



# State of South Dakota

SEVENTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2000

285D0028

## SENATE TAXATION COMMITTEE ENGROSSED NO. **HB1005** - 2/22/00

Introduced by: Representatives Lintz, Chicoine, Engbrecht, Juhnke, McNenny, Sutton (Duane), Waltman, and Young and Senators Symens, Madden, Paisley, and Vitter at the request of the Interim Tax Assessment Committee

1 FOR AN ACT ENTITLED, An Act to conduct a pilot study on agricultural income value, to  
2 create a task force, to appropriate money for a pilot study, and to declare an emergency.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 10-6 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 Notwithstanding the provisions of § 10-6-33, agricultural land shall be assessed based on its  
7 agricultural income value. The agricultural income value of agricultural land shall be determined  
8 on the basis of productivity and the annual earnings capacity of the agricultural land if the land  
9 is used for agricultural purposes. The productivity of land and its annual earning capacity shall  
10 be based on data collected and analyzed pursuant to sections 2 to 5, inclusive, of this Act.

11 Section 2. That chapter 10-6 be amended by adding thereto a NEW SECTION to read as  
12 follows:

13 Agricultural income value is defined as the capitalized average annual earning capacity. The  
14 annual earning capacity shall be determined from share rent and, reduced by the estimated  
15 property taxes and marketing expenses incurred by agricultural land owners renting agricultural

1 land on a share basis. The capacity of the cropland to produce agricultural products shall be  
2 based on average yields for crops or plants under natural conditions. The capacity of  
3 noncropland to produce agricultural products shall be based on average acres per animal unit  
4 under natural conditions. For the purpose of this section, annual earning capacity for:

- 5 (1) Cropland is thirty percent of the annual gross income produced;
- 6 (2) Noncropland is twenty-five percent of the annual gross income capacity of the land  
7 based upon the animal carrying capacity of the land.

8 The economics department of South Dakota State University shall annually compute the  
9 average annual earning capacity of cropland and noncropland for each county using the data base  
10 defined in section 4 of this Act. The average annual earning capacity shall be capitalized at a rate  
11 of six percent to determine the capitalized average annual earning capacity. The economics  
12 department shall annually provide the secretary of revenue this information by June first.

13 Section 3. That chapter 10-6 be amended by adding thereto a NEW SECTION to read as  
14 follows:

15 Before July first, the secretary of revenue shall annually provide each director of equalization  
16 the agricultural income value for each county as computed pursuant to section 2 of this Act.  
17 Before November first the director of equalization shall annually determine the assessed value  
18 of agricultural land. Agricultural land shall be assessed based on its agricultural income value and  
19 adjusted by the following factors:

- 20 (1) The capacity of the land to produce agricultural products as specified in section 2 of  
21 this Act; and
- 22 (2) The location, size, soil survey statistics, terrain, and topographical condition of the  
23 land including the climate, accessibility, and surface obstructions which can be  
24 documented.

25 Section 4. That chapter 10-6 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 The secretary of revenue shall enter into contracts with South Dakota State University and,  
3 if necessary, the South Dakota Agricultural Statistics Service for the purpose of creating a data  
4 base to determine the agricultural income value of agricultural land by county. A data base for  
5 an identifiable region within a county may be created if the director of equalization shows a need  
6 for establishing identifiable regions within a county. The secretary shall collect such data for  
7 1993, which will serve as the first year of the data base, and each year thereafter. The data base  
8 shall consist of the most recent eight years of data that have been collected and the years  
9 representing the highest and lowest agricultural income value shall be discarded from the data  
10 base. The data base for the 2002 assessment year shall consist of data from 1993 to 2000,  
11 inclusive, and the data base for each assessment year thereafter shall be adjusted accordingly.

12 Section 5. That chapter 10-6 be amended by adding thereto a NEW SECTION to read as  
13 follows:

14 Agricultural land shall be divided by the director of equalization into categories, including  
15 cropland and noncropland, so that the categories reflect uses appropriate for the valuation of  
16 such land. Each category shall be divided into subclasses based on soil classification standards  
17 developed by the United States Department of Agriculture Natural Resources Conservation  
18 Service.

19 Section 6. That chapter 10-6 be amended by adding thereto a NEW SECTION to read as  
20 follows:

21 Buildings and structures, other than normally occupied dwellings on agricultural land and  
22 automobile garages or portions of buildings used for that purpose, which are used exclusively  
23 for agricultural purposes and situated on agricultural land are hereby specifically classified for  
24 tax purposes as agricultural property and shall be assessed pursuant to § 10-6-33.

25 Section 7. That chapter 10-6 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 The agricultural income value for agricultural land as determined pursuant to section 1 of this  
3 Act represents eighty-five percent of the fair market value.

4 Section 8. That § 10-6-1 be amended to read as follows:

5 10-6-1. Terms used in this chapter mean:

- 6 (1) "Credit," every claim and demand for money or other valuable thing and every annuity  
7 or sum of money receivable at stated periods, due or to become due, and all claims  
8 and demands secured by deeds or mortgages due or to become due, except for  
9 contracts for deed and mortgages, in which case the term means only the payment  
10 received each year under the contract or mortgage;
- 11 (2) "District," township, municipality, or ward, as the case may be;
- 12 (3) "Full agricultural land value," the value of agricultural land as determined by the  
13 application of this chapter;
- 14 (4) "Money," gold and silver coin, treasury notes, bank notes, and every deposit which  
15 any person owning the same or holding in trust and residing in this state is entitled to  
16 withdraw in money on demand;
- 17 (5) "Tract," "lot," "piece," or "parcel" of real property, or "piece or parcel of land," any  
18 contiguous quantity of land in the possession of, owned by, or recorded as, the  
19 property of the same claimant, person, or company;
- 20 (6) "True and full value," for all real property, except agricultural land, the usual cash  
21 selling price at the place where the property to which the term is applied shall be at  
22 the time of the assessment.

23 Section 9. That § 10-6-33.1 be repealed.

24 ~~10-6-33.1. The true and full value in money of agricultural land, as defined by § 10-6-31,~~  
25 ~~which has been in primarily agricultural use for at least five successive years immediately~~

1 preceding the tax year for which assessment is to be made shall be the market value as  
2 determined for each county through the use of all comparable sales of agricultural land based on  
3 consideration of the following factors:

4 ~~— (1) — The capacity of the land to produce agricultural products as defined in § 10-6-33.2;~~  
5 ~~and~~

6 ~~— (2) — The soil, terrain, and topographical condition of the property including but not limited~~  
7 ~~to capability, the land's use, climate, accessibility, and surface obstructions which can~~  
8 ~~be documented through an analysis of land selling prices.~~

9 ~~— The comparable sales that are used shall be evidenced by an instrument recorded with the~~  
10 ~~register of deeds of the county in which the land is located, if the date of such instrument and the~~  
11 ~~recording date is not more than two years prior to the assessment year.~~

12 Section 10. That § 10-6-33.2 be repealed.

13 ~~— 10-6-33.2. Capacity of land in agricultural use to produce agricultural products shall be based~~  
14 ~~on average yields under natural conditions, in the case of land producing crops or plants, and on~~  
15 ~~the average "acres per animal unit," in the case of grazing land; said average shall affect each~~  
16 ~~operating unit and shall be based on the ten-year period immediately preceding the tax year in~~  
17 ~~issue. In determining such capacity to produce, the county director of equalization and/or the~~  
18 ~~county board of equalization must take into consideration yields, and/or carrying capacity, as~~  
19 ~~determined by the soil conservation service, the agricultural stabilization and conservation~~  
20 ~~service, the extension service, federal land bank, and private lending agencies dealing with land~~  
21 ~~production capacities.~~

22 Section 11. That § 10-6-33.3 be repealed.

23 ~~— 10-6-33.3. Land or improvement on land within an operating unit which is not used incident~~  
24 ~~to an agricultural pursuit shall be separately listed and assessed and the income therefrom shall~~  
25 ~~not be used in determining the values for the purposes of §§ 10-6-33.1 and 10-6-33.2.~~

1 Section 12. That § 10-6-33.4 be repealed.

2 ~~—10-6-33.4. If agricultural land has been classified pursuant to chapter 10-10, land within these~~  
3 ~~classifications and the classifications shall conform to the provisions of §§ 10-6-33.1 to~~  
4 ~~10-6-33.3, inclusive.~~

5 Section 13. That § 10-6-33.5 be amended to read as follows:

6 10-6-33.5. The assessment, valuation, equalization, and taxation of school and endowment  
7 lands shall be at the same level and on the same basis as lands assessed, valued, and equalized  
8 according to ~~§§ 10-6-33.1 to 10-6-33.4, inclusive~~ sections 1 to 5, inclusive, of this Act.

9 Section 14. That § 10-6-33.6 be repealed.

10 ~~—10-6-33.6. If the median value per acre in an identifiable region within a county deviates by~~  
11 ~~more than ten percent from the county average, the county director of equalization may establish~~  
12 ~~a separate market value per acre for the land defined by the director of equalization within that~~  
13 ~~region.~~

14 Section 15. That § 10-6-33.7 be repealed.

15 ~~—10-6-33.7. Agricultural land in each county shall be divided into the eight classes defined by~~  
16 ~~the United States Department of Agriculture's soil conservation service as published in its soil~~  
17 ~~survey for each county. The county director of equalization shall, based on the agricultural lands~~  
18 ~~soil survey classification, determine a value for each soil type. The value for each soil type shall~~  
19 ~~be determined from sales of similar land based upon its soil survey classification, and as adjusted~~  
20 ~~for the factors contained in subdivision 10-6-33.1(2). The sales used shall be sales of agricultural~~  
21 ~~land that are sold for agricultural purposes.~~

22 Section 16. That § 10-6-33.12 be repealed.

23 ~~—10-6-33.12. For the purposes of §§ 10-6-33.8 and 10-6-33.9, there shall be a separate~~  
24 ~~median sales to assessment ratio and coefficient of dispersion for agricultural and nonagricultural~~  
25 ~~real property.~~

1 Section 17. That § 10-6-33.20 be repealed.

2 ~~10-6-33.20. Any agricultural land, as defined in § 10-6-31.3, which is sold in an increment~~  
3 ~~of seventy acres or less, may not be used for the purpose of valuing agricultural land. The sale~~  
4 ~~of any agricultural land, which is not used for purpose of valuing agricultural property pursuant~~  
5 ~~to this section, may not be used in any sales ratio study.~~

6 Section 18. That § 10-11-56.5 be repealed.

7 ~~10-11-56.5. No sale of any land which is classified pursuant to § 10-6-58 may be used in any~~  
8 ~~sales ratio study.~~

9 Section 19. That § 10-11-57 be repealed.

10 ~~10-11-57. In order to determine the ratio for agricultural land assessed pursuant to~~  
11 ~~§ 10-6-33.1, the secretary of revenue shall compare the assessed valuations on properties used~~  
12 ~~for tax purposes in the year sold with the agricultural values of those properties as determined~~  
13 ~~under §§ 10-6-33.1 and 10-6-33.2.~~

14 Section 20. That § 10-12-31.1 be amended to read as follows:

15 10-12-31.1. Notwithstanding other provision of law, when applying the levies for school  
16 purposes, the county director of equalization of each county shall adjust the level of assessment  
17 in that district so that the level of assessment as indicated by the most recent assessment to sales  
18 ratio as provided for in § 10-11-55 and the most recent ~~assessment to full agricultural land value~~  
19 ~~ratio~~ agricultural income value as provided for in ~~§ 10-11-57 section 1 of this Act~~ in that district  
20 are equal to eighty-five percent of market or agricultural income value. The Department of  
21 Revenue shall provide the director of equalization of each county all of the factors of adjustment  
22 necessary for the computations required in this section.

23 Section 21. Sections 1 to 22, inclusive, of this Act are effective for the nine counties listed  
24 in section 22 of this Act for the purposes of the pilot study only and not for actual assessment  
25 and taxation of individual property.

1 Section 22. The secretary of revenue shall conduct a pilot study concerning the use of  
2 agricultural income value as a means to value agricultural land. The pilot study shall include an  
3 analysis of various capitalization rates and determine the impact of such rates on the total  
4 statewide assessed value of agricultural property and its relationship to the total statewide  
5 assessed value of all property. The pilot study shall include the counties of Clark, Moody,  
6 Turner, Brown, Hyde, Lyman, Corson, Meade, and Custer. The secretary shall, for the purpose  
7 of providing information, apply the provisions and procedures provided in this Act to value  
8 agricultural land in the selected counties. The secretary shall submit a report detailing the  
9 information collected to the Task Force on the Study of Productivity Valuation of Agricultural  
10 Land by March 31, 2001. The Governor shall appoint nine members to the Task Force on the  
11 Study of Productivity Valuation of Agricultural Land, three of whom shall be members of the  
12 Legislature, three of whom shall be either county commissioners or county directors of  
13 equalization or any combination thereof, and three members who shall be appointed from the  
14 public at large. The task force, after receipt of the pilot study, shall study the effects including  
15 the capitalization rate, preventing a tax shift between agricultural and nonagricultural property,  
16 and evaluate the procedures used to determine agricultural income values, preventing tax shifts  
17 within agricultural property and make recommendations by October 1, 2001, to the Governor  
18 and the Seventy-seventh Legislature regarding implementation.

19 Section 23. There is hereby appropriated from the general fund the sum of one hundred  
20 thousand dollars (\$100,000), or so much thereof as may be necessary, to the Department of  
21 Revenue for the purpose of conducting a pilot study concerning the use of agricultural income  
22 value as a means to value agricultural land.

23 Section 24. The secretary of the Department of Revenue shall approve vouchers and the state  
24 auditor shall draw warrants to pay expenditures authorized by this Act.

25 Section 25. Any amounts appropriated in this Act not lawfully expended or obligated by

1 June 30, 2002, shall revert in accordance with § 4-8-21.

2 Section 26. Whereas, this Act is necessary for the support of the state government and its  
3 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full  
4 force and effect from and after its passage and approval.

1 **BILL HISTORY**

2 1/11/00 First read in House and referred to Taxation. H.J. 13

3 1/20/00 Scheduled for Committee hearing on this date.

4 2/3/00 Scheduled for Committee hearing on this date.

5 2/3/00 Taxation Do Pass Amended, Passed, AYES 10, NAYS 2. H.J. 402

6 2/7/00 House of Representatives Deferred to another day. H.J. 469

7 2/8/00 House of Representatives Deferred to another day. H.J. 489

8 2/10/00 House of Representatives Deferred to another day, AYES 58, NAYS 9. H.J. 594

9 2/11/00 Motion to Amend, Passed. H.J. 615

10 2/11/00 House of Representatives Do Pass Amended, Passed, AYES 53, NAYS 4. H.J. 616

11 2/11/00 House of Representatives Title Amended Passed. H.J. 617

12 2/14/00 First read in Senate and referred to Taxation. S.J. 458

13 2/18/00 Scheduled for Committee hearing on this date.

14 2/18/00 Taxation Do Pass Amended, Passed, AYES 8, NAYS 0. S.J. 569

# State of South Dakota

SEVENTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2000

995D0218

SENATE APPROPRIATIONS COMMITTEE

ENGROSSED NO. **HB1056** - 2/22/0

**This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsors.**

Introduced by: Representatives Kooistra, Cerny, Davis, Fischer-Clemens, Haley, Kazmerzak, Lockner, Lucas, McCoy, McIntyre, Michels, Munson (Donald), Patterson, Volesky, and Wilson and Senators Valandra, Dunn (Rebecca), Moore, and Symens

1 FOR AN ACT ENTITLED, An Act to establish a combination work and education activity for  
2 recipients under the state's temporary assistance for needy families program.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 28-7A be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 The Department of Social Services shall implement a combination work and education  
7 activity for recipients of the temporary assistance for needy families program who qualify under  
8 the provisions of this Act. This combination work and education activity is limited to twenty-four  
9 months and must be directed towards a goal of employment that leads to self-sufficiency.

10 Section 2. That chapter 28-7A be amended by adding thereto a NEW SECTION to read as  
11 follows:

12 The education component of the combination work and education activity must meet the  
13 following criteria:

14 (1) Must be an undergraduate postsecondary educational program at an institution

1 accredited by the North Central Association of Colleges and Secondary Schools;

2 (2) Must result in a marketable skill directly related to employment;

3 (3) Must be related to the available employment demands and opportunities in the  
4 recipient's labor market.

5 Section 3. That chapter 28-7A be amended by adding thereto a NEW SECTION to read as  
6 follows:

7 The recipient of the temporary assistance for needy families program must meet the following  
8 criteria to be approved for the work and education activity under the provisions of this Act:

9 (1) Must be enrolled in a postsecondary education program for a minimum of twelve  
10 credit hours. Credit hours to meet the requirement of this subdivision may not exceed  
11 fifteen;

12 (2) Must meet the admission requirements established by the institution;

13 (3) Must maintain a 2.5 grade point average; and

14 (4) Must have a combination of work hours and classroom hours that meet the work  
15 participation requirements of the state's temporary assistance for needy families  
16 program.

17 Section 4. That chapter 28-7A be amended by adding thereto a NEW SECTION to read as  
18 follows:

19 The Department of Social Services may limit the number of participants in the work and  
20 education activity to meet the requirements under the state's temporary assistance for needy  
21 families program.

22 Section 5. That chapter 28-7A be amended by adding thereto a NEW SECTION to read as  
23 follows:

24 The department may promulgate rules pursuant to chapter 1-26 for the administration of this  
25 Act. Rules may include the following:

- 1       (1)   Employability assessment, work activities, and supportive services;
- 2
- 3       (2)   Conditions of continued eligibility, eligibility time limits, eligibility recertification
- 4           periods, and exemptions;
- 5       (3)   Program participation requirements, criteria for disqualification, and good cause
- 6           exemptions;
- 7       (4)   Limits on the number of participants; and
- 8       (5)   Such other rules and standards of operation and administration within the mandate of
- 9           this Act as may be necessary or desirable to qualify for federal financial participation.

1 **BILL HISTORY**

2 1/14/00 First read in House and referred to State Affairs. H.J. 45

3 1/21/00 Deferred by Chair.

4 1/21/00 Scheduled for Committee hearing on this date.

5 1/28/00 Scheduled for Committee hearing on this date.

6 2/4/00 Scheduled for Committee hearing on this date.

7 2/7/00 Scheduled for Committee hearing on this date.

8 2/7/00 State Affairs Do Pass Amended, Passed, AYES 7, NAYS 6. H.J. 474

9 2/8/00 State Affairs Hog Housed.

10 2/10/00 House of Representatives Do Pass Amended, Passed, AYES 43, NAYS 25. H.J. 588

11 2/11/00 First read in Senate and referred to Appropriations. S.J. 442

12 2/17/00 Scheduled for Committee hearing on this date.

13 2/17/00 Deferred by Chair.

14 2/18/00 Deferred by Chair.

15 2/18/00 Scheduled for Committee hearing on this date.

16 2/22/00 Appropriations Hog Housed.

17 2/22/00 Scheduled for Committee hearing on this date.

18 2/22/00 Appropriations Do Pass Amended, Passed, AYES 9, NAYS 1.

# State of South Dakota

SEVENTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2000

731D0422

SENATE APPROPRIATIONS COMMITTEE

ENGROSSED NO. **HB1057** - 2/22/00

**This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsors.**

Introduced by: Representatives Munson (Donald), Broderick, Clark, Kooistra, Michels, Roe, Smidt, Sutton (Duane), and Volesky and Senators Reedy, Duxbury, Ham, Kleven, Madden, and Moore

1 FOR AN ACT ENTITLED, An Act to create the South Dakota education savings plan.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. Terms used in this Act mean:

4 (1) "Account," an individual trust account or savings account established pursuant to this  
5 Act;

6 (2) "Account owner," the person designated at the time an account is opened as having  
7 the right to withdraw moneys from the account before the account is disbursed to or  
8 for the benefit of the designated beneficiary;

9 (3) "Department," the Department of Education and Cultural Affairs;

10 (4) "Designated beneficiary" or "beneficiary," with respect to an account, the person  
11 designated at the time the account is opened, or the person who replaces a designated  
12 beneficiary, as the person whose education expenses are expected to be paid from the  
13 account;

14 (5) "Eligible education institution," as that term is defined in 26 U.S.C. sec. 135(c)(3), as  
15 amended to January 1, 2000;

- 1       (6) "Financial institution," any South Dakota state agency not prohibited by state or  
2       federal law from serving in the capacity of a financial entity as intended by the terms  
3       of this Act, or any state bank, state trust company, industrial bank, savings and loan  
4       association, credit union chartered by the State of South Dakota, national bank,  
5       broker-dealer, mutual fund, insurance company, or other similar financial entity  
6       qualified to do business in the State of South Dakota;
- 7       (7) "Internal revenue code," the federal "Internal Revenue Code of 1986", as amended  
8       to January 1, 2000;
- 9       (8) "Manager," a financial institution under contract with the department to serve as  
10      administrator of the program and recipient of contributions on behalf of the program;
- 11      (9) "Member of the family," as that term is defined in 26 U.S.C. sec. 529(e)(2), as  
12      amended to January 1, 2000;
- 13      (10) "Nonqualified withdrawal," a withdrawal from an account other than a qualified  
14      withdrawal or a rollover or change of designated beneficiary;
- 15      (11) "Program," the college savings program established pursuant to this Act;
- 16      (12) "Qualified higher education expenses," as that term is defined in 26 U.S.C. sec.  
17      529(e)(3), as amended to January 1, 2000; and
- 18      (13) "Qualified withdrawal," a withdrawal from an account to pay the qualified higher  
19      education expenses of the designated beneficiary of the account, a withdrawal made  
20      on account of the death or disability of the designated beneficiary, or a withdrawal  
21      made on account of a scholarship, but only if the withdrawal is made in accordance  
22      with this Act.

23       Section 2. The Department of Education and Cultural Affairs shall promulgate rules pursuant  
24      to chapter 1-26 to design, develop, and implement the college savings program and the policies  
25      related to the program consistent with this Act. The department shall approve any plan for

1 promoting the program developed by a manager, as provided in subdivision (6) of section 10 of  
2 this Act. The rules shall interpret the provisions of this Act broadly and shall include policies and  
3 procedures:

4 (1) Governing the withdrawal of funds, including provisions that will enable the  
5 department or the manager to determine whether a withdrawal is a nonqualified  
6 withdrawal or a qualified withdrawal;

7 (2) To enable account owners and beneficiaries and the program to obtain or maintain  
8 federal income tax benefits or treatment provided by section 529 of the Internal  
9 Revenue Code and exemptions under federal securities laws;

10 (3) Governing the charging and collecting of administrative fees and service charges as  
11 provided in this Act;

12 (4) Governing the changing of designated beneficiaries.

13 Section 3. No contributions may be made on behalf of a designated beneficiary in excess of  
14 those necessary to pay the qualified higher education expenses of the designated beneficiary.

15 Section 4. Every contract, application, deposit slip, or other similar document that is used  
16 in connection with a contribution to an account shall clearly indicate that the account is not  
17 insured by this state and neither the principal deposited nor the investment return is guaranteed  
18 by the state.

19 Section 5. The Department of Education and Cultural Affairs may:

20 (1) Retain the professional services of accountants, auditors, consultants, and other  
21 experts necessary to implement and develop the program;

22 (2) Seek rulings and other guidance from the United States Department of the Treasury,  
23 the Internal Revenue Service, and the Securities and Exchange Commission relating  
24 to the program as is necessary for proper implementation and development of the  
25 program;

1 (3) Charge and collect administrative fees and service charges in connection with any  
2 agreement, contract, or transaction relating to the program in amounts not exceeding  
3 the cost of establishing and maintaining the program; and

4 (4) Approve the application and review, for purposes of compliance with applicable laws  
5 and regulations, of any informational materials utilized by the manager to be furnished  
6 to persons who desire to participate in the program established in this Act.

7 Section 6. The Department of Education and Cultural Affairs may contract with one or more  
8 financial institutions to act as managers for the investment of contributions deposited in the  
9 accounts or otherwise in stocks, bonds, mutual funds, and other such investments as deemed  
10 appropriate by the department. In so doing, the department is bound by fiduciary duty and shall  
11 ensure that investments by the managers are made with judgment and care which persons of  
12 prudence, discretion, and intelligence exercise in the management of the property of another, not  
13 in regard to speculation but in regard to the permanent disposition of funds, considering the  
14 probable income as well as the probable safety of capital. The funds contributed to the accounts  
15 established by account owners pursuant to this Act are held in trust by the department and the  
16 manager for the sole benefit of the account owner and beneficiary. These contributions are not  
17 subject to any limitations on the investment or spending of public funds.

18 Section 7. The Department of Education and Cultural Affairs shall implement the program  
19 through the use of one or more financial institutions to act as managers. Under the program,  
20 potential account owners may establish accounts through the program at the financial institution.  
21 The department shall solicit proposals from financial institutions to act as the recipients of  
22 contributions and managers.

23 Section 8. The department shall select from among bidding financial institutions one or more  
24 financial institutions that demonstrate the most advantageous combination to account owners and  
25 beneficiaries, based on the following factors:

- 1 (1) Financial stability and integrity;
- 2 (2) The ability of the financial institution, directly or through a subcontract, to satisfy  
3 record-keeping and reporting requirements;
- 4 (3) The financial institution's plan for promoting the program and the investment that the  
5 financial institution is willing to make in order to promote the program;
- 6 (4) The historic ability of the investment instruments utilized by the financial institution  
7 to track the estimated costs of higher education as calculated by the United States  
8 Department of Education;
- 9 (5) The fees, if any, proposed to be charged to account owners for maintaining accounts;
- 10 (6) The minimum initial cash contribution and minimum contributions that the financial  
11 institution will require, and the willingness of the financial institution to accept  
12 contributions through payroll deduction plans or systematic deposit plans; and
- 13 (7) Any other benefits to the state or to its residents included in the proposal, including  
14 an account opening fee payable to the department by the account owner.

15 Section 9. The department may select more than one financial institution for the program if  
16 the United States Internal Revenue Service has provided guidance that giving a contributor a  
17 choice of two or more financial institutions will not cause the program to fail to qualify for  
18 favorable tax treatment under section 529 of the Internal Revenue Code, and the department  
19 concludes that the choice of two or more financial institutions is in the best interest of account  
20 owners and beneficiaries and will not interfere with the promotion of the program.

21 Section 10. A manager shall:

- 22 (1) Take all actions required to keep the program in compliance with the requirements of  
23 this Act and to ensure that the program is treated as a qualified state tuition plan  
24 under section 529 of the Internal Revenue Code, and to ensure that the program is  
25 exempt from registration under the federal securities law;

- 1       (2)    Keep adequate and separate records of each account and provide the department with  
2            the information necessary to prepare the reports required by section 529 of the  
3            Internal Revenue Code, or file these reports on behalf of the department;
- 4       (3)    Compile and total information contained in statements required to be prepared  
5            pursuant to section 21 of this Act and provide these compilations to the department;
- 6       (4)    Provide representatives of the department access to the books and records of the  
7            manager to the extent needed to determine compliance with the contract;
- 8       (5)    Hold all accounts in trust for the sole benefit of the account owner and beneficiary on  
9            behalf of the program, acting in a fiduciary capacity and making investments with  
10           judgment, care, and prudence; and
- 11      (6)    Develop a plan to promote the program and, after approval of the plan by the  
12            department as provided in section 2 of this Act, promote the program in accordance  
13            with the plan.

14       Section 11. Any contract executed between the department and a financial institution  
15    pursuant to this Act shall be for a term of at least five years and is renewable.

16       Section 12. If a contract executed between the department and a financial institution pursuant  
17    to this Act is not renewed, all of the following conditions apply at the end of the term of the  
18    nonrenewed contract, if these conditions do not disqualify the program as a qualified state tuition  
19    plan under section 529 of the Internal Revenue Code:

- 20      (1)    The department shall continue to maintain the program at the financial institution;
- 21      (2)    Accounts previously established at the financial institution may not be terminated,  
22            except as provided in subdivision (5) of this section or as provided in section 13 of  
23            this Act;
- 24      (3)    Additional contributions may be made to the accounts;
- 25      (4)    No new accounts may be placed with that financial institution; and

1       (5) If the department determines that continuing the accounts at the financial institution  
2           is not in the best interest of the account owners or beneficiaries, the accounts may be  
3           transferred to another financial institution under contract with the department.

4       Section 13. The department may terminate a contract with a financial institution at any time.  
5       If a contract is terminated pursuant to this section, the department shall take custody of accounts  
6       held at that financial institution and shall promptly transfer the accounts to another financial  
7       institution that is selected as a manager and into investment instruments as similar to the original  
8       investments as possible pursuant to the guidelines established in section 18 of this Act.

9       Section 14. The program shall be operated through the use of accounts. Any person who  
10      desires to save for the qualified higher education expenses of a potential beneficiary may open  
11      an account by satisfying each of the following requirements:

- 12      (1) Completing an application in the form prescribed by the financial institution and  
13          approved by the department. The application shall include the following information:
- 14          (a) The name, address, and social security number or employer identification  
15              number of any person that contributes to the account;
  - 16          (b) The name, address, and social security number or employer identification  
17              number of the account owner;
  - 18          (c) The name, address, social security number or employer identification number,  
19              and date of birth of the designated beneficiary;
  - 20          (d) A certification from the contributor that states that to the best of the  
21              contributor's knowledge, the account balance for the designated beneficiary in  
22              all qualified state tuition programs, as defined in section 529 of the Internal  
23              Revenue Code, does not exceed the greater of either a maximum college  
24              savings amount established by the department or the cost in current dollars of  
25              qualified higher education expenses that the contributor reasonably anticipates

1 the designated beneficiary will incur; and

2 (e) Any other information that the department may deem necessary; and

3 (2) Making the minimum contribution required by the financial institution to open an  
4 account.

5 Section 15. Any person may make contributions to an account, consistent with the terms  
6 established by the department, after the account is opened. Contributions to accounts may be  
7 made in cash only. Account owners may withdraw all or part of the balance from an account  
8 upon giving sixty days' notice, or upon such shorter period as may be authorized by the  
9 department in rules promulgated by the department pursuant to chapter 1-26, including any  
10 applicable fees and penalties. An account owner may change the designated beneficiary of an  
11 account to an individual who is a member of the family or former designated beneficiary in  
12 accordance with procedures established by the department in rules promulgated pursuant to  
13 chapter 1-26. At the direction of the account owner, all or a portion of an account may be  
14 transferred to another account if the designated beneficiary of the transferee account is a member  
15 of the family of the designated beneficiary of the transferor account. Changes in designated  
16 beneficiaries and rollovers under this section are not permitted if the changes or rollovers would  
17 violate rules related to excess contributions or rules related to investment choice.

18 Section 16. In the case of any nonqualified withdrawal from an account, an amount that  
19 would constitute more than a de minimis penalty, as determined by the department in accordance  
20 with section 529 of the Internal Revenue Code, shall be withheld as a penalty from the amount  
21 withdrawn or from funds remaining in the account and paid to the department for use in  
22 operating the program and for state student financial aid. If an account owner makes a  
23 nonqualified withdrawal and no penalty amount is withheld, or if the amount withheld is less than  
24 the amount required to be withheld pursuant to this section for nonqualified withdrawals, the  
25 account owner shall pay the unpaid portion of the penalty to the department on or before April

1 fifteenth of the following tax year.

2 Section 17. Each account shall be accounted for separately from all other accounts under the  
3 program. Separate records and accounting shall be maintained for each account for each  
4 designated beneficiary. If prohibited by federal law, no contributor to, account owner of, or  
5 designated beneficiary of any account may direct the investment of any contribution to an  
6 account or the earnings from the account.

7 Section 18. If the department terminates the contract of a financial institution to hold  
8 accounts and accounts are moved from that financial institution to another financial institution,  
9 the department shall select the financial institution to which the balances of the accounts are  
10 moved.

11 Section 19. Neither an account owner nor a designated beneficiary may use an interest in an  
12 account as a security for a loan. Any pledge of an interest in an account is of no force and effect.  
13 An account created pursuant to this Act may not be used to satisfy creditors and is exempt from  
14 judgment lien and from all mesne or final process from any court.

15 Section 20. If there is any distribution from an account to any person or for the benefit of any  
16 person during the calendar year, the distribution shall be reported to the United States Internal  
17 Revenue Service and to the account owner and the designated beneficiary to the extent required  
18 by federal law.

19 Section 21. The manager shall provide statements to each account owner at least once each  
20 year, within thirty-one days after the end of the calendar year. The statement shall identify the  
21 contributions made during the preceding reporting period, the total contributions made through  
22 the end of the reporting period, the value of the account as of the end of the reporting period,  
23 withdrawals made during the reporting period, and any other matters that the department  
24 requires to be reported to the account owner. Statements and information returns relating to  
25 accounts shall be prepared and filed to the extent required by federal or state tax law.

1 Section 22. Nothing in this Act:

- 2 (1) Gives any designated beneficiary any rights or legal interest with respect to an account
- 3 unless the designated beneficiary is the account owner;
- 4 (2) Guarantees that a designated beneficiary will be admitted to an education institution
- 5 or be allowed to continue enrollment at or graduate from an education institution;
- 6 (3) Establishes state residency for a beneficiary merely because of the designation as a
- 7 designated beneficiary; or
- 8 (4) Guarantees that amounts saved pursuant to the program will be sufficient to cover the
- 9 qualified higher education expenses of a designated beneficiary.

10 Section 23. Nothing in this Act establishes any obligation of the State of South Dakota or  
11 any agency or instrumentality of the State of South Dakota to guarantee for the benefit of any  
12 owner, contributor to an account, or designated beneficiary any of the following:

- 13 (1) The return of any amounts contributed to an account;
- 14 (2) The rate of interest or other return on any account;
- 15 (3) The payment of interest or other return on any account; or
- 16 (4) Tuition rates or the cost of related education expenditures.

17 Section 24. Nothing in this Act indicates that any account is insured by the State of South  
18 Dakota or that the principal deposited or investment return is guaranteed by the State of South  
19 Dakota.

20 Section 25. Both resident and nonresident account owners and designated beneficiaries are  
21 eligible to participate in and benefit from the college savings program.

22 Section 26. That § 13-55E-1 be repealed.

23 ~~13-55E-1. Terms used in this chapter mean:~~

- 24 ~~(1) "Advance payment contract," a contract entered into by the executive director and a~~
- 25 ~~purchaser pursuant to this chapter to provide for the higher education of a beneficiary;~~

1 ~~(2) "Beneficiary," the person designated within the advance payment contract to receive~~  
2 ~~tuition, room and board, or tuition only at a state-supported institution of higher~~  
3 ~~education;~~

4 ~~(3) "Executive director," the executive director of the Board of Regents;~~

5 ~~(4) "Institution of higher education," any state-supported university;~~

6 ~~(5) "Purchaser," any person obligated to make an advance payment of tuition, room and~~  
7 ~~board, or tuition only costs on behalf of a beneficiary pursuant to an advance payment~~  
8 ~~contract;~~

9 ~~(6) "Room and board costs," the amount assessed for lodging and regularly scheduled~~  
10 ~~meals provided to students pursuant to a contract for room and board with an~~  
11 ~~institution of higher education;~~

12 ~~(7) "Tuition costs," the amount assessed for full-time enrollment at an institution of~~  
13 ~~higher education including mandatory fees imposed upon all full-time students as a~~  
14 ~~condition of enrollment.~~

15 Section 27. That §§ 13-55E-2 to 13-55E-13, inclusive, be repealed.

1 **BILL HISTORY**

2 1/14/00 First read in House and referred to State Affairs. H.J. 45

3 1/19/00 Scheduled for Committee hearing on this date.

4 1/19/00 Deferred by Chair.

5 1/21/00 Scheduled for Committee hearing on this date.

6 1/24/00 Scheduled for Committee hearing on this date.

7 1/26/00 Scheduled for Committee hearing on this date.

8 1/28/00 Scheduled for Committee hearing on this date.

9 1/31/00 Scheduled for Committee hearing on this date.

10 2/2/00 Scheduled for Committee hearing on this date.

11 2/7/00 Scheduled for Committee hearing on this date.

12 2/7/00 State Affairs Do Pass Amended, Passed, AYES 8, NAYS 5. H.J. 476

13 2/10/00 Motion to Amend, Passed. H.J. 569

14 2/10/00 House of Representatives Do Pass Amended, Passed, AYES 54, NAYS 12. H.J. 570

15 2/10/00 First read in Senate and referred to Appropriations. S.J. 426

16 2/13/00 Scheduled for Committee hearing on this date.

17 2/14/00 Scheduled for Committee hearing on this date.

18 2/16/00 Scheduled for Committee hearing on this date.

19 2/16/00 Deferred by Chair.

20 2/17/00 Scheduled for Committee hearing on this date.

21 2/17/00 Deferred by Chair.

22 2/18/00 Scheduled for Committee hearing on this date.

23 2/18/00 Deferred by Chair.

24 2/22/00 Scheduled for Committee hearing on this date.

25 2/22/00 Appropriations Do Pass Amended, Passed, AYES 7, NAYS 1.

# State of South Dakota

SEVENTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2000

400D0668

SENATE TRANSPORTATION COMMITTEE

ENGROSSED NO. **HB1206** - 2/22/00

**This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsors.**

Introduced by: Representatives Broderick, Apa, Duniphan, and Michels and Senators Shoener and Vitter

1 FOR AN ACT ENTITLED, An Act to repeal revisions to certain municipal special assessment  
2 provisions.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. The amended provisions of HB 1074, previously passed by the Seventy-Fifth  
5 Session of the South Dakota Legislative Assembly are hereby repealed.

1 **BILL HISTORY**

2 1/19/00 First read in House and referred to committee assignment waived. H.J. 142

3 1/20/00 Referred to Judiciary.

4 1/28/00 Scheduled for Committee hearing on this date.

5 1/28/00 Judiciary Do Pass Amended, Passed, AYES 8, NAYS 3. H.J. 285

6 2/1/00 House of Representatives Do Pass Amended, Passed, AYES 40, NAYS 29. H.J. 354

7 2/2/00 First read in Senate and referred to Transportation. S.J. 300

8 2/8/00 Scheduled for Committee hearing on this date.

9 2/8/00 Transportation Tabled, AYES 5, NAYS 2. S.J. 351

10 2/17/00 Transportation Removed from Table, AYES 4, NAYS 2.

11 2/22/00 Scheduled for Committee hearing on this date.

12 2/22/00 Transportation Do Pass Amended, Passed, AYES 5, NAYS 2.

# State of South Dakota

SEVENTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2000

572D0558

SENATE STATE AFFAIRS COMMITTEE

ENGROSSED NO. **HB1211** - 2/22/00

Introduced by: Representatives Eccarius, Cutler, Duniphan, Fischer-Clemens, Haley, Jaspers, McNenny, Munson (Donald), and Wetz and Senators Whiting, Brosz, Frederick, Ham, Madden, Moore, Olson, and Reedy

1 FOR AN ACT ENTITLED, An Act to revise the date at which certain telecommunications  
2 companies may begin certain promotions for local exchange service.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 49-31-86.2 be amended to read as follows:

5 49-31-86.2. The exemption for promotions provided by § 49-31-86 is not effective until  
6 December 31, 2000, in the local exchange area of any facilities-based competitive local exchange  
7 carrier certified by the commission that provides broadband network services throughout its local  
8 exchange area. However, the exemption for promotions provided by § 49-31-86 is not effective  
9 until July 1, 2001, in the local exchange area of any facilities-based local exchange carrier  
10 certified by the commission after July 31, 1998, that provides broadband network services  
11 throughout its local exchange area.

1 **BILL HISTORY**

2 1/19/00 First read in House and referred to committee assignment waived. H.J. 143

3 1/20/00 Referred to State Affairs.

4 1/28/00 Scheduled for Committee hearing on this date.

5 1/28/00 Deferred by Chair.

6 2/2/00 Scheduled for Committee hearing on this date.

7 2/2/00 State Affairs Do Pass, Passed, AYES 11, NAYS 1. H.J. 363

8 2/3/00 House of Representatives Deferred to another day. H.J. 401

9 2/4/00 House of Representatives Deferred to another day. H.J. 433

10 2/7/00 House of Representatives Do Pass, Passed, AYES 59, NAYS 7. H.J. 453

11 2/8/00 First read in Senate and referred to State Affairs. S.J. 360

12 2/16/00 Scheduled for Committee hearing on this date.

13 2/16/00 Deferred by Chair.

14 2/18/00 Scheduled for Committee hearing on this date.

15 2/18/00 State Affairs Do Pass Amended, Passed, AYES 9, NAYS 0. S.J. 567

# State of South Dakota

SEVENTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2000

636D0365

SENATE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **HB1215** - 2/22/00

Introduced by: Representatives Clark, Cutler, Derby, Earley, Engbrecht, Fitzgerald, Michels, Sutton (Daniel), and Young and Senators Vitter, Ham, and Whiting

1 FOR AN ACT ENTITLED, An Act to allow contracts or agreements between governmental  
2 entities to be exempt from certain conflicts of interest.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 6-1-2 be amended to read as follows:

5 6-1-2. The provisions of § 6-1-1 are not applicable if the contract is made pursuant to any  
6 one of the conditions set forth in the following subdivisions, without fraud or deceit; but, the  
7 contract is voidable if the provisions of the applicable subdivision were not fully satisfied or  
8 present at the time the contract was entered into:

9 (1) Any contract involving one thousand dollars or less regardless of whether other  
10 sources of supply or services are available within the county, municipality, township,  
11 or school district, provided that the consideration therefor is reasonable and just;

12 (2) Any contract involving more than one thousand dollars but less than the amount for  
13 which competitive bidding is required, and there is no other source of supply or  
14 services available within the county, municipality, township, or school district  
15 provided that the consideration therefor is reasonable and just and further provided  
16 that the accumulated total of such contracts paid during any given fiscal year ~~shall do~~

1 not exceed the amount specified in § 5-18-3;

2 (3) Any contract with any firm, association, corporation, or cooperative association for  
3 which competitive bidding is not required and where other sources of supply and  
4 services are available within the county, municipality, township or school district, and  
5 the consideration therefor is reasonable and just, unless the majority of the governing  
6 body are members or stockholders who collectively have controlling interest, or any  
7 one of them is an officer or manager of any such firm, association, corporation, or  
8 cooperative association then any such contract ~~shall be~~ is null and void;

9 (4) Any contract with any firm, association, corporation, or cooperative association for  
10 which competitive bidding procedures are followed pursuant to chapter 5-18, and  
11 where more than one such competitive bid is submitted;

12 (5) Any contract for professional services with any individual, firm, association,  
13 corporation or cooperative, if the individual or any member of the firm, association,  
14 corporation or cooperative is an elected or appointed officer of a county, municipality,  
15 township, or school district, whether or not other sources of such services are  
16 available within the county, municipality, township, or school district, provided the  
17 consideration therefor is reasonable and just;

18 (6) Any contract for commodities, materials, supplies, or equipment found in the state  
19 price list established pursuant to § 5-23-8.1, at the price there established or below;  
20 and

21 (7) Any contract or agreement between a governmental entity specified in § 6-1-1 and a  
22 public postsecondary educational institution when an employee of the Board of  
23 Regents serves as an elected or appointed officer for the governmental entity,  
24 provided that the employee does not receive direct compensation or payment as a  
25 result of the contract or agreement.

1 **BILL HISTORY**

2 1/20/00 First read in House and referred to Local Government. H.J. 158

3 2/1/00 Scheduled for Committee hearing on this date.

4 2/1/00 Local Government Do Pass Amended, Passed, AYES 12, NAYS 1. H.J. 336

5 2/3/00 House of Representatives Deferred to another day. H.J. 401

6 2/4/00 House of Representatives Do Pass Amended, Passed, AYES 53, NAYS 10. H.J. 432

7 2/7/00 First read in Senate and referred to Local Government. S.J. 343

8 2/16/00 Scheduled for Committee hearing on this date.

9 2/16/00 Deferred by Chair.

10 2/18/00 Scheduled for Committee hearing on this date.

11 2/18/00 Local Government Do Pass Amended, Passed, AYES 6, NAYS 0. S.J. 568

12 2/18/00 Local Government Place on Consent Calendar.

# State of South Dakota

SEVENTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2000

881D0508

SENATE STATE AFFAIRS COMMITTEE

ENGROSSED NO. **HB1243** - 2/22/00

**This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsors.**

Introduced by: Representatives Peterson, Brown (Jarvis), Brown (Richard), Clark, Fischer-Clemens, Lucas, McCoy, Michels, Sutton (Duane), and Wilson and Senators Daugaard, Lawler, Madden, Symens, and Whiting

1 FOR AN ACT ENTITLED, An Act to authorize the Department of Human Services to develop  
2 and implement programs aimed at reducing the use of tobacco by youth and to accept and  
3 expend private contributions therefor.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That chapter 34-20A be amended by adding thereto a NEW SECTION to read  
6 as follows:

7 The department may develop and implement programs aimed at reducing the use of tobacco  
8 by youth in South Dakota. In addition to appropriations of state funds, the department may  
9 accept and expend, for the purpose of this Act, any funds obtained through federal sources, gifts,  
10 contributions, or any other source if such acceptance and expenditure is in accordance with  
11 chapter 4-8. However, the department may not spend state appropriations unless the  
12 appropriations are matched on a dollar for dollar basis by gifts of contributions from private  
13 sources within the State of South Dakota. This match requirement does not apply to any state  
14 appropriations exceeding one million dollars.

1 **BILL HISTORY**

2 1/21/00 First read in House and referred to committee assignment waived. H.J. 178

3 1/24/00 Referred to State Affairs.

4 1/28/00 Scheduled for Committee hearing on this date.

5 1/28/00 Deferred by Chair.

6 2/7/00 Scheduled for Committee hearing on this date.

7 2/7/00 State Affairs Deferred to another day, AYES 10, NAYS 3.

8 2/8/00 Scheduled for Committee hearing on this date.

9 2/8/00 State Affairs Do Pass, Passed, AYES 10, NAYS 2. H.J. 516

10 2/10/00 Motion to Amend, Passed. H.J. 593

11 2/10/00 House of Representatives Do Pass Amended, Failed, AYES 42, NAYS 26. H.J. 593

12 2/10/00 House of Representatives Deferred to another day, AYES 58, NAYS 9. H.J. 594

13 2/11/00 House of Representatives Reconsidered, AYES 58, NAYS 8. H.J. 602

14 2/11/00 Motion to Amend, Passed. H.J. 603

15 2/11/00 House of Representatives Do Pass Amended, Passed, AYES 53, NAYS 13. H.J. 603

16 2/14/00 First read in Senate and referred to State Affairs. S.J. 458

17 2/16/00 Scheduled for Committee hearing on this date.

18 2/18/00 State Affairs Hog Housed.

19 2/18/00 Scheduled for Committee hearing on this date.

20 2/18/00 State Affairs Do Pass Amended, Passed, AYES 8, NAYS 1. S.J. 567

# State of South Dakota

SEVENTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2000

632D0267

SENATE APPROPRIATIONS COMMITTEE

ENGROSSED NO. **HB1244** - 2/22/00

**This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsors.**

Introduced by: Representatives Clark, Apa, Brown (Jarvis), Brown (Richard), Derby, Diedtrich (Elmer), Engbrecht, Garnos, Hagen, Hennies, Juhnke, Klaudt, McCoy, Michels, Munson (Donald), Slaughter, Smidt, Sutton (Duane), Wilson, Wudel, and Young and Senators Hainje, Brown (Arnold), Ham, Kleven, Paisley, and Reedy

1 FOR AN ACT ENTITLED, An Act to authorize the Board of Regents to create a tuition-waiver  
2 for children of nonresident alumni.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. The Board of Regents may create a tuition reduction program for children of  
5 alumni of the state-supported colleges or universities who are no longer South Dakota residents.

1 **BILL HISTORY**

2 1/21/00 First read in House and referred to committee assignment waived. H.J. 179

3 1/24/00 Referred to Appropriations.

4 2/1/00 Scheduled for Committee hearing on this date.

5 2/1/00 Appropriations Deferred to another day.

6 2/7/00 Scheduled for Committee hearing on this date.

7 2/7/00 Appropriations Deferred to another day.

8 2/9/00 Scheduled for Committee hearing on this date.

9 2/9/00 Appropriations Report Without Recommendation, AYES 8, NAYS 2. H.J. 522

10 2/10/00 House of Representatives Placed on Calendar, AYES 51, NAYS 15. H.J. 561

11 2/10/00 House of Representatives Deferred to another day, AYES 58, NAYS 9. H.J. 594

12 2/11/00 House of Representatives Do Pass, Passed, AYES 47, NAYS 16. H.J. 620

13 2/14/00 First read in Senate and referred to Appropriations. S.J. 458

14 2/16/00 Scheduled for Committee hearing on this date.

15 2/16/00 Deferred by Chair.

16 2/17/00 Scheduled for Committee hearing on this date.

17 2/17/00 Deferred by Chair.

18 2/18/00 Appropriations Hog Housed.

19 2/18/00 Scheduled for Committee hearing on this date.

20 2/18/00 Appropriations Do Pass Amended, Passed, AYES 9, NAYS 0. S.J. 566

# State of South Dakota

SEVENTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2000

665D0571

## HOUSE EDUCATION COMMITTEE ENGROSSED NO. **HB1255** - 2/9/00

Introduced by: Representatives Smidt, Clark, Cutler, Duenwald, Eccarius, Engbrecht, McCoy, Napoli, Richter, and Roe and Senators Ham, Brown (Arnold), Everist, Halverson, and Lawler

1 FOR AN ACT ENTITLED, An Act to create the South Dakota Science and Technology  
2 Council.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. There is hereby created the South Dakota Science and Technology Council. The  
5 purpose of the council is to enable the private sector, the academic sector, and state government  
6 to work together in advancing the state's technological future. The Council shall be comprised  
7 of thirteen members. The President Pro Tempore of the Senate shall appoint two members of the  
8 Senate, one from each political party; the Speaker of the House shall appoint two members from  
9 the House of Representatives, one from each political party; the commissioner of the Governor's  
10 Office of Economic Development shall serve; the South Dakota Board of Regents shall appoint  
11 four members to represent the academic sector; and the South Dakota Chamber of Commerce  
12 and Industry shall appoint four members to represent the private sector. The members shall serve  
13 for two years. A vacancy on the committee shall be filled by the original appointing authority for  
14 the remainder of the term.

15 Section 2. The South Dakota Science and Technology Council shall chose a chair from its

1 members. The committee shall meet at the call of the chair.

2 Section 3. The South Dakota Science and Technology Council shall employ an executive  
3 director funded through an existing grant. The council shall develop a plan for fiscal stability  
4 during the first year.

5 Section 4. The council's mission is as follows:

- 6 (1) Identify major opportunities for development of the state science and technology  
7 enterprise and to coordinate the implementation thereof;
- 8 (2) Facilitate technology transfer from the academic to private sector;
- 9 (3) Serve as a resource for public and private organizations within the state in their efforts  
10 to develop science and technology initiatives; and
- 11 (4) Serve as a voice for science and technology both within the state and at the federal  
12 level.

1 **BILL HISTORY**

2 1/24/00 First read in House and referred to committee assignment waived. H.J. 194

3 1/25/00 Referred to Education.

4 2/8/00 Scheduled for Committee hearing on this date.

5 2/8/00 Education Do Pass Amended, Passed, AYES 0, NAYS 0. H.J. 481

# State of South Dakota

SEVENTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2000

714D0626

SENATE EDUCATION COMMITTEE  
ENGROSSED NO. **HB1257** - 2/22/00

**This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsors.**

Introduced by: Representatives Garnos, Brown (Richard), Earley, Fiegen, Kooistra, Lucas, and McCoy and Senator Olson

1 FOR AN ACT ENTITLED, An Act to enhance learning in public schools, reimburse nationally  
2 certified teachers, establish an Office of Education Technology, study the public education  
3 workforce, increase the voting requirement for school district referenda, and limit certain  
4 transfers of school funds.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

6 Section 1. The South Dakota Board of Education and the Department of Education and  
7 Cultural Affairs shall work jointly with other state government agencies to ensure that children  
8 enter the K-12 education system ready to learn. The board and the department shall jointly work  
9 to develop standards and practices that ensure that, by the third grade, all children, to the best  
10 of their abilities, have learned fundamental reading, mathematics, language, science, and  
11 technology skills that form the foundation for further learning. The board and the department  
12 shall work together to develop standards and practices that ensure that, by completion of the  
13 twelfth grade, all students, to the best of their abilities, have learned the educational and personal  
14 skills that will allow them to enter adulthood as responsible members of society.

15 Section 2. The Department of Education and Cultural Affairs shall establish the Advanced

1 Reading Enhancement Program to assist and strengthen the teaching and learning of reading in  
2 grades one and two. Early intervention reading strategies shall promote growth in word  
3 recognition and comprehension through focused reading and writing activities. The department  
4 shall develop and provide a comprehensive statewide program that will offer technical assistance  
5 to school districts and offer professional development in research-based classroom practices that  
6 allow teachers to analyze instruction, assessment, and achievement, and set goals for  
7 improvement.

8 Section 3. The Department of Education and Cultural Affairs shall establish a program to  
9 reimburse public school teachers for the application and processing fee for the National Board  
10 for Professional Teaching Standards certification process. The reimbursement shall include any  
11 federal funds that may be available through a candidate subsidy program. The reimbursement  
12 shall be paid upon receipt of documentation that the teacher successfully completed all  
13 certification requirements and was awarded the credential.

14 In addition to the reimbursement provided pursuant to this section, a teacher who teaches  
15 in a public school and who has obtained certification by the National Board for Professional  
16 Teaching Standards shall receive a payment of two thousand dollars per year for five years. The  
17 stipend shall be paid as follows:

18 (1) One thousand dollars from the Department of Education and Cultural Affairs;

19 (2) One thousand dollars from the school district where the teacher is employed.

20 The Board of Education shall adopt rules, pursuant to chapter 1-26, to establish guidelines  
21 necessary to implement the program.

22 Section 4. The Department of Education and Cultural Affairs shall research and analyze the  
23 demographics of South Dakota's public education workforce, with an emphasis on the  
24 geographic distribution of K-12 teachers, their years of experience, years until retirement, and  
25 their areas of educational expertise. The department shall also research and analyze teacher

1 vacancies by geographic location, areas of expertise, and compensation level.

2 Section 5. There is hereby established an Office of Educational Technology in the  
3 Department of Education and Cultural Affairs. Its exclusive role shall be assisting local school  
4 districts in using educational technology. Its purposes shall include researching, analyzing,  
5 procuring, and distributing programs and methods using educational technology in South Dakota  
6 K-12 schools and classrooms.

7 Section 6. Pursuant to § 13-1-12.1, the Board of Education shall examine programs that  
8 prepare and certify school personnel, identify deficiencies, and establish revised standards  
9 designed to deliver more qualified staff to classrooms. The board's review shall identify ways to  
10 streamline the alternative certification process whereby persons holding a bachelor's degree or  
11 higher can be certified to teach in elementary and secondary schools.

12 Section 7. The Department of Education and Cultural Affairs, the colleges of education at  
13 public universities, and the Board of Education shall jointly examine the teacher preparation and  
14 administrator preparation programs at the public universities. They shall file a report by  
15 November 15, 2000, and deliver it to the Governor, the Legislature, and the Board of Regents.  
16 The report shall describe the programs, explain strengths and deficiencies in the programs, and  
17 recommend actions to improve the programs.

18 Section 8. That § 13-16-6.4 be amended to read as follows:

19 13-16-6.4. Approval to enter into an agreement or issue capital outlay certificates to which  
20 § 13-16-6.3 applies is subject to a referendum if five percent of the registered voters, based upon  
21 the total number of registered voters at the last preceding general election, petition, within  
22 twenty days thereafter, to have the question of approval or disapproval of the agreement or issue  
23 of capital outlay certificates or the lease-purchase agreement placed upon the ballot at the next  
24 regular election or at a special election called for that purpose. The business manager shall give  
25 notice of the fact that the question will be on the ballot at a regular or special election as

1 provided by law for school elections and prepare official ballots therefor according to the  
2 provisions of this Title relating to elections and the issue shall be decided by ~~a majority~~ sixty  
3 percent of those voting thereon.

4 Section 9. That chapter 13-16 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 Notwithstanding the provisions of § 13-16-26, no school district may transfer more than  
7 thirty thousand dollars in any year from the general fund to the capital outlay fund. Any school  
8 district whose average teacher salary is less than the statewide average teacher salary, as  
9 determined by the Department of Education and Cultural Affairs, in the 1999-2000 school year,  
10 may not transfer any money from the general fund to the capital outlay fund. Any school district  
11 that transferred money in excess of thirty thousand dollars from the general fund to the capital  
12 outlay fund after June 30, 1999, but before July 1, 2000, shall transfer such money back to the  
13 general fund.

14 Section 10. That chapter 13-16 be amended by adding thereto a NEW SECTION to read as  
15 follows:

16 The school board of any school district with an ending general fund balance that exceeds  
17 twenty-five percent of its general fund expenditures for the school fiscal year ending June 30,  
18 1999, shall develop an educator salary enhancement plan. The plan shall cover multiple years and  
19 increase salaries for all employees of the school district, except for the salary of the chief  
20 administrator and business manager. The school board shall conduct at least two public hearings  
21 on the plan after having given notice by publication at least twice in its official newspaper at least  
22 ten days before each hearing. Each notice shall clearly state that the purpose of the hearing is to  
23 develop a plan to reduce the school district's general fund balance by providing higher pay to the  
24 school district employees. The first hearing shall be held at the beginning of the plan development  
25 process. The second hearing shall be held upon completion of the plan development process. The

1 board may not adopt the plan before the second public hearing. The board shall also publish a  
2 summary and details of the plan twice in the district's official newspaper prior to the second  
3 public hearing. The educator salary enhancement plan shall include the criteria by which the  
4 school board will increase salaries. Such criteria shall, at a minimum, include employee  
5 performance, employee skills, employee knowledge, and student achievement. The criteria may  
6 include other factors such as the educational degrees earned or the number of credit hours  
7 attained, but they shall not outweigh employee performance, employee skills, employee  
8 knowledge, and student achievement in determining an individual's salary enhancement under this  
9 plan. The plan, upon approval by the local school board, shall be filed with the Department of  
10 Education and Cultural Affairs.

1 **BILL HISTORY**

2 1/24/00 First read in House and referred to committee assignment waived. H.J. 194

3 1/25/00 Referred to Education.

4 2/3/00 Scheduled for Committee hearing on this date.

5 2/3/00 Education Do Pass Amended, Passed, AYES 10, NAYS 2. H.J. 383

6 2/7/00 House of Representatives Deferred to another day. H.J. 469

7 2/8/00 House of Representatives Placed on Calendar. H.J. 490

8 2/8/00 Motion to Amend, Passed. H.J. 490

9 2/8/00 House of Representatives Do Pass Amended, Passed, AYES 44, NAYS 24. H.J. 490

10 2/9/00 First read in Senate and referred to Education. S.J. 399

11 2/17/00 Scheduled for Committee hearing on this date.

12 2/17/00 Education Deferred to another day.

13 2/22/00 Scheduled for Committee hearing on this date.

14 2/22/00 Education Do Pass Amended, Passed, AYES 4, NAYS 3.

# State of South Dakota

SEVENTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2000

816D0718

SENATE STATE AFFAIRS COMMITTEE  
ENGROSSED NO. **HB1312** - 2/22/00

Introduced by: Representatives Earley and Heineman and Senator Munson (David)

1 FOR AN ACT ENTITLED, An Act to exempt the gross receipts from certain events or activities  
2 sponsored by nonprofits for the benefit of homeless persons.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 10-45-13 be amended by adding thereto a NEW SUBDIVISION to read  
5 as follows:

6 Admissions to events or receipts from activities sponsored and operated by religious,  
7 benevolent, or charitable organizations for a period not to exceed thirty days in any calendar  
8 year, if the entire amount of the receipts after deducting all costs directly related to the conduct  
9 of the event or activity is expended for the benefit of homeless persons.

1 **BILL HISTORY**

2 1/24/00 First read in House and referred to committee assignment waived. H.J. 204

3 1/25/00 Referred to Taxation.

4 2/8/00 Scheduled for Committee hearing on this date.

5 2/8/00 Taxation Do Pass, Passed, AYES 7, NAYS 2. H.J. 499

6 2/9/00 House of Representatives Do Pass, Passed, AYES 65, NAYS 2. H.J. 548

7 2/10/00 First read in Senate and referred to State Affairs. S.J. 429

8 2/14/00 Scheduled for Committee hearing on this date.

9 2/14/00 Deferred by Chair.

10 2/16/00 Scheduled for Committee hearing on this date.

11 2/18/00 Scheduled for Committee hearing on this date.

12 2/18/00 State Affairs Do Pass Amended, Passed, AYES 8, NAYS 0. S.J. 568

# State of South Dakota

SEVENTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2000

400D0318

## HOUSE ENGROSSED NO. **SB30** - 2/22/00

Introduced by: The Committee on Judiciary at the request of the Department of Game, Fish,  
and Parks

1 FOR AN ACT ENTITLED, An Act to revise the procedures and causes for revocation of certain  
2 hunting, fishing, and trapping privileges, and to provide a penalty.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 41-6-74.1 be amended to read as follows:

5 41-6-74.1. ~~The court shall revoke a person's hunting, fishing, or trapping privilege for a~~  
6 ~~period of one year following the~~ At the time of conviction for any one of the following offenses:

- 7 (1) Violation of any game and fish law punishable as a ~~felony~~ or Class 1 misdemeanor;
- 8 (2) Violation of § 41-8-37, 41-9-1.2, 41-8-17 except for subsections (2) and (3) thereof,  
9 or 41-12-12;
- 10 (3) Violation of any other ~~law~~ statute or rule pertaining to fishing, hunting, or possessing  
11 game or game fish without a license or during a closed season; or
- 12 (4) Taking or possessing in excess of the lawful daily or possession limit:
- 13 (a) One or two paddlefish;
- 14 (b) Two or three turkeys;
- 15 (c) Four to six, inclusive, of any one game fish as regulated other than paddlefish;
- 16 (d) Four to six, inclusive, of any one small game animal as regulated;

1 the person's applicable hunting, fishing, or trapping privileges in South Dakota are automatically  
2 revoked without further hearing for a period of one year following date of conviction.

3 Section 2. That § 41-6-74.2 be amended to read as follows:

4 41-6-74.2. ~~The court shall revoke a person's hunting, fishing, or trapping privilege for a~~  
5 ~~period of two to five years, inclusive, following the~~ At the time of conviction for taking or  
6 possessing in excess of the lawful daily or possession limit any of the following:

- 7 (1) Three or more paddlefish;
- 8 (2) Four or more turkeys;
- 9 (3) Seven or more of any one game fish as regulated other than paddlefish;
- 10 (4) Seven or more of any one small game animal as regulated; or
- 11 (5) Two or more big game animals, except turkeys;

12 the person's applicable hunting, fishing, or trapping privileges in South Dakota are automatically  
13 revoked without further hearing for a period of three years following date of conviction.

14 Section 3. That § 41-6-74.3 be amended to read as follows:

15 41-6-74.3. If a person's ~~license~~ privilege has been revoked pursuant to § 41-6-74.1 or  
16 41-6-74.2, ~~the court shall require the license holder to~~ person, if present at the time of  
17 conviction, shall immediately surrender and deliver the license to the court or clerk of courts at  
18 which time the revocation shall be noted on the face of the license by the court or clerk of courts  
19 and the license returned to the Department of Game, Fish and Parks. If the person is not present  
20 at the time of conviction, the person shall within fourteen days of the conviction deliver and  
21 return the license to the Department of Game, Fish and Parks. A violation of this section is a  
22 Class 2 misdemeanor. If the person has a combination license, the revocation shall be noted on  
23 the face of the license and the license shall be returned to the person to remain valid for the other  
24 purposes permitted by the license. For the purposes of §§ 41-6-74.1 and 41-6-74.2, the term,  
25 conviction, is defined as provided in § 32-12-53.

1 **BILL HISTORY**

2 1/11/00 First read in Senate and referred to Judiciary. S.J. 19

3 1/14/00 Scheduled for Committee hearing on this date.

4 1/14/00 Judiciary Do Pass Amended, Passed, AYES 6, NAYS 0. S.J. 42

5 1/18/00 Motion to Amend, Passed. S.J. 78

6 1/18/00 Senate Do Pass Amended, Passed, AYES 19, NAYS 13. S.J. 78

7 1/19/00 First read in House and referred to Judiciary. H.J. 150

8 1/26/00 House of Representatives Referred to Agriculture and Natural Resources. H.J. 246

9 2/15/00 Scheduled for Committee hearing on this date.

10 2/15/00 Agriculture and Natural Resources Do Pass Amended, Passed, AYES 12, NAYS 0.

11 H.J. 664

12 2/15/00 Agriculture and Natural Resources Place on Consent Calendar.

13 2/17/00 House of Representatives Deferred to another day. H.J. 732

14 2/18/00 Motion to Amend, Passed. H.J. 761

15 2/18/00 House of Representatives Do Pass Amended, Passed, AYES 57, NAYS 4. H.J. 761

# State of South Dakota

SEVENTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2000

781D0465

## HOUSE TAXATION COMMITTEE ENGROSSED NO. **SB51** - 2/16/00

Introduced by: Senators Bogue, Daugaard, Everist, and Olson and Representatives Michels, Brown (Richard), and Hunt

1 FOR AN ACT ENTITLED, An Act to revise the provisions concerning the imposition and  
2 administration of the inheritance tax.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 10-41 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 If the inheritance tax has not been paid within one year after the date of death of the decedent  
7 and it appears to the satisfaction of the secretary of revenue that the failure to pay such tax  
8 within one year after the decedent's death is due to the difficulty or impossibility of identifying  
9 the heirs of the decedent, the secretary may waive or compromise the interest on such tax from  
10 the date when first accrued until such time as, in the judgment of the secretary, such cause is  
11 removed.

12 Section 2. That § 10-40-2 be amended by adding thereto a NEW SUBDIVISION to read as  
13 follows:

14 Intangible personal property owned by a nonresident of South Dakota is not subject to the  
15 tax imposed by this section. Intangible personal property held by a revocable or irrevocable trust,  
16 which property was transferred to the trust by a decedent who was a nonresident of South

1 Dakota both at the time that such property was transferred to the trust and at the time of death  
2 is not subject to the tax imposed by this section. Nothing contained in this subdivision may be  
3 construed to alter or affect existing laws concerning transfers by residents of South Dakota.

1 **BILL HISTORY**

2 1/14/00 First read in Senate and referred to Taxation. S.J. 46

3 1/21/00 Scheduled for Committee hearing on this date.

4 1/21/00 Taxation Do Pass Amended, Passed, AYES 9, NAYS 0. S.J. 135

5 1/21/00 Taxation Place on Consent Calendar.

6 1/25/00 Senate Do Pass Amended, Passed, AYES 35, NAYS 0. S.J. 187

7 1/26/00 First read in House and referred to Taxation. H.J. 260

8 2/15/00 Scheduled for Committee hearing on this date.

9 2/15/00 Taxation Do Pass Amended, Passed, AYES 11, NAYS 1. H.J. 665

# State of South Dakota

SEVENTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2000

664D0204

HOUSE JUDICIARY COMMITTEE

ENGROSSED NO. **SB60** - 2/17/00

**This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsors.**

Introduced by: Senators Albers, Madden, and Vitter and Representatives Hennies, Apa, and Engbrecht

1 FOR AN ACT ENTITLED, An Act to revise the provisions for motorcycle instruction permits

2 and to provide for the issuance of restricted motorcycle minor's permits.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 32-12-11 be amended to read as follows:

5 32-12-11. Any person who is at least fourteen years of age but less than eighteen years of  
6 age applying for a South Dakota driver's license who does not currently hold a driver's license,  
7 except a motorcycle license, that has been valid continuously for one hundred eighty days, shall  
8 apply to the Department of Commerce and Regulation for an instruction permit which shall be  
9 held for a minimum of one hundred eighty continuous days. The department may, after the  
10 applicant has successfully passed all parts of the examination other than the driving test and paid  
11 a fee which is equal in amount to the fee prescribed for a driver's license in § 32-12-16, issue to  
12 the applicant an instruction permit. The instruction permit entitles the applicant while having the  
13 permit in the applicant's immediate possession to drive a motor vehicle upon the public highways  
14 for a period of one year if accompanied by a licensed operator who is at least eighteen years of  
15 age, has had at least one year of driving experience, and who is occupying a seat beside the

1 driver. The holder of an instruction permit may apply for a restricted permit or operator's license  
2 after holding a valid instruction permit for one hundred eighty continuous days. A motorcycle  
3 instruction permit entitles the holder, while having the permit in the permit holder's immediate  
4 physical possession, to operate a motorcycle during the hours of 6 a.m. to 8 p.m. if the permit  
5 holder is accompanied by a licensed motorcycle operator who is at least eighteen years of age,  
6 who has at least one year of driving experience and who is driving another motorcycle along with  
7 the permit holder. No motorcycle instruction permit holder may carry another person on the  
8 motorcycle. The permit is valid for ~~thirty days~~ one year. The permit may be issued only once in  
9 a one-year period.

10 Section 2. That § 32-12-12 be amended to read as follows:

11 32-12-12. A restricted minor's permit may be issued, upon application and payment of the  
12 proper fee as provided for in § 32-12-16, to a minor at least fourteen years of age but less than  
13 eighteen years of age who has successfully passed all driver's license examination tests and  
14 completed the requirements of an instruction permit as outlined in § 32-12-11 and has not been  
15 convicted of a traffic violation during the past six months. For any such minor who has  
16 successfully completed a driver education class that has been approved by the Division of  
17 Education Services and Resources, the required minimum time period for holding the instruction  
18 permit in order to qualify for the restricted minor's permit is ninety continuous days. A restricted  
19 minor's permit entitles the holder, while having the permit in immediate physical possession, to  
20 operate a motor vehicle during the hours of 6 a.m. to 8 p.m. standard time if the motor vehicle  
21 is being operated with the permission of the minor's parents or guardian and during the hours of  
22 8 p.m. to 6 a.m. if the motor vehicle is being operated under the direction of the minor's parent  
23 or guardian who is occupying a seat beside the driver. The restrictions as to time of operation  
24 and operation under the direction of a parent or guardian do not apply to the holder of a valid  
25 restricted minor's permit operating a self-propelled agricultural machine which is not subject to

1 registration under chapter 32-5.

2 A restricted motorcycle minor's permit may be issued, upon application and payment of the  
3 proper fee as provided for in § 32-12-16, to a minor at least fourteen years of age but less than  
4 eighteen years of age who has successfully passed all driver's motorcycle license examination  
5 tests and has not been convicted of a traffic violation during the past six months. For any minor  
6 who has successfully completed the motorcycle safety education courses provided by § 32-20-14  
7 and a driver education class that has been approved by the Division Education Services and  
8 Resources, the required minimum time period for holding the motorcycle instruction permit to  
9 qualify for the restricted minor's permit is thirty continuous days. A restricted motorcycle minor's  
10 permit entitles the holder, while having the permit in immediate physical possession, to operate  
11 a motorcycle during the hours of 6 a.m. to 8 p.m. standard time if the motorcycle is being  
12 operated with the permission of the minor's parents or guardian.

13 Section 3. That § 32-12-17 be amended to read as follows:

14 32-12-17. The Department of Commerce and Regulation shall, upon payment of the fee  
15 established by § 32-12-16, issue to every applicant qualifying therefor an operator's license. An  
16 operator's license may be issued to a minor at least sixteen years of age but less than eighteen  
17 years of age who has successfully passed all driver's license examination tests and completed the  
18 requirements of an instruction permit as provided in § 32-12-11, if the applicant has not been  
19 convicted of a traffic violation in the past six months, and if the applicant is not currently under  
20 suspension, revocation, or disqualification. The license shall bear thereon a distinguishing number  
21 assigned to the licensee, the full legal name or any name lawfully taken, date of birth, residence  
22 address, an indication if the licensee is a donor pursuant to chapter 34-26, an indication if the  
23 licensee as a living will pursuant to chapter 34-12D or a durable power of attorney for health  
24 care pursuant to chapter 59-7, a color photo and a brief description of the licensee, and the  
25 licensee's signature. The department shall indicate upon each driver's license the general class of

1 vehicles which the licensee may drive.

2 A operator's motorcycle license may be issued, upon application and payment of the proper  
3 fee as provided for in § 32-12-16, to a minor at least sixteen years of age but less than eighteen  
4 years of age who has successfully passed all driver's motorcycle license examination tests and has  
5 not been convicted of a traffic violation during the past six months. For any minor who has  
6 successfully completed the motorcycle safety education courses provided by § 32-20-14 and a  
7 driver education class that has been approved by the Division Education Services and Resources,  
8 the required minimum time period for holding the motorcycle instruction permit to qualify for  
9 the operator's motorcycle license is thirty continuous days.

1 **BILL HISTORY**

2 1/15/00 First read in Senate and referred to Judiciary. S.J. 57

3 1/17/00 Scheduled for Committee hearing on this date.

4 1/19/00 Scheduled for Committee hearing on this date.

5 1/19/00 Judiciary Do Pass, Passed, AYES 6, NAYS 0. S.J. 109

6 1/20/00 Senate Deferred to another day. S.J. 131

7 1/21/00 Senate Do Pass, Passed, AYES 34, NAYS 1. S.J. 143

8 1/24/00 First read in House and referred to committee assignment waived. H.J. 214

9 1/25/00 Referred to Judiciary.

10 2/4/00 Scheduled for Committee hearing on this date.

11 2/7/00 Scheduled for Committee hearing on this date.

12 2/7/00 Judiciary Do Pass, Failed, AYES 6, NAYS 6.

13 2/7/00 Deferred to 36th legislative day, AYES 8, NAYS 4. H.J. 447

14 2/16/00 Judiciary Hog Housed.

15 2/16/00 Judiciary Reconsidered, AYES 11, NAYS 0.

16 2/16/00 Judiciary Do Pass Amended, Passed, AYES 13, NAYS 0. H.J. 704

# State of South Dakota

SEVENTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2000

714D0462

## HOUSE AGRICULTURE AND NATURAL RESOURCES COMMITTEE ENGROSSED NO. **SB138** - 2/16/00

Introduced by: Senators Bogue, Dennert, and Drake and Representatives Wetz, Duenwald, and McNenny

1 FOR AN ACT ENTITLED, An Act to prohibit the use of motor vehicles for hunting, fishing,  
2 or trapping purposes on certain school and public lands.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 41-9 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 No person may use a motor vehicle, as defined in subdivision 41-1-1(18), for purposes of  
7 hunting, fishing, or trapping on any land under the control of the commissioner of school and  
8 public lands on which public hunting, fishing, or trapping is authorized. No person may use a  
9 motor vehicle, for purposes of hunting, fishing, or trapping to enter onto or to cross any land  
10 under the control of the commissioner of school and public lands on which public hunting,  
11 fishing, or trapping is authorized. Any motor vehicle that is used to transport any person to any  
12 such lands for purposes of hunting, fishing, or trapping shall remain within a public right of way.  
13 Nothing in this Act authorizes or prohibits hunting, fishing, or trapping in any area where those  
14 activities are otherwise authorized or prohibited. The prohibitions contained in this section do  
15 not restrict the use of motor vehicles on roads, trails, or parking areas designated and signed by  
16 the Department of Game, Fish and Parks pursuant to a management agreement with the

1 commissioner of school and public lands. Nothing in this section prohibits using a motor vehicle  
2 on land under the control of the commissioner of school and public lands for normal lease  
3 activities by the lessee or for animal damage control activities. A violation of this section is a  
4 Class 2 misdemeanor.

1 **BILL HISTORY**

2 1/19/00 First read in Senate and referred to Judiciary. S.J. 118

3 1/24/00 Scheduled for Committee hearing on this date.

4 1/24/00 Deferred by Chair.

5 1/26/00 Scheduled for Committee hearing on this date.

6 1/26/00 Judiciary Do Pass Amended, Passed, AYES 6, NAYS 1. S.J. 200

7 1/28/00 Motion to Amend, Passed.

8 1/28/00 Senate Do Pass Amended, Passed, AYES 35, NAYS 0. S.J. 243

9 1/31/00 First read in House and referred to committee assignment waived. H.J. 319

10 2/1/00 Referred to Agriculture and Natural Resources.

11 2/15/00 Scheduled for Committee hearing on this date.

12 2/15/00 Agriculture and Natural Resources Do Pass Amended, Passed, AYES 0, NAYS 0.

13 H.J. 664

# State of South Dakota

SEVENTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2000

742D0693

## HOUSE JUDICIARY COMMITTEE ENGROSSED NO. **SB192** - 2/16/00

Introduced by: Senators Everist, Bogue, Duxbury, Munson (David), and Whiting and  
Representatives Hunt, Broderick, Earley, Michels, Volesky, and Wilson

1 FOR AN ACT ENTITLED, An Act to reenact the revised secured transactions article of the  
2 Uniform Commercial Code.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 9-101. This article may be cited as Uniform Commercial Code—Secured Transactions.

5 Section 9-102. (a) In this article:

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

8 (2) "Account," except as used in "account for," means a right to payment of a monetary  
9 obligation, whether or not earned by performance, (i) for property that has been or  
10 is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services  
11 rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv)  
12 for a secondary obligation incurred or to be incurred, (v) for energy provided or to  
13 be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii)  
14 arising out of the use of a credit or charge card or information contained on or for use  
15 with the card, or (viii) as winnings in a lottery or other game of chance operated or  
16 sponsored by a State, governmental unit of a State, or person licensed or authorized

1 to operate the game by a State or governmental unit of a State. The term includes  
2 health-care-insurance receivables. The term does not include (i) rights to payment  
3 evidenced by chattel paper or an instrument, (ii) commercial tort claims, (iii) deposit  
4 accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, or  
5 (vi) rights to payment for money or funds advanced or sold, other than rights arising  
6 out of the use of a credit or charge card or information contained on or for use with  
7 the card.

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

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

12 (A) authenticated by a secured party;

13 (B) indicating the aggregate unpaid secured obligations as of a date not more than  
14 35 days earlier or 35 days later than the date of the record; and

15 (C) identifying the components of the obligations in reasonable detail.

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

17 (A) which secures payment or performance of an obligation for:

18 (i) goods or services furnished in connection with a debtor's farming  
19 operation; or

20 (ii) rent on real property leased by a debtor in connection with its farming  
21 operation;

22 (B) which is created by statute in favor of a person that:

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

25 (ii) leased real property to a debtor in connection with the debtor's farming

- 1 operation; and
- 2 (C) whose effectiveness does not depend on the person's possession of the
- 3 personal property.
- 4 (6) "As-extracted collateral" means:
- 5 (A) oil, gas, or other minerals that are subject to a security interest that:
- 6 (i) is created by a debtor having an interest in the minerals before
- 7 extraction; and
- 8 (ii) attaches to the minerals as extracted; or
- 9 (B) accounts arising out of the sale at the wellhead or minehead of oil, gas, or other
- 10 minerals in which the debtor had an interest before extraction.
- 11 (7) "Authenticate" means:
- 12 (A) to sign; or
- 13 (B) to execute or otherwise adopt a symbol, or encrypt or similarly process a
- 14 record in whole or in part, with the present intent of the authenticating person
- 15 to identify the person and adopt or accept a record.
- 16 (8) "Bank" means an organization that is engaged in the business of banking. The term
- 17 includes savings banks, savings and loan associations, credit unions, and trust
- 18 companies.
- 19 (9) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the
- 20 like.
- 21 (10) "Certificate of title" means a certificate of title with respect to which a statute
- 22 provides for the security interest in question to be indicated on the certificate as a
- 23 condition or result of the security interest's obtaining priority over the rights of a lien
- 24 creditor with respect to the collateral.
- 25 (11) "Chattel paper" means a record or records that evidence both a monetary obligation

1 and a security interest in specific goods, a security interest in specific goods and  
2 software used in the goods, a security interest in specific goods and license of  
3 software used in the goods, a lease of specific goods, or a lease of specific goods and  
4 license of software used in the goods. In this paragraph, "monetary obligation" means  
5 a monetary obligation secured by the goods or owed under a lease of the goods and  
6 includes a monetary obligation with respect to software used in the goods. The term  
7 does not include (i) charters or other contracts involving the use or hire of a vessel or  
8 (ii) records that evidence a right to payment arising out of the use of a credit or  
9 charge card or information contained on or for use with the card. If a transaction is  
10 evidenced by records that include an instrument or series of instruments, the group  
11 of records taken together constitutes chattel paper.

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

14 (A) proceeds to which a security interest attaches;

15 (B) accounts, chattel paper, payment intangibles, and promissory notes that have  
16 been sold; and

17 (C) goods that are the subject of a consignment.

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

19 (A) the claimant is an organization; or

20 (B) the claimant is an individual and the claim:

21 (i) arose in the course of the claimant's business or profession; and

22 (ii) does not include damages arising out of personal injury to or the death  
23 of an individual.

24 (14) "Commodity account" means an account maintained by a commodity intermediary in  
25 which a commodity contract is carried for a commodity customer.

1 (15) "Commodity contract" means a commodity futures contract, an option on a  
2 commodity futures contract, a commodity option, or another contract if the contract  
3 or option is:

4 (A) traded on or subject to the rules of a board of trade that has been designated  
5 as a contract market for such a contract pursuant to federal commodities laws;  
6 or

7 (B) traded on a foreign commodity board of trade, exchange, or market, and is  
8 carried on the books of a commodity intermediary for a commodity customer.

9 (16) "Commodity customer" means a person for which a commodity intermediary carries  
10 a commodity contract on its books.

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

12 (A) is registered as a futures commission merchant under federal commodities law;  
13 or

14 (B) in the ordinary course of its business provides clearance or settlement services  
15 for a board of trade that has been designated as a contract market pursuant to  
16 federal commodities law.

17 (18) "Communicate" means:

18 (A) to send a written or other tangible record;

19 (B) to transmit a record by any means agreed upon by the persons sending and  
20 receiving the record; or

21 (C) in the case of transmission of a record to or by a filing office, to transmit a  
22 record by any means prescribed by filing-office rule.

23 (19) "Consignee" means a merchant to which goods are delivered in a consignment.

24 (20) "Consignment" means a transaction, regardless of its form, in which a person delivers  
25 goods to a merchant for the purpose of sale and:

- 1 (A) the merchant:
  - 2 (i) deals in goods of that kind under a name other than the name of the
  - 3 person making delivery;
  - 4 (ii) is not an auctioneer; and
  - 5 (iii) is not generally known by its creditors to be substantially engaged in
  - 6 selling the goods of others;
- 7 (B) with respect to each delivery, the aggregate value of the goods is \$1,000 or
- 8 more at the time of delivery;
- 9 (C) the goods are not consumer goods immediately before delivery; and
- 10 (D) the transaction does not create a security interest that secures an obligation.
- 11 (21) "Consignor" means a person that delivers goods to a consignee in a consignment.
- 12 (22) "Consumer debtor" means a debtor in a consumer transaction.
- 13 (23) "Consumer goods" means goods that are used or bought for use primarily for
- 14 personal, family, or household purposes.
- 15 (24) Consumer-goods transaction means a consumer transaction in which:
  - 16 (A) an individual incurs an obligation primarily for personal, family, or household
  - 17 purposes; and
  - 18 (B) a security interest in consumer goods secures the obligation.
- 19 (25) "Consumer obligor" means an obligor who is an individual and who incurred the
- 20 obligation as part of a transaction entered into primarily for personal, family, or
- 21 household purposes.
- 22 (26) "Consumer transaction" means a transaction in which (i) an individual incurs an
- 23 obligation primarily for personal, family, or household purposes, (ii) a security interest
- 24 secures the obligation, and (iii) the collateral is held or acquired primarily for personal,
- 25 family, or household purposes. The term includes consumer-goods transactions.

- 1 (27) "Continuation statement" means an amendment of a financing statement which:
- 2 (A) identifies, by its file number, the initial financing statement to which it relates;
- 3 and
- 4 (B) indicates that it is a continuation statement for, or that it is filed to continue the
- 5 effectiveness of, the identified financing statement.
- 6 (28) "Debtor" means:
- 7 (A) a person having an interest, other than a security interest or other lien, in the
- 8 collateral, whether or not the person is an obligor;
- 9 (B) a seller of accounts, chattel paper, payment intangibles, or promissory notes;
- 10 or
- 11 (C) a consignee.
- 12 (29) "Deposit account" means a demand, time, savings, passbook, or similar account
- 13 maintained with a bank. The term does not include investment property or accounts
- 14 evidenced by an instrument.
- 15 (30) "Document" means a document of title or a receipt of the type described in Section
- 16 7-201(2).
- 17 (31) "Electronic chattel paper" means chattel paper evidenced by a record or records
- 18 consisting of information stored in an electronic medium.
- 19 (32) "Encumbrance" means a right, other than an ownership interest, in real property. The
- 20 term includes mortgages and other liens on real property.
- 21 (33) "Equipment" means goods other than inventory, farm products, or consumer goods.
- 22 (34) "Farm products" means goods, other than standing timber, with respect to which the
- 23 debtor is engaged in a farming operation and which are:
- 24 (A) crops grown, growing, or to be grown, including:
- 25 (i) crops produced on trees, vines, and bushes; and

- 1                   (ii)    aquatic goods produced in aquacultural operations;
- 2                   (B)    livestock, born or unborn, including aquatic goods produced in aquacultural
- 3                   operations;
- 4                   (C)    supplies used or produced in a farming operation; or
- 5                   (D)    products of crops or livestock in their unmanufactured states.
- 6           (35) "Farming operation" means raising, cultivating, propagating, fattening, grazing, or any
- 7           other farming, livestock, or aquacultural operation.
- 8           (36) "File number" means the number assigned to an initial financing statement pursuant
- 9           to Section 9-519(a).
- 10          (37) "Filing office" means an office designated in Section 9-501 as the place to file a
- 11          financing statement.
- 12          (38) "Filing-office rule" means a rule adopted pursuant to Section 9-526.
- 13          (39) "Financing statement" means a record or records composed of an initial financing
- 14          statement and any filed record relating to the initial financing statement.
- 15          (40) "Fixture filing" means the filing of a financing statement covering goods that are or
- 16          are to become fixtures and satisfying Section 9-502(a) and (b). The term includes the
- 17          filing of a financing statement covering goods of a transmitting utility which are or are
- 18          to become fixtures.
- 19          (41) "Fixtures" means goods that have become so related to particular real property that
- 20          an interest in them arises under real property law.
- 21          (42) "General intangible" means any personal property, including things in action, other
- 22          than accounts, chattel paper, commercial tort claims, deposit accounts, documents,
- 23          goods, instruments, investment property, letter-of-credit rights, letters of credit,
- 24          money, and oil, gas, or other minerals before extraction. The term includes payment
- 25          intangibles and software.

1 (43) "Good faith" means honesty in fact and the observance of reasonable commercial  
2 standards of fair dealing.

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

17 (45) "Governmental unit" means a subdivision, agency, department, county, parish,  
18 municipality, or other unit of the government of the United States, a State, or a  
19 foreign country. The term includes an organization having a separate corporate  
20 existence if the organization is eligible to issue debt on which interest is exempt from  
21 income taxation under the laws of the United States.

22 (46) "Health-care-insurance receivable" means an interest in or claim under a policy of  
23 insurance which is a right to payment of a monetary obligation for health-care goods  
24 or services provided.

25 (47) "Instrument" means a negotiable instrument or any other writing that evidences a right

1 to the payment of a monetary obligation, is not itself a security agreement or lease,  
2 and is of a type that in ordinary course of business is transferred by delivery with any  
3 necessary indorsement or assignment. The term does not include (i) investment  
4 property, (ii) letters of credit, or (iii) writings that evidence a right to payment arising  
5 out of the use of a credit or charge card or information contained on or for use with  
6 the card.

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

8 (A) are leased by a person as lessor;

9 (B) are held by a person for sale or lease or to be furnished under a contract of  
10 service;

11 (C) are furnished by a person under a contract of service; or

12 (D) consist of raw materials, work in process, or materials used or consumed in a  
13 business.

14 (49) "Investment property" means a security, whether certificated or uncertificated,  
15 security entitlement, securities account, commodity contract, or commodity account.

16 (50) "Jurisdiction of organization" with respect to a registered organization, means the  
17 jurisdiction under whose law the organization is organized.

18 (51) "Letter-of-credit right" means a right to payment or performance under a letter of  
19 credit, whether or not the beneficiary has demanded or is at the time entitled to  
20 demand payment or performance. The term does not include the right of a beneficiary  
21 to demand payment or performance under a letter of credit.

22 (52) "Lien creditor" means:

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

25 (B) an assignee for benefit of creditors from the time of assignment;

1 (C) a trustee in bankruptcy from the date of the filing of the petition; or

2 (D) a receiver in equity from the time of appointment.

3 (53) "Manufactured home" means a structure, transportable in one or more sections,  
4 which, in the traveling mode, is eight body feet or more in width or 40 body feet or  
5 more in length, or, when erected on site, is 320 or more square feet, and which is built  
6 on a permanent chassis and designed to be used as a dwelling with or without a  
7 permanent foundation when connected to the required utilities, and includes the  
8 plumbing, heating, air-conditioning, and electrical systems contained therein. The term  
9 includes any structure that meets all of the requirements of this paragraph except the  
10 size requirements and with respect to which the manufacturer voluntarily files a  
11 certification required by the United States Secretary of Housing and Urban  
12 Development and complies with the standards established under Title 42 of the United  
13 States Code.

14 (54) "Manufactured-home transaction" means a secured transaction:

15 (A) that creates a purchase-money security interest in a manufactured home, other  
16 than a manufactured home held as inventory; or

17 (B) in which a manufactured home, other than a manufactured home held as  
18 inventory, is the primary collateral.

19 (55) "Mortgage" means a consensual interest in real property, including fixtures, which  
20 secures payment or performance of an obligation.

21 (56) "New debtor" means a person that becomes bound as debtor under Section 9-203(d)  
22 by a security agreement previously entered into by another person.

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

- 1 (58) "Noncash proceeds" means proceeds other than cash proceeds.
- 2 (59) "Obligor" means a person that, with respect to an obligation secured by a security  
3 interest in or an agricultural lien on the collateral, (i) owes payment or other  
4 performance of the obligation, (ii) has provided property other than the collateral to  
5 secure payment or other performance of the obligation, or (iii) is otherwise  
6 accountable in whole or in part for payment or other performance of the obligation.  
7 The term does not include issuers or nominated persons under a letter of credit.
- 8 (60) "Original debtor," except as used in Section 9-310(c), means a person that, as debtor,  
9 entered into a security agreement to which a new debtor has become bound under  
10 Section 9-203(d).
- 11 (61) "Payment intangible" means a general intangible under which the account debtor's  
12 principal obligation is a monetary obligation.
- 13 (62) "Person related to," with respect to an individual, means:  
14 (A) the spouse of the individual;  
15 (B) a brother, brother-in-law, sister, or sister-in-law of the individual;  
16 (C) an ancestor or lineal descendant of the individual or the individual's spouse; or  
17 (D) any other relative, by blood or marriage, of the individual or the individual's  
18 spouse who shares the same home with the individual.
- 19 (63) "Person related to," with respect to an organization, means:  
20 (A) a person directly or indirectly controlling, controlled by, or under common  
21 control with the organization;  
22 (B) an officer or director of, or a person performing similar functions with respect  
23 to, the organization;  
24 (C) an officer or director of, or a person performing similar functions with respect  
25 to, a person described in subparagraph (A);

- 1 (D) the spouse of an individual described in subparagraph (A), (B), or (C); or
- 2 (E) an individual who is related by blood or marriage to an individual described in
- 3 subparagraph (A), (B), (C), or (D) and shares the same home with the
- 4 individual.

5 (64) "Proceeds," except as used in Section 9-609(b), means the following property:

- 6 (A) whatever is acquired upon the sale, lease, license, exchange, or other
- 7 disposition of collateral;
- 8 (B) whatever is collected on, or distributed on account of, collateral;
- 9 (C) rights arising out of collateral;
- 10 (D) 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 of rights
- 12 in, or damage to, the collateral; or
- 13 (E) to the extent of the value of collateral and to the extent payable to the debtor
- 14 or the secured party, insurance payable by reason of the loss or nonconformity
- 15 of, defects or infringement of rights in, or damage to, the collateral.

16 (65) "Promissory note" means an instrument that evidences a promise to pay a monetary

17 obligation, does not evidence an order to pay, and does not contain an

18 acknowledgment by a bank that the bank has received for deposit a sum of money or

19 funds.

20 (66) "Proposal" means a record authenticated by a secured party which includes the terms

21 on which the secured party is willing to accept collateral in full or partial satisfaction

22 of the obligation it secures pursuant to Sections 9-620, 9-621, and 9-622.

23 (67) "Public-finance transaction" means a secured transaction in connection with which:

- 24 (A) debt securities are issued;
- 25 (B) all or a portion of the securities issued have an initial stated maturity of at least

1                   20 years; and

2                   (C) the debtor, obligor, secured party, account debtor or other person obligated on  
3                   collateral, assignor or assignee of a secured obligation, or assignor or assignee  
4                   of a security interest is a State or a governmental unit of a State.

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

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

12                  (70) "Registered organization" means an organization organized solely under the law of  
13                  a single State or the United States and as to which the State or the United States must  
14                  maintain a public record showing the organization to have been organized.

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

16                  (A) the obligor's obligation is secondary; or

17                  (B) the obligor has a right of recourse with respect to an obligation secured by  
18                  collateral against the debtor, another obligor, or property of either.

19                  (72) "Secured party" means:

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

22                  (B) a person that holds an agricultural lien;

23                  (C) a consignor;

24                  (D) a person to which accounts, chattel paper, payment intangibles, or promissory  
25                  notes have been sold;

- 1 (E) a trustee, indenture trustee, agent, collateral agent, or other representative in  
2 whose favor a security interest or agricultural lien is created or provided for;  
3 or  
4 (F) a person that holds a security interest arising under Section 2-401, 2-505,  
5 2-711(3), 2A-508(5), 4-210, or 5-118.
- 6 (73) "Security agreement" means an agreement that creates or provides for a security  
7 interest.
- 8 (74) "Send," in connection with a record or notification, means:  
9 (A) to deposit in the mail, deliver for transmission, or transmit by any other usual  
10 means of communication, with postage or cost of transmission provided for,  
11 addressed to any address reasonable under the circumstances; or  
12 (B) to cause the record or notification to be received within the time that it would  
13 have been received if properly sent under subparagraph (A).
- 14 (75) "Software" means a computer program and any supporting information provided in  
15 connection with a transaction relating to the program. The term does not include a  
16 computer program that is included in the definition of goods.
- 17 (76) "State" means a State of the United States, the District of Columbia, Puerto Rico, the  
18 United States Virgin Islands, or any territory or insular possession subject to the  
19 jurisdiction of the United States.
- 20 (77) "Supporting obligation" means a letter-of-credit right or secondary obligation that  
21 supports the payment or performance of an account, chattel paper, a document, a  
22 general intangible, an instrument, or investment property.
- 23 (78) "Tangible chattel paper" means chattel paper evidenced by a record or records  
24 consisting of information that is inscribed on a tangible medium.
- 25 (79) "Termination statement" means an amendment of a financing statement which:

- 1 (A) identifies, by its file number, the initial financing statement to which it relates;
- 2 and
- 3 (B) indicates either that it is a termination statement or that the identified financing
- 4 statement is no longer effective.

5 (80) "Transmitting utility" means a person primarily engaged in the business of:

- 6 (A) operating a railroad, subway, street railway, or trolley bus;
- 7 (B) transmitting communications electrically, electromagnetically, or by light;
- 8 (C) transmitting goods by pipeline or sewer; or
- 9 (D) transmitting or producing and transmitting electricity, steam, gas, or water.

10 (b) The following definitions in other articles apply to this article:

11	"Applicant"	Section 5-102.
12	"Beneficiary"	Section 5-102.
13	"Broker"	Section 8-102.
14	"Certificated security"	Section 8-102.
15	"Check"	Section 3-104.
16	"Clearing corporation"	Section 8-102.
17	"Contract for sale"	Section 2-106.
18	"Customer"	Section 4-104.
19	"Entitlement holder"	Section 8-102.
20	"Financial asset"	Section 8-102.
21	"Holder in due course"	Section 3-302.
22	"Issuer" (with respect to a letter	
23	of credit or letter-of-credit right)	Section 5-102.
24	"Issuer" (with respect to a security)	Section 8-201.
25	"Lease"	Section 2A-103.
26	"Lease agreement"	Section 2A-103.
27	"Lease contract"	Section 2A-103.

1	"Leasehold interest"	Section 2A-103.
2	"Lessee"	Section 2A-103.
3	"Lessee in ordinary course of business"	Section 2A-103.
4	"Lessor"	Section 2A-103.
5	"Lessor's residual interest"	Section 2A-103.
6	"Letter of credit"	Section 5-102.
7	"Merchant"	Section 2-104.
8	"Negotiable instrument"	Section 3-104.
9	"Nominated person"	Section 5-102.
10	"Note"	Section 3-104.
11	"Proceeds of a letter of credit"	Section 5-114.
12	"Prove"	Section 3-103.
13	"Sale"	Section 2-106.
14	"Securities account"	Section 8-501.
15	"Securities intermediary"	Section 8-102.
16	"Security"	Section 8-102.
17	"Security certificate"	Section 8-102.
18	"Security entitlement"	Section 8-102.
19	"Uncertificated security"	Section 8-102.

20  
21 (c) Article 1 contains general definitions and principles of construction and interpretation  
22 applicable throughout this article.

23 Section 9-103. (a) In this section:

- 24 (1) "purchase-money collateral" means goods or software that secures a purchase-money  
25 obligation incurred with respect to that collateral; and
- 26 (2) "purchase-money obligation" means an obligation of an obligor incurred as all or part  
27 of the price of the collateral or for value given to enable the debtor to acquire rights  
28 in or the use of the collateral if the value is in fact so used.

1 (b) A security interest in goods is a purchase-money security interest:

2 (1) to the extent that the goods are purchase-money collateral with respect to that  
3 security interest;

4 (2) if the security interest is in inventory that is or was purchase-money collateral, also  
5 to the extent that the security interest secures a purchase-money obligation incurred  
6 with respect to other inventory in which the secured party holds or held a purchase-  
7 money security interest; and

8 (3) also to the extent that the security interest secures a purchase-money obligation  
9 incurred with respect to software in which the secured party holds or held a purchase-  
10 money security interest.

11 (c) A security interest in software is a purchase-money security interest to the extent that the  
12 security interest also secures a purchase-money obligation incurred with respect to goods in  
13 which the secured party holds or held a purchase-money security interest if:

14 (1) the debtor acquired its interest in the software in an integrated transaction in which  
15 it acquired an interest in the goods; and

16 (2) the debtor acquired its interest in the software for the principal purpose of using the  
17 software in the goods.

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

20 (e) If the extent to which a security interest is a purchase-money security interest depends  
21 on the application of a payment to a particular obligation, the payment must be applied:

22 (1) in accordance with any reasonable method of application to which the parties agree;

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

25 (3) in the absence of an agreement to a reasonable method and a timely manifestation of

1 the obligor's intention, in the following order:

2 (A) to obligations that are not secured; and

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

5 (f) A purchase-money security interest does not lose its status as such, even if:

6 (1) the purchase-money collateral also secures an obligation that is not a purchase-money  
7 obligation;

8 (2) collateral that is not purchase-money collateral also secures the purchase-money  
9 obligation; or

10 (3) the purchase-money obligation has been renewed, refinanced, consolidated, or  
11 restructured.

12 (g) A secured party claiming a purchase-money security interest has the burden of  
13 establishing the extent to which the security interest is a purchase-money security interest.

14 Section 9-104. (a) A secured party has control of a deposit account if:

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

16 (2) the debtor, secured party, and bank have agreed in an authenticated record that the  
17 bank will comply with instructions originated by the secured party directing  
18 disposition of the funds in the deposit account without further consent by the debtor;

19 or

20 (3) the secured party becomes the bank's customer with respect to the deposit account.

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

23 Section 9-105. A secured party has control of electronic chattel paper if the record or records  
24 comprising the chattel paper are created, stored, and assigned in such a manner that:

25 (1) a single authoritative copy of the record or records exists which is unique, identifiable

- 1 and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;
- 2 (2) the authoritative copy identifies the secured party as the assignee of the record or
- 3 records;
- 4 (3) the authoritative copy is communicated to and maintained by the secured party or its
- 5 designated custodian;
- 6 (4) copies or revisions that add or change an identified assignee of the authoritative copy
- 7 can be made only with the participation of the secured party;
- 8 (5) each copy of the authoritative copy and any copy of a copy is readily identifiable as
- 9 a copy that is not the authoritative copy; and
- 10 (6) any revision of the authoritative copy is readily identifiable as an authorized or
- 11 unauthorized revision.

12 Section 9-106. (a) A person has control of a certificated security, uncertificated security, or

13 security entitlement as provided in Section 8-106.

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

- 15 (1) the secured party is the commodity intermediary with which the commodity contract
- 16 is carried; or
- 17 (2) the commodity customer, secured party, and commodity intermediary have agreed
- 18 that the commodity intermediary will apply any value distributed on account of the
- 19 commodity contract as directed by the secured party without further consent by the
- 20 commodity customer.

21 (c) A secured party having control of all security entitlements or commodity contracts carried

22 in a securities account or commodity account has control over the securities account or

23 commodity account.

24 Section 9-107. A secured party has control of a letter-of-credit right to the extent of any right

25 to payment or performance by the issuer or any nominated person if the issuer or nominated

1 person has consented to an assignment of proceeds of the letter of credit under Section 5-114(c)  
2 or otherwise applicable law or practice.

3 Section 9-108. (a) Except as otherwise provided in subsections (c), (d), and (e), a description  
4 of personal or real property is sufficient, whether or not it is specific, if it reasonably identifies  
5 what is described.

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

8 (1) specific listing;

9 (2) category;

10 (3) except as otherwise provided in subsection (e), a type of collateral defined in the  
11 Uniform Commercial Code;

12 (4) quantity;

13 (5) computational or allocational formula or procedure; or

14 (6) except as otherwise provided in subsection (c), any other method, if the identity of the  
15 collateral is objectively determinable.

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

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

20 (1) the collateral by those terms or as investment property; or

21 (2) the underlying financial asset or commodity contract.

22 (e) A description only by type of collateral defined in the Uniform Commercial Code is an  
23 insufficient description of:

24 (1) a commercial tort claim; or

25 (2) in a consumer transaction, consumer goods, a security entitlement, a securities

1 account, or a commodity account.

2 Section 9-109. (a) Except as otherwise provided in subsections (c) and (d), this article applies

3 to:

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

6 (2) an agricultural lien;

7 (3) a sale of accounts, chattel paper, payment intangibles, or promissory notes;

8 (4) a consignment;

9 (5) a security interest arising under Section 2-401, 2-505, 2-711(3), or 2A-508(5), as  
10 provided in Section 9-110; and

11 (6) a security interest arising under Section 4-210 or 5-118.

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

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

16 (1) a statute, regulation, or treaty of the United States preempts this article;

17 (2) another statute of this State expressly governs the creation, perfection, priority, or  
18 enforcement of a security interest created by this State or a governmental unit of this  
19 State;

20 (3) a statute of another State, a foreign country, or a governmental unit of another State  
21 or a foreign country, other than a statute generally applicable to security interests,  
22 expressly governs creation, perfection, priority, or enforcement of a security interest  
23 created by the State, country, or governmental unit; or

24 (4) the rights of a transferee beneficiary or nominated person under a letter of credit are  
25 independent and superior under Section 5-114.

- 1 (d) This article does not apply to:
- 2 (1) a landlord's lien, other than an agricultural lien;
- 3 (2) a lien, other than an agricultural lien, given by statute or other rule of law for services  
4 or materials, but Section 9-333 applies with respect to priority of the lien;
- 5 (3) an assignment of a claim for wages, salary, or other compensation of an employee;
- 6 (4) a sale of accounts, chattel paper, payment intangibles, or promissory notes as part of  
7 a sale of the business out of which they arose;
- 8 (5) an assignment of accounts, chattel paper, payment intangibles, or promissory notes  
9 which is for the purpose of collection only;
- 10 (6) an assignment of a right to payment under a contract to an assignee that is also  
11 obligated to perform under the contract;
- 12 (7) an assignment of a single account, payment intangible, or promissory note to an  
13 assignee in full or partial satisfaction of a preexisting indebtedness;
- 14 (8) a transfer of an interest in or an assignment of a claim under a policy of insurance,  
15 other than an assignment by or to a health-care provider of a health-care-insurance  
16 receivable and any subsequent assignment of the right to payment, but Sections 9-315  
17 and 9-322 apply with respect to proceeds and priorities in proceeds;
- 18 (9) an assignment of a right represented by a judgment, other than a judgment taken on  
19 a right to payment that was collateral;
- 20 (10) a right of recoupment or set-off, but:
- 21 (A) Section 9-340 applies with respect to the effectiveness of rights of recoupment  
22 or set-off against deposit accounts; and
- 23 (B) Section 9-404 applies with respect to defenses or claims of an account debtor;
- 24 (11) the creation or transfer of an interest in or lien on real property, including a lease or  
25 rents thereunder, except to the extent that provision is made for:

- 1 (A) liens on real property in Sections 9-203 and 9-308;
- 2 (B) fixtures in Section 9-334;
- 3 (C) fixture filings in Sections 9-501, 9-502, 9-512, 9-516, and 9-519; and
- 4 (D) security agreements covering personal and real property in Section 9-604;
- 5 (12) an assignment of a claim arising in tort, other than a commercial tort claim, but
- 6 Sections 9-315 and 9-322 apply with respect to proceeds and priorities in proceeds;
- 7 (13) an assignment of a deposit account in a consumer transaction, but Sections 9-315 and
- 8 9-322 apply with respect to proceeds and priorities in proceeds; or
- 9 (14) the pledging or segregating of collateral for public deposits as authorized by § 51-22-
- 10 12, chapter 52-5, and chapter 4-6A.

11 Section 9-110. A security interest arising under Section 2-401, 2-505, 2-711(3), or  
12 2A-508(5) is subject to this article. However, until the debtor obtains possession of the goods:

- 13 (1) the security interest is enforceable, even if Section 9-203(b)(3) has not been satisfied;
- 14 (2) filing is not required to perfect the security interest;
- 15 (3) the rights of the secured party after default by the debtor are governed by Article 2
- 16 or 2A; and
- 17 (4) the security interest has priority over a conflicting security interest created by the
- 18 debtor.

19 Section 9-201. (a) Except as otherwise provided in the Uniform Commercial Code, a security  
20 agreement is effective according to its terms between the parties, against purchasers of the  
21 collateral, and against creditors.

22 (b) A transaction subject to this article is subject to any applicable rule of law which  
23 establishes a different rule for consumers, any other statute or regulation that regulates the rates,  
24 charges, agreements, and practices for loans, credit sales, or other extensions of credit, and any  
25 consumer-protection statute or regulation.

1 (c) In case of conflict between this article and a rule of law, statute, or regulation described  
2 in subsection (b), the rule of law, statute, or regulation controls. Failure to comply with a statute  
3 or regulation described in subsection (b) has only the effect the statute or regulation specifies.

4 (d) This article does not:

5 (1) validate any rate, charge, agreement, or practice that violates a rule of law, statute,  
6 or regulation described in subsection (b); or

7 (2) extend the application of the rule of law, statute, or regulation to a transaction not  
8 otherwise subject to it.

9 Section 9-202. Except as otherwise provided with respect to consignments or sales of  
10 accounts, chattel paper, payment intangibles, or promissory notes, the provisions of this article  
11 with regard to rights and obligations apply whether title to collateral is in the secured party or  
12 the debtor.

13 Section 9-203. (a) A security interest attaches to collateral when it becomes enforceable  
14 against the debtor with respect to the collateral, unless an agreement expressly postpones the  
15 time of attachment.

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

18 (1) value has been given;

19 (2) the debtor has rights in the collateral or the power to transfer rights in the collateral  
20 to a secured party; and

21 (3) one of the following conditions is met:

22 (A) the debtor has authenticated a security agreement that provides a description  
23 of the collateral and, if the security interest covers timber to be cut, a  
24 description of the land concerned;

25 (B) the collateral is not a certificated security and is in the possession of the

1                   secured party under Section 9-313 pursuant to the debtor's security agreement;

2                   (C) the collateral is a certificated security in registered form and the security  
3                   certificate has been delivered to the secured party under Section 8-301  
4                   pursuant to the debtor's security agreement; or

5                   (D) the collateral is deposit accounts, electronic chattel paper, investment property,  
6                   or letter-of-credit rights, and the secured party has control under Section  
7                   9-104, 9-105, 9-106, or 9-107 pursuant to the debtor's security agreement.

8                   (c) Subsection (b) is subject to Section 4-210 on the security interest of a collecting bank,  
9                   Section 5-118 on the security interest of a letter-of-credit issuer or nominated person, Section  
10                  9-110 on a security interest arising under Article 2 or 2A, and Section 9-206 on security interests  
11                  in investment property.

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

14                  (1) the security agreement becomes effective to create a security interest in the person's  
15                  property; or

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

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

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

24                  (2) another agreement is not necessary to make a security interest in the property  
25                  enforceable.

1 (f) The attachment of a security interest in collateral gives the secured party the rights to  
2 proceeds provided by Section 9-315 and is also attachment of a security interest in a supporting  
3 obligation for the collateral.

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

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

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

11 Section 9-204. (a) Except as otherwise provided in subsection (b), a security agreement may  
12 create or provide for a security interest in after-acquired collateral.

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

15 (1) consumer goods, other than an accession when given as additional security, unless the  
16 debtor acquires rights in them within 10 days after the secured party gives value; or

17 (2) a commercial tort claim.

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

21 Section 9-204.1. In transactions entered into after June 30, 1978, and prior to July 1, 1979,  
22 whereby the intent of the transaction was to create a security interest pursuant to this title, that  
23 security interest shall be deemed to have attached at the time there was agreement that it attach,  
24 when value was given, and when the debtor had rights in the collateral, unless an explicit  
25 agreement postponed the time of attaching.

1 Section 9-205. (a) A security interest is not invalid or fraudulent against creditors solely  
2 because:

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

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

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

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

8 (D) use, commingle, or dispose of proceeds; or

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

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

13 Section 9-206. (a) A security interest in favor of a securities intermediary attaches to a  
14 person's security entitlement if:

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

18 (2) the securities intermediary credits the financial asset to the buyer's securities account  
19 before the buyer pays the securities intermediary.

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

22 (c) 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 asset if:

24 (1) the security or other financial asset:

25 (A) in the ordinary course of business is transferred by delivery with any necessary

1 indorsement or assignment; and

2 (B) is delivered under an agreement between persons in the business of dealing  
3 with such securities or financial assets; and

4 (2) the agreement calls for delivery against payment.

5 (d) The security interest described in subsection (c) secures the obligation to make payment  
6 for the delivery.

7 Section 9-207. (a) Except as otherwise provided in subsection (d), a secured party shall use  
8 reasonable care in the custody and preservation of collateral in the secured party's possession.

9 In the case of chattel paper or an instrument, reasonable care includes taking necessary steps to  
10 preserve rights against prior parties unless otherwise agreed.

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

13 (1) reasonable expenses, including the cost of insurance and payment of taxes or other  
14 charges, incurred in the custody, preservation, use, or operation of the collateral are  
15 chargeable to the debtor and are secured by the collateral;

16 (2) the risk of accidental loss or damage is on the debtor to the extent of a deficiency in  
17 any effective insurance coverage;

18 (3) the secured party shall keep the collateral identifiable, but fungible collateral may be  
19 commingled; and

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

21 (A) for the purpose of preserving the collateral or its value;

22 (B) as permitted by an order of a court having competent jurisdiction; or

23 (C) except in the case of consumer goods, in the manner and to the extent agreed  
24 by the debtor.

25 (c) Except as otherwise provided in subsection (d), a secured party having possession of

1 collateral or control of collateral under Section 9-104, 9-105, 9-106, or 9-107:

2 (1) may hold as additional security any proceeds, except money or funds, received from  
3 the collateral;

4 (2) shall apply money or funds received from the collateral to reduce the secured  
5 obligation, unless remitted to the debtor; and

6 (3) may create a security interest in the collateral.

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

9 (1) subsection (a) does not apply unless the secured party is entitled under an agreement:

10 (A) to charge back uncollected collateral; or

11 (B) otherwise to full or limited recourse against the debtor or a secondary obligor  
12 based on the nonpayment or other default of an account debtor or other obligor  
13 on the collateral; and

14 (2) subsections (b) and (c) do not apply.

15 Section 9-208. (a) This section applies to cases in which there is no outstanding secured  
16 obligation and the secured party is not committed to make advances, incur obligations, or  
17 otherwise give value.

18 (b) Within 10 days after receiving an authenticated demand by the debtor:

19 (1) a secured party having control of a deposit account under Section 9-104(a)(2) shall  
20 send to the bank with which the deposit account is maintained an authenticated  
21 statement that releases the bank from any further obligation to comply with  
22 instructions originated by the secured party;

23 (2) a secured party having control of a deposit account under Section 9-104(a)(3) shall:

24 (A) pay the debtor the balance on deposit in the deposit account; or

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

1 (3) a secured party, other than a buyer, having control of electronic chattel paper under  
2 Section 9-105 shall:

3 (A) communicate the authoritative copy of the electronic chattel paper to the  
4 debtor or its designated custodian;

5 (B) if the debtor designates a custodian that is the designated custodian with which  
6 the authoritative copy of the electronic chattel paper is maintained for the  
7 secured party, communicate to the custodian an authenticated record releasing  
8 the designated custodian from any further obligation to comply with  
9 instructions originated by the secured party and instructing the custodian to  
10 comply with instructions originated by the debtor; and

11 (C) take appropriate action to enable the debtor or its designated custodian to  
12 make copies of or revisions to the authoritative copy which add or change an  
13 identified assignee of the authoritative copy without the consent of the secured  
14 party;

15 (4) a secured party having control of investment property under Section 8-106(d)(2) or  
16 9-106(b) shall send to the securities intermediary or commodity intermediary with  
17 which the security entitlement or commodity contract is maintained an authenticated  
18 record that releases the securities intermediary or commodity intermediary from any  
19 further obligation to comply with entitlement orders or directions originated by the  
20 secured party; and

21 (5) a secured party having control of a letter-of-credit right under Section 9-107 shall  
22 send to each person having an unfulfilled obligation to pay or deliver proceeds of the  
23 letter of credit to the secured party an authenticated release from any further  
24 obligation to pay or deliver proceeds of the letter of credit to the secured party.

25 Section 9-209. (a) Except as otherwise provided in subsection (c), this section applies if:

- 1 (1) there is no outstanding secured obligation; and
- 2 (2) the secured party is not committed to make advances, incur obligations, or otherwise
- 3 give value.

4 (b) Within 10 days after receiving an authenticated demand by the debtor, a secured party  
5 shall send to an account debtor that has received notification of an assignment to the secured  
6 party as assignee under Section 9-406(a) an authenticated record that releases the account debtor  
7 from any further obligation to the secured party.

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

10 Section 9-210. (a) In this section:

- 11 (1) "Request" means a record of a type described in paragraph (2), (3), or (4).
- 12 (2) "Request for an accounting" means a record authenticated by a debtor requesting that
- 13 the recipient provide an accounting of the unpaid obligations secured by collateral and
- 14 reasonably identifying the transaction or relationship that is the subject of the request.
- 15 (3) "Request regarding a list of collateral" means a record authenticated by a debtor
- 16 requesting that the recipient approve or correct a list of what the debtor believes to
- 17 be the collateral securing an obligation and reasonably identifying the transaction or
- 18 relationship that is the subject of the request.
- 19 (4) "Request regarding a statement of account" means a record authenticated by a debtor
- 20 requesting that the recipient approve or correct a statement indicating what the debtor
- 21 believes to be the aggregate amount of unpaid obligations secured by collateral as of
- 22 a specified date and reasonably identifying the transaction or relationship that is the
- 23 subject of the request.

24 (b) Subject to subsections (c), (d), (e), and (f), a secured party, other than a buyer of  
25 accounts, chattel paper, payment intangibles, or promissory notes or a consignor, shall comply

1 with a request within 14 days after receipt:

2 (1) in the case of a request for an accounting, by authenticating and sending to the debtor  
3 an accounting; and

4 (2) in the case of a request regarding a list of collateral or a request regarding a statement  
5 of account, by authenticating and sending to the debtor an approval or correction.

6 (c) A secured party that claims a security interest in all of a particular type of collateral  
7 owned by the debtor may comply with a request regarding a list of collateral by sending to the  
8 debtor an authenticated record including a statement to that effect within 14 days after receipt.

9 (d) A person that receives a request regarding a list of collateral, claims no interest in the  
10 collateral when it receives the request, and claimed an interest in the collateral at an earlier time  
11 shall comply with the request within 14 days after receipt by sending to the debtor an  
12 authenticated record:

13 (1) disclaiming any interest in the collateral; and

14 (2) if known to the recipient, providing the name and mailing address of any assignee of  
15 or successor to the recipient's interest in the collateral.

16 (e) A person that receives a request for an accounting or a request regarding a statement of  
17 account, claims no interest in the obligations when it receives the request, and claimed an interest  
18 in the obligations at an earlier time shall comply with the request within 14 days after receipt by  
19 sending to the debtor an authenticated record:

20 (1) disclaiming any interest in the obligations; and

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

23 (f) A debtor is entitled without charge to one response to a request under this section during  
24 any six-month period. The secured party may require payment of a charge not exceeding \$25 for  
25 each additional response.

1 Section 9-301. Except as otherwise provided in Sections 9-303 through 9-306, the following  
2 rules determine the law governing perfection, the effect of perfection or nonperfection, and the  
3 priority of a security interest in collateral:

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

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

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

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

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

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

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

20 Section 9-302. While farm products are located in a jurisdiction, the local law of that  
21 jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of an  
22 agricultural lien on the farm products.

23 Section 9-303. (a) This section applies to goods covered by a certificate of title, even if there  
24 is no other relationship between the jurisdiction under whose certificate of title the goods are  
25 covered and the goods or the debtor.

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

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

10 (d) A security interest in a snowmobile which attached prior to July 1, 1991, may be  
11 perfected by notation on the certificate of title under chapter 32-3 or in accordance with the  
12 provisions of chapter 57A-9.

13 Section 9-304. (a) The local law of a bank's jurisdiction governs perfection, the effect of  
14 perfection or nonperfection, and the priority of a security interest in a deposit account maintained  
15 with that bank.

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

17 (1) If an agreement between the bank and the debtor governing the deposit account  
18 expressly provides that a particular jurisdiction is the bank's jurisdiction for purposes  
19 of this part, this article, or the Uniform Commercial Code, that jurisdiction is the  
20 bank's jurisdiction.

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

24 (3) If neither paragraph (1) nor paragraph (2) applies and an agreement between the bank  
25 and its customer governing the deposit account expressly provides that the deposit

1 account is maintained at an office in a particular jurisdiction, that jurisdiction is the  
2 bank's jurisdiction.

3 (4) If none of the preceding paragraphs applies, the bank's jurisdiction is the jurisdiction  
4 in which the office identified in an account statement as the office serving the  
5 customer's account is located.

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

8 Section 9-305. (a) Except as otherwise provided in subsection (c), the following rules apply:

9 (1) While a security certificate is located in a jurisdiction, the local law of that jurisdiction  
10 governs perfection, the effect of perfection or nonperfection, and the priority of a  
11 security interest in the certificated security represented thereby.

12 (2) The local law of the issuer's jurisdiction as specified in Section 8-110(d) governs  
13 perfection, the effect of perfection or nonperfection, and the priority of a security  
14 interest in an uncertificated security.

15 (3) The local law of the securities intermediary's jurisdiction as specified in Section  
16 8-110(e) governs perfection, the effect of perfection or nonperfection, and the priority  
17 of a security interest in a security entitlement or securities account.

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

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

23 (1) If an agreement between the commodity intermediary and commodity customer  
24 governing the commodity account expressly provides that a particular jurisdiction is  
25 the commodity intermediary's jurisdiction for purposes of this part, this article, or the

1 Uniform Commercial Code, that jurisdiction is the commodity intermediary's  
2 jurisdiction.

3 (2) If paragraph (1) does not apply and an agreement between the commodity  
4 intermediary and commodity customer governing the commodity account expressly  
5 provides that the agreement is governed by the law of a particular jurisdiction, that  
6 jurisdiction is the commodity intermediary's jurisdiction.

7 (3) If neither paragraph (1) nor paragraph (2) applies and an agreement between the  
8 commodity intermediary and commodity customer governing the commodity account  
9 expressly provides that the commodity account is maintained at an office in a  
10 particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

11 (4) If none of the preceding paragraphs applies, the commodity intermediary's jurisdiction  
12 is the jurisdiction in which the office identified in an account statement as the office  
13 serving the commodity customer's account is located.

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

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

18 (1) perfection of a security interest in investment property by filing;

19 (2) automatic perfection of a security interest in investment property created by a broker  
20 or securities intermediary; and

21 (3) automatic perfection of a security interest in a commodity contract or commodity  
22 account created by a commodity intermediary.

23 Section 9-306. (a) Subject to subsection (c), the local law of the issuer's jurisdiction or a  
24 nominated person's jurisdiction governs perfection, the effect of perfection or nonperfection, and  
25 the priority of a security interest in a letter-of-credit right if the issuer's jurisdiction or nominated

1 person's jurisdiction is a State.

2 (b) For purposes of this part, an issuer's jurisdiction or nominated person's jurisdiction is the  
3 jurisdiction whose law governs the liability of the issuer or nominated person with respect to the  
4 letter-of-credit right as provided in Section 5-116.

5 (c) This section does not apply to a security interest that is perfected only under Section  
6 9-308(d).

7 Section 9-307. (a) In this section, "place of business" means a place where a debtor conducts  
8 its affairs.

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

11 (1) A debtor who is an individual is located at the individual's principal residence.

12 (2) A debtor that is an organization and has only one place of business is located at its  
13 place of business.

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

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

22 (d) A person that ceases to exist, have a residence, or have a place of business continues to  
23 be located in the jurisdiction specified by subsections (b) and (c).

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

1 (f) Except as otherwise provided in subsection (i), a registered organization that is organized  
2 under the law of the United States and a branch or agency of a bank that is not organized under  
3 the law of the United States or a State are located:

4 (1) in the State that the law of the United States designates, if the law designates a State  
5 of location;

6 (2) in the State that the registered organization, branch, or agency designates, if the law  
7 of the United States authorizes the registered organization, branch, or agency to  
8 designate its State of location; or

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

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

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

14 (2) the dissolution, winding up, or cancellation of the existence of the registered  
15 organization.

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

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

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

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

24 Section 9-308. (a) Except as otherwise provided in this section and Section 9-309, a security  
25 interest is perfected if it has attached and all of the applicable requirements for perfection in

1 Sections 9-310 through 9-316 have been satisfied. A security interest is perfected when it  
2 attaches if the applicable requirements are satisfied before the security interest attaches.

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

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

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

12 (e) Perfection of a security interest in a right to payment or performance also perfects a  
13 security interest in a security interest, mortgage, or other lien on personal or real property  
14 securing the right. Any statute conflicting with this subsection is expressly subject to this  
15 subsection.

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

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

20 Section 9-309. The following security interests are perfected when they attach:

21 (1) a purchase-money security interest in consumer goods, except as otherwise provided  
22 in Section 9-311(b) with respect to consumer goods that are subject to a statute or  
23 treaty described in Section 9-311(a);

24 (2) an assignment of accounts or payment intangibles which does not by itself or in  
25 conjunction with other assignments to the same assignee transfer a significant part of

- 1 the assignor's outstanding accounts or payment intangibles;
- 2 (3) a sale of a payment intangible;
- 3 (4) a sale of a promissory note;
- 4 (5) a security interest created by the assignment of a health-care-insurance receivable to
- 5 the provider of the health-care goods or services;
- 6 (6) a security interest arising under Section 2-401, 2-505, 2-711(3), or 2A-508(5), until
- 7 the debtor obtains possession of the collateral;
- 8 (7) a security interest of a collecting bank arising under Section 4-210;
- 9 (8) a security interest of an issuer or nominated person arising under Section 5-118;
- 10 (9) a security interest arising in the delivery of a financial asset under Section 9-206(c);
- 11 (10) a security interest in investment property created by a broker or securities
- 12 intermediary;
- 13 (11) a security interest in a commodity contract or a commodity account created by a
- 14 commodity intermediary;
- 15 (12) an assignment for the benefit of all creditors of the transferor and subsequent transfers
- 16 by the assignee thereunder; and
- 17 (13) a security interest created by an assignment of a beneficial interest in a decedent's
- 18 estate.

19 Section 9-310. (a) Except as otherwise provided in subsection (b) and Section 9-312(b), a  
20 financing statement must be filed to perfect all security interests and agricultural liens.

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

- 22 (1) that is perfected under Section 9-308(d), (e), (f), or (g);
- 23 (2) that is perfected under Section 9-309 when it attaches;
- 24 (3) in property subject to a statute, regulation, or treaty described in Section 9-311(a);
- 25 (4) in goods in possession of a bailee which is perfected under Section 9-312(d)(1) or (2);

- 1 (5) in certificated securities, documents, goods, or instruments which is perfected without
- 2 filing or possession under Section 9-312(e), (f), or (g);
- 3 (6) in collateral in the secured party's possession under Section 9-313;
- 4 (7) in a certificated security which is perfected by delivery of the security certificate to the
- 5 secured party under Section 9-313;
- 6 (8) in deposit accounts, electronic chattel paper, investment property, or letter-of-credit
- 7 rights which is perfected by control under Section 9-314;
- 8 (9) in proceeds which is perfected under Section 9-315;
- 9 (10) that is perfected under Section 9-316; or
- 10 (11) subject to §§ 49-34-11 to 49-34-11.4, inclusive.

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

14 Section 9-311. (a) Except as otherwise provided in subsection (d), the filing of a financing  
15 statement is not necessary or effective to perfect a security interest in property subject to:

- 16 (1) a statute, regulation, or treaty of the United States whose requirements for a security
- 17 interest's obtaining priority over the rights of a lien creditor with respect to the
- 18 property preempt Section 9-310(a);
- 19 (2) a certificate-of-title statute of this State under the law of which indication of a security
- 20 interest on the certificate of title is required as a condition of perfection; or
- 21 (3) a certificate-of-title statute of another jurisdiction which provides for a security
- 22 interest to be indicated on the certificate as a condition or result of the security
- 23 interest's obtaining priority over the rights of a lien creditor with respect to the
- 24 property.

25 (b) Compliance with the requirements of a statute, regulation, or treaty described in

1 subsection (a) for obtaining priority over the rights of a lien creditor is equivalent to the filing  
2 of a financing statement under this article. Except as otherwise provided in subsection (d) and  
3 Sections 9-313 and 9-316(d) and (e) for goods covered by a certificate of title, a security interest  
4 in property subject to a statute, regulation, or treaty described in subsection (a) may be perfected  
5 only by compliance with those requirements, and a security interest so perfected remains  
6 perfected notwithstanding a change in the use or transfer of possession of the collateral.

7 (c) Except as otherwise provided in subsection (d) and Section 9-316(d) and (e), duration  
8 and renewal of perfection of a security interest perfected by compliance with the requirements  
9 prescribed by a statute, regulation, or treaty described in subsection (a) are governed by the  
10 statute, regulation, or treaty. In other respects, the security interest is subject to this article.

11 (d) During any period in which collateral subject to a statute specified in subsection (a)(2)  
12 is inventory held for sale or lease by a person or leased by that person as lessor and that person  
13 is in the business of selling goods of that kind, this section does not apply to a security interest  
14 in that collateral created by that person.

15 Section 9-312. (a) A security interest in chattel paper, negotiable documents, instruments,  
16 or investment property may be perfected by filing.

17 (b) Except as otherwise provided in Section 9-315(c) and (d) for proceeds:

18 (1) a security interest in a deposit account may be perfected only by control under Section  
19 9-314;

20 (2) and except as otherwise provided in Section 9-308(d), a security interest in a letter-of-  
21 credit right may be perfected only by control under Section 9-314; and

22 (3) a security interest in money may be perfected only by the secured party's taking  
23 possession under Section 9-313.

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

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

3 (2) a security interest perfected in the document has priority over any security interest  
4 that becomes perfected in the goods by another method during that time.

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

7 (1) issuance of a document in the name of the secured party;

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

9 (3) filing as to the goods.

10 (e) A security interest in certificated securities, negotiable documents, or instruments is  
11 perfected without filing or the taking of possession for a period of 20 days from the time it  
12 attaches to the extent that it arises for new value given under an authenticated security  
13 agreement.

14 (f) A perfected security interest in a negotiable document or goods in possession of a bailee,  
15 other than one that has issued a negotiable document for the goods, remains perfected for 20  
16 days without filing if the secured party makes available to the debtor the goods or documents  
17 representing the goods for the purpose of:

18 (1) ultimate sale or exchange; or

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

21 (g) A perfected security interest in a certificated security or instrument remains perfected for  
22 20 days without filing if the secured party delivers the security certificate or instrument to the  
23 debtor for the purpose of:

24 (1) ultimate sale or exchange; or

25 (2) presentation, collection, enforcement, renewal, or registration of transfer.

1 (h) After the 20-day period specified in subsection (e), (f), or (g) expires, perfection depends  
2 upon compliance with this article.

3 Section 9-313. (a) Except as otherwise provided in subsection (b), a secured party may  
4 perfect a security interest in negotiable documents, goods, instruments, money, or tangible  
5 chattel paper by taking possession of the collateral. A secured party may perfect a security  
6 interest in certificated securities by taking delivery of the certificated securities under Section  
7 8-301.

8 (b) With respect to goods covered by a certificate of title issued by this State, a secured party  
9 may perfect a security interest in the goods by taking possession of the goods only in the  
10 circumstances described in Section 9-316(d).

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

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

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

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

22 (e) A security interest in a certificated security in registered form is perfected by delivery  
23 when delivery of the certificated security occurs under Section 8-301 and remains perfected by  
24 delivery until the debtor obtains possession of the security certificate.

25 (f) A person in possession of collateral is not required to acknowledge that it holds

1 possession for a secured party's benefit.

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

3 (1) the acknowledgment is effective under subsection (c) or Section 8-301(a), even if the  
4 acknowledgment violates the rights of a debtor; and

5 (2) unless the person otherwise agrees or law other than this article otherwise provides,  
6 the person does not owe any duty to the secured party and is not required to confirm  
7 the acknowledgment to another person.

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

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

13 (2) to redeliver the collateral to the secured party.

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

18 Section 9-314. (a) A security interest in investment property, deposit accounts, letter-of-  
19 credit rights, or electronic chattel paper may be perfected by control of the collateral under  
20 Section 9-104, 9-105, 9-106, or 9-107.

21 (b) A security interest in deposit accounts, electronic chattel paper, or letter-of-credit rights  
22 is perfected by control under Section 9-104, 9-105, or 9-107 when the secured party obtains  
23 control and remains perfected by control only while the secured party retains control.

24 (c) A security interest in investment property is perfected by control under Section 9-106  
25 from the time the secured party obtains control and remains perfected by control until:

- 1 (1) the secured party does not have control; and
- 2 (2) one of the following occurs:
  - 3 (A) if the collateral is a certificated security, the debtor has or acquires possession
  - 4 of the security certificate;
  - 5 (B) if the collateral is an uncertificated security, the issuer has registered or
  - 6 registers the debtor as the registered owner; or
  - 7 (C) if the collateral is a security entitlement, the debtor is or becomes the
  - 8 entitlement holder.

9 Section 9-315. (a) Except as otherwise provided in this article and in Section 2-403(2):

- 10 (1) a security interest or agricultural lien continues in collateral notwithstanding sale,
- 11 lease, license, exchange, or other disposition thereof unless the secured party
- 12 authorized the disposition free of the security interest or agricultural lien; and
- 13 (2) a security interest attaches to any identifiable proceeds of collateral.
- 14 (b) Proceeds that are commingled with other property are identifiable proceeds:
  - 15 (1) if the proceeds are goods, to the extent provided by Section 9-336; and
  - 16 (2) if the proceeds are not goods, to the extent that the secured party identifies the
  - 17 proceeds by a method of tracing, including application of equitable principles, that is
  - 18 permitted under law other than this article with respect to commingled property of the
  - 19 type involved.

20 (c) A security interest in proceeds is a perfected security interest if the security interest in the

21 original collateral was perfected.

22 (d) A perfected security interest in proceeds becomes unperfected on the 21st day after the

23 security interest attaches to the proceeds unless:

- 24 (1) the following conditions are satisfied:
  - 25 (A) a filed financing statement covers the original collateral;

1 (B) the proceeds are collateral in which a security interest may be perfected by  
2 filing in the office in which the financing statement has been filed; and

3 (C) the proceeds are not acquired with cash proceeds;

4 (2) the proceeds are identifiable cash proceeds; or

5 (3) the security interest in the proceeds is perfected other than under subsection (c) when  
6 the security interest attaches to the proceeds or within 20 days thereafter.

7 (e) If a filed financing statement covers the original collateral, a security interest in proceeds  
8 which remains perfected under subsection (d)(1) becomes unperfected at the later of:

9 (1) when the effectiveness of the filed financing statement lapses under Section 9-515 or  
10 is terminated under Section 9-513; or

11 (2) the 21st day after the security interest attaches to the proceeds.

12 Section 9-316. (a) A security interest perfected pursuant to the law of the jurisdiction  
13 designated in Section 9-301(1) or 9-305(c) remains perfected until the earliest of:

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

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

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

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

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

- 1       (1)    the collateral is located in one jurisdiction and subject to a security interest perfected
- 2               under the law of that jurisdiction;
- 3       (2)    thereafter the collateral is brought into another jurisdiction; and
- 4       (3)    upon entry into the other jurisdiction, the security interest is perfected under the law
- 5               of the other jurisdiction.

6       (d) Except as otherwise provided in subsection (e), a security interest in goods covered by

7 a certificate of title which is perfected by any method under the law of another jurisdiction when

8 the goods become covered by a certificate of title from this State remains perfected until the

9 security interest would have become unperfected under the law of the other jurisdiction had the

10 goods not become so covered.

11       (e) A security interest described in subsection (d) becomes unperfected as against a purchaser

12 of the goods for value and is deemed never to have been perfected as against a purchaser of the

13 goods for value if the applicable requirements for perfection under Section 9-311(b) or 9-313

14 are not satisfied before the earlier of:

- 15       (1)    the time the security interest would have become unperfected under the law of the
- 16               other jurisdiction had the goods not become covered by a certificate of title from this
- 17               State; or
- 18       (2)    the expiration of four months after the goods had become so covered.

19       (f) A security interest in deposit accounts, letter-of-credit rights, or investment property

20 which is perfected under the law of the bank's jurisdiction, the issuer's jurisdiction, a nominated

21 person's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's

22 jurisdiction, as applicable, remains perfected until the earlier of:

- 23       (1)    the time the security interest would have become unperfected under the law of that
- 24               jurisdiction; or
- 25       (2)    the expiration of four months after a change of the applicable jurisdiction to another

1 jurisdiction.

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

8 Section 9-317. (a) A security interest or agricultural lien is subordinate to the rights of:

9 (1) a person entitled to priority under Section 9-322; and

10 (2) except as otherwise provided in subsection (e), a person that becomes a lien creditor  
11 before the earlier of the time:

12 (A) the security interest or agricultural lien is perfected; or

13 (B) one of the conditions specified in Section 9-203(b)(3) is met and a financing  
14 statement covering the collateral is filed.

15 (b) Except as otherwise provided in subsection (e), a buyer, other than a secured party, of  
16 tangible chattel paper, documents, goods, instruments, or a security certificate takes free of a  
17 security interest or agricultural lien if the buyer gives value and receives delivery of the collateral  
18 without knowledge of the security interest or agricultural lien and before it is perfected.

19 (c) Except as otherwise provided in subsection (e), a lessee of goods takes free of a security  
20 interest or agricultural lien if the lessee gives value and receives delivery of the collateral without  
21 knowledge of the security interest or agricultural lien and before it is perfected.

22 (d) A licensee of a general intangible or a buyer, other than a secured party, of accounts,  
23 electronic chattel paper, general intangibles, or investment property other than a certificated  
24 security takes free of a security interest if the licensee or buyer gives value without knowledge  
25 of the security interest and before it is perfected.

1 (e) Except as otherwise provided in Sections 9-320 and 9-321, if a person files a financing  
2 statement with respect to a purchase-money security interest before or within 20 days after the  
3 debtor receives delivery of the collateral, the security interest takes priority over the rights of a  
4 buyer, lessee, or lien creditor which arise between the time the security interest attaches and the  
5 time of filing.

6 Section 9-318. (a) A debtor that has sold an account, chattel paper, payment intangible, or  
7 promissory note does not retain a legal or equitable interest in the collateral sold.

8 (b) For purposes of determining the rights of creditors of, and purchasers for value of an  
9 account or chattel paper from, a debtor that has sold an account or chattel paper, while the  
10 buyer's security interest is unperfected, the debtor is deemed to have rights and title to the  
11 account or chattel paper identical to those the debtor sold.

12 Section 9-319. (a) Except as otherwise provided in subsection (b), for purposes of  
13 determining the rights of creditors of, and purchasers for value of goods from, a consignee, while  
14 the goods are in the possession of the consignee, the consignee is deemed to have rights and title  
15 to the goods identical to those the consignor had or had power to transfer.

16 (b) For purposes of determining the rights of a creditor of a consignee, law other than this  
17 article determines the rights and title of a consignee while goods are in the consignee's  
18 possession if, under this part, a perfected security interest held by the consignor would have  
19 priority over the rights of the creditor.

20 Section 9-320. (a) Except as otherwise provided in subsection (e), a buyer in ordinary course  
21 of business, other than a person buying farm products from a person engaged in farming  
22 operations, takes free of a security interest created by the buyer's seller, even if the security  
23 interest is perfected and the buyer knows of its existence.

24 (b) Except as otherwise provided in subsection (e), a buyer of goods from a person who used  
25 or bought the goods for use primarily for personal, family, or household purposes takes free of

1 a security interest, even if perfected, if the buyer buys:

2 (1) without knowledge of the security interest;

3 (2) for value;

4 (3) primarily for the buyer's personal, family, or household purposes; and

5 (4) before the filing of a financing statement covering the goods.

6 (c) To the extent that it affects the priority of a security interest over a buyer of goods under  
7 subsection (b), the period of effectiveness of a filing made in the jurisdiction in which the seller  
8 is located is governed by Section 9-316(a) and (b).

9 (d) A buyer in ordinary course of business buying oil, gas, or other minerals at the wellhead  
10 or minehead or after extraction takes free of an interest arising out of an encumbrance.

11 (e) Subsections (a) and (b) do not affect a security interest in goods in the possession of the  
12 secured party under Section 9-313.

13 Section 9-321. (a) In this section, "licensee in ordinary course of business" means a person  
14 that becomes a licensee of a general intangible in good faith, without knowledge that the license  
15 violates the rights of another person in the general intangible, and in the ordinary course from  
16 a person in the business of licensing general intangibles of that kind. A person becomes a licensee  
17 in the ordinary course if the license to the person comports with the usual or customary practices  
18 in the kind of business in which the licensor is engaged or with the licensor's own usual or  
19 customary practices.

20 (b) A licensee in ordinary course of business takes its rights under a nonexclusive license free  
21 of a security interest in the general intangible created by the licensor, even if the security interest  
22 is perfected and the licensee knows of its existence.

23 (c) A lessee in ordinary course of business takes its leasehold interest free of a security  
24 interest in the goods created by the lessor, even if the security interest is perfected and the lessee  
25 knows of its existence.

1 Section 9-322. (a) Except as otherwise provided in this section, priority among conflicting  
2 security interests and agricultural liens in the same collateral is determined according to the  
3 following rules:

4 (1) Conflicting perfected security interests and agricultural liens rank according to priority  
5 in time of filing or perfection. Priority dates from the earlier of the time a filing  
6 covering the collateral is first made or the security interest or agricultural lien is first  
7 perfected, if there is no period thereafter when there is neither filing nor perfection.

8 (2) A perfected security interest or agricultural lien has priority over a conflicting  
9 unperfected security interest or agricultural lien.

10 (3) The first security interest or agricultural lien to attach or become effective has priority  
11 if conflicting security interests and agricultural liens are unperfected.

12 (b) For the purposes of subsection (a)(1):

13 (1) the time of filing or perfection as to a security interest in collateral is also the time of  
14 filing or perfection as to a security interest in proceeds; and

15 (2) the time of filing or perfection as to a security interest in collateral supported by a  
16 supporting obligation is also the time of filing or perfection as to a security interest  
17 in the supporting obligation.

18 (c) Except as otherwise provided in subsection (f), a security interest in collateral which  
19 qualifies for priority over a conflicting security interest under Section 9-327, 9-328, 9-329,  
20 9-330, or 9-331 also has priority over a conflicting security interest in:

21 (1) any supporting obligation for the collateral; and

22 (2) proceeds of the collateral if:

23 (A) the security interest in proceeds is perfected;

24 (B) the proceeds are cash proceeds or of the same type as the collateral; and

25 (C) in the case of proceeds that are proceeds of proceeds, all intervening proceeds

1           are cash proceeds, proceeds of the same type as the collateral, or an account  
2           relating to the collateral.

3           (d) Subject to subsection (e) and except as otherwise provided in subsection (f), if a security  
4           interest in chattel paper, deposit accounts, negotiable documents, instruments, investment  
5           property, or letter-of-credit rights is perfected by a method other than filing, conflicting perfected  
6           security interests in proceeds of the collateral rank according to priority in time of filing.

7           (e) Subsection (d) applies only if the proceeds of the collateral are not cash proceeds, chattel  
8           paper, negotiable documents, instruments, investment property, or letter-of-credit rights.

9           (f) Subsections (a) through (e) are subject to:

- 10          (1)    subsection (g) and the other provisions of this part;  
11          (2)    Section 4-210 with respect to a security interest of a collecting bank;  
12          (3)    Section 5-118 with respect to a security interest of an issuer or nominated person; and  
13          (4)    Section 9-110 with respect to a security interest arising under Article 2 or 2A.

14          (g) A perfected agricultural lien on collateral has priority over a conflicting security interest  
15          in or agricultural lien on the same collateral if the statute creating the agricultural lien so  
16          provides.

17          Section 9-323. (a) Except as otherwise provided in subsection (c), for purposes of  
18          determining the priority of a perfected security interest under Section 9-322(a)(1), perfection of  
19          the security interest dates from the time an advance is made to the extent that the security  
20          interest secures an advance that:

- 21          (1)    is made while the security interest is perfected only:  
22                  (A)    under Section 9-309 when it attaches; or  
23                  (B)    temporarily under Section 9-312(e), (f), or (g); and  
24          (2)    is not made pursuant to a commitment entered into before or while the security  
25          interest is perfected by a method other than under Section 9-309 or 9-312(e), (f), or

1 (g).

2 (b) Except as otherwise provided in subsection (c), a security interest is subordinate to the  
3 rights of a person that becomes a lien creditor to the extent that the security interest secures an  
4 advance made more than 45 days after the person becomes a lien creditor unless the advance is  
5 made:

6 (1) without knowledge of the lien; or

7 (2) pursuant to a commitment entered into without knowledge of the lien.

8 (c) Subsections (a) and (b) do not apply to a security interest held by a secured party that is  
9 a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor.

10 (d) Except as otherwise provided in subsection (e), a buyer of goods other than a buyer in  
11 ordinary course of business takes free of a security interest to the extent that it secures advances  
12 made after the earlier of:

13 (1) the time the secured party acquires knowledge of the buyer's purchase; or

14 (2) 45 days after the purchase.

15 (e) Subsection (d) does not apply if the advance is made pursuant to a commitment entered  
16 into without knowledge of the buyer's purchase and before the expiration of the 45-day period.

17 (f) Except as otherwise provided in subsection (g), a lessee of goods, other than a lessee in  
18 ordinary course of business, takes the leasehold interest free of a security interest to the extent  
19 that it secures advances made after the earlier of:

20 (1) the time the secured party acquires knowledge of the lease; or

21 (2) 45 days after the lease contract becomes enforceable.

22 (g) Subsection (f) does not apply if the advance is made pursuant to a commitment entered  
23 into without knowledge of the lease and before the expiration of the 45-day period.

24 Section 9-324. (a) Except as otherwise provided in subsection (g), a perfected purchase-  
25 money security interest in goods other than inventory or livestock has priority over a conflicting

1 security interest in the same goods, and, except as otherwise provided in Section 9-327, a  
2 perfected security interest in its identifiable proceeds also has priority, if the purchase-money  
3 security interest is perfected when the debtor receives possession of the collateral or within 20  
4 days thereafter.

5 (b) Subject to subsection (c) and except as otherwise provided in subsection (g), a perfected  
6 purchase-money security interest in inventory has priority over a conflicting security interest in  
7 the same inventory, has priority over a conflicting security interest in chattel paper or an  
8 instrument constituting proceeds of the inventory and in proceeds of the chattel paper, if so  
9 provided in Section 9-330, and, except as otherwise provided in Section 9-327, also has priority  
10 in identifiable cash proceeds of the inventory to the extent the identifiable cash proceeds are  
11 received on or before the delivery of the inventory to a buyer, if:

- 12 (1) the purchase-money security interest is perfected when the debtor receives possession  
13 of the inventory;
- 14 (2) the purchase-money secured party sends an authenticated notification to the holder  
15 of the conflicting security interest;
- 16 (3) the holder of the conflicting security interest receives the notification within five years  
17 before the debtor receives possession of the inventory; and
- 18 (4) the notification states that the person sending the notification has or expects to  
19 acquire a purchase-money security interest in inventory of the debtor and describes  
20 the inventory.

21 (c) Subsections (b)(2) through (4) apply only if the holder of the conflicting security interest  
22 had filed a financing statement covering the same types of inventory:

- 23 (1) if the purchase-money security interest is perfected by filing, before the date of the  
24 filing; or
- 25 (2) if the purchase-money security interest is temporarily perfected without filing or

1           possession under Section 9-312(f), before the beginning of the 20-day period  
2           thereunder.

3           (d) Subject to subsection (e) and except as otherwise provided in subsection (g), a perfected  
4 purchase-money security interest in livestock that are farm products has priority over a  
5 conflicting security interest in the same livestock, and, except as otherwise provided in Section  
6 9-327, a perfected security interest in their identifiable proceeds and identifiable products in their  
7 unmanufactured states also has priority, if:

8           (1) the purchase-money security interest is perfected when the debtor receives possession  
9           of the livestock;

10          (2) the purchase-money secured party sends an authenticated notification to the holder  
11          of the conflicting security interest;

12          (3) the holder of the conflicting security interest receives the notification within six  
13          months before the debtor receives possession of the livestock; and

14          (4) the notification states that the person sending the notification has or expects to  
15          acquire a purchase-money security interest in livestock of the debtor and describes the  
16          livestock.

17          (e) Subsections (d)(2) through (4) apply only if the holder of the conflicting security interest  
18          had filed a financing statement covering the same types of livestock:

19          (1) if the purchase-money security interest is perfected by filing, before the date of the  
20          filing; or

21          (2) if the purchase-money security interest is temporarily perfected without filing or  
22          possession under Section 9-312(f), before the beginning of the 20-day period  
23          thereunder.

24          (f) Except as otherwise provided in subsection (g), a perfected purchase-money security  
25          interest in software has priority over a conflicting security interest in the same collateral, and,

1 except as otherwise provided in Section 9-327, a perfected security interest in its identifiable  
2 proceeds also has priority, to the extent that the purchase-money security interest in the goods  
3 in which the software was acquired for use has priority in the goods and proceeds of the goods  
4 under this section.

5 (g) If more than one security interest qualifies for priority in the same collateral under  
6 subsection (a), (b), (d), or (f):

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

10 (2) in all other cases, Section 9-322(a) applies to the qualifying security interests.

11 Section 9-325. (a) Except as otherwise provided in subsection (b), a security interest created  
12 by a debtor is subordinate to a security interest in the same collateral created by another person  
13 if:

14 (1) the debtor acquired the collateral subject to the security interest created by the other  
15 person;

16 (2) the security interest created by the other person was perfected when the debtor  
17 acquired the collateral; and

18 (3) there is no period thereafter when the security interest is unperfected.

19 (b) Subsection (a) subordinates a security interest only if the security interest:

20 (1) otherwise would have priority solely under Section 9-322(a) or 9-324; or

21 (2) arose solely under Section 2-711(3) or 2A-508(5).

22 Section 9-326. (a) Subject to subsection (b), a security interest created by a new debtor  
23 which is perfected by a filed financing statement that is effective solely under Section 9-508 in  
24 collateral in which a new debtor has or acquires rights is subordinate to a security interest in the  
25 same collateral which is perfected other than by a filed financing statement that is effective solely

1 under Section 9-508.

2 (b) The other provisions of this part determine the priority among conflicting security  
3 interests in the same collateral perfected by filed financing statements that are effective solely  
4 under Section 9-508. However, if the security agreements to which a new debtor became bound  
5 as debtor were not entered into by the same original debtor, the conflicting security interests rank  
6 according to priority in time of the new debtor's having become bound.

7 Section 9-327. The following rules govern priority among conflicting security interests in the  
8 same deposit account:

9 (1) A security interest held by a secured party having control of the deposit account under  
10 Section 9-104 has priority over a conflicting security interest held by a secured party  
11 that does not have control.

12 (2) Except as otherwise provided in paragraphs (3) and (4), security interests perfected  
13 by control under Section 9-314 rank according to priority in time of obtaining control.

14 (3) Except as otherwise provided in paragraph (4), a security interest held by the bank  
15 with which the deposit account is maintained has priority over a conflicting security  
16 interest held by another secured party.

17 (4) A security interest perfected by control under Section 9-104(a)(3) has priority over  
18 a security interest held by the bank with which the deposit account is maintained.

19 Section 9-328. The following rules govern priority among conflicting security interests in the  
20 same investment property:

21 (1) A security interest held by a secured party having control of investment property  
22 under Section 9-106 has priority over a security interest held by a secured party that  
23 does not have control of the investment property.

24 (2) Except as otherwise provided in paragraphs (3) and (4), conflicting security interests  
25 held by secured parties each of which has control under Section 9-106 rank according

- 1 to priority in time of:
- 2 (A) if the collateral is a security, obtaining control;
- 3 (B) if the collateral is a security entitlement carried in a securities account and:
- 4 (i) if the secured party obtained control under Section 8-106(d)(1), the
- 5 secured party's becoming the person for which the securities account is
- 6 maintained;
- 7 (ii) if the secured party obtained control under Section 8-106(d)(2), the
- 8 securities intermediary's agreement to comply with the secured party's
- 9 entitlement orders with respect to security entitlements carried or to be
- 10 carried in the securities account; or
- 11 (iii) if the secured party obtained control through another person under
- 12 Section 8-106(d)(3), the time on which priority would be based under
- 13 this paragraph if the other person were the secured party; or
- 14 (C) if the collateral is a commodity contract carried with a commodity
- 15 intermediary, the satisfaction of the requirement for control specified in Section
- 16 9-106(b)(2) with respect to commodity contracts carried or to be carried with
- 17 the commodity intermediary.
- 18 (3) A security interest held by a securities intermediary in a security entitlement or a
- 19 securities account maintained with the securities intermediary has priority over a
- 20 conflicting security interest held by another secured party.
- 21 (4) A security interest held by a commodity intermediary in a commodity contract or a
- 22 commodity account maintained with the commodity intermediary has priority over a
- 23 conflicting security interest held by another secured party.
- 24 (5) A security interest in a certificated security in registered form which is perfected by
- 25 taking delivery under Section 9-313(a) and not by control under Section 9-314 has

1 priority over a conflicting security interest perfected by a method other than control.

2 (6) Conflicting security interests created by a broker, securities intermediary, or  
3 commodity intermediary which are perfected without control under Section 9-106  
4 rank equally.

5 (7) In all other cases, priority among conflicting security interests in investment property  
6 is governed by Sections 9-322 and 9-323.

7 Section 9-329. The following rules govern priority among conflicting security interests in the  
8 same letter-of-credit right:

9 (1) A security interest held by a secured party having control of the letter-of-credit right  
10 under Section 9-107 has priority to the extent of its control over a conflicting security  
11 interest held by a secured party that does not have control.

12 (2) Security interests perfected by control under Section 9-314 rank according to priority  
13 in time of obtaining control.

14 Section 9-330. (a) A purchaser of chattel paper has priority over a security interest in the  
15 chattel paper which is claimed merely as proceeds of inventory subject to a security interest if:

16 (1) in good faith and in the ordinary course of the purchaser's business, the purchaser  
17 gives new value and takes possession of the chattel paper or obtains control of the  
18 chattel paper under Section 9-105; and

19 (2) the chattel paper does not indicate that it has been assigned to an identified assignee  
20 other than the purchaser.

21 (b) A purchaser of chattel paper has priority over a security interest in the chattel paper  
22 which is claimed other than merely as proceeds of inventory subject to a security interest if the  
23 purchaser gives new value and takes possession of the chattel paper or obtains control of the  
24 chattel paper under Section 9-105 in good faith, in the ordinary course of the purchaser's  
25 business, and without knowledge that the purchase violates the rights of the secured party.

1 (c) Except as otherwise provided in Section 9-327, a purchaser having priority in chattel  
2 paper under subsection (a) or (b) also has priority in proceeds of the chattel paper to the extent  
3 that:

4 (1) Section 9-322 provides for priority in the proceeds; or

5 (2) the proceeds consist of the specific goods covered by the chattel paper or cash  
6 proceeds of the specific goods, even if the purchaser's security interest in the  
7 proceeds is unperfected.

8 (d) Except as otherwise provided in Section 9-331(a), a purchaser of an instrument has  
9 priority over a security interest in the instrument perfected by a method other than possession  
10 if the purchaser gives value and takes possession of the instrument in good faith and without  
11 knowledge that the purchase violates the rights of the secured party.

12 (e) For purposes of subsections (a) and (b), the holder of a purchase-money security interest  
13 in inventory gives new value for chattel paper constituting proceeds of the inventory.

14 (f) For purposes of subsections (b) and (d), if chattel paper or an instrument indicates that  
15 it has been assigned to an identified secured party other than the purchaser, a purchaser of the  
16 chattel paper or instrument has knowledge that the purchase violates the rights of the secured  
17 party.

18 Section 9-331. (a) This article does not limit the rights of a holder in due course of a  
19 negotiable instrument, a holder to which a negotiable document of title has been duly negotiated,  
20 or a protected purchaser of a security. These holders or purchasers take priority over an earlier  
21 security interest, even if perfected, to the extent provided in Articles 3, 7, and 8.

22 (b) This article does not limit the rights of or impose liability on a person to the extent that  
23 the person is protected against the assertion of a claim under Article 8.

24 (c) Filing under this article does not constitute notice of a claim or defense to the holders,  
25 or purchasers, or persons described in subsections (a) and (b).

1 Section 9-332. (a) A transferee of money takes the money free of a security interest unless  
2 the transferee acts in collusion with the debtor in violating the rights of the secured party.

3 (b) A transferee of funds from a deposit account takes the funds free of a security interest  
4 in the deposit account unless the transferee acts in collusion with the debtor in violating the rights  
5 of the secured party.

6 Section 9-333. (a) In this section, "possessory lien" means an interest, other than a security  
7 interest or an agricultural lien:

8 (1) which secures payment or performance of an obligation for services or materials  
9 furnished with respect to goods by a person in the ordinary course of the person's  
10 business;

11 (2) which is created by statute or rule of law in favor of the person; and

12 (3) whose effectiveness depends on the person's possession of the goods.

13 (b) A possessory lien on goods has priority over a security interest in the goods unless the  
14 lien is created by a statute that expressly provides otherwise.

15 Section 9-334. (a) A security interest under this article may be created in goods that are  
16 fixtures or may continue in goods that become fixtures. A security interest does not exist under  
17 this article in ordinary building materials incorporated into an improvement on land.

18 (b) This article does not prevent creation of an encumbrance upon fixtures under real  
19 property law.

20 (c) In cases not governed by subsections (d) through (h), a security interest in fixtures is  
21 subordinate to a conflicting interest of an encumbrancer or owner of the related real property  
22 other than the debtor.

23 (d) Except as otherwise provided in subsection (h), a perfected security interest in fixtures  
24 has priority over a conflicting interest of an encumbrancer or owner of the real property if the  
25 debtor has an interest of record in or is in possession of the real property and:

- 1 (1) the security interest is a purchase-money security interest;
- 2 (2) the interest of the encumbrancer or owner arises before the goods become fixtures;
- 3 and
- 4 (3) the security interest is perfected by a fixture filing before the goods become fixtures
- 5 or within 20 days thereafter.

6 (e) A perfected security interest in fixtures has priority over a conflicting interest of an  
7 encumbrancer or owner of the real property if:

- 8 (1) the debtor has an interest of record in the real property or is in possession of the real  
9 property and the security interest:

- 10 (A) is perfected by a fixture filing before the interest of the encumbrancer or owner  
11 is of record; and

- 12 (B) has priority over any conflicting interest of a predecessor in title of the  
13 encumbrancer or owner;

- 14 (2) before the goods become fixtures, the security interest is perfected by any method  
15 permitted by this article and the fixtures are readily removable:

- 16 (A) factory or office machines;

- 17 (B) equipment that is not primarily used or leased for use in the operation of the  
18 real property; or

- 19 (C) replacements of domestic appliances that are consumer goods;

- 20 (3) the conflicting interest is a lien on the real property obtained by legal or equitable  
21 proceedings after the security interest was perfected by any method permitted by this  
22 article; or

- 23 (4) the security interest is:

- 24 (A) created in a manufactured home in a manufactured-home transaction; and

- 25 (B) perfected pursuant to a statute described in Section 9-311(a)(2).

1 (f) A security interest in fixtures, whether or not perfected, has priority over a conflicting  
2 interest of an encumbrancer or owner of the real property if:

3 (1) the encumbrancer or owner has, in an authenticated record, consented to the security  
4 interest or disclaimed an interest in the goods as fixtures; or

5 (2) the debtor has a right to remove the goods as against the encumbrancer or owner.

6 (g) The priority of the security interest under paragraph (f)(2) continues for a reasonable time  
7 if the debtor's right to remove the goods as against the encumbrancer or owner terminates.

8 (h) A mortgage is a construction mortgage to the extent that it secures an obligation incurred  
9 for the construction of an improvement on land, including the acquisition cost of the land, if a  
10 recorded record of the mortgage so indicates. Except as otherwise provided in subsections (e)  
11 and (f), a security interest in fixtures is subordinate to a construction mortgage if a record of the  
12 mortgage is recorded before the goods become fixtures and the goods become fixtures before  
13 the completion of the construction. A mortgage has this priority to the same extent as a  
14 construction mortgage to the extent that it is given to refinance a construction mortgage.

15 (i) A perfected security interest in crops growing on real property has priority over a  
16 conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest  
17 of record in or is in possession of the real property.

18 (j) Subsection (i) prevails over any inconsistent statute.

19 Section 9-335. (a) A security interest may be created in an accession and continues in  
20 collateral that becomes an accession.

21 (b) If a security interest is perfected when the collateral becomes an accession, the security  
22 interest remains perfected in the collateral.

23 (c) Except as otherwise provided in subsection (d), the other provisions of this part  
24 determine the priority of a security interest in an accession.

25 (d) A security interest in an accession is subordinate to a security interest in the whole which

1 is perfected by compliance with the requirements of a certificate-of-title statute under Section  
2 9-311(b).

3 (e) After default, subject to Part 6, a secured party may remove an accession from other  
4 goods if the security interest in the accession has priority over the claims of every person having  
5 an interest in the whole.

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

14 Section 9-336. (a) In this section, "commingled goods" means goods that are physically  
15 united with other goods in such a manner that their identity is lost in a product or mass.

16 (b) A security interest does not exist in commingled goods as such. However, a security  
17 interest may attach to a product or mass that results when goods become commingled goods.

18 (c) If collateral becomes commingled goods, a security interest attaches to the product or  
19 mass.

20 (d) If a security interest in collateral is perfected before the collateral becomes commingled  
21 goods, the security interest that attaches to the product or mass under subsection (c) is perfected.

22 (e) Except as otherwise provided in subsection (f), the other provisions of this part determine  
23 the priority of a security interest that attaches to the product or mass under subsection (c).

24 (f) If more than one security interest attaches to the product or mass under subsection (c),  
25 the following rules determine priority:

1 (1) A security interest that is perfected under subsection (d) has priority over a security  
2 interest that is unperfected at the time the collateral becomes commingled goods.

3 (2) If more than one security interest is perfected under subsection (d), the security  
4 interests rank equally in proportion to the value of the collateral at the time it became  
5 commingled goods.

6 Section 9-337. If, while a security interest in goods is perfected by any method under the law  
7 of another jurisdiction, this State issues a certificate of title that does not show that the goods  
8 are subject to the security interest or contain a statement that they may be subject to security  
9 interests not shown on the certificate:

10 (1) a buyer of the goods, other than a person in the business of selling goods of that kind,  
11 takes free of the security interest if the buyer gives value and receives delivery of the  
12 goods after issuance of the certificate and without knowledge of the security interest;  
13 and

14 (2) the security interest is subordinate to a conflicting security interest in the goods that  
15 attaches, and is perfected under Section 9-311(b), after issuance of the certificate and  
16 without the conflicting secured party's knowledge of the security interest.

17 Section 9-338. If a security interest or agricultural lien is perfected by a filed financing  
18 statement providing information described in Section 9-516(b)(5) which is incorrect at the time  
19 the financing statement is filed:

20 (1) the security interest or agricultural lien is subordinate to a conflicting perfected  
21 security interest in the collateral to the extent that the holder of the conflicting  
22 security interest gives value in reasonable reliance upon the incorrect information; and

23 (2) a purchaser, other than a secured party, of the collateral takes free of the security  
24 interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect  
25 information, the purchaser gives value and, in the case of chattel paper, documents,

1 goods, instruments, or a security certificate, receives delivery of the collateral.

2 Section 9-339. This article does not preclude subordination by agreement by a person entitled  
3 to priority.

4 Section 9-340. (a) Except as otherwise provided in subsection (c), a bank with which a  
5 deposit account is maintained may exercise any right of recoupment or set-off against a secured  
6 party that holds a security interest in the deposit account.

7 (b) Except as otherwise provided in subsection (c), the application of this article to a security  
8 interest in a deposit account does not affect a right of recoupment or set-off of the secured party  
9 as to a deposit account maintained with the secured party.

10 (c) The exercise by a bank of a set-off against a deposit account is ineffective against a  
11 secured party that holds a security interest in the deposit account which is perfected by control  
12 under Section 9-104(a)(3), if the set-off is based on a claim against the debtor.

13 Section 9-341. Except as otherwise provided in Section 9-340(c), and unless the bank  
14 otherwise agrees in an authenticated record, a bank's rights and duties with respect to a deposit  
15 account maintained with the bank are not terminated, suspended, or modified by:

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

19 Section 9-342. This article does not require a bank to enter into an agreement of the kind  
20 described in Section 9-104(a)(2), even if its customer so requests or directs. A bank that has  
21 entered into such an agreement is not required to confirm the existence of the agreement to  
22 another person unless requested to do so by its customer.

23 Section 9-401. (a) Except as otherwise provided in subsection (b) and Sections 9-406, 9-407,  
24 9-408, and 9-409, whether a debtor's rights in collateral may be voluntarily or involuntarily  
25 transferred is governed by law other than this article.

1 (b) An agreement between the debtor and secured party which prohibits a transfer of the  
2 debtor's rights in collateral or makes the transfer a default does not prevent the transfer from  
3 taking effect.

4 Section 9-402. The existence of a security interest, agricultural lien, or authority given to a  
5 debtor to dispose of or use collateral, without more, does not subject a secured party to liability  
6 in contract or tort for the debtor's acts or omissions.

7 Section 9-403. (a) In this section, "value" has the meaning provided in Section 3-303(a).

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

11 (1) for value;

12 (2) in good faith;

13 (3) without notice of a claim of a property or possessory right to the property assigned;

14 and

15 (4) without notice of a defense or claim in recoupment of the type that may be asserted  
16 against a person entitled to enforce a negotiable instrument under Section 3-305(a).

17 (c) Subsection (b) does not apply to defenses of a type that may be asserted against a holder  
18 in due course of a negotiable instrument under Section 3-305(b).

19 (d) In a consumer transaction, if a record evidences the account debtor's obligation, law  
20 other than this article requires that the record include a statement to the effect that the rights of  
21 an assignee are subject to claims or defenses that the account debtor could assert against the  
22 original obligee, and the record does not include such a statement:

23 (1) the record has the same effect as if the record included such a statement; and

24 (2) the account debtor may assert against an assignee those claims and defenses that  
25 would have been available if the record included such a statement.

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

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

7 Section 9-404. (a) Unless an account debtor has made an enforceable agreement not to assert  
8 defenses or claims, and subject to subsections (b) through (e), the rights of an assignee are  
9 subject to:

10 (1) all terms of the agreement between the account debtor and assignor and any defense  
11 or claim in recoupment arising from the transaction that gave rise to the contract; and

12 (2) any other defense or claim of the account debtor against the assignor which accrues  
13 before the account debtor receives a notification of the assignment authenticated by  
14 the assignor or the assignee.

15 (b) Subject to subsection (c) and except as otherwise provided in subsection (d), the claim  
16 of an account debtor against an assignor may be asserted against an assignee under subsection  
17 (a) only to reduce the amount the account debtor owes.

18 (c) This section is subject to law other than this article which establishes a different rule for  
19 an account debtor who is an individual and who incurred the obligation primarily for personal,  
20 family, or household purposes.

21 (d) In a consumer transaction, if a record evidences the account debtor's obligation, law  
22 other than this article requires that the record include a statement to the effect that the account  
23 debtor's recovery against an assignee with respect to claims and defenses against the assignor  
24 may not exceed amounts paid by the account debtor under the record, and the record does not  
25 include such a statement, the extent to which a claim of an account debtor against the assignor

1 may be asserted against an assignee is determined as if the record included such a statement.

2 (e) This section does not apply to an assignment of a health-care-insurance receivable.

3 Section 9-405. (a) A modification of or substitution for an assigned contract is effective  
4 against an assignee if made in good faith. The assignee acquires corresponding rights under the  
5 modified or substituted contract. The assignment may provide that the modification or  
6 substitution is a breach of contract by the assignor. This subsection is subject to subsections (b)  
7 through (d).

8 (b) Subsection (a) applies to the extent that:

9 (1) the right to payment or a part thereof under an assigned contract has not been fully  
10 earned by performance; or

11 (2) the right to payment or a part thereof has been fully earned by performance and the  
12 account debtor has not received notification of the assignment under Section  
13 9-406(a).

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

17 (d) This section does not apply to an assignment of a health-care-insurance receivable.

18 Section 9-406. (a) Subject to subsections (b) through (i), an account debtor on an account,  
19 chattel paper, or a payment intangible may discharge its obligation by paying the assignor until,  
20 but not after, the account debtor receives a notification, authenticated by the assignor or the  
21 assignee, that the amount due or to become due has been assigned and that payment is to be  
22 made to the assignee. After receipt of the notification, the account debtor may discharge its  
23 obligation by paying the assignee and may not discharge the obligation by paying the assignor.

24 (b) Subject to subsection (h), notification is ineffective under subsection (a):

25 (1) if it does not reasonably identify the rights assigned;

1       (2) to the extent that an agreement between an account debtor and a seller of a payment  
2           intangible limits the account debtor's duty to pay a person other than the seller and  
3           the limitation is effective under law other than this article; or

4       (3) at the option of an account debtor, if the notification notifies the account debtor to  
5           make less than the full amount of any installment or other periodic payment to the  
6           assignee, even if:

7           (A) only a portion of the account, chattel paper, or payment intangible has been  
8           assigned to that assignee;

9           (B) a portion has been assigned to another assignee; or

10          (C) the account debtor knows that the assignment to that assignee is limited.

11       (c) Subject to subsection (h), if requested by the account debtor, an assignee shall seasonably  
12       furnish reasonable proof that the assignment has been made. Unless the assignee complies, the  
13       account debtor may discharge its obligation by paying the assignor, even if the account debtor  
14       has received a notification under subsection (a).

15       (d) Except as otherwise provided in subsection (e) and Sections 2A-303 and 9-407, and  
16       subject to subsection (h), a term in an agreement between an account debtor and an assignor or  
17       in a promissory note is ineffective to the extent that it:

18       (1) prohibits, restricts, or requires the consent of the account debtor or person obligated  
19           on the promissory note to the assignment or transfer of, or the creation, attachment,  
20           perfection, or enforcement of a security interest in, the account, chattel paper,  
21           payment intangible, or promissory note; or

22       (2) provides that the assignment or transfer or the creation, attachment, perfection, or  
23           enforcement of the security interest may give rise to a default, breach, right of  
24           recoupment, claim, defense, termination, right of termination, or remedy under the  
25           account, chattel paper, payment intangible, or promissory note.

1 (e) Subsection (d) does not apply to the sale of a payment intangible or promissory note.

2 (f) Except as otherwise provided in Sections 2A-303 and 9-407 and subject to subsections

3 (h) and (i), a rule of law, statute, or regulation that prohibits, restricts, or requires the consent

4 of a government, governmental body or official, or account debtor to the assignment or transfer

5 of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that

6 the rule of law, statute, or regulation:

7 (1) prohibits, restricts, or requires the consent of the government, governmental body or

8 official, or account debtor to the assignment or transfer of, or the creation,

9 attachment, perfection, or enforcement of a security interest in the account or chattel

10 paper; or

11 (2) provides that the assignment or transfer or the creation, attachment, perfection, or

12 enforcement of the security interest may give rise to a default, breach, right of

13 recoupment, claim, defense, termination, right of termination, or remedy under the

14 account or chattel paper.

15 (g) Subject to subsection (h), an account debtor may not waive or vary its option under

16 subsection (b)(3).

17 (h) This section is subject to law other than this article which establishes a different rule for

18 an account debtor who is an individual and who incurred the obligation primarily for personal,

19 family, or household purposes.

20 (i) This section does not apply to an assignment of a health-care-insurance receivable.

21 (j) This section prevails over any inconsistent statute.

22 Section 9-407. (a) Except as otherwise provided in subsection (b), a term in a lease

23 agreement is ineffective to the extent that it:

24 (1) prohibits, restricts, or requires the consent of a party to the lease to the assignment

25 or transfer of, or the creation, attachment, perfection, or enforcement of a security

1 interest in, an interest of a party under the lease contract or in the lessor's residual  
2 interest in the goods; or

3 (2) provides that the assignment or transfer or the creation, attachment, perfection, or  
4 enforcement of the security interest may give rise to a default, breach, right of  
5 recoupment, claim, defense, termination, right of termination, or remedy under the  
6 lease.

7 (b) Except as otherwise provided in Section 2A-303(7), a term described in subsection (a)(2)  
8 is effective to the extent that there is:

9 (1) a transfer by the lessee of the lessee's right of possession or use of the goods in  
10 violation of the term; or

11 (2) a delegation of a material performance of either party to the lease contract in violation  
12 of the term.

13 (c) The creation, attachment, perfection, or enforcement of a security interest in the lessor's  
14 interest under the lease contract or the lessor's residual interest in the goods is not a transfer that  
15 materially impairs the lessee's prospect of obtaining return performance or materially changes  
16 the duty of or materially increases the burden or risk imposed on the lessee within the purview  
17 of Section 2A-303(4) unless, and then only to the extent that, enforcement actually results in a  
18 delegation of material performance of the lessor.

19 Section 9-408. (a) Except as otherwise provided in subsection (b), a term in a promissory  
20 note or in an agreement between an account debtor and a debtor which relates to a health-care-  
21 insurance receivable or a general intangible, including a contract, permit, license, or franchise,  
22 and which term prohibits, restricts, or requires the consent of the person obligated on the  
23 promissory note or the account debtor to, the assignment or transfer of, or creation, attachment,  
24 or perfection of a security interest in, the promissory note, health-care-insurance receivable, or  
25 general intangible, is ineffective to the extent that the term:

1 (1) would impair the creation, attachment, or perfection of a security interest; or

2 (2) provides that the assignment or transfer or the creation, attachment, or perfection of  
3 the security interest may give rise to a default, breach, right of recoupment, claim,  
4 defense, termination, right of termination, or remedy under the promissory note,  
5 health-care-insurance receivable, or general intangible.

6 (b) Subsection (a) applies to a security interest in a payment intangible or promissory note  
7 only if the security interest arises out of a sale of the payment intangible or promissory note.

8 (c) A rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a  
9 government, governmental body or official, person obligated on a promissory note, or account  
10 debtor to the assignment or transfer of, or creation of a security interest in, a promissory note,  
11 health-care-insurance receivable, or general intangible, including a contract, permit, license, or  
12 franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law,  
13 statute, or regulation:

14 (1) would impair the creation, attachment, or perfection of a security interest; or

15 (2) provides that the assignment or transfer or the creation, attachment, or perfection of  
16 the security interest may give rise to a default, breach, right of recoupment, claim,  
17 defense, termination, right of termination, or remedy under the promissory note,  
18 health-care-insurance receivable, or general intangible.

19 (d) To the extent that a term in a promissory note or in an agreement between an account  
20 debtor and a debtor which relates to a health-care-insurance receivable or general intangible or  
21 a rule of law, statute, or regulation described in subsection (c) would be effective under law  
22 other than this article but is ineffective under subsection (a) or (c), the creation, attachment, or  
23 perfection of a security interest in the promissory note, health-care-insurance receivable, or  
24 general intangible:

25 (1) is not enforceable against the person obligated on the promissory note or the account

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

16 (e) This section prevails over any inconsistent statute.

17 Section 9-409. (a) A term in a letter of credit or a rule of law, statute, regulation, custom,  
18 or practice applicable to the letter of credit which prohibits, restricts, or requires the consent of  
19 an applicant, issuer, or nominated person to a beneficiary's assignment of or creation of a  
20 security interest in a letter-of-credit right is ineffective to the extent that the term or rule of law,  
21 statute, regulation, custom, or practice:

- 22 (1) would impair the creation, attachment, or perfection of a security interest in the letter-
- 23 of-credit right; or
- 24 (2) provides that the assignment or the creation, attachment, or perfection of the security
- 25 interest may give rise to a default, breach, right of recoupment, claim, defense,

1 termination, right of termination, or remedy under the letter-of-credit right.

2 (b) To the extent that a term in a letter of credit is ineffective under subsection (a) but would  
3 be effective under law other than this article or a custom or practice applicable to the letter of  
4 credit, to the transfer of a right to draw or otherwise demand performance under the letter of  
5 credit, or to the assignment of a right to proceeds of the letter of credit, the creation, attachment,  
6 or perfection of a security interest in the letter-of-credit right:

7 (1) is not enforceable against the applicant, issuer, nominated person, or transferee  
8 beneficiary;

9 (2) imposes no duties or obligations on the applicant, issuer, nominated person, or  
10 transferee beneficiary; and

11 (3) does not require the applicant, issuer, nominated person, or transferee beneficiary to  
12 recognize the security interest, pay or render performance to the secured party, or  
13 accept payment or other performance from the secured party.

14 Section 9-501. (a) Except as otherwise provided in subsection (b), if the local law of this  
15 State governs perfection of a security interest or agricultural lien, the office in which to file a  
16 financing statement to perfect the security interest or agricultural lien is:

17 (1) the office designated for the filing or recording of a record of a mortgage on the  
18 related real property, if:

19 (A) the collateral is as-extracted collateral or timber to be cut; or

20 (B) the financing statement is filed as a fixture filing and the collateral is goods that  
21 are or are to become fixtures; or

22 (2) the office of the secretary of state, in all other cases, including a case in which the  
23 collateral is goods that are or are to become fixtures and the financing statement is not  
24 filed as a fixture filing.

25 (b) The office in which to file a financing statement to perfect a security interest in collateral,

1 including fixtures, of a transmitting utility is the office of the secretary of state. The financing  
2 statement also constitutes a fixture filing as to the collateral indicated in the financing statement  
3 which is or is to become fixtures.

4 Section 9-501.1. All statements to continue, release, assign, amend or terminate any financing  
5 statements filed subsequent to December 31, 1979, and prior to July 1, 1980, notwithstanding  
6 any noncompliance with § 57A-9-401.1 as amended, are hereby cured, legalized and validated  
7 as fully as if such filings had been made in full compliance with § 57A-9-401.1.

8 Section 9-502. (a) Subject to subsection (b), a financing statement is sufficient only if it:

- 9 (1) provides the name of the debtor and either the social security number or the internal  
10 revenue service taxpayer identification number of the debtor;
- 11 (2) provides the name of the secured party or a representative of the secured party; and
- 12 (3) indicates the collateral covered by the financing statement.

13 (b) Except as otherwise provided in Section 9-501(b), to be sufficient, a financing statement  
14 that covers as-extracted collateral or timber to be cut, or which is filed as a fixture filing and  
15 covers goods that are or are to become fixtures, must satisfy subsection (a) and also:

- 16 (1) indicate that it covers this type of collateral;
- 17 (2) indicate that it is to be filed for record in the real property records;
- 18 (3) provide a description of the real property to which the collateral is related sufficient  
19 to give constructive notice of a mortgage under the law of this State if the description  
20 were contained in a record of the mortgage of the real property. A financing statement  
21 covering timber to be cut or covering minerals or the like (including oil and gas) or  
22 accounts subject to Section 9-301, or a financing statement filed as a fixture filing  
23 where the debtor is not a transmitting utility, must show that it covers this type of  
24 collateral, must recite that it is to be filed for record in the real estate records, and the  
25 financing statement must contain a description of the real estate sufficient if it were

1 contained in a mortgage of the real estate to give constructive notice of the mortgage  
2 under the law of this state. If the debtor does not have an interest of record in the real  
3 estate, the financing statement must show the name of a record owner. No description  
4 of the real estate or the name of the record owner thereof is required for a fixture  
5 filing where the debtor is a transmitting utility; and

6 (4) if the debtor does not have an interest of record in the real property, provide the name  
7 of a record owner.

8 (c) A record of a mortgage is effective, from the date of recording, as a financing statement  
9 filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to  
10 be cut only if:

11 (1) the record indicates the goods or accounts that it covers;

12 (2) the goods are or are to become fixtures related to the real property described in the  
13 record or the collateral is related to the real property described in the record and is as-  
14 extracted collateral or timber to be cut;

15 (3) the record satisfies the requirements for a financing statement in this section other  
16 than an indication that it is to be filed in the real property records; and

17 (4) the record is recorded.

18 (d) A financing statement may be filed before a security agreement is made or a security  
19 interest otherwise attaches.

20 Section 9-503. (a) A financing statement sufficiently provides the name of the debtor:

21 (1) if the debtor is a registered organization, only if the financing statement provides the  
22 name of the debtor indicated on the public record of the debtor's jurisdiction of  
23 organization which shows the debtor to have been organized;

24 (2) if the debtor is a decedent's estate, only if the financing statement provides the name  
25 of the decedent and indicates that the debtor is an estate;

1 (3) if the debtor is a trust or a trustee acting with respect to property held in trust, only  
2 if the financing statement:

3 (A) provides the name specified for the trust in its organic documents or, if no  
4 name is specified, provides the name of the settlor and additional information  
5 sufficient to distinguish the debtor from other trusts having one or more of the  
6 same settlors; and

7 (B) indicates, in the debtor's name or otherwise, that the debtor is a trust or is a  
8 trustee acting with respect to property held in trust; and

9 (4) in other cases:

10 (A) if the debtor has a name, only if it provides the individual or organizational  
11 name of the debtor; and

12 (B) if the debtor does not have a name, only if it provides the names of the  
13 partners, members, associates, or other persons comprising the debtor.

14 (b) A financing statement that provides the name of the debtor in accordance with subsection  
15 (a) is not rendered ineffective by the absence of:

16 (1) a trade name or other name of the debtor; or

17 (2) unless required under subsection (a)(4)(B), names of partners, members, associates,  
18 or other persons comprising the debtor.

19 (c) A financing statement that provides only the debtor's trade name does not sufficiently  
20 provide the name of the debtor.

21 (d) Failure to indicate the representative capacity of a secured party or representative of a  
22 secured party does not affect the sufficiency of a financing statement.

23 (e) A financing statement may provide the name of more than one debtor and the name of  
24 more than one secured party.

25 Section 9-504. A financing statement sufficiently indicates the collateral that it covers if the

1 financing statement provides:

2 (1) a description of the collateral pursuant to Section 9-108; or

3 (2) an indication that the financing statement covers all assets or all personal property.

4 Section 9-505. (a) A consignor, lessor, or other bailor of goods, a licensor, or a buyer of a  
5 payment intangible or promissory note may file a financing statement, or may comply with a  
6 statute or treaty described in Section 9-311(a), using the terms "consignor", "consignee",  
7 "lessor", "lessee", "bailor", "bailee", "licensor", "licensee", "owner", "registered owner", "buyer",  
8 "seller", or words of similar import, instead of the terms "secured party" and "debtor".

9 (b) This part applies to the filing of a financing statement under subsection (a) and, as  
10 appropriate, to compliance that is equivalent to filing a financing statement under Section  
11 9-311(b), but the filing or compliance is not of itself a factor in determining whether the  
12 collateral secures an obligation. If it is determined for another reason that the collateral secures  
13 an obligation, a security interest held by the consignor, lessor, bailor, licensor, owner, or buyer  
14 which attaches to the collateral is perfected by the filing or compliance.

15 Section 9-506. (a) A financing statement substantially satisfying the requirements of this part  
16 is effective, even if it has minor errors or omissions, unless the errors or omissions make the  
17 financing statement seriously misleading.

18 (b) Except as otherwise provided in subsection (c), a financing statement that fails sufficiently  
19 to provide the name of the debtor in accordance with Section 9-503(a) is seriously misleading.

20 (c) If a search of the records of the filing office under the debtor's correct name, using the  
21 filing office's standard search logic, if any, would disclose a financing statement that fails  
22 sufficiently to provide the name of the debtor in accordance with Section 9-503(a), the name  
23 provided does not make the financing statement seriously misleading.

24 (d) For purposes of Section 9-508(b), the "debtor's correct name" in subsection (c) means  
25 the correct name of the new debtor.

1 Section 9-507. (a) A filed financing statement remains effective with respect to collateral that  
2 is sold, exchanged, leased, licensed, or otherwise disposed of and in which a security interest or  
3 agricultural lien continues, even if the secured party knows of or consents to the disposition.

4 (b) Except as otherwise provided in subsection (c) and Section 9-508, a financing statement  
5 is not rendered ineffective if, after the financing statement is filed, the information provided in  
6 the financing statement becomes seriously misleading under Section 9-506.

7 (c) If a debtor so changes its name that a filed financing statement becomes seriously  
8 misleading under Section 9-506:

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

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

15 Section 9-508. (a) Except as otherwise provided in this section, a filed financing statement  
16 naming an original debtor is effective to perfect a security interest in collateral in which a new  
17 debtor has or acquires rights to the extent that the financing statement would have been effective  
18 had the original debtor acquired rights in the collateral.

19 (b) If the difference between the name of the original debtor and that of the new debtor  
20 causes a filed financing statement that is effective under subsection (a) to be seriously misleading  
21 under Section 9-506:

22 (1) the financing statement is effective to perfect a security interest in collateral acquired  
23 by the new debtor before, and within four months after, the new debtor becomes  
24 bound under Section 9-203(d); and

25 (2) the financing statement is not effective to perfect a security interest in collateral

1           acquired by the new debtor more than four months after the new debtor becomes  
2           bound under Section 9-203(d) unless an initial financing statement providing the name  
3           of the new debtor is filed before the expiration of that time.

4           (c) This section does not apply to collateral as to which a filed financing statement remains  
5           effective against the new debtor under Section 9-507(a).

6           Section 9-509. (a) A person may file an initial financing statement, amendment that adds  
7           collateral covered by a financing statement, or amendment that adds a debtor to a financing  
8           statement only if:

9           (1)    the debtor authorizes the filing in an authenticated record or pursuant to subsection  
10           (b) or (c); or

11           (2)    the person holds an agricultural lien that has become effective at the time of filing and  
12           the financing statement covers only collateral in which the person holds an agricultural  
13           lien.

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

16           (1)    the collateral described in the security agreement; and

17           (2)    property that becomes collateral under Section 9-315(a)(2), whether or not the  
18           security agreement expressly covers proceeds.

19           (c) By acquiring collateral in which a security interest or agricultural lien continues under  
20           Section 9-315(a)(1), a debtor authorizes the filing of an initial financing statement, and an  
21           amendment, covering the collateral and property that becomes collateral under Section 9-  
22           315(a)(2).

23           (d) A person may file an amendment other than an amendment that adds collateral covered  
24           by a financing statement or an amendment that adds a debtor to a financing statement only if:

25           (1)    the secured party of record authorizes the filing; or

1 (2) the amendment is a termination statement for a financing statement as to which the  
2 secured party of record has failed to file or send a termination statement as required  
3 by Section 9-513(a) or (c), the debtor authorizes the filing, and the termination  
4 statement indicates that the debtor authorized it to be filed.

5 (e) If there is more than one secured party of record for a financing statement, each secured  
6 party of record may authorize the filing of an amendment under subsection (d).

7 Section 9-510. (a) A filed record is effective only to the extent that it was filed by a person  
8 that may file it under Section 9-509.

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

11 (c) A continuation statement that is not filed within the period prescribed by Section 9-515(d)  
12 is ineffective.

13 Section 9-511. (a) A secured party of record with respect to a financing statement is a person  
14 whose name is provided as the name of the secured party or a representative of the secured party  
15 in an initial financing statement that has been filed. If an initial financing statement is filed under  
16 Section 9-514(a), the assignee named in the initial financing statement is the secured party of  
17 record with respect to the financing statement.

18 (b) If an amendment of a financing statement which provides the name of a person as a  
19 secured party or a representative of a secured party is filed, the person named in the amendment  
20 is a secured party of record. If an amendment is filed under Section 9-514(b), the assignee named  
21 in the amendment is a secured party of record.

22 (c) A person remains a secured party of record until the filing of an amendment of the  
23 financing statement which deletes the person.

24 Section 9-512. (a) Subject to Section 9-509, a person may add or delete collateral covered  
25 by, continue or terminate the effectiveness of, or, subject to subsection (e), otherwise amend the

1 information provided in, a financing statement by filing an amendment that:

2 (1) identifies, by its file number, the initial financing statement to which the amendment  
3 relates and either the social security number or internal revenue service taxpayer  
4 identification number of the debtor; and

5 (2) if the amendment relates to an initial financing statement filed or recorded in a filing  
6 office described in Section 9-501(a)(1), provides the date and time that the initial  
7 financing statement was filed or recorded and the information specified in Section 9-  
8 502(b).

9 (b) Except as otherwise provided in Section 9-515, the filing of an amendment does not  
10 extend the period of effectiveness of the financing statement.

11 (c) A financing statement that is amended by an amendment that adds collateral is effective  
12 as to the added collateral only from the date of the filing of the amendment.

13 (d) A financing statement that is amended by an amendment that adds a debtor is effective as to  
14 the added debtor only from the date of the filing of the amendment.

15 (e) An amendment is ineffective to the extent it:

16 (1) purports to delete all debtors and fails to provide the name of a debtor to be covered  
17 by the financing statement; or

18 (2) purports to delete all secured parties of record and fails to provide the name of a new  
19 secured party of record.

20 Section 9-513. (a) A secured party shall cause the secured party of record for a financing  
21 statement to file a termination statement for the financing statement if the financing statement  
22 covers consumer goods and:

23 (1) there is no obligation secured by the collateral covered by the financing statement and  
24 no commitment to make an advance, incur an obligation, or otherwise give value; or

25 (2) the debtor did not authorize the filing of the initial financing statement.

1 (b) To comply with subsection (a), a secured party shall cause the secured party of record  
2 to file the termination statement:

3 (1) within one month after there is no obligation secured by the collateral covered by the  
4 financing statement and no commitment to make an advance, incur an obligation, or  
5 otherwise give value; or

6 (2) if earlier, within 20 days after the secured party receives an authenticated demand  
7 from a debtor.

8 (c) In cases not governed by subsection (a), within 20 days after a secured party receives an  
9 authenticated demand from a debtor, the secured party shall cause the secured party of record  
10 for a financing statement to send to the debtor a termination statement for the financing  
11 statement or file the termination statement in the filing office if:

12 (1) except in the case of a financing statement covering accounts or chattel paper that has  
13 been sold or goods that are the subject of a consignment, there is no obligation  
14 secured by the collateral covered by the financing statement and no commitment to  
15 make an advance, incur an obligation, or otherwise give value;

16 (2) the financing statement covers accounts or chattel paper that has been sold but as to  
17 which the account debtor or other person obligated has discharged its obligation;

18 (3) the financing statement covers goods that were the subject of a consignment to the  
19 debtor but are not in the debtor's possession; or

20 (4) the debtor did not authorize the filing of the initial financing statement.

21 (d) Except as otherwise provided in Section 9-510, upon the filing of a termination statement  
22 with the filing office, the financing statement to which the termination statement relates ceases  
23 to be effective. Except as otherwise provided in Section 9-510, for purposes of Sections 9-  
24 519(g), 9-522(a), and 9-523(c), the filing with the filing office of a termination statement relating  
25 to a financing statement that indicates that the debtor is a transmitting utility also causes the

1 effectiveness of the financing statement to lapse.

2 Section 9-514. (a) Except as otherwise provided in subsection (c), an initial financing  
3 statement may reflect an assignment of all of the secured party's power to authorize an  
4 amendment to the financing statement by providing the name and mailing address of the assignee  
5 as the name and address of the secured party.

6 (b) Except as otherwise provided in subsection (c), a secured party of record may assign of  
7 record all or part of its power to authorize an amendment to a financing statement by filing in  
8 the filing office an amendment of the financing statement which:

- 9 (1) identifies, by its file number, the initial financing statement to which it relates;
- 10 (2) provides the name of the assignor; and
- 11 (3) provides the name and mailing address of the assignee.

12 (c) An assignment of record of a security interest in a fixture covered by a record of a  
13 mortgage which is effective as a financing statement filed as a fixture filing under Section  
14 9-502(c) may be made only by an assignment of record of the mortgage in the manner provided  
15 by law of this State other than the Uniform Commercial Code.

16 Section 9-515. (a) Except as otherwise provided in subsections (b), (e), (f), and (g), a filed  
17 financing statement is effective for a period of five years after the date of filing.

18 Financing statements filed before July 1, 1997, are effective for a period of five years from  
19 the date of filing and thereafter for a period of 60 days.

20 The expiration date established by a financing statement filed prior to July 1, 1997, whether  
21 or not continued by a continuation statement shall remain in full force and effect and is not  
22 diminished by any subsequent amendments to this Act.

23 (b) Except as otherwise provided in subsections (e), (f), and (g), an initial financing statement  
24 filed in connection with a public-finance transaction or manufactured-home transaction is  
25 effective for a period of 30 years after the date of filing if it indicates that it is filed in connection

1 with a public-finance transaction or manufactured-home transaction.

2 (c) The effectiveness of a filed financing statement lapses on the expiration of the period of  
3 its effectiveness unless before the lapse a continuation statement is filed pursuant to subsection  
4 (d). Upon lapse, a financing statement ceases to be effective and any security interest or  
5 agricultural lien that was perfected by the financing statement becomes unperfected, unless the  
6 security interest is perfected otherwise. If the security interest or agricultural lien becomes  
7 unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the  
8 collateral for value.

9 (d) A continuation statement may be filed only within six months before the expiration of the  
10 five-year period specified in subsection (a) or the 30-year period specified in subsection (b),  
11 whichever is applicable.

12 However, for financing statements filed before July 1, 1997, a continuation statement may  
13 be filed within six months before and 60 days after the expiration of the five-year period.

14 (e) Except as otherwise provided in Section 9-510, upon timely filing of a continuation  
15 statement, the effectiveness of the initial financing statement continues for a period of five years  
16 and, for initial financing statements filed before July 1, 1997, the effectiveness of the initial  
17 financing statement continues for a period of five years and sixty days, commencing on the day  
18 on which the financing statement would have become ineffective in the absence of the filing.  
19 Upon the expiration of the five-year period, the financing statement lapses in the same manner  
20 as provided in subsection (c), unless, before the lapse, another continuation statement is filed  
21 pursuant to subsection (d). Succeeding continuation statements may be filed in the same manner  
22 to continue the effectiveness of the initial financing statement.

23 (f) If a debtor is a transmitting utility and a filed financing statement so indicates, the  
24 financing statement is effective until a termination statement is filed.

25 (g) A record of a mortgage that is effective as a financing statement filed as a fixture filing

1 under Section 9-502(c) remains effective as a financing statement filed as a fixture filing until the  
2 mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real  
3 property.

4 Section 9-516. (a) Except as otherwise provided in subsection (b), communication of a  
5 record to a filing office and tender of the filing fee or acceptance of the record by the filing office  
6 constitutes filing.

7 (b) Filing does not occur with respect to a record that a filing office refuses to accept  
8 because:

9 (1) the record is not communicated by a method or medium of communication authorized  
10 by the filing office;

11 (2) an amount equal to or greater than the applicable filing fee is not tendered;

12 (3) the filing office is unable to index the record because:

13 (A) in the case of an initial financing statement, the record does not provide a name  
14 for the debtor;

15 (B) in the case of an amendment or correction statement, the record:

16 (i) does not identify the initial financing statement as required by Section  
17 9-512 or 9-518, as applicable; or

18 (ii) identifies an initial financing statement whose effectiveness has lapsed  
19 under Section 9-515;

20 (C) in the case of an initial financing statement that provides the name of a debtor  
21 identified as an individual or an amendment that provides a name of a debtor  
22 identified as an individual which was not previously provided in the financing  
23 statement to which the record relates, the record does not identify the debtor's  
24 last name; or

25 (D) in the case of a record filed or recorded in the filing office described in Section

1                   9-501(a)(1), the record does not provide a sufficient description of the real  
2                   property to which it relates;

3       (4)   in the case of an initial financing statement or an amendment that adds a secured party  
4           of record, the record does not provide a name and mailing address for the secured  
5           party of record;

6       (5)   in the case of an initial financing statement or an amendment that provides a name of  
7           a debtor which was not previously provided in the financing statement to which the  
8           amendment relates, the record does not:

9           (A)   provide a mailing address for the debtor;

10          (B)   indicate whether the debtor is an individual or an organization; or

11          (C)   if the financing statement indicates that the debtor is an organization, provide:

12               (i)   a type of organization for the debtor;

13               (ii)  a jurisdiction of organization for the debtor; or

14               (iii) an organizational identification number for the debtor or indicate that  
15               the debtor has none;

16       (6)   in the case of an assignment reflected in an initial financing statement under Section  
17           9-514(a) or an amendment filed under Section 9-514(b), the record does not provide  
18           a name and mailing address for the assignee; or

19       (7)   in the case of a continuation statement, the record is not filed within the six-month  
20           period prescribed by Section 9-515(d).

21       (c) For purposes of subsection (b):

22           (1)   a record does not provide information if the filing office is unable to read or decipher  
23           the information; and

24           (2)   a record that does not indicate that it is an amendment or identify an initial financing  
25           statement to which it relates, as required by Section 9-512, 9-514, or 9-518, is an

1 initial financing statement.

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

6 Section 9-517. The failure of the filing office to index a record correctly does not affect the  
7 effectiveness of the filed record.

8 Section 9-518. (a) A person may file in the filing office a correction statement with respect  
9 to a record indexed there under the person's name if the person believes that the record is  
10 inaccurate or was wrongfully filed.

11 (b) A correction statement must:

12 (1) identify the record to which it relates by:

13 (A) the file number assigned to the initial financing statement to which the record  
14 relates; and

15 (B) if the correction statement relates to a record filed or recorded in a filing office  
16 described in Section 9-501(a)(1), the date and time that the initial financing  
17 statement was filed or recorded and the information specified in Section 9-  
18 502(b);

19 (2) indicate that it is a correction statement; and

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

24 (c) The filing of a correction statement does not affect the effectiveness of an initial financing  
25 statement or other filed record.

1 Section 9-519. (a) For each record filed in a filing office, the filing office shall:

- 2 (1) assign a unique number to the filed record;
- 3 (2) create a record that bears the number assigned to the filed record and the date and  
4 time of filing;
- 5 (3) maintain the filed record for public inspection; and
- 6 (4) index the filed record in accordance with subsections (c), (d), and (e).

7 (b) A file number assigned after July 1, 2001, must include a digit that:

- 8 (1) is mathematically derived from or related to the other digits of the file number; and
- 9 (2) aids the filing office in determining whether a number communicated as the file  
10 number includes a single-digit or transpositional error.

11 (c) Except as otherwise provided in subsections (d) and (e), the filing office shall:

- 12 (1) index an initial financing statement according to the name of the debtor and index all  
13 filed records relating to the initial financing statement in a manner that associates with  
14 one another an initial financing statement and all filed records relating to the initial  
15 financing statement; and
- 16 (2) index a record that provides a name of a debtor which was not previously provided  
17 in the financing statement to which the record relates also according to the name that  
18 was not previously provided.

19 (d) If a financing statement is filed as a fixture filing or covers as-extracted collateral or  
20 timber to be cut, it must be filed for record and the filing office shall index it:

- 21 (1) under the names of the debtor and of each owner of record shown on the financing  
22 statement as if they were the mortgagors under a mortgage of the real property  
23 described; and
- 24 (2) to the extent that the law of this State provides for indexing of records of mortgages  
25 under the name of the mortgagee, under the name of the secured party as if the

1 secured party were the mortgagee thereunder, or, if indexing is by description, as if  
2 the financing statement were a record of a mortgage of the real property described.

3 (e) If a financing statement is filed as a fixture filing or covers as-extracted collateral or  
4 timber to be cut, the filing office shall index an assignment filed under Section 9-514(a) or an  
5 amendment filed under Section 9-514(b):

6 (1) under the name of the assignor as grantor; and

7 (2) to the extent that the law of this State provides for indexing a record of the  
8 assignment of a mortgage under the name of the assignee, under the name of the  
9 assignee.

10 (f) The filing office shall maintain a capability:

11 (1) to retrieve a record by the name of the debtor and:

12 (A) if the filing office is described in Section 9-501(a)(1), by the file number  
13 assigned to the initial financing statement to which the record relates and the  
14 date and time that the record was filed or recorded; or

15 (B) if the filing office is described in Section 9-501(a)(2), by the file number  
16 assigned to the initial financing statement to which the record relates; and

17 (2) to associate and retrieve with one another an initial financing statement and each filed  
18 record relating to the initial financing statement.

19 (g) The filing office may not remove a debtor's name from the index until one year after the  
20 effectiveness of a financing statement naming the debtor lapses under Section 9-515 with respect  
21 to all secured parties of record.

22 (h) The filing office shall perform the acts required by subsections (a) through (e) at the time  
23 and in the manner prescribed by filing-office rule, but not later than two business days after the  
24 filing office receives the record in question.

25 (i) Subsections (b) and (h) do not apply to a filing office described in Section 9-501(a)(1).

1       Section 9-520. (a) A filing office shall refuse to accept a record for filing for a reason set  
2       forth in Section 9-516(b) and may refuse to accept a record for filing only for a reason set forth  
3       in Section 9-516(b).

4       (b) If a filing office refuses to accept a record for filing, it shall communicate to the person  
5       that presented the record the fact of and reason for the refusal and the date and time the record  
6       would have been filed had the filing office accepted it. The communication must be made at the  
7       time and in the manner prescribed by filing-office rule but, in the case of a filing office described  
8       in Section 9-501(a)(2), in no event more than two business days after the filing office receives  
9       the record.

10       (c) A filed financing statement satisfying Section 9-502(a) and (b) is effective, even if the  
11       filing office is required to refuse to accept it for filing under subsection (a). However, Section  
12       9-338 applies to a filed financing statement providing information described in Section 9-  
13       516(b)(5) which is incorrect at the time the financing statement is filed.

14       (d) If a record communicated to a filing office provides information that relates to more than  
15       one debtor, this part applies as to each debtor separately.

16       Section 9-521. (a) A filing office that accepts written records may not refuse to accept a  
17       written initial financing statement in the following form and format except for a reason set forth  
18       in Section 9-516(b):

# UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]
B. SEND ACKNOWLEDGEMENT TO: [Name and Address]

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

**1. DEBTOR'S EXACT FULL LEGAL NAME – insert only one debtor (1a or 1b) – do not abbreviate or combine names**

OR	1a. ORGANIZATION'S NAME				
	1b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX	
1c. MAILING ADDRESS		CITY	STATE	POSTAL CODE	COUNTRY
1d. TAX ID # SSN OR EIN	ADD'L INFO RE ORGANIZATION DEBTOR	1e. TYPE OF ORGANIZATION	1f. JURISDICTION OF ORGANIZATION	1g. ORGANIZATIONAL ID#, if any <input type="checkbox"/> NONE	

**2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – insert only one debtor name (2a or 2b) – do not abbreviate or combine names**

OR	2a. ORGANIZATION'S NAME				
	2b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX	
2c. MAILING ADDRESS		CITY	STATE	POSTAL CODE	COUNTRY
2d. TAX ID # SSN OR EIN	ADD'L INFO RE ORGANIZATION DEBTOR	2e. TYPE OF ORGANIZATION	2f. JURISDICTION OF ORGANIZATION	2g. ORGANIZATIONAL ID#, if any <input type="checkbox"/> NONE	

**3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) – insert only one secured party name (3a or 3b)**

OR	3a. ORGANIZATION'S NAME				
	3b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX	
3c. MAILING ADDRESS		CITY	STATE	POSTAL CODE	COUNTRY

4. This FINANCING STATEMENT covers the following collateral:

5. ALTERNATIVE DESIGNATION (if applicable): <input type="checkbox"/> LESSEE/LESSOR <input type="checkbox"/> CONSIGNEE/CONSIGNOR <input type="checkbox"/> BAILEE/BAILOR <input type="checkbox"/> SELLER/BUYER <input type="checkbox"/> AG LIEN <input type="checkbox"/> NON-UCC FILING		
6. <input type="checkbox"/> This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS. Attach Addendum (if applicable)	7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) [ADDITIONAL FEE] [optional]	<input type="checkbox"/> All Debtors <input type="checkbox"/> Debtor 1 <input type="checkbox"/> Debtor 2
8. OPTIONAL FILER REFERENCE DATA		

**UCC FINANCING STATEMENT ADDENDUM**

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

**9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT**

OR	9a. ORGANIZATION'S NAME		
	9b. INDIVIDUAL'S LAST NAME	FIRSTNAME	MIDDLE NAME, SUFFIX

10. MISCELLANEOUS:

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

**11. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – insert only one name (1a or 1b) – do not abbreviate or combine names**

OR	11a. ORGANIZATION'S NAME				
	11b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX	
11c. MAILING ADDRESS		CITY	STATE	POSTAL CODE	COUNTRY
11d. TAX ID #SSN OR EIN	ADD'L INFO RE ORGANIZATION DEBTOR	11e. TYPE OF ORGANIZATION	11f. JURISDICTION OF ORGANIZATION	11g. ORGANIZATIONAL ID#, if any <input type="checkbox"/> NONE	

**12. ADDITIONAL SECURED PARTY'S or  ASSIGNED S/P'S – insert only one name (12a or 12b)**

OR	12a. ORGANIZATION'S NAME				
	12b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX	
12c. MAILING ADDRESS		CITY	STATE	POSTAL CODE	COUNTRY

13. This FINANCING STATEMENT covers  
 timber to be cut or  as extracted collateral, or is filed as  
 future filing.

14. Description of real estate:

15. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

16. Additional collateral description:

17. Check only if applicable and check only one box.  
 Debtor is a  Trust, or  
 Trustee acting with respect to property held in trust, or  
 Decedent's Estate

18. Check only if applicable and check only one box.  
 Debtor is a TRANSMITTING UTILITY  
 Filed in connection with a Manufactured-Home Transaction – effective 30 years  
 Filed in connection with a Public Finance Transaction – effective 30 years

- 1 (b) A filing office that accepts written records may not refuse to accept a written record in  
 2 the following form and format except for a reason set forth in Section 9-516(b):

**UCC FINANCING STATEMENT AMENDMENT**  
 FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]				
B. SEND ACKNOWLEDGEMENT TO: [Name and Address]				
THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY				
1a. INITIAL FINANCING STATEMENT FILE #		1b. This FINANCING STATEMENT AMENDMENT is to be filed (for record) (or recorded) in the <input type="checkbox"/> REAL ESTATE RECORDS.		
2. <input type="checkbox"/> TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to security interest(s) of the Secured Party authorizing this Termination Statement.				
3. <input type="checkbox"/> CONTINUATION: Effectiveness of the Financing Statement identified above with respect to security interest(s) of the Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law.				
4. <input type="checkbox"/> ASSIGNMENT (full or partial): Give name of assignee in Item 7a or 7b and address of assignee in Item 7c; and also give name of assignor in Item 9.				
5. AMENDMENT (PARTY INFORMATION): This Amendment affects <input type="checkbox"/> Debtor or <input type="checkbox"/> Secured Party of record. Check only <u>one</u> of these two boxes.  Also check <u>one</u> of the following three boxes and provide appropriate information in Items 6 and/or 7. <input type="checkbox"/> CHANGE name and/or address: Give current record name in Item 6a or 6b; also give new name (if name change) in Item 7a or 7b and/or new address (if address change) in Item 7c. <input type="checkbox"/> DELETE name: Give record name to be deleted in Item 6a or 6b. <input type="checkbox"/> ADD name: Complete Item 7a or 7b, and also Item 7c; also complete items 7d-7g (if applicable).				
6. CURRENT RECORD INFORMATION:				
6a. ORGANIZATION'S NAME				
OR	6b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
7. CHANGED (NEW) OR ADDED INFORMATION:				
7a. ORGANIZATION'S NAME				
OR	7b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
7c. MAILING ADDRESS		CITY	STATE	POSTAL CODE      COUNTRY
7d. TAX ID # SSN OR EIN	ADD'L INFO RE ORGANIZATION DEBTOR	7e. TYPE OF ORGANIZATION	7f. JURISDICTION OF ORGANIZATION	7g. ORGANIZATIONAL ID#, if any <input type="checkbox"/> NONE
8. AMENDMENT (COLLATERAL CHANGE): check only <u>one</u> box. Describe collateral <input type="checkbox"/> deleted or <input type="checkbox"/> added, or give entire <input type="checkbox"/> restated collateral description, or describe collateral <input type="checkbox"/> assigned.				
9. NAME of SECURED PARTY of RECORD AUTHORIZING THIS AMENDMENT (name of assignor, if this is an Assignment). If this is an Amendment authorized by a Debtor which adds collateral or adds the authorizing Debtor, or if this is a Termination authorized by a Debtor, check here <input type="checkbox"/> and enter name of DEBTOR authorizing this Amendment.				
9a. ORGANIZATION'S NAME				
OR	9b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
10. OPTIONAL FILER REFERENCE DATA				

**UCC FINANCING STATEMENT AMENDMENT ADDENDUM**

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

11. INITIAL FINANCING STATEMENT FILE # (same as item 1a on Amendment form)			
12. NAME OF PARTY AUTHORIZING THIS AMENDMENT (same as Item 9 on Amendment form)			
12a. ORGANIZATION'S NAME			
OR	12b. INDIVIDUAL'S NAME	FIRST NAME	MIDDLE NAME, SUFFIX

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

13. Use this space for additional information			
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1 Section 9-522. (a) The filing office shall maintain a record of the information provided in a  
2 filed financing statement for at least one year after the effectiveness of the financing statement  
3 has lapsed under Section 9-515 with respect to all secured parties of record. The record must  
4 be retrievable by using the name of the debtor and:

5 (1) if the record was filed or recorded in the filing office described in Section 9-501(a)(1),  
6 by using the file number assigned to the initial financing statement to which the record  
7 relates and the date and time that the record was filed or recorded; or

8 (2) if the record was filed in the filing office described in Section 9-501(a)(2), by using  
9 the file number assigned to the initial financing statement to which the record relates.

10 (b) Except to the extent that a statute governing disposition of public records provides  
11 otherwise, the filing office immediately may destroy any written record evidencing a financing  
12 statement. However, if the filing office destroys a written record, it shall maintain another record  
13 of the financing statement which complies with subsection (a).

14 Section 9-523. (a) If a person that files a written record requests an acknowledgment of the  
15 filing, the filing office shall send to the person an image of the record showing the number  
16 assigned to the record pursuant to Section 9-519(a)(1) and the date and time of the filing of the  
17 record. However, if the person furnishes a copy of the record to the filing office, the filing office  
18 may instead:

19 (1) note upon the copy the number assigned to the record pursuant to Section  
20 9-519(a)(1) and the date and time of the filing of the record; and

21 (2) send the copy to the person.

22 (b) If a person files a record other than a written record, the filing office shall communicate

1 to the person an acknowledgment that provides:

2 (1) the information in the record;

3 (2) the number assigned to the record pursuant to Section 9-519(a)(1); and

4 (3) the date and time of the filing of the record.

5 (c) The filing office shall communicate or otherwise make available in a record the following  
6 information to any person that requests it:

7 (1) whether there is on file on a date and time specified by the filing office, but not a date  
8 earlier than three business days before the filing office receives the request, any  
9 financing statement that:

10 (A) designates a particular debtor or, if the request so states, designates a particular  
11 debtor at the address specified in the request;

12 (B) has not lapsed under Section 9-515 with respect to all secured parties of  
13 record; and

14 (C) if the request so states, has lapsed under Section 9-515 and a record of which  
15 is maintained by the filing office under Section 9-522(a);

16 (2) the date and time of filing of each financing statement; and

17 (3) the information provided in each financing statement.

18 (d) In complying with its duty under subsection (c), the filing office may communicate  
19 information in any medium. However, if requested, the filing office shall communicate  
20 information by issuing a record that can be admitted into evidence in the courts of this State  
21 without extrinsic evidence of its authenticity.

22 A computer printout from the centralized computer system established by the secretary of  
23 state constitutes the certificate of the secretary of state as to whether there is on file, on the date  
24 and hour stated thereon, a financing statement covering the following collateral: farm products  
25 or accounts, or livestock, or general intangibles arising from or relating to the sale of farm

1 products by a farmer, or crops growing or to be grown, or equipment used in farming operations.

2 The secretary of state shall, upon a telephone request, furnish to any person, company, or  
3 corporation, information as to whether a financing statement describing farm collateral has been  
4 filed in the office of the secretary of state and, if such financing statement has been filed, the  
5 secretary of state shall also furnish the name and business address of the secured creditor.  
6 However, the secretary of state need not answer telephone inquiries in writing nor send written  
7 confirmation from a telephone request. The secretary of state is not responsible for accuracy and  
8 completeness of the information furnished verbally in response to a telephone request. The  
9 secretary of state shall provide a toll-free telephone number to provide access for telephone  
10 requests.

11 (e) The filing office shall perform the acts required by subsections (a) through (d) at the time  
12 and in the manner prescribed by filing-office rule, but not later than two business days after the  
13 filing office receives the request.

14 Section 9-524. Delay by the filing office beyond a time limit prescribed by this part is excused  
15 if:

16 (1) the delay is caused by interruption of communication or computer facilities, war,  
17 emergency conditions, failure of equipment, or other circumstances beyond control  
18 of the filing office; and

19 (2) the filing office exercises reasonable diligence under the circumstances.

20 Section 9-525. (a) Except as otherwise provided in subsection (e), the fee for filing and  
21 indexing a record under this part, other than an initial financing statement of the kind described  
22 in subsection (b), is [the amount specified in subsection (c), if applicable, plus]:

23 (1) \$ \_\_[X]\_\_\_\_\_ if the record is communicated in writing and consists of one or two  
24 pages;

25 (2) \$ \_\_[2X]\_\_\_\_\_ if the record is communicated in writing and consists of more than

1 two pages; and

2 (3) \$ \_\_[1/2X]\_\_ if the record is communicated by another medium authorized by filing-  
3 office rule.

4 (b) Except as otherwise provided in subsection (e), the fee for filing and indexing an initial  
5 financing statement of the following kind is [the amount specified in subsection (c), if applicable,  
6 plus]:

7 (1) \$ \_\_\_\_\_ if the financing statement indicates that it is filed in connection with a public-  
8 finance transaction;

9 (2) \$ \_\_\_\_\_ if the financing statement indicates that it is filed in connection with a  
10 manufactured-home transaction.

11 [Alternative A]

12 (c) The number of names required to be indexed does not affect the amount of the fee in  
13 subsections (a) and (b).

14 [Alternative B]

15 (c) Except as otherwise provided in subsection (e), if a record is communicated in writing,  
16 the fee for each name more than two required to be indexed is \$ \_\_\_\_\_.

17 (d) The fee for responding to a request for information from the filing office, including for  
18 [issuing a certificate showing] [communicating] whether there is on file any financing statement  
19 naming a particular debtor, is:

20 (1) \$ \_\_\_\_\_ if the request is communicated in writing; and

21 (2) \$ \_\_\_\_\_ if the request is communicated by another medium authorized by filing-office  
22 rule.

23 (e) This section does not require a fee with respect to a record of a mortgage which is  
24 effective as a financing statement filed as a fixture filing or as a financing statement covering as-  
25 extracted collateral or timber to be cut under Section 9-502(c). However, the recording and

1 satisfaction fees that otherwise would be applicable to the record of the mortgage apply.

2 Section 9-525.1. For the purposes of former § 57A-9-401, a filing made in the county office  
3 of register of deeds prior to July 1, 1986, which has not lapsed prior to July 1, 1986, shall remain  
4 effective for the period provided by this title. Any continuation of or amendment to such filing  
5 shall be made with the secretary of state. Such central filing shall be accompanied by a certified  
6 copy of the original filed financing statement.

7 Section 9-525.2. The secretary of state may promulgate all necessary regulations under the  
8 provisions of chapter 1-26 to implement a central filing system for filing financing statements.

9 Section 9-525.3. The secretary of state may adopt rules concerning the operation of the  
10 central agricultural security interest computer filing system, prescribing such matters as format  
11 for data and the type of information to be recorded from the financing statement.

12 Section 9-526. (a) The secretary of state shall adopt rules to implement this article. The  
13 filing-office rules must be:

14 (1) consistent with this article; and

15 (2) adopted and published in accordance with chapter 1-26.

16 (b) To keep the filing-office rules and practices of the filing office in harmony with the rules  
17 and practices of filing offices in other jurisdictions that enact substantially this part, and to keep  
18 the technology used by the filing office compatible with the technology used by filing offices in  
19 other jurisdictions that enact substantially this part, the secretary of state's office, so far as is  
20 consistent with the purposes, policies, and provisions of this article, in adopting, amending, and  
21 repealing filing-office rules, shall:

22 (1) consult with filing offices in other jurisdictions that enact substantially this part; and

23 (2) consult the most recent version of the Model Rules promulgated by the International  
24 Association of Corporate Administrators or any successor organization; and

25 (3) take into consideration the rules and practices of, and the technology used by, filing

1 offices in other jurisdictions that enact substantially this part.

2 Section 9-601. (a) After default, a secured party has the rights provided in this part and,  
3 except as otherwise provided in Section 9-602, those provided by agreement of the parties. A  
4 secured party:

5 (1) may reduce a claim to judgment, foreclose, or otherwise enforce the claim, security  
6 interest, or agricultural lien by any available judicial procedure; and

7 (2) if the collateral is documents, may proceed either as to the documents or as to the  
8 goods they cover.

9 (b) A secured party in possession of collateral or control of collateral under Section 9-104,  
10 9-105, 9-106, or 9-107 has the rights and duties provided in Section 9-207.

11 (c) The rights under subsections (a) and (b) are cumulative and may be exercised  
12 simultaneously.

13 (d) Except as otherwise provided in subsection (g) and Section 9-605, after default, a debtor  
14 and an obligor have the rights provided in this part and by agreement of the parties.

15 (e) If a secured party has reduced its claim to judgment, the lien of any levy that may be made  
16 upon the collateral by virtue of an execution based upon the judgment relates back to the earliest  
17 of:

18 (1) the date of perfection of the security interest or agricultural lien in the collateral;

19 (2) the date of filing a financing statement covering the collateral; or

20 (3) any date specified in a statute under which the agricultural lien was created.

21 (f) A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien  
22 by judicial procedure within the meaning of this section. A secured party may purchase at the sale  
23 and thereafter hold the collateral free of any other requirements of this article.

24 (g) Except as otherwise provided in Section 9-607(c), this part imposes no duties upon a  
25 secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles,

1 or promissory notes.

2 Section 9-602. Except as otherwise provided in Section 9-624, to the extent that they give  
3 rights to a debtor or obligor and impose duties on a secured party, the debtor or obligor may not  
4 waive or vary the rules stated in the following listed sections:

5 (1) Section 9-207(b)(4)(C), which deals with use and operation of the collateral by the  
6 secured party;

7 (2) Section 9-210, which deals with requests for an accounting and requests concerning  
8 a list of collateral and statement of account;

9 (3) Section 9-607(c), which deals with collection and enforcement of collateral;

10 (4) Sections 9-608(a) and 9-615(c) to the extent that they deal with application or  
11 payment of noncash proceeds of collection, enforcement, or disposition;

12 (5) Sections 9-608(a) and 9-615(d) to the extent that they require accounting for or  
13 payment of surplus proceeds of collateral;

14 (6) Section 9-609 to the extent that it imposes upon a secured party that takes possession  
15 of collateral without judicial process the duty to do so without breach of the peace;

16 (7) Sections 9-610(b), 9-611, 9-613, and 9-614, which deal with disposition of collateral;

17 (8) Section 9-615(f), which deals with calculation of a deficiency or surplus when a  
18 disposition is made to the secured party, a person related to the secured party, or a  
19 secondary obligor;

20 (9) Section 9-616, which deals with explanation of the calculation of a surplus or  
21 deficiency;

22 (10) Sections 9-620, 9-621, and 9-622, which deal with acceptance of collateral in  
23 satisfaction of obligation;

24 (11) Section 9-623, which deals with redemption of collateral;

25 (12) Section 9-624, which deals with permissible waivers; and

1 (13) Sections 9-625 and 9-626, which deal with the secured party's liability for failure to  
2 comply with this article.

3 Section 9-603. (a) The parties may determine by agreement the standards measuring the  
4 fulfillment of the rights of a debtor or obligor and the duties of a secured party under a rule  
5 stated in Section 9-602 if the standards are not manifestly unreasonable.

6 (b) Subsection (a) does not apply to the duty under Section 9-609 to refrain from breaching  
7 the peace.

8 Section 9-604. (a) If a security agreement covers both personal and real property, a secured  
9 party may proceed:

10 (1) under this part as to the personal property without prejudicing any rights with respect  
11 to the real property; or

12 (2) as to both the personal property and the real property in accordance with the rights  
13 with respect to the real property, in which case the other provisions of this part do not  
14 apply.

15 (b) Subject to subsection (c), if a security agreement covers goods that are or become  
16 fixtures, a secured party may proceed:

17 (1) under this part; or

18 (2) in accordance with the rights with respect to real property, in which case the other  
19 provisions of this part do not apply.

20 (c) Subject to the other provisions of this part, if a secured party holding a security interest  
21 in fixtures has priority over all owners and encumbrancers of the real property, the secured party,  
22 after default, may remove the collateral from the real property.

23 (d) A secured party that removes collateral shall promptly reimburse any encumbrancer or  
24 owner of the real property, other than the debtor, for the cost of repair of any physical injury  
25 caused by the removal. The secured party need not reimburse the encumbrancer or owner for any

1 diminution in value of the real property caused by the absence of the goods removed or by any  
2 necessity of replacing them. A person entitled to reimbursement may refuse permission to  
3 remove until the secured party gives adequate assurance for the performance of the obligation  
4 to reimburse.

5 Section 9-605. A secured party does not 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 person,  
11 unless the secured party knows:

12 (A) that the person is a debtor; and

13 (B) the identity of the person.

14 Section 9-606. For purposes of this part, a default occurs in connection with an agricultural  
15 lien at the time the secured party becomes entitled to enforce the lien in accordance with the  
16 statute under which it was created.

17 Section 9-607. (a) If so agreed, and in any event after default, a secured party:

18 (1) may notify an account debtor or other person obligated on collateral to make payment  
19 or otherwise render performance to or for the benefit of the secured party;

20 (2) may take any proceeds to which the secured party is entitled under Section 9-315;

21 (3) may enforce the obligations of an account debtor or other person obligated on  
22 collateral and exercise the rights of the debtor with respect to the obligation of the  
23 account debtor or other person obligated on collateral to make payment or otherwise  
24 render performance to the debtor, and with respect to any property that secures the  
25 obligations of the account debtor or other person obligated on the collateral;

1 (4) if it holds a security interest in a deposit account perfected by control under Section  
2 9-104(a)(1), may apply the balance of the deposit account to the obligation secured  
3 by the deposit account; and

4 (5) if it holds a security interest in a deposit account perfected by control under Section  
5 9-104(a)(2) or (3), may instruct the bank to pay the balance of the deposit account  
6 to or for the benefit of the secured party.

7 (b) If necessary to enable a secured party to exercise under subsection (a)(3) the right of a  
8 debtor to enforce a mortgage nonjudicially, the secured party may record in the office in which  
9 a record of the mortgage is recorded:

10 (1) a copy of the security agreement that creates or provides for a security interest in the  
11 obligation secured by the mortgage; and

12 (2) the secured party's sworn affidavit in recordable form stating that:

13 (A) a default has occurred; and

14 (B) the secured party is entitled to enforce the mortgage nonjudicially.

15 (c) A secured party shall proceed in a commercially reasonable manner if the secured party:

16 (1) undertakes to collect from or enforce an obligation of an account debtor or other  
17 person obligated on collateral; and

18 (2) is entitled to charge back uncollected collateral or otherwise to full or limited recourse  
19 against the debtor or a secondary obligor.

20 (d) A secured party may deduct from the collections made pursuant to subsection (c)  
21 reasonable expenses of collection and enforcement, including reasonable attorney's fees and legal  
22 expenses incurred by the secured party.

23 (e) This section does not determine whether an account debtor, bank, or other person  
24 obligated on collateral owes a duty to a secured party.

25 Section 9-608. (a) If a security interest or agricultural lien secures payment or performance

1 of an obligation, the following rules apply:

2 (1) A secured party shall apply or pay over for application the cash proceeds of collection  
3 or enforcement under Section 9-607 in the following order to:

4 (A) the reasonable expenses of collection and enforcement and, to the extent  
5 provided for by agreement and not prohibited by law, reasonable attorney's  
6 fees and legal expenses incurred by the secured party;

7 (B) the satisfaction of obligations secured by the security interest or agricultural  
8 lien under which the collection or enforcement is made; and

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

14 (2) If requested by a secured party, a holder of a subordinate security interest or other  
15 lien shall furnish reasonable proof of the interest or lien within a reasonable time.  
16 Unless the holder complies, the secured party need not comply with the holder's  
17 demand under paragraph (1)(C).

18 (3) A secured party need not apply or pay over for application noncash proceeds of  
19 collection and enforcement under Section 9-607 unless the failure to do so would be  
20 commercially unreasonable. A secured party that applies or pays over for application  
21 noncash proceeds shall do so in a commercially reasonable manner.

22 (4) A secured party shall account to and pay a debtor for any surplus, and the obligor is  
23 liable for any deficiency.

24 (b) If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or  
25 promissory notes, the debtor is not entitled to any surplus, and the obligor is not liable for any

1 deficiency.

2 Section 9-609. (a) After default, a secured party:

3 (1) may take possession of the collateral; and

4 (2) without removal, may render equipment unusable and dispose of collateral on a  
5 debtor's premises under Section 9-610.

6 (b) A secured party may proceed under subsection (a):

7 (1) pursuant to judicial process; or

8 (2) without judicial process, if it proceeds without breach of the peace.

9 (c) If so agreed, and in any event after default, a secured party may require the debtor to  
10 assemble the collateral and make it available to the secured party at a place to be designated by  
11 the secured party which is reasonably convenient to both parties.

12 Section 9-609.1. No cause of action for recovery of security or its value may be commenced  
13 by a secured creditor against an innocent third-party purchaser of farm products as defined in  
14 subsection (34) of Section 9-102, nor may such a cause of action be commenced against a  
15 livestock auction agency, as defined in chapter 40-15 and § 301 of the Packers and Stockyards  
16 Act (7 USC 201), or a public grain warehouse, or a public terminal grain warehouse, or a grain  
17 dealer as defined by chapters 49-43, 49-44, and 49-45 respectively, unless such action is  
18 commenced within twenty-four months from the date the farm products are sold and unless such  
19 action is preceded by the secured creditor offering to file against the debtor, a complaint as  
20 defined by § 23A-2-1.

21 Section 9-609.2. Any person who for himself, or through an agent, sells livestock through  
22 a livestock auction agency, as defined in chapter 40-15 and § 301 of the Packers and Stockyards  
23 Act (7 USC 201), or who so sells grain through a public grain warehouse, or through a public  
24 terminal grain warehouse, or a grain dealer as defined in chapters 49-43, 49-44, and 49-45  
25 respectively, without notifying the livestock auction agency or the grain warehouse or grain

1 dealer of a security interest in such farm products, and with intent to defraud, is guilty of farm  
2 products fraud. The failure of the seller to give written notice of a security interest in the farm  
3 products prior to the date of the sale by the livestock auction agency, or the grain warehouse,  
4 or grain dealer, is prima facie evidence of intent to defraud.

5 A violation of this section is a Class 1 misdemeanor.

6 Section 9-610. (a) After default, a secured party may sell, lease, license, or otherwise dispose  
7 of any or all of the collateral in its present condition or following any commercially reasonable  
8 preparation or processing.

9 (b) Every aspect of a disposition of collateral, including the method, manner, time, place, and  
10 other terms, must be commercially reasonable. If commercially reasonable, a secured party may  
11 dispose of collateral by public or private proceedings, by one or more contracts, as a unit or in  
12 parcels, and at any time and place and on any terms.

13 (c) A secured party may purchase collateral:

14 (1) at a public disposition; or

15 (2) at a private disposition only if the collateral is of a kind that is customarily sold on a  
16 recognized market or the subject of widely distributed standard price quotations.

17 (d) A contract for sale, lease, license, or other disposition includes the warranties relating to  
18 title, possession, quiet enjoyment, and the like which by operation of law accompany a voluntary  
19 disposition of property of the kind subject to the contract.

20 (e) A secured party may disclaim or modify warranties under subsection (d):

21 (1) in a manner that would be effective to disclaim or modify the warranties in a voluntary  
22 disposition of property of the kind subject to the contract of disposition; or

23 (2) by communicating to the purchaser a record evidencing the contract for disposition  
24 and including an express disclaimer or modification of the warranties.

25 (f) A record is sufficient to disclaim warranties under subsection (e) if it indicates "There is

1 no warranty relating to title, possession, quiet enjoyment, or the like in this disposition” or uses  
2 words of similar import.

3 Section 9-611. (a) In this section, "notification date" means the earlier of the date on which:

- 4 (1) a secured party sends to the debtor and any secondary obligor an authenticated  
5 notification of disposition; or
- 6 (2) the debtor and any secondary obligor waive the right to notification.

7 (b) Except as otherwise provided in subsection (d), a secured party that disposes of collateral  
8 under Section 9-610 shall send to the persons specified in subsection (c) a reasonable  
9 authenticated notification of disposition.

10 (c) To comply with subsection (b), the secured party shall send an authenticated notification  
11 of disposition to:

- 12 (1) the debtor;
- 13 (2) any secondary obligor; and
- 14 (3) if the collateral is other than consumer goods:
  - 15 (A) any other person from which the secured party has received, before the  
16 notification date, an authenticated notification of a claim of an interest in the  
17 collateral;
  - 18 (B) any other secured party or lienholder that, 10 days before the notification date,  
19 held a security interest in or other lien on the collateral perfected by the filing  
20 of a financing statement that:
    - 21 (i) identified the collateral;
    - 22 (ii) was indexed under the debtor’s name as of that date; and
    - 23 (iii) was filed in the office in which to file a financing statement against the  
24 debtor covering the collateral as of that date; and
  - 25 (C) any other secured party that, 10 days before the notification date, held a

1 security interest in the collateral perfected by compliance with a statute,  
2 regulation, or treaty described in Section 9-311(a).

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

5 (e) A secured party complies with the requirement for notification prescribed by subsection  
6 (c)(3)(B) if:

7 (1) not later than 20 days or earlier than 30 days before the notification date, the secured  
8 party requests, in a commercially reasonable manner, information concerning  
9 financing statements indexed under the debtor's name in the office indicated in  
10 subsection (c)(3)(B); and

11 (2) before the notification date, the secured party:

12 (A) did not receive a response to the request for information; or

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

16 Section 9-612. (a) Except as otherwise provided in subsection (b), whether a notification is  
17 sent within a reasonable time is a question of fact.

18 (b) In a transaction other than a consumer transaction, a notification of disposition sent after  
19 default and 10 days or more before the earliest time of disposition set forth in the notification is  
20 sent within a reasonable time before the disposition.

21 Section 9-613. Except in a consumer-goods transaction, the following rules apply:

22 (1) The contents of a notification of disposition are sufficient if the notification:

23 (A) describes the debtor and the secured party;

24 (B) describes the collateral that is the subject of the intended disposition;

25 (C) states the method of intended disposition;

1 (D) states that the debtor is entitled to an accounting of the unpaid indebtedness  
2 and states the charge, if any, for an accounting; and

3 (E) states the time and place of a public disposition or the time after which any  
4 other disposition is to be made.

5 (2) Whether the contents of a notification that lacks any of the information specified in  
6 paragraph (1) are nevertheless sufficient is a question of fact.

7 (3) The contents of a notification providing substantially the information specified in  
8 paragraph (1) are sufficient, even if the notification includes:

9 (A) information not specified by that paragraph; or

10 (B) minor errors that are not seriously misleading.

11 (4) A particular phrasing of the notification is not required.

12 (5) The following form of notification and the form appearing in Section 9-614(3), when  
13 completed, each provides sufficient information:

14 NOTIFICATION OF DISPOSITION OF COLLATERAL

15 To: [Name of debtor, obligor, or other person to which the notification is sent]

16 From: [Name, address, and telephone number of secured party]

17 Name of Debtor(s): [Include only if debtor(s) are not an addressee]

18 [For a public disposition:]

19 We will sell [or lease or license, as applicable] the [describe collateral] [to the highest  
20 qualified bidder] in public as follows:

21 Day and Date: \_\_\_\_\_

22 Time: \_\_\_\_\_

23 Place: \_\_\_\_\_

24 [For a private disposition:]

25 We will sell [or lease or license, as applicable] the [describe collateral] privately

1   sometime after   [day and date]  .

2       You are entitled to an accounting of the unpaid indebtedness secured by the property that  
3 we intend to sell [or lease or license, *as applicable*] [for a charge of \$ \_\_\_\_\_]. You may  
4 request an accounting by calling us at   [telephone number]  

5       Section 9-614. In a consumer-goods transaction, the following rules apply:

6       (1)   A notification of disposition must provide the following information:

7           (A)   the information specified in Section 9-613(1);

8           (B)   a description of any liability for a deficiency of the person to which the  
9 notification is sent;

10          (C)   a telephone number from which the amount that must be paid to the secured  
11 party to redeem the collateral under Section 9-623 is available; and

12          (D)   a telephone number or mailing address from which additional information  
13 concerning the disposition and the obligation secured is available.

14       (2)   A particular phrasing of the notification is not required.

15       (3)   The following form of notification, when completed, provides sufficient information:

16         [Name and address of secured party]  

17         [Date]  

18                                   NOTICE OF OUR PLAN TO SELL PROPERTY

19         [Name and address of any obligor who is also a debtor]  

20   Subject:   [Identification of Transaction]  

21   We have your   [describe collateral]  , because you broke promises in our agreement.

22   [For a public disposition:]

23   We will sell   [describe collateral]   at public sale. A sale could include a lease or license.

24   The sale will be held as follows:

25       Date: \_\_\_\_\_



1 information not required by paragraph (1), unless the error is misleading with respect  
2 to rights arising under this article.

3 (6) If a notification under this section is not in the form of paragraph (3), law other than  
4 this article determines the effect of including information not required by paragraph  
5 (1).

6 Section 9-615. (a) A secured party shall apply or pay over for application the cash proceeds  
7 of disposition under Section 9-610 in the following order to:

8 (1) the reasonable expenses of retaking, holding, preparing for disposition, processing,  
9 and disposing, and, to the extent provided for by agreement and not prohibited by  
10 law, reasonable attorney's fees and legal expenses incurred by the secured party;

11 (2) the satisfaction of obligations secured by the security interest or agricultural lien under  
12 which the disposition is made;

13 (3) the satisfaction of obligations secured by any subordinate security interest in or other  
14 subordinate lien on the collateral if:

15 (A) the secured party receives from the holder of the subordinate security interest  
16 or other lien an authenticated demand for proceeds before distribution of the  
17 proceeds is completed; and

18 (B) in a case in which a consignor has an interest in the collateral, the subordinate  
19 security interest or other lien is senior to the interest of the consignor; and

20 (4) a secured party that is a consignor of the collateral if the secured party receives from  
21 the consignor an authenticated demand for proceeds before distribution of the  
22 proceeds is completed.

23 (b) If requested by a secured party, a holder of a subordinate security interest or other lien  
24 shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder  
25 does so, the secured party need not comply with the holder's demand under subsection (a)(3).

1 (c) A secured party need not apply or pay over for application noncash proceeds of  
2 disposition under Section 9-610 unless the failure to do so would be commercially unreasonable.  
3 A secured party that applies or pays over for application noncash proceeds shall do so in a  
4 commercially reasonable manner.

5 (d) If the security interest under which a disposition is made secures payment or performance  
6 of an obligation, after making the payments and applications required by subsection (a) and  
7 permitted by subsection (c):

8 (1) unless subsection (a)(4) requires the secured party to apply or pay over cash proceeds  
9 to a consignor, the secured party shall account to and pay a debtor for any surplus;  
10 and

11 (2) the obligor is liable for any deficiency.

12 (e) If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or  
13 promissory notes:

14 (1) the debtor is not entitled to any surplus; and

15 (2) the obligor is not liable for any deficiency.

16 (f) The surplus or deficiency following a disposition is calculated based on the amount of  
17 proceeds that would have been realized in a disposition complying with this part to a transferee  
18 other than the secured party, a person related to the secured party, or a secondary obligor if:

19 (1) the transferee in the disposition is the secured party, a person related to the secured  
20 party, or a secondary obligor; and

21 (2) the amount of proceeds of the disposition is significantly below the range of proceeds  
22 that a complying disposition to a person other than the secured party, a person related  
23 to the secured party, or a secondary obligor would have brought.

24 (g) A secured party that receives cash proceeds of a disposition in good faith and without  
25 knowledge that the receipt violates the rights of the holder of a security interest or other lien that

1 is not subordinate to the security interest or agricultural lien under which the disposition is made:

- 2 (1) takes the cash proceeds free of the security interest or other lien;
- 3 (2) is not obligated to apply the proceeds of the disposition to the satisfaction of
- 4 obligations secured by the security interest or other lien; and
- 5 (3) is not obligated to account to or pay the holder of the security interest or other lien
- 6 for any surplus.

7 Section 9-616. (a) In this section:

- 8 (1) "Explanation" means a writing that:
  - 9 (A) states the amount of the surplus or deficiency;
  - 10 (B) provides an explanation in accordance with subsection (c) of how the secured
  - 11 party calculated the surplus or deficiency;
  - 12 (C) states, if applicable, that future debits, credits, charges, including additional
  - 13 credit service charges or interest, rebates, and expenses may affect the amount
  - 14 of the surplus or deficiency; and
  - 15 (D) provides a telephone number or mailing address from which additional
  - 16 information concerning the transaction is available.

- 17 (2) "Request" means a record:
  - 18 (A) authenticated by a debtor or consumer obligor;
  - 19 (B) requesting that the recipient provide an explanation; and
  - 20 (C) sent after disposition of the collateral under Section 9-610.

21 (b) In a consumer-goods transaction in which the debtor is entitled to a surplus or a  
22 consumer obligor is liable for a deficiency under Section 9-615, the secured party shall:

- 23 (1) send an explanation to the debtor or consumer obligor, as applicable, after the
- 24 disposition and:
  - 25 (A) before or when the secured party accounts to the debtor and pays any surplus

1                   or first makes written demand on the consumer obligor after the disposition for  
2                   payment of the deficiency; and

3                   (B)    within 14 days after receipt of a request; or

4           (2)    in the case of a consumer obligor who is liable for a deficiency, within 14 days after  
5           receipt of a request, send to the consumer obligor a record waiving the secured  
6           party's right to a deficiency.

7           (c) To comply with subsection (a)(1)(B), a writing must provide the following information  
8   in the following order:

9           (1)    the aggregate amount of obligations secured by the security interest under which the  
10           disposition was made, and, if the amount reflects a rebate of unearned interest or  
11           credit service charge, an indication of that fact, calculated as of a specified date:

12           (A)   if the secured party takes or receives possession of the collateral after default,  
13           not more than 35 days before the secured party takes or receives possession;

14           or

15           (B)   if the secured party takes or receives possession of the collateral before default  
16           or does not take possession of the collateral, not more than 35 days before the  
17           disposition;

18           (2)    the amount of proceeds of the disposition;

19           (3)    the aggregate amount of the obligations after deducting the amount of proceeds;

20           (4)    the amount, in the aggregate or by type, and types of expenses, including expenses of  
21           retaking, holding, preparing for disposition, processing, and disposing of the  
22           collateral, and attorney's fees secured by the collateral which are known to the  
23           secured party and relate to the current disposition;

24           (5)    the amount, in the aggregate or by type, and types of credits, including rebates of  
25           interest or credit service charges, to which the obligor is known to be entitled and

1           which are not reflected in the amount in paragraph (1); and

2           (6)   the amount of the surplus or deficiency.

3           (d) A particular phrasing of the explanation is not required. An explanation complying  
4 substantially with the requirements of subsection (a) is sufficient, even if it includes minor errors  
5 that are not seriously misleading.

6           (e) A debtor or consumer obligor is entitled without charge to one response to a request  
7 under this section during any six-month period in which the secured party did not send to the  
8 debtor or consumer obligor an explanation pursuant to subsection (b)(1). The secured party may  
9 require payment of a charge not exceeding \$25 for each additional response.

10          Section 9-617. (a) A secured party's disposition of collateral after default:

11           (1)   transfers to a transferee for value all of the debtor's rights in the collateral;

12           (2)   discharges the security interest under which the disposition is made; and

13           (3)   discharges any subordinate security interest or other subordinate lien, other than liens  
14                created by law that are not to be discharged.

15           (b) A transferee that acts in good faith takes free of the rights and interests described in  
16 subsection (a), even if the secured party fails to comply with this article or the requirements of  
17 any judicial proceeding.

18           (c) If a transferee does not take free of the rights and interests described in subsection (a),  
19 the transferee takes the collateral subject to:

20           (1)   the debtor's rights in the collateral;

21           (2)   the security interest or agricultural lien under which the disposition is made; and

22           (3)   any other security interest or other lien.

23          Section 9-618. (a) A secondary obligor acquires the rights and becomes obligated to perform  
24 the duties of the secured party after the secondary obligor:

25           (1)   receives an assignment of a secured obligation from the secured party;

1 (2) receives a transfer of collateral from the secured party and agrees to accept the rights  
2 and assume the duties of the secured party; or

3 (3) is subrogated to the rights of a secured party with respect to collateral.

4 (b) An assignment, transfer, or subrogation described in subsection (a):

5 (1) is not a disposition of collateral under Section 9-610; and

6 (2) relieves the secured party of further duties under this article.

7 Section 9-619. (a) In this section, "transfer statement" means a record authenticated by a  
8 secured party stating:

9 (1) that the debtor has defaulted in connection with an obligation secured by specified  
10 collateral;

11 (2) that the secured party has exercised its post-default remedies with respect to the  
12 collateral;

13 (3) that, by reason of the exercise, a transferee has acquired the rights of the debtor in the  
14 collateral; and

15 (4) the name and mailing address of the secured party, debtor, and transferee.

16 (b) A transfer statement entitles the transferee to the transfer of record of all rights of the  
17 debtor in the collateral specified in the statement in any official filing, recording, registration, or  
18 certificate-of-title system covering the collateral. If a transfer statement is presented with the  
19 applicable fee and request form to the official or office responsible for maintaining the system,  
20 the official or office shall:

21 (1) accept the transfer statement;

22 (2) promptly amend its records to reflect the transfer; and

23 (3) if applicable, issue a new appropriate certificate of title in the name of the transferee.

24 (c) A transfer of the record or legal title to collateral to a secured party under subsection (b)  
25 or otherwise is not of itself a disposition of collateral under this article and does not of itself

1 relieve the secured party of its duties under this article.

2 Section 9-620. (a) Except as otherwise provided in subsection (g), a secured party may  
3 accept collateral in full or partial satisfaction of the obligation it secures only if:

4 (1) the debtor consents to the acceptance under subsection (c);

5 (2) the secured party does not receive, within the time set forth in subsection (d), a  
6 notification of objection to the proposal authenticated by:

7 (A) a person to which the secured party was required to send a proposal under  
8 Section 9-621; or

9 (B) any other person, other than the debtor, holding an interest in the collateral  
10 subordinate to the security interest that is the subject of the proposal;

11 (3) if the collateral is consumer goods, the collateral is not in the possession of the debtor  
12 when the debtor consents to the acceptance; and

13 (4) subsection (e) does not require the secured party to dispose of the collateral or the  
14 debtor waives the requirement pursuant to Section 9-624.

15 (b) A purported or apparent acceptance of collateral under this section is ineffective unless:

16 (1) the secured party consents to the acceptance in an authenticated record or sends a  
17 proposal to the debtor; and

18 (2) the conditions of subsection (a) are met.

19 (c) For purposes of this section:

20 (1) a debtor consents to an acceptance of collateral in partial satisfaction of the obligation  
21 it secures only if the debtor agrees to the terms of the acceptance in a record  
22 authenticated after default; and

23 (2) a debtor consents to an acceptance of collateral in full satisfaction of the obligation  
24 it secures only if the debtor agrees to the terms of the acceptance in a record  
25 authenticated after default or the secured party:

1 (A) sends to the debtor after default a proposal that is unconditional or subject only  
2 to a condition that collateral not in the possession of the secured party be  
3 preserved or maintained;

4 (B) in the proposal, proposes to accept collateral in full satisfaction of the  
5 obligation it secures; and

6 (C) does not receive a notification of objection authenticated by the debtor within  
7 20 days after the proposal is sent.

8 (d) To be effective under subsection (a)(2), a notification of objection must be received by  
9 the secured party:

10 (1) in the case of a person to which the proposal was sent pursuant to Section 9-621,  
11 within 20 days after notification was sent to that person; and

12 (2) in other cases:

13 (A) within 20 days after the last notification was sent pursuant to Section 9-621;  
14 or

15 (B) if a notification was not sent, before the debtor consents to the acceptance  
16 under subsection (c).

17 (e) A secured party that has taken possession of collateral shall dispose of the collateral  
18 pursuant to Section 9-610 within the time specified in subsection (f) if:

19 (1) 60 percent of the cash price has been paid in the case of a purchase-money security  
20 interest in consumer goods; or

21 (2) 60 percent of the principal amount of the obligation secured has been paid in the case  
22 of a non-purchase-money security interest in consumer goods.

23 (f) To comply with subsection (e), the secured party shall dispose of the collateral:

24 (1) within 90 days after taking possession; or

25 (2) within any longer period to which the debtor and all secondary obligors have agreed

1 in an agreement to that effect entered into and authenticated after default.

2 (g) In a consumer transaction, a secured party may not accept collateral in partial satisfaction  
3 of the obligation it secures.

4 Section 9-621. (a) A secured party that desires to accept collateral in full or partial  
5 satisfaction of the obligation it secures shall send its proposal to:

6 (1) any person from which the secured party has received, before the debtor consented  
7 to the acceptance, an authenticated notification of a claim of an interest in the  
8 collateral;

9 (2) any other secured party or lienholder that, 10 days before the debtor consented to the  
10 acceptance, held a security interest in or other lien on the collateral perfected by the  
11 filing of a financing statement that:

12 (A) identified the collateral;

13 (B) was indexed under the debtor's name as of that date; and

14 (C) was filed in the office or offices in which to file a financing statement against  
15 the debtor covering the collateral as of that date; and

16 (3) any other secured party that, 10 days before the debtor consented to the acceptance,  
17 held a security interest in the collateral perfected by compliance with a statute,  
18 regulation, or treaty described in Section 9-311(a).

19 (b) A secured party that desires to accept collateral in partial satisfaction of the obligation  
20 it secures shall send its proposal to any secondary obligor in addition to the persons described  
21 in subsection (a).

22 Section 9-622. (a) A secured party's acceptance of collateral in full or partial satisfaction of  
23 the obligation it secures:

24 (1) discharges the obligation to the extent consented to by the debtor;

25 (2) transfers to the secured party all of a debtor's rights in the collateral;

1 (3) discharges the security interest or agricultural lien that is the subject of the debtor's  
2 consent and any subordinate security interest or other subordinate lien; and

3 (4) terminates any other subordinate interest.

4 (b) A subordinate interest is discharged or terminated under subsection (a), even if the  
5 secured party fails to comply with this article.

6 Section 9-623. (a) A debtor, any secondary obligor, or any other secured party or lienholder  
7 may redeem collateral.

8 (b) To redeem collateral, a person shall tender:

9 (1) fulfillment of all obligations secured by the collateral; and

10 (2) the reasonable expenses and attorney's fees described in Section 9-615(a)(1).

11 (c) A redemption may occur at any time before a secured party:

12 (1) has collected collateral under Section 9-607;

13 (2) has disposed of collateral or entered into a contract for its disposition under Section  
14 9-610; or

15 (3) has accepted collateral in full or partial satisfaction of the obligation it secures under  
16 Section 9-622.

17 Section 9-624. (a) A debtor or secondary obligor may waive the right to notification of  
18 disposition of collateral under Section 9-611 only by an agreement to that effect entered into and  
19 authenticated after default.

20 (b) A debtor may waive the right to require disposition of collateral under Section 9-620(e)  
21 only by an agreement to that effect entered into and authenticated after default.

22 (c) Except in a consumer-goods transaction, a debtor or secondary obligor may waive the  
23 right to redeem collateral under Section 9-623 only by an agreement to that effect entered into  
24 and authenticated after default.

25 Section 9-625. (a) If it is established that a secured party is not proceeding in accordance

1 with this article, a court may order or restrain collection, enforcement, or disposition of collateral  
2 on appropriate terms and conditions.

3 (b) Subject to subsections (c) and (d) a person is liable for damages in the amount of any loss  
4 caused by a failure to comply with this article. Loss caused by a failure to comply may include  
5 loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing.

6 (c) Except as otherwise provided in Section 9-628:

7 (1) a person that, at the time of the failure, was a debtor, was an obligor, or held a  
8 security interest in or other lien on the collateral may recover damages under  
9 subsection (b) for its loss; and

10 (2) if the collateral is consumer goods, a person that was a debtor or a secondary obligor  
11 at the time a secured party failed to comply with this part may recover for that failure  
12 in any event an amount not less than the credit service charge plus 10 percent of the  
13 principal amount of the obligation or the time-price differential plus 10 percent of the  
14 cash price.

15 (d) A debtor whose deficiency is eliminated under Section 9-626 may recover damages for  
16 the loss of any surplus. However, a debtor or secondary obligor whose deficiency is eliminated  
17 or reduced under Section 9-626 may not otherwise recover under subsection (b) for  
18 noncompliance with the provisions of this part relating to collection, enforcement, disposition,  
19 or acceptance.

20 (e) If a secured party fails to comply with a request regarding a list of collateral or a  
21 statement of account under Section 9-210, the secured party may claim a security interest only  
22 as shown in the list or statement included in the request as against a person that is reasonably  
23 misled by the failure.

24 Section 9-626. (a) In an action arising from a transaction in which the amount of a deficiency  
25 or surplus is in issue, the following rules apply:

- 1 (1) A secured party need not prove compliance with the provisions of this part relating  
2 to collection, enforcement, disposition, or acceptance unless the debtor or a secondary  
3 obligor places the secured party's compliance in issue.
- 4 (2) If the secured party's compliance is placed in issue, the secured party has the burden  
5 of establishing that the collection, enforcement, disposition, or acceptance was  
6 conducted in accordance with this part.
- 7 (3) Except as otherwise provided in Section 9-628, if a secured party fails to prove that  
8 the collection, enforcement, disposition, or acceptance was conducted in accordance  
9 with the provisions of this part relating to collection, enforcement, disposition, or  
10 acceptance, the liability of a debtor or a secondary obligor for a deficiency is limited  
11 to an amount by which the sum of the secured obligation, expenses, and attorney's  
12 fees exceeds the greater of:
- 13 (A) the proceeds of the collection, enforcement, disposition, or acceptance; or
  - 14 (B) the amount of proceeds that would have been realized had the noncomplying  
15 secured party proceeded in accordance with the provisions of this part relating  
16 to collection, enforcement, disposition, or acceptance.
- 17 (4) For purposes of paragraph (3)(B), the amount of proceeds that would have been  
18 realized is equal to the sum of the secured obligation, expenses, and attorney's fees  
19 unless the secured party proves that the amount is less than that sum.
- 20 (5) If a deficiency or surplus is calculated under Section 9-615(f), the debtor or obligor  
21 has the burden of establishing that the amount of proceeds of the disposition is  
22 significantly below the range of prices that a complying disposition to a person other  
23 than the secured party, a person related to the secured party, or a secondary obligor  
24 would have brought.

25 Section 9-627. (a) The fact that a greater amount could have been obtained by a collection,

1 enforcement, disposition, or acceptance at a different time or in a different method from that  
2 selected by the secured party is not of itself sufficient to preclude the secured party from  
3 establishing that the collection, enforcement, disposition, or acceptance was made in a  
4 commercially reasonable manner.

5 (b) A disposition of collateral is made in a commercially reasonable manner if the disposition  
6 is made:

- 7 (1) in the usual manner on any recognized market;
- 8 (2) at the price current in any recognized market at the time of the disposition; or
- 9 (3) otherwise in conformity with reasonable commercial practices among dealers in the  
10 type of property that was the subject of the disposition.

11 (c) A collection, enforcement, disposition, or acceptance is commercially reasonable if it has  
12 been approved:

- 13 (1) in a judicial proceeding;
- 14 (2) by a bona fide creditors' committee;
- 15 (3) by a representative of creditors; or
- 16 (4) by an assignee for the benefit of creditors.

17 (d) Approval under subsection (c) need not be obtained, and lack of approval does not mean  
18 that the collection, enforcement, disposition, or acceptance is not commercially reasonable.

19 Section 9-628. (a) Unless a secured party knows that a person is a debtor or obligor, knows  
20 the identity of the person, and knows how to communicate with the person:

- 21 (1) the secured party is not liable to the person, or to a secured party or lienholder that  
22 has filed a financing statement against the person, for failure to comply with this  
23 article; and
- 24 (2) the secured party's failure to comply with this article does not affect the liability of the  
25 person for a deficiency.

1 (b) A secured party is not liable because of its status as secured party:

2 (1) to a person that is a debtor or obligor, unless the secured party knows:

3 (A) that the person is a debtor or obligor;

4 (B) the identity of the person; and

5 (C) how to communicate with the person; or

6 (2) to a secured party or lienholder that has filed a financing statement against a person,  
7 unless the secured party knows:

8 (A) that the person is a debtor; and

9 (B) the identity of the person.

10 (c) A secured party is not liable to any person, and a person's liability for a deficiency is not  
11 affected, because of any act or omission arising out of the secured party's reasonable belief that  
12 a transaction is not a consumer-goods transaction or a consumer transaction or that goods are  
13 not consumer goods, if the secured party's belief is based on its reasonable reliance on:

14 (1) a debtor's representation concerning the purpose for which collateral was to be used,  
15 acquired, or held; or

16 (2) an obligor's representation concerning the purpose for which a secured obligation was  
17 incurred.

18 (d) A secured party is not liable to any person under Section 9-625(c)(2) for its failure to  
19 comply with Section 9-616.

20 (e) A secured party is not liable under Section 9-625(c)(2) more than once with respect to  
21 any one secured obligation.

22 Section 9-701. This Act is effective on July 1, 2001, and on July 1, 2001, chapter 57A-9 is  
23 repealed.

24 Section 9-702. (a) Except as otherwise provided in this part, this Act applies to a transaction  
25 or lien within its scope, even if the transaction or lien was entered into or created before this Act

1 takes effect.

2 (b) Except as otherwise provided in subsection (c) and Sections 9-703 through 9-709:

3 (1) transactions and liens that were not governed by former Article 9, were validly  
4 entered into or created before this Act takes effect, and would be subject to this Act  
5 if they had been entered into or created after this Act takes effect, and the rights,  
6 duties, and interests flowing from those transactions and liens remain valid after this  
7 Act takes effect; and

8 (2) the transactions and liens may be terminated, completed, consummated, and enforced  
9 as required or permitted by this Act or by the law that otherwise would apply if this  
10 Act had not taken effect.

11 (c) This Act does not affect an action, case, or proceeding commenced before this Act takes  
12 effect.

13 Section 9-703. (a) A security interest that is enforceable immediately before this Act takes  
14 effect and would have priority over the rights of a person that becomes a lien creditor at that time  
15 is a perfected security interest under this Act if, when this Act takes effect, the applicable  
16 requirements for enforceability and perfection under this Act are satisfied without further action.

17 (b) Except as otherwise provided in Section 9-705, if, immediately before this Act takes  
18 effect, a security interest is enforceable and would have priority over the rights of a person that  
19 becomes a lien creditor at that time, but the applicable requirements for enforceability or  
20 perfection under this Act are not satisfied when this Act takes effect, the security interest:

21 (1) is a perfected security interest for one year after this Act takes effect;

22 (2) remains enforceable thereafter only if the security interest becomes enforceable under  
23 Section 9-203 before the year expires; and

24 (3) remains perfected thereafter only if the applicable requirements for perfection under  
25 this Act are satisfied before the year expires.

1 Section 9-704. A security interest that is enforceable immediately before this Act takes effect  
2 but which would be subordinate to the rights of a person that becomes a lien creditor at that  
3 time:

- 4 (1) remains an enforceable security interest for one year after this Act takes effect;
- 5 (2) remains enforceable thereafter if the security interest becomes enforceable under  
6 Section 9-203 when this Act takes effect or within one year thereafter; and
- 7 (3) becomes perfected:
  - 8 (A) without further action, when this Act takes effect if the applicable requirements  
9 for perfection under this Act are satisfied before or at that time; or
  - 10 (B) when the applicable requirements for perfection are satisfied if the requirements  
11 are satisfied after that time.

12 Section 9-705. (a) If action, other than the filing of a financing statement, is taken before this  
13 Act takes effect and the action would have resulted in priority of a security interest over the  
14 rights of a person that becomes a lien creditor had the security interest become enforceable  
15 before this Act takes effect, the action is effective to perfect a security interest that attaches  
16 under this Act within one year after this Act takes effect. An attached security interest becomes  
17 unperfected one year after this Act takes effect unless the security interest becomes a perfected  
18 security interest under this Act before the expiration of that period.

19 (b) The filing of a financing statement before this Act takes effect is effective to perfect a  
20 security interest to the extent the filing would satisfy the applicable requirements for perfection  
21 under this Act.

22 (c) This Act does not render ineffective an effective financing statement that, before this Act  
23 takes effect, is filed and satisfies the applicable requirements for perfection under the law of the  
24 jurisdiction governing perfection as provided in former Section 9-103. However, except as  
25 otherwise provided in subsections (d) and (e) and Section 9-706, the financing statement ceases

1 to be effective at the earlier of:

2 (1) the time the financing statement would have ceased to be effective under the law of  
3 the jurisdiction in which it is filed; or

4 (2) June 30, 2006.

5 (d) The filing of a continuation statement after this Act takes effect does not continue the  
6 effectiveness of the financing statement filed before this Act takes effect. However, upon the  
7 timely filing of a continuation statement after this Act takes effect and in accordance with the law  
8 of the jurisdiction governing perfection as provided in Part 3, the effectiveness of a financing  
9 statement filed in the same office in that jurisdiction before this Act takes effect continues for the  
10 period provided by the law of that jurisdiction.

11 (e) Subsection (c)(2) applies to a financing statement that, before this Act takes effect, is filed  
12 against a transmitting utility and satisfies the applicable requirements for perfection under the law  
13 of the jurisdiction governing perfection as provided in former Section 9-103 only to the extent  
14 that Part 3 provides that the law of a jurisdiction other than the jurisdiction in which the financing  
15 statement is filed governs perfection of a security interest in collateral covered by the financing  
16 statement.

17 (f) A financing statement that includes a financing statement filed before this Act takes effect  
18 and a continuation statement filed after this Act takes effect is effective only to the extent that  
19 it satisfies the requirements of Part 5 for an initial financing statement.

20 Section 9-706. (a) The filing of an initial financing statement in the office specified in Section  
21 9-501 continues the effectiveness of a financing statement filed before this Act takes effect if:

22 (1) the filing of an initial financing statement in that office would be effective to perfect  
23 a security interest under this Act;

24 (2) the pre-effective-date financing statement was filed in an office in another State or  
25 another office in this State; and

1 (3) the initial financing statement satisfies subsection (c).

2 (b) The filing of an initial financing statement under subsection (a) continues the effectiveness  
3 of the pre-effective-date financing statement:

4 (1) if the initial financing statement is filed before this Act takes effect, for the period  
5 provided in § 57A-9-403 with respect to a financing statement; and

6 (2) if the initial financing statement is filed after this Act takes effect, for the period  
7 provided in Section 9-515 with respect to an initial financing statement.

8 (c) To be effective for purposes of subsection (a), an initial financing statement must:

9 (1) satisfy the requirements of Part 5 for an initial financing statement;

10 (2) identify the pre-effective-date financing statement by indicating the office in which  
11 the financing statement was filed and providing the dates of filing and file numbers,  
12 if any, of the financing statement and of the most recent continuation statement filed  
13 with respect to the financing statement; and

14 (3) indicate that the pre-effective-date financing statement remains effective.

15 Section 9-707. (a) In this section, "pre-effective-date financing statement" means a financing  
16 statement filed before this Act takes effect.

17 (b) After this Act takes effect, a person may add or delete collateral covered by, continue or  
18 terminate the effectiveness of, or otherwise amend the information provided in, a pre-effective-  
19 date financing statement only in accordance with the law of the jurisdiction governing perfection  
20 as provided in Part 3. However, the effectiveness of a pre-effective-date financing statement also  
21 may be terminated in accordance with the law of the jurisdiction in which the financing statement  
22 is filed.

23 (c) Except as otherwise provided in subsection (d), if the law of this State governs perfection  
24 of a security interest, the information in a pre-effective-date financing statement may be amended  
25 after this Act takes effect only if:

1 (1) the pre-effective-date financing statement and an amendment are filed in the office  
2 specified in Section 9-501;

3 (2) an amendment is filed in the office specified in Section 9-501 concurrently with, or  
4 after the filing in that office of, an initial financing statement that satisfies Section 9-  
5 706(c); or

6 (3) an initial financing statement that provides the information as amended and satisfies  
7 Section 9-706(c) is filed in the office specified in Section 9-501.

8 (d) If the law of this State governs perfection of a security interest, the effectiveness of a pre-  
9 effective-date financing statement may be continued only under Section 9-705(d) and (f) or 9-  
10 706.

11 (e) Whether or not the law of this State governs perfection of a security interest, the  
12 effectiveness of a pre-effective-date financing statement filed in this State may be terminated after  
13 this Act takes effect by filing a termination statement in the office in which the pre-effective-date  
14 financing statement is filed, unless an initial financing statement that satisfies Section 9-706(c)  
15 has been filed in the office specified by the law of the jurisdiction governing perfection as  
16 provided in Part 3 as the office in which to file a financing statement.

17 Section 9-708. A person may file an initial financing statement or a continuation statement  
18 under this part if:

19 (1) the secured party of record authorizes the filing; and

20 (2) the filing is necessary under this part:

21 (A) to continue the effectiveness of a financing statement filed before this Act takes  
22 effect; or

23 (B) to perfect or continue the perfection of a security interest.

24 Section 9-709. (a) This Act determines the priority of conflicting claims to collateral.  
25 However, if the relative priorities of the claims were established before this Act takes effect,

1 former chapter 57A-9 determines priority.

2 (b) For purposes of Section 9-322(a), the priority of a security interest that becomes  
3 enforceable under Section 9-203 of this Act dates from the time this Act takes effect if the  
4 security interest is perfected under this Act by the filing of a financing statement before this Act  
5 takes effect which would not have been effective to perfect the security interest under former  
6 chapter 57A-9. This subsection does not apply to conflicting security interests each of which is  
7 perfected by the filing of such a financing statement.

8 Section 1. That § 57A-1-105 be amended to read as follows:

9 57A-1-105.

10 (1) Except as provided hereafter in this section, when a transaction bears a reasonable  
11 relation to this state and also to another state or nation the parties may agree that the  
12 law either of this state or of such other state or nation shall govern their rights and  
13 duties. Failing such agreement this title applies to transactions bearing an appropriate  
14 relation to this state.

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

18 Rights of creditors against sold goods. § 57A-2-402.

19 Applicability of the article on leases. §§ 57A-2A-105 and 57A-2A-106.

20 Applicability of the chapters on bank deposits and collections. § 57A-4-102.

21 Governing law in the article on funds transfers. § 57A-4A-507.

22 Letters of Credit. § 57A-5-116.

23 Applicability of the chapters on investment securities. § 57A-8-110.

24 ~~Perfection provisions of the chapter on secured transactions. § 57A-9-103.~~

25 Law governing perfection, the effect of perfection or nonperfection, and the priority of

1 security interests and agricultural liens. Sections 9-301 through 9-307.

2 Section 2. That § 57A-1-201 be amended to read as follows:

3 57A-1-201. Subject to additional definitions contained in the subsequent chapters of this title  
4 which are applicable to specific chapters or parts thereof, and unless the context otherwise  
5 requires, in this title:

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

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

9 (3) "Agreement" means the bargain of the parties in fact as found in their language or by  
10 implication from other circumstances including course of dealing or usage of trade or  
11 course of performance as provided in this title (§§ 57A-1-205 and 57A-2-208).  
12 Whether an agreement has legal consequences is determined by the provisions of this  
13 title, if applicable; otherwise by the law of contracts (§ 57A-1-103). (Compare  
14 "Contract.")

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

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

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

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

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

1 (9) "Buyer in ordinary course of business" means a person ~~who~~ that buys goods in good  
2 ~~faith and,~~ without knowledge that the sale ~~to him is in violation of the ownership~~  
3 ~~violates the rights or security interest of a third party~~ of another person in the goods  
4 ~~buys, and~~ in the ordinary course from a person, other than a pawnbroker, in the  
5 business of selling goods of that kind ~~but does not include a pawnbroker. All persons~~  
6 ~~who sell minerals or the like (including oil and gas) at wellhead or minehead shall be~~  
7 ~~deemed to be persons. A person buys goods in the ordinary course if the sale to the~~  
8 ~~person comports with the usual or customary practices in the kind of business in~~  
9 ~~which the seller is engaged or with the seller's own usual or customary practices. A~~  
10 ~~person that sells oil, gas, or other minerals at the wellhead or minehead is a person in~~  
11 the business of selling goods of that kind. ~~"Buying"~~ A buyer in ordinary course of  
12 business may ~~be~~ buy for cash ~~or,~~ by exchange of other property, or on secured or  
13 unsecured credit, ~~and includes receiving~~ may acquire goods or documents of title  
14 under a preexisting contract for sale ~~but does not include a transfer in bulk or as~~  
15 ~~security for or in total or partial satisfaction of a money debt. Only a buyer that takes~~  
16 ~~possession of the goods or has a right to recover the goods from the seller under~~  
17 Article 2 may be a buyer in ordinary course of business. A person that acquires goods  
18 in a transfer in bulk or as security for or in total or partial satisfaction of a money debt  
19 is not a buyer in ordinary course of business.

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

- 1 (11) "Contract" means the total legal obligation which results from the parties' agreement  
2 as affected by this title and any other applicable rules of law. (Compare "Agreement.")
- 3 (12) "Creditor" includes a general creditor, a secured creditor, a lien creditor and any  
4 representative of creditors, including an assignee for the benefit of creditors, a trustee  
5 in bankruptcy, a receiver in equity and an executor or administrator of an insolvent  
6 debtor's or assignor's estate.
- 7 (13) "Defendant" includes a person in the position of defendant in a cross-action or  
8 counterclaim.
- 9 (14) "Delivery" with respect to instruments, documents of title, chattel paper or  
10 certificated securities means voluntary transfer of possession.
- 11 (15) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse  
12 receipt or order for the delivery of goods, and also any other document which in the  
13 regular course of business or financing is treated as adequately evidencing that the  
14 person in possession of it is entitled to receive, hold and dispose of the document and  
15 the goods it covers. To be a document of title a document must purport to be issued  
16 by or addressed to a bailee and purport to cover goods in the bailee's possession  
17 which are either identified or are fungible portions of an identified mass.
- 18 (16) "Fault" means wrongful act, omission or breach.
- 19 (17) "Fungible" with respect to goods or securities means goods or securities of which any  
20 unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which  
21 are not fungible shall be deemed fungible for the purposes of this title to the extent  
22 that under a particular agreement or document unlike units are treated as equivalents.
- 23 (18) "Genuine" means free of forgery or counterfeiting.
- 24 (19) "Good faith" means honesty in fact in the conduct or transaction concerned.
- 25 (20) "Holder" with respect to a negotiable instrument, means the person in possession if

1 the instrument is payable to bearer or, in the case of an instrument payable to an  
2 identified person, if the identified person is in possession. "Holder," with respect to  
3 a document of title, means the person in possession if the goods are deliverable to  
4 bearer or to the order of the person in possession.

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

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

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

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

15 (25) A person has "notice" of a fact when  
16 (a) He has actual knowledge of it; or  
17 (b) He has received a notice or notification of it; or  
18 (c) From all the facts and circumstances known to him at the time in question he  
19 has reason to know that it exists.

20 A person "knows" or has "knowledge" of a fact when he has actual knowledge of it.  
21 "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather  
22 than to reason to know. The time and circumstances under which a notice or  
23 notification may cease to be effective are not determined by this title.

24 (26) A person "notifies" or "gives" a notice or notification to another by taking such steps  
25 as may be reasonably required to inform the other in ordinary course whether or not

1 such other actually comes to know of it. A person "receives" a notice or notification  
2 when

3 (a) It comes to his attention; or

4 (b) It is duly delivered at the place of business through which the contract was  
5 made or at any other place held out by him as the place for receipt of such  
6 communications.

7 (27) Notice, knowledge or a notice or notification received by an organization is effective  
8 for a particular transaction from the time when it is brought to the attention of the  
9 individual conducting that transaction, and in any event from the time when it would  
10 have been brought to his attention if the organization had exercised due diligence. An  
11 organization exercises due diligence if it maintains reasonable routines for  
12 communicating significant information to the person conducting the transaction and  
13 there is reasonable compliance with the routines. Due diligence does not require an  
14 individual acting for the organization to communicate information unless such  
15 communication is part of his regular duties or unless he has reason to know of the  
16 transaction and that the transaction would be materially affected by the information.

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

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

22 (30) "Person" includes an individual or an organization (see § 57A-1-102).

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

- 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 an  
3 interest in property.
- 4 (33) "Purchaser" means a person who takes by purchase.
- 5 (34) "Remedy" means any remedial right to which an aggrieved party is entitled with or  
6 without resort to a tribunal.
- 7 (35) "Representative" includes an agent, an officer of a corporation or association, and a  
8 trustee, executor or administrator of an estate, or any other person empowered to act  
9 for another.
- 10 (36) "Rights" includes remedies.
- 11 (37) "Security interest" means an interest in personal property or fixtures which secures  
12 payment or performance of an obligation. ~~The retention or reservation of title by a~~  
13 ~~seller of goods notwithstanding shipment or delivery to the buyer (§ 57A-2-401) is~~  
14 ~~limited in effect to a reservation of a "security interest."~~ The term also includes any  
15 interest of a consignor and a buyer of accounts or, chattel paper which, a payment  
16 intangible, or a promissory note in a transaction that is subject to chapter 57A-9. The  
17 special property interest of a buyer of goods on identification of those goods to a  
18 contract for sale under § 57A-2-401 is not a "security interest," but a buyer may also  
19 acquire a "security interest" by complying with chapter 57A-9. ~~Unless a consignment~~  
20 ~~is intended as security, reservation of title thereunder is not a "security interest" but~~  
21 ~~a consignment in any event is subject to the provisions on consignment sales~~  
22 ~~(§ 57A-2-326). Except as otherwise provided in Section 2-505, the right of a seller~~  
23 or lessor of goods under Article 2 or 2A to retain or acquire possession of the goods  
24 is not a "security interest," but a seller or lessor may also acquire a "security interest"  
25 by complying with Article 9. The retention or reservation of title by a seller of goods

1 notwithstanding shipment or delivery to the buyer (Section 2-401) is limited in effect  
2 to a reservation of a "security interest."

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

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

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

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

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

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

18 (a) the present value of the consideration the lessee is obligated to pay the lessor  
19 for the right to possession and use of the goods is substantially equal to or is  
20 greater than the fair market value of the goods at the time the lease is entered  
21 into,

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

25 (c) the lessee has an option to renew the lease or to become the owner of the

1 goods,

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

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

8 For purposes of this subsection (37):

9 (a) Additional consideration is not nominal if (i) when the option to renew the  
10 lease is granted to the lessee the rent is stated to be the fair market rent for the  
11 use of the goods for the term of the renewal determined at the time the option  
12 is to be performed, or (ii) when the option to become the owner of the goods  
13 is granted to the lessee the price is stated to be the fair market value of the  
14 goods determined at the time the option is to be performed. Additional  
15 consideration is nominal if it is less than the lessee's reasonably predictable cost  
16 of performing under the lease agreement if the option is not exercised;

17 (b) "Reasonably predictable" and "remaining economic life of the goods" are to be  
18 determined with reference to the facts and circumstances at the time the  
19 transaction is entered into; and

20 (c) "Present value" means the amount as of a date certain of one or more sums  
21 payable in the future, discounted to the date certain. The discount is  
22 determined by the interest rate specified by the parties if the rate is not  
23 manifestly unreasonable at the time the transaction is entered into; otherwise,  
24 the discount is determined by a commercially reasonable rate that takes into  
25 account the facts and circumstances of each case at the time the transaction

1                   was entered into.

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

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

10      (40) "Surety" includes guarantor.

11      (41) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical  
12           method of transmission, or the like.

13      (42) "Term" means that portion of an agreement which relates to a particular matter.

14      (43) "Unauthorized" signature means one made without actual, implied, or apparent  
15           authority and includes a forgery.

16      (44) "Value." Except as otherwise provided with respect to negotiable instruments and  
17           bank collections (§§ 57A-3-303, 57A-4-208, and 57A-4-209) a person gives "value"  
18           for rights if he acquires them

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

22           (b) As security for or in total or partial satisfaction of a preexisting claim; or

23           (c) By accepting delivery pursuant to a preexisting contract for purchase; or

24           (d) Generally, in return for any consideration sufficient to support a simple  
25               contract.

1 (45) "Warehouse receipt" means a receipt issued by a person engaged in the business of  
2 storing goods for hire.

3 (46) "Written" or "writing" includes printing, typewriting or any other intentional reduction  
4 to tangible form.

5 Section 3. That § 57A-2-103 be amended to read as follows:

6 57A-2-103.

7 (1) In this chapter unless the context otherwise requires

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

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

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

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

13 (2) Other definitions applying to this chapter or to specified parts thereof, and the  
14 sections in which they appear are:

15 "Acceptance." § 57A-2-606.

16 "Banker's credit." § 57A-2-325.

17 "Between merchants." § 57A-2-104.

18 "Cancellation." § 57A-2-106(4).

19 "Commercial unit." § 57A-2-105.

20 "Confirmed credit." § 57A-2-325.

21 "Conforming to contract." § 57A-2-106.

22 "Contract for sale." § 57A-2-106.

23 "Cover." § 57A-2-712.

24 "Entrusting." § 57A-2-403.

25 "Financing agency." § 57A-2-104.

1 "Future goods." § 57A-2-105.

2 "Goods." § 57A-2-105.

3 "Identification." § 57A-2-501.

4 "Installment contract." § 57A-2-612.

5 "Letter of credit." § 57A-2-325.

6 "Lot." § 57A-2-105.

7 "Merchant." § 57A-2-104.

8 "Overseas." § 57A-2-323.

9 "Person in position of seller." § 57A-2-707.

10 "Present sale." § 57A-2-106.

11 "Sale." § 57A-2-106.

12 "Sale on approval." § 57A-2-326.

13 "Sale or return." § 57A-2-326.

14 "Termination." § 57A-2-106.

15 (3) The following definitions in other chapters apply to this chapter:

16 "Check." § 57A-3-104.

17 "Consignee." § 57A-7-102.

18 "Consignor." § 57A-7-102.

19 "Consumer goods." § ~~57A-9-109~~ Section 9-102.

20 "Dishonor." § ~~57A-3-502~~ Section 3-502.

21 "Draft." § 57A-3-104.

22 (4) In addition chapter 57A-1 contains general definitions and principles of construction  
23 and interpretation applicable throughout this chapter.

24 Section 4. That § 57A-2-210 be amended to read as follows:

25 57A-2-210.

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

5 (2) ~~Unless~~ Except as otherwise provided in Section 9-406, unless otherwise agreed, all  
6 rights of either seller or buyer can be assigned except where the assignment would  
7 materially change the duty of the other party, or increase materially the burden or risk  
8 imposed on him by his contract, or impair materially his chance of obtaining return  
9 performance. A right to damages for breach of the whole contract or a right arising  
10 out of the assignor's due performance of his entire obligation can be assigned despite  
11 agreement otherwise.

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

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

7 (5) The other party may treat any assignment which delegates performance as creating  
8 reasonable grounds for insecurity and may without prejudice to his rights against the  
9 assignor demand assurances from the assignee (§ 57A-2-609).

10 Section 5. That § 57A-2-326 be amended to read as follows:

11 57A-2-326.

12 (1) Unless otherwise agreed, if delivered goods may be returned by the buyer even though  
13 they conform to the contract, the transaction is

14 (a) A "sale on approval" if the goods are delivered primarily for use; and

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

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

19 ~~(3) Where goods are delivered to a person for sale and such person maintains a place of~~  
20 ~~business at which he deals in goods of the kind involved, under a name other than the~~  
21 ~~name of the person making delivery, then with respect to claims of creditors of the~~  
22 ~~person conducting the business the goods are deemed to be on sale or return. The~~  
23 ~~provisions of this section are applicable even though an agreement purports to reserve~~  
24 ~~title to the person making delivery until payment or resale or uses such words as "on~~  
25 ~~consignment" or "on memorandum." However, this section is not applicable if the~~

1 person making delivery:

2 ~~———— (a) ———— Complies with an applicable law providing for a consignor's interest or the like~~  
3 ~~to be evidenced by a sign; or~~

4 ~~———— (b) ———— Establishes that the person conducting the business is generally known by his~~  
5 ~~creditors to be substantially engaged in selling the goods of others; or~~

6 ~~———— (c) ———— Complies with the filing provisions of the chapter on secured transactions~~  
7 ~~(chapter 57A-9).~~

8 ~~—— (4) ——— Any "or return" term of a contract for sale is to be treated as a separate contract for~~  
9 ~~sale within the statute of frauds section of this chapter (§ 57A-2-201) and as~~  
10 ~~contradicting the sale aspect of the contract within the provisions of this chapter on~~  
11 ~~parol or extrinsic evidence (§ 57A-2-202).~~

12 Section 6. That § 57A-2-502 be amended to read as follows:

13 57A-2-502.

14 (1) Subject to ~~subsection~~ subsections (2) and (3) and even though the goods have not  
15 been shipped a buyer who has paid a part or all of the price of goods in which he has  
16 a special property under the provisions of § 57A-2-501 may on making and keeping  
17 good a tender of any unpaid portion of their price recover them from the seller if:

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

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

22 (2) The buyer's right to recover the goods under subsection (1)(a) vests upon acquisition  
23 of a special property, even if the seller had not then repudiated or failed to deliver.

24 (3) If the identification creating his special property has been made by the buyer he  
25 acquires the right to recover the goods only if they conform to the contract for sale.

1 Section 7. That § 57A-2-716 be amended to read as follows:

2 57A-2-716.

3 (1) Specific performance may be decreed where the goods are unique or in other proper  
4 circumstances.

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

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

14 Section 8. That § 57A-2A-103 be amended to read as follows:

15 57A-2A-103.

16 (1) In this chapter unless the context otherwise requires:

17 (a) "Buyer in ordinary course of business" means a person who in good faith and  
18 without knowledge that the sale to him is in violation of the ownership rights  
19 or security interest or leasehold interest of a third party in the goods buys in  
20 ordinary course from a person in the business of selling goods of that kind but  
21 does not include a pawnbroker. "Buying" may be for cash or by exchange of  
22 other property or on secured or unsecured credit and includes receiving goods  
23 or documents of title under a preexisting contract for sale but does not include  
24 a transfer in bulk or as security for or in total or partial satisfaction of a money  
25 debt.

- 1 (b) "Cancellation" occurs when either party puts an end to the lease contract for  
2 default by the other party.
- 3 (c) "Commercial unit" means such a unit of goods as by commercial usage is a  
4 single whole for purposes of lease and division of which materially impairs its  
5 character or value on the market or in use. A commercial unit may be a single  
6 article, as a machine, or a set of articles, as a suite of furniture or a line of  
7 machinery, or a quantity, as a gross or carload, or any other unit treated in use  
8 or in the relevant market as a single whole.
- 9 (d) "Conforming" goods or performance under a lease contract means goods or  
10 performance that are in accordance with the obligations under the lease  
11 contract.
- 12 (e) "Consumer lease" means a lease that a lessor regularly engaged in the business  
13 of leasing or selling makes to a lessee who is a natural person and takes under  
14 the lease primarily for a personal, family, or household purpose.
- 15 (f) "Fault" means wrongful act, omission, breach or default.
- 16 (g) "Finance lease" means a lease in which (i) the lessor does not select,  
17 manufacture or supply the goods, (ii) the lessor acquires the goods or the right  
18 to possession and use of the goods in connection with the lease, and (iii) either  
19 (A) the lessee receives a copy of the contract evidencing the lessor's purchase  
20 of the goods on or before signing the lease contract, (B) the lessee's approval  
21 of the contract evidencing the lessor's purchase of the goods is a condition to  
22 effectiveness of the lease contract, (C) the lessor (aa) informs the lessee in  
23 writing of the identity of the supplier unless the lessee has selected the supplier  
24 and directed the lessor to purchase the goods from the supplier, (bb) informs  
25 the lessee in writing that the lessee may have rights under the contract

1 evidencing the lessor's purchase of the goods, and (cc) advises the lessee in  
2 writing to contact the supplier for a description of any such rights, or (D) the  
3 lease contract discloses all warranties and other rights provided to the lessee  
4 by the lessor and supplier in connection with the lease contract and informs the  
5 lessee that there are no warranties or other rights provided to the lessee by the  
6 lessor and supplier other than those disclosed in the lease contract.

7 (h) "Goods" means all things that are movable at the time of identification to the  
8 lease contract, or are fixtures (§ 57A-2A-309), but the term does not include  
9 money, documents, instruments, accounts, chattel paper, general intangibles,  
10 or minerals or the like, including oil and gas, before extraction. The term also  
11 includes the unborn young of animals.

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

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

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

25 (l) "Lease contract" means the total legal obligation that results from the lease

1 agreement as affected by this chapter and any other applicable rules of law.

2 Unless the context clearly indicates otherwise, the term includes a sublease  
3 contract.

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

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

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

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

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

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

- 1 (s) "Lot" means a parcel or a single article that is the subject matter of a separate
- 2 lease or delivery, whether or not it is sufficient to perform the lease contract.
- 3 (t) "Merchant lessee" means a lessee that is a merchant with respect to goods of
- 4 the kind subject to the lease.
- 5 (u) "Present value" means the amount as of a date certain of one or more sums
- 6 payable in the future, discounted to the date certain. The discount is
- 7 determined by the interest rate specified by the parties if the rate was not
- 8 manifestly unreasonable at the time the transaction was entered into; otherwise,
- 9 the discount is determined by a commercially reasonable rate that takes into
- 10 account the facts and circumstances of each case at the time the transaction
- 11 was entered into.
- 12 (v) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge,
- 13 gift or any other voluntary transaction creating an interest in goods.
- 14 (w) "Sublease" means a lease of goods the right to possession and use of which
- 15 was acquired by the lessor as a lessee under an existing lease.
- 16 (x) "Supplier" means a person from whom a lessor buys or leases goods to be
- 17 leased under a finance lease.
- 18 (y) "Supply contract" means a contract under which a lessor buys or leases goods
- 19 to be leased.
- 20 (z) "Termination" occurs when either party pursuant to a power created by
- 21 agreement or law puts an end to the lease contract otherwise than for default.
- 22 (2) Other definitions applying to this chapter and the sections in which they appear are:
- 23 "Accessions." § 57A-2A-310(1).
- 24 "Construction mortgage." § 57A-2A-309(1)(d).
- 25 "Encumbrance." § 57A-2A-309(1)(e).

1 "Fixtures." § 57A-2A-309(1)(a).

2 "Fixture filing." § 57A-2A-309(1)(b).

3 "Purchase money lease." § 57A-2A-309(1)(c).

4 (3) The following definitions apply to this chapter:

5 "Account." ~~§ 57A-9-106~~ Section 9-102(a)(2).

6 "Between merchants." § 57A-2-104(3) .

7 "Buyer." § 57A-2-103(1)(a).

8 "Chattel paper." ~~§ 57A-9-105(1)(b)~~ Section 9-102(a)(11).

9 "Consumer goods." ~~§ 57A-9-109(1)~~ Section 9-102(a)(23).

10 "Document." ~~§ 57A-9-105(1)(f)~~ Section 9-102(a)(30).

11 "Entrusting." § 57A-2-403(3).

12 ~~"General intangibles." § 57A-9-106.~~ "General intangible." Section 9-102(a)(42).

13 "Good faith." § 57A-2-103(1)(b).

14 "Instrument." ~~§ 57A-9-105(1)(i)~~ Section 9-102(a)(47).

15 "Merchant." § 57A-2-104(1).

16 "Mortgage." ~~§ 57A-9-105(1)(j)~~ Section 9-102(a)(55).

17 "Pursuant to commitment." ~~§ 57A-9-105(1)(k)~~ Section 9-102(a)(68).

18 "Receipt." § 57A-2-103(1)(c).

19 "Sale." § 57A-2-106(1).

20 "Sale on approval." § 57A-2-326(1)(a).

21 "Sale or return." § 57A-2-326(1)(b).

22 "Seller." § 57A-2-103(1)(d).

23 (4) In addition, chapter 57A-1 (commencing with § 57A-1-101) contains general  
24 definitions and principles of construction and interpretation applicable throughout this  
25 chapter.

1 Section 9. That § 57A-2A-307 be amended to read as follows:

2 57A-2A-307.

3 (1) Except as otherwise provided in § 57A-2A-306, a creditor of a lessee takes subject  
4 to the lease contract.

5 (2) Except as otherwise provided in ~~subsections~~ subsection (3) and (4) of this section and  
6 in §§ 57A-2A-306 and 57A-2A-308, a creditor of a lessor takes subject to the lease  
7 contract;

8 ~~—————(a) Unless unless the creditor holds a lien that attached to the goods before the~~  
9 lease contract became enforceable;

10 ~~—————(b) Unless the creditor holds a security interest in the goods and the lessee did not~~  
11 ~~give value and receive delivery of the goods without knowledge of the security~~  
12 ~~interest; or~~

13 ~~—————(c) Unless the creditor holds a security interest in the goods that attached and was~~  
14 ~~perfected before (i) the lease contract became enforceable, (ii) the lessee gave~~  
15 ~~value and received delivery of the goods, or (iii) in the case of a purchase~~  
16 ~~money security interest, the date that is twenty days after the date that the~~  
17 ~~lessor received possession of the goods or the date that the lessee received~~  
18 ~~possession of the goods, whichever is earlier.~~

19 ~~—————(3) A lessee in the ordinary course of business takes the leasehold interest free of a~~  
20 ~~security interest in the goods created by the lessor even though the security interest~~  
21 ~~is perfected and the lessee knows of its existence.~~

22 ~~—————(4) A lessee other than a lessee in the ordinary course of business takes the leasehold~~  
23 ~~interest free of a security interest to the extent that it secures future advances made~~  
24 ~~after the secured party acquires knowledge of the lease or more than forty-five days~~  
25 ~~after the lease contract becomes enforceable, whichever first occurs, unless the future~~

1           ~~advances are made pursuant to a commitment entered into without knowledge of the~~  
2           ~~lease and before the expiration of the forty-five-day period.~~

3           (3)   Except as otherwise provided in Sections 9-317, 9-321, and 9-323, a lessee takes a  
4           leasehold interest subject to a security interest held by a creditor of the lessor.

5           Section 10. That § 57A-2A-309 be amended to read as follows:

6           57A-2A-309.

7           (1)   In this section:

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

10          (b)   A "fixture filing" is the filing, in the office where a mortgage on the real estate  
11          would be recorded, of a financing statement concerning goods that are or are  
12          to become fixtures and conforming to the requirements of ~~§ 57A-9-402(5)~~  
13          Section 9-502(a) and (b);

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

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

20          (e)   "Encumbrance" includes real estate mortgages and other liens on real estate  
21          and all other rights in real estate that are not ownership interests.

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

25          (3)   This chapter does not prevent creation of a lease of fixtures pursuant to real estate

1 law.

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

4 (a) The lease is a purchase money lease, the conflicting interest of the  
5 encumbrancer or owner arises before the goods become fixtures, a fixture filing  
6 covering the fixtures is filed before the goods become fixtures or within twenty  
7 days thereafter, and the lessee has an interest of record in the real estate or is  
8 in possession of the real estate;

9 (b) A fixture filing covering the fixtures is filed before the interest of the  
10 encumbrancer or owner is of record, the lessor's interest has priority over any  
11 conflicting interest of a predecessor in title of the encumbrancer or owner, and  
12 the lessee has an interest of record in the real estate or is in possession of the  
13 real estate;

14 (c) The fixtures are readily removable factory or office machines, readily  
15 removable equipment that is not primarily used or leased for use in the  
16 operation of the real estate, or readily removable replacements of domestic  
17 appliances that are goods subject to a consumer lease;

18 (d) The conflicting interest is a lien on the real estate obtained by legal or equitable  
19 proceedings after the lease contract is enforceable;

20 (e) The encumbrancer or owner has consented in writing to the lease or has  
21 disclaimed an interest in the goods as fixtures; or

22 (f) The lessee has a right to remove the goods as against the encumbrancer or  
23 owner. If the lessee's right to remove terminates, the priority of the interest of  
24 the lessor continues for a reasonable time.

25 (5) Notwithstanding subsection (a) of subsection (4) of this section but otherwise subject

1 to subsection (4), the interest of a lessor of fixtures is subordinate to the conflicting  
2 interest of an encumbrancer of the real estate under a construction mortgage recorded  
3 before the goods become fixtures if the goods become fixtures before the completion  
4 of the construction. To the extent given to refinance a construction mortgage, the  
5 conflicting interest of an encumbrancer of the real estate under a mortgage has this  
6 priority to the same extent as the encumbrancer of the real estate under the  
7 construction mortgage.

8 (6) In cases not within the preceding subsections, priority between the interest of a lessor  
9 of fixtures and the conflicting interest of an encumbrancer or owner of the real estate  
10 who is not the lessee is determined by the priority rules governing conflicting interests  
11 in real estate.

12 (7) If the interest of a lessor has priority over all conflicting interests of all owners and  
13 encumbrancers of the real estate, the lessor or the lessee may (a) on default,  
14 expiration, termination, or cancellation of the lease agreement by the other party but  
15 subject to the provisions of the lease agreement and this chapter, or (b) if necessary  
16 to enforce his other rights and remedies under this chapter, remove the goods from  
17 the real estate, free and clear of all conflicting interests of all owners and  
18 encumbrancers of the real estate, but he must reimburse any encumbrancer or owner  
19 of the real estate who is not the lessee and who has not otherwise agreed for the cost  
20 of repair of any physical injury, but not for any diminution in value of the real estate  
21 caused by the absence of the goods removed or by any necessity of replacing them.  
22 A person entitled to reimbursement may refuse permission to remove until the party  
23 seeking removal gives adequate security for the performance of this obligation.

24 Section 11. That § 57A-4-210 be amended to read as follows:

25 57A-4-210. (a) A collecting bank has a security interest in an item and any accompanying

1 documents or the proceeds of either:

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

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

7 (3) If it makes an advance on or against the item.

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

12 (c) Receipt by a collecting bank of a final settlement for an item is a realization on its security  
13 interest in the item, accompanying documents, and proceeds. So long as the bank does not  
14 receive final settlement for the item or give up possession of the item or accompanying  
15 documents for purposes other than collection, the security interest continues to that extent and  
16 is subject to chapter 57A-9, but:

17 (1) No security agreement is necessary to make the security interest enforceable  
18 (~~§ 57A-9-203(1)(a)~~ Section 9-203(b)(3)(A));

19 (2) No filing is required to perfect the security interest; and

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

22 Section 12. That chapter 57A-5 be amended by adding thereto a NEW SECTION to read  
23 as follows:

24 Section 5-118. (a) An issuer or nominated person has a security interest in a document  
25 presented under a letter of credit to the extent that the issuer or nominated person honors or

1 gives value for the presentation.

2 (b) So long as and to the extent that an issuer or nominated person has not been reimbursed  
3 or has not otherwise recovered the value given with respect to a security interest in a document  
4 under subsection (a), the security interest continues and is subject to Article 9, but:

5 (1) a security agreement is not necessary to make the security interest enforceable under  
6 Section 9-203(b)(3);

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

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

14 Section 13. That § 57A-7-503 be amended to read as follows:

15 57A-7-503.

16 (1) A document of title confers no right in goods against a person who before issuance  
17 of the document had a legal interest or a perfected security interest in them and who  
18 neither:

19 (a) Delivered or entrusted them or any document of title covering them to the  
20 bailor or his nominee with actual or apparent authority to ship, store or sell or  
21 with power to obtain delivery under this chapter (§ 57A-7-403) or with power  
22 of disposition under this title (§ 57A-2-403 and ~~57A-9-307~~ Section 9-320) or  
23 other statute or rule of law; nor

24 (b) Acquiesced in the procurement by the bailor or his nominee of any document  
25 of title.

1 (2) Title to goods based upon an unaccepted delivery order is subject to the rights of  
2 anyone to whom a negotiable warehouse receipt or bill of lading covering the goods  
3 has been duly negotiated. Such a title may be defeated under § 57A-7-504 to the same  
4 extent as the rights of the issuer or a transferee from the issuer.

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

9 Section 14. That § 57A-8-103 be amended to read as follows:

10 57A-8-103. In this chapter:

11 (a) A share or similar equity interest issued by a corporation, business trust, joint stock  
12 company, or similar entity is a security.

13 (b) An "investment company security" is a security. "Investment company security"  
14 means a share or similar equity interest issued by an entity that is registered as an  
15 investment company under the federal investment company laws, an interest in a unit  
16 investment trust that is so registered, or a face-amount certificate issued by a  
17 face-amount certificate company that is so registered. Investment company security  
18 does not include an insurance policy or endowment policy or annuity contract issued  
19 by an insurance company.

20 (c) An interest in a partnership or limited liability company is not a security unless it is  
21 dealt in or traded on securities exchanges or in securities markets, its terms expressly  
22 provide that it is a security governed by this chapter, or it is an investment company  
23 security. However, an interest in a partnership or limited liability company is a  
24 financial asset if it is held in a securities account.

25 (d) A writing that is a security certificate is governed by this chapter and not by chapter

1 57A-3, even though it also meets the requirements of that chapter. However, a  
2 negotiable instrument governed by chapter 57A-3 is a financial asset if it is held in a  
3 securities account.

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

6 (f) A commodity contract, as defined in ~~§ 57A-9-115~~ Section 9-102(a)(15), is not a  
7 security or a financial asset.

8 Section 15. That § 57A-8-106 be amended to read as follows:

9 57A-8-106. (a) A purchaser has "control" of a certificated security in bearer form if the  
10 certificated security is delivered to the purchaser.

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

- 13 (1) the certificate is indorsed to the purchaser or in blank by an effective indorsement; or  
14 (2) the certificate is registered in the name of the purchaser, upon original issue or  
15 registration of transfer by the issuer.

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

- 17 (1) the uncertificated security is delivered to the purchaser; or  
18 (2) the issuer has agreed that it will comply with instructions originated by the purchaser  
19 without further consent by the registered owner.

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

- 21 (1) the purchaser becomes the entitlement holder; or  
22 (2) the securities intermediary has agreed that it will comply with entitlement orders  
23 originated by the purchaser without further consent by the entitlement holder; or  
24 (3) another person has control of the security entitlement on behalf of the purchaser or,  
25 having previously acquired control of the security entitlement, acknowledges that it

1           has control on behalf of the purchaser.

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

4           (f) A purchaser who has satisfied the requirements of subsection(c)(~~2~~) or (d)(~~2~~) has control,  
5 even if the registered owner in the case of subsection (c)(~~2~~) or the entitlement holder in the case  
6 of subsection (d)(~~2~~) retains the right to make substitutions for the uncertificated security or  
7 security entitlement, to originate instructions or entitlement orders to the issuer or securities  
8 intermediary, or otherwise to deal with the uncertificated security or security entitlement.

9           (g) An issuer or a securities intermediary may not enter into an agreement of the kind  
10 described in subsection (c)(2) or (d)(2) without the consent of the registered owner or  
11 entitlement holder, but an issuer or a securities intermediary is not required to enter into such an  
12 agreement even though the registered owner or entitlement holder so directs. An issuer or  
13 securities intermediary that has entered into such an agreement is not required to confirm the  
14 existence of the agreement to another party unless requested to do so by the registered owner  
15 or entitlement holder.

16           Section 16. That § 57A-8-110 be amended to read as follows:

17           57A-8-110. (a) The local law of the issuer's jurisdiction, as specified in subsection (d),  
18 governs:

- 19           (1) the validity of a security;
- 20           (2) the rights and duties of the issuer with respect to registration of transfer;
- 21           (3) the effectiveness of registration of transfer by the issuer;
- 22           (4) whether the issuer owes any duties to an adverse claimant to a security; and
- 23           (5) whether an adverse claim can be asserted against a person to whom transfer of a  
24           certificated or uncertificated security is registered or a person who obtains control of  
25           an uncertificated security.

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

- 3 (1) acquisition of a security entitlement from the securities intermediary;
- 4 (2) the rights and duties of the securities intermediary and entitlement holder arising out  
5 of a security entitlement;
- 6 (3) whether the securities intermediary owes any duties to an adverse claimant to a  
7 security entitlement; and
- 8 (4) whether an adverse claim can be asserted against a person who acquires a security  
9 entitlement from the securities intermediary or a person who purchases a security  
10 entitlement or interest therein from an entitlement holder.

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

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

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

- 20 (1) If an agreement between the securities intermediary and its entitlement holder  
21 ~~specifies that it is governed by the law of a particular jurisdiction governing the~~  
22 securities account expressly provides that a particular jurisdiction is the securities  
23 intermediary's jurisdiction for purposes of this part, this article, or this Act, that  
24 jurisdiction is the securities intermediary's jurisdiction.
- 25 (2) If paragraph (1) does not apply and an agreement between the securities intermediary

1 and its entitlement holder governing the securities account expressly provides that the  
2 agreement is governed by the law of a particular jurisdiction, that jurisdiction is the  
3 securities intermediary's jurisdiction.

4 (3) If neither paragraph (1) nor paragraph (2) applies and an agreement between the  
5 securities intermediary and its entitlement holder ~~does not specify the governing law~~  
6 ~~as provided in paragraph (1), but governing the securities account expressly specifies~~  
7 provides that the securities account is maintained at an office in a particular  
8 jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

9 ~~(3)(4)~~ If an agreement between the securities intermediary and its entitlement holder does  
10 ~~not specify a jurisdiction as provided in paragraph (1) or (2)~~ none of the preceding  
11 paragraphs applies, the securities intermediary's jurisdiction is the jurisdiction in which  
12 ~~is located~~ the office identified in an account statement as the office serving the  
13 entitlement holder's account is located.

14 ~~(4)(5)~~ If an agreement between the securities intermediary and its entitlement holder does  
15 ~~not specify a jurisdiction as provided in paragraph (1) or (2) and an account statement~~  
16 ~~does not identify an office serving the entitlement holder's account as provided in~~  
17 ~~paragraph (3)~~ none of the preceding paragraphs applies, the securities intermediary's  
18 jurisdiction is the jurisdiction in which ~~is located~~ the chief executive office of the  
19 securities intermediary is located.

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

24 Section 17. That § 57A-8-301 be amended to read as follows:

25 57A-8-301. (a) Delivery of a certificated security to a purchaser occurs when:

- 1 (1) the purchaser acquires possession of the security certificate;
- 2 (2) another person, other than a securities intermediary, either acquires possession of the
- 3 security certificate on behalf of the purchaser or, having previously acquired
- 4 possession of the certificate, acknowledges that it holds for the purchaser; or
- 5 (3) a securities intermediary acting on behalf of the purchaser acquires possession of the
- 6 security certificate, only if the certificate is in registered form and ~~has been~~ is (i)
- 7 registered in the name of the purchaser, (ii) payable to the order of the purchaser, or
- 8 (iii) specially indorsed to the purchaser by an effective indorsement and has not been
- 9 indorsed to the securities intermediary or in blank.

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

- 11 (1) the issuer registers the purchaser as the registered owner, upon original issue or
- 12 registration of transfer; or
- 13 (2) another person, other than a securities intermediary, either becomes the registered
- 14 owner of the uncertificated security on behalf of the purchaser or, having previously
- 15 become the registered owner, acknowledges that it holds for the purchaser.

16 Section 18. That § 57A-8-302 be amended to read as follows:

17 57A-8-302.

- 18 (a) Except as otherwise provided in subsections (b) and (c), ~~upon delivery a purchaser~~
- 19 ~~of a certificated or uncertificated security to a purchaser, the purchaser~~ acquires all
- 20 rights in the security that the transferor had or had power to transfer.
- 21 (b) A purchaser of a limited interest acquires rights only to the extent of the interest
- 22 purchased.
- 23 (c) A purchaser of a certificated security who as a previous holder had notice of an
- 24 adverse claim does not improve its position by taking from a protected purchaser.

25 Section 19. That § 57A-8-510 be amended to read as follows:

1 57A-8-510.

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

8 (b) If an adverse claim could not have been asserted against an entitlement holder under  
9 § 57A-8-502, the adverse claim cannot be asserted against a person who purchases  
10 a security entitlement, or an interest therein, from the entitlement holder.

11 (c) In a case not covered by the priority rules in chapter 57A-9, a purchaser for value of  
12 a security entitlement, or an interest therein, who obtains control has priority over a  
13 purchaser of a security entitlement, or an interest therein, who does not obtain  
14 control. ~~Purchasers~~ Except as otherwise provided in subsection(d), purchasers who  
15 have control rank ~~equally, except that a~~ according to priority in time of:

16 (1) the purchaser's becoming the person for whom the securities account, in which the  
17 security entitlement is carried, is maintained, if the purchaser obtained control under  
18 Section 8-106(d)(1);

19 (2) the securities intermediary's agreement to comply with the purchaser's entitlement  
20 orders with respect to security entitlements carried or to be carried in the securities  
21 account in which the security entitlement is carried, if the purchaser obtained control  
22 under Section 8-106(d)(2); or

23 (3) if the purchaser obtained control through another person under Section 8-106(d)(3),  
24 the time on which priority would be based under this subsection if the other person  
25 were the secured party.

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

1 **BILL HISTORY**

2 1/24/00 First read in Senate and referred to Commerce. S.J. 168

3 2/3/00 Scheduled for Committee hearing on this date.

4 2/3/00 Commerce Do Pass, Passed, AYES 6, NAYS 0. S.J. 302

5 2/4/00 Senate Deferred to another day. S.J. 322

6 2/7/00 Senate Do Pass, Passed, AYES 31, NAYS 4. S.J. 334

7 2/8/00 First read in House and referred to Judiciary. H.J. 512

8 2/11/00 Scheduled for Committee hearing on this date.

9 2/11/00 Deferred by Chair.

10 2/14/00 Scheduled for Committee hearing on this date.

11 2/14/00 Deferred by Chair.

12 2/16/00 Scheduled for Committee hearing on this date.

13 2/16/00 Judiciary Do Pass Amended, Passed, AYES 11, NAYS 0. H.J. 706

14 2/16/00 Judiciary Place on Consent Calendar.

# State of South Dakota

SEVENTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2000

547D0763

## HOUSE JUDICIARY COMMITTEE ENGROSSED NO. **SB195** - 2/17/00

Introduced by: Senators Lawler, Kloucek, Lange, and Staggers and Representatives Duenwald, Apa, Brown (Jarvis), Chicoine, Diedtrich (Elmer), Heineman, Juhnke, Monroe, Sebert, and Waltman

1 FOR AN ACT ENTITLED, An Act to prohibit or restrict certain acts in relation to human  
2 embryos.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. No person may knowingly conduct nontherapeutic research that destroys a human  
5 embryo. A violation of this section is a Class 1 misdemeanor.

6 Section 2. No person may knowingly conduct nontherapeutic research that subjects a human  
7 embryo to substantial risk of injury or death. No person may sell or transfer a human embryo  
8 with the knowledge that the embryo will be subjected to nontherapeutic research. A violation of  
9 this section is a Class 1 misdemeanor.

10 Section 3. No person may use for research purposes cells or tissues that the person knows  
11 were obtained by performing the activities described in sections 1 and 2 of this Act. A violation  
12 of this section is a Class 1 misdemeanor.

13 Section 4. For purposes of this Act, the term, nontherapeutic research, means research that  
14 is not intended to help preserve the life and health of the particular embryo subjected to risk. It  
15 does not include in vitro fertilization and accompanying embryo transfer to a woman's body or

1 any diagnostic test which may assist in the future care of a child subjected to such tests.

2 Section 5. For purposes of this Act, the term, human embryo, means a living organism of the

3 species *Homo sapiens* at the earliest stages of development (including the single-celled stage)

4 that is not located in a woman's body.

1 **BILL HISTORY**

2 1/24/00 First read in Senate and referred to Judiciary. S.J. 169

3 2/4/00 Scheduled for Committee hearing on this date.

4 2/4/00 Judiciary Do Pass Amended, Passed, AYES 7, NAYS 0. S.J. 328

5 2/9/00 Motion to Amend, Passed. S.J. 396

6 2/9/00 Senate Do Pass Amended, Passed, AYES 35, NAYS 0. S.J. 396

7 2/10/00 First read in House and referred to Judiciary. H.J. 564

8 2/16/00 Scheduled for Committee hearing on this date.

9 2/16/00 Judiciary Do Pass Amended, Passed, AYES 10, NAYS 3. H.J. 704

# State of South Dakota

SEVENTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2000

400D0787

## HOUSE ENGROSSED NO. **SB197** - 2/22/00

Introduced by: The Committee on State Affairs at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to create a statewide underground tank cleanup program.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That chapter 34A-13 be amended by adding thereto a NEW SECTION to read  
4 as follows:

5 There is hereby created within the petroleum release compensation fund, a new program to  
6 be known as the abandoned tank removal program. Under this program, the director may  
7 provide payments for tank pulling and corrective action at abandoned sites where the owner or  
8 the person having legal custody of an abandoned site has voluntarily requested such action in the  
9 manner and time established by the secretaries of the departments of transportation and  
10 environment and natural resources and if the following criteria are met:

11 (1) The owner or person having legal custody of the abandoned site has submitted to the  
12 director a written request to have the tank removed. The request shall be made in the  
13 manner established by the secretary of the Department of Transportation to include  
14 documentation of eligibility for the site to participate in the abandoned tank removal  
15 program, proof of ownership, and legal description;

16 (2) The owner or person having legal custody of the abandoned site has, in writing,  
17 waived all claims against the state, its officers, agents, and employees for damages

1 resulting directly or indirectly from the tank pulling or corrective action;

2 (3) If the abandoned site is on private property, all property taxes are current; and

3 (4) The owner or person having legal custody of the abandoned site has agreed to transfer  
4 ownership of the removed tank and its contents to the state.

5 No tank is eligible for coverage under this program if the tank is located at the site of a  
6 commercially operational motor fuel vendor in service on or after April 1, 1988. However, the  
7 secretary of environment and natural resources may provide coverage to any owner or person  
8 under the program provided by this Act, if the owner or person having legal custody of a site,  
9 upon a determination by the Department of Environment and Natural Resources, is not  
10 financially able to participate in the petroleum release compensation program and the site is or  
11 has been in service since April 1, 1988.

12 Section 2. That chapter 34A-13 be amended by adding thereto a NEW SECTION to read  
13 as follows:

14 Payments made from the director for tank pulling and corrective action under the abandoned  
15 tank removal program may include:

16 (1) Tank pulling, as defined in this chapter, including the disposal of tank contents and  
17 specifically excluding the replacement of surface above the backfill area; and

18 (2) Removal of abandoned waste oil tanks and corrective action of a waste oil release  
19 located on an abandoned site.

20 Section 3. That chapter 34A-13 be amended by adding thereto a NEW SECTION to read  
21 as follows:

22 The owner or person having legal custody of the abandoned site shall, as a condition of  
23 approval for participation in the abandoned tank removal program, execute a legally binding five-  
24 year lien running with the affected property providing that any compensation received by the  
25 owner, the owner's heirs, successors in interest, or assigns, for transfer of any interest in or part

1 of the site, shall be paid to the secretary of the Department of Transportation and deposited in  
2 the fund. No lien may be for an amount more than ten thousand dollars or the cost of tank pulling  
3 and corrective action identified in the lien by the director, whichever is less. Any lien provided  
4 by this section is valid for five years from the date of recordation and the priority of the lien is  
5 established as of the date it is recorded in the office of the register of deeds of the county in  
6 which the site is located.

7 Section 4. That chapter 34A-13 be amended by adding thereto a NEW SECTION to read  
8 as follows:

9 The Department of Environment and Natural Resources shall be responsible for the tank  
10 removal and corrective actions subject to this Act. The department may contract directly with  
11 consultants, contractors, other service providers, state agencies, subdivisions of government,  
12 counties, cities, townships, and tribes to carry out the provisions of this Act. After receiving  
13 itemized documentation of all actual costs from the department, the director of the petroleum  
14 release compensation fund shall make payment within thirty days of receipt. All tank removals,  
15 pollution assessments, and corrective actions taken under this Act shall comply with chapters  
16 34A-2 and 34A-12 and the rules promulgated thereunder.

17 Section 5. That chapter 34A-13 be amended by adding thereto a NEW SECTION to read  
18 as follows:

19 The secretaries of the departments of transportation and environment and natural resources  
20 may promulgate, pursuant to chapter 1-26, rules regarding practices and procedures necessary  
21 to carry out the provisions of the abandoned tank removal program including the form and  
22 procedure for application for qualifying for tank pulling and corrective action.

23 Section 6. That chapter 34A-13 be amended by adding thereto a NEW SECTION to read  
24 as follows:

25 Except at sites determined to be high risk by the secretary of the Department of Environment

1 and Natural Resources using risk-based corrective action criteria, the director shall suspend  
2 payments for tank pulling and corrective action at abandoned sites eligible for the abandoned  
3 tank removal program if the balance of the fund is five million dollars or below. The director  
4 shall resume payments for tank pulling and corrective action at abandoned sites eligible for the  
5 abandoned tank removal program if the fund balance exceeds five million dollars. Except as  
6 provided in this Act, all other limits of coverage, conditions, and criteria in this chapter apply to  
7 tank pulling and corrective action taken at abandoned sites.

1 **BILL HISTORY**

2 1/24/00 First read in Senate and referred to State Affairs. S.J. 169

3 1/31/00 Scheduled for Committee hearing on this date.

4 2/2/00 Scheduled for Committee hearing on this date.

5 2/2/00 State Affairs Do Pass Amended, Passed, AYES 9, NAYS 0. S.J. 279

6 2/4/00 Senate Deferred to another day. S.J. 322

7 2/7/00 Senate Do Pass Amended, Passed, AYES 33, NAYS 0. S.J. 335

8 2/8/00 First read in House and referred to Transportation. H.J. 512

9 2/16/00 Scheduled for Committee hearing on this date.

10 2/16/00 Transportation Do Pass, Passed, AYES 11, NAYS 1. H.J. 703

11 2/17/00 House of Representatives Deferred to another day. H.J. 732

12 2/18/00 House of Representatives Deferred to another day. H.J. 764