

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 288
91ST GENERAL ASSEMBLY

Reported from the Committee on Judiciary, May 3, 2001, with recommendation that the House Committee Substitute for Senate Bill No. 288 Do Pass.

TED WEDEL, Chief Clerk

0578L.04C

AN ACT

To repeal sections 59.040, 59.041, 59.050, 59.090, 59.100, 59.130, 59.250, 59.255, 59.257, 59.260, 59.300, 347.189, 351.120, 351.220, 351.268, 351.410, 351.415, 351.435, 351.440, 351.458, 351.478, 351.482, 400.1-105, 400.1-201, 400.2-103, 400.2-210, 400.2-326, 400.2-401, 400.2-502, 400.2-716, 400.2A-103, 400.2A-303, 400.2A-307, 400.2A-309, 400.4-210, 400.7-503, 400.8-103, 400.8-106, 400.8-110, 400.8-301, 400.8-302, 400.8-510, 400.9-101, 400.9-102, 400.9-103, 400.9-104, 400.9-105, 400.9-106, 400.9-107, 400.9-108, 400.9-109, 400.9-110, 400.9-111, 400.9-112, 400.9-113, 400.9-114, 400.9-115, 400.9-116, 400.9-201, 400.9-202, 400.9-203, 400.9-204, 400.9-205, 400.9-206, 400.9-207, 400.9-208, 400.9-301, 400.9-302, 400.9-303, 400.9-304, 400.9-305, 400.9-306, 400.9-307, 400.9-308, 400.9-309, 400.9-310, 400.9-311, 400.9-312, 400.9-313, 400.9-314, 400.9-315, 400.9-316, 400.9-317, 400.9-318, 400.9-401, 400.9-402, 400.9-403, 400.9-404, 400.9-405, 400.9-406, 400.9-407, 400.9-408, 400.9-409, 400.9-501, 400.9-502, 400.9-503, 400.9-504, 400.9-505, 400.9-506, 400.9-507 and 400.9-508, RSMo 2000, relating to business procedures regulated by the secretary of state and related matters, and to enact in lieu thereof one hundred eighty-one new sections relating to the same subject, with an emergency clause, and a termination date for a certain section.

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

Section A. Sections 59.040, 59.041, 59.050, 59.090, 59.100, 59.130, 59.250, 59.255,
2 59.257, 59.260, 59.300, 347.189, 351.120, 351.220, 351.268, 351.410, 351.415, 351.435,

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

3 351.440, 351.458, 351.478, 351.482, 400.1-105, 400.1-201, 400.2-103, 400.2-210, 400.2-326,
4 400.2-401, 400.2-502, 400.2-716, 400.2A-103, 400.2A-303, 400.2A-307, 400.2A-309, 400.4-
5 210, 400.7-503, 400.8-103, 400.8-106, 400.8-110, 400.8-301, 400.8-302, 400.8-510, 400.9-101,
6 400.9-102, 400.9-103, 400.9-104, 400.9-105, 400.9-106, 400.9-107, 400.9-108, 400.9-109,
7 400.9-110, 400.9-111, 400.9-112, 400.9-113, 400.9-114, 400.9-115, 400.9-116, 400.9-201,
8 400.9-202, 400.9-203, 400.9-204, 400.9-205, 400.9-206, 400.9-207, 400.9-208, 400.9-301,
9 400.9-302, 400.9-303, 400.9-304, 400.9-305, 400.9-306, 400.9-307, 400.9-308, 400.9-309,
10 400.9-310, 400.9-311, 400.9-312, 400.9-313, 400.9-314, 400.9-315, 400.9-316, 400.9-317,
11 400.9-318, 400.9-401, 400.9-402, 400.9-403, 400.9-404, 400.9-405, 400.9-406, 400.9-407,
12 400.9-408, 400.9-409, 400.9-501, 400.9-502, 400.9-503, 400.9-504, 400.9-505, 400.9-506,
13 400.9-507 and 400.9-508, RSMo 2000, are repealed and one hundred eighty-one new sections
14 enacted in lieu thereof, to be known as sections 59.005, 59.041, 59.042, 59.043, 59.090, 59.100,
15 59.130, 59.250, 59.255, 59.257, 59.260, 59.300, 59.800, 347.048, 351.120, 351.220, 351.268,
16 351.410, 351.415, 351.435, 351.458, 351.478, 351.482, 400.1-105, 400.1-201, 400.2-103, 400.2-
17 210, 400.2-326, 400.2-401, 400.2-502, 400.2-716, 400.2A-103, 400.2A-303, 400.2A-307,
18 400.2A-309, 400.4-210, 400.5-118, 400.7-503, 400.8-103, 400.8-106, 400.8-110, 400.8-301,
19 400.8-302, 400.8-510, 400.9-101, 400.9-102, 400.9-103, 400.9-104, 400.9-105, 400.9-106,
20 400.9-107, 400.9-108, 400.9-109, 400.9-110, 400.9-201, 400.9-202, 400.9-203, 400.9-204,
21 400.9-205, 400.9-206, 400.9-207, 400.9-208, 400.9-209, 400.9-210, 400.9-301, 400.9-302,
22 400.9-303, 400.9-304, 400.9-305, 400.9-306, 400.9-307, 400.9-308, 400.9-309, 400.9-310,
23 400.9-311, 400.9-312, 400.9-313, 400.9-314, 400.9-315, 400.9-316, 400.9-317, 400.9-318,
24 400.9-319, 400.9-320, 400.9-321, 400.9-322, 400.9-323, 400.9-324, 400.9-325, 400.9-326,
25 400.9-327, 400.9-328, 400.9-329, 400.9-330, 400.9-331, 400.9-332, 400.9-333, 400.9-334,
26 400.9-335, 400.9-336, 400.9-337, 400.9-338, 400.9-339, 400.9-340, 400.9-341, 400.9-342,
27 400.9-401, 400.9-402, 400.9-403, 400.9-404, 400.9-405, 400.9-406, 400.9-407, 400.9-408,
28 400.9-409, 400.9-501, 400.9-502, 400.9-503, 400.9-504, 400.9-505, 400.9-506, 400.9-507,
29 400.9-508, 400.9-509, 400.9-510, 400.9-511, 400.9-512, 400.9-513, 400.9-514, 400.9-515,
30 400.9-516, 400.9-517, 400.9-518, 400.9-519, 400.9-520, 400.9-521, 400.9-522, 400.9-523,
31 400.9-524, 400.9-525, 400.9-526, 400.9-527, 400.9-601, 400.9-602, 400.9-603, 400.9-604,
32 400.9-605, 400.9-606, 400.9-607, 400.9-608, 400.9-609, 400.9-610, 400.9-611, 400.9-612,
33 400.9-613, 400.9-614, 400.9-615, 400.9-616, 400.9-617, 400.9-618, 400.9-619, 400.9-620,
34 400.9-621, 400.9-622, 400.9-623, 400.9-624, 400.9-625, 400.9-626, 400.9-627, 400.9-628,
35 400.9-629, 400.9-701, 400.9-702, 400.9-703, 400.9-704, 400.9-705, 400.9-706, 400.9-707,
36 400.9-708, 400.9-709 and 400.9-710, to read as follows:

59.005. As used in this chapter, unless the context clearly indicates otherwise, the
2 **following terms mean:**

3 (1) "Document" or "instrument", any writing or drawing presented to the recorder
4 of deeds for recording;

5 (2) "File", "filed" or "filing", the act of delivering or transmitting a document to
6 the recorder of deeds for recording into the official public record;

7 (3) "Grantor" or "grantee", the names of the parties involved in the transaction
8 used to create the recording index;

9 (4) "Legal description" shall include but not be limited to the reference to the lot
10 or parts thereof, block, plat or replat number, plat book and page and the name of any
11 recorded plat; or if the property has not been platted, the acreage, if applicable, the
12 quarter/quarter section, and the section, township and range of property. The address of
13 the property shall not be accepted as legal description;

14 (5) "Legible", all text, seals, drawings, signatures or other content within the
15 document must be capable of producing a clear and readable image from record,
16 regardless of the process used for recording;

17 (6) "Page", any writing, printing or drawing printed on one side only covering all
18 or part of the page, not larger than eight and one-half inches in width and eleven inches
19 in height for pages other than a plat or survey;

20 (7) "Record", "recorded" or "recording", the recording of a document into the
21 official public record, regardless of the process used;

22 (8) "Recorder of deeds", the separate recorder of deeds in those counties where
23 separate from the circuit clerk and the circuit clerk and ex officio recorder of deeds in
24 those counties where the offices are combined.

59.041. Notwithstanding the provisions of this chapter or chapter 478, RSMo, or any
2 other provision of law in conflict with the provisions of this section, in any county which
3 becomes a county of the second class after September 28, 1987, and wherein the offices of circuit
4 clerk and recorder of deeds are combined, such combination shall continue until the [voters]
5 governing body of the county [authorize] authorizes the separation of the offices as provided
6 in section [59.040] 59.042.

**59.042. 1. In any county where the offices of clerk of the circuit court and the
2 recorder of deeds are combined, the governing body of said county, by public vote, may
3 authorize the separation of the two offices.**

4 **2. (1) When the governing body of such county authorizes the separation of the two
5 offices, it shall submit to the duly qualified voters of said county in the next general election
6 the question of whether the clerk of the circuit court should be appointed.**

7 **(2) The question shall be submitted to the voters in substantially the following
8 form:**

9 **Shall the office of the circuit clerk in (name of county) be appointed?**

10 **G YES**

G NO

11

12 **If you are in favor of the question, place an "X" in the box opposite "YES". If you are**
13 **opposed to the question, place an "X" in the box opposite "NO".**

14 **(3) If the issue is approved by a majority of the voters in the county, it shall be the**
15 **duty of the circuit court en banc to appoint the circuit clerk for said county.**

16 **(4) If the issue is not approved by a majority of the voters in the county, the circuit**
17 **clerk shall thereafter be elected pursuant to section 59.043.**

59.043. In all counties where the recorder of deeds and the clerk of the circuit court
2 **are separated after December 31, 2003, in the November general election, following the**
3 **election where the voters of the county do not approve the appointment of the circuit clerk,**
4 **and every four years thereafter, the qualified voters of such county shall elect some suitable**
5 **person as circuit court clerk who shall hold office for four years until a successor is elected,**
6 **commissioned and qualified. Such person shall enter upon the duties of office on the first**
7 **day of January next following the election.**

59.090. 1. In all counties of the fourth class, the clerks of the circuit court shall be ex
2 officio recorder for their respective counties, **unless the governing body of such county has**
3 **separated the two offices pursuant to sections 59.042 and 59.043.**

4 **2. With respect to any county that elects to separate the offices of clerk of the circuit**
5 **court and recorder of deeds, all references in statutes to the "circuit clerk ex officio**
6 **recorder of deeds" shall be deemed, after the separation, to refer to either the circuit clerk**
7 **or the recorder of deeds, as appropriate in the context of the reference.**

59.100. Every [clerk and every] recorder elected as provided in section 59.020, before
2 entering upon the duties of the office as recorder, shall enter into bond to the state, in a sum set
3 by the county commission of not less than one thousand dollars, with sufficient sureties, not less
4 than two, to be approved by the commission, conditioned for the faithful performance of the
5 duties enjoined on [him] **such person** by law as recorder, and for the delivering up of the
6 records, books, papers, writings, seals, furniture and apparatus belonging to the office, whole,
7 safe and undefaced, to such officer's successor.

59.130. [He] **Every recorder of deeds** shall have a seal of office, and shall have power
2 to take the acknowledgment of proof of deeds and instruments of writing [, and to take the
3 relinquishments of dower of married women, and certify the same, under his seal of office, in
4 all cases and in the same manner, with like effect, as clerks of circuit courts may do by law].

59.250. 1. The recorder of deeds in counties [of the third class,] wherein there is a
2 separate circuit clerk and recorder, shall keep a full, true and faithful account of all fees of every

3 kind received. [He] **The recorder** shall make a report thereof each year to the county
4 commission.

5 2. It shall be the duty of the recorder of deeds to charge, receive and collect in all cases
6 every fee, charge or money due [his] **the recorder's** office by law. [He] **The recorder of deeds**
7 shall also, when he **or she** makes and files the report [herein] required **by this section** at the end
8 of each year of his **or her** official term, verify [the same] **such report** by affidavit, and the report
9 shall show the source and amount of every fee or charge collected. All fees, charges and moneys
10 collected by the recorder of deeds shall be the property of the county. **Every recorder of deeds**
11 **shall be liable on his or her official bond for all fees collected and not accounted for by him**
12 **or her and paid into the county treasury as provided by this section.**

59.255. The recorder of deeds in each county [of the third class] wherein the offices of
2 circuit clerk and recorder of deeds are separate and the circuit clerk and ex officio recorder of
3 deeds in each county [of the fourth class and in each county of the third class] wherein the offices
4 are combined shall keep in his **or her** office [a well-bound book to be] **a record** known as the
5 "Marginal Release of Deeds of Trust" in which [he shall enter in appropriately ruled and headed
6 columns] **was recorded**, at the time of the execution of a marginal release of a deed of trust, [the
7 following items:] **executed prior to August 28, 1991**, the names of the grantors and grantees,
8 the book and page of release, the date of release and to whom delivered.

59.257. The recorder of deeds in counties [of the third class,] wherein there is a separate
2 circuit clerk and recorder, is entitled to appoint the deputies that the recorder of deeds, with the
3 approval of the county commission, deems necessary for the prompt and proper discharge of the
4 duties of his office. The deputies shall possess the **same** qualifications [of clerks of courts of
5 record] **as the recorder** and may, in the name of their principal, perform the duties of the
6 recorder of deeds, but all recorders of deeds and their sureties are responsible for the official
7 conduct of their deputies. The deputies appointed [as herein provided] **pursuant to this section**
8 shall receive the salaries that are fixed by the recorder of deeds, with the approval of the county
9 commission, from the general revenue of the county. The appointment of every deputy shall be
10 in writing, endorsed with an oath of office similar to that taken by the recorder of deeds and
11 subscribed to by the deputy appointed, and filed by the recorder with the county commission.

59.260. It shall be the duty of the circuit clerk and recorder of counties [of the third
2 class,] wherein the offices [shall have been] **are** combined, [and in all counties of the fourth
3 class,] to charge and collect for the county in all cases every fee accruing to his **or her** office as
4 recorder of the county to which he **or she** may be entitled under the law, and shall at the end of
5 each month, file with the county clerk a report of all fees charged and accruing to his office
6 during such month, together with the names of persons paying such fees. It shall be the duty of
7 the circuit clerk and recorder, upon the filing of said report, to forthwith pay over to the county

8 treasurer, all moneys that shall have been collected by him **or her** as recorder during the month
9 and required to be shown in such monthly report as herein provided, taking duplicate receipts
10 therefor, one of which shall be filed with the county clerk; and every such circuit clerk and
11 recorder shall be liable on his **or her** official bond for all fees collected and not accounted for
12 by him **or her**, and paid into the county treasury as herein provided.

59.300. The circuit clerk and recorder in counties [of the fourth class, and in counties
2 of the third class] wherein the offices [shall have been] **are** combined, as recorder of the county,
3 may appoint in writing one or more deputies, to be approved by the circuit judge of the circuit
4 court, which appointment with the like oath of office as their principals, to be taken by them and
5 endorsed thereon shall be filed in the office of the county clerk. Such deputy recorders shall
6 possess the qualifications of clerks of courts of record, and may, in the name of their principals,
7 perform the duties of recorders of deeds, but all circuit clerks and recorders and their sureties
8 shall be responsible for the official conduct of their deputies.

**59.800. 1. Beginning on the effective date of this act, notwithstanding any other
2 condition precedent required by law to the recording of any instrument specified in
3 subdivisions (1) and (2) of section 59.330, an additional fee of seven dollars shall be charged
4 and collected by every recorder of deeds in this state on each instrument recorded. The
5 additional fee shall be distributed as follows:**

6 (1) **One dollar and fifty cents to the record's fund established pursuant to
7 subsection 1 of section 59.319, provided, however, that all funds received pursuant to this
8 section shall be used exclusively for the purchase, installation, upgrade and maintenance
9 of modern technology necessary to operate the recorder's office in an efficient manner;**

10 (2) **Two dollars to the county general revenue fund;**

11 (3) **One dollar to the county employees retirement fund established pursuant to
12 section 50.1010, RSMo, provided, however, that in any charter county or city not within
13 a county whose employees are not members of the county employees' retirement fund, the
14 one dollar fee collected for the county employees retirement fund established pursuant to
15 section 50.1010, RSMo, shall go to the general revenue fund of that charter county or city
16 not within a county; and**

17 (4) **Two dollars and fifty cents to the fund established in subsection 2 of this section.**

18 **2. There is hereby established in the state treasury a revolving fund known as the
19 "Statutory County Recorder's Fund", which shall receive funds paid to the recorders of
20 deeds of the counties of this state pursuant to subdivision (4) of subsection 1 of this section.
21 The state treasurer shall be custodian of the fund and shall make disbursements from the
22 fund for the purpose of subsidizing the fees collected by counties that hereafter elect to
23 separate the offices of clerk of the circuit court and recorder. The subsidy shall consist of**

24 **one-half of the total amount of moneys collected pursuant to subdivision (2) of subsection**
25 **1 of this section subtracted from sixty thousand dollars. The moneys paid to qualifying**
26 **counties pursuant to this subsection shall be deposited in the county general revenue fund.**
27 **For purposes of this section a "qualified county" is a county that hereafter elects to**
28 **separate the offices of clerk of the circuit court and recorder and in which the office of the**
29 **recorder of deeds collects less than sixty thousand dollars in fees on an annual basis.**

30 **3. Any unexpended balance in the fund at the end of any biennium is exempt from**
31 **the provisions of section 33.080, RSMo, relating to transfer of unexpended balances to the**
32 **general revenue fund.**

347.048. Any limited liability company that owns and rents or leases real property,
2 **or owns unoccupied real property, located within any home rule city with a population of**
3 **more than four hundred thousand inhabitants which is located in more than one county,**
4 **shall file with that city's clerk an affidavit listing the name and address of at least one**
5 **person, who has management control and responsibility for the real property owned and**
6 **leased or rented by the limited liability company, or owned by the limited liability company**
7 **and unoccupied.**

351.120. Every corporation organized pursuant to the laws of this state, including
2 corporations organized pursuant to or subject to this chapter, and every foreign corporation
3 licensed to do business in this state, whether such license shall have been issued pursuant to this
4 chapter or not, other than corporations exempted from taxation by the laws of this state, shall file
5 an annual corporation registration report stating its corporate name, the name of its registered
6 agent and such agent's Missouri address, giving street and number, or building and number, or
7 both, as the case may require, the name and correct business or residence address of its officers
8 and directors, and the mailing address of the corporation's principal place of business or
9 corporate headquarters. The annual corporation registration report shall be due on the date that
10 the corporation's franchise tax report is due as required in section 147.020, RSMo, or within
11 thirty days of the date of incorporation of the corporation; but any extension of time for filing the
12 franchise tax report shall not apply to the due date of the annual corporation registration report.
13 Any corporation that is not required to file a franchise tax report shall still be required to file an
14 annual corporation registration report. **In the event of any change in the names and addresses**
15 **of the officers and directors set forth in an annual registration report following the**
16 **required date of its filing and the date of the next such required report, the corporation**
17 **may correct such information by filing a certificate of correction pursuant to section**
18 **351.049.**

351.220. The board of directors of a corporation may declare and the corporation may
2 pay dividends on its [outstanding] shares in cash, property, or its own shares, subject to the

3 following limitations and provisions:

4 (1) No dividend shall be declared or paid at a time when the net assets of the corporation
5 are less than its stated capital or when the payment thereof would reduce the net assets of the
6 corporation below its stated capital;

7 (2) If a dividend is declared out of the paid-in surplus of the corporation, whether created
8 by reduction of stated capital or otherwise, the limitations contained in section 351.210 shall
9 apply;

10 (3) If a dividend is declared payable in its own shares having a par value, such shares
11 shall be issued at the par value thereof and there shall be transferred to stated capital at the time
12 such dividend is declared an amount of surplus equal to the aggregate par value of the shares to
13 be issued as a dividend;

14 (4) If a dividend is declared payable in its own shares, without par value, and such shares
15 have a preferential right in the assets of the corporation in the event of its involuntary liquidation,
16 such shares shall be issued at the liquidation value thereof, and there shall be transferred to stated
17 capital at the time such dividend is declared, an amount of surplus equal to the aggregate
18 preferential amount payable upon such shares in the event of involuntary liquidation;

19 (5) If a dividend is declared payable in its own shares without par value and none of such
20 shares has a preferential right in the assets of the corporation in the event of its involuntary
21 liquidation, such shares shall be issued at such value as shall be fixed by the board of directors
22 by resolution at the time such dividend is declared, and there shall be transferred to stated capital,
23 at the time such dividend is declared, an amount of surplus equal to the aggregate value so fixed
24 in respect of such shares, and the amount per share transferred to stated capital shall be disclosed
25 to the shareholders receiving such dividends concurrently with payment thereof;

26 (6) A split-up or division of issued shares into a greater number of shares of the same
27 class shall not be construed to be a share dividend within the meaning of this section;

28 (7) No dividend shall be declared or paid contrary to any restrictions contained in the
29 articles of incorporation.

351.268. 1. In addition to the provisions of sections 351.265 and 351.267 regarding the
2 adjournment of shareholders meetings at which a quorum is not present, unless the bylaws
3 provide to the contrary, a meeting may be otherwise successively adjourned to a specified date
4 not longer than ninety days after such adjournment or to another place. Notice need not be given
5 of the adjourned meeting if the time and place thereof are announced at the meeting at which the
6 adjournment is taken. At the adjourned meeting the corporation may transact any business which
7 might have been transacted at the original meeting. If the adjournment is for more than ninety
8 days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice
9 of the date and place of the adjourned meeting shall be given to each shareholder of record

10 entitled to vote at the meeting.

11 2. A shareholder's meeting may be successively postponed by resolution of the board of
12 directors, unless otherwise provided in the bylaws, to a specified date up to a date ninety days
13 after such postponement or to another place, provided [public] notice **of the date and place of**
14 **the postponed meeting, which may be by public notice, is given to each shareholder of**
15 **record entitled to vote at the meeting** of such postponement is given prior to the date
16 previously scheduled for such meeting. [Such notice shall state the new date and place of such
17 postponed meeting.]

18 3. For purposes of this chapter, "adjournment" means a delay in the date, which may also
19 be combined with a change in the place, of a meeting after the meeting has been convened;
20 "postponement" means a delay in the date, which may be combined with a change in the place,
21 of the meeting before it has been convened, but after the time and place thereof have been set
22 forth in a notice delivered or given to shareholders; and public notice shall be deemed to have
23 been given if a public announcement is made by press release reported by a national news service
24 or in a publicly available document filed with the United States Securities and Exchange
25 Commission.

 351.410. Any two or more domestic corporations may merge into one of the corporations
2 in the following manner: The board of directors of each corporation shall approve a plan of
3 merger and direct the submission of the plan to a vote at a meeting of shareholders. The plan of
4 merger shall set forth:

5 (1) The names of the corporations proposing to merge, **which are herein designated**
6 **as the "constituent corporations"**, and the name of the corporation into which they propose
7 to merge, which is herein designated as "the surviving corporation";

8 (2) The terms and conditions of the proposed merger and the mode of carrying it into
9 effect;

10 (3) The manner and basis of converting the shares of each merging corporation into cash,
11 property, shares or other securities or obligations of the surviving corporation, or (if any shares
12 of any merging corporation are not to be converted solely into cash, property, shares or other
13 securities or obligations of the surviving corporation) into cash, property, shares or other
14 securities or obligations of any other domestic or foreign corporation, which cash, property,
15 shares or other securities or obligations of any other domestic or foreign corporation may be in
16 addition to or completely in lieu of cash, property, shares or other securities or obligations of the
17 surviving corporation;

18 (4) A statement of any changes in the articles of incorporation of the surviving
19 corporation to be effected by the merger;

20 (5) Such other provisions with respect to the proposed merger as are deemed necessary

21 or desirable.

351.415. Any two or more domestic corporations may consolidate into a new domestic corporation in the following manner: The board of directors of each corporation shall approve a plan of consolidation and direct the submission of the plan to a vote at a meeting of shareholders. The plan of consolidation shall set forth:

(1) The names of the corporations proposing to consolidate, **which are herein designated as the "constituent corporations"** and the name of the new corporation into which they propose to consolidate, which is herein designated as "the new corporation";

(2) The terms and conditions of the proposed consolidation and the mode of carrying it into effect;

(3) The manner and basis of converting the shares of each consolidating corporation into cash, property, shares, or other securities, or obligations of the new corporation, or (if any shares of any consolidating corporation are not to be converted solely into cash, property, shares or other securities or obligations of the new corporation) into cash, property, shares or other securities or obligations of any other domestic or foreign corporation, which cash, property, shares or other securities or obligations of any other domestic or foreign corporation may be in addition to or completely in lieu of cash, property, shares or other securities or obligations of the new corporation;

(4) With respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this chapter;

(5) Such other provisions with respect to the proposed consolidation as are deemed necessary or desirable.

351.435. **1.** Duplicate originals or the original and a copy of the articles of merger or articles of consolidation shall be delivered to the secretary of state **by the surviving corporation in the case of a merger or the new corporation in the case of a consolidation. The articles shall be executed pursuant to section 351.430, filed pursuant to section 351.046 and effective pursuant to section 351.048.** If the secretary of state finds that the articles conform to law, he shall, when all required taxes or fees have been paid, file the same, keeping the original as a permanent record, and issue a certificate of merger or a certificate of consolidation, to which he shall affix the copy of such articles.

2. In lieu of the delivery of articles of merger or articles of consolidation as required pursuant to subsection 1 of this section, summary articles of merger or summary articles of consolidation, executed pursuant to section 351.046, may be filed pursuant to section 351.046 to be effective pursuant to section 351.048. Such summary articles shall state:

(1) The name and state of incorporation of each of the constituent corporations;

(2) That a plan of merger or consolidation has been approved, adopted, certified,

15 **executed and acknowledged by each of the constituent corporations as required by this**
16 **chapter;**

17 **(3) The name of the surviving corporation in the case of a merger or the new**
18 **corporation in the case of a consolidation;**

19 **(4) In the case of a merger, such amendments or changes in the articles of the**
20 **surviving corporation as are desired to be effected by the merger, or, if no such**
21 **amendments or changes are desired, a statement that the articles of incorporation of the**
22 **surviving corporation shall be the articles of incorporation;**

23 **(5) In the case of a consolidation, that the articles of incorporation of the new**
24 **corporation shall be as set forth in an attachment to the summary articles;**

25 **(6) That the executed plan of merger or consolidation is on file at an office of the**
26 **surviving corporation in the case of a merger, or new corporation in the case of a**
27 **consolidation stating the address thereof; and**

28 **(7) That a copy of a plan of merger or consolidation will be furnished by the**
29 **surviving corporation in the case of a merger or the new corporation in the case of a**
30 **consolidation, on request and without cost, to any shareholder of any constituent**
31 **corporation.**

351.458. 1. One or more foreign corporations and one or more domestic corporations
2 may be merged or consolidated in the following manner, if such merger or consolidation is
3 permitted by the laws of the state under which each such foreign corporation is organized:

4 (1) Each domestic corporation shall comply with the provisions of this chapter with
5 respect to the merger or consolidation, as the case may be, of domestic corporations and each
6 foreign corporation shall comply with the applicable provisions of the laws of the state under
7 which it is organized;

8 (2) If the surviving or new corporation, as the case may be, is to be governed by the laws
9 of any state other than this state, it shall comply with the provisions of this chapter with respect
10 to foreign corporations if it is to do business in this state, and regardless of whether or not it is
11 to do business in this state it shall file with the secretary of state of this state:

12 (a) An agreement that it will promptly pay to the dissenting shareholders of any domestic
13 corporation which is a party to the merger or consolidation the amount, if any, to which they
14 shall be entitled under provisions of this chapter with respect to the rights of dissenting
15 shareholders, and

16 (b) An agreement that it may be served with process in this state, and an irrevocable
17 appointment of the secretary of state of this state as its agent to accept service of process, in any
18 proceeding based upon any cause of action against any such domestic corporation arising in this
19 state prior to the issuance of the certificate of merger or the certificate of consolidation by the

20 secretary of state of this state, and in any proceeding for the enforcement of the rights of a
21 dissenting shareholder of any such domestic corporation against the surviving or new
22 corporation.

23 2. The effect of the merger or consolidation shall be the same as in the case of the merger
24 or consolidation of domestic corporations; except, if the surviving or new corporation is to be
25 governed by the laws of any state other than this state, to the extent that the laws of the other
26 state shall otherwise provide.

27 3. [If the surviving or new corporation is to be governed by the laws of any state other
28 than this state, the secretary of state of this state may nevertheless in his discretion issue a
29 certificate of merger or certificate of consolidation in the manner provided in section 351.435.

30 4.] If the surviving or new corporation is a foreign corporation, the effective date of such
31 merger or consolidation shall be the date on which the same becomes effective in the state of
32 domicile of such surviving or new corporation and the provisions of section 351.440 shall not
33 apply. **A document from the state of the domicile of the surviving corporation in the case
34 of a merger, or the new corporation in the case of a consolidation, certifying that the
35 merger or consolidation has become effective in such state shall be a requirement for the
36 merger or consolidation becoming effective in this state.**

351.478. 1. After dissolution is authorized **pursuant to sections 351.462, 351.464 or
2 351.466, or it has been dissolved pursuant to section 351.486**, a corporation shall dispose of
3 the known claims against it by following the procedure described in this section.

4 2. The corporation shall notify its known claimants in writing by United States Postal
5 Service of the dissolution at any time after dissolution is authorized. The written notice must:

- 6 (1) Describe information that must be included in a claim;
- 7 (2) Provide a mailing address where a claim may be sent;
- 8 (3) State the deadline, which may not be fewer than one hundred eighty days from the
9 effective date of the written notice, by which the dissolved corporation must receive the claim;
- 10 and
- 11 (4) State that the claim will be barred if not received by the deadline.

12 3. Other rules of law, including rules on the permissibility of third-party claims, to the
13 contrary notwithstanding, a claim against a corporation dissolved without fraudulent intent is
14 barred:

15 (1) If a claimant who was given written notice pursuant to subsection 2 of this section
16 does not deliver the claim to the corporation by the deadline;

17 (2) If a claimant whose claim was rejected by the dissolved corporation does not
18 commence proceedings to enforce the claim within ninety days from the effective date of the
19 rejection notice.

20 4. For purposes of this section, "claim" does not include a contingent liability or a claim
21 based on an event occurring after the effective date of dissolution.

22 5. For purposes of this section, "fraudulent intent" shall be established if it is shown that
23 the sole or primary purpose of the authorization for dissolution was to defraud shareholders,
24 creditors or others.

351.482. 1. After dissolution is authorized **pursuant to sections 351.462, 351.464 or**
2 **351.466, or it has been dissolved pursuant to section 351.486**, a corporation may also publish
3 notice of its dissolution and request that persons with claims against the corporation present them
4 in accordance with the notice.

5 2. The notice shall:

6 (1) Be published one time in a newspaper of general circulation in the county where the
7 corporation's principal office, or, if none in this state, its registered office, is or was last located;

8 (2) Be published one time in a publication of statewide circulation whose audience is
9 primarily persons engaged in the practice of law in this state and which is published not less than
10 four times per year;

11 (3) At the request of the corporation, be published by the secretary of state in an
12 electronic format accessible to the public;

13 (4) Describe the information that must be included in a claim and provide a mailing
14 address where the claim may be sent; and

15 (5) State that a claim against the corporation will be barred unless a proceeding to
16 enforce the claim is commenced within two years after the publication of the notice.

17 3. Other rules of law, including rules on the permissibility of third-party claims, to the
18 contrary notwithstanding, if a corporation dissolved without fraudulent intent publishes notices
19 in accordance with subsection 2 of this section, the claim of each of the following claimants is
20 barred unless the claimant commences a proceeding to enforce the claim against the dissolved
21 corporation within two years after the publication date of whichever of the notices was published
22 last:

23 (1) A claimant who did not receive written notice pursuant to section 351.478;

24 (2) A claimant whose claim was timely sent to the dissolved corporation but not acted
25 on;

26 (3) A claimant whose claim is contingent or based on an event occurring after the
27 effective date of dissolution.

28 4. A claim may be enforced pursuant to this section only:

29 (1) Against the dissolved corporation, to the extent of its undistributed assets; or

30 (2) If the assets have been distributed in liquidation, against a shareholder of the
31 dissolved corporation to the extent of the shareholder's pro rata share of the claim or the

32 corporate assets distributed to the shareholder in liquidation, whichever is less, but a
33 shareholder's total liability for all claims pursuant to this section may not exceed the total amount
34 of assets distributed to the shareholder.

35 5. For purposes of this section, "fraudulent intent" shall be established if it is shown that
36 the sole or primary purpose of the authorization for dissolution or the dissolution was to defraud
37 shareholders, creditors or others.

400.1-105. (1) Except as provided hereafter in this section, when a transaction bears a
2 reasonable relation to this state and also to another state or nation the parties may agree that the
3 law either of this state or of such other state or nation shall govern their rights and duties. Failing
4 such agreement this chapter applies to transactions bearing an appropriate relation to this state.

5 (2) Where one of the following provisions of this chapter specifies the applicable law,
6 that provision governs and a contrary agreement is effective only to the extent permitted by the
7 law (including the conflict of laws rules) so specified:

8 Rights of creditors against sold goods. Section 400.2-402.

9 Applicability of the Article on Leases. Sections 400.2A-105 and 400.2A-106.

10 Applicability of the Article on Bank Deposits and Collections. Section 400.4-102.

11 Letter of credit. Section 400.5-116.

12 Bulk transfers subject to the Article on Bulk Transfers. Section 400.6-102.

13 Applicability of the Article on Investment Securities. Section 400.8-110.

14 [Perfection provisions of the Article on Secured Transactions. Section 400.9-103.]

15 **Law governing perfection, the effect of perfection or nonperfection, and the priority**
16 **of security interests. Sections 400.9-301 through 400.9-307.**

400.1-201. Subject to additional definitions contained in the subsequent articles of this
2 chapter which are applicable to specific articles or parts thereof, and unless the context otherwise
3 requires, in this chapter:

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

6 (2) "Aggrieved party" means a party entitled to resort to a remedy.

7 (3) "Agreement" means the bargain of the parties in fact as found in their language or
8 by implication from other circumstances including course of dealing or usage of trade or course
9 of performance as provided in this chapter (sections 400.1-205 and 400.2-208). Whether an
10 agreement has legal consequences is determined by the provisions of this chapter, if applicable;
11 otherwise by the law of contracts (section 400.1-103). (Compare "Contract".)

12 (4) "Bank" means any person engaged in the business of banking.

13 (5) "Bearer" means the person in possession of an instrument, document of title, or
14 certificated security payable to bearer or endorsed in blank.

15 (6) "Bill of lading" means a document evidencing the receipt of goods for shipment
16 issued by a person engaged in the business of transporting or forwarding goods, and includes an
17 airbill. "Airbill" means a document serving for air transportation as a bill of lading does for
18 marine or rail transportation, and includes an air consignment note or air waybill.

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

20 (8) "Burden of establishing" a fact means the burden of persuading the triers of fact that
21 the existence of the fact is more probable than its nonexistence.

22 (9) "Buyer in ordinary course of business" means a person [who] **that buys goods** in
23 good faith and without knowledge that the sale [to him is in violation of the ownership rights or
24 security interest of a third party] **violates the rights of another person** in the goods [buys], **and**
25 **in the ordinary course from a person, other than a pawnbroker,** in the business of selling goods
26 of that kind [but does not include a pawnbroker]. [All persons who sell minerals or the like
27 (including oil and gas) at wellhead or minehead shall be deemed to be persons] **A person buys**
28 **goods in the ordinary course if the sale to the person comports with the usual or customary**
29 **practices in the kind of business in which the seller is engaged or with the seller's own**
30 **usual or customary practices. A person that sells oil, gas or other minerals at the wellhead**
31 **or minehead is a person** in the business of selling goods of that kind. ["Buying" may be] **A**
32 **buyer in ordinary course of business may buy** for cash [or], by exchange of other property or
33 on secured or unsecured credit and [includes receiving] **may acquire** goods or documents of title
34 under a preexisting contract for sale [but does not include a transfer in bulk or as security for or
35 in total or partial satisfaction of a money debt]. **Only a buyer that takes possession of the**
36 **goods or has a right to recover the goods from the seller under article 2 may be a buyer in**
37 **ordinary course of business. A person that acquires goods in a transfer in bulk or as**
38 **security for, or in total or partial satisfaction of, a money debt is not a buyer in ordinary**
39 **course of business.**

40 (10) "Conspicuous": A term or clause is conspicuous when it is so written that a
41 reasonable person against whom it is to operate ought to have noticed it. A printed heading in
42 capitals (as: NONNEGOTIABLE BILL OF LADING) is conspicuous. Language in the body
43 of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram
44 any stated term is "conspicuous". Whether a term or clause is "conspicuous" or not is for
45 decision by the court.

46 (11) "Contract" means the total legal obligation which results from the parties' agreement
47 as affected by this chapter and any other applicable rules of law. (Compare "Agreement".)

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

51 assignor's estate.

52 (13) "Defendant" includes a person in the position of defendant in a cross-action or
53 counterclaim.

54 (14) "Delivery" with respect to instruments, documents of title, chattel paper or
55 certificated securities means voluntary transfer of possession.

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

63 (16) "Fault" means wrongful act, omission or breach.

64 (17) "Fungible" with respect to goods or securities means goods or securities of which
65 any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are
66 not fungible shall be deemed fungible for the purposes of this chapter to the extent that under a
67 particular agreement or document unlike units are treated as equivalents.

68 (18) "Genuine" means free of forgery or counterfeiting.

69 (19) "Good faith" means honesty in fact in the conduct or transaction concerned.

70 (20) "Holder" with respect to a negotiable instrument, means the person in possession
71 if the instrument is payable to bearer or, in the case of an instrument payable to an identified
72 person, if the identified person is in possession. "Holder" with respect to a document of title
73 means the person in possession if the goods are deliverable to bearer or to the order of the person
74 in possession.

75 (21) To "honor" is to pay or to accept and pay, or where a credit so engages to purchase
76 or discount a draft complying with the terms of the credit.

77 (22) "Insolvency proceedings" includes any assignment for the benefit of creditors or
78 other proceedings intended to liquidate or rehabilitate the estate of the person involved.

79 (23) A person is "insolvent" who either has ceased to pay his **or her** debts in the ordinary
80 course of business or cannot pay his **or her** debts as they become due or is insolvent within the
81 meaning of the federal bankruptcy law.

82 (24) "Money" means a medium of exchange authorized or adopted by a domestic or
83 foreign government and includes a monetary unit of account established by an intergovernmental
84 organization or by agreement between two or more nations.

85 (25) A person has "notice" of a fact when

86 (a) [he] **a person** has actual knowledge of it; or

87 (b) [he] **a person** has received a notice or notification of it; or

88 (c) from all the facts and circumstances known to him **or her** at the time in question he
89 **or she** has reason to know that it exists. A person "knows" or has "knowledge" of a fact when
90 [he] **a person** has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar
91 import refers to knowledge rather than to reason to know. The time and circumstances under
92 which a notice or notification may cease to be effective are not determined by this chapter.

93 (26) A person "notifies" or "gives" a notice or notification to another by taking such steps
94 as may be reasonably required to inform the other in ordinary course whether or not such other
95 actually comes to know of it. A person "receives" a notice or notification when

96 (a) it comes to [his] **a person's** attention, or

97 (b) it is duly delivered at the place of business through which the contract was made or
98 at any other place held out by [him] **a person** as the place for receipt of such communications.

99 (27) Notice, knowledge or a notice or notification received by an organization is
100 effective for a particular transaction from the time when it is brought to the attention of the
101 individual conducting that transaction, and in any event from the time when it would have been
102 brought to [his] **an individual's** attention if the organization had exercised due diligence. An
103 organization exercises due diligence if it maintains reasonable routines for communicating
104 significant information to the person conducting the transaction and there is reasonable
105 compliance with the routines. Due diligence does not require an individual acting for the
106 organization to communicate information unless such communication is part of [his] **an**
107 **individual's** regular duties or unless he **or she** has reason to know of the transaction and that the
108 transaction would be materially affected by the information.

109 (28) "Organization" includes a corporation, government or governmental subdivision or
110 agency, business trust, estate, trust, partnership or association, two or more persons having a joint
111 or common interest, or any other legal or commercial entity.

112 (29) "Party", as distinct from "third party", means a person who has engaged in a
113 transaction or made an agreement within this chapter.

114 (30) "Person" includes an individual or an organization (see section 400.1-102).

115 (31) "Presumption" or "presumed" means that the trier of fact must find the existence
116 of the fact presumed unless and until evidence is introduced which would support a finding of
117 its nonexistence.

118 (32) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien,
119 **security interest**, issue or re-issue, gift or any other voluntary transaction creating an interest in
120 property.

121 (33) "Purchaser" means a person who takes by purchase.

122 (34) "Remedy" means any remedial right to which an aggrieved party is entitled with or

123 without resort to a tribunal.

124 (35) "Representative" includes an agent, an officer of a corporation or association, and
125 a trustee, executor or administrator of an estate, or any other person empowered to act for
126 another.

127 (36) "Rights" includes remedies.

128 (37) "Security interest" means an interest in personal property or fixtures which secures
129 payment or performance of an obligation. [The retention or reservation of title by a seller of
130 goods notwithstanding shipment or delivery to the buyer (section 400.2-401) is limited in effect
131 to a reservation of a "security interest".] The term also includes any interest of a **consignor and**
132 **a buyer of accounts [or], chattel paper [which], a payment intangible, or a promissory note**
133 **in a transaction that** is subject to article 9. The special property interest of a buyer of goods on
134 identification of those goods to a contract for sale under section 400.2-401 is not a "security
135 interest", but a buyer may also acquire a "security interest" by complying with article 9. [Unless
136 a consignment is intended as security, reservation of title thereunder is not a "security interest",
137 but a consignment in any event is subject to the provisions on consignment sales (section
138 400.2-326).] **Except as otherwise provided in section 400.2-505, the right of a seller or lessor**
139 **of goods under article 2 or 2A to retain or acquire possession of the goods is not a "security**
140 **interest", but a seller or lessor may also acquire a "security interest" by complying with**
141 **article 9. The retention or reservation of title by a seller of goods notwithstanding**
142 **shipment or delivery to the buyer (section 400.2-401) is limited in effect to a reservation of**
143 **a "security interest".**

144 Whether a transaction creates a lease or security interest is determined by the facts of
145 each case; however, a transaction creates a security interest if the consideration the lessee is to
146 pay the lessor for the right to possession and use of the goods is an obligation for the term of the
147 lease not subject to termination by the lessee, and

148 (a) the original term of the lease is equal to or greater than the remaining economic life
149 of the goods,

150 (b) the lessee is bound to renew the lease for the remaining economic life of the goods
151 or is bound to become the owner of the goods,

152 (c) the lessee has an option to renew the lease for the remaining economic life of the
153 goods for no additional consideration or nominal additional consideration upon compliance with
154 the lease agreement, or

155 (d) the lessee has an option to become the owner of the goods for no additional
156 consideration or nominal additional consideration upon compliance with the lease agreement.

157 A transaction does not create a security interest merely because it provides that

158 (a) the present value of the consideration the lessee is obligated to pay the lessor for the

159 right to possession and use of the goods is substantially equal to or is greater than the fair market
160 value of the goods at the time the lease is entered into,

161 (b) the lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing,
162 recording, or registration fees, or service or maintenance costs with respect to the goods,

163 (c) the lessee has an option to renew the lease or to become the owner of the goods,

164 (d) the lessee has an option to renew the lease for a fixed rent that is equal to or greater
165 than the reasonably predictable fair market rent for the use of the goods for the term of the
166 renewal at the time the option is to be performed, or

167 (e) the lessee has an option to become the owner of the goods for a fixed price that is
168 equal to or greater than the reasonably predictable fair market value of the goods at the time the
169 option is to be performed.

170

171 For purposes of subsection (37):

172 (x) Additional consideration is not nominal if (i) when the option to renew the lease is
173 granted to the lessee the rent is stated to be the fair market rent for the use of the goods for the
174 term of the renewal determined at the time the option is to be performed, or (ii) when the option
175 to become the owner of the goods is granted to the lessee the price is stated to be the fair market
176 value of the goods determined at the time the option is to be performed. Additional
177 consideration is nominal if it is less than the lessee's reasonably predictable cost of performing
178 under the lease agreement if the option is not exercised;

179 (y) "Reasonably predictable" and "remaining economic life of the goods" are to be
180 determined with reference to the facts and circumstances at the time the transaction is entered
181 into; and

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

187 (38) "Send" in connection with any writing or notice means to deposit in the mail or
188 deliver for transmission by any other usual means of communication with postage or cost of
189 transmission provided for and properly addressed and in the case of an instrument to an address
190 specified thereon or otherwise agreed, or if there be none to any address reasonable under the
191 circumstances. The receipt of any writing or notice within the time at which it would have
192 arrived if properly sent has the effect of a proper sending.

193 (39) "Signed" includes any symbol executed or adopted by a party with present intention
194 to authenticate a writing.

195 **(40) "Special property" means identifiable property in which the holder has only**
196 **a qualified, temporary, or limited interest.**

197 [(40)] **(41)** "Surety" includes guarantor.

198 [(41)] **(42)** "Telegram" includes a message transmitted by radio, teletype, cable, any
199 mechanical method of transmission, or the like.

200 [(42)] **(43)** "Term" means that portion of an agreement which relates to a particular
201 matter.

202 [(43)] **(44)** "Unauthorized" signature means one made without actual, implied, or
203 apparent authority and includes a forgery.

204 [(44)] **(45)** "Value". Except as otherwise provided with respect to negotiable instruments
205 and bank collections (sections 400.3-303, 400.4-208 and 400.4-209) a person gives "value" for
206 rights if he **or she** acquires them

207 (a) in return for a binding commitment to extend credit or for the extension of
208 immediately available credit whether or not drawn upon and whether or not a charge-back is
209 provided for in the event of difficulties in collection; or

210 (b) as security for or in total or partial satisfaction of a pre-existing claim; or

211 (c) by accepting delivery pursuant to a pre-existing contract for purchase; or

212 (d) generally, in return for any consideration sufficient to support a simple contract.

213 [(45)] **(46)** "Warehouse receipt" means a receipt issued by a person engaged in the
214 business of storing goods for hire.

215 [(46)] **(47)** "Written" or "writing" includes printing, typewriting or any other intentional
216 reduction to tangible form.

400.2-103. (1) In this article unless the context otherwise requires

2 (a) "Buyer" means a person who buys or contracts to buy goods.

3 (b) "Good faith" in the case of a merchant means honesty in fact and the observance of
4 reasonable commercial standards of fair dealing in the trade.

5 (c) "Receipt" of goods means taking physical possession of them.

6 (d) "Seller" means a person who sells or contracts to sell goods.

7 (2) Other definitions applying to this article or to specified parts thereof, and the sections
8 in which they appear are:

9 "Acceptance". Section 400.2-606.

10 "Banker's credit". Section 400.2-325.

11 "Between merchants". Section 400.2-104.

12 "Cancellation". Section 400.2-106(4).

13 "Commercial unit". Section 400.2-105.

14 "Confirmed credit". Section 400.2-325.

- 15 "Conforming to contract". Section 400.2-106.
16 "Contract for sale". Section 400.2-106.
17 "Cover". Section 400.2-712.
18 "Entrusting". Section 400.2-403.
19 "Financing agency". Section 400.2-104.
20 "Future goods". Section 400.2-105.
21 "Goods". Section 400.2-105.
22 "Identification". Section 400.2-501.
23 "Installment contract". Section 400.2-612.
24 "Letter of credit". Section 400.2-325.
25 "Lot". Section 400.2-105.
26 "Merchant". Section 400.2-104.
27 "Overseas". Section 400.2-323.
28 "Person in position of seller". Section 400.2-707.
29 "Present sale". Section 400.2-106.
30 "Sale". Section 400.2-106.
31 "Sale on approval". Section 400.2-326.
32 "Sale or return". Section 400.2-326.
33 "Termination". Section 400.2-106.
34 (3) The following definitions in other articles apply to this article:
35 "Check". Section 400.3-104.
36 "Consignee". Section 400.7-102.
37 "Consignor". Section 400.7-102.
38 "Consumer goods". Section [400.9-109] **400.9-102**.
39 "Dishonor". Section [400.3-507] **400.3-502**.
40 "Draft". Section 400.3-104.
41 (4) In addition article 1 contains general definitions and principles of construction and
42 interpretation applicable throughout this article.

400.2-210. (1) A party may perform his **or her** duty through a delegate unless otherwise
2 agreed or unless the other party has a substantial interest in having his **or her** original promisor
3 perform or control the acts required by the contract. No delegation of performance relieves the
4 party delegating of any duty to perform or any liability for breach.

5 (2) Unless otherwise agreed all rights of either seller or buyer can be assigned except
6 where the assignment would materially change the duty of the other party, or increase materially
7 the burden or risk imposed on him **or her** by his **or her** contract, or impair materially his **or her**
8 chance of obtaining return performance. A right to damages for breach of the whole contract or

9 a right arising out of the assignor's due performance of his **or her** entire obligation can be
10 assigned despite agreement otherwise.

11 (3) **The creation, attachment, perfection or enforcement of a security interest in the**
12 **seller's interest under a contract is not a transfer that materially changes the duty of or**
13 **increases materially the burden or risk imposed on the buyer or impairs materially the**
14 **buyer's chance of obtaining return performance within the purview of subsection (2) of this**
15 **section unless, and then only to the extent that, enforcement actually results in a delegation**
16 **of material performance of the seller. Even in that event, the creation, attachment,**
17 **perfection and enforcement of the security interest remain effective, but (i) the seller is**
18 **liable to the buyer for damages caused by the delegation to the extent that the damages**
19 **could not reasonably be prevented by the buyer, and (ii) a court having jurisdiction may**
20 **grant other appropriate relief, including cancellation of the contract for sale or an**
21 **injunction against enforcement of the security interest or consummation of the**
22 **enforcement.**

23 (4) Unless the circumstances indicate the contrary a prohibition of assignment of "the
24 contract" is to be construed as barring only the delegation to the assignee of the assignor's
25 performance.

26 [(4)] (5) An assignment of "the contract" or of "all my rights under the contract" or an
27 assignment in similar general terms is an assignment of rights and unless the language or the
28 circumstances (as in an assignment for security) indicate the contrary, it is a delegation of
29 performance of the duties of the assignor and its acceptance by the assignee constitutes a promise
30 by him **or her** to perform those duties. This promise is enforceable by either the assignor or the
31 other party to the original contract.

32 [(5)] (6) The other party may treat any assignment which delegates performance as
33 creating reasonable grounds for insecurity and may without prejudice to his **or her** rights against
34 the assignor demand assurances from the assignee (section 400.2-609).

400.2-326. (1) Unless otherwise agreed, if delivered goods may be returned by the buyer
2 even though they conform to the contract, the transaction is

3 (a) a "sale on approval" if the goods are delivered primarily for use, and

4 (b) a "sale or return" if the goods are delivered primarily for resale.

5 (2) [Except as provided in subsection (3),] Goods held on approval are not subject to the
6 claims of the buyer's creditors until acceptance; goods held on sale or return are subject to such
7 claims while in the buyer's possession.

8 (3) [Where goods are delivered to a person for sale and such person maintains a place
9 of business at which he deals in goods of the kind involved, under a name other than the name
10 of the person making delivery, then with respect to claims of creditors of the person conducting

11 the business the goods are deemed to be on sale or return. The provisions of this subsection are
12 applicable even though an agreement purports to reserve title to the person making delivery until
13 payment or resale or uses such words as "on consignment" or "on memorandum". However, this
14 subsection is not applicable if the person making delivery

15 (a) complies with an applicable law providing for a consignor's interest or the like to be
16 evidenced by a sign, or

17 (b) establishes that the person conducting the business is generally known by his
18 creditors to be substantially engaged in selling the goods of others, or

19 (c) complies with the filing provisions of the article on secured transactions (article 9).

20 (4) Any "or return" term of a contract for sale is to be treated as a separate contract for
21 sale within the statute of frauds section of this article (section 400.2-201) and as contradicting
22 the sale aspect of the contract within the provisions of this article on parol or extrinsic evidence
23 (section 400.2-202).

400.2-401. Each provision of this article with regard to the rights, obligations and
2 remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to
3 the goods except where the provision refers to such title. Insofar as situations are not covered
4 by the other provisions of this article and matters concerning title become material the following
5 rules apply:

6 (1) Title to goods cannot pass under a contract for sale prior to their identification to the
7 contract (section 400.2-501), and unless otherwise explicitly agreed the buyer acquires by their
8 identification a special property as limited by this chapter. Any retention or reservation by the
9 seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a
10 reservation of a security interest. Subject to these provisions and to the provisions of the article
11 on secured transactions (article 9), title **and/or ownership** to goods passes from the seller to the
12 buyer in any manner and on any conditions explicitly agreed on by the parties.

13 (2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at
14 which the seller completes his **or her** performance with reference to the physical delivery of the
15 goods, despite any reservation of a security interest and even though a document of title is to be
16 delivered at a different time or place; and in particular and despite any reservation of a security
17 interest by the bill of lading

18 (a) if the contract requires or authorizes the seller to send the goods to the buyer but does
19 not require him **or her** to deliver them at destination, title passes to the buyer at the time and
20 place of shipment; but

21 (b) if the contract requires delivery at destination, title passes on tender there.

22 (3) Unless otherwise explicitly agreed where delivery is to be made without moving the
23 goods,

24 (a) if the seller is to deliver a document of title, title passes at the time when and the
25 place where he **or she** delivers such documents; or

26 (b) if the goods are at the time of contracting already identified and no documents are
27 to be delivered, title passes at the time and place of contracting.

28 (4) A rejection or other refusal by the buyer to receive or retain the goods, whether or
29 not justified, or a justified revocation of acceptance reverts title to the goods in the seller. Such
30 reversion occurs by operation of law and is not a "sale".

400.2-502. (1) Subject to [subsection] **subsections (2) and (3), of this section** and even
2 though the goods have not been shipped, a buyer who has paid a part or all of the price of goods
3 in which he **or she** has a special property under the provisions of section 400.2-501 may on
4 making and keeping good a tender of any unpaid portion of their price recover them from the
5 seller if:

6 (a) **in the case of goods bought for personal, family or household purposes, the**
7 **seller repudiates or fails to deliver as required by the contract; or**

8 (b) **in all cases,** the seller becomes insolvent within ten days after receipt of the first
9 installment on their price.

10 (2) **The buyer's right to recover the goods under subdivision (a) of this section vests**
11 **upon acquisition of a special property, even if the seller had not then repudiated or failed**
12 **to deliver.**

13 (3) If the identification creating his **or her** special property has been made by the buyer
14 he **or she** acquires the right to recover the goods only if they conform to the contract for sale.

400.2-716. (1) Specific performance may be decreed where the goods are unique or in
2 other proper circumstances.

3 (2) The decree for specific performance may include such terms and conditions as to
4 payment of the price, damages, or other relief as the court may deem just.

5 (3) The buyer has a right of replevin for goods identified to the contract if after
6 reasonable effort he **or she** is unable to effect cover for such goods or the circumstances
7 reasonably indicate that such effort will be unavailing or if the goods have been shipped under
8 reservation and satisfaction of the security interest in them has been made or tendered. **In the**
9 **case of goods bought for personal, family or household purposes, the buyer's right of**
10 **replevin vests upon acquisition of a special property, even if the seller had not then**
11 **repudiated or failed to deliver.**

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

2 (a) "Buyer in ordinary course of business" means a person who in good faith and without
3 knowledge that the sale to him **or her** is in violation of the ownership rights or security interest
4 or leasehold interest of a third party in the goods buys in ordinary course from a person in the

5 business of selling goods of that kind but does not include a pawnbroker. "Buying" may be for
6 cash or by exchange of other property or on secured or unsecured credit and includes receiving
7 goods or documents of title under a pre-existing contract for sale but does not include a transfer
8 in bulk or as security for or in total or partial satisfaction of a money debt.

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

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

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

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

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

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

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

25 (ii) the lessor acquires the goods or the right to possession and use of the goods in
26 connection with the lease; and

27 (iii) one of the following occurs:

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

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

32 (C) the lessor (aa) informs the lessee in writing of the identity of the supplier, unless the
33 lessee has selected the supplier and directed the lessor to purchase the goods from the supplier,
34 (bb) informs the lessee in writing that the lessee may have rights under the contract evidencing
35 the lessor's purchase of the goods, and (cc) advised the lessee in writing to contact the supplier
36 for a description of any such rights, or

37 (D) the lease contract discloses all warranties and other rights provided to the lessee by
38 the lessor and supplier in connection with the lease contract and informs the lessee that there are
39 no warranties or other rights provided to the lessee by the lessor and supplier other than those
40 disclosed in the lease contract.

41 (h) "Goods" means all things that are movable at the time of identification to the lease
42 contract, or are fixtures [(**J as defined in Section 400.2A-309**)], but the term does not include
43 money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the
44 like, including oil and gas, before extraction. The term also includes the unborn young of
45 animals.

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

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

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

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

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

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

64 (o) "Lessee in ordinary course of business" means a person who in good faith and
65 without knowledge that the lease to him **or her** is in violation of the ownership rights or security
66 interest or leasehold interest of a third party in the goods leases in ordinary course from a person
67 in the business of selling or leasing goods of that kind but does not include a pawnbroker.
68 "Leasing" may be for cash or by exchange of other property or on secured or unsecured credit
69 and includes receiving goods or documents of title under a pre-existing lease contract but does
70 not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

100 "Fixtures". Section 400.2A-309(1)(a).

101 "Fixture filing". Section 400.2A-309(1)(b).

102 "Purchase money lease". Section 400.2A-309(1)(c).

103 (3) The following definitions in other articles apply to this Article:

104 "Account". Section [400.9-106] **400.9-102(a)(2)**.

105 "Between merchants". Section 400.2-104(3).

106 "Buyer". Section 400.2-103(1)(a).

107 "Chattel paper". Section [400.9-105(1)(b)] **400.9-102(a)(10)**.

108 "Consumer goods". Section [400.9-109(1)] **400.9-102(a)(22)**.

109 "Document". Section [400.9-105(1)(f)] **400.9-102(a)(29)**.

110 "Entrusting". Section 400.2-403(3).

111 "General [intangibles] **intangible**". Section [400.9-106] **400.9-102(a)(41)**.

112 "Good faith". Section 400.2-103(1)(b).

113 "Instrument". Section [400.9-105(1)(i)] **400.9-102(a)(46)**.
114 "Merchant". Section 400.2-104(1).
115 "Mortgage". Section [400.9-105(1)(j)] **400.9-102(a)(54)**.
116 "Pursuant to commitment". Section [400.9-105(1)(k)] **400.9-102(a)(68)**.
117 "Receipt". Section 400.2-103(1)(c).
118 "Sale". Section 400.2-106(1).
119 "Sale on approval". Section 400.2-326.
120 "Sale or return". Section 400.2-326.
121 "Seller". Section 400.2-103(1)(d).
122 (4) In addition Article 1 contains general definitions and principles of construction and
123 interpretation applicable throughout this Article.

400.2A-303. (1) As used in this section, "creation of a security interest" includes the sale
2 of a lease contract that is subject to Article 9, Secured Transactions, by reason of Section
3 [400.9-102(1)(b)] **400.9-109(a)(2)**.

4 (2) Except as provided in [subsections] **subsection (3)** and [(4)] **section 400.9-407**, a
5 provision in a lease agreement which (i) prohibits the voluntary or involuntary transfer, including
6 a transfer by sale, sublease, creation or enforcement of a security interest, or attachment, levy,
7 or other judicial process, of an interest of a party under the lease contract or of the lessor's
8 residual interest in the goods, or (ii) makes such a transfer an event of default, gives rise to the
9 rights and remedies provided in subsection [(5)] **(4)**, but a transfer that is prohibited or is an
10 event of default under the lease agreement is otherwise effective.

11 (3) [A provision in a lease agreement which (i) prohibits the creation or enforcement of
12 a security interest in an interest of a party under the lease contract or in the lessor's residual
13 interest in the goods, or (ii) makes such a transfer an event of default, is not enforceable unless,
14 and then only to the extent that, there is an actual transfer by the lessee of the lessee's right of
15 possession or use of the goods in violation of the provision or an actual delegation of a material
16 performance of either party to the lease contract in violation of the provision. Neither the
17 granting nor the enforcement of a security interest in (i) the lessor's interest under the lease
18 contract or (ii) the lessor's residual interest in the goods is a transfer that materially impairs the
19 prospect of obtaining return performance by, materially changes the duty of, or materially
20 increases the burden or risk imposed on, the lessee within the purview of subsection (5) unless,
21 and then only to the extent that, there is an actual delegation of a material performance of the
22 lessor.

23 (4) A provision in a lease agreement which (i) prohibits a transfer of a right to damages
24 for default with respect to the whole lease contract or of a right to payment arising out of the
25 transferor's due performance of the transferor's entire obligation, or (ii) makes such a transfer an

26 event of default, is not enforceable, and such a transfer is not a transfer that materially impairs
27 the prospect of obtaining return performance by, materially changes the duty of, or materially
28 increases the burden or risk imposed on, the other party to the lease contract within the purview
29 of subsection [(5)] (4).

30 [(5)] (4) Subject to [subsections] **subsection** (3) and [(4)] **section 400.9-407**:

31 (a) if a transfer is made which is made an event of default under a lease agreement, the
32 party to the lease contract not making the transfer, unless that party waives the default or
33 otherwise agrees, has the rights and remedies described in Section 400.2A-501(2);

34 (b) if paragraph (a) is not applicable and if a transfer is made that (i) is prohibited under
35 a lease agreement or (ii) materially impairs the prospect of obtaining return performance by,
36 materially changes the duty of, or materially increases the burden or risk imposed on, the other
37 party to the lease contract, unless the party not making the transfer agrees at any time to the
38 transfer in the lease contract or otherwise, then, except as limited by contract, (i) the transferor
39 is liable to the party not making the transfer for damages caused by the transfer to the extent that
40 the damages could not reasonably be prevented by the party not making the transfer and (ii) a
41 court having jurisdiction may grant other appropriate relief, including cancellation of the lease
42 contract or an injunction against the transfer.

43 [(6)] (5) A transfer of "the lease" or of "all my rights under the lease", or a transfer in
44 similar general terms, is a transfer of rights, and, unless the language or the circumstances, as in
45 a transfer for security, indicate the contrary, the transfer is a delegation of duties by the transferor
46 to the transferee. Acceptance by the transferee constitutes a promise by the transferee to perform
47 those duties. The promise is enforceable by either the transferor or the other party to the lease
48 contract.

49 [(7)] (6) Unless otherwise agreed by the lessor and the lessee, a delegation of
50 performance does not relieve the transferor as against the other party of any duty to perform or
51 of any liability for default.

400.2A-307. (1) Except as otherwise provided in section 400.2A-306, a creditor of a
2 lessee takes subject to the lease contract.

3 (2) Except as otherwise provided in [subsections] **subsection** (3) [and (4)] and in
4 sections 400.2A-306 and 400.2A-308, a creditor of a lessor takes subject to the lease contract
5 unless[:

6 (a)] the creditor holds a lien that attached to the goods before the lease contract became
7 enforceable[,

8 (b) the creditor holds a security interest in the goods and the lessee did not give value
9 and receive delivery of the goods without knowledge of the security interest; or

10 (c) the creditor holds a security interest in the goods which was perfected (Section

11 400.9-303) before the lease contract became enforceable].

12 (3) [A lessee in the ordinary course of business takes the leasehold interest free of a
13 security interest in the goods created by the lessor even though the security interest is perfected
14 (Section 400.9-303) and the lessee knows of its existence.] **Except as otherwise provided in**
15 **sections 400.9-317, 400.9-321 and 400.9-323, a lessee takes a leasehold interest subject to**
16 **a security interest held by a creditor of the lessor.**

17 [(4) A lessee other than a lessee in the ordinary course of business takes the leasehold
18 interest free of a security interest to the extent that it secures future advances made after the
19 secured party acquires knowledge of the lease or more than forty-five days after the lease
20 contract becomes enforceable, whichever first occurs, unless the future advances are made
21 pursuant to a commitment entered into without knowledge of the lease and before the expiration
22 of the forty-five-day period.]

400.2A-309. (1) In this section:

2 (a) goods are "fixtures" when they become so related to particular real estate that an
3 interest in them arises under real estate law;

4 (b) a "fixture filing" is the filing, in the office where a **record of a** mortgage on the real
5 estate would be filed or recorded, of a financing statement covering goods that are or are to
6 become fixtures and conforming to the requirements of Section [400.9-402(5)] **400.9-502(a) and**
7 **(b)**;

8 (c) a lease is a "purchase money lease" unless the lessee has possession or use of the
9 goods or the right to possession or use of the goods before the lease agreement is enforceable;

10 (d) a mortgage is a "construction mortgage" to the extent it secures an obligation incurred
11 for the construction of an improvement on land including the acquisition cost of the land, if the
12 recorded writing so indicates; and

13 (e) "encumbrance" includes real estate mortgages and other liens on real estate and all
14 other rights in real estate that are not ownership interests.

15 (2) Under this Article a lease may be of goods that are fixtures or may continue in goods
16 that become fixtures, but no lease exists under this Article of ordinary building materials
17 incorporated into an improvement on land.

18 (3) This Article does not prevent creation of a lease of fixtures pursuant to real estate
19 law.

20 (4) The perfected interest of a lessor of fixtures has priority over a conflicting interest
21 of an encumbrancer or owner of the real estate if:

22 (a) the lease is a purchase money lease, the conflicting interest of the encumbrancer or
23 owner arises before the goods become fixtures, the interest of the lessor is perfected by a fixture
24 filing before the goods become fixtures or within ten days thereafter, and the lessee has an

25 interest of record in the real estate or is in possession of the real estate; or

26 (b) the interest of the lessor is perfected by a fixture filing before the interest of the
27 encumbrancer or owner is of record, the lessor's interest has priority over any conflicting interest
28 of a predecessor in title of the encumbrancer or owner, and the lessee has an interest of record
29 in the real estate or is in possession of the real estate.

30 (5) The interest of a lessor of fixtures, whether or not perfected, has priority over the
31 conflicting interest of an encumbrancer or owner of the real estate if:

32 (a) the fixtures are readily removable factory or office machines, readily removable
33 equipment that is not primarily used or leased for use in the operation of the real estate, or readily
34 removable replacements of domestic appliances that are goods subject to a consumer lease, and
35 before the goods become fixtures the lease contract is enforceable; or

36 (b) the conflicting interest is a lien on the real estate obtained by legal or equitable
37 proceedings after the lease contract is enforceable; or

38 (c) the encumbrancer or owner has consented in writing to the lease or has disclaimed
39 an interest in the goods as fixtures; or

40 (d) the lessee has a right to remove the goods as against the encumbrancer or owner. If
41 the lessee's right to remove terminates, the priority of the interest of the lessor continues for a
42 reasonable time.

43 (6) Notwithstanding subsection (4)(a) but otherwise subject to subsections (4) and (5),
44 the interest of a lessor of fixtures, including the lessor's residual interest, is subordinate to the
45 conflicting interest of an encumbrancer of the real estate under a construction mortgage recorded
46 before the goods become fixtures if the goods become fixtures before the completion of the
47 construction. To the extent given to refinance a construction mortgage, the conflicting interest
48 of an encumbrancer of the real estate under a mortgage has this priority to the same extent as the
49 encumbrancer of the real estate under the construction mortgage.

50 (7) In cases not within the preceding subsections, priority between the interest of a lessor
51 of fixtures, including the lessor's residual interest, and the conflicting interest of an encumbrancer
52 or owner of the real estate who is not the lessee is determined by the priority rules governing
53 conflicting interests in real estate.

54 (8) If the interest of a lessor of fixtures, including the lessor's residual interest, has
55 priority over all conflicting interests of all owners and encumbrancers of the real estate, the lessor
56 or the lessee may (i) on default, expiration, termination, or cancellation of the lease agreement
57 but subject to the lease agreement and this article, or (ii) if necessary to enforce other rights and
58 remedies of the lessor or lessee under this Article, remove the goods from the real estate, free and
59 clear of all conflicting interests of all owners and encumbrancers of the real estate, but the lessor
60 or lessee must reimburse any encumbrancer or owner of the real estate who is not the lessee and

61 who has not otherwise agreed for the cost of repair of any physical injury, but not for any
62 diminution in value of the real estate caused by the absence of the goods removed or by any
63 necessity of replacing them. A person entitled to reimbursement may refuse permission to
64 remove until the party seeking removal gives adequate security for the performance of this
65 obligation.

66 (9) Even though the lease agreement does not create a security interest, the interest of
67 a lessor of fixtures, including the lessor's residual interest, is perfected by filing a financing
68 statement as a fixture filing for leased goods that are or are to become fixtures in accordance with
69 the relevant provisions of the Article on Secured Transactions (Article 9).

400.4-210. (a) A collecting bank has a security interest in an item and any
2 accompanying documents or the proceeds of either:

3 (1) in case of an item deposited in an account, to the extent to which credit given for the
4 item has been withdrawn or applied;

5 (2) in case of an item for which it has given credit available for withdrawal as of right,
6 to the extent of the credit given whether or not the credit is drawn upon or there is a right of
7 charge-back; or

8 (3) if it makes an advance on or against the item.

9 (b) If credit given for several items received at one time or pursuant to a single
10 agreement is withdrawn or applied in part, the security interest remains upon all the items, any
11 accompanying documents or the proceeds of either. For the purpose of this section, credits first
12 given are first withdrawn.

13 (c) Receipt by a collecting bank of a final settlement for an item is a realization on its
14 security interest in the item, accompanying documents and proceeds. So long as the bank does
15 not receive final settlement for the item or give up possession of the item or accompanying
16 documents for purposes other than collection, the security interest continues to that extent and
17 is subject to Article 9, but:

18 (1) no security agreement is necessary to make the security interest enforceable (Section
19 [400.9-203(1)(a)] **400.9-203(b)(3)(A)**);

20 (2) no filing is required to perfect the security interest; and

21 (3) the security interest has priority over conflicting perfected security interests in the
22 item, accompanying documents or proceeds.

**400.5-118. (a) An issuer or nominated person has a security interest in a document
2 presented under a letter of credit to the extent that the issuer or nominated person honors
3 or gives value for the presentation.**

4 **(b) So long as and to the extent that an issuer or nominated person has not been
5 reimbursed or has not otherwise recovered the value given with respect to a security**

6 **interest in a document under subsection (a), the security interest continues and is subject**
7 **to article 9, but:**

8 (1) **a security agreement is not necessary to make the security interest enforceable**
9 **under section 400.9-203(b)(3);**

10 (2) **if the document is presented in a medium other than a written or other tangible**
11 **medium, the security interest is perfected; and**

12 (3) **if the document is presented in a written or other tangible medium and is not**
13 **a certificated security, chattel paper, a document of title, an instrument, or a letter of**
14 **credit, the security interest is perfected and has priority over a conflicting security interest**
15 **in the document so long as the debtor does not have possession of the document.**

400.7-503. (1) A document of title confers no right in goods against a person who before
2 issuance of the document had a legal interest or a perfected security interest in them and who
3 neither

4 (a) delivered or entrusted them or any document of title covering them to the bailor or
5 his **or her** nominee with actual or apparent authority to ship, store or sell or with power to obtain
6 delivery under this article (section 400.7-403) or with power of disposition under this chapter
7 (sections 400.2-403 and [400.9-307] **400.9-320**) or other statute or rule of law; nor

8 (b) acquiesced in the procurement by the bailor or his **or her** nominee of any document
9 of title.

10 (2) Title to goods based upon an unaccepted delivery order is subject to the rights of
11 anyone to whom a negotiable warehouse receipt or bill of lading covering the goods has been
12 duly negotiated. Such a title may be defeated under section 400.7-504 to the same extent as the
13 rights of the issuer or a transferee from the issuer.

14 (3) Title to goods based upon a bill of lading issued to a freight forwarder is subject to
15 the rights of anyone to whom a bill issued by the freight forwarder is duly negotiated; but
16 delivery by the carrier in accordance with part 4 of this article pursuant to its own bill of lading
17 discharges the carrier's obligation to deliver.

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

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

9 (c) An interest in a partnership or limited liability company is not a security unless it is

10 dealt in or traded on securities exchanges or in securities markets, its terms expressly provide
11 that it is a security governed by this article, or it is an investment company security. However,
12 an interest in a partnership or limited liability company is a financial asset if it is held in a
13 securities account.

14 (d) A writing that is a security certificate is governed by this article and not by article 3
15 of this chapter, even though it also meets the requirements of that article. However, a negotiable
16 instrument governed by article 3 of this chapter is a financial asset if it is held in a securities
17 account.

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

20 (f) A commodity contract, as defined in section [400.9-115] **400.9-102(a)(14)**, is not a
21 security or a financial asset.

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

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

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

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

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

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

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

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

14 (1) The purchaser becomes the entitlement holder; [or]

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

17 **(3) Another person has control of the security entitlement on behalf of the**
18 **purchaser or, having previously acquired control of the security entitlement, acknowledges**
19 **that it has control on behalf of the purchaser.**

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

22 (f) A purchaser who has satisfied the requirements of subsection (c)[(2)] or (d)[(2)] has
23 control even if the registered owner in the case of subsection (c)[(2)] or the entitlement holder
24 in the case of subsection (d)[(2)] retains the right to make substitutions for the uncertificated

25 security or security entitlement, to originate instructions or entitlement orders to the issuer or
26 securities intermediary, or otherwise to deal with the uncertificated security or security
27 entitlement.

28 (g) An issuer or a securities intermediary may not enter into an agreement of the kind
29 described in subsection (c)(2) or (d)(2) without the consent of the registered owner or entitlement
30 holder, but an issuer or a securities intermediary is not required to enter into such an agreement
31 even though the registered owner or entitlement holder so directs. An issuer or securities
32 intermediary that has entered into such an agreement is not required to confirm the existence of
33 the agreement to another party unless requested to do so by the registered owner or entitlement
34 holder.

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

3 (1) The validity of a security;

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

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

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

7 (5) Whether an adverse claim can be asserted against a person to whom transfer of a
8 certificated or uncertificated security is registered or a person who obtains control of an
9 uncertificated security.

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

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

13 (2) The rights and duties of the securities intermediary and entitlement holder arising out
14 of a security entitlement;

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

17 (4) Whether an adverse claim can be asserted against a person who acquires a security
18 entitlement from the securities intermediary or a person who purchases a security entitlement or
19 interest therein from an entitlement holder.

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

23 (d) "Issuer's jurisdiction" means the jurisdiction under which the issuer of the security
24 is organized or, if permitted by the law of that jurisdiction, the law of another jurisdiction
25 specified by the issuer. An issuer organized under the law of this state may specify the law of
26 another jurisdiction as the law governing the matters specified in subsection (a)(2) through (5).

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

29 (1) If an agreement between the securities intermediary and its entitlement holder
30 [specifies that it is governed by the law of a particular jurisdiction] **governing the securities**
31 **account expressly provides that a particular jurisdiction is the securities intermediary's**
32 **jurisdiction for purposes of this part, this article, or chapter 400**, that jurisdiction is the
33 securities intermediary's jurisdiction;

34 (2) If **paragraph (1) does not apply and an agreement between the securities**
35 **intermediary and its entitlement holder governing the securities account expressly provides**
36 **that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is**
37 **the securities intermediary's jurisdiction.**

38 (3) **If neither paragraph (1) nor paragraph (2) applies, and** an agreement between
39 the securities intermediary and its entitlement holder [does not specify the governing law as
40 provided in paragraph (1), but] **governing the securities account** expressly [specified] **provides**
41 that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction
42 is the securities intermediary's jurisdiction;

43 [(3)] (4) If [an agreement between the securities intermediary and its entitlement holder
44 does not specify a jurisdiction as provided in paragraph (1) or (2)] **none of the preceding**
45 **paragraphs apply**, the securities intermediary's jurisdiction is the jurisdiction in which [is
46 located] the office identified in an account statement as the office serving the entitlement holder's
47 account **is located.**

48 [(4)] (5) If [an agreement between the securities intermediary and its entitlement holder
49 does not specify a jurisdiction as provided in paragraph (1) or (2) and an account statement does
50 not identify an office serving the entitlement holder's account as provided in paragraph (3)] **none**
51 **of the preceding paragraphs apply**, the securities intermediary's jurisdiction is the jurisdiction
52 in which [is located] the chief executive office of the securities intermediary **is located.**

53 (f) A securities intermediary's jurisdiction is not determined by the physical location of
54 certificates representing financial assets, or by the jurisdiction in which is organized the issuer
55 of the financial asset with respect to which an entitlement holder has a security entitlement, or
56 by the location of facilities for data processing or other record keeping concerning the account.

400.8-301. (a) Delivery of a certificated security to a purchaser occurs when:

2 (1) The purchaser acquires possession of the security certificate;

3 (2) Another person, other than a securities intermediary, either acquires possession of
4 the security certificate on behalf of the purchaser or, having previously acquired possession of
5 the certificate, acknowledges that it holds for the purchaser; or

6 (3) A securities intermediary acting on behalf of the purchaser acquires possession of the

7 security certificate, only if the certificate is in registered form and [has been] **is (i) registered in**
8 **the name of the purchaser; (ii) payable to the order of the purchaser; or (iii) specially**
9 indorsed to the purchaser by an effective indorsement **and has not been indorsed to the**
10 **securities intermediary or in blank.**

11 (b) Delivery of an uncertificated security to a purchaser occurs when:

12 (1) The issuer registers the purchaser as the registered owner, upon original issue or
13 registration of transfer; or

14 (2) Another person, other than a securities intermediary, either becomes the registered
15 owner of the uncertificated security on behalf of the purchaser or, having previously become the
16 registered owner, acknowledges that it holds for the purchaser.

400.8-302. (a) Except as otherwise provided in subsections (b) and (c), [upon delivery]
2 **a purchaser** of a certificated or uncertificated security [to a purchaser, the purchaser] acquires
3 all rights in the security that the transferor had or had power to transfer.

4 (b) A purchaser of a limited interest acquires rights only to the extent of the interest
5 purchased.

6 (c) A purchaser of a certificated security who as a previous holder had notice of an
7 adverse claim does not improve its position by taking from a protected purchaser.

400.8-510. (a) **In a case not covered by the priority rules in article 9 or the rules**
2 **stated in subsection (c)**, an action based on an adverse claim to a financial asset or security
3 entitlement, whether framed in conversion, replevin, constructive trust, equitable lien or other
4 theory, may not be asserted against a person who purchases a security entitlement, or an interest
5 therein, from an entitlement holder if the purchaser gives value, does not have notice of the
6 adverse claim, and obtains control.

7 (b) If an adverse claim could not have been asserted against an entitlement holder under
8 section 400.8-502, the adverse claim cannot be asserted against a person who purchases a
9 security entitlement, or an interest therein, from the entitlement holder.

10 (c) In a case not covered by the priority rules in article 9 of this chapter, a purchaser for
11 value of a security entitlement, or an interest therein, who obtains control has priority over a
12 purchaser of a security entitlement, or an interest therein, who does not obtain control. **Except**
13 **as otherwise provided in subsection (d)**, purchasers who have control rank [equally, except that
14 a] **according to priority in time of:**

15 (1) **the purchaser's becoming the person for whom the securities account, in which**
16 **the security entitlement is carried, is maintained, if the purchaser obtained control under**
17 **section 400.8-106(d)(1);**

18 (2) **the securities intermediary's agreement to comply with the purchaser's**
19 **entitlement orders with respect to security entitlements carried or to be carried in the**

20 securities account in which the security entitlement is carried, if the purchaser obtained
21 control under section 400.8-106(d)(2); or

22 (3) if the purchaser obtained control through another person under section 400.8-
23 106(d)(3), the time on which priority would be based under this subsection if the other
24 person were the secured party.

25 (d) A securities intermediary as purchaser has priority over a conflicting purchaser who
26 has control unless otherwise agreed by the securities intermediary.

2 400.9-101. This article may be cited as "Uniform Commercial Code-Secured
2 Transactions".

400.9-102. (a) In this article:

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

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

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

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

23 (A) Authenticated by a secured party;

24 (B) Indicating the aggregate unpaid secured obligations as of a date not more than
25 35 days earlier or 35 days later than the date of the record; and

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

27 (5) "Agricultural lien" means an interest, other than a security interest, in farm

28 **products:**

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

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

31 **or**

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

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

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

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

39 **(C) Whose effectiveness does not depend on the person's possession of the personal**
40 **property;**

41 **(6) "As-extracted collateral" means:**

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

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

44 **(ii) Attaches to the minerals as extracted; or**

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

47 **(7) "Authenticate" means:**

48 **(A) To sign; or**

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

52 **(8) "Bank" means an organization that is engaged in the business of banking. The**
53 **term includes savings banks, savings and loan associations, credit unions, and trust**
54 **companies;**

55 **(9) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or**
56 **the like;**

57 **(10) "Certificate of title" means a certificate of title with respect to which a statute**
58 **provides for the security interest in question to be indicated on the certificate as a condition**
59 **or result of the security interest's obtaining priority over the rights of a lien creditor with**
60 **respect to the collateral;**

61 **(11) "Chattel paper" means a record or records that evidence both a monetary**
62 **obligation and a security interest in specific goods, a security interest in specific goods and**
63 **software used in the goods, or a lease of specific goods. The term does not include charters**

64 or other contracts involving the use or hire of a vessel. If a transaction is evidenced both
65 by a security agreement or lease and by an instrument or series of instruments, the group
66 of records taken together constitutes chattel paper;

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

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

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

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

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

74 (A) The claimant is an organization; or

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

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

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

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

81 (15) "Commodity contract" means a commodity futures contract, an option on a
82 commodity futures contract, a commodity option, or another contract if the contract or
83 option is:

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

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

88 (16) "Commodity customer" means a person for which a commodity intermediary
89 carries a commodity contract on its books;

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

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

92 or

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

96 (18) "Communicate" means:

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

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

- 100 (C) In the case of transmission of a record to or by a filing office, to transmit a
101 record by any means prescribed by filing-office rule;
- 102 (19) "Consignee" means a merchant to which goods are delivered in a consignment;
- 103 (20) "Consignment" means a transaction, regardless of its form, in which a person
104 delivers goods to a merchant for the purpose of sale and:
- 105 (A) The merchant:
- 106 (i) Deals in goods of that kind under a name other than the name of the person
107 making delivery;
- 108 (ii) Is not an auctioneer; and
- 109 (iii) Is not generally known by its creditors to be substantially engaged in selling
110 the goods of others;
- 111 (B) With respect to each delivery, the aggregate value of the goods is one thousand
112 dollars or more at the time of delivery;
- 113 (C) The goods are not consumer goods immediately before delivery; and
- 114 (D) The transaction does not create a security interest that secures an obligation;
- 115 (21) "Consignor" means a person that delivers goods to a consignee in a
116 consignment;
- 117 (22) "Consumer debtor" means a debtor in a consumer transaction;
- 118 (23) "Consumer goods" means goods that are used or bought for use primarily for
119 personal, family, or household purposes;
- 120 (24) "Consumer-goods transaction" means a consumer transaction in which:
- 121 (A) An individual incurs an obligation primarily for personal, family, or household
122 purposes; and
- 123 (B) A security interest in consumer goods secures the obligation;
- 124 (25) "Consumer obligor" means an obligor who is an individual and who incurred
125 the obligation as part of a transaction entered into primarily for personal, family, or
126 household purposes;
- 127 (26) "Consumer transaction" means a transaction in which (i) an individual incurs
128 an obligation primarily for personal, family, or household purposes, (ii) a security interest
129 secures the obligation, and (iii) the collateral is held or acquired primarily for personal,
130 family, or household purposes. The term includes consumer-goods transactions;
- 131 (27) "Continuation statement" means an amendment of a financing statement
132 which:
- 133 (A) Identifies, by its file number, the initial financing statement to which it relates;
134 and
- 135 (B) Indicates that it is a continuation statement for, or that it is filed to continue the

- 136 effectiveness of, the identified financing statement;
- 137 (28) "Debtor" means:
- 138 (A) A person having an interest, other than a security interest or other lien, in the
- 139 collateral, whether or not the person is an obligor;
- 140 (B) A seller of accounts, chattel paper, payment intangibles, or promissory notes;
- 141 or
- 142 (C) A consignee;
- 143 (29) "Deposit account" means a demand, time, savings, passbook, or similar
- 144 account maintained with a bank. The term does not include investment property or
- 145 accounts evidenced by an instrument;
- 146 (30) "Document" means a document of title or a receipt of the type described in
- 147 section 400.7-201(2);
- 148 (31) "Electronic chattel paper" means chattel paper evidenced by a record or
- 149 records consisting of information stored in an electronic medium;
- 150 (32) "Encumbrance" means a right, other than an ownership interest, in real
- 151 property. The term includes mortgages and other liens on real property;
- 152 (33) "Equipment" means goods other than inventory, farm products, or consumer
- 153 goods;
- 154 (34) "Farm products" means goods, other than standing timber, with respect to
- 155 which the debtor is engaged in a farming operation and which are:
- 156 (A) Crops grown, growing, or to be grown, including:
- 157 (i) Crops produced on trees, vines, and bushes; and
- 158 (ii) Aquatic goods produced in aquacultural operations;
- 159 (B) Livestock, born or unborn, including aquatic goods produced in aquacultural
- 160 operations;
- 161 (C) Supplies used or produced in a farming operation; or
- 162 (D) Products of crops or livestock in their unmanufactured states;
- 163 (35) "Farming operation" means raising, cultivating, propagating, fattening,
- 164 grazing, or any other farming, livestock, or aquacultural operation;
- 165 (36) "File number" means the number assigned to an initial financing statement
- 166 pursuant to section 400.9-519(a);
- 167 (37) "Filing office" means an office designated in section 400.9-501 as the place to
- 168 file a financing statement;
- 169 (38) "Filing-office rule" means a rule adopted pursuant to section 400.9-526;
- 170 (39) "Financing statement" means a record or records composed of an initial
- 171 financing statement and any filed record relating to the initial financing statement;

172 **(40) "Fixture filing" means the filing of a financing statement covering goods that**
173 **are or are to become fixtures and satisfying section 400.9-502(a) and (b). The term includes**
174 **the filing of a financing statement covering goods of a transmitting utility which are or are**
175 **to become fixtures;**

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

178 **(42) "General intangible" means any personal property, including things in action,**
179 **other than accounts, chattel paper, commercial tort claims, deposit accounts, documents,**
180 **goods, instruments, investment property, letter-of-credit rights, letters of credit, money,**
181 **and oil, gas, or other minerals before extraction. The term includes payment intangibles**
182 **and software;**

183 **(43) "Good faith" means honesty in fact;**

184 **(44) "Goods" means all things that are movable when a security interest attaches.**
185 **The term includes (i) fixtures, (ii) standing timber that is to be cut and removed under a**
186 **conveyance or contract for sale, (iii) the unborn young of animals, (iv) crops grown,**
187 **growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and (v)**
188 **manufactured homes. The term also includes a computer program embedded in goods and**
189 **any supporting information provided in connection with a transaction relating to the**
190 **program if (i) the program is associated with the goods in such a manner that it**
191 **customarily is considered part of the goods, or (ii) by becoming the owner of the goods, a**
192 **person acquires a right to use the program in connection with the goods. The term does**
193 **not include a computer program embedded in goods that consist solely of the medium in**
194 **which the program is embedded. The term also does not include accounts, chattel paper,**
195 **commercial tort claims, deposit accounts, documents, general intangibles, instruments,**
196 **investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other**
197 **minerals before extraction;**

198 **(45) "Governmental unit" means a subdivision, agency, department, county,**
199 **parish, municipality, or other unit of the government of the United States, a state, or a**
200 **foreign country. The term includes an organization having a separate corporate existence**
201 **if the organization is eligible to issue debt on which interest is exempt from income taxation**
202 **under the laws of the United States;**

203 **(46) "Health-care-insurance receivable" means an interest in or claim under a**
204 **policy of insurance which is a right to payment of a monetary obligation for health-care**
205 **goods or services provided;**

206 **(47) "Instrument" means a negotiable instrument or any other writing that**
207 **evidences a right to the payment of a monetary obligation, is not itself a security agreement**

208 or lease, and is of a type that in ordinary course of business is transferred by delivery with
209 any necessary indorsement or assignment. The term does not include (i) investment
210 property, (ii) letters of credit, or (iii) writings that evidence a right to payment arising out
211 of the use of a credit or charge card or information contained on or for use with the card;

212 (48) "Inventory" means goods, other than farm products, which:

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

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

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

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

219 (49) "Investment property" means a security, whether certificated or
220 uncertificated, security entitlement, securities account, commodity contract, or commodity
221 account;

222 (50) "Jurisdiction of organization", with respect to a registered organization,
223 means the jurisdiction under whose law the organization is organized;

224 (51) "Letter-of-credit right" means a right to payment or performance under a
225 letter of credit, whether or not the beneficiary has demanded or is at the time entitled to
226 demand payment or performance. The term does not include the right of a beneficiary to
227 demand payment or performance under a letter of credit;

228 (52) "Lien creditor" means:

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

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

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

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

234 (53) "Manufactured home" means a structure, transportable in one or more
235 sections, which, in the traveling mode, is eight body feet or more in width or forty body feet
236 or more in length, or, when erected on site, is three hundred twenty or more square feet,
237 and which is built on a permanent chassis and designed to be used as a dwelling with or
238 without a permanent foundation when connected to the required utilities, and includes the
239 plumbing, heating, air-conditioning, and electrical systems contained therein. The term
240 includes any structure that meets all of the requirements of this paragraph except the size
241 requirements and with respect to which the manufacturer voluntarily files a certification
242 required by the United States Secretary of Housing and Urban Development and complies
243 with the standards established under Title 42 of the United States Code;

- 244 **(54) "Manufactured-home transaction" means a secured transaction:**
245 **(A) That creates a purchase-money security interest in a manufactured home, other**
246 **than a manufactured home held as inventory; or**
247 **(B) In which a manufactured home, other than a manufactured home held as**
248 **inventory, is the primary collateral;**
- 249 **(55) "Mortgage" means a consensual interest in real property, including fixtures,**
250 **which secures payment or performance of an obligation;**
- 251 **(56) "New debtor" means a person that becomes bound as debtor under section**
252 **400.9-203(d) by a security agreement previously entered into by another person;**
- 253 **(57) "New value" means (i) money, (ii) money's worth in property, services, or new**
254 **credit, or (iii) release by a transferee of an interest in property previously transferred to**
255 **the transferee. The term does not include an obligation substituted for another obligation;**
- 256 **(58) "Noncash proceeds" means proceeds other than cash proceeds;**
- 257 **(59) "Notice" means a properly filed financing statement;**
- 258 **(60) "Obligor" means a person that, with respect to an obligation secured by a**
259 **security interest in or an agricultural lien on the collateral, (i) owes payment or other**
260 **performance of the obligation, (ii) has provided property other than the collateral to secure**
261 **payment or other performance of the obligation, or (iii) is otherwise accountable in whole**
262 **or in part for payment or other performance of the obligation. The term does not include**
263 **issuers or nominated persons under a letter of credit;**
- 264 **(61) "Original debtor" means a person that, as debtor, entered into a security**
265 **agreement to which a new debtor has become bound under section 400.9-203(d);**
- 266 **(62) "Payment intangible" means a general intangible under which the account**
267 **debtor's principal obligation is a monetary obligation;**
- 268 **(63) "Person related to", with respect to an individual, means:**
269 **(A) The spouse of the individual;**
270 **(B) A brother, brother-in-law, sister, or sister-in-law of the individual;**
271 **(C) An ancestor or lineal descendant of the individual or the individual's spouse;**
272 **or**
- 273 **(D) Any other relative, by blood or marriage, of the individual or the individual's**
274 **spouse who shares the same home with the individual;**
- 275 **(64) "Person related to", with respect to an organization, means:**
276 **(A) A person directly or indirectly controlling, controlled by, or under common**
277 **control with the organization;**
278 **(B) An officer or director of, or a person performing similar functions with respect**
279 **to, the organization;**

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

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

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

285 (65) "Proceeds" means the following property:

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

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

289 (C) Rights arising out of collateral;

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

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

296 (66) "Promissory note" means an instrument that evidences a promise to pay a
297 monetary obligation, does not evidence an order to pay, and does not contain an
298 acknowledgment by a bank that the bank has received for deposit a sum of money or
299 funds;

300 (67) "Proposal" means a record authenticated by a secured party which includes
301 the terms on which the secured party is willing to accept collateral in full or partial
302 satisfaction of the obligation it secures pursuant to sections 400.9-620, 400.9-621 and
303 400.9-622;

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

308 (69) "Record", except as used in "for record", "of record", "record or legal title",
309 and "record owner", means information that is inscribed on a tangible medium or which
310 is stored in an electronic or other medium and is retrievable in perceivable form;

311 (70) "Registered organization" means an organization organized solely under the
312 law of a single state or the United States and as to which the state or the United States must
313 maintain a public record showing the organization to have been organized;

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

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

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

318 (72) "Secured party" means:

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

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

322 (C) A consignor;

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

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

327 (F) A person that holds a security interest arising under sections 400.2-401,
328 400.2-505, 400.2-711(3), 400.2A-508(5), 400.4-210 or 400.5-118;

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

331 (74) "Send", in connection with a record or notification, means:

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

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

337 (75) "Software" means a computer program and any supporting information
338 provided in connection with a transaction relating to the program. The term does not
339 include a computer program that is included in the definition of goods;

340 (76) "State" means a state of the United States, the District of Columbia, Puerto
341 Rico, the United States Virgin Islands, or any territory or insular possession subject to the
342 jurisdiction of the United States;

343 (77) "Supporting obligation" means a letter-of-credit right or secondary obligation
344 that supports the payment or performance of an account, chattel paper, a document, a
345 general intangible, an instrument, or investment property;

346 (78) "Tangible chattel paper" means chattel paper evidenced by a record or
347 records consisting of information that is inscribed on a tangible medium;

348 (79) "Termination statement" means an amendment of a financing statement
349 which:

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

351 and

352	(B) Indicates either that it is a termination statement or that the identified	
353	financing statement is no longer effective;	
354	(80) "Transmitting utility" means a person primarily engaged in the business of:	
355	(A) Operating a railroad, subway, street railway, or trolley bus;	
356	(B) Transmitting communications electrically, electromagnetically, or by light;	
357	(C) Transmitting goods by pipeline or sewer; or	
358	(D) Transmitting or producing and transmitting electricity, steam, gas, or water.	
359	(b) The following definitions in other articles apply to this article:	
360	"Applicant"	Section 400.5-102.
361	"Beneficiary"	Section 400.5-102.
362	"Broker"	Section 400.8-102.
363	"Certificated security"	Section 400.8-102.
364	"Check"	Section 400.3-104.
365	"Clearing corporation"	Section 400.8-102.
366	"Contract for sale"	Section 400.2-106.
367	"Customer"	Section 400.4-104.
368	"Entitlement holder"	Section 400.8-102.
369	"Financial asset"	Section 400.8-102.
370	"Holder in due course"	Section 400.3-302.
371	"Issuer" (with respect to a	
372	letter of credit or	
373	letter-of-credit right)	Section 400.5-102.
374	"Issuer" (with respect to a	
375	security)	Section 400.8-201.
376	"Lease"	Section 400.2A-103.
377	"Lease agreement"	Section 400.2A-103.
378	"Lease contract"	Section 400.2A-103.
379	"Leasehold interest"	Section 400.2A-103.
380	"Lessee"	Section 400.2A-103.
381	"Lessee in ordinary course	
382	of business"	Section 400.2A-103.
383	"Lessor"	Section 400.2A-103.
384	"Lessor's residual interest"	Section 400.2A-103.
385	"Letter of credit"	Section 400.5-102.
386	"Merchant"	Section 400.2-104.
387	"Negotiable instrument"	Section 400.3-104.

388	"Nominated person"	Section 400.5-102.
389	"Note"	Section 400.3-104.
390	"Proceeds of a letter of credit"	Section 400.5-114.
391	"Prove"	Section 400.3-103.
392	"Sale"	Section 400.2-106.
393	"Securities account"	Section 400.8-501.
394	"Securities intermediary"	Section 400.8-102.
395	"Security"	Section 400.8-102.
396	"Security certificate"	Section 400.8-102.
397	"Security entitlement"	Section 400.8-102.
398	"Uncertificated security"	Section 400.8-102.
399	(c) This section contains general definitions and principles of construction and	
400	interpretation applicable throughout sections 400.9-103 to 400.9-708.	
	400.9-103. (a) In this section:	
2	(1) "Purchase-money collateral" means goods or software that secures a purchase-	
3	money obligation incurred with respect to that collateral; and	
4	(2) "Purchase-money obligation" means an obligation of an obligor incurred as all	
5	or part of the price of the collateral or for value given to enable the debtor to acquire rights	
6	in or the use of the collateral if the value is in fact so used.	
7	(b) A security interest in goods is a purchase-money security interest:	
8	(1) To the extent that the goods are purchase-money collateral with respect to that	
9	security interest;	
10	(2) If the security interest is in inventory that is or was purchase-money collateral,	
11	also to the extent that the security interest secures a purchase-money obligation incurred	
12	with respect to other inventory in which the secured party holds or held a purchase-money	
13	security interest; and	
14	(3) Also to the extent that the security interest secures a purchase-money obligation	
15	incurred with respect to software in which the secured party holds or held a purchase-	
16	money security interest.	
17	(c) A security interest in software is a purchase-money security interest to the	
18	extent that the security interest also secures a purchase-money obligation incurred with	
19	respect to goods in which the secured party holds or held a purchase-money security	
20	interest if:	
21	(1) The debtor acquired its interest in the software in an integrated transaction in	
22	which it acquired an interest in the goods; and	
23	(2) The debtor acquired its interest in the software for the principal purpose of	

24 using the software in the goods.

25 (d) The security interest of a consignor in goods that are the subject of a
26 consignment is a purchase-money security interest in inventory.

27 (e) In a transaction other than a consumer-goods transaction, if the extent to which
28 a security interest is a purchase-money security interest depends on the application of a
29 payment to a particular obligation, the payment must be applied:

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

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

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

36 (A) To obligations that are not secured; and

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

39 (f) In a transaction other than a consumer-goods transaction, a purchase-money
40 security interest does not lose its status as such, even if:

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

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

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

47 (g) In a transaction other than a consumer-goods transaction, a secured party
48 claiming a purchase-money security interest has the burden of establishing the extent to
49 which the security interest is a purchase-money security interest.

50 (h) The limitation of the rules in subsections (e), (f), and (g) to transactions other
51 than consumer-goods transactions is intended to leave to the court the determination of the
52 proper rules in consumer-goods transactions. The court may not infer from that limitation
53 the nature of the proper rule in consumer-goods transactions and may continue to apply
54 established approaches.

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

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

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

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

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

400.9-105. A secured party has control of electronic chattel paper if the record or
2 **records comprising the chattel paper are created, stored, and assigned in such a manner**
3 **that:**

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

6 **(2) The authoritative copy identifies the secured party as the assignee of the record**
7 **or records;**

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

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

12 **(5) Each copy of the authoritative copy and any copy of a copy is readily**
13 **identifiable as a copy that is not the authoritative copy; and**

14 **(6) Any revision of the authoritative copy is readily identifiable as an authorized**
15 **or unauthorized revision.**

400.9-106. (a) A person has control of a certificated security, uncertificated
2 **security, or security entitlement as provided in section 400.8-106.**

3 **(b) A secured party has control of a commodity contract if:**

4 **(1) The secured party is the commodity intermediary with which the commodity**
5 **contract is carried; or**

6 **(2) The commodity customer, secured party, and commodity intermediary have**
7 **agreed that the commodity intermediary will apply any value distributed on account of the**
8 **commodity contract as directed by the secured party without further consent by the**
9 **commodity customer.**

10 **(c) A secured party having control of all security entitlements or commodity**
11 **contracts carried in a securities account or commodity account has control over the**
12 **securities account or commodity account.**

400.9-107. A secured party has control of a letter-of-credit right to the extent of any
2 **right to payment or performance by the issuer or any nominated person if the issuer or**
3 **nominated person has consented to an assignment of proceeds of the letter of credit under**
4 **section 400.5-114(c) or otherwise applicable law or practice.**

400.9-108. (a) Except as otherwise provided in subsections (c), (d), and (e), a

2 description of personal or real property is sufficient, whether or not it is specific, if it
3 reasonably identifies what is described.

4 (b) Except as otherwise provided in subsection (d), a description of collateral
5 reasonably identifies the collateral if it identifies the collateral by:

6 (1) Specific listing;

7 (2) Category;

8 (3) Except as otherwise provided in subsection (e), a type of collateral defined in
9 chapter 400;

10 (4) Quantity;

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

12 (6) Except as otherwise provided in subsection (c), any other method, if the identity
13 of the collateral is objectively determinable.

14 (c) A description of collateral as "all the debtor's assets" or "all the debtor's
15 personal property" or using words of similar import does not reasonably identify the
16 collateral.

17 (d) Except as otherwise provided in subsection (e), a description of a security
18 entitlement, securities account, or commodity account is sufficient if it describes:

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

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

21 (e) A description only by type of collateral defined in chapter 400 is an insufficient
22 description of:

23 (1) A commercial tort claim; or

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

2 **400.9-109. (a) Except as otherwise provided in subsections (c) and (d), this article
applies to:**

3 (1) A transaction, regardless of its form, that creates a security interest in personal
4 property or fixtures by contract;

5 (2) An agricultural lien;

6 (3) A sale of accounts, chattel paper, payment intangibles, or promissory notes;

7 (4) A consignment;

8 (5) A security interest arising under section 400.2-401, 400.2-505, 400.2-711(3) or
9 400.2A-508(5), as provided in section 400.9-110; and

10 (6) A security interest arising under section 400.4-210 or 400.5-118.

11 (b) The application of this article to a security interest in a secured obligation is not
12 affected by the fact that the obligation is itself secured by a transaction or interest to which

13 **this article does not apply.**

14 **(c) This article does not apply to the extent that:**

15 **(1) A statute, regulation, or treaty of the United States preempts this article;**

16 **(2) A statute of another state, a foreign country, or a governmental unit of another**
17 **state or a foreign country, other than a statute generally applicable to security interests,**
18 **expressly governs creation, perfection, priority, or enforcement of a security interest**
19 **created by the state, country, or governmental unit; or**

20 **(3) The rights of a transferee beneficiary or nominated person under a letter of**
21 **credit are independent and superior under section 400.5-114.**

22 **(d) This article does not apply to:**

23 **(1) A landlord's lien, other than an agricultural lien;**

24 **(2) A lien, other than an agricultural lien, given by statute or other rule of law for**
25 **services or materials, but section 400.9-333 applies with respect to priority of the lien;**

26 **(3) An assignment of a claim for wages, salary, or other compensation of an**
27 **employee;**

28 **(4) A sale of accounts, chattel paper, payment intangibles, or promissory notes as**
29 **part of a sale of the business out of which they arose;**

30 **(5) An assignment of accounts, chattel paper, payment intangibles, or promissory**
31 **notes which is for the purpose of collection only;**

32 **(6) An assignment of a right to payment under a contract to an assignee that is also**
33 **obligated to perform under the contract;**

34 **(7) An assignment of a single account, payment intangible, or promissory note to**
35 **an assignee in full or partial satisfaction of a preexisting indebtedness;**

36 **(8) A transfer of an interest in or an assignment of a claim under a policy of**
37 **insurance, other than an assignment by or to a health-care provider of a health-care-**
38 **insurance receivable and any subsequent assignment of the right to payment, but sections**
39 **400.9-315 and 400.9-322 apply with respect to proceeds and priorities in proceeds;**

40 **(9) An assignment of a right represented by a judgment, other than a judgment**
41 **taken on a right to payment that was collateral;**

42 **(10) A right of recoupment or set-off, but:**

43 **(A) Section 400.9-340 applies with respect to the effectiveness of rights of**
44 **recoupment or set-off against deposit accounts; and**

45 **(B) Section 400.9-404 applies with respect to defenses or claims of an account**
46 **debtor;**

47 **(11) The creation or transfer of an interest in or lien on real property, including a**
48 **lease or rents thereunder, except to the extent that provision is made for:**

- 49 (A) Liens on real property in sections 400.9-203 and 400.9-308;
 - 50 (B) Fixtures in section 400.9-334;
 - 51 (C) Fixture filings in sections 400.9-501, 400.9-502, 400.9-512, 400.9-516 and
 - 52 400.9-519; and
 - 53 (D) Security agreements covering personal and real property in section 400.9-604;
 - 54 (12) An assignment of a claim arising in tort, other than a commercial tort claim,
 - 55 but sections 400.9-315 and 400.9-322 apply with respect to proceeds and priorities in
 - 56 proceeds;
 - 57 (13) An assignment of a deposit account in a consumer transaction, but sections
 - 58 400.9-315 and 400.9-322 apply with respect to proceeds and priorities in proceeds; or
 - 59 (14) An assignment of a claim or right to receive compensation for injuries or
 - 60 sickness as described in 26 U.S.C. Section 104(a)(1) or (2), as amended from time to time;
 - 61 or
 - 62 (15) An assignment of a claim or right to receive benefits under a special needs trust
 - 63 as described in 42 U.S.C. Section 1396p(d)(4), as amended from time to time; or
 - 64 (16) A transfer by a government or governmental subdivision or agency.
- 400.9-110. A security interest arising under sections 400.2-401, 400.2-505,
 2 400.2-711(3) or 400.2A-508(5) is subject to this article. However, until the debtor obtains
 3 possession of the goods:
- 4 (1) The security interest is enforceable, even if section 400.9-203(b)(3) has not been
 - 5 satisfied;
 - 6 (2) Filing is not required to perfect the security interest;
 - 7 (3) The rights of the secured party after default by the debtor are governed by
 - 8 article 2 or 2A; and
 - 9 (4) The security interest has priority over a conflicting security interest created by
 - 10 the debtor.

PART 2

EFFECTIVENESS OF SECURITY AGREEMENT;

ATTACHMENT OF SECURITY INTEREST;

RIGHTS OF PARTIES TO SECURITY AGREEMENT

400.9-201. (a) Except as otherwise provided in chapter 400, a security agreement
 2 is effective according to its terms between the parties, against purchasers of the collateral,
 3 and against creditors.

4 (b) A transaction subject to this article is subject to any applicable rule of law
 5 which establishes a different rule for consumers.

6 (c) In case of conflict between this article and a rule of law, statute, or regulation

7 described in subsection (b), the rule of law, statute, or regulation controls. Failure to
8 comply with a statute or regulation described in subsection (b) has only the effect the
9 statute or regulation specifies.

10 (d) This article does not:

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

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

400.9-202. Except as otherwise provided with respect to consignments or sales of
2 accounts, chattel paper, payment intangibles, or promissory notes, the provisions of this
3 article with regard to rights and obligations apply whether title to collateral is in the
4 secured party or the debtor.

400.9-203. (a) A security interest attaches to collateral when it becomes enforceable
2 against the debtor with respect to the collateral, unless an agreement expressly postpones
3 the time of attachment.

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

6 (1) Value has been given;

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

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

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

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

15 (C) The collateral is a certificated security in registered form and the security
16 certificate has been delivered to the secured party under section 400.8-301 pursuant to the
17 debtor's security agreement; or

18 (D) The collateral is deposit accounts, electronic chattel paper, investment property,
19 or letter-of-credit rights, and the secured party has control under section 400.9-104,
20 400.9-105, 400.9-106 or 400.9-107 pursuant to the debtor's security agreement.

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

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

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

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

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

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

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

39 (f) The attachment of a security interest in collateral gives the secured party the
40 rights to proceeds provided by section 400.9-315 and is also attachment of a security
41 interest in a supporting obligation for the collateral.

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

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

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

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

3 (b) A security interest does not attach under a term constituting an after-acquired
4 property clause to:

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

8 (2) A commercial tort claim.

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

1 **400.9-205. (a) A security interest is not invalid or fraudulent against creditors**
2 **solely because:**

3 **(1) The debtor has the right or ability to:**

4 **(A) Use, commingle, or dispose of all or part of the collateral, including returned**
5 **or repossessed goods;**

6 **(B) Collect, compromise, enforce, or otherwise deal with collateral;**

7 **(C) Accept the return of collateral or make repossessions; or**

8 **(D) Use, commingle, or dispose of proceeds; or**

9 **(2) The secured party fails to require the debtor to account for proceeds or replace**
10 **collateral.**

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

400.9-206. (a) A security interest in favor of a securities intermediary attaches to
2 **a person's security entitlement if:**

3 **(1) The person buys a financial asset through the securities intermediary in a**
4 **transaction in which the person is obligated to pay the purchase price to the securities**
5 **intermediary at the time of the purchase; and**

6 **(2) The securities intermediary credits the financial asset to the buyer's securities**
7 **account before the buyer pays the securities intermediary.**

8 **(b) The security interest described in subsection (a) secures the person's obligation**
9 **to pay for the financial asset.**

10 **(c) A security interest in favor of a person that delivers a certificated security or**
11 **other financial asset represented by a writing attaches to the security or other financial**
12 **asset if:**

13 **(1) The security or other financial asset:**

14 **(A) In the ordinary course of business is transferred by delivery with any necessary**
15 **endorsement or assignment; and**

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

18 **(2) The agreement calls for delivery against payment.**

19 **(d) The security interest described in subsection (c) secures the obligation to make**
20 **payment for the delivery.**

400.9-207. (a) Except as otherwise provided in subsection (d), a secured party shall
2 **use reasonable care in the custody and preservation of collateral in the secured party's**
3 **possession. In the case of chattel paper or an instrument, reasonable care includes taking**

4 necessary steps to preserve rights against prior parties unless otherwise agreed.

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

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

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

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

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

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

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

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

19 (c) Except as otherwise provided in subsection (d), a secured party having
20 possession of collateral or control of collateral under section 400.9-104, 400.9-105,
21 400.9-106 or 400.9-107:

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

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

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

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

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

31 (A) To charge back uncollected collateral; or

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

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

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

4 (b) Within ten days after receiving an authenticated demand by the debtor:

5 (1) A secured party having control of a deposit account under section
6 400.9-104(a)(2) shall send to the bank with which the deposit account is maintained an
7 authenticated statement that releases the bank from any further obligation to comply with
8 instructions originated by the secured party;

9 (2) A secured party having control of a deposit account under section
10 400.9-104(a)(3) shall:

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

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

13 (3) A secured party, other than a buyer, having control of electronic chattel paper
14 under section 400.9-105 shall:

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

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

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

25 (4) A secured party having control of investment property under section
26 400.8-106(d)(2) or 400.9-106(b) shall send to the securities intermediary or commodity
27 intermediary with which the security entitlement or commodity contract is maintained an
28 authenticated record that releases the securities intermediary or commodity intermediary
29 from any further obligation to comply with entitlement orders or directions originated by
30 the secured party; and

31 (5) A secured party having control of a letter-of-credit right under section 400.9-107
32 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the
33 letter of credit to the secured party an authenticated release from any further obligation
34 to pay or deliver proceeds of the letter of credit to the secured party.

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

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

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

6 (b) Within ten days after receiving an authenticated demand by the debtor, a

7 secured party shall send to an account debtor that has received notification of an
8 assignment to the secured party as assignee under section 400.9-406(a) an authenticated
9 record that releases the account debtor from any further obligation to the secured party.

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

400.9-210. (a) In this section:

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

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

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

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

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

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

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

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

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

3 of an agricultural lien on the farm products.

400.9-303. (a) This section applies to goods covered by a certificate of title, even if
2 there is no other relationship between the jurisdiction under whose certificate of title the
3 goods are covered and the goods or the debtor.

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

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

400.9-304. (a) The local law of a bank's jurisdiction governs perfection, the effect
2 of perfection or nonperfection, and the priority of a security interest in a deposit account
3 maintained with that bank.

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

5 (1) If an agreement between the bank and the debtor governing the deposit account
6 expressly provides that a particular jurisdiction is the bank's jurisdiction for purposes of
7 this part, this article, or chapter 400, that jurisdiction is the bank's jurisdiction;

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

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

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

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

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

3 (1) While a security certificate is located in a jurisdiction, the local law of that

4 **jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority**
5 **of a security interest in the certificated security represented thereby;**

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

9 **(3) The local law of the securities intermediary's jurisdiction as specified in section**
10 **400.8-110(e) governs perfection, the effect of perfection or nonperfection, and the priority**
11 **of a security interest in a security entitlement or securities account;**

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

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

17 **(1) If an agreement between the commodity intermediary and commodity customer**
18 **governing the commodity account expressly provides that a particular jurisdiction is the**
19 **commodity intermediary's jurisdiction for purposes of this part, this article, or chapter**
20 **400, that jurisdiction is the commodity intermediary's jurisdiction;**

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

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

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

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

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

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

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

39 **(3) Automatic perfection of a security interest in a commodity contract or**

40 commodity account created by a commodity intermediary.

2 **400.9-306. (a)** Subject to subsection (c), the local law of the issuer's jurisdiction or
3 a nominated person's jurisdiction governs perfection, the effect of perfection or
4 nonperfection, and the priority of a security interest in a letter-of-credit right if the issuer's
5 jurisdiction or nominated person's jurisdiction is a state.

6 **(b)** For purposes of this part, an issuer's jurisdiction or nominated person's
7 jurisdiction is the jurisdiction whose law governs the liability of the issuer or nominated
8 person with respect to the letter-of-credit right as provided in section 400.5-116.

9 **(c)** This section does not apply to a security interest that is perfected only under
10 section 400.9-308(c).

11 **400.9-307. (a)** In this section, "place of business" means a place where a debtor
12 conducts its affairs.

13 **(b)** Except as otherwise provided in this section, the following rules determine a
14 debtor's location:

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

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

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

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

(d) 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).

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

(f) Except as otherwise provided in subsection (i), 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

27 law of the United States authorizes the registered organization, branch, or agency to
28 designate its state of location; or

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

30 (g) A registered organization continues to be located in the jurisdiction specified
31 by subsection (e) or (f) notwithstanding:

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

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

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

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

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

43 (k) This section applies only for purposes of this part.

400.9-308. (a) Except as otherwise provided in this section and section 400.9-309,
2 a security interest is perfected if it has attached and all of the applicable requirements for
3 perfection in sections 400.9-310 through 400.9-316 have been satisfied. A security interest
4 is perfected when it attaches if the applicable requirements are satisfied before the security
5 interest attaches.

6 (b) An agricultural lien is perfected if it has become effective and all of the
7 applicable requirements for perfection in section 400.9-310 have been satisfied. An
8 agricultural lien is perfected when it becomes effective if the applicable requirements are
9 satisfied before the agricultural lien becomes effective.

10 (c) A security interest or agricultural lien is perfected continuously if it is originally
11 perfected by one method under this article and is later perfected by another method under
12 this article, without an intermediate period when it was unperfected.

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

15 (e) Perfection of a security interest in a right to payment or performance also
16 perfects a security interest in a security interest, mortgage, or other lien on personal or real
17 property securing the right.

18 (f) Perfection of a security interest in a securities account also perfects a security
19 interest in the security entitlements carried in the securities account.

20 (g) Perfection of a security interest in a commodity account also perfects a security
21 interest in the commodity contracts carried in the commodity account.

400.9-309. The following security interests are perfected when they attach:

2 (1) A purchase-money security interest in consumer goods, except as otherwise
3 provided in section 400.9-311(b) with respect to consumer goods that are subject to a
4 statute or treaty described in section 400.9-311(a);

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

8 (3) A sale of a payment intangible;

9 (4) A sale of a promissory note;

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

12 (6) A security interest arising under section 400.2-401, 400.2-505, 400.2-711(3) or
13 400.2A-508(5), until the debtor obtains possession of the collateral;

14 (7) A security interest of a collecting bank arising under section 400.4-210;

15 (8) A security interest of an issuer or nominated person arising under section
16 400.5-118;

17 (9) A security interest arising in the delivery of a financial asset under section
18 400.9-206(c);

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

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

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

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

400.9-310. (a) Except as otherwise provided in subsection (b) and section 400.9-
2 312(b), a financing statement must be filed to perfect all security interests and agricultural
3 liens.

4 (b) The filing of a financing statement is not necessary to perfect a security interest:

5 (1) That is perfected under section 400.9-308(c), (d), (e) or (f);

6 (2) That is perfected under section 400.9-309 when it attaches;

7 (3) In property subject to a statute, regulation, or treaty described in section
8 400.9-311(a);

9 (4) In goods in possession of a bailee which is perfected under section
10 **400.9-312(d)(1) or (2);**

11 (5) In certificated securities, documents, goods, or instruments which is perfected
12 **without filing or possession under section 400.9-312(e), (f), or (g);**

13 (6) In collateral in the secured party's possession under section 400.9-313;

14 (7) In a certificated security which is perfected by delivery of the security certificate
15 **to the secured party under section 400.9-313;**

16 (8) In deposit accounts, electronic chattel paper, investment property, or letter-of-
17 **credit rights which is perfected by control under section 400.9-314;**

18 (9) In proceeds which is perfected under section 400.9-315; or

19 (10) That is perfected under section 400.9-316.

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

400.9-311. (a) Except as otherwise provided in subsection (d), the filing of a
2 **financing statement is not necessary or effective to perfect a security interest in property**
3 **subject to:**

4 (1) A statute, regulation, or treaty of the United States whose requirements for a
5 **security interest's obtaining priority over the rights of a lien creditor with respect to the**
6 **property preempt section 400.9-310(a);**

7 (2) Sections 301.600 to 301.661 and section 400.2A-304; or

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

11 (b) Compliance with the requirements of a statute, regulation, or treaty described
12 **in subsection (a) for obtaining priority over the rights of a lien creditor is equivalent to the**
13 **filing of a financing statement under this article. Except as otherwise provided in**
14 **subsection (d) and sections 400.9-313 and 400.9-316(d) and (e) for goods covered by a**
15 **certificate of title, a security interest in property subject to a statute, regulation, or treaty**
16 **described in subsection (a) may be perfected only by compliance with those requirements,**
17 **and a security interest so perfected remains perfected notwithstanding a change in the use**
18 **or transfer of possession of the collateral.**

19 (c) Except as otherwise provided in subsection (d) and section 400.9-316(d) and (e),
20 **duration and renewal of perfection of a security interest perfected by compliance with the**
21 **requirements prescribed by a statute, regulation, or treaty described in subsection (a) are**
22 **governed by the statute, regulation, or treaty. In other respects, the security interest is**

23 subject to this article.

24 (d) During any period in which collateral is inventory held for sale or lease by a
25 person or leased by that person as lessor and that person is in the business of selling or
26 leasing goods of that kind, this section does not apply to a security interest in that collateral
27 created by that person as debtor.

2 400.9-312. (a) A security interest in chattel paper, negotiable documents,
instruments, or investment property may be perfected by filing.

3 (b) Except as otherwise provided in section 400.9-315(c) and (d) for proceeds:

4 (1) A security interest in a deposit account may be perfected only by control under
5 section 400.9-314;

6 (2) And except as otherwise provided in section 400.9-308(c), a security interest in
7 a letter-of-credit right may be perfected only by control under section 400.9-314; and

8 (3) A security interest in money may be perfected only by the secured party's taking
9 possession under section 400.9-313.

10 (c) While goods are in the possession of a bailee that has issued a negotiable
11 document covering the goods:

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

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

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

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

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

20 (3) Filing as to the goods.

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

25 (f) A perfected security interest in a negotiable document or goods in possession of
26 a bailee, other than one that has issued a negotiable document for the goods, remains
27 perfected for twenty days without filing if the secured party makes available to the debtor
28 the goods or documents representing the goods for the purpose of:

29 (1) Ultimate sale or exchange; or

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

32 exchange.

33 (g) A perfected security interest in a certificated security or instrument remains
34 perfected for twenty days without filing if the secured party delivers the security certificate
35 or instrument to the debtor for the purpose of:

36 (1) Ultimate sale or exchange; or

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

38 (h) After the twenty-day period specified in subsection (e), (f), or (g) expires,
39 perfection depends upon compliance with this article.

400.9-313. (a) Except as otherwise provided in subsection (b), a secured party may
2 perfect a security interest in negotiable documents, goods, instruments, money, or tangible
3 chattel paper by taking possession of the collateral. A secured party may perfect a security
4 interest in certificated securities by taking delivery of the certificated securities under
5 section 400.8-301.

6 (b) With respect to goods covered by a certificate of title issued by this state, a
7 secured party may perfect a security interest in the goods by taking possession of the goods
8 only in the circumstances described in section 400.9-316(d).

9 (c) With respect to collateral other than certificated securities and goods covered
10 by a document, a secured party takes possession of collateral in the possession of a person
11 other than the debtor, the secured party, or a lessee of the collateral from the debtor in the
12 ordinary course of the debtor's business, when:

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

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

17 (d) If perfection of a security interest depends upon possession of the collateral by
18 a secured party, perfection occurs no earlier than the time the secured party takes
19 possession and continues only while the secured party retains possession.

20 (e) A security interest in a certificated security in registered form is perfected by
21 delivery when delivery of the certificated security occurs under section 400.8-301 and
22 remains perfected by delivery until the debtor obtains possession of the security certificate.

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

25 (g) If a person acknowledges that it holds possession for the secured party's benefit:

26 (1) The acknowledgment is effective under subsection (c) or section 400.8-301(a),
27 even if the acknowledgment violates the rights of a debtor; and

28 (2) Unless the person otherwise agrees or law other than this article otherwise

29 provides, the person does not owe any duty to the secured party and is not required to
30 confirm the acknowledgment to another person.

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

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

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

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

400.9-314. (a) A security interest in investment property, deposit accounts, letter-
2 of-credit rights, or electronic chattel paper may be perfected by control of the collateral
3 under section 400.9-104, 400.9-105, 400.9-106 or 400.9-107.

4 (b) A security interest in deposit accounts, electronic chattel paper, or letter-of-
5 credit rights is perfected by control under section 400.9-104, 400.9-105 or 400.9-107 when
6 the secured party obtains control and remains perfected by control only while the secured
7 party retains control.

8 (c) A security interest in investment property is perfected by control under section
9 400.9-106 from the time the secured party obtains control and remains perfected by control
10 until:

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

12 (2) One of the following occurs:

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

15 (B) If the collateral is an uncertificated security, the issuer has registered or
16 registers the debtor as the registered owner; or

17 (C) If the collateral is a security entitlement, the debtor is or becomes the
18 entitlement holder.

400.9-315. (a) Except as otherwise provided in this article and in section
2 400.2-403(2):

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

- 6 **(2) A security interest attaches to any identifiable proceeds of collateral.**
- 7 **(b) Proceeds that are commingled with other property are identifiable proceeds:**
- 8 **(1) If the proceeds are goods, to the extent provided by section 400.9-336; and**
- 9 **(2) If the proceeds are not goods, to the extent that the secured party identifies the**
- 10 **proceeds by a method of tracing, including application of equitable principles, that is**
- 11 **permitted under law other than this article with respect to commingled property of the**
- 12 **type involved.**
- 13 **(c) A security interest in proceeds is a perfected security interest if the security**
- 14 **interest in the original collateral was perfected.**
- 15 **(d) A perfected security interest in proceeds becomes unperfected on the twenty-**
- 16 **first day after the security interest attaches to the proceeds unless:**
- 17 **(1) The following conditions are satisfied:**
- 18 **(A) A filed financing statement covers the original collateral;**
- 19 **(B) The proceeds are collateral in which a security interest may be perfected by**
- 20 **filing in the office in which the financing statement has been filed; and**
- 21 **(C) The proceeds are not acquired with cash proceeds;**
- 22 **(2) The proceeds are identifiable cash proceeds; or**
- 23 **(3) The security interest in the proceeds is perfected other than under subsection**
- 24 **(c) when the security interest attaches to the proceeds or within twenty days thereafter.**
- 25 **(e) If a filed financing statement covers the original collateral, a security interest**
- 26 **in proceeds which remains perfected under subsection (d)(1) becomes unperfected at the**
- 27 **later of:**
- 28 **(1) When the effectiveness of the filed financing statement lapses under section**
- 29 **400.9-515 or is terminated under section 400.9-513; or**
- 30 **(2) The twenty-first day after the security interest attaches to the proceeds.**
- 400.9-316. (a) A security interest perfected pursuant to the law of the jurisdiction**
- 2 **designated in section 400.9-301(1) or 400.9-305(c) remains perfected until the earliest of:**
- 3 **(1) The time perfection would have ceased under the law of that jurisdiction;**
- 4 **(2) The expiration of four months after a change of the debtor's location to another**
- 5 **jurisdiction; or**
- 6 **(3) The expiration of one year after a transfer of collateral to a person that thereby**
- 7 **becomes a debtor and is located in another jurisdiction.**
- 8 **(b) If a security interest described in subsection (a) becomes perfected under the**
- 9 **law of the other jurisdiction before the earliest time or event described in that subsection,**
- 10 **it remains perfected thereafter. If the security interest does not become perfected under**
- 11 **the law of the other jurisdiction before the earliest time or event, it becomes unperfected**

12 and is deemed never to have been perfected as against a purchaser of the collateral for
13 value.

14 (c) A possessory security interest in collateral, other than goods covered by a
15 certificate of title and as-extracted collateral consisting of goods, remains continuously
16 perfected if:

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

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

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

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

27 (e) A security interest described in subsection (d) becomes unperfected as against
28 a purchaser of the goods for value and is deemed never to have been perfected as against
29 a purchaser of the goods for value if the applicable requirements for perfection under
30 section 400.9-311(b) or 400.9-313 are not satisfied before the earlier of:

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

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

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

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

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

44 (g) If a security interest described in subsection (f) becomes perfected under the law
45 of the other jurisdiction before the earlier of the time or the end of the period described in
46 that subsection, it remains perfected thereafter. If the security interest does not become
47 perfected under the law of the other jurisdiction before the earlier of that time or the end

48 of that period, it becomes unperfected and is deemed never to have been perfected as
49 against a purchaser of the collateral for value.

2 **400.9-317. (a) An unperfected security interest or agricultural lien is subordinate**

3 **to the rights of:**

4 **(1) A person entitled to priority under section 400.9-322; and**
5 **(2) A person that becomes a lien creditor before the earlier of the time the security**
6 **interest or agricultural lien is perfected or a financing statement covering the collateral is**
7 **filed.**

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

13 **(c) Except as otherwise provided in subsection (e), a lessee of goods takes free of a**
14 **security interest or agricultural lien if the lessee gives value and receives delivery of the**
15 **collateral without knowledge of the security interest or agricultural lien and before it is**
16 **perfected.**

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

21 **(e) Except as otherwise provided in sections 400.9-320 and 400.9-321, if a person**
22 **files a financing statement with respect to a purchase-money security interest before or**
23 **within twenty days after the debtor receives delivery of the collateral, the security interest**
24 **takes priority over the rights of a buyer, lessee, or lien creditor which arise between the**
25 **time the security interest attaches and the time of filing.**

2 **400.9-318. (a) A debtor that has sold an account, chattel paper, payment intangible,**
3 **or promissory note does not retain a legal or equitable interest in the collateral sold.**

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

8 **400.9-319. (a) Except as otherwise provided in subsection (b), for purposes of**
9 **determining the rights of creditors of, and purchasers for value of goods from, a consignee,**
10 **while the goods are in the possession of the consignee, the consignee is deemed to have**
11 **rights and title to the goods identical to those the consignor had or had power to transfer.**

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

400.9-320. (a) Except as otherwise provided in subsection (e), a buyer in ordinary
2 **course of business, other than a person buying farm products from a person engaged in**
3 **farming operations, takes free of a security interest created by the buyer's seller, even if**
4 **the security interest is perfected and the buyer knows of its existence.**

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

8 **(1) Without knowledge of the security interest;**

9 **(2) For value;**

10 **(3) Primarily for the buyer's personal, family, or household purposes; and**

11 **(4) Before the filing of a financing statement covering the goods.**

12 **(c) To the extent that it affects the priority of a security interest over a buyer of**
13 **goods under subsection (b), the period of effectiveness of a filing made in the jurisdiction**
14 **in which the seller is located is governed by section 400.9-316(a) and (b).**

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

18 **(e) Subsections (a) and (b) do not affect a security interest in goods in the possession**
19 **of the secured party under section 400.9-313.**

400.9-321. (a) In this section, "licensee in ordinary course of business" means a
2 **person that becomes a licensee of a general intangible in good faith, without knowledge**
3 **that the license violates the rights of another person in the general intangible, and in the**
4 **ordinary course from a person in the business of licensing general intangibles of that kind.**
5 **A person becomes a licensee in the ordinary course if the license to the person comports**
6 **with the usual or customary practices in the kind of business in which the licensor is**
7 **engaged or with the licensor's own usual or customary practices.**

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

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

2 **400.9-322. (a) Except as otherwise provided in this section, priority among**
3 **conflicting security interests and agricultural liens in the same collateral is determined**
4 **according to the following rules:**

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

9 **(2) A perfected security interest or agricultural lien has priority over a conflicting**
10 **unperfected security interest or agricultural lien.**

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

13 **(b) For the purposes of subsection (a)(1):**

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

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

19 **(c) Except as otherwise provided in subsection (f), a security interest in collateral**
20 **which qualifies for priority over a conflicting security interest under section 400.9-327,**
21 **400.9-328, 400.9-329, 400.9-330 or 400.9-331 also has priority over a conflicting security**
22 **interest in:**

23 **(1) Any supporting obligation for the collateral; and**

24 **(2) Proceeds of the collateral if:**

25 **(A) The security interest in proceeds is perfected;**

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

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

30 **(d) Subject to subsection (e) and except as otherwise provided in subsection (f), if**
31 **a security interest in chattel paper, deposit accounts, negotiable documents, instruments,**
32 **investment property, or letter-of-credit rights is perfected by a method other than filing,**
33 **conflicting perfected security interests in proceeds of the collateral rank according to**
34 **priority in time of filing.**

35 **(e) Subsection (d) applies only if the proceeds of the collateral are not cash**
36 **proceeds, chattel paper, negotiable documents, instruments, investment property, or letter-**
37 **of-credit rights.**

- 37 **(f) Subsections (a) through (e) are subject to:**
38 **(1) Subsection (g) and the other provisions of this part;**
39 **(2) Section 400.4-210 with respect to a security interest of a collecting bank;**
40 **(3) Section 400.5-118 with respect to a security interest of an issuer or nominated**
41 **person; and**
42 **(4) Section 400.9-110 with respect to a security interest arising under article 2 or**
43 **2A.**
- 44 **(g) A perfected agricultural lien on collateral has priority over a conflicting security**
45 **interest in or agricultural lien on the same collateral if the statute creating the agricultural**
46 **lien so provides.**
- 400.9-323. (a) Except as otherwise provided in subsection (c), for purposes of**
2 **determining the priority of a perfected security interest under section 400.9-322(a)(1),**
3 **perfection of the security interest dates from the time an advance is made to the extent that**
4 **the security interest secures an advance that:**
- 5 **(1) Is made while the security interest is perfected only:**
6 **(A) Under section 400.9-309 when it attaches; or**
7 **(B) Temporarily under section 400.9-312(e), (f), or (g); and**
8 **(2) Is not made pursuant to a commitment entered into before or while the security**
9 **interest is perfected by a method other than under section 400.9-309 or 400.9-312(e), (f),**
10 **or (g).**
- 11 **(b) Except as otherwise provided in subsection (c), a security interest is subordinate**
12 **to the rights of a person that becomes a lien creditor while the security interest is perfected**
13 **only to the extent that it secures advances made more than forty-five days after the person**
14 **becomes a lien creditor unless the advance is made:**
- 15 **(1) Without knowledge of the lien; or**
16 **(2) Pursuant to a commitment entered into without knowledge of the lien.**
- 17 **(c) Subsections (a) and (b) do not apply to a security interest held by a secured**
18 **party that is a buyer of accounts, chattel paper, payment intangibles, or promissory notes**
19 **or a consignor.**
- 20 **(d) Except as otherwise provided in subsection (e), a buyer of goods other than a**
21 **buyer in ordinary course of business takes free of a security interest to the extent that it**
22 **secures advances made after the earlier of:**
- 23 **(1) The time the secured party acquires knowledge of the buyer's purchase; or**
24 **(2) Forty-five days after the purchase.**
- 25 **(e) Subsection (d) does not apply if the advance is made pursuant to a commitment**
26 **entered into without knowledge of the buyer's purchase and before the expiration of the**

27 **forty-five-day period.**

28 (f) Except as otherwise provided in subsection (g), a lessee of goods, other than a
29 lessee in ordinary course of business, takes the leasehold interest free of a security interest
30 to the extent that it secures advances made after the earlier of:

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

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

33 (g) Subsection (f) does not apply if the advance is made pursuant to a commitment
34 entered into without knowledge of the lease and before the expiration of the forty-five-day
35 period.

400.9-324. (a) Except as otherwise provided in subsection (g), a perfected purchase-
2 money security interest in goods other than inventory or livestock has priority over a
3 conflicting security interest in the same goods, and, except as otherwise provided in section
4 400.9-327, a perfected security interest in its identifiable proceeds also has priority, if the
5 purchase-money security interest is perfected when the debtor receives possession of the
6 collateral or within twenty days thereafter.

7 (b) Subject to subsection (c) and except as otherwise provided in subsection (g), a
8 perfected purchase-money security interest in inventory has priority over a conflicting
9 security interest in the same inventory, has priority over a conflicting security interest in
10 chattel paper or an instrument constituting proceeds of the inventory and in proceeds of
11 the chattel paper, if so provided in section 400.9-330, and, except as otherwise provided in
12 section 400.9-327, also has priority in identifiable cash proceeds of the inventory to the
13 extent the identifiable cash proceeds are received on or before the delivery of the inventory
14 to a buyer, if:

15 (1) The purchase-money security interest is perfected when the debtor receives
16 possession of the inventory;

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

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

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

24 (c) Subsections (b)(2) through (4) apply only if the holder of the conflicting security
25 interest had filed a financing statement covering the same types of inventory:

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

28 **(2) If the purchase-money security interest is temporarily perfected without filing**
29 **or possession under section 400.9-312(f), before the beginning of the twenty-day period**
30 **thereunder.**

31 **(d) Subject to subsection (e) and except as otherwise provided in subsection (g), a**
32 **perfected purchase-money security interest in livestock that are farm products has priority**
33 **over a conflicting security interest in the same livestock, and, except as otherwise provided**
34 **in section 400.9-327, a perfected security interest in their identifiable proceeds and**
35 **identifiable products in their unmanufactured states also has priority, if:**

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

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

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

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

45 **(e) Subsections (d)(2) through (4) apply only if the holder of the conflicting security**
46 **interest had filed a financing statement covering the same types of livestock:**

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

49 **(2) If the purchase-money security interest is temporarily perfected without filing**
50 **or possession under section 400.9-312(f), before the beginning of the twenty-day period**
51 **thereunder.**

52 **(f) Except as otherwise provided in subsection (g), a perfected purchase-money**
53 **security interest in software has priority over a conflicting security interest in the same**
54 **collateral, and, except as otherwise provided in section 400.9-327, a perfected security**
55 **interest in its identifiable proceeds also has priority, to the extent that the purchase-money**
56 **security interest in the goods in which the software was acquired for use has priority in the**
57 **goods and proceeds of the goods under this section.**

58 **(g) If more than one security interest qualifies for priority in the same collateral**
59 **under subsection (a), (b), (d), or (f):**

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

63 **(2) In all other cases, section 400.9-322(a) applies to the qualifying security**

64 interests.

2 **400.9-325. (a) Except as otherwise provided in subsection (b), a security interest**
3 **created by a debtor is subordinate to a security interest in the same collateral created by**
4 **another person if:**

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

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

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

10 **(b) Subsection (a) subordinates a security interest only if the security interest:**

11 **(1) Otherwise would have priority solely under section 400.9-322(a) or 400.9-324;**

12 **or**

13 **(2) Arose solely under section 400.2-711(3) or 400.2A-508(5).**

14 **400.9-326. (a) Subject to subsection (b), a security interest created by a new debtor**
15 **which is perfected by a filed financing statement that is effective solely under section**
16 **400.9-508 in collateral in which a new debtor has or acquires rights is subordinate to a**
17 **security interest in the same collateral which is perfected other than by a filed financing**
18 **statement that is effective solely under section 400.9-508.**

19 **(b) The other provisions of this part determine the priority among conflicting**
20 **security interests in the same collateral perfected by filed financing statements that are**
21 **effective solely under section 400.9-508. However, if the security agreements to which a**
22 **new debtor became bound as debtor were not entered into by the same original debtor, the**
23 **conflicting security interests rank according to priority in time of the new debtor's having**
24 **become bound.**

25 **400.9-327. The following rules govern priority among conflicting security interests**
26 **in the same deposit account:**

27 **(1) A security interest held by a secured party having control of the deposit account**
28 **under section 400.9-104 has priority over a conflicting security interest held by a secured**
29 **party that does not have control.**

30 **(2) Except as otherwise provided in paragraphs (3) and (4), security interests**
31 **perfected by control under section 400.9-314 rank according to priority in time of**
32 **obtaining control.**

33 **(3) Except as otherwise provided in paragraph (4), a security interest held by the**
34 **bank with which the deposit account is maintained has priority over a conflicting security**
35 **interest held by another secured party.**

36 **(4) A security interest perfected by control under section 400.9-104(a)(3) has**

13 **priority over a security interest held by the bank with which the deposit account is**
14 **maintained.**

400.9-328. The following rules govern priority among conflicting security interests
2 **in the same investment property:**

3 **(1) A security interest held by a secured party having control of investment**
4 **property under section 400.9-106 has priority over a security interest held by a secured**
5 **party that does not have control of the investment property.**

6 **(2) Except as otherwise provided in paragraphs (3) and (4), conflicting security**
7 **interests held by secured parties each of which has control under section 400.9-106 rank**
8 **according to priority in time of:**

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

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

11 **(i) If the secured party obtained control under section 400.8-106(d)(1), the secured**
12 **party's becoming the person for which the securities account is maintained;**

13 **(ii) If the secured party obtained control under section 400.8-106(d)(2), the**
14 **securities intermediary's agreement to comply with the secured party's entitlement orders**
15 **with respect to security entitlements carried or to be carried in the securities account; or**

16 **(iii) If the secured party obtained control through another person under section**
17 **400.8-106(d)(3), the time on which priority would be based under this paragraph if the**
18 **other person were the secured party; or**

19 **(C) If the collateral is a commodity contract carried with a commodity**
20 **intermediary, the satisfaction of the requirement for control specified in section**
21 **400.9-106(b)(2) with respect to commodity contracts carried or to be carried with the**
22 **commodity intermediary.**

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

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

29 **(5) A security interest in a certificated security in registered form which is perfected**
30 **by taking delivery under section 400.9-313(a) and not by control under section 400.9-314**
31 **has priority over a conflicting security interest perfected by a method other than control.**

32 **(6) Conflicting security interests created by a broker, securities intermediary, or**
33 **commodity intermediary which are perfected without control under section 400.9-106 rank**
34 **equally.**

35 (7) In all other cases, priority among conflicting security interests in investment
36 property is governed by sections 400.9-322 and 400.9-323.

2 400.9-329. The following rules govern priority among conflicting security interests
in the same letter-of-credit right:

3 (1) A security interest held by a secured party having control of the letter-of-credit
4 right under section 400.9-107 has priority to the extent of its control over a conflicting
5 security interest held by a secured party that does not have control.

6 (2) Security interests perfected by control under section 400.9-314 rank according
7 to priority in time of obtaining control.

2 400.9-330. (a) 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
3 interest if:

4 (1) In good faith and in the ordinary course of the purchaser's business, the
5 purchaser gives new value and takes possession of the chattel paper or obtains control of
6 the chattel paper under section 400.9-105; and

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

9 (b) A purchaser of chattel paper has priority over a security interest in the chattel
10 paper which is claimed other than merely as proceeds of inventory subject to a security
11 interest if the purchaser gives new value and takes possession of the chattel paper or
12 obtains control of the chattel paper under section 400.9-105 in good faith, in the ordinary
13 course of the purchaser's business, and without knowledge that the purchase violates the
14 rights of the secured party.

15 (c) Except as otherwise provided in section 400.9-327, a purchaser having priority
16 in chattel paper under subsection (a) or (b) also has priority in proceeds of the chattel
17 paper to the extent that:

18 (1) Section 400.9-322 provides for priority in the proceeds; or

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

22 (d) Except as otherwise provided in section 400.9-331(a), a purchaser of an
23 instrument has priority over a security interest in the instrument perfected by a method
24 other than possession if the purchaser gives value and takes possession of the instrument
25 in good faith and without knowledge that the purchase violates the rights of the secured
26 party.

27 (e) For purposes of subsections (a) and (b), the holder of a purchase-money security

28 interest in inventory gives new value for chattel paper constituting proceeds of the
29 inventory.

30 (f) For purposes of subsections (b) and (d), if chattel paper or an instrument
31 indicates that it has been assigned to an identified secured party other than the purchaser,
32 a purchaser of the chattel paper or instrument has knowledge that the purchase violates
33 the rights of the secured party.

400.9-331. (a) This article does not limit the rights of a holder in due course of a
2 negotiable instrument, a holder to which a negotiable document of title has been duly
3 negotiated, or a protected purchaser of a security. These holders or purchasers take
4 priority over an earlier security interest, even if perfected, to the extent provided in articles
5 3, 7, and 8.

6 (b) This article does not limit the rights of or impose liability on a person to the
7 extent that the person is protected against the assertion of an adverse claim under article
8 8.

9 (c) Filing under this article does not constitute notice of a claim or defense to the
10 holders, or purchasers, or persons described in subsections (a) and (b).

400.9-332. (a) A transferee of money takes the money free of a security interest
2 unless the transferee acts in collusion with the debtor in violating the rights of the secured
3 party.

4 (b) A transferee of funds from a deposit account takes the funds free of a security
5 interest in the deposit account unless the transferee acts in collusion with the debtor in
6 violating the rights of the secured party.

400.9-333. (a) In this section, "possessory lien" means an interest, other than a
2 security interest or an agricultural lien:

3 (1) Which secures payment or performance of an obligation for services or
4 materials furnished with respect to goods by a person in the ordinary course of the
5 person's business;

6 (2) Which is created by statute or rule of law in favor of the person; and

7 (3) Whose effectiveness depends on the person's possession of the goods.

8 (b) A possessory lien on goods has priority over a security interest in the goods
9 unless the lien is created by a statute that expressly provides otherwise.

400.9-334. (a) A security interest under this article may be created in goods that
2 are fixtures or may continue in goods that become fixtures. A security interest does not
3 exist under this article in ordinary building materials incorporated into an improvement
4 on land.

5 (b) This article does not prevent creation of an encumbrance upon fixtures under

6 real property law.

7 (c) In cases not governed by subsections (d) through (h), a security interest in
8 fixtures is subordinate to a conflicting interest of an encumbrancer or owner of the related
9 real property other than the debtor.

10 (d) Except as otherwise provided in subsection (h), a perfected security interest in
11 fixtures has priority over a conflicting interest of an encumbrancer or owner of the real
12 property if the debtor has an interest of record in or is in possession of the real property
13 and:

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

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

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

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

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

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

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

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

29 (A) Factory or office machines;

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

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

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

36 (4) The security interest is:

37 (A) Created in a manufactured home in a manufactured-home transaction; and

38 (B) Perfected pursuant to a statute described in section 400.9-311(a)(2).

39 (f) A security interest in fixtures, whether or not perfected, has priority over a
40 conflicting interest of an encumbrancer or owner of the real property if:

41 (1) The encumbrancer or owner has, in an authenticated record, consented to the

42 security interest or disclaimed an interest in the goods as fixtures; or

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

45 (g) The priority of the security interest under subsection (f) continues for a
46 reasonable time if the debtor's right to remove the goods as against the encumbrancer or
47 owner terminates.

48 (h) A mortgage is a construction mortgage to the extent that it secures an obligation
49 incurred for the construction of an improvement on land, including the acquisition cost of
50 the land, if a recorded record of the mortgage so indicates. Except as otherwise provided
51 in subsections (e) and (f), a security interest in fixtures is subordinate to a construction
52 mortgage if a record of the mortgage is recorded before the goods become fixtures and the
53 goods become fixtures before the completion of the construction. A mortgage has this
54 priority to the same extent as a construction mortgage to the extent that it is given to
55 refinance a construction mortgage.

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

59 (j) Subsection (i) prevails over any inconsistent provisions of other statutes.

400.9-335. (a) A security interest may be created in an accession and continues in
2 collateral that becomes an accession.

3 (b) If a security interest is perfected when the collateral becomes an accession, the
4 security interest remains perfected in the collateral.

5 (c) Except as otherwise provided in subsection (d), the other provisions of this part
6 determine the priority of a security interest in an accession.

7 (d) A security interest in an accession is subordinate to a security interest in the
8 whole which is perfected by compliance with the requirements of a certificate-of-title
9 statute under section 400.9-311(b).

10 (e) After default, a secured party may remove an accession from other goods if the
11 security interest in the accession has priority over the claims of every person having an
12 interest in the whole.

13 (f) A secured party that removes an accession from other goods under subsection
14 (e) shall promptly reimburse any holder of a security interest or other lien on, or owner of,
15 the whole or of the other goods, other than the debtor, for the cost of repair of any physical
16 injury to the whole or the other goods. The secured party need not reimburse the holder
17 or owner for any diminution in value of the whole or the other goods caused by the absence
18 of the accession removed or by any necessity for replacing it. A person entitled to

19 reimbursement may refuse permission to remove until the secured party gives adequate
20 assurance for the performance of the obligation to reimburse.

200.9-336. (a) In this section, "commingled goods" means goods that are physically
2 united with other goods in such a manner that their identity is lost in a product or mass.

3 (b) A security interest does not exist in commingled goods as such. However, a
4 security interest may attach to a product or mass that results when goods become
5 commingled goods.

6 (c) If collateral becomes commingled goods, a security interest attaches to the
7 product or mass.

8 (d) If a security interest in collateral is perfected before the collateral becomes
9 commingled goods, the security interest that attaches to the product or mass under
10 subsection (c) is perfected.

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

14 (f) If more than one security interest attaches to the product or mass under
15 subsection (c), the following rules determine priority:

16 (1) A security interest that is perfected under subsection (d) has priority over a
17 security interest that is unperfected at the time the collateral becomes commingled goods.

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

200.9-337. If, while a security interest in goods is perfected by any method under
2 the law of another jurisdiction, this state issues a certificate of title that does not show that
3 the goods are subject to the security interest or contain a statement that they may be
4 subject to security interests not shown on the certificate:

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

8 (2) The security interest is subordinate to a conflicting security interest in the goods
9 that attaches, and is perfected under section 400.9-311(b), after issuance of the certificate
10 and without the conflicting secured party's knowledge of the security interest.

200.9-338. If a security interest or agricultural lien is perfected by a filed financing
2 statement providing information described in section 400.9-516(b)(5) which is incorrect at
3 the time the financing statement is filed:

4 (1) The security interest or agricultural lien is subordinate to a conflicting perfected

5 security interest in the collateral to the extent that the holder of the conflicting security
6 interest gives value in reasonable reliance upon the incorrect information; and

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

400.9-339. This article does not preclude subordination by agreement by a person
2 entitled to priority.

400.9-340. (a) Except as otherwise provided in subsection (c), a bank with which
2 a deposit account is maintained may exercise any right of recoupment or set-off against a
3 secured party that holds a security interest in the deposit account.

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

7 (c) The exercise by a bank of a set-off against a deposit account is ineffective against
8 a secured party that holds a security interest in the deposit account which is perfected by
9 control under section 400.9-104(a)(3), if the set-off is based on a claim against the debtor.

400.9-341. Except as otherwise provided in section 400.9-340(c), and unless the
2 bank otherwise agrees in an authenticated record, a bank's rights and duties with respect
3 to a deposit account maintained with the bank are not terminated, suspended, or modified
4 by:

5 (1) The creation, attachment, or perfection of a security interest in the deposit
6 account;

7 (2) The bank's knowledge of the security interest; or

8 (3) The bank's receipt of instructions from the secured party.

400.9-342. This article does not require a bank to enter into an agreement of the
2 kind described in section 400.9-104(a)(2), even if its customer so requests or directs. A
3 bank that has entered into such an agreement is not required to confirm the existence of
4 the agreement to another person unless requested to do so by its customer.

5 PART 4

6 RIGHTS OF THIRD PARTIES

400.9-401. (a) Except as otherwise provided in subsection (b) and sections
2 400.9-406, 400.9-407, 400.9-408 and 400.9-409, whether a debtor's rights in collateral may
3 be voluntarily or involuntarily transferred is governed by law other than this article.

4 (b) An agreement between the debtor and secured party which prohibits a transfer
5 of the debtor's rights in collateral or makes the transfer a default does not prevent the

6 transfer from taking effect.

2 **400.9-402.** The existence of a security interest, agricultural lien, or authority given
3 to a debtor to dispose of or use collateral, without more, does not subject a secured party
4 to liability in contract or tort for the debtor's acts or omissions.

2 **400.9-403.** (a) In this section, "value" has the meaning provided in section
3 **400.3-303(a).**

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

7 (1) For value;

8 (2) In good faith;

9 (3) Without notice of a claim of a property or possessory right to the property
10 assigned; and

11 (4) Without notice of a defense or claim in recoupment of the type that may be
12 asserted against a person entitled to enforce a negotiable instrument under section
13 **400.3-305(a).**

14 (c) Subsection (b) does not apply to defenses of a type that may be asserted against
15 a holder in due course of a negotiable instrument under section **400.3-305(b).**

16 (d) In a consumer transaction, if a record evidences the account debtor's obligation,
17 law other than this article requires that the record include a statement to the effect that the
18 rights of an assignee are subject to claims or defenses that the account debtor could assert
19 against the original obligee, and the record does not include such a statement:

20 (1) The record has the same effect as if the record included such a statement; and

21 (2) The account debtor may assert against an assignee those claims and defenses
22 that would have been available if the record included such a statement.

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

26 (f) Except as otherwise provided in subsection (d), this section does not displace law
27 other than this article which gives effect to an agreement by an account debtor not to assert
28 a claim or defense against an assignee.

2 **400.9-404.** (a) Unless an account debtor has made an enforceable agreement not
3 to assert defenses or claims, and subject to subsections (b) through (e), the rights of an
4 assignee are subject to:

4 (1) All terms of the agreement between the account debtor and assignor and any

5 defense or claim in recoupment arising from the transaction that gave rise to the contract;
6 and

7 (2) Any other defense or claim of the account debtor against the assignor which
8 accrues before the account debtor receives a notification of the assignment authenticated
9 by the assignor or the assignee.

10 (b) Subject to subsection (c) and except as otherwise provided in subsection (d), the
11 claim of an account debtor against an assignor may be asserted against an assignee under
12 subsection (a) only to reduce the amount the account debtor owes.

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

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

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

400.9-405. (a) A modification of or substitution for an assigned contract is effective
2 against an assignee if made in good faith. The assignee acquires corresponding rights
3 under the modified or substituted contract. The assignment may provide that the
4 modification or substitution is a breach of contract by the assignor. This subsection is
5 subject to subsections (b) through (d).

6 (b) Subsection (a) applies to the extent that:

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

9 (2) The right to payment or a part thereof has been fully earned by performance
10 and the account debtor has not received notification of the assignment under section
11 400.9-406(a).

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

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

400.9-406. (a) Subject to subsections (b) through (i), 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) Subject to subsection (h), notification is ineffective under subsection (a):

(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 general 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) Subject to subsection (h), 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).

(d) Except as otherwise provided in subsection (e) and sections 400.2A-303 and 400.9-407, and subject to subsection (h), 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 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) Subsection (d) does not apply to the sale of a payment intangible or promissory note.

37 (f) Except as otherwise provided in sections 400.2A-303 and 400.9-407, and subject
38 to subsections (h) and (i), a rule of law, statute, or regulation, that prohibits, restricts, or
39 requires the consent of a government, governmental body or official, or account debtor to
40 the assignment or transfer of, or creation of a security interest in, an account or chattel
41 paper is ineffective to the extent that the rule of law, statute, or regulation:

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

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

49 (g) Subject to subsection (h), an account debtor may not waive or vary its option
50 under subsection (b)(3).

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

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

56 (j) This section prevails over any inconsistent provisions of any statutes, rules, and
57 regulations.

400.9-407. (a) Except as otherwise provided in subsection (b), a term in a lease
2 agreement is ineffective to the extent that it:

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

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

9 (b) Except as otherwise provided in section 400.2A-303(7), a term described in
10 subsection (a)(2) is effective to the extent that there is:

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

13 (2) A delegation of a material performance of either party to the lease contract in
14 violation of the term.

15 (c) The creation, attachment, perfection, or enforcement of a security interest in the

16 lessor's interest under the lease contract or the lessor's residual interest in the goods is not
17 a transfer that materially impairs the lessee's prospect of obtaining return performance or
18 materially changes the duty of or materially increases the burden or risk imposed on the
19 lessee within the purview of section 400.2A-303(4) unless, and then only to the extent that,
20 enforcement actually results in a delegation of material performance of the lessor. Even
21 in that event, the creation, attachment, perfection, and enforcement of the security interest
22 remain effective.

2 **400.9-408. (a)** Except as otherwise provided in subsection (b), a term in a
3 promissory note or in an agreement between an account debtor and a debtor which relates
4 to a health-care-insurance receivable or a general intangible, including a contract, permit,
5 license, or franchise, and which term prohibits, restricts, or requires the consent of the
6 person obligated on the promissory note or the account debtor to, the assignment or
7 transfer of, or creation, attachment, or perfection of a security interest in, the promissory
8 note, health-care-insurance receivable, or general intangible, is ineffective to the extent that
9 the term:

- 9 (1) Would impair the creation, attachment, or perfection of a security interest; or
10 (2) Provides that the creation, attachment, or perfection of the security interest may
11 give 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 (b) Subsection (a) applies to a security interest in a payment intangible or
15 promissory note only if the security interest arises out of a sale of the payment intangible
16 or promissory note.

17 (c) A rule of law, statute, or regulation that prohibits, restricts, or requires the
18 consent of a government, governmental body or official, person obligated on a promissory
19 note, or account debtor to the assignment or transfer of, or creation of a security interest
20 in, a promissory note, health-care-insurance receivable, or general intangible, including
21 a contract, permit, license, or franchise between an account debtor and a debtor, is
22 ineffective to the extent that the rule of law, statute, or regulation:

- 23 (1) Would impair the creation, attachment, or perfection of a security interest; or
24 (2) Provides that the creation, attachment, or perfection of the security interest may
25 give rise to a default, breach, right of recoupment, claim, defense, termination, right of
26 termination, or remedy under the promissory note, health-care-insurance receivable, or
27 general intangible.

28 (d) To the extent that a term in a promissory note or in an agreement between an
29 account debtor and a debtor which relates to a health-care-insurance receivable or general

30 intangible or a rule of law, statute, or regulation described in subsection (c) would be
31 effective under law other than this article but is ineffective under subsection (a) or (c), the
32 creation, attachment, or perfection of a security interest in the promissory note, health-
33 care-insurance receivable, or general intangible:

34 (1) Is not enforceable against the person obligated on the promissory note or the
35 account debtor;

36 (2) Does not impose a duty or obligation on the person obligated on the promissory
37 note or the account debtor;

38 (3) Does not require the person obligated on the promissory note or the account
39 debtor to recognize the security interest, pay or render performance to the secured party,
40 or accept payment or performance from the secured party;

41 (4) Does not entitle the secured party to use or assign the debtor's rights under the
42 promissory note, health-care-insurance receivable, or general intangible, including any
43 related information or materials furnished to the debtor in the transaction giving rise to
44 the promissory note, health-care-insurance receivable, or general intangible;

45 (5) Does not entitle the secured party to use, assign, possess, or have access to any
46 trade secrets or confidential information of the person obligated on the promissory note
47 or the account debtor; and

48 (6) Does not entitle the secured party to enforce the security interest in the
49 promissory note, health-care-insurance receivable, or general intangible.

50 (e) This section prevails over any inconsistent provisions of any statutes, rules, and
51 regulations.

200.9-409. (a) A term in a letter of credit or a rule of law, statute, regulation,
2 custom, or practice applicable to the letter of credit which prohibits, restricts, or requires
3 the consent of an applicant, issuer, or nominated person to a beneficiary's assignment of
4 or creation of a security interest in a letter-of-credit right is ineffective to the extent that
5 the term or rule of law, statute, regulation, custom, or practice:

6 (1) Would impair the creation, attachment, or perfection of a security interest in
7 the letter-of-credit right; or

8 (2) Provides that the creation, attachment, or perfection of the security interest may
9 give rise to a default, breach, right of recoupment, claim, defense, termination, right of
10 termination, or remedy under the letter-of-credit right.

11 (b) To the extent that a term in a letter of credit is ineffective under subsection (a)
12 but would be effective under law other than this article or a custom or practice applicable
13 to the letter of credit, to the transfer of a right to draw or otherwise demand performance
14 under the letter of credit, or to the assignment of a right to proceeds of the letter of credit,

15 the creation, attachment, or perfection of a security interest in the letter-of-credit right:

16 (1) Is not enforceable against the applicant, issuer, nominated person, or transferee
17 beneficiary;

18 (2) Imposes no duties or obligations on the applicant, issuer, nominated person, or
19 transferee beneficiary; and

20 (3) Does not require the applicant, issuer, nominated person, or transferee
21 beneficiary to recognize the security interest, pay or render performance to the secured
22 party, or accept payment or other performance from the secured party.

23 **PART 5**

24 **FILING**

**400.9-501. (a) Except as otherwise provided in subsection (b), if the local law of this
2 state governs perfection of a security interest or agricultural lien, the office in which to file
3 a financing statement to perfect the security interest or agricultural lien is:**

4 (1) The office designated for the filing or recording of a record of a mortgage on
5 the related real property, if:

6 (A) The collateral is as-extracted collateral or timber to be cut; or

7 (B) The financing statement is filed as a fixture filing and the collateral is goods
8 that are or are to become fixtures; or

9 (2) The office of the secretary of state in all other cases, including a case in which
10 the collateral is goods that are or are to become fixtures and the financing statement is not
11 filed as a fixture filing.

12 (b) The office in which to file a financing statement to perfect a security interest in
13 collateral, including fixtures, of a transmitting utility is the office of the secretary of state.
14 The financing statement also constitutes a fixture filing as to the collateral indicated in the
15 financing statement which is or is to become fixtures.

**400.9-502. (a) Subject to subsection (b), a financing statement is sufficient only if
2 it:**

3 (1) Provides the name of the debtor;

4 (2) Provides the name of the secured party or a representative of the secured party;

5 and

6 (3) Indicates the collateral covered by the financing statement.

7 (b) Except as otherwise provided in section 400.9-501(b), to be sufficient, a
8 financing statement that covers as-extracted collateral or timber to be cut, or which is filed
9 as a fixture filing and covers goods that are or are to become fixtures, must satisfy
10 subsection (a) and also:

11 (1) Indicate that it covers this type of collateral;

12 (2) Indicate that it is to be filed for record in the real property records;

13 (3) Provide a description of the real property to which the collateral is related
14 sufficient to give constructive notice of a mortgage under the law of this state if the
15 description were contained in a record of the mortgage of the real property; and

16 (4) If the debtor does not have an interest of record in the real property, provide
17 the name of a record owner.

18 (c) A record of a mortgage is effective, from the date of recording, as a financing
19 statement filed as a fixture filing or as a financing statement covering as-extracted
20 collateral or timber to be cut only if:

21 (1) The record indicates the goods or accounts that it covers;

22 (2) The goods are or are to become fixtures related to the real property described
23 in the record or the collateral is related to the real property described in the record and is
24 as-extracted collateral or timber to be cut;

25 (3) The record satisfies the requirements for a financing statement in this section
26 other than an indication that it is to be filed in the real property records; and

27 (4) The record is duly recorded.

28 (d) A financing statement may be filed before a security agreement is made or a
29 security interest otherwise attaches.

400.9-503. (a) A financing statement sufficiently provides the name of the debtor:

2 (1) If the debtor is a registered organization, only if the financing statement
3 provides the name of the debtor indicated on the public record of the debtor's jurisdiction
4 of organization which shows the debtor to have been organized;

5 (2) If the debtor is a decedent's estate, only if the financing statement provides the
6 name of the decedent and indicates that the debtor is an estate;

7 (3) If the debtor is a trust or a trustee acting with respect to property held in trust,
8 only if the financing statement:

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

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

14 (4) In other cases:

15 (A) If the debtor has a name, only if it provides the individual or organizational
16 name of the debtor; and

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

19 (b) A financing statement that provides the name of the debtor in accordance with
20 subsection (a) is not rendered ineffective by the absence of:

21 (1) A trade name or other name of the debtor; or

22 (2) Unless required under subsection (a)(4)(B), names of partners, members,
23 associates, or other persons comprising the debtor.

24 (c) A financing statement that provides only the debtor's trade name does not
25 sufficiently provide the name of the debtor.

26 (d) Failure to indicate the representative capacity of a secured party or
27 representative of a secured party does not affect the sufficiency of a financing statement.

28 (e) A financing statement may provide the name of more than one debtor and the
29 name of more than one secured party.

400.9-504. A financing statement sufficiently indicates the collateral that it covers
2 only if the financing statement provides:

3 (1) A description of the collateral pursuant to section 400.9-108; or

4 (2) An indication that the financing statement covers all assets or all personal
5 property.

400.9-505. (a) A consignor, lessor, or other bailor of goods, a licensor, or a buyer
2 of a payment intangible or promissory note may file a financing statement, or may comply
3 with a statute or treaty described in section 400.9-311(a), using the terms "consignor",
4 "consignee", "lessor", "lessee", "bailor", "bailee", "licensor", "licensee", "owner",
5 "registered owner", "buyer", "seller", or words of similar import, instead of the terms
6 "secured party" and "debtor".

7 (b) This part applies to the filing of a financing statement under subsection (a) and,
8 as appropriate, to compliance that is equivalent to filing a financing statement under
9 section 400.9-311(b), but the filing or compliance is not of itself a factor in determining
10 whether the collateral secures an obligation. If it is determined for another reason that the
11 collateral secures an obligation, a security interest held by the consignor, lessor, bailor,
12 licensor, owner, or buyer which attaches to the collateral is perfected by the filing or
13 compliance.

400.9-506. (a) A financing statement substantially satisfying the requirements of
2 this part is effective, even if it has minor errors or omissions, unless the errors or omissions
3 make the financing statement seriously misleading.

4 (b) Except as otherwise provided in subsection (c), a financing statement that fails
5 sufficiently to provide the name of the debtor in accordance with section 400.9-503(a) is
6 seriously misleading.

7 (c) If a search of the records of the filing office under the debtor's correct name,

8 using the filing office's standard search logic, if any, would disclose a financing statement
9 that fails sufficiently to provide the name of the debtor in accordance with section
10 400.9-503(a), the name provided does not make the financing statement seriously
11 misleading.

12 (d) For purposes of section 400.9-508(b), the "debtor's correct name" in subsection
13 (c) means the correct name of the new debtor.

400.9-507. (a) A filed financing statement remains effective with respect to
2 collateral that is sold, exchanged, leased, licensed, or otherwise disposed of and in which
3 a security interest or agricultural lien continues, even if the secured party knows of or
4 consents to the disposition.

5 (b) Except as otherwise provided in subsection (c) and section 400.9-508, a
6 financing statement is not rendered ineffective if, after the financing statement is filed, the
7 information provided in the financing statement becomes seriously misleading under
8 section 400.9-506.

9 (c) If a debtor so changes its name that a filed financing statement becomes
10 seriously misleading under section 400.9-506:

11 (1) The financing statement is effective to perfect a security interest in collateral
12 acquired by the debtor before, or within four months after, the change; and

13 (2) The financing statement is not effective to perfect a security interest in collateral
14 acquired by the debtor more than four months after the change, unless an amendment to
15 the financing statement which renders the financing statement not seriously misleading is
16 filed within four months after the change.

400.9-508. (a) Except as otherwise provided in this section, a filed financing
2 statement naming an original debtor is effective to perfect a security interest in collateral
3 in which a new debtor has or acquires rights to the extent that the financing statement
4 would have been effective had the original debtor acquired rights in the collateral.

5 (b) If the difference between the name of the original debtor and that of the new
6 debtor causes a filed financing statement that is effective under subsection (a) to be
7 seriously misleading under section 400.9-506:

8 (1) The financing statement is effective to perfect a security interest in collateral
9 acquired by the new debtor before, and within four months after, the new debtor becomes
10 bound under section 400.9-203(d); and

11 (2) The financing statement is not effective to perfect a security interest in collateral
12 acquired by the new debtor more than four months after the new debtor becomes bound
13 under section 400.9-203(d) unless an initial financing statement providing the name of the
14 new debtor is filed before the expiration of that time.

15 (c) This section does not apply to collateral as to which a filed financing statement
16 remains effective against the new debtor under section 400.9-507(a).

2 **400.9-509. (a)** A person may file an initial financing statement, amendment that
3 adds collateral covered by a financing statement, or amendment that adds a debtor to a
4 financing statement only if:

5 (1) The debtor authorizes the filing in an authenticated record; or

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

9 (b) By authenticating or becoming bound as debtor by a security agreement, a
10 debtor or new debtor authorizes the filing of an initial financing statement, and an
11 amendment, covering:

12 (1) The collateral described in the security agreement; and

13 (2) Property that becomes collateral under section 400.9-315(a)(2), whether or not
14 the security agreement expressly covers proceeds.

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

18 (1) The secured party of record authorizes the filing; or

19 (2) The amendment is a termination statement for a financing statement as to which
20 the secured party of record has failed to file or send a termination statement as required
21 by section 400.9-513(a) or (c), the debtor authorizes the filing, and the termination
22 statement indicates that the debtor authorized it to be filed.

23 (d) 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 (c).

2 **400.9-510. (a)** A filed record is effective only to the extent that it was filed by a
3 person that may file it under section 400.9-509.

4 (b) A record authorized by one secured party of record does not affect the financing
5 statement with respect to another secured party of record.

6 (c) A continuation statement that is not filed within the six-month period prescribed
7 by section 400.9-515(d) is ineffective.

8 **400.9-511. (a)** A secured party of record with respect to a financing statement is
9 a person whose name is provided as the name of the secured party or a representative of
10 the secured party in an initial financing statement that has been filed. If an initial
11 financing statement is filed under section 400.9-514(a), the assignee named in the initial
12 financing statement is the secured party of record with respect to the financing statement.

6 **(b) If an amendment of a financing statement which provides the name of a person**
7 **as a secured party or a representative of a secured party is filed, the person named in the**
8 **amendment is a secured party of record. If an amendment is filed under section**
9 **400.9-514(b), the assignee named in the amendment is a secured party of record.**

10 **(c) A person remains a secured party of record until the filing of an amendment of**
11 **the financing statement which deletes the person.**

400.9-512. (a) Subject to section 400.9-509, a person may add or delete collateral
2 **covered by, continue or terminate the effectiveness of, or, subject to subsection (e),**
3 **otherwise amend the information provided in, a financing statement by filing an**
4 **amendment that:**

5 **(1) Identifies, by its file number, the initial financing statement to which the**
6 **amendment relates; and**

7 **(2) If the amendment relates to an initial financing statement filed or recorded in**
8 **a filing office described in section 400.9-501(a)(1), provides the information specified in**
9 **section 400.9-502(b).**

10 **(b) Except as otherwise provided in section 400.9-515, the filing of an amendment**
11 **does not extend the period of effectiveness of the financing statement.**

12 **(c) A financing statement that is amended by an amendment that adds collateral**
13 **is effective as to the added collateral only from the date of the filing of the amendment.**

14 **(d) A financing statement that is amended by an amendment that adds a debtor is**
15 **effective as to the added debtor only from the date of the filing of the amendment.**

16 **(e) An amendment is ineffective to the extent it:**

17 **(1) Purports to delete all debtors and fails to provide the name of a debtor to be**
18 **covered by the financing statement; or**

19 **(2) Purports to delete all secured parties of record and fails to provide the name of**
20 **a new secured party of record.**

400.9-513. (a) A secured party shall cause the secured party of record for a
2 **financing statement to file a termination statement for the financing statement if the**
3 **financing statement covers consumer goods and:**

4 **(1) There is no obligation secured by the collateral covered by the financing**
5 **statement and no commitment to make an advance, incur an obligation, or otherwise give**
6 **value; or**

7 **(2) The debtor did not authorize the filing of the initial financing statement.**

8 **(b) To comply with subsection (a), a secured party shall cause the secured party of**
9 **record to file the termination statement:**

10 **(1) Within one month after there is no obligation secured by the collateral covered**

11 by the financing statement and no commitment to make an advance, incur an obligation,
12 or otherwise give value; or

13 (2) If earlier, within twenty days after the secured party receives an authenticated
14 demand from a debtor.

15 (c) In cases not governed by subsection (a), within twenty days after a secured party
16 receives an authenticated demand from a debtor, the secured party shall cause the secured
17 party of record for a financing statement to send to the debtor a termination statement for
18 the financing statement or file the termination statement in the filing office if:

19 (1) Except in the case of a financing statement covering accounts or chattel paper
20 that has been sold or goods that are the subject of a consignment, there is no obligation
21 secured by the collateral covered by the financing statement and no commitment to make
22 an advance, incur an obligation, or otherwise give value;

23 (2) The financing statement covers accounts or chattel paper that has been sold but
24 as to which the account debtor or other person obligated has discharged its obligation;

25 (3) The financing statement covers goods that were the subject of a consignment
26 to the debtor but are not in the debtor's possession; or

27 (4) The debtor did not authorize the filing of the initial financing statement.

28 (d) Except as otherwise provided in section 400.9-510, upon the filing of a
29 termination statement with the filing office, the financing statement to which the
30 termination statement relates ceases to be effective. Except as otherwise provided in
31 section 400.9-510, for purposes of sections 400.9-519(g), 400.9-522(a), and 400.9-523(c),
32 upon the filing of a termination statement with the filing office, a financing statement
33 indicating that the debtor is a transmitting utility to which the termination statement
34 relates ceases to be effective.

400.9-514. (a) Except as otherwise provided in subsection (c), an initial financing
2 statement may reflect an assignment of all of the secured party's power to authorize an
3 amendment to the financing statement by providing the name and mailing address of the
4 assignee as the name and address of the secured party.

5 (b) Except as otherwise provided in subsection (c), a secured party of record may
6 assign of record all or part of its power to authorize an amendment to a financing
7 statement by filing in the filing office an amendment of the financing statement which:

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

9 (2) Provides the name of the assignor; and

10 (3) Provides the name and mailing address of the assignee.

11 (c) An assignment of record of a security interest in a fixture covered by a record
12 of a mortgage which is effective as a financing statement filed as a fixture filing under

13 section 400.9-502(c) may be made only by an assignment of record of the mortgage in the
14 manner provided by law of this state other than chapter 400.

2 **400.9-515. (a)** Except as otherwise provided in subsections (b), (e), (f), and (g), a
3 filed financing statement is effective for a period of five years after the date of filing.

4 **(b)** Except as otherwise provided in subsections (e), (f), and (g), an initial financing
5 statement filed in connection with a manufactured-home transaction is effective for a
6 period of thirty years after the date of filing if it indicates that it is filed in connection with
7 a manufactured-home transaction.

8 **(c)** The effectiveness of a filed financing statement lapses on the expiration of the
9 period of its effectiveness unless before the lapse a continuation statement is filed pursuant
10 to subsection (d). Upon lapse, a financing statement ceases to be effective and any security
11 interest or agricultural lien that was perfected by the financing statement becomes
12 unperfected, unless the security interest is perfected otherwise. If the security interest or
13 agricultural lien becomes unperfected upon lapse, it is deemed never to have been perfected
14 as against a purchaser of the collateral for value.

15 **(d)** A continuation statement may be filed only within six months before the
16 expiration of the five-year period specified in subsection (a) or the thirty-year period
17 specified in subsection (b), whichever is applicable.

18 **(e)** Except as otherwise provided in section 400.9-510, upon timely filing of a
19 continuation statement, the effectiveness of the initial financing statement continues for a
20 period of five years commencing on the day on which the financing statement would have
21 become ineffective in the absence of the filing. Upon the expiration of the five-year period,
22 the financing statement lapses in the same manner as provided in subsection (c), unless,
23 before the lapse, another continuation statement is filed pursuant to subsection (d).
24 Succeeding continuation statements may be filed in the same manner to continue the
25 effectiveness of the initial financing statement.

26 **(f)** If a debtor is a transmitting utility and a filed financing statement so indicates,
27 the financing statement is effective until a termination statement is filed.

28 **(g)** A record of a mortgage that is effective as a financing statement filed as a
29 fixture filing under section 400.9-502(c) remains effective as a financing statement filed as
30 a fixture filing until the mortgage is released or satisfied of record or its effectiveness
otherwise terminates as to the real property.

400.9-516. (a) Except as otherwise provided in subsection (b), communication of
2 a record to a filing office and tender of the filing fee or acceptance of the record by the
3 filing office constitutes filing.

4 **(b)** Filing does not occur with respect to a record that a filing office refuses to

5 accept because:

6 (1) The record is not communicated by a method or medium of communication
7 authorized by the filing office;

8 (2) An amount equal to or greater than the applicable filing fee is not tendered;

9 (3) The filing office is unable to index the record because:

10 (A) In the case of an initial financing statement, the record does not provide a name
11 for the debtor;

12 (B) In the case of an amendment or correction statement, the record:

13 (i) Does not identify the initial financing statement as required by section 400.9-512
14 or 400.9-518, as applicable; or

15 (ii) Identifies an initial financing statement whose effectiveness has lapsed under
16 section 400.9-515;

17 (C) In the case of an initial financing statement that provides the name of a debtor
18 identified as an individual or an amendment that provides a name of a debtor identified
19 as an individual which was not previously provided in the financing statement to which the
20 record relates, the record does not identify the debtor's last name; or

21 (D) In the case of a record filed or recorded in the filing office described in section
22 400.9-501(a)(1), the record does not provide a sufficient description of the real property to
23 which it relates;

24 (4) In the case of an initial financing statement or an amendment that adds a
25 secured party of record, the record does not provide a name and mailing address for the
26 secured party of record;

27 (5) In the case of an initial financing statement or an amendment that provides a
28 name of a debtor which was not previously provided in the financing statement to which
29 the amendment relates, the record does not:

30 (A) Provide a mailing address for the debtor;

31 (B) Indicate whether the debtor is an individual or an organization; or

32 (C) If the financing statement indicates that the debtor is an organization, provide:

33 (i) A type of organization for the debtor;

34 (ii) A jurisdiction of organization for the debtor; or

35 (iii) An organizational identification number for the debtor or indicate that the
36 debtor has none;

37 (6) In the case of an assignment reflected in an initial financing statement under
38 section 400.9-514(a) or an amendment filed under section 400.9-514(b), the record does not
39 provide a name and mailing address for the assignee; or

40 (7) In the case of a continuation statement, the record is not filed within the six-

41 month period prescribed by section 400.9-515(d).

42 (c) For purposes of subsection (b):

43 (1) A record does not provide information if the filing office is unable to read or
44 decipher the information; and

45 (2) A record that does not indicate that it is an amendment or identify an initial
46 financing statement to which it relates, as required by section 400.9-512, 400.9-514 or
47 400.9-518, is an initial financing statement.

48 (d) A record that is communicated to the filing office with tender of the filing fee,
49 but which the filing office refuses to accept for a reason other than one set forth in
50 subsection (b), is effective as a filed record except as against a purchaser of the collateral
51 which gives value in reasonable reliance upon the absence of the record from the files.

2 400.9-517. The failure of the filing office to index a record correctly does not affect
2 the effectiveness of the filed record.

2 400.9-518. (a) A person may file in the filing office a correction statement with
2 respect to a record indexed there under the person's name if the person believes that the
3 record is inaccurate or was wrongfully filed.

4 (b) A correction statement must:

5 (1) Identify the record to which it relates by the file number assigned to the initial
6 financing statement to which the record relates;

7 (2) Indicate that it is a correction statement; and

8 (3) Provide the basis for the person's belief that the record is inaccurate and
9 indicate the manner in which the person believes the record should be amended to cure any
10 inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.

11 (c) The filing of a correction statement does not affect the effectiveness of an initial
12 financing statement or other filed record.

2 400.9-519. (a) For each record filed in a filing office, the filing office shall:

2 (1) Assign a unique number to the filed record;

3 (2) Create a record that bears the number assigned to the filed record and the date
4 and time of filing;

5 (3) Maintain the filed record for public inspection; and

6 (4) Index the filed record in accordance with subsections (c), (d), and (e).

7 (b) A file number assigned after January 1, 2003, must include a digit that:

8 (1) Is mathematically derived from or related to the other digits of the file number;

9 and

10 (2) Enables the filing office to detect whether a number communicated as the file
11 number includes a single-digit or transpositional error.

12 (c) Except as otherwise provided in subsections (d) and (e), the filing office shall:

13 (1) Index an initial financing statement according to the name of the debtor and
14 index all filed records relating to the initial financing statement in a manner that associates
15 with one another an initial financing statement and all filed records relating to the initial
16 financing statement; and

17 (2) Index a record that provides a name of a debtor which was not previously
18 provided in the financing statement to which the record relates also according to the name
19 that was not previously provided.

20 (d) If a financing statement is filed as a fixture filing or covers as-extracted
21 collateral or timber to be cut, it must be filed for record and the filing office shall index it:

22 (1) Under the names of the debtor and of each owner of record shown on the
23 financing statement as if they were the mortgagors under a mortgage of the real property
24 described; and

25 (2) To the extent that the law of this state provides for indexing of records of
26 mortgages under the name of the mortgagee, under the name of the secured party as if the
27 secured party were the mortgagee thereunder, or, if indexing is by description, as if the
28 financing statement were a record of a mortgage of the real property described.

29 (e) If a financing statement is filed as a fixture filing or covers as-extracted
30 collateral or timber to be cut, the filing office shall index an assignment filed under section
31 400.9-514(a) or an amendment filed under section 400.9-514(b):

32 (1) Under the name of the assignor as grantor; and

33 (2) To the extent that the law of this state provides for indexing a record of the
34 assignment of a mortgage under the name of the assignee, under the name of the assignee.

35 (f) The filing office shall maintain a capability:

36 (1) To retrieve a record by the name of the debtor and by the file number assigned
37 to the initial financing statement to which the record relates; and

38 (2) To associate and retrieve with one another an initial financing statement and
39 each filed record relating to the initial financing statement.

40 (g) The filing office may not remove a debtor's name from the index until one year
41 after the effectiveness of a financing statement naming the debtor lapses under section
42 400.9-515 with respect to all secured parties of record.

43 (h) The filing office shall perform the acts required by subsections (a) through (e)
44 at the time and in the manner prescribed by filing-office rule, but after January 1, 2003,
45 not later than three business days after the filing office receives the record in question.

2 400.9-520. (a) A filing office shall refuse to accept a record for filing for a reason
set forth in section 400.9-516(b) and may refuse to accept a record for filing only for a

3 reason set forth in section 400.9-516(b).

4 (b) If a filing office refuses to accept a record for filing, it shall communicate to the
5 person that presented the record the fact of and reason for the refusal and the date and
6 time the record would have been filed had the filing office accepted it. The communication
7 must be made at the time and in the manner prescribed by filing-office rule in no event
8 more than three business days after the filing office receives the record.

9 (c) A filed financing statement satisfying section 400.9-502(a) and (b) is effective,
10 even if the filing office is required to refuse to accept it for filing under subsection (a).
11 However, section 400.9-338 applies to a filed financing statement providing information
12 described in section 400.9-516(b)(5) which is incorrect at the time the financing statement
13 is filed.

14 (d) If a record communicated to a filing office provides information that relates to
15 more than one debtor, this part applies as to each debtor separately.

400.9-521. Except for a reason set forth in section 400.9-516(b), a filing office that
2 accepts written records may not refuse to accept a written document for a filing authorized
3 by this chapter, provided that the document conforms to a format:

- 4 (1) Approved by the International Association of Corporate Administrators; or
5 (2) Adopted by a rule promulgated by the secretary of state pursuant to section
6 400.9-526.

400.9-522. (a) The filing office shall maintain a record of the information provided
2 in a filed financing statement for at least one year after the effectiveness of the financing
3 statement has lapsed under section 400.9-515 with respect to all secured parties of record.
4 The record must be retrievable by using the name of the debtor and by using the file
5 number assigned to the initial financing statement to which the record relates.

6 (b) Except to the extent that a statute governing disposition of public records
7 provides otherwise, the filing office immediately may destroy any written record
8 evidencing a financing statement. However, if the filing office destroys a written record,
9 it shall maintain another record of the financing statement which complies with subsection
10 (a).

400.9-523. (a) If a person that files a written record requests an acknowledgment
2 of the filing, the filing office shall send to the person an image of the record showing the
3 number assigned to the record pursuant to section 400.9-519(a)(1) and the date and time
4 of the filing of the record. However, if the person furnishes a copy of the record to the
5 filing office, the filing office may instead:

- 6 (1) Note upon the copy the number assigned to the record pursuant to section
7 400.9-519(a)(1) and the date and time of the filing of the record; and

8 (2) Send the copy to the person.

9 (b) If a person files a record other than a written record, the filing office shall
10 communicate to the person an acknowledgment that provides:

11 (1) The information in the record;

12 (2) The number assigned to the record pursuant to section 400.9-519(a)(1); and

13 (3) The date and time of the filing of the record.

14 (c) The filing office shall communicate or otherwise make available in a record the
15 following information to any person that requests it:

16 (1) Whether there is on file on a date and time specified by the filing office, but not
17 a date earlier than three business days before the filing office receives the request, any
18 financing statement that:

19 (A) Designates a particular debtor or, if the request so states, designates a
20 particular debtor at the address specified in the request;

21 (B) Has not lapsed under section 400.9-515 with respect to all secured parties of
22 record; and

23 (C) If the request so states, has lapsed under section 400.9-515 and a record of
24 which is maintained by the filing office under section 400.9-522(a);

25 (2) The date and time of filing of each financing statement; and

26 (3) The information provided in each financing statement.

27 (d) In complying with its duty under subsection (c), the filing office may
28 communicate information in any medium. However, if requested, the filing office shall
29 communicate information by issuing a record that can be admitted into evidence in the
30 courts of this state without extrinsic evidence of its authenticity.

31 (e) The filing office shall perform the acts required by subsections (a) through (d)
32 at the time and in the manner prescribed by filing-office rule, but after January 1, 2003,
33 not later than three business days after the filing office receives the request.

34 (f) At least weekly, the filing office shall offer to sell or license to the public on a
35 nonexclusive basis, in bulk, copies of all records filed in it under this part, in every medium
36 from time to time available to the filing office.

400.9-524. Delay by the filing office beyond a time limit prescribed by this part is
2 excused if:

3 (1) The delay is caused by interruption of communication or computer facilities,
4 war, emergency conditions, failure of equipment, or other circumstances beyond control
5 of the filing office; and

6 (2) The filing office exercises reasonable diligence under the circumstances.

400.9-525. (a) Except as otherwise provided in subsection (e), the fee for filing and

2 indexing a record under this part, other than an initial financing statement of the kind
3 described in section 400.9-502(c), is the amount specified in subsection (c), if applicable,
4 plus:

5 (1) If the filing office is the secretary of state's office, then five dollars for the first
6 page and one dollar for each subsequent page if the record is communicated in writing or
7 by another medium authorized by filing office rule; or

8 (2) If the filing office is other than the secretary of state's office, then the fee
9 otherwise allowed by law.

10 (b) Except as otherwise provided in subsection (e), the fee for filing and indexing
11 an initial financing statement of the kind described in section 400.9-502(c) is the amount
12 specified in subsection (c), if applicable, plus:

13 (1) If the filing office is the secretary of state's office, then five dollars for the first
14 page and one dollar for each subsequent page if the record is communicated in writing or
15 by another medium authorized by filing office rule; or

16 (2) If the filing office is other than the secretary of state's office, then the fee
17 otherwise allowed by law.

18 (c) The number of names required to be indexed does not affect the amount of the
19 fee in subsections (a) and (b).

20 (d) The fee for responding to a request for information from the filing office,
21 including for communicating whether there is on file any financing statement naming a
22 particular debtor, is:

23 (1) If the filing office is the secretary of state's office, then fifteen dollars for the
24 first page and one dollar for each subsequent page if the record is communicated in writing
25 or by another medium authorized by filing office rule; or

26 (2) If the filing office is other than the secretary of state's office, then the fee
27 otherwise allowed by law.

28 (e) This section does not require a fee with respect to a record of a mortgage which
29 is effective as a financing statement filed as a fixture filing or as a financing statement
30 covering as-extracted collateral or timber to be cut under section 400.9-502(c). However,
31 the recording and satisfaction fees that otherwise would be applicable to the record of the
32 mortgage apply.

2 400.9-526. (a) The secretary of state shall have the authority to promulgate all rules
3 necessary to the administration and enforcement of the provisions of this chapter. All rules
4 shall be promulgated pursuant to the provisions of this section and chapter 536, RSMo.
5 No rule or portion of a rule promulgated under the authority of this chapter shall become
6 effective unless it has been promulgated pursuant to the provisions of section 536.024,

6 **RSMo.**

7 (b) To keep the filing-office rules and practices of the filing office in harmony with
8 the rules and practices of filing offices in other jurisdictions that enact substantially this
9 part, and to keep the technology used by the filing office compatible with the technology
10 used by filing offices in other jurisdictions that enact substantially this part, the secretary
11 of state, so far as is consistent with the purposes, policies, and provisions of this article, in
12 adopting, amending, and repealing filing-office rules, shall:

13 (1) Consult with filing offices in other jurisdictions that enact substantially this
14 part;

15 (2) Consult the most recent version of the Model Rules promulgated by the
16 International Association of Corporate Administrators or any successor organization; and

17 (3) Take into consideration the rules and practices of, and the technology used by,
18 filing offices in other jurisdictions that enact substantially this part.

400.9-527. The secretary of state shall report annually on or before February 1 to
2 the governor, the president pro tempore of the senate and the speaker of the house of
3 representatives on the operation of the filing office. The report must contain a statement
4 of the extent to which:

5 (1) The filing-office rules are not in harmony with the rules of filing offices in other
6 jurisdictions that enact substantially this part and the reasons for these variations; and

7 (2) The filing-office rules are not in harmony with the most recent version of the
8 Model Rules promulgated by the International Association of Corporate Administrators,
9 or any successor organization, and the reasons for these variations.

10 **PART 6**

11 **DEFAULT**

400.9-601. (a) After default, a secured party has the rights provided in this part
2 and, except as otherwise provided in section 400.9-602, those provided by agreement of the
3 parties. A secured party:

4 (1) May reduce a claim to judgment, foreclose, or otherwise enforce the claim,
5 security interest, or agricultural lien by any available judicial procedure; and

6 (2) If the collateral is documents, may proceed either as to the documents or as to
7 the goods they cover.

8 (b) A secured party in possession of collateral or control of collateral under section
9 400.9-104, 400.9-105, 400.9-106 or 400.9-107 has the rights and duties provided in section
10 400.9-207.

11 (c) The rights under subsections (a) and (b) are cumulative and may be exercised
12 simultaneously.

13 (d) Except as otherwise provided in subsection (g) and section 400.9-605, after
14 default, a debtor and an obligor have the rights provided in this part and by agreement of
15 the parties.

16 (e) If a secured party has reduced its claim to judgment, the lien of any levy that
17 may be made upon the collateral by virtue of an execution based upon the judgment relates
18 back to the earliest of:

19 (1) The date of perfection of the security interest or agricultural lien in the
20 collateral; or

21 (2) The date of filing a financing statement covering the collateral;

22 (3) Any date specified in a statute under which the agricultural lien was created.

23 (f) A sale pursuant to an execution is a foreclosure of the security interest or
24 agricultural lien by judicial procedure within the meaning of this section. A secured party
25 may purchase at the sale and thereafter hold the collateral free of any other requirements
26 of this article.

27 (g) Except as otherwise provided in section 400.9-607(c), this part imposes no duties
28 upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment
29 intangibles, or promissory notes.

400.9-602. Except as otherwise provided in section 400.9-624, to the extent that they
2 give rights to a debtor or obligor and impose duties on a secured party, a secured party
3 may not require the debtor or obligor to waive or vary the rules stated in the following
4 listed sections:

5 (1) Section 400.9-207(b)(4)(C), which deals with use and operation of the collateral
6 by the secured party;

7 (2) Section 400.9-210, which deals with requests for an accounting and requests
8 concerning a list of collateral and statement of account;

9 (3) Section 400.9-607(c), which deals with collection and enforcement of collateral;

10 (4) Sections 400.9-608(a) and 400.9-615(c) to the extent that they deal with
11 application or payment of noncash proceeds of collection, enforcement, or disposition;

12 (5) Sections 400.9-608(a) and 400.9-615(d) to the extent that they require accounting
13 for or payment of surplus proceeds of collateral;

14 (6) Section 400.9-609 to the extent that it imposes upon a secured party that takes
15 possession of collateral without judicial process the duty to do so without breach of the
16 peace;

17 (7) Sections 400.9-610(b), 400.9-611, 400.9-613 and 400.9-614, which deal with
18 disposition of collateral;

19 (8) Section 400.9-616, which deals with explanation of the calculation of a surplus

20 or deficiency;

21 (9) Sections 400.9-620, 400.9-621 and 400.9-622, which deal with acceptance of
22 collateral in satisfaction of obligation;

23 (10) Section 400.9-623, which deals with redemption of collateral;

24 (11) Section 400.9-624, which deals with permissible waivers; and

25 (12) Sections 400.9-625 and 400.9-626, which deal with the secured party's liability
26 for failure to comply with this article.

400.9-603. (a) The parties may determine by agreement the standards measuring
2 the fulfillment of the rights of a debtor or obligor and the duties of a secured party under
3 a rule stated in section 400.9-602 if the standards are not manifestly unreasonable.

4 (b) Subsection (a) does not apply to the duty under section 400.9-609 to refrain
5 from breaching the peace.

400.9-604. (a) If a security agreement covers both personal and real property, a
2 secured party may proceed:

3 (1) Under this part as to the personal property without prejudicing any rights with
4 respect to the real property; or

5 (2) As to both the personal property and the real property in accordance with the
6 rights with respect to the real property, in which case the other provisions of this part do
7 not apply.

8 (b) Subject to subsection (c), if a security agreement covers goods that are or
9 become fixtures, a secured party may proceed:

10 (1) Under this part; or

11 (2) In accordance with the rights with respect to real property, in which case the
12 other provisions of this part do not apply.

13 (c) Subject to the other provisions of this part, if a secured party holding a security
14 interest in fixtures has priority over all owners and encumbrancers of the real property,
15 the secured party, after default, may remove the collateral from the real property.

16 (d) A secured party that removes collateral shall promptly reimburse any
17 encumbrancer or owner of the real property, other than the debtor, for the cost of repair
18 of any physical injury caused by the removal. The secured party need not reimburse the
19 encumbrancer or owner for any diminution in value of the real property caused by the
20 absence of the goods removed or by any necessity of replacing them. A person entitled to
21 reimbursement may refuse permission to remove until the secured party gives adequate
22 assurance for the performance of the obligation to reimburse.

400.9-605. A secured party does not owe a duty based on its status as secured party:

2 (1) To a person that is a debtor or obligor, unless the secured party knows:

3 (A) That the person is a debtor or obligor;

4 (B) The identity of the person; and

5 (C) How to communicate with the person; or

6 (2) To a secured party or lienholder that has filed a financing statement against a
7 person, unless the secured party knows:

8 (A) That the person is a debtor; and

9 (B) The identity of the person.

400.9-606. For purposes of this part, a default occurs in connection with an
2 agricultural lien at the time the secured party becomes entitled to enforce the lien in
3 accordance with the statute under which it was created.

400.9-607. (a) If so agreed, and in any event after default, a secured party:

2 (1) May notify an account debtor or other person obligated on collateral to make
3 payment or otherwise render performance to or for the benefit of the secured party;

4 (2) May take any proceeds to which the secured party is entitled under section
5 400.9-315;

6 (3) May enforce the obligations of an account debtor or other person obligated on
7 collateral and exercise the rights of the debtor with respect to the obligation of the account
8 debtor or other person obligated on collateral to make payment or otherwise render
9 performance to the debtor, and with respect to any property that secures the obligations
10 of the account debtor or other person obligated on the collateral;

11 (4) If it holds a security interest in a deposit account perfected by control under
12 section 400.9-104(a)(1), may apply the balance of the deposit account to the obligation
13 secured by the deposit account; and

14 (5) If it holds a security interest in a deposit account perfected by control under
15 section 400.9-104(a)(2) or (3), may instruct the bank to pay the balance of the deposit
16 account to or for the benefit of the secured party.

17 (b) If necessary to enable a secured party to exercise under subsection (a)(3) the
18 right of a debtor to enforce a mortgage nonjudicially, the secured party may record in the
19 office in which a record of the mortgage is recorded:

20 (1) A copy of the security agreement that creates or provides for a security interest
21 in the obligation secured by the mortgage; and

22 (2) The secured party's sworn affidavit in recordable form stating that:

23 (A) A default has occurred; and

24 (B) The secured party is entitled to enforce the mortgage nonjudicially.

25 (c) A secured party shall proceed in a commercially reasonable manner if the
26 secured party:

27 (1) Undertakes to collect from or enforce an obligation of an account debtor or
28 other person obligated on collateral; and

29 (2) Is entitled to charge back uncollected collateral or otherwise to full or limited
30 recourse against the debtor or a secondary obligor.

31 (d) A secured party may deduct from the collections made pursuant to subsection
32 (c) reasonable expenses of collection and enforcement, including reasonable attorney's fees
33 and legal expenses incurred by the secured party.

34 (e) This section does not determine whether an account debtor, bank, or other
35 person obligated on collateral owes a duty to a secured party.

400.9-608. (a) If a security interest or agricultural lien secures payment or
2 performance of an obligation, the following rules apply:

3 (1) A secured party shall apply or pay over for application the cash proceeds of
4 collection or enforcement under this section in the following order to:

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

8 (B) The satisfaction of obligations secured by the security interest or agricultural
9 lien under which the collection or enforcement is made; and

10 (C) The satisfaction of obligations secured by any subordinate security interest in
11 or other lien on the collateral subject to the security interest or agricultural lien under
12 which the collection or enforcement is made if the secured party receives an authenticated
13 demand for proceeds before distribution of the proceeds is completed;

14 (2) If requested by a secured party, a holder of a subordinate security interest or
15 other lien shall furnish reasonable proof of the interest or lien within a reasonable time.
16 Unless the holder complies, the secured party need not comply with the holder's demand
17 under paragraph (1)(C);

18 (3) A secured party need not apply or pay over for application noncash proceeds
19 of collection and enforcement under this section unless the failure to do so would be
20 commercially unreasonable. A secured party that applies or pays over for application
21 noncash proceeds shall do so in a commercially reasonable manner;

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

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

400.9-609. (a) After default, a secured party:

2 (1) May take possession of the collateral; and
3 (2) Without removal, may render equipment unusable and dispose of collateral on
4 a debtor's premises under section 400.9-610.

5 (b) A secured party may proceed under subsection (a):

6 (1) Pursuant to judicial process; or

7 (2) Without judicial process, if it proceeds without breach of the peace.

8 (c) If so agreed, and in any event after default, a secured party may require the
9 debtor to assemble the collateral and make it available to the secured party at a place to
10 be designated by the secured party which is reasonably convenient to both parties.

400.9-610. (a) After default, a secured party may sell, lease, license, or otherwise
2 dispose of any or all of the collateral in its present condition or following any commercially
3 reasonable preparation or processing.

4 (b) Every aspect of a disposition of collateral, including the method, manner, time,
5 place, and other terms, must be commercially reasonable. If commercially reasonable, a
6 secured party may dispose of collateral by public or private proceedings, by one or more
7 contracts, as a unit or in parcels, and at any time and place and on any terms.

8 (c) A secured party may purchase collateral:

9 (1) At a public disposition; or

10 (2) At a private disposition only if the collateral is of a kind that is customarily sold
11 on a recognized market or the subject of widely distributed standard price quotations.

12 (d) A contract for sale, lease, license, or other disposition includes the warranties
13 relating to title, possession, quiet enjoyment, and the like which by operation of law
14 accompany a voluntary disposition of property of the kind subject to the contract.

15 (e) A secured party may disclaim or modify warranties under subsection (d):

16 (1) In a manner that would be effective to disclaim or modify the warranties in a
17 voluntary disposition of property of the kind subject to the contract of disposition; or

18 (2) By communicating to the purchaser a record evidencing the contract for
19 disposition and including an express disclaimer or modification of the warranties.

20 (f) A record is sufficient to disclaim warranties under subsection (e) if it indicates
21 "There is no warranty relating to title, possession, quiet enjoyment, or the like in this
22 disposition" or uses words of similar import.

400.9-611. (a) In this section, "notification date" means the earlier of the date on
2 which:

3 (1) A secured party sends to the debtor and any secondary obligor an authenticated
4 notification of disposition; or

5 (2) The debtor and any secondary obligor waive the right to notification.

6 (b) Except as otherwise provided in subsection (d), a secured party that disposes
7 of collateral under section 400.9-610 shall send to the persons specified in subsection (c) a
8 reasonable authenticated notification of disposition.

9 (c) To comply with subsection (b), the secured party shall send an authenticated
10 notification of disposition to:

11 (1) The debtor;

12 (2) Any secondary obligor; and

13 (3) If the collateral is other than consumer goods:

14 (A) Any other person from which the secured party has received, before the
15 notification date, an authenticated notification of a claim of an interest in the collateral;

16 (B) Any other secured party or lienholder that, ten days before the notification
17 date, held a security interest in or other lien on the collateral perfected by the filing of a
18 financing statement that:

19 (i) Identified the collateral;

20 (ii) Was indexed under the debtor's name as of that date; and

21 (iii) Was filed in the office in which to file a financing statement against the debtor
22 covering the collateral as of that date; and

23 (C) Any other secured party that, ten days before the notification date, held a
24 security interest in the collateral perfected by compliance with a statute, regulation, or
25 treaty described in section 400.9-311(a).

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

28 (e) A secured party complies with the requirement for notification prescribed by
29 subsection (c)(3)(B) if:

30 (1) Not later than twenty days or earlier than thirty days before the notification
31 date, the secured party requests, in a commercially reasonable manner, information
32 concerning financing statements indexed under the debtor's name in the office indicated
33 in subsection (c)(3)(B); and

34 (2) Before the notification date, the secured party:

35 (A) Did not receive a response to the request for information; or

36 (B) Received a response to the request for information and sent an authenticated
37 notification of disposition to each secured party named in that response whose financing
38 statement covered the collateral.

400.9-612. (a) Except as otherwise provided in subsection (b), whether a
2 notification is sent within a reasonable time is a question of fact.

3 (b) In a transaction other than a consumer transaction, a notification of disposition

4 sent after default and ten days or more before the earliest time of disposition set forth in
5 the notification is sent within a reasonable time before the disposition.

400.9-613. Except in a consumer-goods transaction, the following rules apply:

2 (1) The contents of a notification of disposition are sufficient if the notification:

3 (A) Describes the debtor and the secured party;

4 (B) Describes the collateral that is the subject of the intended disposition;

5 (C) States the method of intended disposition;

6 (D) States that the debtor is entitled to an accounting of the unpaid indebtedness
7 and states the charge, if any, for an accounting; and

8 (E) States the time and place of a public sale or the time after which any other
9 disposition is to be made;

10 (2) Whether the contents of a notification that lacks any of the information
11 specified in paragraph (1) are nevertheless sufficient is a question of fact;

12 (3) The contents of a notification providing substantially the information specified
13 in paragraph (1) are sufficient, even if the notification includes:

14 (A) Information not specified by that paragraph; or

15 (B) Minor errors that are not seriously misleading;

16 (4) A particular phrasing of the notification is not required;

17 (5) The following form of notification and the form appearing in section
18 400.9-614(3), when completed, each provides sufficient information:

19 NOTIFICATION OF DISPOSITION OF COLLATERAL

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

22 From: *(Name, address, and telephone number of secured*
23 *party)*

24 Name of Debtor(s): *(Include only if debtor(s) are not an addressee)*
25 *(For a public disposition:)*

26 We will sell (or lease or license, *as applicable*) the *(describe collateral)* (to the
27 highest qualified bidder) in public as follows:

28 Day and Date: _____

29 Time: _____

30 Place: _____

31 *(For a private disposition:)*

32 We will sell (or lease or license, *as applicable*) the *(describe collateral)* privately
33 sometime after *(day and date)*.

34 You are entitled to an accounting of the unpaid indebtedness secured by the

35 property that we intend to sell (or lease or license, *as applicable*) (for a charge of \$).

36 You may request an accounting by calling us at (*telephone number*)

37 (End of Form)

400.9-614. In a consumer-goods transaction, the following rules apply:

2 (1) A notification of disposition must provide the following information:

3 (A) The information specified in section 400.9-613(1);

4 (B) A description of any liability for a deficiency of the person to which the
5 notification is sent;

6 (C) A telephone number from which the amount that must be paid to the secured
7 party to redeem the collateral under section 400.9-623 is available; and

8 (D) A telephone number or mailing address from which additional information
9 concerning the disposition and the obligation secured is available;

10 (2) A particular phrasing of the notification is not required;

11 (3) The following form of notification, when completed, provides sufficient
12 information:

13 (*Name and address of secured party*)

14 (*Date*)

NOTICE OF OUR PLAN TO SELL PROPERTY

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

17 **Subject:** (*Identification of Transaction*)

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

19 (*For a public disposition:*)

20 We will sell (*describe collateral*) at public sale. A sale could include a lease or license.

21 The sale will be held as follows:

22 **Date:** _____

23 **Time:** _____

24 **Place:** _____

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

26 (*For a private disposition:*)

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

29

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

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

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

41

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

44

45 **We are sending this notice to the following other people who have an interest in (*describe***
46 ***collateral*) or who owe money under your agreement:**

47 **(*Names of all other debtors and obligors, if any*)**

48

(End of Form)

49 **(4) A notification in the form of paragraph (3) is sufficient, even if additional**
50 **information appears at the end of the form;**

51 **(5) A notification in the form of paragraph (3) is sufficient, even if it includes errors**
52 **in information not required by paragraph (1), unless the error is misleading with respect**
53 **to rights arising under this article;**

54 **(6) If a notification under this section is not in the form of paragraph (3), law other**
55 **than this article determines the effect of including information not required by paragraph**
56 **(1).**

400.9-615. (a) A secured party shall apply or pay over for application the cash
2 **proceeds of disposition in the following order to:**

3 **(1) The reasonable expenses of retaking, holding, preparing for disposition,**
4 **processing, and disposing, and, to the extent provided for by agreement and not prohibited**
5 **by law, reasonable attorney's fees and legal expenses incurred by the secured party;**

6 **(2) The satisfaction of obligations secured by the security interest or agricultural**
7 **lien under which the disposition is made;**

8 **(3) The satisfaction of obligations secured by any subordinate security interest in**
9 **or other subordinate lien on the collateral if:**

10 **(A) The secured party receives from the holder of the subordinate security interest**
11 **or other lien an authenticated demand for proceeds before distribution of the proceeds is**
12 **completed; and**

13 **(B) In a case in which a consignor has an interest in the collateral, the subordinate**

14 security interest or other lien is senior to the interest of the consignor; and

15 (4) A secured party that is a consignor of the collateral if the secured party receives
16 from the consignor an authenticated demand for proceeds before distribution of the
17 proceeds is completed.

18 (b) If requested by a secured party, a holder of a subordinate security interest or
19 other lien shall furnish reasonable proof of the interest or lien within a reasonable time.
20 Unless the holder does so, the secured party need not comply with the holder's demand
21 under subsection (a)(3).

22 (c) A secured party need not apply or pay over for application noncash proceeds
23 of disposition under this section unless the failure to do so would be commercially
24 unreasonable. A secured party that applies or pays over for application noncash proceeds
25 shall do so in a commercially reasonable manner.

26 (d) If the security interest under which a disposition is made secures payment or
27 performance of an obligation, after making the payments and applications required by
28 subsection (a) and permitted by subsection (c):

29 (1) Unless subsection (a)(4) requires the secured party to apply or pay over cash
30 proceeds to a consignor, the secured party shall account to and pay a debtor for any
31 surplus; and

32 (2) The obligor is liable for any deficiency.

33 (e) If the underlying transaction is a sale of accounts, chattel paper, payment
34 intangibles, or promissory notes:

35 (1) The debtor is not entitled to any surplus; and

36 (2) The obligor is not liable for any deficiency.

37 (f) The surplus or deficiency following a disposition is calculated based on the
38 amount of proceeds that would have been realized in a disposition complying with this part
39 to a transferee other than the secured party, a person related to the secured party, or a
40 secondary obligor if:

41 (1) The transferee in the disposition is the secured party, a person related to the
42 secured party, or a secondary obligor; and

43 (2) The amount of proceeds of the disposition is significantly below the range of
44 proceeds that a complying disposition to a person other than the secured party, a person
45 related to the secured party, or a secondary obligor would have brought.

46 (g) A secured party that receives cash proceeds of a disposition in good faith and
47 without notice that the receipt violates the rights of the holder of a security interest or other
48 lien that is not subordinate to the security interest under which the disposition is made:

49 (1) Takes the cash proceeds free of the security interest or other lien;

50 **(2) Is not obligated to apply the proceeds of the disposition to the satisfaction of**
51 **obligations secured by the security interest or other lien; and**

52 **(3) Is not obligated to account to or pay the holder of the security interest or other**
53 **lien for any surplus.**

400.9-616. (a) In this section:

2 **(1) "Explanation" means a writing that:**

3 **(A) States the amount of the surplus or deficiency;**

4 **(B) Provides an explanation in accordance with subsection (c) of how the secured**
5 **party calculated the surplus or deficiency;**

6 **(C) States, if applicable, that future debits, credits, charges, including additional**
7 **credit service charges or interest, rebates, and expenses may affect the amount of the**
8 **surplus or deficiency; and**

9 **(D) Provides a telephone number or mailing address from which additional**
10 **information concerning the transaction is available.**

11 **(2) "Request" means a record:**

12 **(A) Authenticated by a debtor or consumer obligor;**

13 **(B) Requesting that the recipient provide an explanation; and**

14 **(C) Sent after disposition of the collateral under section 400.9-610.**

15 **(b) In a consumer-goods transaction in which the debtor is entitled to a surplus or**
16 **a consumer obligor is liable for a deficiency under section 400.9-615, the secured party**
17 **shall:**

18 **(1) Send an explanation to the debtor or consumer obligor, as applicable, after the**
19 **disposition and:**

20 **(A) Before or when the secured party accounts to the debtor and pays any surplus**
21 **or first makes written demand on the consumer obligor after the disposition for payment**
22 **of the deficiency; and**

23 **(B) Within fourteen days after receipt of a request; or**

24 **(2) In the case of a consumer obligor who is liable for a deficiency, within fourteen**
25 **days after receipt of a request, send to the consumer obligor a record waiving the secured**
26 **party's right to a deficiency.**

27 **(c) To comply with subsection (a)(1)(B), a writing must provide the following**
28 **information in the following order:**

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

32 **(A) If the secured party takes or receives possession of the collateral after default,**

33 not more than thirty-five days before the secured party takes or receives possession; or

34 (B) If the secured party takes or receives possession of the collateral before default
35 or does not take possession of the collateral, not more than thirty-five days before the
36 disposition;

37 (2) The amount of proceeds of the disposition;

38 (3) The aggregate amount of the obligations after deducting the amount of
39 proceeds;

40 (4) The amount, in the aggregate or by type, and types of expenses, including
41 expenses of retaking, holding, preparing for disposition, processing, and disposing of the
42 collateral, and attorney's fees secured by the collateral which are known to the secured
43 party and relate to the current disposition;

44 (5) The amount, in the aggregate or by type, and types of credits, including rebates
45 of interest or credit service charges, to which the obligor is known to be entitled and which
46 are not reflected in the amount in paragraph (1); and

47 (6) The amount of the surplus or deficiency.

48 (d) A particular phrasing of the explanation is not required. An explanation
49 complying substantially with the requirements of subsection (a) is sufficient, even if it
50 includes minor errors that are not seriously misleading.

51 (e) A debtor or consumer obligor is entitled without charge to one response to a
52 request under this section during any six-month period in which the secured party did not
53 send to the debtor or consumer obligor an explanation pursuant to subsection (b)(1). The
54 secured party may require payment of a charge not exceeding twenty-five dollars for each
55 additional response.

400.9-617. (a) A secured party's disposition of collateral after default:

2 (1) Transfers to a transferee for value all of the debtor's rights in the collateral;

3 (2) Discharges the security interest under which the disposition is made; and

4 (3) Discharges any subordinate security interest or other subordinate lien.

5 (b) A transferee that acts in good faith takes free of the rights and interests
6 described in subsection (a), even if the secured party fails to comply with this article or the
7 requirements of any judicial proceeding.

8 (c) If a transferee does not take free of the rights and interests described in
9 subsection (a), the transferee takes the collateral subject to:

10 (1) The debtor's rights in the collateral;

11 (2) The security interest or agricultural lien under which the disposition is made;

12 and

13 (3) Any other security interest or other lien.

400.9-618. (a) A secondary obligor acquires the rights and becomes obligated to perform the duties of the secured party after the secondary obligor:

- (1) Receives an assignment of a secured obligation from the secured party;**
- (2) Receives a transfer of collateral from the secured party and agrees to accept the rights and assume the duties of the secured party; or**
- (3) Is subrogated to the rights of a secured party with respect to collateral.**

(b) An assignment, transfer, or subrogation described in subsection (a):

- (1) Is not a disposition of collateral under section 400.9-610; and**
- (2) Relieves the secured party of further duties under this article.**

400.9-619. (a) In this section, "transfer statement" means a record authenticated by a secured party stating:

(1) That the debtor has defaulted in connection with an obligation secured by specified collateral;

(2) That the secured party has exercised its post-default remedies with respect to the collateral;

(3) That, by reason of the exercise, a transferee has acquired the rights of the debtor in the collateral; and

(4) The name and mailing address of the secured party, debtor, and transferee.

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

(1) Accept the transfer statement;

(2) Promptly amend its records to reflect the transfer; and

(3) If applicable, issue a new appropriate certificate of title in the name of the transferee.

(c) A transfer of the record or legal title to collateral to a secured party under subsection (b) or otherwise is not of itself a disposition of collateral under this article and does not of itself relieve the secured party of its duties under this article.

400.9-620. (a) Except as otherwise provided in subsection (g), a secured party may accept collateral in full or partial satisfaction of the obligation it secures only if:

(1) The debtor consents to the acceptance under subsection (c);

(2) The secured party does not receive, within the time set forth in subsection (d), a notification of objection to the proposal authenticated by:

(A) A person to which the secured party was required to send a proposal under

7 section 400.9-621; or

8 (B) Any other person, other than the debtor, holding an interest in the collateral
9 subordinate to the security interest that is the subject of the proposal;

10 (3) If the collateral is consumer goods, the collateral is not in the possession of the
11 debtor when the debtor consents to the acceptance; and

12 (4) Subsection (e) does not require the secured party to dispose of the collateral or
13 the debtor waives the requirement pursuant to section 400.9-624.

14 (b) A purported or apparent acceptance of collateral under this section is
15 ineffective unless:

16 (1) The secured party consents to the acceptance in an authenticated record or
17 sends a proposal to the debtor; and

18 (2) The conditions of subsection (a) are met.

19 (c) For purposes of this section:

20 (1) A debtor consents to an acceptance of collateral in partial satisfaction of the
21 obligation it secures only if the debtor agrees to the terms of the acceptance in a record
22 authenticated after default; and

23 (2) A debtor consents to an acceptance of collateral in full satisfaction of the
24 obligation it secures only if the debtor agrees to the terms of the acceptance in a record
25 authenticated after default or the secured party:

26 (A) Sends to the debtor after default a proposal that is unconditional or subject
27 only to a condition that collateral not in the possession of the secured party be preserved
28 or maintained;

29 (B) In the proposal, proposes to accept collateral in full satisfaction of the
30 obligation it secures; and

31 (C) Does not receive a notification of objection authenticated by the debtor within
32 twenty days after the proposal is sent.

33 (d) To be effective under subsection (a)(2), a notification of objection must be
34 received by the secured party:

35 (1) In the case of a person to which the proposal was sent pursuant to section
36 400.9-621, within twenty days after notification was sent to that person; and

37 (2) In other cases:

38 (A) Within twenty days after the last notification was sent pursuant to section
39 400.9-621; or

40 (B) If a notification was not sent, before the debtor consents to the acceptance
41 under subsection (c).

42 (e) A secured party that has taken possession of collateral shall dispose of the

43 collateral pursuant to section 400.9-610 within the time specified in subsection (f) if:

44 (1) Sixty percent of the cash price has been paid in the case of a purchase-money
45 security interest in consumer goods; or

46 (2) Sixty percent of the principal amount of the obligation secured has been paid
47 in the case of a non-purchase-money security interest in consumer goods.

48 (f) To comply with subsection (e), the secured party shall dispose of the collateral:

49 (1) Within ninety days after taking possession; or

50 (2) Within any longer period to which the debtor and all secondary obligors have
51 agreed in an agreement to that effect entered into and authenticated after default.

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

400.9-621. (a) A secured party that desires to accept collateral in full or partial
2 satisfaction of the obligation it secures shall send its proposal to:

3 (1) Any person from which the secured party has received, before the debtor
4 consented to the acceptance, an authenticated notification of a claim of an interest in the
5 collateral;

6 (2) Any other secured party or lienholder that, ten days before the debtor consented
7 to the acceptance, held a security interest in or other lien on the collateral perfected by the
8 filing of a financing statement that:

9 (A) Identified the collateral;

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

11 (C) Was filed in the office or offices in which to file a financing statement against
12 the debtor covering the collateral as of that date; and

13 (3) Any other secured party that, ten days before the debtor consented to the
14 acceptance, held a security interest in the collateral perfected by compliance with a statute,
15 regulation, or treaty described in section 400.9-311(a).

16 (b) A secured party that desires to accept collateral in partial satisfaction of the
17 obligation it secures shall send its proposal to any secondary obligor in addition to the
18 persons described in subsection (a).

400.9-622. (a) A secured party's acceptance of collateral in full or partial
2 satisfaction of the obligation it secures:

3 (1) Discharges the obligation to the extent consented to by the debtor;

4 (2) Transfers to the secured party all of a debtor's rights in the collateral;

5 (3) Discharges the security interest or agricultural lien that is the subject of the
6 debtor's consent and any subordinate security interest or other subordinate lien; and

7 (4) Terminates any other subordinate interest.

8 (b) A subordinate interest is discharged or terminated under subsection (a), even
9 if the secured party fails to comply with this article.

2 **400.9-623. (a) A debtor, any secondary obligor, or any other secured party or
lienholder may redeem collateral.**

3 (b) To redeem collateral, a person shall tender:

4 (1) Fulfillment of all obligations secured by the collateral; and

5 (2) The reasonable expenses and attorney's fees described in section 400.9-615(a)(1).

6 (c) A redemption may occur at any time before a secured party:

7 (1) Has collected collateral under section 400.9-607;

8 (2) Has disposed of collateral or entered into a contract for its disposition under
9 section 400.9-610; or

10 (3) Has accepted collateral in full or partial satisfaction of the obligation it secures
11 under section 400.9-622.

2 **400.9-624. (a) A debtor or secondary obligor may waive the right to notification
of disposition of collateral under section 400.9-611 only by an agreement to that effect
3 entered into and authenticated after default.**

4 (b) A debtor may waive the right to require disposition of collateral under section
5 400.9-620(e) only by an agreement to that effect entered into and authenticated after
6 default.

7 (c) Except in a consumer-goods transaction, a debtor or secondary obligor may
8 waive the right to redeem collateral under section 400.9-623 only by an agreement to that
9 effect entered into and authenticated after default.

2 **400.9-625. (a) If it is established that a secured party is not proceeding in
accordance with this article, a court may order or restrain collection, enforcement, or
3 disposition of collateral on appropriate terms and conditions.**

4 (b) Subject to subsections (c), (d), and (f), a person is liable for damages in the
5 amount of any loss caused by a failure to comply with this article. Loss caused by a failure
6 to comply with a request under section 400.9-210 may include loss resulting from the
7 debtor's inability to obtain, or increased costs of, alternative financing.

8 (c) Except as otherwise provided in section 400.9-628:

9 (1) A person that, at the time of the failure, was a debtor, was an obligor, or held
10 a security interest in or other lien on the collateral may recover damages under subsection
11 (b) for its loss; and

12 (2) If the collateral is consumer goods, a person that was a debtor or a secondary
13 obligor at the time a secured party failed to comply with this part may recover for that
14 failure in any event an amount not less than the credit service charge plus ten percent of

15 the principal amount of the obligation or the time-price differential plus ten percent of the
16 cash price.

17 (d) A debtor whose deficiency is eliminated under section 400.9-626 may recover
18 damages for the loss of any surplus. However, a debtor or secondary obligor whose
19 deficiency is eliminated or reduced under section 400.9-626 may not otherwise recover
20 under subsection (b) for noncompliance with the provisions of this part relating to
21 collection, enforcement, disposition, or acceptance.

22 (e) In addition to any damages recoverable under subsection (b), the debtor,
23 consumer obligor, or person named as a debtor in a filed record, as applicable, may
24 recover five hundred dollars in each case from a person that:

25 (1) Fails to comply with section 400.9-208;

26 (2) Fails to comply with section 400.9-209;

27 (3) Files a record that the person is not entitled to file under section 400.9-509(a);

28 (4) Fails to cause the secured party of record to file or send a termination statement
29 as required by section 400.9-513(a) or (c);

30 (5) Fails to comply with section 400.9-616(b)(1) and whose failure is part of a
31 pattern, or consistent with a practice, of noncompliance; or

32 (6) Fails to comply with section 400.9-616(b)(2).

33 (f) A debtor or consumer obligor may recover damages under subsection (b) and,
34 in addition, five hundred dollars in each case from a person that, without reasonable cause,
35 fails to comply with a request under section 400.9-210. A recipient of a request under
36 section 400.9-210 which never claimed an interest in the collateral or obligations that are
37 the subject of a request under that section has a reasonable excuse for failure to comply
38 with the request within the meaning of this subsection.

39 (g) If a secured party fails to comply with a request regarding a list of collateral or
40 a statement of account under section 400.9-210, the secured party may claim a security
41 interest only as shown in the statement included in the request as against a person that is
42 reasonably misled by the failure.

43 (h) This section shall apply on and after January 1, 2003.

400.9-626. (a) In an action arising from a transaction, other than a consumer
2 transaction, in which the amount of a deficiency or surplus is in issue, the following rules
3 apply:

4 (1) A secured party need not prove compliance with the provisions of this part
5 relating to collection, enforcement, disposition, or acceptance unless the debtor or a
6 secondary obligor places the secured party's compliance in issue.

7 (2) If the secured party's compliance is placed in issue, the secured party has the

8 **burden of establishing that the collection, enforcement, disposition, or acceptance was**
9 **conducted in accordance with this part.**

10 **(3) Except as otherwise provided in section 400.9-628, if a secured party fails to**
11 **prove that the collection, enforcement, disposition, or acceptance was conducted in**
12 **accordance with the provisions of this part relating to collection, enforcement, disposition,**
13 **or acceptance, the liability of a debtor or a secondary obligor for a deficiency is limited to**
14 **an amount by which the sum of the secured obligation, expenses, and attorney's fees**
15 **exceeds the greater of:**

16 **(A) The proceeds of the collection, enforcement, disposition, or acceptance; or**

17 **(B) The amount of proceeds that would have been realized had the noncomplying**
18 **secured party proceeded in accordance with the provisions of this part relating to**
19 **collection, enforcement, disposition, or acceptance.**

20 **(4) For purposes of paragraph (3)(B), the amount of proceeds that would have been**
21 **realized is equal to the sum of the secured obligation, expenses, and attorney's fees unless**
22 **the secured party proves that the amount is less than that sum.**

23 **(5) If a deficiency or surplus is calculated under section 400.9-615(f), the debtor or**
24 **obligor has the burden of establishing that the amount of proceeds of the disposition is**
25 **significantly below the range of prices that a complying disposition to a person other than**
26 **the secured party, a person related to the secured party, or a secondary obligor would have**
27 **brought.**

28 **(b) The limitation of the rules in subsection (a) to transactions other than consumer**
29 **transactions is intended to leave to the court the determination of the proper rules in**
30 **consumer transactions. The court may not infer from that limitation the nature of the**
31 **proper rule in consumer transactions and may continue to apply established approaches.**

32 **(c) This section shall apply on and after January 1, 2003.**

400.9-627. (a) The fact that a greater amount could have been obtained by a
2 **collection, enforcement, disposition, or acceptance at a different time or in a different**
3 **method from that selected by the secured party is not of itself sufficient to preclude the**
4 **secured party from establishing that the collection, enforcement, disposition, or acceptance**
5 **was made in a commercially reasonable manner.**

6 **(b) A disposition of collateral is made in a commercially reasonable manner if the**
7 **disposition is made:**

8 **(1) In the usual manner on any recognized market;**

9 **(2) At the price current in any recognized market at the time of the disposition; or**

10 **(3) Otherwise in conformity with reasonable commercial practices among dealers**
11 **in the type of property that was the subject of the disposition.**

12 (c) A collection, enforcement, disposition, or acceptance is commercially reasonable
13 if it has been approved:

14 (1) In a judicial proceeding;

15 (2) By a bona fide creditors' committee;

16 (3) By a representative of creditors; or

17 (4) By an assignee for the benefit of creditors.

18 (d) Approval under subsection (c) need not be obtained, and lack of approval does
19 not mean that the collection, enforcement, disposition, or acceptance is not commercially
20 reasonable.

200.9-628. (a) Unless a secured party knows that a person is a debtor or obligor,
21 knows the identity of the person, and knows how to communicate with the person:

22 (1) The secured party is not liable to the person, or to a secured party or lienholder
23 that has filed a financing statement against the person, for failure to comply with this
24 article; and

25 (2) The secured party's failure to comply with this article does not affect the
26 liability of the person for a deficiency.

27 (b) A secured party is not liable because of its status as secured party:

28 (1) To a person that is a debtor or obligor, unless the secured party knows:

29 (A) That the person is a debtor or obligor;

30 (B) The identity of the person; and

31 (C) How to communicate with the person; or

32 (2) To a secured party or lienholder that has filed a financing statement against a
33 person, unless the secured party knows:

34 (A) That the person is a debtor; and

35 (B) The identity of the person.

36 (c) A secured party is not liable to any person, and a person's liability for a
37 deficiency is not affected, because of any act or omission arising out of the secured party's
38 reasonable belief that a transaction is not a consumer-goods transaction or a consumer
39 transaction or that goods are not consumer goods, if the secured party's belief is based on
40 its reasonable reliance on:

41 (1) A debtor's representation concerning the purpose for which collateral was to
42 be used, acquired, or held; or

43 (2) An obligor's representation concerning the purpose for which a secured
44 obligation was incurred.

45 (d) A secured party is not liable under section 400.9-625(c)(2) more than once with
46 respect to any one secured obligation.
47

2 **400.9-629. (1) If it is established that the secured party is not proceeding in**
3 **accordance with the provisions of this part disposition may be ordered or restrained on**
4 **appropriate terms and conditions. If the disposition has occurred the debtor or any person**
5 **entitled to notification or whose security interest has been made known to the secured**
6 **party prior to the disposition has a right to recover from the secured party any loss caused**
7 **by a failure to comply with the provisions of this part. If the collateral is consumer goods,**
8 **the debtor has a right to recover in any event an amount not less than the credit service**
9 **charge plus ten percent of the principal amount of the debt or the time price differential**

10 **(2) The fact that a better price could have been obtained by a sale at a different**
11 **time or in a different method from that selected by the secured party is not of itself**
12 **sufficient to establish that the sale was not made in a commercially reasonable manner.**
13 **If the secured party either sells the collateral in the usual manner in any recognized market**
14 **therefor or if he sells at the price current in such market at the time of his sale or if he has**
15 **otherwise sold in conformity with reasonable commercial practices among dealers in the**
16 **type of property sold he has sold in a commercially reasonable manner. The principles**
17 **stated in the two preceding sentences with respect to sales also apply as may be appropriate**
18 **to other types of disposition. A disposition which has been approved in any judicial**
19 **proceeding or by any bona fide creditors' committee or representative of creditors shall**
20 **conclusively be deemed to be commercially reasonable, but this sentence does not indicate**
21 **that any such approval must be obtained in any case nor does it indicate that any**
22 **disposition not so approved is not commercially reasonable.**

23 **(3) The provisions of this section shall terminate on December 31, 2002.**

24 **PART 7**

25 **TRANSITION**

2 **400.9-701. For the purposes of this section and sections 400.9-702 to 400.9-708, "this**
3 **act" shall refer to sections 400.9-101 to 400.9-628.**

2 **400.9-702. (a) Except as otherwise provided in this part, this act applies to a**
3 **transaction or lien within its scope, even if the transaction or lien was entered into or**
4 **created before the effective date of this act.**

2 **(b) Except as otherwise provided in subsection (c) and sections 400.9-703 through**
3 **400.9-708:**

4 **(1) Transactions and liens that were not governed by former article 9, were validly**
5 **entered into or created before this act takes effect, and would be subject to this act if they**
6 **had been entered into or created after this act takes effect, and the rights, duties, and**
7 **interests flowing from those transactions and liens remain valid after this act takes effect;**
8

10 and

11 (2) The transactions and liens may be terminated, completed, consummated, and
12 enforced as required or permitted by this act or by the law that otherwise would apply if
13 this act had not taken effect.

14 (c) This act does not affect an action, case, or proceeding commenced before this
15 act takes effect.

400.9-703. (a) A security interest that is enforceable immediately before this act
2 takes effect and would have priority over the rights of a person that becomes a lien creditor
3 at that time is a perfected security interest under this act if, when this act takes effect, the
4 applicable requirements for enforceability and perfection under this act are satisfied
5 without further action.

6 (b) Except as otherwise provided in section 400.9-705, if, immediately before this
7 act takes effect, a security interest is enforceable and would have priority over the rights
8 of a person that becomes a lien creditor at that time, but the applicable requirements for
9 enforceability or perfection under this act are not satisfied when this act takes effect, the
10 security interest:

11 (1) Is a perfected security interest for one year after this act takes effect;

12 (2) Remains enforceable thereafter only if the security interest becomes enforceable
13 under section 400.9-203 before the year expires; and

14 (3) Remains perfected thereafter only if the applicable requirements for perfection
15 under this act are satisfied before the year expires.

400.9-704. A security interest that is enforceable immediately before this act takes
2 effect but which would be subordinate to the rights of a person that becomes a lien creditor
3 at that time:

4 (1) Remains an enforceable security interest for one year after this act takes effect;

5 (2) Remains enforceable thereafter if the security interest becomes enforceable
6 under section 400.9-203 when this act takes effect or within one year thereafter; and

7 (3) Becomes perfected:

8 (A) Without further action, when this act takes effect if the applicable requirements
9 for perfection under this act are satisfied before or at that time; or

10 (B) When the applicable requirements for perfection are satisfied if the
11 requirements are satisfied after that time.

400.9-705. (a) If action, other than the filing of a financing statement, is taken
2 before this act takes effect and the action would have resulted in priority of a security
3 interest over the rights of a person that becomes a lien creditor had the security interest
4 become enforceable before this act takes effect, the action is effective to perfect a security

5 interest that attaches under this act within one year after this act takes effect. An attached
6 security interest becomes unperfected one year after this act takes effect unless the security
7 interest becomes a perfected security interest under this act before the expiration of that
8 period.

9 (b) The filing of a financing statement before this act takes effect is effective to
10 perfect a security interest to the extent the filing would satisfy the applicable requirements
11 for perfection under this act.

12 (c) This act does not render ineffective an effective financing statement that, before
13 this act takes effect, is filed and satisfies the applicable requirements for perfection under
14 the law of the jurisdiction governing perfection as provided in former section 400.9-103.
15 However, except as otherwise provided in subsections (d) and (e) and section 400.9-706, the
16 financing statement ceases to be effective at the earlier of:

17 (1) The time the financing statement would have ceased to be effective under the
18 law of the jurisdiction in which it is filed; or

19 (2) June 30, 2006.

20 (d) The filing of a continuation statement after this act takes effect does not
21 continue the effectiveness of the financing statement filed before this act takes effect.
22 However, upon the timely filing of a continuation statement after this act takes effect and
23 in accordance with the law of the jurisdiction governing perfection as provided in Part 3,
24 the effectiveness of a financing statement filed in the same office in that jurisdiction before
25 this act takes effect continues for the period provided by the law of that jurisdiction.

26 (e) Subsection (c)(2) applies to a financing statement that, before this act takes
27 effect, is filed against a transmitting utility and satisfies the applicable requirements for
28 perfection under the law of the jurisdiction governing perfection as provided in former
29 section 400.9-103 only to the extent that Part 3 provides that the law of a jurisdiction other
30 than jurisdiction in which the financing statement is filed governs perfection of a security
31 interest in collateral covered by the financing statement.

32 (f) A financing statement that includes a financing statement filed before this act
33 takes effect and a continuation statement filed after this act takes effect is effective only to
34 the extent that it satisfies the requirements of Part 5 for an initial financing statement.

400.9-706. (a) The filing of an initial financing statement in the office specified in
2 section 400.9-501 continues the effectiveness of a financing statement filed before this act
3 takes effect if:

4 (1) The filing of an initial financing statement in that office would be effective to
5 perfect a security interest under this act;

6 (2) The pre-effective-date financing statement was filed in an office in another state

7 or another office in this state; and

8 (3) The initial financing statement satisfies subsection (c).

9 (b) The filing of an initial financing statement under subsection (a) continues the
10 effectiveness of the pre-effective-date financing statement:

11 (1) If the initial financing statement is filed before this act takes effect, for the
12 period provided in former section 400.9-403 with respect to a financing statement; and

13 (2) If the initial financing statement is filed after this act takes effect, for the period
14 provided in section 400.9-515 with respect to an initial financing statement.

15 (c) To be effective for purposes of subsection (a), an initial financing statement
16 must:

17 (1) Satisfy the requirements of Part 5 for an initial financing statement;

18 (2) Identify the pre-effective-date financing statement by indicating the office in
19 which the financing statement was filed and providing the dates of filing and file numbers,
20 if any, of the financing statement and of the most recent continuation statement filed with
21 respect to the financing statement; and

22 (3) Indicate that the pre-effective-date financing statement remains effective.

2 400.9-707. (a) In this section, "pre-effective-date financing statement" means a
2 financing statement filed before this act takes effect.

3 (b) After this act takes effect, a person may add or delete collateral covered by,
4 continue or terminate the effectiveness of, or otherwise amend the information provided
5 in, a pre-effective-date financing statement only in accordance with the law of the
6 jurisdiction governing perfection as provided in Part 3. However, the effectiveness of a
7 pre-effective-date financing statement also may be terminated in accordance with the law
8 of the jurisdiction in which the financing statement is filed.

9 (c) Except as otherwise provided in subsection (d) of this section, if the law of this
10 state governs perfection of a security interest, the information in a pre-effective-date
11 financing statement may be amended after this act takes effect only if:

12 (1) The pre-effective-date financing statement and an amendment are filed in the
13 office specified in section 400.9-501;

14 (2) An amendment is filed in the office specified in section 400.9-501 concurrently
15 with, or after the filing in that office of, an initial financing statement that satisfies section
16 400.9-706(c); or

17 (3) An initial financing statement that provides the information as amended and
18 satisfies section 400.9-706(c) is filed in the office specified in section 400.9-501.

19 (d) If the law of this state governs perfection of a security interest, the effectiveness
20 of a pre-effective-date financing statement may be continued only under section 400.9-

21 **705(d) and (f) or section 400.9-706.**

22 **(e) Whether or not the law of this state governs perfection of a security interest, the**
23 **effectiveness of a pre-effective-date financing statement filed in this state may be**
24 **terminated after this act takes effect by filing a termination statement in the office in which**
25 **the pre-effective-date financing statement is filed, unless an initial financing statement that**
26 **satisfies section 400.9-706(c) has been filed in the office specified by the law of the**
27 **jurisdiction governing perfection as provided in Part 3 as the office in which to file a**
28 **financing statement.**

29 **(f) If the law of this state governs perfection of a security interest, the effectiveness**
30 **of a pre-effective-date financing statement may be terminated after the effective date of this**
31 **act only if:**

32 **(1) The pre-effective-date financing statement and a termination statement are filed**
33 **in the office specified in section 400.9-501; or**

34 **(2) A termination statement is filed in the office specified in section 400.9-501**
35 **concurrently with the filing in that office of an initial financing statement that satisfies**
36 **section 400.9-706(c). Under this subsection, no separate fee shall be charged for the filing**
37 **or indexing of the termination statement.**

400.9-708. A person may file an initial financing statement or a continuation
2 **statement under this part if:**

3 **(1) The secured party of record authorizes the filing; and**

4 **(2) The filing is necessary under this part:**

5 **(A) To continue the effectiveness of a financing statement filed before this act takes**
6 **effect; or**

7 **(B) To perfect or continue the perfection of a security interest.**

400.9-709. (a) This act determines the priority of conflicting claims to collateral.
2 **However, if the relative priorities of the claims were established before this act takes effect,**
3 **former article 9 determines priority.**

4 **(b) For purposes of section 400.9-322(a), the priority of a security interest that**
5 **becomes enforceable under section 400.9-203 of this act dates from the time this act takes**
6 **effect if the security interest is perfected under this act by the filing of a financing**
7 **statement before this act takes effect which would not have been effective to perfect the**
8 **security interest under former article 9. This subsection does not apply to conflicting**
9 **security interests each of which is perfected by the filing of such a financing statement.**

400.9-710. (a) In this section:

2 **(1) "Former article 9 records" means:**

3 **a. Financing statements and other records that have been filed in the local-filing**

4 office before the effective date of this act, and that are, or upon processing and indexing
5 will be, reflected in the index maintained, as of the effective date of this act, by the local-
6 filing office for financing statements and other records filed in the local-filing office before
7 the effective date of this act; and b. The index as of the effective date of this act. The term
8 does not include records presented to a local-filing office for filing after the effective date
9 of this act, whether or not the records relate to financing statements filed in the local-filing
10 office before the effective date of this act.

11 (2) "Local-filing office" means a filing office, other than the office of the secretary
12 of state, that is designated as the proper place to file a financing statement under 400.9-401
13 of former article 9. The term applies only with respect to a record that covers a type of
14 collateral as to which the filing office is designated in that section as the proper place to
15 file.

16 (b) Until June 30, 2006, each local-filing office must maintain all former article 9
17 records in accordance with former article 9. A former article 9 record that is not reflected
18 on the index maintained on the effective date of this act, by the local-filing office must be
19 processed and indexed, and reflected on the index as of the effective date of this act, as soon
20 as practicable but in any event no later than thirty days after the effective date of this act.

21 (c) Until at least June 30, 2006, each local-filing office must respond to requests for
22 information with respect to former article 9 records relating to a debtor and issue
23 certificates, in accordance with former article 9. The fees charged for responding to
24 requests for information relating to a debtor and issuing certificates with respect to former
25 article 9 records must be the fees in effect under former article 9 on June 30, 2001.

26 (d) After June 30, 2006, each local-filing office may remove and destroy, in
27 accordance with any then applicable record retention law of this state, all former article
28 9 records, including the related index.

29 (e) This section does not apply, with respect to financing statements and other
30 records, to a filing office in which mortgages or records of mortgages on real property are
31 required to be filed or recorded, if:

32 (1) The collateral is timber to be cut or as-extracted collateral; or

33 (s) The record is or relates to a financing statement filed as a fixture and the
34 collateral is goods that are or are to become fixtures.

2 [59.040. 1. In a county of the third class, the question of combining the
3 offices of circuit clerk and recorder or separating the offices may be submitted to the
4 voters of the county by the county commission and shall be submitted by the county
5 commission upon the petition of voters who comprise at least eight percent of the
6 voters of the county as determined by the total vote for governor at the last preceding
general election at which a governor was elected.

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2. If the two offices are separate and the question is to combine the two offices, the question shall be submitted in substantially the following form:

Shall the offices of the circuit clerk and recorder in (name of county) county be combined?

3. If the two offices are combined and the question is to separate the two offices, the question shall be submitted in substantially the following form:

Official Ballot

Shall the offices of circuit clerk and recorder in(name of county) county be separated?

4. The submission of the question provided for in this section may be made at the November election in 1948, or any fourth year thereafter. Any consolidation or separation brought about as a result of the provisions of this section shall not become effective until the expiration of the term of office of the officers affected.]

[59.050. In any county of the third class where the offices of the clerk of the circuit court and the recorder of deeds are combined and which will become a county of the second class on the first day of January next following the general election at which the circuit clerk ex officio recorder of deeds would normally be elected, the combined office shall not be filled at that general election, but candidates may file and stand for election for the separate offices of clerk of the circuit court and recorder of deeds and the winner of the election for each office shall assume his separate duties on the first day of January next following the election for the full four-year term of office.]

[59.310. 1. As used in this section, "page" means any writing, printing or drawing covering all or part of one side of a paper, other than a plat, not larger than 8 ½ inches x 14 inches, or of a plat not larger than 18 inches x 24 inches, with the following conditions:

(1) Should sufficient space not be provided for the necessary recording information and certification on a document, said recording information and certification shall be placed on an added sheet and such sheet shall be counted as a page;

(2) The size of print or type on any document to be recorded shall not be smaller than 8 point. Should any document to be recorded contain type smaller than 8 point, such document must be accompanied by an exact typewritten copy thereof which will be recorded contemporaneously with the document;

(3) The document must be of sufficient legibility so as to produce a clear and legible reproduction thereof. Should a document not be of sufficient legibility so as to produce a clear and legible reproduction, such document must be accompanied by an exact typewritten copy thereof which will be recorded contemporaneously with the document;

(4) Any attachment which extends the length of the page, and any deed or document larger than 8 ½ inches x 14 inches, other than a plat or survey, shall be counted as an additional page for each additional 8 ½ inches x 14 inches or fraction thereof. Any plat or survey larger than 18 inches x 24 inches shall be counted as an

22 additional page for each additional 18 inches x 24 inches or fraction thereof.

23 2. Any signature on a document shall have the corresponding name typed,
24 printed or stamped underneath said signature.

25 3. Recorders shall be allowed fees for their services as follows:

26 (1) For recording every deed or instrument: \$5.00 for the first page and
27 \$3.00 for each page thereafter;

28 (2) For copying or reproducing any recorded instrument except surveys or
29 plats: a fee not to exceed \$2.00 for the first page and \$1.00 for every page thereafter;

30 (3) For every certificate and seal, except when recording an instrument:
31 \$1.00;

32 (4) For recording a plat or survey of a subdivision, outlots or condominiums:
33 \$25.00 for each page of drawings and calculations plus \$5.00 for each page of other
34 material;

35 (5) For recording a survey of one tract of land, in the form of one page:
36 \$5.00 per page;

37 (6) For copying a plat or survey: a fee not to exceed \$5.00 for each page;

38 (7) For every certified copy of a marriage license or application for a
39 marriage license: \$2.00. The only additional fee over and above this is the \$1.00
40 state user fee on all documents that convey real estate, and a 25-cent fee for
41 identifying each note to an instrument when a document is recorded that creates a lien
42 against the real estate.]

2 [59.313. 1. As used in this section for recording in the office of the recorder
3 of deeds of any city not within a county, "page" means any writing, printing or
4 drawing covering all or part of one side of a paper, other than a plat not larger than
5 8 ½ inches x 14 inches, or of a plat not larger than 18 x 24 inches, with the following
6 conditions:

7 (1) Should sufficient space not be provided for the necessary recording
8 information and certification on a document, said recording information and
9 certification shall be placed on an added sheet and such sheet shall be counted as a
10 page;

11 (2) The size of print or type on any document to be recorded shall not be
12 smaller than 8 point. Should any document to be recorded contain type smaller than
13 8 point, such document must be accompanied by an exact typewritten copy thereof
14 which will be recorded contemporaneously with the document. Such additional
15 documents shall be recorded at the same cost as an original;

16 (3) The document must be of sufficient legibility so as to produce a clear and
17 legible reproduction thereof. Should a document not be of sufficient legibility so as
18 to produce a clear and legible reproduction, such document must be accompanied by
19 an exact typewritten copy thereof which will be recorded contemporaneously with
20 the document;

21 (4) Any attachment which extends the length of the page, and any deed or
22 document larger than 8 ½ inches x 14 inches, other than a plat or survey, shall be
counted as an additional page for each additional 8 ½ inches x 14 inches or fraction

23 thereof. Any plat or survey larger than 18 inches x 24 inches shall be counted as an
24 additional page for each additional 18 inches x 24 inches or fraction thereof.

25 2. Any signature on a document shall have the corresponding name typed,
26 printed or stamped underneath the signature.

27 3. The recorder of deeds in any city not within a county shall be allowed fees
28 for his services as follows:

29 (1) For recording every deed or instrument: \$10.00 for the first page and
30 \$5.00 for each page thereafter;

31 (2) For copying or reproducing any recorded instrument, except surveys and
32 plats: \$3.00 for the first page and \$2.00 for each page thereafter;

33 (3) For every certificate and seal, except when recording an instrument:
34 \$2.00;

35 (4) For recording a plat or survey of a subdivision, outlots or condominiums:
36 \$44.00 for each page of drawings and calculations plus \$10.00 for each page of other
37 materials;

38 (5) For recording a survey of one tract of land, in the form of one page:
39 \$8.00;

40 (6) For copying a plat or survey: \$8.00 for each page;

41 (7) For every certified copy of a marriage license or application for a
42 marriage license: \$5.00;

43 (8) For releasing on the margin: \$8.00 for each item released;

44 (9) For a document which releases or assigns more than one item: \$7.50 for
45 each item beyond one released or assigned in addition to any other charges which
46 may apply; and

47 (10) For duplicate reels of microfilm: \$30.00 each. For all other personnel
48 services, use of equipment and use of office space the recorder of deeds shall set
49 attendant fees.]

2 [347.189. Any limited liability company that owns and rents or leases real
3 property located within any home rule city with a population of more than four
4 hundred thousand inhabitants which is located in more than one county, shall file
5 with that city's clerk an affidavit listing the name and address of at least one person,
6 who has management control and responsibility for the real property owned and
leased or rented by the limited liability company.]

2 [351.440. Upon the issuance of the certificate of merger or the certificate of
consolidation by the secretary of state, the merger or consolidation shall be effected.]

2 [400.9-101. This article shall be known and may be cited as "Uniform
Commercial Code--Secured Transactions".]

2 [400.9-102. (1) Except as otherwise provided in section 400.9-104 on
excluded transactions, this article applies

3 (a) to any transaction (regardless of its form) which is intended to create a
4 security interest in personal property or fixtures including goods, documents,
5 instruments, general intangibles, chattel papers, or accounts; and also

6 (b) to any sale of accounts or chattel paper.

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(2) This article applies to security interests created by contract including pledge, assignment, chattel mortgage, chattel trust, trust deed, factor's lien, equipment trust, conditional sale, trust receipt, other lien or title retention contract and lease or consignment intended as security. This article does not apply to statutory liens except as provided in section 400.9-310.

(3) 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.]

[400.9-103. (1) Documents, instruments, letters of credit, and ordinary goods.

(a) This subsection applies to documents and instruments, rights to proceeds of written letters of credit, and to goods other than those covered by a certificate of title described in subsection (2), mobile goods described in subsection (3), and minerals described in subsection (5).

(b) Except as otherwise provided in this subsection, perfection and the effect of perfection or non-perfection of a security interest in collateral are governed by the law of the jurisdiction where the collateral is when the last event occurs on which is based the assertion that the security interest is perfected or unperfected.

(c) If the parties to a transaction creating a purchase money security interest in goods in one jurisdiction understand at the time that the security interest attaches that the goods will be kept in another jurisdiction, then the law of the other jurisdiction governs the perfection and the effect of perfection or non-perfection of the security interest from the time it attaches until thirty days after the debtor receives possession of the goods and thereafter if the goods are taken to the other jurisdiction before the end of the thirty-day period.

(d) When collateral is brought into and kept in this state while subject to a security interest perfected under the law of the jurisdiction from which the collateral was removed, the security interest remains perfected, but if action is required by Part 3 of this article to perfect the security interest,

(i) if the action is not taken before the expiration of the period of perfection in the other jurisdiction or the end of four months after the collateral is brought into this state, whichever period first expires, the security interest becomes unperfected at the end of that period and is thereafter deemed to have been unperfected as against a person who became a purchaser after removal;

(ii) if the action is taken before the expiration of the period specified in subparagraph (i), the security interest continues perfected thereafter;

(iii) for the purpose of priority over a buyer of consumer goods (subsection (2) of section 400.9-307), the period of the effectiveness of a filing in the jurisdiction from which the collateral is removed is governed by the rules with respect to perfection in subparagraphs (i) and (ii).

(2) Certificate of title.

(a) This subsection applies to goods covered by a certificate of title issued under a statute of this state or of another jurisdiction under the law of which

36 indication of a security interest on the certificate is required as a condition of
37 perfection.

38 (b) Except as otherwise provided in this subsection, perfection and the effect
39 of perfection or non-perfection of the security interest are governed by the law
40 (including the conflict of laws rules) of the jurisdiction issuing the certificate until
41 four months after the goods are removed from that jurisdiction and thereafter until
42 the goods are registered in another jurisdiction, but in any event not beyond surrender
43 of the certificate. After the expiration of that period, the goods are not covered by the
44 certificate of title within the meaning of this section.

45 (c) Except with respect to the rights of a buyer described in the next
46 paragraph, a security interest, perfected in another jurisdiction otherwise than by
47 notation on a certificate of title, in goods brought into this state and thereafter
48 covered by a certificate of title issued by this state is subject to the rules stated in
49 paragraph (d) of subsection (1).

50 (d) If goods are brought into this state while a security interest therein is
51 perfected in any manner under the law of the jurisdiction from which the goods are
52 removed and a certificate of title is issued by this state and the certificate does not
53 show that the goods are subject to the security interest or that they may be subject to
54 security interests not shown on the certificate, the security interest is subordinate to
55 the rights of a buyer of the goods who is not in the business of selling goods of that
56 kind to the extent that he gives value and receives delivery of the goods after issuance
57 of the certificate and without knowledge of the security interest.

58 (3) Accounts, general intangibles and mobile goods.

59 (a) This subsection applies to accounts (other than an account described in
60 subsection (5) on minerals) and general intangibles (other than uncertificated
61 securities) and to goods which are mobile and which are of a type normally used in
62 more than one jurisdiction, such as motor vehicles, trailers, rolling stock, airplanes,
63 shipping containers, road building and construction machinery and commercial
64 harvesting machinery and the like, if the goods are equipment or are inventory leased
65 or held for lease by the debtor to others, and are not covered by a certificate of title
66 described in subsection (2).

67 (b) The law (including the conflict of laws rules) of the jurisdiction in which
68 the debtor is located governs the perfection and the effect of perfection or
69 non-perfection of the security interest.

70 (c) If, however, the debtor is located in a jurisdiction which is not a part of
71 the United States, and which does not provide for perfection of the security interest
72 by filing or recording in that jurisdiction, the law of the jurisdiction in the United
73 States in which the debtor has its major executive office in the United States governs
74 the perfection and the effect of perfection or nonperfection of the security interest
75 through filing. In the alternative, if the debtor is located in a jurisdiction which is not
76 a part of the United States or Canada and the collateral is accounts or general
77 intangibles for money due or to become due, the security interest may be perfected
78 by notification to the account debtor. As used in this paragraph, "United States"

79 includes its territories and possessions and the Commonwealth of Puerto Rico.

80 (d) A debtor shall be deemed located at his place of business if he has one,
81 at his chief executive office if he has more than one place of business, otherwise at
82 his residence. If, however, the debtor is a foreign air carrier under the Federal
83 Aviation Act of 1958, as amended, it shall be deemed located at the designated office
84 of the agent upon whom service of process may be made on behalf of the foreign air
85 carrier.

86 (e) A security interest perfected under the law of the jurisdiction of the
87 location of the debtor is perfected until the expiration of four months after a change
88 of the debtor's location to another jurisdiction, or until perfection would have ceased
89 by the law of the first jurisdiction, whichever period first expires. Unless perfected
90 in the new jurisdiction before the end of that period, it becomes unperfected
91 thereafter and is deemed to have been unperfected as against a person who became
92 a purchaser after the change.

93 (4) Chattel paper.

94 The rules stated for goods in subsection (1) apply to a possessory security
95 interest in chattel paper. The rules stated for accounts in subsection (3) apply to a
96 nonpossessory security interest in chattel paper, but the security interest may not be
97 perfected by notification to the account debtor.

98 (5) Minerals.

99 Perfection and the effect of perfection or non-perfection of a security interest
100 which is created by a debtor who has an interest in minerals or the like (including oil
101 and gas) before extraction and which attaches thereto as extracted, or which attaches
102 to an account resulting from the sale thereof at the wellhead or minehead or governed
103 by the law (including the conflict of laws rules) of the jurisdiction wherein the
104 wellhead or minehead is located.

105 (6) Investment property.

106 (a) This subsection applies to investment property.

107 (b) Except as otherwise provided in paragraph (f), during the time that a
108 security certificate is located in a jurisdiction, perfection of a security interest, the
109 effect of perfection or nonperfection, and the priority of a security interest in the
110 certificated security represented thereby are governed by the local law of that
111 jurisdiction.

112 (c) Except as otherwise provided in paragraph (f), perfection of a security
113 interest, the effect of perfection or non-perfection, and the priority of a security
114 interest in an uncertificated security are governed by the local law of the issuer's
115 jurisdiction as specified in section 400.8-110(d).

116 (d) Except as otherwise provided in paragraph (f), perfection of a security
117 interest, the effect of perfection or non-perfection, and the priority of a security
118 interest in a security entitlement or securities account are governed by the local law
119 of the securities intermediary's jurisdiction as specified in section 400.8-110(e).

120 (e) Except as otherwise provided in paragraph (f), perfection of a security
121 interest, the effect of perfection or nonperfection, and the priority of a security

122 interest in a commodity contract or commodity account are governed by the local law
123 of the commodity intermediary's jurisdiction. The following rules determine a
124 "commodity intermediary's jurisdiction" for purposes of this paragraph:

125 (i) If an agreement between the commodity intermediary and commodity
126 customer specifies that it is governed by the law of a particular jurisdiction, that
127 jurisdiction is the commodity intermediary's jurisdiction.

128 (ii) If an agreement between the commodity intermediary and commodity
129 customer does not specify the governing law as provided in subparagraph (i), but
130 expressly specifies that the commodity account is maintained at an office in a
131 particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

132 (iii) If an agreement between the commodity intermediary and commodity
133 customer does not specify a jurisdiction as provided in subparagraphs (i) or (ii), the
134 commodity intermediary's jurisdiction is the jurisdiction in which is located the office
135 identified in an account statement as the office serving the commodity customer's
136 account.

137 (iv) If an agreement between the commodity intermediary and commodity
138 customer does not specify a jurisdiction as provided in subparagraphs (i) or (ii) and
139 an account statement does not identify an office serving the commodity customer's
140 account as provided in subparagraph (iii), the commodity intermediary's jurisdiction
141 is the jurisdiction in which is located the chief executive office of the commodity
142 intermediary.

143 (f) Perfection of a security interest by filing, automatic perfection of a
144 security interest in investment property granted by a broker or securities intermediary,
145 and automatic perfection of a security interest in a commodity contract or commodity
146 account granted by a commodity intermediary are governed by the local law of the
147 jurisdiction in which the debtor is located.]

[400.9-104. This article does not apply

2 (a) to a security interest subject to any statute of the United States to the
3 extent that such statute governs the rights of parties to and third parties affected by
4 transactions in particular types of property; or

5 (b) to a landlord's lien; or

6 (c) to a lien given by statute or other rule of law for services or materials
7 except as provided in section 400.9-310 on priority of such liens; or

8 (d) to a transfer of a claim for wages, salary or other compensation of an
9 employee; or

10 (e) to a transfer by a government or governmental subdivision or agency; or

11 (f) to a sale of accounts or chattel paper as part of a sale of the business out
12 of which they arose, or an assignment of accounts or chattel paper which is for the
13 purpose of collection only, or a transfer of a right to payment under a contract to an
14 assignee who is also to do the performance under the contract or a transfer of a single
15 account to an assignee in whole or partial satisfaction of a preexisting indebtedness;
16 or

17 (g) to a transfer of an interest or claim in or under any policy of insurance,

- 18 except as provided with respect to proceeds (section 400.9-306) and priorities and
19 proceeds (section 400.9-312); or
- 20 (h) to a right represented by a judgment (other than a judgment taken on a
21 right to payment which was collateral); or
- 22 (i) to any right of setoff; or
- 23 (j) except to the extent that provision is made for fixtures in section
24 400.9-313, to the creation or transfer of an interest in or lien on real estate, including
25 a lease or rents thereunder; or
- 26 (k) to a transfer in whole or in part of any claim arising out of tort; or
- 27 (l) to a transfer of an interest in any deposit account (subsection (1) of section
28 400.9-105), except as provided with respect to proceeds (section 400.9-306) and
29 priorities and proceeds (section 400.9-312); or
- 30 (m) to a transfer of an interest in a letter of credit other than the rights to
31 proceeds of a written letter of credit.]
- [400.9-105. (1) In this Article unless the context otherwise requires:
- 2 (a) "Account debtor" means the person who is obligated on an account,
3 chattel paper or general intangible;
- 4 (b) "Chattel paper" means a writing or writings which evidence both a
5 monetary obligation and a security interest in or a lease of specific goods, but a
6 charter or other contract involving the use or hire of a vessel is not chattel paper.
7 When a transaction is evidenced both by such a security agreement or a lease and by
8 an instrument or a series of instruments, the group of writings taken together
9 constitutes chattel paper;
- 10 (c) "Collateral" means the property subject to a security interest, and includes
11 accounts and chattel paper which have been sold;
- 12 (d) "Debtor" means the person who owes payment or other performance of
13 the obligation secured, whether or not he owns or has rights in the collateral, and
14 includes the seller of accounts or chattel paper. Where the debtor and the owner of
15 the collateral are not the same person, the term "debtor" means the owner of the
16 collateral in any provision of the article dealing with the collateral, the obligor in any
17 provision dealing with the obligation, and may include both where the context so
18 requires;
- 19 (e) "Deposit account" means a demand, time, savings, passbook or like
20 account maintained with a bank, savings and loan association, credit union or like
21 organization, other than an account evidenced by a certificate of deposit;
- 22 (f) "Document" means document of title as defined in the general definitions
23 of article 1 (section 400.1-201), and a receipt of the kind described in subsection (2)
24 of section 400.7-201;
- 25 (g) "Encumbrance" includes real estate mortgages and other liens on real
26 estate and all other rights in real estate that are not ownership interests;
- 27 (h) "Goods" includes all things which are movable at the time the security
28 interest attaches or which are fixtures (section 400.9-313), but does not include
29 money, documents, instruments, investment property, accounts, chattel paper, general

30 intangibles, or minerals or the like (including oil and gas) before extraction. "Goods"
31 also includes standing timber which is to be cut and removed under a conveyance or
32 contract for sale, the unborn young of animals and growing crops;

33 (i) "Instrument" means a negotiable instrument (defined in section
34 400.3-104), or any other writing which evidences a right to the payment of money
35 and is not itself a security agreement or lease and is of a type which is in ordinary
36 course of business transferred by delivery with any necessary endorsement or
37 assignment. The term does not include investment property;

38 (j) "Mortgage" means a consensual interest created by a real estate mortgage,
39 a deed of trust on real estate, or the like;

40 (k) An advance is made "pursuant to commitment" if the secured party has
41 bound himself to make it, whether or not a subsequent event of default or other event
42 not within his control has relieved or may relieve him from his obligation;

43 (l) "Security agreement" means an agreement which creates or provides for
44 a security interest;

45 (m) "Secured party" means a lender, seller or other person in whose favor
46 there is a security interest including a person to whom accounts or chattel paper have
47 been sold. When the holders of obligations issued under an indenture of trust,
48 equipment trust agreement or the like are represented by a trustee or other person, the
49 representative is the secured party;

50 (n) "Transmitting utility" means any person primarily engaged in the railroad,
51 street railway or trolley bus business, the electric or electronics communications
52 transmission business, the transmission of goods by pipeline, or the transmission or
53 the production and transmission of electricity, steam, gas or water, or the provision
54 of sewer service;

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

- 57 "Account". Section 400.9-106.
- 58 "Attach". Section 400.9-203.
- 59 "Commodity contract". Section 400.9-115.
- 60 "Commodity customer". Section 400.9-115.
- 61 "Commodity intermediary". Section 400.9-115.
- 62 "Construction mortgage". Section 400.9-313(1).
- 63 "Consumer goods". Section 400.9-109(1).
- 64 "Control". Section 400.9-115.
- 65 "Equipment". Section 400.9-109(2).
- 66 "Farm products". Section 400.9-109(3).
- 67 "Fixture". Section 400.9-313.
- 68 "Fixture filing". Section 400.9-313.
- 69 "General intangibles". Section 400.9-106.
- 70 "Inventory". Section 400.9-109(4).
- 71 "Investment property". Section 400.9-115.
- 72 "Letter of credit". Section 400.5-102.

- 73 "Lien creditor". Section 400.9-301(3).
- 74 "Proceeds". Section 400.9-306(1).
- 75 "Purchase money security interest". Section 400.9-107.
- 76 "Rights to proceeds of a written letter of credit". Section 400.5- 114(a).
- 77 "United States". Section 400.9-103.
- 78 (3) The following definitions in other articles apply to this article:
- 79 "Broker". Section 400.8-102.
- 80 "Certificated security". Section 400.8-102.
- 81 "Check". Section 400.3-104.
- 82 "Clearing corporation". Section 400.8-102.
- 83 "Contract for sale". Section 400.2-106.
- 84 "Control". Section 400.8-106.
- 85 "Delivery". Section 400.8-301.
- 86 "Entitlement holder". Section 400.8-102.
- 87 "Financial asset". Section 400.8-102.
- 88 "Holder in due course". Section 400.3-302.
- 89 "Note". Section 400.3-104.
- 90 "Sale". Section 400.2-106.
- 91 "Securities intermediary". Section 400.8-102.
- 92 "Security". Section 400.8-102.
- 93 "Security certificate". Section 400.8-102.
- 94 "Security entitlement". Section 400.8-102.
- 95 "Uncertificated security". Section 400.8-102.

96 (4) In addition article 1 contains general definitions and principles of
 97 construction and interpretation applicable throughout this article.]

2 [400.9-106. "Account" means any right to payment for goods sold or leased
 3 or for services rendered which is not evidenced by an instrument or chattel paper,
 4 whether or not it has been earned by performance. "General intangibles" means any
 5 personal property (including things in action) other than goods, accounts, chattel
 6 paper, documents, investment property, instruments, rights to proceeds of written
 7 letters of credit, and money. All rights to payment earned or unearned under a charter
 8 or other contract involving the use or hire of a vessel and all rights incident to the
 charter or contract are accounts.]

2 [400.9-107. A security interest is a "purchase money security interest" to the
 extent that it is

3 (a) taken or retained by the seller of the collateral to secure all or part of its
 4 price; or

5 (b) taken by a person who by making advances or incurring an obligation
 6 gives value to enable the debtor to acquire rights in or the use of collateral if such
 7 value is in fact so used.]

2 [400.9-108. Where a secured party makes an advance, incurs an obligation,
 3 releases a perfected security interest, or otherwise gives new value which is to be
 secured in whole or in part by after-acquired property his security interest in the

4 after-acquired collateral shall be deemed to be taken for new value and not as security
5 for an antecedent debt if the debtor acquires his rights in such collateral either in the
6 ordinary course of his business or under a contract of purchase made pursuant to the
7 security agreement within a reasonable time after new value is given.]

[400.9-109. Goods are

2 (1) "Consumer goods" if they are used or bought for use primarily for
3 personal, family or household purposes;

4 (2) "Equipment" if they are used or bought for use primarily in business
5 (including farming or a profession) or by a debtor who is a nonprofit organization or
6 a governmental subdivision or agency or if the goods are not included in the
7 definitions of inventory, farm products or consumer goods;

8 (3) "Farm products" if they are crops or livestock or supplies used or
9 produced in farming operations or if they are products of crops or livestock in their
10 unmanufactured states (such as ginned cotton, woolclip, maple syrup, milk and eggs),
11 and if they are in the possession of a debtor engaged in raising, fattening, grazing or
12 other farming operations. If goods are farm products they are neither equipment nor
13 inventory;

14 (4) "Inventory" if they are held by a person who holds them for sale or lease
15 or to be furnished under contracts of service or if he has so furnished them, or if they
16 are raw materials, work in process or materials used or consumed in a business.
17 Inventory of a person is not to be classified as his equipment.]

2 [400.9-110. For the purposes of this article any description of personal
3 property or real estate is sufficient whether or not it is specific if it reasonably
4 identifies what is described.]

2 [400.9-111. The creation of a security interest is not a bulk transfer under
3 article 6 (see section 400.6-103).]

2 [400.9-112. Unless otherwise agreed, when a secured party knows that
3 collateral is owned by a person who is not the debtor, the owner of the collateral is
4 entitled to receive from the secured party any surplus under section 400.9-502(2) or
5 under section 400.9-504(1), and is not liable for the debt or for any deficiency after
6 resale, and he has the same right as the debtor

7 (a) to receive statements under section 400.9-208;

8 (b) to receive notice of and to object to a secured party's proposal to retain
9 the collateral in satisfaction of the indebtedness under section 400.9-505;

10 (c) to redeem the collateral under section 400.9-506;

11 (d) to obtain injunctive or other relief under section 400.9-507(1); and

(e) to recover losses caused to him under section 400.9-208(2).]

2 [400.9-113. A security interest arising solely under the Article on Sales
3 (Article 2) or the Article on Leases (Article 2A) is subject to the provisions of this
4 Article except that to the extent that and so long as the debtor does not have or does
5 not lawfully obtain possession of the goods

6 (a) no security agreement is necessary to make the security interest
enforceable; and

7 (b) no filing is required to perfect the security interest; and
8 (c) the rights of the secured party on default by the debtor are governed (i)
9 by the Article on Sales (Article 2) in the case of a security interest arising solely
10 under such Article or (ii) by the Article on Leases (Article 2A) in the case of a
11 security interest arising solely under such Article.]

2 [400.9-114. (1) A person who delivers goods under a consignment which is
3 not a security interest and who would be required to file under this article by
4 paragraph (3)(c) of section 400.2-326 has priority over a secured party who is or
5 becomes a creditor of the consignee and who would have a perfected security interest
6 in the goods if they were the property of the consignee, and also has priority with
7 respect to identifiable cash proceeds received on or before delivery of the goods to
8 a buyer, if

9 (a) the consignor complies with the filing provision of the article on sales
10 with respect to consignments (paragraph (3)(c) of section 400.2-326) before the
11 consignee receives possession of the goods; and

12 (b) the consignor gives notification in writing to the holder of the security
13 interest if the holder has filed a financing statement covering the same types of goods
14 before the date of the filing made by the consignor; and

15 (c) the holder of the security interest receives the notification within five
16 years before the consignee receives possession of the goods; and

17 (d) the notification states that the consignor expects to deliver goods on
18 consignment to the consignee, describing the goods by item or type.

19 (2) In the case of a consignment which is not a security interest and in which
20 the requirements of the preceding subsection have not been met, a person who
21 delivers goods to another is subordinate to a person who would have a perfected
22 security interest in the goods if they were the property of the debtor.

23 (3) A person who consigns consumer goods, except for motor vehicles,
24 trailers, manufactured or mobile homes not for highway use, and any type of
25 watercraft, as defined in chapter 306, RSMo, to a consignee to sell shall have the sole
26 obligation to notify the lienholder of the goods to be sold, that such goods will be
27 offered for sale on a certain date. At no time shall the consignee be held liable to the
28 lienholder, providing the consignee sells in good faith and is acting only as the agent
for the consignor.]

[400.9-115. (1) In this article:

2 (a) "Commodity account" means an account maintained by a commodity
3 intermediary in which a commodity contract is carried for commodity customers;

4 (b) "Commodity contract" means a commodity futures contract, an option on
5 a commodity futures contract, a commodity option, or other contract that, in each
6 case, is:

7 (i) Traded on or subject to the rules of a board of trade that has been
8 designated as a contract market for such a contract pursuant to the federal
9 commodities laws; or

10 (ii) Traded on a foreign commodity board of trade, exchange or market, and

- 11 is carried on the books of a commodity intermediary for a commodity customer;
- 12 (c) "Commodity customer" means a person for whom a commodity
- 13 intermediary carries a commodity contract on its books;
- 14 (d) "Commodity intermediary" means:
- 15 (i) A person who is registered as a futures commission merchant under the
- 16 federal commodities laws; or
- 17 (ii) A person who in the ordinary course of its business provides clearance
- 18 or settlement services for a board of trade that has been designated as a contract
- 19 market pursuant to the federal commodities laws;
- 20 (e) "Control" with respect to a certificated security, uncertificated security,
- 21 or security entitlement has the meaning specified in section 400.8-106. A secured
- 22 party has control over a commodity contract if by agreement among the commodity
- 23 customer, the commodity intermediary, and the secured party, the commodity
- 24 intermediary has agreed that it will apply any value distributed on account of the
- 25 commodity contract as directed by the secured party without further consent by the
- 26 commodity customer. If a commodity customer grants a security interest in a
- 27 commodity contract to its own commodity intermediary, the commodity intermediary
- 28 as secured party has control. A secured party has control over a securities account
- 29 or commodity account if the secured party has control over all security entitlements
- 30 or commodity contracts carried in the securities account or commodity account;
- 31 (f) "Investment property" means:
- 32 (i) A security, whether certificated or uncertificated;
- 33 (ii) A security entitlement;
- 34 (iii) A securities account;
- 35 (iv) A commodity contract; or
- 36 (v) A commodity account.
- 37 (2) Attachment or perfection of a security interest in a securities account is
- 38 also attachment or perfection of a security interest in all security entitlements carried
- 39 in the securities account. Attachment or perfection of a security interest in a
- 40 commodity account is also attachment or perfection of a security interest in all
- 41 commodity contracts carried in the commodity account.
- 42 (3) A description of collateral in a security agreement or financing statement
- 43 is sufficient to create or perfect a security interest in a certificated security,
- 44 uncertificated security, security entitlement, securities account, commodity contract,
- 45 or commodity account whether it describes the collateral by those terms, or as
- 46 investment property, or by description of the underlying security, financial asset, or
- 47 commodity contract. A description of investment property collateral in a security
- 48 agreement or financing statement is sufficient if it identifies the collateral by specific
- 49 listing, by category, by quantity, by a computational or allocational formula or
- 50 procedure, or by any other method, if the identity of the collateral is objectively
- 51 determinable.
- 52 (4) Perfection of a security interest in investment property is governed by the
- 53 following rules:

- 54 (a) A security interest in investment property may be perfected by control;
55 (b) Except as otherwise provided in paragraphs (c) and (d), a security interest
56 in investment property may be perfected by filing;
- 57 (c) If the debtor is a broker or securities intermediary, a security interest in
58 investment property is perfected when it attaches. The filing of a financing statement
59 with respect to a security interest in investment property granted by a broker or
60 securities intermediary has no effect for purposes of perfection or priority with
61 respect to that security interest;
- 62 (d) If a debtor is a commodity intermediary, a security interest in a
63 commodity contract or a commodity account is perfected when it attaches. The filing
64 of a financing statement with respect to a security interest in a commodity contract
65 or a commodity account granted by a commodity intermediary has no effect for
66 purposes of perfection or priority with respect to that security interest.
- 67 (5) Priority between conflicting security interests in the same investment
68 property is governed by the following rules:
- 69 (a) A security interest of a secured party who has control over investment
70 property has priority over a security interest of a secured party who does not have
71 control over the investment property;
- 72 (b) Except as otherwise provided in paragraphs (c) and (d), conflicting
73 security interest of secured parties each of whom has control rank equally;
- 74 (c) Except as otherwise agreed by the securities intermediary, a security
75 interest in a security entitlement or a securities account granted to the debtor's own
76 securities intermediary has priority over any security interest granted by the debtor
77 to another secured party;
- 78 (d) Except as otherwise agreed by the commodity intermediary, a security
79 interest in a commodity contract or a commodity account granted to the debtor's own
80 commodity intermediary has priority over any security interest granted by the debtor
81 to another secured party;
- 82 (e) Conflicting security interests granted by a broker, a securities
83 intermediary, or a commodity intermediary which are perfected without control rank
84 equally;
- 85 (f) In all other cases, priority between conflicting security interest in
86 investment property is governed by section 400.9-312(5), (6), and (7). Section
87 400.9-312(4) does not apply to investment property.
- 88 (6) If a security certificate in registered form is delivered to a secured party
89 pursuant to agreement, a written security agreement is not required for attachment or
90 enforceability of the security interest, delivery suffices for perfection of the security
91 interest, and the security interest has priority over a conflicting security interest
92 perfected by means other than control, even if a necessary indorsement is lacking.]
- 2 [400.9-116. (1) If a person buys a financial asset through a securities
3 intermediary in a transaction in which the buyer is obligated to pay the purchase price
4 to the securities intermediary at the time of the purchase, and the securities
intermediary credits the financial asset to the buyer's securities account before the

5 buyer pays the securities intermediary, the securities intermediary has a security
6 interest in the buyer's security entitlement securing the buyer's obligation to pay. A
7 security agreement is not required for attachment or enforceability of the security
8 interest, and the security interest is automatically perfected.

9 (2) If a certificated security, or other financial asset represented by a writing
10 which in the ordinary course of business is transferred by delivery with any necessary
11 indorsement or assignment is delivered pursuant to an agreement between persons
12 in the business of dealing with such securities or financial assets and the agreement
13 calls for delivery versus payment, the person delivering the certificate or other
14 financial asset has a security interest in the certificated security or other financial
15 asset securing the seller's right to receive payment. A security agreement is not
16 required for attachment or enforceability of the security interest, and the security
17 interest is automatically perfected.]

2 [400.9-201. Except as otherwise provided by this chapter a security
3 agreement is effective according to its terms between the parties, against purchasers
4 of the collateral and against creditors. Nothing in this article validates any charge or
5 practice illegal under any statute or regulation thereunder governing usury, small
6 loans, retail installment sales, or the like, or extends the application of any such
statute or regulation to any transaction not otherwise subject thereto.]

2 [400.9-202. Each provision of this article with regard to rights, obligations
3 and remedies applies whether title to collateral is in the secured party or in the
debtor.]

2 [400.9-203. (1) Subject to the provisions of section 400.4-208 on the
3 security interest of a collecting bank, sections 400.9-115 and 400.9-116 on security
4 interests in investment property, and section 400.9-113 on a security interest arising
5 under the article on sales, a security interest is not enforceable against the debtor or
6 third parties with respect to the collateral and does not attach unless:

7 (a) the collateral is in the possession of the secured party pursuant to
8 agreement, the collateral is investment property and the secured party has control
9 pursuant to agreement, or the debtor has signed a security agreement which contains
10 a description of the collateral and in addition, when the security interest covers
11 timber to be cut, a description of the land concerned;

12 (b) value has been given; and

13 (c) the debtor has rights in the collateral.

14 (2) A security interest attaches when it becomes enforceable against the
15 debtor with respect to the collateral. Attachment occurs as soon as all of the events
16 specified in subsection (1) have taken place unless explicit agreement postpones the
17 time of attaching.

18 (3) Unless otherwise agreed a security agreement gives the secured party the
19 rights to proceeds provided by section 400.9-306.

20 (4) A transaction, although subject to this article, is also subject to sections
21 365.010 to 365.160, RSMo, and sections 408.100 to 408.562, RSMo, and in the case
of conflict between the provisions of this article and any such statute, the provisions

22 of such statute control. Failure to comply with any applicable statute has only the
23 effect which is specified therein.]

2 [400.9-204. (1) Except as provided in subsection (2), a security agreement
3 may provide that any or all obligations covered by the security agreement are to be
4 secured by after-acquired collateral.

5 (2) No security interest attaches under an after-acquired property clause to
6 consumer goods other than accessions (section 400.9-314) when given as additional
7 security unless the debtor acquires rights in them within ten days after the secured
8 party gives value.

9 (3) Obligations covered by a security agreement may include future advances
10 or other value whether or not the advances or value are given pursuant to
commitment (subsection (1) of section 400.9-105).]

2 [400.9-205. A security interest is not invalid or fraudulent against creditors
3 by reason of liberty in the debtor to use, commingle or dispose of all or part of the
4 collateral (including returned or repossessed goods) or to collect or compromise
5 accounts or chattel paper, or to accept the return of goods or make repossessions or
6 to use, commingle or dispose of proceeds, or by reason of the failure of the secured
7 party to require the debtor to account for proceeds or replace collateral. This section
8 does not relax the requirements of possession where perfection of a security interest
depends upon possession of the collateral by the secured party or by a bailee.]

2 [400.9-206. (1) Subject to any statute or decision which establishes a
3 different rule for buyers or lessees of consumer goods, an agreement by a buyer or
4 lessee that he will not assert against an assignee any claim or defense which he may
5 have against the seller or lessor is enforceable by an assignee who takes his
6 assignment for value, in good faith and without notice of a claim or defense, except
7 as to defenses of a type which may be asserted against a holder in due course of a
8 negotiable instrument under the article on commercial paper (article 3). A buyer who
9 as part of one transaction signs both a negotiable instrument and a security agreement
makes such an agreement.

10 (2) When a seller retains a purchase money security interest in goods the
11 article on sales (article 2) governs the sale and any disclaimer, limitation or
12 modification of the seller's warranties.]

2 [400.9-207. (1) A secured party must use reasonable care in the custody and
3 preservation of collateral in his possession. In the case of an instrument or chattel
4 paper reasonable care includes taking necessary steps to preserve rights against prior
5 parties unless otherwise agreed.

6 (2) Unless otherwise agreed, when collateral is in the secured party's
7 possession

8 (a) reasonable expenses (including the cost of any insurance and payment of
9 taxes or other charges) incurred in the custody, preservation, use or operation of the
collateral are chargeable to the debtor and are secured by the collateral;

10 (b) the risk of accidental loss or damage is on the debtor to the extent of any
11 deficiency in any effective insurance coverage;

12 (c) the secured party may hold as additional security any increase or profits
13 (except money) received from the collateral, but money so received, unless remitted
14 to the debtor, shall be applied in reduction of the secured obligation;

15 (d) the secured party must keep the collateral identifiable but fungible
16 collateral may be commingled;

17 (e) the secured party may repledge the collateral upon terms which do not
18 impair the debtor's right to redeem it.

19 (3) A secured party is liable for any loss caused by his failure to meet any
20 obligation imposed by the preceding subsections but does not lose his security
21 interest.

22 (4) A secured party may use or operate the collateral for the purpose of
23 preserving the collateral or its value or pursuant to the order of a court of appropriate
24 jurisdiction or, except in the case of consumer goods, in the manner and to the extent
25 provided in the security agreement.]

[400.9-208. (1) A debtor may sign a statement indicating what he believes
2 to be the aggregate amount of unpaid indebtedness as of a specified date and may
3 send it to the secured party with a request that the statement be approved or corrected
4 and returned to the debtor. When the security agreement or any other record kept by
5 the secured party identifies the collateral a debtor may similarly request the secured
6 party to approve or correct a list of the collateral.

7 (2) The secured party must comply with such a request within two weeks
8 after receipt by sending a written correction or approval. If the secured party claims
9 a security interest in all of a particular type of collateral owned by the debtor he may
10 indicate that fact in his reply and need not approve or correct an itemized list of such
11 collateral. If the secured party without reasonable excuse fails to comply he is liable
12 for any loss caused to the debtor thereby; and if the debtor has properly included in
13 his request a good faith statement of the obligation or a list of the collateral or both
14 the secured party may claim a security interest only as shown in the statement against
15 persons misled by his failure to comply. If he no longer has an interest in the
16 obligation or collateral at the time the request is received he must disclose the name
17 and address of any successor in interest known to him and he is liable for any loss
18 caused to the debtor as a result of failure to disclose. A successor in interest is not
19 subject to this section until a request is received by him.

20 (3) A debtor is entitled to such a statement once every six months without
21 charge. The secured party may require payment of a charge not exceeding ten dollars
22 for each additional statement furnished.]

[400.9-301. (1) Except as otherwise provided in subsection (2), an
2 unperfected security interest is subordinate to the rights of

3 (a) persons entitled to priority under section 400.9-312;

4 (b) a person who becomes a lien creditor before the security interest is
5 perfected;

6 (c) in the case of goods, instruments, documents, and chattel paper, a person
7 who is not a secured party and who is a transferee in bulk or other buyer not in

8 ordinary course of business to the extent that he gives value and receives delivery of
9 the collateral without knowledge of the security interest and before it is perfected;

10 (d) in the case of accounts, general intangibles, and investment property, a
11 person who is not a secured party and who is a transferee to the extent that he gives
12 value without knowledge of the security interest and before it is perfected.

13 (2) If the secured party files with respect to a purchase money security
14 interest before or within twenty days after the debtor receives possession of the
15 collateral, he takes priority over the rights of a transferee in bulk or of a lien creditor
16 which arise between the time the security interest attaches and the time of filing.

17 (3) A "lien creditor" means a creditor who has acquired a lien on the property
18 involved by attachment, levy or the like and includes an assignee for benefit of
19 creditors from the time of assignment, and a trustee in bankruptcy from the date of
20 the filing of the petition or a receiver in equity from the time of appointment.

21 (4) A person who becomes a lien creditor while a security interest is
22 perfected takes subject to the security interest only to the extent that it secures
23 advances made before he becomes a lien creditor or within forty-five days thereafter
24 or made without knowledge of the lien or pursuant to a commitment entered into
25 without knowledge of the lien.]

2 [400.9-302. (1) A financing statement must be filed to perfect all security
interests except the following:

3 (a) a security interest in collateral in possession of the secured party under
4 section 400.9-305;

5 (b) a security interest temporarily perfected in instruments, certificated
6 securities, or documents without delivery under section 400.9-304 or in proceeds for
7 a ten-day period under section 400.9-306;

8 (c) a security interest created by an assignment of a beneficial interest in a
9 trust or a decedent's estate;

10 (d) a purchase money security interest in consumer goods; but filing is
11 required for a motor vehicle required to be registered; and fixture filing is required
12 for priority over conflicting interests in fixtures to the extent provided in section
13 400.9-313;

14 (e) an assignment of accounts which does not alone or in conjunction with
15 other assignments to the same assignee transfer a significant part of the outstanding
16 accounts of the assignor;

17 (f) a security interest of a collecting bank (section 400.4-208) or in securities
18 (section 400.8-321) or arising under the article on sales (see section 400.9-113) or
19 covered in subsection (3) of this section;

20 (g) an assignment for the benefit of all the creditors of the transferor, and
21 subsequent transfers by the assignee thereunder;

22 (h) a security interest in investment property which is perfected without filing
23 under section 400.9-115 or section 400.9-116.

24 (2) If a secured party assigns a perfected security interest, no filing under this
25 article is required in order to continue the perfected status of the security interest

26 against creditors of and transferees from the original debtor.

27 (3) The filing of a financing statement otherwise required by this article is
28 not necessary or effective to perfect a security interest in property subject to

29 (a) a statute or treaty of the United States which provides for a national or
30 international registration or a national or international certificate of title or which
31 specifies a place of filing different from that specified in this article for filing of the
32 security interests; or

33 (b) section 301.190, RSMo, or section 306.400, RSMo; but during any period
34 in which collateral is inventory held for sale by a person who is in the business of
35 selling goods of that kind, the filing provisions of this article (part 4) apply to a
36 security interest in that collateral created by him as debtor; or

37 (c) a certificate of title statute of another jurisdiction under the law of which
38 indication of a security interest on the certificate is required as a condition of
39 perfection (subsection (2) of section 400.9-103).

40 (4) Compliance with a statute or treaty described in subsection (3) is
41 equivalent to the filing of a financing statement under this article, and a security
42 interest in property subject to the statute or treaty can be perfected only by
43 compliance therewith, except as provided in section 400.9-103 on multiple state
44 transactions. Duration and renewal of perfection of a security interest perfected by
45 compliance with the statute or treaty or governed by the provisions of the statute or
46 treaty; in other respects the security interest is subject to this article.]

2 [400.9-303. (1) A security interest is perfected when it has attached and
3 when all of the applicable steps required for perfection have been taken. Such steps
4 are specified in sections 400.9-115, 400.9-302, 400.9-304, 400.9-305 and 400.9-306.
5 If such steps are taken before the security interest attaches, it is perfected at the time
6 when it attaches.

7 (2) If a security interest is originally perfected in any way permitted under
8 this article and is subsequently perfected in some other way under this article, without
9 an intermediate period when it was unperfected, the security interest shall be deemed
10 to be perfected continuously for the purposes of this article.]

11 [400.9-304. (1) A security interest in chattel paper or negotiable documents
12 may be perfected by filing. A security interest in the rights to proceeds of a written
13 letter of credit can be perfected only by the secured party's taking possession of the
14 letter of credit. A security interest in money or instruments (other than instruments
15 which constitute part of chattel paper) can be perfected only by the secured party's
16 taking possession, except as provided in subsections (4) and (5) of this section and
17 subsections (2) and (3) of section 400.9-306 on proceeds.

18 (2) During the period that goods are in the possession of the issuer of a
19 negotiable document therefor, a security interest in the goods is perfected by
20 perfecting a security interest in the document, and any security interest in the goods
21 otherwise perfected during such period is subject thereto.

22 (3) A security interest in goods in the possession of a bailee other than one
23 who has issued a negotiable document therefor is perfected by issuance of a

14 document in the name of the secured party or by the bailee's receipt of notification
15 of the secured party's interest or by filing as to the goods.

16 (4) A security interest in instruments, certificated securities, or negotiable
17 documents is perfected without filing or the taking of possession for a period of
18 twenty-one days from the time it attaches to the extent that it arises for new value
19 given under a written security agreement.

20 (5) A security interest remains perfected for a period of twenty-one days
21 without filing where a secured party having a perfected security interest in an
22 instrument, a certificated security, a negotiable document or goods in possession of
23 a bailee other than one who has issued a negotiable document therefor:

24 (a) makes available to the debtor the goods or documents representing the
25 goods for the purpose of ultimate sale or exchange or for the purpose of loading,
26 unloading, storing, shipping, transshipping, manufacturing, processing or otherwise
27 dealing with them in a manner preliminary to their sale or exchange, but priority
28 between conflicting security interests in the goods is subject to subsection (3) of
29 section 400.9-312; or

30 (b) delivers the instrument or certificated security to the debtor for the
31 purpose of ultimate sale or exchange or of presentation, collection, renewal, or
32 registration of transfer.

33 (6) After the twenty-one day period in subsections (4) and (5) perfection
34 depends upon compliance with applicable provisions of this article.]

2 [400.9-305. A security interest in letters of credit and advices of credit
3 (subsection (2)(a) of section 400.5-116), goods, instruments, money, negotiable
4 documents, or chattel paper may be perfected by the secured party's taking possession
5 of the collateral. A security interest in the right to proceeds of a written letter of
6 credit may be perfected by the secured party's taking possession of the letter of credit.
7 If such collateral other than goods covered by a negotiable document is held by a
8 bailee, the secured party is deemed to have possession from the time the bailee
9 receives notification of the secured party's interest. A security interest is perfected
10 by possession from the time possession is taken without relation back and continues
11 only so long as possession is retained, unless otherwise specified in this article. The
12 security interest may be otherwise perfected as provided in this article before or after
the period of possession by the secured party.]

2 [400.9-306. (1) "Proceeds" includes whatever is received upon the sale,
3 exchange, collection or other disposition of collateral or proceeds. Insurance payable
4 by reason of loss or damage to the collateral is proceeds, except to the extent that it
5 is payable to a person other than a party to the security agreement. Any payments or
6 distributions made with respect to investment property collateral are proceeds.
7 Money, checks, deposit accounts and the like are "cash proceeds". All other proceeds
8 are "non-cash proceeds".

9 (2) Except where this article otherwise provides, a security interest continues
10 in collateral notwithstanding sale, exchange or other disposition thereof unless the
disposition was authorized by the secured party in the security agreement or

11 otherwise provided the creditor agrees in writing, and also continues in any
12 identifiable proceeds including collections received by the debtor.

13 (3) The security interest in proceeds is a continuously perfected security
14 interest if the interest in the original collateral was perfected but it ceases to be a
15 perfected security interest and becomes unperfected ten days after receipt of the
16 proceeds by the debtor unless

17 (a) a filed financing statement covers the original collateral and the proceeds
18 are collateral in which a security interest may be perfected by filing in the office or
19 offices where the financing statement has been filed and, if the proceeds are acquired
20 with cash proceeds, the description of collateral in the financing statement indicates
21 the types of property constituting the proceeds;

22 (b) a filed financing statement covers the original collateral and the proceeds
23 are identifiable cash proceeds;

24 (c) the original collateral was investment property and the proceeds are
25 identifiable cash proceeds; or

26 (d) the security interest in the proceeds is perfected before the expiration of
27 the ten-day period. Except as provided in this section, a security interest in proceeds
28 can be perfected only by the methods or under the circumstances permitted in this
29 article for original collateral of the same type.

30 (4) In the event of insolvency proceedings instituted by or against a debtor,
31 a secured party with a perfected security interest in proceeds has a perfected security
32 interest only in the following proceeds:

33 (a) in identifiable non-cash proceeds and in separate deposit accounts
34 containing only proceeds;

35 (b) in identifiable cash proceeds in the form of money which is neither
36 commingled with other money nor deposited in a deposit account prior to the
37 insolvency proceedings;

38 (c) in identifiable cash proceeds in the form of checks and the like which are
39 not deposited in a deposit account prior to the insolvency proceedings; and

40 (d) in all cash and deposit accounts of the debtor in which proceeds have
41 been commingled with other funds, but the perfected security interest under this
42 paragraph (d) is

43 (i) subject to any right of setoff; and

44 (ii) limited to an amount not greater than the amount of any cash proceeds
45 received by the debtor within ten days before the institution of the insolvency
46 proceedings less the sum of (I) the payments to the secured party on account of cash
47 proceeds received by the debtor during such period and (II) the cash proceeds
48 received by the debtor during such period to which the secured party is entitled under
49 paragraphs (a) through (c) of this subsection (4).

50 (5) If a sale of goods results in an account or chattel paper which is
51 transferred by the seller to a secured party, and if the goods are returned to or are
52 repossessed by the seller or the secured party, the following rules determine
53 priorities:

54 (a) If the goods were collateral at the time of sale, for an indebtedness of the
55 seller which is still unpaid, the original security interest attaches again to the goods
56 and continues as a perfected security interest if it was perfected at the time when the
57 goods were sold. If the security interest was originally perfected by a filing which
58 is still effective, nothing further is required to continue the perfected status; in any
59 other case, the secured party must take possession of the returned or repossessed
60 goods or must file.

61 (b) An unpaid transferee of the chattel paper has a security interest in the
62 goods against the transferor. Such security interest is prior to a security interest
63 asserted under paragraph (a) to the extent that the transferee of the chattel paper was
64 entitled to priority under section 400.9-308.

65 (c) An unpaid transferee of the account has a security interest in the goods
66 against the transferor. Such security interest is subordinate to a security interest
67 asserted under paragraph (a).

68 (d) A security interest of an unpaid transferee asserted under paragraph (b)
69 or (c) must be perfected for protection against creditors of the transferor and
70 purchasers of the returned or repossessed goods.]

2 [400.9-307. (1) A buyer in ordinary course of business (subsection (9) of
3 section 400.1-201) other than a person buying farm products from a person engaged
4 in farming operations takes free of a security interest created by his seller even
5 though the security interest is perfected and even though the buyer knows of its
6 existence.

7 (2) In the case of consumer goods and in the case of farm equipment having
8 an original purchase price not in excess of five hundred dollars (other than fixtures,
9 see section 400.9-313), a buyer takes free of a security interest even though perfected
10 if he buys without knowledge of the security interest, for value and for his own
11 personal, family or household purposes or his own farming operations unless prior
12 to the purchase the secured party has filed a financing statement covering such
goods.]

2 [400.9-308. A purchaser of chattel paper or an instrument who gives new
3 value and takes possession of it in the ordinary course of his business has priority
4 over a security interest in the chattel paper or instrument

5 (a) which is perfected under section 400.9-304 (permissive filing and
6 temporary perfection) or under section 400.9-306 (perfection as to proceeds) if he
7 acts without knowledge that the specific paper or instrument is subject to a security
8 interest; or

9 (b) which is claimed merely as proceeds of inventory subject to a security
10 interest (section 400.9-306) even though he knows that the specific paper or
instrument is subject to the security interest.]

2 [400.9-309. Nothing in this article limits the rights of a holder in due course
3 of a negotiable instrument (section 400.3-302) or a holder to whom a negotiable
4 document of title has been duly negotiated (section 400.7-501) or a protected
purchaser of a security (section 400.8-303) and such holders or purchasers take

5 priority over an earlier security interest even though perfected. Filing under this
6 article does not constitute notice of the security interest to such holders or
7 purchasers.]

[400.9-310. When a person in the ordinary course of his business furnishes
2 services or materials with respect to goods subject to a security interest, a lien upon
3 goods in the possession of such person given by statute or rule of law for such
4 materials or services takes priority over a perfected security interest unless the lien
5 is statutory and the statute expressly provides otherwise.]

[400.9-311. The debtor's rights in collateral may be voluntarily or
2 involuntarily transferred (by way of sale, creation of a security interest, attachment,
3 levy, garnishment or other judicial process) notwithstanding a provision in the
4 security agreement prohibiting any transfer or making the transfer constitute a
5 default.]

[400.9-312. (1) The rules of priority stated in other sections of this part and
2 in the following sections shall govern when applicable: section 400.4-210, with
3 respect to the security interests of collecting banks in items being collected,
4 accompanying documents and proceeds; section 400.9-103 on security interests
5 related to other jurisdictions; section 400.9-114 on consignments; section 400.9-115
6 on security interests in investment property.

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

14 (3) A perfected purchase money security interest in inventory has priority
15 over a conflicting security interest in the same inventory and also has priority in
16 identifiable cash proceeds received on or before the delivery of the inventory to a
17 buyer if

18 (a) the purchase money security interest is perfected at the time the debtor
19 receives possession of the inventory; and

20 (b) the purchase money secured party gives notification in writing to the
21 holder of the conflicting security interest if the holder had filed a financing statement
22 covering the same types of inventory (i) before the date of the filing made by the
23 purchase money secured party, or (ii) before the beginning of the twenty-one-day
24 period where the purchase money security interest is temporarily perfected without
25 filing or possession (subsection (5) of section 400.9-304); and

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

28 (d) the notification states that the person giving the notice has or expects to
29 acquire a purchase money security interest in inventory of the debtor, describing such
30 inventory by item or type.

31 (4) A purchase money security interest in collateral other than inventory has
32 priority over a conflicting security interest in the same collateral or its proceeds if the
33 purchase money security interest is perfected at the time the debtor receives
34 possession of the collateral or within twenty days thereafter.

35 (5) In all cases not governed by other rules stated in this section (including
36 cases of purchase money security interests which do not qualify for the special
37 priorities set forth in subsections (3) and (4) of this section), priority between
38 conflicting security interests in the same collateral shall be determined according to
39 the following rules:

40 (a) Conflicting security interests rank according to priority in time of filing
41 or perfection. Priority dates from the time a filing is first made covering the
42 collateral or the time the security interest is first perfected, whichever is earlier,
43 provided that there is no period thereafter when there is neither filing nor perfection.

44 (b) So long as conflicting security interests are unperfected, the first to attach
45 has priority.

46 (6) For the purposes of subsection (5) a date of filing or perfection as to
47 collateral is also a date of filing or perfection as to proceeds.

48 (7) If future advances are made while a security interest is perfected by filing,
49 the taking of possession, or under section 400.9-115 or section 400.9-116 on
50 investment property, the security interest has the same priority for the purposes of
51 subsection (5) or section 400.9-115(5) with respect to the future advances as it does
52 with respect to the first advance. If a commitment is made before or while the
53 security interest is so perfected, the security interest has the same priority with
54 respect to advances made pursuant thereto. In other cases a perfected security
55 interest has priority from the date the advance is made.]

2 [400.9-313. (1) In this section and in the provisions of part 4 of this article
referring to fixture filing, unless the context otherwise requires

3 (a) goods are "fixtures" when they become so related to particular real estate
4 that an interest in them arises under real estate law;

5 (b) a "fixture filing" is the filing in the office where a mortgage on the real
6 estate would be filed or recorded of a financing statement covering goods which are
7 or are to become fixtures and conforming to the requirements of subsection (5) of
8 section 400.9-402;

9 (c) a mortgage is a "construction mortgage" to the extent that it secures an
10 obligation incurred for the construction of an improvement on land including the
11 acquisition cost of the land, if the recorded writing so indicates.

12 (2) A security interest under this article may be created in goods which are
13 fixtures or may continue in goods which become fixtures, but no security interest
14 exists under this article in ordinary building materials incorporated into an
15 improvement on land.

16 (3) This article does not prevent creation of an encumbrance upon fixtures
17 pursuant to real estate law.

18 (4) A perfected security interest in fixtures has priority over the conflicting

19 interest of an encumbrancer or owner of the real estate where

20 (a) the security interest is a purchase money security interest, the interest of
21 the encumbrancer or owner arises before the goods become fixtures, the security
22 interest is perfected by a fixture filing before the goods become fixtures or within ten
23 days thereafter, and the debtor has an interest of record in the real estate or is in
24 possession of the real estate; or

25 (b) the security interest is perfected by a fixture filing before the interest of
26 the encumbrancer or owner is of record, the security interest has priority over any
27 conflicting interest of a predecessor in title of the encumbrancer or owner, and the
28 debtor has an interest of record in the real estate or is in possession of the real estate;
29 or

30 (c) the fixtures are readily removable factory or office machines or readily
31 removable replacements of domestic appliances which are consumer goods, and
32 before the goods become fixtures the security interest is perfected by any method
33 permitted by this article; or

34 (d) the conflicting interest is a lien on the real estate obtained by legal or
35 equitable proceedings after the security interest was perfected by any method
36 permitted by this article.

37 (5) A security interest in a manufactured home as defined in section 700.010,
38 RSMo, which has been perfected pursuant to sections 700.350 to 700.390, RSMo,
39 has priority over the conflicting interest of an encumbrancer or owner of the real
40 estate if the security agreement was made before the manufactured home was placed
41 upon the real estate. This subdivision shall apply only to security interests in
42 manufactured homes which are placed on real property after August 28, 1998. This
43 subdivision shall not prevent the use of fixture filings for manufactured homes.

44 (6) A security interest in fixtures, whether or not perfected, has priority over
45 the conflicting interest of an encumbrancer or owner of the real estate where

46 (a) the encumbrancer or owner has consented in writing to the security
47 interest or has disclaimed an interest in the goods as fixtures; or

48 (b) the debtor has a right to remove the goods as against the encumbrancer
49 or owner. If the debtor's right terminates, the priority of the security interest
50 continues for a reasonable time.

51 (7) Notwithstanding paragraph (a) of subsection (4) but otherwise subject to
52 subsections (4), (5) and (6), a security interest in fixtures is subordinate to a
53 construction mortgage recorded before the goods become fixtures if the goods
54 become fixtures before the completion of the construction. To the extent that it is
55 given to refinance a construction mortgage, a mortgage has this priority to the same
56 extent as the construction mortgage.

57 (8) In cases not within the preceding subsections, a security interest in
58 fixtures is subordinate to the conflicting interest of an encumbrancer or owner of the
59 related real estate who is not the debtor.

60 (9) When the secured party has priority over all owners and encumbrancers
61 of the real estate, he may, on default, subject to the provisions of part 5, remove his

62 collateral from the real estate, but he must reimburse any encumbrancer or owner of
63 the real estate who is not the debtor and who has not otherwise agreed for the cost of
64 repair of any physical injury, but not for any diminution in value of the real estate
65 caused by the absence of the goods removed or by any necessity of replacing them.
66 A person entitled to reimbursement may refuse permission to remove until the
67 secured party gives adequate security for the performance of this obligation.]

2 [400.9-314. (1) A security interest in goods which attaches before they are
3 installed in or affixed to other goods takes priority as to the goods installed or affixed
4 (called in this section "accessions") over the claims of all persons to the whole except
5 as stated in subsection (3) and subject to section 400.9-315(1).

6 (2) A security interest which attaches to goods after they become part of a
7 whole is valid against all persons subsequently acquiring interests in the whole
8 except as stated in subsection (3) but is invalid against any person with an interest in
9 the whole at the time the security interest attaches to the goods who has not in writing
10 consented to the security interest or disclaimed an interest in the goods as part of the
11 whole.

12 (3) The security interests described in subsections (1) and (2) do not take
13 priority over

14 (a) a subsequent purchaser for value of any interest in the whole; or

15 (b) a creditor with a lien on the whole subsequently obtained by judicial
16 proceedings; or

17 (c) a creditor with a prior perfected security interest in the whole to the extent
18 that he makes subsequent advances if the subsequent purchase is made, the lien by
19 judicial proceedings obtained or the subsequent advance under the prior perfected
20 security interest is made or contracted for without knowledge of the security interest
21 and before it is perfected. A purchaser of the whole at a foreclosure sale other than
22 the holder of a perfected security interest purchasing at his own foreclosure sale is a
23 subsequent purchaser within this section.

24 (4) When under subsections (1) or (2) and (3) a secured party has an interest
25 in accessions which has priority over the claims of all persons who have interests in
26 the whole, he may on default subject to the provisions of part 5 remove his collateral
27 from the whole but he must reimburse any encumbrancer or owner of the whole who
28 is not the debtor and who has not otherwise agreed for the cost of repair of any
29 physical injury but not for any diminution in value of the whole caused by the
30 absence of the goods removed or by any necessity for replacing them. A person
31 entitled to reimbursement may refuse permission to remove until the secured party
gives adequate security for the performance of this obligation.]

2 [400.9-315. (1) If a security interest in goods was perfected and subsequently
3 the goods or a part thereof have become part of a product or mass, the security
4 interest continues in the product or mass if

5 (a) the goods are so manufactured, processed, assembled or commingled that
6 their identity is lost in the product or mass; or

(b) a financing statement covering the original goods also covers the product

7 into which the goods have been manufactured, processed or assembled. In a case to
8 which paragraph (b) applies, no separate security interest in that part of the original
9 goods which has been manufactured, processed or assembled into the product may
10 be claimed under section 400.9-314.

11 (2) When under subsection (1) more than one security interest attaches to the
12 product or mass, they rank equally according to the ratio that the cost of the goods
13 to which each interest originally attached bears to the cost of the total product or
14 mass.]

[400.9-316. Nothing in this article prevents subordination by agreement by
2 any person entitled to priority.]

[400.9-317. The mere existence of a security interest or authority given to the
2 debtor to dispose of or use collateral does not impose contract or tort liability upon
3 the secured party for the debtor's acts or omissions.]

[400.9-318. (1) Unless an account debtor has made an enforceable
2 agreement not to assert defenses or claims arising out of a sale as provided in section
3 400.9-206 the rights of an assignee are subject to

4 (a) all the terms of the contract between the account debtor and assignor and
5 any defense or claim arising therefrom; and

6 (b) any other defense or claim of the account debtor against the assignor
7 which accrues before the account debtor receives notification of the assignment.

8 (2) So far as the right to payment or a part thereof under an assigned contract
9 has not been fully earned by performance, and notwithstanding notification of the
10 assignment, any modification of or substitution for the contract made in good faith
11 and in accordance with reasonable commercial standards is effective against an
12 assignee unless the account debtor has otherwise agreed but the assignee acquires
13 corresponding rights under the modified or substituted contract. The assignment may
14 provide that such modification or substitution is a breach by the assignor.

15 (3) The account debtor is authorized to pay the assignor until the account
16 debtor receives notification that the amount due or to become due has been assigned
17 and that payment is to be made to the assignee. A notification which does not
18 reasonably identify the rights assigned is ineffective. If requested by the account
19 debtor, the assignee must seasonably furnish reasonable proof that the assignment has
20 been made and unless he does so the account debtor may pay the assignor.

21 (4) A term in any contract between an account debtor and an assignor is
22 ineffective if it prohibits assignment of an account or prohibits creation of a security
23 interest in a general intangible for money due or to become due, or requires the
24 account debtor's consent to such assignment or security interest.]

[400.9-401. (1) The proper place to file in order to perfect a security interest
2 is as follows:

3 (a) when the collateral is equipment used in farming operations, or farm
4 products, or accounts, or general intangibles arising from or relating to the sale of
5 farm products by a farmer, or consumer goods, then in the office of the recorder of
6 deeds in the county of the debtor's residence or if the debtor is not a resident of this

7 state then in the office of the recorder of deeds in the county where the goods are
8 kept, and in addition when the collateral is crops growing or to be grown in the office
9 of the recorder of deeds in the county where the land is located;

10 (b) when the collateral is timber to be cut, minerals or the like (including oil
11 and gas) or accounts subject to subsection (5) of section 400.9-103, or when the
12 financing statement is filed as a fixture filing (section 400.9-313) and the collateral
13 is goods which are or are to become fixtures, then in the office where a mortgage on
14 the real estate concerned would be filed for record, and any such filing shall be for
15 record;

16 (c) in all other cases, in the office of the secretary of state and in addition, if
17 the debtor has a place of business in only one county of this state, also in the office
18 of the recorder of deeds of such county, or, if the debtor has no place of business in
19 this state, but resides in the state, also in the office of the recorder of deeds of the
20 county in which he resides.

21 (2) A filing which is made in good faith in an improper place or not in all of
22 the places required by this section is nevertheless effective with regard to any
23 collateral as to which the filing complied with the requirements of this article and is
24 also effective with regard to collateral covered by the financing statement against any
25 person who has knowledge of the contents of such financing statement.

26 (3) A filing which is made in the proper place in this state continues effective
27 even though the debtor's residence or place of business or the location of the
28 collateral or its use, whichever controlled the original filing, is thereafter changed.

29 (4) The rules stated in section 400.9-103 determine whether filing is
30 necessary in this state.

31 (5) Notwithstanding the preceding subsections, and subject to subsection (3)
32 of section 400.9-302, the proper place to file in order to perfect a security interest in
33 collateral, including fixtures, of a transmitting utility is the office of the secretary of
34 state. This filing constitutes a fixture filing (section 400.9-313) as to the collateral
35 described therein which is or is to become a fixture.

36 (6) For the purposes of this section, the residence of an organization is its
37 place of business, if it has one, or its chief executive office if it has more than one
38 place of business.]

[400.9-402. (1) A financing statement is sufficient if it gives the names of
2 the debtor and the secured party, is signed by the debtor, gives an address of the
3 secured party from which information concerning the security interest may be
4 obtained, gives a mailing address of the debtor and contains a statement indicating
5 the types, or describing the items, of collateral. A financing statement may be filed
6 before a security agreement is made or a security interest otherwise attaches. When
7 the financing statement covers timber to be cut or covers minerals or the like
8 (including oil and gas) or accounts subject to subsection (5) of section 400.9-103, or
9 when the financing statement is filed as a fixture filing (section 400.9-313) and the
10 collateral is goods which are or are to become fixtures, the statement must also
11 comply with subsection (5). A copy of the security agreement is sufficient as a

12 financing statement if it contains the above information and is signed by the debtor.
13 A carbon, photographic or other reproduction of a security agreement or a financing
14 statement is sufficient as a financing statement if the security agreement so provides
15 or if the original has been filed in this state.

16 (2) A financing statement which otherwise complies with subsection (1) is
17 sufficient when it is signed by the secured party instead of the debtor if it is filed to
18 perfect a security interest in:

19 (a) collateral already subject to a security interest in another jurisdiction
20 when it is brought into this state, or when the debtor's location is changed to this
21 state. Such a financing statement must state that the collateral was brought into this
22 state or that the debtor's location was changed to this state under such circumstances;
23 or

24 (b) proceeds under section 400.9-306 if the security interest in the original
25 collateral was perfected. Such a financing statement must describe the original
26 collateral; or

27 (c) collateral as to which the filing has lapsed; or

28 (d) collateral acquired after a change of name, identity or corporate structure
29 of the debtor (subsection (7)).

30 (3) A form substantially as follows is sufficient to comply with subsection
31 (1):

32 Name of debtor (or assignor).....
33 Address
34 Name of secured party (or assignee).....
35 Address.....

36 1. This financing statement covers the following types (or items) of property:
37 (Describe).....

38 2. (If applicable) The above goods are to become fixtures on
39 Where appropriate substitute either "The above timber is standing on
40 " or "The above minerals or the like (including oil and gas) or accounts
41 will be financed at the wellhead or minehead of the well or mine located on
42 (Describe Real Estate) and this financing statement is to be filed in the real
43 estate records. (If the debtor does not have an interest of record) The name of a
44 record owner is

45 3. (If products of collateral are claimed) Products of the collateral are also
46 covered.

47 (use
48 whichever Signature of Debtor (or Assignee)
49 is
50 applicable) Signature of Secured Party (or Assignee)

51 (4) A financing statement may be amended by filing a writing signed by both
52 the debtor and the secured party. An amendment does not extend the period of
53 effectiveness of a financing statement. If any amendment adds collateral, it is
54 effective as to the added collateral only from the filing date of the amendment. In

55 this article, unless the context otherwise requires, the term "financing statement"
56 means the original financing statement and any amendments.

57 (5) A financing statement covering timber to be cut or covering minerals or
58 the like (including oil and gas) or accounts subject to subsection (5) of section
59 400.9-103, or a financing statement filed as a fixture filing (section 400.9-313) where
60 the debtor is not a transmitting utility, must show that it covers this type of collateral,
61 must recite that it is to be filed in the real estate records, and the financing statement
62 must contain a description of the real estate sufficient if it were contained in a
63 mortgage of the real estate to give constructive notice of the mortgage under the law
64 of this state. If the debtor does not have an interest of record in the real estate, the
65 financing statement must show the name of a record owner.

66 (6) A mortgage is effective as a financing statement filed as a fixture filing
67 from the date of its recording if (a) the goods are described in the mortgage by item
68 or type, (b) the goods are or are to become fixtures related to the real estate described
69 in the mortgage, (c) the mortgage complies with the requirements for a financing
70 statement in this section other than a recital that it is to be filed in the real estate
71 records, and (d) the mortgage is duly recorded. No fee with reference to the
72 financing statement is required other than the regular recording and satisfaction fees
73 with respect to the mortgage.

74 (7) A financing statement sufficiently shows the name of the debtor if it gives
75 the individual, limited liability company, partnership or corporate name of the debtor,
76 whether or not it adds other trade names or the names of partners. Where the debtor
77 so changes such debtor's name or in the case of an organization its name, identity or
78 organizational structure that a filed financing statement becomes seriously
79 misleading, the filing is not effective to perfect a security interest in collateral
80 acquired by the debtor more than four months after the change, unless a new
81 appropriate financing statement is filed before the expiration of that time. A
82 financing statement shall not be deemed seriously misleading for purposes of this
83 section by the merger, consolidation, share exchange or conversion of a debtor from
84 one type of entity (e.g. corporation, partnership, limited partnership, limited liability
85 company) into another and a corresponding change in the debtor's name, providing
86 the debtor's name changes only to the extent of adding or changing the designation
87 of the debtor's form of organization, and by way of example and not of limitation, the
88 change from "incorporation" or "inc." to "limited liability company" or "LLC" is not
89 seriously misleading, provided it follows the debtor's name. A filed financing
90 statement remains effective with respect to collateral transferred by the debtor even
91 though the secured party knows of or consents to the transfer.

92 (8) A financing statement substantially complying with the requirements of
93 this section is effective even though it contains minor errors which are not seriously
94 misleading.]

2 [400.9-403. (1) Presentation for filing of a financing statement and tender
3 of the filing fee or acceptance of the statement by the filing officer constitutes filing
under this article.

4 (2) Except as provided in subsection (7) of this section, a filed financing
5 statement is effective for a period of five years from the date of filing. The
6 effectiveness of a filed financing statement lapses on the expiration of the five-year
7 period, unless a continuation statement is filed prior to the lapse. If a security interest
8 perfected by filing exists at the time insolvency proceedings are commenced by or
9 against a debtor, the security interest remains perfected until termination of the
10 insolvency proceedings and thereafter for a period of sixty days or until expiration
11 of the five-year period, whichever occurs later. If a security interest perfected by
12 filing exists at the time insolvency proceedings are commenced by or against the
13 debtor, the secured party shall give the filing officer written notice of insolvency
14 proceedings, and failing such notice, the filing officer may act as though insolvency
15 proceedings have not been commenced. Without regard to the secured party's
16 compliance with this notice requirement, the security interest remains perfected until
17 the termination of the insolvency proceedings and thereafter for a period of sixty
18 days, or until the financing statement would otherwise have expired, whichever
19 occurs later. Upon lapse, the security interest becomes unperfected, unless it is
20 perfected without filing. If the security interest becomes unperfected upon lapse, it
21 is deemed to have been unperfected as against a person who became a purchaser or
22 lien creditor before lapse.

23 (3) The uniform fee for filing, indexing and furnishing filing data for a
24 financing statement on officially approved forms shall be six dollars. The uniform
25 fee for filing forms of a size other than officially approved by the secretary of state
26 shall be six dollars, plus one dollar per page for attachments. The uniform fee for
27 filing, indexing and furnishing filing data for an amendment on officially approved
28 forms shall be four dollars. The uniform fee for filing forms of a size other than
29 officially approved by the secretary of state shall be six dollars, plus one dollar per
30 page for attachments.

31 (4) A continuation statement may be filed by the secured party within six
32 months prior to the expiration of the five-year period specified in subsection (2).
33 Any such continuation statement must be signed by the secured party, identify the
34 original statement by file number and state that the original statement is still
35 effective. A continuation statement signed by a person other than the secured party
36 of record must be accompanied by a separate written statement of assignment signed
37 by the secured party of record and complying with subsection (2) of section
38 400.9-405, including payment of the required fee. Upon timely filing of the
39 continuation statement, the effectiveness of the original statement is continued for
40 five years after the last date to which the filing was effective whereupon it lapses in
41 the same manner as provided in subsection (2) unless another continuation statement
42 is filed prior to such lapse. Succeeding continuation statements may be filed in the
43 same manner to continue the effectiveness of the original statement. Unless a statute
44 on disposition of public records provides otherwise, the filing officer may remove a
45 lapsed statement from the files and destroy it.

46 (5) Except as provided in subsection (8), a filing officer shall mark each

47 statement with a file number and with the date and hour of filing and shall hold the
48 statement, or a microfilm or other photographic copy thereof, for public inspection.
49 In addition the filing officer shall index the statements according to the name of the
50 debtor and shall note in the index the file number and the address of the debtor given
51 in the statement.

52 (6) The uniform fee for filing and indexing and for stamping a copy furnished
53 by the secured party to show the date and place of filing for a continuation statement
54 shall be four dollars if the statement is of the standard size prescribed by the secretary
55 of state. The uniform fee for filing forms of a size other than that officially approved
56 by the secretary of state shall be six dollars, plus one dollar per page for attachments.

57 (7) If the debtor is a transmitting utility (subsection (5) of section 400.9-401)
58 and a filed financing statement so states, it is effective until a termination statement
59 is filed. A real estate mortgage which is effective as a fixture filing under subsection
60 (6) of section 400.9-402 remains effective as a fixture filing until the mortgage is
61 released or satisfied of record or its effectiveness otherwise terminates as to the real
62 estate.

63 (8) When a financing statement covers timber to be cut or covers minerals
64 or the like (including oil and gas) or accounts subject to subsection (5) of section
65 400.9-103, or is filed as a fixture filing, the filing officer shall index it under the
66 names of the debtor and any owner of record shown on the financing statement in the
67 same fashion as if they were the mortgagors in a mortgage of the real estate
68 described, and, to the extent that the law of this state provides for indexing of
69 mortgages under the name of the mortgagee, under the name of the secured party as
70 if he were the mortgagee thereunder, or where indexing is by description in the same
71 fashion as if the financing statement were a mortgage of the real estate described.]

2 [400.9-404. (1) Whenever there is no outstanding secured obligation and no
3 commitment to make advances, incur obligations or otherwise give value, the secured
4 party must on written demand by the debtor send the debtor a statement that he no
5 longer claims a security interest under the financing statement, which shall be
6 identified by file number. A termination statement signed by a person other than the
7 secured party of record must include or be accompanied by the assignment or a
8 statement by the secured party of record that he has assigned the security interest to
9 the signer of the termination statement. The uniform fee for filing and indexing such
10 an assignment or statement thereof on officially approved forms shall be four dollars.
11 The uniform fee for filing and indexing such an assignment or statement thereof
12 made on forms of a size other than that officially approved by the secretary of state
13 shall be six dollars, plus one dollar per page for attachments. If the affected secured
14 party fails to send such a termination statement within ten days after proper demand
15 therefor he shall be liable to the debtor for one hundred dollars, and in addition for
16 any loss caused to the debtor by such failure.

17 (2) On presentation to the filing officer of such a termination statement he
18 must note it in the index. The filing officer shall remove from the files, mark
"terminated" and send or deliver to the secured party the financing statement and any

19 continuation statement, statement of assignment or statement of release pertaining
20 thereto.

21 (3) No fee shall be charged for filing, indexing, sending or delivering a
22 termination statement.]

2 [400.9-405. (1) A financing statement may disclose an assignment of a
3 security interest in the collateral described in the financing statement by indication
4 in the financing statement of the name and address of the assignee or by an
5 assignment itself or a copy thereof on the face or back of the statement. On
6 presentation to the filing officer of such a financing statement the filing officer shall
7 mark the same as provided in section 400.9-403(5). The uniform fee for filing,
8 indexing and furnishing filing data for a financing statement so indicating an
9 assignment on officially approved forms shall be six dollars. The uniform fee for
10 filing forms of a size other than that officially approved by the secretary of state shall
11 be six dollars, plus one dollar per page for attachments.

12 (2) A secured party may assign of record all or a part of his rights under a
13 financing statement by the filing in the place where the original financing statement
14 was filed of a separate written statement of assignment signed by the secured party
15 of record and setting forth the name of the secured party of record and the debtor, the
16 file number and the date of filing of the financing statement and the name and
17 address of the assignee and containing a description of the collateral assigned. A
18 copy of the assignment is sufficient as a separate statement if it complies with the
19 preceding sentence. On presentation to the filing officer of such a separate statement,
20 the filing officer shall mark such separate statement with the date and hour of the
21 filing. He shall note the assignment on the index of the financing statement, or in the
22 case of a fixture filing, or a filing covering timber to be cut, or covering minerals or
23 the like (including oil and gas) or accounts subject to subsection (5) of section
24 400.9-103, he shall index the assignment under the name of the assignor as grantor
25 and, to the extent that the law of this state provides for indexing the assignment of
26 a mortgage under the name of the assignee, he shall index the assignment of the
27 financing statement under the name of the assignee. The uniform fee for filing,
28 indexing and furnishing filing data about such a separate statement of assignment
29 shall be four dollars if the statement is of the standard size prescribed by the secretary
30 of state and otherwise shall be six dollars, plus one dollar per page for attachments.
31 Notwithstanding the provisions of this subsection, an assignment of record of a
32 security interest in a fixture contained in a mortgage effective as a fixture filing
33 (subsection (6) of section 400.9-402) may be made only by an assignment of the
34 mortgage in the manner provided by the law of this state other than this chapter.

35 (3) After the disclosure or filing of an assignment under this section, the
assignee is the secured party of record.]

2 [400.9-406. A secured party of record may by his signed statement release
3 all or a part of any collateral described in a filed financing statement. The statement
4 of release is sufficient if it contains a description of the collateral being released, the
name and address of the debtor, the name and address of the secured party, and the

5 file number of the financing statement. A statement of release signed by a person
6 other than the secured party of record must be accompanied by a separate written
7 statement of assignment signed by the secured party of record and complying with
8 subsection (2) of section 400.9-405, including payment of the required fee. Upon
9 presentation of such a statement of release to the filing officer he shall mark the
10 statement with the hour and date of filing and shall note the same upon the margin
11 of the index of the filing of the financing statement. The uniform fee for filing and
12 noting such a statement of release shall be four dollars if the statement is of the
13 standard size prescribed by the secretary of state and otherwise shall be six dollars,
14 plus one dollar per page for attachments.]

2 [400.9-407. (1) If the person filing any financing statement, termination
3 statement, statement of assignment, or statement of release, furnishes the filing
4 officer a copy thereof, the filing officer shall upon request note upon the copy the file
5 number and date and hour of the filing of the original and deliver or send the copy
6 to such person.

7 (2) Upon request of any person, the filing officer shall issue his certificate
8 showing whether there is on file on the date and hour stated therein, any presently
9 effective financing statement naming a particular debtor and any statement of
10 assignment thereof and if there is, giving the date and hour of filing of each such
11 statement and the names and addresses of each secured party therein. The uniform
12 fee for such a certificate shall be eight dollars. Upon request the filing officer shall
13 issue his certificate showing a copy of all filed financing statements and statements
14 of assignment naming a particular debtor. The uniform fee for such a certificate shall
be eight dollars, plus fifty cents per page copied after ten pages.]

2 [400.9-408. Notwithstanding any other provisions of this chapter, the
3 following special provisions apply where a financing statement is required to be filed
4 for record in the office where a mortgage on the real estate concerned would be filed
5 for record.

6 (1) Any amendment, continuation statement, termination statement,
7 statement of assignment, or statement of release incidental to such a financing
8 statement shall be filed for record in the same office where the original financing
9 statement is recorded.

10 (2) In addition to other requirements of this part of this chapter, every such
11 statement incidental to such a financing statement shall refer to the original financing
12 statement by book and page of the record thereof.

13 (3) Such financing statements and such other statements incidental thereto
14 shall be recorded in the real estate mortgage records, and shall be indexed as real
15 estate mortgages. If any statement shows the name of a record owner of the real
16 estate which is other than the name of the debtor or the secured party, the statement
17 also shall be indexed in the mortgagor index according to the name of such record
18 owner. Such financing statements and such other statements incidental thereto are
19 entitled to be recorded even though not proved or acknowledged and certified. Fees
for recording and related services shall be the same as the fees authorized by law in

20 the case of real estate mortgages.

21 (4) The recorder of deeds shall not be liable for any loss resulting from
22 failure of the recorder to record and index a financing statement or other statement
23 incidental thereto as a mortgage on real estate unless it is clearly evident that such
24 recording is desired, either by written instructions endorsed on the financing
25 statement or other statement incidental thereto directing that it be recorded and
26 indexed as a mortgage on real estate, by payment of the recording fee, or otherwise.]

[400.9-409. A consignor or lessor of goods may file a financing statement
2 using the terms "consignor", "consignee", "lessor", "lessee" or the like instead of the
3 terms specified in section 400.9-402. The provisions of this part shall apply as
4 appropriate to such a financing statement but its filing shall not of itself be a factor
5 in determining whether or not the consignment or lease is intended as security
6 (section 400.1-201(37)). However, if it is determined for other reasons that the
7 consignment or lease is so intended, a security interest of the consignor or lessor
8 which attaches to the consigned or leased goods is perfected by such filing.]

[400.9-501. (1) When a debtor is in default under a security agreement, a
2 secured party has the rights and remedies provided in this part and except as limited
3 by subsection (3) those provided in the security agreement. He may reduce his claim
4 to judgment, foreclose or otherwise enforce the security interest by any available
5 judicial procedure. If the collateral is documents the secured party may proceed
6 either as to the documents or as to the goods covered thereby. A secured party in
7 possession has the rights, remedies and duties provided in section 400.9-207. The
8 rights and remedies referred to in this subsection are cumulative.

9 (2) After default, the debtor has the rights and remedies provided in this part,
10 those provided in the security agreement and those provided in section 400.9-207.

11 (3) To the extent that they give rights to the debtor and impose duties on the
12 secured party, the rules stated in the subsections referred to below may not be waived
13 or varied except as provided with respect to compulsory disposition of collateral
14 (subsection (3) of section 400.9-504 and section 400.9-505) and with respect to
15 redemption of collateral (section 400.9-506) but the parties may by agreement
16 determine the standards by which the fulfillment of these rights and duties is to be
17 measured if such standards are not manifestly unreasonable:

18 (a) subsection (2) of section 400.9-502 and subsection (2) of section
19 400.9-504 insofar as they require accounting for surplus proceeds of collateral;

20 (b) subsection (3) of section 400.9-504 and subsection (1) of section
21 400.9-505 which deal with disposition of collateral;

22 (c) subsection (2) of section 400.9-505 which deals with acceptance of
23 collateral as discharge of obligation;

24 (d) section 400.9-506 which deals with redemption of collateral; and

25 (e) subsection (1) of section 400.9-507 which deals with the secured party's
26 liability for failure to comply with this part.

27 (4) If the security agreement covers both real and personal property, the
28 secured party may proceed under this part as to the personal property or he may

29 proceed as to both the real and the personal property in accordance with his rights
30 and remedies in respect of the real property in which case the provisions of this part
31 do not apply.

32 (5) When a secured party has reduced his claim to judgment the lien of any
33 levy which may be made upon his collateral by virtue of any execution based upon
34 the judgment shall relate back to the date of the perfection of the security interest in
35 such collateral. A judicial sale, pursuant to such execution, is a foreclosure of the
36 security interest by judicial procedure within the meaning of this section, and the
37 secured party may purchase at the sale and thereafter hold the collateral free of any
38 other requirements of this article.]

2 [400.9-502. (1) When so agreed and in any event on default the secured
3 party is entitled to notify an account debtor or the obligor on an instrument to make
4 payment to him whether or not the assignor was theretofore making collections on
5 the collateral, and also to take control of any proceeds to which he is entitled under
6 section 400.9-306.

7 (2) A secured party who by agreement is entitled to charge back uncollected
8 collateral or otherwise to full or limited recourse against the debtor and who
9 undertakes to collect from the account debtors or obligors must proceed in a
10 commercially reasonable manner and may deduct his reasonable expenses of
11 realization from the collections. If the security agreement secures an indebtedness,
12 the secured party must account to the debtor for any surplus, and unless otherwise
13 agreed, the debtor is liable for any deficiency. But, if the underlying transaction was
14 a sale of accounts or chattel paper, the debtor is entitled to any surplus or is liable for
any deficiency only if the security agreement so provides.]

2 [400.9-503. Unless otherwise agreed a secured party has on default the right
3 to take possession of the collateral. In taking possession a secured party may proceed
4 without judicial process if this can be done without breach of the peace or may
5 proceed by action. If the security agreement so provides the secured party may
6 require the debtor to assemble the collateral and make it available to the secured party
7 at a place to be designated by the secured party which is reasonably convenient to
8 both parties. Without removal a secured party may render equipment unusable, and
may dispose of collateral on the debtor's premises under section 400.9-504.]

2 [400.9-504. (1) A secured party after default may sell, lease or otherwise
3 dispose of any or all of the collateral in its then condition or following any
4 commercially reasonable preparation or processing. Any sale of goods is subject to
5 the article on sales (article 2). The proceeds of disposition shall be applied in the
6 order following to

7 (a) the reasonable expenses of retaking, holding, preparing for sale or lease,
8 selling or leasing and the like and, to the extent provided for in the agreement and not
9 prohibited by law, the reasonable attorney fees and legal expenses incurred by the
10 secured party;

11 (b) the satisfaction of indebtedness secured by the security interest under
which the disposition is made;

12 (c) the satisfaction of indebtedness secured by any subordinate security
13 interest in the collateral if written notification of demand therefor is received before
14 distribution of the proceeds is completed. If requested by the secured party, the
15 holder of a subordinate security interest must seasonably furnish reasonable proof of
16 his interest, and unless he does so, the secured party need not comply with his
17 demand.

18 (2) If the security interest secures an indebtedness, the secured party must
19 account to the debtor for any surplus, and, unless otherwise agreed, the debtor is
20 liable for any deficiency. But if the underlying transaction was a sale of accounts or
21 chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only
22 if the security agreement so provides.

23 (3) Disposition of the collateral may be by public or private proceedings and
24 may be made by way of one or more contracts. Sale or other disposition may be as
25 a unit or in parcels and at any time and place and on any terms but every aspect of the
26 disposition including the method, manner, time, place and terms must be
27 commercially reasonable. Unless collateral is perishable or threatens to decline
28 speedily in value or is of a type customarily sold on a recognized market, reasonable
29 notification of the time and place of any public sale or reasonable notification of the
30 time after which any private sale or other intended disposition is to be made shall be
31 sent by the secured party to the debtor. If he has not signed after default a statement
32 renouncing or modifying his right to notification of sale, but no such statement shall
33 be effective in the case of consumer goods. In the case of consumer goods, no other
34 notification need be sent. In other cases, notification shall be sent to any other
35 secured party from whom the secured party has received (before sending his
36 notification to the debtor) written notice of a claim of an interest in the collateral.
37 The secured party may buy at any public sale and if the collateral is of a type
38 customarily sold in a recognized market or is of a type which is the subject of widely
39 distributed standard price quotations he may buy at private sale.

40 (4) When collateral is disposed of by a secured party after default, the
41 disposition transfers to a purchaser for value all of the debtor's rights therein,
42 discharges the security interest under which it is made and any security interest or
43 lien subordinate thereto. The purchaser takes free of all such rights and interests even
44 though the secured party fails to comply with the requirements of this part or of any
45 judicial proceedings

46 (a) in the case of a public sale, if the purchaser has no knowledge of any
47 defects in the sale and if he does not buy in collusion with the secured party, other
48 bidders or the person conducting the sale; or

49 (b) in any other case, if the purchaser acts in good faith.

50 (5) A person who is liable to a secured party under a guaranty, endorsement,
51 repurchase agreement or the like and who receives a transfer of collateral from the
52 secured party or is subrogated to his rights has thereafter the rights and duties of the
53 secured party. Such a transfer of collateral is not a sale or disposition of the collateral
54 under this article.]

2 [400.9-505. (1) If the debtor has paid sixty percent of the cash price in the
3 case of a purchase money security interest in consumer goods or sixty percent of the
4 loan in the case of another security interest in consumer goods, and has not signed
5 after default a statement renouncing or modifying his rights under this part a secured
6 party who has taken possession of collateral must dispose of it under section
7 400.9-504 and if he fails to do so within ninety days after he takes possession the
8 debtor at his option may recover in conversion or under section 400.9-507(1) on
9 secured party's liability.

10 (2) In any other case involving consumer goods or any other collateral a
11 secured party in possession may, after default, propose to retain the collateral in
12 satisfaction of the obligation. Written notice of such proposal shall be sent to the
13 debtor. Except in cases of consumer goods, notice shall be sent to any other secured
14 party from whom the secured party has received (before sending his notice to the
15 debtor) written notice of a claim of an interest in the collateral. If the secured party
16 receives objection in writing from a person entitled to receive notification within
17 twenty-one days after the notice was sent, the secured party must dispose of the
18 collateral under section 400.9-504. In the absence of such written objection the
secured party may retain the collateral in satisfaction of the debtor's obligation.]

2 [400.9-506. At any time before the secured party has disposed of collateral
3 or entered into a contract for its disposition under section 400.9-504 or before the
4 obligation has been discharged under section 400.9-505(2) the debtor or any other
5 secured party may unless otherwise agreed in writing after default redeem the
6 collateral by tendering fulfillment of all obligations secured by the collateral as well
7 as the expenses reasonably incurred by the secured party in retaking, holding and
8 preparing the collateral for disposition, in arranging for the sale, and to the extent
9 provided in the agreement and not prohibited by law, his reasonable attorney fees and
legal expenses.]

2 [400.9-507. (1) If it is established that the secured party is not proceeding
3 in accordance with the provisions of this part disposition may be ordered or
4 restrained on appropriate terms and conditions. If the disposition has occurred the
5 debtor or any person entitled to notification or whose security interest has been made
6 known to the secured party prior to the disposition has a right to recover from the
7 secured party any loss caused by a failure to comply with the provisions of this part.
8 If the collateral is consumer goods, the debtor has a right to recover in any event an
9 amount not less than the credit service charge plus ten percent of the principal
10 amount of the debt or the time price differential plus ten percent of the cash price.

11 (2) The fact that a better price could have been obtained by a sale at a
12 different time or in a different method from that selected by the secured party is not
13 of itself sufficient to establish that the sale was not made in a commercially
14 reasonable manner. If the secured party either sells the collateral in the usual manner
15 in any recognized market therefor or if he sells at the price current in such market at
16 the time of his sale or if he has otherwise sold in conformity with reasonable
commercial practices among dealers in the type of property sold he has sold in a

17 commercially reasonable manner. The principles stated in the two preceding
18 sentences with respect to sales also apply as may be appropriate to other types of
19 disposition. A disposition which has been approved in any judicial proceeding or by
20 any bona fide creditors' committee or representative of creditors shall conclusively
21 be deemed to be commercially reasonable, but this sentence does not indicate that
22 any such approval must be obtained in any case nor does it indicate that any
23 disposition not so approved is not commercially reasonable.]

[400.9-508. The secretary of state may collect an additional fee of five dollars
2 on each and every fee paid to the secretary of state as required in chapter 400.9. All
3 fees collected as provided in this section shall be deposited in the state treasury and
4 credited to the secretary of state's technology trust fund account.]

Section B. Because immediate action is necessary to ensure the efficient operation of
2 business procedures regulated by the secretary of state in this state, section A of this act is
3 deemed necessary for the immediate preservation of the public health, welfare, peace and safety,
4 and is hereby declared to be an emergency act within the meaning of the constitution, and section
5 A of this act shall be in full force and effect on July 1, 2001.