

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 indexing system; to 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; and to repeal present chapter
16 41-09 of the North Dakota Century Code, relating to secured transactions.

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

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

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

1 is the same as that provided in sections ~~41-09-42~~ 41-09-96 and ~~41-09-43~~, as
2 applicable 35 of this Act.

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

5 **32-20-08. Other remedies not affected.** This chapter does not affect any right or
6 remedy to foreclose or otherwise enforce or satisfy a lien upon or security interest in personal
7 property without action as prescribed in sections ~~41-09-47~~ 41-09-98 through ~~41-09-53~~
8 41-09-123.

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

11 **35-06-11. Pledge enforced - Sale when performance due.** When performance of the
12 act for which a pledge is given is due in whole or in part, the pledgee may collect what is due
13 ~~him~~ the pledgee by a sale of the property pledged, subject to the rules and exceptions
14 prescribed in this chapter and in ~~section 41-09-50~~ sections 41-09-98 through 41-09-123.

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

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

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

23 2. Except as provided in subsection 3, if the holder of a lien under this chapter
24 relinquishes possession of the aircraft before the amount due is paid, that person
25 may retake possession of the aircraft as provided by section ~~41-09-49~~ 41-09-106.

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

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

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

1 of deeds in the county in which the personal property may be found or with the
2 secretary of state. The notice must particularly describe the property to be
3 subjected to the lien and the name and ~~last-known~~ last-known address of the
4 obligor. The notice of lien must state that the child support obligation is past due
5 and that a copy of the notice of lien has been served on the obligor by first-class
6 mail at the obligor's ~~last-known~~ last-known address.

7 2. The information filed with a register of deeds or with the secretary of state under
8 this section must be included in the computerized central indexing system
9 maintained by the secretary of state under section ~~41-09-46~~ 33 of this Act and
10 must be accessible to the public on the same terms and conditions that apply to
11 access other statutory lien information maintained in the computerized central
12 indexing system.

13 3. Upon filing of the notice of lien in accordance with this section, the lien attaches to
14 and is perfected against all personal property described in the notice.

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

17 2. Where one of the following provisions of this title specifies the applicable law, that
18 provision governs and a contrary agreement is effective only to the extent
19 permitted by the law (including the conflict of laws rules) so specified:

- 20 a. Rights of creditors against sold goods. Section 41-02-47.
- 21 b. Applicability of the chapter on leases. Sections 41-02.1-05 and 41-02.1-06.
- 22 c. Applicability of the chapter on bank deposits and collections. Section
23 41-04-02.
- 24 d. Governing law in the chapter on funds transfers. Section 41-04.1-38.
- 25 e. Letters of credit. Section 41-05-16.
- 26 f. Applicability of the chapter on investment securities. Section 41-08-10.
- 27 g. ~~Perfection provisions of the chapter on secured transactions. Section~~
28 41-09-03 Law governing perfection, the effect of perfection or nonperfection,
29 and the priority of security interests and agricultural liens. Sections 41-09-21
30 through 41-09-27.

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

3 **41-01-10.5. ~~(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 is
23 otherwise perfected.
- 24 4. A financing continuation statement may be filed within six months before the
25 perfection of a security interest would otherwise lapse. ~~The financing statement~~
26 ~~may be signed by either the debtor or the secured party.~~ It must identify the
27 security agreement, statement, or notice (however denominated in any statute or
28 other law repealed or modified by chapter 343 of the 1973 Session Laws, as
29 codified in this title), state the office where and the date when the last filing, refiling,
30 or recording, if any, was made with respect to it, and the filing number, if any, or
31 book and page, if any, of any recording and further state that the security

1 agreement, statement, or notice (however denominated) in another filing office
2 under this title or under any statute or other law repealed or modified by chapter
3 343 of the 1973 Session Laws, as codified in this title, is still effective. Sections
4 ~~41-09-40~~ 41-09-21 and ~~41-09-03~~ 41-09-72 govern the proper place to file the
5 financing statement. Except as specified in this subsection, the provisions of
6 ~~subsection 3~~ subsections 4 and 5 of section ~~41-09-42~~ 41-09-86 for continuation
7 statements apply to the financing statement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 22 3. The following definitions also apply to this chapter:
- 23 a. "Account". Section ~~41-09-06~~ 41-09-02.
- 24 b. "Between merchants". Subsection 1 of section 41-02-04.
- 25 c. "Buyer". Subdivision a of subsection 1 of section 41-02-03.
- 26 d. "Chattel paper". ~~Subdivision c of subsection 1 of section 41-09-05~~
27 Section 41-09-02.
- 28 e. "Consumer goods". ~~Subsection 1 of section 41-09-09~~ Section 41-09-02.
- 29 f. "Document". ~~Subdivision g of subsection 1 of section 41-09-05~~
30 Section 41-09-02.
- 31 g. "Entrusting". Subsection 3 of section 41-02-48.

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

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

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

- 19 1. Except as provided in ~~subsections 2 and subsection 3 and section 41-09-69~~, a
20 provision in a lease agreement that prohibits the voluntary or involuntary transfer,
21 including a transfer by sale, sublease, creation or enforcement of a security
22 interest, or attachment, levy, or other judicial process, of an interest of a party
23 under the lease contract or of the lessor's residual interest in the goods, or that
24 makes such a transfer an event of default, is enforceable as provided in subsection
25 ~~4~~ 3, but a transfer that is prohibited or is an event of default under the lease
26 agreement is otherwise effective. "Creation of a security interest" as used in this
27 section includes the sale of a lease contract that is subject to chapter 41-09.
- 28 2. ~~A provision in a lease agreement that prohibits the creation or enforcement of a~~
29 ~~security interest in an interest of a party under the lease contract, or in the lessor's~~
30 ~~residual interest in the goods or that makes such a transfer an event of default is~~
31 ~~not enforceable unless, and then only to the extent that, there is an actual transfer~~

1 ~~by the lessee of the lessee's right of possession or use of the goods in violation of~~
2 ~~the provision or delegation of a material performance of either party to the lease~~
3 ~~contract in violation of the provision.~~

4 ~~3.~~ A transfer of a right to damages for default with respect to the whole lease contract
5 or a transfer of a right to payment arising out of the transferor's due performance of
6 the transferor's entire obligation, which includes the creation of a security interest
7 in the right to future payment under a lease contract that is granted by a lessor who
8 has no remaining performance under the lease contract, may not be prohibited or
9 made an event of default and is not a transfer that materially impairs the prospect
10 of obtaining return performance by, materially changes the duty of, or materially
11 increases the burden or risk imposed on the other party to the lease contract within
12 subsection ~~4~~ 3.

13 ~~4.~~ 3. Subject to ~~subsections~~ subsection 2 and 3 ~~section 41-09-69~~, if a transfer is made
14 that is prohibited or is an event of default under a lease agreement, or if a transfer
15 is made that materially impairs the prospect of obtaining return performance by,
16 materially changes the duty of, or materially increases the burden or risk imposed
17 on the other party to the lease contract, unless the party prejudiced by the transfer
18 agrees at any time to the transfer in the lease contract or otherwise, then that party
19 has, if the transfer is made an event of default, the rights and remedies provided
20 under subsection 2 of section 41-02.1-48. In all other cases, except as limited by
21 contract, the transferor is liable to the prejudiced party for damages caused by the
22 transfer to the extent the damages could not reasonably be prevented by the
23 prejudiced party. A court having jurisdiction may grant other appropriate relief,
24 including cancellation of the lease contract or an injunction against the transfer.

25 ~~5.~~ 4. A transfer of "the lease" or of "all my rights under the lease" or a transfer in similar
26 general terms is a transfer of rights, and unless the language or the circumstances,
27 as in a transfer for security, indicate the contrary, the transfer is a delegation of
28 duties by the transferor to the transferee and acceptance by the transferee
29 constitutes a promise by the transferee to perform those duties. This promise is
30 enforceable by either the transferor or the other party to the lease contract.

1 6- 5. Unless otherwise agreed by the lessor and the lessee, no delegation of
2 performance relieves the transferor as against the other party of any duty to
3 perform or any liability for default.

4 7- 6. To prohibit the transfer of an interest of a party under a consumer lease contract or
5 to make a transfer an event of default, the language must be specific, by a writing,
6 and conspicuous.

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

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

11 1. Except as otherwise provided in section 41-02.1-36, a creditor of a lessee takes
12 subject to the lease contract.

13 2. Except as otherwise provided in ~~subsections~~ subsection 3 ~~and 4~~ and in sections
14 41-02.1-36 and 41-02.1-38, a creditor of a lessor takes subject to the lease
15 contract unless ~~any of the following is met:~~

16 a. ~~The~~ the creditor holds a lien that attached to the goods before the lease
17 contract became enforceable.

18 b. ~~The creditor holds a security interest in the goods and the lessee did not give~~
19 ~~value and receive delivery of the goods without knowledge of the security~~
20 ~~interest.~~

21 e. ~~The creditor holds a security interest in the goods was perfected (section~~
22 ~~41-09-24) before the lease contract became enforceable.~~

23 3. ~~A lessee in the ordinary course of business takes the leasehold free of a security~~
24 ~~interest is perfected and the lessee knows of its existence.~~

25 4. ~~A lessee other than a lessee in the ordinary course of business takes the leasehold~~
26 ~~interest free of a security interest to the extent that it secures future advances~~
27 ~~made after the secured party acquires knowledge of the lease or more than~~
28 ~~forty five days after the lease contract becomes enforceable, whichever first~~
29 ~~occurs, unless the future advances are made pursuant to a commitment entered~~
30 ~~into without knowledge of the lease and before the expiration of the forty five day~~
31 ~~period.~~ Except as otherwise provided in sections 41-09-37, 41-09-41, and

1 41-09-43, a lessee takes a leasehold interest subject to a security interest held by
2 a creditor of the lessor.

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

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

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

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

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

16 **41-05-18. (5-118) Security interest of issuer or nominated person.**

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

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

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

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

28 c. If the document is presented in a written or other tangible medium and is not a
29 certificated security, chattel paper, a document of title, an instrument, or a
30 letter of credit, the security interest is perfected and has priority over a

1 conflicting security interest in the document so long as the debtor does not
2 have possession of the document.

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

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

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

12 6. A commodity contract, as defined in section ~~41-09-13.2~~ 41-09-02, is not a security
13 or a financial asset.

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

16 **41-08-06. (8-106) Control.**

17 1. A purchaser has "control" of a certificated security in bearer form if the certificated
18 security is delivered to the purchaser.

19 2. A purchaser has "control" of a certificated security in registered form if the
20 certificated security is delivered to the purchaser, and:

21 a. The certificate is endorsed to the purchaser or in blank by an effective
22 endorsement; or

23 b. The certificate is registered in the name of the purchaser, upon original issue
24 or registration of transfer by the issuer.

25 3. A purchaser has "control" of an uncertificated security if:

26 a. The uncertificated security is delivered to the purchaser; or

27 b. The issuer has agreed that it will comply with instructions originated by the
28 purchaser without further consent by the registered owner.

29 4. A purchaser has "control" of a security entitlement if:

30 a. The purchaser becomes the entitlement holder; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 1. In this chapter:

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

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

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

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

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

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

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

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

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

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

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

- 1 licensed or authorized to operate the game by a state or
2 governmental unit of a state.
- 3 (2) The term includes a health care insurance receivable. The term does
4 not include:
- 5 (a) Right to payment evidenced by chattel paper or an instrument;
6 (b) Commercial tort claim;
7 (c) Deposit account;
8 (d) Investment property;
9 (e) Letter-of-credit right or letters of credit;
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 (g) 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, production, 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:

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

- 1 p. "Commodity account" means an account maintained by a commodity
2 intermediary in which a commodity contract is carried for a commodity
3 customer.
- 4 q. "Commodity contract" means a commodity futures contract, an option on a
5 commodity futures contract, a commodity option, or another contract if the
6 contract or option is:
- 7 (1) Traded on or subject to the rules of a board of trade that has been
8 designated as a contract market for such a contract pursuant to federal
9 commodities laws; or
- 10 (2) Traded on a foreign commodity board of trade, exchange, or market
11 and is carried on the books of a commodity intermediary for a
12 commodity customer.
- 13 r. "Commodity customer" means a person for which a commodity intermediary
14 carries a commodity contract on the intermediary's books.
- 15 s. "Commodity intermediary" means a person that:
- 16 (1) Is registered as a futures commission merchant under federal
17 commodities law; or
- 18 (2) In the ordinary course of the person's business provides clearance or
19 settlement services for a board of trade that has been designated as a
20 contract market pursuant to federal commodities law.
- 21 t. "Communicate" means:
- 22 (1) To send a written or other tangible record;
- 23 (2) To transmit a record by any means agreed upon by the persons
24 sending and receiving the record; or
- 25 (3) In the case of transmission of a record to or by a filing office, to transmit
26 a record by any means prescribed by filing-office rule.
- 27 u. "Consignee" means a merchant to which goods are delivered in a
28 consignment.
- 29 v. "Consignment" means a transaction, regardless of form, in which a person
30 delivers goods to a merchant for the purpose of sale and:
- 31 (1) The merchant:

- 1 (a) Deals in goods of that kind under a name other than the name of
2 the person making delivery;
- 3 (b) Is not an auctioneer; and
- 4 (c) Is not generally known by its creditors to be substantially
5 engaged in selling the goods of others;
- 6 (2) With respect to each delivery, the aggregate value of the goods is one
7 thousand dollars or more at the time of delivery;
- 8 (3) The goods are not consumer goods immediately before delivery; and
- 9 (4) The transaction does not create a security interest that secures an
10 obligation.
- 11 w. "Consignor" means a person that delivers goods to a consignee in a
12 consignment.
- 13 x. "Consumer debtor" means a debtor in a consumer transaction.
- 14 y. "Consumer goods" means goods that are used or bought for use primarily for
15 personal, family, or household purposes.
- 16 z. "Consumer-goods transaction" means a consumer transaction in which:
- 17 (1) An individual incurs an obligation primarily for personal, family, or
18 household purposes; and
- 19 (2) A security interest in consumer goods secures the obligation.
- 20 aa. "Consumer obligor" means an obligor who is an individual and who incurred
21 the obligation as part of a transaction entered into primarily for personal,
22 family, or household purposes.
- 23 bb. "Consumer transaction" means a transaction in which:
- 24 (1) An individual incurs an obligation primarily for personal, family, or
25 household purposes;
- 26 (2) A security interest secures the obligation; and
- 27 (3) The collateral is held or acquired primarily for personal, family, or
28 household purposes. The term includes consumer-goods transactions.
- 29 cc. "Continuation statement" means an amendment of a financing statement
30 which:

- 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 (4) Writings that evidence a right to payment arising out of the use of a
2 credit or charge card or information contained on or for use with the
3 card.
- 4 xx. "Inventory" means goods, other than farm products, that:
- 5 (1) Are leased by a person as lessor;
6 (2) Are held by a person for sale or lease or to be furnished under a
7 contract of service;
8 (3) Are furnished by a person under a contract of service; or
9 (4) Consist of raw materials, work in process, or materials used or
10 consumed in a business.
- 11 yy. "Investment property" means a security, whether certificated or uncertificated,
12 security entitlement, securities account, commodity contract, or commodity
13 account.
- 14 zz. "Jurisdiction of organization", with respect to a registered organization, means
15 the jurisdiction under whose law the organization is organized.
- 16 aaa. "Letter-of-credit right" means a right to payment or performance under a letter
17 of credit, regardless of whether the beneficiary has demanded or is at the time
18 entitled to demand payment or performance. The term does not include the
19 right of a beneficiary to demand payment or performance under a letter of
20 credit.
- 21 bbb. "Lien creditor" means:
- 22 (1) A creditor that has acquired a lien on the property involved by
23 attachment, levy, or the like;
24 (2) An assignee for benefit of creditors from the time of assignment;
25 (3) A trustee in bankruptcy from the date of the filing of the petition; or
26 (4) A receiver in equity from the time of appointment.
- 27 ccc. "Manufactured home" means a structure, transportable in one or more
28 sections, that, in the traveling mode, is eight body feet [2.44 meters] or more
29 in width or forty body feet [12.19 meters] or more in length, or, when erected
30 on site, is three hundred twenty square feet [29.73 square meters] or more,
31 and which is built on a permanent chassis and designed to be used as a

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 iii. "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 account
29 or negotiable instrument.

30 jjj. "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 of
20 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 through 41-09-117.

25 sss. "Pursuant to commitment", with respect to an advance made or other value
26 given by a secured party, means pursuant to the secured party's obligation,
27 regardless of whether a subsequent event of default or other event not within
28 the secured party's control has relieved or may relieve the secured party from
29 the secured party's obligation.

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

1 which is stored in an electronic or other medium and is retrievable in
2 perceivable form.

3 uuu. "Registered organization" means an organization organized solely under the
4 law of a single state or the United States and as to which the state or the
5 United States must maintain a public record showing the organization to have
6 been organized.

7 vvv. "Secondary obligor" means an obligor to the extent that:
8 (1) The obligor's obligation is secondary; or
9 (2) The obligor has a right of recourse with respect to an obligation secured
10 by collateral against the debtor, another obligor, or property of either.

11 www. "Secured party" means:
12 (1) A person in whose favor a security interest is created or provided for
13 under a security agreement, regardless of whether any obligation to be
14 secured is outstanding;
15 (2) A person that holds an agricultural lien;
16 (3) A consignor;
17 (4) A person to which accounts, chattel paper, payment intangibles, or
18 promissory notes have been sold;
19 (5) A trustee, indenture trustee, agent, collateral agent, or other
20 representative in whose favor a security interest or agricultural lien is
21 created or provided for; or
22 (6) A person that holds a security interest arising under section 41-02-46,
23 section 41-02-53, subsection 3 of section 41-02-90, subsection 5 of
24 section 41-02.1-56, section 41-04-22, or section 41-05-18.

25 xxx. "Security agreement" means an agreement that creates or provides for a
26 security interest.

27 yyy. "Send", in connection with a record or notification, means:
28 (1) To deposit in the mail, deliver for transmission, or transmit by any other
29 usual means of communication, with postage or cost of transmission
30 provided for, addressed to any address reasonable under the
31 circumstances; or

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

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

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

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

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

15 dddd. "Termination statement" means an amendment of a financing statement
16 which:

17 (1) Identifies, by the amendment's file number, the initial financing
18 statement to which it relates; and

19 (2) Indicates either that the amendment is a termination statement or that
20 the identified financing statement is no longer effective.

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

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

23 (2) Transmitting communications electrically, electromagnetically, or by
24 light;

25 (3) Transmitting goods by pipeline or sewer; or

26 (4) Transmitting or producing and transmitting electricity, steam, gas, or
27 water.

28 ffff. "Uncertificated certificate of deposit" means an obligation of a bank to repay a
29 sum of money that it has received which is not represented by a certificate,
30 but only by an entry on the books of the bank and any documentation given to
31 the customer by the bank. The term does not include a deposit account.

- 1 2. The following definitions in other chapters apply to this chapter:
- 2 a. "Applicant". Section 41-05-02.
- 3 b. "Beneficiary". Section 41-05-02.
- 4 c. "Broker". Section 41-08-02.
- 5 d. "Certificated security". Section 41-08-02.
- 6 e. "Check". Section 41-03-04.
- 7 f. "Clearing corporation". Section 41-08-02.
- 8 g. "Contract for sale". Section 41-02-06.
- 9 h. "Customer". Section 41-04-04.
- 10 i. "Entitlement holder". Section 41-08-02.
- 11 j. "Financial asset". Section 41-08-02.
- 12 k. "Holder in due course". Section 41-03-28.
- 13 l. "Issuer" (with respect to a letter of credit or letter-of-credit right). Section
14 41-05-02.
- 15 m. "Issuer" (with respect to a security). Section 41-08-17.
- 16 n. "Lease". Section 41-02.1-03.
- 17 o. "Lease agreement". Section 41-02.1-03.
- 18 p. "Lease contract". Section 41-02.1-03.
- 19 q. "Leasehold interest". Section 41-02.1-03.
- 20 r. "Lessee". Section 41-02.1-03.
- 21 s. "Lessee in ordinary course of business". Section 41-02.1-03.
- 22 t. "Lessor". Section 41-02.1-03.
- 23 u. "Lessor's residual interest". Section 41-02.1-03.
- 24 v. "Letter of credit". Section 41-05-02.
- 25 w. "Merchant". Section 41-02-04.
- 26 x. "Negotiable instrument". Section 41-03-04.
- 27 y. "Nominated person". Section 41-05-02.
- 28 z. "Note". Section 41-03-04.
- 29 aa. "Proceeds of a letter of credit". Section 41-05-14.
- 30 bb. "Prove". Section 41-03-03.
- 31 cc. "Sale". Section 41-02-06.

- 1 dd. "Securities account". Section 41-08-41.
2 ee. "Securities intermediary". Section 41-08-02.
3 ff. "Security". Section 41-08-02.
4 gg. "Security certificate". Section 41-08-02.
5 hh. "Security entitlement". Section 41-08-02.
6 ii. "Uncertificated security". Section 41-08-02.
7 3. Chapter 41-01 contains general definitions and principles of construction and
8 interpretation applicable throughout this chapter.

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

10 **Burden of establishing.**

- 11 1. In this section:
12 a. "Purchase-money collateral" means goods or software that secures a
13 purchase-money obligation incurred with respect to that collateral; and
14 b. "Purchase-money obligation" means an obligation of an obligor incurred as all
15 or part of the price of the collateral or for value given to enable the debtor to
16 acquire rights in or the use of the collateral if the value is in fact so used.
17 2. A security interest in goods is a purchase-money security interest:
18 a. To the extent that the goods are purchase-money collateral with respect to
19 that security interest;
20 b. If the security interest is in inventory that is or was purchase-money collateral,
21 also to the extent that the security interest secures a purchase-money
22 obligation incurred with respect to other inventory in which the secured party
23 holds or held a purchase-money security interest; and
24 c. Also to the extent that the security interest secures a purchase-money
25 obligation incurred with respect to software in which the secured party holds
26 or held a purchase-money security interest.
27 3. A security interest in software is a purchase-money security interest to the extent
28 that the security interest also secures a purchase-money obligation incurred with
29 respect to goods in which the secured party holds or held a purchase-money
30 security interest if:

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

1 **41-09-04. (9-104) Control of deposit account or uncertificated certificate of**
2 **deposit.**

- 3 1. A secured party has control of a deposit account or uncertificated certificate of
4 deposit if:
- 5 a. The secured party is the bank with which the deposit account or uncertificated
6 certificate of deposit is maintained;
- 7 b. The debtor, secured party, and bank have agreed in an authenticated record
8 that the bank will comply with instructions originated by the secured party
9 directing disposition of the funds in the deposit account or uncertificated
10 certificate of deposit without further consent by the debtor; or
- 11 c. The secured party becomes the bank's customer with respect to the deposit
12 account or uncertificated certificate of deposit.
- 13 2. A secured party that has satisfied subsection 1 has control, even if the debtor
14 retains the right to direct the disposition of funds from the deposit account or
15 uncertificated certificate of deposit.

16 **41-09-05. (9-105) Control of electronic chattel paper.** A secured party has control of
17 electronic chattel paper if the record or records comprising the chattel paper are created,
18 stored, and assigned in such a manner that:

- 19 1. A single authoritative copy of the record or records exists which is unique,
20 identifiable and, except as otherwise provided in subsections 4 through 6,
21 unalterable;
- 22 2. The authoritative copy identifies the secured party as the assignee of the record or
23 records;
- 24 3. The authoritative copy is communicated to and maintained by the secured party or
25 the secured party's designated custodian;
- 26 4. Copies or revisions that add or change an identified assignee of the authoritative
27 copy can be made only with the participation of the secured party;
- 28 5. Each copy of the authoritative copy and any copy of a copy is readily identifiable as
29 a copy that is not the authoritative copy; and
- 30 6. Any revision of the authoritative copy is readily identifiable as an authorized or
31 unauthorized revision.

- 1 **41-09-06. (9-106) Control of investment property.**
- 2 1. A person has control of a certificated security, uncertificated security, or security
- 3 entitlement as provided in section 41-08-06.
- 4 2. A secured party has control of a commodity contract if:
- 5 a. The secured party is the commodity intermediary with which the commodity
- 6 contract is carried; or
- 7 b. The commodity customer, secured party, and commodity intermediary have
- 8 agreed that the commodity intermediary will apply any value distributed on
- 9 account of the commodity contract as directed by the secured party without
- 10 further consent by the commodity customer.
- 11 3. A secured party having control of all security entitlements or commodity contracts
- 12 carried in a securities account or commodity account has control over the
- 13 securities account or commodity account.

14 **41-09-07. (9-107) Control of letter-of-credit right.** A secured party has control of a

15 letter-of-credit right to the extent of any right to payment or performance by the issuer or any

16 nominated person if the issuer or nominated person has consented to an assignment of

17 proceeds of the letter of credit under subsection 3 of section 41-05-14 or otherwise applicable

18 law or practice.

- 19 **41-09-08. (9-108) Sufficiency of description.**
- 20 1. Except as otherwise provided in subsections 3 through 5, a description of personal
- 21 or real property is sufficient, regardless of whether the description is specific, if the
- 22 description reasonably identifies what is described.
- 23 2. Except as otherwise provided in subsection 4, a description of collateral reasonably
- 24 identifies the collateral if it identifies the collateral by:
- 25 a. Specific listing;
- 26 b. Category;
- 27 c. Except as otherwise provided in subsection 5, a type of collateral defined in
- 28 the Uniform Commercial Code;
- 29 d. Quantity;
- 30 e. Computational or allocational formula or procedure; or

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

15 **41-09-09. (9-109) Scope.**

- 16 1. Except as otherwise provided in subsections 3 and 4, this chapter applies to:
- 17 a. A transaction, regardless of its form, that creates a security interest in
18 personal property or fixtures by contract;
- 19 b. An agricultural lien;
- 20 c. A sale of accounts, chattel paper, payment intangibles, or promissory notes;
- 21 d. A consignment;
- 22 e. A security interest arising under section 41-02-46, section 41-02-53,
23 subsection 3 of section 41-02-90, or subsection 5 of section 41-02.1-56, as
24 provided in section 41-09-10; and
- 25 f. A security interest arising under section 41-04-22 or 41-05-18.
- 26 2. The application of this chapter to a security interest in a secured obligation is not
27 affected by the fact that the obligation is itself secured by a transaction or interest
28 to which this chapter does not apply.
- 29 3. This chapter does not apply to the extent that:
- 30 a. A statute, regulation, or treaty of the United States preempts this chapter;

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

- 1 (1) Section 41-09-60 applies with respect to the effectiveness of rights of
2 recoupment or set-off against deposit accounts or certificates of
3 deposit; and
- 4 (2) Section 41-09-66 applies with respect to defenses or claims of an
5 account debtor;
- 6 k. The creation or transfer of an interest in or lien on real property, including a
7 lease or rents thereunder, except to the extent that provision is made for:
- 8 (1) Liens on real property in sections 41-09-13 and 41-09-28;
9 (2) Fixtures in section 41-09-54;
10 (3) Fixture filings in sections 41-09-72, 41-09-73, 41-09-87, and 41-09-90;
11 and
- 12 (4) Security agreements covering personal and real property in section
13 41-09-101;
- 14 l. An assignment of a claim arising in tort, other than a commercial tort claim,
15 but sections 41-09-35 and 41-09-42 apply with respect to proceeds and
16 priorities in proceeds; or
- 17 m. A transfer by this state or a governmental unit of this state.

18 **41-09-10. (9-110) Security interests arising under chapter 41-02 or 41-02.1. A**
19 **security interest arising under section 41-02-46, section 41-02-53, subsection 3 of section**
20 **41-02-90, or subsection 5 of section 41-02.1-56 is subject to this chapter. However, until the**
21 **debtor obtains possession of the goods:**

- 22 1. The security interest is enforceable, even if subdivision c of subsection 2 of section
23 41-09-13 has not been satisfied;
- 24 2. Filing is not required to perfect the security interest;
- 25 3. The rights of the secured party after default by the debtor are governed by chapter
26 41-02 or 41-02.1; and
- 27 4. The security interest has priority over a conflicting security interest created by the
28 debtor.

29 **41-09-11. (9-201) General effectiveness of security agreement.**

- 1 1. Except as otherwise provided in this title, a security agreement is effective
2 according to the security agreement's terms between the parties, against
3 purchasers of the collateral, and against creditors.
- 4 2. A transaction, although subject to this chapter, is also subject to chapters 13-03.1,
5 35-05, 49-09, and 51-13. In the case of conflict between this chapter and any of
6 those statutes, the provisions of those statutes control. Failure to comply with any
7 applicable statute has only the effect that is specified therein.
- 8 3. In case of conflict between this chapter and a rule of law, statute, or regulation
9 described in subsection 2, the rule of law, statute, or regulation controls. Failure to
10 comply with a statute or regulation described in subsection 2 has only the effect the
11 statute or regulation specifies. In no event is the failure of a secured party to
12 comply with a statute or rule other than chapter 41-09 a failure to comply with any
13 provision of chapter 41-09.
- 14 4. This chapter does not:
- 15 a. Validate any rate, charge, agreement, or practice that violates a rule of law,
16 statute, or regulation described in subsection 2; or
- 17 b. Extend the application of the rule of law, statute, or regulation to a transaction
18 not otherwise subject to it.
- 19 **41-09-12. (9-202) Title to collateral immaterial.** Except as otherwise provided with
20 respect to consignments or sales of accounts, chattel paper, payment intangibles, or
21 promissory notes, the provisions of this chapter with regard to rights and obligations apply
22 whether title to collateral is in the secured party or the debtor.
- 23 **41-09-13. (9-203) Attachment and enforceability of security interest - Proceeds -**
24 **Supporting obligations - Formal requisites.**
- 25 1. A security interest attaches to collateral when the security interest becomes
26 enforceable against the debtor with respect to the collateral, unless an agreement
27 expressly postpones the time of attachment.
- 28 2. Except as otherwise provided in subsections 3 through 9, a security interest is
29 enforceable against the debtor and third parties with respect to the collateral only if:
- 30 a. Value has been given;

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

- 1 a. The agreement satisfies subdivision c of subsection 2 with respect to existing
2 or after-acquired property of the new debtor to the extent the property is
3 described in the agreement; and
- 4 b. Another agreement is not necessary to make a security interest in the
5 property enforceable.
- 6 6. The attachment of a security interest in collateral gives the secured party the rights
7 to proceeds provided by section 41-09-35 and is also attachment of a security
8 interest in a supporting obligation for the collateral.
- 9 7. The attachment of a security interest in a right to payment or performance secured
10 by a security interest or other lien on personal or real property is also attachment of
11 a security interest in the security interest, mortgage, or other lien.
- 12 8. The attachment of a security interest in a securities account is also attachment of a
13 security interest in the security entitlements carried in the securities account.
- 14 9. The attachment of a security interest in a commodity account is also attachment of
15 a security interest in the commodity contracts carried in the commodity account.

16 **41-09-14. (9-204) After-acquired property - Future advances.**

- 17 1. Except as otherwise provided in subsection 2, a security agreement may create or
18 provide for a security interest in after-acquired collateral.
- 19 2. A security interest does not attach under a term constituting an after-acquired
20 property clause to:
- 21 a. Consumer goods, other than an accession if given as additional security,
22 unless the debtor acquires rights in the consumer goods within ten days after
23 the secured party gives value; or
- 24 b. A commercial tort claim.
- 25 3. A security agreement may provide that collateral secures, or that accounts, chattel
26 paper, payment intangibles, or promissory notes are sold in connection with, future
27 advances or other value, regardless of whether the advances or value is given
28 pursuant to commitment.

29 **41-09-15. (9-205) Use or disposition of collateral permissible.**

- 30 1. A security interest is not invalid or fraudulent against creditors solely because:
- 31 a. The debtor has the right or ability to:

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

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

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

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

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

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

11 **41-09-16. (9-206) Security interest arising in purchase or delivery of financial**
12 **asset.**

13 1. A security interest in favor of a securities intermediary attaches to a person's
14 security entitlement if:

15 a. The person buys a financial asset through the securities intermediary in a
16 transaction in which the person is obligated to pay the purchase price to the
17 securities intermediary at the time of the purchase; and

18 b. The securities intermediary credits the financial asset to the buyer's securities
19 account before the buyer pays the securities intermediary.

20 2. The security interest described in subsection 1 secures the person's obligation to
21 pay for the financial asset.

22 3. A security interest in favor of a person that delivers a certificated security or other
23 financial asset represented by a writing attaches to the security or other financial
24 asset if:

25 a. The security or other financial asset:

26 (1) In the ordinary course of business is transferred by delivery with any
27 necessary indorsement or assignment; and

28 (2) Is delivered under an agreement between persons in the business of
29 dealing with such securities or financial assets; and

30 b. The agreement calls for delivery against payment.

1 4. The security interest described in subsection 3 secures the obligation to make
2 payment for the delivery.

3 **41-09-17. (9-207) Rights and duties of secured party having possession or**
4 **control of collateral.**

5 1. Except as otherwise provided in subsection 4, a secured party shall use
6 reasonable care in the custody and preservation of collateral in the secured party's
7 possession. In the case of chattel paper or an instrument, reasonable care
8 includes taking necessary steps to preserve rights against prior parties unless
9 otherwise agreed.

10 2. Except as otherwise provided in subsection 4, if a secured party has possession of
11 collateral:

12 a. Reasonable expenses, including the cost of insurance and payment of taxes
13 or other charges, incurred in the custody, preservation, use, or operation of
14 the collateral are chargeable to the debtor and are secured by the collateral;

15 b. The risk of accidental loss or damage is on the debtor to the extent of a
16 deficiency in any effective insurance coverage;

17 c. The secured party shall keep the collateral identifiable, but fungible collateral
18 may be commingled; and

19 d. The secured party may use or operate the collateral:

20 (1) For the purpose of preserving the collateral or the collateral's value;

21 (2) As permitted by an order of a court having competent jurisdiction; or

22 (3) Except in the case of consumer goods, in the manner and to the extent
23 agreed by the debtor.

24 3. Except as otherwise provided in subsection 4, a secured party having possession
25 of collateral or control of collateral under section 41-09-04, 41-09-05, 41-09-06, or
26 41-09-07:

27 a. May hold as additional security any proceeds, except money or funds,
28 received from the collateral;

29 b. Shall apply money or funds received from the collateral to reduce the secured
30 obligation, unless remitted to the debtor; and

31 c. May create a security interest in the collateral.

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

- 1 (2) If the debtor designates a custodian that is the designated custodian
2 with which the authoritative copy of the electronic chattel paper is
3 maintained for the secured party, communicate to the custodian an
4 authenticated record releasing the designated custodian from any
5 further obligation to comply with instructions originated by the secured
6 party and instructing the custodian to comply with instructions
7 originated by the debtor; and
- 8 (3) Take appropriate action to enable the debtor or the debtor's designated
9 custodian to make copies of or revisions to the authoritative copy which
10 add or change an identified assignee of the authoritative copy without
11 the consent of the secured party;
- 12 d. A secured party having control of investment property under subdivision b of
13 subsection 4 of section 41-08-06 or subsection 2 of section 41-09-06 shall
14 send to the securities intermediary or commodity intermediary with which the
15 security entitlement or commodity contract is maintained an authenticated
16 record that releases the securities intermediary or commodity intermediary
17 from any further obligation to comply with entitlement orders or directions
18 originated by the secured party; and
- 19 e. A secured party having control of a letter-of-credit right under section
20 41-09-07 shall send to each person having an unfulfilled obligation to pay or
21 deliver proceeds of the letter of credit to the secured party an authenticated
22 release from any further obligation to pay or deliver proceeds of the letter of
23 credit to the secured party.

24 **41-09-19. (9-209) Duties of secured party if account debtor has been notified of**
25 **assignment.**

- 26 1. Except as otherwise provided in subsection 3, this section applies if:
- 27 a. There is no outstanding secured obligation; and
- 28 b. The secured party is not committed to make advances, incur obligations, or
29 otherwise give value.
- 30 2. Within ten days after receiving an authenticated demand by the debtor, a secured
31 party shall send to an account debtor that has received notification of an

1 assignment to the secured party as assignee under subsection 1 of section
2 41-09-68 an authenticated record that releases the account debtor from any further
3 obligation to the secured party.

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

6 **41-09-20. (9-210) Request for accounting - Request regarding list of collateral or**
7 **statement of account.**

8 1. In this section:

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

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

14 c. "Request regarding a list of collateral" means a record authenticated by a
15 debtor requesting that the recipient approve or correct a list of what the debtor
16 believes to be the collateral securing an obligation and reasonably identifying
17 the transaction or relationship that is the subject of the request.

18 d. "Request regarding a statement of account" means a record authenticated by
19 a debtor requesting that the recipient approve or correct a statement
20 indicating what the debtor believes to be the aggregate amount of unpaid
21 obligations secured by collateral as of a specified date and reasonably
22 identifying the transaction or relationship that is the subject of the request.

23 2. Subject to subsections 3 through 6, a secured party, other than a buyer of
24 accounts, chattel paper, payment intangibles, or promissory notes or a consignor,
25 shall comply with a request within fourteen days after receipt:

26 a. In the case of a request for an accounting, by authenticating and sending to
27 the debtor an accounting; and

28 b. In the case of a request regarding a list of collateral or a request regarding a
29 statement of account, by authenticating and sending to the debtor an approval
30 or correction.

- 1 3. A secured party that claims a security interest in all of a particular type of collateral
2 owned by the debtor may comply with a request regarding a list of collateral by
3 sending to the debtor an authenticated record including a statement to that effect
4 within fourteen days after receipt.
- 5 4. A person that receives a request regarding a list of collateral, claims no interest in
6 the collateral when that person receives the request, and claimed an interest in the
7 collateral at an earlier time shall comply with the request within fourteen days after
8 receipt by sending to the debtor an authenticated record:
- 9 a. Disclaiming any interest in the collateral; and
10 b. If known to the recipient, providing the name and mailing address of any
11 assignee of or successor to the recipient's interest in the collateral.
- 12 5. A person that receives a request for an accounting or a request regarding a
13 statement of account, claims no interest in the obligations when it receives the
14 request, and claimed an interest in the obligations at an earlier time shall comply
15 with the request within fourteen days after receipt by sending to the debtor an
16 authenticated record:
- 17 a. Disclaiming any interest in the obligations; and
18 b. If known to the recipient, providing the name and mailing address of any
19 assignee of or successor to the recipient's interest in the obligations.
- 20 6. A debtor is entitled without charge to one response to a request under this section
21 during any six-month period. The secured party may require payment of a charge
22 not exceeding twenty-five dollars for each additional response.

23 **41-09-21. (9-301) Law governing perfection and priority of security interests.**

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

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

- 1 2. While collateral is located in a jurisdiction, the local law of that jurisdiction governs
2 perfection, the effect of perfection or nonperfection, and the priority of a possessory
3 security interest in that collateral.
- 4 3. Except as otherwise provided in subsection 4, while negotiable documents, goods,
5 instruments, money, or tangible chattel paper is located in a jurisdiction, the local
6 law of that jurisdiction governs:
- 7 a. Perfection of a security interest in the goods by filing a fixture filing;
8 b. Perfection of a security interest in timber to be cut; and
9 c. The effect of perfection or nonperfection and the priority of a nonpossessory
10 security interest in the collateral.
- 11 4. The local law of the jurisdiction in which the wellhead or minehead is located
12 governs perfection, the effect of perfection or nonperfection, and the priority of a
13 security interest in as-extracted collateral.

14 **41-09-22. (9-302) Law governing perfection and priority of agricultural liens.**

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

18 **41-09-23. (9-303) Law governing perfection and priority of security interests in**
19 **goods covered by a certificate of title.**

- 20 1. This section applies to goods covered by a certificate of title, even if there is no
21 other relationship between the jurisdiction under whose certificate of title the goods
22 are covered and the goods or the debtor.
- 23 2. Goods become covered by a certificate of title when a valid application for the
24 certificate of title and the applicable fee are delivered to the appropriate authority.
25 Goods cease to be covered by a certificate of title at the earlier of the time the
26 certificate of title ceases to be effective under the law of the issuing jurisdiction or
27 the time the goods become covered subsequently by a certificate of title issued by
28 another jurisdiction.
- 29 3. The local law of the jurisdiction under whose certificate of title the goods are
30 covered governs perfection, the effect of perfection or nonperfection, and the
31 priority of a security interest in goods covered by a certificate of title from the time

1 the goods become covered by the certificate of title until the goods cease to be
2 covered by the certificate of title.

3 **41-09-24. (9-304) Law governing perfection and priority of security interests in**
4 **deposit accounts or certificates of deposit.**

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

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

9 a. If an agreement between the bank and the debtor governing the deposit
10 account or certificate of deposit expressly provides that a particular jurisdiction
11 is the bank's jurisdiction for purposes of this part, this chapter, or this title, that
12 jurisdiction is the bank's jurisdiction.

13 b. If subdivision a does not apply and an agreement between the bank and its
14 customer governing the deposit account or certificate of deposit expressly
15 provides that the agreement is governed by the law of a particular jurisdiction,
16 that jurisdiction is the bank's jurisdiction.

17 c. If neither subdivision a nor b applies and an agreement between the bank and
18 the bank's customer governing the deposit account or certificate of deposit
19 expressly provides that the deposit account or certificate of deposit is
20 maintained at an office in a particular jurisdiction, that jurisdiction is the bank's
21 jurisdiction.

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

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

27 **41-09-25. (9-305) Law governing perfection and priority of security interests in**
28 **investment property.**

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

30 a. While a security certificate is located in a jurisdiction, the local law of that
31 jurisdiction governs perfection, the effect of perfection or nonperfection, and

- 1 the priority of a security interest in the certificated security represented
2 thereby.
- 3 b. The local law of the issuer's jurisdiction as specified in subsection 4 of section
4 41-08-10 governs perfection, the effect of perfection or nonperfection, and the
5 priority of a security interest in an uncertificated security.
- 6 c. The local law of the securities intermediary's jurisdiction as specified in
7 subsection 5 of section 41-08-10 governs perfection, the effect of perfection or
8 nonperfection, and the priority of a security interest in a security entitlement or
9 securities account.
- 10 d. The local law of the commodity intermediary's jurisdiction governs perfection,
11 the effect of perfection or nonperfection, and the priority of a security interest
12 in a commodity contract or commodity account.
- 13 2. The following rules determine a commodity intermediary's jurisdiction for purposes
14 of sections 41-09-21 through 41-09-62:
- 15 a. If an agreement between the commodity intermediary and commodity
16 customer governing the commodity account expressly provides that a
17 particular jurisdiction is the commodity intermediary's jurisdiction for purposes
18 of sections 41-09-21 through 41-09-62, this chapter, or this title, that
19 jurisdiction is the commodity intermediary's jurisdiction.
- 20 b. If subdivision a does not apply and an agreement between the commodity
21 intermediary and commodity customer governing the commodity account
22 expressly provides that the agreement is governed by the law of a particular
23 jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.
- 24 c. If neither subdivision a nor b applies and an agreement between the
25 commodity intermediary and commodity customer governing the commodity
26 account expressly provides that the commodity account is maintained at an
27 office in a particular jurisdiction, that jurisdiction is the commodity
28 intermediary's jurisdiction.
- 29 d. If none of the preceding subdivisions applies, the commodity intermediary's
30 jurisdiction is the jurisdiction in which the office identified in an account
31 statement as the office serving the commodity customer's account is located.

- 1 e. If none of the preceding subdivisions applies, the commodity intermediary's
2 jurisdiction is the jurisdiction in which the chief executive office of the
3 commodity intermediary is located.
- 4 3. The local law of the jurisdiction in which the debtor is located governs:
- 5 a. Perfection of a security interest in investment property by filing;
6 b. Automatic perfection of a security interest in investment property created by a
7 broker or securities intermediary; and
8 c. Automatic perfection of a security interest in a commodity contract or
9 commodity account created by a commodity intermediary.

10 **41-09-26. (9-306) Law governing perfection and priority of security interests in**
11 **letter-of-credit rights.**

- 12 1. Subject to subsection 3, the local law of the issuer's jurisdiction or a nominated
13 person's jurisdiction governs perfection, the effect of perfection or nonperfection,
14 and the priority of a security interest in a letter-of-credit right if the issuer's
15 jurisdiction or nominated person's jurisdiction is a state.
- 16 2. For purposes of this part, an issuer's jurisdiction or nominated person's jurisdiction
17 is the jurisdiction whose law governs the liability of the issuer or nominated person
18 with respect to the letter-of-credit right as provided in section 41-05-16.
- 19 3. This section does not apply to a security interest that is perfected only under
20 subsection 4 of section 41-09-28.

21 **41-09-27. (9-307) Location of debtor.**

- 22 1. In this section, "place of business" means a place where a debtor conducts its
23 affairs.
- 24 2. Except as otherwise provided in this section, the following rules determine a
25 debtor's location:
- 26 a. A debtor who is an individual is located at the individual's principal residence.
27 b. A debtor that is an organization and has only one place of business is located
28 at its place of business.
- 29 c. A debtor that is an organization and has more than one place of business is
30 located at its chief executive office.

- 1 3. Subsection 2 applies only if a debtor's residence, place of business, or chief
2 executive office, as applicable, is located in a jurisdiction whose law generally
3 requires information concerning the existence of a nonpossessory security interest
4 to be made generally available in a filing, recording, or registration system as a
5 condition or result of the security interest's obtaining priority over the rights of a lien
6 creditor with respect to the collateral. If subsection 2 does not apply, the debtor is
7 located in the District of Columbia.
- 8 4. A person that ceases to exist, have a residence, or have a place of business
9 continues to be located in the jurisdiction specified by subsections 2 and 3.
- 10 5. A registered organization that is organized under the law of a state is located in
11 that state.
- 12 6. Except as otherwise provided in subsection 9, a registered organization that is
13 organized under the law of the United States and a branch or agency of a bank
14 that is not organized under the law of the United States or a state are located:
- 15 a. In the state that the law of the United States designates, if the law designates
16 a state of location;
- 17 b. In the state that the registered organization, branch, or agency designates, if
18 the law of the United States authorizes the registered organization, branch, or
19 agency to designate its state of location; or
- 20 c. In the District of Columbia, if neither subdivision a nor b applies.
- 21 7. A registered organization continues to be located in the jurisdiction specified by
22 subsection 5 or 6 notwithstanding:
- 23 a. The suspension, revocation, forfeiture, or lapse of the registered
24 organization's status as such in its jurisdiction of organization; or
- 25 b. The dissolution, winding up, or cancellation of the existence of the registered
26 organization.
- 27 8. The United States is located in the District of Columbia.
- 28 9. A branch or agency of a bank that is not organized under the law of the United
29 States or a state is located in the state in which the branch or agency is licensed, if
30 all branches and agencies of the bank are licensed in only one state.

1 10. A foreign air carrier under the Federal Aviation Act of 1958, as amended, [Pub. L.
2 85-726; 72 Stat. 731] is located at the designated office of the agent upon which
3 service of process may be made on behalf of the carrier.

4 11. This section applies only for purposes of this part.

5 **41-09-28. (9-308) When security interest or agricultural lien is perfected -**
6 **Continuity of perfection.**

7 1. Except as otherwise provided in this section and section 41-09-29, a security
8 interest is perfected if it has attached and all of the applicable requirements for
9 perfection in sections 41-09-30 through 41-09-36 have been satisfied. A security
10 interest is perfected when it attaches if the applicable requirements are satisfied
11 before the security interest attaches.

12 2. An agricultural lien is perfected if it has become effective and all of the applicable
13 requirements for perfection in section 41-09-30 have been satisfied. An
14 agricultural lien is perfected when it becomes effective if the applicable
15 requirements are satisfied before the agricultural lien becomes effective.

16 3. A security interest or agricultural lien is perfected continuously if it is originally
17 perfected by one method under this chapter and is later perfected by another
18 method under this chapter, without an intermediate period when it was
19 unperfected.

20 4. Perfection of a security interest in collateral also perfects a security interest in a
21 supporting obligation for the collateral.

22 5. Perfection of a security interest in a right to payment or performance also perfects
23 a security interest in a security interest, mortgage, or other lien on personal or real
24 property securing the right.

25 6. Perfection of a security interest in a securities account also perfects a security
26 interest in the security entitlements carried in the securities account.

27 7. Perfection of a security interest in a commodity account also perfects a security
28 interest in the commodity contracts carried in the commodity account.

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

- 1 1. A purchase-money security interest in consumer goods, except as otherwise
- 2 provided in subsection 2 of section 41-09-31 with respect to consumer goods that
- 3 are subject to a statute or treaty described in subsection 1 of section 41-09-31;
- 4 2. An assignment of accounts or payment intangibles which does not by itself or in
- 5 conjunction with other assignments to the same assignee transfer a significant part
- 6 of the assignor's outstanding accounts or payment intangibles;
- 7 3. A sale of a payment intangible;
- 8 4. A sale of a promissory note;
- 9 5. A security interest created by the assignment of a health care insurance receivable
- 10 to the provider of the health care goods or services;
- 11 6. A security interest arising under section 41-02-46, section 41-02-53, subsection 3
- 12 of section 41-02-90, or subsection 5 of section 41-02.1-56, until the debtor obtains
- 13 possession of the collateral;
- 14 7. A security interest of a collecting bank arising under section 41-04-22;
- 15 8. A security interest of an issuer or nominated person arising under section
- 16 41-05-18;
- 17 9. A security interest arising in the delivery of a financial asset under subsection 3 of
- 18 section 41-09-16;
- 19 10. A security interest in investment property created by a broker or securities
- 20 intermediary;
- 21 11. A security interest in a commodity contract or a commodity account created by a
- 22 commodity intermediary;
- 23 12. An assignment for the benefit of all creditors of the transferor and subsequent
- 24 transfers by the assignee thereunder; and
- 25 13. A security interest created by an assignment of a beneficial interest in a decedent's
- 26 estate.

27 **41-09-30. (9-310) When filing required to perfect security interest or agricultural**
28 **lien - Security interests and agricultural liens to which filing provisions do not apply.**

- 29 1. Except as otherwise provided in subsection 2 and subsection 2 of section
- 30 41-09-32, a financing statement must be filed to perfect all security interests and
- 31 agricultural liens.

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

21 **41-09-31. (9-311) Perfection of security interests in property subject to certain**
22 **statutes, regulations, and treaties.**

- 23 1. Except as otherwise provided in subsection 4, the filing of a financing statement is
24 not necessary or effective to perfect a security interest in property subject to:
25 a. A statute, regulation, or treaty of the United States whose requirements for a
26 security interest's obtaining priority over the rights of a lien creditor with
27 respect to the property preempt subsection 1 of section 41-09-30;
28 b. Section 35-01-05.1;
29 c. A certificate-of-title statute of another jurisdiction which provides for a security
30 interest to be indicated on the certificate as a condition or result of the security

- 1 interest's obtaining priority over the rights of a lien creditor with respect to the
2 property; or
3 d. Section 35-01-05.
- 4 2. Compliance with the requirements of a statute, regulation, or treaty described in
5 subsection 1 for obtaining priority over the rights of a lien creditor is equivalent to
6 the filing of a financing statement under this chapter. Except as otherwise provided
7 in subsection 4 and sections 41-09-33 and subsections 4 and 5 of section
8 41-09-36 for goods covered by a certificate of title, a security interest in property
9 subject to a statute, regulation, or treaty described in subsection 1 may be
10 perfected only by compliance with those requirements, and a security interest so
11 perfected remains perfected notwithstanding a change in the use or transfer of
12 possession of the collateral.
- 13 3. Except as otherwise provided in subsection 4 and subsections 4 and 5 of section
14 41-09-36, duration and renewal of perfection of a security interest perfected by
15 compliance with the requirements prescribed by a statute, regulation, or treaty
16 described in subsection 1 are governed by the statute, regulation, or treaty. In
17 other respects, the security interest is subject to this chapter.
- 18 4. During any period in which collateral subject to a statute specified in subdivision b
19 of subsection 1 is inventory held for sale or lease by a person or leased by that
20 person as lessor and that person is in the business of selling goods of that kind,
21 this section does not apply to a security interest in that collateral created by that
22 person.
- 23 **41-09-32. (9-312) Perfection of security interests in chattel paper, deposit**
24 **accounts, documents, goods covered by documents, instruments, investment property,**
25 **letter-of-credit rights, money, and uncertificated certificates of deposit money -**
26 **Perfection by permissive filing - Temporary perfection without filing or transfer of**
27 **possession.**
- 28 1. A security interest in chattel paper, negotiable documents, instruments, or
29 investment property may be perfected by filing.
- 30 2. Except as otherwise provided in subsections 3 and 4 of section 41-09-35 for
31 proceeds:

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

- 1 b. Loading, unloading, storing, shipping, transshipping, manufacturing,
2 processing, or otherwise dealing with them in a manner preliminary to their
3 sale or exchange.
- 4 7. A perfected security interest in a certificated certificate of deposit, certificated
5 security, or instrument remains perfected for twenty days without filing if the
6 secured party delivers the security certificate, certificated certificate of deposit, or
7 instrument to the debtor for the purpose of:
- 8 a. Ultimate sale or exchange; or
9 b. Presentation, collection, enforcement, renewal, or registration of transfer.
- 10 8. After the twenty-day period specified in subsection 5, 6, or 7 expires, perfection
11 depends upon compliance with this chapter.
- 12 **41-09-33. (9-313) When possession by or delivery to secured party perfects**
13 **security interest without filing.**
- 14 1. Except as otherwise provided in subsection 2, a secured party may perfect a
15 security interest in certificated certificates of deposit, negotiable documents, goods,
16 instruments, money, or tangible chattel paper by taking possession of the
17 collateral. A secured party may perfect a security interest in certificated securities
18 by taking delivery of the certificated securities under section 41-08-27.
- 19 2. With respect to goods covered by a certificate of title issued by this state, a
20 secured party may perfect a security interest in the goods by taking possession of
21 the goods only in the circumstances described in subsection 4 of section 41-09-36.
- 22 3. With respect to collateral other than certificated securities and goods covered by a
23 document, a secured party takes possession of collateral in the possession of a
24 person other than the debtor, the secured party, or a lessee of the collateral from
25 the debtor in the ordinary course of the debtor's business, when:
- 26 a. The person in possession authenticates a record acknowledging that it holds
27 possession of the collateral for the secured party's benefit; or
- 28 b. The person takes possession of the collateral after having authenticated a
29 record acknowledging that it will hold possession of collateral for the secured
30 party's benefit.

- 1 4. If perfection of a security interest depends upon possession of the collateral by a
2 secured party, perfection occurs no earlier than the time the secured party takes
3 possession and continues only while the secured party retains possession.
- 4 5. A security interest in a certificated security in registered form is perfected by
5 delivery when delivery of the certificated security occurs under section 41-08-27
6 and remains perfected by delivery until the debtor obtains possession of the
7 security certificate.
- 8 6. A person in possession of collateral is not required to acknowledge that it holds
9 possession for a secured party's benefit.
- 10 7. If a person acknowledges that it holds possession for the secured party's benefit:
11 a. The acknowledgment is effective under subsection 3 or subsection 1 of
12 section 41-09-21, even if the acknowledgment violates the rights of a debtor;
13 and
14 b. Unless the person otherwise agrees or law other than this chapter otherwise
15 provides, the person does not owe any duty to the secured party and is not
16 required to confirm the acknowledgment to another person.
- 17 8. A secured party having possession of collateral does not relinquish possession by
18 delivering the collateral to a person other than the debtor or a lessee of the
19 collateral from the debtor in the ordinary course of the debtor's business if the
20 person was instructed before the delivery or is instructed contemporaneously with
21 the delivery:
22 a. To hold possession of the collateral for the secured party's benefit; or
23 b. To redeliver the collateral to the secured party.
- 24 9. A secured party does not relinquish possession, even if a delivery under
25 subsection 8 violates the rights of a debtor. A person to which collateral is
26 delivered under subsection 8 does not owe any duty to the secured party and is not
27 required to confirm the delivery to another person unless the person otherwise
28 agrees or law other than this chapter otherwise provides.
- 29 **41-09-34. (9-314) Perfection by control.**
- 30 1. A security interest in investment property, deposit accounts, uncertificated
31 certificates of deposit, letter-of-credit rights, or electronic chattel paper may be

- 1 perfected by control of the collateral under section 41-09-04, 41-09-05, 41-09-06,
2 or 41-09-07.
- 3 2. A security interest in deposit accounts, electronic chattel paper, letter-of-credit
4 rights, or uncertificated certificates of deposit is perfected by control under section
5 41-09-04, 41-09-05, or 41-09-07 when the secured party obtains control and
6 remains perfected by control only while the secured party retains control.
- 7 3. A security interest in investment property is perfected by control under section
8 41-09-06 from the time the secured party obtains control and remains perfected by
9 control until:
- 10 a. The secured party does not have control; and
- 11 b. One of the following occurs:
- 12 (1) If the collateral is a certificated security, the debtor has or acquires
13 possession of the security certificate;
- 14 (2) If the collateral is an uncertificated security, the issuer has registered or
15 registers the debtor as the registered owner; or
- 16 (3) If the collateral is a security entitlement, the debtor is or becomes the
17 entitlement holder.

18 **41-09-35. (9-315) Secured party's rights on disposition of collateral and in**
19 **proceeds.**

- 20 1. Except as otherwise provided in this chapter and in subsection 2 of section
21 41-02-48:
- 22 a. A security interest or agricultural lien continues in collateral notwithstanding
23 sale, lease, license, exchange, or other disposition thereof unless the secured
24 party authorized the disposition free of the security interest or agricultural lien;
25 and
- 26 b. A security interest attaches to any identifiable proceeds of collateral.
- 27 2. Proceeds that are commingled with other property are identifiable proceeds:
- 28 a. If the proceeds are goods, to the extent provided by section 41-09-56; and
- 29 b. If the proceeds are not goods, to the extent that the secured party identifies
30 the proceeds by a method of tracing, including application of equitable

- 1 principles, that is permitted under law other than this chapter with respect to
2 commingled property of the type involved.
- 3 3. A security interest in proceeds is a perfected security interest if the security interest
4 in the original collateral was perfected.
- 5 4. A perfected security interest in proceeds becomes unperfected on the twenty-first
6 day after the security interest attaches to the proceeds unless:
- 7 a. The following conditions are satisfied:
- 8 (1) A filed financing statement covers the original collateral;
9 (2) The proceeds are collateral in which a security interest may be
10 perfected by filing in the office in which the financing statement has
11 been filed; and
- 12 (3) The proceeds are not acquired with cash proceeds;
- 13 b. The proceeds are identifiable cash proceeds; or
- 14 c. The security interest in the proceeds is perfected other than under
15 subsection 3 when the security interest attaches to the proceeds or within
16 twenty days thereafter.
- 17 5. If a filed financing statement covers the original collateral, a security interest in
18 proceeds which remains perfected under subdivision a of subsection 4 becomes
19 unperfected at the later of:
- 20 a. When the effectiveness of the filed financing statement lapses under section
21 41-09-86 or is terminated under section 41-09-84; or
- 22 b. The twenty-first day after the security interest attaches to the proceeds.
- 23 **41-09-36. (9-316) Continued perfection of security interest following change in**
24 **governing law.**
- 25 1. A security interest perfected pursuant to the law of the jurisdiction designated in
26 subsection 1 of section 41-09-21 or subsection 3 of section 41-09-25 remains
27 perfected until the earliest of:
- 28 a. The time perfection would have ceased under the law of that jurisdiction;
29 b. The expiration of four months after a change of the debtor's location to
30 another jurisdiction; or

- 1 c. The expiration of one year after a transfer of collateral to a person that
2 thereby becomes a debtor and is located in another jurisdiction.
- 3 2. If a security interest described in subsection 1 becomes perfected under the law of
4 the other jurisdiction before the earliest time or event described in that subsection,
5 it remains perfected thereafter. If the security interest does not become perfected
6 under the law of the other jurisdiction before the earliest time or event, it becomes
7 unperfected and is deemed never to have been perfected as against a purchaser
8 of the collateral for value.
- 9 3. A possessory security interest in collateral, other than goods covered by a
10 certificate of title and as-extracted collateral consisting of goods, remains
11 continuously perfected if:
- 12 a. The collateral is located in one jurisdiction and subject to a security interest
13 perfected under the law of that jurisdiction;
- 14 b. Thereafter the collateral is brought into another jurisdiction; and
- 15 c. Upon entry into the other jurisdiction, the security interest is perfected under
16 the law of the other jurisdiction.
- 17 4. Except as otherwise provided in subsection 5, a security interest in goods covered
18 by a certificate of title which is perfected by any method under the law of another
19 jurisdiction when the goods become covered by a certificate of title from this state
20 remains perfected until the security interest would have become unperfected under
21 the law of the other jurisdiction had the goods not become so covered.
- 22 5. A security interest described in subsection 4 becomes unperfected as against a
23 purchaser of the goods for value and is deemed never to have been perfected as
24 against a purchaser of the goods for value if the applicable requirements for
25 perfection under subsection 2 of section 41-09-31 or section 41-09-33 are not
26 satisfied before the earlier of:
- 27 a. The time the security interest would have become unperfected under the law
28 of the other jurisdiction had the goods not become covered by a certificate of
29 title from this state; or
- 30 b. The expiration of four months after the goods had become so covered.

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

16 **41-09-37. (9-317) Interests that take priority over or take free of security interest**
17 **or agricultural lien.**

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

- 1 3. Except as otherwise provided in subsection 5, a lessee of goods takes free of a
2 security interest or agricultural lien if the lessee gives value and receives delivery
3 of the collateral without knowledge of the security interest or agricultural lien and
4 before it is perfected.
- 5 4. A licensee of a general intangible or a buyer, other than a secured party, of
6 accounts, electronic chattel paper, general intangibles, or investment property
7 other than a certificated security takes free of a security interest if the licensee or
8 buyer gives value without knowledge of the security interest and before it is
9 perfected.
- 10 5. Except as otherwise provided in sections 41-09-40 and 41-09-41, if a person files a
11 financing statement with respect to a purchase-money security interest before or
12 within twenty days after the debtor receives delivery of the collateral, the security
13 interest takes priority over the rights of a buyer, lessee, or lien creditor which arise
14 between the time the security interest attaches and the time of filing.

15 **41-09-38. (9-318) No interest retained in right to payment that is sold - Rights and**
16 **title of seller of account or chattel paper with respect to creditors and purchasers.**

- 17 1. A debtor that has sold an account, chattel paper, payment intangible, or promissory
18 note does not retain a legal or equitable interest in the collateral sold.
- 19 2. For purposes of determining the rights of creditors of, and purchasers for value of
20 an account or chattel paper from, a debtor that has sold an account or chattel
21 paper, while the buyer's security interest is unperfected, the debtor is deemed to
22 have rights and title to the account or chattel paper identical to those the debtor
23 sold.

24 **41-09-39. (9-319) Rights and title of consignee with respect to creditors and**
25 **purchasers.**

- 26 1. Except as otherwise provided in subsection 2, for purposes of determining the
27 rights of creditors of, and purchasers for value of goods from, a consignee, while
28 the goods are in the possession of the consignee, the consignee is deemed to
29 have rights and title to the goods identical to those the consignor had or had power
30 to transfer.

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 information
7 prescribed by the secretary of state under section 41-09-92 or contained on a form
8 prescribed by the secretary of state under section 35-17-04, 35-30-02, or 35-31-02.

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

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

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

1 **41-09-41. (9-321) Licensee of general intangible and lessee of goods in ordinary**
2 **course of business.**

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

17 **41-09-42. (9-322) Priorities among conflicting security interests in and**
18 **agricultural liens on same collateral.**

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

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

1 d. Section 41-09-10 with respect to a security interest arising under chapter
2 41-02 or 41-02.1.

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

6 **41-09-43. (9-323) Future advances.**

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

11 a. Is made while the security interest is perfected only:

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

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

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

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

21 a. Without knowledge of the lien; or

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

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

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

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

30 b. Forty-five days after the purchase.

- 1 5. Subsection 4 does not apply if the advance is made pursuant to a commitment
2 entered into without knowledge of the buyer's purchase and before the expiration
3 of the forty-five-day period.
- 4 6. Except as otherwise provided in subsection 7, a lessee of goods, other than a
5 lessee in ordinary course of business, takes the leasehold interest free of a
6 security interest to the extent that it secures advances made after the earlier of:
- 7 a. The time the secured party acquires knowledge of the lease; or
8 b. Forty-five days after the lease contract becomes enforceable.
- 9 7. Subsection 6 does not apply if the advance is made pursuant to a commitment
10 entered into without knowledge of the lease and before the expiration of the
11 forty-five-day period.
- 12 **41-09-44. (9-324) Priority of purchase-money security interests.**
- 13 1. Except as otherwise provided in subsection 7, a perfected purchase-money
14 security interest in goods other than inventory or livestock has priority over a
15 conflicting security interest in the same goods, and, except as otherwise provided
16 in section 41-09-47, a perfected security interest in its identifiable proceeds also
17 has priority, if the purchase-money security interest is perfected when the debtor
18 receives possession of the collateral or within twenty days thereafter.
- 19 2. Subject to subsection 3 and except as otherwise provided in subsection 7, a
20 perfected purchase-money security interest in inventory has priority over a
21 conflicting security interest in the same inventory, has priority over a conflicting
22 security interest in chattel paper or an instrument constituting proceeds of the
23 inventory and in proceeds of the chattel paper, if so provided in section 41-09-50,
24 and, except as otherwise provided in section 41-09-47, also has priority in
25 identifiable cash proceeds of the inventory to the extent the identifiable cash
26 proceeds are received on or before the delivery of the inventory to a buyer, if:
- 27 a. The purchase-money security interest is perfected when the debtor receives
28 possession of the inventory;
- 29 b. The purchase-money secured party sends an authenticated notification to the
30 holder of the conflicting security interest;

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

- 1 a. If the purchase-money security interest is perfected by filing, before the date
2 of the filing; or
- 3 b. If the purchase-money security interest is temporarily perfected without filing
4 or possession under subsection 6 of section 41-09-32, before the beginning of
5 the twenty-day period thereunder.
- 6 6. Except as otherwise provided in subsection 7, a perfected purchase-money
7 security interest in software has priority over a conflicting security interest in the
8 same collateral, and, except as otherwise provided in section 41-09-47, a perfected
9 security interest in its identifiable proceeds also has priority, to the extent that the
10 purchase-money security interest in the goods in which the software was acquired
11 for use has priority in the goods and proceeds of the goods under this section.
- 12 7. If more than one security interest qualifies for priority in the same collateral under
13 subsection 1, 2, 3, or 4:
- 14 a. A security interest securing an obligation incurred as all or part of the price of
15 the collateral has priority over a security interest securing an obligation
16 incurred for value given to enable the debtor to acquire rights in or the use of
17 collateral; and
- 18 b. In all other cases, subsection 1 of section 41-09-42 applies to the qualifying
19 security interests.
- 20 **41-09-45. (9-325) Priority of security interests in transferred collateral.**
- 21 1. Except as otherwise provided in subsection 2, a security interest created by a
22 debtor is subordinate to a security interest in the same collateral created by
23 another person if:
- 24 a. The debtor acquired the collateral subject to the security interest created by
25 the other person;
- 26 b. The security interest created by the other person was perfected when the
27 debtor acquired the collateral; and
- 28 c. There is no period thereafter when the security interest is unperfected.
- 29 2. Subsection 1 subordinates a security interest only if the security interest:
- 30 a. Otherwise would have priority solely under subsection 1 of section 41-09-42
31 or section 41-09-44; or

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

3 **41-09-46. (9-326) Priority of security interests created by new debtor.**

4 1. Subject to subsection 2, a security interest created by a new debtor which is
5 perfected by a filed financing statement that is effective solely under section
6 41-09-79 in collateral in which a new debtor has or acquires rights is subordinate to
7 a security interest in the same collateral which is perfected other than by a filed
8 financing statement that is effective solely under section 41-09-79.

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

15 **41-09-47. (9-327) Priority of security interests in deposit account and**
16 **uncertificated certificate of deposit.** The following rules govern priority among conflicting
17 security interests in the same deposit account or uncertificated certificate of deposit:

18 1. A security interest held by a secured party having control of the deposit account or
19 uncertificated certificate of deposit under section 41-09-04 has priority over a
20 conflicting security interest held by a secured party that does not have control.

21 2. Except as otherwise provided in subsections 3 and 4, security interests perfected
22 by control under section 41-09-34 rank according to priority in time of obtaining
23 control.

24 3. Except as otherwise provided in subsection 4, a security interest held by the bank
25 with which the deposit account or uncertificated certificate of deposit is maintained
26 has priority over a conflicting security interest held by another secured party.

27 4. A security interest perfected by control under subdivision c of subsection 1 of
28 section 41-09-04 has priority over a security interest held by the bank with which
29 the deposit account or uncertificated certificate of deposit is maintained.

- 1 **41-09-48. (9-328) Priority of security interests in investment property.** The
2 following rules govern priority among conflicting security interests in the same investment
3 property:
- 4 1. A security interest held by a secured party having control of investment property
5 under section 41-09-06 has priority over a security interest held by a secured party
6 that does not have control of the investment property.
- 7 2. Except as otherwise provided in subsections 3 and 4, conflicting security interests
8 held by secured parties each of which has control under section 41-09-06 rank
9 according to priority in time of:
- 10 a. If the collateral is a security, obtaining control;
- 11 b. If the collateral is a security entitlement carried in a securities account and:
- 12 (1) If the secured party obtained control under subdivision a of
13 subsection 4 of section 41-08-06, the secured party's becoming the
14 person for which the securities account is maintained;
- 15 (2) If the secured party obtained control under subdivision b of
16 subsection 4 of section 41-08-06, the securities intermediary's
17 agreement to comply with the secured party's entitlement orders with
18 respect to security entitlements carried or to be carried in the securities
19 account; or
- 20 (3) If the secured party obtained control through another person under
21 subdivision c of subsection 4 of section 41-08-06, the time on which
22 priority would be based under this subsection if the other person were
23 the secured party; or
- 24 c. If the collateral is a commodity contract carried with a commodity
25 intermediary, the satisfaction of the requirement for control specified in
26 subdivision b of subsection 2 of section 41-09-06 with respect to commodity
27 contracts carried or to be carried with the commodity intermediary.
- 28 3. A security interest held by a securities intermediary in a security entitlement or a
29 securities account maintained with the securities intermediary has priority over a
30 conflicting security interest held by another secured party.

- 1 4. A security interest held by a commodity intermediary in a commodity contract or a
2 commodity account maintained with the commodity intermediary has priority over a
3 conflicting security interest held by another secured party.
- 4 5. A security interest in a certificated security in registered form which is perfected by
5 taking delivery under subsection 1 of section 41-09-33 and not by control under
6 section 41-09-34 has priority over a conflicting security interest perfected by a
7 method other than control.
- 8 6. Conflicting security interests created by a broker, securities intermediary, or
9 commodity intermediary which are perfected without control under section
10 41-09-06 rank equally.
- 11 7. In all other cases, priority among conflicting security interests in investment
12 property is governed by sections 41-09-42 and 41-09-43.

13 **41-09-49. (9-329) Priority of security interests in letter-of-credit right.** The
14 following rules govern priority among conflicting security interests in the same letter-of-credit
15 right:

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

21 **41-09-50. (9-330) Priority of purchaser of chattel paper or instrument.**

- 22 1. A purchaser of chattel paper has priority over a security interest in the chattel
23 paper which is claimed merely as proceeds of inventory subject to a security
24 interest if:
- 25 a. In good faith and in the ordinary course of the purchaser's business, the
26 purchaser gives new value and takes possession of the chattel paper or
27 obtains control of the chattel paper under section 41-09-05; and
- 28 b. The chattel paper does not indicate that it has been assigned to an identified
29 assignee other than the purchaser.
- 30 2. A purchaser of chattel paper has priority over a security interest in the chattel
31 paper which is claimed other than merely as proceeds of inventory subject to a

1 security interest if the purchaser gives new value and takes possession of the
2 chattel paper or obtains control of the chattel paper under section 41-09-05 in good
3 faith, in the ordinary course of the purchaser's business, and without knowledge
4 that the purchase violates the rights of the secured party.

5 3. Except as otherwise provided in section 41-09-47, a purchaser having priority in
6 chattel paper under subsection 1 or 2 also has priority in proceeds of the chattel
7 paper to the extent that:

8 a. Section 41-09-42 provides for priority in the proceeds; or

9 b. The proceeds consist of the specific goods covered by the chattel paper or
10 cash proceeds of the specific goods, even if the purchaser's security interest
11 in the proceeds is unperfected.

12 4. Except as otherwise provided in subsection 1 of section 41-09-51, a purchaser of
13 an instrument has priority over a security interest in the instrument perfected by a
14 method other than possession if the purchaser gives value and takes possession
15 of the instrument in good faith and without knowledge that the purchase violates
16 the rights of the secured party.

17 5. For purposes of subsections 1 and 2, the holder of a purchase-money security
18 interest in inventory gives new value for chattel paper constituting proceeds of the
19 inventory.

20 6. For purposes of subsections 2 and 4, if chattel paper or an instrument indicates
21 that it has been assigned to an identified secured party other than the purchaser, a
22 purchaser of the chattel paper or instrument has knowledge that the purchase
23 violates the rights of the secured party.

24 **41-09-51. (9-331) Priority of rights of purchasers of instruments, documents, and**
25 **securities under other articles - Priority of interests in financial assets and security**
26 **entitlements under chapter 41-08.**

27 1. This chapter does not limit the rights of a holder in due course of a negotiable
28 instrument, a holder to which a negotiable document of title has been duly
29 negotiated, or a protected purchaser of a security. These holders or purchasers
30 take priority over an earlier security interest, even if perfected, to the extent
31 provided in chapters 41-03, 41-07, and 41-08.

1 2. This chapter does not limit the rights of or impose liability on a person to the extent
2 that the person is protected against the assertion of a claim under chapter 41-08.

3 3. Filing under this chapter does not constitute notice of a claim or defense to the
4 holders, purchasers, or persons described in subsections 1 and 2.

5 **41-09-52. (9-332) Transfer of money - Transfer of funds from deposit account.**

6 1. A transferee of money takes the money free of a security interest unless the
7 transferee acts in collusion with the debtor in violating the rights of the secured
8 party.

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

12 **41-09-53. (9-333) Priority of certain liens arising by operation of law.**

13 1. In this section, "possessory lien" means an interest, other than a security interest
14 or an agricultural lien:

15 a. Which secures payment or performance of an obligation for services or
16 materials furnished with respect to goods by a person in the ordinary course
17 of the person's business;

18 b. Which is created by statute or rule of law in favor of the person; and

19 c. Whose effectiveness depends on the person's possession of the goods.

20 2. A possessory lien on goods has priority over a security interest in the goods unless
21 the lien is created by a statute that expressly provides otherwise.

22 **41-09-54. (9-334) Priority of security interests in fixtures and crops.**

23 1. A security interest under this chapter may be created in goods that are fixtures or
24 may continue in goods that become fixtures. A security interest does not exist
25 under this chapter in ordinary building materials incorporated into an improvement
26 on land.

27 2. This chapter does not prevent creation of an encumbrance upon fixtures under
28 real-property law.

29 3. In cases not governed by subsections 4 through 8, a security interest in fixtures is
30 subordinate to a conflicting interest of an encumbrancer or owner of the related
31 real property other than the debtor.

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

- 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 the
4 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 4. A security interest in an accession is subordinate to a security interest in the whole
2 which is perfected by compliance with the requirements of a certificate-of-title
3 statute under subsection 2 of section 41-09-51.
- 4 5. After default, subject to sections 41-09-98 through 41-09-123, a secured party may
5 remove an accession from other goods if the security interest in the accession has
6 priority over the claims of every person having an interest in the whole.
- 7 6. A secured party that removes an accession from other goods under subsection 5
8 shall promptly reimburse any holder of a security interest or other lien on, or owner
9 of, the whole or of the other goods, other than the debtor, for the cost of repair of
10 any physical injury to the whole or the other goods. The secured party need not
11 reimburse the holder or owner for any diminution in value of the whole or the other
12 goods caused by the absence of the accession removed or by any necessity for
13 replacing it. A person entitled to reimbursement may refuse permission to remove
14 until the secured party gives adequate assurance for the performance of the
15 obligation to reimburse.
- 16 **41-09-56. (9-336) Commingled goods.**
- 17 1. In this section, "commingled goods" means goods that are physically united with
18 other goods in such a manner that their identity is lost in a product or mass.
- 19 2. A security interest does not exist in commingled goods as such. However, a
20 security interest may attach to a product or mass that results when goods become
21 commingled goods.
- 22 3. If collateral becomes commingled goods, a security interest attaches to the product
23 or mass.
- 24 4. If a security interest in collateral is perfected before the collateral becomes
25 commingled goods, the security interest that attaches to the product or mass under
26 subsection 3 is perfected.
- 27 5. Except as otherwise provided in subsection 6, the other provisions of this part
28 determine the priority of a security interest that attaches to the product or mass
29 under subsection 3.
- 30 6. If more than one security interest attaches to the product or mass under
31 subsection 3, the following rules determine priority:

- 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 to
10 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 filed 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, the
29 purchaser gives value and, in the case of chattel paper, documents, goods,
30 instruments, or a security certificate, receives delivery of the collateral.

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

2 1. Except as otherwise provided in subsection 2 and sections 41-09-68 through
3 41-09-71, whether a debtor's rights in collateral may be voluntarily or involuntarily
4 transferred is governed by law other than this chapter.

5 2. An agreement between the debtor and secured party which prohibits a transfer of
6 the debtor's rights in collateral or makes the transfer a default does not prevent the
7 transfer from taking effect.

8 **41-09-64. (9-402) Secured party not obligated on contract of debtor or in tort.** The
9 existence of a security interest, agricultural lien, or authority given to a debtor to dispose of or
10 use collateral, without more, does not subject a secured party to liability in contract or tort for
11 the debtor's acts or omissions.

12 **41-09-65. (9-403) Agreement not to assert defenses against assignee.**

13 1. In this section, "value" has the meaning provided in subsection 1 of section
14 41-03-29.

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

19 a. For value;

20 b. In good faith;

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

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

26 3. Subsection 2 does not apply to defenses of a type that may be asserted against a
27 holder in due course of a negotiable instrument under subsection 2 of section
28 41-03-31.

29 4. In a consumer transaction, if a record evidences the account debtor's obligation,
30 law other than this chapter requires that the record include a statement to the effect
31 that the rights of an assignee are subject to claims or defenses that the account

1 debtor could assert against the original obligee, and the record does not include
2 such a statement:

3 a. The record has the same effect as if the record included such a statement;
4 and

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

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

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

14 **41-09-66. (9-404) Rights acquired by assignee - Claims and defenses against**
15 **assignee.**

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

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

22 b. Any other defense or claim of the account debtor against the assignor which
23 accrues before the account debtor receives a notification of the assignment
24 authenticated by the assignor or the assignee.

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

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

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

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

10 **41-09-67. (9-405) Modification of assigned contract.**

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

16 2. Subsection 1 applies to the extent that:

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

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

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

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

27 **41-09-68. (9-406) Discharge of account debtor - Notification of assignment -**

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

30 1. Subject to subsections 2 through 9, an account debtor on an account, chattel
31 paper, or a payment intangible may discharge its obligation by paying the assignor

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

- 1 b. Provides that the assignment or transfer or the creation, attachment,
2 perfection, or enforcement of the security interest may give rise to a default,
3 breach, right of recoupment, claim, defense, termination, right of termination,
4 or remedy under the account, chattel paper, payment intangible, or
5 promissory note.
- 6 5. Subsection 4 does not apply to the sale of a payment intangible or promissory
7 note.
- 8 6. Except as otherwise provided in sections 41-02.1-33 and 41-09-69 and subject to
9 subsections 8 and 9, a rule of law, statute, or regulation that prohibits, restricts, or
10 requires the consent of a government, governmental body or official, or account
11 debtor to the assignment or transfer of, or creation of a security interest in, an
12 account or chattel paper is ineffective to the extent that the rule of law, statute, or
13 regulation:
- 14 a. Prohibits, restricts, or requires the consent of the government, governmental
15 body or official, or account debtor to the assignment or transfer of, or the
16 creation, attachment, perfection, or enforcement of a security interest in the
17 account or chattel paper; or
- 18 b. Provides that the assignment, transfer, creation, attachment, perfection, or
19 enforcement of the security interest may give rise to a default, breach, right of
20 recoupment, claim, defense, termination, right of termination, or remedy under
21 the account or chattel paper.
- 22 7. Subject to subsection 8, an account debtor may not waive or vary its option under
23 subdivision c of subsection 2.
- 24 8. This section is subject to law other than this chapter which establishes a different
25 rule for an account debtor who is an individual and who incurred the obligation
26 primarily for personal, family, or household purposes.
- 27 9. This section does not apply to an assignment of a health care insurance
28 receivable.
- 29 **41-09-69. (9-407) Restrictions on creation or enforcement of security interest in**
30 **leasehold interest or in lessor's residual interest.**

- 1 1. Except as otherwise provided in subsection 2, a term in a lease agreement is
2 ineffective to the extent that the term:
- 3 a. Prohibits, restricts, or requires the consent of a party to the lease to the
4 assignment, transfer, creation, attachment, perfection, or enforcement of a
5 security interest in an interest of a party under the lease contract or in the
6 lessor's residual interest in the goods; or
- 7 b. Provides that the assignment, transfer, creation, attachment, perfection, or
8 enforcement of the security interest may give rise to a default, breach, right of
9 recoupment, claim, defense, termination, right of termination, or remedy under
10 the lease.
- 11 2. Except as otherwise provided in subsection 6 of section 41-02.1-33, a term
12 described in subdivision b of subsection 1 is effective to the extent that there is:
- 13 a. A transfer by the lessee of the lessee's right of possession or use of the
14 goods in violation of the term; or
- 15 b. A delegation of a material performance of either party to the lease contract in
16 violation of the term.
- 17 3. The creation, attachment, perfection, or enforcement of a security interest in the
18 lessor's interest under the lease contract or the lessor's residual interest in the
19 goods is not a transfer that materially impairs the lessee's prospect of obtaining
20 return performance or materially changes the duty of or materially increases the
21 burden or risk imposed on the lessee within the purview of subsection 4 of section
22 41-02.1-33 unless, and then only to the extent that, enforcement actually results in
23 a delegation of material performance of the lessor.

24 **41-09-70. (9-408) Restrictions on assignment of promissory notes, health care**
25 **insurance receivables, and certain general intangibles ineffective.**

- 26 1. Except as otherwise provided in subsection 2, a term in a promissory note or in an
27 agreement between an account debtor and a debtor which relates to a health care
28 insurance receivable or a general intangible, including a contract, permit, license,
29 or franchise, and which term prohibits, restricts, or requires the consent of the
30 person obligated on the promissory note or the account debtor to, the assignment
31 or transfer of, or creation, attachment, or perfection of a security interest in, the

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

- 1 proceeds of the letter of credit, the creation, attachment, or perfection of a security
2 interest in the letter-of-credit right:
- 3 a. Is not enforceable against the applicant, issuer, nominated person, or
4 transferee beneficiary;
- 5 b. Imposes no duties or obligations on the applicant, issuer, nominated person,
6 or transferee beneficiary; and
- 7 c. Does not require the applicant, issuer, nominated person, or transferee
8 beneficiary to recognize the security interest, pay or render performance to
9 the secured party, or accept payment or other performance from the secured
10 party.

11 **41-09-72. (9-501) Filing office.**

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

28 **41-09-73. (9-502) Contents of financing statement - Record of mortgage as**
29 **financing statement - Time of filing financing statement - Amending financing statement.**

- 30 1. Subject to subsection 2, a financing statement is sufficient only if the statement:
- 31 a. Provides the name of the debtor;

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

- 1 (2) Indicates, in the debtor's name or otherwise, that the debtor is a trust or
2 is a trustee acting with respect to property held in trust; and
- 3 d. In other cases:
- 4 (1) If the debtor has a name, only if it provides the individual or
5 organizational name of the debtor; and
- 6 (2) If the debtor does not have a name, only if it provides the names of the
7 partners, members, associates, or other persons comprising the debtor.
- 8 2. A financing statement that provides the name of the debtor in accordance with
9 subsection 1 is not rendered ineffective by the absence of:
- 10 a. A trade name or other name of the debtor; or
- 11 b. Unless required under paragraph 2 of subdivision d of subsection 1, names of
12 partners, members, associates, or other persons comprising the debtor.
- 13 3. A financing statement that provides only the debtor's trade name does not
14 sufficiently provide the name of the debtor.
- 15 4. Failure to indicate the representative capacity of a secured party or representative
16 of a secured party does not affect the sufficiency of a financing statement.
- 17 5. A financing statement may provide the name of more than one debtor and the
18 name of more than one secured party.

19 **41-09-75. (9-504) Indication of collateral.** A financing statement sufficiently indicates
20 the collateral that it covers if the financing statement provides:

- 21 1. A description of the collateral pursuant to section 41-09-08; or
- 22 2. An indication that the financing statement covers all assets or all personal property.

23 **41-09-76. (9-505) Filing and compliance with other statutes and treaties for**
24 **consignments, leases, other bailments, and other transactions.**

- 25 1. A consignor, lessor, or other bailor of goods, a licensor, or a buyer of a payment
26 intangible or promissory note may file a financing statement, or may comply with a
27 statute or treaty described in subsection 1 of section 41-09-31, using the terms
28 "consignor", "consignee", "lessor", "lessee", "bailor", "bailee", "licensor", "licensee",
29 "owner", "registered owner", "buyer", "seller", or words of similar import, instead of
30 the terms "secured party" and "debtor".

1 2. This part applies to the filing of a financing statement under subsection 1 and, as
2 appropriate, to compliance that is equivalent to filing a financing statement under
3 subsection 2 of section 41-09-31, but the filing or compliance is not of itself a factor
4 in determining whether the collateral secures an obligation. If it is determined for
5 another reason that the collateral secures an obligation, a security interest held by
6 the consignor, lessor, bailor, licensor, owner, or buyer which attaches to the
7 collateral is perfected by the filing or compliance.

8 **41-09-77. (9-506) Effect of errors or omissions.**

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

22 **41-09-78. (9-507) Effect of certain events on effectiveness of financing statement.**

- 23 1. A filed financing statement remains effective with respect to collateral that is sold,
24 exchanged, leased, licensed, or otherwise disposed of and in which a security
25 interest or agricultural lien continues, even if the secured party knows of or
26 consents to the disposition.
- 27 2. Except as otherwise provided in subsection 3 and section 41-09-79, a financing
28 statement is not rendered ineffective if, after the financing statement is filed, the
29 information provided in the financing statement becomes seriously misleading
30 under section 41-09-77.

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

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

5 b. The financing statement is not effective to perfect a security interest in
6 collateral acquired by the debtor more than four months after the change,
7 unless an amendment to the financing statement which renders the financing
8 statement not seriously misleading is filed within four months after the
9 change.

10 **41-09-79. (9-508) Effectiveness of financing statement if new debtor becomes**
11 **bound by security agreement.**

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

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

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

22 b. The financing statement is not effective to perfect a security interest in
23 collateral acquired by the new debtor more than four months after the new
24 debtor becomes bound under subsection 4 of section 41-09-13 unless an
25 initial financing statement providing the name of the new debtor is filed before
26 the expiration of that time.

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

29 **41-09-80. (9-509) Persons entitled to file a record.**

- 1 1. A person may file an initial financing statement, amendment that adds collateral
2 covered by a financing statement, or amendment that adds a debtor to a financing
3 statement only if:
- 4 a. The debtor authorizes the filing in an authenticated record or pursuant to
5 subsection 2 or 3; or
- 6 b. The person holds an agricultural lien that has become effective at the time of
7 filing and the financing statement covers only collateral in which the person
8 holds an agricultural lien.
- 9 2. By authenticating or becoming bound as debtor by a security agreement, a debtor
10 or new debtor authorizes the filing of an initial financing statement, and an
11 amendment, covering:
- 12 a. The collateral described in the security agreement; and
- 13 b. Property that becomes collateral under subdivision b of subsection 1 of
14 section 41-09-35, regardless of whether the security agreement expressly
15 covers proceeds.
- 16 3. By acquiring collateral in which a security interest or agricultural lien continues
17 under subdivision a of subsection 1 of section 41-09-35, a debtor authorizes the
18 filing of an initial financing statement, and an amendment, covering the collateral
19 and property that becomes collateral under subdivision b of subsection 1 of section
20 41-09-35.
- 21 4. A person may file an amendment other than an amendment that adds collateral
22 covered by a financing statement or an amendment that adds a debtor to a
23 financing statement only if:
- 24 a. The secured party of record authorizes the filing; or
- 25 b. The amendment is a termination statement for a financing statement as to
26 which the secured party of record has failed to file or send a termination
27 statement as required under section 41-09-84, the debtor authorizes the filing,
28 and the termination statement indicates that the debtor authorized it to be
29 filed. The filing office shall notify the secured party of a filing under this
30 subsection.

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

4 **41-09-81. (9-510) Effectiveness of filed record.**

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

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

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

11 **41-09-82. (9-511) Secured party of record.**

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

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

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

25 **41-09-83. (9-512) Amendment of financing statement.**

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

30 a. Identifies, by its file number, the initial financing statement to which the
31 amendment relates; and

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

16 **41-09-84. Termination statement - Remedies - Fees.**

- 17 1. If a financing statement covering consumer goods is filed after December 31, 1973,
18 then within one month or within ten days following written demand by the debtor
19 after there is no outstanding secured obligation and no commitment to make
20 advances, incur obligations, or otherwise give value, the secured party shall file
21 with each filing officer with whom the financing statement was filed, a termination
22 statement to the effect that the secured party no longer claims a security interest
23 under the financing statement, which must be identified by file number. In other
24 cases when there is no outstanding secured obligation and no written commitment
25 between the secured party and the debtor to make advances, incur obligations, or
26 otherwise give value, the secured party, unless requested by the debtor in writing
27 to continue the filing, must send to each filing officer with whom the financing
28 statement was filed, a termination statement to the effect that the secured party no
29 longer claims a security interest under the financing statement nor under the
30 central notice system, which shall be identified by file number. A termination
31 statement submitted by a person other than the secured party of record must be

1 accompanied by a separate written statement of assignment complying with
2 section 41-09-85, including payment of the required fee, if any. If the affected
3 secured party fails to file a termination statement as required by this subsection
4 within sixty days of when the secured obligation is fully satisfied, and the debtor
5 has not requested in writing that the filing be continued, then under
6 section 41-09-120 the secured party is liable to the debtor for one hundred dollars
7 and for any loss caused to the debtor by such failure. The debtor's written request
8 for a filing to be continued may be made at any time and be effective under this
9 section. If the affected secured party fails to file a termination statement within ten
10 days after proper written demand by the debtor, then under section 41-09-120 the
11 secured party is liable to the debtor for one hundred dollars and for any loss
12 caused to the debtor by such failure.

13 2. On presentation to the filing officer of a termination statement, the filing officer shall
14 note the termination statement in the index. If the filing officer receives the
15 termination statement in duplicate, the filing officer shall return one copy of the
16 termination statement to the secured party stamped to show the time of receipt of
17 the termination statement. If the filing officer has a microfilm or other photographic
18 record or an optical disk of the financing statement, and of any related continuation
19 statement, statement of assignment, and statement of release, the filing officer
20 may remove the originals from the files at any time after receipt of the termination
21 statement, or if the filing officer has no such record, the filing officer may remove
22 the originals from the files at any time after one year after receipt of the termination
23 statement.

24 3. The fee for filing and indexing a termination statement, including sending or
25 delivering the financing statement, is five dollars. For any financing statement filed
26 after April 8, 1991, the fee must be paid at the time the fee for filing the financing
27 statement is paid.

28 **41-09-85. (9-514) Assignment of powers of secured party of record.**

29 1. Except as otherwise provided in subsection 3, an initial financing statement may
30 reflect an assignment of all of the secured party's power to authorize an

1 amendment to the financing statement by providing the name and mailing address
2 of the assignee as the name and address of the secured party.

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

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

8 b. Provides the name of the assignor; and

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

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

14 **41-09-86. (9-515) Duration and effectiveness of financing statement - Effect of**
15 **lapsed financing statement.**

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

18 2. (Reserved)

19 3. The effectiveness of a filed financing statement lapses on the expiration of the
20 period of its effectiveness unless before the lapse a continuation statement is filed
21 pursuant to subsection 4. Upon lapse, a financing statement ceases to be effective
22 and any security interest or agricultural lien that was perfected by the financing
23 statement becomes unperfected, unless the security interest is perfected
24 otherwise. If the security interest or agricultural lien becomes unperfected upon
25 lapse, it is deemed never to have been perfected as against a purchaser of the
26 collateral for value.

27 4. A continuation statement may be filed only within six months before the expiration
28 of the five-year period specified in subsection 1.

29 5. Except as otherwise provided in section 41-09-81, upon timely filing of a
30 continuation statement, the effectiveness of the initial financing statement
31 continues for a period of five years commencing on the day on which the financing

1 statement would have become ineffective in the absence of the filing. Upon the
2 expiration of the five-year period, the financing statement lapses in the same
3 manner as provided in subsection 3, unless, before the lapse, another continuation
4 statement is filed pursuant to subsection 4. Succeeding continuation statements
5 may be filed in the same manner to continue the effectiveness of the initial
6 financing statement.

7 6. If a debtor is a transmitting utility and a filed financing statement so indicates, the
8 financing statement is effective until a termination statement is filed.

9 7. A record of a mortgage that is effective as a financing statement filed as a fixture
10 filing under subsection 3 of section 41-09-73 remains effective as a financing
11 statement filed as a fixture filing until the mortgage is released or satisfied of record
12 or its effectiveness otherwise terminates as to the real property.

13 **41-09-87. (9-516) What constitutes filing - Effectiveness of filing.**

14 1. Except as otherwise provided in subsection 2, communication of a record to a filing
15 office and tender of the filing fee or acceptance of the record by the filing office
16 constitutes filing.

17 2. Filing does not occur with respect to a record that a filing office refuses to accept
18 because:

19 a. The record is not communicated by a method or medium of communication
20 authorized by the filing office;

21 b. An amount equal to or greater than the applicable filing fee is not tendered;

22 c. The filing office is unable to index the record because:

23 (1) In the case of an initial financing statement, the record does not provide
24 a name for the debtor;

25 (2) In the case of an amendment or correction statement, the record:

26 (a) Does not identify the initial financing statement as required by
27 section 41-09-83 or 41-09-89, as applicable; or

28 (b) Identifies an initial financing statement whose effectiveness has
29 lapsed under section 41-09-86;

30 (3) In the case of an initial financing statement that provides the name of a
31 debtor identified as an individual or an amendment that provides a

- 1 name of a debtor identified as an individual which was not previously
2 provided in the financing statement to which the record relates, the
3 record does not identify the debtor's last name; or
- 4 (4) In the case of a record filed or recorded in the filing office described in
5 subdivision a of subsection 1 of section 41-09-72, the record does not
6 provide a sufficient description of the real property to which it relates;
- 7 d. In the case of an initial financing statement or an amendment that adds a
8 secured party of record, the record does not provide a name and mailing
9 address for the secured party of record;
- 10 e. In the case of an initial financing statement or an amendment that provides a
11 name of a debtor which was not previously provided in the financing
12 statement to which the amendment relates, the record does not:
- 13 (1) Provide a mailing address for the debtor;
14 (2) Indicate whether the debtor is an individual or an organization; or
15 (3) If the financing statement indicates that the debtor is an organization,
16 provide:
- 17 (a) A type of organization for the debtor;
18 (b) A jurisdiction of organization for the debtor; or
19 (c) An organizational identification number for the debtor or indicate
20 that the debtor has none;
- 21 f. In the case of an assignment reflected in an initial financing statement under
22 subsection 1 of section 41-09-85 or an amendment filed under subsection 2 of
23 section 41-09-85, the record does not provide a name and mailing address for
24 the assignee;
- 25 g. In the case of a continuation statement, the record is not filed within the
26 six-month period prescribed by subsection 4 of section 41-09-86; or
- 27 h. The record does not contain the social security number or the federal tax
28 identification number of the debtor.
- 29 3. For purposes of subsection 2:
- 30 a. A record does not provide information if the filing office is unable to read or
31 decipher the information; and

1 b. A record that does not indicate that it is an amendment or identify an initial
2 financing statement to which it relates, as required by section 41-09-83,
3 41-09-85, or 41-09-89, is an initial financing statement.

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

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

11 **41-09-89. (9-518) Claim concerning inaccurate or wrongfully filed record.**

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

15 2. A correction statement must:

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

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

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

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

25 **41-09-90. (9-519) Numbering, maintaining, and indexing records - Communicating**
26 **information provided in records.**

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

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

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

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

- 1 d. Index the filed record in accordance with subsections 3 through 5.
- 2 2. A file number assigned after January 1, 2002, must include a digit that:
- 3 a. Is mathematically derived from or related to the other digits of the file number;
- 4 and
- 5 b. Aids the filing office in determining whether a number communicated as the
- 6 file number includes a single-digit or transpositional error.
- 7 3. Except as otherwise provided in subsections 4 and 5, the filing office shall:
- 8 a. Index an initial financing statement according to the name of the debtor and
- 9 index all filed records relating to the initial financing statement in a manner
- 10 that associates with one another an initial financing statement and all filed
- 11 records relating to the initial financing statement; and
- 12 b. Index a record that provides a name of a debtor which was not previously
- 13 provided in the financing statement to which the record relates also according
- 14 to the name that was not previously provided.
- 15 4. If a financing statement is filed as a fixture filing or covers as-extracted collateral or
- 16 timber to be cut, it must be filed for record and the filing office shall index it:
- 17 a. Under the names of the debtor and of each owner of record shown on the
- 18 financing statement as if they were the mortgagors under a mortgage of the
- 19 real property described; and
- 20 b. To the extent that the law of this state provides for indexing of records of
- 21 mortgages under the name of the mortgagee, under the name of the secured
- 22 party as if the secured party were the mortgagee thereunder, or, if indexing is
- 23 by description, as if the financing statement were a record of a mortgage of
- 24 the real property described.
- 25 5. If a financing statement is filed as a fixture filing or covers as-extracted collateral or
- 26 timber to be cut, the filing office shall index an assignment filed under subsection 1
- 27 of section 41-09-85 or an amendment filed under subsection 2 of section 41-09-85:
- 28 a. Under the name of the assignor as grantor; and
- 29 b. To the extent that the law of this state provides for indexing a record of the
- 30 assignment of a mortgage under the name of the assignee, under the name of
- 31 the assignee.

- 1 6. The filing office shall maintain a capability:
- 2 a. To retrieve a record by the name of the debtor and by the file number
- 3 assigned to the initial financing statement to which the record relates; and
- 4 b. To associate and retrieve with one another an initial financing statement and
- 5 each filed record relating to the initial financing statement.
- 6 7. The filing office may not remove a debtor's name from the index until one year after
- 7 the effectiveness of a financing statement naming the debtor lapses under section
- 8 41-09-86 with respect to all secured parties of record.
- 9 8. The filing office shall perform the acts required by subsections 1 through 5 at the
- 10 time and in the manner prescribed by filing-office rule, but not later than two
- 11 business days after the filing office receives the record in question.
- 12 **41-09-91. (9-520) Acceptance and refusal to accept record.**
- 13 1. A filing office shall refuse to accept a record for filing for a reason set forth in
- 14 subsection 2 of section 41-09-87 and may refuse to accept a record for filing only
- 15 for a reason set forth in subsection 2 of section 41-09-87.
- 16 2. If a filing office refuses to accept a record for filing, it shall communicate to the
- 17 person that presented the record the fact of and reason for the refusal and the date
- 18 and time the record would have been filed had the filing office accepted it. The
- 19 communication must be made at the time and in the manner prescribed by
- 20 filing-office rule but in no event more than two business days after the filing office
- 21 receives the record.
- 22 3. A filed financing statement satisfying subsections 1 and 2 of section 41-09-73 is
- 23 effective, even if the filing office is required to refuse to accept it for filing under
- 24 subsection 1. However, section 41-09-58 applies to a filed financing statement
- 25 providing information described in subdivision e of subsection 2 of section
- 26 41-09-87 which is incorrect at the time the financing statement is filed.
- 27 4. If a record communicated to a filing office provides information that relates to more
- 28 than one debtor, this part applies as to each debtor separately.
- 29 **41-09-92. (9-521) Uniform form of written financing statement and amendment.**

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

7 **41-09-93. (9-522) Maintenance and destruction of records.**

- 8 1. The filing office shall maintain a record of the information provided in a filed
9 financing statement for at least one year after the effectiveness of the financing
10 statement has lapsed under section 41-09-86 with respect to all secured parties of
11 record. The record must be retrievable by using the name of the debtor and by
12 using the file number assigned to the initial financing statement to which the record
13 relates.
14 2. Except to the extent that a statute governing disposition of public records provides
15 otherwise, the filing office immediately may destroy any written record evidencing a
16 financing statement. However, if the filing office destroys a written record, it shall
17 maintain another record of the financing statement which complies with
18 subsection 1.

19 **41-09-94. (9-523) Information from filing office - Sale or license of records.**

- 20 1. If a person that files a written record requests an acknowledgment of the filing, the
21 filing office shall send to the person an image of the record showing the number
22 assigned to the record pursuant to subdivision a of subsection 1 of section
23 41-09-90 and the date and time of the filing of the record. However, if the person
24 furnishes a copy of the record to the filing office, the filing office may instead:
25 a. Note upon the copy the number assigned to the record pursuant to
26 subdivision a of subsection 1 of section 41-09-90 and the date and time of the
27 filing of the record; and
28 b. Send the copy to the person.
29 2. If a person files a record other than a written record, the filing office shall
30 communicate to the person an acknowledgment that provides:
31 a. The information in the record;

- 1 b. The number assigned to the record pursuant to subdivision a of subsection 1
2 of section 41-09-90; and
- 3 c. The date and time of the filing of the record.
- 4 3. The filing office shall communicate or otherwise make available in a record the
5 following information to any person that requests it:
- 6 a. Whether there is on file on a date and time specified by the filing office, but
7 not a date earlier than three business days before the filing office receives the
8 request, any verified statement of an agricultural lien created under
9 chapter 35-17, 35-30, or 35-31 or any financing statement that:
- 10 (1) Designates a particular debtor or, if the request so states, designates a
11 particular debtor at the address specified in the request;
- 12 (2) Has not lapsed under section 41-09-86 with respect to all secured
13 parties of record; and
- 14 (3) Effective January 1, 2002, if the request so states, has lapsed under
15 section 41-09-86 and a record of which is maintained by the filing office
16 under subsection 1 of section 41-09-93;
- 17 b. The date and time of filing of each verified statement and each financing
18 statement; and
- 19 c. The information provided in each verified statement and each financing
20 statement.
- 21 4. In complying with its duty under subsection 3, the filing office may communicate
22 information in any medium. However, if requested, the filing office shall
23 communicate information by issuing a written certificate that may be admitted into
24 evidence in the courts of this state without extrinsic evidence of its authenticity.
- 25 5. The filing office shall perform the acts required by subsections 1 through 4 at the
26 time and in the manner prescribed by filing-office rule, but not later than two
27 business days after the filing office receives the request.
- 28 6. At least weekly, the secretary of state shall offer to sell or license to the public on a
29 nonexclusive basis, in bulk, copies of all records filed in it under this part, in every
30 medium from time to time filed within the central indexing system.

1 **41-09-95. (9-524) Delay by filing office.** Delay by the filing office beyond a time limit
2 prescribed by this part is excused if:

- 3 1. The delay is caused by interruption of communication or computer facilities, war,
4 emergency conditions, failure of equipment, or other circumstances beyond control
5 of the filing office; and
6 2. The filing office exercises reasonable diligence under the circumstances.

7 **41-09-96. (9-525) Fees.**

- 8 1. The fee for filing and indexing an original statement under this title, fifteen dollars
9 plus one dollar per additional page. An additional fee may not be charged for the
10 same statement to gain protection under the central notice system.
11 2. The fee for filing and indexing an amendment, continuation, assignment, release,
12 or subordination under this title, ten dollars plus one dollar per additional page. An
13 additional fee may not be charged for the same document to gain protection under
14 the central notice system.
15 3. A fee may not be charged for responding to a request for information from the filing
16 office communicating whether there is on file any financing statement or verified
17 statement naming a particular debtor.
18 4. The fee for a filing office providing information on specific filings on a particular
19 debtor, including listing up to four lines of collateral covered by each filing, is seven
20 dollars per debtor for the first five entries, plus two dollars for each additional five
21 entries or fraction thereafter.
22 5. The fee for a filing office providing copies of each filing for a particular debtor is
23 seven dollars per debtor plus two dollars per page for each page over three pages.
24 6. The fee for a filing office providing certified copies of filings on a particular debtor is
25 seven dollars plus one dollar per page for attachments.
26 7. Any fees collected by the secretary of state pursuant to this chapter must be
27 deposited in the general fund in the state treasury, except the fees collected under
28 subsection 6 of section 41-09-94, must be deposited in the secretary of state's
29 general services operating fund.

30 **41-09-97. (9-526) Rules.** The secretary of state shall adopt and publish rules to
31 implement this chapter. The rules must be:

- 1 1. Consistent with this chapter; and
- 2 2. Adopted and published in accordance with chapter 28-32.
- 3 **41-09-98. (9-601) Rights after default - Judicial enforcement - Consignor or buyer**
- 4 **of accounts, chattel paper, payment intangibles, or promissory notes.**
- 5 1. After default, a secured party has the rights provided in this part and, except as
- 6 otherwise provided in section 41-09-99, those provided by agreement of the
- 7 parties. A secured party:
- 8 a. May reduce a claim to judgment, foreclose, or otherwise enforce the claim,
- 9 security interest, or agricultural lien by any available judicial procedure; and
- 10 b. If the collateral is documents, may proceed either as to the documents or as
- 11 to the goods they cover.
- 12 2. A secured party in possession of collateral or control of collateral under section
- 13 41-09-04, 41-09-05, 41-09-06, or 41-09-07 has the rights and duties provided in
- 14 section 41-09-17.
- 15 3. The rights under subsections 1 and 2 are cumulative and may be exercised
- 16 simultaneously.
- 17 4. Except as otherwise provided in subsection 7 and section 41-09-102, after default,
- 18 a debtor and an obligor have the rights provided in this part and by agreement of
- 19 the parties.
- 20 5. If a secured party has reduced its claim to judgment, the lien of any levy that may
- 21 be made upon the collateral by virtue of an execution based upon the judgment
- 22 relates back to the earliest of:
- 23 a. The date of perfection of the security interest or agricultural lien in the
- 24 collateral;
- 25 b. The date of filing a financing statement covering the collateral; or
- 26 c. Any date specified in a statute under which the agricultural lien was created.
- 27 6. A sale pursuant to an execution is a foreclosure of the security interest or
- 28 agricultural lien by judicial procedure within the meaning of this section. A secured
- 29 party may purchase at the sale and thereafter hold the collateral free of any other
- 30 requirements of this chapter.

1 7. Except as otherwise provided in subsection 3 of section 41-09-104, sections
2 41-09-98 through 41-09-123 impose no duties upon a secured party that is a
3 consignor or is a buyer of accounts, chattel paper, payment intangibles, or
4 promissory notes.

5 **41-09-99. (9-602) Waiver and variance of rights and duties.** Except as otherwise
6 provided in section 41-09-119, to the extent that they give rights to a debtor or obligor and
7 impose duties on a secured party, the debtor or obligor may not waive or vary the rules stated
8 in the following listed sections:

- 9 1. Paragraph 3 of subdivision d of subsection 2 of section 41-09-17, which deals with
10 use and operation of the collateral by the secured party;
- 11 2. Section 41-09-20, which deals with requests for an accounting and requests
12 concerning a list of collateral and statement of account;
- 13 3. Subsection 3 of section 41-09-104, which deals with collection and enforcement of
14 collateral;
- 15 4. Subsection 1 of section 41-09-105 and subsection 3 of section 41-09-111 to the
16 extent that they deal with application or payment of noncash proceeds of collection,
17 enforcement, or disposition;
- 18 5. Subsection 1 of section 41-09-105 and subsection 4 of section 41-09-111 to the
19 extent that they require accounting for or payment of surplus proceeds of collateral;
- 20 6. Section 41-09-106 to the extent that it imposes upon a secured party that takes
21 possession of collateral without judicial process the duty to do so without breach of
22 the peace;
- 23 7. Subsection 2 of section 41-09-107, section 41-09-108, and section 41-09-110,
24 which deal with disposition of collateral;
- 25 8. Subsection 6 of section 41-09-111, which deals with calculation of a deficiency or
26 surplus when a disposition is made to the secured party, a person related to the
27 secured party, or a secondary obligor;
- 28 9. Sections 41-09-115 through 41-09-117, which deal with acceptance of collateral in
29 satisfaction of obligation;
- 30 10. Section 41-09-118, which deals with redemption of collateral;
- 31 11. Section 41-09-119, which deals with permissible waivers; and

1 12. Sections 41-09-120 and 41-09-121, which deal with the secured party's liability for
2 failure to comply with this chapter.

3 **41-09-100. (9-603) Agreement on standards concerning rights and duties.**

4 1. The parties may determine by agreement the standards measuring the fulfillment
5 of the rights of a debtor or obligor and the duties of a secured party under a rule
6 stated in section 41-09-99 if the standards are not manifestly unreasonable.

7 2. Subsection 1 does not apply to the duty under section 41-09-106 to refrain from
8 breaching the peace.

9 **41-09-101. (9-604) Procedure if security agreement covers real property or**
10 **fixtures.**

11 1. If a security agreement covers both personal and real property, a secured party
12 may proceed:

13 a. Under this part as to the personal property without prejudicing any rights with
14 respect to the real property; or

15 b. As to both the personal property and the real property in accordance with the
16 rights with respect to the real property, in which case the other provisions of
17 this part do not apply.

18 2. Subject to subsection 3, if a security agreement covers goods that are or become
19 fixtures, a secured party may proceed:

20 a. Under this part; or

21 b. In accordance with the rights with respect to real property, in which case the
22 other provisions of this part do not apply.

23 3. Subject to the other provisions of this part, if a secured party holding a security
24 interest in fixtures has priority over all owners and encumbrancers of the real
25 property, the secured party, after default, may remove the collateral from the real
26 property.

27 4. A secured party that removes collateral shall promptly reimburse any
28 encumbrancer or owner of the real property, other than the debtor, for the cost of
29 repair of any physical injury caused by the removal. The secured party need not
30 reimburse the encumbrancer or owner for any diminution in value of the real
31 property caused by the absence of the goods removed or by any necessity of

1 replacing them. A person entitled to reimbursement may refuse permission to
2 remove until the secured party gives adequate assurance for the performance of
3 the obligation to reimburse.

4 **41-09-102. (9-605) Unknown debtor or secondary obligor.** A secured party does not
5 owe a duty based on its status as secured party:

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

7 a. That the person is a debtor or obligor;

8 b. The identity of the person; and

9 c. How to communicate with the person; or

10 2. To a secured party or lienholder that has filed a financing statement against a
11 person, unless the secured party knows:

12 a. That the person is a debtor; and

13 b. The identity of the person.

14 **41-09-103. (9-606) Time of default for agricultural lien.** For purposes of this part, a
15 default occurs in connection with an agricultural lien at the time the secured party becomes
16 entitled to enforce the lien in accordance with the statute under which it was created or
17 section 35-01-29.

18 **41-09-104. (9-607) Collection and enforcement by secured party.**

19 1. If so agreed, and in any event after default, a secured party:

20 a. May notify an account debtor or other person obligated on collateral to make
21 payment or otherwise render performance to or for the benefit of the secured
22 party;

23 b. May take any proceeds to which the secured party is entitled under section
24 41-09-35;

25 c. May enforce the obligations of an account debtor or other person obligated on
26 collateral and exercise the rights of the debtor with respect to the obligation of
27 the account debtor or other person obligated on collateral to make payment or
28 otherwise render performance to the debtor, and with respect to any property
29 that secures the obligations of the account debtor or other person obligated
30 on the collateral;

- 1 d. If it holds a security interest in a deposit account or an uncertificated
2 certificate of deposit perfected by control under subdivision a of subsection 1
3 of section 41-09-04, or in a certificated certificate of deposit perfected by
4 possession under section 41-09-33, may apply the balance of the deposit
5 account or certificate of deposit to the obligation secured by the deposit
6 account or certificate of deposit; and
- 7 e. If it holds a security interest in a deposit account or an uncertificated
8 certificate of deposit perfected by control under subdivision b or c of
9 subsection 1 of section 41-09-04, or in a certificated certificate of deposit
10 perfected by possession under section 41-09-33, may instruct the bank to pay
11 the balance of the deposit account or certificate of deposit to or for the benefit
12 of the secured party.
- 13 2. If necessary to enable a secured party to exercise under subdivision c of
14 subsection 1 the right of a debtor to enforce a mortgage nonjudicially, the secured
15 party may record in the office in which a record of the mortgage is recorded:
- 16 a. A copy of the security agreement that creates or provides for a security
17 interest in the obligation secured by the mortgage; and
- 18 b. The secured party's sworn affidavit in recordable form stating that:
- 19 (1) A default has occurred; and
- 20 (2) The secured party is entitled to enforce the mortgage nonjudicially.
- 21 3. A secured party shall proceed in a commercially reasonable manner if the secured
22 party:
- 23 a. Undertakes to collect from or enforce an obligation of an account debtor or
24 other person obligated on collateral; and
- 25 b. Is entitled to charge back uncollected collateral or otherwise to full or limited
26 recourse against the debtor or a secondary obligor.
- 27 4. A secured party may deduct from the collections made pursuant to subsection 3
28 reasonable expenses of collection and enforcement, including reasonable
29 attorney's fees and legal expenses incurred by the secured party.
- 30 5. This section does not determine whether an account debtor, bank, or other person
31 obligated on collateral owes a duty to a secured party.

1 **41-09-105. (9-608) Application of proceeds of collection or enforcement - Liability**
2 **for deficiency and right to surplus.**

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

5 a. A secured party shall apply or pay over for application the cash proceeds of
6 collection or enforcement under section 41-09-104 in the following order to:

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

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

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

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

21 c. A secured party need not apply or pay over for application noncash proceeds
22 of collection and enforcement under section 41-09-104 unless the failure to do
23 so would be commercially unreasonable. A secured party that applies or pays
24 over for application noncash proceeds shall do so in a commercially
25 reasonable manner.

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

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

31 **41-09-106. (9-609) Secured party's right to take possession after default.**

- 1 1. After default a secured party:
- 2 a. May take possession of the collateral; and
- 3 b. Without removal, may render equipment unusable and dispose of collateral on
- 4 a debtor's premises under section 41-09-107.
- 5 2. A secured party may proceed under subsection 1:
- 6 a. Pursuant to judicial process; or
- 7 b. Without judicial process, if it proceeds without breach of the peace.
- 8 3. If so agreed, and in any event after default, a secured party may require the debtor
- 9 to assemble the collateral and make it available to the secured party at a place to
- 10 be designated by the secured party which is reasonably convenient to both parties.
- 11 **41-09-107. (9-610) Disposition of collateral after default.**
- 12 1. After default, a secured party may sell, lease, license, or otherwise dispose of any
- 13 or all of the collateral in its present condition or following any commercially
- 14 reasonable preparation or processing.
- 15 2. Every aspect of a disposition of collateral, including the method, manner, time,
- 16 place, and other terms, must be commercially reasonable. If commercially
- 17 reasonable, a secured party may dispose of collateral by public or private
- 18 proceedings, by one or more contracts, as a unit or in parcels, and at any time and
- 19 place and on any terms.
- 20 3. A secured party may purchase collateral:
- 21 a. At a public disposition; or
- 22 b. At a private disposition only if the collateral is of a kind that is customarily sold
- 23 on a recognized market or the subject of widely distributed standard price
- 24 quotations.
- 25 4. A contract for sale, lease, license, or other disposition includes the warranties
- 26 relating to title, possession, quiet enjoyment, and the like which by operation of law
- 27 accompany a voluntary disposition of property of the kind subject to the contract.
- 28 5. A secured party may disclaim or modify warranties under subsection 4:
- 29 a. In a manner that would be effective to disclaim or modify the warranties in a
- 30 voluntary disposition of property of the kind subject to the contract of
- 31 disposition; or

1 b. By communicating to the purchaser a record evidencing the contract for
2 disposition and including an express disclaimer or modification of the
3 warranties.

4 6. A record is sufficient to disclaim warranties under subsection 5 if it indicates "there
5 is no warranty relating to title, possession, quiet enjoyment, or the like in this
6 disposition" or uses words of similar import.

7 **41-09-108. (9-611) Notification before disposition of collateral.**

8 1. In this section, "notification date" means the earlier of the date on which:

9 a. A secured party sends to the debtor and any secondary obligor an
10 authenticated notification of disposition; or

11 b. The debtor and any secondary obligor waive the right to notification.

12 2. Except as otherwise provided in subsection 4, a secured party that disposes of
13 collateral under section 41-09-107 shall send to the persons specified in
14 subsection 3 a reasonable authenticated notification of disposition.

15 3. To comply with subsection 2, the secured party shall send an authenticated
16 notification of disposition to:

17 a. The debtor;

18 b. Any secondary obligor; and

19 c. If the collateral is other than consumer goods:

20 (1) Any other person from which the secured party has received, before the
21 notification date, an authenticated notification of a claim of an interest in
22 the collateral;

23 (2) Any other secured party or lienholder that, ten days before the
24 notification date, held a security interest in or other lien on the collateral
25 perfected by the filing of a financing statement that:

26 (a) Identified the collateral;

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

28 (c) Was filed in the office in which to file a financing statement
29 against the debtor covering the collateral as of that date; and

30 (3) Any other secured party that, ten days before the notification date, held
31 a security interest in the collateral perfected by compliance with a

1 statute, regulation, or treaty described in subsection 1 of section
2 41-09-31.

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

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

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

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

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

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

17 **41-09-109. (9-612) Timeliness of notification before disposition of collateral.**

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

20 2. A notification of disposition sent after default and ten days before the earliest time
21 of disposition set forth in the notification is sent within a reasonable time before the
22 disposition.

23 **41-09-110. (9-613) Contents and form of notification before disposition of**
24 **collateral - General.**

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

26 a. Describes the debtor and the secured party;

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

28 c. States the method of intended disposition;

29 d. States that the debtor is entitled to an accounting of the unpaid indebtedness
30 and states the charge, if any, for an accounting; and

- 1 e. States the time and place of a public disposition or the time after which any
2 other disposition is to be made.
- 3 2. Whether the contents of a notification that lacks any of the information specified in
4 subsection 1 are nevertheless sufficient is a question of fact.
- 5 3. The contents of a notification providing substantially the information specified in
6 subsection 1 are sufficient, even if the notification includes:
- 7 a. Information not specified by that subsection; or
8 b. Minor errors that are not seriously misleading.
- 9 4. A particular phrasing of the notification is not required.

10 **41-09-111. (9-615) Application of proceeds of disposition - Liability for deficiency**
11 **and right to surplus.**

- 12 1. A secured party shall apply or pay over for application the cash proceeds of
13 disposition under section 41-09-107 in the following order to:
- 14 a. The reasonable expenses of retaking, holding, preparing for disposition,
15 processing, and disposing, and, to the extent provided for by agreement and
16 not prohibited by law, reasonable attorney's fees and legal expenses incurred
17 by the secured party;
- 18 b. The satisfaction of obligations secured by the security interest or agricultural
19 lien under which the disposition is made;
- 20 c. The satisfaction of obligations secured by any subordinate security interest in
21 or other subordinate lien on the collateral if:
- 22 (1) The secured party receives from the holder of the subordinate security
23 interest or other lien an authenticated demand for proceeds before
24 distribution of the proceeds is completed; and
- 25 (2) In a case in which a consignor has an interest in the collateral, the
26 subordinate security interest or other lien is senior to the interest of the
27 consignor; and
- 28 d. A secured party that is a consignor of the collateral if the secured party
29 receives from the consignor an authenticated demand for proceeds before
30 distribution of the proceeds is completed.

- 1 2. If requested by a secured party, a holder of a subordinate security interest or other
2 lien shall furnish reasonable proof of the interest or lien within a reasonable time.
3 Unless the holder does so, the secured party need not comply with the holder's
4 demand under subdivision c of subsection 1.
- 5 3. A secured party need not apply or pay over for application noncash proceeds of
6 disposition under section 41-09-107 unless the failure to do so would be
7 commercially unreasonable. A secured party that applies or pays over for
8 application noncash proceeds shall do so in a commercially reasonable manner.
- 9 4. If the security interest under which a disposition is made secures payment or
10 performance of an obligation, after making the payments and applications required
11 by subsection 1 and permitted by subsection 3:
- 12 a. Unless subdivision d of subsection 1 requires the secured party to apply or
13 pay over cash proceeds to a consignor, the secured party shall account to
14 and pay a debtor for any surplus; and
- 15 b. The obligor is liable for any deficiency.
- 16 5. If the underlying transaction is a sale of accounts, chattel paper, payment
17 intangibles, or promissory notes:
- 18 a. The debtor is not entitled to any surplus; and
19 b. The obligor is not liable for any deficiency.
- 20 6. The surplus or deficiency following a disposition is calculated based on the amount
21 of proceeds that would have been realized in a disposition complying with this part
22 to a transferee other than the secured party, a person related to the secured party,
23 or a secondary obligor if:
- 24 a. The transferee in the disposition is the secured party, a person related to the
25 secured party, or a secondary obligor; and
- 26 b. The amount of proceeds of the disposition is significantly below the range of
27 proceeds that a complying disposition to a person other than the secured
28 party, a person related to the secured party, or a secondary obligor would
29 have brought.
- 30 7. A secured party that receives cash proceeds of a disposition in good faith and
31 without knowledge that the receipt violates the rights of the holder of a security

- 1 interest or other lien that is not subordinate to the security interest or agricultural
2 lien under which the disposition is made:
3 a. Takes the cash proceeds free of the security interest or other lien;
4 b. Is not obligated to apply the proceeds of the disposition to the satisfaction of
5 obligations secured by the security interest or other lien; and
6 c. Is not obligated to account to or pay the holder of the security interest or other
7 lien for any surplus.

8 **41-09-112. (9-617) Rights of transferee of collateral.**

- 9 1. A secured party's disposition of collateral after default:
10 a. Transfers to a transferee for value all of the debtor's rights in the collateral;
11 b. Discharges the security interest under which the disposition is made; and
12 c. Discharges any subordinate security interest or other subordinate lien.
13 2. A transferee that acts in good faith takes free of the rights and interests described
14 in subsection 1, even if the secured party fails to comply with this chapter or the
15 requirements of any judicial proceeding.
16 3. If a transferee does not take free of the rights and interests described in
17 subsection 1, the transferee takes the collateral subject to:
18 a. The debtor's rights in the collateral;
19 b. The security interest or agricultural lien under which the disposition is made;
20 and
21 c. Any other security interest or other lien.

22 **41-09-113. (9-618) Rights and duties of certain secondary obligors.**

- 23 1. A secondary obligor acquires the rights and becomes obligated to perform the
24 duties of the secured party after the secondary obligor:
25 a. Receives an assignment of a secured obligation from the secured party;
26 b. Receives a transfer of collateral from the secured party and agrees to accept
27 the rights and assume the duties of the secured party; or
28 c. Is subrogated to the rights of a secured party with respect to collateral.
29 2. An assignment, transfer, or subrogation described in subsection 1:
30 a. Is not a disposition of collateral under section 41-09-107; and
31 b. Relieves the secured party of further duties under this chapter.

1 **41-09-114. (9-619) Transfer of record or legal title.**

2 1. In this section, "transfer statement" means a record authenticated by a secured
3 party stating:

4 a. That the debtor has defaulted in connection with an obligation secured by
5 specified collateral;

6 b. That the secured party has exercised its postdefault remedies with respect to
7 the collateral;

8 c. That, by reason of the exercise, a transferee has acquired the rights of the
9 debtor in the collateral; and

10 d. The name and mailing address of the secured party, debtor, and transferee.

11 2. A transfer statement entitles the transferee to the transfer of record of all rights of
12 the debtor in the collateral specified in the statement in any official filing, recording,
13 registration, or certificate-of-title system covering the collateral. If a transfer
14 statement is presented with the applicable fee and request form to the official or
15 office responsible for maintaining the system, the official or office shall:

16 a. Accept the transfer statement;

17 b. Promptly amend its records to reflect the transfer; and

18 c. If applicable, issue a new appropriate certificate of title in the name of the
19 transferee.

20 3. A transfer of the record or legal title to collateral to a secured party under
21 subsection 2 or otherwise is not of itself a disposition of collateral under this
22 chapter and does not of itself relieve the secured party of its duties under this
23 chapter.

24 **41-09-115. (9-620) Acceptance of collateral in full or partial satisfaction of**
25 **obligation - Compulsory disposition of collateral.**

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

28 a. The debtor consents to the acceptance under subsection 3;

29 b. The secured party does not receive, within the time set forth in subsection 4, a
30 notification of objection to the proposal authenticated by:

- 1 (1) A person to which the secured party was required to send a proposal
2 under section 41-09-116; or
- 3 (2) Any other person, other than the debtor, holding an interest in the
4 collateral subordinate to the security interest that is the subject of the
5 proposal;
- 6 2. A purported or apparent acceptance of collateral under this section is ineffective
7 unless:
- 8 a. The secured party consents to the acceptance in an authenticated record or
9 sends a proposal to the debtor; and
- 10 b. The conditions of subsection 1 are met.
- 11 3. For purposes of this section:
- 12 a. A debtor consents to an acceptance of collateral in partial satisfaction of the
13 obligation it secures only if the debtor agrees to the terms of the acceptance
14 in a record authenticated after default; and
- 15 b. A debtor consents to an acceptance of collateral in full satisfaction of the
16 obligation it secures only if the debtor agrees to the terms of the acceptance
17 in a record authenticated after default or the secured party:
- 18 (1) Sends to the debtor after default a proposal that is unconditional or
19 subject only to a condition that collateral not in the possession of the
20 secured party be preserved or maintained;
- 21 (2) In the proposal, proposes to accept collateral in full satisfaction of the
22 obligation it secures; and
- 23 (3) Does not receive a notification of objection authenticated by the debtor
24 within twenty days after the proposal is sent.
- 25 4. To be effective under subdivision c of subsection 1, a notification of objection must
26 be received by the secured party:
- 27 a. In the case of a person to which the proposal was sent pursuant to section
28 41-09-116, within twenty days after notification was sent to that person; and
- 29 b. In other cases:
- 30 (1) Within twenty days after the last notification was sent pursuant to
31 section 41-09-116; or

1 2. A subordinate interest is discharged or terminated under subsection 1, even if the
2 secured party fails to comply with this chapter.

3 **41-09-118. (9-623) Right to redeem collateral.**

4 1. A debtor, any secondary obligor, or any other secured party or lienholder may
5 redeem collateral.

6 2. To redeem collateral, a person shall tender:

7 a. Fulfillment of all obligations secured by the collateral; and

8 b. The reasonable expenses and attorney's fees described in subdivision a of
9 subsection 1 of section 41-09-111.

10 3. A redemption may occur at any time before a secured party:

11 a. Has collected collateral under section 41-09-104;

12 b. Has disposed of collateral or entered into a contract for its disposition under
13 section 41-09-107; or

14 c. Has accepted collateral in full or partial satisfaction of the obligation it secures
15 under section 41-09-117.

16 **41-09-119. (9-624) Waiver.**

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

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

23 **41-09-120. (9-625) Remedies for secured party's failure to comply with chapter.**

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

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

31 3. Except as otherwise provided in section 41-09-123:

- 1 a. A person that, at the time of the failure, was a debtor, was an obligor, or held
2 a security interest in or other lien on the collateral may recover in an individual
3 action damages under subsection 2 for its loss; and
- 4 b. If the collateral is consumer goods, a person that was a debtor or a secondary
5 obligor at the time a secured party failed to comply with this part may recover
6 in an individual action for that failure in any event an amount not less than the
7 credit service charge plus ten percent of the principal amount of the obligation
8 or the time-price differential plus ten percent of the cash price.
- 9 4. A debtor whose deficiency is eliminated under section 41-09-121 may recover in
10 an individual action damages for the loss of any surplus. However, a debtor or
11 secondary obligor whose deficiency is eliminated or reduced under section
12 41-09-121 may not otherwise recover under subsection 2 for noncompliance with
13 the provisions of sections 41-09-98 through 41-09-123 relating to collection,
14 enforcement, disposition, or acceptance.
- 15 5. In addition to any damages recoverable under subsection 2, the debtor or person
16 named as a debtor in a filed record, as applicable, may recover in an individual
17 action one hundred dollars in each case from a person that:
- 18 a. Fails to comply with section 41-09-18;
19 b. Fails to comply with section 41-09-19;
20 c. Files a record that the person is not entitled to file under subsection 1 of
21 section 41-09-80; or
22 d. Fails to comply with section 41-09-84.
- 23 6. A debtor or consumer obligor may recover in an individual action damages under
24 subsection 2 and, in addition, one hundred dollars in each case from a person that,
25 without reasonable cause, fails to comply with a request under section 41-09-20. A
26 recipient of a request under section 41-09-20 which never claimed an interest in
27 the collateral or obligations that are the subject of a request under that section has
28 a reasonable excuse for failure to comply with the request within the meaning of
29 this subsection.
- 30 7. If a secured party fails to comply with a request regarding a list of collateral or a
31 statement of account under section 41-09-20, the secured party may claim a

1 security interest only as shown in the list or statement included in the request as
2 against a person that is reasonably misled by the failure.

3 **41-09-121. (9-626) Action in which deficiency or surplus is in issue.** In an action
4 arising from a transaction in which the amount of a deficiency or surplus is in issue, the
5 following rules apply:

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

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

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

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

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

22 4. For purposes of subdivision b of subsection 3, the amount of proceeds that would
23 have been realized is equal to the sum of the secured obligation, expenses, and
24 attorney's fees unless the secured party proves that the amount is less than that
25 sum.

26 5. If a deficiency or surplus is calculated under subsection 6 of section 41-09-111, the
27 debtor or obligor has the burden of establishing that the amount of proceeds of the
28 disposition is significantly below the range of prices that a complying disposition to
29 a person other than the secured party, a person related to the secured party, or a
30 secondary obligor would have brought.

1 **41-09-122. (9-627) Determination of whether conduct was commercially**
2 **reasonable.**

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

23 **41-09-123. (9-628) Nonliability and limitation on liability of secured party -**
24 **Liability of secondary obligor.**

- 25 1. Unless a secured party knows that a person is a debtor or obligor, knows the
26 identity of the person, and knows how to communicate with the person:
- 27 a. The secured party is not liable to the person, or to a secured party or
28 lienholder that has filed a financing statement against the person, for failure to
29 comply with this chapter; and
- 30 b. The secured party's failure to comply with this chapter does not affect the
31 liability of the person for a deficiency.

- 1 2. A secured party is not liable because of its status as secured party:
2 a. To a person that is a debtor or obligor, unless the secured party knows:
3 (1) That the person is a debtor or obligor;
4 (2) The identity of the person; and
5 (3) How to communicate with the person; or
6 b. To a secured party or lienholder that has filed a financing statement against a
7 person, unless the secured party knows:
8 (1) That the person is a debtor; and
9 (2) The identity of the person.
10 3. A secured party is not liable to any person, and a person's liability for a deficiency
11 is not affected, because of any act or omission arising out of the secured party's
12 reasonable belief that a transaction is not a consumer-goods transaction or a
13 consumer transaction or that goods are not consumer goods, if the secured party's
14 belief is based on its reasonable reliance on:
15 a. A debtor's representation concerning the purpose for which collateral was to
16 be used, acquired, or held; or
17 b. An obligor's representation concerning the purpose for which a secured
18 obligation was incurred.
19 4. A secured party is not liable under subdivision b of subsection 3 of section
20 41-09-120 more than once with respect to any one secured obligation.

21 **41-09-124. (9-702) Savings clause.**

- 22 1. Except as otherwise provided in this part, this Act applies to a transaction or lien
23 within its scope, even if the transaction or lien was entered into or created before
24 July 1, 2001.
25 2. Except as otherwise provided in subsection 3 and sections 41-09-125 through
26 41-09-131:
27 a. Transactions and liens that were not governed by the former chapter 41-09
28 were validly entered into or created before July 1, 2001, and would be subject
29 to this Act if they had been entered into or created on or after July 1, 2001,
30 and the rights, duties, and interests flowing from those transactions and liens
31 remain valid after July 1, 2001; and

1 b. The transactions and liens may be terminated, completed, consummated, and
2 enforced as required or permitted by this Act or by the law that otherwise
3 would apply if this Act had not taken effect.

4 3. This Act does not affect an action, case, or proceeding commenced before July 1,
5 2001.

6 **41-09-125. (9-703) Security interest perfected before effective date.**

7 1. A security interest that is enforceable immediately before July 1, 2001, and would
8 have priority over the rights of a person that becomes a lien creditor at that time is
9 a perfected security interest under this Act if, on July 1, 2001, the applicable
10 requirements for enforceability and perfection under this Act are satisfied without
11 further action.

12 2. Except as otherwise provided in section 41-09-127, if, immediately before July 1,
13 2001, a security interest is enforceable and would have priority over the rights of a
14 person that becomes a lien creditor at that time, but the applicable requirements for
15 enforceability or perfection under this Act are not satisfied on July 1, 2001, the
16 security interest:

17 a. Is a perfected security interest for one year after this Act takes effect;

18 b. Remains enforceable thereafter only if the security interest becomes
19 enforceable under section 41-09-13 before the year expires; and

20 c. Remains perfected thereafter only if the applicable requirements for perfection
21 under this Act are satisfied before the year expires.

22 **41-09-126. (9-704) Security interest unperfected before effective date.** A security
23 interest that is enforceable immediately before July 1, 2001, but which would be subordinate to
24 the rights of a person that becomes a lien creditor at that time:

25 1. Remains an enforceable security interest until July 1, 2002;

26 2. Remains enforceable thereafter if the security interest becomes enforceable under
27 section 41-09-13 on July 1, 2001, or within one year thereafter; and

28 3. Becomes perfected:

29 a. Without further action, on July 1, 2001, if the applicable requirements for
30 perfection under this Act are satisfied before or at that time; or

1 b. When the applicable requirements for perfection are satisfied if the
2 requirements are satisfied after that time.

3 **41-09-127. (9-705) Effectiveness of action taken before effective date.**

4 1. If action, other than the filing of a financing statement, is taken before July 1, 2001,
5 and the action would have resulted in priority of a security interest over the rights of
6 a person that becomes a lien creditor had the security interest become enforceable
7 before July 1, 2001, the action is effective to perfect a security interest that
8 attaches under this Act by July 1, 2002. An attached security interest becomes
9 unperfected on July 1, 2002, unless the security interest becomes a perfected
10 security interest under this Act before the expiration of that period.

11 2. The filing of a financing statement before July 1, 2001, is effective to perfect a
12 security interest to the extent the filing would satisfy the applicable requirements for
13 perfection under this Act.

14 3. This Act does not render ineffective an effective financing statement that, before
15 July 1, 2001, is filed and satisfies the applicable requirements for perfection under
16 the law of the jurisdiction governing perfection as provided in the former section
17 41-09-03. However, except as otherwise provided in subsections 4 and 5 and
18 section 41-09-128, the financing statement ceases to be effective at the earlier of:

19 a. The time the financing statement would have ceased to be effective under the
20 law of the jurisdiction in which it is filed; or

21 b. June 30, 2006.

22 4. The filing of a continuation statement after this Act takes effect does not continue
23 the effectiveness of the financing statement filed before July 1, 2001. However,
24 upon the timely filing of a continuation statement after July 1, 2001, and in
25 accordance with the law of the jurisdiction governing perfection as provided in
26 part 3, the effectiveness of a financing statement filed in the same office in that
27 jurisdiction before July 1, 2001, continues for the period provided by the law of that
28 jurisdiction.

29 5. Subdivision b of subsection 3 applies to a financing statement that, before July 1,
30 2001, is filed against a transmitting utility and satisfies the applicable requirements
31 for perfection under the law of the jurisdiction governing perfection as provided in

1 the former section 41-09-03 only to the extent that part 3 provides that the law of a
2 jurisdiction other than the jurisdiction in which the financing statement is filed
3 governs perfection of a security interest in collateral covered by the financing
4 statement.

5 6. A financing statement that includes a financing statement filed before July 1, 2001,
6 takes effect and a continuation statement filed after July 1, 2001, is effective only to
7 the extent that it satisfies the requirements of part 5 for an initial financing
8 statement.

9 **41-09-128. (9-706) When initial financing statement suffices to continue**
10 **effectiveness of financing statement.**

11 1. The filing of an initial financing statement in the office specified in section 41-09-72
12 continues the effectiveness of a financing statement filed before July 1, 2001, if:

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

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

17 c. The initial financing statement satisfies subsection 3.

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

20 a. If the initial financing statement is filed before July 1, 2001, for the period
21 provided in the former section 41-09-42 with respect to a financing statement;
22 and

23 b. If the initial financing statement is filed after July 1, 2001, for the period
24 provided in section 41-09-86 with respect to an initial financing statement.

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

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

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

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

- 1 **41-09-129. (9-707) Amendment of pre-effective-date financing statement.**
- 2 1. In this section, "pre-effective-date financing statement" means a financing
- 3 statement filed before July 1, 2001.
- 4 2. After July 1, 2001, a person may add or delete collateral covered by, continue or
- 5 terminate the effectiveness of, or otherwise amend the information provided in a
- 6 pre-effective-date financing statement only in accordance with the law of the
- 7 jurisdiction governing perfection as provided in part 3. However, the effectiveness
- 8 of a pre-effective-date financing statement also may be terminated in accordance
- 9 with the law of the jurisdiction in which the financing statement is filed.
- 10 3. Except as otherwise provided in subsection 4, if the law of this state governs
- 11 perfection of a security interest, the information in a pre-effective-date financing
- 12 statement may be amended after July 1, 2001, if:
- 13 a. The pre-effective-date financing statement and an amendment are filed in the
- 14 office specified in section 41-09-72;
- 15 b. An amendment is filed in the office specified in section 41-09-72 concurrently
- 16 with, or after the filing in that office of, an initial financing statement that
- 17 satisfies subsection 3 of section 41-09-128; or
- 18 c. An initial financing statement that provides the information as amended and
- 19 satisfies subsection 3 of section 41-09-128 is filed in the office specified in
- 20 section 41-09-72.
- 21 4. If the law of this state governs perfection of a security interest, the effectiveness of
- 22 a pre-effective-date financing statement may be continued only under
- 23 subsections 4 and 6 of section 41-09-127 and section 41-09-128.
- 24 5. Regardless of whether the law of this state governs perfection of a security
- 25 interest, the effectiveness of a pre-effective-date financing statement filed in this
- 26 state may be terminated July 1, 2001, by filing a termination statement in the office
- 27 in which the pre-effective-date financing statement is filed, unless an initial
- 28 financing statement that satisfies subsection 3 of section 41-09-128 has been filed
- 29 in the office specified by the law of the jurisdiction governing perfection as provided
- 30 in part 3 as the office in which to file a financing statement.

1 **41-09-130. (9-708) Persons entitled to file initial financing statement or**
2 **continuation statement.** A person may file an initial financing statement or a continuation
3 statement under this part if:

- 4 1. The secured party of record authorizes the filing; and
5 2. The filing is necessary under this part:
6 a. To continue the effectiveness of a financing statement filed before July 1,
7 2001; or
8 b. To perfect or continue the perfection of a security interest.

9 **41-09-131. (9-709) Priority.**

- 10 1. This Act determines the priority of conflicting claims to collateral. However, if the
11 relative priorities of the claims were established before July 1, 2001, the former
12 chapter 41-09 determines priority.
13 2. For purposes of subsection 1 of section 41-09-42, the priority of a security interest
14 that becomes enforceable under section 41-09-13 dates from July 1, 2001, if the
15 security interest is perfected under this Act by the filing of a financing statement
16 before July 1, 2001, which would not have been effective to perfect the security
17 interest under the former chapter 41-09. This subsection does not apply to
18 conflicting security interests each of which is perfected by the filing of such a
19 financing statement.

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

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

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

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

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

3 **54-09-08. Secretary of state's general services operating fund.** The secretary of
4 state's general services operating fund is a special fund in the state treasury. Moneys in the
5 fund are to be used pursuant to legislative appropriations for the provision of services under
6 ~~subsections 8 and 14~~ subsection 6 of section ~~41-09-42 and 41-09-94~~, subsection 10 of section
7 54-09-04, and sections 34 and 35 of this Act. At the close of each fiscal year, the secretary of
8 state shall transfer any unobligated balance remaining in the fund exceeding seventy-five
9 thousand dollars to the general fund.

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

- 11 1. The secretary of state shall maintain a computerized central indexing system that
12 contains the information filed with the office of the secretary of state or with any of
13 the offices of the registers of deeds in this state pursuant to sections 35-13-02,
14 35-17-04, 35-20-16, 35-30-02, 35-31-02, 35-34-04, 35-34-06, 41-09-72, 57-38-49,
15 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.
16 The system must connect each register of deeds' office to the secretary of state's
17 office through the information technology department. The system must allow
18 access to financing statement information by equipment that conforms to
19 requirements determined by the information technology department. The system
20 must have safeguards to allow access to information that is in the system relating
21 to security interests or liens and to prevent unauthorized alteration or deletion of
22 that information and to allow access to other information in the system as
23 prescribed by the secretary of state.
- 24 2. Within two working days of receipt of a financing statement, continuation
25 statement, amendment, or termination statement filed pursuant to chapter 41-09 or
26 a statement filed pursuant to section 35-13-02, 35-17-04, 35-20-16, 35-30-02, or
27 35-31-02, the register of deeds or secretary of state shall file the information
28 contained in the statement in the computerized central indexing system. A
29 computer printout of information from the system is prima facie evidence of the
30 existence or nonexistence of the filing of a financing statement or lien. The
31 secretary of state shall prescribe one form that can be used to perfect a security

1 interest in farm products or gain protection under the central notice system, or
2 both.

3 3. The secretary of state may adopt rules necessary to implement sections 33, 34,
4 and 35 of this Act.

5 **SECTION 34. Secretary of state to compile lists for crops and livestock -**
6 **Distribution of lists.**

- 7 1. From the computerized central indexing system, the secretary of state or a
8 designee shall produce each month one list for crops and one list for livestock that
9 each contain the information as filed on the forms pursuant to section 41-09-72.
10 The secretary of state shall also include on the lists the information filed for crops
11 and livestock pursuant to sections 35-17-04, 35-30-02, and 35-31-02. The lists
12 must be in alphabetical order according to the last name of, or in numerical order
13 according to the social security number of, the person engaged in farming
14 operations. The lists may be prepared in categories according to county, regions
15 as designated by the secretary of state, or on a statewide basis. If requested, the
16 lists must be in printed form. Each list must conspicuously note the effective date
17 of the list.
- 18 2. The secretary of state shall distribute monthly by mail the lists prepared pursuant to
19 subsection 1, at least five business days in advance of the effective date of each of
20 the lists. If requested, the secretary of state shall mail the lists to any person
21 making a request at a fee as provided in section 35 of this Act.
- 22 3. Upon a verbal request of any person, the secretary of state, a designee of the
23 secretary of state, or a register of deeds shall verbally provide information
24 contained on a list generated through the computerized central indexing system if
25 the collateral is crops or livestock. The requesting party may request a certificate
26 from the secretary of state or the register of deeds and the secretary of state or the
27 register of deeds shall confirm the information given. Direct computer access is
28 equivalent to oral confirmation, and a computer printout constitutes the written
29 confirmation of the secretary of state, if use of this method of confirmation does not
30 cause the central indexing system to lose federal certification. A computer printout
31 from the computerized central indexing system constitutes the certificate of the

1 secretary of state or the register of deeds as to whether there is on file, on the date
2 and hour stated on the computer printout, a financing statement.

3 **SECTION 35. Fees.**

- 4 1. The secretary of state shall establish fees for placing data in the computerized
5 central indexing system; for obtaining computer access to the computerized central
6 indexing system, to the computerized Uniform Commercial Code central filing data
7 base, or to the computerized statutory liens data base; for receiving printouts; for
8 direct access to all or parts of the central indexing system; for lists sold or licensed
9 under subsection 6 of section 41-09-94; for any other list provided by the secretary
10 of state; for any programming charges specifically incurred to provide information
11 requested by persons which is related to the central indexing system; and for other
12 services provided through the computerized system.
- 13 2. The fee for furnishing information on a verbal request pursuant to subsection 3 of
14 section 34 of this Act is seven dollars, and the fee for furnishing a certificate under
15 subsection 3 of section 34 of this Act is seven dollars.
- 16 3. The secretary of state shall establish the fee for furnishing lists under subsection 1
17 of section 34 of this Act based on actual costs to produce the lists for distribution.
- 18 4. Fees collected by the secretary of state under subsections 1 and 3 and under
19 subsection 6 of section 41-09-94 must be deposited in the secretary of state's
20 general services operating fund. Fees collected by the secretary of state under
21 subsection 2 must be deposited in the general fund in the state treasury.
- 22 5. The secretary of state may adopt rules regarding what portion of the filing fees and
23 search fees collected by the register of deeds under section 41-09-96 must be
24 submitted to the secretary of state for deposit into the secretary of state's general
25 operating fund to meet the cost of the provision of services required under
26 sections 33 and 34 of this Act.

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