

FIRST REGULAR SESSION

HOUSE BILL NO. 1165

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE HICKS.

2226H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

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

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

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

EXPLANATION — Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

8 400.9-301, 400.9-304, 400.9-305, 400.9-310, 400.9-312, 400.9-313, 400.9-314, 400.9-316,
9 400.9-317, 400.9-323, 400.9-324, 400.9-330, 400.9-331, 400.9-332, 400.9-334, 400.9-341,
10 400.9-404, 400.9-406, 400.9-408, 400.9-509, 400.9-513, 400.9-601, 400.9-605, 400.9-608,
11 400.9-611, 400.9-613, 400.9-614, 400.9-615, 400.9-616, 400.9-619, 400.9-620, 400.9-621,
12 400.9-624, and 400.9-628, RSMo, are repealed and one hundred eight new sections enacted in
13 lieu thereof, to be known as sections 400.1-201, 400.1-204, 400.1-301, 400.1-306, 400.2-102,
14 400.2-106, 400.2-201, 400.2-202, 400.2-203, 400.2-205, 400.2-209, 400.2A-102, 400.2A-
15 103, 400.2A-107, 400.2A-201, 400.2A-202, 400.2A-203, 400.2A-205, 400.2A-208, 400.3-
16 104, 400.3-105, 400.3-401, 400.3-604, 400.4A-103, 400.4A-201, 400.4A-202, 400.4A-203,
17 400.4A-207, 400.4A-208, 400.4A-210, 400.4A-211, 400.4A-305, 400.5-104, 400.5-116,
18 400.7-102, 400.7-106, 400.8-102, 400.8-103, 400.8-106, 400.8-110, 400.8-303, 400.9-102,
19 400.9-104, 400.9-105, 400.9-105A, 400.9-107A, 400.9-107B, 400.9-203, 400.9-204, 400.9-
20 207, 400.9-208, 400.9-209, 400.9-210, 400.9-301, 400.9-304, 400.9-305, 400.9-306A, 400.9-
21 306B, 400.9-310, 400.9-312, 400.9-313, 400.9-314, 400.9-314A, 400.9-316, 400.9-317,
22 400.9-323, 400.9-324, 400.9-326A, 400.9-330, 400.9-331, 400.9-332, 400.9-334, 400.9-341,
23 400.9-404, 400.9-406, 400.9-408, 400.9-509, 400.9-513, 400.9-601, 400.9-605, 400.9-608,
24 400.9-611, 400.9-613, 400.9-614, 400.9-615, 400.9-616, 400.9-619, 400.9-620, 400.9-621,
25 400.9-624, 400.9-628, 400.12-101, 400.12-102, 400.12-103, 400.12-104, 400.12-105,
26 400.12-106, 400.12-107, 400.199-101, 400.199-102, 400.199-201, 400.199-301, 400.199-
27 302, 400.199-303, 400.199-304, 400.199-305, 400.199-306, and 400.199-401, to read as
28 follows:

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

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

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

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

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

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

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

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

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

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

21 (9) "Buyer in ordinary course of business" means a person that buys goods in good
22 faith, without knowledge that the sale violates the rights of another person in the goods, and
23 in the ordinary course from a person, other than a pawnbroker, in the business of selling
24 goods of that kind. A person buys goods in the ordinary course if the sale to the person
25 comports with the usual or customary practices in the kind of business in which the seller is
26 engaged or with the seller's own usual or customary practices. A person that sells oil, gas, or
27 other minerals at the wellhead or minehead is a person in the business of selling goods of that
28 kind. A buyer in ordinary course of business may buy for cash, by exchange of other
29 property, or on secured or unsecured credit, and may acquire goods or documents of title
30 under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a
31 right to recover the goods from the seller under article 2 may be a buyer in ordinary course of
32 business. "Buyer in ordinary course of business" does not include a person that acquires
33 goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

34 (10) "Conspicuous", with reference to a term, means so written, displayed, or
35 presented that, **based on the totality of the circumstances**, a reasonable person against
36 which it is to operate ought to have noticed it. Whether a term is "conspicuous" or not is a
37 decision for the court. ~~[Conspicuous terms include the following:~~

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

40 ~~(B) language in the body of a record or display in larger type than the surrounding~~
41 ~~text, or in contrasting type, font, or color to the surrounding text of the same size, or set off~~
42 ~~from surrounding text of the same size by symbols or other marks that call attention to the~~
43 ~~language.]~~

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

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

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

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

55 (15) "Delivery", with respect to an **electronic document of title, means voluntary**
56 **transfer of control and, with respect to an instrument, a tangible** document of title, or an
57 **authoritative tangible copy of a record evidencing** chattel paper, means voluntary transfer
58 of possession.

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

66 (16A) **"Electronic" means relating to technology having electrical, digital,**
67 **magnetic, wireless, optical, electromagnetic, or similar capabilities.**

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

69 (18) "Fungible goods" means:

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

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

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

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

76 (21) "Holder" means:

77 (A) the person in possession of a negotiable instrument that is payable either to bearer
78 or to an identified person that is the person in possession; ~~or~~

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

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

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

85 (23) "Insolvent" means:

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

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

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

90 (24) "Money" means a medium of exchange **that is** currently authorized or adopted
91 by a domestic or foreign government. The term includes a monetary unit of account
92 established by an intergovernmental organization or by agreement between two or more
93 countries. **The term does not include an electronic record that is a medium of exchange**
94 **recorded and transferable in a system that existed and operated for the medium of**
95 **exchange before the medium of exchange was authorized or adopted by the government.**

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

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

99 (27) "Person" means an individual, corporation, business trust, estate, trust,
100 partnership, limited liability company, association, joint venture, government, governmental
101 subdivision, agency, or instrumentality, ~~[public corporation,]~~ or any other legal or commercial
102 entity. **The term includes a protected series, however denominated, of an entity if the**
103 **protected series is established under law other than under this chapter that limits, or**
104 **limits if conditions specified under the law are satisfied, the ability of a creditor of the**
105 **entity or of any other protected series of the entity to satisfy a claim from assets of the**
106 **protected series.**

107 (28) "Present value" means the amount as of a date certain of one or more sums
108 payable in the future, discounted to the date certain by use of either an interest rate specified
109 by the parties if that rate is not manifestly unreasonable at the time the transaction is entered
110 into or, if an interest rate is not so specified, a commercially reasonable rate that takes into
111 account the facts and circumstances at the time the transaction is entered into.

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

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

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

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

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

123 (34) "Right" includes remedy.

124 (35) "Security interest" means an interest in personal property or fixtures which
125 secures payment or performance of an obligation. "Security interest" includes any interest of
126 a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note

127 in a transaction that is subject to article 9. "Security interest" does not include the special
128 property interest of a buyer of goods on identification of those goods to a contract for sale
129 under section 400.2-401, but a buyer may also acquire a "security interest" by complying with
130 article 9. Except as otherwise provided in section 400.2-505, the right of a seller or lessor of
131 goods under article 2 or 2A to retain or acquire possession of the goods is not a "security
132 interest", but a seller or lessor may also acquire a "security interest" by complying with article
133 9. The retention or reservation of title by a seller of goods notwithstanding shipment or
134 delivery to the buyer under section 400.2-401 is limited in effect to a reservation of a
135 "security interest". Whether a transaction in the form of a lease creates a "security interest" is
136 determined pursuant to section 400.1-203.

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

138 (A) to deposit in the mail ~~[or]~~, deliver for transmission, **or transmit** by any other
139 usual means of communication, with postage or cost of transmission provided for ~~[and~~
140 ~~properly addressed and, in the case of an instrument, to an address specified thereon or~~
141 ~~otherwise agreed, or if there be none]~~, **addressed** to any address reasonable under the
142 circumstances; or

143 (B) ~~[in any other way to cause to be received any record or notice within the time it~~
144 ~~would have arrived if properly sent]~~ **to cause the record or notification to be received**
145 **within the time it would have been received if properly sent under subparagraph (A).**

146 (37) ~~["Signed" includes using any symbol executed or adopted with present intention~~
147 ~~to adopt or accept a writing]~~ **"Sign" means, with present intent to authenticate or adopt a**
148 **record:**

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

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

152

153 **"Signed", "signing", and "signature" have corresponding meanings.**

154 (38) "State" means a State of the United States, the District of Columbia, Puerto Rico,
155 the United States Virgin Islands, or any territory or insular possession subject to the
156 jurisdiction of the United States.

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

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

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

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

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

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

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

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

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

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

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

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

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

10 (1) section 400.2-402;

11 (2) sections 400.2A-105 and 400.2A-106;

12 (3) section 400.4-102;

13 (4) section 400.4A-507;

14 (5) section 400.5-116;

15 (6) section 400.8-110;

16 (7) sections 400.9-301 through 400.9-307;

17 **(8) section 400.12-107.**

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

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

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

9 **(a) If the sale-of-goods aspects do not predominate, only the provisions of this**
10 **Article which relate primarily to the sale-of-goods aspects of the transaction apply, and**
11 **the provisions that relate primarily to the transaction as a whole do not apply.**

12 **(b) If the sale-of-goods aspects predominate, this Article applies to the**
13 **transaction but does not preclude application in appropriate circumstances of other law**
14 **to aspects of the transaction which do not relate to the sale of goods.**

15 **(3) This Article does not:**

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

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

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

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

8 (3) "Termination" occurs when either party pursuant to a power created by agreement
9 or law puts an end to the contract otherwise than for its breach. On "termination" all
10 obligations which are still executory on both sides are discharged but any right based on prior
11 breach or performance survives.

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

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

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

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

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

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

7 enforceable under this ~~[paragraph]~~ **subsection** beyond the quantity of goods shown in ~~[such~~
8 ~~writing]~~ **the record**.

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

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

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

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

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

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

6 (a) by course of dealing or usage of trade (section 400.1-205) or by course of
7 performance (section 400.2-208); and

8 (b) by evidence of consistent additional terms unless the court finds the ~~[writing]~~
9 **record** to have been intended also as a complete and exclusive statement of the terms of the
10 agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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
3 without knowledge that the sale to him or her is in violation of the ownership rights or
4 security interest or leasehold interest of a third party in the goods buys in ordinary course
5 from a person in the business of selling goods of that kind but does not include a pawnbroker.
6 "Buying" may be for cash or by exchange of other property or on secured or unsecured credit
7 and includes receiving goods or documents of title under a preexisting contract for sale but

8 does not include a transfer in bulk or as security for or in total or partial satisfaction of a
9 money debt.

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

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

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

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

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

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

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

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

29 (iii) one of the following occurs:

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

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

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

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

43 (h) "Goods" means all things that are movable at the time of identification to the lease
44 contract, or are fixtures as defined in Section 400.2A-309, but the term does not include

45 money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or
46 the like, including oil and gas, before extraction. The term also includes the unborn young of
47 animals.

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

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

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

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

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

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

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

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

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

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

71 (o) "Lessee in ordinary course of business" means a person who in good faith and
72 without knowledge that the lease to him or her is in violation of the ownership rights or
73 security interest or leasehold interest of a third party in the goods leases in ordinary course
74 from a person in the business of selling or leasing goods of that kind but does not include a
75 pawnbroker. "Leasing" may be for cash or by exchange of other property or on secured or
76 unsecured credit and includes receiving goods or documents of title under a preexisting lease
77 contract but does not include a transfer in bulk or as security for or in total or partial
78 satisfaction of a money debt.

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

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

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

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

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

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

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

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

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

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

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

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

"Accessions".	Section 400.2A-310(1).
"Construction mortgage".	Section 400.2A-309(1)(d).
"Encumbrance".	Section 400.2A-309(1)(e).
"Fixtures".	Section 400.2A-309(1)(a).
"Fixture filing".	Section 400.2A-309(1)(b).
"Purchase money lease".	Section 400.2A-309(1)(c).

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

"Account".	Section 400.9-102(a)(2).
"Between merchants".	Section 400.2-104(3).
"Buyer".	Section 400.2-103(1)(a).
"Chattel paper".	Section 400.9-102(a)(10).

117	"Consumer goods".	Section 400.9-102(a)(22).
118	"Document".	Section 400.9-102(a)(29).
119	"Entrusting".	Section 400.2-403(3).
120	"General intangible".	Section 400.9-102(a)(41).
121	"Good faith".	Section 400.2-103(1)(b).
122	"Instrument".	Section 400.9-102(a)(46).
123	"Merchant".	Section 400.2-104(1).
124	"Mortgage".	Section 400.9-102(a)(54).
125	"Pursuant to commitment".	Section 400.9-102(a)(68).
126	"Receipt".	Section 400.2-103(1)(c).
127	"Sale".	Section 400.2-106(1).
128	"Sale on approval".	Section 400.2-326.
129	"Sale or return".	Section 400.2-326.
130	"Seller".	Section 400.2-103(1)(d).

131 (4) In addition article 1 contains general definitions and principles of construction and
 132 interpretation applicable throughout this article.

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

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

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

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

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

10 (3) A ~~writing~~ **record** is not insufficient because it omits or incorrectly states a term
 11 agreed upon, but the lease contract is not enforceable under subsection (1)(b) beyond the
 12 lease term and the quantity of goods shown in the ~~writing~~ **record**.

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

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

18 indicate that the goods are for the lessee, has made either a substantial beginning of their
19 manufacture or commitments for their procurement;

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

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

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

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

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

29 (c) a reasonable lease term.

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

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

7 (b) by evidence of consistent additional terms unless the court finds the **[writing]**
8 **record** to have been intended also as a complete and exclusive statement of the terms of the
9 agreement.

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

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

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

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

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

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

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

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

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

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

15 (b) "Instrument" means a negotiable instrument.

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

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

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

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

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

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

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

37 (j) "Certificate of deposit" means an instrument containing an acknowledgement by a
38 bank that a sum of money has been received by the bank and a promise by the bank to repay
39 the sum of money. A certificate of deposit is a note of the bank.

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

- 44 a. The customer's printed or typewritten name;
45 b. A notation that the customer authorized the draft; or
46 c. The statement "No signature required" or words to that effect.

47

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

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

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

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

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

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

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

4 ~~[(b) A signature may be made (i) manually or by means of a device or machine, and~~
 5 ~~(ii) by the use of any name, including a trade or assumed name, or by a word, mark, or symbol~~
 6 ~~executed or adopted by a person with present intention to authenticate a writing.]~~

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

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

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

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

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

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

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

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

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

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

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

17 (b) If an instruction complying with subsection (a)(1) is to make more than one
 18 payment to a beneficiary, the instruction is a separate payment order with respect to each
 19 payment.

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

400.4A-201. "Security procedure" means a procedure established by agreement of a
 2 customer and a receiving bank for the purpose of (i) verifying that a payment order or

3 communication amending or cancelling a payment order is that of the customer, or (ii)
4 detecting error in the transmission or the content of the payment order or communication. A
5 security procedure may **impose an obligation on the receiving bank or the customer and**
6 require the use of algorithms or other codes, identifying words [ø], numbers, **symbols,**
7 **sounds, biometrics,** encryption, callback procedures, or similar security devices.
8 Comparison of a signature on a payment order or communication with an authorized
9 specimen signature of the customer **or requiring a payment order to be sent from a known**
10 **email address, IP address, or telephone number** is not by itself a security procedure.

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

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

16 (c) Commercial reasonableness of a security procedure is a question of law to be
17 determined by considering the wishes of the customer expressed to the bank, the
18 circumstances of the customer known to the bank, including the size, type, and frequency
19 of payment orders normally issued by the customer to the bank, alternative security
20 procedures offered to the customer, and security procedures in general use by customers and
21 receiving banks similarly situated. A security procedure is deemed to be commercially
22 reasonable if (i) the security procedure was chosen by the customer after the bank offered,
23 and the customer refused, a security procedure that was commercially reasonable for that
24 customer, and (ii) the customer expressly agreed in [~~writing~~] **a record** to be bound by any
25 payment order, whether or not authorized, issued in its name and accepted by the bank in
26 compliance with the **bank's obligations under the** security procedure chosen by the
27 customer.

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

31 (e) This section applies to amendments and cancellations of payment orders to the
32 same extent it applies to payment orders.

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

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

4 (1) By express ~~written~~ agreement **evidenced by a record**, the receiving bank may
5 limit the extent to which it is entitled to enforce or retain payment of the payment order.

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

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

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

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

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

12 (2) If the beneficiary's bank pays the person identified by name or knows that the
13 name and number identify different persons, no person has rights as beneficiary except the
14 person paid by the beneficiary's bank if that person was entitled to receive payment from the

15 originator of the funds transfer. If no person has rights as beneficiary, acceptance of the order
16 cannot occur.

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

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

22 (2) If the originator is not a bank and proves that the person identified by number was
23 not entitled to receive payment from the originator, the originator is not obliged to pay its
24 order unless the originator's bank proves that the originator, before acceptance of the
25 originator's order, had notice that payment of a payment order issued by the originator might
26 be made by the beneficiary's bank on the basis of an identifying or bank account number even
27 if it identifies a person different from the named beneficiary. Proof of notice may be made by
28 any admissible evidence. The originator's bank satisfies the burden of proof if it proves that
29 the originator, before the payment order was accepted, signed a ~~writing~~ **record** stating the
30 information to which the notice relates.

31 (d) In a case governed by subsection (b)(1), if the beneficiary's bank rightfully pays
32 the person identified by number and that person was not entitled to receive payment from the
33 originator, the amount paid may be recovered from that person to the extent allowed by the
34 law governing mistake and restitution as follows:

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

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

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

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

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

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

12 (1) If the sender is a bank, the receiving bank may rely on the number as the proper
13 identification of the intermediary or beneficiary's bank if the receiving bank, when it executes

14 the sender's order, does not know that the name and number identify different persons. The
15 receiving bank need not determine whether the name and number refer to the same person or
16 whether the number refers to a bank. The sender is obliged to compensate the receiving bank
17 for any loss and expenses incurred by the receiving bank as a result of its reliance on the
18 number in executing or attempting to execute the order.

19 (2) If the sender is not a bank and the receiving bank proves that the sender, before
20 the payment order was accepted, had notice that the receiving bank might rely on the number
21 as the proper identification of the intermediary or beneficiary's bank even if it identifies a
22 person different from the bank identified by name, the rights and obligations of the sender and
23 the receiving bank are governed by subsection (b)(1), as though the sender were a bank. Proof
24 of notice may be made by any admissible evidence. The receiving bank satisfies the burden
25 of proof if it proves that the sender, before the payment order was accepted, signed a ~~writing~~
26 **record** stating the information to which the notice relates.

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

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

400.4A-210. (a) A payment order is rejected by the receiving bank by a notice of
2 rejection transmitted to the sender orally~~[-electronically,]~~ or in ~~writing~~ **a record**. A notice
3 of rejection need not use any particular words and is sufficient if it indicates that the receiving
4 bank is rejecting the order or will not execute or pay the order. Rejection is effective when
5 the notice is given if transmission is by a means that is reasonable in the circumstances. If
6 notice of rejection is given by a means that is not reasonable, rejection is effective when the
7 notice is received. If an agreement of the sender and receiving bank establishes the means to
8 be used to reject a payment order, (i) any means complying with the agreement is reasonable
9 and (ii) any means not complying is not reasonable unless no significant delay in receipt of
10 the notice resulted from the use of the noncomplying means.

11 (b) This subsection applies if a receiving bank other than the beneficiary's bank fails
12 to execute a payment order despite the existence on the execution date of a withdrawable
13 credit balance in an authorized account of the sender sufficient to cover the order. If the
14 sender does not receive notice of rejection of the order on the execution date and the
15 authorized account of the sender does not bear interest, the bank is obliged to pay interest to
16 the sender on the amount of the order for the number of days elapsing after the execution date

17 to the earlier of the day the order is cancelled pursuant to section 400.4A-211(d) or the day
18 the sender receives notice or learns that the order was not executed, counting the final day of
19 the period as an elapsed day. If the withdrawable credit balance during that period falls below
20 the amount of the order, the amount of interest is reduced accordingly.

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

23 (d) Acceptance of a payment order precludes a later rejection of the order. Rejection
24 of a payment order precludes a later acceptance of the order.

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

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

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

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

17 (2) With respect to a payment order accepted by the beneficiary's bank, cancellation
18 or amendment is not effective unless the order was issued in execution of an unauthorized
19 payment order, or because of a mistake by a sender in the funds transfer which resulted in the
20 issuance of a payment order (i) that is a duplicate of a payment order previously issued by the
21 sender, (ii) that orders payment to a beneficiary not entitled to receive payment from the
22 originator, or (iii) that orders payment in an amount greater than the amount the beneficiary
23 was entitled to receive from the originator. If the payment order is cancelled or amended, the
24 beneficiary's bank is entitled to recover from the beneficiary any amount paid to the
25 beneficiary to the extent allowed by the law governing mistake and restitution.

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

29 (e) A cancelled payment order cannot be accepted. If an accepted payment order is
30 cancelled, the acceptance is nullified and no person has any right or obligation based on the
31 acceptance. Amendment of a payment order is deemed to be cancellation of the original
32 order at the time of amendment and issue of a new payment order in the amended form at the
33 same time.

34 (f) Unless otherwise provided in an agreement of the parties or in a funds-transfer
35 system rule, if the receiving bank, after accepting a payment order, agrees to cancellation or
36 amendment of the order by the sender or is bound by a funds-transfer system rule allowing
37 cancellation or amendment without the bank's agreement, the sender, whether or not
38 cancellation or amendment is effective, is liable to the bank for any loss and expenses,
39 including reasonable attorney's fees, incurred by the bank as a result of the cancellation or
40 amendment or attempted cancellation or amendment.

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

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

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

6 (b) If execution of a payment order by a receiving bank in breach of section 400.4A-
7 302 results in (i) noncompletion of the funds transfer, (ii) failure to use an intermediary bank
8 designated by the originator, or (iii) issuance of a payment order that does not comply with
9 the terms of the payment order of the originator, the bank is liable to the originator for its
10 expenses in the funds transfer and for incidental expenses and interest losses, to the extent not
11 covered by subsection (a), resulting from the improper execution. Except as provided in
12 subsection (c), additional damages are not recoverable.

13 (c) In addition to the amounts payable under subsections (a) and (b), damages,
14 including consequential damages, are recoverable to the extent provided in an express
15 ~~written~~ agreement of the receiving bank, **evidenced by a record**.

16 (d) If a receiving bank fails to execute a payment order it was obliged by express
17 agreement to execute, the receiving bank is liable to the sender for its expenses in the
18 transaction and for incidental expenses and interest losses resulting from the failure to
19 execute. Additional damages, including consequential damages, are recoverable to the extent

20 provided in an express ~~written~~ agreement of the receiving bank, **evidenced by a record**, but
21 are not otherwise recoverable.

22 (e) Reasonable attorney's fees are recoverable if demand for compensation under
23 subsection (a) or (b) is made and refused before an action is brought on the claim. If a claim
24 is made for breach of an agreement under subsection (d) and the agreement does not provide
25 for damages, reasonable attorney's fees are recoverable if demand for compensation under
26 subsection (d) is made and refused before an action is brought on the claim.

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

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

3 ~~(i) By a signature; or~~

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

400.5-116. (a) The liability of an issuer, nominated person or adviser for action or
2 omission is governed by the law of the jurisdiction chosen by an agreement in the form of a
3 record signed ~~or otherwise authenticated~~ by the affected parties ~~in the manner provided in~~
4 ~~section 400.5-104~~ or by a provision in the person's letter of credit, confirmation or other
5 undertaking. The jurisdiction whose law is chosen need not bear any relation to the
6 transaction.

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

12 (c) For the purpose of jurisdiction, choice of law and recognition of interbranch
13 letters of credit, but not enforcement of a judgment, all branches of a bank are considered
14 separate juridical entities and a bank is considered to be located at the place where its relevant
15 branch is considered to be located under ~~this~~ subsection (d).

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

19 ~~(e)~~ (e) Except as otherwise provided in this subsection, the liability of an issuer,
20 nominated person or adviser is governed by any rules of custom or practice, such as the
21 Uniform Customs and Practice for Documentary Credits, to which the letter of credit,
22 confirmation or other undertaking is expressly made subject. If:

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

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

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

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

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

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

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

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

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

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

9 (5) "Delivery order" means a record that contains an order to deliver goods directed to
10 a warehouse, carrier, or other person that in the ordinary course of business issues warehouse
11 receipts or bills of lading.

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

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

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

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

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

27 ~~(11) "Sign" means, with present intent to authenticate or adopt a record:~~
 28 ~~(A) to execute or adopt a tangible symbol; or~~
 29 ~~(B) to attach to or logically associate with the record an electronic sound, symbol, or~~
 30 ~~process.~~

31 ~~(12)~~ "Shipper" means a person that enters into a contract of transportation with a
 32 carrier.

33 ~~(13)~~ (11) "Warehouse" means a person engaged in the business of storing goods for
 34 hire.

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

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

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

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

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

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

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

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

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

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

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

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

16 (4) copies or amendments that add or change an identified ~~[assignee]~~ **transferee** of
 17 the authoritative copy can be made only with the consent of the person asserting control;

18 (5) each copy of the authoritative copy and any copy of a copy is readily identifiable
 19 as a copy that is not the authoritative copy; and

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

22 (c) A system satisfies subsection (a), and a person has control of an electronic
23 document of title, if an authoritative electronic copy of the document, a record attached
24 to or logically associated with the electronic copy, or a system in which the electronic
25 copy is recorded:

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

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

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

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

34 (B) transfer control of each authoritative electronic copy.

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

37 (1) the authoritative electronic copy, a record attached to or logically associated
38 with the authoritative electronic copy, or a system in which the authoritative electronic
39 copy is recorded limits the use of the document of title or has a protocol that is
40 programmed to cause a change, including a transfer or loss of control; or

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

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

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

46 (2) the other person:

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

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

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

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

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

55 (2) obtains control of the document after having acknowledged that it will obtain
56 control of the document on behalf of the person.

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

59 **(i) If a person acknowledges that it has or will obtain control on behalf of**
60 **another person, unless the person otherwise agrees or law other than this article or**
61 **Article 9 otherwise provides, the person does not owe any duty to the other person and is**
62 **not required to confirm the acknowledgment to any other person.**

400.8-102. (a) In this article:

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

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

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

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

11 (5) "Clearing corporation" means:

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

13 (ii) A federal reserve bank; or

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

19 (6) "Communicate" means to:

20 (i) Send a signed ~~writing~~ **record**; or

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

23 (7) "Entitlement holder" means a person identified in the records of a securities
24 intermediary as the person having a security entitlement against the securities intermediary. If
25 a person acquires a security entitlement by virtue of section 400.8-501(b)(2) or (3), that
26 person is the entitlement holder;

27 (8) "Entitlement order" means a notification communicated to a securities
28 intermediary directing transfer or redemption of a financial asset to which the entitlement
29 holder has a security entitlement;

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

31 (i) A security;

32 (ii) An obligation of a person or a share, participation or other interest in a person or
33 in property or an enterprise of a person, which is, or is of a type, dealt in or traded on financial

34 markets, or which is recognized in any area in which it is issued or dealt in as a medium for
35 investment; or

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

39

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

43 (10) "Good faith", for purposes of the obligation of good faith in the performance or
44 enforcement of contracts or duties within this article, means honesty in fact and the
45 observance of reasonable commercial standards of fair dealing;

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

50 (12) "Instruction" means a notification communicated to the issuer of an
51 uncertificated security which directs that the transfer of the security be registered or that
52 the security be redeemed;

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

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

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

57 (14) "Securities intermediary" means:

58 (i) A clearing corporation; or

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

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

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

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

69 (iii) Which:

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

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

74 (16) "Security certificate" means a certificate representing a security;

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

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

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

80	["Appropriate person".]	[Section 400.8-107.]
81	["Control".]	[Section 400.8-106.]
82	["Delivery".]	[Section 400.8-301.]
83	["Investment company security".]	[Section 400.8-103.]
84	["Issuer".]	[Section 400.8-201.]
85	["Overissue".]	[Section 400.8-210.]
86	["Protected purchaser".]	[Section 400.8-303.]
87	["Securities account".]	[Section 400.8-501.]

88 **"Appropriate person". Section 400.8-107.**

89 **"Control". Section 400.8-106.**

90 **"Controllable account". Section 400.9-102.**

91 **"Controllable electronic record". Section 400.12-102.**

92 **"Controllable payment intangible". Section 400.9-102.**

93 **"Delivery". Section 400.8-301.**

94 **"Investment company security". Section 400.8-103.**

95 **"Issuer". Section 400.8-201.**

96 **"Overissue". Section 400.8-210.**

97 **"Protected purchaser". Section 400.8-303.**

98 **"Securities account". Section 400.8-501.**

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

101 (d) The characterization of a person, business, or transaction for purposes of this
 102 article does not determine the characterization of the person, business or transaction for
 103 purposes of any other law, regulation or rule.

400.8-103. (a) A share or similar equity interest issued by a corporation, business
 2 trust, 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
6 that is so registered, or a face-amount certificate issued by a face-amount certificate company
7 that is so registered. Investment company security does not include an insurance policy or
8 endowment 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
10 is dealt in or traded on securities exchanges or in securities markets, its terms expressly
11 provide that it is a security governed by this article, or it is an investment company security.
12 However, an interest in a partnership or limited liability company is a financial asset if it is
13 held in a securities account.

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

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

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

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

400.8-106. (a) A purchaser has "control" of a certificated security in bearer form if
2 the 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
6 indorsement; 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
12 purchaser 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;

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 purchaser~~
18 ~~or, having previously acquired control of the security entitlement, acknowledges that it has~~
19 ~~control on behalf of the purchaser]~~, **other than the transferor to the purchaser of an**
20 **interest in the security entitlement:**

21 (A) **has control of the security entitlement and acknowledges that it has control**
22 **on behalf of the purchaser; or**

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

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

27 (f) A purchaser who has satisfied the requirements of subsection (c) or (d) has control
28 even if the registered owner in the case of subsection (c) or the entitlement holder in the case
29 of subsection (d) retains the right to make substitutions for the uncertificated security or
30 security entitlement, to originate instructions or entitlement orders to the issuer or securities
31 intermediary, or otherwise to deal with the uncertificated security or security entitlement.

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

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

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

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
11 subsection (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
14 out 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
19 or interest therein from an entitlement holder.

20 (c) The local law of the jurisdiction in which a security certificate is located at the
21 time of delivery governs whether an adverse claim can be asserted against a person to whom
22 the 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
27 (5).

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

30 (1) If an agreement between the securities intermediary and its entitlement holder
31 governing the securities account expressly provides that a particular jurisdiction is the
32 securities intermediary's jurisdiction for purposes of this part, this article, or chapter 400, that
33 jurisdiction is the 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 the
37 securities intermediary's jurisdiction.

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

42 (4) If none of the preceding paragraphs apply, the securities intermediary's
43 jurisdiction is the jurisdiction in which the office identified in an account statement as the
44 office serving the entitlement holder's account is located.

45 (5) If none of the preceding paragraphs apply, the securities intermediary's
 46 jurisdiction is the jurisdiction in which the chief executive office of the securities
 47 intermediary is located.

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

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

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

- 3 (1) Gives value;
- 4 (2) Does not have notice of any adverse claim to the security; and
- 5 (3) Obtains control of the certificated or uncertificated security.

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

400.9-102. (a) In this article:

- 2 (1) "Accession" means goods that are physically united with other goods in such a
 3 manner that the identity of the original goods is not lost;
- 4 (2) "Account", except as used in "account for", **"account statement", "account to",**
 5 **"commodity account" in paragraph (14), "customer's account", "deposit account" in**
 6 **paragraph (29), "on account of", and "statement of account",** means a right to payment
 7 of a monetary obligation, whether or not earned by performance, (i) for property that has been
 8 or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered
 9 or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary
 10 obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the
 11 use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit
 12 or charge card or information contained on or for use with the card, or (viii) as winnings in a
 13 lottery or other game of chance operated or sponsored by a state, governmental unit of a state,
 14 or person licensed or authorized to operate the game by a state or governmental unit of a state.
 15 The term includes **controllable accounts and** health-care-insurance receivables. The term
 16 does not include (i) ~~[rights to payment evidenced by]~~ chattel paper ~~[or an instrument]~~, (ii)
 17 commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit
 18 rights or letters of credit, ~~[or]~~ (vi) rights to payment for money or funds advanced or sold,

19 other than rights arising out of the use of a credit or charge card or information contained on
 20 or for use with the card, **or (vii) rights to payment evidenced by an instrument;**

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

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

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

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

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

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

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

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

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

38 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) With the present intent to adopt or accept a record, to attach to or logically
 50 associate with the record an electronic sound, symbol or process;]~~ **"Assignee", except as**

51 **used in "assignee for benefit of creditors", means a person (i) in whose favor a security**

52 **interest that secures an obligation is created or provided for under a security agreement,**

53 **whether or not the obligation is outstanding or (ii) to which an account, chattel paper,**

54 **payment intangible, or promissory note has been sold. The term includes a person to**

55 **which a security interest has been transferred by a secured party;**

56 **(7A) "Assignor" means a person that (i) under a security agreement creates or**
57 **provides for a security interest that secures an obligation or (ii) sells an account, chattel**
58 **paper, payment intangible, or promissory note. The term includes a secured party that**
59 **has transferred a security interest to another person;**

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

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

65 (10) "Certificate of title" means a certificate of title with respect to which a statute
66 provides for the security interest in question to be indicated on the certificate as a condition or
67 result of the security interest's obtaining priority over the rights of a lien creditor with respect
68 to the collateral. The term includes another record maintained as an alternative to a certificate
69 of title by the governmental unit that issues certificates of title if a statute permits the security
70 interest in question to be indicated on the record as a condition or result of the security
71 interest's obtaining priority over the rights of a lien creditor with respect to the collateral;

72 (11) "Chattel paper" means ~~[a record or records that evidence both a monetary~~
73 ~~obligation and a security interest in specific goods, a security interest in specific goods and~~
74 ~~software used in the goods, a security interest in specific goods and license of software used~~
75 ~~in the goods, a lease of specific goods, or a lease of specific goods and license of software~~
76 ~~used in the goods. In this paragraph, "monetary obligation" means a monetary obligation~~
77 ~~secured by the goods or owed under a lease of the goods and includes a monetary obligation~~
78 ~~with respect to software used in the goods. The term does not include (i) charters or other~~
79 ~~contracts involving the use or hire of a vessel or (ii) records that evidence a right to payment~~
80 ~~arising out of the use of a credit or charge card or information contained on or for use with the~~
81 ~~card. If a transaction is evidenced by records that include an instrument or series of~~
82 ~~instruments, the group of records taken together constitutes chattel paper]:~~

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

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

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

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

91

92 **The term does not include a right to payment arising out of a charter or other contract**
93 **involving the use or hire of a vessel or a right to payment arising out of the use of a**
94 **credit or charge card or information contained on or for use with the card;**

95 (12) "Collateral" means the property subject to a security interest or agricultural lien.

96 The term includes:

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

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

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

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

102 (A) The claimant is an organization; or

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

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

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

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

109 (15) "Commodity contract" means a commodity futures contract, an option on a
110 commodity futures contract, a commodity option, or another contract if the contract or option
111 is:

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

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

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

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

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

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

123 (18) "Communicate" means:

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

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

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

- 129 (19) "Consignee" means a merchant to which goods are delivered in a consignment;
130 (20) "Consignment" means a transaction, regardless of its form, in which a person
131 delivers goods to a merchant for the purpose of sale and:
- 132 (A) The merchant:
- 133 (i) Deals in goods of that kind under a name other than the name of the person making
134 delivery;
- 135 (ii) Is not an auctioneer; and
136 (iii) Is not generally known by its creditors to be substantially engaged in selling the
137 goods of others;
- 138 (B) With respect to each delivery, the aggregate value of the goods is one thousand
139 dollars or more at the time of delivery;
- 140 (C) The goods are not consumer goods immediately before delivery; and
141 (D) The transaction does not create a security interest that secures an obligation;
- 142 (21) "Consignor" means a person that delivers goods to a consignee in a consignment;
143 (22) "Consumer debtor" means a debtor in a consumer transaction;
144 (23) "Consumer goods" means goods that are used or bought for use primarily for
145 personal, family, or household purposes;
- 146 (24) "Consumer-goods transaction" means a consumer transaction in which:
- 147 (A) An individual incurs an obligation primarily for personal, family, or household
148 purposes; and
149 (B) A security interest in consumer goods secures the obligation;
- 150 (25) "Consumer obligor" means an obligor who is an individual and who incurred the
151 obligation as part of a transaction entered into primarily for personal, family, or household
152 purposes;
- 153 (26) "Consumer transaction" means a transaction in which (i) an individual incurs an
154 obligation primarily for personal, family, or household purposes, (ii) a security interest
155 secures the obligation, and (iii) the collateral is held or acquired primarily for personal,
156 family, or household purposes. The term includes consumer-goods transactions;
- 157 (27) "Continuation statement" means an amendment of a financing statement which:
- 158 (A) Identifies, by its file number, the initial financing statement to which it relates;
159 and
160 (B) Indicates that it is a continuation statement for, or that it is filed to continue the
161 effectiveness of, the identified financing statement;
- 162 **(27A) "Controllable account" means an account evidenced by a controllable**
163 **electronic record that provides that the account debtor undertakes to pay the person**
164 **that has control under section 400.12-105 of the controllable electronic record;**

165 **(27B) "Controllable payment intangible" means a payment intangible evidenced**
166 **by a controllable electronic record that provides that the account debtor undertakes to**
167 **pay the person that has control under section 400.12-105 of the controllable electronic**
168 **record;**

169 (28) "Debtor" means:

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

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

173 (C) A consignee;

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

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

179 (31) [~~"Electronic chattel paper" means chattel paper evidenced by a record or records~~
180 ~~consisting of information stored in an electronic medium]~~ **"Electronic money" means**
181 **money in an electronic form;**

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

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

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

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

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

190 (ii) Aquatic goods produced in aquacultural operations;

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

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

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

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

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

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

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

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

204 (40) "Fixture filing" means the filing of a financing statement covering goods that are
205 or are to become fixtures and satisfying section 400.9-502(a) and (b). The term includes the
206 filing of a financing statement covering goods of a transmitting utility which are or are to
207 become fixtures;

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

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

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

216 ~~(44)~~ (44) "Goods" means all things that are movable when a security interest attaches.
217 The term includes (i) fixtures, (ii) standing timber that is to be cut and removed under a
218 conveyance or contract for sale, (iii) the unborn young of animals, (iv) crops grown, growing,
219 or to be grown, even if the crops are produced on trees, vines, or bushes, and (v)
220 manufactured homes. The term also includes a computer program embedded in goods and
221 any supporting information provided in connection with a transaction relating to the program
222 if (i) the program is associated with the goods in such a manner that it customarily is
223 considered part of the goods, or (ii) by becoming the owner of the goods, a person acquires a
224 right to use the program in connection with the goods. The term does not include a computer
225 program embedded in goods that consist solely of the medium in which the program is
226 embedded. The term also does not include accounts, chattel paper, commercial tort claims,
227 deposit accounts, documents, general intangibles, instruments, investment property, letter-of-
228 credit rights, letters of credit, money, or oil, gas, or other minerals before extraction;

229 ~~(45)~~ (44) "Governmental unit" means a subdivision, agency, department, county,
230 parish, municipality, or other unit of the government of the United States, a state, or a foreign
231 country. The term includes an organization having a separate corporate existence if the
232 organization is eligible to issue debt on which interest is exempt from income taxation under
233 the laws of the United States;

234 ~~(46)~~ (45) "Health-care-insurance receivable" means an interest in or claim under a
235 policy of insurance which is a right to payment of a monetary obligation for health-care goods
236 or services provided or to be provided;

237 ~~(47)~~ (46) "Instrument" means a negotiable instrument or any other writing that
238 evidences a right to the payment of a monetary obligation, is not itself a security agreement or

239 lease, and is of a type that in ordinary course of business is transferred by delivery with any
240 necessary indorsement or assignment. The term does not include (i) investment property, (ii)
241 letters of credit, ~~or~~ (iii) writings that evidence a right to payment arising out of the use of a
242 credit or charge card or information contained on or for use with the card, **or (iv) writings**
243 **that evidence chattel paper;**

244 ~~[(48)]~~ **(47)** "Inventory" means goods, other than farm products, which:

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

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

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

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

251 ~~[(49)]~~ **(48)** "Investment property" means a security, whether certificated or
252 uncertificated, security entitlement, securities account, commodity contract, or commodity
253 account;

254 ~~[(50)]~~ **(49)** "Jurisdiction of organization", with respect to a registered organization,
255 means the jurisdiction under whose law the organization is formed or organized;

256 ~~[(51)]~~ **(50)** "Letter-of-credit right" means a right to payment or performance under a
257 letter of credit, whether or not the beneficiary has demanded or is at the time entitled to
258 demand payment or performance. The term does not include the right of a beneficiary to
259 demand payment or performance under a letter of credit;

260 ~~[(52)]~~ **(51)** "Lien creditor" means:

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

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

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

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

266 ~~[(53)]~~ **(52)** "Manufactured home" means a structure, transportable in one or more
267 sections, which, in the traveling mode, is eight body feet or more in width or forty body feet
268 or more in length, or, when erected on site, is three hundred twenty or more square feet, and
269 which is built on a permanent chassis and designed to be used as a dwelling with or without a
270 permanent foundation when connected to the required utilities, and includes the plumbing,
271 heating, air-conditioning, and electrical systems contained therein. The term includes any
272 structure that meets all of the requirements of this paragraph except the size requirements and
273 with respect to which the manufacturer voluntarily files a certification required by the United
274 States Secretary of Housing and Urban Development and complies with the standards
275 established under Title 42 of the United States Code;

276 ~~[(54)]~~ (53) "Manufactured-home transaction" means a secured transaction:

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

279 (B) In which a manufactured home, other than a manufactured home held as
280 inventory, is the primary collateral;

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

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

286 (56) "New debtor" means a person that becomes bound as debtor under section 400.9-
287 203(d) by a security agreement previously entered into by another person;

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

291 (58) "Noncash proceeds" means proceeds other than cash proceeds;

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

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

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

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

305 (A) The spouse of the individual;

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

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

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

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

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

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

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

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

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

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

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

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

325 (C) Rights arising out of collateral;

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

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

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

335 (66) "Proposal" means a record ~~[authenticated]~~ **signed** by a secured party which
336 includes the terms on which the secured party is willing to accept collateral in full or partial
337 satisfaction of the obligation it secures pursuant to sections 400.9-620, 400.9-621 and 400.9-
338 622;

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

341 (A) A record consisting of the record initially filed with or issued by a state or the
342 United States to form or organize an organization and any record filed with or issued by the
343 state or the United States which amends or restates the initial record;

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

347 (C) A record consisting of legislation enacted by the legislature of a state or the
348 Congress of the United States which forms or organizes an organization, any record amending

349 the legislation, and any record filed with or issued by the state or the United States which
350 amends or restates the name of the organization;

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

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

358 (70) "Registered organization" means an organization formed or organized solely
359 under the law of a single state or the United States by the filing of a public organic record
360 with, the issuance of a public organic record by, or the enactment of legislation by the state or
361 the United States. The term includes a business trust that is formed or organized under the
362 law of a single state if a statute of the state governing business trusts requires that the business
363 trust's organic record be filed with the state;

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

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

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

368 (72) "Secured party" means:

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

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

372 (C) A consignor;

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

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

377 (F) A person that holds a security interest arising under sections 400.2-401, 400.2-
378 505, 400.2-711(3), 400.2A-508(5), 400.4-210 or 400.5-118;

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

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

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

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

387 ~~(75)~~ (74) "Software" means a computer program and any supporting information
 388 provided in connection with a transaction relating to the program. The term does not include
 389 a computer program that is included in the definition of goods;

390 ~~(76)~~ (75) "State" means a state of the United States, the District of Columbia, Puerto
 391 Rico, the United States Virgin Islands, or any territory or insular possession subject to the
 392 jurisdiction of the United States;

393 ~~(77)~~ (76) "Supporting obligation" means a letter-of-credit right or secondary
 394 obligation that supports the payment or performance of an account, chattel paper, a document,
 395 a general intangible, an instrument, or investment property;

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

398 ~~(79)~~ (77) **"Tangible money" means money in a tangible form;**

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

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

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

404 ~~(80)~~ (79) "Transmitting utility" means a person primarily engaged in the business
 405 of:

- 406 (A) Operating a railroad, subway, street railway, or trolley bus;
- 407 (B) Transmitting communications electrically, electromagnetically, or by light;
- 408 (C) Transmitting goods by pipeline or sewer; or
- 409 (D) Transmitting or producing and transmitting electricity, steam, gas, or water.

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

412	["Applicant"]	[Section 400.5-102.]
413	["Beneficiary"]	[Section 400.5-102.]
414	["Broker"]	[Section 400.8-102.]
415	["Certificated security"]	[Section 400.8-102.]
416	["Check"]	[Section 400.3-104.]
417	["Clearing corporation"]	[Section 400.8-102.]
418	["Contract for sale"]	[Section 400.2-106.]
419	["Customer"]	[Section 400.4-104.]
420	["Entitlement holder"]	[Section 400.8-102.]

421	["Financial asset"]	[Section 400.8-102.]
422	["Holder in due course"]	[Section 400.3-302.]
423	["Issuer" (with respect to a letter of credit or	
424	letter of credit right)]	[Section 400.5-102.]
425	["Issuer" (with respect to a security)]	[Section 400.8-201.]
426	["Lease"]	[Section 400.2A-103.]
427	["Lease agreement"]	[Section 400.2A-103.]
428	["Lease contract"]	[Section 400.2A-103.]
429	["Leasehold interest"]	[Section 400.2A-103.]
430	["Lessee"]	[Section 400.2A-103.]
431	["Lessee in ordinary course of business"]	[Section 400.2A-103.]
432	["Lessor"]	[Section 400.2A-103.]
433	["Lessor's residual interest"]	[Section 400.2A-103.]
434	["Letter of credit"]	[Section 400.5-102.]
435	["Merchant"]	[Section 400.2-104.]
436	["Negotiable instrument"]	[Section 400.3-104.]
437	["Nominated person"]	[Section 400.5-102.]
438	["Note"]	[Section 400.3-104.]
439	["Proceeds of a letter of credit"]	[Section 400.5-114.]
440	["Prove"]	[Section 400.3-103.]
441	["Sale"]	[Section 400.2-106.]
442	["Securities account"]	[Section 400.8-501.]
443	["Securities intermediary"]	[Section 400.8-102.]
444	["Security"]	[Section 400.8-102.]
445	["Security certificate"]	[Section 400.8-102.]
446	["Security entitlement"]	[Section 400.8-102.]
447	["Uncertificated security"]	[Section 400.8-102.]

- 448 **"Applicant" Section 400.5-102.**
- 449 **"Beneficiary" Section 400.5-102.**
- 450 **"Broker" Section 400.8-102.**
- 451 **"Certified security" Section 400.8-102.**
- 452 **"Check" Section 400.3-104.**
- 453 **"Clearing corporation" Section 400.8-102.**
- 454 **"Contract for sale" Section 400.2-106.**
- 455 **"Controllable electronic record" Section 400.12-102.**

- 456 **"Customer" Section 400.4-104.**
457 **"Entitlement holder" Section 400.8-102.**
458 **"Financial asset" Section 400.8-102.**
459 **"Holder in due course" Section 400.3-302.**
460 **"Issuer" (with respect to a letter of credit or letter-of-credit right) Section 400.5-**
461 **102.**
462 **"Issuer" (with respect to a security) Section 400.8-201.**
463 **"Lease" Section 400.2A-103.**
464 **"Lease agreement" Section 400.2A-103.**
465 **"Lease contract" Section 400.2A-103.**
466 **"Leasehold interest" Section 400.2A-103.**
467 **"Lessee" Section 400.2A-103.**
468 **"Lessee in ordinary course of business" Section 400.2A-103.**
469 **"Lessor" Section 400.2A-103.**
470 **"Lessor's residual interest" Section 400.2A-103.**
471 **"Letter of credit" Section 400.5-102.**
472 **"Merchant" Section 400.2-104.**
473 **"Negotiable instrument" Section 400.3-104.**
474 **"Nominated person" Section 400.5-102.**
475 **"Note" Section 400.3-104.**
476 **"Proceeds of a letter of credit" Section 400.5-114.**
477 **"Protected purchaser" Section 400.8-303.**
478 **"Prove" Section 400.3-103.**
479 **"Qualifying purchaser" Section 400.12-102.**
480 **"Sale" Section 400.2-106.**
481 **"Securities account" Section 400.8-501.**
482 **"Securities intermediary" Section 400.8-102.**
483 **"Security" Section 400.8-102.**
484 **"Security certificate" Section 400.8-102.**
485 **"Security entitlement" Section 400.8-102.**
486 **"Uncertificated security" Section 400.8-102.**
487 (c) This section contains general definitions and principles of construction and
488 interpretation applicable throughout sections 400.9-103 to 400.9-809.
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]~~ **a signed**
4 record 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; **or**

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

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

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

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

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

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

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

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

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

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

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

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

20 **(c) A system satisfies subsection (a), and a purchaser has control of an**
21 **authoritative electronic copy of a record evidencing chattel paper, if the electronic copy,**
22 **a record attached to or logically associated with the electronic copy, or a system in which**
23 **the electronic copy is recorded:**

24 **(1) Enables the purchaser readily to identify each electronic copy as either an**
25 **authoritative copy or a nonauthoritative copy;**

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

29 **(3) Gives the purchaser exclusive power, subject to subsection (d), to:**

30 **(A) Prevent others from adding or changing an identified assignee of the**
31 **authoritative electronic copy; and**

32 **(B) Transfer control of the authoritative electronic copy.**

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

35 **(1) The authoritative electronic copy, a record attached to or logically associated**
36 **with the authoritative electronic copy, or a system in which the authoritative electronic**
37 **copy is recorded limits the use of the authoritative electronic copy or has a protocol**
38 **programmed to cause a change, including a transfer or loss of control; or**

39 **(2) The power is shared with another person.**

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

42 **(1) The purchaser can exercise the power only if the power also is exercised by**
43 **the other person; and**

44 **(2) The other person:**

45 **(A) Can exercise the power without exercise of the power by the purchaser; or**

46 **(B) Is the transferor to the purchaser of an interest in the chattel paper.**

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

49 **(g) A purchaser has control of an authoritative electronic copy of a record**
50 **evidencing chattel paper if another person, other than the transferor to the purchaser of**
51 **an interest in the chattel paper:**

52 **(1) Has control of the authoritative electronic copy and acknowledges that it has**
53 **control on behalf of the purchaser; or**

54 **(2) Obtains control of the authoritative electronic copy after having**
55 **acknowledged that it will obtain control of the electronic copy on behalf of the**
56 **purchaser.**

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

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

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

7 **(B) Exclusive power, subject to subsection (b), to:**

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

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

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

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

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

24 **(2) The power is shared with another person.**

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

27 **(1) The person can exercise the power only if the power also is exercised by the**
28 **other person; and**

29 **(2) The other person:**

30 **(A) Can exercise the power without exercise of the power by the person; or**

31 **(B) Is the transferor to the person of an interest in the electronic money.**

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

34 **(e) A person has control of electronic money if another person, other than the**
35 **transferor to the person of an interest in the electronic money:**

36 **(1) Has control of the electronic money and acknowledges that it has control on**
37 **behalf of the person; or**

38 **(2) Obtains control of the electronic money after having acknowledged that it**
39 **will obtain control of the electronic money on behalf of the person.**

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

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

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

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

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 the**
 3 **time of attachment.**

4 (b) Except as otherwise provided in subsections (c) through (i), a security interest is
 5 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]~~ **signed** a security agreement that provides a
 11 description of the collateral and, if the security interest covers timber to be cut, a description
 12 of the land concerned;

13 (B) The collateral is not a certificated security and is in the possession of the secured
 14 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 **controllable accounts, controllable electronic records,**
 19 **controllable payment intangibles,** deposit accounts, ~~[electronic chattel paper,]~~ **electronic**
 20 **documents, electronic money,** investment property, or letter-of-credit rights, and the secured
 21 party has control under section 400.9-104, ~~[400.9-105,]~~ **400.9-105A,** 400.9-106 ~~[or]~~, 400.9-
 22 107, **or 400.9-107A** pursuant to the debtor's security agreement; **or**

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

25 (c) Subsection (b) is subject to section 400.4-210 on the security interest of a
 26 collecting bank, section 400.5-118 on the security interest of a letter-of-credit issuer or

27 nominated person, section 400.9-110 on a security interest arising under article 2 or 2A, and
 28 section 400.9-206 on security interests in investment property.

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

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

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

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

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

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

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

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

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

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

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

3 (b) ~~[A]~~ **Subject to subsection (b.1),** a security interest does not attach under a term
 4 constituting an after-acquired 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 value;
 7 or

8 (2) A commercial tort claim.

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

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

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

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

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

 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 may
13 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 by
18 the debtor.

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

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, or
28 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~~] **a signed** demand by the debtor:

5 (1) A secured party having control of a deposit account under section 400.9-104(a)(2)
6 shall send to the bank with which the deposit account is maintained [~~an authenticated~~
7 ~~statement~~] **a signed record** 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 400.9-104(a)(3)
10 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 of an authoritative electronic copy of a record evidencing chattel**
15 **paper** [~~shall:~~

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

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

23 ~~(C) Take appropriate action to enable the debtor or its designated custodian to make~~
24 ~~copies of or revisions to the authoritative copy which add or change an identified assignee of~~
25 ~~the authoritative copy without the consent of the secured party] **shall transfer control of the**
26 **electronic copy to the debtor or a person designated by the debtor;**~~

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

33 (5) A secured party having control of a letter-of-credit right under section 400.9-107
 34 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the
 35 letter of credit to the secured party [~~an authenticated~~] **a signed** release from any further
 36 obligation to pay or deliver proceeds of the letter of credit to the secured party;

37 (6) **A secured party having control under section 400.7-106 of an authoritative**
 38 **electronic copy of an electronic document shall transfer control of the electronic copy to**
 39 **the debtor or a person designated by the debtor;**

40 (7) **A secured party having control under section 400.9-105A of electronic money**
 41 **shall transfer control of the electronic money to the debtor or a person designated by the**
 42 **debtor; and**

43 (8) **A secured party having control under section 400.12-105 of a controllable**
 44 **electronic record, other than a buyer of a controllable account or controllable payment**
 45 **intangible evidenced by the controllable electronic record, shall transfer control of the**
 46 **controllable electronic record to the debtor or a person designated by the debtor.**

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

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

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

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

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

11 (4) "Request regarding a statement of account" means a record [~~authenticated~~] **signed**
 12 by 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 of a
14 specified date and reasonably identifying the transaction or relationship that is the subject of
15 the request.

16 (b) Subject to subsections (c), (d), (e), and (f), a secured party, other than a buyer of
17 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]~~ **signing** and sending
20 to the 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]~~ **signing** 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]~~ **a signed** record including a statement to that effect
27 within fourteen days after receipt.

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

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

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

35 (e) A person that receives a request for an accounting or a request regarding a
36 statement of account, claims no interest in the obligations when it receives the request, and
37 claimed an interest in the obligations at an earlier time shall comply with the request within
38 fourteen days after receipt by sending to the debtor ~~[an authenticated]~~ **a signed** record:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (5) If none of the preceding paragraphs applies, the bank's jurisdiction is the
20 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 of a
5 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 of
11 a security interest in a security entitlement or securities account;

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

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

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

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

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

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

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

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

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

- 38 (1) Perfection of a security interest in investment property by filing;
39 (2) Automatic perfection of a security interest in investment property created by a
40 broker or securities intermediary; and
41 (3) Automatic perfection of a security interest in a commodity contract or commodity
42 account created by a commodity intermediary.

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

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

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

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

18 **(3) If paragraphs (1) and (2) do not apply and the authoritative electronic copy,
19 or a record attached to or logically associated with the electronic copy and readily
20 available for review, expressly provides that the chattel paper is governed by the law of a
21 particular jurisdiction, that jurisdiction is the chattel paper's jurisdiction.**

22 **(4) If paragraphs (1), (2), and (3) do not apply and the rules of the system in
23 which the authoritative electronic copy is recorded are readily available for review and
24 expressly provide that the chattel paper or the system is governed by the law of a
25 particular jurisdiction, that jurisdiction is the chattel paper's jurisdiction.**

26 **(5) If paragraphs (1) through (4) do not apply, the chattel paper's jurisdiction is
27 the jurisdiction in which the debtor is located.**

28 **(c) If an authoritative tangible copy of a record evidences chattel paper and the
29 chattel paper is not evidenced by an authoritative electronic copy, while the
30 authoritative tangible copy of the record evidencing chattel paper is located in a
31 jurisdiction, the local law of that jurisdiction governs:**

32 **(1) Perfection of a security interest in the chattel paper by possession under**
33 **section 400.9-314A; and**

34 **(2) The effect of perfection or nonperfection and the priority of a security**
35 **interest in the chattel paper.**

36 **(d) The local law of the jurisdiction in which the debtor is located governs**
37 **perfection of a security interest in chattel paper by filing.**

400.9-306B. (a) Except as provided in subsection (b), the local law of the
2 **controllable electronic record's jurisdiction specified in section 400.12-107(c) and (d)**
3 **governs perfection, the effect of perfection or nonperfection, and the priority of a**
4 **security interest in a controllable electronic record and a security interest in a**
5 **controllable account or controllable payment intangible evidenced by the controllable**
6 **electronic record.**

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

8 **(1) Perfection of a security interest in a controllable account, controllable**
9 **electronic record, or controllable payment intangible by filing; and**

10 **(2) Automatic perfection of a security interest in a controllable payment**
11 **intangible created by a sale of the controllable payment intangible.**

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

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

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

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

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

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

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

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

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

15 **(8) In **controllable accounts, controllable electronic records, controllable****
16 **payment intangibles, deposit accounts, [electronic chattel paper,] electronic documents,**
17 **investment property, or letter-of-credit rights which is perfected by control under section**
18 **400.9-314;**

19 **(8.1) In chattel paper which is perfected by possession and control under section**
20 **400.9-314A;**

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

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

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

400.9-312. (a) A security interest in chattel paper, ~~[negotiable documents,]~~
2 **controllable accounts, controllable electronic records, controllable payment intangibles,**
3 instruments, ~~[or]~~ investment property, **or negotiable documents** may be perfected by filing.

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

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

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

9 (3) A security interest in **tangible** money may be perfected only by the secured
10 party's taking possession under section 400.9-313; **and**

11 **(4) A security interest in electronic money may be perfected only by control**
12 **under section 400.9-314.**

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

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

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

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

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

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

23 (3) Filing as to the goods.

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

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

32 (1) Ultimate sale or exchange; or

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

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

38 (1) Ultimate sale or exchange; or

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

40 (h) After the twenty-day period specified in subsection (e), (f), or (g) expires,
41 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, **negotiable tangible**
3 **documents, or tangible** money~~[-, or tangible chattel paper]~~ by taking possession of the
4 collateral. A secured party may perfect a security interest in certificated securities by taking
5 delivery of the certificated securities under 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 by a
10 document, a secured party takes possession of collateral in the possession of a person other
11 than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary
12 course of the debtor's business, when:

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

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

18 (d) If perfection of a security interest depends upon possession of the collateral by a
19 secured party, perfection occurs ~~no~~ **not** earlier than the time the secured party takes
20 possession and continues only while the secured party retains possession.

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

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

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

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

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

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

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

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

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

400.9-314. (a) A security interest in [~~investment property, deposit accounts, letter-of-
 2 credit rights, or electronic chattel paper~~] **controllable accounts, controllable electronic
 3 records, controllable payment intangibles, deposit accounts, electronic documents,
 4 electronic money, investment property, or letter-of-credit rights** may be perfected by
 5 control of the collateral under section 400.9-104, [~~400.9-105,~~] **400.9-105A**, 400.9-106 [~~or~~]
 6 400.9-107, **or 400.9-107A**.

7 (b) A security interest in [~~deposit accounts, electronic chattel paper, or letter-of-credit
 8 rights~~] **controllable accounts, controllable electronic records, controllable payment
 9 intangibles, deposit accounts, electronic documents, electronic money, or letter-of-credit
 10 rights** is perfected by control under section **400.7-106**, 400.9-104, [~~400.9-105 or~~] **400.9-
 11 105A**, 400.9-107 [~~when~~], **or 400.9-107A not earlier than the time** the secured party obtains
 12 control and remains perfected by control only while the secured party retains control.

13 (c) A security interest in investment property is perfected by control under section
 14 400.9-106 [~~from~~] **not earlier than** the time the secured party obtains control and remains
 15 perfected by control until:

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

17 (2) One of the following occurs:

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

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

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

2 **400.9-314A. (a) A secured party may perfect a security interest in chattel paper**
3 **by taking possession of each authoritative tangible copy of the record evidencing the**
4 **chattel paper and obtaining control of each authoritative electronic copy of the**
5 **electronic record evidencing the chattel paper.**

6 **(b) A security interest is perfected under subsection (a) not earlier than the time**
7 **the secured party takes possession and obtains control and remains perfected under**
8 **subsection (a) only while the secured party retains possession and control.**

9 **(c) Section 400.9-313(c) and (f) through (i) applies to perfection by possession of**
10 **an authoritative tangible copy of a record evidencing chattel paper.**

11 400.9-316. (a) A security interest perfected pursuant to the law of the jurisdiction
12 designated in section 400.9-301(1) [ø], 400.9-305(c), **400.9-306A(d), or 400.9-306B(b)**
13 remains perfected until the earliest of:

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

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

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

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

24 (c) A possessory security interest in collateral, other than goods covered by a
25 certificate of title and as-extracted collateral consisting of goods, remains continuously
26 perfected if:

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

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

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

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

 (e) A security interest described in subsection (d) becomes unperfected as against a
purchaser of the goods for value and is deemed never to have been perfected as against a

29 purchaser of the goods for value if the applicable requirements for perfection under section
30 400.9-311(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 state;
33 or

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

35 (f) A security interest in **chattel paper, controllable accounts, controllable**
36 **electronic records, controllable payment intangibles**, deposit accounts, letter-of-credit
37 rights, or investment property which is perfected under the law of the **chattel paper's**
38 **jurisdiction, the controllable electronic record's jurisdiction, the bank's jurisdiction, the**
39 issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's
40 jurisdiction, or the commodity intermediary's jurisdiction, as applicable, remains perfected
41 until the earlier of:

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

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

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

52 (h) The following rules apply to collateral to which a security interest attaches within
53 four months after the debtor changes its location to another jurisdiction:

54 (1) A financing statement filed before the change pursuant to the law of the
55 jurisdiction designated in section 400.9-301(1) or 400.9-305(c) is effective to perfect a
56 security interest in the collateral if the financing statement would have been effective to
57 perfect a security interest in the collateral had the debtor not changed its location.

58 (2) If a security interest perfected by a financing statement that is effective under
59 paragraph (1) becomes perfected under the law of the other jurisdiction before the earlier of
60 the time the financing statement would have become ineffective under the law of the
61 jurisdiction designated in section 400.9-301(1) or 400.9-305(c) or the expiration of the four-
62 month period, it remains perfected thereafter. If the security interest does not become
63 perfected under the law of the other jurisdiction before the earlier time or event, it becomes
64 unperfected and is deemed never to have been perfected as against a purchaser of the
65 collateral for value.

66 (i) If a financing statement naming an original debtor is filed pursuant to the law of
 67 the jurisdiction designated in section 400.9-301(1) or 400.9-305(c) and the new debtor is
 68 located in another jurisdiction, the following rules apply:

69 (1) The financing statement is effective to perfect a security interest in collateral
 70 acquired by the new debtor before, and within four months after, the new debtor becomes
 71 bound under section 400.9-203(d), if the financing statement would have been effective to
 72 perfect a security interest in the collateral had the collateral been acquired by the original
 73 debtor.

74 (2) A security interest perfected by the financing statement and which becomes
 75 perfected under the law of the other jurisdiction before the earlier of the time the financing
 76 statement would have become ineffective under the law of the jurisdiction designated in
 77 section 400.9-301(1) or 400.9-305(c) or the expiration of the four-month period remains
 78 perfected thereafter. A security interest that is perfected by the financing statement but that
 79 does not become perfected under the law of the other jurisdiction before the earlier time or
 80 event becomes unperfected and is deemed never to have been perfected as against a purchaser
 81 of the collateral for value.

400.9-317. (a) A security interest or agricultural lien is subordinate to the rights of:

2 (1) A person entitled to priority under section 400.9-322; and

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

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

6 (B) One of the conditions specified in section 400.9-203(b)(3) is met and a financing
 7 statement covering the collateral is filed.

8 (b) Except as otherwise provided in subsection (e), a buyer, other than a secured
 9 party, ~~[of tangible chattel paper, documents,]~~ **of goods, instruments, tangible documents,** or a
 10 ~~[certificated]~~ security **certificate** takes free of a security interest or agricultural lien if the
 11 buyer gives value and receives delivery of the collateral without knowledge of the security
 12 interest or agricultural lien and 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) **Subject to subsections (f) through (i),** a licensee of a general intangible or a
 18 buyer, other than a secured party, of collateral other than ~~[tangible chattel paper, tangible~~
 19 ~~documents,]~~ **electronic money,** goods, instruments, **tangible documents,** or a certificated
 20 security takes free of a security interest if the licensee or buyer gives value without
 21 knowledge of the security interest and before it is perfected.

22 (e) Except as otherwise provided in sections 400.9-320 and 400.9-321, if a person
23 files a financing statement with respect to a purchase-money security interest before or within
24 twenty days after the debtor receives delivery of the collateral, the security interest takes
25 priority over the rights of a buyer, lessee, or lien creditor which arise between the time the
26 security interest attaches and the time of filing.

27 **(f) A buyer, other than a secured party, of chattel paper takes free of a security**
28 **interest if, without knowledge of the security interest and before it is perfected, the**
29 **buyer gives value and:**

30 **(1) Receives delivery of each authoritative tangible copy of the record evidencing**
31 **the chattel paper; and**

32 **(2) If each authoritative electronic copy of the record evidencing the chattel**
33 **paper can be subjected to control under section 400.9-105, obtains control of each**
34 **authoritative electronic copy.**

35 **(g) A buyer of an electronic document takes free of a security interest if, without**
36 **knowledge of the security interest and before it is perfected, the buyer gives value and, if**
37 **each authoritative electronic copy of the document can be subjected to control under**
38 **section 400.7-106, obtains control of each authoritative electronic copy.**

39 **(h) A buyer of a controllable electronic record takes free of a security interest if,**
40 **without knowledge of the security interest and before it is perfected, the buyer gives**
41 **value and obtains control of the controllable electronic record.**

42 **(i) A buyer, other than a secured party, of a controllable account or a**
43 **controllable payment intangible takes free of a security interest if, without knowledge of**
44 **the security interest and before it is perfected, the buyer gives value and obtains control**
45 **of the controllable account or controllable payment intangible.**

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 the
4 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), or
10 (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 to the extent that the security interest

13 secures an advance made more than forty-five days after the person becomes a lien creditor
14 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 party
18 that is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a
19 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 forty-
27 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 to
30 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 the
11 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 extent
13 the identifiable cash proceeds are received on or before the delivery of the inventory to a
14 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]~~ **a signed** notification
18 to the holder of the conflicting security interest;

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

21 (4) The notification states that the person sending the notification has or expects to
22 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 or
29 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 in
34 section 400.9-327, a perfected security interest in their identifiable proceeds and identifiable
35 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]~~ **a signed** notification
39 to the 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 to
43 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 or
50 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 under
59 subsection (a), (b), (d), or (f):

60 (1) A security interest securing an obligation incurred as all or part of the price of the
61 collateral has priority over a security interest securing an obligation incurred for value given
62 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 interests.

**400.9-326A. A security interest in a controllable account, controllable electronic
2 record, or controllable payment intangible held by a secured party having control of the
3 account, electronic record, or payment intangible has priority over a conflicting security
4 interest held by a secured party that does not have control.**

400.9-330. (a) A purchaser of chattel paper has priority over a security interest in the
2 chattel paper which is claimed merely as proceeds of inventory subject to a security interest
3 if:

4 (1) In good faith and in the ordinary course of the purchaser's business, the purchaser
5 gives new value [~~and~~], takes possession of **each authoritative tangible copy of the record**
6 **evidencing** the chattel paper [~~or~~], **and obtains control [~~or~~] under section 400.9-105 of each**
7 **authoritative electronic copy of the record evidencing** the chattel paper [~~under section~~
8 ~~400.9-105~~]; and

9 (2) The [~~chattel paper does~~] **authoritative copies of the record evidencing the**
10 **chattel paper do** not indicate that [~~it~~] **the chattel paper** has been assigned to an identified
11 assignee other than the purchaser.

12 (b) A purchaser of chattel paper has priority over a security interest in the chattel
13 paper which is claimed other than merely as proceeds of inventory subject to a security
14 interest if the purchaser gives new value [~~and~~], takes possession of **each authoritative**
15 **tangible copy of the record evidencing** the chattel paper [~~or~~], **and obtains control [~~or~~] under**
16 **section 400.9-105 of each authoritative electronic copy of the record evidencing** the
17 chattel paper [~~under section 400.9-105~~] in good faith, in the ordinary course of the purchaser's
18 business, and without knowledge that the purchase violates the rights of the secured party.

19 (c) Except as otherwise provided in section 400.9-327, a purchaser having priority in
20 chattel paper under subsection (a) or (b) also has priority in proceeds of the chattel paper to
21 the extent that:

22 (1) Section 400.9-322 provides for priority in the proceeds; or

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

26 (d) Except as otherwise provided in section 400.9-331(a), a purchaser of an
27 instrument has priority over a security interest in the instrument perfected by a method other
28 than possession if the purchaser gives value and takes possession of the instrument in good
29 faith and without knowledge that the purchase violates the rights of the secured party.

30 (e) For purposes of subsections (a) and (b), the holder of a purchase-money security
31 interest in inventory gives new value for chattel paper constituting proceeds of the inventory.

32 (f) For purposes of subsections (b) and (d), if **the authoritative copies of the record**
33 **evidencing** chattel paper or an instrument [~~indicates~~] **indicate** that [~~it~~] **the chattel paper or**
34 **instrument** has been assigned to an identified secured party other than the purchaser, a
35 purchaser of the chattel paper or instrument has knowledge that the purchase violates the
36 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, **or a qualifying purchaser of a**
4 **controllable account, controllable electronic record, or controllable payment intangible.**
5 These holders or purchasers take priority over an earlier security interest, even if perfected, to
6 the extent provided in articles 3, 7, [~~and~~] 8, and 12.

7 (b) This article does not limit the rights of or impose liability on a person to the extent
8 that the person is protected against the assertion of an adverse claim under article 8 **or 12.**

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 **tangible** money takes the money free of a security
2 interest [~~unless the transferee acts~~] **if the transferee receives possession of the money**
3 **without acting** in collusion with the debtor in violating the rights of the secured 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~~] **if the transferee receives the funds**
6 **without acting** in collusion with the debtor in violating the rights of the secured party.

7 (c) **A transferee of electronic money takes the money free of a security interest if**
8 **the transferee obtains control of the money without acting in collusion with the debtor in**
9 **violating the rights of the secured party.**

400.9-334. (a) A security interest under this article may be created in goods that are
2 fixtures or may continue in goods that become fixtures. A security interest does not exist
3 under this article in ordinary building materials incorporated into an improvement on land.

4 (b) This article does not prevent creation of an encumbrance upon fixtures under real
5 property law.

6 (c) In cases not governed by subsections (d) through (h), a security interest in fixtures
7 is subordinate to a conflicting interest of an encumbrancer or owner of the related real
8 property other than the debtor.

9 (d) Except as otherwise provided in subsection (h), a perfected security interest in
10 fixtures has priority over a conflicting interest of an encumbrancer or owner of the real
11 property if the debtor has an interest of record in or is in possession of the real property and:

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

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

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

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

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

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

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

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

27 (A) Factory or office machines;

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

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

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

33 or

34 (4) The security interest is:

35 (A) Created in a manufactured home in a manufactured-home transaction; and

36 (B) Perfected pursuant to a statute described in section 400.9-311(a)(2).

37 (f) A security interest in fixtures, whether or not perfected, has priority over a
38 conflicting interest of an encumbrancer or owner of the real property if:

39 (1) The encumbrancer or owner has, in ~~[an authenticated]~~ **a signed** record, consented
40 to the security interest or disclaimed an interest in the goods as fixtures; or

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

42 (g) The priority of the security interest under subsection (f) continues for a reasonable
43 time if the debtor's right to remove the goods as against the encumbrancer or owner
44 terminates.

45 (h) A mortgage is a construction mortgage to the extent that it secures an obligation
46 incurred for the construction of an improvement on land, including the acquisition cost of the
47 land, if a recorded record of the mortgage so indicates. Except as otherwise provided in
48 subsections (e) and (f), a security interest in fixtures is subordinate to a construction mortgage
49 if a record of the mortgage is recorded before the goods become fixtures and the goods
50 become fixtures before the completion of the construction. A mortgage has this priority to the
51 same extent as a construction mortgage to the extent that it is given to refinance a construction
52 mortgage.

53 (i) A perfected security interest in crops growing on real property has priority over a
54 conflicting interest of an encumbrancer or owner of the real property if the debtor has an
55 interest of record in or is in possession of the real property.

56 (j) Subsection (i) prevails over any inconsistent provisions of other statutes.

400.9-341. Except as otherwise provided in section 400.9-340(c), and unless the bank
2 otherwise agrees in ~~[an authenticated]~~ **a signed** record, a bank's rights and duties with respect
3 to a deposit account maintained with the bank are not terminated, suspended, or modified by:

4 (1) The creation, attachment, or perfection of a security interest in the deposit
5 account;

6 (2) The bank's knowledge of the security interest; or

7 (3) The bank's receipt of instructions from the secured party.

400.9-404. (a) Unless an account debtor has made an enforceable agreement not to
2 assert defenses or claims, and subject to subsections (b) through (e), the rights of an assignee
3 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; and

6 (2) Any other defense or claim of the account debtor against the assignor which
7 accrues before the account debtor receives a notification of the assignment ~~[authenticated]~~
8 **signed** by the assignor or the assignee.

9 (b) Subject to subsection (c) and except as otherwise provided in subsection (d), the
10 claim of an account debtor against an assignor may be asserted against an assignee under
11 subsection (a) only to reduce the amount the account debtor owes.

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 for
14 personal, family, or household purposes.

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

22 (e) This section does not apply to an assignment of a health-care-insurance
23 receivable.

400.9-406. (a) Subject to subsections (b) through (i) **and (k)**, an account debtor on an
2 account, chattel paper, or a payment intangible may discharge its obligation by paying the
3 assignor until, but not after, the account debtor receives a notification, ~~[authenticated]~~ **signed**
4 by the assignor or the assignee, that the amount due or to become due has been assigned and
5 that payment is to be made to the assignee. After receipt of the notification, the account
6 debtor may discharge its obligation by paying the assignee and may not discharge the
7 obligation by paying the assignor.

8 (b) Subject to ~~[subsection]~~ **subsections (h) and (k)**, notification is ineffective under
9 subsection (a):

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

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

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

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

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

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

21 (c) Subject to ~~[subsection]~~ **subsections (h) and (k)**, if requested by the account
22 debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been
23 made. Unless the assignee complies, the account debtor may discharge its obligation by
24 paying the assignor, even if the account debtor has received a notification under subsection
25 (a).

26 (d) **In this subsection, "promissory note" includes a negotiable instrument that**
27 **evidences chattel paper.** Except as otherwise provided in subsection (e) and sections

28 400.2A-303 and 400.9-407, and subject to subsection (h), a term in an agreement between an
29 account debtor and an assignor or in a promissory note is ineffective to the extent that it:

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

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

38 (e) Subsection (d) does not apply to the sale of a payment intangible or promissory
39 note, other than a sale pursuant to a disposition under section 400.9-610 or an acceptance of
40 collateral under section 400.9-620.

41 (f) Except as otherwise provided in sections 400.2A-303 and 400.9-407, and subject
42 to subsections (h) and (i), a rule of law, statute, or regulation, that prohibits, restricts, or
43 requires the consent of a government, governmental body or official, or account debtor to the
44 assignment or transfer of, or creation of a security interest in, an account or chattel paper is
45 ineffective to the extent that the rule of law, statute, or regulation:

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

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

53 (g) Subject to ~~subsection~~ **subsections (h) and (k)**, an account debtor may not waive
54 or vary its option under subsection (b)(3).

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

58 (i) This section does not apply to an assignment of a health-care-insurance receivable.

59 (j) This section prevails over any inconsistent provisions of any statutes, rules, and
60 regulations.

61 **(k) Subsections (a), (b), (c), and (g) do not apply to a controllable account or**
62 **controllable payment intangible.**

400.9-408. (a) Except as otherwise provided in subsection (b), a term in a promissory
2 note or in an agreement between an account debtor and a debtor which relates to a health-

3 care-insurance receivable or a general intangible, including a contract, permit, license, or
4 franchise, and which term prohibits, restricts, or requires the consent of the person obligated
5 on the promissory note or the account debtor to, the assignment or transfer of, or creation,
6 attachment, or perfection of a security interest in, the promissory note, health-care-insurance
7 receivable, or general intangible, is ineffective to the extent that the term:

8 (1) Would impair the creation, attachment, or perfection of a security interest; or

9 (2) Provides that the assignment or transfer or the creation, attachment, or perfection
10 of the security interest may give rise to a default, breach, right of recoupment, claim, defense,
11 termination, right of termination, or remedy under the promissory note, health-care-insurance
12 receivable, or general intangible.

13 (b) Subsection (a) applies to a security interest in a payment intangible or promissory
14 note only if the security interest arises out of a sale of the payment intangible or promissory
15 note, other than a sale pursuant to a disposition under section 400.9-610 or an acceptance of
16 collateral under section 400.9-620.

17 (c) A rule of law, statute, or regulation that prohibits, restricts, or requires the consent
18 of a government, governmental body or official, person obligated on a promissory note, or
19 account debtor to the assignment or transfer of, or creation of a security interest in, a
20 promissory note, health-care-insurance receivable, or general intangible, including a contract,
21 permit, license, or franchise between an account debtor and a debtor, is ineffective to the
22 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 assignment or transfer or the creation, attachment, or perfection
25 of the security interest may give rise to a default, breach, right of recoupment, claim, defense,
26 termination, right of termination, or remedy under the promissory note, health-care-insurance
27 receivable, or 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 effective
31 under law other than this article but is ineffective under subsection (a) or (c), the creation,
32 attachment, or perfection of a security interest in the promissory note, health-care-insurance
33 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, or
40 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 related
43 information or materials furnished to the debtor in the transaction giving rise to the
44 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 or the
47 account debtor; and

48 (6) Does not entitle the secured party to enforce the security interest in the promissory
49 note, health-care-insurance receivable, or general intangible.

50 (e) This section prevails over any inconsistent provisions of any statutes, rules, and
51 regulations.

52 (f) **In this section, "promissory note" includes a negotiable instrument that**
53 **evidences chattel paper.**

400.9-509. (a) A person may file an initial financing statement, amendment that adds
2 collateral covered by a financing statement, or amendment that adds a debtor to a financing
3 statement only if:

4 (1) The debtor authorizes the filing in ~~[an authenticated]~~ **a signed** record or pursuant
5 to subsection (b) or (c); or

6 (2) The person holds an agricultural lien that has become effective at the time of filing
7 and the financing statement covers only collateral in which the person holds an agricultural
8 lien.

9 (b) By ~~[authenticating]~~ **signing** or becoming bound as debtor by a security agreement,
10 a 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 the
14 security agreement expressly covers proceeds.

15 (c) By acquiring collateral in which a security interest or agricultural lien continues
16 under section 400.9-315(a)(1), a debtor authorizes the filing of an initial financing statement,
17 and an amendment, covering the collateral and property that becomes collateral under section
18 400.9-315(a)(2).

19 (d) A person may file an amendment other than an amendment that adds collateral
20 covered by a financing statement or an amendment that adds a debtor to a financing statement
21 only if:

22 (1) The secured party of record authorizes the filing; or

23 (2) The amendment is a termination statement for a financing statement as to which
24 the secured party of record has failed to file or send a termination statement as required by
25 section 400.9-513(a) or (c), the debtor authorizes the filing, and the termination statement
26 indicates that the debtor authorized it to be filed.

27 (e) If there is more than one secured party of record for a financing statement, each
28 secured party of record may authorize the filing of an amendment under subsection (d).

400.9-513. (a) A secured party shall cause the secured party of record for a financing
2 statement to file a termination statement for the financing statement if the financing statement
3 covers consumer goods and:

4 (1) There is no obligation secured by the collateral covered by the financing statement
5 and no commitment to make an advance, incur an obligation, or otherwise give value; or

6 (2) The debtor did not authorize the filing of the initial financing statement.

7 (b) To comply with subsection (a), a secured party shall cause the secured party of
8 record to file the termination statement:

9 (1) Within one month after there is no obligation secured by the collateral covered by
10 the financing statement and no commitment to make an advance, incur an obligation, or
11 otherwise give value; or

12 (2) If earlier, within twenty days after the secured party receives [~~an authenticated~~] a
13 **signed** demand from a debtor.

14 (c) In cases not governed by subsection (a), within twenty days after a secured party
15 receives [~~an authenticated~~] a **signed** demand from a debtor, the secured party shall cause the
16 secured party of record for a financing statement to send to the debtor a termination statement
17 for the financing statement or file the termination statement in the filing office if:

18 (1) Except in the case of a financing statement covering accounts or chattel paper that
19 has been sold or goods that are the subject of a consignment, there is no obligation secured by
20 the collateral covered by the financing statement and no commitment to make an advance,
21 incur an obligation, or otherwise give value;

22 (2) The financing statement covers accounts or chattel paper that has been sold but as
23 to which the account debtor or other person obligated has discharged its obligation;

24 (3) The financing statement covers goods that were the subject of a consignment to
25 the debtor but are not in the debtor's possession; or

26 (4) The debtor did not authorize the filing of the initial financing statement.

27 (d) Except as otherwise provided in section 400.9-510, upon the filing of a
28 termination statement with the filing office, the financing statement to which the termination
29 statement relates ceases to be effective. Except as otherwise provided in section 400.9-510,
30 for purposes of sections 400.9-519(g), 400.9-522(a), and 400.9-523(c), the filing with the

31 filing office of a termination statement relating to a financing statement that indicates that the
 32 debtor is a transmitting utility also causes the effectiveness of the financing statement to
 33 lapse.

400.9-601. (a) After default, a secured party has the rights provided in this part and,
 2 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 the
 7 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, **400.9-105A**, 400.9-106 [œ], 400.9-107, or **400.9-107A** has the rights
 10 and duties provided in section 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 the
 15 parties.

16 (e) If a secured party has reduced its claim to judgment, the lien of any levy that may
 17 be made upon the collateral by virtue of an execution based upon the judgment relates back to
 18 the earliest of:

19 (1) The date of perfection of the security interest or agricultural lien in the collateral;
 20 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 of
 26 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.

400.9-605. (a) **Except as provided in subsection (b)**, a secured party does not owe a
 2 duty based on its status as secured party:

3 (1) To a person that is a debtor or obligor, unless the secured party knows:

4 (A) That the person is a debtor or obligor;

5 (B) The identity of the person; and

6 (C) How to communicate with the person; or

7 (2) To a secured party or lienholder that has filed a financing statement against a
8 person, unless the secured party knows:

9 (A) That the person is a debtor; and

10 (B) The identity of the person.

11 **(b) A secured party owes a duty based on its status as a secured party to a person**
12 **if, at the time the secured party obtains control of collateral that is a controllable**
13 **account, controllable electronic record, or controllable payment intangible or at the**
14 **time the security interest attaches to the collateral, whichever is later:**

15 (1) The person is a debtor or obligor; and

16 (2) The secured party knows that the information in subsection (a)(1)(A), (B), or
17 (C) relating to the person is not provided by the collateral, a record attached to or
18 logically associated with the collateral, or the system in which the collateral is recorded.

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 section 400.9-607 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 lien
9 under which the collection or enforcement is made; and

10 (C) The satisfaction of obligations secured by any subordinate security interest in or
11 other lien on the collateral subject to the security interest or agricultural lien under which the
12 collection or enforcement is made if the secured party receives ~~[an authenticated]~~ **a signed**
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 other
15 lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the
16 holder complies, the secured party need not comply with the holder's demand under
17 paragraph (1)(C);

18 (3) A secured party need not apply or pay over for application noncash proceeds of
19 collection and enforcement under section 400.9-607 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 obligor
23 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 is
26 not liable for any deficiency.

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 **a signed** 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 of
7 collateral under section 400.9-610 shall send to the persons specified in subsection (c) a
8 reasonable [~~authenticated~~] **signed** notification of disposition.

9 (c) To comply with subsection (b), the secured party shall send [~~an authenticated~~] **a**
10 **signed** 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~~] **a signed** notification of a claim of an interest in the
16 collateral;

17 (B) Any other secured party or lienholder that, ten days before the notification date,
18 held a security interest in or other lien on the collateral perfected by the filing of a financing
19 statement that:

20 (i) Identified the collateral;

21 (ii) Was indexed under the debtor's name as of that date; and

22 (iii) Was filed in the office in which to file a financing statement against the debtor
23 covering the collateral as of that date; and

24 (C) Any other secured party that, ten days before the notification date, held a security
25 interest in the collateral perfected by compliance with a statute, regulation, or treaty described
26 in section 400.9-311(a).

27 (d) Subsection (b) does not apply if the collateral is perishable or threatens to decline
28 speedily in value or is of a type customarily sold on a recognized market.

29 (e) A secured party complies with the requirement for notification prescribed by
30 subsection (c)(3)(B) if:

31 (1) Not later than twenty days or earlier than thirty days before the notification date,
32 the secured party requests, in a commercially reasonable manner, information concerning
33 financing statements indexed under the debtor's name in the office indicated in subsection (c)
34 (3)(B); and

35 (2) Before the notification date, the secured party:
 36 (A) Did not receive a response to the request for information; or
 37 (B) Received a response to the request for information and sent ~~[an authenticated]~~ a
 38 **signed** notification of disposition to each secured party or other lienholder named in that
 39 response whose financing statement covered the collateral.

400.9-613. (a) 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 and
 7 states the charge, if any, for an accounting; and
- 8 (E) States the time and place of a public disposition 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 specified
 11 in paragraph (1) are nevertheless sufficient is a question of fact;

12 (3) The contents of a notification providing substantially the information specified in
 13 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 ~~[400.9-614~~

18 ~~(3)]~~ **400.9-614(a)(3)**, when completed **in accordance with the instructions in subsection**
 19 **(b) and section 9-614(b)**, each provides sufficient information:

20 ~~[NOTIFICATION OF DISPOSITION OF COLLATERAL]~~

21 ~~[To:]~~ ~~[(Name of debtor, obligor, or other person to~~
 22 ~~which the notification is sent)]~~

23 ~~[From:]~~ ~~[(Name, address, and telephone number of~~
 24 ~~secured party)]~~

25 ~~[Name of Debtor~~
 26 ~~(s):]~~ ~~[(Include only if debtor(s) are not an addressee)]~~

27 ~~[(For a public disposition:)]~~

28 ~~[We will sell (or lease or license, as applicable) the (describe collateral)~~
 29 ~~(to the highest qualified bidder) in public as follows:]~~

30 ~~[Day and Date:]~~ ~~[_____]~~

31 ~~[Time:]~~ ~~[_____]~~

32 ~~[Place:]~~ ~~[_____]~~

69 (4) Include and complete items {4} and {6}.

70 (5) Include and complete item {5} only if the sender will charge the recipient for
 71 an accounting.

400.9-614. (a) 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)]~~ **400.9-613(a)(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 **in accordance with the**
 12 **instructions in subsection (b)**, provides sufficient information:

13 ~~[(Name and address of secured party)]~~

14 ~~[(Date)]~~

15 ~~[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
 19 agreement.]~~

20 ~~[(For a public disposition:)]~~

21 ~~[We will sell (describe collateral) at public sale.]~~

22 ~~[A sale could include a lease or license. The sale will be held as
 23 follows:]~~

24 ~~[Date:]~~

25 ~~[Time:]~~

26 ~~[Place:]~~

27 ~~[You may attend the sale and bring bidders if you want.]~~

28 ~~[(For a private disposition:)]~~

29 ~~[We will sell (describe collateral) at private sale sometime after (date).
 30 A sale could include a lease or license.]~~

30 ~~[The money that we get from the sale (after paying our costs) will
 31 reduce the amount you owe. If we get less money than you owe, you
 32 (will or will not, as applicable) still owe us the difference. If we get
 33~~

34 ~~more money than you owe, you will get the extra money, unless we~~
 35 ~~must pay it to someone else.]~~

36 ~~[You can get the property back at any time before we sell it by paying~~
 37 ~~us the full amount you owe (not just the past due payments), including~~
 38 ~~our expenses. To learn the exact amount you must pay, call us at~~
 39 ~~(telephone number).]~~

40 ~~[If you want us to explain to you in writing how we have figured the~~
 41 ~~amount that you owe us, you may call us at (telephone number) (or~~
 42 ~~write us at (secured party's address)) and request a written explanation.~~
 43 ~~(We will charge you \$ for the explanation if we sent you another~~
 44 ~~written explanation of the amount you owe us within the last six~~
 45 ~~months.)]~~

46 ~~[If you need more information about the sale call us at (telephone~~
 47 ~~number) (or write us at (secured party's address)).]~~

48 ~~[We are sending this notice to the following other people who have an~~
 49 ~~interest in (describe collateral) or who owe money under your~~
 50 ~~agreement:]~~

51 ~~[(Names of all other debtors and obligors, if any)]~~

52 ~~[(End of Form)]~~

53 **(Name and address of secured party)**

54 **(Date)**

55 **NOTICE OF OUR PLAN TO SELL PROPERTY**

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

57 **Subject: (Identify transaction)**

58 **We have your (describe collateral), because you broke promises in our**
 59 **agreement.**

60 **{1} We will sell (describe collateral) at public sale. A sale could include a lease or**
 61 **license. The sale will be held as follows:**

62 **(Date)**

63 **(Time)**

64 **(Place)**

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

66 **{2} We will sell (describe collateral) at private sale sometime after (date). A sale**
 67 **could include a lease or license.**

68 **{3} The money that we get from the sale, after paying our costs, will reduce the**
 69 **amount you owe. If we get less money than you owe, you (will or will not, as applicable)**

70 still owe us the difference. If we get more money than you owe, you will get the extra
71 money, unless we must pay it to someone else.

72 {4} You can get the property back at any time before we sell it by paying us the
73 full amount you owe, not just the past due payments, including our expenses. To learn
74 the exact amount you must pay, call us at (telephone number).

75 {5} If you want us to explain to you in (writing) (writing or in (description of
76 electronic record)) (description of electronic record) how we have figured the amount
77 that you owe us, {6} call us at (telephone number) (or) (write us at (secured party's
78 address)) (or contact us by (description of electronic communication method)) {7} and
79 request (a written explanation) (a written explanation or an explanation in (description
80 of electronic record)) (an explanation in (description of electronic record)).

81 {8} We will charge you \$ (amount) for the explanation if we sent you another
82 written explanation of the amount you owe us within the last six months.

83 {9} If you need more information about the sale (call us at (telephone number))
84 (or) (write us at (secured party's address)) (or contact us by (description of electronic
85 communication method)).

86 {10} We are sending this notice to the following other people who have an
87 interest in (describe collateral) or who owe money under your agreement:

88 (Names of all other debtors and obligors, if any)

89 (End of Form)

90 (4) A notification in the form of paragraph (3) is sufficient, even if additional
91 information appears at the end of the form;

92 (5) A notification in the form of paragraph (3) is sufficient, even if it includes errors
93 in information not required by paragraph (1), unless the error is misleading with respect to
94 rights arising under this article;

95 (6) If a notification under this section is not in the form of paragraph (3), law other
96 than this article determines the effect of including information not required by paragraph (1).

97 (b) The following instructions apply to the form of notification in subsection (a)
98 (3):

99 (1) The instructions in this subsection refer to the numbers in braces before
100 items in the form of notification in subsection (a)(3). Do not include the numbers or
101 braces in the notification. The numbers and braces are used only for the purpose of
102 these instructions.

103 (2) Include and complete either item {1}, if the notification relates to a public
104 disposition of the collateral, or item {2}, if the notification relates to a private disposition
105 of the collateral.

106 (3) Include and complete items {3}, {4}, {5}, {6}, and {7}.

107 **(4) In item {5}, include and complete any one of the three alternative methods**
 108 **for the explanation—writing, writing or electronic record, or electronic record.**

109 **(5) In item {6}, include the telephone number. In addition, the sender may**
 110 **include and complete either or both of the two additional alternative methods of**
 111 **communication—writing or electronic communication—for the recipient of the**
 112 **notification to communicate with the sender. Neither of the two additional methods**
 113 **of communication is required to be included.**

114 **(6) In item {7}, include and complete the method or methods for the explanation**
 115 **—writing, writing or electronic record, or electronic record—included in item {5}.**

116 **(7) Include and complete item {8} only if a written explanation is included in**
 117 **item {5} as a method for communicating the explanation and the sender will charge the**
 118 **recipient for another written explanation.**

119 **(8) In item {9}, include either the telephone number or the address or both the**
 120 **telephone number and the address. In addition, the sender may include and complete**
 121 **the additional method of communication—electronic communication—for the recipient**
 122 **of the notification to communicate with the sender. The additional method of electronic**
 123 **communication is not required to be included.**

124 **(9) If item {10} does not apply, insert "None" after "agreement:".**

400.9-615. (a) A secured party shall apply or pay over for application the cash
 2 proceeds of disposition under section 400.9-610 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 by
 5 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 lien
 7 under which the disposition is made;

8 (3) The satisfaction of obligations secured by any subordinate security interest in or
 9 other subordinate lien on the collateral if:

10 (A) The secured party receives from the holder of the subordinate security interest or
 11 other lien ~~[an authenticated]~~ **a signed** demand for proceeds before distribution of the proceeds
 12 is 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]~~ **a signed** 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 other
 19 lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the

20 holder does so, the secured party need not comply with the holder's demand under subsection
21 (a)(3).

22 (c) A secured party need not apply or pay over for application noncash proceeds of
23 disposition under section 400.9-610 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 surplus;
31 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 to
39 a transferee other than the secured party, a person related to the secured party, or a secondary
40 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 lien
53 for any surplus.

400.9-616. (a) In this section:

2 (1) "Explanation" means a ~~writing~~ **record** that:

3 (A) States the amount of the surplus or deficiency;

4 (B) Provides an explanation in accordance with 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 surplus
8 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]~~ **Signed** 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 a
16 consumer obligor is liable for a deficiency under section 400.9-615, the secured party shall:

17 (1) Send an explanation to the debtor or consumer obligor, as applicable, after the
18 disposition and:

19 (A) Before or when the secured party accounts to the debtor and pays any surplus or
20 first makes ~~[written]~~ demand **in a record** on the consumer obligor after the disposition for
21 payment of the deficiency; and

22 (B) Within fourteen days after receipt of a request; or

23 (2) In the case of a consumer obligor who is liable for a deficiency, within fourteen
24 days after receipt of a request, send to the consumer obligor a record waiving the secured
25 party's right to a deficiency.

26 (c) To comply with subsection (a)(1)(B), ~~[a writing]~~ **an explanation** must provide the
27 following information in the following order:

28 (1) The aggregate amount of obligations secured by the security interest under which
29 the disposition was made, and, if the amount reflects a rebate of unearned interest or credit
30 service charge, an indication of that fact, calculated as of a specified date:

31 (A) If the secured party takes or receives possession of the collateral after default, not
32 more than thirty-five days before the secured party takes or receives possession; or

33 (B) If the secured party takes or receives possession of the collateral before default or
34 does not take possession of the collateral, not more than thirty-five days before the
35 disposition;

36 (2) The amount of proceeds of the disposition;

37 (3) The aggregate amount of the obligations after deducting the amount of proceeds;

38 (4) The amount, in the aggregate or by type, and types of expenses, including
39 expenses of retaking, holding, preparing for disposition, processing, and disposing of the

40 collateral, and attorney's fees secured by the collateral which are known to the secured party
41 and relate to the current disposition;

42 (5) The amount, in the aggregate or by type, and types of credits, including rebates of
43 interest or credit service charges, to which the obligor is known to be entitled and which are
44 not reflected in the amount in paragraph (1); and

45 (6) The amount of the surplus or deficiency.

46 (d) A particular phrasing of the explanation is not required. An explanation
47 complying substantially with the requirements of subsection (a) is sufficient, even if it
48 includes minor errors that are not seriously misleading.

49 (e) A debtor or consumer obligor is entitled without charge to one response to a
50 request under this section during any six-month period in which the secured party did not
51 send to the debtor or consumer obligor an explanation pursuant to subsection (b)(1). The
52 secured party may require payment of a charge not exceeding twenty-five dollars for each
53 additional response.

400.9-619. (a) In this section, "transfer statement" means a record [authenticated]
2 signed by a secured party stating:

3 (1) That the debtor has defaulted in connection with an obligation secured by
4 specified collateral;

5 (2) That the secured party has exercised its post-default remedies with respect to the
6 collateral;

7 (3) That, by reason of the exercise, a transferee has acquired the rights of the debtor in
8 the collateral; and

9 (4) The name and mailing address of the secured party, debtor, and transferee.

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

15 (1) Accept the transfer statement;

16 (2) Promptly amend its records to reflect the transfer; and

17 (3) If applicable, issue a new appropriate certificate of title in the name of the
18 transferee.

19 (c) A transfer of the record or legal title to collateral to a secured party under
20 subsection (b) or otherwise is not of itself a disposition of collateral under this article and
21 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
2 accept collateral in full or partial satisfaction of the obligation it secures only if:

3 (1) The debtor consents to the acceptance under subsection (c);

4 (2) The secured party does not receive, within the time set forth in subsection (d), a
5 notification of objection to the proposal ~~[authenticated]~~ **signed** by:

6 (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 the
13 debtor waives the requirement pursuant to section 400.9-624.

14 (b) A purported or apparent acceptance of collateral under this section is ineffective
15 unless:

16 (1) The secured party consents to the acceptance in ~~[an authenticated]~~ **a signed** record
17 or 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]~~ **signed** 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]~~ **signed** after default or the secured party:

26 (A) Sends to the debtor after default a proposal that is unconditional or subject only to
27 a condition that collateral not in the possession of the secured party be preserved or
28 maintained;

29 (B) In the proposal, proposes to accept collateral in full satisfaction of the obligation
30 it secures; and

31 (C) Does not receive a notification of objection ~~[authenticated]~~ **signed** by the debtor
32 within 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 400.9-
36 621, 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 400.9-
39 621; or

40 (B) If a notification was not sent, before the debtor consents to the acceptance under
41 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 in
47 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~~ **signed** 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~~ **a signed** notification of a claim of an interest
5 in the collateral;

6 (2) Any other secured party or lienholder that, ten days before the debtor consented to
7 the acceptance, held a security interest in or other lien on the collateral perfected by the filing
8 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 the
12 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 persons
18 described in subsection (a).

400.9-624. (a) A debtor or secondary obligor may waive the right to notification of
2 disposition of collateral under section 400.9-611 only by an agreement to that effect entered
3 into and ~~authenticated~~ **signed** 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]~~ **signed** after
6 default.

7 (c) Except in a consumer-goods transaction, a debtor or secondary obligor may waive
8 the right to redeem collateral under section 400.9-623 only by an agreement to that effect
9 entered into and ~~[authenticated]~~ **signed** after default.

400.9-628. (a) **Subject to subsection (e)**, unless a secured party knows that a person
2 is a debtor or obligor, knows the identity of the person, and knows how to communicate with
3 the person:

4 (1) The secured party is not liable to the person, or to a secured party or lienholder
5 that has filed a financing statement against the person, for failure to comply with this article;
6 and

7 (2) The secured party's failure to comply with this article does not affect the liability
8 of the person for a deficiency.

9 (b) **Subject to subsection (e)**, a secured party is not liable because of its status as
10 secured party:

11 (1) To a person that is a debtor or obligor, unless the secured party knows:

12 (A) That the person is a debtor or obligor;

13 (B) The identity of the person; and

14 (C) How to communicate with the person; or

15 (2) To a secured party or lienholder that has filed a financing statement against a
16 person, unless the secured party knows:

17 (A) That the person is a debtor; and

18 (B) The identity of the person.

19 (c) A secured party is not liable to any person, and a person's liability for a deficiency
20 is not affected, because of any act or omission arising out of the secured party's reasonable
21 belief that a transaction is not a consumer-goods transaction or a consumer transaction or that
22 goods are not consumer goods, if the secured party's belief is based on its reasonable reliance
23 on:

24 (1) A debtor's representation concerning the purpose for which collateral was to be
25 used, acquired, or held; or

26 (2) An obligor's representation concerning the purpose for which a secured obligation
27 was incurred.

28 (d) A secured party is not liable under section 400.9-625(c)(2) more than once with
29 respect to any one secured obligation.

30 (e) **Subsections (a) and (b) do not apply to limit the liability of a secured party to**
31 **a person if, at the time the secured party obtains control of collateral that is a**

32 **controllable account, controllable electronic record, or controllable payment intangible**
 33 **or at the time the security interest attaches to the collateral, whichever is later:**

34 (1) **The person is a debtor or obligor; and**

35 (2) **The secured party knows that the information in subsection (b)(1)(A), (B), or**
 36 **(C) relating to the person is not provided by the collateral, a record attached to or**
 37 **logically associated with the collateral, or the system in which the collateral is recorded.**

400.12-101. This article may be cited as Uniform Commercial Code—
 2 **Controllable Electronic Records.**

400.12-102. (a) In this article:

2 (1) **"Controllable electronic record" means a record stored in an electronic**
 3 **medium that can be subjected to control under section 400.12-105. The term does not**
 4 **include a controllable account, a controllable payment intangible, a deposit account, an**
 5 **electronic copy of a record evidencing chattel paper, an electronic document of title,**
 6 **electronic money, investment property, or a transferable record.**

7 (2) **"Qualifying purchaser" means a purchaser of a controllable electronic**
 8 **record or an interest in a controllable electronic record that obtains control of the**
 9 **controllable electronic record for value, in good faith, and without notice of a claim of a**
 10 **property right in the controllable electronic record.**

11 (3) **"Transferable record" has the meaning provided for that term in Section 201**
 12 **(a)(1) of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C.**
 13 **Section 7021(a)(1), as amended.**

14 (4) **"Value" has the meaning provided in section 400.3-303(a), as if references in**
 15 **that subsection to an "instrument" were references to a controllable account,**
 16 **controllable electronic record, or controllable payment intangible.**

17 (b) **The definitions in Article 9 of "account debtor", "controllable account",**
 18 **"controllable payment intangible", "chattel paper", "deposit account", "electronic**
 19 **money", and "investment property" apply to this article.**

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

400.12-103. (a) If there is conflict between this article and Article 9, Article 9
 2 **governs.**

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

400.12-104. (a) This section applies to the acquisition and purchase of rights in a
 2 **controllable account or controllable payment intangible, including the rights and**
 3 **benefits under subsections (c), (d), (e), (g), and (h) of a purchaser and qualifying**
 4 **purchaser, in the same manner this section applies to a controllable electronic record.**

5 **(b) To determine whether a purchaser of a controllable account or a controllable**
6 **payment intangible is a qualifying purchaser, the purchaser obtains control of the**
7 **account or payment intangible if it obtains control of the controllable electronic record**
8 **that evidences the account or payment intangible.**

9 **(c) Except as provided in this section, law other than this article determines**
10 **whether a person acquires a right in a controllable electronic record and the right the**
11 **person acquires.**

12 **(d) A purchaser of a controllable electronic record acquires all rights in the**
13 **controllable electronic record that the transferor had or had power to transfer, except**
14 **that a purchaser of a limited interest in a controllable electronic record acquires rights**
15 **only to the extent of the interest purchased.**

16 **(e) A qualifying purchaser acquires its rights in the controllable electronic**
17 **record free of a claim of a property right in the controllable electronic record.**

18 **(f) Except as provided in subsections (a) and (e) for a controllable account and a**
19 **controllable payment intangible or law other than this article, a qualifying purchaser**
20 **takes a right to payment, right to performance, or other interest in property evidenced**
21 **by the controllable electronic record subject to a claim of a property right in the right to**
22 **payment, right to performance, or other interest in property.**

23 **(g) An action may not be asserted against a qualifying purchaser based on both a**
24 **purchase by the qualifying purchaser of a controllable electronic record and a claim of a**
25 **property right in another controllable electronic record, whether the action is framed in**
26 **conversion, replevin, constructive trust, equitable lien, or other theory.**

27 **(h) Filing of a financing statement under Article 9 is not notice of a claim of a**
28 **property right in a controllable electronic record.**

400.12-105. (a) A person has control of a controllable electronic record if the
2 **electronic record, a record attached to or logically associated with the electronic record,**
3 **or a system in which the electronic record is recorded:**

4 **(1) Gives the person:**

5 **(A) Power to avail itself of substantially all the benefit from the electronic**
6 **record; and**

7 **(B) Exclusive power, subject to subsection (b), to:**

8 **(i) Prevent others from availing themselves of substantially all the benefit from**
9 **the electronic record; and**

10 **(ii) Transfer control of the electronic record to another person or cause another**
11 **person to obtain control of another controllable electronic record as a result of the**
12 **transfer of the electronic record; and**

13 **(2) Enables the person readily to identify itself in any way, including by name,**
14 **identifying number, cryptographic key, office, or account number, as having the powers**
15 **specified in paragraph (1).**

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

18 **(1) The controllable electronic record, a record attached to or logically**
19 **associated with the electronic record, or a system in which the electronic record is**
20 **recorded limits the use of the electronic record or has a protocol programmed to cause a**
21 **change, including a transfer or loss of control or a modification of benefits afforded by**
22 **the electronic record; or**

23 **(2) The power is shared with another person.**

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

26 **(1) The person can exercise the power only if the power also is exercised by the**
27 **other person; and**

28 **(2) The other person:**

29 **(A) Can exercise the power without exercise of the power by the person; or**

30 **(B) Is the transferor to the person of an interest in the controllable electronic**
31 **record or a controllable account or controllable payment intangible evidenced by the**
32 **controllable electronic record.**

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

35 **(e) A person has control of a controllable electronic record if another person,**
36 **other than the transferor to the person of an interest in the controllable electronic**
37 **record or a controllable account or controllable payment intangible evidenced by the**
38 **controllable electronic record:**

39 **(1) Has control of the electronic record and acknowledges that it has control on**
40 **behalf of the person; or**

41 **(2) Obtains control of the electronic record after having acknowledged that it**
42 **will obtain control of the electronic record on behalf of the person.**

43 **(f) A person that has control under this section is not required to acknowledge**
44 **that it has control on behalf of another person.**

45 **(g) If a person acknowledges that it has or will obtain control on behalf of**
46 **another person, unless the person otherwise agrees or law other than this article or**
47 **Article 9 otherwise provides, the person does not owe any duty to the other person and is**
48 **not required to confirm the acknowledgment to any other person.**

400.12-106. (a) An account debtor on a controllable account or controllable payment intangible may discharge its obligation by paying:

(1) The person having control of the controllable electronic record that evidences the controllable account or controllable payment intangible; or

(2) Except as provided in subsection (b), a person that formerly had control of the controllable electronic record.

(b) Subject to subsection (d), the account debtor may not discharge its obligation by paying a person that formerly had control of the controllable electronic record if the account debtor receives a notification that:

(1) Is signed by a person that formerly had control or the person to which control was transferred;

(2) Reasonably identifies the controllable account or controllable payment intangible;

(3) Notifies the account debtor that control of the controllable electronic record that evidences the controllable account or controllable payment intangible was transferred;

(4) Identifies the transferee, in any reasonable way, including by name, identifying number, cryptographic key, office, or account number; and

(5) Provides a commercially reasonable method by which the account debtor is to pay the transferee.

(c) After receipt of a notification that complies with subsection (b), the account debtor may discharge its obligation by paying in accordance with the notification and may not discharge the obligation by paying a person that formerly had control.

(d) Subject to subsection (h), notification is ineffective under subsection (b):

(1) Unless, before the notification is sent, the account debtor and the person that, at that time, had control of the controllable electronic record that evidences the controllable account or controllable payment intangible agree in a signed record to a commercially reasonable method by which a person may furnish reasonable proof that control has been transferred;

(2) To the extent an agreement between the account debtor and 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 the account debtor, if the notification notifies the account debtor to:

(A) Divide a payment;

(B) Make less than the full amount of an installment or other periodic payment;

or

38 (C) pay any part of a payment by more than one method or to more than one
39 person.

40 (e) Subject to subsection (h), if requested by the account debtor, the person
41 giving the notification under subsection (b) seasonably shall furnish reasonable proof,
42 using the method in the agreement referred to in subsection (d)(1), that control of the
43 controllable electronic record has been transferred. Unless the person complies with the
44 request, the account debtor may discharge its obligation by paying a person that
45 formerly had control, even if the account debtor has received a notification under
46 subsection (b).

47 (f) A person furnishes reasonable proof under subsection (e) that control has
48 been transferred if the person demonstrates, using the method in the agreement referred
49 to in subsection (d)(1), that the transferee has the power to:

50 (1) Avail itself of substantially all the benefit from the controllable electronic
51 record;

52 (2) Prevent others from availing themselves of substantially all the benefit from
53 the controllable electronic record; and

54 (3) Transfer the powers specified in paragraphs (1) and (2) to another person.

55 (g) Subject to subsection (h), an account debtor may not waive or vary its rights
56 under subsections (d)(1) and (e) or its option under subsection (d)(3).

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

400.12-107. (a) Except as provided in subsection (b), the local law of a
2 controllable electronic record's jurisdiction governs a matter covered by this article.

3 (b) For a controllable electronic record that evidences a controllable account or
4 controllable payment intangible, the local law of the controllable electronic record's
5 jurisdiction governs a matter covered by section 400.12-106 unless an effective
6 agreement determines that the local law of another jurisdiction governs.

7 (c) The following rules determine a controllable electronic record's jurisdiction
8 under this section:

9 (1) If the controllable electronic record, or a record attached to or logically
10 associated with the controllable electronic record and readily available for review,
11 expressly provides that a particular jurisdiction is the controllable electronic record's
12 jurisdiction for purposes of this article or this chapter, that jurisdiction is the
13 controllable electronic record's jurisdiction.

14 (2) If paragraph (1) does not apply and the rules of the system in which the
15 controllable electronic record is recorded are readily available for review and expressly

16 provide that a particular jurisdiction is the controllable electronic record's jurisdiction
17 for purposes of this article or this chapter, that jurisdiction is the controllable electronic
18 record's jurisdiction.

19 (3) If paragraphs (1) and (2) do not apply and the controllable electronic record,
20 or a record attached to or logically associated with the controllable electronic record
21 and readily available for review, expressly provides that the controllable electronic
22 record is governed by the law of a particular jurisdiction, that jurisdiction is the
23 controllable electronic record's jurisdiction.

24 (4) If paragraphs (1), (2), and (3) do not apply and the rules of the system in
25 which the controllable electronic record is recorded are readily available for review and
26 expressly provide that the controllable electronic record or the system is governed by
27 the law of a particular jurisdiction, that jurisdiction is the controllable electronic
28 record's jurisdiction.

29 (5) If paragraphs (1) through (4) do not apply, the controllable electronic
30 record's jurisdiction is the District of Columbia.

31 (d) If subsection (c)(5) applies and Article 12 is not in effect in the District of
32 Columbia without material modification, the governing law for a matter covered by this
33 article is the law of the District of Columbia as though Article 12 were in effect in the
34 District of Columbia without material modification. In this subsection, "Article 12"
35 means Article 12 of Uniform Commercial Code Amendments (2022).

36 (e) To the extent subsections (a) and (b) provide that the local law of the
37 controllable electronic record's jurisdiction governs a matter covered by this article,
38 that law governs even if the matter or a transaction to which the matter relates does not
39 bear any relation to the controllable electronic record's jurisdiction.

40 (f) The rights acquired under Section 400.12-104 by a purchaser or qualifying
41 purchaser are governed by the law applicable under this section at the time of purchase.

2 400.199-101. This article may be cited as Transitional Provisions for Uniform
2 Commercial Code Amendments (2022).

400.199-102. (a) In this article:

2 (1) "Adjustment date" means July 1, 2025.

3 (2) "Article 12" means Article 12 of this chapter.

4 (3) "Article 12 property" means a controllable account, controllable electronic
5 record, or controllable payment intangible.

6 (b) The following definitions in other articles of this chapter apply to this article.

7 "Controllable account". Section 400.9-102.

8 "Controllable electronic record". Section 400.12-102.

9 "Controllable payment intangible". Section 400.9-102.

10 "Electronic money". Section 400.9-102.

11 "Financing statement". Section 400.9-102.

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

400.199-201. Except as provided in sections 400.199-301, 400.199-302, 400.199-
2 303, 400.199-304, 400.199-305, and 400.199-306, a transaction validly entered into
3 before August 28, 2023, and the rights, duties, and interests flowing from the transaction
4 remain valid thereafter and may be terminated, completed, consummated, or enforced
5 as required or permitted by law other than this chapter or, if applicable, this chapter, as
6 though this act had not taken effect.

400.199-301. (a) Except as provided in sections 400.199-301, 400.199-302,
2 400.199-303, 400.199-304, 400.199-305, and 400.199-306, Article 9 as amended by this
3 act and Article 12 apply to a transaction, lien, or other interest in property, even if the
4 transaction, lien, or interest was entered into, created, or acquired before August 28,
5 2023.

6 (b) Except as provided in subsection (c) and sections 400.199-302 through
7 400.199-306:

8 (1) A transaction, lien, or interest in property that was validly entered into,
9 created, or transferred before August 28, 2023 and was not governed by this chapter,
10 but would be subject to Article 9 as amended by this act or Article 12 if it had been
11 entered into, created, or transferred on or after August 28, 2023, including the rights,
12 duties, and interests flowing from the transaction, lien, or interest, remains valid on and
13 after August 28, 2023; and

14 (2) The transaction, lien, or interest may be terminated, completed,
15 consummated, and enforced as required or permitted by this act or by the law that
16 would apply if this act had not taken effect.

17 (c) This act does not affect an action, case, or proceeding commenced before
18 August 28, 2023.

400.199-302. (a) A security interest that is enforceable and perfected
2 immediately before August 28, 2023 is a perfected security interest under this act if,
3 on August 28, 2023, the requirements for enforceability and perfection under this act
4 are satisfied without further action.

5 (b) If a security interest is enforceable and perfected immediately before August
6 28, 2023, but the requirements for enforceability or perfection under this act are not
7 satisfied on August 28, 2023, the security interest:

8 **(1) Is a perfected security interest until the earlier of the time perfection would**
9 **have ceased under the law in effect immediately before August 28, 2023, or the**
10 **adjustment date;**

11 **(2) Remains enforceable thereafter only if the security interest satisfies the**
12 **requirements for enforceability under section 400.9-203, as amended by this act, before**
13 **the adjustment date; and**

14 **(3) Remains perfected thereafter only if the requirements for perfection under**
15 **this act are satisfied before the time specified in paragraph (1).**

400.199-303. A security interest that is enforceable immediately before August
2 **28, 2023, but is unperfected at that time:**

3 **(1) Remains an enforceable security interest until the adjustment date;**

4 **(2) Remains enforceable thereafter if the security interest becomes enforceable**
5 **under section 400.9-203, as amended by this act, on August 28, 2023, or before the**
6 **adjustment date; and**

7 **(3) Becomes perfected:**

8 **(A) Without further action, on August 28, 2023, if the requirements for**
9 **perfection under this act are satisfied before or at that time; or**

10 **(B) When the requirements for perfection are satisfied if the requirements are**
11 **satisfied after that time.**

400.199-304. (a) If action, other than the filing of a financing statement, is taken
2 **before August 28, 2023, and the action would have resulted in perfection of the security**
3 **interest had the security interest become enforceable before August 28, 2023, the action**
4 **is effective to perfect a security interest that attaches under this act before the**
5 **adjustment date. An attached security interest becomes unperfected on the adjustment**
6 **date unless the security interest becomes a perfected security interest under this act**
7 **before the adjustment date.**

8 **(b) The filing of a financing statement before August 28, 2023, is effective to**
9 **perfect a security interest on August 28, 2023, to the extent the filing would satisfy the**
10 **requirements for perfection under this act.**

11 **(c) The taking of an action before August 28, 2023, is sufficient for the**
12 **enforceability of a security interest on August 28, 2023, if the action would satisfy the**
13 **requirements for enforceability under this act.**

400.199-305. (a) Subject to subsections (b) and (c), this act determines the
2 **priority of conflicting claims to collateral.**

3 **(b) Subject to subsection (c), if the priorities of claims to collateral were**
4 **established before August 28, 2023, Article 9 as in effect before August 28, 2023,**
5 **determines priority.**

6 **(c) On the adjustment date, to the extent the priorities determined by Article 9**
7 **as amended by this act modify the priorities established before August 28, 2023, the**
8 **priorities of claims to Article 12 property and electronic money established before**
9 **August 28, 2023, cease to apply.**

400.199-306. (a) Subject to subsections (b) and (c), Article 12 determines the
2 **priority of conflicting claims to Article 12 property when the priority rules of Article 9**
3 **as amended by this act do not apply.**

4 **(b) Subject to subsection (c), when the priority rules of Article 9 as amended by**
5 **this act do not apply and the priorities of claims to Article 12 property were established**
6 **before August 28, 2023, law other than Article 12 determines priority.**

7 **(c) When the priority rules of Article 9 as amended by this act do not apply, to**
8 **the extent the priorities determined by this act modify the priorities established before**
9 **August 28, 2023, the priorities of claims to Article 12 property established before August**
10 **28, 2023, cease to apply on the adjustment date.**

400.199-401. This act takes effect on August 28, 2023.

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