

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1105

2001 HOUSE JUDICIARY

HB 1105

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1105

House Judiciary Committee

☐ Conference Committee

Hearing Date 01-24-01

Tape Number	Side A	Side B	Meter #
Tape 1	x		01 to 2189
Committee Clerk Signature <i>John Diers</i>			

Minutes: Chr DeKrey opened the hearing on HB 1105. Relating to secured transactions.

Jay Buringrud: Assistant Director Legislative Council. Secretary of the North Dakota

Commission on Uniform State Laws. I am here to describe HB 1105. (see page 285 of the Report of the North Dakota Legislative Council entitled Revised Uniform Commercial Code Article 9 (1999). Rep Klemin was a member of the task force of the State Bar Association.

Rep Klemin: District 47, Bismarck. (see Introductions & Adoptions of Uniform Acts attached)

The objective is to have the law become effective July 1, 2001. There has been an ad hoc committee working on this bill.

Chr DeKrey: Is anyone here in opposition to this bill or have amendments to offer.

Al Jaeger: Secretary of State, we have made a study of article 9 for over a year, we were involved in the Interim Committee and the ad hoc committee. Our involvement is because of a the data, the recording of the documents in the states mainframe through our office. We are the Office of

Records. There are a couple of technical things that need to be changed. That is why we brought in the amendments (see attached).

Jennifer Clark: with the Legislative Council, this is the fourth version of the draft. She provided the committee a one-sided copy with the sections of the bill marked in yellow that were the changes, if anyone wanted to see where the changes. There is a typo on page 59, line 25 the second term money, just delete it. The second change in on page 121 line 19, strike line 19 and move up the referenced numbered sections.

Rep Delmore: How many sub bills are drafted?

Jennifer Clark: I know there was a concerted effort to keep the ag liens out of this bill, so it would not tie this bill up, I don't know how many related issues are coming to this bill.

Chr DeKrey: thank you for appearing before our committee.

Dan Kuntz: North Dakota Grain Dealers Association, I am appearing before this committee because ag liens are appearing for the first time. The draft of this bill would incorporate ag liens into uniform commercial code for certain purposes. We have worked with the task force to correct these situations. If the amendment are included we can support this bill.

Marilyn Foss: general counsel of the North Dakota Bankers Association, pointed out the changes made at the request of the association.

Chr DeKrey: If there are no further questions, thank you for appearing in front of the committee.

Greg Tschider: North Dakota Credit Union League, we feel this work product is acceptable. And we strongly recommend a do pass of this bill.

Rep Mahoney: Are you in agreement with the amendments?

Greg Tschider: Yes.

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House Judiciary Committee
Bill/Resolution Number H.B. 1105
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Joel Olibertson: ICBND, we support the bill.

Chr DeKrey: Is there anyone else wishing to testify, if not we will close the hearing on H.B. 1105.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1105A

House Judiciary Committee

☐ Conference Committee

Hearing Date 01-24-01

Tape Number	Side A	Side B	Meter #
TAPE II		x	4930 to 6237
TAPE III	x		01 to 55
Committee Clerk Signature <i>George Davis</i>			

Minutes: Chairman DeKrey, we will open the committee hearing on HB 1105. We have amendments to this bill. Rep Delmore moved the amendments (10030,0401)and Rep Mahoney seconded. A voice vote was taken and the amendments passed. Is there any discussion on this bill. Several questions were asked about how the amendments worked .

Rep Klemm: moved a amendments that would take out the word and on page 121 line 18.

Rep Delmore: seconded.

Chairman DeKrey: A voice vote was taken and the amendments passed.

Rep Disrud: Move a DO PASS as amended.

Rep Delmore: seconded.

Chairman DeKrey: Discussion on the bill. The clerk will call the roll on a DO PASS motion on HB 1105. The motion passed with a vote of 13 YES, 4 NO, and 2 ABSENT. The bill will be referred to Appropriations Committee. The Carrier for the bill Vice Chr Kretschmar.

FISCAL NOTE
Requested by Legislative Council
02/06/2001

Bill/Resolution No.:

Amendment to: Engrossed
 HB 1105

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$5,000	\$0	\$5,000
Expenditures	\$0	\$0	\$0	\$26,000	\$0	\$5,000
Appropriations	\$0	\$0	\$0	\$21,000	\$0	\$0

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

This bill has been introduced at the request of the Commission on Uniform State Laws and makes a number of changes to the Uniform Commercial Code (UCC), commonly known as Article 9. These UCC documents are filed in the Secretary of State's Central Indexing System (CIS), which is connected to the Register of Deeds in each of the state's 53 counties.

If adopted, this bill will allow for the direct data entry and electronic filing of UCC documents via the Internet on the part of those pre-paid direct filing subscribers that choose to utilize this option. Rather than filing a paper copy, the filer will have the option to file a UCC document via the Internet. As is now the choice with subscriber's to the CIS direct search option, the filing subscriber will choose which county will receive credit for the UCC document filing fee.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

Under current law, an annual subscription fee is charged to filing customers who have signed on to access the Central Indexing System's (CIS) Internet UCC document search option. A similar subscription fee structure will be implemented for those customers who wish to electronically file UCC documents via the Internet. This annual subscription fee will offset the various ongoing costs related to supporting and providing the direct filing service for the filing customer. It is expected that the subscription revenue to the agency's general services operating fund will be less than \$5,000 for the biennium. However, it will always

exceed the expenditures because the fees will be set accordingly to always cover the cost to the agency for providing the service.

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The expenditures to operate the Central Indexing System (CIS) will be the same, whether or not this bill is adopted. The operational funding for the CIS is already included in HB 1002, which is the Secretary of State's appropriation bill.

To cover the extra costs associated with supporting and providing the direct Internet filing option, an annual subscription fee will be charged to those customers who wish to electronically file their UCC documents. This subscription fee will be similar in structure, which currently exists in state law for those customers who conduct Internet searches for UCC documents filed in the CIS. This proposed annual subscription fee would offset the various ongoing costs related to supporting and providing the direct filing service for the filing customers. It is expected that the expense charged to the agency's general services operating fund will be less than \$5,000 for the biennium.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

In order to provide the online direct data entry and electronic filing of UCC documents, the agency will need to do one-time programming that will cost approximately \$21,000. The revenue that is received in the agency's general service operating fund will cover the funding for this programming.

Name:	Al Jaeger	Agency:	Secretary of State
Phone Number:	328-2900	Date Prepared:	02/07/2001

FISCAL NOTE

Requested by Legislative Council
01/26/2001

Bill/Resolution No.:

Amendment to: HB 1105

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$5,000	\$0	\$5,000
Expenditures	\$0	\$0	\$21,000	\$5,000	\$0	\$5,000
Appropriations	\$0	\$0	\$21,000	\$0	\$0	\$0

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

This bill has been introduced at the request of the Commission on Uniform State Laws and makes a number of changes to the Uniform Commercial Code (UCC), commonly known as Article 9. These UCC documents are filed in the Secretary of State's Central Indexing System (CIS), which is connected to the Register of Deeds in each of the state's 53 counties.

If adopted, this bill will allow for the direct data entry and electronic filing of UCC documents via the Internet on the part of those pre-paid direct filing subscribers that choose to utilize this option. Rather than filing a paper copy, the filer will have the option to file a UCC document via the Internet. As is now the choice with subscriber's to the CIS direct search option, the filing subscriber will choose which county will receive credit for the UCC document filing fee.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The UCC document filing revenue generated under this bill, if adopted, will be equivalent to the revenue generated under the current law.

Under current law, an annual subscription fee is charged to filing customers who have signed on to access the Central Indexing System's (CIS) Internet UCC document search option. A similar subscription fee structure will be implemented for those customers who wish to electronically file UCC documents via the

Internet. This annual subscription fee will offset the various ongoing costs related to supporting and providing the direct filing service for the filing customer. It is expected that the subscription revenue to the agency's general services operating fund will be less than \$5,000 for the biennium. However, it will always exceed the expenditures because the fees will be set accordingly to always cover the cost to the agency for providing the service.

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The expenditures to operate the Central Indexing System (CIS) will be the same, whether or not this bill is adopted. The operational funding for the CIS is already included in HB 1002, which is the Secretary of State's appropriation bill.

To cover the extra costs associated with supporting and providing the direct Internet filing option, an annual subscription fee will be charged to those customers who wish to electronically file their UCC documents. This subscription fee will be similar in structure, which currently exists in state law for those customers who conduct Internet searches for UCC documents filed in the CIS. This proposed annual subscription fee would offset the various ongoing costs related to supporting and providing the direct filing service for the filing customers. It is expected that the expense charged to the agency's general services operating fund will be less than \$5,000 for the biennium.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

In order to do the computer programming necessary to provide the online direct data entry and electronic filing of UCC documents, the agency will need a one-time appropriation of \$21,000. The funding for this programming is not included in the agency's appropriation bill. Therefore, when the bill was heard by the House Judiciary Committee, the committee agreed to amend HB 1105 to include the required appropriation for the direct data entry.

Name:	Al Jaeger	Agency:	Secretary of State
Phone Number:	328-2900	Date Prepared:	01/29/2001

FISCAL NOTE
 Requested by Legislative Council
 01/02/2001

Bill/Resolution No.: HB 1105

Amendment to:

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$21,000	\$0	\$0	\$0

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

This bill has been introduced at the request of the Commission on Uniform State Laws and makes a number of changes to the Uniform Commercial Code (UCC), commonly known as Article 9. These UCC documents are filed in the Secretary of State's Central Indexing System (CIS), which is connected to the Register of Deeds in each of the state's 53 counties.

If adopted, this bill will allow for the direct data entry and electronic filing of UCC documents via the Internet on the part of those pre-paid direct filing subscribers that chose to utilize this option. Rather than filing a paper copy, the filer will have the option to file a UCC document via the Internet. As is now the choice with subscriber's to the CIS direct search option, the filing subscriber will chose which county will receive credit for the UCC document filing fee.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The UCC document filing revenue generated under this bill, if adopted, will be equivalent to the revenue generated under the current law.

Under current law, an annual subscription fee is charged to filing customers who have signed on to access the Central Indexing System's (CIS) Internet UCC document search option. A similar subscription fee structure will be implemented for those customers who wish to electronically file UCC documents via the

Internet. This annual subscription fee will offset the various ongoing costs related to supporting and providing the direct filing service for the filing customer. It is expected that the subscription revenue to the agency's general services operating fund will be less than \$5,000 for the biennium.

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The expenditures to operate the Central Indexing System (CIS) will be the same, whether or not this bill is adopted. The operational funding for the CIS is already included in HB 1002, which is the Secretary of State's appropriation bill.

To cover the extra costs associated with supporting and providing the Internet filing option, an annual subscription fee will be charged to those customers who wish to electronically file their UCC documents. This subscription fee will be similar in structure, which currently exists in state law for those customers who conduct Internet searches for UCC documents filed in the CIS. This proposed annual subscription fee would offset the various ongoing costs related to supporting and providing the direct filing service for the filing customers. It is expected that the expense charged to the agency's general services operating fund will be less than \$5,000 for the biennium.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

In order to do the computer programming necessary to provide the online direct data entry and electronic filing of UCC documents, the agency will need a one-time appropriation of \$21,000. The funding for this programming is not included in the agency's appropriation bill. Therefore, when the bill is heard for the first time in the House Judiciary Committee, the agency will ask the committee to amend HB 1105 to include the required appropriation.

Name:	Al Jaeger	Agency:	Secretary of State
Phone Number:	328-2900	Date Prepared:	01/08/2001

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1105

Page 1, line 15, remove "and"

Page 1, line 16, after "transactions" insert "and to provide an appropriation for defraying the expenses of the secretary of state"

Page 4, line 24, remove the overstrike over "~~financing~~" and remove "continuation"

Page 58, line 16, remove "or"

Page 58, line 17, replace the underscored period with an underscored semicolon and insert immediately thereafter "or"

Page 58, after line 17, insert:

"k. In agricultural liens created by chapter 35-17, 35-30, or 35-31."

Page 96, line 12, remove "and"

Page 96, line 13, replace the underscored period with an underscored semicolon

Page 96, after line 13, insert:

"f. Provides a mailing address for the secured party; and

g. Provides a mailing address for the debtor."

Page 112, line 23, after "certificate" insert an underscored period and remove "that may be admitted into"

Page 112, remove line 24

Page 141, after line 27, insert:

"SECTION 37. APPROPRIATION - SECRETARY OF STATE.

There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$21,000, or so much of the sum as may be necessary, to the secretary of state for the purpose of defraying the expenses of providing direct access to the central indexing system, for the biennium beginning July 1, 2001, and ending June 30, 2003."

Renumber accordingly

VR
1/25/01
1082

HOUSE AMENDMENTS TO HB 1105 House Judiciary 01-25-01

Page 1, line 15, remove "and"

Page 1, line 16, after "transactions" insert "; and to provide an appropriation"

HOUSE AMENDMENTS TO HB 1105 House Judiciary 01-25-01

Page 4, line 24, remove the overstrike over "~~financing~~" and remove "continuation"

HOUSE AMENDMENTS TO HB 1105 House Judiciary 01-25-01

Page 58, line 16, remove "or"

Page 58, line 17, replace the second underscored period with "or"

k. In agricultural liens created by chapter 35-17, 35-30, or 35-31.

HOUSE AMENDMENTS TO HB 1105 House Judiciary 01-25-01

Page 59, line 25, remove the second "money"

HOUSE AMENDMENTS TO HB 1105 House Judiciary 01-25-01

Page 96, line 12, remove "and"

Page 96, line 13, replace the second underscored period with ";

f. Provides a mailing address for the secured party; and

g. Provides a mailing address for the debtor."

HOUSE AMENDMENTS TO HB 1105 House Judiciary 01-25-01

Page 112, line 23, replace "that may be admitted into" with an underscored period

Page 112, remove line 24

HOUSE AMENDMENTS TO HB 1105 House Judiciary 01-25-01

Page 121, line 18, remove "and"

Page 121, line 19, remove "If the collateral is other than consumer goods;"

Page 121, line 20, remove "(1)"

Page 121, line 23, replace "(2)" with "d."

Page 121, line 26, replace "(a)" with "(1)"

Page 121, line 27, replace "(b)" with "(2)"

Page 121, line 28, replace "(c)" with "(3)"

Page 121, line 30, replace "(3)" with "e."

Page 141, after line 27, insert:

"SECTION 37. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$21,000, or so much of the sum as may be necessary, to the secretary of state for the purpose of defraying the expenses of providing direct access to the central indexing system, for the biennium beginning July 1, 2001, and ending June 30, 2003."

Renumber accordingly

Date: 01-24-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB-1105

House JUDICIARY Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as amended & referred to Approp

Motion Made By Rep Disrud Seconded By Rep Delmore

Representatives	Yes	No	Representatives	Yes	No
CHR - Duane DeKrey	✓				
VICE CHR -- Wm E Kretschmar	✓				
Rep Curtis E Brekke	✓				
Rep Lois Delmore	✓				
Rep Rachael Disrud	✓				
Rep Bruce Eckre	✓				
Rep April Fairfield	✓				
Rep Bette Grande	✓				
Rep G. Jane Gunter					
Rep Joyce Kingsbury	✓				
Rep Lawrence R. Klemin	✓				
Rep John Mahoney	✓				
Rep Andrew G Maragos					
Rep Kenton Onstad	✓				
Rep Dwight Wrangham	✓				

Total (Yes) 13 No 0

Absent 2

Floor Assignment Rep Kretschmar

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1105: Judiciary Committee (Rep. DeKrey, Chairman) recommends **AMENDMENT'S AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (13 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1105 was placed on the Sixth order on the calendar.

Page 1, line 15, remove "and"

Page 1, line 16, after "transactions" insert "; and to provide an appropriation"

Page 4, line 24, remove the overstrike over "financing" and remove "continuation"

Page 58, line 16, remove "or"

Page 58, line 17, replace the second underscored period with "; or"

k. In agricultural liens created by chapter 35-17, 35-30, or 35-31."

Page 59, line 25, remove the second "money"

Page 96, line 12, remove "and"

Page 96, line 13, replace the second underscored period with ";"

f. Provides a mailing address for the secured party; and

g. Provides a mailing address for the debtor."

Page 112, line 23, replace "that may be admitted into" with an underscored period

Page 112, remove line 24

Page 121, line 18, remove "and"

Page 121, line 19, remove "If the collateral is other than consumer goods;"

Page 121, line 20, remove "(1)"

Page 121, line 23, replace "(2)" with "d."

Page 121, line 26, replace "(a)" with "(1)"

Page 121, line 27, replace "(b)" with "(2)"

Page 121, line 28, replace "(c)" with "(3)"

Page 121, line 30, replace "(3)" with "e."

Page 141, after line 27, insert:

"SECTION 37. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$21,000, or so much of the sum as may be necessary, to the secretary of state for the purpose of defraying the expenses of providing direct access to the central indexing system, for the biennium beginning July 1, 2001, and ending June 30, 2003."

Renumber accordingly

2001 HOUSE APPROPRIATIONS

HB 1105

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1105

House Appropriations Committee
Government Operations Division

☐ Conference Committee

Hearing Date February 1, 2001

Tape Number	Side A	Side B	Meter #
02-01-01 tape #1	0 - 470		
Committee Clerk Signature <i>Kathleen Lall</i>			

Minutes:

The committee was called to order, and opened committee work on HB 1105.

Chairman Byerly: This is a bill rereferred to appropriations from the House Judiciary committee. This bill has to do with Article 9, Uniform Commercial Code. On the last page of the 144 page bill, they amended in an appropriation for \$21,000, for some programming that needs to be done. The judiciary committee didn't understand the appropriation and put it in as general fund dollars, but if you remember the testimony from before when the Secretary of State testified, he has a special service fund, and this \$21,000 should come out of this fund, rather than general fund dollars.

Allen (from LC): That's right, just changing the source of the funds.

Rep. Glassheim: moves to adopt the amendment. Rep. Koppelman seconded.

Page 2

Government Operations Division

Bill/Resolution Number HB 1105

Hearing Date February 1, 2001

Vote on the motion to amend, 6 yes, 0 no, and 1 absent and not voting. (Rep. Skarphol was testifying at another hearing).

Rep. Carlisle: Moves DO PASS AS AMENDED. Rep. Thoreson seconded.

Vote on do pass as amended, 6 yes, 0 no, 1 absent and not voting.

Rep. Byerly is assigned to carry this to full committee.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **HB1105**

House Appropriations Committee

☐ Conference Committee

Hearing Date **February 2, 2001**

Tape Number	Side A	Side B	Meter #
2	x		320 - 677
Committee Clerk Signature <i>ZD</i>			

Minutes:

Appropriations Committee Action on HB1105.

Rep. Rex Byerly: Without going into the bill itself, as the bill is 141 pages long and it deals with some changes to the Uniform Commercial Code. The hearing was held by Judiciary Committee on the bulk of the bill and they inserted an amendment that requires the payment of \$21,000 in general fund money to make some changes to the UCC system which is in the Secretary of State's office. I talked with Al Jaeger about this and he does not need the money out of general fund dollars and there is an amendment in your book behind the bill, he has what is called a general services operating fund, and if you remember from the last session, what we did was we gave him the ability to sell some of this information custom tailored, and he has a very small fund that he can receive payment for these types of things. An example, is lien fees, he is able to burn them onto a CD and sell them to banks a recording of all these lien's and stuff like

Page 2
House Appropriations Committee
Bill/Resolution Number HB1105
Hearing Date February 2, 2001

that and its not a great big fund, but he did say that this \$21,000 could come out of that fund, and I would move the amendment .0501. Seconded Rep. Carlisle to amend HB1105.

Rep. Mike Timm: Any Discussion?

Rep. Jeff Delzer: A minor thing, but is the number .0501 or is it .0502? It is .0502.

Rep. Amy Kliniske: Would Rep. Byerly answer a question please? If you look on page 33. Quadruple A. Did we just make Puerto Rico a state?

Rep. Rex Byerly: The hearing that was in our committee deal with the money as is our job on appropriations committee. The bill itself was heard in Judiciary and I suspect that Chairman Dekray once the bill comes to the floor can answer that question.

Rep. Mike Timm: Any other discussion? We have a proposed amendment. All those in favor of adopting the amendment say AYE. Motion carried, the amendment is adopted. We have the bill before us with and amendment on it. Rep. Byerly moves a DO PASS, Seconded by Rep. Wald. Any discussion? YES (19) NO (1) ABSENT and not voting (1). Motion passed. Rep. Byerly will carry the bill to the floor.

End of Action on HB1105.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1105

Page 142, line 12, replace "general" with "secretary of state's general services operating"

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

Dept. 108 - Secretary of State

HOUSE - This amendment changes the source of funds from the general fund to the Secretary of State's general services operating fund for the \$21,000 appropriation relating to costs of providing direct access to the central indexing system.

10030.0502
Title.0600

Prepared by the Legislative Council staff for
House Appropriations
February 1, 2001

VK
2/2/01

HOUSE AMENDMENTS TO HB 1105 HOUSE APP 02-05-01
Page 142, line 12, replace "general" with "secretary of state's general services operating"

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

Dept. 108 - Secretary of State

HOUSE - This amendment changes the source of funds from the general fund to the Secretary of State's general services operating fund for the \$21,000 appropriation relating to costs of providing direct access to the central indexing system.

Date: 2-1-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1105

House Appropriations - Government Operations Division Committee

☒ Subcommittee on Government Operations

or

☐ Conference Committee

Legislative Council Amendment Number 10030.0502

Action Taken adopt amendment

Motion Made By Rep. Glassheim Seconded By Rep. Koppelman

Representatives	Yes	No	Representatives	Yes	No
Rep. Rex R. Byerly - Chairman	✓		Rep. Eliot Glassheim	✓	
Rep. Ron Carlisle - Vice Chairman	✓		Rep. Robert Huether	✓	
Rep. Kim Koppelman	✓				
Rep. Bob Skarphol					
Rep. Blair Thoreson	✓				

Total (Yes) 6 No 0

Absent 1

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

Changes the source of funds from General fund to the Sec of State's general services operating fund.

Date: 2-1-01
Roll Call Vote #: 2

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1105

House Appropriations - Government Operations Division Committee

☒ Subcommittee on Government Operations
or
☐ Conference Committee

Legislative Council Amendment Number 10030.0502

Action Taken Do Pass as Amended.

Motion Made By Rep. Carlisle Seconded By Thompson

[illegible]

Total (Yes) 6 No 4

Absent

Floor Assignment Kep. Bulley.

If the vote is on an amendment, briefly indicate intent:

Date: 02-02-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1105

House APPROPRIATIONS Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS AS AMENDED

Motion Made By BYERLY Seconded By WALD

Representatives	Yes	No	Representatives	Yes	No
Timm - Chairman	✓				
Wald - Vice Chairman	✓				
Rep - Aarsvold	✓		Rep - Koppelman	✓	
Rep - Boehm	✓		Rep - Martinson	✓	
Rep - Byerly	✓		Rep - Monson	✓	
Rep - Carlisle	✓		Rep - Skarphol	✓	
Rep - Delzer		✓	Rep - Svedjan	✓	
Rep - Glassheim	✓		Rep - Thoreson	✓	
Rep - Gulleeson	✓		Rep - Warner	✓	
Rep - Huether	✓		Rep - Wentz	✓	
Rep - Kempenich	✓				
Rep - Kerzman					
Rep - Kliniske	✓				

Total (Yes) 19 No 1

Absent 1

Floor Assignment BYERLY

If the vote is on an amendment, briefly indicate intent:

2001 SENATE JUDICIARY

HB 1105

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1105

Senate Judiciary Committee

☐ Conference Committee

Hearing Date 28 February 2001

Tape Number	Side A	Side B	Meter #
1		x	1.1-32.0
2		x	15-17
Committee Clerk Signature			

Minutes: **Senator Traynor** opened the hearing on HB 1105: A BILL FOR AN ACT TO PROVIDE FOR A COMPUTERIZED CENTRAL INDEXING SYSTEM; TO CREATE AND ENACT SECTION 41-05-18 AND A NEW CHAPTER 41-09 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO UNIFORM COMMERCIAL CODE ARTICLE 9 - SECURED TRANSACTIONS; TO AMEND AND REENACT SUBSECTION 5 OF SECTION 11-18-05, SECTIONS 32-20-08 AND 35-32-02, SECTION 35-34-06, SUBSECTION 2 OF SECTION 41-02-95, SUBSECTION 3 OF SECTION 41-02.1-03, SECTIONS 41-02.1-50, SUBSECTION 3 OF SECTION 41-02-95, SUBSECTION 3 OF SECTION 41-02.1-03, SECTIONS 41-02.1-33 AND 41-02.1-37, SUBDIVISION B OF SUBSECTION 1 OF SECTION 41-02.1-39, SUBDIVISION A OF SUBSECTION 3 OF SECTION 41-04-22, SUBDIVISION A OF SUBSECTION 11 OF SECTION 41-07-32, SUBSECTION 6 OF SECTION 41-08-03, SECTION 41-08-06, SUBSECTION 5 OF SECTION 41-08-50, SUBSECTION 12 OF SECTION 47-19-02, SUBDIVISION A OF SUBSECTION 2 OF

SECTION 49-04-19, AND SECTION 54-09-08 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO THE UNIFORM COMMERCIAL CODE; TO REPEAL PRESENT CHAPTER 41-09 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO SECURED TRANSACTIONS; AND TO PROVIDE AN APPROPRIATION.

Jay Burlingrud, secretary for the North Dakota Commission on State Laws. If you finance anything, most chances are that you are using the Uniform Commercial Code. It has been adopted by 28 states. Under current article 9, when the collateral found, the debtor is now found. Presented to the interim Judiciary Committee.

Senator Trenbeath, existing amendments were done

Rep. Klemine, district 47, worked on interim task force. Bankers, Secretary of State, Farm Credit Services, Attorney General's office and the Legislative Council were on this task force. There were some amendments that were added to the bill. Would like to see this bill adopted nation wide on July 1 of 2001.

Senator Nelson, uniform law is supposed to be uniform. What kind of impact would we have if we add agriculture loans to the bill?

Representative Klemine, there are specific revisions to address specific issues in the state. Ag loans deal with local crops only.

Senator Nelson, then it wouldn't need to be there.

Rep. Klemine, that would be best answered by someone else.

Senator Traynor, does the bill address change in statute of limitation?

Senator Watne, I see that 21,000 dollars is there for the secretary of state central indexing.

What is in that system that needs indexing?

Al Jaegar, Secretary of State, (explains the bill)

Senator Nelson, it seems that most of these amendments are just rewordings.

Al Jaegar, the bill before you is a consensus of the groups. They agreed to argue outside of 1105.

Marilyn Foss, representing on behalf of the ND Bankers Association. Did propose some changes. This UCC recognizes an electronic security instrument. Also looked at other systems legitimacy, had hashed out on termination statements. We kept the current system.

Senator Dever, will this bill effect super priority loans?

Marilyn Foss, we agreed to article nine. It was controversial.

Senator Nelson, section 29 is 120 pages long. Are there any differences between the two bills and can you prepare something for me if I carry the bill?

Marilyn Foss, I can prepare something for you.

Senator Nelson, this bill is basically a language change.

Marilyn Foss, I can't answer that.

Dan Kunts, representing agriculture association, supports the bill.

Joel Gilbertson, general council for Banks of ND, supports the bill.

Senator Traynor, closed the hearing on HB 1105.

Discussion followed.

**SENATOR WANTE MOTIONED TO DO PASS, SECONDED BY SENATOR
TRENBEATH. VOTE INDICATED 7 YEAS, 0 NAYS AND 0 ABSENT AND NOT
VOTING. SENATOR NELSON VOLUNTEERED TO CARRY THE BILL.**

Date: 2/28
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1105

Senate Judiciary Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken DP

Motion Made By Watne Seconded By Trenbeath

Senators	Yes	No	Senators	Yes	No
Traynor, J. Chairman	X		Bercier, D.	X	
Watne, D. Vice Chairman	X		Nelson, C.	X	
Dever, D.	X				
Lyson, S.	X				
Trenbeath, T.	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment C. Nelson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
March 1, 2001 11:45 a.m.

Module No: SR-35-4585
Carrier: C. Nelson
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1105, as reengrossed: Judiciary Committee (Sen. Traynor, Chairman) recommends DO PASS and BE REREFERRED to the Appropriations Committee (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Reengrossed HB 1105 was rereferred to the Appropriations Committee.

2001 SENATE APPROPRIATIONS

HB 1105

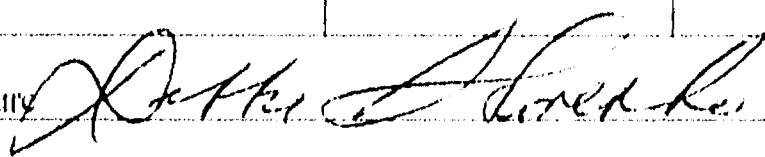
2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1105

Senate Appropriations Committee

☐ Conference Committee

Hearing Date March 19, 2001

Tape Number	Side A	Side B	Meter #
1		X	36,4-43,2
Committee Clerk Signature 			

Minutes:

Senator Nething opened the hearing on HB 1105.

Al Jaeger, Secretary of State for North Dakota, spoke stating that this bill has to do with a Uniform state law primarily it deals with Article 9 uniform commercial code which was heard by the Judiciary Committee and because there is an appropriation that is attached it has been referred to this committee. Originally when my office submitted the request to the Governor's office we had this particular item attached as a enhancement and they felt because it was directly related to HB 1105 that it should be attached to this bill. The House Appropriations Committee made a recommendation amending the bill to make sure that the wording was changed so that the funds that I need will come from my general services operating funds. And so really what is before you is not a request for general funds it's just to make sure that the authorization for spending authority is included in the operating line for my general services operating account and that is the extent of the funding request. This morning, however I received a call from the

Attorney General's office that inadvertently in the drafting of the bill something got goofed up and it was just caught this morning and I do have an amendment (attached) where we have to change about three words and it's rather important. I also have a document (attached) that shows the part of Federal law that has the oversight responsibility for this. The reason for the amendment is the way the bill is written now, it says that we don't have to use social security numbers and we don't have a problem with that but the Federal notice system which is part of the central indexing system and is the chapter of the section, states that it should be included in this particular bill. The federal law is very clear that we have to use social security numbers for that particular filing. And so the amendment makes it so that the particular line on page 97, line 19 does in fact work back to the central indexing system so we are in compliance with state law and the federal regulations.

Senator Nelting: Any questions? Senator Solberg do you move the amendment.

Senator Solberg, moved to adopt the amendment; seconded by Senator Holmberg. Any further discussion on the amendment? All in favor of the amendment.

Senator Holmberg moved for a "Do Pass with amendments"; seconded by Senator Solberg. With no further discussion, role was taken. 12 yes, 0 no, 2 absent. Senator Carolyn Nelson will carry the bill.

Tape #1, Side B, meter 43.2.

10030.0601
Title.

Prepared by the Legislative Council staff for
Senate Appropriations
March 20, 2001

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1105

Page 97, line 19, after "under" insert "subdivision e of"

Renumber accordingly

Date: 3-19-01

Roll Call Vote #: _____

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1105

Senate Appropriations Committee

☐ Subcommittee on _____

or

☐ Conference Committee

Legislative Council Amendment Number 10030.0601

Action Taken

DO Pass as Amended

Motion Made By

Holmberg Seconded

Senator Solberg

By

Senator Holmberg

Senators	Yes	No	Senators	Yes	No
Dave Nething, Chairman	✓				
Ken Solberg, Vice-Chairman	✓				
Randy A. Schobinger	✓				
Elroy N. Lindaas	✓				
Harvey Tallackson					
Larry J. Robinson	✓				
Steven W. Tomac	✓				
Joel C. Heitkamp					
Tony Grindberg	✓				
Russell T. Thane	✓				
Ed Kringstad	✓				
Ray Holmberg	✓				
Bill Bowman	✓				
John M. Andrist	✓				

Total Yes 12 No 0

Absent 2

Floor Assignment Senator Larsen Nelson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
March 21, 2001 9:11 a.m.

Module No: SR-49-6231
Carrier: C. Nelson
Insert LC: 10030.0601 Title: .0700

REPORT OF STANDING COMMITTEE

HB 1105, as reengrossed: Appropriations Committee (Sen. Nething, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Reengrossed HB 1105 was placed on the Sixth order on the calendar.

Page 97, line 19, after "under" insert "subdivision e of"

Renumber accordingly

2001 TESTIMONY

HB 1105


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INTRODUCTIONS & ADOPTIONS Of Uniform Acts



> A Few Facts About

REVISED UCC ARTICLE 9, SECURED TRANSACTIONS (1999)

PURPOSE:

Updates UCC Article 9, last revised in 1972 and adopted in every state. Article 9 provides a statutory framework that governs secured transactions- transactions which involve the granting of credit secured by personal property.

ORIGIN:

Completed by the Uniform Law Commissioners, in conjunction with the American Law Institute, in 1999.

ENDORSED BY:

American Bar Association

STATE ADOPTIONS:

Alaska	Kentucky	Rhode Island
Arizona	Maine	South Dakota
California	Maryland	Tennessee
Delaware	Michigan	Texas
District of Columbia	Minnesota	Utah
Hawaii	Montana	Vermont
Illinois	Nebraska	Virginia
Indiana	Nevada	Washington
Iowa	North Carolina	West Virginia
Kansas	Oklahoma	

2001 INTRODUCTIONS:

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Colorado	New Hampshire	US Virgin Islands
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Mississippi	North Dakota	Wyoming

For any further information regarding the Revision of UCC Article 9,


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INTRODUCTIONS & ADOPTIONS Of Uniform Acts



> Summary

UNIFORM COMMERCIAL CODE REVISED ARTICLE 9, SECURED TRANSACTIONS (1999)

The Uniform Commercial Code has eleven substantive articles. Article 9, Secured Transactions, may be the most important of the eleven. Article 9 provides the rules governing any transaction (other than a finance lease) that couples a debt with a creditor's interest in a debtor's personal property. If the debtor defaults, the creditor may repossess and sell the property (generally called collateral) to satisfy the debt. The creditor's interest is called a "security interest." Article 9 also covers certain kinds of sales that look like a grant of a security interest.

The operation of Article 9 appears deceptively simple. There are two key concepts: "attachment" and "perfection." These terms describe the two key events in the creation of a "security interest." Attachment generally occurs when the security interest is effective between the creditor and the debtor, and that usually happens when their agreement provides that it take place. Perfection occurs when the creditor establishes his or her "priority" in relation to other creditors of the debtor in the same collateral. The creditor with "priority" may use the collateral to satisfy the debtor's obligation when the debtor defaults before other creditors subsequent in priority may do so. Perfection occurs usually when a "financing statement" is filed in the appropriate public record. Generally, the first to file has the first priority, and so on.

Article 9 relies on the public record because it provides the means for creditors to determine if there is any security interest that precedes theirs--a notice function. A subsequent secured creditor cannot complain that his or her grant of credit was made in ignorance of the prior security interests easily found in the public record, and cannot complain of the priority of the prior interests as a result. Every secured creditor has a priority over any unsecured creditor.

The somewhat simple description in the prior paragraphs should not mislead anyone. Article 9 is not simple. There are substantial exceptions to the above-stated perfection rule, for example. Filing is not the only method for perfection. Much depends upon the kind of property that is collateral. Possession of collateral by the secured party is an alternative method of perfection for many kinds of collateral. For some kinds of property, control

filing does. There are kinds of transactions for which attachment is perfection. Priority is, also, not always a matter of perfecting a security interest first in time.

The following numbered topics highlight Article 9 as revised in 1999. They are not a treatise on Revised Article 9, but are a schematic summary of its relevant changes.

1. The Scope Issue. The 1999 revision expands the "scope" of Article 9. What this means literally is that the kinds of property in which a security interest can be taken by a creditor under Article 9 increases over those available in Article 9 before revision. Also, certain kinds of transactions that did not come under Article 9 before, now come under Article 9. These are some of the kinds of collateral that are included in Revised Article 9 that are not in original Article 9: sales of payment intangibles and promissory notes; security interests created by governmental debtors; health insurance receivables; consignments; and commercial tort claims. Nonpossessory, statutory agricultural liens come under Article 9 for determination of perfection and priority, generally the same as security interests come under it for those purposes.

2. Perfection. Filing a financing statement remains the dominant way to perfect a security interest in most kinds of property. It is clearer in Revised Article 9 that filing a financing statement will perfect a security interest, even if there is another method of perfection. "Control" is the method of perfection for letter of credit rights and deposit accounts, as well as for investment property. Control was available only to perfect security interests in investment property under old Article 9. A creditor has control when the debtor cannot transfer the property without the creditor's consent. Possession, as an alternative method to filing a financing statement to perfect a security interest, is the only method for perfecting a security interest in money that is not proceeds of sale from property subject to a security interest. Automatic perfection for a purchase money security interest is increased from ten days in old Article 9 to twenty days in Revised Article 9. Attachment of a purchase money security interest is perfection, at least for the twenty-day period. Then another method of perfection is necessary to continue the perfected security interest. However, a purchase money security interest in consumer goods remains perfected automatically for the duration of the security interest.

3. Choice of Law. In interstate secured transactions, it is necessary to determine which state's laws apply to perfection, the effect of perfection and the priority of security interests. It is particularly important to know where to file a financing statement. The 1999 revisions to Article 9 make two fundamental changes from old Article 9. In old Article 9, the basic rule chooses the law of the state in which the collateral is found as the law that governs perfection, effect of perfection, and a creditor's priority. In Revised Article 9, the new rule chooses the state that is the location of the debtor. Further, if the debtor is an entity created by registration in a state, the location of the debtor is the location in which the entity is created by registration. If an entity is a corporation, for example, the location of the

debtor is the state in which the corporate charter is filed or registered. In old Article 9, the entity that is a debtor is located in the state in which it has its chief executive office. These changes in basic choice of law rules will change the place in which a financing statement is filed in a great many instances from the place it would have been filed under old Article 9. At the same time, the location of the debtor establishes a more certain place to perfect than the old rule does. Collateral shifts location much easier than the debtors do.

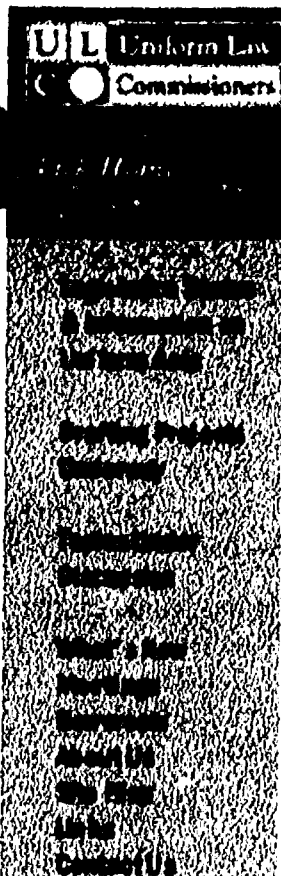
4. The Filing System. Improvements in the filing system in the 1999 revisions to Article 9 include a full commitment to centralized filing—one place in every state in which financing statements are filed, and a filing system that escorts filing from the world of filed documents to the world of electronic communications and records. Under Revised Article 9, the only local filing of financing statements occurs in the real estate records for fixtures. Fixtures are items of personal property that become physically part of the real estate, and are treated as part of the real estate until severed from it. It is anticipated that electronic filing of financing statements will replace the filing of paper. Paper filing of financing statements is already disappearing in many states in 1999, as Revised Article 9 becomes available to them. Revised Article 9 definitions and provisions allow this transition from paper to electronic filing without further revision of the law. Revised Article 9 makes filing office operations more ministerial than old Article 9 did. The office that files financing statements has no responsibility for the accuracy of information on the statements and is fully absolved from any liability for the contents of any statements received and filed. Financing statements may, therefore, be considerably simplified. There is no signature requirement, for example, for a financing statement.

5. Consumer Transactions. Revised Article 9 makes a clearer distinction between transactions in which the debtor is a consumer than prior Article 9 did. Enforcement of a security interest that is included in a consumer transaction is handled differently in certain respects in the 1999 revisions to Article 9 than it was pre-1999. Examples of consumer provisions are: a consumer cannot waive redemption rights in a financing agreement; a consumer buyer of goods who pre-pays in whole or in part, has an enforceable interest in the purchased goods and may obtain the goods as a remedy; a consumer is entitled to disclosure of the amount of any deficiency assessed against him or her, and the method for calculating the deficiency; and, a secured creditor may not accept collateral as partial satisfaction of a consumer obligation, so that choosing strict foreclosure as a remedy means that no deficiency may be assessed against the debtor. Although it governs more than consumer transactions, the good faith standard becomes the objective standard of commercial reasonableness in the 1999 revisions to Article 9.

6. Default and Enforcement. Article 9 provisions on default and enforcement deal generally with the procedures for obtaining property in which a creditor has a security interest and selling it to satisfy the debt, when the debtor is in default. Normally, the creditor has the right to repossess the property. Revised Article 9 includes new rules dealing with

kinds of property subject to security interests, new rules for the interests of subordinate creditors with security interests in the same property, and new rules for aspects of enforcement when the debtor is a consumer debtor. These are some of the specific new rules: a secured party (creditor with security interest) is obliged to notify a secondary obligor when there is a default, and a secondary obligor generally cannot waive rights by becoming a secondary obligor; a secured party who repossesses goods and sells them is subject to the usual warranties that are part of any sale; junior secured creditors (subsequent in priority) and lienholders who have filed financing statements, must be notified when a secured party repossesses collateral; and, if a secured party sells collateral at a low price to an insider buyer, the price that the goods should have obtained in a commercially reasonable sale, rather than the actual price, is the price that will be used in calculating the deficiency.

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INTRODUCTIONS & ADOPTIONS Of Uniform Acts



> Why States Should Adopt the ...

REVISED ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE CONCERNS FOR A STATE THAT FAILS TIMELY TO ENACT REVISED ARTICLE 9: THE CHOICE OF LAW PROBLEM

September 15, 2000

Revised Article 9 of the Uniform Commercial Code contains a uniform effective date of July 1, 2001, applicable to all states that enact the revisions. The Official Comments state that this uniform effective date was intended to give all states ample opportunity to enact the statute so that it would become effective on the same date throughout the country. The Official Comments caution:

If former Article 9 is in effect in some jurisdictions, and this Article is in effect in others, *horrendous complications* may arise.
(emphasis added)

Those horrendous complications may be referred to as the "choice of law" problem.

This paper is intended to explain what the choice of law problem is and how it might negatively impact a state (an "Affected State") if the Affected State fails to enact Revised Article 9 so that it is effective on July 1, 2001.

The Choice of Law Problem In General

The choice of law problem relates to the concern that a litigation outcome relating to an Article 9 secured loan or other secured transaction may be determined by the location of the litigation. If litigation relating to an Article 9 secured loan or other secured transaction takes place in a court located in a state that has adopted Revised Article 9, the Revised Article 9 choice of law rules apply. But, if the litigation takes place in a court located in a state that has enacted former Article 9 and has not enacted Revised Article 9, the former Article 9 choice of law rules will apply. For example, if the collateral is ordinary goods, and perfection of a lender's security interest in the goods is claimed by means of the filing of a Uniform Commercial Code financing statement, Revised Article 9's choice of law rules require that the lender perfect its security interest in the goods by filing the financing statement under the laws of the jurisdiction of the debtor's location. The debtor's location would usually be, in the case of a business debtor that is a legal entity, the state under whose laws the debtor is incorporated or

otherwise organized as a registered organization. However, former Article 9 requires that the lender perfect its security interest in the goods by filing the financing statement under the laws of the jurisdiction where the goods are located. Litigation might take place in a state court or in a bankruptcy or other federal court.

Lenders that would otherwise extend credit under the Revised Article 9 rules will not want to take the risk of litigation occurring in a court that, under the choice of law rules of the state in which the court is located, will apply former Article 9 to determine perfection. Lenders extending credit under Revised Article 9 rules applicable elsewhere in the country will accordingly be forced to protect themselves by complying with both sets of rules - former Article 9 and Revised Article 9 - so long as there is a possibility of litigation occurring in a former Article 9 forum.

The Choice of Law Problem for an Affected State

With that background in mind, several significant concerns for an Affected State arise if the Affected State fails to enact Revised Article 9 so that it is effective on July 1, 2001.

The Affected State's debtors may have higher transaction costs. Secured parties extending credit to an Affected State's debtors will need to comply with the perfection rules of both former and Revised Article 9. That will mean duplicate or at least more complex documentation and, in many instances, additional filing fees for Uniform Commercial Code financing statements. It will also mean that the lender's legal fees passed on to the Affected State's debtor would be higher.

The Affected State may lose some state revenues. To maximize its protection under Revised Article 9, a lender that would otherwise extend credit to a corporation or other registered organization organized under the laws of an Affected State may insist that the debtor reincorporate or reorganize under the laws of a state that has enacted Revised Article 9. That could mean loss of some revenues to the Affected State to the extent that the revenues would otherwise be derived from the debtor being incorporated or otherwise organized under the laws of the Affected State.

The Affected State may lose some inward direct investment opportunities. Lenders extending credit to debtors located outside of the Affected State may put restrictive covenants in their loan documents limiting a debtor's ability to open an office in the Affected State or to have goods located in the Affected State. That would be because the lender, having complied with the rules under Revised Article 9, would not want to incur the initial or ongoing monitoring costs of compliance with former Article 9, merely because the debtor opens or might open an office in the Affected State or has goods or might have goods located in the Affected State. That restriction may be an outright prohibition or one that requires that the lender be paid a fee for its extra initial or monitoring costs if an office is opened by the debtor in the Affected State or goods are maintained by the debtor in the Affected State.

may be best illustrated by an example.

Lender lends to Debtor and is granted a security interest in Debtor's assets under Revised Article 9. Lender complies with the perfection rules of Revised Article 9. Debtor later finds itself in financial trouble. Creditor discovers that Debtor has a sufficient presence in the Affected State to permit a bankruptcy venue in the Affected State. If a bankruptcy were commenced by or against Debtor outside of the Affected State in a state that has enacted Revised Article 9, the bankruptcy court would likely apply the Revised Article 9 choice of law rules, and Lender's security interest would be perfected. But, if a bankruptcy were commenced in the Affected State, the bankruptcy court in the Affected State would likely look to the Affected State's former Article 9 choice of law rules, which require that a financing statement must have been filed in the Affected State for the collateral in question. Without that filing, Lender's security interest is unperfected.

In this example, Creditor would have an incentive to commence an involuntary bankruptcy against Debtor in the Affected State, not because bankruptcy is a good idea for Debtor or its creditors generally but just to set aside Lender's security interest in those assets. (We can also posit an example where Lender insists that Debtor file bankruptcy prematurely in a state that has enacted Revised Article 9 in order to protect itself from an involuntary bankruptcy petition against Debtor being filed in the Affected State.)

The choice of law problem for the Affected State will be even more acute given the large number of states that have already enacted or will shortly enact Revised Article 9. Twenty-seven states, as well as the District of Columbia, have thus far enacted the statute; the statute in each of these states has an effective date of July 1, 2001. Bills are being prepared for introduction in January in all of the remaining states, and efforts are underway in those states to insure timely adoption so that the statute will be effective on July 1, 2001, in those states.

The Solution: the Affected State Should Timely Enact Revised Article 9

The choice of law problem will be eliminated, and these potential negative consequences for the Affected State will be avoided, if the Affected State enacts Revised Article 9 and all other states do likewise so that Revised Article 9 is in effect in all states by July 1, 2001. Even if not all states enact Revised Article 9 so that it is in effect in all states by July 1, 2001, the choice of law problem in the Affected State will be dramatically minimized if the Affected State joins the majority of states in enacting Revised Article 9 so that it is effective in the Affected State on July 1, 2001.

There are many reasons for the Affected State to enact Revised Article 9 so that it is effective on July 1, 2001. Solving the choice of law problem is only one of those reasons. In addition, early enactment well before the July 1,

2001, effective date would promote awareness of the statute among the Affected State's business, financial and legal community, accelerate educational and training efforts and procedures implementation and generally better prepare the Affected State for Revised Article 9 becoming effective in so many, if not all, states across the country on July 1, 2001.

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we
3-26-01
10030.0600

Fifty-seventh
Legislative Assembly
of North Dakota

SECOND ENGROSSMENT

REENGROSSED HOUSE BILL NO. 1105

Introduced by

Judiciary Committee

(At the request of the Commission on Uniform State Laws)

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

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

19 **SECTION 1. AMENDMENT.** Subsection 5 of section 11-18-05 of the 1999
20 Supplement to the North Dakota Century Code is amended and reenacted as follows:
21 5. For filing, indexing, making, or completing any statement, abstract, or certificate
22 under the Uniform Commercial Code central filing data base, the computerized
23 central notice system or the computerized statutory liens data base, for receiving
24 printouts, and for other services provided through the computerized system, the

Pages
missing

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. ~~(41-106)~~ 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 1 of section ~~41-09-23~~ 41-09-31 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
23 is 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 filed in~~
26 ~~the office where the security interest is perfected or in the office of 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 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;
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; or
- 13 ~~minimum~~ Certificate of deposit.
- 14 c. "Account debtor" means a person obligated on an account, chattel paper, or
15 general intangible. The term does not include a person obligated to pay a
16 negotiable instrument, even if the instrument constitutes part of chattel paper.
- 17 d. "Accounting", except as used in "accounting for", means a record:
- 18 (1) Authenticated by a secured party;
19 (2) Indicating the aggregate unpaid secured obligations as of a date not
20 more than thirty-five days earlier or thirty-five days later than the date of
21 the record; and
22 (3) Identifying the components of the obligations in reasonable detail.
- 23 e. "Agricultural lien" means an interest, other than a security interest, in farm
24 products;
- 25 (1) That secures payment or performance of an obligation for:
26 (a) Goods or services furnished in connection with a debtor's farming
27 operation ~~or in connection with processing the product or~~
28 entrustment of the farm products; or
29 (b) Rent on real property leased by a debtor in connection with the
30 debtor's farming operation;
31 (2) That is created by statute in favor of a person that;

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- (a) Finished goods or services in connection with processing, production, or entrustment of the farm product or in the ordinary course of that person's business furnished goods or services to a debtor in connection with a debtor's farming operation; or
- (b) Leased real property to a debtor in connection with the debtor's farming operation; and
- (3) Of which the effectiveness does not depend on the person's possession of the personal property.
- f. "As-extracted collateral" means:
 - (1) Oil, gas, or other mineral that is subject to a security interest that:
 - (a) Is created by a debtor having an interest in the mineral before extraction; and
 - (b) Attaches to the mineral as extracted; or
 - (2) Accounts arising out of the sale at the wellhead or minehead of oil, gas, or other mineral in which the debtor had an interest before extraction.
- g. "Authenticate" means:
 - (1) To sign; or
 - (2) To execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record.
- h. "Bank" means an organization engaged in the business of banking. The term includes a savings bank, savings and loan association, credit union, and trust company.
- i. "Cash proceeds" means proceeds that are money, checks, deposit accounts, certificates of deposit, or the like.
- j. "Certificate of deposit" means a bank record of a sum of money which has been received by the bank and a promise made by the bank to repay the sum of money. The term does not include a deposit account. A certificate of deposit may be negotiable, nonnegotiable, nontransferable, certificated, or uncertificated.

1 k. "Certificate of title" means a certificate of title with respect to which a statute
2 provides for the security interest in question to be indicated on the certificate
3 as a condition or result of the security interest's obtaining priority over the
4 rights of a lien creditor with respect to the collateral.

5 ~~"Certificated certificate of deposit" means a certificate of deposit that is~~
6 ~~monetized by a certificate of deposit.~~

7 m. "Chattel paper" means a record or records that evidence both a monetary
8 obligation and a security interest in specific goods, a security interest in
9 specific goods and software used in the goods, a security interest in specific
10 goods and license of software used in the goods, a lease of specific goods, or
11 a lease of specific goods and license of software used in the goods. In this
12 subdivision, "monetary obligation" means a monetary obligation secured by
13 the goods or owed under a lease of the goods and includes a monetary
14 obligation with respect to software used in the goods. The term does not
15 include (1) charters or other contracts involving the use or hire of a vessel or
16 (2) records that evidence a right to payment arising out of the use of a credit
17 or charge card or information contained on or for use with the card. If a
18 transaction is evidenced by records that include an instrument or series of
19 instruments, the group of records taken together constitutes chattel paper.

20 n. "Collateral" means the property subject to a security interest or agricultural
21 lien. The term includes:

- 22 (1) Proceeds to which a security interest attaches;
23 (2) Accounts, chattel paper, payment intangibles, and promissory notes
24 that have been sold; and
25 (3) Goods that are the subject of a consignment.

26 o. "Commercial tort claim" means a claim arising in tort with respect to which:

- 27 (1) The claimant is an organization; or
28 (2) The claimant is an individual and the claim:
29 (a) Arose in the course of the claimant's business or profession; and
30 (b) Does not include damages arising out of personal injury to or the
31 death of an individual.

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- 1 (1) Identifies, by its file number, the initial financing statement to which it
2 relates; and
- 3 (2) Indicates that it is a continuation statement for, or that it is filed to
4 continue the effectiveness of, the identified financing statement.
- 5 dd. "Debtor" means:
- 6 (1) A person having an interest, other than a security interest or other lien,
7 in the collateral, regardless of whether the person is an obligor;
- 8 (2) A seller of accounts, chattel paper, payment intangibles, or promissory
9 notes; or
- 10 (3) A consignee.
- 11 ee. "Deposit account" means a demand, time, savings, passbook, or similar
12 account maintained with a bank. The term does not include investment
13 property or an account evidenced by a ~~certificate of deposit~~ or an instrument.
- 14 ff. "Document" means a document of title or a receipt of the type described in
15 subsection 2 of section 41-07-07.
- 16 gg. "Electronic chattel paper" means chattel paper evidenced by a record
17 consisting of information stored in an electronic medium.
- 18 hh. "Encumbrance" means a right, other than an ownership interest, in real
19 property. The term includes mortgages and other liens on real property.
- 20 ii. "Equipment" means goods other than inventory, farm products, or consumer
21 goods.
- 22 jj. "Farm products" means goods, other than standing timber, ~~subject to a lien~~
23 ~~created under chapter 35-17, 35-30, or 35-31,~~ or with respect to which the
24 debtor is engaged in a farming operation and which are:
- 25 (1) Crops grown, growing, or to be grown, including:
- 26 (a) Crops produced on trees, vines, and bushes; and
- 27 (b) Aquatic goods produced in aquacultural operations;
- 28 (2) Livestock, born or unborn, including aquatic goods produced in
29 aquacultural operations;
- 30 (3) Supplies used or produced in a farming operation; or
- 31 (4) Products of crops or livestock in their unmanufactured states.

1 kk. "Farming operation" means raising, cultivating, propagating, fattening,
2 grazing, or any other farming, livestock, or aquacultural operation.

3 ll. "File number" means the number assigned to an initial financing statement
4 pursuant to subsection 1 of section 41-09-90.

5 mm. "Filing office" means an office designated in section 41-09-72 as the place to
6 file a financing statement.

7 nn. "Filing-office rule" means a rule adopted under section 41-09-97.

8 oo. "Financing statement" means a record composed of an initial financing
9 statement and any filed record relating to the initial financing statement.

10 pp. "Fixture filing" means the filing of a financing statement covering goods that
11 are or are to become fixtures and satisfying subsections 1 and 2 of section
12 41-09-73. The term includes the filing of a financing statement covering
13 goods of a transmitting utility which are or are to become fixtures.

14 qq. "Fixtures" means goods that have become so related to particular real
15 property that an interest in them arises under real property law.

16 rr. "General intangible" means any personal property, including things in action,
17 other than accounts, ~~certificates of deposit,~~ chattel paper, commercial tort
18 claims, deposit accounts, documents, goods, instruments, investment
19 property, letter-of-credit rights, letters of credit, money, and oil, gas, or other
20 minerals before extraction. The term includes payment intangibles and
21 software.

22 ss. "Good faith" means honesty in fact and the observance of reasonable
23 commercial standards of fair dealing.

24 tt. "Goods" means all things that are movable when a security interest attaches.

25 (1) The term includes:

26 (a) Fixtures:

27 (b) Standing timber that is to be cut and removed under a
28 conveyance or contract for sale;

29 (c) The unborn young of animals;

30 (d) Crops grown, growing, or to be grown, even if the crops are
31 produced on trees, vines, or bushes; and

- 1 (e) Manufactured homes.
- 2 (2) The term also includes a computer program embedded in goods and
- 3 any supporting information provided in connection with a transaction
- 4 relating to the program if:
- 5 (a) The program is associated with the goods in such a manner that
- 6 the program is customarily considered part of the goods; or
- 7 (b) By becoming the owner of the goods, a person acquires a right to
- 8 use the program in connection with the goods.
- 9 (3) The term does not include a computer program embedded in goods
- 10 that consist solely of the medium in which the program is embedded.
- 11 The term also does not include accounts, ~~certificates of deposit~~, chattel
- 12 paper, commercial tort claims, deposit accounts, documents, general
- 13 intangibles, instruments, investment property, letter-of-credit rights,
- 14 letters of credit, money, or oil, gas, or other minerals before extraction.
- 15 uu. "Governmental unit" means a subdivision, agency, department, county,
- 16 parish, municipality, or other unit of the government of the United States, a
- 17 state, or a foreign country. The term includes an organization having a
- 18 separate corporate existence if the organization is eligible to issue debt on
- 19 which interest is exempt from income taxation under the laws of the United
- 20 States.
- 21 vv. "Health care insurance receivable" means an interest in or claim under a
- 22 policy of insurance which is a right to payment of a monetary obligation for
- 23 health care goods or services provided.
- 24 ww. "Instrument" means a negotiable instrument or any other writing that
- 25 evidences a right to the payment of a monetary obligation, is not itself a
- 26 security agreement or lease, and is of a type that in ordinary course of
- 27 business is transferred by delivery with any necessary indorsement or
- 28 assignment. The term does not include:
- 29 (1) ~~Certificates of deposit;~~
- 30 (2) Investment property;
- 31 (3) Letters of credit; or

1 dwelling with or without a permanent foundation when connected to the
2 required utilities, and includes the plumbing, heating, air-conditioning, and
3 electrical systems contained therein. The term includes any structure that
4 meets all of the requirements of this subdivision except the size requirements
5 and with respect to which the manufacturer voluntarily files a certification
6 required by the United States secretary of housing and urban development
7 and complies with the standards established under title 42 of the United
8 States Code.

9 ddd. "Manufactured-home transaction" means a secured transaction:

- 10 (1) Which creates a purchase-money security interest in a manufactured
11 home, other than a manufactured home held as inventory; or
12 (2) In which a manufactured home, other than a manufactured home held
13 as inventory, is the primary collateral.

14 eee. "Mortgage" means a consensual interest in real property, including fixtures,
15 that secures payment or performance of an obligation.

16 fff. "New debtor" means a person that becomes bound as debtor under
17 subsection 4 of section 41-09-13 by a security agreement previously entered
18 into by another person.

19 ggg. "New value" means:

- 20 (1) Money;
21 (2) Money's worth in property, services, or new credit; or
22 (3) Release by a transferee of an interest in property previously transferred
23 to the transferee.

24 The term does not include an obligation substituted for another obligation.

25 hhh. "Noncash proceeds" means proceeds other than cash proceeds.

26 ~~"Nonnegotiable certificate of deposit" means a bank record that contains an~~
27 ~~acknowledgment that a sum of money has been received by the issuer and a~~
28 ~~promise by the issuer to repay the sum of money other than a deposit~~
29 ~~account or negotiable instrument.~~

30 iii. "Nontransferable certificate of deposit" means a nonnegotiable certificate of
31 deposit which may be transferred only on the books of the issuer, with the

1 consent of the issuer, or subject to other restrictions or considerations of the
2 issuer on transfer. The term does not include a deposit account.

3 kkk. "Obligor" means a person that, with respect to an obligation secured by a
4 security interest in or an agricultural lien on the collateral:

- 5 (1) Owes payment or other performance of the obligation;
6 (2) Has provided property other than the collateral to secure payment or
7 other performance of the obligation; or
8 (3) Is otherwise accountable in whole or in part for payment or other
9 performance of the obligation.

10 The term does not include issuers or nominated persons under a letter of
11 credit.

12 lll. "Original debtor", except as used in subsection 3 of section 41-09-30, means
13 a person that, as debtor, entered into a security agreement to which a new
14 debtor has become bound under subsection 4 of section 41-09-13.

15 mmm. "Payment intangible" means a general intangible under which the account
16 debtor's principal obligation is a monetary obligation.

17 nnn. "Person related to", with respect to an individual, means:

- 18 (1) The spouse of the individual;
19 (2) A brother, brother-in-law, sister, or sister-in-law of the individual;
20 (3) An ancestor or lineal descendant of the individual or the individual's
21 spouse; or
22 (4) Any other relative, by blood or marriage, of the individual or the
23 individual's spouse who shares the same home with the individual.

24 ooo. "Person related to", with respect to an organization, means:

- 25 (1) A person directly or indirectly controlling, controlled by, or under
26 common control with the organization;
27 (2) An officer or director of, or a person performing similar functions with
28 respect to, the organization;
29 (3) An officer or director of, or a person performing similar functions with
30 respect to, a person described in paragraph 1;
31 (4) The spouse of an individual described in paragraph 1, 2, or 3; or

1 (5) An individual who is related by blood or marriage to an individual
2 described in paragraph 1, 2, 3, or 4 and shares the same home with the
3 individual.

4 ppp. "Proceeds", except as used in subsection 2 of section 41-09-106, means the
5 following property:

6 (1) Whatever is acquired upon the sale, lease, license, exchange, or other
7 disposition of collateral;

8 (2) Whatever is collected on, or distributed on account of, collateral;

9 (3) Rights arising out of collateral;

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

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

17 qqq. "Promissory note" means an instrument that evidences a promise to pay a
18 monetary obligation, does not evidence an order to pay, and does not contain
19 an acknowledgment by a bank that the bank has received for deposit a sum
20 of money or funds.

21 rrr. "Proposal" means a record authenticated by a secured party which includes
22 the terms on which the secured party is willing to accept collateral in full or
23 partial satisfaction of the obligation it secures under sections 41-09-115

24 "Public Finance" means a record authenticated by a secured party which includes
25 the terms on which the secured party is willing to accept collateral in full or

26 partial satisfaction of the obligation it secures under sections 41-09-115
27 and 41-09-117.
28 "Pursuant to commitment", with respect to an advance made or other value
29 given by a secured party, means pursuant to the secured party's obligation,
30 regardless of whether a subsequent event of default or other event not within
31 the secured party's control has relieved or may relieve the secured party from
 the secured party's obligation.

 iii. "Record", except as used in "for record", "of record", "record or legal title", and
 "record owner", means information that is inscribed on a tangible medium or

1 provided for, addressed to any address reasonable under the
2 circumstances; or

3 (2) To cause the record or notification to be received within the time that it
4 would have been received if properly sent under paragraph 1.

5 zzz. "Software" means a computer program and any supporting information
6 provided in connection with a transaction relating to the program. The term
7 does not include a computer program that is included in the definition of
8 goods.

9 aaaa. "State" means a state of the United States, the District of Columbia, the
10 Commonwealth of Puerto Rico, the United States Virgin Islands, or any
11 territory or insular possession subject to the jurisdiction of the United States.

12 bbbb. "Supporting obligation" means a letter-of-credit right or secondary obligation
13 that supports the payment or performance of an account, chattel paper, a
14 document, a general intangible, an instrument, or investment property.

15 cccc. "Tangible chattel paper" means chattel paper evidenced by a record or
16 records consisting of information that is inscribed on a tangible medium.

17 dddd. "Termination statement" means an amendment of a financing statement
18 which:

- 19 (1) Identifies, by the amendment's file number, the initial financing
20 statement to which it relates; and
21 (2) Indicates either that the amendment is a termination statement or that
22 the identified financing statement is no longer effective.

23 eeee. "Transmitting utility" means a person primarily engaged in the business of:

- 24 (1) Operating a railroad, subway, street railway, or trolley bus;
25 (2) Transmitting communications electrically, electromagnetically, or by
26 light;
27 (3) Transmitting goods by pipeline or sewer; or
28 (4) Transmitting or producing and transmitting electricity, steam, gas, or
29 water.

30 fff. "Uncertificated certificate of deposit" means an obligation of a bank to repay a
31 sum of money that it has received which is not represented by a certificate.

by an entry on the books of the bank and any documentation given to
the customer by the bank. The term does not include a deposit account.

2. The following definitions in other chapters apply to this chapter:

- a. "Applicant". Section 41-05-02.
- b. "Beneficiary". Section 41-05-02.
- c. "Broker". Section 41-08-02.
- d. "Certificated security". Section 41-08-02.
- e. "Check". Section 41-03-04.
- f. "Clearing corporation". Section 41-08-02.
- g. "Contract for sale". Section 41-02-06.
- h. "Customer". Section 41-04-04.
- i. "Entitlement holder". Section 41-08-02.
- j. "Financial asset". Section 41-08-02.
- k. "Holder in due course". Section 41-03-28.
- l. "Issuer" (with respect to a letter of credit or letter-of-credit right). Section 41-05-02.
- m. "Issuer" (with respect to a security). Section 41-08-17.
- n. "Lease". Section 41-02.1-03.
- o. "Lease agreement". Section 41-02.1-03.
- p. "Lease contract". Section 41-02.1-03.
- q. "Leasehold interest". Section 41-02.1-03.
- r. "Lessee". Section 41-02.1-03.
- s. "Lessee in ordinary course of business". Section 41-02.1-03.
- t. "Lessor". Section 41-02.1-03.
- u. "Lessor's residual interest". Section 41-02.1-03.
- v. "Letter of credit". Section 41-05-02.
- w. "Merchant". Section 41-02-04.
- x. "Negotiable instrument". Section 41-03-04.
- y. "Nominated person". Section 41-05-02.
- z. "Note". Section 41-03-04.
- aa. "Proceeds of a letter of credit". Section 41-05-14.

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

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1 A secured party claiming a purchase-money security interest has the burden of
2 establishing the extent to which the security interest is a purchase-money security
3 interest.

4 41-09-04. (9-104) Control of deposit account or uncertificated certificate of

5 deposit.

6 1. A secured party has control of a deposit account or uncertificated certificate of

7 deposit.
8 a. The secured party is the bank with which the deposit account or uncertificated
9 certificate of deposit is maintained;

10 b. The debtor, secured party, and bank have agreed in an authenticated record
11 that the bank will comply with instructions originated by the secured party
12 directing disposition of the funds in the deposit account or uncertificated
13 certificate of deposit without further consent by the debtor; or

14 c. The secured party becomes the bank's customer with respect to the deposit
15 account or uncertificated certificate of deposit.

16 2. A secured party that has satisfied subsection 1 has control, even if the debtor
17 retains the right to direct the disposition of funds from the deposit account or
18 uncertificated certificate of deposit.

19 41-09-05. (9-105) Control of electronic chattel paper. A secured party has control of
20 electronic chattel paper if the record or records comprising the chattel paper are created,
21 stored, and assigned in such a manner that:

22 1. A single authoritative copy of the record or records exists which is unique,
23 identifiable and, except as otherwise provided in subsections 4 through 6,
24 unalterable;

25 2. The authoritative copy identifies the secured party as the assignee of the record or
26 records;

27 3. The authoritative copy is communicated to and maintained by the secured party or
28 the secured party's designated custodian;

29 4. Copies or revisions that add or change an identified assignee of the authoritative
30 copy can be made only with the participation of the secured party;

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- 1 c. Except as otherwise provided in subsection 5, a type of collateral defined in
- 2 the Uniform Commercial Code;
- 3 d. Quantity;
- 4 e. Computational or allocational formula or procedure; or
- 5 f. Except as otherwise provided in subsection 3, any other method, if the
- 6 identity of the collateral is objectively determinable.
- 7 3. A description of collateral as "all the debtor's assets" or "all the debtor's personal
- 8 property" or using words of similar import does not reasonably identify the
- 9 collateral.
- 10 4. Except as otherwise provided in subsection 5, a description of a security
- 11 entitlement, securities account, or commodity account is sufficient if the description
- 12 describes:
- 13 a. The collateral by those terms or as investment property; or
- 14 b. The underlying financial asset or commodity contract.
- 15 5. A description only by type of collateral defined in the Uniform Commercial Code is
- 16 an insufficient description of:
- 17 A commercial tort claim; or
- 18 A security entitlement, a securities account, or a commodity account.

19 **41-09-09. (9-109) Scope.**

- 20 1. Except as otherwise provided in subsections 3 and 4, this chapter applies to:
- 21 a. A transaction, regardless of its form, that creates a security interest in
- 22 personal property or fixtures by contract;
- 23 b. An agricultural lien;
- 24 c. A sale of accounts, chattel paper, payment intangibles, or promissory notes;
- 25 d. A consignment;
- 26 e. A security interest arising under section 41-02-46, section 41-02-53,
- 27 subsection 3 of section 41-02-90, or subsection 5 of section 41-02.1-56, as
- 28 provided in section 41-09-10; and
- 29 f. A security interest arising under section 41-04-22 or 41-05-18.

Removed
subdivision b

- 1 2. The application of this chapter to a security interest in a secured obligation is not
- 2 affected by the fact that the obligation is itself secured by a transaction or interest
- 3 to which this chapter does not apply.
- 4 3. This chapter does not apply to the extent that:
 - 5 a. A statute, regulation, or treaty of the United States preempts this chapter;
 - 6 b. A statute of another state, a foreign country, or a governmental unit of another
 - 7 state or a foreign country, other than a statute generally applicable to security
 - 8 interests, expressly governs creation, perfection, priority, or enforcement of a
 - 9 security interest created by the state, country, or governmental unit; or
 - 10 c. The rights of a transferee beneficiary or nominated person under a letter of
 - 11 credit are independent and superior under section 41-05-14.
- 12 4. This chapter does not apply to:
 - 13 a. A landlord's lien, other than an agricultural lien;
 - 14 b. A lien, other than an agricultural lien, given by statute or other rule of law for
 - 15 services or materials, but section 41-09-53 applies with respect to priority of
 - 16 the lien;
 - 17 c. An assignment of a claim for wages, salary, or other compensation of an
 - 18 employee;
 - 19 d. A sale of accounts, chattel paper, payment intangibles, or promissory notes
 - 20 as part of a sale of the business out of which they arose;
 - 21 e. An assignment of accounts, chattel paper, payment intangibles, or promissory
 - 22 notes which is for the purpose of collection only;
 - 23 f. An assignment of a right to payment under a contract to an assignee that is
 - 24 also obligated to perform under the contract;
 - 25 g. An assignment of a single account, payment intangible, or promissory note to
 - 26 an assignee in full or partial satisfaction of a preexisting indebtedness;
 - 27 h. A transfer of an interest in or an assignment of a claim under a policy of
 - 28 insurance, other than an assignment by or to a health care provider of a
 - 29 health care insurance receivable and any subsequent assignment of the right
 - 30 to payment, but sections 41-09-35 and 41-09-42 apply with respect to
 - 31 proceeds and priorities in proceeds;

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- 1 L. An assignment of a right represented by a judgment, other than a judgment
2 taken on a right to payment that was collateral;
3 L. A right of recoupment or set-off, but:
4 (1) Section 41-09-60 applies with respect to the effectiveness of rights of
5 recoupment or set-off against deposit accounts or certificates of
6 deposit; and
7 (2) Section 41-09-66 applies with respect to defenses or claims of an
8 account debtor;
9 k. The creation or transfer of an interest in or lien on real property, including a
10 lease or rents thereunder, except to the extent that provision is made for:
11 (1) Liens on real property in sections 41-09-13 and 41-09-28;
12 (2) Fixtures in section 41-09-54;
13 (3) Fixture filings in sections 41-09-72, 41-09-73, 41-09-87, and 41-09-90;
14 and
15 (4) Security agreements covering personal and real property in section
16 41-09-101;
17 L. An assignment of a claim arising in tort, other than a commercial tort claim,
18 but sections 41-09-35 and 41-09-42 apply with respect to proceeds and
19 priorities in proceeds; or
20 ~~may~~ A transfer by this state or a governmental unit of this state, or
21 41-09-10, (9-110) Security Interests arising under chapter 41-02 or 41-02.1. A
22 security interest arising under section 41-02-46, section 41-02-53, subsection 3 of section
23 41-02-90, or subsection 5 of section 41-02.1-56 is subject to this chapter. However, until the
24 debtor obtains possession of the goods:
25 1. The security interest is enforceable, even if subdivision c of subsection 2 of section
26 41-09-13 has not been satisfied;
27 2. Filing is not required to perfect the security interest;
28 3. The rights of the secured party after default by the debtor are governed by chapter
29 41-02 or 41-02.1; and
30 4. The security interest has priority over a conflicting security interest created by the
31 debtor.

Amended
Subdivision m

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

1. Except as otherwise provided in this title, a security agreement is effective according to the security agreement's terms between the parties, against purchasers of the collateral, and against creditors.

2. A transaction, although subject to this chapter, is also subject to chapters 13-03.1, 35-05, 48-08 and 51-13. In the case of conflict between this chapter and any of those statutes, the provisions of those statutes control. Failure to comply with any applicable statute has only the effect that is specified therein.

3. In case of conflict between this chapter and a rule of law, statute, or regulation described in subsection 2, the rule of law, statute, or regulation controls. Failure to comply with a statute or regulation described in subsection 2 has only the effect the statute or regulation specifies. In no event is the failure of a secured party to comply with a statute or rule other than chapter 41-09 a failure to comply with any provision of chapter 41-09.

4. This chapter does not:

a. Validate any rate, charge, agreement, or practice that violates a rule of law, statute, or regulation described in subsection 2; or

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

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

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

1. A security interest attaches to collateral when the security interest becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.

2. Except as otherwise provided in subsections 3 through 9, a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

- 1 a. Value has been given;
- 2 b. The debtor has rights in the collateral or the power to transfer rights in the
- 3 collateral to a secured party; and
- 4 c. One of the following conditions is met:
 - 5 (1) The debtor has authenticated a security agreement that provides a
 - 6 description of the collateral and, if the security interest covers timber to
 - 7 be cut, a description of the land concerned;
 - 8 (2) The collateral is not a certificated security and is in the possession of
 - 9 the secured party under section 41-09-33 pursuant to the debtor's
 - 10 security agreement;
 - 11 (3) The collateral is a certificated security in registered form and the
 - 12 security certificate has been delivered to the secured party under
 - 13 section 41-08-27 pursuant to the debtor's security agreement; or
 - 14 (4) The collateral is deposit accounts, electronic chattel paper, investment
 - 15 property, letter-of-credit rights, or uncertificated certificates of deposit,
 - 16 and the secured party has control under section 41-09-04, 41-09-05,
 - 17 41-09-06, or 41-09-07 pursuant to the debtor's security agreement.
- 18 3. Subsection 2 is subject to section 41-04-22 on the security interest of a collecting
- 19 bank, section 41-05-18 on the security interest of a letter-of-credit issuer or
- 20 nominated person, section 41-09-10 on a security interest arising under chapter
- 21 41-02 or 41-02.1, and section 41-09-16 on security interests in investment
- 22 property.
- 23 4. A person becomes bound as debtor by a security agreement entered into by
- 24 another person if, by operation of law other than this chapter or by contract:
 - 25 a. The security agreement becomes effective to create a security interest in the
 - 26 person's property; or
 - 27 b. The person becomes generally obligated for the obligations of the other
 - 28 person, including the obligation secured under the security agreement, and
 - 29 acquires or succeeds to all or substantially all of the assets of the other
 - 30 person.

- 1 c. May create a security interest in the collateral.
- 2 4. If the secured party is a buyer of accounts, chattel paper, payment intangibles, or
- 3 promissory notes or a consignor:
- 4 a. Subsection 1 does not apply unless the secured party is entitled under an
- 5 agreement:
- 6 (1) To charge back uncollected collateral; or
- 7 (2) Otherwise to full or limited recourse against the debtor or a secondary
- 8 obligor based on the nonpayment or other default of an account debtor
- 9 or other obligor on the collateral; and
- 10 b. Subsections 2 and 3 do not apply.
- 11 **41-09-18. (9-208) Additional duties of secured party having control of collateral.**
- 12 1. This section applies to cases in which there is no outstanding secured obligation
- 13 and the secured party is not committed to make advances, incur obligations, or
- 14 otherwise give value.
- 15 2. Within ten days after receiving an authenticated demand by the debtor:
- 16 a. A secured party having control of a deposit account or an ~~uncertificated~~
- 17 ~~certificate of deposit~~ under subdivision b of subsection 1 of section 41-09-04
- 18 shall send to the bank with which the deposit account or ~~uncertificated~~
- 19 ~~certificate of deposit~~ is maintained an authenticated statement that releases
- 20 the bank from any further obligation to comply with instructions originated by
- 21 the secured party;
- 22 b. A secured party having control of a deposit account or an ~~uncertificated~~
- 23 ~~certificate of deposit~~ under subdivision c of subsection 1 of section 41-09-04
- 24 shall:
- 25 (1) Pay the debtor the balance on deposit in the deposit account or
- 26 ~~uncertificated certificate of deposit; or~~
- 27 (2) Transfer the balance on deposit into a deposit account or an
- 28 ~~uncertificated certificate of deposit~~ in the debtor's name;
- 29 c. A secured party, other than a buyer, having control of electronic chattel paper
- 30 under section 41-09-05 shall:

- 1 3. The local law of the jurisdiction under whose certificate of title the goods are
2 covered governs perfection, the effect of perfection or nonperfection, and the
3 priority of a security interest in goods covered by a certificate of title from the time
4 the goods become covered by the certificate of title until the goods cease to be
5 covered by the certificate of title.

6 41-09-24. (9-304) Law governing perfection and priority of security interests in
7 deposit accounts or certificates of deposit.

- 8 1. The local law of a bank's jurisdiction governs perfection, the effect of perfection or
9 nonperfection, and the priority of a security interest in a deposit account or
10 certificate of deposit maintained with that bank.
11 2. The following rules determine a bank's jurisdiction for purposes of this part:
12 a. If an agreement between the bank and the debtor governing the deposit
13 account or certificate of deposit expressly provides that a particular
14 jurisdiction is the bank's jurisdiction for purposes of this part, this chapter, or
15 this title, that jurisdiction is the bank's jurisdiction.
16 b. If subdivision a does not apply and an agreement between the bank and its
17 customer governing the deposit account or certificate of deposit expressly
18 provides that the agreement is governed by the law of a particular jurisdiction,
19 that jurisdiction is the bank's jurisdiction.
20 c. If neither subdivision a nor b applies and an agreement between the bank and
21 the bank's customer governing the deposit account or certificate of deposit
22 expressly provides that the deposit account or certificate of deposit is
23 maintained at an office in a particular jurisdiction, that jurisdiction is the bank's
24 jurisdiction.
25 d. If none of the preceding subdivisions applies, the bank's jurisdiction is the
26 jurisdiction in which the office identified in an account statement as the office
27 serving the customer's account is located.
28 e. If none of the preceding subdivisions applies, the bank's jurisdiction is the
29 jurisdiction in which the chief executive office of the bank is located.

30 41-09-25. (9-305) Law governing perfection and priority of security interests in
31 investment property.

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

25 **41-09-31. (9-311) Perfection of security interests in property subject to certain**
26 **statutes, regulations, and treaties.**

- 27 1. Except as otherwise provided in subsection 4, the filing of a financing statement is
28 not necessary or effective to perfect a security interest in property subject to:
 - 29 a. A statute, regulation, or treaty of the United States whose requirements for a
30 security interest's obtaining priority over the rights of a lien creditor with
31 respect to the property preempt subsection 1 of section 41-09-30;

- 1 b. Section 35-01-05.1;
2 c. A certificate-of-title statute of another jurisdiction which provides for a security
3 interest to be indicated on the certificate as a condition or result of the
4 security interest's obtaining priority over the rights of a lien creditor with
5 respect to the property; or
6 ~~Section 35-01-05.1~~
7 2. Compliance with the requirements of a statute, regulation, or treaty described in
8 subsection 1 for obtaining priority over the rights of a lien creditor is equivalent to
9 the filing of a financing statement under this chapter. Except as otherwise
10 provided in subsection 4 and sections 41-09-33 and subsections 4 and 5 of section
11 41-09-36 for goods covered by a certificate of title, a security interest in property
12 subject to a statute, regulation, or treaty described in subsection 1 may be
13 perfected only by compliance with those requirements, and a security interest so
14 perfected remains perfected notwithstanding a change in the use or transfer of
15 possession of the collateral.
16 3. Except as otherwise provided in subsection 4 and subsections 4 and 5 of section
17 41-09-36, duration and renewal of perfection of a security interest perfected by
18 compliance with the requirements prescribed by a statute, regulation, or treaty
19 described in subsection 1 are governed by the statute, regulation, or treaty. In
20 other respects, the security interest is subject to this chapter.
21 4. During any period in which collateral subject to a statute specified in subdivision b
22 of subsection 1 is inventory held for sale or lease by a person or leased by that
23 person as lessor and that person is in the business of selling goods of that kind,
24 this section does not apply to a security interest in that collateral created by that
25 person.
26 41-09-32. (9-312) Perfection of security interests in chattel paper, deposit
27 accounts, documents, goods covered by documents, instruments, investment property,
28 letter-of-credit rights, money, and uncertificated certificates of deposit
29 Perfection by
30 permissive filing - Temporary perfection without filing or transfer of possession.
31 1. A security interest in chattel paper, negotiable documents, instruments, or
 investment property may be perfected by filing.

- 1 2. Except as otherwise provided in subsections 3 and 4 of section 41-09-35 for
2 proceeds:
 - 3 a. A security interest in a deposit account or an uncertificated certificate of
4 deposit may be perfected only by control under section 41-09-34;
 - 5 b. And except as otherwise provided in subsection 4 of section 41-09-28, a
6 security interest in a letter-of-credit right may be perfected only by control
7 under section 41-09-34; and
 - 8 c. A security interest in money or ~~negotiated certificates of deposit~~ may be
9 perfected only by the secured party's taking possession under section
10 41-09-33.
- 11 3. While goods are in the possession of a bailee that has issued a negotiable
12 document covering the goods:
 - 13 a. A security interest in the goods may be perfected by perfecting a security
14 interest in the document; and
 - 15 b. A security interest perfected in the document has priority over any security
16 interest that becomes perfected in the goods by another method during that
17 time.
- 18 4. While goods are in the possession of a bailee that has issued a nonnegotiable
19 document covering the goods, a security interest in the goods may be perfected
20 by:
 - 21 a. Issuance of a document in the name of the secured party;
 - 22 b. The bailee's receipt of notification of the secured party's interest; or
 - 23 c. Filing as to the goods.
- 24 5. A security interest in ~~certificated certificates of deposit~~ certificated securities,
25 negotiable documents, or instruments is perfected without filing or the taking of
26 possession for a period of twenty days from the time it attaches to the extent that it
27 arises for new value given under an authenticated security agreement.
- 28 6. A perfected security interest in a negotiable document or goods in possession of a
29 bailee, other than one that has issued a negotiable document for the goods,
30 remains perfected for twenty days without filing if the secured party makes

1 available to the debtor the goods or documents representing the goods for the
2 purpose of:

3 a. Ultimate sale or exchange; or

4 b. Loading, unloading, storing, shipping, transshipping, manufacturing,
5 processing, or otherwise dealing with them in a manner preliminary to their
6 sale or exchange.

7 7. A perfected security interest in a ~~certificated certificate of deposit~~, certificated
8 security, or instrument remains perfected for twenty days without filing if the
9 secured party delivers the security certificate, ~~certificated certificate of deposit~~ or
10 instrument to the debtor for the purpose of:

11 a. Ultimate sale or exchange; or

12 b. Presentation, collection, enforcement, renewal, or registration of transfer.

13 8. After the twenty-day period specified in subsection 5, 6, or 7 expires, perfection
14 depends upon compliance with this chapter.

15 **41-09-33. (9-313) When possession by or delivery to secured party perfects**
16 **security interest without filing.**

17 1. Except as otherwise provided in subsection 2, a secured party may perfect a
18 security interest in ~~certificated certificates of deposit~~, negotiable documents,
19 goods, instruments, money, or tangible chattel paper by taking possession of the
20 collateral. A secured party may perfect a security interest in certificated securities
21 by taking delivery of the certificated securities under section 41-08-27.

22 2. With respect to goods covered by a certificate of title issued by this state, a
23 secured party may perfect a security interest in the goods by taking possession of
24 the goods only in the circumstances described in subsection 4 of section 41-09-36.

25 3. With respect to collateral other than certificated securities and goods covered by a
26 document, a secured party takes possession of collateral in the possession of a
27 person other than the debtor, the secured party, or a lessee of the collateral from
28 the debtor in the ordinary course of the debtor's business, when:

29 a. The person in possession authenticates a record acknowledging that it holds
30 possession of the collateral for the secured party's benefit; or

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

1. A security interest in investment property, deposit accounts, ~~negotiable~~ ~~certificates of deposit~~, letter-of-credit rights, or electronic chattel paper may be perfected by control of the collateral under section 41-09-04, 41-09-05, 41-09-06, or 41-09-07.
2. A security interest in deposit accounts, electronic chattel paper, letter-of-credit rights, ~~or negotiable certificates of deposit~~ is perfected by control under section 41-09-04, 41-09-05, or 41-09-07 when the secured party obtains control and remains perfected by control only while the secured party retains control.
3. A security interest in investment property is perfected by control under section 41-09-06 from the time the secured party obtains control and remains perfected by control until:
 - a. The secured party does not have control; and
 - b. One of the following occurs:
 - (1) If the collateral is a certificated security, the debtor has or acquires possession of the security certificate;
 - (2) If the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner; or
 - (3) If the collateral is a security entitlement, the debtor is or becomes the entitlement holder.

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

1. Except as otherwise provided in this chapter and in subsection 2 of section 41-02-48:
 - a. A security interest or agricultural lien continues in collateral notwithstanding sale, lease, license, exchange, or other disposition thereof unless the secured party authorized the disposition free of the security interest or agricultural lien; and
 - b. A security interest attaches to any identifiable proceeds of collateral.
2. Proceeds that are commingled with other property are identifiable proceeds:
 - a. If the proceeds are goods, to the extent provided by section 41-09-56; and

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

17 **41-09-37. (9-317) Interests that take priority over or take free of security interest**
18 **or agricultural lien.**

- 19 1. A security interest or an agricultural lien is subordinate to the rights of:
20 a. A person entitled to priority under section 41-09-42; and
21 b. Except as otherwise provided in subsection 5, a person that becomes a lien
22 creditor before the earlier of the time:
23 (1) The security interest or agricultural lien is perfected; or
24 (2) One of the conditions specified in subdivision c of subsection 2 of
25 section 41-09-13 is met and a financing statement covering the
26 collateral is filed.
27 2. Except as otherwise provided in subsection 5, a buyer, other than a secured party,
28 of tangible chattel paper, documents, goods, instruments, or a security certificate
29 takes free of a security interest or agricultural lien if the buyer gives value and
30 receives delivery of the collateral without knowledge of the security interest or
31 agricultural lien and before it is perfected.

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

5 **41-09-40. (9-320) Buyer of goods.**

- 6 1. Except as otherwise provided in subsection 5, a buyer in ordinary course of
7 business, other than a person buying farm products from a person engaged in
8 farming operations, takes free of a security interest created by the buyer's seller,
9 even if the security interest is perfected and the buyer knows of its existence. ~~A~~
10 ~~crop or livestock buyer is a buyer in the ordinary course of business as to security~~
11 ~~interests and agricultural liens if the buyer qualifies under subsection 9. As used in~~
12 ~~this section, a crop or livestock buyer is a person who buys crops or livestock from~~
13 ~~or who sells crops or livestock on a fee or commission for, a person engaged in~~
14 ~~farming operations.~~
- 15 2. Except as otherwise provided in subsection 5, a buyer of goods from a person who
16 used or bought the goods for use primarily for personal, family, or household
17 purposes takes free of a security interest, even if perfected, if the buyer buys:
18 a. Without knowledge of the security interest;
19 b. For value;
20 c. Primarily for the buyer's personal, family, or household purposes; and
21 d. Before the filing of a financing statement covering the goods.
- 22 3. To the extent that it affects the priority of a security interest over a buyer of goods
23 under subsection 2, the period of effectiveness of a filing made in the jurisdiction in
24 which the seller is located is governed by subsections 1 and 2 of section 41-09-36.
- 25 4. A buyer in ordinary course of business buying oil, gas, or other minerals at the
26 wellhead or minehead or after extraction takes free of an interest arising out of an
27 encumbrance.
- 28 5. Subsections 1 and 2 do not affect a security interest in goods in the possession of
29 the secured party under section 41-09-33.
- 30 6. If a secured party who has perfected a security interest in crops or livestock, or if a
31 lienholder who has created a lien by statute or otherwise, which includes

1 agricultural liens, intends to impose liability for the security interest or lien against a
2 crop or livestock buyer, the name of the secured party or lienholder must appear
3 on the most current list distributed by the secretary of state pursuant to section 34
4 of this Act. In order to appear on the list, secured parties or lienholders must file
5 with the secretary of state or in the office of the register of deeds in any county in
6 this state a form prescribed by the secretary of state which contains the
7 information prescribed by the secretary of state under section 41-09-92 or
8 contained on a form prescribed by the secretary of state under section 35-17-04,
9 35-30-02, or 35-31-02.

- 10 7. When a crop or livestock buyer issues a check or draft to a person engaged in
11 farming operations in payment for crops or livestock in order to take free of security
12 interests or liens against such crops or livestock, the crop or livestock buyer must
13 issue the check or draft for payment jointly to the person engaged in farming
14 operations and those secured parties or lienholders who have a security interest or
15 lien in the crops or livestock sold and whose names appear on the most current list
16 or lists distributed by the secretary of state at the time the check or draft is issued.
17 A claim for relief may not be commenced by a secured party or lienholder against
18 a crop or livestock buyer for a loss incurred as a result of issuing a check or draft
19 after January 1, 1986, which does not include the name of a secured party or
20 lienholder under this section more than eighteen months after the date of the
21 check or draft unless within the eighteen-month period the secured party or
22 lienholder sends a notice as provided under this section, but in no event can the
23 action be commenced more than five years after the date of the check or draft.

24 The notice must:

- 25 a. Be sent by certified mail to, or personally served upon, the crop or livestock
26 buyer;
27 b. Name the person engaged in farming operations and the date of the check or
28 draft that gives rise to the claim;
29 c. State the intention of the secured party or lienholder to make a claim;
30 d. State the amount the secured party or lienholder is claiming;

1. e. Give a description of and the amount of crops or livestock upon which the
2. claim is based; and
3. f. State that the secured party or lienholder has commenced an action seeking
4. judgment against the person engaged in farming operations or such person
5. has filed or has been placed in bankruptcy or receivership proceedings under
6. chapter 32-10.
7. 8. A complaint by a secured party or lienholder may not be filed or served against a
8. crop or livestock buyer for collection of any loss sustained by the secured party or
9. lienholder through any transaction filed pursuant to subsection 6 until:
10. a. A judgment has been obtained and a good-faith effort made to collect that
11. judgment against the person engaged in farming operations, or that
12. proceedings against the person engaged in farming operations were stayed
13. by federal bankruptcy proceedings, or that receivership proceedings have
14. been commenced under chapter 32-10;
15. b. Within eighteen months following the date of the check or draft, the notice
16. required to be sent pursuant to subsection 7 was served upon the crop or
17. livestock buyer and reciting or incorporating by reference all the information
18. contained in that notice; and
19. c. A list is made of any other collateral taken by the secured party or lienholder
20. as security on the same debt from the person engaged in farming operations,
21. including a statement of value, status, and plans for application of such
22. collateral to the indebtedness of the person engaged in farming operations.
23. 9. A crop or livestock buyer takes free of any security interest created by, or any lien
24. against crops or livestock of, the person engaged in farming operations if:
25. a. The crop or livestock buyer has complied with the requirements of
26. subsection 7;
27. b. Evidence of security interests or liens does not appear on the most current list
28. prepared and distributed by the secretary of state pursuant to sections 33 and
29. 34 of this Act; or

1. The name of the person represented to be the seller of the crops or livestock
2. does not appear on the most current list prepared and distributed pursuant to
3. sections 33 and 34 of this Act.

4. 41-09-41. (9-321) Licensee of general intangible and lessee of goods in ordinary
5. course of business.

6. 1. In this section, "licensee in ordinary course of business" means a person that
7. becomes a licensee of a general intangible in good faith, without knowledge that
8. the license violates the rights of another person in the general intangible, and in
9. the ordinary course from a person in the business of licensing general intangibles
10. of that kind. A person becomes a licensee in the ordinary course if the license to
11. the person comports with the usual or customary practices in the kind of business
12. in which the licensor is engaged or with the licensor's own usual or customary
13. practices.
14. 2. A licensee in ordinary course of business takes its rights under a nonexclusive
15. license free of a security interest in the general intangible created by the licensor,
16. even if the security interest is perfected and the licensee knows of its existence.
17. 3. A lessee in ordinary course of business takes its leasehold interest free of a
18. security interest in the goods created by the lessor, even if the security interest is
19. perfected and the lessee knows of its existence.

20. 41-09-42. (9-322) Priorities among conflicting security interests in and
21. agricultural liens on same collateral.

22. 1. Except as otherwise provided in this section, priority among conflicting security
23. interests and agricultural liens in the same collateral is determined according to the
24. following rules:
25. a. Conflicting perfected security interests and agricultural liens rank according to
26. priority in time of filing or perfection. Priority dates from the earlier of the time
27. a filing covering the collateral is first made or the security interest or
28. agricultural lien is first perfected, if there is no period thereafter when there is
29. neither filing nor perfection.
30. b. A perfected security interest or agricultural lien has priority over a conflicting
31. unperfected security interest or agricultural lien.

1 c. Section 41-05-18 with respect to a security interest of an issuer or nominated
2 person; and

3 d. Section 41-09-10 with respect to a security interest arising under chapter
4 41-02 or 41-02.1.

5 7. A perfected agricultural lien on collateral has priority over ~~the rights of a~~
6 ~~person~~ and over a conflicting security interest in or agricultural lien on the
7 same collateral if the statute creating the agricultural lien so provides.

8 **41-09-43. (9-323) Future advances.**

9 1. Except as otherwise provided in subsection 3, for purposes of determining the
10 priority of a perfected security interest under subdivision a of subsection 1 of
11 section 41-09-42, perfection of the security interest dates from the time an
12 advance is made to the extent that the security interest secures an advance that:

13 a. Is made while the security interest is perfected only;

14 (1) Under section 41-09-29 when it attaches; or

15 (2) Temporarily under subsection 5, 6, or 7 of section 41-09-32; and

16 b. Is not made pursuant to a commitment entered into before or while the
17 security interest is perfected by a method other than under section 41-09-29
18 or subsection 5, 6, or 7 of section 41-09-32.

19 2. Except as otherwise provided in subsection 3, a security interest is subordinate to
20 the rights of a person that becomes a lien creditor to the extent that the security
21 interest secures an advance made more than forty-five days after the person
22 becomes a lien creditor unless the advance is made:

23 a. Without knowledge of the lien; or

24 b. Pursuant to a commitment entered into without knowledge of the lien.

25 3. Subsections 1 and 2 do not apply to a security interest held by a secured party that
26 is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or
27 a consignor.

28 4. Except as otherwise provided in subsection 5, a buyer of goods other than a buyer
29 in ordinary course of business takes free of a security interest to the extent that it
30 secures advances made after the earlier of:

31 a. The time the secured party acquires knowledge of the buyer's purchase; or

- a. Otherwise would have priority solely under subsection 1 of section 41-09-42 or section 41-09-44; or
- b. Arose solely under subsection 3 of section 41-02-90 or subsection 5 of section 41-02.1-56.

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

1. Subject to subsection 2, a security interest created by a new debtor which is perfected by a filed financing statement that is effective solely under section 41-09-79 in collateral in which a new debtor has or acquires rights is subordinate to a security interest in the same collateral which is perfected other than by a filed financing statement that is effective solely under section 41-09-79.
2. The other provisions of this part determine the priority among conflicting security interests in the same collateral perfected by filed financing statements that are effective solely under section 41-09-79. However, if the security agreements to which a new debtor became bound as debtor were not entered into by the same original debtor, the conflicting security interests rank according to priority in time of the new debtor's having become bound.

41-09-47. (9-327) Priority of security interests in deposit account and uncertificated certificate of deposit. The following rules govern priority among conflicting security interests in the same deposit account or ~~uncertificated certificate of deposit~~:

1. A security interest held by a secured party having control of the deposit account or ~~uncertificated certificate of deposit~~ under section 41-09-04 has priority over a conflicting security interest held by a secured party that does not have control.
2. Except as otherwise provided in subsections 3 and 4, security interests perfected by control under section 41-09-34 rank according to priority in time of obtaining control.
3. Except as otherwise provided in subsection 4, a security interest held by the bank with which the deposit account or ~~uncertificated certificate of deposit~~ is maintained has priority over a conflicting security interest held by another secured party.
4. A security interest perfected by control under subdivision c of subsection 1 of section 41-09-04 has priority over a security interest held by the bank with which the deposit account or ~~uncertificated certificate of deposit~~ is maintained.

- 1 6. A security interest in fixtures, whether or not perfected, has priority over a
- 2 conflicting interest of an encumbrancer or owner of the real property if:
- 3 a. The encumbrancer or owner has, in an authenticated record, consented to
- 4 the security interest or disclaimed an interest in the goods as fixtures; or
- 5 b. The debtor has a right to remove the goods as against the encumbrancer or
- 6 owner.
- 7 7. The priority of the security interest under subdivision b of subsection 6 continues
- 8 for a reasonable time if the debtor's right to remove the goods as against the
- 9 encumbrancer or owner terminates.
- 10 8. A mortgage is a construction mortgage to the extent that it secures an obligation
- 11 incurred for the construction of an improvement on land, including the acquisition
- 12 cost of the land, if a recorded record of the mortgage so indicates. Except as
- 13 otherwise provided in subsections 5 and 6, a security interest in fixtures is
- 14 subordinate to a construction mortgage if a record of the mortgage is recorded
- 15 before the goods become fixtures and the goods become fixtures before the
- 16 completion of the construction. A mortgage has this priority to the same extent as
- 17 a construction mortgage to the extent that it is given to refinance a construction
- 18 mortgage.
- 19 9. A perfected security interest in crops growing on real property has priority over a
- 20 conflicting interest of an encumbrancer or owner of the real property if the debtor
- 21 has an interest of record in or is in possession of the real property.
- 22 ~~10. Subsection 9 prevails over any inconsistent provisions of section 47-16-03.~~
- 23 **41-09-55. (9-335) Accessions.**
- 24 1. A security interest may be created in an accession and continues in collateral that
- 25 becomes an accession.
- 26 2. If a security interest is perfected when the collateral becomes an accession, the
- 27 security interest remains perfected in the collateral.
- 28 3. Except as otherwise provided in subsection 4, the other provisions of this part
- 29 determine the priority of a security interest in an accession.

- 1 a. A security interest that is perfected under subsection 4 has priority over a
- 2 security interest that is unperfected at the time the collateral becomes
- 3 commingled goods.
- 4 b. If more than one security interest is perfected under subsection 4, the security
- 5 interests rank equally in proportion to the value of the collateral at the time it
- 6 became commingled goods.

7 **41-09-57. (9-337) Priority of security interests in goods covered by certificate of**
8 **title.** If, while a security interest in goods is perfected by any method under the law of another
9 jurisdiction, this state issues a certificate of title that does not show that the goods are subject
10 to the security interest or contain a statement that they may be subject to security interests not
11 shown on the certificate;

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

20 **41-09-58. (9-338) Priority of security interest perfected by filing financing**
21 **statement providing certain incorrect information.** If a security interest is perfected by a
22 filed financing statement providing information described in subdivision e of subsection 2 of
23 section 41-09-87 which is incorrect at the time the financing statement is filed;

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

Remove
reference to
"eg. lease"

1 41-09-59. (9-339) Priority subject to subordination. This chapter does not preclude
2 subordination by agreement by a person entitled to priority.

3 41-09-60. (9-340) Effectiveness of right of recoupment or set-off against deposit
4 account or certificate of deposit.

5 1. Except as otherwise provided in subsection 3, a bank with which a deposit account
6 or certificate of deposit is maintained may exercise any right of recoupment or
7 set-off against a secured party that holds a security interest in the deposit account
8 or certificate of deposit.

9 2. Except as otherwise provided in subsection 3, the application of this chapter to a
10 security interest in a deposit account or certificate of deposit does not affect a right
11 of recoupment or set-off of the secured party as to a deposit account or certificate
12 of deposit maintained with the secured party.

13 3. The exercise by a bank of a set-off against a deposit account or certificate of
14 deposit is ineffective against a secured party that holds a security interest in the
15 deposit account or certificate of deposit which is perfected by control under
16 subdivision c of subsection 1 of section 41-09-04, if the set-off is based on a claim
17 against the debtor.

18 41-09-61. (9-341) Bank's rights and duties with respect to deposit account or
19 certificate of deposit. Except as otherwise provided in subsection 3 of section 41-09-60, and
20 unless the bank otherwise agrees in an authenticated record, a bank's rights and duties with
21 respect to a deposit account or certificate of deposit maintained with the bank are not
22 terminated, suspended, or modified by:

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

27 41-09-62. (9-342) Bank's right to refuse to enter into or disclose existence of
28 control agreement. This chapter does not require a bank to enter into an agreement of the
29 kind described in subdivision b of subsection 1 of section 41-09-04, even if its customer so
30 requests or directs. A bank that has entered into such an agreement is not required to confirm
31 the existence of the agreement to another person unless requested to do so by its customer.

- 1 creation, attachment, perfection, or enforcement of a security interest in, the
2 account, chattel paper, payment intangible, or promissory note; or
3 b. Provides that the assignment or transfer or the creation, attachment,
4 perfection, or enforcement of the security interest may give rise to a default,
5 breach, right of recoupment, claim, defense, termination, right of termination,
6 or remedy under the account, chattel paper, payment intangible, or
7 promissory note.
8 5. Subsection 4 does not apply to the sale of a payment intangible or promissory
9 note.
10 6. Except as otherwise provided in sections 41-02.1-33 and 41-09-69 and subject to
11 subsections 8 and 9, a rule of law, statute, or regulation that prohibits, restricts, or
12 requires the consent of a government, governmental body or official, or account
13 debtor to the assignment or transfer of, or creation of a security interest in, an
14 account or chattel paper is ineffective to the extent that the rule of law, statute, or
15 regulation:
16 a. Prohibits, restricts, or requires the consent of the government, governmental
17 body or official, or account debtor to the assignment or transfer of, or the
18 creation, attachment, perfection, or enforcement of a security interest in the
19 account or chattel paper; or
20 b. Provides that the assignment, transfer, creation, attachment, perfection, or
21 enforcement of the security interest may give rise to a default, breach, right of
22 recoupment, claim, defense, termination, right of termination, or remedy
23 under the account or chattel paper.
24 7. Subject to subsection 8, an account debtor may not waive or vary its option under
25 subdivision c of subsection 2.
26 8. This section is subject to law other than this chapter which establishes a different
27 rule for an account debtor who is an individual and who incurred the obligation
28 primarily for personal, family, or household purposes.
29 9. This section does not apply to an assignment of a health care insurance
30 receivable.

Removed subsection 10

- 1 a. Is not enforceable against the person obligated on the promissory note or the
2 account debtor;
3 b. Does not impose a duty or obligation on the person obligated on the
4 promissory note or the account debtor;
5 c. Does not require the person obligated on the promissory note or the account
6 debtor to recognize the security interest, pay or render performance to the
7 secured party, or accept payment or performance from the secured party;
8 d. Does not entitle the secured party to use or assign the debtor's rights under
9 the promissory note, health care insurance receivable, or general intangible,
10 including any related information or materials furnished to the debtor in the
11 transaction giving rise to the promissory note, health care insurance
12 receivable, or general intangible;
13 e. Does not entitle the secured party to use, assign, possess, or have access to
14 any trade secrets or confidential information of the person obligated on the
15 promissory note or the account debtor; and
16 f. Does not entitle the secured party to enforce the security interest in the
17 promissory note, health care insurance receivable, or general intangible.

Removed
subsection 5
18 **41-09-71. (9-409) Restrictions on assignment of letter-of-credit rights ineffective.**

- 19 1. A term in a letter of credit or a rule of law, statute, regulation, custom, or practice
20 applicable to the letter of credit which prohibits, restricts, or requires the consent of
21 an applicant, issuer, or nominated person to a beneficiary's assignment of or
22 creation of a security interest in a letter-of-credit right is ineffective to the extent
23 that the term or rule of law, statute, regulation, custom, or practice:
24 a. Would impair the creation, attachment, or perfection of a security interest in
25 the letter-of-credit right; or
26 b. Provides that the assignment, creation, attachment, or perfection of the
27 security interest may give rise to a default, breach, right of recoupment, claim,
28 defense, termination, right of termination, or remedy under the letter-of-credit
29 right.
30 2. To the extent that a term in a letter of credit is ineffective under subsection 1 but
31 would be effective under law other than this chapter or a custom or practice

1 applicable to the letter of credit, to the transfer of a right to draw or otherwise
2 demand performance under the letter of credit, or to the assignment of a right to
3 proceeds of the letter of credit, the creation, attachment, or perfection of a security
4 interest in the letter-of-credit right;

- 5 a. Is not enforceable against the applicant, issuer, nominated person, or
6 transferee beneficiary;
7 b. Imposes no duties or obligations on the applicant, issuer, nominated person,
8 or transferee beneficiary; and
9 c. Does not require the applicant, issuer, nominated person, or transferee
10 beneficiary to recognize the security interest, pay or render performance to
11 the secured party, or accept payment or other performance from the secured
12 party.

13 **41-09-72. (9-501) Filing office.**

14 1. Except as otherwise provided in subsection 2, if the local law of this state governs
15 perfection of a security interest or agricultural lien, the office in which to file a
16 financing statement to perfect the security interest or agricultural lien is:

- 17 a. The office designated for the filing or recording of a record of a mortgage on
18 the related real property, if:
19 (1) The collateral is as-extracted collateral or timber to be cut; or
20 (2) The financing statement is filed as a fixture filing and the collateral is
21 goods that are or are to become fixtures; or
22 b. The office of the register of deeds in any county in this state or in the office of
23 the secretary of state, in all other cases, including a case in which the
24 collateral is goods that are or are to become fixtures and the financing
25 statement is not filed as a fixture filing.

26 2. The office in which to file a financing statement to perfect a security interest in
27 collateral, including fixtures, of a transmitting utility is the office of the secretary of
28 state. The financing statement also constitutes a fixture filing as to the collateral
29 indicated in the financing statement which is or is to become fixtures.

30 **41-09-73. (9-502) Contents of financing statement - Record of mortgage as**
31 **financing statement - Time of filing financing statement - ~~Contents of financing statement~~**

- 1 1. Subject to subsection 2, a financing statement is sufficient only if the statement:
 - 2 a. Provides the name of the debtor;
 - 3 b. Provides the name of the secured party or a representative of the secured
 - 4 party;
 - 5 c. Indicates the collateral covered by the financing statement;
 - 6 ~~d. If it is a financing statement that is to be filed to gain protection under the~~
 - 7 central notice system, includes a reasonable description of the property,
 - 8 including the county in which the property is located, and any other additional
 - 9 information required by the Food Security Act of 1985 (Pub. L. 99-198; Stat.
 - 10 1535, 7 U.S.C., 1631), as prescribed by the secretary of state, and, to be a
 - 11 sufficient a financing statement must include the social security number or
 - 12 federal tax identification number of the debtor, the name and address of the
 - 13 secured party, and unless electronically filed, the signatures of the debtor and
 - 14 secured parties;
 - 15 ~~e. Provides the social security or federal tax identification number of the debtor;~~
 - 16 f. Provides a mailing address for the secured party; and
 - 17 ~~g. Provides a mailing address for the debtor;~~
- 18 2. Except as otherwise provided in subsection 2 of section 41-09-72, to be sufficient,
- 19 a financing statement that covers as-extracted collateral or timber to be cut, or
- 20 which is filed as a fixture filing and covers goods that are or are to become fixtures,
- 21 must satisfy subsection 1 and also:
 - 22 a. Indicate that it covers this type of collateral;
 - 23 b. Indicate that it is to be filed for record in the real-property records;
 - 24 c. Provide a description of the real property to which the collateral is related
 - 25 sufficient to give constructive notice of a mortgage under the law of this state
 - 26 if the description were contained in a record of the mortgage of the real
 - 27 property; and
 - 28 d. If the debtor does not have an interest of record in the real property, provide
 - 29 the name of a record owner.

- 1 3. A record of a mortgage is effective, from the date of recording, as a financing
2 statement filed as a fixture filing or as a financing statement covering as-extracted
3 collateral or timber to be cut only if:
4 a. The record indicates the goods or accounts that it covers;
5 b. The goods are or are to become fixtures related to the real property described
6 in the record or the collateral is related to the real property described in the
7 record and is as-extracted collateral or timber to be cut;
8 c. The record satisfies the requirements for a financing statement in this section
9 other than an indication that it is to be filed in the real-property records; and
10 d. The record is duly recorded.

- 11 4. A financing statement may be filed before a security agreement is made or a
12 security interest otherwise attaches.

13 ~~5. A financing statement filed to gain protection under the central notice system must~~
14 ~~be amended within three months of a material change to reflect that change. The~~
15 ~~amended financing statement must be signed by both the debtor and secured~~
16 ~~party and filed in the same manner as the original financing statement. An~~
17 ~~electronically filed amendment does not need to be signed.~~

18 ~~6. Effective January 1, 2009, any social security number or federal tax identification~~
19 ~~number submitted under subsection 1 is not a public record and may not be~~
20 ~~disclosed as part of any search under section 41-09-94 or 41-09-96 or as part of a~~
21 ~~search of the record.~~

22 41-09-74. (9-503) Name of debtor and secured party.

- 23 1. A financing statement sufficiently provides the name of the debtor:
24 a. If the debtor is a registered organization, only if the financing statement
25 provides the name of the debtor indicated on the public record of the debtor's
26 jurisdiction of organization which shows the debtor to have been organized;
27 b. If the debtor is a decedent's estate, only if the financing statement provides
28 the name of the decedent and indicates that the debtor is an estate;
29 c. If the debtor is a trust or a trustee acting with respect to property held in trust,
30 only if the financing statement;

1 filed. The filing office shall notify the secured party of a filing under this

2 subsection.

- 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 1. Subject to section 41-09-80, a person may add or delete collateral covered by,
29 continue or terminate the effectiveness of, or, subject to subsection 5, otherwise
30 amend the information provided in, a financing statement by filing an amendment
31 that:

- 1 a. Identifies, by its file number, the initial financing statement to which the
- 2 amendment relates; and
- 3 b. If the amendment relates to an initial financing statement filed or recorded in a
- 4 filing office described in subdivision a of subsection 1 of section 41-09-72,
- 5 provides the information specified in subsection 2 of section 41-09-73.
- 6 2. Except as otherwise provided in section 41-09-86, the filing of an amendment does
- 7 not extend the period of effectiveness of the financing statement.
- 8 3. A financing statement that is amended by an amendment that adds collateral is
- 9 effective as to the added collateral only from the date of the filing of the
- 10 amendment.
- 11 4. A financing statement that is amended by an amendment that adds a debtor is
- 12 effective as to the added debtor only from the date of the filing of the amendment.
- 13 5. An amendment is ineffective to the extent it:
- 14 a. Purports to delete all debtors and fails to provide the name of a debtor to be
- 15 covered by the financing statement; or
- 16 b. Purports to delete all secured parties of record and fails to provide the name
- 17 of a new secured party of record.

18 **41-09-84. Termination statement - Remedies - Fees.**

- 19 1. If a financing statement covering consumer goods is filed after December 31,
- 20 1973, then within one month or within ten days following written demand by the
- 21 debtor after there is no outstanding secured obligation and no commitment to
- 22 make advances, incur obligations, or otherwise give value, the secured party shall
- 23 file with each filing officer with whom the financing statement was filed, a
- 24 termination statement to the effect that the secured party no longer claims a
- 25 security interest under the financing statement, which must be identified by file
- 26 number. In other cases when there is no outstanding secured obligation and no
- 27 written commitment between the secured party and the debtor to make advances,
- 28 incur obligations, or otherwise give value, the secured party, unless requested by
- 29 the debtor in writing to continue the filing, must send to each filing officer with
- 30 whom the financing statement was filed, a termination statement to the effect that
- 31 the secured party no longer claims a security interest under the financing

1 statement nor under the central notice system, which shall be identified by file
2 number. A termination statement submitted by a person other than the secured
3 party of record must be accompanied by a separate written statement of
4 assignment complying with section 41-09-85, including payment of the required
5 fee, if any. If the affected secured party fails to file a termination statement as
6 required by this subsection within sixty days of when the secured obligation is fully
7 satisfied, and the debtor has not requested in writing that the filing be continued,
8 then under section 41-09-120 the secured party is liable to the debtor for one
9 hundred dollars and for any loss caused to the debtor by such failure. The debtor's
10 written request for a filing to be continued may be made at any time and be
11 effective under this section. If the affected secured party fails to file a termination
12 statement within ten days after proper written demand by the debtor, then under
13 section 41-09-120 the secured party is liable to the debtor for one hundred dollars
14 and for any loss caused to the debtor by such failure.

- 15 2. On presentation to the filing officer of a termination statement, the filing officer shall
16 note the termination statement in the index. If the filing officer receives the
17 termination statement in duplicate, the filing officer shall return one copy of the
18 termination statement to the secured party stamped to show the time of receipt of
19 the termination statement. If the filing officer has a microfilm or other photographic
20 record or an optical disk of the financing statement, and of any related continuation
21 statement, statement of assignment, and statement of release, the filing officer
22 may remove the originals from the files at any time after receipt of the termination
23 statement, or if the filing officer has no such record, the filing officer may remove
24 the originals from the files at any time after one year after receipt of the termination
25 statement.
- 26 3. The fee for filing and indexing a termination statement, including sending or
27 delivering the financing statement, is five dollars. For any financing statement filed
28 after April 8, 1991, the fee must be paid at the time the fee for filing the financing
29 statement is paid.

30 41-09-85. (9-514) Assignment of powers of secured party of record.

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Legislative Assembly

- 1 1. Except as otherwise provided in subsection 3, an initial financing statement may
2 reflect an assignment of all of the secured party's power to authorize an
3 amendment to the financing statement by providing the name and mailing address
4 of the assignee as the name and address of the secured party.
- 5 2. Except as otherwise provided in subsection 3, a secured party of record may
6 assign of record all or part of its power to authorize an amendment to a financing
7 statement by filing in the filing office an amendment of the financing statement
8 which:
 - 9 a. Identifies, by its file number, the initial financing statement to which it relates;
 - 10 b. Provides the name of the assignor; and
 - 11 c. Provides the name and mailing address of the assignee.
- 12 3. An assignment of record of a security interest in a fixture covered by a record of a
13 mortgage which is effective as a financing statement filed as a fixture filing under
14 subsection 3 of section 41-09-73 may be made only by an assignment of record of
15 the mortgage in the manner provided by law of this state other than this title.

16 **41-09-86. (9-515) Duration and effectiveness of financing statement - Effect of**
17 **lapsed financing statement.**

- 18 1. Except as otherwise provided in subsections 5, 6, and 7, a filed financing
19 statement is effective for a period of five years after the date of filing.
- 20 2. ~~(Repealed)~~
- 21 3. The effectiveness of a filed financing statement lapses on the expiration of the
22 period of its effectiveness unless before the lapse a continuation statement is filed
23 pursuant to subsection 4. Upon lapse, a financing statement ceases to be
24 effective and any security interest or agricultural lien that was perfected by the
25 financing statement becomes unperfected, unless the security interest is perfected
26 otherwise. If the security interest or agricultural lien becomes unperfected upon
27 lapse, it is deemed never to have been perfected as against a purchaser of the
28 collateral for value.
- 29 4. A continuation statement may be filed only within six months before the expiration
30 of the five-year period specified in subsection 1.

1 ~~"44 The record does not contain the social security number or the federal tax~~
2 ~~"identification number of the debtor."~~

3 3. For purposes of subsection 2:

4 a. A record does not provide information if the filing office is unable to read or
5 decipher the information; and

6 b. A record that does not indicate that it is an amendment or identify an initial
7 financing statement to which it relates, as required by section 41-09-83,
8 41-09-85, or 41-09-89, is an initial financing statement.

9 4. A record that is communicated to the filing office with tender of the filing fee, but
10 which the filing office refuses to accept for a reason other than one set forth in
11 subsection 2, is effective as a filed record except as against a purchaser of the
12 collateral which gives value in reasonable reliance upon the absence of the record
13 from the files.

14 41-09-88. (9-517) Effect of indexing errors. The failure of the filing office to index a
15 record correctly does not affect the effectiveness of the filed record.

16 41-09-89. (9-518) Claim concerning inaccurate or wrongfully filed record.

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

20 2. A correction statement must:

21 a. Identify the record to which it relates by the file number assigned to the initial
22 financing statement to which the record relates;

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

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

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

30 41-09-90. (9-519) Numbering, maintaining, and indexing records - Communicating
31 information provided in records.

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- 1 a. Note upon the copy the number assigned to the record pursuant to
2 subdivision a of subsection 1 of section 41-09-90 and the date and time of the
3 filing of the record; and
- 4 b. Send the copy to the person.
- 5 2. If a person files a record other than a written record, the filing office shall
6 communicate to the person an acknowledgment that provides:
 - 7 a. The information in the record;
 - 8 b. The number assigned to the record pursuant to subdivision a of subsection 1
9 of section 41-09-90; and
 - 10 c. The date and time of the filing of the record.
- 11 3. The filing office shall communicate or otherwise make available in a record the
12 following information to any person that requests it:
 - 13 a. Whether there is on file on a date and time specified by the filing office, but
14 not a date earlier than three business days before the filing office receives the
15 request, any verified statement of an agricultural lien created under
16 ~~chapter 35-17, 35-30, or 35-31~~ of any financing statement that:
 - 17 (1) Designates a particular debtor or, if the request so states, designates a
18 particular debtor at the address specified in the request;
 - 19 (2) Has not lapsed under section 41-09-86 with respect to all secured
20 parties of record; and
 - 21 (3) ~~Effective January 1, 2002~~ If the request so states, has lapsed under
22 section 41-09-86 and a record of which is maintained by the filing office
23 under subsection 1 of section 41-09-93;
 - 24 b. The date and time of filing of each verified statement and each financing
25 statement; and
 - 26 c. The information provided in each verified statement and each financing
27 statement.
- 28 4. In complying with its duty under subsection 3, the filing office may communicate
29 information in any medium. However, if requested, the filing office shall
30 communicate information by issuing a written certificate.

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1 5. The filing office shall perform the acts required by subsections 1 through 4 at the
2 time and in the manner prescribed by filing-office rule, but not later than two
3 business days after the filing office receives the request.

4 6. At least weekly, the secretary of state shall offer to sell or license to the public on a
5 nonexclusive basis, in bulk, copies of all records filed in it under this part, in every
6 medium from time to time filed within the central indexing system.

7 **41-09-95. (9-524) Delay by filing office.** Delay by the filing office beyond a time limit
8 prescribed by this part is excused if:

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

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

13 **41-09-96. (9-525) Fees.**

14 1. The fee for filing and indexing an original statement under this title, fifteen dollars
15 plus one dollar per additional page. An additional fee may not be charged for the
16 same statement to gain protection under the central notice system.

17 2. The fee for filing and indexing an amendment, continuation, assignment, release,
18 or subordination under this title, ten dollars plus one dollar per additional page. An
19 additional fee may not be charged for the same document to gain protection under
20 the central notice system.

21 3. A fee may not be charged for responding to a request for information from the filing
22 office communicating whether there is on file any financing statement or verified
23 statement naming a particular debtor.

24 4. The fee for a filing office providing information on specific filings on a particular
25 debtor, including listing up to four lines of collateral covered by each filing, is seven
26 dollars per debtor for the first five entries, plus two dollars for each additional five
27 entries or fraction thereafter.

28 5. The fee for a filing office providing copies of each filing for a particular debtor is
29 seven dollars per debtor plus two dollars per page for each page over three pages.

30 6. The fee for a filing office providing certified copies of filings on a particular debtor is
31 seven dollars plus one dollar per page for attachments.

1 ~~Two fees collected by the secretary of state pursuant to this chapter must be~~
2 ~~deposited in the general fund in the state treasury, except the fees collected under~~
3 ~~subsection 6 of section 41-09-94, must be deposited in the secretary of state's~~
4 ~~general services operating fund.~~

5 41-09-97. (9-526) Rules. The secretary of state shall adopt and publish rules to
6 implement this chapter. The rules must be:

- 7 1. Consistent with this chapter; and
8 2. Adopted and published in accordance with chapter 28-32.

9 41-09-98. (9-601) Rights after default - Judicial enforcement - Consignor or buyer
10 of accounts, chattel paper, payment intangibles, or promissory notes.

- 11 1. After default, a secured party has the rights provided in this part and, except as
12 otherwise provided in section 41-09-99, those provided by agreement of the
13 parties. A secured party:

- 14 a. May reduce a claim to judgment, foreclose, or otherwise enforce the claim,
15 security interest, or agricultural lien by any available judicial procedure; and
16 b. If the collateral is documents, may proceed either as to the documents or as
17 to the goods they cover.

- 18 2. A secured party in possession of collateral or control of collateral under section
19 41-09-04, 41-09-05, 41-09-06, or 41-09-07 has the rights and duties provided in
20 section 41-09-17.

- 21 3. The rights under subsections 1 and 2 are cumulative and may be exercised
22 simultaneously.

- 23 4. Except as otherwise provided in subsection 7 and section 41-09-102, after default,
24 a debtor and an obligor have the rights provided in this part and by agreement of
25 the parties.

- 26 5. If a secured party has reduced its claim to judgment, the lien of any levy that may
27 be made upon the collateral by virtue of an execution based upon the judgment
28 relates back to the earliest of:

- 29 a. The date of perfection of the security interest or agricultural lien in the
30 collateral;

- 31 b. The date of filing a financing statement covering the collateral; or

Remove
subsection 9

- 1 8. Subsection 6 of section 41-09-111, which deals with calculation of a deficiency or
- 2 surplus when a disposition is made to the secured party, a person related to the
- 3 secured party, or a secondary obligor;
- 4 9. Sections 41-09-115 through 41-09-117, which deal with acceptance of collateral in
- 5 satisfaction of obligation;
- 6 10. Section 41-09-118, which deals with redemption of collateral;
- 7 11. Section 41-09-119, which deals with permissible waivers; and
- 8 12. Sections 41-09-120 and 41-09-121, which deal with the secured party's liability for
- 9 failure to comply with this chapter.
- 10 41-09-100. (9-603) Agreement on standards concerning rights and duties.
- 11 1. The parties may determine by agreement the standards measuring the fulfillment
- 12 of the rights of a debtor or obligor and the duties of a secured party under a rule
- 13 stated in section 41-09-99 if the standards are not manifestly unreasonable.
- 14 2. Subsection 1 does not apply to the duty under section 41-09-106 to refrain from
- 15 breaching the peace.
- 16 41-09-101. (9-604) Procedure if security agreement covers real property or
- 17 fixtures.
- 18 1. If a security agreement covers both personal and real property, a secured party
- 19 may proceed:
- 20 a. Under this part as to the personal property without prejudicing any rights with
- 21 respect to the real property; or
- 22 b. As to both the personal property and the real property in accordance with the
- 23 rights with respect to the real property, in which case the other provisions of
- 24 this part do not apply.
- 25 2. Subject to subsection 3, if a security agreement covers goods that are or become
- 26 fixtures, a secured party may proceed:
- 27 a. Under this part; or
- 28 b. In accordance with the rights with respect to real property, in which case the
- 29 other provisions of this part do not apply.
- 30 3. Subject to the other provisions of this part, if a secured party holding a security
- 31 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 **41-09-102. (9-605) Unknown debtor or secondary obligor. A secured party does**
12 not 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 **41-09-103. (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 ~~41-09-104. (9-607) Collection and enforcement by secured party.~~

25 **41-09-104. (9-607) Collection and enforcement by secured party.**

- 26 1. If so agreed, and in any event after default, a secured party:
27 a. May notify an account debtor or other person obligated on collateral to make
28 payment or otherwise render performance to or for the benefit of the secured
29 party;
30 b. May take any proceeds to which the secured party is entitled under section
31 41-09-35;

- c. May enforce the obligations of an account debtor or other person obligated on collateral and exercise the rights of the debtor with respect to the obligation of the account debtor or other person obligated on collateral to make payment or otherwise render performance to the debtor, and with respect to any property that secures the obligations of the account debtor or other person obligated on the collateral;
 - d. If it holds a security interest in a deposit account ~~or a certificate of deposit~~ perfected by control under subdivision a of subsection 1 of section 41-09-04, or in a certificated certificate of deposit perfected by possession under section 41-09-33, may apply the balance of the deposit account or ~~certificate of deposit~~ to the obligation secured by the deposit account or ~~certificate of deposit~~; and
 - e. If it holds a security interest in a deposit account or an ~~or a certificate of deposit~~ certificate of deposit perfected by control under subdivision b or c of subsection 1 of section 41-09-04, or in a certificated certificate of deposit perfected by possession under section 41-09-33, may instruct the bank to pay the balance of the deposit account or ~~certificate of deposit~~ or for the benefit of the secured party.
2. If necessary to enable a secured party to exercise under subdivision c of subsection 1 the right of a debtor to enforce a mortgage nonjudicially, the secured party may record in the office in which a record of the mortgage is recorded:
 - a. A copy of the security agreement that creates or provides for a security interest in the obligation secured by the mortgage; and
 - b. The secured party's sworn affidavit in recordable form stating that:
 - (1) A default has occurred; and
 - (2) The secured party is entitled to enforce the mortgage nonjudicially.
3. A secured party shall proceed in a commercially reasonable manner if the secured party:
 - a. Undertakes to collect from or enforce an obligation of an account debtor or other person obligated on collateral; and

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- 1 b. At a private disposition only if the collateral is of a kind that is customarily sold
2 on a recognized market or the subject of widely distributed standard price
3 quotations.
- 4 4. A contract for sale, lease, license, or other disposition includes the warranties
5 relating to title, possession, quiet enjoyment, and the like which by operation of law
6 accompany a voluntary disposition of property of the kind subject to the contract.
- 7 5. A secured party may disclaim or modify warranties under subsection 4:
8 a. In a manner that would be effective to disclaim or modify the warranties in a
9 voluntary disposition of property of the kind subject to the contract of
10 disposition; or
11 b. By communicating to the purchaser a record evidencing the contract for
12 disposition and including an express disclaimer or modification of the
13 warranties.
- 14 6. A record is sufficient to disclaim warranties under subsection 5 if it indicates "there
15 is no warranty relating to title, possession, quiet enjoyment, or the like in this
16 disposition" or uses words of similar import.

17 **41-09-108. (9-611) Notification before disposition of collateral.**

- 18 1. In this section, "notification date" means the earlier of the date on which:
19 a. A secured party sends to the debtor and any secondary obligor an
20 authenticated notification of disposition; or
21 b. The debtor and any secondary obligor waive the right to notification.
- 22 2. Except as otherwise provided in subsection 4, a secured party that disposes of
23 collateral under section 41-09-107 shall send to the persons specified in
24 subsection 3 a reasonable authenticated notification of disposition.
- 25 3. To comply with subsection 2, the secured party shall send an authenticated
26 notification of disposition to:
27 a. The debtor;
28 b. Any secondary obligor;
29 c. Any other person from which the secured party has received, before the
30 notification date, an authenticated notification of a claim of an interest in the
31 collateral;

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- 1 d. Any other secured party or lienholder that, ten days before the notification
2 date, held a security interest in or other lien on the collateral perfected by the
3 filing of a financing statement that:
 - 4 (1) Identified the collateral;
 - 5 (2) Was indexed under the debtor's name as of that date; and
 - 6 (3) Was filed in the office in which to file a financing statement against the
7 debtor covering the collateral as of that date; and
- 8 e. Any other secured party that, ten days before the notification date, held a
9 security interest in the collateral perfected by compliance with a statute,
10 regulation, or treaty described in subsection 1 of section 41-09-31.
- 11 4. Subsection 2 does not apply if the collateral is perishable or threatens to decline
12 speedily in value or is of a type customarily sold on a recognized market.
- 13 5. A secured party complies with the requirements for notification prescribed by
14 paragraph 2 of subdivision c of subsection 3 if:
 - 15 a. Not later than twenty days or earlier than thirty days before the notification
16 date, the secured party requests, in a commercially reasonable manner,
17 information concerning financing statements indexed under the debtor's name
18 in the office indicated in paragraph 2 of subdivision c of subsection 3; and
 - 19 b. Before the notification date, the secured party:
 - 20 (1) Did not receive a response to the request for information; or
 - 21 (2) Received a response to the request for information and sent an
22 authenticated notification of disposition to each secured party or other
23 lienholder named in that response whose financing statement covered
24 the collateral.

25 **41-09-109. (9-612) Timeliness of notification before disposition of collateral.**

- 26 1. Except as otherwise provided in subsection 2, whether a notification is sent within
27 a reasonable time is a question of fact.
- 28 2. A notification of disposition sent after default and ten days before the earliest time
29 of disposition set forth in the notification is sent within a reasonable time before the
30 disposition.

1 41-09-110. (9-613) Contents and form of notification before disposition of
2 collateral - General

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

Remove
Subsection 5
AND Remove
Section 94H19

18 41-09-111. (9-615) Application of proceeds of disposition - Liability for deficiency
19 and right to surplus.

- 20 1. A secured party shall apply or pay over for application the cash proceeds of
21 disposition under section 41-09-107 in the following order to:
22 a. The reasonable expenses of retaking, holding, preparing for disposition,
23 processing, and disposing, and, to the extent provided for by agreement and
24 not prohibited by law, reasonable attorney's fees and legal expenses incurred
25 by the secured party;
26 b. The satisfaction of obligations secured by the security interest or agricultural
27 lien under which the disposition is made;
28 c. The satisfaction of obligations secured by any subordinate security interest in
29 or other subordinate lien on the collateral if:

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- 1 to a transferee other than the secured party, a person related to the secured party,
2 or a secondary obligor if:
3 a. The transferee in the disposition is the secured party, a person related to the
4 secured party, or a secondary obligor; and
5 b. The amount of proceeds of the disposition is significantly below the range of
6 proceeds that a complying disposition to a person other than the secured
7 party, a person related to the secured party, or a secondary obligor would
8 have brought.

- 9 7. A secured party that receives cash proceeds of a disposition in good faith and
10 without knowledge that the receipt violates the rights of the holder of a security
11 interest or other lien that is not subordinate to the security interest or agricultural
12 lien under which the disposition is made:
13 a. Takes the cash proceeds free of the security interest or other lien;
14 b. Is not obligated to apply the proceeds of the disposition to the satisfaction of
15 obligations secured by the security interest or other lien; and
16 c. Is not obligated to account to or pay the holder of the security interest or other
17 lien for any surplus.

Remove
section
9-616

18 41-09-112. (9-617) Rights of transferee of collateral.

- 19 1. A secured party's disposition of collateral after default:
20 a. Transfers to a transferee for value all of the debtor's rights in the collateral;
21 b. Discharges the security interest under which the disposition is made; and
22 c. Discharges any subordinate security interest or other subordinate lien.
23 2. A transferee that acts in good faith takes free of the rights and interests described
24 in subsection 1, even if the secured party fails to comply with this chapter or the
25 requirements of any judicial proceeding.
26 3. If a transferee does not take free of the rights and interests described in
27 subsection 1, the transferee takes the collateral subject to:
28 a. The debtor's rights in the collateral;
29 b. The security interest or agricultural lien under which the disposition is made;
30 and
31 c. Any other security interest or other lien.

1 chapter and does not of itself relieve the secured party of its duties under this
2 chapter.

3 **41-09-115. (9-620) Acceptance of collateral in full or partial satisfaction of**
4 **obligation - Compulsory disposition of collateral.**

5 1. A secured party may accept collateral in full or partial satisfaction of the obligation
6 it secures only if:

- 7 a. The debtor consents to the acceptance under subsection 3;
8 b. The secured party does not receive, within the time set forth in subsection 4,
9 a notification of objection to the proposal authenticated by:

- 10 (1) A person to which the secured party was required to send a proposal
11 under section 41-09-116; or
12 (2) Any other person, other than the debtor, holding an interest in the
13 collateral subordinate to the security interest that is the subject of the
14 proposal;

15 2. A purported or apparent acceptance of collateral under this section is ineffective
16 unless:

- 17 a. The secured party consents to the acceptance in an authenticated record or
18 sends a proposal to the debtor; and
19 b. The conditions of subsection 1 are met.

20 3. For purposes of this section:

- 21 a. A debtor consents to an acceptance of collateral in partial satisfaction of the
22 obligation it secures only if the debtor agrees to the terms of the acceptance
23 in a record authenticated after default; and
24 b. A debtor consents to an acceptance of collateral in full satisfaction of the
25 obligation it secures only if the debtor agrees to the terms of the acceptance
26 in a record authenticated after default or the secured party:

- 27 (1) Sends to the debtor after default a proposal that is unconditional or
28 subject only to a condition that collateral not in the possession of the
29 secured party be preserved or maintained;

- 30 (2) In the proposal, proposes to accept collateral in full satisfaction of the
31 obligation it secures; and

reinsert
subdivisions c, d

1 (3) Does not receive a notification of objection authenticated by the debtor
2 within twenty days after the proposal is sent.

3 4. To be effective under subdivision c of subsection 1, a notification of objection must
4 be received by the secured party:

5 a. In the case of a person to which the proposal was sent pursuant to section
6 41-09-116, within twenty days after notification was sent to that person; and

7 b. In other cases:

8 (1) Within twenty days after the last notification was sent pursuant to
9 section 41-09-116; or

10 (2) If a notification was not sent, before the debtor consents to the
11 acceptance under subsection 3.

12 41-09-116. (9-621) Notification of proposal to accept collateral.

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

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

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

21 (1) Identified the collateral;

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

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

25 c. Any other secured party that, ten days before the debtor consented to the
26 acceptance, held a security interest in the collateral perfected by compliance
27 with a statute, regulation, or treaty described in subsection 1 of section
28 41-09-31.

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

Remedy
subsections
5, 6, 7

41-09-117. (9-622) Effect of acceptance of collateral.

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

41-09-118. (9-623) Right to redeem collateral.

1. A debtor, any secondary obligor, or any other secured party or lienholder may redeem collateral.
2. To redeem collateral, a person shall tender:
 - a. Fulfillment of all obligations secured by the collateral; and
 - b. The reasonable expenses and attorney's fees described in subdivision a of subsection 1 of section 41-09-111.
3. A redemption may occur at any time before a secured party:
 - a. Has collected collateral under section 41-09-104;
 - b. Has disposed of collateral or entered into a contract for its disposition under section 41-09-107; or
 - c. Has accepted collateral in full or partial satisfaction of the obligation it secures under section 41-09-117.

41-09-119. (9-624) Waiver.

1. A debtor or secondary obligor may waive the right to notification of disposition of collateral under section 41-09-108 only by an agreement to that effect entered into and authenticated after default.
2. A debtor or secondary obligor may waive the right to redeem collateral under section 41-09-118 only by an agreement to that effect entered into and authenticated after default.

41-09-120. (9-625) Remedies for secured party's failure to comply with chapter.

1. If it is established that a secured party is not proceeding in accordance with this chapter, a court may order or restrain collection, enforcement, or disposition of collateral on appropriate terms and conditions.
2. Subject to subsections 3, 4, and 6, a person is liable for damages in the amount of any loss caused by a failure to comply with this chapter. Loss caused by a failure to comply with a request under section 41-09-20 may include loss resulting from the debtor's inability to obtain, or increase costs of, alternative financing.
3. Except as otherwise provided in section 41-09-123:
 - a. A person that, at the time of the failure, was a debtor, was an obligor, or held a security interest in or other lien on the collateral may recover in an individual action damages under subsection 2 for its loss; and
 - b. If the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply with this part may recover in an individual action for that failure in any event an amount not less than the credit service charge plus ten percent of the principal amount of the obligation or the time-price differential plus ten percent of the cash price.
4. A debtor whose deficiency is eliminated under section 41-09-121 may recover in an individual action damages for the loss of any surplus. However, a debtor or secondary obligor whose deficiency is eliminated or reduced under section 41-09-121 may not otherwise recover under subsection 2 for noncompliance with the provisions of sections 41-09-98 through 41-09-123 relating to collection, enforcement, disposition, or acceptance.
5. In addition to any damages recoverable under subsection 2, the debtor or person named as a debtor in a filed record, as applicable, may recover in an individual action one hundred dollars in each case from a person that:
 - a. Fails to comply with section 41-09-18;
 - b. Fails to comply with section 41-09-19;
 - c. Files a record that the person is not entitled to file under subsection 1 of section 41-09-80; or
 - d. Fails to comply with section 41-09-84.

Remove
subdivisions
e & f

1 6. A debtor or consumer obligor may recover in an individual action damages under
2 subsection 2 and, in addition, ~~one hundred dollars~~ in each case from a person that,
3 without reasonable cause, fails to comply with a request under section 41-09-20.
4 A recipient of a request under section 41-09-20 which never claimed an interest in
5 the collateral or obligations that are the subject of a request under that section has
6 a reasonable excuse for failure to comply with the request within the meaning of
7 this subsection.

8 7. If a secured party fails to comply with a request regarding a list of collateral or a
9 statement of account under section 41-09-20, the secured party may claim a
10 security interest only as shown in the list or statement included in the request as
11 against a person that is reasonably misled by the failure.

12 41-09-121. (9-121) Action in which deficiency or surplus is in issue. In an action
13 arising from a transaction in which the amount of a deficiency or surplus is in issue, the
14 following rules apply:

15 1. A secured party need not prove compliance with the provisions of this part relating
16 to collection, enforcement, disposition, or acceptance unless the debtor or a
17 secondary obligor places the secured party's compliance in issue.

18 2. If the secured party's compliance is placed in issue, the secured party has the
19 burden of establishing that the collection, enforcement, disposition, or acceptance
20 was conducted in accordance with this part.

21 3. Except as otherwise provided in section 41-09-123, if a secured party fails to prove
22 that the collection, enforcement, disposition, or acceptance was conducted in
23 accordance with the provisions of this part relating to collection, enforcement,
24 disposition, or acceptance, the liability of a debtor or a secondary obligor for a
25 deficiency is limited to an amount by which the sum of the secured obligation,
26 expenses, and attorney's fees exceeds the greater of:

27 a. The proceeds of the collection, enforcement, disposition, or acceptance; or

28 b. The amount of proceeds that would have been realized had the noncomplying
29 secured party proceeded in accordance with the provisions of this part
30 relating to collection, enforcement, disposition, or acceptance.

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- 1 4. For purposes of subdivision b of subsection 3, the amount of proceeds that would
2 have been realized is equal to the sum of the secured obligation, expenses, and
3 attorney's fees unless the secured party proves that the amount is less than that
4 sum.
5 5. If a deficiency or surplus is calculated under subsection 6 of section 41-09-111, the
6 debtor or obligor has the burden of establishing that the amount of proceeds of the
7 disposition is significantly below the range of prices that a complying disposition to
8 a person other than the secured party, a person related to the secured party, or a
9 secondary obligor would have brought.

10 41-09-122. (9-627) Determination of whether conduct was commercially
11 reasonable.

- 12 1. The fact that a greater amount could have been obtained by a collection,
13 enforcement, disposition, or acceptance at a different time or in a different method
14 from that selected by the secured party is not of itself sufficient to preclude the
15 secured party from establishing that the collection, enforcement, disposition, or
16 acceptance was made in a commercially reasonable manner.
17 2. A disposition of collateral is made in a commercially reasonable manner if the
18 disposition is made:
19 a. In the usual manner on any recognized market;
20 b. At the price current in any recognized market at the time of the disposition; or
21 c. Otherwise in conformity with reasonable commercial practices among dealers
22 in the type of property that was the subject of the disposition.
23 3. A collection, enforcement, disposition, or acceptance is commercially reasonable if
24 it has been approved:
25 a. In a judicial proceeding;
26 b. By a bona fide creditors' committee;
27 c. By a representative of creditors; or
28 d. By an assignee for the benefit of creditors.
29 4. Approval under subsection 3 need not be obtained, and lack of approval does not
30 mean that the collection, enforcement, disposition, or acceptance is not
31 commercially reasonable.

1 41-09-123. (9-628) Nonliability and limitation on liability of secured party -

2 Liability of secondary obligor.

3 1. Unless a secured party knows that a person is a debtor or obligor, knows the
4 identity of the person, and knows how to communicate with the person:

5 a. The secured party is not liable to the person, or to a secured party or
6 lienholder that has filed a financing statement against the person, for failure to
7 comply with this chapter; and

8 b. The secured party's failure to comply with this chapter does not affect the
9 liability of the person for a deficiency.

10 2. A secured party is not liable because of its status as secured party:

11 a. To a person that is a debtor or obligor, unless the secured party knows:

12 (1) That the person is a debtor or obligor;

13 (2) The identity of the person; and

14 (3) How to communicate with the person; or

15 b. To a secured party or lienholder that has filed a financing statement against a
16 person, unless the secured party knows:

17 (1) That the person is a debtor; and

18 (2) The identity of the person.

19 3. A secured party is not liable to any person, and a person's liability for a deficiency
20 is not affected, because of any act or omission arising out of the secured party's
21 reasonable belief that a transaction is not a consumer-goods transaction or a
22 consumer transaction or that goods are not consumer goods, if the secured party's
23 belief is based on its reasonable reliance on:

24 a. A debtor's representation concerning the purpose for which collateral was to
25 be used, acquired, or held; or

26 b. An obligor's representation concerning the purpose for which a secured
27 obligation was incurred.

28 4. A secured party is not liable under subdivision b of subsection 3 of section
29 41-09-120 more than once with respect to any one secured obligation.

30 41-09-124. (9-702) Savings clause.

remove
subsection
4

1 conflicting security interests each of which is perfected by the filing of such a
2 financing statement.

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

5 12. A financing statement ~~covering any item described as defined in subsection 5 of~~
6 section 41-09-41 41-09-02.

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

9 2. a. Notwithstanding the provisions of ~~sections 41-09-23, 41-09-40, 41-09-41,~~
10 section 41-09-30 and 41-09-42 sections 41-09-72 through 41-09-97, all filings
11 required under the Uniform Commercial Code in order to perfect a security
12 interest against the personal property or fixtures of a debtor transmitting utility
13 shall be made and maintained only in the office of the secretary of state of
14 North Dakota.

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

17 **54-09-08. Secretary of state's general services operating fund.** The secretary of
18 state's general services operating fund is a special fund in the state treasury. Moneys in the
19 fund are to be used pursuant to legislative appropriations for the provision of services under
20 ~~subsections 8 and 11 subsection 6 of section 41-09-42 and 41-09-94,~~ subsection 10 of section
21 54-09-04, ~~and sections 54 and 55 of this Act.~~ At the close of each fiscal year, the secretary of
22 state shall transfer any unobligated balance remaining in the fund exceeding seventy-five
23 thousand dollars to the general fund.

24 **SECTION 33. Computerized central indexing system - Rules.**

25 1. The secretary of state shall maintain a computerized central indexing system that
26 contains the information filed with the office of the secretary of state or with any of
27 the offices of the registers of deeds in this state pursuant to sections 35-13-02,
28 35-17-04, 35-20-16, 35-30-02, 35-31-02, 35-34-04, 35-34-06, 41-09-72, 57-38-49,
29 57-39.2-13, 57-40.2-16, 57-40.3-07.1, 57-43.1-17.4, 57-43.2-16.3, and 57-51-11.
30 The system must connect each register of deeds' office to the secretary of state's
office through the information technology department. The system must allow

1 access to financing statement information by equipment that conforms to
2 requirements determined by the information technology department. The system
3 must have safeguards to allow access to information that is in the system relating
4 to security interests or liens and to prevent unauthorized alteration or deletion of
5 that information and to allow access to other information in the system as
6 prescribed by the secretary of state.

- 7
- 8 2. Within two working days of receipt of a financing statement, continuation
9 statement, amendment, or termination statement filed pursuant to chapter 41-09 or
10 a statement filed pursuant to section 35-13-02, 35-17-04, 35-20-16, 35-30-02, or
11 35-31-02, the register of deeds or secretary of state shall file the information
12 contained in the statement in the computerized central indexing system. A
13 computer printout of information from the system is prima facie evidence of the
14 existence or nonexistence of the filing of a financing statement or lien. The
15 secretary of state shall prescribe one form that can be used to perfect a security
16 interest in farm products or gain protection under the central notice system, or
17 both.
- 18 3. The secretary of state may adopt rules necessary to implement sections 33, 34,
19 and 35 of this Act.

20 **SECTION 34. Secretary of state to compile lists for crops and livestock -**

21 **Distribution of lists.**

- 22 1. From the computerized central indexing system, the secretary of state or a
23 designee shall produce each month one list for crops and one list for livestock that
24 each contain the information as filed on the forms pursuant to section 41-09-72.
25 The secretary of state shall also include on the lists the information filed for crops
26 and livestock pursuant to sections 35-17-04, 35-30-02, and 35-31-02. The lists
27 must be in alphabetical order according to the last name of, or in numerical order
28 according to the social security number of, the person engaged in farming
29 operations. The lists may be prepared in categories according to county, regions
30 as designated by the secretary of state, or on a statewide basis. If requested, the
31 lists must be in printed form. Each list must conspicuously note the effective date
32 of the list.

2. The secretary of state shall distribute monthly by mail the lists prepared pursuant to subsection 1, at least five business days in advance of the effective date of each of the lists. If requested, the secretary of state shall mail the lists to any person making a request at a fee as provided in section 35 of this Act.
3. Upon a verbal request of any person, the secretary of state, a designee of the secretary of state, or a register of deeds shall verbally provide information contained on a list generated through the computerized central indexing system if the collateral is crops or livestock. The requesting party may request a certificate from the secretary of state or the register of deeds and the secretary of state or the register of deeds shall confirm the information given. Direct computer access is equivalent to oral confirmation, and a computer printout constitutes the written confirmation of the secretary of state, if use of this method of confirmation does not cause the central indexing system to lose federal certification. A computer printout from the computerized central indexing system constitutes the certificate of the secretary of state or the register of deeds as to whether there is on file, on the date and hour stated on the computer printout, a financing statement.

SECTION 35. Fees.

1. The secretary of state shall establish fees for placing data in the computerized central indexing system; for obtaining computer access to the computerized central indexing system, to the computerized Uniform Commercial Code central filing data base, or to the computerized statutory liens data base; for receiving printouts; for direct access to all or parts of the central indexing system; for lists sold or licensed under subsection 6 of section 41-09-94; for any other list provided by the secretary of state; for any programming charges specifically incurred to provide information requested by persons which is related to the central indexing system; and for other services provided through the computerized system.
2. The fee for furnishing information on a verbal request pursuant to subsection 3 of section 34 of this Act is seven dollars, and the fee for furnishing a certificate under subsection 3 of section 34 of this Act is seven dollars.
3. The secretary of state shall establish the fee for furnishing lists under subsection 1 of section 34 of this Act based on actual costs to produce the lists for distribution.

- 2
4. Fees collected by the secretary of state under subsections 1 and 3 and under subsection 6 of section 41-09-94 must be deposited in the secretary of state's general services operating fund. Fees collected by the secretary of state under subsection 2 must be deposited in the general fund in the state treasury.
 5. The secretary of state may adopt rules regarding what portion of the filing fees and search fees collected by the register of deeds under section 41-09-96 must be submitted to the secretary of state for deposit into the secretary of state's general operating fund to meet the cost of the provision of services required under sections 33 and 34 of this Act.

10 **SECTION 36. REPEAL.** Chapter 41-09 of the North Dakota Century Code is repealed.

11 **SECTION 37. APPROPRIATION.** There is appropriated out of any moneys in the
12 secretary of state's general services operating fund in the state treasury, not otherwise
13 appropriated, the sum of \$21,000, or so much of the sum as may be necessary, to the
14 secretary of state for the purpose of defraying the expenses of providing direct access to the
15 central indexing system, for the biennium beginning July 1, 2001, and ending June 30, 2003.

[Code of Federal Regulations]
[Title 9, Volume 2, Parts 200 to end]
[Revised as of January 1, 2000]
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TITLE 9--ANIMALS AND ANIMAL PRODUCTS

CHAPTER II--GRAIN INSPECTION, PACKERS AND STOCKYARDS ADMINISTRATION
(PACKERS AND STOCKYARDS PROGRAMS),
DEPARTMENT OF AGRICULTURE

PART 205--CLEAR TITLE--PROTECTION FOR PURCHASERS OF FARM PRODUCTS--Table of Contents

Sec. 205.105 Master list and portion thereof distributed to registrants -format.

(a) The master list must contain all the information on all the EFS's filed in the system, so arranged that it is possible to deliver to any registrant all such information relating to any product, produced in any county or parish (or all counties or parishes), for any crop year, covered by the system. The system must be able to deliver all such information to any registrant, either in alphabetical order by the word appearing first in the name of each person subjecting a product to a security interest (see Sec. 205.102), in numerical order by social security number (or, if other than a natural person, IRS taxpayer identification number) of each such person, or in both alphabetical and numerical orders, as requested by the registrant.

(b) Section (c)(2)(E) requires the portion to be distributed in "written or printed form." This means recording on paper by any technology in a form that can be read by humans without special equipment. The system may, however, honor requests from registrants to substitute recordings on

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any medium by any technology including, but not limited to, electronic recording on tapes or discs in machine-readable form, and on photographic recording on microfiche. It also includes, if requested by registrants, electronic transmissions whereby registrants can print their own paper copies.

(c) After distribution of a portion of a master list, there can be supplementary distribution of a portion showing only changes from the previous one. However, if this is done, cumulative supplements must be distributed often enough that readers can find all the information given to them for any one crop year in no more than three distributions.

[51 FR 29451, Aug. 18, 1986, as amended at 61 FR 54723, Oct. 22, 1996]