

April 2000

Introduced by

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3           **41-01-10.5. (11-106) Required refilings.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 18                  1.   A purchaser has "control" of a certificated security in bearer form if the certificated  
19                  security is delivered to the purchaser.
- 20                  2.   A purchaser has "control" of a certificated security in registered form if the  
21                  certificated security is delivered to the purchaser, and:
- 22                   a.   The certificate is endorsed to the purchaser or in blank by an effective  
23                   endorsement; or
- 24                   b.   The certificate is registered in the name of the purchaser, upon original issue  
25                   or registration of transfer by the issuer.
- 26                  3.   A purchaser has "control" of an uncertificated security if:
- 27                   a.   The uncertificated security is delivered to the purchaser; or
- 28                   b.   The issuer has agreed that it will comply with instructions originated by the  
29                   purchaser without further consent by the registered owner.
- 30                  4.   A purchaser has "control" of a security entitlement if:
- 31                   a.   The purchaser becomes the entitlement holder; ~~or~~

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14                   1. In this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

1           The term does not include charters or other contracts involving the use or hire  
2           of a vessel. If a transaction is evidenced both by a security agreement or  
3           lease and by an instrument or series of instruments, the group of records  
4           taken together constitutes chattel paper.

5           l. "Collateral" means the property subject to a security interest or agricultural  
6           lien. The term includes:

7           (1) Proceeds to which a security interest attaches;

8           (2) Accounts, chattel paper, payment intangibles, and promissory notes  
9           that have been sold; and

10          (3) Goods that are the subject of a consignment.

11          m. "Commercial tort claim" means a claim arising in tort with respect to which:

12          (1) The claimant is an organization; or

13          (2) The claimant is an individual and the claim:

14               (a) Arose in the course of the claimant's business or profession; and

15               (b) Does not include damages arising out of personal injury to or the  
16               death of an individual.

17          n. "Commodity account" means an account maintained by a commodity  
18          intermediary in which a commodity contract is carried for a commodity  
19          customer.

20          o. "Commodity contract" means a commodity futures contract, an option on a  
21          commodity futures contract, a commodity option, or another contract if the  
22          contract or option is:

23          (1) Traded on or subject to the rules of a board of trade that has been  
24          designated as a contract market for such a contract pursuant to federal  
25          commodities laws; or

26          (2) Traded on a foreign commodity board of trade, exchange, or market  
27          and is carried on the books of a commodity intermediary for a  
28          commodity customer.

29          p. "Commodity customer" means a person for which a commodity intermediary  
30          carries a commodity contract on the intermediary's books.

31          q. "Commodity intermediary" means a person that:

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

- 1           x. "Consumer-goods transaction" means a consumer transaction in which:  
2           (1) An individual incurs an obligation primarily for personal, family, or  
3           household purposes; and  
4           (2) A security interest in consumer goods secures the obligation.
- 5           y. "Consumer obligor" means an obligor who is an individual and who incurred  
6           the obligation as part of a transaction entered into primarily for personal,  
7           family, or household purposes.
- 8           z. "Consumer transaction" means a transaction in which:  
9           (1) An individual incurs an obligation primarily for personal, family, or  
10           household purposes;  
11           (2) A security interest secures the obligation; and  
12           (3) The collateral is held or acquired primarily for personal, family, or  
13           household purposes. The term includes consumer-goods transactions.
- 14          aa. "Continuation statement" means an amendment of a financing statement  
15           which:  
16           (1) Identifies, by its file number, the initial financing statement to which it  
17           relates; and  
18           (2) Indicates that it is a continuation statement for, or that it is filed to  
19           continue the effectiveness of, the identified financing statement.
- 20          bb. "Debtor" means:  
21           (1) A person having an interest, other than a security interest or other lien,  
22           in the collateral, regardless of whether the person is an obligor;  
23           (2) A seller of accounts, chattel paper, payment intangibles, or promissory  
24           notes; or  
25           (3) A consignee.
- 26          cc. "Deposit account" means a demand, time, savings, passbook, or similar  
27           account maintained with a bank. The term does not include investment  
28           property or an account evidenced by an instrument.
- 29          dd. "Document" means a document of title or a receipt of the type described in  
30           subsection 2 of section 41-07-07.



- 1            ee. "Electronic chattel paper" means chattel paper evidenced by a record  
2            consisting of information stored in an electronic medium.
- 3            ff. "Encumbrance" means a right, other than an ownership interest, in real  
4            property. The term includes mortgages and other liens on real property.
- 5            gg. "Equipment" means goods other than inventory, farm products, or consumer  
6            goods.
- 7            hh. "Farm products" means goods, other than standing timber, with respect to  
8            which the debtor is engaged in a farming operation and which are:
- 9            (1) Crops grown, growing, or to be grown, including:
- 10            (a) Crops produced on trees, vines, and bushes; and
- 11            (b) Aquatic goods produced in aquacultural operations;
- 12            (2) Livestock, born or unborn, including aquatic goods produced in  
13            aquacultural operations;
- 14            (3) Supplies used or produced in a farming operation; or
- 15            (4) Products of crops or livestock in their unmanufactured states.
- 16            ii. "Farming operation" means raising, cultivating, propagating, fattening,  
17            grazing, or any other farming, livestock, or aquacultural operation.
- 18            jj. "File number" means the number assigned to an initial financing statement  
19            pursuant to subsection 1 of section 41-09-90.
- 20            kk. "Filing office" means an office designated in section 41-09-72 as the place to  
21            file a financing statement.
- 22            ll. "Filing-office rule" means a rule adopted under section 41-09-97.
- 23            mm. "Financing statement" means a record composed of an initial financing  
24            statement and any filed record relating to the initial financing statement.
- 25            nn. "Fixture filing" means the filing of a financing statement covering goods that  
26            are or are to become fixtures and satisfying subsections 1 and 2 of section  
27            41-09-73. The term includes the filing of a financing statement covering  
28            goods of a transmitting utility which are or are to become fixtures.
- 29            oo. "Fixtures" means goods that have become so related to particular real  
30            property that an interest in them arises under real property law.

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

1                   state, or a foreign country. The term includes an organization having a  
2                   separate corporate existence if the organization is eligible to issue debt on  
3                   which interest is exempt from income taxation under the laws of the United  
4                   States.

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

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

13                   (1) Investment property;

14                   (2) Letters of credit; or

15                   (3) Writings that evidence a right to payment arising out of the use of a  
16                   credit or charge card or information contained on or for use with the  
17                   card.

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

19                   (1) Are leased by a person as lessor;

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

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

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

25                   ww. "Investment property" means a security, whether certificated or uncertificated,  
26                   security entitlement, securities account, commodity contract, or commodity  
27                   account.

28                   xx. "Jurisdiction of organization", with respect to a registered organization, means  
29                   the jurisdiction under whose law the organization is organized.

30                   yy. "Letter-of-credit right" means a right to payment or performance under a letter  
31                   of credit, regardless of whether the beneficiary has demanded or is at the time

1                   entitled to demand payment or performance. The term does not include the  
2                   right of a beneficiary to demand payment or performance under a letter of  
3                   credit.

4                   zz. "Lien creditor" means:

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

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

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

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

10                  aaa. "Manufactured home" means a structure, transportable in one or more  
11                  sections, that, in the traveling mode, is eight body feet [2.44 meters] or more  
12                  in width or forty body feet [12.19 meters] or more in length, or, when erected  
13                  on site, is three hundred twenty square feet [29.73 square meters] or more,  
14                  and which is built on a permanent chassis and designed to be used as a  
15                  dwelling with or without a permanent foundation when connected to the  
16                  required utilities, and includes the plumbing, heating, air-conditioning, and  
17                  electrical systems contained therein. The term includes any structure that  
18                  meets all of the requirements of this subdivision except the size requirements  
19                  and with respect to which the manufacturer voluntarily files a certification  
20                  required by the United States secretary of housing and urban development  
21                  and complies with the standards established under title 42 of the United  
22                  States Code.

23                  bbb. "Manufactured-home transaction" means a secured transaction:

24                  (1) Which creates a purchase-money security interest in a manufactured  
25                  home, other than a manufactured home held as inventory; or

26                  (2) In which a manufactured home, other than a manufactured home held  
27                  as inventory, is the primary collateral.

28                  ccc. "Mortgage" means a consensual interest in real property, including fixtures,  
29                  that secures payment or performance of an obligation.



- 1            kkk.    "Person related to", with respect to an organization, means:
- 2                    (1)    A person directly or indirectly controlling, controlled by, or under
- 3                    common control with the organization;
- 4                    (2)    An officer or director of, or a person performing similar functions with
- 5                    respect to, the organization;
- 6                    (3)    An officer or director of, or a person performing similar functions with
- 7                    respect to, a person described in paragraph 1;
- 8                    (4)    The spouse of an individual described in paragraph 1, 2, or 3; or
- 9                    (5)    An individual who is related by blood or marriage to an individual
- 10                   described in paragraph 1, 2, 3, or 4 and shares the same home with the
- 11                   individual.
- 12            lll.    "Proceeds" means the following property:
- 13                   (1)    Whatever is acquired upon the sale, lease, license, exchange, or other
- 14                   disposition of collateral;
- 15                   (2)    Whatever is collected on, or distributed on account of, collateral;
- 16                   (3)    Rights arising out of collateral;
- 17                   (4)    To the extent of the value of collateral, claims arising out of the loss,
- 18                   nonconformity, or interference with the use of, defects or infringement
- 19                   of rights in, or damage to, the collateral; or
- 20                   (5)    To the extent of the value of collateral and to the extent payable to the
- 21                   debtor or the secured party, insurance payable by reason of the loss or
- 22                   nonconformity of, defects or infringement of rights in, or damage to, the
- 23                   collateral.
- 24            mmm.    "Promissory note" means an instrument that evidences a promise to pay a
- 25                   monetary obligation, does not evidence an order to pay, and does not contain
- 26                   an acknowledgment by a bank that the bank has received for deposit a sum of
- 27                   money or funds.
- 28            nnn.    "Proposal" means a record authenticated by a secured party which includes
- 29                   the terms on which the secured party is willing to accept collateral in full or
- 30                   partial satisfaction of the obligation it secures under sections 41-09-118
- 31                   through 41-09-120.

- 1           ooo.   "Public-finance transaction" means a secured transaction in connection with  
2                   which:  
3                   (1)   Debt securities are issued;  
4                   (2)   All or a portion of the securities issued have an initial stated maturity of  
5                           at least twenty years; and  
6                   (3)   The debtor, obligor, secured party, account debtor or other person  
7                           obligated on collateral, assignor or assignee of a secured obligation, or  
8                           assignor or assignee of a security interest is a state or a governmental  
9                           unit of a state.
- 10          ppp.   "Pursuant to commitment", with respect to an advance made or other value  
11                   given by a secured party, means pursuant to the secured party's obligation,  
12                   regardless of whether a subsequent event of default or other event not within  
13                   the secured party's control has relieved or may relieve the secured party from  
14                   the secured party's obligation.
- 15          qqq.   "Record", except as used in "for record", "of record", "record or legal title", and  
16                   "record owner", means information that is inscribed on a tangible medium or  
17                   which is stored in an electronic or other medium and is retrievable in  
18                   perceivable form.
- 19          rrr.   "Registered organization" means an organization organized solely under the  
20                   law of a single state or the United States and as to which the state or the  
21                   United States must maintain a public record showing the organization to have  
22                   been organized.
- 23          sss.   "Secondary obligor" means an obligor to the extent that:  
24                   (1)   The obligor's obligation is secondary; or  
25                   (2)   The obligor has a right of recourse with respect to an obligation secured  
26                           by collateral against the debtor, another obligor, or property of either.
- 27          ttt.   "Secured party" means:  
28                   (1)   A person in whose favor a security interest is created or provided for  
29                           under a security agreement, regardless of whether any obligation to be  
30                           secured is outstanding;  
31                   (2)   A person that holds an agricultural lien;

- 1                   (3) A consignor;
- 2                   (4) A person to which accounts, chattel paper, payment intangibles, or
- 3                   promissory notes have been sold;
- 4                   (5) A trustee, indenture trustee, agent, collateral agent, or other
- 5                   representative in whose favor a security interest or agricultural lien is
- 6                   created or provided for; or
- 7                   (6) A person that holds a security interest arising under section 41-02-46,
- 8                   section 41-02-53, subsection 3 of section 41-02-90, subsection 5 of
- 9                   section 41-02.1-56, section 41-04-22, or section 41-05-18.
- 10                  uuu. "Security agreement" means an agreement that creates or provides for a
- 11                  security interest.
- 12                  vvv. "Send", in connection with a record or notification, means:
- 13                   (1) To deposit in the mail, deliver for transmission, or transmit by any other
- 14                   usual means of communication, with postage or cost of transmission
- 15                   provided for, addressed to any address reasonable under the
- 16                   circumstances; or
- 17                   (2) To cause the record or notification to be received within the time that it
- 18                   would have been received if properly sent under paragraph 1.
- 19                  www. "Software" means a computer program and any supporting information
- 20                  provided in connection with a transaction relating to the program. The term
- 21                  does not include a computer program that is included in the definition of
- 22                  goods.
- 23                  xxx. "State" means a state of the United States, the District of Columbia, the
- 24                  Commonwealth of Puerto Rico, the United States Virgin Islands, or any
- 25                  territory or insular possession subject to the jurisdiction of the United States.
- 26                  yyy. "Supporting obligation" means a letter-of-credit right or secondary obligation
- 27                  that supports the payment or performance of an account, chattel paper, a
- 28                  document, a general intangible, an instrument, or investment property.
- 29                  zzz. "Tangible chattel paper" means chattel paper evidenced by a record or
- 30                  records consisting of information that is inscribed on a tangible medium.



- 1            aaaa.    "Termination statement" means an amendment of a financing statement  
2                            which:  
3                            (1)    Identifies, by the amendment's file number, the initial financing  
4    statement to which it relates; and  
5                            (2)    Indicates either that the amendment is a termination statement or that  
6    the identified financing statement is no longer effective.
- 7            bbbb.    "Transmitting utility" means a person primarily engaged in the business of:  
8                            (1)    Operating a railroad, subway, street railway, or trolley bus;  
9                            (2)    Transmitting communications electrically, electromagnetically, or by  
10     light;  
11                            (3)    Transmitting goods by pipeline or sewer; or  
12                            (4)    Transmitting or producing and transmitting electricity, steam, gas, or  
13     water.
- 14            2.    The following definitions in other chapters apply to this chapter:
- 15                            a.    "Applicant". Section 41-05-02.  
16                            b.    "Beneficiary". Section 41-05-02.  
17                            c.    "Broker". Section 41-08-02.  
18                            d.    "Certificated security". Section 41-08-02.  
19                            e.    "Check". Section 41-03-04.  
20                            f.    "Clearing corporation". Section 41-08-02.  
21                            g.    "Contract for sale". Section 41-02-06.  
22                            h.    "Customer". Section 41-04-04.  
23                            i.    "Entitlement holder". Section 41-08-02.  
24                            j.    "Financial asset". Section 41-08-02.  
25                            k.    "Holder in due course". Section 41-03-28.  
26                            l.    "Issuer" (with respect to a letter of credit or letter-of-credit right). Section  
27     41-05-02.  
28                            m.    "Issuer" (with respect to a security). Section 41-08-17.  
29                            n.    "Lease". Section 41-02.1-03.  
30                            o.    "Lease agreement". Section 41-02.1-03.  
31                            p.    "Lease contract". Section 41-02.1-03.

- 1           q. "Leasehold interest". Section 41-02.1-03.  
2           r. "Lessee". Section 41-02.1-03.  
3           s. "Lessee in ordinary course of business". Section 41-02.1-03.  
4           t. "Lessor". Section 41-02.1-03.  
5           u. "Lessor's residual interest". Section 41-02.1-03.  
6           v. "Letter of credit". Section 41-05-02.  
7           w. "Merchant". Section 41-02-04.  
8           x. "Negotiable instrument". Section 41-03-04.  
9           y. "Nominated person". Section 41-05-02.  
10          z. "Note". Section 41-03-04.  
11          aa. "Proceeds of a letter of credit". Section 41-05-14.  
12          bb. "Prove". Section 41-03-03.  
13          cc. "Sale". Section 41-02-06.  
14          dd. "Securities account". Section 41-08-41.  
15          ee. "Securities intermediary". Section 41-08-02.  
16          ff. "Security". Section 41-08-02.  
17          gg. "Security certificate". Section 41-08-02.  
18          hh. "Security entitlement". Section 41-08-02.  
19          ii. "Uncertificated security". Section 41-08-02.  
20          3. Chapter 41-01 contains general definitions and principles of construction and  
21             interpretation applicable throughout this chapter.

22           **41-09-03. (9-103) Purchase-money security interest - Application of payments -**

23           **Burden of establishing.**

- 24           1. In this section:  
25            a. "Purchase-money collateral" means goods or software that secures a  
26               purchase-money obligation incurred with respect to that collateral; and  
27            b. "Purchase-money obligation" means an obligation of an obligor incurred as all  
28               or part of the price of the collateral or for value given to enable the debtor to  
29               acquire rights in or the use of the collateral if the value is in fact so used.  
30           2. A security interest in goods is a purchase-money security interest:

- 1           a. To the extent that the goods are purchase-money collateral with respect to  
2           that security interest;
- 3           b. If the security interest is in inventory that is or was purchase-money collateral,  
4           also to the extent that the security interest secures a purchase-money  
5           obligation incurred with respect to other inventory in which the secured party  
6           holds or held a purchase-money security interest; and
- 7           c. Also to the extent that the security interest secures a purchase-money  
8           obligation incurred with respect to software in which the secured party holds  
9           or held a purchase-money security interest.
- 10          3. A security interest in software is a purchase-money security interest to the extent  
11          that the security interest also secures a purchase-money obligation incurred with  
12          respect to goods in which the secured party holds or held a purchase-money  
13          security interest if:
- 14               a. The debtor acquired its interest in the software in an integrated transaction in  
15               which the debtor acquired an interest in the goods; and
- 16               b. The debtor acquired its interest in the software for the principal purpose of  
17               using the software in the goods.
- 18          4. The security interest of a consignor in goods that are the subject of a consignment  
19          is a purchase-money security interest in inventory.
- 20          5. In a transaction other than a consumer-goods transaction, if the extent to which a  
21          security interest is a purchase-money security interest depends on the application  
22          of a payment to a particular obligation, the payment must be applied:
- 23               a. In accordance with any reasonable method of application to which the parties  
24               agree;
- 25               b. In the absence of the parties' agreement to a reasonable method, in  
26               accordance with any intention of the obligor manifested at or before the time  
27               of payment; or
- 28               c. In the absence of an agreement to a reasonable method and a timely  
29               manifestation of the obligor's intention, in the following order:
- 30                   (1) To obligations that are not secured; and

- 1                   (2) If more than one obligation is secured, to obligations secured by  
2                   purchase-money security interests in the order in which those  
3                   obligations were incurred.
- 4           6. In a transaction other than a consumer-goods transaction, a purchase-money  
5           security interest does not lose its status as such, even if:
- 6           a. The purchase-money collateral also secures an obligation that is not a  
7           purchase-money obligation;
- 8           b. Collateral that is not purchase-money collateral also secures the  
9           purchase-money obligation; or
- 10          c. The purchase-money obligation has been renewed, refinanced, consolidated,  
11          or restructured.
- 12          7. In a transaction other than a consumer-goods transaction, a secured party claiming  
13          a purchase-money security interest has the burden of establishing the extent to  
14          which the security interest is a purchase-money security interest.
- 15          8. The limitation of the rules in subsections 5 through 7 to transactions other than  
16          consumer-goods transactions is intended to leave to the court the determination of  
17          the proper rules in consumer-goods transactions. The court may not infer from that  
18          limitation the nature of the proper rule in consumer-goods transactions and may  
19          continue to apply established approaches.
- 20          **41-09-04. (9-104) Control of deposit account.**
- 21          1. A secured party has control of a deposit account if:
- 22          a. The secured party is the bank with which the deposit account is maintained;  
23          b. The debtor, secured party, and bank have agreed in an authenticated record  
24          that the bank will comply with instructions originated by the secured party  
25          directing disposition of the funds in the account without further consent by the  
26          debtor; or
- 27          c. The secured party becomes the bank's customer with respect to the deposit  
28          account.
- 29          2. A secured party that has satisfied subsection 1 has control, even if the debtor  
30          retains the right to direct the disposition of funds from the deposit account.

1           **41-09-05. (9-105) Control of electronic chattel paper.** A secured party has control of  
2 electronic chattel paper if the record or records comprising the chattel paper are created,  
3 stored, and assigned in such a manner that:

- 4           1. A single authoritative copy of the record or records exists which is unique,  
5           identifiable and, except as otherwise provided in subsections 4 through 6,  
6           unalterable;
- 7           2. The authoritative copy identifies the secured party as the assignee of the record or  
8           records;
- 9           3. The authoritative copy is communicated to and maintained by the secured party or  
10           the secured party's designated custodian;
- 11           4. Copies or revisions that add or change an identified assignee of the authoritative  
12           copy can be made only with the participation of the secured party;
- 13           5. Each copy of the authoritative copy and any copy of a copy is readily identifiable as  
14           a copy that is not the authoritative copy; and
- 15           6. Any revision of the authoritative copy is readily identifiable as an authorized or  
16           unauthorized revision.

17           **41-09-06. (9-106) Control of investment property.**

- 18           1. A person has control of a certificated security, uncertificated security, or security  
19           entitlement as provided in section 41-08-06.
- 20           2. A secured party has control of a commodity contract if:
  - 21           a. The secured party is the commodity intermediary with which the commodity  
22           contract is carried; or
  - 23           b. The commodity customer, secured party, and commodity intermediary have  
24           agreed that the commodity intermediary will apply any value distributed on  
25           account of the commodity contract as directed by the secured party without  
26           further consent by the commodity customer.
- 27           3. A secured party having control of all security entitlements or commodity contracts  
28           carried in a securities account or commodity account has control over the  
29           securities account or commodity account.

30           **41-09-07. (9-107) Control of letter-of-credit right.** A secured party has control of a  
31 letter-of-credit right to the extent of any right to payment or performance by the issuer or any

1 nominated person if the issuer or nominated person has consented to an assignment of  
2 proceeds of the letter of credit under subsection 3 of section 41-05-14 or otherwise applicable  
3 law or practice.

4 **41-09-08. (9-108) Sufficiency of description.**

- 5 1. Except as otherwise provided in subsections 3 through 5, a description of personal  
6 or real property is sufficient, regardless of whether the description is specific, if the  
7 description reasonably identifies what is described.
- 8 2. Except as otherwise provided in subsection 4, a description of collateral reasonably  
9 identifies the collateral if it identifies the collateral by:
- 10 a. Specific listing;
- 11 b. Category;
- 12 c. Except as otherwise provided in subsection 5, a type of collateral defined in  
13 the Uniform Commercial Code;
- 14 d. Quantity;
- 15 e. Computational or allocational formula or procedure; or
- 16 f. Except as otherwise provided in subsection 3, any other method, if the identity  
17 of the collateral is objectively determinable.
- 18 3. A description of collateral as "all the debtor's assets" or "all the debtor's personal  
19 property" or using words of similar import does not reasonably identify the  
20 collateral.
- 21 4. Except as otherwise provided in subsection 5, a description of a security  
22 entitlement, securities account, or commodity account is sufficient if the description  
23 describes:
- 24 a. The collateral by those terms or as investment property; or
- 25 b. The underlying financial asset or commodity contract.
- 26 5. A description only by type of collateral defined in the Uniform Commercial Code is  
27 an insufficient description of:
- 28 a. A commercial tort claim; or
- 29 b. In a consumer transaction, consumer goods, a security entitlement, a  
30 securities account, or a commodity account.

31 **41-09-09. (9-109) Scope.**

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

- 1           d. A sale of accounts, chattel paper, payment intangibles, or promissory notes  
2           as part of a sale of the business out of which they arose;
- 3           e. An assignment of accounts, chattel paper, payment intangibles, or promissory  
4           notes which is for the purpose of collection only;
- 5           f. An assignment of a right to payment under a contract to an assignee that is  
6           also obligated to perform under the contract;
- 7           g. An assignment of a single account, payment intangible, or promissory note to  
8           an assignee in full or partial satisfaction of a preexisting indebtedness;
- 9           h. A transfer of an interest in or an assignment of a claim under a policy of  
10           insurance, other than an assignment by or to a health care provider of a  
11           health care insurance receivable and any subsequent assignment of the right  
12           to payment, but sections 41-09-35 and 41-09-42 apply with respect to  
13           proceeds and priorities in proceeds;
- 14           i. An assignment of a right represented by a judgment, other than a judgment  
15           taken on a right to payment that was collateral;
- 16           j. A right of recoupment or set-off, but:
- 17               (1) Section 41-09-60 applies with respect to the effectiveness of rights of  
18               recoupment or set-off against deposit accounts; and
- 19               (2) Section 41-09-66 applies with respect to defenses or claims of an  
20               account debtor;
- 21           k. The creation or transfer of an interest in or lien on real property, including a  
22           lease or rents thereunder, except to the extent that provision is made for:
- 23               (1) Liens on real property in sections 41-09-13 and 41-09-28;
- 24               (2) Fixtures in section 41-09-54;
- 25               (3) Fixture filings in sections 41-09-72, 41-09-73, 41-09-87, and 41-09-90;  
26               and
- 27               (4) Security agreements covering personal and real property in section  
28               41-09-102;
- 29           l. An assignment of a claim arising in tort, other than a commercial tort claim,  
30           but sections 41-09-35 and 41-09-42 apply with respect to proceeds and  
31           priorities in proceeds; or



1           m. An assignment of a deposit account in a consumer transaction, but sections  
2                   41-09-35 and 41-09-42 apply with respect to proceeds and priorities in  
3                   proceeds.

4           **41-09-10. (9-110) Security interests arising under chapter 41-02 or 41-02.1. A**  
5 **security interest arising under section 41-02-46, section 41-02-53, subsection 3 of section**  
6 **41-02-90, or subsection 5 of section 41-02.1-56 is subject to this chapter. However, until the**  
7 **debtor obtains possession of the goods:**

- 8           1. The security interest is enforceable, even if subdivision c of subsection 2 of section  
9                   41-09-13 has not been satisfied;
- 10          2. Filing is not required to perfect the security interest;
- 11          3. The rights of the secured party after default by the debtor are governed by chapter  
12               41-02 or 41-02.1; and
- 13          4. The security interest has priority over a conflicting security interest created by the  
14               debtor.

15          **41-09-11. (9-201) General effectiveness of security agreement.**

- 16          1. Except as otherwise provided in this title, a security agreement is effective  
17               according to the security agreement's terms between the parties, against  
18               purchasers of the collateral, and against creditors.
- 19          2. A transaction subject to this chapter is subject to any applicable rule of law which  
20               establishes a different rule for consumers and [insert reference to (i) any other  
21               statute or regulation that regulates the rates, charges, agreements, and practices  
22               for loans, credit sales, or other extensions of credit and (ii) any  
23               consumer-protection statute or regulation].
- 24          3. In case of conflict between this chapter and a rule of law, statute, or regulation  
25               described in subsection 2, the rule of law, statute, or regulation controls. Failure to  
26               comply with a statute or regulation described in subsection 2 has only the effect the  
27               statute or regulation specifies.
- 28          4. This chapter does not:
  - 29               a. Validate any rate, charge, agreement, or practice that violates a rule of law,  
30                   statute, or regulation described in subsection 2; or

- 1           b. Extend the application of the rule of law, statute, or regulation to a transaction  
2                   not otherwise subject to it.

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

- 3           **41-09-12. (9-202) Title to collateral immaterial.** Except as otherwise provided with  
4 respect to consignments or sales of accounts, chattel paper, payment intangibles, or  
5 promissory notes, the provisions of this chapter with regard to rights and obligations apply  
6 whether title to collateral is in the secured party or the debtor.

- 7           **41-09-13. (9-203) Attachment and enforceability of security interest - Proceeds -**  
8 **Supporting obligations - Formal requisites.**

- 9           1. A security interest attaches to collateral when the security interest becomes  
10 enforceable against the debtor with respect to the collateral, unless an agreement  
11 expressly postpones the time of attachment.
- 12           2. Except as otherwise provided in subsections 3 through 9, a security interest is  
13 enforceable against the debtor and third parties with respect to the collateral only if:
- 14           a. Value has been given;
- 15           b. The debtor has rights in the collateral or the power to transfer rights in the  
16 collateral to a secured party; and
- 17           c. One of the following conditions is met:
- 18                   (1) The debtor has authenticated a security agreement that provides a  
19 description of the collateral and, if the security interest covers timber to  
20 be cut, a description of the land concerned;
- 21                   (2) The collateral is not a certificated security and is in the possession of  
22 the secured party under section 41-09-33 pursuant to the debtor's  
23 security agreement;
- 24                   (3) The collateral is a certificated security in registered form and the  
25 security certificate has been delivered to the secured party under  
26 section 41-08-27 pursuant to the debtor's security agreement; or

- 1                   (4) The collateral is deposit accounts, electronic chattel paper, investment  
2                   property, or letter-of-credit rights, and the secured party has control  
3                   under section 41-09-04, 41-09-05, 41-09-06, or 41-09-07 pursuant to  
4                   the debtor's security agreement.
- 5           3. Subsection 2 is subject to section 41-04-22 on the security interest of a collecting  
6           bank, section 41-05-18 on the security interest of a letter-of-credit issuer or  
7           nominated person, section 41-09-10 on a security interest arising under chapter  
8           41-02 or 41-02.1, and section 41-09-16 on security interests in investment  
9           property.
- 10          4. A person becomes bound as debtor by a security agreement entered into by  
11          another person if, by operation of law other than this chapter or by contract:
- 12               a. The security agreement becomes effective to create a security interest in the  
13               person's property; or
- 14               b. The person becomes generally obligated for the obligations of the other  
15               person, including the obligation secured under the security agreement, and  
16               acquires or succeeds to all or substantially all of the assets of the other  
17               person.
- 18          5. If a new debtor becomes bound as debtor by a security agreement entered into by  
19          another person:
- 20               a. The agreement satisfies subdivision c of subsection 2 with respect to existing  
21               or after-acquired property of the new debtor to the extent the property is  
22               described in the agreement; and
- 23               b. Another agreement is not necessary to make a security interest in the  
24               property enforceable.
- 25          6. The attachment of a security interest in collateral gives the secured party the rights  
26          to proceeds provided by section 41-09-35 and is also attachment of a security  
27          interest in a supporting obligation for the collateral.
- 28          7. The attachment of a security interest in a right to payment or performance secured  
29          by a security interest or other lien on personal or real property is also attachment of  
30          a security interest in the security interest, mortgage, or other lien.

1           8. The attachment of a security interest in a securities account is also attachment of a  
2           security interest in the security entitlements carried in the securities account.

3           9. The attachment of a security interest in a commodity account is also attachment of  
4           a security interest in the commodity contracts carried in the commodity account.

5           **41-09-14. (9-204) After-acquired property - Future advances.**

6           1. Except as otherwise provided in subsection 2, a security agreement may create or  
7           provide for a security interest in after-acquired collateral.

8           2. A security interest does not attach under a term constituting an after-acquired  
9           property clause to:

10          a. Consumer goods, other than an accession if given as additional security,  
11           unless the debtor acquires rights in the consumer goods within ten days after  
12           the secured party gives value; or

13          b. A commercial tort claim.

14          3. A security agreement may provide that collateral secures, or that accounts, chattel  
15           paper, payment intangibles, or promissory notes are sold in connection with, future  
16           advances or other value, regardless of whether the advances or value is given  
17           pursuant to commitment.

18          **41-09-15. (9-205) Use or disposition of collateral permissible.**

19          1. A security interest is not invalid or fraudulent against creditors solely because:

20          a. The debtor has the right or ability to:

21           (1) Use, commingle, or dispose of all or part of the collateral, including  
22           returned or repossessed goods;

23           (2) Collect, compromise, enforce, or otherwise deal with collateral;

24           (3) Accept the return of collateral or make repossessions; or

25           (4) Use, commingle, or dispose of proceeds; or

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

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

1           **41-09-16. (9-206) Security interest arising in purchase or delivery of financial**  
2 **asset.**

- 3           1. A security interest in favor of a securities intermediary attaches to a person's  
4 security entitlement if:  
5           a. The person buys a financial asset through the securities intermediary in a  
6 transaction in which the person is obligated to pay the purchase price to the  
7 securities intermediary at the time of the purchase; and  
8           b. The securities intermediary credits the financial asset to the buyer's securities  
9 account before the buyer pays the securities intermediary.  
10          2. The security interest described in subsection 1 secures the person's obligation to  
11 pay for the financial asset.  
12          3. A security interest in favor of a person that delivers a certificated security or other  
13 financial asset represented by a writing attaches to the security or other financial  
14 asset if:  
15           a. The security or other financial asset:  
16               (1) In the ordinary course of business is transferred by delivery with any  
17 necessary indorsement or assignment; and  
18               (2) Is delivered under an agreement between persons in the business of  
19 dealing with such securities or financial assets; and  
20           b. The agreement calls for delivery against payment.  
21          4. The security interest described in subsection 3 secures the obligation to make  
22 payment for the delivery.

23           **41-09-17. (9-207) Rights and duties of secured party having possession or**  
24 **control of collateral.**

- 25          1. Except as otherwise provided in subsection 4, a secured party shall use  
26 reasonable care in the custody and preservation of collateral in the secured party's  
27 possession. In the case of chattel paper or an instrument, reasonable care  
28 includes taking necessary steps to preserve rights against prior parties unless  
29 otherwise agreed.  
30          2. Except as otherwise provided in subsection 4, if a secured party has possession of  
31 collateral:

- 1           a. Reasonable expenses, including the cost of insurance and payment of taxes  
2           or other charges, incurred in the custody, preservation, use, or operation of  
3           the collateral are chargeable to the debtor and are secured by the collateral;  
4           b. The risk of accidental loss or damage is on the debtor to the extent of a  
5           deficiency in any effective insurance coverage;  
6           c. The secured party shall keep the collateral identifiable, but fungible collateral  
7           may be commingled; and  
8           d. The secured party may use or operate the collateral:  
9           (1) For the purpose of preserving the collateral or the collateral's value;  
10           (2) As permitted by an order of a court having competent jurisdiction; or  
11           (3) Except in the case of consumer goods, in the manner and to the extent  
12           agreed by the debtor.  
13        3. Except as otherwise provided in subsection 4, a secured party having possession  
14        of collateral or control of collateral under section 41-09-04, 41-09-05, 41-09-06, or  
15        41-09-07:  
16        a. May hold as additional security any proceeds, except money or funds,  
17        received from the collateral;  
18        b. Shall apply money or funds received from the collateral to reduce the secured  
19        obligation, unless remitted to the debtor; and  
20        c. May create a security interest in the collateral.  
21        4. If the secured party is a buyer of accounts, chattel paper, payment intangibles, or  
22        promissory notes or a consignor:  
23        a. Subsection 1 does not apply unless the secured party is entitled under an  
24        agreement:  
25        (1) To charge back uncollected collateral; or  
26        (2) Otherwise to full or limited recourse against the debtor or a secondary  
27        obligor based on the nonpayment or other default of an account debtor  
28        or other obligor on the collateral; and  
29        b. Subsections 2 and 3 do not apply.  
30        **41-09-18. (9-208) Additional duties of secured party having control of collateral.**

- 1           1. This section applies to cases in which there is no outstanding secured obligation  
2           and the secured party is not committed to make advances, incur obligations, or  
3           otherwise give value.
- 4           2. Within ten days after receiving an authenticated demand by the debtor:
- 5           a. A secured party having control of a deposit account under subdivision b of  
6           subsection 1 of section 41-09-04 shall send to the bank with which the deposit  
7           account is maintained an authenticated statement that releases the bank from  
8           any further obligation to comply with instructions originated by the secured  
9           party;
- 10          b. A secured party having control of a deposit account under subdivision c of  
11          subsection 1 of section 41-09-04 shall:
- 12           (1) Pay the debtor the balance on deposit in the deposit account; or  
13           (2) Transfer the balance on deposit into a deposit account in the debtor's  
14           name;
- 15          c. A secured party, other than a buyer, having control of electronic chattel paper  
16          under section 41-09-05 shall:
- 17           (1) Communicate the authoritative copy of the electronic chattel paper to  
18           the debtor or the electronic chattel paper's designated custodian;
- 19           (2) If the debtor designates a custodian that is the designated custodian  
20           with which the authoritative copy of the electronic chattel paper is  
21           maintained for the secured party, communicate to the custodian an  
22           authenticated record releasing the designated custodian from any  
23           further obligation to comply with instructions originated by the secured  
24           party and instructing the custodian to comply with instructions  
25           originated by the debtor; and
- 26           (3) Take appropriate action to enable the debtor or the debtor's designated  
27           custodian to make copies of or revisions to the authoritative copy which  
28           add or change an identified assignee of the authoritative copy without  
29           the consent of the secured party;
- 30          d. A secured party having control of investment property under subdivision b of  
31          subsection 4 of section 41-08-06 or subsection 2 of section 41-09-06 shall

1                   send to the securities intermediary or commodity intermediary with which the  
2                   security entitlement or commodity contract is maintained an authenticated  
3                   record that releases the securities intermediary or commodity intermediary  
4                   from any further obligation to comply with entitlement orders or directions  
5                   originated by the secured party; and

6                   e. A secured party having control of a letter-of-credit right under section  
7                   41-09-07 shall send to each person having an unfulfilled obligation to pay or  
8                   deliver proceeds of the letter of credit to the secured party an authenticated  
9                   release from any further obligation to pay or deliver proceeds of the letter of  
10                   credit to the secured party.

11                   **41-09-19. (9-209) Duties of secured party if account debtor has been notified of**  
12 **assignment.**

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

14                   a. There is no outstanding secured obligation; and

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

17                   2. Within ten days after receiving an authenticated demand by the debtor, a secured  
18                   party shall send to an account debtor that has received notification of an  
19                   assignment to the secured party as assignee under subsection 1 of section  
20                   41-09-68 an authenticated record that releases the account debtor from any further  
21                   obligation to the secured party.

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

24                   **41-09-20. (9-210) Request for accounting - Request regarding list of collateral or**  
25 **statement of account.**

26                   1. In this section:

27                   a. "Request" means a record of a type described in subdivision b, c, or d.

28                   b. "Request for an accounting" means a record authenticated by a debtor  
29                   requesting that the recipient provide an accounting of the unpaid obligations  
30                   secured by collateral and reasonably identifying the transaction or relationship  
31                   that is the subject of the request.



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

1           with the request within fourteen days after receipt by sending to the debtor an  
2           authenticated record:

- 3           a.   Disclaiming any interest in the obligations; and  
4           b.   If known to the recipient, providing the name and mailing address of any  
5           assignee of or successor to the recipient's interest in the obligations.

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

9           **41-09-21. (9-301) Law governing perfection and priority of security interests.**

10          Except as otherwise provided in sections 41-09-23 through 41-09-26, the following rules  
11          determine the law governing perfection, the effect of perfection or nonperfection, and the priority  
12          of a security interest in collateral:

13           1.   Except as otherwise provided in this section, while a debtor is located in a  
14           jurisdiction, the local law of that jurisdiction governs perfection, the effect of  
15           perfection or nonperfection, and the priority of a security interest in collateral.

16           2.   While collateral is located in a jurisdiction, the local law of that jurisdiction governs  
17           perfection, the effect of perfection or nonperfection, and the priority of a possessory  
18           security interest in that collateral.

19           3.   Except as otherwise provided in subsection 4, while negotiable documents, goods,  
20           instruments, money, or tangible chattel paper is located in a jurisdiction, the local  
21           law of that jurisdiction governs:

22           a.   Perfection of a security interest in the goods by filing a fixture filing;

23           b.   Perfection of a security interest in timber to be cut; and

24           c.   The effect of perfection or nonperfection and the priority of a nonpossessory  
25           security interest in the collateral.

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

29           **41-09-22. (9-302) Law governing perfection and priority of agricultural liens.**

30          While farm products are located in a jurisdiction, the local law of that jurisdiction governs

1 perfection, the effect of perfection or nonperfection, and the priority of an agricultural lien on the  
2 farm products.

3 **41-09-23. (9-303) Law governing perfection and priority of security interests in**  
4 **goods covered by a certificate of title.**

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

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

14 3. The local law of the jurisdiction under whose certificate of title the goods are  
15 covered governs perfection, the effect of perfection or nonperfection, and the  
16 priority of a security interest in goods covered by a certificate of title from the time  
17 the goods become covered by the certificate of title until the goods cease to be  
18 covered by the certificate of title.

19 **41-09-24. (9-304) Law governing perfection and priority of security interests in**  
20 **deposit accounts.**

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

24 2. The following rules determine a bank's jurisdiction for purposes of this part:

25 a. If an agreement between the bank and the debtor governing the deposit  
26 account expressly provides that a particular jurisdiction is the bank's  
27 jurisdiction for purposes of this part, this chapter, or this title, that jurisdiction is  
28 the bank's jurisdiction.

29 b. If subdivision a does not apply and an agreement between the bank and its  
30 customer governing the deposit account expressly provides that the

1                   agreement is governed by the law of a particular jurisdiction, that jurisdiction is  
2                   the bank's jurisdiction.

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

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

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

12                  **41-09-25. (9-305) Law governing perfection and priority of security interests in**  
13 **investment property.**

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

15                  a. While a security certificate is located in a jurisdiction, the local law of that  
16                  jurisdiction governs perfection, the effect of perfection or nonperfection, and  
17                  the priority of a security interest in the certificated security represented  
18                  thereby.

19                  b. The local law of the issuer's jurisdiction as specified in subsection 4 of section  
20                  41-08-10 governs perfection, the effect of perfection or nonperfection, and the  
21                  priority of a security interest in an uncertificated security.

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

26                  d. The local law of the commodity intermediary's jurisdiction governs perfection,  
27                  the effect of perfection or nonperfection, and the priority of a security interest  
28                  in a commodity contract or commodity account.

29                  2. The following rules determine a commodity intermediary's jurisdiction for purposes  
30                  of sections 41-09-21 through 41-09-62:

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

27           **41-09-26. (9-306) Law governing perfection and priority of security interests in**  
28           **letter-of-credit rights.**

- 29           1. Subject to subsection 3, the local law of the issuer's jurisdiction or a nominated  
30           person's jurisdiction governs perfection, the effect of perfection or nonperfection,

1           and the priority of a security interest in a letter-of-credit right if the issuer's  
2           jurisdiction or nominated person's jurisdiction is a state.

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

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

8           **41-09-27. (9-307) Location of debtor.**

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

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

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

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

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

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

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

27           5. A registered organization that is organized under the law of a state is located in  
28           that state.

29           6. Except as otherwise provided in subsection 9, a registered organization that is  
30           organized under the law of the United States and a branch or agency of a bank  
31           that is not organized under the law of the United States or a state are located:

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

21        **41-09-28. (9-308) When security interest or agricultural lien is perfected -**

22        **Continuity of perfection.**

- 23           1. Except as otherwise provided in this section and section 41-09-29, a security  
24           interest is perfected if it has attached and all of the applicable requirements for  
25           perfection in sections 41-09-30 through 41-09-36 have been satisfied. A security  
26           interest is perfected when it attaches if the applicable requirements are satisfied  
27           before the security interest attaches.
- 28           2. An agricultural lien is perfected if it has become effective and all of the applicable  
29           requirements for perfection in section 41-09-30 have been satisfied. An  
30           agricultural lien is perfected when it becomes effective if the applicable  
31           requirements are satisfied before the agricultural lien becomes effective.

- 1           3. A security interest or agricultural lien is perfected continuously if it is originally  
2           perfected by one method under this chapter and is later perfected by another  
3           method under this chapter, without an intermediate period when it was  
4           unperfected.
- 5           4. Perfection of a security interest in collateral also perfects a security interest in a  
6           supporting obligation for the collateral.
- 7           5. Perfection of a security interest in a right to payment or performance also perfects  
8           a security interest in a security interest, mortgage, or other lien on personal or real  
9           property securing the right.
- 10          6. Perfection of a security interest in a securities account also perfects a security  
11          interest in the security entitlements carried in the securities account.
- 12          7. Perfection of a security interest in a commodity account also perfects a security  
13          interest in the commodity contracts carried in the commodity account.

14           **41-09-29. (9-309) Security interest perfected upon attachment.** The following  
15 security interests are perfected when they attach:

- 16          1. A purchase-money security interest in consumer goods, except as otherwise  
17          provided in subsection 2 of section 41-09-31 with respect to consumer goods that  
18          are subject to a statute or treaty described in subsection 1 of section 41-09-31;
- 19          2. An assignment of accounts or payment intangibles which does not by itself or in  
20          conjunction with other assignments to the same assignee transfer a significant part  
21          of the assignor's outstanding accounts or payment intangibles;
- 22          3. A sale of a payment intangible;
- 23          4. A sale of a promissory note;
- 24          5. A security interest created by the assignment of a health care insurance receivable  
25          to the provider of the health care goods or services;
- 26          6. A security interest arising under section 41-02-46, section 41-02-53, subsection 3  
27          of section 41-02-90, or subsection 5 of section 41-02.1-56, until the debtor obtains  
28          possession of the collateral;
- 29          7. A security interest of a collecting bank arising under section 41-04-22;
- 30          8. A security interest of an issuer or nominated person arising under section  
31          41-05-18;



- 1           9. A security interest arising in the delivery of a financial asset under subsection 3 of  
2           section 41-09-16;
- 3           10. A security interest in investment property created by a broker or securities  
4           intermediary;
- 5           11. A security interest in a commodity contract or a commodity account created by a  
6           commodity intermediary;
- 7           12. An assignment for the benefit of all creditors of the transferor and subsequent  
8           transfers by the assignee thereunder; and
- 9           13. A security interest created by an assignment of a beneficial interest in a decedent's  
10          estate.

11           **41-09-30. (9-310) When filing required to perfect security interest or agricultural**  
12 **lien - Security interests and agricultural liens to which filing provisions do not apply.**

- 13           1. Except as otherwise provided in subsection 2 and subsection 2 of section  
14           41-09-32, a financing statement must be filed to perfect all security interests and  
15           agricultural liens.
- 16           2. The filing of a financing statement is not necessary to perfect a security interest:
- 17           a. That is perfected under subsection 4, 5, 6, or 7 of section 41-09-28;
- 18           b. That is perfected under section 41-09-29 when it attaches;
- 19           c. In property subject to a statute, regulation, or treaty described in subsection 1  
20           of section 41-09-31;
- 21           d. In goods in possession of a bailee which is perfected under subdivision a or b  
22           of subsection 4 of section 41-09-32;
- 23           e. In certificated securities, documents, goods, or instruments which is perfected  
24           without filing or possession under subsection 5, 6, or 7 of section 41-09-32;
- 25           f. In collateral in the secured party's possession under section 41-09-33;
- 26           g. In a certificated security which is perfected by delivery of the security  
27           certificate to the secured party under section 41-09-33;
- 28           h. In deposit accounts, electronic chattel paper, investment property, or  
29           letter-of-credit rights which is perfected by control under section 41-09-34;
- 30           i. In proceeds which is perfected under section 41-09-35; or
- 31           j. That is perfected under section 41-09-36.

- 1           3. If a secured party assigns a perfected security interest or agricultural lien, a filing  
2                   under this chapter is not required to continue the perfected status of the security  
3                   interest against creditors of and transferees from the original debtor.

4           **41-09-31. (9-311) Perfection of security interests in property subject to certain**  
5 **statutes, regulations, and treaties.**

- 6           1. Except as otherwise provided in subsection 4, the filing of a financing statement is  
7                   not necessary or effective to perfect a security interest in property subject to:  
8                   a. A statute, regulation, or treaty of the United States whose requirements for a  
9                   security interest's obtaining priority over the rights of a lien creditor with  
10                  respect to the property preempt subsection 1 of section 41-09-30;  
11                  b. Section 35-01-05.1; or  
12                  c. A certificate-of-title statute of another jurisdiction which provides for a security  
13                  interest to be indicated on the certificate as a condition or result of the security  
14                  interest's obtaining priority over the rights of a lien creditor with respect to the  
15                  property.
- 16           2. Compliance with the requirements of a statute, regulation, or treaty described in  
17                   subsection 1 for obtaining priority over the rights of a lien creditor is equivalent to  
18                   the filing of a financing statement under this chapter. Except as otherwise provided  
19                   in subsection 4 and sections 41-09-33 and subsections 4 and 5 of section  
20                   41-09-36 for goods covered by a certificate of title, a security interest in property  
21                   subject to a statute, regulation, or treaty described in subsection 1 may be  
22                   perfected only by compliance with those requirements, and a security interest so  
23                   perfected remains perfected notwithstanding a change in the use or transfer of  
24                   possession of the collateral.
- 25           3. Except as otherwise provided in subsection 4 and subsections 4 and 5 of section  
26                   41-09-36, duration and renewal of perfection of a security interest perfected by  
27                   compliance with the requirements prescribed by a statute, regulation, or treaty  
28                   described in subsection 1 are governed by the statute, regulation, or treaty. In  
29                   other respects, the security interest is subject to this chapter.
- 30           4. During any period in which collateral is inventory held for sale or lease by a person  
31                   or leased by that person as lessor and that person is in the business of selling or

1           leasing goods of that kind, this section does not apply to a security interest in that  
2           collateral created by that person as debtor.

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

3           **41-09-32. (9-312) Perfection of security interests in chattel paper, deposit**  
4           **accounts, documents, goods covered by documents, instruments, investment property,**  
5           **letter-of-credit rights, and money - Perfection by permissive filing - Temporary perfection**  
6           **without filing or transfer of possession.**

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

- 1           c. Filing as to the goods.
- 2           5. A security interest in certificated securities, negotiable documents, or instruments  
3           is perfected without filing or the taking of possession for a period of twenty days  
4           from the time it attaches to the extent that it arises for new value given under an  
5           authenticated security agreement.
- 6           6. A perfected security interest in a negotiable document or goods in possession of a  
7           bailee, other than one that has issued a negotiable document for the goods,  
8           remains perfected for twenty days without filing if the secured party makes  
9           available to the debtor the goods or documents representing the goods for the  
10           purpose of:
- 11           a. Ultimate sale or exchange; or
- 12           b. Loading, unloading, storing, shipping, transshipping, manufacturing,  
13           processing, or otherwise dealing with them in a manner preliminary to their  
14           sale or exchange.
- 15           7. A perfected security interest in a certificated security or instrument remains  
16           perfected for twenty days without filing if the secured party delivers the security  
17           certificate or instrument to the debtor for the purpose of:
- 18           a. Ultimate sale or exchange; or
- 19           b. Presentation, collection, enforcement, renewal, or registration of transfer.
- 20           8. After the twenty-day period specified in subsection 5, 6, or 7 expires, perfection  
21           depends upon compliance with this chapter.
- 22           **41-09-33. (9-313) When possession by or delivery to secured party perfects**  
23           **security interest without filing.**
- 24           1. Except as otherwise provided in subsection 2, a secured party may perfect a  
25           security interest in negotiable documents, goods, instruments, money, or tangible  
26           chattel paper by taking possession of the collateral. A secured party may perfect a  
27           security interest in certificated securities by taking delivery of the certificated  
28           securities under section 41-08-27.
- 29           2. With respect to goods covered by a certificate of title issued by this state, a  
30           secured party may perfect a security interest in the goods by taking possession of  
31           the goods only in the circumstances described in subsection 4 of section 41-09-36.

- 1           3. With respect to collateral other than certificated securities and goods covered by a  
2           document, a secured party takes possession of collateral in the possession of a  
3           person other than the debtor, the secured party, or a lessee of the collateral from  
4           the debtor in the ordinary course of the debtor's business, when:  
5           a. The person in possession authenticates a record acknowledging that it holds  
6           possession of the collateral for the secured party's benefit; or  
7           b. The person takes possession of the collateral after having authenticated a  
8           record acknowledging that it will hold possession of collateral for the secured  
9           party's benefit.
- 10          4. If perfection of a security interest depends upon possession of the collateral by a  
11          secured party, perfection occurs no earlier than the time the secured party takes  
12          possession and continues only while the secured party retains possession.
- 13          5. A security interest in a certificated security in registered form is perfected by  
14          delivery when delivery of the certificated security occurs under section 41-08-27  
15          and remains perfected by delivery until the debtor obtains possession of the  
16          security certificate.
- 17          6. A person in possession of collateral is not required to acknowledge that it holds  
18          possession for a secured party's benefit.
- 19          7. If a person acknowledges that it holds possession for the secured party's benefit:  
20          a. The acknowledgment is effective under subsection 3 or subsection 1 of  
21          section 41-09-21, even if the acknowledgment violates the rights of a debtor;  
22          and  
23          b. Unless the person otherwise agrees or law other than this chapter otherwise  
24          provides, the person does not owe any duty to the secured party and is not  
25          required to confirm the acknowledgment to another person.
- 26          8. A secured party having possession of collateral does not relinquish possession by  
27          delivering the collateral to a person other than the debtor or a lessee of the  
28          collateral from the debtor in the ordinary course of the debtor's business if the  
29          person was instructed before the delivery or is instructed contemporaneously with  
30          the delivery:  
31          a. To hold possession of the collateral for the secured party's benefit; or

- 1            b. To redeliver the collateral to the secured party.
- 2            9. A secured party does not relinquish possession, even if a delivery under
- 3            subsection 8 violates the rights of a debtor. A person to which collateral is
- 4            delivered under subsection 8 does not owe any duty to the secured party and is not
- 5            required to confirm the delivery to another person unless the person otherwise
- 6            agrees or law other than this chapter otherwise provides.

7            **41-09-34. (9-314) Perfection by control.**

- 8            1. A security interest in investment property, deposit accounts, letter-of-credit rights,
- 9            or electronic chattel paper may be perfected by control of the collateral under
- 10           section 41-09-04, 41-09-05, 41-09-06, or 41-09-07.
- 11           2. A security interest in deposit accounts, electronic chattel paper, or letter-of-credit
- 12           rights is perfected by control under section 41-09-04, 41-09-05, or 41-09-07 when
- 13           the secured party obtains control and remains perfected by control only while the
- 14           secured party retains control.
- 15           3. A security interest in investment property is perfected by control under section
- 16           41-09-06 from the time the secured party obtains control and remains perfected by
- 17           control until:
- 18           a. The secured party does not have control; and
- 19           b. One of the following occurs:
- 20               (1) If the collateral is a certificated security, the debtor has or acquires
- 21               possession of the security certificate;
- 22               (2) If the collateral is an uncertificated security, the issuer has registered or
- 23               registers the debtor as the registered owner; or
- 24               (3) If the collateral is a security entitlement, the debtor is or becomes the
- 25               entitlement holder.

26           **41-09-35. (9-315) Secured party's rights on disposition of collateral and in**

27 **proceeds.**

- 28           1. Except as otherwise provided in this chapter and in subsection 2 of section
- 29           41-02-48:
- 30           a. A security interest or agricultural lien continues in collateral notwithstanding
- 31           sale, lease, license, exchange, or other disposition thereof unless the secured

- 1                   party authorized the disposition free of the security interest or agricultural lien;  
2                   and  
3                   b. A security interest attaches to any identifiable proceeds of collateral.  
4           2. Proceeds that are commingled with other property are identifiable proceeds:  
5                   a. If the proceeds are goods, to the extent provided by section 41-09-56; and  
6                   b. If the proceeds are not goods, to the extent that the secured party identifies  
7                   the proceeds by a method of tracing, including application of equitable  
8                   principles, that is permitted under law other than this chapter with respect to  
9                   commingled property of the type involved.  
10           3. A security interest in proceeds is a perfected security interest if the security interest  
11                   in the original collateral was perfected.  
12           4. A perfected security interest in proceeds becomes unperfected on the twenty-first  
13                   day after the security interest attaches to the proceeds unless:  
14                   a. The following conditions are satisfied:  
15                           (1) A filed financing statement covers the original collateral;  
16                           (2) The proceeds are collateral in which a security interest may be  
17                                   perfected by filing in the office in which the financing statement has  
18                                   been filed; and  
19                           (3) The proceeds are not acquired with cash proceeds;  
20                   b. The proceeds are identifiable cash proceeds; or  
21                   c. The security interest in the proceeds is perfected other than under  
22                           subsection 3 when the security interest attaches to the proceeds or within  
23                           twenty days thereafter.  
24           5. If a filed financing statement covers the original collateral, a security interest in  
25                   proceeds which remains perfected under subdivision a of subsection 4 becomes  
26                   unperfected at the later of:  
27                   a. When the effectiveness of the filed financing statement lapses under section  
28                           41-09-86 or is terminated under section 41-09-84; or  
29                   b. The twenty-first day after the security interest attaches to the proceeds.  
30           **41-09-36. (9-316) Continued perfection of security interest following change in**  
31 **governing law.**

- 1           1. A security interest perfected pursuant to the law of the jurisdiction designated in  
2           subsection 1 of section 41-09-21 or subsection 3 of section 41-09-25 remains  
3           perfected until the earliest of:
  - 4           a. The time perfection would have ceased under the law of that jurisdiction;
  - 5           b. The expiration of four months after a change of the debtor's location to  
6           another jurisdiction; or
  - 7           c. The expiration of one year after a transfer of collateral to a person that  
8           thereby becomes a debtor and is located in another jurisdiction.
- 9           2. If a security interest described in subsection 1 becomes perfected under the law of  
10           the other jurisdiction before the earliest time or event described in that subsection,  
11           it remains perfected thereafter. If the security interest does not become perfected  
12           under the law of the other jurisdiction before the earliest time or event, it becomes  
13           unperfected and is deemed never to have been perfected as against a purchaser  
14           of the collateral for value.
- 15           3. A possessory security interest in collateral, other than goods covered by a  
16           certificate of title and as-extracted collateral consisting of goods, remains  
17           continuously perfected if:
  - 18           a. The collateral is located in one jurisdiction and subject to a security interest  
19           perfected under the law of that jurisdiction;
  - 20           b. Thereafter the collateral is brought into another jurisdiction; and
  - 21           c. Upon entry into the other jurisdiction, the security interest is perfected under  
22           the law of the other jurisdiction.
- 23           4. Except as otherwise provided in subsection 5, a security interest in goods covered  
24           by a certificate of title which is perfected by any method under the law of another  
25           jurisdiction when the goods become covered by a certificate of title from this state  
26           remains perfected until the security interest would have become unperfected under  
27           the law of the other jurisdiction had the goods not become so covered.
- 28           5. A security interest described in subsection 4 becomes unperfected as against a  
29           purchaser of the goods for value and is deemed never to have been perfected as  
30           against a purchaser of the goods for value if the applicable requirements for



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

22           **41-09-37. (9-317) Interests that take priority over or take free of unperfected**  
23 **security interest or agricultural lien.**

- 24       1.   An unperfected security interest or agricultural lien is subordinate to the rights of:
- 25           a.   A person entitled to priority under section 41-09-42; and
- 26           b.   Except as otherwise provided in subsection 5, a person that becomes a lien  
27                 creditor before the earlier of the time the security interest or agricultural lien is  
28                 perfected or a financing statement covering the collateral is filed.
- 29       2.   Except as otherwise provided in subsection 5, a buyer, other than a secured party,  
30           of tangible chattel paper, documents, goods, instruments, or a security certificate  
31           takes free of a security interest or agricultural lien if the buyer gives value and

1           receives delivery of the collateral without knowledge of the security interest or  
2           agricultural lien and before it is perfected.

3           3. Except as otherwise provided in subsection 5, a lessee of goods takes free of a  
4           security interest or agricultural lien if the lessee gives value and receives delivery  
5           of the collateral without knowledge of the security interest or agricultural lien and  
6           before it is perfected.

7           4. A licensee of a general intangible or a buyer, other than a secured party, of  
8           accounts, electronic chattel paper, general intangibles, or investment property  
9           other than a certificated security takes free of a security interest if the licensee or  
10          buyer gives value without knowledge of the security interest and before it is  
11          perfected.

12          5. Except as otherwise provided in sections 41-09-40 and 41-09-41, if a person files a  
13          financing statement with respect to a purchase-money security interest before or  
14          within twenty days after the debtor receives delivery of the collateral, the security  
15          interest takes priority over the rights of a buyer, lessee, or lien creditor which arise  
16          between the time the security interest attaches and the time of filing.

17          **41-09-38. (9-318) No interest retained in right to payment that is sold - Rights and**  
18          **title of seller of account or chattel paper with respect to creditors and purchasers.**

19          1. A debtor that has sold an account, chattel paper, payment intangible, or promissory  
20          note does not retain a legal or equitable interest in the collateral sold.

21          2. For purposes of determining the rights of creditors of, and purchasers for value of  
22          an account or chattel paper from, a debtor that has sold an account or chattel  
23          paper, while the buyer's security interest is unperfected, the debtor is deemed to  
24          have rights and title to the account or chattel paper identical to those the debtor  
25          sold.

26          **41-09-39. (9-319) Rights and title of consignee with respect to creditors and**  
27          **purchasers.**

28          1. Except as otherwise provided in subsection 2, for purposes of determining the  
29          rights of creditors of, and purchasers for value of goods from, a consignee, while  
30          the goods are in the possession of the consignee, the consignee is deemed to

1           have rights and title to the goods identical to those the consignor had or had power  
2           to transfer.

3           2. For purposes of determining the rights of a creditor of a consignee, law other than  
4           this chapter determines the rights and title of a consignee while goods are in the  
5           consignee's possession if, under this part, a perfected security interest held by the  
6           consignor would have priority over the rights of the creditor.

7           **41-09-40. (9-320) Buyer of goods.**

8           1. Except as otherwise provided in subsection 5, a buyer in ordinary course of  
9           business, other than a person buying farm products from a person engaged in  
10           farming operations, takes free of a security interest created by the buyer's seller,  
11           even if the security interest is perfected and the buyer knows of its existence.

12           2. Except as otherwise provided in subsection 5, a buyer of goods from a person who  
13           used or bought the goods for use primarily for personal, family, or household  
14           purposes takes free of a security interest, even if perfected, if the buyer buys:

15           a. Without knowledge of the security interest;

16           b. For value;

17           c. Primarily for the buyer's personal, family, or household purposes; and

18           d. Before the filing of a financing statement covering the goods.

19           3. To the extent that it affects the priority of a security interest over a buyer of goods  
20           under subsection 2, the period of effectiveness of a filing made in the jurisdiction in  
21           which the seller is located is governed by subsections 1 and 2 of section 41-09-36.

22           4. A buyer in ordinary course of business buying oil, gas, or other minerals at the  
23           wellhead or minehead or after extraction takes free of an interest arising out of an  
24           encumbrance.

25           5. Subsections 1 and 2 do not affect a security interest in goods in the possession of  
26           the secured party under section 41-09-33.

27           **41-09-41. (9-321) Licensee of general intangible and lessee of goods in ordinary**  
28           **course of business.**

29           1. In this section, "licensee in ordinary course of business" means a person that  
30           becomes a licensee of a general intangible in good faith, without knowledge that  
31           the license violates the rights of another person in the general intangible, and in the

1           ordinary course from a person in the business of licensing general intangibles of  
2           that kind. A person becomes a licensee in the ordinary course if the license to the  
3           person comports with the usual or customary practices in the kind of business in  
4           which the licensor is engaged or with the licensor's own usual or customary  
5           practices.

6           2. A licensee in ordinary course of business takes its rights under a nonexclusive  
7           license free of a security interest in the general intangible created by the licensor,  
8           even if the security interest is perfected and the licensee knows of its existence.

9           3. A lessee in ordinary course of business takes its leasehold interest free of a  
10           security interest in the goods created by the lessor, even if the security interest is  
11           perfected and the lessee knows of its existence.

12           **41-09-42. (9-322) Priorities among conflicting security interests in and**  
13 **agricultural liens on same collateral.**

14           1. Except as otherwise provided in this section, priority among conflicting security  
15           interests and agricultural liens in the same collateral is determined according to the  
16           following rules:

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

22           b. A perfected security interest or agricultural lien has priority over a conflicting  
23           unperfected security interest or agricultural lien.

24           c. The first security interest or agricultural lien to attach or become effective has  
25           priority if conflicting security interests and agricultural liens are unperfected.

26           2. For the purposes of subdivision a of subsection 1:

27           a. The time of filing or perfection as to a security interest in collateral is also the  
28           time of filing or perfection as to a security interest in proceeds; and

29           b. The time of filing or perfection as to a security interest in collateral supported  
30           by a supporting obligation is also the time of filing or perfection as to a  
31           security interest in the supporting obligation.

- 1           3. Except as otherwise provided in subsection 6, a security interest in collateral which  
2           qualifies for priority over a conflicting security interest under section 41-09-47,  
3           41-09-48, 41-09-49, 41-09-50, or 41-09-51 also has priority over a conflicting  
4           security interest in:
- 5           a. Any supporting obligation for the collateral; and  
6           b. Proceeds of the collateral if:
- 7                 (1) The security interest in proceeds is perfected;  
8                 (2) The proceeds are cash proceeds or of the same type as the collateral;  
9                 and  
10                (3) In the case of proceeds that are proceeds of proceeds, all intervening  
11                proceeds are cash proceeds, proceeds of the same type as the  
12                collateral, or an account relating to the collateral.
- 13          4. Subject to subsection 5 and except as otherwise provided in subsection 6, if a  
14          security interest in chattel paper, deposit accounts, negotiable documents,  
15          instruments, investment property, or letter-of-credit rights is perfected by a method  
16          other than filing, conflicting perfected security interests in proceeds of the collateral  
17          rank according to priority in time of filing.
- 18          5. Subsection 4 applies only if the proceeds of the collateral are not cash proceeds,  
19          chattel paper, negotiable documents, instruments, investment property, or  
20          letter-of-credit rights.
- 21          6. Subsections 1 through 5 are subject to:
- 22               a. Subsection 7 and the other provisions of this part;  
23               b. Section 41-04-22 with respect to a security interest of a collecting bank;  
24               c. Section 41-05-18 with respect to a security interest of an issuer or nominated  
25                person; and  
26               d. Section 41-09-10 with respect to a security interest arising under chapter  
27                41-02 or 41-02.1.
- 28          7. A perfected agricultural lien on collateral has priority over a conflicting security  
29          interest in or agricultural lien on the same collateral if the statute creating the  
30          agricultural lien so provides.
- 31          **41-09-43. (9-323) Future advances.**

- 1           1. Except as otherwise provided in subsection 3, for purposes of determining the  
2           priority of a perfected security interest under subdivision a of subsection 1 of  
3           section 41-09-42, perfection of the security interest dates from the time an advance  
4           is made to the extent that the security interest secures an advance that:
- 5           a. Is made while the security interest is perfected only:  
6                 (1) Under section 41-09-29 when it attaches; or  
7                 (2) Temporarily under subsection 5, 6, or 7 of section 41-09-32; and
- 8           b. Is not made pursuant to a commitment entered into before or while the  
9                 security interest is perfected by a method other than under section 41-09-29  
10                 or subsection 5, 6, or 7 of section 41-09-32.
- 11          2. Except as otherwise provided in subsection 3, a security interest is subordinate to  
12          the rights of a person that becomes a lien creditor while the security interest is  
13          perfected only to the extent that it secures advances made more than forty-five  
14          days after the person becomes a lien creditor unless the advance is made:
- 15          a. Without knowledge of the lien; or  
16          b. Pursuant to a commitment entered into without knowledge of the lien.
- 17          3. Subsections 1 and 2 do not apply to a security interest held by a secured party that  
18          is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or  
19          a consignor.
- 20          4. Except as otherwise provided in subsection 5, a buyer of goods other than a buyer  
21          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          a. The time the secured party acquires knowledge of the buyer's purchase; or  
24          b. Forty-five days after the purchase.
- 25          5. Subsection 4 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  
27          of the forty-five-day period.
- 28          6. Except as otherwise provided in subsection 7, a lessee of goods, other than a  
29          lessee in ordinary course of business, takes the leasehold interest free of a  
30          security interest to the extent that it secures advances made after the earlier of:  
31          a. The time the secured party acquires knowledge of the lease; or

- 1            b. Forty-five days after the lease contract becomes enforceable.
- 2            7. Subsection 6 does not apply if the advance is made pursuant to a commitment
- 3            entered into without knowledge of the lease and before the expiration of the
- 4            forty-five-day period.

5            **41-09-44. (9-324) Priority of purchase-money security interests.**

- 6            1. Except as otherwise provided in subsection 7, a perfected purchase-money
- 7            security interest in goods other than inventory or livestock has priority over a
- 8            conflicting security interest in the same goods, and, except as otherwise provided
- 9            in section 41-09-47, a perfected security interest in its identifiable proceeds also
- 10           has priority, if the purchase-money security interest is perfected when the debtor
- 11           receives possession of the collateral or within twenty days thereafter.
- 12           2. Subject to subsection 3 and except as otherwise provided in subsection 7, a
- 13           perfected purchase-money security interest in inventory has priority over a
- 14           conflicting security interest in the same inventory, has priority over a conflicting
- 15           security interest in chattel paper or an instrument constituting proceeds of the
- 16           inventory and in proceeds of the chattel paper, if so provided in section 41-09-50,
- 17           and, except as otherwise provided in section 41-09-47, also has priority in
- 18           identifiable cash proceeds of the inventory to the extent the identifiable cash
- 19           proceeds are received on or before the delivery of the inventory to a buyer, if:
- 20           a. The purchase-money security interest is perfected when the debtor receives
- 21           possession of the inventory;
- 22           b. The purchase-money secured party sends an authenticated notification to the
- 23           holder of the conflicting security interest;
- 24           c. The holder of the conflicting security interest receives the notification within
- 25           five years before the debtor receives possession of the inventory; and
- 26           d. The notification states that the person sending the notification has or expects
- 27           to acquire a purchase-money security interest in inventory of the debtor and
- 28           describes the inventory.
- 29           3. Subdivisions b through d of subsection 2 apply only if the holder of the conflicting
- 30           security interest had filed a financing statement covering the same types of
- 31           inventory:

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



1           security interest in its identifiable proceeds also has priority, to the extent that the  
2           purchase-money security interest in the goods in which the software was acquired  
3           for use has priority in the goods and proceeds of the goods under this section.

4           7. If more than one security interest qualifies for priority in the same collateral under  
5           subsection 1, 2, 3, or 4:

6           a. A security interest securing an obligation incurred as all or part of the price of  
7           the collateral has priority over a security interest securing an obligation  
8           incurred for value given to enable the debtor to acquire rights in or the use of  
9           collateral; and

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

12           **41-09-45. (9-325) Priority of security interests in transferred collateral.**

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

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

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

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

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

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

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

26           **41-09-46. (9-326) Priority of security interests created by new debtor.**

27          1. Subject to subsection 2, a security interest created by a new debtor which is  
28          perfected by a filed financing statement that is effective solely under section  
29          41-09-79 in collateral in which a new debtor has or acquires rights is subordinate to  
30          a security interest in the same collateral which is perfected other than by a filed  
31          financing statement that is effective solely under section 41-09-79.

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

7           **41-09-47. (9-327) Priority of security interests in deposit account.** The following  
8           rules govern priority among conflicting security interests in the same deposit account:

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

21           **41-09-48. (9-328) Priority of security interests in investment property.** The  
22           following rules govern priority among conflicting security interests in the same investment  
23           property:

- 24           1. A security interest held by a secured party having control of investment property  
25           under section 41-09-06 has priority over a security interest held by a secured party  
26           that does not have control of the investment property.
- 27           2. Except as otherwise provided in subsections 3 and 4, conflicting security interests  
28           held by secured parties each of which has control under section 41-09-06 rank  
29           according to priority in time of:
- 30           a. If the collateral is a security, obtaining control;
- 31           b. If the collateral is a security entitlement carried in a securities account and:

- 1                   (1) If the secured party obtained control under subdivision a of  
2                   subsection 4 of section 41-08-06, the secured party's becoming the  
3                   person for which the securities account is maintained;
- 4                   (2) If the secured party obtained control under subdivision b of  
5                   subsection 4 of section 41-08-06, the securities intermediary's  
6                   agreement to comply with the secured party's entitlement orders with  
7                   respect to security entitlements carried or to be carried in the securities  
8                   account; or
- 9                   (3) If the secured party obtained control through another person under  
10                   subdivision c of subsection 4 of section 41-08-06, the time on which  
11                   priority would be based under this subsection if the other person were  
12                   the secured party; or
- 13                   c. If the collateral is a commodity contract carried with a commodity  
14                   intermediary, the satisfaction of the requirement for control specified in  
15                   subdivision b of subsection 2 of section 41-09-06 with respect to commodity  
16                   contracts carried or to be carried with the commodity intermediary.
- 17                   3. A security interest held by a securities intermediary in a security entitlement or a  
18                   securities account maintained with the securities intermediary has priority over a  
19                   conflicting security interest held by another secured party.
- 20                   4. A security interest held by a commodity intermediary in a commodity contract or a  
21                   commodity account maintained with the commodity intermediary has priority over a  
22                   conflicting security interest held by another secured party.
- 23                   5. A security interest in a certificated security in registered form which is perfected by  
24                   taking delivery under subsection 1 of section 41-09-33 and not by control under  
25                   section 41-09-34 has priority over a conflicting security interest perfected by a  
26                   method other than control.
- 27                   6. Conflicting security interests created by a broker, securities intermediary, or  
28                   commodity intermediary which are perfected without control under section  
29                   41-09-06 rank equally.
- 30                   7. In all other cases, priority among conflicting security interests in investment  
31                   property is governed by sections 41-09-42 and 41-09-43.

1           **41-09-49. (9-329) Priority of security interests in letter-of-credit right.** The  
2 following rules govern priority among conflicting security interests in the same letter-of-credit  
3 right:

- 4           1. A security interest held by a secured party having control of the letter-of-credit right  
5 under section 41-09-07 has priority to the extent of its control over a conflicting  
6 security interest held by a secured party that does not have control.  
7           2. Security interests perfected by control under section 41-09-34 rank according to  
8 priority in time of obtaining control.

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

- 10          1. A purchaser of chattel paper has priority over a security interest in the chattel  
11 paper which is claimed merely as proceeds of inventory subject to a security  
12 interest if:  
13           a. In good faith and in the ordinary course of the purchaser's business, the  
14 purchaser gives new value and takes possession of the chattel paper or  
15 obtains control of the chattel paper under section 41-09-05; and  
16           b. The chattel paper does not indicate that it has been assigned to an identified  
17 assignee other than the purchaser.  
18          2. A purchaser of chattel paper has priority over a security interest in the chattel  
19 paper which is claimed other than merely as proceeds of inventory subject to a  
20 security interest if the purchaser gives new value and takes possession of the  
21 chattel paper or obtains control of the chattel paper under section 41-09-05 in good  
22 faith, in the ordinary course of the purchaser's business, and without knowledge  
23 that the purchase violates the rights of the secured party.  
24          3. Except as otherwise provided in section 41-09-47, a purchaser having priority in  
25 chattel paper under subsection 1 or 2 also has priority in proceeds of the chattel  
26 paper to the extent that:  
27           a. Section 41-09-42 provides for priority in the proceeds; or  
28           b. The proceeds consist of the specific goods covered by the chattel paper or  
29 cash proceeds of the specific goods, even if the purchaser's security interest  
30 in the proceeds is unperfected.

- 1           4. Except as otherwise provided in subsection 1 of section 41-09-51, a purchaser of  
2                    an instrument has priority over a security interest in the instrument perfected by a  
3                    method other than possession if the purchaser gives value and takes possession  
4                    of the instrument in good faith and without knowledge that the purchase violates  
5                    the rights of the secured party.
- 6           5. For purposes of subsections 1 and 2, the holder of a purchase-money security  
7                    interest in inventory gives new value for chattel paper constituting proceeds of the  
8                    inventory.
- 9           6. For purposes of subsections 2 and 4, if chattel paper or an instrument indicates  
10                   that it has been assigned to an identified secured party other than the purchaser, a  
11                    purchaser of the chattel paper or instrument has knowledge that the purchase  
12                    violates the rights of the secured party.

13           **41-09-51. (9-331) Priority of rights of purchasers of instruments, documents, and**  
14 **securities under other articles - Priority of interests in financial assets and security**  
15 **entitlements under chapter 41-08.**

- 16           1. This chapter does not limit the rights of a holder in due course of a negotiable  
17                    instrument, a holder to which a negotiable document of title has been duly  
18                    negotiated, or a protected purchaser of a security. These holders or purchasers  
19                    take priority over an earlier security interest, even if perfected, to the extent  
20                    provided in chapters 41-03, 41-07, and 41-08.
- 21           2. This chapter does not limit the rights of or impose liability on a person to the extent  
22                    that the person is protected against the assertion of an adverse claim under  
23                    chapter 41-08.
- 24           3. Filing under this chapter does not constitute notice of a claim or defense to the  
25                    holders, purchasers, or persons described in subsections 1 and 2.

26           **41-09-52. (9-332) Transfer of money - Transfer of funds from deposit account.**

- 27           1. A transferee of money takes the money free of a security interest unless the  
28                    transferee acts in collusion with the debtor in violating the rights of the secured  
29                    party.

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

4           **41-09-53. (9-333) Priority of certain liens arising by operation of law.**

- 5           1. In this section, "possessory lien" means an interest, other than a security interest  
6           or an agricultural lien:
- 7           a. Which secures payment or performance of an obligation for services or  
8           materials furnished with respect to goods by a person in the ordinary course  
9           of the person's business;
- 10          b. Which is created by statute or rule of law in favor of the person; and
- 11          c. Whose effectiveness depends on the person's possession of the goods.
- 12          2. A possessory lien on goods has priority over a security interest in the goods unless  
13          the lien is created by a statute that expressly provides otherwise.

14          **41-09-54. (9-334) Priority of security interests in fixtures and crops.**

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

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

- 1           7. The priority of the security interest under subsection 6 continues for a reasonable  
2           time if the debtor's right to remove the goods as against the encumbrancer or  
3           owner terminates.
- 4           8. A mortgage is a construction mortgage to the extent that it secures an obligation  
5           incurred for the construction of an improvement on land, including the acquisition  
6           cost of the land, if a recorded record of the mortgage so indicates. Except as  
7           otherwise provided in subsections 5 and 6, a security interest in fixtures is  
8           subordinate to a construction mortgage if a record of the mortgage is recorded  
9           before the goods become fixtures and the goods become fixtures before the  
10          completion of the construction. A mortgage has this priority to the same extent as  
11          a construction mortgage to the extent that it is given to refinance a construction  
12          mortgage.
- 13          9. A perfected security interest in crops growing on real property has priority over a  
14          conflicting interest of an encumbrancer or owner of the real property if the debtor  
15          has an interest of record in or is in possession of the real property.
- 16          10. Subsection 9 prevails over any inconsistent provisions of section 47-16-03:

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

17          **41-09-55. (9-335) Accessions.**

- 18          1. A security interest may be created in an accession and continues in collateral that  
19          becomes an accession.
- 20          2. If a security interest is perfected when the collateral becomes an accession, the  
21          security interest remains perfected in the collateral.
- 22          3. Except as otherwise provided in subsection 4, the other provisions of this part  
23          determine the priority of a security interest in an accession.
- 24          4. A security interest in an accession is subordinate to a security interest in the whole  
25          which is perfected by compliance with the requirements of a certificate-of-title  
26          statute under subsection 2 of section 41-09-51.
- 27          5. After default, subject to sections 41-09-99 through 41-09-126, a secured party may  
28          remove an accession from other goods if the security interest in the accession has  
29          priority over the claims of every person having an interest in the whole.



1           6. A secured party that removes an accession from other goods under subsection 5  
2           shall promptly reimburse any holder of a security interest or other lien on, or owner  
3           of, the whole or of the other goods, other than the debtor, for the cost of repair of  
4           any physical injury to the whole or the other goods. The secured party need not  
5           reimburse the holder or owner for any diminution in value of the whole or the other  
6           goods caused by the absence of the accession removed or by any necessity for  
7           replacing it. A person entitled to reimbursement may refuse permission to remove  
8           until the secured party gives adequate assurance for the performance of the  
9           obligation to reimburse.

10           **41-09-56. (9-336) Commingled goods.**

- 11           1. In this section, "commingled goods" means goods that are physically united with  
12           other goods in such a manner that their identity is lost in a product or mass.
- 13           2. A security interest does not exist in commingled goods as such. However, a  
14           security interest may attach to a product or mass that results when goods become  
15           commingled goods.
- 16           3. If collateral becomes commingled goods, a security interest attaches to the product  
17           or mass.
- 18           4. If a security interest in collateral is perfected before the collateral becomes  
19           commingled goods, the security interest that attaches to the product or mass under  
20           subsection 3 is perfected.
- 21           5. Except as otherwise provided in subsection 6, the other provisions of this part  
22           determine the priority of a security interest that attaches to the product or mass  
23           under subsection 3.
- 24           6. If more than one security interest attaches to the product or mass under  
25           subsection 3, the following rules determine priority:
- 26           a. A security interest that is perfected under subsection 4 has priority over a  
27           security interest that is unperfected at the time the collateral becomes  
28           commingled goods.
- 29           b. If more than one security interest is perfected under subsection 4, the security  
30           interests rank equally in proportion to value of the collateral at the time it  
31           became commingled goods.

1           **41-09-57. (9-337) Priority of security interests in goods covered by certificate of**  
2 **title.** If, while a security interest in goods is perfected by any method under the law of another  
3 jurisdiction, this state issues a certificate of title that does not show that the goods are subject to  
4 the security interest or contain a statement that they may be subject to security interests not  
5 shown on the certificate:

- 6           1. A buyer of the goods, other than a person in the business of selling goods of that  
7 kind, takes free of the security interest if the buyer gives value and receives  
8 delivery of the goods after issuance of the certificate and without knowledge of the  
9 security interest; and  
10          2. The security interest is subordinate to a conflicting security interest in the goods  
11 that attaches, and is perfected under subsection 2 of section 41-09-31, after  
12 issuance of the certificate and without the conflicting secured party's knowledge of  
13 the security interest.

14           **41-09-58. (9-338) Priority of security interest or agricultural lien perfected by filed**  
15 **financing statement providing certain incorrect information.** If a security interest or  
16 agricultural lien is perfected by a filed financing statement providing information described in  
17 subdivision e of subsection 2 of section 41-09-87 which is incorrect at the time the financing  
18 statement is filed:

- 19          1. The security interest or agricultural lien is subordinate to a conflicting perfected  
20 security interest in the collateral to the extent that the holder of the conflicting  
21 security interest gives value in reasonable reliance upon the incorrect information;  
22 and  
23          2. A purchaser, other than a secured party, of the collateral takes free of the security  
24 interest or agricultural lien to the extent that, in reasonable reliance upon the  
25 incorrect information, the purchaser gives value and, in the case of chattel paper,  
26 documents, goods, instruments, or a security certificate, receives delivery of the  
27 collateral.

28           **41-09-59. (9-339) Priority subject to subordination.** This chapter does not preclude  
29 subordination by agreement by a person entitled to priority.

30           **41-09-60. (9-340) Effectiveness of right of recoupment or set-off against deposit**  
31 **account.**

- 1           1. Except as otherwise provided in subsection 3, a bank with which a deposit account  
2           is maintained may exercise any right of recoupment or set-off against a secured  
3           party that holds a security interest in the deposit account.
- 4           2. Except as otherwise provided in subsection 3, the application of this chapter to a  
5           security interest in a deposit account does not affect a right of recoupment or  
6           set-off of the secured party as to a deposit account maintained with the secured  
7           party.
- 8           3. The exercise by a bank of a set-off against a deposit account is ineffective against  
9           a secured party that holds a security interest in the deposit account which is  
10          perfected by control under subdivision c of subsection 1 of section 41-09-04, if the  
11          set-off is based on a claim against the debtor.

12           **41-09-61. (9-341) Bank's rights and duties with respect to deposit account.**

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

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

19           **41-09-62. (9-342) Bank's right to refuse to enter into or disclose existence of**  
20 **control agreement.** This chapter does not require a bank to enter into an agreement of the  
21 kind described in subdivision b of subsection 1 of section 41-09-04, even if its customer so  
22 requests or directs. A bank that has entered into such an agreement is not required to confirm  
23 the existence of the agreement to another person unless requested to do so by its customer.

24           **41-09-63. (9-401) Alienability of debtor's rights.**

- 25           1. Except as otherwise provided in subsection 2 and sections 41-09-68 through  
26           41-09-71, whether a debtor's rights in collateral may be voluntarily or involuntarily  
27           transferred is governed by law other than this chapter.
- 28           2. An agreement between the debtor and secured party which prohibits a transfer of  
29           the debtor's rights in collateral or makes the transfer a default does not prevent the  
30           transfer from taking effect.

1           **41-09-64. (9-402) Secured party not obligated on contract of debtor or in tort.** The  
2 existence of a security interest, agricultural lien, or authority given to a debtor to dispose of or  
3 use collateral, without more, does not subject a secured party to liability in contract or tort for  
4 the debtor's acts or omissions.

5           **41-09-65. (9-403) Agreement not to assert defenses against assignee.**

6           1. In this section, "value" has the meaning provided in subsection 1 of section  
7 41-03-29.

8           2. Except as otherwise provided in this section, an agreement between an account  
9 debtor and an assignor not to assert against an assignee any claim or defense that  
10 the account debtor may have against the assignor is enforceable by an assignee  
11 that takes an assignment:

12           a. For value;

13           b. In good faith;

14           c. Without notice of a claim of a property or possessory right to the property  
15 assigned; and

16           d. Without notice of a defense or claim in recoupment of the type that may be  
17 asserted against a person entitled to enforce a negotiable instrument under  
18 subsection 1 of section 41-03-31.

19           3. Subsection 2 does not apply to defenses of a type that may be asserted against a  
20 holder in due course of a negotiable instrument under subsection 2 of section  
21 41-03-31.

22           4. In a consumer transaction, if a record evidences the account debtor's obligation,  
23 law other than this chapter requires that the record include a statement to the effect  
24 that the rights of an assignee are subject to claims or defenses that the account  
25 debtor could assert against the original obligee, and the record does not include  
26 such a statement:

27           a. The record has the same effect as if the record included such a statement;  
28 and

29           b. The account debtor may assert against an assignee those claims and  
30 defenses that would have been available if the record included such a  
31 statement.

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

4           6. Except as otherwise provided in subsection 4, this section does not displace law  
5           other than this chapter which gives effect to an agreement by an account debtor  
6           not to assert a claim or defense against an assignee.

7           **41-09-66. (9-404) Rights acquired by assignee - Claims and defenses against**  
8           **assignee.**

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

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

15           b. Any other defense or claim of the account debtor against the assignor which  
16           accrues before the account debtor receives a notification of the assignment  
17           authenticated by the assignor or the assignee.

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

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

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

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

3           **41-09-67. (9-405) Modification of assigned contract.**

4           1. A modification of or substitution for an assigned contract is effective against an  
5           assignee if made in good faith. The assignee acquires corresponding rights under  
6           the modified or substituted contract. The assignment may provide that the  
7           modification or substitution is a breach of contract by the assignor. This subsection  
8           is subject to subsections 2 through 4.

9           2. Subsection 1 applies to the extent that:

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

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

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

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

20          **41-09-68. (9-406) Discharge of account debtor - Notification of assignment -**

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

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

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

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

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

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

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

22           **41-09-69. (9-407) Restrictions on creation or enforcement of security interest in**  
23 **leasehold interest or in lessor's residual interest.**

- 24           1. Except as otherwise provided in subsection 2, a term in a lease agreement is  
25           ineffective to the extent that the term:
- 26           a. Prohibits, restricts, or requires the consent of a party to the lease to the  
27           creation, attachment, perfection, or enforcement of a security interest in an  
28           interest of a party under the lease contract or in the lessor's residual interest  
29           in the goods; or



- 1            b. Provides that the creation, attachment, perfection, or enforcement of the  
2            security interest may give rise to a default, breach, right of recoupment, claim,  
3            defense, termination, right of termination, or remedy under the lease.
- 4            2. Except as otherwise provided in subsection 7 of section 41-02.1-33, a term  
5            described in subdivision b of subsection 1 is effective to the extent that there is:
- 6            a. A transfer by the lessee of the lessee's right of possession or use of the  
7            goods in violation of the term; or
- 8            b. A delegation of a material performance of either party to the lease contract in  
9            violation of the term.
- 10          3. The creation, attachment, perfection, or enforcement of a security interest in the  
11          lessor's interest under the lease contract or the lessor's residual interest in the  
12          goods is not a transfer that materially impairs the lessee's prospect of obtaining  
13          return performance or materially changes the duty of or materially increases the  
14          burden or risk imposed on the lessee within the purview of subsection 4 of section  
15          41-02.1-33 unless, and then only to the extent that, enforcement actually results in  
16          a delegation of material performance of the lessor.

17            **41-09-70. (9-408) Restrictions on assignment of promissory notes, health care**  
18 **insurance receivables, and certain general intangibles ineffective.**

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

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

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

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

10                   **41-09-71. (9-409) Restrictions on assignment of letter-of-credit rights ineffective.**

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

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

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

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

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

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

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

- 1           2. Except as otherwise provided in subsection 2 of section 41-09-72, to be sufficient,  
2           a financing statement that covers as-extracted collateral or timber to be cut, or  
3           which is filed as a fixture filing and covers goods that are or are to become fixtures,  
4           must satisfy subsection 1 and also:
- 5           a. Indicate that it covers this type of collateral;  
6           b. Indicate that it is to be filed for record in the real-property records;  
7           c. Provide a description of the real property to which the collateral is related  
8           sufficient to give constructive notice of a mortgage under the law of this state  
9           if the description were contained in a record of the mortgage of the real  
10           property; and  
11           d. If the debtor does not have an interest of record in the real property, provide  
12           the name of a record owner.
- 13           3. A record of a mortgage is effective, from the date of recording, as a financing  
14           statement filed as a fixture filing or as a financing statement covering as-extracted  
15           collateral or timber to be cut only if:
- 16           a. The record indicates the goods or accounts that it covers;  
17           b. The goods are or are to become fixtures related to the real property described  
18           in the record or the collateral is related to the real property described in the  
19           record and is as-extracted collateral or timber to be cut;  
20           c. The record satisfies the requirements for a financing statement in this section  
21           other than an indication that it is to be filed in the real-property records; and  
22           d. The record is duly recorded.
- 23           4. A financing statement may be filed before a security agreement is made or a  
24           security interest otherwise attaches.

25           **41-09-74. (9-503) Name of debtor and secured party.**

- 26           1. A financing statement sufficiently provides the name of the debtor:
- 27           a. If the debtor is a registered organization, only if the financing statement  
28           provides the name of the debtor indicated on the public record of the debtor's  
29           jurisdiction of organization which shows the debtor to have been organized;  
30           b. If the debtor is a decedent's estate, only if the financing statement provides  
31           the name of the decedent and indicates that the debtor is an estate;

- 1           c. If the debtor is a trust or a trustee acting with respect to property held in trust,  
2           only if the financing statement:
- 3           (1) Provides the name specified for the trust in its organic documents or, if  
4           no name is specified, provides the name of the settlor and additional  
5           information sufficient to distinguish the debtor from other trusts having  
6           one or more of the same settlors; and
- 7           (2) Indicates, in the debtor's name or otherwise, that the debtor is a trust or  
8           is a trustee acting with respect to property held in trust; and
- 9           d. In other cases:
- 10          (1) If the debtor has a name, only if it provides the individual or  
11          organizational name of the debtor; and
- 12          (2) If the debtor does not have a name, only if it provides the names of the  
13          partners, members, associates, or other persons comprising the debtor.
- 14          2. A financing statement that provides the name of the debtor in accordance with  
15          subsection 1 is not rendered ineffective by the absence of:
- 16          a. A trade name or other name of the debtor; or
- 17          b. Unless required under paragraph 2 of subdivision d of subsection 1, names of  
18          partners, members, associates, or other persons comprising the debtor.
- 19          3. A financing statement that provides only the debtor's trade name does not  
20          sufficiently provide the name of the debtor.
- 21          4. Failure to indicate the representative capacity of a secured party or representative  
22          of a secured party does not affect the sufficiency of a financing statement.
- 23          5. A financing statement may provide the name of more than one debtor and the  
24          name of more than one secured party.
- 25          **41-09-75. (9-504) Indication of collateral.** A financing statement sufficiently indicates  
26 the collateral that it covers only if the financing statement provides:
- 27          1. A description of the collateral pursuant to section 41-09-08; or
- 28          2. An indication that the financing statement covers all assets or all personal property.
- 29          **41-09-76. (9-505) Filing and compliance with other statutes and treaties for**  
30 **consignments, leases, other bailments, and other transactions.**

- 1           1. A consignor, lessor, or other bailor of goods, a licensor, or a buyer of a payment  
2           intangible or promissory note may file a financing statement, or may comply with a  
3           statute or treaty described in subsection 1 of section 41-09-31, using the terms  
4           "consignor", "consignee", "lessor", "lessee", "bailor", "bailee", "licensor", "licensee",  
5           "owner", "registered owner", "buyer", "seller", or words of similar import, instead of  
6           the terms "secured party" and "debtor".
- 7           2. This part applies to the filing of a financing statement under subsection 1 and, as  
8           appropriate, to compliance that is equivalent to filing a financing statement under  
9           subsection 2 of section 41-09-31, but the filing or compliance is not of itself a factor  
10          in determining whether the collateral secures an obligation. If it is determined for  
11          another reason that the collateral secures an obligation, a security interest held by  
12          the consignor, lessor, bailor, licensor, owner, or buyer which attaches to the  
13          collateral is perfected by the filing or compliance.

14          **41-09-77. (9-506) Effect of errors or omissions.**

- 15          1. A financing statement substantially satisfying the requirements of this part is  
16          effective, even if the financing statement has minor errors or omissions, unless the  
17          errors or omissions make the financing statement seriously misleading.
- 18          2. Except as otherwise provided in subsection 3, a financing statement that fails  
19          sufficiently to provide the name of the debtor in accordance with subsection 1 of  
20          section 41-09-74 is seriously misleading.
- 21          3. If a search of the records of the filing office under the debtor's correct name, using  
22          the filing office's standard search logic, if any, would disclose a financing statement  
23          that fails sufficiently to provide the name of the debtor in accordance with  
24          subsection 1 of section 41-09-74, the name provided does not make the financing  
25          statement seriously misleading.
- 26          4. For purposes of subsection 2 of section 41-09-79, the "debtor's correct name" in  
27          subsection 3 means the correct name of the new debtor.

28          **41-09-78. (9-507) Effect of certain events on effectiveness of financing statement.**

- 29          1. A filed financing statement remains effective with respect to collateral that is sold,  
30          exchanged, leased, licensed, or otherwise disposed of and in which a security

1           interest or agricultural lien continues, even if the secured party knows of or  
2           consents to the disposition.

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

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

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

11           b. The financing statement is not effective to perfect a security interest in  
12           collateral acquired by the debtor more than four months after the change,  
13           unless an amendment to the financing statement which renders the financing  
14           statement not seriously misleading is filed within four months after the  
15           change.

16           **41-09-79. (9-508) Effectiveness of financing statement if new debtor becomes**  
17           **bound by security agreement.**

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

22           2. If the difference between the name of the original debtor and that of the new debtor  
23           causes a filed financing statement that is effective under subsection 1 to be  
24           seriously misleading under section 41-09-77:

25           a. The financing statement is effective to perfect a security interest in collateral  
26           acquired by the new debtor before, and within four months after, the new  
27           debtor becomes bound under subsection 4 of section 41-09-13; and

28           b. The financing statement is not effective to perfect a security interest in  
29           collateral acquired by the new debtor more than four months after the new  
30           debtor becomes bound under subsection 4 of section 41-09-13 unless an



1                   initial financing statement providing the name of the new debtor is filed before  
2                   the expiration of that time.

3           3.   This section does not apply to collateral as to which a filed financing statement  
4                   remains effective against the new debtor under subsection 1 of section 41-09-78.

5           **41-09-80. (9-509) Persons entitled to file a record.**

6           1.   A person may file an initial financing statement, amendment that adds collateral  
7                   covered by a financing statement, or amendment that adds a debtor to a financing  
8                   statement only if:

9                   a.   The debtor authorizes the filing in an authenticated record; or

10                  b.   The person holds an agricultural lien that has become effective at the time of  
11                   filing and the financing statement covers only collateral in which the person  
12                   holds an agricultural lien.

13           2.   By authenticating or becoming bound as debtor by a security agreement, a debtor  
14                   or new debtor authorizes the filing of an initial financing statement, and an  
15                   amendment, covering:

16                   a.   The collateral described in the security agreement; and

17                   b.   Property that becomes collateral under subdivision b of subsection 1 of  
18                   section 41-09-35, regardless of whether the security agreement expressly  
19                   covers proceeds.

20           3.   By acquiring collateral in which a security interest or agricultural lien continues  
21                   under subdivision a of subsection 1 of section 41-09-35, a debtor authorizes the  
22                   filing of an initial financing statement, and an amendment, covering the collateral  
23                   and property that becomes collateral under subdivision b of subsection 1 of section  
24                   41-09-35.

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

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

29                   b.   The amendment is a termination statement for a financing statement as to  
30                   which the secured party of record has failed to file or send a termination  
31                   statement as required by subsection 1 or 3 of section 41-09-84, the debtor

1                   authorizes the filing, and the termination statement indicates that the debtor  
2                   authorized it to be filed.

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

6           **41-09-81. (9-510) Effectiveness of filed record.**

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

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

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

13          **41-09-82. (9-511) Secured party of record.**

14          1. A secured party of record with respect to a financing statement is a person whose  
15          name is provided as the name of the secured party or a representative of the  
16          secured party in an initial financing statement that has been filed. If an initial  
17          financing statement is filed under subsection 1 of section 41-09-85, the assignee  
18          named in the initial financing statement is the secured party of record with respect  
19          to the financing statement.

20          2. If an amendment of a financing statement which provides the name of a person as  
21          a secured party or a representative of a secured party is filed, the person named in  
22          the amendment is a secured party of record. If an amendment is filed under  
23          subsection 2 of section 41-09-85, the assignee named in the amendment is a  
24          secured party of record.

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

27          **41-09-83. (9-512) Amendment of financing statement.**

28          Alternative A

29          1. Subject to section 41-09-80, a person may add or delete collateral covered by,  
30          continue or terminate the effectiveness of, or, subject to subsection 5, otherwise

- 1           amend the information provided in, a financing statement by filing an amendment  
2           that:  
3           a.   Identifies, by its file number, the initial financing statement to which the  
4           amendment relates; and  
5           b.   If the amendment relates to an initial financing statement filed or recorded in a  
6           filing office described in subdivision a of subsection 1 of section 41-09-72,  
7           provides the information specified in subsection 2 of section 41-09-73.

8           Alternative B

- 9           1.   Subject to section 41-09-80, a person may add or delete collateral covered by,  
10           continue or terminate the effectiveness of, or, subject to subsection 5, otherwise  
11           amend the information provided in, a financing statement by filing an amendment  
12           that:  
13           a.   Identifies, by its file number, the initial financing statement to which the  
14           amendment relates; and  
15           b.   If the amendment relates to an initial financing statement filed or recorded in a  
16           filing office described in subdivision a of subsection 1 of section 41-09-72,  
17           provides the date and time that the initial financing statement was filed or  
18           recorded and the information specified in subsection 2 of section 41-09-73.  
19           2.   Except as otherwise provided in section 41-09-86, the filing of an amendment does  
20           not extend the period of effectiveness of the financing statement.  
21           3.   A financing statement that is amended by an amendment that adds collateral is  
22           effective as to the added collateral only from the date of the filing of the  
23           amendment.  
24           4.   A financing statement that is amended by an amendment that adds a debtor is  
25           effective as to the added debtor only from the date of the filing of the amendment.  
26           5.   An amendment is ineffective to the extent it:  
27           a.   Purports to delete all debtors and fails to provide the name of a debtor to be  
28           covered by the financing statement; or  
29           b.   Purports to delete all secured parties of record and fails to provide the name  
30           of a new secured party of record.

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

- 1           **41-09-84. (9-513) Termination statement.**
- 2           1. A secured party shall cause the secured party of record for a financing statement
- 3           to file a termination statement for the financing statement if the financing statement
- 4           covers consumer goods and:
- 5           a. There is no obligation secured by the collateral covered by the financing
- 6           statement and no commitment to make an advance, incur an obligation, or
- 7           otherwise give value; or
- 8           b. The debtor did not authorize the filing of the initial financing statement.
- 9           2. To comply with subsection 1, a secured party shall cause the secured party of
- 10           record to file the termination statement:
- 11           a. Within one month after there is no obligation secured by the collateral covered
- 12           by the financing statement and no commitment to make an advance, incur an
- 13           obligation, or otherwise give value; or
- 14           b. If earlier, within twenty days after the secured party receives an authenticated
- 15           demand from a debtor.
- 16           3. In cases not governed by subsection 1, within twenty days after a secured party
- 17           receives an authenticated demand from a debtor, the secured party shall cause the
- 18           secured party of record for a financing statement to send to the debtor a
- 19           termination statement for the financing statement or file the termination statement
- 20           in the filing office if:
- 21           a. Except in the case of a financing statement covering accounts or chattel
- 22           paper that has been sold or goods that are the subject of a consignment,
- 23           there is no obligation secured by the collateral covered by the financing
- 24           statement and no commitment to make an advance, incur an obligation, or
- 25           otherwise give value;
- 26           b. The financing statement covers accounts or chattel paper that has been sold
- 27           but as to which the account debtor or other person obligated has discharged
- 28           its obligation;
- 29           c. The financing statement covers goods that were the subject of a consignment
- 30           to the debtor but are not in the debtor's possession; or
- 31           d. The debtor did not authorize the filing of the initial financing statement.

1           4. Except as otherwise provided in section 41-09-81, upon the filing of a termination  
2                   statement with the filing office, the financing statement to which the termination  
3                   statement relates ceases to be effective.

4           **41-09-85. (9-514) Assignment of powers of secured party of record.**

5           1. Except as otherwise provided in subsection 3, an initial financing statement may  
6                   reflect an assignment of all of the secured party's power to authorize an  
7                   amendment to the financing statement by providing the name and mailing address  
8                   of the assignee as the name and address of the secured party.

9           2. Except as otherwise provided in subsection 3, a secured party of record may  
10                  assign of record all or part of its power to authorize an amendment to a financing  
11                  statement by filing in the filing office an amendment of the financing statement  
12                  which:

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

14                  b. Provides the name of the assignor; and

15                  c. Provides the name and mailing address of the assignee.

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

20           **41-09-86. (9-515) Duration and effectiveness of financing statement - Effect of**  
21 **lapsed financing statement.**

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

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

29           3. The effectiveness of a filed financing statement lapses on the expiration of the  
30                  period of its effectiveness unless before the lapse a continuation statement is filed  
31                  pursuant to subsection 4. Upon lapse, a financing statement ceases to be effective

- 1           and any security interest or agricultural lien that was perfected by the financing  
2           statement becomes unperfected, unless the security interest is perfected  
3           otherwise. If the security interest or agricultural lien becomes unperfected upon  
4           lapse, it is deemed never to have been perfected as against a purchaser of the  
5           collateral for value.
- 6           4. A continuation statement may be filed only within six months before the expiration  
7           of the five-year period specified in subsection 1 or the thirty-year period specified in  
8           subsection 2, whichever is applicable.
- 9           5. Except as otherwise provided in section 41-09-81, upon timely filing of a  
10           continuation statement, the effectiveness of the initial financing statement  
11           continues for a period of five years commencing on the day on which the financing  
12           statement would have become ineffective in the absence of the filing. Upon the  
13           expiration of the five-year period, the financing statement lapses in the same  
14           manner as provided in subsection 3, unless, before the lapse, another continuation  
15           statement is filed pursuant to subsection 4. Succeeding continuation statements  
16           may be filed in the same manner to continue the effectiveness of the initial  
17           financing statement.
- 18           6. If a debtor is a transmitting utility and a filed financing statement so indicates, the  
19           financing statement is effective until a termination statement is filed.
- 20           7. A record of a mortgage that is effective as a financing statement filed as a fixture  
21           filing under subsection 3 of section 41-09-73 remains effective as a financing  
22           statement filed as a fixture filing until the mortgage is released or satisfied of record  
23           or its effectiveness otherwise terminates as to the real property.

24           **41-09-87. (9-516) What constitutes filing - Effectiveness of filing.**

- 25           1. Except as otherwise provided in subsection 2, communication of a record to a filing  
26           office and tender of the filing fee or acceptance of the record by the filing office  
27           constitutes filing.
- 28           2. Filing does not occur with respect to a record that a filing office refuses to accept  
29           because:
- 30           a. The record is not communicated by a method or medium of communication  
31           authorized by the filing office;

- 1            b. An amount equal to or greater than the applicable filing fee is not tendered;
- 2            c. The filing office is unable to index the record because:
- 3                (1) In the case of an initial financing statement, the record does not provide
- 4                a name for the debtor;
- 5                (2) In the case of an amendment or correction statement, the record:
- 6                    (a) Does not identify the initial financing statement as required by
- 7                    section 41-09-83 or 41-09-89, as applicable; or
- 8                    (b) Identifies an initial financing statement whose effectiveness has
- 9                    lapsed under section 41-09-86;
- 10               (3) In the case of an initial financing statement that provides the name of a
- 11               debtor identified as an individual or an amendment that provides a
- 12               name of a debtor identified as an individual which was not previously
- 13               provided in the financing statement to which the record relates, the
- 14               record does not identify the debtor's last name; or
- 15               (4) In the case of a record filed or recorded in the filing office described in
- 16               subdivision a of subsection 1 of section 41-09-72, the record does not
- 17               provide a sufficient description of the real property to which it relates;
- 18            d. In the case of an initial financing statement or an amendment that adds a
- 19            secured party of record, the record does not provide a name and mailing
- 20            address for the secured party of record;
- 21            e. In the case of an initial financing statement or an amendment that provides a
- 22            name of a debtor which was not previously provided in the financing
- 23            statement to which the amendment relates, the record does not:
- 24                (1) Provide a mailing address for the debtor;
- 25                (2) Indicate whether the debtor is an individual or an organization; or
- 26                (3) If the financing statement indicates that the debtor is an organization,
- 27                provide:
- 28                    (a) A type of organization for the debtor;
- 29                    (b) A jurisdiction of organization for the debtor; or
- 30                    (c) An organizational identification number for the debtor or indicate
- 31                    that the debtor has none;

- 1           f. In the case of an assignment reflected in an initial financing statement under  
2           subsection 1 of section 41-09-85 or an amendment filed under subsection 2 of  
3           section 41-09-85, the record does not provide a name and mailing address for  
4           the assignee; or
- 5           g. In the case of a continuation statement, the record is not filed within the  
6           six-month period prescribed by subsection 4 of section 41-09-86.
- 7           3. For purposes of subsection 2:
- 8           a. A record does not provide information if the filing office is unable to read or  
9           decipher the information; and
- 10           b. A record that does not indicate that it is an amendment or identify an initial  
11           financing statement to which it relates, as required by section 41-09-83,  
12           41-09-85, or 41-09-89, is an initial financing statement.
- 13           4. A record that is communicated to the filing office with tender of the filing fee, but  
14           which the filing office refuses to accept for a reason other than one set forth in  
15           subsection 2, is effective as a filed record except as against a purchaser of the  
16           collateral which gives value in reasonable reliance upon the absence of the record  
17           from the files.

18           **41-09-88. (9-517) Effect of indexing errors.** The failure of the filing office to index a  
19 record correctly does not affect the effectiveness of the filed record.

20           **41-09-89. (9-518) Claim concerning inaccurate or wrongfully filed record.**

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

24           Alternative A

- 25           2. A correction statement must:
- 26           a. Identify the record to which it relates by the file number assigned to the initial  
27           financing statement to which the record relates;
- 28           b. Indicate that it is a correction statement; and
- 29           c. Provide the basis for the person's belief that the record is inaccurate and  
30           indicate the manner in which the person believes the record should be



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

3                    Alternative B

4                    2. A correction statement must:

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

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

8                    (2) If the correction statement relates to a record filed or recorded in a filing  
9                    office described in subdivision a of subsection 1 of section 41-09-72,  
10                    the date and time that the initial financing statement was filed or  
11                    recorded and the information specified in subsection 2 of section  
12                    41-09-73;

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

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

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

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

20                    **41-09-90. (9-519) Numbering, maintaining, and indexing records - Communicating**  
21 **information provided in records.**

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

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

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

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

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

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

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

- 1           b. Aids the filing office in determining whether a number communicated as the  
2                     file number includes a single-digit or transpositional error.
- 3           3. Except as otherwise provided in subsections 4 and 5, the filing office shall:
- 4           a. Index an initial financing statement according to the name of the debtor and  
5                     index all filed records relating to the initial financing statement in a manner  
6                     that associates with one another an initial financing statement and all filed  
7                     records relating to the initial financing statement; and
- 8           b. Index a record that provides a name of a debtor which was not previously  
9                     provided in the financing statement to which the record relates also according  
10                    to the name that was not previously provided.
- 11          4. If a financing statement is filed as a fixture filing or covers as-extracted collateral or  
12                     timber to be cut, it must be filed for record and the filing office shall index it:
- 13          a. Under the names of the debtor and of each owner of record shown on the  
14                     financing statement as if they were the mortgagors under a mortgage of the  
15                     real property described; and
- 16          b. To the extent that the law of this state provides for indexing of records of  
17                     mortgages under the name of the mortgagee, under the name of the secured  
18                     party as if the secured party were the mortgagee thereunder, or, if indexing is  
19                     by description, as if the financing statement were a record of a mortgage of  
20                     the real property described.
- 21          5. If a financing statement is filed as a fixture filing or covers as-extracted collateral or  
22                     timber to be cut, the filing office shall index an assignment filed under subsection 1  
23                     of section 41-09-85 or an amendment filed under subsection 2 of section 41-09-85:
- 24          a. Under the name of the assignor as grantor; and
- 25          b. To the extent that the law of this state provides for indexing a record of the  
26                     assignment of a mortgage under the name of the assignee, under the name of  
27                     the assignee.

28          Alternative A

- 29          6. The filing office shall maintain a capability:
- 30          a. To retrieve a record by the name of the debtor and by the file number  
31                     assigned to the initial financing statement to which the record relates; and

- 1            b. To associate and retrieve with one another an initial financing statement and  
2            each filed record relating to the initial financing statement.

3            Alternative B

- 4            6. The filing office shall maintain a capability:

- 5            a. To retrieve a record by the name of the debtor and:

6            (1) If the filing office is described in subdivision a of subsection 1 of section  
7            41-09-72, by the file number assigned to the initial financing statement  
8            to which the record relates and the date and time that the record was  
9            filed or recorded; or

10           (2) If the filing office is described in subdivision b of subsection 1 of section  
11           41-09-72, by the file number assigned to the initial financing statement  
12           to which the record relates; and

- 13           b. To associate and retrieve with one another an initial financing statement and  
14           each filed record relating to the initial financing statement.

15           7. The filing office may not remove a debtor's name from the index until one year after  
16           the effectiveness of a financing statement naming the debtor lapses under section  
17           41-09-86 with respect to all secured parties of record.

18           8. The filing office shall perform the acts required by subsections 1 through 5 at the  
19           time and in the manner prescribed by filing-office rule, but not later than two  
20           business days after the filing office receives the record in question.

21           9. [Subsection] [Subsections] [2] [and] [8] [does] [do] not apply to a filing office  
22           described in subdivision a of subsection 1 of section 41-09-72.

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

23           **41-09-91. (9-520) Acceptance and refusal to accept record.**

24           1. A filing office shall refuse to accept a record for filing for a reason set forth in  
25           subsection 2 of section 41-09-87 and may refuse to accept a record for filing only  
26           for a reason set forth in subsection 2 of section 41-09-87.

27           2. If a filing office refuses to accept a record for filing, it shall communicate to the  
28           person that presented the record the fact of and reason for the refusal and the date  
29           and time the record would have been filed had the filing office accepted it. The

1           communication must be made at the time and in the manner prescribed by  
2           filing-office rule but [, in the case of a filing office described in subdivision b of  
3           subsection 1 of section 41-09-72,] in no event more than two business days after  
4           the filing office receives the record.

5           3. A filed financing statement satisfying subsections 1 and 2 of section 41-09-73 is  
6           effective, even if the filing office is required to refuse to accept it for filing under  
7           subsection 1. However, section 41-09-58 applies to a filed financing statement  
8           providing information described in subdivision e of subsection 2 of section  
9           41-09-87 which is incorrect at the time the financing statement is filed.

10          4. If a record communicated to a filing office provides information that relates to more  
11          than one debtor, this part applies as to each debtor separately.

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

12          **41-09-92. (9-521) Uniform form of written financing statement and amendment.**

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

16          2. A filing office that accepts written records may not refuse to accept a written record  
17          in the form and format established by the secretary of state, except for a reason set  
18          forth in subsection 2 of section 41-09-87.

19          **41-09-93. (9-522) Maintenance and destruction of records.**

20          Alternative A

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

27          Alternative B

28          1. The filing office shall maintain a record of the information provided in a filed  
29          financing statement for at least one year after the effectiveness of the financing

- 1 statement has lapsed under section 41-09-86 with respect to all secured parties of  
2 record. The record must be retrievable by using the name of the debtor and:  
3 a. If the record was filed or recorded in the filing office described in subdivision a  
4 of subsection 1 of section 41-09-72, by using the file number assigned to the  
5 initial financing statement to which the record relates and the date and time  
6 that the record was filed or recorded; or  
7 b. If the record was filed in the filing office described in subdivision b of  
8 subsection 1 of section 41-09-72, by using the file number assigned to the  
9 initial financing statement to which the record relates.  
10 2. Except to the extent that a statute governing disposition of public records provides  
11 otherwise, the filing office immediately may destroy any written record evidencing a  
12 financing statement. However, if the filing office destroys a written record, it shall  
13 maintain another record of the financing statement which complies with  
14 subsection 1.

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

- 15 **41-09-94. (9-523) Information from filing office - Sale or license of records.**  
16 1. If a person that files a written record requests an acknowledgment of the filing, the  
17 filing office shall send to the person an image of the record showing the number  
18 assigned to the record pursuant to subdivision a of subsection 1 of section  
19 41-09-90 and the date and time of the filing of the record. However, if the person  
20 furnishes a copy of the record to the filing office, the filing office may instead:  
21 a. Note upon the copy the number assigned to the record pursuant to  
22 subdivision a of subsection 1 of section 41-09-90 and the date and time of the  
23 filing of the record; and  
24 b. Send the copy to the person.  
25 2. If a person files a record other than a written record, the filing office shall  
26 communicate to the person an acknowledgment that provides:  
27 a. The information in the record;  
28 b. The number assigned to the record pursuant to subdivision a of subsection 1  
29 of section 41-09-90; and  
30 c. The date and time of the filing of the record.

- 1           3. The filing office shall communicate or otherwise make available in a record the  
2 following information to any person that requests it:
- 3           a. Whether there is on file on a date and time specified by the filing office, but  
4 not a date earlier than three business days before the filing office receives the  
5 request, any financing statement that:
- 6                 (1) Designates a particular debtor [or, if the request so states, designates a  
7 particular debtor at the address specified in the request];
- 8                 (2) Has not lapsed under section 41-09-86 with respect to all secured  
9 parties of record; and
- 10                (3) If the request so states, has lapsed under section 41-09-86 and a  
11 record of which is maintained by the filing office under subsection 1 of  
12 section 41-09-93;
- 13           b. The date and time of filing of each financing statement; and
- 14           c. The information provided in each financing statement.
- 15           4. In complying with its duty under subsection 3, the filing office may communicate  
16 information in any medium. However, if requested, the filing office shall  
17 communicate information by issuing [(its written certificate) (a record that can be  
18 admitted into evidence in the courts of this state without extrinsic evidence of its  
19 authenticity)].
- 20           5. The filing office shall perform the acts required by subsections 1 through 4 at the  
21 time and in the manner prescribed by filing-office rule, but not later than two  
22 business days after the filing office receives the request.
- 23           6. At least weekly, the filing office shall offer to sell or license to the public on a  
24 nonexclusive basis, in bulk, copies of all records filed in it under this part, in every  
25 medium from time to time available to the filing office.

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

- 26           **41-09-95. (9-524) Delay by filing office.** Delay by the filing office beyond a time limit  
27 prescribed by this part is excused if:

1           1. The delay is caused by interruption of communication or computer facilities, war,  
2                   emergency conditions, failure of equipment, or other circumstances beyond control  
3                   of the filing office; and

4           2. The filing office exercises reasonable diligence under the circumstances.

5           **41-09-96. (9-525) Fees.**

6           1. Except as otherwise provided in subsection 5, the fee for filing and indexing a  
7                   record under this part, other than an initial financing statement of the kind  
8                   described in subsection 3 of section 41-09-73, is [the amount specified in  
9                   subsection 3, if applicable, plus]:

10           a. \$ \_\_\_\_\_ [X] \_\_\_\_\_ if the record is communicated in writing and  
11                   consists of one or two pages;

12           b. \$ \_\_\_\_\_ [2X] \_\_\_\_\_ if the record is communicated in writing and  
13                   consists of more than two pages; and

14           c. \$ \_\_\_\_\_ [1/2X] \_\_\_\_\_ if the record is communicated by another  
15                   medium authorized by filing-office rule.

16           2. Except as otherwise provided in subsection 5, the fee for filing and indexing an  
17                   initial financing statement of the kind described in subsection 3 of section 41-09-73  
18                   is [the amount specified in subsection 3, if applicable, plus]:

19           a. \$ \_\_\_\_\_ if the financing statement indicates that it is filed in connection with  
20                   a public-finance transaction; and

21           b. \$ \_\_\_\_\_ if the financing statement indicates that it is filed in connection with  
22                   a manufactured-home transaction.

23           Alternative A

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

26           Alternative B

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

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

- 1           a.   \$ \_\_\_\_\_ if the request is communicated in writing; and  
2           b.   \$ \_\_\_\_\_ if the request is communicated by another medium authorized by  
3                 filing-office rule.
- 4           5.   This section does not require a fee with respect to a record of a mortgage which is  
5                 effective as a financing statement filed as a fixture filing or as a financing statement  
6                 covering as-extracted collateral or timber to be cut under subsection 3 of section  
7                 41-09-73. However, the recording and satisfaction fees that otherwise would be  
8                 applicable to the record of the mortgage apply.

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

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

- 10          1.   The filing office shall adopt and publish rules to implement this chapter. The  
11                 filing-office rules must be:
- 12                 a.   Consistent with this chapter; and  
13                 b.   Adopted and published in accordance with chapter 28-32.
- 14          2.   To keep the filing-office rules and practices of the filing office in harmony with the  
15                 rules and practices of filing offices in other jurisdictions that enact substantially this  
16                 part, and to keep the technology used by the filing office compatible with the  
17                 technology used by filing offices in other jurisdictions that enact substantially this  
18                 part, the [insert appropriate governmental official or agency], so far as is consistent  
19                 with the purposes, policies, and provisions of this chapter, in adopting, amending,  
20                 and repealing filing-office rules, shall:
- 21                 a.   Consult with filing offices in other jurisdictions that enact substantially this  
22                         part;
- 23                 b.   Consult the most recent version of the model rules promulgated by the  
24                         international association of corporate administrators or any successor  
25                         organization; and
- 26                 c.   Take into consideration the rules and practices of, and the technology used  
27                         by, filing offices in other jurisdictions that enact substantially this part.

28           **41-09-98. (9-527) Duty to report.** The secretary of state shall report [annually on or  
29 before \_\_\_\_\_ ] to the [governor and legislature] on the operation of the filing office. The  
30 report must contain a statement of the extent to which:



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

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

7           **41-09-99. (9-601) Rights after default - Judicial enforcement - Consignor or buyer**  
8 **of accounts, chattel paper, payment intangibles, or promissory notes.**

- 9           1. After default, a secured party has the rights provided in this part and, except as  
10                   otherwise provided in section 41-09-100, those provided by agreement of the  
11                   parties. A secured party:  
12                   a. May reduce a claim to judgment, foreclose, or otherwise enforce the claim,  
13                    security interest, or agricultural lien by any available judicial procedure; and  
14                   b. If the collateral is documents, may proceed either as to the documents or as  
15                    to the goods they cover.  
16           2. A secured party in possession of collateral or control of collateral under section  
17                   41-09-04, 41-09-05, 41-09-06, or 41-09-07 has the rights and duties provided in  
18                   section 41-09-17.  
19           3. The rights under subsections 1 and 2 are cumulative and may be exercised  
20                   simultaneously.  
21           4. Except as otherwise provided in subsection 7 and section 41-09-103, after default,  
22                   a debtor and an obligor have the rights provided in this part and by agreement of  
23                   the parties.  
24           5. If a secured party has reduced its claim to judgment, the lien of any levy that may  
25                   be made upon the collateral by virtue of an execution based upon the judgment  
26                   relates back to the earliest of:  
27                   a. The date of perfection of the security interest or agricultural lien in the  
28                    collateral;  
29                   b. The date of filing a financing statement covering the collateral; or  
30                   c. Any date specified in a statute under which the agricultural lien was created.

1           6. A sale pursuant to an execution is a foreclosure of the security interest or  
2           agricultural lien by judicial procedure within the meaning of this section. A secured  
3           party may purchase at the sale and thereafter hold the collateral free of any other  
4           requirements of this chapter.

5           7. Except as otherwise provided in subsection 3 of section 41-09-105, sections  
6           41-09-99 through 41-09-126 impose no duties upon a secured party that is a  
7           consignor or is a buyer of accounts, chattel paper, payment intangibles, or  
8           promissory notes.

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

13           1. Paragraph 3 of subdivision d of subsection 2 of section 41-09-17, which deals with  
14           use and operation of the collateral by the secured party;

15           2. Section 41-09-20, which deals with requests for an accounting and requests  
16           concerning a list of collateral and statement of account;

17           3. Subsection 3 of section 41-09-105, which deals with collection and enforcement of  
18           collateral;

19           4. Subsection 1 of section 41-09-106 and subsection 3 of section 41-09-113 to the  
20           extent that they deal with application or payment of noncash proceeds of collection,  
21           enforcement, or disposition;

22           5. Subsection 1 of section 41-09-106 and subsection 4 of section 41-09-113 to the  
23           extent that they require accounting for or payment of surplus proceeds of collateral;

24           6. Section 41-09-107 to the extent that it imposes upon a secured party that takes  
25           possession of collateral without judicial process the duty to do so without breach of  
26           the peace;

27           7. Subsection 2 of section 41-09-108, section 41-09-109, section 41-09-111, and  
28           section 41-09-112, which deal with disposition of collateral;

29           8. Subsection 6 of section 41-09-113, which deals with calculation of a deficiency or  
30           surplus when a disposition is made to the secured party, a person related to the  
31           secured party, or a secondary obligor;

- 1           9. Section 41-09-114, which deals with explanation of the calculation of a surplus or  
2           deficiency;  
3           10. Sections 41-09-118 through 41-09-120, which deal with acceptance of collateral in  
4           satisfaction of obligation;  
5           11. Section 41-09-121, which deals with redemption of collateral;  
6           12. Section 41-09-122, which deals with permissible waivers; and  
7           13. Sections 41-09-123 and 41-09-124, which deal with the secured party's liability for  
8           failure to comply with this chapter.

9           **41-09-101. (9-603) Agreement on standards concerning rights and duties.**

- 10          1. The parties may determine by agreement the standards measuring the fulfillment  
11          of the rights of a debtor or obligor and the duties of a secured party under a rule  
12          stated in section 41-09-100 if the standards are not manifestly unreasonable.  
13          2. Subsection 1 does not apply to the duty under section 41-09-107 to refrain from  
14          breaching the peace.

15          **41-09-102. (9-604) Procedure if security agreement covers real property or**  
16          **fixtures.**

- 17          1. If a security agreement covers both personal and real property, a secured party  
18          may proceed:  
19           a. Under this part as to the personal property without prejudicing any rights with  
20           respect to the real property; or  
21           b. As to both the personal property and the real property in accordance with the  
22           rights with respect to the real property, in which case the other provisions of  
23           this part do not apply.  
24          2. Subject to subsection 3, if a security agreement covers goods that are or become  
25          fixtures, a secured party may proceed:  
26           a. Under this part; or  
27           b. In accordance with the rights with respect to real property, in which case the  
28           other provisions of this part do not apply.  
29          3. Subject to the other provisions of this part, if a secured party holding a security  
30          interest in fixtures has priority over all owners and encumbrancers of the real

1           property, the secured party, after default, may remove the collateral from the real  
2           property.

3           4. A secured party that removes collateral shall promptly reimburse any  
4           encumbrancer or owner of the real property, other than the debtor, for the cost of  
5           repair of any physical injury caused by the removal. The secured party need not  
6           reimburse the encumbrancer or owner for any diminution in value of the real  
7           property caused by the absence of the goods removed or by any necessity of  
8           replacing them. A person entitled to reimbursement may refuse permission to  
9           remove until the secured party gives adequate assurance for the performance of  
10          the obligation to reimburse.

11          **41-09-103. (9-605) Unknown debtor or secondary obligor.** A secured party does not  
12          owe a duty based on its status as secured party:

- 13          1. To a person that is a debtor or obligor, unless the secured party knows:  
14             a. That the person is a debtor or obligor;  
15             b. The identity of the person; and  
16             c. How to communicate with the person; or  
17          2. To a secured party or lienholder that has filed a financing statement against a  
18          person, unless the secured party knows:  
19             a. That the person is a debtor; and  
20             b. The identity of the person.

21          **41-09-104. (9-606) Time of default for agricultural lien.** For purposes of this part, a  
22          default occurs in connection with an agricultural lien at the time the secured party becomes  
23          entitled to enforce the lien in accordance with the statute under which it was created.

24          **41-09-105. (9-607) Collection and enforcement by secured party.**

- 25          1. If so agreed, and in any event after default, a secured party:  
26             a. May notify an account debtor or other person obligated on collateral to make  
27             payment or otherwise render performance to or for the benefit of the secured  
28             party;  
29             b. May take any proceeds to which the secured party is entitled under section  
30             41-09-35;

- 1           c. May enforce the obligations of an account debtor or other person obligated on  
2           collateral and exercise the rights of the debtor with respect to the obligation of  
3           the account debtor or other person obligated on collateral to make payment or  
4           otherwise render performance to the debtor, and with respect to any property  
5           that secures the obligations of the account debtor or other person obligated  
6           on the collateral;
- 7           d. If it holds a security interest in a deposit account perfected by control under  
8           subdivision a of subsection 1 of section 41-09-04, may apply the balance of  
9           the deposit account to the obligation secured by the deposit account; and
- 10          e. If it holds a security interest in a deposit account perfected by control under  
11          subdivision b or c of subsection 1 of section 41-09-04, may instruct the bank  
12          to pay the balance of the deposit account to or for the benefit of the secured  
13          party.
- 14          2. If necessary to enable a secured party to exercise under subdivision c of  
15          subsection 1 the right of a debtor to enforce a mortgage nonjudicially, the secured  
16          party may record in the office in which a record of the mortgage is recorded:
- 17           a. A copy of the security agreement that creates or provides for a security  
18           interest in the obligation secured by the mortgage; and
- 19           b. The secured party's sworn affidavit in recordable form stating that:  
20           (1) A default has occurred; and  
21           (2) The secured party is entitled to enforce the mortgage nonjudicially.
- 22          3. A secured party shall proceed in a commercially reasonable manner if the secured  
23          party:
- 24           a. Undertakes to collect from or enforce an obligation of an account debtor or  
25           other person obligated on collateral; and
- 26           b. Is entitled to charge back uncollected collateral or otherwise to full or limited  
27           recourse against the debtor or a secondary obligor.
- 28          4. A secured party may deduct from the collections made pursuant to subsection 3  
29          reasonable expenses of collection and enforcement, including reasonable  
30          attorney's fees and legal expenses incurred by the secured party.

1           5. This section does not determine whether an account debtor, bank, or other person  
2           obligated on collateral owes a duty to a secured party.

3           **41-09-106. (9-608) Application of proceeds of collection or enforcement - Liability**  
4 **for deficiency and right to surplus.**

5           1. If a security interest or agricultural lien secures payment or performance of an  
6           obligation, the following rules apply:

7           a. A secured party shall apply or pay over for application the cash proceeds of  
8           collection or enforcement under this section in the following order to:

9           (1) The reasonable expenses of collection and enforcement and, to the  
10           extent provided for by agreement and not prohibited by law, reasonable  
11           attorney's fees and legal expenses incurred by the secured party;

12           (2) The satisfaction of obligations secured by the security interest or  
13           agricultural lien under which the collection or enforcement is made; and

14           (3) The satisfaction of obligations secured by any subordinate security  
15           interest in or other lien on the collateral subject to the security interest  
16           or agricultural lien under which the collection or enforcement is made if  
17           the secured party receives an authenticated demand for proceeds  
18           before distribution of the proceeds is completed.

19           b. If requested by a secured party, a holder of a subordinate security interest or  
20           other lien shall furnish reasonable proof of the interest or lien within a  
21           reasonable time. Unless the holder complies, the secured party need not  
22           comply with the holder's demand under subdivision c.

23           c. A secured party need not apply or pay over for application noncash proceeds  
24           of collection and enforcement under this section unless the failure to do so  
25           would be commercially unreasonable. A secured party that applies or pays  
26           over for application noncash proceeds shall do so in a commercially  
27           reasonable manner.

28           d. A secured party shall account to and pay a debtor for any surplus, and the  
29           obligor is liable for any deficiency.

1           2. If the underlying transaction is a sale of accounts, chattel paper, payment  
2           intangibles, or promissory notes, the debtor is not entitled to any surplus, and the  
3           obligor is not liable for any deficiency.

4           **41-09-107. (9-609) Secured party's right to take possession after default.**

- 5           1. After default, a secured party:  
6           a. May take possession of the collateral; and  
7           b. Without removal, may render equipment unusable and dispose of collateral on  
8           a debtor's premises under section 41-09-108.  
9           2. A secured party may proceed under subsection 1:  
10          a. Pursuant to judicial process; or  
11          b. Without judicial process, if it proceeds without breach of the peace.  
12          3. If so agreed, and in any event after default, a secured party may require the debtor  
13          to assemble the collateral and make it available to the secured party at a place to  
14          be designated by the secured party which is reasonably convenient to both parties.

15          **41-09-108. (9-610) Disposition of collateral after default.**

- 16          1. After default, a secured party may sell, lease, license, or otherwise dispose of any  
17          or all of the collateral in its present condition or following any commercially  
18          reasonable preparation or processing.  
19          2. Every aspect of a disposition of collateral, including the method, manner, time,  
20          place, and other terms, must be commercially reasonable. If commercially  
21          reasonable, a secured party may dispose of collateral by public or private  
22          proceedings, by one or more contracts, as a unit or in parcels, and at any time and  
23          place and on any terms.  
24          3. A secured party may purchase collateral:  
25          a. At a public disposition; or  
26          b. At a private disposition only if the collateral is of a kind that is customarily sold  
27          on a recognized market or the subject of widely distributed standard price  
28          quotations.  
29          4. A contract for sale, lease, license, or other disposition includes the warranties  
30          relating to title, possession, quiet enjoyment, and the like which by operation of law  
31          accompany a voluntary disposition of property of the kind subject to the contract.

- 1           5. A secured party may disclaim or modify warranties under subsection 4:
- 2           a. In a manner that would be effective to disclaim or modify the warranties in a
- 3                 voluntary disposition of property of the kind subject to the contract of
- 4                 disposition; or
- 5           b. By communicating to the purchaser a record evidencing the contract for
- 6                 disposition and including an express disclaimer or modification of the
- 7                 warranties.
- 8           6. A record is sufficient to disclaim warranties under subsection 5 if it indicates "there
- 9                 is no warranty relating to title, possession, quiet enjoyment, or the like in this
- 10                 disposition" or uses words of similar import.
- 11           **41-09-109. (9-611) Notification before disposition of collateral.**
- 12           1. In this section, "notification date" means the earlier of the date on which:
- 13                 a. A secured party sends to the debtor and any secondary obligor an
- 14                 authenticated notification of disposition; or
- 15                 b. The debtor and any secondary obligor waive the right to notification.
- 16           2. Except as otherwise provided in subsection 4, a secured party that disposes of
- 17                 collateral under section 41-09-108 shall send to the persons specified in
- 18                 subsection 3 a reasonable authenticated notification of disposition.
- 19           3. To comply with subsection 2, the secured party shall send an authenticated
- 20                 notification of disposition to:
- 21                 a. The debtor;
- 22                 b. Any secondary obligor; and
- 23                 c. If the collateral is other than consumer goods:
- 24                         (1) Any other person from which the secured party has received, before the
- 25                         notification date, an authenticated notification of a claim of an interest in
- 26                         the collateral;
- 27                         (2) Any other secured party or lienholder that, ten days before the
- 28                         notification date, held a security interest in or other lien on the collateral
- 29                         perfected by the filing of a financing statement that:
- 30                                 (a) Identified the collateral;
- 31                                 (b) Was indexed under the debtor's name as of that date; and



1                   (c) Was filed in the office in which to file a financing statement  
2                                   against the debtor covering the collateral as of that date; and  
3                   (3) Any other secured party that, ten days before the notification date, held  
4                                   a security interest in the collateral perfected by compliance with a  
5                                   statute, regulation, or treaty described in subsection 1 of section  
6                                   41-09-31.

7                   4. Subsection 2 does not apply if the collateral is perishable or threatens to decline  
8                                   speedily in value or is of a type customarily sold on a recognized market.

9                   5. A secured party complies with the requirement for notification prescribed by  
10                                  paragraph 2 of subdivision c of subsection 3 if:

11                   a. Not later than twenty days or earlier than thirty days before the notification  
12                                  date, the secured party requests, in a commercially reasonable manner,  
13                                  information concerning financing statements indexed under the debtor's name  
14                                  in the office indicated in paragraph 2 of subdivision c of subsection 3; and

15                   b. Before the notification date, the secured party:

16                                  (1) Did not receive a response to the request for information; or

17                                  (2) Received a response to the request for information and sent an  
18                                  authenticated notification of disposition to each secured party or other  
19                                  lienholder named in that response whose financing statement covered  
20                                  the collateral.

21                   **41-09-110. (9-612) Timeliness of notification before disposition of collateral.**

22                   1. Except as otherwise provided in subsection 2, whether a notification is sent within  
23                                  a reasonable time is a question of fact.

24                   2. In a transaction other than a consumer transaction, a notification of disposition sent  
25                                  after default and ten days or more before the earliest time of disposition set forth in  
26                                  the notification is sent within a reasonable time before the disposition.

27                   **41-09-111. (9-613) Contents and form of notification before disposition of**

28 **collateral - General.** Except in a consumer-goods transaction, the following rules apply:

29                   1. The contents of a notification of disposition are sufficient if the notification:

30                                  a. Describes the debtor and the secured party;

31                                  b. Describes the collateral that is the subject of the intended disposition;

- 1           c. States the method of intended disposition;  
2           d. States that the debtor is entitled to an accounting of the unpaid indebtedness  
3           and states the charge, if any, for an accounting; and  
4           e. States the time and place of a public sale or the time after which any other  
5           disposition is to be made.
- 6       2. Whether the contents of a notification that lacks any of the information specified in  
7       subsection 1 are nevertheless sufficient is a question of fact.
- 8       3. The contents of a notification providing substantially the information specified in  
9       subsection 1 are sufficient, even if the notification includes:
- 10       a. Information not specified by that subsection; or  
11       b. Minor errors that are not seriously misleading.
- 12       4. A particular phrasing of the notification is not required.
- 13       5. The following form of notification and the form appearing in subsection 3 of section  
14       41-09-112, when completed, each provides sufficient information:

15                               NOTIFICATION OF DISPOSITION OF COLLATERAL

16       To: (Name of debtor, obligor, or other person to which the notification is sent)

17       From: (Name, address, and telephone number of secured party)

18       Name of debtor(s): (Include only if debtor(s) are not an addressee)

19       (For a public disposition:)

20               We will sell (or lease or license, as applicable) the (describe collateral) (to the  
21       highest qualified bidder) in public as follows:

22       Day and date: \_\_\_\_\_

23       Time: \_\_\_\_\_

24       Place: \_\_\_\_\_

25       (For a private disposition:)

26               We will sell (or lease or license, as applicable) the (describe collateral)  
27       privately sometime after (day and date).

28               You are entitled to an accounting of the unpaid indebtedness secured by the  
29       property that we intend to sell (or lease or license, as applicable) (for a charge of  
30       \$ \_\_\_\_\_ ). You may request an accounting by calling us at (telephone number).

1           **41-09-112. (9-614) Contents and form of notification before disposition of**  
2 **collateral - Consumer-goods transaction.** In a consumer-goods transaction, the following  
3 provisions apply:

- 4           1. A notification of disposition must provide the following information:  
5           a. The information specified in subsection 1 of section 41-09-111;  
6           b. A description of any liability for a deficiency of the person to which the  
7           notification is sent;  
8           c. A telephone number from which the amount that must be paid to the secured  
9           party to redeem the collateral under section 41-09-121 is available; and  
10          d. A telephone number or mailing address from which additional information  
11          concerning the disposition and the obligation secured is available.  
12          2. A particular phrasing of the notification is not required.  
13          3. The following form of notification, when completed, provides sufficient information:  
14          (Name and address of secured party)  
15          (Date)

16                                   NOTICE OF OUR PLAN TO SELL PROPERTY

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

18          Subject: (Identification of transaction)

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

21          (For a public disposition:)

22                 We will sell (describe collateral) at public sale. A sale could include a lease or  
23          license. The sale will be held as 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). A sale  
30          could include a lease or license.

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

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

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

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

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

18       4. A notification in the form of subsection 3 is sufficient, even if additional information  
19       appears at the end of the form.

20       5. A notification in the form of subsection 3 is sufficient, even if it includes errors in  
21       information not required by subsection 1, unless the error is misleading with  
22       respect to rights arising under this chapter.

23       6. If a notification under this section is not in the form of subsection 3, law other than  
24       this chapter determines the effect of including information not required by  
25       subsection 1.

26       **41-09-113. (9-615) Application of proceeds of disposition - Liability for deficiency**  
27       **and right to surplus.**

28       1. A secured party shall apply or pay over for application the cash proceeds of  
29       disposition in the following order to:

30       a. The reasonable expenses of retaking, holding, preparing for disposition,  
31       processing, and disposing, and, to the extent provided for by agreement and

- 1                   not prohibited by law, reasonable attorney's fees and legal expenses incurred  
2                   by the secured party;
- 3                   b. The satisfaction of obligations secured by the security interest or agricultural  
4                   lien under which the disposition is made;
- 5                   c. The satisfaction of obligations secured by any subordinate security interest in  
6                   or other subordinate lien on the collateral if:
- 7                   (1) The secured party receives from the holder of the subordinate security  
8                   interest or other lien an authenticated demand for proceeds before  
9                   distribution of the proceeds is completed; and
- 10                  (2) In a case in which a consignor has an interest in the collateral, the  
11                  subordinate security interest or other lien is senior to the interest of the  
12                  consignor; and
- 13                  d. A secured party that is a consignor of the collateral if the secured party  
14                  receives from the consignor an authenticated demand for proceeds before  
15                  distribution of the proceeds is completed.
- 16                  2. If requested by a secured party, a holder of a subordinate security interest or other  
17                  lien shall furnish reasonable proof of the interest or lien within a reasonable time.  
18                  Unless the holder does so, the secured party need not comply with the holder's  
19                  demand under subdivision c of subsection 1.
- 20                  3. A secured party need not apply or pay over for application noncash proceeds of  
21                  disposition under this section unless the failure to do so would be commercially  
22                  unreasonable. A secured party that applies or pays over for application noncash  
23                  proceeds shall do so in a commercially reasonable manner.
- 24                  4. If the security interest under which a disposition is made secures payment or  
25                  performance of an obligation, after making the payments and applications required  
26                  by subsection 1 and permitted by subsection 3:
- 27                  a. Unless subdivision d of subsection 1 requires the secured party to apply or  
28                  pay over cash proceeds to a consignor, the secured party shall account to  
29                  and pay a debtor for any surplus; and
- 30                  b. The obligor is liable for any deficiency.

- 1           5. If the underlying transaction is a sale of accounts, chattel paper, payment  
2           intangibles, or promissory notes:  
3           a. The debtor is not entitled to any surplus; and  
4           b. The obligor is not liable for any deficiency.  
5           6. The surplus or deficiency following a disposition is calculated based on the amount  
6           of proceeds that would have been realized in a disposition complying with this part  
7           to a transferee other than the secured party, a person related to the secured party,  
8           or a secondary obligor if:  
9           a. The transferee in the disposition is the secured party, a person related to the  
10           secured party, or a secondary obligor; and  
11           b. The amount of proceeds of the disposition is significantly below the range of  
12           proceeds that a complying disposition to a person other than the secured  
13           party, a person related to the secured party, or a secondary obligor would  
14           have brought.  
15           7. A secured party that receives cash proceeds of a disposition in good faith and  
16           without knowledge that the receipt violates the rights of the holder of a security  
17           interest or other lien that is not subordinate to the security interest or agricultural  
18           lien under which the disposition is made:  
19           a. Takes the cash proceeds free of the security interest or other lien;  
20           b. Is not obligated to apply the proceeds of the disposition to the satisfaction of  
21           obligations secured by the security interest or other lien; and  
22           c. Is not obligated to account to or pay the holder of the security interest or other  
23           lien for any surplus.

24           **41-09-114. (9-616) Explanation of calculation of surplus or deficiency.**

- 25           1. In this section:  
26           a. "Explanation" means a writing that:  
27               (1) States the amount of the surplus or deficiency;  
28               (2) Provides an explanation in accordance with subsection 3 of how the  
29               secured party calculated the surplus or deficiency;

- 1                   (3) States, if applicable, that future debits, credits, charges, including  
2                               additional credit service charges or interest, rebates, and expenses  
3                               may affect the amount of the surplus or deficiency; and
- 4                   (4) Provides a telephone number or mailing address from which additional  
5                               information concerning the transaction is available.
- 6                   b. "Request" means a record:
- 7                               (1) Authenticated by a debtor or consumer obligor;  
8                               (2) Requesting that the recipient provide an explanation; and  
9                               (3) Sent after disposition of the collateral under section 41-09-108.
- 10               2. In a consumer-goods transaction in which the debtor is entitled to a surplus or a  
11                   consumer obligor is liable for a deficiency under section 41-09-113, the secured  
12                   party shall:
- 13                   a. Send an explanation to the debtor or consumer obligor, as applicable, after  
14                               the disposition and:
- 15                               (1) Before or when the secured party accounts to the debtor and pays any  
16                               surplus or first makes written demand on the consumer obligor after the  
17                               disposition for payment of the deficiency; and  
18                               (2) Within fourteen days after receipt of a request; or
- 19                   b. In the case of a consumer obligor who is liable for a deficiency, within fourteen  
20                               days after receipt of a request, send to the consumer obligor a record waiving  
21                               the secured party's right to a deficiency.
- 22               3. To comply with paragraph 2 of subdivision a of subsection 1, a writing must  
23                   provide the following information in the following order:
- 24                   a. The aggregate amount of obligations secured by the security interest under  
25                               which the disposition was made, and, if the amount reflects a rebate of  
26                               unearned interest or credit service charge, an indication of that fact,  
27                               calculated as of a specified date:
- 28                               (1) If the secured party takes or receives possession of the collateral after  
29                               default, not more than thirty-five days before the secured party takes or  
30                               receives possession; or

- 1                   (2) If the secured party takes or receives possession of the collateral  
2                               before default or does not take possession of the collateral, not more  
3                               than thirty-five days before the disposition;
- 4                   b. The amount of proceeds of the disposition;  
5                   c. The aggregate amount of the obligations after deducting the amount of  
6                               proceeds;  
7                   d. The amount, in the aggregate or by type, and types of expenses, including  
8                               expenses of retaking, holding, preparing for disposition, processing, and  
9                               disposing of the collateral, and attorney's fees secured by the collateral which  
10                              are known to the secured party and relate to the current disposition;  
11                   e. The amount, in the aggregate or by type, and types of credits, including  
12                              rebates of interest or credit service charges, to which the obligor is known to  
13                              be entitled and which are not reflected in the amount in subsection 1; and  
14                   f. The amount of the surplus or deficiency.
- 15               4. A particular phrasing of the explanation is not required. An explanation complying  
16                              substantially with the requirements of subsection 1 is sufficient, even if it includes  
17                              minor errors that are not seriously misleading.
- 18               5. A debtor or consumer obligor is entitled without charge to one response to a  
19                              request under this section during any six-month period in which the secured party  
20                              did not send to the debtor or consumer obligor an explanation pursuant to  
21                              subdivision a of subsection 1. The secured party may require payment of a charge  
22                              not exceeding twenty-five dollars for each additional response.

23               **41-09-115. (9-617) Rights of transferee of collateral.**

- 24               1. A secured party's disposition of collateral after default:
- 25                   a. Transfers to a transferee for value all of the debtor's rights in the collateral;  
26                   b. Discharges the security interest under which the disposition is made; and  
27                   c. Discharges any subordinate security interest or other subordinate lien [other  
28                              than liens created under (cite acts or statutes providing for liens, if any, that  
29                              are not to be discharged)].



- 1           2. A transferee that acts in good faith takes free of the rights and interests described  
2           in subsection 1, even if the secured party fails to comply with this chapter or the  
3           requirements of any judicial proceeding.
- 4           3. If a transferee does not take free of the rights and interests described in  
5           subsection 1, the transferee takes the collateral subject to:
- 6           a. The debtor's rights in the collateral;  
7           b. The security interest or agricultural lien under which the disposition is made;  
8           and  
9           c. Any other security interest or other lien.

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

10           **41-09-116. (9-618) Rights and duties of certain secondary obligors.**

- 11           1. A secondary obligor acquires the rights and becomes obligated to perform the  
12           duties of the secured party after the secondary obligor:
- 13           a. Receives an assignment of a secured obligation from the secured party;  
14           b. Receives a transfer of collateral from the secured party and agrees to accept  
15           the rights and assume the duties of the secured party; or  
16           c. Is subrogated to the rights of a secured party with respect to collateral.
- 17           2. An assignment, transfer, or subrogation described in subsection 1:
- 18           a. Is not a disposition of collateral under section 41-09-108; and  
19           b. Relieves the secured party of further duties under this chapter.

20           **41-09-117. (9-619) Transfer of record or legal title.**

- 21           1. In this section, "transfer statement" means a record authenticated by a secured  
22           party stating:
- 23           a. That the debtor has defaulted in connection with an obligation secured by  
24           specified collateral;  
25           b. That the secured party has exercised its postdefault remedies with respect to  
26           the collateral;  
27           c. That, by reason of the exercise, a transferee has acquired the rights of the  
28           debtor in the collateral; and  
29           d. The name and mailing address of the secured party, debtor, and transferee.

- 1           2. A transfer statement entitles the transferee to the transfer of record of all rights of  
2           the debtor in the collateral specified in the statement in any official filing, recording,  
3           registration, or certificate-of-title system covering the collateral. If a transfer  
4           statement is presented with the applicable fee and request form to the official or  
5           office responsible for maintaining the system, the official or office shall:  
6           a. Accept the transfer statement;  
7           b. Promptly amend its records to reflect the transfer; and  
8           c. If applicable, issue a new appropriate certificate of title in the name of the  
9           transferee.
- 10          3. A transfer of the record or legal title to collateral to a secured party under  
11          subsection 2 or otherwise is not of itself a disposition of collateral under this  
12          chapter and does not of itself relieve the secured party of its duties under this  
13          chapter.

14           **41-09-118. (9-620) Acceptance of collateral in full or partial satisfaction of**  
15 **obligation - Compulsory disposition of collateral.**

- 16          1. Except as otherwise provided in subsection 7, a secured party may accept  
17          collateral in full or partial satisfaction of the obligation it secures only if:  
18          a. The debtor consents to the acceptance under subsection 3;  
19          b. The secured party does not receive, within the time set forth in subsection 4, a  
20          notification of objection to the proposal authenticated by:  
21               (1) A person to which the secured party was required to send a proposal  
22               under section 41-09-119; or  
23               (2) Any other person, other than the debtor, holding an interest in the  
24               collateral subordinate to the security interest that is the subject of the  
25               proposal;  
26          c. If the collateral is consumer goods, the collateral is not in the possession of  
27          the debtor when the debtor consents to the acceptance; and  
28          d. Subsection 5 does not require the secured party to dispose of the collateral or  
29          the debtor waives the requirement pursuant to section 41-09-122.
- 30          2. A purported or apparent acceptance of collateral under this section is ineffective  
31          unless:

- 1           a. The secured party consents to the acceptance in an authenticated record or  
2           sends a proposal to the debtor; and
- 3           b. The conditions of subsection 1 are met.
- 4        3. For purposes of this section:
- 5           a. A debtor consents to an acceptance of collateral in partial satisfaction of the  
6           obligation it secures only if the debtor agrees to the terms of the acceptance  
7           in a record authenticated after default; and
- 8           b. A debtor consents to an acceptance of collateral in full satisfaction of the  
9           obligation it secures only if the debtor agrees to the terms of the acceptance  
10          in a record authenticated after default or the secured party:
- 11           (1) Sends to the debtor after default a proposal that is unconditional or  
12           subject only to a condition that collateral not in the possession of the  
13           secured party be preserved or maintained;
- 14           (2) In the proposal, proposes to accept collateral in full satisfaction of the  
15           obligation it secures; and
- 16           (3) Does not receive a notification of objection authenticated by the debtor  
17           within twenty days after the proposal is sent.
- 18        4. To be effective under subdivision c of subsection 1, a notification of objection must  
19        be received by the secured party:
- 20           a. In the case of a person to which the proposal was sent pursuant to section  
21           41-09-119, within twenty days after notification was sent to that person; and
- 22           b. In other cases:
- 23           (1) Within twenty days after the last notification was sent pursuant to  
24           section 41-09-119; or
- 25           (2) If a notification was not sent, before the debtor consents to the  
26           acceptance under subsection 3.
- 27        5. A secured party that has taken possession of collateral shall dispose of the  
28        collateral pursuant to section 41-09-108 within the time specified in subsection 6 if:
- 29           a. Sixty percent of the cash price has been paid in the case of a  
30           purchase-money security interest in consumer goods; or

1           b. Sixty percent of the principal amount of the obligation secured has been paid  
2           in the case of a non-purchase-money security interest in consumer goods.

3           6. To comply with subsection 5, the secured party shall dispose of the collateral:

4           a. Within ninety days after taking possession; or

5           b. Within any longer period to which the debtor and all secondary obligors have  
6           agreed in an agreement to that effect entered into and authenticated after  
7           default.

8           7. In a consumer transaction, a secured party may not accept collateral in partial  
9           satisfaction of the obligation it secures.

10           **41-09-119. (9-621) Notification of proposal to accept collateral.**

11           1. A secured party that desires to accept collateral in full or partial satisfaction of the  
12           obligation it secures shall send its proposal to:

13           a. Any person from which the secured party has received, before the debtor  
14           consented to the acceptance, an authenticated notification of a claim of an  
15           interest in the collateral;

16           b. Any other secured party or lienholder that, ten days before the debtor  
17           consented to the acceptance, held a security interest in or other lien on the  
18           collateral perfected by the filing of a financing statement that:

19           (1) Identified the collateral;

20           (2) Was indexed under the debtor's name as of that date; and

21           (3) Was filed in the office or offices in which to file a financing statement  
22           against the debtor covering the collateral as of that date; and

23           c. Any other secured party that, ten days before the debtor consented to the  
24           acceptance, held a security interest in the collateral perfected by compliance  
25           with a statute, regulation, or treaty described in subsection 1 of section  
26           41-09-31.

27           2. A secured party that desires to accept collateral in partial satisfaction of the  
28           obligation it secures shall send its proposal to any secondary obligor in addition to  
29           the persons described in subsection 1.

30           **41-09-120. (9-622) Effect of acceptance of collateral.**

- 1           1. A secured party's acceptance of collateral in full or partial satisfaction of the  
2           obligation it secures:  
3           a. Discharges the obligation to the extent consented to by the debtor;  
4           b. Transfers to the secured party all of a debtor's rights in the collateral;  
5           c. Discharges the security interest or agricultural lien that is the subject of the  
6           debtor's consent and any subordinate security interest or other subordinate  
7           lien; and  
8           d. Terminates any other subordinate interest.  
9           2. A subordinate interest is discharged or terminated under subsection 1, even if the  
10          secured party fails to comply with this chapter.

11          **41-09-121. (9-623) Right to redeem collateral.**

- 12          1. A debtor, any secondary obligor, or any other secured party or lienholder may  
13          redeem collateral.  
14          2. To redeem collateral, a person shall tender:  
15          a. Fulfillment of all obligations secured by the collateral; and  
16          b. The reasonable expenses and attorney's fees described in subdivision a of  
17          subsection 1 of section 41-09-113.  
18          3. A redemption may occur at any time before a secured party:  
19          a. Has collected collateral under section 41-09-105;  
20          b. Has disposed of collateral or entered into a contract for its disposition under  
21          section 41-09-108; or  
22          c. Has accepted collateral in full or partial satisfaction of the obligation it secures  
23          under section 41-09-120.

24          **41-09-122. (9-624) Waiver.**

- 25          1. A debtor or secondary obligor may waive the right to notification of disposition of  
26          collateral under section 41-09-109 only by an agreement to that effect entered into  
27          and authenticated after default.  
28          2. A debtor may waive the right to require disposition of collateral under subsection 5  
29          of section 41-09-118 only by an agreement to that effect entered into and  
30          authenticated after default.

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

4           **41-09-123. (9-625) Remedies for secured party's failure to comply with chapter.**

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

8           2. Subject to subsections 3, 4, and 6, a person is liable for damages in the amount of  
9           any loss caused by a failure to comply with this chapter. Loss caused by a failure  
10           to comply with a request under section 41-09-20 may include loss resulting from  
11           the debtor's inability to obtain, or increase costs of, alternative financing.

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

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

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

21          4. A debtor whose deficiency is eliminated under section 41-09-124 may recover  
22           damages for the loss of any surplus. However, a debtor or secondary obligor  
23           whose deficiency is eliminated or reduced under section 41-09-124 may not  
24           otherwise recover under subsection 2 for noncompliance with the provisions of  
25           sections 41-09-99 through 41-09-126 relating to collection, enforcement,  
26           disposition, or acceptance.

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

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

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

- 1           c. Files a record that the person is not entitled to file under subsection 1 of  
2           section 41-09-80;
- 3           d. Fails to cause the secured party of record to file or send a termination  
4           statement as required by subsection 1 or 3 of section 41-09-84;
- 5           e. Fails to comply with subdivision a of subsection 2 of section 41-09-114 and  
6           whose failure is part of a pattern, or consistent with a practice, of  
7           noncompliance; or
- 8           f. Fails to comply with subdivision b of subsection 2 of section 41-09-114.
- 9       6. A debtor or consumer obligor may recover damages under subsection 2 and, in  
10       addition, five hundred dollars in each case from a person that, without reasonable  
11       cause, fails to comply with a request under section 41-09-20. A recipient of a  
12       request under section 41-09-20 which never claimed an interest in the collateral or  
13       obligations that are the subject of a request under that section has a reasonable  
14       excuse for failure to comply with the request within the meaning of this subsection.
- 15       7. If a secured party fails to comply with a request regarding a list of collateral or a  
16       statement of account under section 41-09-20, the secured party may claim a  
17       security interest only as shown in the statement included in the request as against  
18       a person that is reasonably misled by the failure.

19       **41-09-124. (9-626) Action in which deficiency or surplus is in issue.**

- 20       1. In an action arising from a transaction, other than a consumer transaction, in which  
21       the amount of a deficiency or surplus is in issue, the following rules apply:
- 22       a. A secured party need not prove compliance with the provisions of this part  
23       relating to collection, enforcement, disposition, or acceptance unless the  
24       debtor or a secondary obligor places the secured party's compliance in issue.
- 25       b. If the secured party's compliance is placed in issue, the secured party has the  
26       burden of establishing that the collection, enforcement, disposition, or  
27       acceptance was conducted in accordance with this part.
- 28       c. Except as otherwise provided in section 41-09-126, if a secured party fails to  
29       prove that the collection, enforcement, disposition, or acceptance was  
30       conducted in accordance with the provisions of this part relating to collection,  
31       enforcement, disposition, or acceptance, the liability of a debtor or a

1                   secondary obligor for a deficiency is limited to an amount by which the sum of  
2                   the secured obligation, expenses, and attorney's fees exceeds the greater of:

3                   (1)   The proceeds of the collection, enforcement, disposition, or  
4                   acceptance; or

5                   (2)   The amount of proceeds that would have been realized had the  
6                   noncomplying secured party proceeded in accordance with the  
7                   provisions of this part relating to collection, enforcement, disposition, or  
8                   acceptance.

9                   d.   For purposes of paragraph 2 of subdivision c, the amount of proceeds that  
10                  would have been realized is equal to the sum of the secured obligation,  
11                  expenses, and attorney's fees unless the secured party proves that the  
12                  amount is less than that sum.

13                  e.   If a deficiency or surplus is calculated under subsection 6 of section  
14                  41-09-113, the debtor or obligor has the burden of establishing that the  
15                  amount of proceeds of the disposition is significantly below the range of prices  
16                  that a complying disposition to a person other than the secured party, a  
17                  person related to the secured party, or a secondary obligor would have  
18                  brought.

19                  2.   The limitation of the rules in subsection 1 to transactions other than consumer  
20                  transactions is intended to leave to the court the determination of the proper rules  
21                  in consumer transactions. The court may not infer from that limitation the nature of  
22                  the proper rule in consumer transactions and may continue to apply established  
23                  approaches.

24                  **41-09-125. (9-627) Determination of whether conduct was commercially**  
25                  **reasonable.**

26                  1.   The fact that a greater amount could have been obtained by a collection,  
27                  enforcement, disposition, or acceptance at a different time or in a different method  
28                  from that selected by the secured party is not of itself sufficient to preclude the  
29                  secured party from establishing that the collection, enforcement, disposition, or  
30                  acceptance was made in a commercially reasonable manner.



- 1           2. A disposition of collateral is made in a commercially reasonable manner if the  
2           disposition is made:  
3           a. In the usual manner on any recognized market;  
4           b. At the price current in any recognized market at the time of the disposition; or  
5           c. Otherwise in conformity with reasonable commercial practices among dealers  
6           in the type of property that was the subject of the disposition.  
7           3. A collection, enforcement, disposition, or acceptance is commercially reasonable if  
8           it has been approved:  
9           a. In a judicial proceeding;  
10          b. By a bona fide creditors' committee;  
11          c. By a representative of creditors; or  
12          d. By an assignee for the benefit of creditors.  
13          4. Approval under subsection 3 need not be obtained, and lack of approval does not  
14          mean that the collection, enforcement, disposition, or acceptance is not  
15          commercially reasonable.

16           **41-09-126. (9-628) Nonliability and limitation on liability of secured party -**

17   **Liability of secondary obligor.**

- 18          1. Unless a secured party knows that a person is a debtor or obligor, knows the  
19          identity of the person, and knows how to communicate with the person:  
20          a. The secured party is not liable to the person, or to a secured party or  
21          lienholder that has filed a financing statement against the person, for failure to  
22          comply with this chapter; and  
23          b. The secured party's failure to comply with this chapter does not affect the  
24          liability of the person for a deficiency.  
25          2. A secured party is not liable because of its status as secured party:  
26          a. To a person that is a debtor or obligor, unless the secured party knows:  
27               (1) That the person is a debtor or obligor;  
28               (2) The identity of the person; and  
29               (3) How to communicate with the person; or  
30          b. To a secured party or lienholder that has filed a financing statement against a  
31          person, unless the secured party knows:

- 1                   (1) That the person is a debtor; and
- 2                   (2) The identity of the person.
- 3       3. A secured party is not liable to any person, and a person's liability for a deficiency  
4           is not affected, because of any act or omission arising out of the secured party's  
5           reasonable belief that a transaction is not a consumer-goods transaction or a  
6           consumer transaction or that goods are not consumer goods, if the secured party's  
7           belief is based on its reasonable reliance on:
- 8           a. A debtor's representation concerning the purpose for which collateral was to  
9           be used, acquired, or held; or
- 10          b. An obligor's representation concerning the purpose for which a secured  
11          obligation was incurred.
- 12       4. A secured party is not liable to any person under subdivision b of subsection 3 of  
13          section 41-09-123 for its failure to comply with section 41-09-114.
- 14       5. A secured party is not liable under subdivision b of subsection 3 of section  
15          41-09-123 more than once with respect to any one secured obligation.
- 16       **41-09-127. (9-702) Savings clause.**
- 17       1. Except as otherwise provided in this part, this Act applies to a transaction or lien  
18          within its scope, even if the transaction or lien was entered into or created before  
19          January 1, 2002.
- 20       2. Except as otherwise provided in subsection 3 and sections 41-09-128 through  
21          41-09-133:
- 22          a. Transactions and liens that were not governed by the former chapter 41-09  
23          were validly entered into or created before January 1, 2002, and would be  
24          subject to this Act if they had been entered into or created on or after  
25          January 1, 2002, and the rights, duties, and interests flowing from those  
26          transactions and liens remain valid after January 1, 2001; and
- 27          b. The transactions and liens may be terminated, completed, consummated, and  
28          enforced as required or permitted by this Act or by the law that otherwise  
29          would apply if this Act had not taken effect.
- 30       3. This Act does not affect an action, case, or proceeding commenced before  
31          January 1, 2002.

1           **41-09-128. (9-703) Security interest perfected before effective date.**

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

17           **41-09-129. (9-704) Security interest unperfected before effective date.** A security  
18 interest that is enforceable immediately before January 1, 2002, but which would be  
19 subordinate to the rights of a person that becomes a lien creditor at that time:

- 20           1. Remains an enforceable security interest until January 1, 2003;  
21           2. Remains enforceable thereafter if the security interest becomes enforceable under  
22           section 41-09-13 on January 1, 2002, or within one year thereafter; and  
23           3. Becomes perfected:
- 24           a. Without further action, on January 1, 2002, if the applicable requirements for  
25           perfection under this Act are satisfied before or at that time; or  
26           b. When the applicable requirements for perfection are satisfied if the  
27           requirements are satisfied after that time.

28           **41-09-130. (9-705) Effectiveness of action taken before effective date.**

- 29           1. If action, other than the filing of a financing statement, is taken before January 1,  
30           2002, and the action would have resulted in priority of a security interest over the  
31           rights of a person that becomes a lien creditor had the security interest become

- 1           enforceable before January 1, 2002, the action is effective to perfect a security  
2           interest that attaches under this Act by January 1, 2003. An attached security  
3           interest becomes unperfected on January 1, 2003, unless the security interest  
4           becomes a perfected security interest under this Act before the expiration of that  
5           period.
- 6           2. The filing of a financing statement before January 1, 2002, is effective to perfect a  
7           security interest to the extent the filing would satisfy the applicable requirements for  
8           perfection under this Act.
- 9           3. This Act does not render ineffective an effective financing statement that, before  
10           January 1, 2002, is filed and satisfies the applicable requirements for perfection  
11           under the law of the jurisdiction governing perfection as provided in the former  
12           section 41-09-03. However, except as otherwise provided in subsections 4 and 5  
13           and section 41-09-131, the financing statement ceases to be effective at the earlier  
14           of:
- 15           a. The time the financing statement would have ceased to be effective under the  
16           law of the jurisdiction in which it is filed; or
- 17           b. January 1, 2007.
- 18           4. The filing of a continuation statement after this Act takes effect does not continue  
19           the effectiveness of the financing statement filed before January 1, 2002.  
20           However, upon the timely filing of a continuation statement after January 1, 2002,  
21           and in accordance with the law of the jurisdiction governing perfection as provided  
22           in part 3, the effectiveness of a financing statement filed in the same office in that  
23           jurisdiction before January 1, 2002, continues for the period provided by the law of  
24           that jurisdiction.
- 25           5. Subdivision b of subsection 3 applies to a financing statement that, before  
26           January 1, 2002, is filed against a transmitting utility and satisfies the applicable  
27           requirements for perfection under the law of the jurisdiction governing perfection as  
28           provided in the former section 41-09-03 only to the extent that part 3 provides that  
29           the law of a jurisdiction other than jurisdiction in which the financing statement is  
30           filed governs perfection of a security interest in collateral covered by the financing  
31           statement.

1           6. A financing statement that includes a financing statement filed before January 1,  
2           2002, takes effect and a continuation statement filed after January 1, 2002, is  
3           effective only to the extent that it satisfies the requirements of part 5 for an initial  
4           financing statement.

5           **41-09-131. (9-706) When initial financing statement suffices to continue**  
6           **effectiveness of financing statement.**

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

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

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

14          c. The initial financing statement satisfies subsection 3.

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

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

20          b. If the initial financing statement is filed after January 1, 2002, for the period  
21          provided in section 41-09-86 with respect to an initial financing statement.

22          3. To be effective for purposes of subsection 1, an initial financing statement must:

23          a. Satisfy the requirements of part 5 for an initial financing statement;

24          b. Identify the pre-effective-date financing statement by indicating the office in  
25          which the financing statement was filed and providing the dates of filing and  
26          file numbers, if any, of the financing statement and of the most recent  
27          continuation statement filed with respect to the financing statement; and

28          c. Indicate that the pre-effective-date financing statement remains effective.

29           **41-09-132. (9-707) Persons entitled to file initial financing statement or**  
30           **continuation statement.** A person may file an initial financing statement or a continuation  
31           statement under this part if:

- 1           1. The secured party of record authorizes the filing; and
- 2           2. The filing is necessary under this part:
- 3           a. To continue the effectiveness of a financing statement filed before January 1,
- 4                 2002; or
- 5           b. To perfect or continue the perfection of a security interest.

6           **41-09-133. (9-708) Priority.**

- 7           1. This Act determines the priority of conflicting claims to collateral. However, if the
- 8                 relative priorities of the claims were established before January 1, 2002, the former
- 9                 chapter 41-09 determines priority.
- 10          2. For purposes of subsection 1 of section 41-09-42, the priority of a security interest
- 11                 that becomes enforceable under section 41-09-13 dates from January 1, 2002, if
- 12                 the security interest is perfected under this Act by the filing of a financing statement
- 13                 before January 1, 2002, which would not have been effective to perfect the security
- 14                 interest under the former chapter 41-09. This subsection does not apply to
- 15                 conflicting security interests each of which is perfected by the filing of such a
- 16                 financing statement.

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

- 19          12. A financing statement covering any item described in ~~subsection 5 of section~~  
20                 ~~41-09-44~~ 41-09-73.

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

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

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

1           **54-09-08. Secretary of state's general services operating fund.** The secretary of  
2 state's general services operating fund is a special fund in the state treasury. Moneys in the  
3 fund are to be used pursuant to legislative appropriations for the provision of services under  
4 ~~subsections 8 and 11 of section 41-09-42~~ 41-09-96 and subsection 10 of section 54-09-04. At  
5 the close of each fiscal year, the secretary of state shall transfer any unobligated balance  
6 remaining in the fund exceeding seventy-five thousand dollars to the general fund.

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

7           **SECTION 33. REPEAL.** Chapter 41-09 of the North Dakota Century Code is repealed.

8           **SECTION 34. EFFECTIVE DATE.** This Act becomes effective on January 1, 2002.

**NOTE:** Appendix II to the Model Act contains optional provisions setting forth a  
production-money security interest in crops. If the Legislative Assembly decides to  
enact these optional provisions, there are several necessary changes to make to the  
Act.