TITLE 33. UNIFORM COMMERCIAL CODE

CHAPTER 1 – General Provisions

Subchapter 1 – Titles, Construction, Application, and Subject Matter of Act

Section 1-101 – Short Titles

A. The sovereign immunity of neither this Nation nor any of its agencies or instrumentalities is waived with respect to any provision of any transaction subject to this Title, absent a recorded, properly ratified, express waiver of sovereign immunity.
B. This Title does not apply to any property interest that is subject to Federal restrictions regarding its sale, transfer or encumbrance.
C. Sections 1-101 through 11-107 of this title shall be known and may be cited as the "Uniform Commercial Code". With the exception of Section 33-1-301, and Chapter 9 (Secured Transactions,) this Title is coextensive with Title 12A, Sections 1-101 through 11-107 of the Oklahoma Statutes Annotated and interpretation of this title shall generally comport with Oklahoma cases interpreting those statutes, except those that conflict with Muscogee (Creek) Nation law, but not unwritten Mvskoke traditional law and customs.
D. Chapters, Subchapters, Section Numbers and subject matter of this Title shall generally correspond to Articles, Parts and Section Numbers appearing in the Oklahoma Statutes Annotated in order to facilitate ease of use and cross reference of notes, official comments and pertinent case law, except as indicated in paragraph C of this section.
E. This Chapter shall be known and may be cited as "Uniform Commercial Code – General Provisions".

Section 1-102 – Scope of Chapter

This Chapter applies to a transaction to the extent that it is governed by another Chapter of the Uniform Commercial Code.

Section 1-103 – Construction of Uniform Commercial Code to Promote Its Purposes and Policies – Applicability of Supplemental Principles of Law

A. The Uniform Commercial Code shall be liberally construed and applied to promote its underlying purposes and policies, which are:
    1. To simplify, clarify and modernize the law governing commercial transactions;
    2. To permit the continued expansion of commercial practices through custom, usage and agreement of the parties; and
    3. To make uniform the law among the various jurisdictions.

B. Unless displaced by the particular provisions of the Uniform Commercial Code, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement its provisions.

Section 1-104 – Construction against Implicit Repeal

The Uniform Commercial Code being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

Section 1-105 – Severability

If any provision or clause of this Commercial Code, or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Commercial Code which can be given effect without the invalid provision or application, and to this end the provisions of the Commercial Code are severable.

Section 1-106 – Use of Singular and Plural – Gender

In the Uniform Commercial Code, unless the statutory context otherwise requires:

1. Words in the singular number include the plural, and in the plural include the singular; and
2. Words of any gender include any other gender.

Section 1-107 – Section Captions

Section captions are part of the Commercial Code.

Section 1-108 – Electronic Signatures in Global and National Commerce Act Superseded, Modified, and Limited

Article 1 of the Uniform Commercial Code modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C., Section 7001 et seq., except that nothing in this article modifies, limits, or supersedes Section 7001(c) of that Act or authorizes electronic delivery of any of the notices described in Section 7003(b) of this Act.

Subchapter 2 – General Definitions and Principles of Interpretation

Section 1-201 – General Definitions and Principles of Interpretation

A. Unless the context otherwise requires, words or phrases defined in this section, or in the additional definitions contained in other articles of the Uniform Commercial Code that apply to particular articles or parts thereof, have the meanings stated.

B. Subject to definitions contained in other articles of the Uniform Commercial Code that apply to particular articles or parts thereof:

1. "Action" in the sense of a judicial proceeding includes a recoupment, counterclaim, setoff, suit in equity, and any other proceedings in which rights are determined.
2. "Aggrieved party" means a party entitled to pursue a remedy.
3. "Agreement", as distinguished from "contract", means the bargain of the parties in fact as found in their languages or inferred from other circumstances including course of performance, course of dealing, or usage of trade as provided in Section 1-303 of this title.
4. "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company.
5. "Bearer" means a person in control of a negotiable electronic document of title or a person in possession of an instrument, negotiable tangible document of title, or certified security payable to bearer or endorsed in blank.
6. "Bill of lading" means a document of title evidencing the receipt of goods for shipment issued by a person engaged in the business of directly or indirectly transporting or forwarding goods. The term does not include a warehouse receipt.
7. "Branch" includes a separately incorporated foreign branch of a bank.
8. "Burden of establishing" means the burden of persuading the trier of fact that the existence of the fact is more probably than its nonexistence.
9. "Buyer in ordinary course of business" means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under Article 2 may be a buyer in ordinary course of business. "Buyer in ordinary course of business" does not include a person that acquires goods in a transfer in bulk or as security for or total or partial satisfaction of a money debt.

10. “Conspicuous”, with reference to a term means so written, displayed, or presented that a reasonable person against whom it is to operate ought to have noticed it. Whether a term is “conspicuous” or not is a decision for the court. Conspicuous terms include the following:
    A. A heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of same or lesser size; and
    B. Language in the body of a record or display in larger type than the surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the language.
11. “Consumer” means an individual who enters into a transaction primarily for personal, family, or household purposes.
12. “Contract”, as distinguished from “agreement”, means the total legal obligation that results from the parties’ agreement as determined by the provisions of the Uniform Commercial Code as supplemented by any other applicable laws.
13. “Creditor” includes a general creditor, a secured creditor, a lien creditor, and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity, and an executor or administrator of an insolvent debtor’s or assignor’s estate.
14. “Defendant” includes a person in the position of defendant in a counterclaim, cross-claim, or third-party claim.
15. “Delivery” with respect to an electronic document of title means voluntary transfer of control and with respect to an instrument, a tangible document of title, or chattel paper means voluntary transfer of possession.
16. “Document of title” means a record that in the regular course of business or financing is treated as adequately evidencing that the person in possession or control of the record is entitled to receive, control, hold, and dispose of the record and the goods the record covers and that purports to be issued by or addressed to a bailee and to cover goods in the bailee’s possession which are either identified or are fungible portions of an identified mass. The term includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt, and order for delivery of goods. An electronic document of title means a document of title evidenced by a record consisting of information stored in an electronic medium. A tangible document of title means a document of title evidenced by a record consisting of information that is inscribed on a tangible medium.
17. “Fault” means a default, breach, or wrongful act or omission.
18. “Fungible goods” means:
    A. Goods of which any unit, by nature or usage of trade, is the equivalent of any other like unit; or
    B. Goods that by agreement are treated as equivalent.
19. “Genuine” means free of forgery or counterfeiting.

20. “Good faith”, except as otherwise provided in Article 5 of this title, means honesty in fact and the observance of reasonable commercial standards of fair dealing.
21. “Holder” means:
    A. The person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession;
    B. The person in possession of a document of title if the goods are deliverable either to bearer or to the order of the person in possession; or
    C. The person in control of a negotiable electronic document of title.
22. “Insolvency proceeding” includes any assignment for the benefit of creditors or other proceeding intended to liquidate or rehabilitate the estate of the person involved.
23. “Insolvent” means:
    A. Having generally ceased to pay debts in the ordinary course of business other than as a result of bona fide dispute;
    B. Being unable to pay debts as they become due; or
    C. Being insolvent within the meaning of the federal bankruptcy law.
24. “Money” means a medium of exchange authorized or adopted by a domestic or foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more countries.
25. “Nation” means the Muscogee (Creek) Nation.
26. “Organization” means a person other than an individual.
27. “Party”, as distinguished from “third party”, means a person who has engaged in a transaction or made an agreement subject to the Uniform Commercial Code.
28. “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.
29. “Present value” means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain by use of either an interest rate specified by the parties if that rate is not manifestly unreasonable at the time the transaction is entered into or, if an interest rate is not so specified, a commercially reasonable rate that takes into account the facts and circumstances at the time the transaction is entered into.
30. “Purchase” means taking by sale, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.
31. “Purchaser” means a person who takes by purchase.
32. “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
33. “Remedy” means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

34. “Representative” means a person empowered to act for another, including an agent, an officer of a corporation or association, and a trustee, executor, or administrator of an estate.
35. “Right” includes remedy.
36. “Security interest” means an interest in personal property or fixtures which secures payment or performance of an obligation. “Security interest” includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to Chapter 9 of this title. “Security interest” does not include the special property interest of a buyer of goods on identification of those goods to a contract for sale under Section 2-401 of this title, but a buyer may also acquire a “security interest” by complying with the provisions of Chapter 9 of this title. Except as otherwise provided in Section 2-505 of this title, the right of a seller or lessor of goods under Chapter 2 or 2A of this title to retain or acquire possession of the goods is not a “security interest”, but a seller or lessor may also acquire a “security interest” by complying with Chapter 9 of this title. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer under Section 2-401 of this title is limited in effect to a reservation of a “security interest”. Whether a transaction in the form of a lease creates security interest is determined pursuant to Section 1-203 of this title.
37. “Send” in connection with any writing, record, or notice means:
    A. To deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided and properly addressed and, in the case of an instrument, to an address specified thereon or otherwise agreed, or if there be none, to any address reasonable under the circumstances; or
    B. In any other way to cause to be received any record or notice within the time at which it would have arrived if properly sent.
38. “Signed” includes any symbol executed or adopted with present intention to adopt or accept a writing.
39. “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.
40. “Surety” includes guarantor or other secondary obligor.
41. “Term” means a portion of an agreement which relates to a particular matter.
42. “Unauthorized signature” means a signature made without actual, implied or apparent authority. The term includes a forgery.
43. “Warehouse receipt” means a document of title issued by a person engaged in the business of storing goods for hire.
44. “Writing” includes printing, typewriting, or any other intentional reduction to tangible form. “Written” has a corresponding meaning.

Section 1-203 – Lease Distinguished from Security Interest

A. Whether a transaction in the form of a lease creates a lease or security interest is determined by the facts of each case.
B. A transaction creates a security interest if the consideration that the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee, and:
    1. The original term of the lease is equal to or greater than the remaining economic life of the goods;
    2. The lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;
    3. The lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement; or
    4. The lessee has an option to become the owner of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement.
C. A transaction in the form of a lease does not create a security interest merely because:
    1. The present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;
    2. The lessee assumes risk of loss of the goods;
    3. The lessee agrees to pay, with respect to the goods, taxes, insurance, filing, recording, or registration fees, or service or maintenance costs;
    4. The lessee has an option to renew the lease or to become the owner of the goods;
    5. The lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed; or
    6. The lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option if to be performed.
D. Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised. Additional consideration is not nominal if:
    1. When the option to renew the lease is granted to the lessee, the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed, or

2. When the option to become the owner of the goods is granted to the lessee, the price is stated to be the fair market value of the goods determined at the time the option is to be performed.

E. The "remaining economic life of the goods" and "reasonably predictable" fair market rent, fair market value, or cost of performing under the lease agreement must be determined with reference to the facts and circumstances at the time the transaction is entered into.

Section 1-204 – "Value"

Except as otherwise provided in Chapter 3, 4 and 5 of the Uniform Commercial Code, a person gives value for rights if the person acquires them:

1. In return for a binding commitment to extend credit or for the extension of immediately available credit, whether or not drawn upon and whether or not a change back is provided for in the event of difficulties in collection;
2. As security for, or in total or partial satisfaction of, a preexisting claim;
3. By accepting delivery under a preexisting contract for purchase; or
4. In return for any consideration sufficient to support a simple contract.

Section 1-205 – Reasonable Time – Seasonableness

A. Whether a time for taking an action required by the Uniform Commercial Code is reasonable depends on the nature, purpose, and circumstances of the action.
B. An action is taken seasonably if it is taken at or within the time agreed or, if no time is agreed, at or within a reasonable time.

Section 1-206 – Presumptions

Whenever the Uniform Commercial Code creates a "presumption" with respect to a fact, or provides that a fact is "presumed", the tier of fact must find the existence of the fact unless and until evidence is introduced that supports a finding of its nonexistence.

Subchapter 3 – Territorial Applicability and General Rules

Section 1-301 – Territorial Applicability – Parties' Power to Choose Applicable Law

A. In this Section:
   1. "Domestic transaction" means a transaction other than an international transaction.
   2. "International transaction" means a transaction that bears a reasonable relation to a country other than the United States.
B. This section applies to a transaction to the extent that it is governed by another Chapter of the Commercial Code.

C. Except as provided hereafter in this section, when a transaction bears a reasonable relation to this Nation and also to another State, Indian Tribe or Country, the parties may agree that the law either of this Nation or of such other State, Indian Tribe, or Country shall govern their rights and duties. In the absence of such agreement and except as provided in subsections E, F and G, the rights and obligations of the parties are determined by the law that would be selected by this Nations conflict of laws principles.

D. An agreement by parties to a domestic or international transaction that any or all of their rights and obligations are to be determined by the laws of the Nation, another Indian Tribe, State or Country is effective, whether or not the transaction bears a relation to the Nation, Indian Tribe, State or Country designated.

E. If one of the parties to a transaction is a consumer, the following rules apply:
   1. An agreement referred to in subsection D is not effective unless the transaction bears a reasonable relation to the Nation, another Indian Tribe, State or Country designated.
   2. Application of the law of the Nation, another Indian Tribe, State or Country under subsections D and G may not deprive the consumer of the protection of any rule of law governing a matter within the scope of this section, which is both protective of consumers and may not be varied by agreement:
      i. Of the Nation, another Indian Tribe, State or Country in which the consumer principally resides, unless paragraph C applies; or
      ii. If the transaction is a sale of goods, and the Nation, another Indian Tribe, State or Country in which the consumer both makes the contract and takes delivery of those goods, is not the Nation, another Indian Tribe, State or Country in which the consumer principally resides.

F. An agreement otherwise effective under subsection D is not effective to the extent that application of the law of the Nation, another Indian Tribe, State or Country designated would be contrary to a fundamental policy of the Nation, another Indian Tribe, State or Country whose law would govern in the absence of such an agreement.

G. To the extent that the Uniform Commercial code governs a transaction, if one of the following provisions of the Uniform Commercial Code specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by law so specified:
   1. Section 2-402 of this title;
   2. Sections 2A-105 and 2A-106 of this title;
   3. Section 4-102 of this title;
   4. Section 4A-507 of this title;
   5. Section 5-116 of this title;
   6. Section 8-110 of this title; and
   7. Sections 9-301 through 9-307 of this title.

Section 1-302 – Variation by Agreement

A. Except as otherwise provided in subsection B of this section or elsewhere in the Uniform Commercial Code, the effect of the Uniform Commercial Code may be varied by agreement.
B. The obligations of good faith, diligence, reasonableness, and care prescribed by the Uniform Commercial Code may not be disclaimed by agreement. The parties, by agreement, may determine the standards by which the performance of those obligations is to be measured if those standards are not manifestly unreasonable. Whenever the Uniform Commercial Code requires an action to be taken within a reasonable time, a time that is not manifestly unreasonable may be fixed by agreement.
C. The presence in certain provisions of the Uniform Commercial Code of the phrase "unless otherwise agreed" or words of similar import does not imply that the effect of other provisions may not be varied by agreement under this section.

Section 1-303 – Course of Performance, Course of Dealing, and Usage of Trade

A. A "course of performance" is a sequence of conduct between the parties to a particular transaction that exists if:
    1. The agreement of the parties with respect to the transaction involves repeated occasions for performance by a party; and
    2. The other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection.
B. A "course of dealing" is a sequence of conduct concerning previous transactions between the parties to a particular transaction that is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.
C. A "usage of trade" is any practice or method of dealing having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage must be proved as facts. If it is established that such a usage is embodied in a trade code or similar record, the interpretation of the record is a question of law.
D. A course of performance or course of dealing between the parties or usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware is relevant in ascertaining the meaning of the agreement of the parties, may give particular meaning to specific terms of the agreement, and may supplement or qualify the terms of the agreement. A usage of trade applicable in the place in which part of the performance under the agreement is to occur may be so utilized as to that part of the performance.
E. Except as otherwise provided in subsection F of this section, the express terms of an agreement and any applicable course of performance, course of dealing, or usage of trade must be

construed whenever reasonable as consistent with each other. If such a construction is unreasonable:

1. Express terms prevail over course of performance, course of dealing, and usage of trade;
2. Course of performance prevails over course of dealing and usage of trade; and
3. Course of dealing prevails over usage of trade.

F. Subject to Section 2-209 of Title 33 of the Muscogee (Creek) Nation Code, a course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.

G. Evidence of a relevant usage of trade offered by one party is not admissible unless that party has given the other party notice that the court finds sufficient to prevent unfair surprise to the other party.

Section 1-304 – Obligation of Good Faith

Every contract of duty within the Uniform Commercial Code imposes an obligation of good faith in its performance and enforcement.

Section 1-305 – Remedies to Be Liberally Administered

A. The remedies provided by the Uniform Commercial Code must be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special not penal damages may be had except as specifically provided in the Uniform Commercial Code or by other rule of law.

B. Any right or obligation declared by the Uniform Commercial Code is enforceable by action unless the provision declaring it specifies a different limited effect.

Section 1-306 – Waiver or Renunciation of Claim or Right after Breach

A claim or right arising out of an alleged breach may be discharged in whole or in part without consideration by agreement of the aggrieved party in an authenticated record.

Section 1-307 – Prima Facie Evidence by Third Party Documents

A document in due from purporting to be a bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party is prima facie evidence of its own authentically and genuineness and of the facts stated in the document by the third party.

Section 1-308 – Performance or Acceptance under Reservation of Rights

A. A party that with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as “without prejudice”, “under protest” or the like are sufficient.
B. Subsection A of this section does not apply to an accord and satisfaction.

Section 1-309 – Option to Accelerate at Will

A term providing that one party or that party’s successor in interest may accelerate payment or performance or require collateral or additional collateral “at will” or when the party “deems itself insecure”, or in words of similar import, means that the party shall have power to do so only if that party in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against whom the power has been exercised.

Section 1-310 – Subordination of Obligations

An obligation may be issued as subordinated to performance of another obligation of the person obligated, or a creditor may subordinate its right to performance of an obligation by agreement with either the person obligated or another creditor of the person obligated. Such subordination does not create a security interest as against either the common debtor or a subordinated creditor.

Chapter 2 – Sales

Subchapter 1 – Short Title, General Construction, and Subject Matter

Section 2-101 – Short Title

This article shall be known and may be cited as Uniform Commercial Code Sales.

Section 2-102 – Scope – Certain Security and Other Transactions Excluded from this Article

Unless the context otherwise requires, this Article applies to transactions in goods; it does not apply to any transaction which although in the form of an unconditional contract to sell or present sale is intended to operate only as a security transaction nor does this Article impair or repeal any statute regulating sales to consumers, farmers or other specified classes of buyers.

Section 2-103 – Definitions and Index of Definitions

1. In this article unless the context otherwise requires:
   a. “Buyer” means a person who buys or contracts to buy goods.
   b. “Receipt” of goods means taking physical possession of them.
   c. “Seller” means a person who sells or contracts to sell goods.

2. Other definitions applying to this article or to specified parts thereof, and the sections in which they appear are:
   "Acceptance". Section 2-606 of this title.
   "Banker's credit". Section 2-325 of this title.
   "Between merchants. Section 2-104 of this title.
   "Cancellation". Section 2-106(4) of this title.
   "Commercial unit". Section 2-105 of this title.
   "Confirmed credit". Section 2-325 of this title.
   "Conforming to contract". Section 2-325 of this title.
   "Contract for sale." Section 2-106 of this title.
   "Cover". Section 2-712 of this title.
   "Entrusting". Section 2-403 of this title.
   "Financing agency." Section 2-104 of this title.
   "Future goods". Section 2-105 of this title.
   "Goods". Section 2-105 of this title.
   "Identification". Section 2-501 of this title.
   "Installment contract". Section 2-612 of this title.
   "Letter of Credit". Section 2-325 of this title.
   "Lot". Section 2-105 of this title.
   "Merchant". Section 2-104 of this title.
   "Overseas". Section 2-323 of this title.
   "Person in position of seller". Section 2-707 of this title.
   "Present sale". Section 2-106 of this title.
   "Sale". Section 2-106 of this title.
   "Sale on approval". Section 2-326 of this title.
   "Sale or return". Section 2-326 of this title.
   "Termination". Section 2-106 of this title.
3. "Control" as provided in Section 7-106 of this title and the following definitions in other articles apply to this article:
   "Check". Section 3-104 of this title.
   "Consignee". Section 7-102 of this title.
   "Consignor". Section 7-102 of this title.
   "Consumer goods". Section 1-9-102 of this title.
   "Dishonor". Section 3-502 of this title.
   "Draft". Section 3-104 of this title.
4. In addition, Chapter 1 of this title contains general definitions and principles of construction and interpretation applicable throughout this article.

Section 2-104 – Definitions: "Merchant" – "Financing Agency" – "Between Merchants"

1. "Merchant" means a person who deals in goods of the kind or otherwise by his occupation hold himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill.
2. "Financing agency" means a bank, finance company or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller's draft or making advances against it or by merely taking it for collection whether or not documents of title accompany or are associated with the draft. "Financing agency" includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (Section 2-707).
3. "Between merchants" means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants.

Section 2-105 – Definitions: Transferability – "Goods" – "Future Goods" – "Lot" – "Commercial Unit"

1. "Goods" means all things (Including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities (Article 8) and things in action. "Goods" also includes the unborn young of animals and growing crops and other identifies things attached to realty as described in the section on goods to be severed from realty (Section 2-107) but does not include information.
2. Goods must both exist and identifies before any interest in them can pass. Goods which are not both existing and identified are "future" goods. A purported present sale of future goods or of any interest therein operates as a contract to sell.
3. There may be a sale of a part interest in existing identified goods.
4. An undivided share in an identified bulk of fungible goods is sufficiently identified to be sold through the quantity of the bulk is not determined. Any agreed proportion of such a bulk or any quantity thereof agreed upon by number, weight or other measure may to the extent of the seller's interest in the bulk be sold to the buyer who then becomes an owner in common.
5. "Lot" means a parcel or a single article which is the subject matter of a separate sale or delivery, whether or not it is sufficient to perform the contract.
6. "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of sale and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article (as a machine) or a set of articles (as a suite of

furniture or an assortment of sizes) or a quantity (as a bale, gross, or carload) or any other unit treated in use or in the relevant market as a single whole.

Section 2-106 – Definitions: "Contract" – "Agreement" – "Contract for Sale" – "Sale" – "Present Sale" – "Conforming" to Contract – "Termination" – "Cancellation"

1. In this article unless the context otherwise requires "contract" and "agreement" are limited to those relating to the present or future sale of goods. "Contract for Sale" includes both a present sale of goods and a contract to sell goods at a future time but does not include license information. A "sale" consists in the passing of title from the seller to the buyer for a price (Section 2-401). A "present sale" means a sale which is accomplished by the making of the contract.
2. Goods or conduct including any part of a performance are "conforming" or conform to the contact when they are in accordance with the obligations under the contract.
3. "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the contract otherwise than for its breach. On "termination" all obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.
4. "Cancellation" occurs when either party puts an end to the contract for breach by the other and its effect is the same as that of "termination" except that the canceling party also retains any remedy for breach of the whole contract or any unperformed balance.

Section 2-107 – Goods to be Served from Realty – Recording

1. A contract for the sale of minerals or the like, including oil and gas, or a structure or its materials to be removed from realty is a contract for the sale of goods within this article if they are to be severed by the seller, but until the severance, a purported present sale thereof which is not effective as a transfer of an interest in land is effective only as a contract to sell.
2. A contract for the sale, apart from the land of growing crops or other things attached to realty and capable of severance without material harm thereto, but not described in subsection 1 of this section or of timber to be cut is a contract for the sale of goods within this article whether the subject matter is to be severed by the buyer or by the seller even though it forms part of the realty at the time of contracting, and the parties can by identification effect a present sale before severance.
3. The provisions of this section are subject to any third party rights provided by the law relating to realty records, and the contract for sale may be executed and recorded as a document transferring an interest in land and shall then constitute notice to third parties of the buyer's rights under the contract for sale.

Subchapter 2 – Form, Formation, and Readjustment of Contract

Section 2-201 – Formal Requirements – Statute of Frauds

1. Except as otherwise provided in this section a contract for the sale of goods for the price of Five Hundred Dollars ($500.00) or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in such writing.
2. Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subsection 1 against such party unless written notice of objection to its contents is given within ten (10) days after it is received.
3. A contract which does not satisfy the requirements of subsection 1 but which is valid in other respects is enforceable.
    a. If the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances which reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement; or
    b. If the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond the quantity of goods admitted; or
    c. With respect to goods for which payment has been made and accepted or which have been received and accepted (Section 33-2-606).

Section 2-202 – Final Written Expression – Parol or Extrinsic Evidence

Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

a. By course of performance, course of dealing or usage of trade and
b. By evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

Section 2-203 – Seals Inoperative

The affixing of a seal to a writing evidencing a contract for sale or an offer to buy or sell goods does not constitute the writing a sealed instrument and the law with respect to sealed instruments does not apply to such a contract or offer.

Section 2-204 – Formation in General

1. A contract for sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract.
2. An agreement sufficient to constitute a contract for sale may be found even though the moment of its making is undetermined.
3. Even though one or more terms are left open a contract for sale does not fail for indefiniteness if the parties have intended to make a contract and there is a reasonably certain basis for giving an appropriate remedy.

Section 2-205 – Firm Offers

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

Section 2-206 – Offer and Acceptance in Formation of Contract

1. Unless otherwise unambiguously indicated by the language or circumstances:
   a. An offer to make a contract shall be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances;
   b. An order or other offer to buy goods for prompt or current shipment shall be construed as inviting acceptance either by a prompt promise to ship or by the prompt or current shipment of conforming or nonconforming goods, but such a shipment of non-conforming goods does not constitute an acceptance if the seller seasonably notifies the buyer that the shipment is offered only as an accommodation to the buyer.
2. Where the beginning of a requested performance is a reasonable mode of acceptance an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance.

Section 2-207 – Additional Terms in Acceptance or Confirmation

1. A definite and seasonable expression of acceptance or a written confirmation which is sent within a reasonable time operates as an acceptance even though it states terms additional to or different from those offered or agreed upon, unless acceptance is expressly made conditional on assent to the additional or different terms.

2. The additional terms are to be construed as proposals for addition to the contract. Between merchants such terms become part of the contract unless:
   a. The offer expressly limits acceptance to the terms of the offer;
   b. They materially alter it; or
   c. Notification of objection to them has already been given or is given within a reasonable time after notice of them is received.
3. Conduct by both parties which recognizes the existence of a contract is sufficient to establish a contract for sale although the writings of the parties do not otherwise establish a contract. In such case the terms of the particular contract consist of those terms on which the writings of the parties agree, together with any supplementary terms incorporated under any other provisions of this act.

Section 2-208 – Course of Performance or Practical Construction

1. Where the contract for sale involves repeated occasions for performance by either party with knowledge of the nature of the performance and opportunity for objection to it by the other, any course of performance accepted or acquiesced in without objection shall be relevant to determine the meaning of the agreement.
2. The express terms of the agreement and any such course of performance, as well as any course of dealing and usage of trade, shall be construed whenever reasonable as consistent with each other; but when such construction is unreasonable, express terms shall control course of performance and course of performance shall control both course of dealing and usage of trade (Section 33-1-205).
3. Subject to the provisions of the next section on modification and waiver, such course of performance shall be relevant to show a waiver or modification of any term inconsistent with such course of performance.

Section 2-209 – Modification, Rescission and Waiver

1. An agreement modifying a contract within this article needs no consideration to be binding.
2. A signed agreement which excludes modification or rescission except by a signed writing cannot be otherwise modified or rescinded, but except as between merchants such a requirement on a form supplied by the merchant must be separately signed by the other party.
3. The requirements of the statute of frauds section of this Chapter (Section 33-2-201) must be satisfied if the contract as modified is within its provisions.
4. Although an attempt at modification or rescission does not satisfy the requirements of subsection (2) or (3) it can operate as a waiver.
5. A party who has made a waiver affecting an executory portion of the contract may retract the waiver by reasonable notification received by the other party that strict performance will be

required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver.

Section 2-210 – Delegation of Performance – Assignment of Rights

1. A party may perform his duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having his original promisor perform or control the acts required by the contract. No delegation of performance relieves the party delegating of any duty to perform or any liability for breach.
2. Except as otherwise provided in Chapter 9 of this Title, unless otherwise agreed all rights of either seller or buyer can be assigned except where the assignment would materially change the duty of the other party, or increase materially the burden or risk imposed on him by his contract, or impair materially his chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of the assignor's due performance of his entire obligation can be assigned despite agreement otherwise.
3. The creation, attachment, perfection, or enforcement of a security interest in the seller's interest under a contract is not a transfer that materially changes the duty of or increases materially the burden or risk imposed on the buyer or impairs materially the buyer's chance of obtaining return performance within the purview of paragraph 2 of this section unless, and then only to the extent that enforcement actually results in a delegation of material performance of the seller. Even in that event, the creation, attachment, perfection, and enforcement of the security interest remain effective, but
   i. The seller is liable to the buyer for damages caused by the delegation to the extent that the damages could not reasonably be prevented by the buyer, and
   ii. A court having jurisdiction may grant other appropriate relief, including cancellation of the contract for sale or an injunction against enforcement of the security interest or consummation of the enforcement.
4. Unless the circumstances indicate the contrary a prohibition of assignment of "the contract" is to be construed as barring only the delegation to the assignee of the assignor's performance.
5. An assignment of "the contract" or of "all my rights under the contract" or an assignment in similar general terms is an assignment of rights and unless the language or the circumstances (as in an assignment for security) indicate the contrary, it is delegation of performance of the duties of the assignor and its acceptance by the assignee constitutes a promise by him to perform those duties. This promise is enforceable by either the assignor or the other party to the original contract.
6. The other party may treat any assignment which delegates performance as creating reasonable grounds for insecurity and may without prejudice to his rights against the assignor demand assurances from the assignee (Section 2-609).

Subchapter 3 – General Obligation and Construction of Contract

Section 2-301 – General Obligations of Parties

The obligation of the seller is to transfer and deliver and that of the buyer is to accept and pay in accordance with the contract.

Section 2-303 – Allocation or Division of Risks

Where this article allocates a risk or a burden as between the parties "unless otherwise agreed" the agreement may not only shift the allocation but may also divide the risk or burden.

Section 2-304 – Price Payable in Money, Goods, Realty, or Otherwise

1. The price can be made payable in money or otherwise. If it is payable in whole or in part in goods each party is a seller of the goods which he is to transfer.
2. Even though all or part of the price is payable in an interest in realty the transfer of the goods and the seller's obligations with reference to them are subject to this article, but not the transfer of the interest in realty or the transferor's obligations in connection therewith.

Section 2-306 – Output, Requirements and Exclusive Dealings

1. A term which measures the quantity by the output of the seller or the requirements of the buyer means such actual output or requirements as may occur in good faith, except that no quantity unreasonably disproportionate to any states estimate or in the absence of a stated estimate to any normal or otherwise comparable to prior output or requirements may be tendered or demanded.
2. A lawful agreement by either the seller or the buyer for exclusive dealing in the kind of goods concerned imposes unless otherwise agreed an obligation by the seller to use best efforts to supply the goods and by the buyer to use best efforts to promote their sale.

Section 2-307 – Delivery in Single Lot or Several Lots

Unless otherwise agreed all goods called for by a contract for sale must be tendered in a single delivery and payment is due only on such tender but where the circumstances give either party the right to make or demand delivery in lots the price if it can be apportioned may be demanded for each lot.

Section 2-308 – Absence of Specified Place for Delivery

Unless otherwise agreed:

a. The place for delivery of goods is the seller's place of business or if he has none his residence; but

b. In a contract for sale of identified goods which to the knowledge of the parties at the time of contracting are in some other place, that place is the place for their delivery; and
c. Documents of title may be delivered through customary banking channels.

Section 2-309 – Absence of Specific Time Provisions; Notice of Termination

1. The time for shipment or delivery or any other action under a contract if not provided in this article or agreed upon shall be a reasonable time.
2. Where the contract provides for successive performances but is indefinite in duration it is valid for a reasonable time but unless otherwise agreed may be terminated at any time by either party.
3. Termination of a contract by one party except on the happening of an agreed event requires that reasonable notification be received by the other party and an agreement dispensing with notification is invalid if its operation would be unconscionable.

Section 2-310 – Open Time for Payment or Running of Credit; Authority to Ship under Reservation

Unless otherwise agreed:

a. Payment is due at the time and place at which the buyer is to receive the goods even though the place of shipment is the place of delivery; and
b. If the seller is authorized to send the goods he may ship them under reservation, and may tender the documents of title, but the buyer may inspect the goods after their arrival before payment is due unless such inspection is inconsistent with the terms of the contract (Section 2-513); and
c. If delivery is authorized and made by way of documents of title otherwise than by subsection (b) then payment is due regardless of where the goods are to be received:
    i. At the time and place at which the buyer is to receive delivery of the tangible documents or
    ii. At the time the buyer is to receive delivery of the electronic documents and at the seller's place of business or if none, the seller's residence; and
d. Where the seller is required or authorized to ship the goods on credit the credit period runs from the time of shipment but post-dating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period.

Section 2-311 – Options and Cooperation Respecting Performance

1. An agreement for sale which is otherwise sufficiently definite (subsection (3) of Section 33-2-204) to be a contract is not made invalid by the fact that it leaves particulars of performance to be specified by one of the parties. Any such specification must be made in good faith and within limits set by commercial reasonableness.

2. Unless otherwise agreed specifications relating to assortment of the goods are at the buyer's option and except as otherwise provided in subsections (1) (c) and (3) of Section 33-2-319 specifications or arrangements relating to shipment are at the seller's option.
3. Where such specification would materially affect the other party's performance but is not seasonably made or where one party's co-operation is necessary to the agreed performance of the other but is not seasonably forthcoming, the other party in addition to all other remedies:
   a. Is excused for any resulting delay in his own performance; and
   b. May also either proceed to perform in any reasonable manner or after the time for a material part of his own performance treat the failure to specify or to cooperate as a breach by failure to deliver or accept the goods.

Section 2-312 – Warranty of Title and Against Infringement; Buyer's Obligation Against Infringement

1. Subject to subsection (2) there is in a contract for sale a warranty by the seller that:
   a. The title conveyed shall be good, and its transfer rightful; and
   b. The goods shall be delivered free from any security interest or other lien or encumbrance of which the buyer at the time of contracting has no knowledge.
2. A warranty under subsection (1) will be excluded or modified only by specific language or by circumstances which give the buyer reason to know that the person selling does not claim title in himself or that he is purporting to sell only such right or title as he or a third person may have.
3. Unless otherwise agreed a seller who is a merchant regularly dealing in goods of the kind warrants that the goods shall be delivered free of the rightful claim of any third person by way of infringement or the like but a buyer who furnishes specifications to the seller must hold the seller harmless against any such claim which arises out of compliance with the specifications.

Section 2-313 – Express Warranties by Affirmation, Promise, Description, Sample

1. Express warranties by the seller are created as follows:
   a. Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.
   b. Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.
   c. Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.
2. It is not necessary to the creation of an express warranty that the seller use formal words such as "warrant" or "guarantee" or that he have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty.

Section 2-314 – Implied Warranty: Merchantability; Usage of Trade

1. Unless excluded or modified (Section 33-2-316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.
2. Goods to be merchantable must be at least such as:
   a. Pass without objection in the trade under the contract description; and
   b. In the case of fungible goods, are of fair average quality within the description; and
   c. Are fit for the ordinary purposes for which such goods are used; and
   d. Run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and
   e. Are adequately contained, packaged, and labeled as the agreement may require; and
   f. Conform to the promises or affirmations of fact made on the container or label if any.
3. Unless excluded or modified (Section 33-2-316) other implied warranties may arise from course of dealing or usage of trade.

Section 2-315 –Implied Warranty: Fitness for Particular Purpose

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose.

Section 2-316 – Exclusion or Modification of Warranties

1. Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other; but, subject to the provisions of this Article on parol or extrinsic evidence (Section 33-2-202) negation or limitation is inoperative to the extent that such construction is unreasonable.
2. Subject to subsection (3), to exclude or modify the implied warranty of merchantability or any part of it the language must mention merchantability and in case of a writing must be conspicuous, and to exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous. Language to exclude all implied warranties of fitness is sufficient if it states, for example, that "There are no warranties which extend beyond the description on the face hereof."
3. Notwithstanding subsection (2):
   a. Unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is", "with all faults" or other language which in common understanding

calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty; and

b. When the buyer before entering into the contract has examined the goods or the sample or model as fully as he desired or has refused to examine the goods there is no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to him; and
c. An implied warranty can also be excluded or modified by course of dealing or course of performance or usage of trade; and
d. The implied warranties of merchantability and fitness do not apply to the sale or barter of livestock or its unborn young, provided that seller offers sufficient evidence that all state and federal regulations pertaining to the health of such animals were complied with; provided, however, that the implied warranties of merchantability and fitness shall apply to the sale or barter of horses.

4. Remedies for breach of warranty can be limited in accordance with the provisions of this Chapter on liquidation or limitation of damages and on contractual modification of remedy (Sections 33-2-718 and 33-2-719).

Section 2-317 – Cumulation and Conflict of Warranties Express or Implied

Warranties whether express or implied shall be construed as consistent with each other and as cumulative, but if such construction is unreasonable the intention of the parties shall determine which warranty is dominant. In ascertaining that intention the following rules apply:

a. Exact or technical specifications displace an inconsistent sample or model or general language of description.
b. A sample from an existing bulk displaces inconsistent general language of description.
c. Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose.

Section 2-318 – Third Party Beneficiaries of Warranties Express or Implied

1. A seller's warranty whether express or implied extends to any natural person who is in the family or household of his buyer or who is a guest in his home if it is reasonable to expect that such person may use, consume or be affected by the goods and who is injured in person by breach of warranty.
2. This section does not displace principles of law and equity that extend a warranty to or for the benefit of a buyer to other persons.
3. The operation of this section may not be excluded, modified, or limited by a seller, but an exclusion, modification, or limitation of the warranty, including any with respect to rights and

remedies, effective against the buyer is also effective against any beneficiary designated under this section.

Section 2-319 – F.O.B. and F.A.S. Terms

1. Unless otherwise agreed the term F.O.B. (which means "free on board") at a named place, even though used only in connection with the stated price, is a delivery term under which:
   a. When the term is F.O.B. the place of shipment, the seller must at that place ship the goods in the manner provided in this article (Section 33-2-504) and bear the expense and risk of putting them into the possession of the carrier; or
   b. When the term is F.O.B. the place of destination, the seller must at his own expense and risk transport the goods to that place and there tender delivery of them in the manner provided in this article (Section 33-2-503);
   c. When under either (a) or (b) the term is also F.O.B. vessel, car or other vehicle, the seller must in addition at his own expense and risk load the goods on board. If the term is F.O.B. vessel the buyer must name the vessel and in an appropriate case the seller must comply with the provisions of this article on the form of bill of lading (Section 33-2-323).
2. Unless otherwise agreed the term F.A.S. vessel (which means "free alongside") at a named port, even though used only in connection with the stated price, is a delivery term under which the seller must:
   a. At his own expense and risk deliver the goods alongside the vessel in the manner usual in that port or on a dock designated and provided by the buyer; and
   b. Obtain and tender a receipt for the goods in exchange for which the carrier is under a duty to issue a bill of lading.
3. Unless otherwise agreed in any case falling within subsection (1)(a) or (c) or subsection (2) the buyer must reasonably give any needed instructions for making delivery, including when the term is F.A.S. or F.O.B. the loading berth of the vessel and in an appropriate case its name and sailing date. The seller may treat the failure of needed instructions as a failure of cooperation under this article (Section 33-2-311). He may also at his option move the goods in any reasonable manner preparatory to delivery or shipment.
4. Under the term F.O.B. vessel or F.A.S. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents.

Section 2-320 – C.I.F. and C. and F. Terms

1. The term C.I.F. means that the price includes in a lump sum the cost of the goods and the insurance and freight to the named destination. The term C. and F. or C.F. means that the price so includes cost and freight to the named destination.

2. Unless otherwise agreed and even though used only in connection with the stated price and destination, the term C.I.F. destination or its equivalent requires the seller at his own expense and risk to:
   a. Put the goods into the possession of a carrier at the port for shipment and obtain a negotiable bill or bills of lading covering the entire transportation to the named destination; and
   b. Load the goods and obtain a receipt from the carrier (which may be contained in the bill of lading) showing that the freight has been paid or provided for; and
   c. Obtain a policy or certificate of insurance, including any way risk insurance, of a kind and on terms then current at the port of shipment in the usual amount, in the currency of the contract, shown to cover the same goods covered by the bill of lading and providing for payment of loss to the order of the buyer or for the amount of whom it may concern; but to the order of the buyer or for the account of whom it may concern; but the seller may add to the price the amount of the premium for any such war risk insurance; and
   d. Prepare an invoice of the goods and procure any other documents required to effect shipment or to comply with the contract; and
   e. Forward and tender with commercial promptness all the documents in due form and with any endorsement necessary to perfect the buyer's rights.
3. Unless otherwise agreed the term C. and F. or its equivalent has the same effect and imposes upon the seller the same obligations and risks as a C.I.F. term except the obligation as to insurance.
4. Under the term C.I.F. or C. and F. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents.

Section 2-321 – C.I.F. or C. and F.

Under a contract containing a term C.I.F. or C. and F.

1. Where the price is based on or is to be adjusted according to "net landed weights", "delivered weights", "out turn" quantity or quality or the like, unless otherwise agreed the seller must reasonably estimate the price. The payment due on tender of the documents called for by the contract is the amount so estimated, but after final adjustment of the price a settlement must be made with commercial promptness.
2. An agreement described in subsection (1) or any warranty of quality or condition of the goods on arrival places upon the seller the risk of ordinary deterioration, shrinkage and the like in transportation but has no effect on the place or time of identification to the contract for sale or delivery or on the passing of the risk of loss.

3. Unless otherwise agreed where the contract provides for payment on or after arrival of the goods the seller must before payment allow such preliminary inspection as is feasible; but if the goods are lost delivery of the documents and payment are due when the goods should have arrived.

Section 2-322 – Delivery

1. Unless otherwise agreed a term for delivery of goods "ex-ship" (which means from the carrying vessel) or in equivalent language is not restricted to a particular ship and requires delivery from a ship which has reached a place at the named port of destination where goods of the kind are usually discharged.
2. Under such a tern unless otherwise agreed:
   a. The seller must discharge all liens arising out of the carriage and furnish the buyer with a direction which puts the carrier under a duty to deliver the goods; and
   b. The risk of loss does not pass to the buyer until the goods leave the ship's tackle or are otherwise properly unloaded.

Section 2-323 – Form of Bill of Lading Required in Overseas Shipment

1. Where the contract contemplates overseas shipment and contains a term C.I.F. or C. and F. or F.O.B. vessel, the seller unless otherwise agreed must obtain a negotiable bill of lading stating that the goods have been loaded on board or, in the case of a term C.I.F. or C. and F., received for shipment.
2. Where in the case within subsection (1) a tangible bill of lading has been issued in a set of parts, unless otherwise agreed if the documents are not to be sent from abroad the buyer may demand tender of the full set; otherwise only one part of the bill of lading need be tendered. Even if the agreement expressly requires a full set.
   a. Due tender of a single part is acceptable within the provisions of this article on cure of improper delivery (subsection (1) of Section 33-2-508); and
   b. Even though the full set is demanded, if the documents are sent from abroad the person tendering an incomplete set may nevertheless require payment upon furnishing an indemnity which the buyer in good faith deems adequate.
3. A shipment by water or by air or a contract contemplating such shipment is "overseas" insofar as by usage of trade or agreement it is subject to the commercial, financing or shipping practices characteristic of international deep water commerce.

Section 2-324 – Provisions for "No Arrival, No Sale"

Under a term "no arrival, no sale" or terms of like meaning, unless otherwise agreed.

a. The seller must properly ship conforming goods and if they arrive by any means he must tender them on arrival but he assumes no obligation that the goods will arrive unless he has caused the nonarrival; and
b. Where without fault of the seller the goods are in part lost or have so deteriorated as no longer to conform to the contract or arrive after the contract time, the buyer may proceed as if there had been casualty to identified goods (Section 33-2-613).

Section 2-325 – Letter of Credit

1. Failure of the buyer seasonably to furnish an agreed letter of credit is a breach of the contract for sale.
2. The delivery to seller of a proper letter of credit suspends the buyer's obligation to pay. If the letter of credit is dishonored, the seller may on seasonable notification to the buyer require payment directly from him.
3. Unless otherwise agreed the term "letter of credit" or "banker's credit" in a contract for sale means an irrevocable credit issued by a financing agency of good repute and, where the shipment is overseas, of goods international repute. The term "confirmed credit" means that the credit must also carry the direct obligation of such an agency which does business in the seller's financial market.

Section 2-326 – Sale on Approval and Sale or Return – Consignment Sales and Rights of Creditors

1. Unless otherwise agreed, if delivered goods may be returned by the buyer even though they conform to the contract, the transaction is:
   a. A "sale on approval" if the goods are delivered primarily for use, and
   b. A "sale or return" if the goods are delivered primarily for resale.
2. Goods held on approval are not subject to the claims of the buyer's creditors until acceptance; goods held on sale or return are subject to such claims while in the buyer's possession.
3. Any "or return" term of a contract for sale is to be treated as a separate contract for sale within the statute of frauds section of this Chapter (Section 2-201 of this title) and as contradicting the sale aspect of the contract within the provisions of this article on parole or extrinsic evidence (Section 2-202 of this title).

Section 2-327 – Special Incidents of Sale on Approval and Sale or Return

1. Under a sale on approval unless otherwise agreed:
   a. Although the goods are identified to the contract the risk of loss and the title do not pass to the buyer until acceptance; and

   b. Use of the goods consistent with the purpose of trial is not acceptance but failure seasonably to notify the seller of election to return the goods is acceptance, and if the goods conform to the contract acceptance of any part is acceptance of the whole; and
   c. After due notification of election to return, the return is at the seller's risk and expense but a merchant buyer must follow any reasonable instructions.
2. Under a sale or return unless otherwise agreed:
   a. The option to return extends to the whole or any commercial unit of the goods while in substantially their original condition, but must be exercised seasonably, and
   b. The return is at the buyer's risk and expense.

Section 2-328 – Sale by Auction

1. In a sale by auction if goods are put up in lots each lot is the subject of a separate sale.
2. A sale by auction is complete when the auctioneer so announces by the fall of the hammer or in other customary manner. Where a bid is made while the hammer is falling in acceptance of a prior bid the auctioneer may in his discretion reopen the bidding or declare the goods sold under the bid on which the hammer was falling.
3. Such a sale is with reserve unless the goods are in explicit terms put up without reserve. In an auction with reserve the auctioneer may withdraw the goods at any time until he announces completion of the sale. In an auction without reserve, after the auctioneer calls for bids on an article or lot, that article or lot cannot be withdrawn unless no bid is made within a reasonable time. In either case a bidder may retract his bid until the auctioneer's announcement of completion of the sale, but a bidder's retraction does not revive any previous bid.
4. If the auctioneer knowingly received a bid on the seller's behalf or the seller makes or procures such a bid, and notice has not been given that liberty for such bidding is reserved, the buyer may at his option avoid the sale or take the goods at the price of the last good faith bid prior to the completion of the sale. This subsection shall not apply to any bid at a forced sale.

Subchapter 4 – Creditors, Title, and Good Faith Purchases

Section 2-401 – Passing of Title – Reservation for Security – Limited Application of this Section

Each provision of this article with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this Chapter and matters concerning title become material the following rules apply:

1. Title to goods cannot pass under a contract for sale prior to their identification to the contract (Section 33-2-501), and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by this act. Any retention or reservation by the seller

of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of the article on Secured Transactions (Chapter 9), title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

2. Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading:
    a. If the contract requires or authorizes the seller to send the goods to the buyer but does not require him to deliver them at destination, title passes to the buyer at the time and place of shipment; but
    b. If the contract requires delivery at destination, title passes on tender there.
3. Unless otherwise explicitly agreed where delivery is to be made without moving the goods:
    a. If the seller is to deliver a tangible document of title, title passes at the time when and the place where he delivers such documents and if the seller is to deliver and electronic document of title, title passes when the seller delivers the document; or
    b. If the goods are at the time of contracting already identified and no documents are to be delivered, title passes at the time and place of contracting.
4. A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance revests title to the goods in the seller. Such revesting occurs by operation of law and is not a “sale”.

Section 2-402 – Rights of Seller’s Creditors against Sold Goods

1. Except as provided in subsections (2) and (3), rights of unsecured creditors of the seller with respect to goods which have been identified to a contract for sale are subject to the buyer’s rights to recover the goods under this article (Sections 33-2-502 and 33-2-716).
2. A creditor of the seller may treat a sale or an identification of goods to a contract for sale as void if as against him a retention of possession by the seller is fraudulent under any rule of law of the state where the goods are situated, except that retention of possession in good faith and current course of trade by a merchant seller for a commercially reasonable time after a sale or identification if not fraudulent.
3. Nothing this article shall be deemed to impair the rights of creditors of the seller.
    a. Under the provisions of the article on Secured Transactions (Article 9); or
    b. Where identification to the contract or delivery is made not in current course of trade but in satisfaction of or as security for a pre-existing claim for money, security or the like and is made under circumstances which under any rule of law of the state where the goods are

situated would apart from this article constitute the transaction a fraudulent transfer or voidable preference.

Section 2-403 – Power to Transfer – Good Faith Purchase of Goods

1. A purchaser of goods acquires all title which his transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value. When goods have been delivered under a transaction of purchase the purchaser has such power even though:
   a. The transferor was deceived as to the identity of the purchaser, or
   b. The delivery was in exchange for a check which is later dishonored, or
   c. It was agreed that the transaction was to be a "cash sale", or
   d. The delivery was procured through fraud punishable as larcenous under the criminal law.
2. Any entrusting of possession of goods to a merchant who deals in goods of that kind gives him power to transfer all rights of the entruster to a buyer in ordinary course of business.
3. "Entrusting" includes any delivery and any acquiescence in retention of possession regardless of any condition expressed between the parties to the delivery or acquiescence and regardless of whether the procurement of the entrusting or the possessor's disposition of the goods have been such as to be larcenous under the criminal law.
4. The rights of other purchasers of goods and lien creditors are governed by the articles on Secured Transactions (Chapter 9) and Documents of Title (Chapter 7).

Subchapter 5 – Performance

Section 2-501 – Insurable Interest in Goods; Manner of Identification of Goods

1. The buyer obtains a special property and an insurable interest in goods by identification of existing goods as goods to which the contract refers even though the goods so identified are nonconforming and he has an option to return or reject them. Such identification can be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement identification occurs:
   a. When the contract is made if it is for the sale of goods already existing and identified;
   b. If the contract is for the sale of future goods other than those described in paragraph (c), when goods are shipped, marked or otherwise designated by the seller as goods to which the contract refers;
   c. When the crops are planted or otherwise become growing crops or the young are conceived if the contract is for the sale of unborn young to be born within twelve (12) months after contracting or for the Sale of crops to be harvested within twelve (12) months or the next normal harvest season after contracting whichever is longer.

2. The seller retains an insurable interest in goods so long as title to or any security interest in the goods remains in him and where the identification is by the seller alone he may until default or insolvency or notification to the buyer that the identification is final substitute other goods for those identified.
3. Nothing in this section impairs any insurable interest recognized under any other statute or rule of law.

Section 2-502 – Buyer's Right to Goods on Seller's Insolvency

1. Subject to paragraphs (2) and (3) of this section and even though the goods have not been shipped a buyer who has paid a part or all of the price of goods in which the buyer has a special property under the provisions of Section 33-2-501 of this title may on making and keeping good a tender of any unpaid portion of their price recover them from the seller if:
   a. In the case of goods bought for personal, family, or household purposes, the seller repudiates or fails to deliver as required by the contract; or
   b. In all cases, the seller becomes insolvent within ten (10) days after receipt of the first installment on their price.
2. The buyer's right to recover the goods under subparagraph (a) of paragraph (1) vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver.
3. If the identification creating his special property has been made by the buyer he acquires the right to recover the goods only if they conform to the contract for sale.

Section 2-503 – Manner of Seller's Tender of Delivery

1. Tender of delivery requires that the seller put and hold conforming goods at the buyer's disposition and give the buyer any notification reasonably necessary to enable him to take delivery. The manner, time and place for tender are determined by the agreement and this article, and in particular:
   a. Tender must be at a reasonable hour, and if it is of goods they must be kept available for the period reasonably necessary to enable the buyer to take possession; but
   b. Unless otherwise agreed the buyer must furnish facilities reasonably suited to the receipt of the goods.
2. Where the case is within the next section respecting shipment tender requires that the seller comply with its provisions.
3. Where the seller is required to deliver at a particular destination tender requires that he comply with subsection (1) and also in any appropriate case tender documents as described in subsections (4) and (5) of this section.
4. Where goods are in the possession of a bailee and are to be delivered without being moved.

a. Tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgment by the bailee of the buyer's right to possession of the goods; but
b. Tender to the buyer of a nonnegotiable document of title or of a written direction to the bailee to deliver is sufficient tender unless the buyer seasonably objects, and receipt by the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the nonnegotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

5. Where the contract requires the seller to deliver documents:
   a. He must tender all such documents in correct form, except as provided in this article with respect to bills of lading in a set (subsection (2) of Section 33-2-323); and
   b. Tender through customary banking channels is sufficient and dishonor of a draft accompanying or associated with the documents constitutes nonacceptance or rejection.

Section 2-504 – Shipment by Seller

Where the seller is required or authorized to send the goods to the buyer and the contract does not require him to deliver them at a particular destination, then unless otherwise agreed he must:

a. Put the goods in the possession of such a carrier and make such a contract for their transportation as may be reasonable having regard to the nature of the goods and other circumstances of the case; and
b. Obtain and promptly deliver or tender in due from any document necessary to enable the buyer to obtain possession of the goods or otherwise required by the agreement or by usage of trade; and
c. Promptly notify the buyer of the shipment. Failure to notify the buyer under paragraph (d) or to make a proper contract under paragraph (a) is a ground for rejection only if material delay or loss ensues.

Section 2-505 – Seller's Shipment under Reservation

1. Where the seller has identified goods to the contract by or before shipment:
   a. His procurement of a negotiable bill of lading to his own order or otherwise reserves in him a security interest in the goods. His procurement of the bill to the order of a financing agency or of the buyer indicates in addition only the seller's expectation of transferring that interest to the person named.
   b. A nonnegotiable bill of lading to himself or his nominee reserves possession of the goods as security but except in a case of conditional delivery (subsection (2) of Section 33-2-507) a

nonnegotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession or control of the bill of lading.

2. When shipment by the seller with reservation of a security interest is in violation of the contract for sale it constitutes an improper contract for transportation within the preceding section but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the seller's powers as a holder of a negotiable document of title.

Section 2-506 – Rights of Financing Agency

1. A financing agency by paying or purchasing for value a draft which relates to a shipment of goods acquires to the extent of the payment or purchase and in addition to its own rights under the draft and any document of title securing it any rights of the shipper in the goods including the right to stop delivery and the shipper's right to have the draft honored by the buyer.
2. The right to reimbursement of a financing agency which has in good faith honored or purchased the draft under commitment to or authority from the buyer is not impaired by subsequent discovery of defects with reference to any relevant document which was apparently regular.

Section 2-507 – Effect of Seller's Tender; Delivery on Condition

1. Tender of delivery is a condition to the buyer's duty to accept the goods and, unless otherwise agreed, to his duty to pay for them. Tender entitles the seller to acceptance of the goods and to payment according to the contract.
2. Where payment is due and demanded on the delivery to the buyer of goods or documents of title, his right as against the seller to retain or dispose of them is conditional upon his making the payment due.

Section 2-508 – Cure by Seller of Improper Tender or Delivery; Replacement

1. Where any tender or delivery by the seller is rejected because nonconforming and the time for performance has not yet expired, the seller may seasonably notify the buyer of his intention to cure and may then within the contract time make a conforming delivery.
2. Where the buyer rejects a nonconforming tender which the seller had reasonable grounds to believe would be acceptable with or without money allowance the seller may if he seasonably notifies the buyer have a further reasonable time to substitute a conforming tender.

Section 2-509 – Risk of Loss in the Absence of Breach

1. Where the contract requires or authorizes the seller to ship the goods by carrier:
   a. If it does not require him to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier even though the shipment is under reservation (Section 33-2-505); but

   b. If it does require him to deliver them at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the buyer when the goods are there duly so tendered as to enable the buyer to take delivery.
2. Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer:
   a. On his receipt of a negotiable document of title covering the goods; or
   b. On acknowledgment by the bailee of the buyer's right to possession of the goods; or
   c. After his receipt of possession or control of a nonnegotiable document of title or other direction to deliver in a record, as provided in subsection (4) (b) of Section 33-2-503.
3. In any case not within subsection (1) or (2), the risk of loss passes to the buyer on his receipt of the goods if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery.
4. The provisions of this section are subject to contrary agreement of the parties and to the provisions of this article on sale on approval (Section 33-2-327) and on effect of breach on risk of loss (Section 33-2-510).

Section 2-510 – Effect of Breach on Risk of Loss

1. Where a tender or delivery of goods so fails to conform to the contract as to give a right of rejection the risk of their loss remains on the seller until cure or acceptance.
2. Where the buyer rightfully revokes acceptance he may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as having rested on the seller from the beginning.
3. Where the buyer as to conforming goods already identified to the contract for sale repudiates or is otherwise in breach before risk of their loss has passed to him, the seller may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as resting on the buyer for a commercially reasonable time.

Section 2-511 – Tender of Payment by Buyer; Payment by Check

1. Unless otherwise agreed tender of payment is a condition to the seller's duty to tender and complete any delivery.
2. Tender of payment is sufficient when made by any means or in any manner current in the ordinary course of business unless the seller demands payment in legal tender and gives any extension of time reasonably necessary to procure it.
3. Subject to the provisions of this act on the effect of an instrument on an obligation (Section 33-3-310), payment by check is conditional and is defeated as between the parties by dishonor of the check on due presentment.

Section 2-512 – Payment by Buyer before Inspection

1. Where the contract requires payment before inspection nonconformity of the goods does not excuse the buyer from so making payment unless:
   a. The nonconformity appears without inspection; or
   b. Despite tender of the required documents the circumstances would justify injunction against honor under the provisions of this act (subsection (b) of Section 33-5-109 of this title).
2. Payment pursuant to subsection (1) of this section does not constitute an acceptance of goods or impair the buyer's right to inspect or any of his remedies.

Section 2-513 – Buyer's Right to Inspection of Goods

1. Unless otherwise agreed and subject to subsection (3), where goods are tendered or delivered or identified to the contract for sale, the buyer has a right before payment or acceptance to inspect them at any reasonable place and time and in any reasonable manner. When the seller is required or authorized to send the goods to the buyer, the inspection may be after their arrival.
2. Expenses of inspection must be borne by the buyer but may be recovered from the seller if the goods do not conform and are rejected.
3. Unless otherwise agreed and subject to the provisions of this article on C.I.F. contracts (subsection (3) of Section 33-2-321), the buyer is not entitled to inspect the goods before payment of the price when the contract provides:
   a. For delivery "C.O.D." or on other like terms; or
   b. For payment against documents of title, except where such payment is due only after the goods are to become available for inspection.
4. A place or method of inspection fixed by the parties is presumed to be exclusive but unless otherwise expressly agreed it does not postpone identification or shift the place for delivery or for passing the risk of loss. If compliance becomes impossible, inspection shall be as provided in this section unless the place or method fixed was clearly intended as an indispensable condition failure of which avoids the contract.

Section 2-514 – When Documents Deliverable on Acceptance; When on Payment

Unless otherwise agreed documents against which a draft is drawn are to be delivered to the drawee on acceptance of the draft if it is payable more than three (3) days after presentment; otherwise, only on payment.

Section 2-515 – Preserving Evidence of Goods in Dispute

In furtherance of the adjustment of any claim or dispute:

a. Either party on reasonable notification to the other and for the purpose of ascertaining the facts and preserving evidence has the right to inspect, test and sample the goods including such of them as may be in the possession or control of the other; and
b. The parties may agree to a third party inspection or survey to determine the conformity or condition of the goods and may agree that the findings shall be binding upon them in any subsequent litigation or adjustment.

Subchapter 6 – Breach, Repudiation, and Excuse

Section 2-601 – Buyer's Rights on Improper Delivery

Subject to the provisions of this article on breach in installment contracts (Section 33-2-612) and unless otherwise agreed under the sections on contractual limitations of remedy (Sections 33-2-718 and 33-2-719), if the goods or the tender of delivery fail in any respect to conform to the contract, the buyer may:

a. Reject the whole; or
b. Accept the whole; or
c. Accept any commercial unit or units and reject the rest.

Section 2-602 – Manner and Effect of Rightful Rejection

1. Rejection of goods must be within a reasonable time after their delivery or tender. It is ineffective unless the buyer seasonably notifies the seller.
2. Subject to the provisions of the two following sections on rejected goods (Section 33-2-603 and 33-2-604):
   a. After rejection any exercise of ownership by the buyer with respect to any commercial unit is wrongful as against the seller; and
   b. If the buyer has before rejection taken physical possession of goods in which he does not have a security interest under the provisions of this article (subsection (3) of Section 33-2-711), he is under a duty after rejection to hold them with reasonable care at the seller's disposition for a time sufficient to permit the seller to remove them; but
   c. The buyer has no further obligations with regard to goods rightfully rejected.
3. The seller's right with respect to goods wrongfully rejected are governed by the provisions of this article on Seller's remedies in general (Section 33-2-703).

Section 2-603 – Merchant Buyer's Duties as to Rightfully Rejected Goods

1. Subject to any security interest in the buyer (subsection (3) of Section 33-2-711), when the seller has no agent or place of business at the market of rejection a merchant buyer is under a duty after rejection of goods in his possession or control to follow any reasonable instructions received from the seller with respect to the goods and in the absence of such instructions to

make reasonable efforts to sell them for the seller's account if they are perishable or threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

2. When the buyer sells goods under subsection (1), he is entitled to reimbursement from the seller or out of the proceeds for reasonable expenses of caring for and selling them, and if the expenses include no selling commission then to such commission as is usual in the trade or if there is none to a reasonable sum not exceeding ten percent (10%) on the gross proceeds.
3. In complying with this section the buyer is held only to good faith and good faith conduct hereunder is neither acceptance nor conversion nor the basis of an action for damages.

Section 2-604 – Buyer's Options as to Salvage of Rightfully Rejected Goods

Subject to the provisions of the immediately preceding section on perishables if the seller gives on instructions within a reasonable time after notification of rejection the buyer may store the rejected goods for the seller's account or reship them to him or resell them for the seller's account with reimbursement as provided in the preceding section. Such action is not acceptance or conversion.

Section 2-605 – Waiver of Buyer's Objections by Failure to Particularize

1. The buyer's failure to state in connection with rejection a particular defect which is ascertainable by reasonable inspection precludes him from relying on the unstated defect to justify rejection or to establish breach:
   a. Where the seller could have cured if it stated seasonably; or
   b. Between merchants when the seller has after rejection made a request in writing for a full and final written statement of all defects on which the buyer purposes to rely.
2. Payment against documents made without reservation of rights precludes recovery of the payment for defects apparent in the documents.

Section 2-606 – What Constitutes Acceptance of Goods

1. Acceptance of goods occur when the buyer:
   a. After a reasonably opportunity to inspect the goods signifies to the seller that the goods are conforming or that he will take or retain them in spite of their nonconformity; or
   b. Fails to make an effective rejection (subsection (1) of Section 33-2-602), but such acceptance does not occur until the buyer has had a reasonable opportunity to inspect them; or
   c. Does any act inconsistent with the seller's ownership; but if such act is wrongful against the seller it is an acceptance only if ratified by him.
2. Acceptance of a part of any commercial unit is acceptance of that entire unit.

Section 2-607 – Effect of Acceptance; Notice of Breach; Burden of Establishing Breach after Acceptance; Notice of Claim or Litigation to Person Answerable Over

1. The buyer must pay at the contract rate for any goods accepted.
2. Acceptance of goods by the buyer precludes rejection of the goods accepted and if made with knowledge of nonconformity cannot be revoked because of it unless the acceptance was on the reasonable assumption that the nonconformity would be seasonably cured but acceptance does not of itself impair any other remedy provided by this article for nonconformity.
3. Where a tender has been accepted:
   a. The buyer must within a reasonable time after he discovers or should have discovered any breach notify the seller of breach or be barred from any remedy; and
   b. If the claim is one for infringement or the like (subsection (3) of Section 33A-2-312) and the buyer is used as a result of such a breach he must so notify the seller within a reasonable time after he receives notice of the litigation or be barred from any remedy over for liability established by the litigation.
4. The burden is on the buyer to establish any breach with respect to the goods accepted.
5. Where the buyer is sued for breach of a warranty or other obligation for which his seller is answerable over:
   a. He may give his seller written notice of the litigation. If the notice states that the seller may come in and defend and that if the seller does not do so he will be bound in any action against him by his buyer by any determination of fact common to the two litigations, then unless the seller after seasonable receipt of the notice does come in and defend he is so bound.
   b. If the claim is one for infringement or the like (subsection (3) of Section 33-2-312) the original seller may demand in writing that his buyer turn over to him control of the litigation including settlement or else be barred from any remedy over and if also agrees to bear all expense and to satisfy any adverse judgment, then unless the buyer after seasonable receipt of the demand does turn over control the buyer is so barred.
6. The provisions of subsections (3), (4) and (5) apply to any obligation of a buyer to hold the seller harmless against infringement or the like (subsection (3) (b) of Section 33-2-312).

Section 2-608 – Revocation of Acceptance in Whole or in Part

1. The buyer may revoke his acceptance of a lot or commercial unit whose nonconformity substantially impairs its value to him if he has accepted it:
   a. On the reasonable assumption that its nonconformity would be cured and it has not been seasonably cured; or
   b. Without discovery of such nonconformity if his acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the seller's assurances.

2. Revocation of acceptance must occur within a reasonable time after the buyer discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by their own defects. It is not effective until the buyer notifies the seller of it.
3. A buyer who so revokes has the same rights and duties with regard to the goods involved as if he had rejected them.

Section 2-609 – Rights to Adequate Assurance of Performance

1. A contract for sale imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party the other may in writing demand adequate assurance of due performance and until he receives such assurance may if commercially reasonable suspend any performance for which he has not already received the agreed return.
2. Between merchants the reasonableness of grounds for insecurity and the adequacy of any assurance offered shall be determined according to commercial standards.
3. Acceptance of any improper delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.
4. After receipt of a justified demand failure to provide within a reasonable time not exceeding thirty (30) days such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of the contract.

Section 2-610 – Anticipatory Repudiation

When either party repudiates the contract with respect to a performance not yet due the loss of which will substantially impair the value of the contract to the other, the aggrieved party may:

a. For commercially reasonable time await performance by the repudiating party; or
b. Resort to any remedy for breach (Section 33-2-703 or Section 33-2-711), even though he has notified the repudiating party that he would await the latter's performance and has urged retraction; and
c. In either case suspend in his own performance or proceed in accordance with the provisions of this article on the seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods (Section 33-2-704).

Section 2-611 – Retraction of Anticipatory Repudiation

1. Until the repudiating party's next performance is due he can retract his repudiation unless the aggrieved party has since the repudiation cancelled or materially changed his position or otherwise indicated that he considers the repudiation final.

2. Retraction may be by any method which clearly indicates to the aggrieved party that the repudiating party intends to perform, but must include any assurance justifiably demanded under the provisions of this article (Section 33-2-609).
3. Retraction reinstates the repudiating party's rights under the contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation.

Section 2-612 – Installment Contracts

1. An "installment contract" is one which requires or authorizes the delivery of goods in separate lots to be separately accepted, even though the contract contains a clause "each delivery is a separate contract" or its equivalent.
2. The buyer may reject any installment which is nonconforming if the nonconformity substantially impairs the value of that installment and cannot be cured or if the nonconformity is a defect in the required documents; but if the nonconformity does not fall within subsection (3) and the seller gives adequate assurance of its cure the buyer must accept that installment.
3. Whenever nonconformity or default with respect to one or more installments substantially impairs the value of the whole contract there is a breach of the whole. But the aggrieved party reinstates the contract if he accepts a nonconforming installment without seasonably notifying of cancellation or if he brings an action with respect only to past installments or demands performance as to future installments.

Section 2-613 – Casualty to Identified Goods

Where the contract requires for its performance goods identified when the contract is made, and the goods suffer casualty without fault of either party before the risk of loss passes to the buyer, or in a proper cause under a "no arrival, no sale" terms (Section 33-2-324) then:

a. If the loss is total the contract is avoided; and
b. If the loss is partial or the goods have so deteriorated as no longer to conform to the contract the buyer may nevertheless demand inspection and at his option either treat the contract as avoided or accept the goods with due allowance form the contract price for the deterioration or the deficiency in quantity but without further right against the seller.

Section 2-614 – Substituted Performance

1. Where without fault of either party the agreed berthing, loading, or unloading facilities fail or an agreed type of carrier becomes unavailable or the agreed manner of delivery otherwise becomes commercially impracticable but a commercially reasonable substitute is available, such substitute performance must be tendered and accepted.
2. If the agreed means or manner of payment fails because of domestic or foreign governmental regulation, the seller may withhold or stop delivery unless the buyer provides a means or

manner of payment which is commercially a substantial equivalent. If delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the buyer's obligation unless the regulation is discriminatory, oppressive or predatory.

Section 2-615 – Excuse by Failure of Presupposed Conditions

Except so far as a seller may have assumed a greater obligation and subject to the preceding section on substituted performance:

a. Delay in delivery or nondelivery in whole or in part by a seller who complies with paragraphs (b) and (c) is not a breach of his duty under a contract for sale if performance as agreed has been made impracticable by the occurrence of a contingency the nonoccurrence of which was a basic assumption on which the contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order whether or not it later proves to be invalid.
b. Where the clauses mentioned in paragraph (a) affect only a part of the seller's capacity to perform, he must allocate production and deliveries among his customers but may at his option include regular customers not then under contract as well as his own requirements for further manufacture. He may so allocate in any manner which is fair and reasonable.

Section 2-616 – Procedure on Notice Claiming Excuse

1. Where the buyer receives notification of a material or indefinite delay or an allocation justified under the preceding section he may by written notification to the seller as to any delivery concerned, and where the prospective deficiency substantially impairs the value of the whole contract under the provisions of this article relating to breach of installment contracts (Section 33-2-612), then also as to the whole:
   a. Terminate and thereby discharge any unexecuted portion of the contract; or
   b. Modify the contract by agreeing to take his available quota in substitution.
2. If after receipt of such notification from the seller the buyer fails so to modify the contract within a reasonable time not exceeding thirty (30) days the contract lapses with respect to any deliveries affected.
3. The provisions of this section may not be negated by agreement except in so far as the seller has assumed a greater obligation under the preceding section.

Subchapter 7 – Remedies

Section 2-701 – Remedies for Breach of Collateral Contracts Not Impaired

Remedies for breach of any obligation or promise collateral or ancillary to a contract for sale are not impaired by the provisions of this Chapter.

Section 2-702 – Seller's Remedies on Discovery of Buyer's Insolvency

1. Where the seller discovers the buyer to be insolvent he may refuse delivery except for cash including payment for all goods theretofore delivered under the contract, and stop delivery under this Chapter (Section 33-2-705).
2. Where the seller discovers that the buyer has received goods on credit while insolvent he may reclaim the goods upon demand made within ten (10) days after the receipt, but if misrepresentation of solvency has been made to the particular seller in writing within three (3) months before delivery the ten-day limitation does not apply. Except as provided in this subsection the seller may not base a right to reclaim goods on the buyer's fraudulent or innocent misrepresentation of solvency or of intent to pay.
3. The seller's right to reclaim under subsection (2) is subject to the rights of a buyer in ordinary course or other good faith purchaser under this article (Section 33-2-403). Successful reclamation of goods excludes all other remedies with respect to them.

Section 2-703 – Seller's Remedies in General

Where the buyer wrongfully rejects or revokes acceptance of goods or fails to make a payment due on or before delivery or repudiates with respect to a part or the whole, then with respect to any goods directly affected and, if the breach is of the whole contract (Section 33-2-612), then also with respect to the whole undelivered balance, the aggrieved seller may:

a. Withhold delivery of such goods;
b. Stop delivery by any bailee as hereafter provided (Section 33-2-705);
c. Proceed under the next section respecting goods still unidentified to the contract;
d. Resell and recover damages as hereafter provided (Section 33-2-706);
e. Recover damages for nonacceptance (Section 33-2-708) or in a proper case the price (Section 33-2-709);
f. Cancel.

Section 2-704 – Seller's Right to Identify Goods to the Contract Notwithstanding Breach or to Salvage Unfinished Goods

1. An aggrieved seller under the preceding section may:
   a. Identify to the contract conforming goods not already identified if at the time he learned of the breach they are in his possession or control;
   b. Treat as the subject of resale goods which have demonstrably been intended for the particular contract even though those goods are unfinished.
2. Where the goods are unfinished an aggrieved seller may in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization either

complete the manufacture and wholly identify the goods to the contract or cease manufacture and resell for scrap or salvage value or proceed in any other reasonable manner.

Section 2-705 – Seller's Stoppage of Delivery in Transit or Otherwise

1. The seller may stop delivery of goods in the possession of a carrier or other bailee when he discovers the buyer to be insolvent (Section 33-2-702) and may stop delivery of carload, truckload, planeload or larger shipments of express or freight when the buyer repudiates or fails to make a payment due before delivery or if for any other reason the seller has a right to withhold or reclaim the goods.
2. As against such buyer the seller may stop delivery until:
   a. Receipt of the goods by the buyer; or
   b. Acknowledgment to the buyer by any bailee of the goods except a carrier that the bailee holds the goods for the buyer; or
   c. Such acknowledgment to the buyer by a carrier by reshipment or as a warehouse; or
   d. Negotiation to the buyer of any negotiable document of title covering the goods.
3. A. to stop delivery the seller must so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.
   B. After such notification the bailee must hold and deliver the goods according to the directions of the seller but the seller is liable to the bailee for any ensuing charges or damages.
   C. If a negotiable document of title has been issued for goods the bailee is not obliged to obey a notification to stop until surrender of possession or control of the document.
   D. A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

Section 2-706 – Seller's Resale Including Contract for Resale

1. Under the conditions stated in Section 33-2-703 on seller's remedies, the seller may resell the goods concerned or the undelivered balance thereof. Where the resale is made in good faith and in a commercially reasonable manner the seller may recover the difference between the resale price and the contract price together with any incidental damages allowed under the provisions of this article (Section 33-2-710), but less expenses saved in consequence of the buyer's breach.
2. Except as otherwise provided in subsection (3) or unless otherwise agreed resale may be at public or private sale including sale by way of one or more contracts to sell or of identification to an existing contract of the seller. Sale may be as a unit or in parcels and at any time and place and on any terms but every aspect of the sale including the method, manner, time, place and terms must be commercially reasonable. The resale must be reasonably identified as referring to

the broken contract, but it is not necessary that the goods be in existence or that any or all of them have been identified to the contract before the breach.

3. Where the resale is at private sale the seller must give the buyer reasonable notification of his intention to resell.
4. Where the resale is at public sale:
    a. Only identified goods can be sold except where there is a recognized market for a public sale of futures in goods of the kind; and
    b. It must be made at a usual place or market for public sale if one is reasonably available and except in the case of goods which are perishable or threaten to decline in value speedily the seller must give the buyer reasonable notice of the time and place of the resale; and
    c. If the goods are not to be within the view of those attending the sale the notification of sale must state the place where the goods are located and provide for their reasonable inspection by prospective bidders; and
    d. The seller may buy.
5. A purchaser who buys in good faith at a resale takes the goods free of any rights of the original buyer even though the seller fails to comply with one or more of the requirements of this section.
6. The seller is not accountable to the buyer for any profit made on any resale. A person in the position of a seller (Section 33-2-707) or a buyer who has rightfully rejected or justifiably revoked acceptance must account for any excess over the amount of his security interest, as hereinafter defined (subsection (3) of Section 33-2-711).

Section 2-707 – Person in Position of the Seller

1. A "person in the position of a seller" includes as against a principal an agent who has paid or become responsible for the price of goods on behalf of his principal or anyone who otherwise holds a security interest or other right in goods similar to that of a seller.
2. A person in the position of a seller may as provided in this article withhold or stop delivery (Section 33-2-705) and resell (Section 33-2-706) and recover incidental damages (Section 33-2-710).

Section 2-708 – Seller's Damages for Nonacceptance or Repudiation

1. Subject to subsection (2) and to the provisions of this Chapter with respect to proof of market price (Section 33-2-723), the measure of damages for nonacceptance or repudiation by the buyer is the difference between the market price at the time and place for tender and the unpaid contract price together with any incidental damages provides in this article (Section 33-2-710), but less expenses saved in consequence of the buyer's breach.
2. If the measure of damages provided in subsection (1) is inadequate to put the seller in as good as position as performance would have done then the measure of damages is the profit

(including reasonable overhead) which the seller would have made from full performance by the buyer, together with any incidental damages provided in this article (Section 33-2-710), due allowance for costs reasonable incurred and due credit for payments or proceeds of resale.

Section 2-709 – Action for the Price

1. When the buyer fails to pay the price as it becomes due the seller may recover, together with any incidental damages under the next section, the price:
   a. Of goods accepted or of conforming goods lost or damaged within a commercially reasonable time after risk of their loss has passed to the buyer; and
   b. Of goods identified to the contract is the seller is unable after reasonable effort to resell them at a reasonable price or the circumstances reasonably indicate that such effort will be unavailing.
2. Where the seller sues for the price he must hold for the buyer any goods which have been identified to the contract and are still in his control except that is resale becomes possible he may resell them at any time prior to the collection of the judgment. The net proceeds of any such resale must be credited to the buyer and the payment of the judgment entitles him to any goods not resold.
3. After the buyer has wrongfully rejected or revoked acceptance of the goods or has failed to make a payment due or has repudiated (Section 33-2-610), a seller who is held not entitled to the price under this section shall nevertheless be awarded damages for nonacceptance under the preceding section.

Section 2-710 – Seller's Incidental Damages

Incidental damages to an aggrieved seller include any commercially reasonable charges, expenses or commissions incurred in stopping delivery, in the transportation, care and custody of goods after the buyer's breach, in connection with return or resale of the goods or otherwise resulting from the breach.

Section 2-711 – Buyer's Remedies in General; Buyer's Security Interest in Rejected Goods

1. Where the seller fails to make delivery or repudiates or the buyer rightfully rejects or justifiably revokes acceptance then with respect to any goods involved, and with respect to the whole if the breach goes to the whole contract (Section 33-2-612), the buyer may cancel and whether or not he has done so may in addition to recovering so much of the price as has been paid:
   a. "Cover" and have damages under the next section as to all the goods affected whether or not they have been identified to the contract; or
   b. Recover damages for nondelivery as provided in this article (Section 33-2-713).
2. Where the seller fails to deliver or repudiates the buyer may also:

a. If the goods have been identified recover them as provided in this article (Section 33-2-502); or
b. In a proper case obtain specific performance or replevy the goods as provided in this article (Section 33-2-716).

3. On rightful rejection or justifiable revocation of acceptance of buyer has a security interest in goods in his possession or control for any payments made on their price and any expenses reasonably incurred in their inspection, receipt, transportation, care and custody and may hold such goods and resell them in like manner as an aggrieved seller (Section 33-2-706).

Section 2-712 – Buyer's Remedies in General; Buyer's Security Interest in Rejected Goods

1. After a breach within the preceding section the buyer may "cover" by making in good faith and without unreasonable delay any reasonable purchase of or contract to purchase goods in substitution for those due from the seller.
2. The buyer may recover from the seller as damages the difference between the cost of cover and the contract price together with any incidental or consequential damages as hereinafter defined (Section 33-2-715), but less expenses saved in consequences of the seller's breach.
3. Failure of the buyer to affect cover within this section does not bar him from any other remedy.

Section 2-713 – Buyer's Damages for Nondelivery or Repudiation

1. Subject to the provisions of this Chapter with respect to proof of market price (Section 33-2-723), the measure of damages for nondelivery or repudiation by the seller is the difference between the market price at the time when the buyer learned of the breach and the contract price together with any incidental and consequential damages provided in this article (Section 33-2-715), but less expenses saved in consequence of the seller's breach.
2. Market price is to be determined as of the place for tender or in cases of rejection after arrival or revocation of acceptance, as of the place of the arrival.

Section 2-714 – Buyer's Damages for Breach in Regard to Accepted Goods

1. Where the buyer has accepted goods and given notification (subsection (3) of Section 33-2-607) he may recover as damages for any nonconformity of tender the loss resulting in the ordinary course of events from the seller's breach as determined in any manner which is reasonable.
2. The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount.
3. In a proper case any incidental and consequential damages under the next section may also be recovered.

Section 2-715 – Buyer's Incidental and Consequential Damages

1. Incidental damages resulting from the seller's breach include expenses reasonably incurred in inspection, receipt, transportation and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses or commissions in connection with effecting cover and any other reasonable expense incident to the delay or other breach.
2. Consequential damages resulting from the seller's breach include:
   a. Any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and
   b. Injury to person or property proximately resulting from any breach of warranty.

Section 2-716 – Buyer's Right to Specific Performance or Replevin

1. Specific performance may be decreed where the goods are unique or in other proper circumstances.
2. The decree for specific performance may include such terms and conditions as to payment of the price, damages, or other relief as the court may deem just.
3. The buyer has a right of replevin for goods identified to the contract if after reasonable effort he is unable to affect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered. In the case of goods bought for personal, family, or household purposes, the buyer's right of replevin vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver.

Section 2-717 – Deduction of Damages from the Price

The buyer on notifying the seller of his intention to do so may deduct all or any part of the damages resulting from any breach of the contract from any part of the price still due under the same contract.

Section 2-718 – Liquidation or Limitation of Damages; Deposit

1. Damages for breach by either party may be liquidated in the agreement but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy. A term fixing unreasonably large liquidated damages is void as a penalty.
2. Where the seller justifiably withholds delivery of goods because of the buyer's breach, the buyer is entitled to restitution of any amount by which the sum of his payments exceeds:
   a. The amount to which the seller is entitled by virtue of terms liquidating the seller's damages in accordance with subsection (1), or

   b. In the absence of such terms, twenty percent (20%) of the value of the total performance for which the buyer is obligated under the contract or Five Hundred Dollars ($500.00), whichever is smaller.
3. The buyer's right to restitution under subsection (2) is subject to offset to the extent that the seller establishes:
   a. A right to recover damages under the provisions of this article other than subsection (1), and
   b. The amount or value of any benefits received by the buyer directly or indirectly by reason of the contract.
4. Where a seller has received payment in goods their reasonable value or the proceeds of their resale shall be treated as payments for the purposes of subsection (2); but if the seller has notice of the buyer's breach before reselling goods received in part performance, his resale is subject to the conditions laid down in this Chapter on resale by an aggrieved seller (Section 33-2-706).

Section 2-719 – Contractual Modification or Limitation of Remedy

1. Subject to the provisions of subsections (2) and (3) of this section and of the preceding section on liquidation and limitation of damages:
   a. The agreement may provide for remedies in addition to or in substitution for those provided in this article and may limit or alter the measure of damages recoverable under this article, as by limiting the buyer's remedies to return of the goods and repayment of the price or to repair and replacement of nonconforming goods or parts; and
   b. Resort to a remedy as provided is optional unless the remedy is expressly agreed to be exclusive, in which case it is the sole remedy.
2. Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this act.
3. Consequential damages may be limited or excluded unless the limitation or exclusion is unconscionable. Limitation of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable but limitation of damages where the loss is commercial is not.

Section 2-720 – Effect of Cancellation or Rescission on Claims for Antecedent Breach

Unless the contrary intention clearly appears, expressions of "cancellation" or "rescission" of the contract or the like shall not be construed as a renunciation or discharge of any claim in damages for an antecedent breach.

Section 2-721 – Remedies for Fraud

Remedies for material misrepresentation or fraud include all remedies available under this article for nonfraudulent breach. Neither rescission or a claim for rescission of the contract for sale nor rejection or return of the goods shall bar or be deemed inconsistent with a claim for damages or other remedy.

Section 2-722 – Who Can Sue Third Parties for Injury to Goods

Where a third party so deals with goods which have been identified to a contract for sale as to cause actionable injury to a party to that contract:

a. A right of action against the third party is in either party to the contract for sale who has title to or a security interest or a special property or an insurable interest in the goods; and if the goods have been destroyed or converted a right of action is also in the party who either bore the risk of loss under the contract for sale or has since the injury assumed that risk as against the other;
b. If at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the contract for sale and there is no arrangement between them for disposition of the recovery, his suit or settlement is, subject to his own interest, as a fiduciary for the other party to the contract;
c. Either party may with the consent of the other sue for the benefit of whom it may concern.

Section 2-723 – Proof of Market Price: Time and Place

1. If an action based on anticipatory repudiation comes to trial before the time for performance with respect to some or all of the goods, any damages based on market price (Section 33-2-708 or Section 33-2-713) shall be determined according to the price of such goods prevailing at the time when the aggrieved party learned of the repudiation.
2. If evidence of a price prevailing at the times or places described in this article is not readily available the price prevailing within any reasonable time before or after the time described or at any other place which in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the cost of transporting the goods to or from such other place.
3. Evidence of a relevant price prevailing at a time or place other than the one described in this article offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise.

Section 2-724 – Admissibility of Market Quotations

Whenever the prevailing price or value of any goods regularly bought and sold in any established commodity market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of such market shall be admissible in evidence. The circumstances of the preparation of such a report may be shown to affect its weight but not its admissibility.

Section 2-725 – Statute of Limitations in Contracts for Sale

1. An action for breach of any contract for sale must be commenced within five (5) years after the cause of action has accrued. By the original agreement the parties may reduce the period of limitation to not less than one (1) year but may not extend it.
2. A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made, except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered.
3. Where an action commenced within the time limited by subsection (1) is so terminated as to leave available a remedy by another action for the same breach such other action may be commenced after the expiration of the time limited and within one (1) year after the termination of the first action unless the termination resulted from voluntary discontinuance or form dismissal for failure or neglect to prosecute.
4. This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action which have accrued before this act becomes effective.

Chapter 2A – Leases

Section 2A-101 – Short Title

This article shall be known and may be cited as the Uniform Commercial Code Leases.

Section 2A-102 – Scope

This article applies to any transaction, regardless of form, that creates a lease of goods.

Section 2A-103 – Definitions and Index of Definitions

1. In this article unless the context otherwise requires:
   a. "Buyer in the ordinary course of business" means a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, buys in the ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes acquiring goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.
   b. "Cancellation" occurs when either party puts an end to the lease contract for default by the other party.

c. “Commercial unit” means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine, or a set of articles, as a suite of furniture or a line of machinery, or a quantity, as a gross or carload, or any other unit treated in use or in the relevant market as a single whole.
d. “Conforming” goods or performance under a lease contract means goods or performance that are in accordance with the obligations under the lease contract.
e. “Consumer lease” means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual and who takes under the lease primarily for a personal, family, or household purpose, if the total payments to be made under the lease contract, excluding payments for options to renew or buy, do not exceed Forty-Five Thousand Dollars ($45,000.00).
f. “Fault” means wrongful act, omission, breach, or default.
g. “Finance lease” means a lease with respect to which:
    i. The lessor does not select, manufacture or supply the goods;
    ii. The lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and
    iii. One of the following occurs:
        A. The lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;
        B. The lessee’s approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract;
        C. The lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; or
        D. If the lease is not a consumer lease, the lessor, before the lessee signs the lease contract, informs the lessee in writing:
            a. Of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person,
            b. That the lessee is entitled under this article to the promises and warranties, including those of any third party, provided to the lessor by the person

supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods, and

c. That the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.

H. "Goods" means all things that are movable at the time of identification to the lease contract, or are fixtures (Section 2A-309 of this title). The term includes future goods, specially manufactured goods, and the unborn young of animals. The term does not include information, the money in which the price is to be paid, investment securities under Article 8 of the Uniform Commercial Code, minerals or the like, including oil and gas, before extraction, or chooses in action.

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

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

K. "Lease agreement" means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstance including course of dealing of usage of trade or course of performance as provided in this article. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

L. "Lease contract" means the total legal obligation that results from the lease agreement as affected by this article and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.

M. "Leasehold interest" means the interest of the lessor or the lessee under a lease contract.

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

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

P. “Lessor” means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

Q. “Lessor’s residual interest” means the lessor’s interest in the goods after expiration, termination, or cancellation of the lease contract.

R. “Lien” means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.

S. “Lot” means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.

T. “Merchant lessee” means a lessee that is a merchant with respect to goods of the kind subject to the lease.

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

V. “Purchase” includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods.

W. “Sublease” means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.

X. “Supplier” means a person from whom a lessor buys or leases goods to be leased under a finance lease.

Y. “Supply contract” means a contract under which a lessor buys or leases goods to be leased.

Z. “Termination” occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

2. Other definitions applying to this article and the sections in which they appear are:
   “Accessions”. Subsection (1) of Section 2A-310 of this title.
   “Construction mortgage”. Paragraph (d) of subsection (1) of Section 2A-309 of this title.
   “Encumbrance”. Paragraph (e) of subsection (1) of Section 2A-309 of this title.
   “Fixtures”. Paragraph (a) of subsection (1) of Section 2A-309 of this title.
   “Fixture filing”. Paragraph (b) of subsection (1) of Section 2A-309 of this title.
   “Purchase money lease”. Paragraph (c) of subsection (1) of Section 2A-309 of this title.

3. The following definitions in other articles apply to this article:
   “Account” of Chapter 9 of this title.
   “Between merchants”. Subsection (3) of Section 2-104 of this title.
   “Buyer”. Paragraph (a) of subsection (1) of Section 2-103 of this title.
   “Chattel paper”. Chapter 9 of this title.
   “Consumer goods”. Chapter 9 of this title.

"Document" of Chapter 9 of this title.
"Entrusting". Paragraph (3) of Section 2-403 of this title.
"General intangible". Chapter 9 of this title.
"Instrument" of Chapter 9 of this title.
"Merchant". Subsection (1) of Section 2-104 of this title.
"Mortgage". Paragraph (55) of Chapter 9 of this title.
"Pursuant to commitment" of Chapter 9 of this title.
"Receipt". Subsection (c) of paragraph (1) of Section 2-103 of this title.
"Sale". Paragraph (1) of Section 2-106 of this title.
"Sale on approval". Section 2-326 of this title.
"Sale or return". Section 2-326 of this title.
"Seller". Subparagraph (d) of paragraph (1) of Section 2-103 of this title.

4. In addition, Chapter 1 of this title contains general definitions and principles of construction and interpretation applicable throughout this article.

Section 2A-104 – Leases Subject to Other Law

1. A lease, although subject to this Chapter, is also subject to any applicable:
   a. Certificate of title statute of this nation;
   b. Certificate of title statute of another jurisdiction (Section 33-2A-105 of this title); or
   c. Consumer protection statute of this nation, or final consumer protection decision of a court of this nation.
2. In case of conflict between this Chapter, other than Section 33-2A-105, subsection (3) of Section 33-2A-304, and subsection (3) of Section 33-2A-305 of this title, and a statute or decision referred to in subsection (1) of this section, the statute or decision controls.
3. Failure to comply with an applicable law has only the effect specified therein.

Section 2A-105 – Territorial Application of Article to Goods Covered by Certificate of Title

Subject to the provisions of subsections (3) of Sections 34 and 35 of this Chapter, with respect to goods covered by a certificate of title issued under a statute of this nation or of another jurisdiction, compliance and the effect of compliance or noncompliance with a certificate of title statute are governed by the law, including the conflict of laws rules, of the jurisdiction issuing the certificate until the earlier of:

a. Surrender of the certificate, or
b. Four (4) months after the goods are removed from that jurisdiction and thereafter until a new certificate of title is issued by another jurisdiction.

Section 2A-106 – Limitation on Power of Parties to Consumer Lease to Choose Applicable Law and Judicial Forum

1. If the law chosen by the parties to a consumer lease is that of a jurisdiction other than a jurisdiction in which the lessee resides at the time the lease agreement becomes enforceable or within thirty (30) days thereafter or in which the goods are to be used, the choice is not enforceable.
2. If the judicial forum chosen by the parties to a consumer lease is a forum that would not otherwise have jurisdiction over the lessee, the choice is not enforceable.

Section 2A-107 – Waiver or Renunciation of Claim or Right after Default

Any claim or right arising out of an alleged default or breach of warranty may be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by the aggrieved party.

Section 2A-108 – Unconscionability

1. If the court as a matter of law finds a lease contract or any clause of a lease contract to have been unconscionable at the time it was made the court may refuse to enforce the lease contract, or it may enforce the remainder of the lease contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.
2. With respect to a consumer lease, if the court as a matter of law finds that a lease contract or any clause of a lease contract has been induced by unconscionable conduct or that unconscionable conduct has occurred in the collection of a claim arising from a lease contract, the court may grant appropriate relief.
3. Before making a finding of unconscionability under subsection (1) or (2) of this section, the court, on its own motion or that of a party, shall afford the parties a reasonable opportunity to present evidence as to the setting, purpose, and effect of the lease contract or clause thereof, or of the conduct.
4. In an action in which the lessee claims unconscionability with respect to a consumer lease;
    a. If the court finds unconscionability under subsection (1) or (2) of this section, the court shall award reasonable attorney's fees to the lessee.
    b. If the court does not find unconscionability and the lessee claiming unconscionability has brought or maintained an action he knew to be groundless, the court shall award reasonable attorney's fees to the party against whom the claim is made.
    c. In determining attorney's fees, the amount of the recovery on behalf of the claimant under subsections (1) and (2) of this section is not controlling.

Section 2A-109 – Option to Accelerate at Will

1. A term providing that one party or his successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or "when he deems himself insecure" or in words of similar import must be construed to mean that he has power to do so only if he in good faith believes that the prospect of payment or performance is impaired.
2. With respect to a consumer lease, the burden of establishing good faith under subsection (1) of this section is on the party who exercised the power; otherwise the burden of establishing lack of good faith is on the party against whom the power has been exercised.

Section 2A-201 – Statute of Frauds

1. A lease contract is not enforceable by way of action or defense unless:
   a. The total payments to be made under the lease contract, excluding payments for options to renew or buy, are less than One Thousand Dollars ($1,000.00); or
   b. There is a writing, signed by the party against whom enforcement is sought or by that party's authorized agent, sufficient to indicate that a lease contract has been made between the parties and to describe the goods leased and the lease term.
2. Any description of leased goods or of the lease term is sufficient and satisfies paragraph (b) of subsection (1) of this section, whether or not it is specific, if it reasonably identifies what is described.
3. A writing is not insufficient because it omits or incorrectly states a term agreed upon, but the lease contract is not enforceable under paragraph (b) of subsection (1) of this section beyond the lease term and the quantity of goods shown in writing.
4. A lease contract that does not satisfy the requirements of subsection (1) of this section, but which is valid in other respects, is enforceable:
   a. If the goods are to be specifically manufactured or obtained for the lessee and are not suitable for lease or sale to others in the ordinary course of the lessor's business, and the lessor, before notice of repudiation is received and under circumstances that reasonably indicate that the goods are for the lessee, has made either a substantial beginning of their manufacture or commitments for their procurement;
   b. If the party against whom enforcement is sought admits in that party's pleading, testimony or otherwise in court that a lease contract was made, but the lease contract is not enforceable under this provision beyond the quantity of goods admitted; or
   c. With respect to goods that have been received and accepted by the lessee.
5. The lease term under a lease contract referred to in subsection (4) of this section is:
   a. If there is a writing signed by the party against whom enforcement is sought or by that party's authorized agent specifying the lease term, the term so specified;

b. If the party against whom enforcement is sought admits in that party's pleading, testimony, or otherwise in court a lease term, the term so admitted; or
c. A reasonable lease term.

Section 2A-202 – Final Written Expression – Parol or Extrinsic Evidence

Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

a. By course of dealing or usage of trade or by course of performance; and
b. By evidence of consistent additional terms unless the court funds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

Section 2A-203 – Seal Inoperative

The affixing of a seal to a writing evidencing a lease contract or an offer to enter into a lease contract does not render the writing a sealed instrument and the law with respect to sealed instruments does not apply to the lease contract or offer.

Section 2A-204 – Formation in General

1. A lease contract may be made in any manner sufficient to show agreement including conduct by both parties which recognizes the existence of a lease contract.
2. An agreement sufficient to constitute a lease contract may be found although the moment of its making is undetermined.
3. Although one or more terms are left open, a lease contract does not fail for indefiniteness if the parties have intended to make a lease contract and there is a reasonably certain basis for giving an appropriate remedy.

Section 2A-205 – Firm Offers

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

Section 2A-206 – Offer and Acceptance in Formation of Lease Contract

1. Unless otherwise unambiguously indicated by the language or circumstances, an offer to make a lease contract must be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances.
2. If the beginning of a requested performance is a reasonable mode of acceptance, an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance.

Section 2A-207 – Reserved

Section 2A-208 – Modification, Rescission, and Waiver

1. An agreement modifying a lease contract needs no consideration to be binding.
2. A signed lease agreement that excludes modification or rescission except by a signed writing may not be otherwise modified or rescinded, but, except as between merchants, such a requirement on a form supplied by a merchant must be separately signed by the other party.
3. Although an attempt at modification or rescission does not satisfy the requirements of subsection (2) of this section, it may operate as a waiver.
4. A party who has made a waiver affecting an executory portion of a lease contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver.

Section 2A-209 – Lessee under Finance Lease as Beneficiary of Supply Contract

1. The benefit of the supplier's promises to the lessor under the supply contract and of all warranties, whether express or implied, including those of any third party provided in connection with or as part of the supply contract, extends to the lessee to the extent of the lessee's leasehold interest under a finance lease related to the supply contract, but is subject to the terms of the warranty and of the supply contract and all defenses or claims arising therefrom.
2. The extension of the benefit of a supplier's promises and of warranties to the lessee (subsection (1) of this section) does not:
   i. Modify the rights and obligations of the parties to the supply contract, whether arising therefrom or otherwise, or
   ii. Impose any duty or liability under the supply contract on the lessee.
3. Any modification or rescission of the supply contract by the supplier and the lessor is effective between the supplier and the lessee unless, before the modification or rescission, the supplier has received notice that the lessee has entered into a finance lease related to the supply contract. If the modification or rescission is effective between the supplier and the lessee, the lessor is deemed to have assumed, in addition to the obligations of the lessor to the lessee

under the lease contract, promises of the supplier to the lessor and warranties that were so modified or rescinded as they existed and were available to the lessee before modification or rescission.

4. In addition to the extension of the benefit of the supplier's promises and of warranties to the lessee under subsection (1) of this section, the lessee retains all rights that the lessee may have against the supplier which arise from an agreement between the lessee and the supplier or under other law.

Section 2A-210 – Express Warranties

1. Express warranties by the lessor are created as follows:
   a. Any affirmation of fact or promise made by the lessor to the lessee which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods will conform to the affirmation or promise.
   b. Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods will conform to the description.
   c. Any sample or model that is made part of the basis of the bargain creates an express warranty that the whole of the goods will conform to the sample or model.
2. It is not necessary to the creation of an express warranty that the lessor use formal words, such as "warrant" or "guarantee", or that the lessor have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the lessor's opinion or commendation of the goods does not create a warranty.

Section 2A-211 – Warranties against Interference and Against Infringement – Lessee's Obligation against Infringement

1. There is in a lease contract a warranty that for the lease term no person holds a claim to or interest in the goods that arose from an act or omission of the lessor, other than a claim by way of infringement or the like, which will interfere with the lessee's enjoyment of its leasehold interest.
2. Except in a finance lease there is in a lease contract by a lessor who is a merchant regularly dealing in goods of the kind a warranty that the goods are delivered free of the rightful claim of any person by way of infringement or the like.
3. A lessee who furnishes specifications to a lessor or a supplier shall hold the lessor and the supplier harmless against any claim by way of infringement or the like that arises out of compliance with the specifications.

Section 2A-212 – Implied Warranty of Merchantability

1. Except in a finance lease, a warranty that the goods will be merchantable is implied in a lease contract if the lessor is a merchant with respect to goods that kind.
2. Goods to be merchantable must be at least such as:
    a. Pass without objection in the trade under the description in the lease agreement;
    b. In the case of fungible goods, are of fair average quality within the description;
    c. Are fit for the ordinary purposes for which goods of that type are used;
    d. Run, within the variation permitted by the lease agreement, of even kind, quality, and quantity within each unit and among all units involved;
    e. Are adequately contained, packages, and labeled as the lease agreement may require; and
    f. Conform to any promises or affirmations of fact made on the container or label.
3. Other implied warranties may arise form course of dealing or usage of trade.

Section 2A-213 – Implied Warranty of Fitness for Particular Purpose

Except in a finance lease, if the lessor at the time the lease contract is made has reason to know of any particular purpose for which the goods are required and that the lessee is relying on the lessor's skill or judgment to select or furnish suitable goods, there is in the lease contract an implied warranty that the goods will be fit for that purpose.

Section 2A-214 – Exclusion or Modification of Warranties

1. Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit a warranty must be construed wherever reasonable as consistent with each other; but, subject to the provisions of Section 11 of this act on parol or extrinsic evidence, negation or limitation is inoperative to the extent that the construction is unreasonable.
2. Subject to subsection (3) of this section, to exclude or modify the implied warranty of merchantability or any part of it the language must mention "merchantability", be by a writing, and be conspicuous. Subject to subsection (3) of this section, to exclude or modify any implied warranty of fitness the exclusion must be by a writing and be conspicuous. Language to exclude all implied warranties of fitness is sufficient if it is in writing, is conspicuous and states, for example, "There is no warranty that the goods will be fit for a particular purpose."
3. Notwithstanding subsection (2) of this section, but subject to subsection (4) of this section:
    a. Unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is", or "with all faults", or by other language that in common understanding calls the lessee's attention to the exclusion of warranties and makes plain that there is no implied warranty, if in writing and conspicuous;
    b. If the lessee before entering into the lease contract has examined the goods or the sample or model as fully as desired or has refused to examine the goods, there is no implied warranty with regard to defects that an examination ought in the circumstances to have revealed; and

c. An implied warranty may also be excluded or modified by course of dealing, course of performance, or usage of trade.

4. To exclude or modify a warranty against interference or against infringement (Section 20 of this act) or any part of it, the language must be specific, be by a writing, and be conspicuous, unless the circumstances, including course of performance, course of dealing, or usage of trade, give the lessee reason to know that the goods are being leased subject to a claim or interest of any person.

Section 2A-215 – Cumulation and Conflict of Warranties Express or Implied

Warranties, whether express or implied, must be construed as consistent with each other and as cumulative, but if that construction is unreasonable, the intention of the parties determines which warranty is dominant. In ascertaining that intention the following rules apply:

a. Exact or technical specifications displace an inconsistent sample or model or general language of description.
b. A sample from an existing bulk displaces inconsistent general language of description.
c. Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose.

Section 2A-216 – Third Party Beneficiaries of Express and Implied Warranties

1. A warranty to or for the benefit of a lessee under this article, whether express or implied, extends to any natural person who is in the family or household of the lessee or who is a guest in the lessee's home if it is reasonable to expect that such person may use, consume, or be affected by the goods and who is injured in person by breach of the warranty.
2. This section does not displace principles of law and equity that extend a warranty to or for the benefit of a lessee to other persons.
3. The operation of this section may not be excluded, modified, or limited, but an exclusion, modification, or limitation of the warranty, including any with respect to rights and remedies, effective against the lessee is also effective against any beneficiary designated under this section.

Section 2A-217 – Identification

Identification of goods as goods to which a lease contract refers may be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement, identification occurs:

a. When the lease contract is made if the lease contract is for a lease of goods that are existing and identified;

b. When the goods are shipped, marked, or otherwise designated by the lessor as goods to which the lease contract refers, if the lease contract is for a lease of goods that are not existing and identified; or
c. When the young are conceived, if the lease contract is for a lease of unborn young of animals.

Section 2A-218 – Insurance and Proceeds

1. A lessee obtains and insurable interest when existing goods are identified to the lease contract even though the goods identified are nonconforming and the lessee has an option to reject them.
2. If a lessee has an insurable interest only is reason of the lessor's identification of the goods, the lessor, until default or insolvency or notification to the lessee that identification is final, may substitute other goods for those identified.
3. Notwithstanding a lessee's insurable interest under subsections (1) and (2) of this section, the lessor retains an insurable interest until an option to buy has been exercised by the lessee and risk of loss has passed to the lessee.
4. Nothing in this section impairs any insurable interest recognized under any other statute or rule of law.
5. The parties by agreement may determine that one or more parties have an obligation to obtain and pay for insurance covering the goods and by agreement may determine the beneficiary of the proceeds of the insurance.

Section 2A-219 – Risk of Loss

1. Except in the case of a finance lease, risk of loss is retained by the lessor and does not pass to the lessee. In the case of a finance lease, risk of loss passes to the lessee.
2. Subject to the provisions of this article on the effect of default on risk of loss (Section 29 of this act), if risk of loss is to pass to the lessee and the time of passage is not stated, the following rules apply:
   a. If the lease contract requires or authorizes the goods to be shipped by carrier:
      i. And it goes not require delivery at a particular destination, the risk of loss passes to the lessee when the goods are duly delivered to the carrier; but
      ii. If it does require delivery at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the lessee when the goods are there duly so tendered as to enable the lessee to take delivery.
   b. If the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the lessee on acknowledgment by the bailee of the lessee's right to possession of the goods.

c. In any case not within paragraph (a) or (b) of this subsection, the risk of loss passes to the lessee on the lessee's receipt of the goods if the lessor, or, in the case of a finance lease, the supplier, is a merchant; otherwise the risk passes to the lessee on tender of delivery.

Section 2A-220 – Effect of Default on Risk of Loss

1. Where risk of loss is to pass to the lessee and the time of passage is not stated:
   a. If a tender or delivery of goods so fails to conform to the lease contract as to give a right of rejection, the risk of their loss remains with the lessor, or, in the case of a finance lease, the supplier, until cure or acceptance.
   b. If the lessee rightfully revokes acceptance, he, to the extent of any deficiency in his effective insurance coverage, may treat the risk of loss as having remained with the lessor from the beginning.
2. Whether or not risk of loss is to pass to the lessee, if the lessee as to conforming goods already identified to a lease contract repudiates or is otherwise in default under the lease contract, the lessor, or, in the case of a finance lease, the supplier, to the extent of any deficiency in his effective insurance coverage may treat the risk of loss as resting on the lessee for a commercially reasonable time.

Section 2A-221 – Casualty to Identified Goods

If a lease contract requires goods identified when the lease contract is made, and the goods suffer casualty without fault of the lessee, the lessor or the supplier before delivery, or the goods suffer casualty before risk of loss passes to the lessee pursuant to the lease agreement then:

a. If the loss is total, the lease contract is avoided; and
b. If the loss is partial or the goods have so deteriorated as to no longer conform to the lease contract, the lessee may nevertheless demand inspection and at his option either treat the lease contract as avoided or, except in a finance lease that is not a consumer lease, accept the goods with due allowance from the rent payable for the balance of the lease term for the deterioration or the deficiency in quantity but without further right against the lessor.

Section 2A-222 through 300 – Reserved

Section 2A-301 – Enforceability of Lease Contract

Except as otherwise provided in this article a lease contract is effective and enforceable according to its terms between the parties against purchasers of the goods and against creditors of the parties.

Section 2A-302 – Title to and Possession of Goods

Except as otherwise provided in this article, each provision of this article applies whether the lessor or a third party has title to the goods, and whether the lessor, the lessee, or a third party has possession of the goods, notwithstanding any statute or rule of law that possession or the absence of possession is fraudulent.

Section 2A-303 – Alienability of Party's Interest under Lease Contract or of Lessor's Residual Interest in Goods – Delegation of Performance – Transfer of Rights

1. As used in this section, "creation of a security interest" includes the sale of a lease contract that is subject to Chapter 9 of this title, Secured Transactions.
2. Except as provided in Chapter 9 of this title, a provision in a lease agreement which:
    i. Prohibits the voluntary or involuntary transfer, including a transfer by sale, sublease, creation or enforcement of a security interest, or attachment, levy, or other judicial process, of an interest of a party under the lease contract or of the lessor's residual interest in the goods, or
    ii. Makes such a transfer an event of default, gives rise to the rights and remedies provided in subsection (4) of this section, but a transfer that is prohibited or is an event of default under the lease agreement is otherwise effective.
3. A provision in a lease agreement which:
    i. Prohibits a transfer of a right to damages for default with respect to the whole lease contract or of a right to payment arising out of the transferor's due performance of the transferor's entire obligation, or
    ii. Makes such a transfer an event of default, is not enforceable, and such a transfer is not a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden of risk imposed on, the other party to the lease contract within the purview of subsection (4) of this section.
4. Subject to subsection (3) of this section and Chapter 9 of this Title:
    a. If a transfer is made which is made an event of default under a lease agreement, the party to the lease contract not making the transfer, unless that party waives the default or otherwise agrees, has the rights and remedies described in subsection (2) of Section 2A-501 of this title; or
    b. If paragraph (a) of this subsection is not applicable and if a transfer is made that:
        i. Is prohibited under a lease agreement or
        ii. Materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract, unless the party not making the transfer agrees at any time to the transfer in the lease contract or otherwise, then, except as limited by contract,

a. The transferor is liable to the party not making the transfer for damages caused by the transfer to the extent that the damages could not reasonably be prevented by the party not making the transfer and
b. A court having jurisdiction may grant other appropriate relief, including cancellation of the lease contract or an injunction against the transfer.

5. A transfer of "the lease" or of "all my rights under the lease", or a transfer in similar general terms, is a transfer of rights and, unless the language or the circumstances, as in a transfer of security, indicate the contrary, the transfer is a delegation of duties by the transferor to the transferee. Acceptance by the transferee constitutes a promise by the transferee to perform those duties. The promise is enforceable by either the transferor or the other party to the lease contract.
6. Unless otherwise agreed by the lessor and the lessee, a delegation of performance does not relieve the transferor as against the other party of any duty to perform or of any liability for default.
7. In a consumer lease, to prohibit the transfer of an interest of a party under the lease contract or to make a transfer an event of default, the language must be specific, by a writing, and conspicuous.

Section 2A-304 – Subsequent Lease of Goods by Lessor

1. Subject to Section 33-2A-303 of this title, a subsequent lessee from a lessor of goods under an existing lease contract obtains, to the extent of the leasehold interest transferred, the leasehold interest in the goods that the lessor had or had power to transfer, and except as provided in subsection (2) of this section and subsection (4) of Section 33-2A-527 of this title, takes subject to the existing lease contract. A lessor with voidable title has power to transfer a goods leasehold interest to a good faith subsequent lessee for value, but only to the extent set forth in the preceding sentence. If goods have been delivered under a transaction of purchase, the lessor has the power even though:
   a. The lessor's transferor was deceived as to the identity of the lessor;
   b. The delivery was in exchange for a check which is later dishonored;
   c. It was agreed that the transaction was to be a "cash sale"; or
   d. The delivery was procured through fraud punishable as larcenous under the criminal law.
2. A subsequent lessee in the ordinary course of business from a lessor who is a merchant dealing in goods of that kind to whom the goods were entrusted by the existing lessee of that lessor before the interest of the subsequent lessee became enforceable against that lessor obtains, to the extent of the leasehold interest transferred, all of that lessor's and the existing lessee's rights to the goods, and takes free of the existing lease contract.
3. A subsequent lessee from the lessor of goods that are subject to an existing lease contract and are covered by a certificate of title issued under a statute of this state or of another jurisdiction

takes no greater rights than those provided both by this section and by the certificate of title statute.

Section 2A-305 – Sale or Sublease of Goods by Lessee

1. Subject to the provisions this Title, a buyer or sublessee from the lessee of goods under an existing lease contract obtains, to the extent of the interest transferred, the leasehold interest in the goods that the lessee has or had power to transfer, and except as provided in subsection (2) of this section, takes subject to the existing lease contract. A lessee with a voidable leasehold interest has power to transfer a good leasehold interest to a good faith buyer for value or a good faith sublessee for value, but only to the extent provided for a buyer or sublessee form the lessee of goods under an existing lease contract. When goods have been delivered under a transaction of lease the lessee has that power even though:
   a. The lessor was deceived as to the identity of the lessee;
   b. The delivery was in exchange for a check which is later dishonored; or
   c. The delivery was procured through fraud punishable as larcenous under the criminal law.
2. A buyer in the ordinary course of business or sub-lessee in the ordinary course of business from a lessee who is a merchant dealing in goods of that kind to whom the goods were entrusted by the lessor obtains, to the extent of the interest transferred, all of the lessor‘s and lessee’s rights to the goods, and takes free of the existing lease contract.
3. A buyer or sublessee from the lessee of goods that are subject to an existing lease contract and are covered by a certificate of title issued under a statute of this state or of another jurisdiction takes no greater rights than those provided both by this section and by the certificate of title statute.

Section 2A-306 – Priority of Certain Liens Arising by Operation of Law

If a person in the ordinary course of his business furnishes services or materials with respect to goods subject to a lease contract, a lien upon those goods in the possession of that person given by statute or rule of law for those materials or services takes priority over any interest of the lessor or lessee under the lease contract or this article unless the lien is created by statute and the statute provides otherwise or unless the lien is created by rule of law and the rule of law provides otherwise.

Section 2A-307 – Priority of Liens Arising by Attachment or Levy On, Security Interests In and Other Claims to Goods

1. Except as otherwise provided in Section 2A-306 of this title, a creditor of a lessee takes subject to the lease contract.

2. Except as otherwise provided in subsection (3) of this section and in Sections 2A-306 and 2A-308 of this title, a creditor of a lessor takes subject to the lease contract unless the creditor holds a lien that attached to the goods before the lease contract became enforceable.
3. Except as otherwise provided in Chapter 9 of this title, a lessee takes a leasehold interest subject to a security interest held by a creditor of the lessor.

Section 2A-308 – Special Rights of Creditors

1. A creditor of a lessor in possession of goods subject to a lease contract may treat the lease contract as void if as against the creditor retention of possession by the lessor is fraudulent under any statute or rule of law, but retention of possession in good faith and current course of trade by the lessor for a commercially reasonable time after the lease contract becomes enforceable is not fraudulent.
2. Nothing in this article impairs the rights of creditors of a lessor is the lease contract:
   a. Becomes enforceable, not in current course of trade but in satisfaction of or as security for a preexisting claim for money, security, or the like, and
   b. Is made under circumstances which under any statute or rule of law apart from this article would constitute the transaction a fraudulent transfer or voidable preference.
3. A creditor of a seller may treat a sale or an identification of goods to a contract for sale as void if as against the creditor retention of possession by the seller is fraudulent under any statute or rule of law, but retention of possession of the goods pursuant to a lease contract entered into by the seller as lessee and the buyer as lessor in connection with the sale or identification of the goods is not fraudulent if the buyer bought for value and in good faith.

Section 2A-309 – Lessor's and Lessee's Rights when Goods become Fixtures

1. In this section:
   a. Goods are "fixtures" when they become so related to particular real estate that an interest in them arises under real estate law;
   b. A "fixture filing" is the filing, in the office where a mortgage on the real estate would be filed or recorded, of a financing statement covering goods that are or are to become fixtures and conforming to the requirements of Chapter 9 of this title, as applicable;
   c. A lease is a "purchase money lease" unless the lessee has possession or use of the goods or the right to possession or use of the goods before the lease agreement is enforceable;
   d. A mortgage is a "construction mortgage" to the extent it secures an obligation incurred for the construction of an improvement on land including the acquisition cost of the land, if the recorded writing so indicates; and
   e. "Encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests.

2. Under the Chapter a lease may be of goods that are fixtures or may continue in goods that become fixtures, but no lease exists under this article of ordinary building materials incorporated into an improvement on land.
3. This Chapter does not prevent creation of a lease of fixtures pursuant to real estate law.
4. The perfected interest of a lessor of fixtures has priority over a conflicting interest of an encumbrancer or owner of the real estate if:
   a. The lease is a purchase money lease, the conflicting interest of the encumbrancer or owner arises before the goods become fixtures, the interest of the lessor is perfected by a fixture filing before the goods become fixtures or within ten (10) days thereafter, and the lessee has an interest of record in the real estate or is in possession of the real estate; or
   b. The interest of the lessor is perfected by a fixture filing before the interest of the encumbrancer or owner is of record, the lessor's interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the lessee has an interest of record in the real estate or is in possession of the real estate.
5. The interest of a lessor of fixtures, whether or not perfected, has priority over the conflicting interest of an encumbrancer or owner of the real estate if:
   a. The fixtures are readily removable factory or office machines, readily removable equipment that is not primarily used or leased for use in the operation of the real estate, or readily removable replacements of domestic appliances that are goods subject to a consumer lease, and before the goods become fixtures the lease contract is enforceable; or
   b. The conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the lease contract is enforceable; or
   c. The encumbrancer or owner has consented in writing to the lease or has disclaimed an interest in the goods as fixtures; or
   d. The lessee has a right to remove the goods as against the encumbrancer or owner. If the lessee's right to remove terminates, the priority of the interest of the lessor continues for a reasonable time.
6. Notwithstanding paragraph (a) of subsection (4) of this section but otherwise subject to subsections (4) and (5) of this section, the interest of a lessor of fixtures, including the lessor's residual interest, is subordinate to the conflicting interest of an encumbrancer of the real estate under a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent given to refinance a construction mortgage, the conflicting interest of an encumbrancer of the real estate under a mortgage has this priority to the same extent as the encumbrancer of the real estate under the construction mortgage.
7. In cases other than those described in subsections (1) through (6) of this section, priority between the interest of a lessor of fixtures, including the lessor's residual interest, and the

conflicting interest of an encumbrancer or owner of the real estate who is not the lessee is determined by the priority rules governing conflicting interests in real estate.

8. If the interest of a lessor of fixtures, including the lessor's residual interest, has priority over all conflicting interests of all owners and encumbrancers of the real estate, the lessor or the lessee may:
    i. On default, expiration, termination, or cancellation of the lease agreement but subject to the lease agreement and this article, or
    ii. If necessary to enforce other rights and remedies of the lessor or lessee under this article, remove the goods from the real estate, free and clear of all conflicting interests of all owners and encumbrancers of the real estate, but the lessor or lessee must reimburse any encumbrancer or owner of the real estate who is not the lessee and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by an necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation.
9. Even though the lease agreement does not create a security interest, the interest of a lessor of fixtures, including the lessor's residual interest, is perfected by filing a financing statement as a fixture filing for leased goods that are or are to become fixtures in accordance with the relevant provisions of the Uniform Commercial Code – Secured Transactions.

Section 2A-310 – Lessor's and Lessee's Rights when Goods become Accessions

1. Goods are "accessions" when they are installed in or affixed to other goods.
2. The interest of a lessor or a lessee under a lease contract entered into before the goods became accessions is superior to all interests in the whole except as stated in subsection (4) of this section.
3. The interest of a lessor or a lessee under a lease contract entered into at the time or after the goods became accessions is superior to all subsequently acquired interests in the whole except as stated in subsection (4) of this section but is subordinate to interests in the whole existing at the time the lease contract was made unless the holders of such interests in the whole have in writing consented to the lease or disclaimed an interest in the goods as part of the whole.
4. The interest of a lessor or a lessee under a lease contract described in subsection (2) or (3) of this section is subordinate to the interest of:
    a. A buyer in the ordinary course of business or a lessee in the ordinary course of business of any interest in the whole acquired after the goods became accessions; or
    b. A creditor with a security interest in the whole perfected before the lease contract was made to the extent that the creditor makes subsequent advances without knowledge of the lease contract.

5. When under subsections (2) or (3), and (4) of this section a lessor or a lessee of accessions holds an interest that is superior to all interests in the whole, the lessor or the lessee:
    a. On default, expiration, termination, or cancellation of the lease contract by the other party but subject to the provisions of the lease contract and this article, or
    b. If necessary to enforce his other rights and remedies under this article, may remove the goods from the whole, free and clear of all interests in the whole, but he must reimburse any holder of an interest in the whole who is not the lessee and who has not otherwise agreed for the cost of repair of any physical injury but not for any diminution in value of the whole caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation.

Section 2A-311 – Priority Subject to Subordination

Nothing in this article prevents subordination by agreement by any person entitled to priority.

Section 2A-401 – Insecurity; Adequate Assurance of Performance

1. A lease contract imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired.
2. If reasonable grounds for insecurity arise with respect to the performance of either party, the insecure party may demand in writing adequate assurance of due performance. Until the insecure party receives that assurance, if commercially reasonable the insecure party may suspend any performance for which he has not already received the agreed return.
3. A repudiation of the lease contract occurs if assurance of due performance adequate under the circumstances of the particular case is not provided to the insecure party within a reasonable time, not to exceed thirty (30) days after receipt of a demand by the other party.
4. Between merchants, the reasonableness of grounds for insecurity and the adequacy of any assurance offered must be determined according to commercial standards.
5. Acceptance of any nonconforming delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

Section 2A-402 – Anticipatory Repudiation

1. If either repudiates a lease contract with respect to a performance not yet due under the lease contract, the loss of which performance will substantially impair the value of the lease contract to the other, the aggrieved party may:
    a. For a commercially reasonable time, await retraction of repudiation and performance by the repudiating party;

   b. Make demand and await assurance of future performance adequate under the circumstances of the particular case; or
   c. Resort to any right of remedy upon default under the lease contract or this article, even though the aggrieved party has notified the repudiating party that the aggrieved party would await the repudiating party's performance and assurance and has urged retraction.
2. In addition, whether or not the aggrieved party is pursuing one of the remedies provided for in subsection (1) of this section, the aggrieved party may suspend performance or, if the aggrieved party is the lessor, proceed in accordance with the provisions of this article on the lessor's right to identify goods to the lease contract notwithstanding default or to salvage unfinished goods.

Section 2A-403 – Retraction of Anticipatory Repudiation

1. Until the repudiating party's next performance is due, the repudiating party can retract the repudiation unless, since the repudiation, the aggrieved party has cancelled the lease contract or materially changed the aggrieved party's position or otherwise indicated that the aggrieved party considers the repudiation final.
2. Retraction may be any method that clearly indicates to the aggrieved party that the repudiating party intends to perform under the lease contract.
3. Retraction reinstates a repudiating party's rights under a lease contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation.

Section 2A-404 – Substituted Performance

1. If without fault of the lessee, the lessor and the supplier, the agreed berthing, loading, or unloading facilities fail or the agreed type of carrier becomes unavailable or the agreed manner of delivery otherwise becomes commercially impracticable, but a commercially reasonable substitute is available, the substitute performance must be tendered and accepted.
2. If the agreed means or manner of payment fails because of domestic or foreign governmental regulation:
   a. The lessor may withhold or stop delivery or cause the supplier to withhold or stop delivery unless the lessee provides a means or manner of payment that is commercially a substantial equivalent; and
   b. If delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the lessee's obligation unless the regulation is discriminatory, oppressive, or predatory.

Section 2A-405 – Excused Performance

On Substituted or excused performance, the following rules apply:

a. Delay in delivery or nondelivery in whole or in part by a lessor or a supplier who complies with paragraphs (b) and (c) of this section is not a default under the lease contract if performance as agreed has been made impracticable by the occurrence of a contingency the nonoccurrence of which was a basis assumption on which the lease contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order, whether or not the regulation or order later proves to be invalid.
b. If the causes mentioned in paragraph (a) of this section affect only part of the lessor's or the supplier's capacity to perform, he shall allocate production and deliveries among his customers but at his option may include regular customers not then under contract for sale or lease as well as his own requirements for further manufacture. He may so allocate in any manner that is fair and reasonable.
c. The lessor seasonably shall notify the lessee and in the case of a finance lease the supplier seasonably shall notify the lessor and the lessee, if known, that there will be delay or nondelivery and, if allocation is required under paragraph (b) of this section, of the estimate quota thus made available for the lessee.

Section 2A-406 – Procedure on Excused Performance

1. If the lessee receives notification of a material or indefinite delay or an allocation, the lessee, by written notification to the lessor as to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired may:
   a. Terminate the lease contract; or
   b. Except in finance lease that is not a consumer lease, modify the lease contract by accepting the available quota in substitution, with due allowance form the rent payable for the balance of the lease term for the deficiency but without further right against the lessor.
2. If, after receipt of a notification from the lessor, the lessee fails so to modify the lease agreement within a reasonable time not exceeding thirty (30) days, the lease contract lapses with respect to any deliveries affected.

Section 2A-407 – Irrevocable Promises – Finance Leases

1. In the case of a finance lease that is not a consumer lease the lessee's promises under the lease contract become irrevocable and independent upon the lessee's acceptance of the goods.
2. A promise that has become irrevocable and independent under subsection (1) of this section:
   a. Is effective and enforceable between the parties, and by or against third parties including assignees of the parties, and
   b. Is not subject to cancellation, termination, modification, repudiation, excuse, or substitution without the consent of the party to whom the promise runs.

3. This section does not affect the validity under any other law of a covenant in any lease contract making the lessee's promises irrevocable and independent upon the lessee's acceptance of the goods.

Section 2A-501 – Default – Procedure

1. Whether the lessor or the lessee is in default under a lease contract is determined by the lease agreement and this chapter.
2. If the lessor or the lessee is in default under the lease contract, the party seeking enforcement has rights and remedies as provided in this Chapter and, except as limited by this Chapter, as provided in the lease agreement.
3. If the lessor or the lessee is in default under the lease contract, the party seeking enforcement may reduce the party's claim to judgment, or otherwise enforce the lease contract by self-help or any available judicial procedure or nonjudicial procedure, including administrative proceeding, arbitration, or the like, in accordance with this Chapter.
4. Except as otherwise provided in this Chapter or the lease agreement, the rights and remedies referred to in subsections (2) and (3) of this section are cumulative.
5. If the lease agreement covers both real property and goods, the party seeking enforcement may proceed under this Part as to the goods, or under other applicable law as to both the real property and the goods in accordance with that party's rights and remedies in respect of the real property, in which case this Part does not apply.

Section 2A-502 – Notice after Default

Except as otherwise provided in this Chapter or the lease agreement, the lessor or lessee in default under the lease contract is not entitled to notice of default or notice of enforcement from the other party to the lease agreement.

Section 2A-503 – Modification or Impairment of Rights and Remedies

1. Except as otherwise provided in this Chapter, the lease agreement may include rights and remedies for default in addition to or in substitution for those provided in this article and may limit or alter the measure of damages recoverable under this article.
2. Resort to a remedy provided under this article or in the lease agreement is optional unless the remedy is expressly agreed to be exclusive. If circumstances cause an exclusive or limited remedy to fail of its essential purpose, or provision for an exclusive remedy is unconscionable, remedy may be had as provided in this Chapter.
3. Consequential damages may be liquidated under Section 2A-504 of this title, or may otherwise be limited, altered, or excluded unless the limitation, alteration, or exclusion is unconscionable. Limitation, alteration, or exclusion of consequential damages for injury to the person in the case

of consumer goods is prima facie unconscionable but limitation, alteration, or exclusion of damages where the loss is commercial is not prima facie unconscionable.

4. Rights and remedies on default by the lessor or the lessee with respect to any obligation or promise collateral or ancillary to the lease contract are not impaired by this Chapter.

Section 2A-504 – Liquidation of Damages

1. Damages payable by either party for default, or any other act or omission, including indemnity for loss or diminution of anticipated tax benefits or loss or damage to lessor's residual interest, may be liquidated in the lease agreement but only at an amount or by a formula that is reasonable in light of the then anticipated harm caused by the default or other act or omission.
2. If the lease agreement provides for liquidation of damages, and such provision does not comply with subsection (1) of this section, or such provision is an exclusive or limited remedy that circumstances cause to fail of its essential purpose, remedy may be had as provided in this article.
3. If the lessor justifiably withholds or stops delivery of goods because of the lessee's default or insolvency, the lessee is entitled to restitution of any amount by which the sum of his payments exceeds:
   a. The amount to which the lessor is entitled by virtue of term liquidating the lessor's damages in accordance with subsection (1) of this section; or
   b. In the absence of those terms, twenty percent (20%) of the then present value of the total rent the lessee was obligated to pay for the balance of the lease term, or, in the case of a consumer lease, the lesser of such amount or Five Hundred Dollars ($500.00).
4. A lessee's right to restitution under subsection (3) of this section is subject to offset to the extent the lessor establishes:
   a. A right to recover damages under the provisions of this article other than subsection (1) of this section; and
   b. The amount of value of any benefits received by the lessee directly or indirectly by reason of the lease contract.

Section 2A-505 – Cancellation and Termination and Effect of Cancellation, Termination, Rescission, or Fraud on Rights and Remedies

1. On cancellation of the lease contract, all obligations that are still executory on both sides are discharged, but any right based on prior default or performance survives, and the canceling party also retains any remedy for default of the whole lease contract or any unperformed balance.
2. On termination of the lease contract, all obligations that are still executory on both sides are discharged but any right based on prior default or performance survives.

3. Unless the contrary intention clearly appears, expressions of “cancellation”, “rescission”, or the like of the lease contract may not be construed as a renunciation or discharge of any claim in damages for an antecedent default.
4. Rights and remedies for material misrepresentation or fraud include all rights and remedies available under this article for default.
5. Neither rescission nor a claim for rescission of the lease contract nor rejection or return of the goods may bar or be deemed inconsistent with a claim for damages or other right or remedy.

Section 2A-505 – Cancellation and Termination and Effect of Cancellation, Termination, Rescission, or Fraud on Rights and Remedies

1. On cancellation of the lease contract, all obligations that are still executory on both sides are discharged, but any right based on prior default or performance survives, and the canceling party also retains any remedy for default of the whole lease contract or any unperformed balance.
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3. Unless the contrary intention clearly appears, expressions of “cancellation”, “rescission”, or the like of the lease contract may not be construed as a renunciation or discharge of any claim in damages for an antecedent default.
4. Rights and remedies for material misrepresentation or fraud include all rights and remedies available under this Chapter for default.
5. Neither rescission nor a claim for rescission of the lease contract nor rejection or return of the goods may bar or be deemed inconsistent with a claim for damages or other right or remedy.

Section 2A-506 – Statute of Limitations

1. An action for default under a lease contract, including breach of warranty or indemnity, must be commenced within four (4) years after the cause of action accrued. By the original lease contract the parties may reduce the period of limitation to not less than one (1) year.
2. A cause of action for default accrues when the act or omission on which the default or breach of warranty is based is or should have been discovered by the aggrieved party, or when the default occurs, whichever is later. A cause of action for indemnity accrues when the act or omission on which the claim for indemnity is based is or should have been discovered by the indemnified party, whichever is later.
3. If an action commenced within the time limited by subsection (1) of this section is so terminated as to leave available a remedy by another action for the same default or breach of warranty or indemnity, the other action may be commenced after the expiration of the time limited and within six (6) months after the termination of the first action unless the termination resulted from voluntary discontinuance or form dismissal for failure or neglect to prosecute.

4. This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action that have accrued before this Chapter becomes effective.

Section 2A-507 – Proof of Market Rent – Time and Place

1. Damages based on market rent (Section 2A-519 or 2A-528 of this title) are determined according to the rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the times specified in Sections 2A-519 and 2A-528 of this title.
2. If evidence of rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the times or places described in this article is not readily available, the rent prevailing within any reasonable time before or after the time described or at any other place or for a different lease term which in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the difference, including the cost of transporting the goods to or from the other place.
3. Evidence of a relevant rent prevailing at a time or place or for a lease term other than the one described in this article offered by one party is not admissible unless and until he has given the other party notice the court finds sufficient to prevent unfair surprise.
4. If the prevailing rent or value of any goods regularly leased in any established market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of that market are admissible in evidence. The circumstance of the preparation of the report may be shown to affect its weight but not its admissibility.

Section 2A-508 – Lessee's Remedies

1. If a lessor fails to deliver the goods in conformity to the lease contract (Section 2A-509 of this title) or repudiates the lease contract (Section 2A-402 of this title), or a lessee rightfully rejects the goods (Section 2A-509 of this title) or justifiably revokes acceptance of the goods (Section 2A-517 of this title), then with respect to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (Section 2A-510 of this title), the lessor is in default under the lease contract and the lessee may:
   a. Cancel the lease contract (subsection (1) of Section 2A-505 of this title);
   b. Recover so much of the rent and security as has been paid and is just under the circumstances;
   c. Cover and recover damages as to all goods affected whether or not they have been identified to the lease contract (Sections 2A-518 and 2A-520 of this title), or recover damages for nondelivery (Sections 2A-519 and 2A-520 of this title);
   d. Exercise any other rights or pursue any other remedies provided in the lease contract.

2. If a lessor fails to deliver the goods in conformity to the lease contract or repudiates the lease contract, the lessee may also:
   a. If the goods have been identified, recover them (Section 2A-522 of this title); or
   b. In a proper case, obtain specific performance or replevy the goods (Section 2A-521 of this title).
3. If a lessor is otherwise in default under a lease contract, the lessee may exercise the rights and pursue the remedies provided in the lease contract, which may include a right to cancel the lease, and in subsection (3) of Section 2A-519 of this title.
4. If a lessor has breached a warranty, whether express or implied, the lessee may recover damages (subsection (4) of Section 2A-519 of this title).
5. On rightful rejection or justifiable revocation or acceptance, a lessee has a security interest in goods in the lessee's possession or control for any rent and security that has been paid and any expenses reasonably incurred in their inspection, receipt, transportation, and care and custody and may hold those goods and dispose of them in good faith and in a commercially reasonable manner, subject to subsection (5) of Section 2A-527 of this title.
6. Subject to the provisions of Section 2A-407 of this title, a lessee, on notifying the lessor of the lessee's intention to do so, may deduct all or any part of the damages resulting from any default under the lease contract from any part of the rent still due under the same lease contract.

Section 2A-510 – Installment Lease Contracts – Rejection and Default

1. Under an installment lease contract a lessee may reject any delivery that is nonconforming if the nonconformity substantially impairs the value of that delivery and cannot be cured or the nonconformity is a defect in the required documents; but if the nonconformity does not fall within subsection (2) of this section and the lessor or the supplier gives adequate assurance of its cure, the lessee must accept that delivery.
2. Whenever nonconformity or default with respect to one or more deliveries substantially impairs the value of the installment lease contract as a whole there is a default with respect to the whole. But, the aggrieved party reinstates the installment lease contract as a whole if the aggrieved party accepts a nonconforming delivery without seasonably notifying of cancellation or brings an action with respect only to past deliveries or demands performance as to future deliveries.

Section 2A-511 – Merchant Lessee's Duties as to Rightfully Rejected Goods

1. Subject to any security interest of a lessee, if a lessor or a supplier has no agent or place of business at the market of rejection, a merchant lessee, after rejection of goods in his possession or control, shall follow any reasonable instructions received from the lessor or the supplier with respect to goods. In the absence of those instructions, a merchant lessee shall make reasonable efforts to sell, lease, or otherwise dispose of the goods for the lessor's account if they threaten

to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

2. If a merchant lessee (subsection (1) of this section) or any other lessee disposes of goods, he is entitled to reimbursement either from the lessor or the supplier or out of the proceeds for reasonable expenses of caring for an disposing of the goods and, if the expenses include no disposition commission, to such commission as is usual in the trade, or if there is none, to a reasonable sum not exceeding ten percent (10%) of the gross proceeds.
3. In complying with this section, the lessee is held only to good faith. Good faith conduct hereunder is neither acceptance or conversion nor the basis of an action for damages.
4. A purchaser who purchases in good faith from a lessee pursuant to this section takes the goods free of any rights of the lessor and the supplier even though the lessee fails to comply with one or more of the requirements of this Chapter.

Section 2A-512 – Lessee's Duties as to Rightfully Rejected Goods

1. Except as otherwise provided with respect to goods that threaten to decline in value speedily and subject to any security interest of a lessee:
   a. The lessee, after rejection of goods in the lessee's possession, shall hold them with reasonable care at the lessor's or the supplier's disposition for a reasonably time after the lessee's seasonable notification of rejection;
   b. If the lessor or the supplier gives no instructions within a reasonable time after notification of rejection, the lessee may store the rejected goods for the lessor's or the supplier's account or ship them to the lessor or the supplier or dispose of them for the lessor's or the supplier's account with reimbursement in the manner provided in this article; but
   c. The lessee has no further obligations with regard to goods rightfully rejected.
2. Action by the lessee pursuant to subsection (1) of this section is not acceptance or conversion.

Section 2A-513 – Cure by Lessor of Improper Tender or Delivery – Replacement

1. If any tender or delivery by the lessor or the supplier is rejected because nonconforming and the time for performance has not yet expired, the lessor or the supplier may seasonably notify the lessee of the lessor's or the supplier's intention to cure and may then make a conforming delivery within the time provided in the lease contract.
2. If the lessee rejects a nonconforming tender that the lessor or the supplier had reasonable grounds to believe would be acceptable with or without money allowance, the lessor or the supplier may have a further reasonable time to substitute a conforming tender if he seasonably notifies the lessee.

Section 2A-512 – Lessee's Duties as to Rightfully Rejected Goods

1. Except as otherwise provided with respect to goods that threaten to decline in value speedily and subject to any security interest of a lessee:
   a. The lessee, after rejection of goods in the lessee's possession, shall hold them with reasonable care at the lessor's or the supplier's disposition for a reasonable time after the lessee's seasonable notification of rejection;
   b. If the lessor or the supplier gives no instructions within a reasonable time after notification of rejection, the lessee may store the rejected goods for the lessor's or the supplier's account or ship them to the lessor or the supplier of dispose of them for the lessor's or the supplier's account with reimbursement in the manner provided in this article; but
   c. The lessee has no further obligations with regard to goods rightfully rejected.
2. Action by the lessee pursuant to subsection (1) of this section is not acceptance or conversion.

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2. If the lessee rejects a nonconforming tender that the lessor or the supplier had reasonable grounds to believe would be acceptable with or without money allowance, the lessor or the supplier may have a further reasonable time to substitute a conforming tender if he seasonably notifies the lessee.

Section 2A-514 – Waiver of Lessee's Objections

1. In rejecting goods, a lessee's failure to state a particular defect that is ascertainable by reasonable inspection precludes the lessee from relying on the defect to justify rejection or to establish default:
   a. If, stated seasonably, the lessor or the supplier could have cured it (Section 2A-213 of this title); or
   b. Between merchants if the lessor or the supplier after rejection has made a request in writing for a full and final written statement of all defects on which the lessee proposes to rely.
2. A lessee's failure to reserve rights when paying rent or other consideration against documents precludes recovery of the payment for defects apparent in the documents.

Section 2A-515 – Acceptance of Goods

1. Acceptance of goods occurs after the lessee has had a reasonable opportunity to inspect the goods and:

a. The lessee signifies or acts with respect to the goods in a manner that signifies to the lessor or the supplier that the goods are conforming or that the lessee will take or retain them in spite of their nonconformity; or
b. The lessee fails to make an effective rejection of the goods.

2. Acceptance of a part of any commercial unit is acceptance of that entire unit.

Section 2A-516 – Effect of Acceptance of Goods – Notice of Default – Burden of Establishing Default after Acceptance – Notice of Claim or Litigation to Person Answerable Over

1. A lessee must pay rent for any goods accepted in accordance with the lease contract, with due allowance for goods rightfully rejected or not delivered.
2. A lessee's acceptance of goods precludes rejection of the goods accepted. In the case of a finance lease, if made with knowledge of a nonconformity, acceptance cannot be revoked because of it. In any other case, if made with knowledge of a nonconformity, acceptance cannot be revoked because of it unless the acceptance was on the reasonable assumption that the nonconformity would be seasonably cured. Acceptance does not of itself impair any other remedy provided by this article or the lease agreement for nonconformity.
3. If a tender has been accepted:
   a. Within a reasonable time after the lessee discovers or should have discovered any default, the lessee shall notify the lessor and the supplier, if any, or be barred from any remedy against the party not notified;
   b. Except in the case of a consumer lease, within a reasonable time after the lessee receives notice of litigation for infringement or the like (Section 2A-211 of this title) the lessee shall notify the lessor or be barred from any remedy over for liability established by the litigation; and
   c. The burden is on the lessee to establish any default.
4. If a lessee is sued for breach of a warranty or other obligation for which a lessor or a supplier is answerable over the following apply:
   a. The lessee may give the lessor or the supplier, or both, written notice of the litigation. If the notice states that the person notified may come in and defend and that if the person notified does not do so that person will be bound in any action against that person by the lessee by any determination of fact common to the two litigations, then unless the person notified after seasonable receipt of the notice does come in and defend that person is so bound.
   b. The lessor or the supplier may demand in writing that the lessee turn over control of the litigation including settlement if the claim is one for infringement or the like (Section 2A-211 of this title) or else be barred from any remedy over. If the demand states that the lessor or the supplier agrees to bear all expense and to satisfy any adverse judgment, then unless the lessee after seasonable receipt of the demand does turn over control the lessee is so barred.

5. Subsections (3) and (4) of this section apply to any obligation of a lessee to hold the lessor or the supplier harmless against infringement or the like (Section 2A-211 of this title).

Section 2A-517 – Revocation of Acceptance of Goods

1. A lessee may revoke acceptance of a lot or commercial unit whose nonconformity substantially impairs its value to the lessee if the lessee has accepted it:
   a. Except in the case of a finance lease, on the reasonable assumption that its nonconformity would be cured and it has not been seasonably cured; or
   b. Without discovery or the nonconformity if the lessee's acceptance was reasonably induced either by the lessor's assurances or, except in the case of a finance lease, by the difficulty of discovery before acceptance.
2. Except in the case of a finance lease that is not a consumer lease, a lessee may revoke acceptance of a lot or commercial unit if the lessor defaults under the lease contract and the default substantially impairs the value of that lot or commercial unit to the lessee.
3. If the lease agreement so provides, the lessee may revoke acceptance of a lor or commercial unit because of other defaults by the lessor.
4. Revocation of acceptance must occur within a reasonable time after the lessee discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by the nonconformity. Revocation is not effective until the lessee notifies the lessor.
5. A lessee who so revokes has the same rights and duties with regard to the goods involved as if the lessee had rejected them.

Section 2A-518 – Cover – Substitute Goods

1. After a default by a lessor under the lease contract of the type described in subsection (1) of Section 2A-508 of this title, or, if agreed, after other default by the lessor, the lessee may cover by making any purchase or lease of or contract to purchase or lease goods in substitution for those due from the lessor.
2. Except as otherwise provided with respect to damages liquidated in the lease agreement (Section 2A-504 of this title) or otherwise determined pursuant to agreement of the parties (subsection (c) of Section 15 of this act and Section 2A-503 of this title), if a lessee's cover is by a lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages:
   i. The present value, as of the date of the commencement of the term of the new lease agreement, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the

original lease agreement minus the present value as of the same date of the total rent for the then remaining lease term of the original lease agreement, and

ii. Any incidental or consequential damages less expenses saved in consequence of the lessor's default.

3. If a lessee's cover is by lease agreement that for any reason does not qualify for treatment under subsection (2) of this section, or is by purchase or otherwise, the lessee may recover from the lessor as if the lessee had elected not to cover and Section 2A-519 of this title governs.

Section 2A-519 – Lessee's Damages for Nondelivery, Repudiation, Default, and Breach of Warranty in Regard to Accepted Goods

1. Except as otherwise provided with respect to damages liquidated in the lease agreement (Section 2A-504 of this title) or otherwise determined pursuant to agreement of the parties (Section 2A-503 of this title), if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement that for any reason does not qualify for treatment under subsection (2) of Section 2A-518 of this title, or is by purchase or otherwise, the measure of damages for nondelivery or repudiation by the lessor or for rejection or revocation of acceptance by the lessee is the present value, as of the date of the default, of then market rent minus the present value as of the same date of the original rent, computed for the remaining lease term of the original lease agreement, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.
2. Market rent is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.
3. Except as otherwise agreed, if the lessee has accepted goods and given notification (subsection (3) of Section 2A-516 of this title), the measure of damages for nonconforming tender or delivery or other default by a lessor is the loss resulting in the ordinary course of events from the lessor's default as determined in any manner that is reasonable together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.
4. Except as otherwise agreed, the measure of damages for breach of warranty is the present value at the time and place of acceptance of the difference between the value of the use of the goods accepted and the value if they had been as warranted for the lease term, unless special circumstances show proximate damages of a different amount, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default or breach of warranty.

Section 2A-521 – Lessee's Damages for Nondelivery, Repudiation, Default, and Breach of Warranty in Regard to Accepted Goods

1. Specific performance may be decreed if the goods are unique or in other proper circumstances.

2. A decree for specific performance may include any terms and conditions as to payment of the rent, damages, or other relief that the court deems just.
3. A lessee has a right of replevin, detinue, sequestration, claim and delivery, or the like for goods identified to the lease contract if after reasonable effort the lessee is unable to affect cover for those goods or the circumstances reasonably indicate that the effort will be unavailing.

Section 2A-522 – Lessee's Right to Goods on Lessor's Insolvency

1. Subject to subsection (2) of this section and even though the goods have not been shipped, a lessee who has paid a part or all of the rent and security for goods identified to a lease contract on making and keeping good a tender of any unpaid portion of the rent and security due under the lease contract may recover the goods identified from the lessor is the lessor becomes insolvent within ten (10) days after receipt of the first installment of rent and security.
2. A lessee acquires the right to recover goods identified to a lease contract only if they conform to the lease contract.

Section 2A-523 – Lessor's Remedies

1. If a lessee wrongfully rejects or revokes acceptance of goods or fails to make a payment when due or repudiates with respect to a part or the whole, then, with respect to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (Section 2A-510 of this title), the lessee is in default under the lease contract and the lessor may:
   a. Cancel the lease contract (subsection (1) of Section 2A-505 of this title);
   b. Proceed respecting goods not identified to the lease contract (Section 2A-524 of this title);
   c. Withhold delivery of the goods and take possession of goods previously delivered (Section 2A-525 of this title);
   d. Stop delivery of the goods by any bailee (Section 2A-526 of this title);
   e. Dispose of the goods and recover damages (Section 2A-527 of this title), or retain the goods and recover damages (Section 2A-528 of this title), or in a proper case recover rent (Section 2A-529 of this title); or
   f. Exercise any other rights or pursue any other remedies provided in the lease contract.
2. If a lessor does not fully exercise a right or obtain a remedy to which the lessor is entitled under subsection (1) of this section, the lessor may recover the loss resulting in the ordinary course of events from the lessee's default as determined in any reasonable manner, together with incidental damages, less expenses saved in consequence of the lessee's default.
3. If a lessee is otherwise in default under a lease contract, the lessor may exercise the rights and pursue the remedies provided in the lease contract, which may include a right to cancel the lease. In addition, unless otherwise provided in the lease contract:

a. If the default substantially impairs the value of the lease contract to the lessor, the lessor may exercise the rights and pursue the remedies provided in subsection (1) or (2) of this section; or
b. If the default does not substantially impair the value of the lease contract to the lessor, the lessor may recover as provided in subsection (2) of this section.

Section 2A-524 – Lessor's Right to Identify Goods to Lease Contract

1. After default by the lessee under the lease contract of the type described in either subsection (1) of Section 2A-523 of this title or paragraph (a) of subsection (3) of Section 2A-523 of this title, or, if agreed, after other default by the lessee, the lessor may:
   a. Identify to the lease contract conforming goods not already identified if at the time the lessor learned of the default they were in the lessor's or the supplier's possession or control; and
   b. Dispose of goods (subsection (1) of Section 2A-527 of this title) that demonstrably have been intended for the particular lease contract even though those goods are unfinished.
2. If the goods are unfinished, in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization, an aggrieved lessor or the supplier may either complete manufacture and wholly identify the goods to the lease contract or cease manufacture and lease, sell, or otherwise dispose of the goods for scrap or salvage value or proceed in any other reasonable manner.

Section 2A-525 – Lessor's Right to Possession of Goods

1. If a lessor discovers the lessee to be insolvent, the lessor may refuse to deliver the goods.
2. After a default by the lessee under the lease contract of the type described in subsection (1) of Section 2A-523 or paragraph (a) of subsection (3) of Section 2A-523 of this title, or, if agreed, after other default by the lessee, the lessor has the right to take possession of the goods. If the lease contract so provides, the lessor may require the lessee to assemble the goods and make them available to the lessor at a place to be designated by the lessor which is reasonably convenient to both parties. Without removal, the lessor may render unusable any goods employed in trade or business, and may dispose of goods on the lessee's premises (Section 2A-527 of this title).
3. The lessor may proceed under subsection (2) of this section without judicial process if it can be done without breach of the peace or the lessor may proceed by action.

Section 2A-526 – Lessor's Stoppage of Delivery in Transit or Otherwise

1. A lessor may stop delivery of goods in the possession of a carrier or other bailee if the lessor discovers the lessee to be insolvent and may stop delivery of carload, truckload, planeload, or

larger shipments of express or freight if the lessee repudiates or fails to make a payment due before delivery, whether for rent, security or otherwise under the lease contract, or for any other reason the lessor has a right to withhold or take possession of the goods.

2. In pursuing its remedies under subsection (1) of this section, the lessor may stop delivery until:
   a. Receipt of the goods by the lessee;
   b. Acknowledgment to the lessee by any bailee of the goods, except a carrier that the bailee holds the goods for the lessee; or
   c. Such an acknowledgment to the lessee by a carrier via reshipment or as a warehouse.
3.
   a. To stop delivery, a lessor shall so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.
   b. After notification, the bailee shall hold and deliver the goods according to the directions of the lessor, but the lessor is liable to the bailee for any ensuing charges or damages.
   c. A carrier who has issued a nonnegotiable bill of lading is not obligated to obey a notification to stop received from a person other than the consignor.

Section 2A-527 – Lessor's Right to Dispose of Goods

1. After a default by a lessee under the lease contract of the type described in subsection (1) of Section 2A-523 of this title or paragraph (a) of subsection (3) of Section 2A-523 of this title or after the lessor refuses to deliver or takes possession of goods (Section 2A-525 or 2A-526 of this title), or, if agreed, after other default by a lessee, the lessor may dispose of the goods concerned or the undelivered balance thereof by lease, sale, or otherwise.
2. Except as otherwise provided with respect to damages liquidated in the lease agreement (Section 2A-504 of this title) or otherwise determined pursuant to agreement of the parties (Section 2A-503 of this title), if the disposition is by lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessor may recover from the lessee as damages:
   i. Accrued and unpaid rent as of the date of the commencement of the term of the new lease agreement,
   ii. The present value, as of the same date, of the total rent for the then remaining lease term of the original lease agreement minus the present value, as of the same date, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement, and
   iii. Any incidental damages allowed under Section 2A-530 of this title, less expenses saved in consequence of the lessee's default.
3. If the lessor's disposition is by lease agreement that for any reason does not qualify for treatment under subsection (2) of this section, or is by sale or otherwise, the lessor may recover

from the lessee as if the lessor had elected not to dispose of the goods and Section 2A-528 of this title governs.

4. A subsequent buyer or lessee who buys or leases from the lessor in good faith for value as a result of a disposition under this section takes the goods free of the original lease contract and any rights of the original lessee even though the lessor fails to comply with one or more of the requirements of this article.
5. The lessor is not accountable to the lessee for any profit made on any disposition. A lessee who has rightfully rejected or justifiably revoked acceptance shall account to the lessor for any excess over the amount of the lessee's security interest (subsection (5) of Section 2A-508 of this title).

Section 2A-528 – Lessor's Damages for Nonacceptance, Failure to Pay, Repudiation, or Other Default

1. Except as otherwise provided with respect to damages liquidated in the lease agreement (Section 2A-504 of this title) or otherwise determined pursuant to agreement of the parties (Section 2A-503 of this title), if a lessor elects to retain the goods or a lessor elects to dispose of the goods and the disposition is by lease agreement that for any reason does not qualify for treatment under subsection (2) of Section 2A-527 of this title, or is by sale or otherwise, the lessor may recover from the lessee as damages for a default of the type described in subsection (1) of Section 2A-523 or paragraph (a) of subsection (3) of Section 2A-523, or if agreed, for other default of the lessee:
    i. Accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods, as of the date the lessor repossesses the goods or an earlier date on which the lessee makes a tender of the goods to the lessor,
    ii. The present value as of the date determined under clause (i) of this subsection of the total rent for the then remaining lease term of the original lease agreement minus the present value as of the same date of the market rent at the place where the goods are located computed for the same lease term, and
    iii. Any incidental damages allowed under Section 2A-530 of this title, less expenses saved in consequence of the lessee's default.
2. If the measure of damages provided in subsection (1) of this section is inadequate to put a lessor in as good a position as performance would have, the measure of damages is the present value of the profit, including reasonable overhead, the lessor would have made from full performance by the lessee, together with any incidental damages allowed under Section 2A-530 of this title, due allowance for costs reasonably incurred and due credit for payments or proceeds of disposition.

Section 2A-529 – Lessor's Action for the Rent

1. After default by the lessee under the lease contract of the type described in subsection (1) of Section 2A-523 or paragraph (a) of subsection (3) of Section 2A-523 of this title, or, if agreed,

after other default by the lessee, if the lessor complies with subsection (2) of this section, the lessor may recover from the lessee as damages:

a. For goods accepted by the lessee and not repossessed by or tendered to the lessor, and for conforming goods lost or damages within a commercially reasonable time after risk of loss passes to the lessee (Section 2A-219 of this title):
    i. Accrued and unpaid rent as of the date of entry of judgment in favor of the lessor,
    ii. The present value as of the same date of the rent for the then remaining lease term of the lease agreement, and
    iii. Any incidental damages allowed under Section 2A-530 of this title, less expenses saved in consequence of the lessee's default; and
b. For good identified to the lease contract if the lessor is unable after reasonable effort to dispose of them at a reasonable price or the circumstances reasonably indicate that effort will be unavailing:
    i. Accrued and unpaid rent as of the date of entry of judgment in favor of the lessor,
    ii. The present value as of the same date of the rent for the then remaining lease term of the lease agreement, and
    iii. Any incidental damages allowed under Section 2A-530 of this title, less expenses saved in consequence of the lessee's default.

2. Except as provided in subsection (3) of this section, the lessor shall hold for the lessee for the remaining lease term of the lease agreement any goods that have been identified to the lease contract and are in the lessor's control.
3. The lessor may dispose of the goods at any time before collection of the judgment for damages obtained pursuant to subsection (1) of this section. If the disposition is before the end of the remaining lease term of the lease agreement, the lessor's recovery against the lessee for damages is governed by Section 2A-527 or 2A-528 of this title, and the lessor will cause an appropriate credit to be provided against a judgment for damages to the extent that the amount of the judgment exceeds the recovery available pursuant to Section 2A-527 or 2A-528 of this title.
4. Payment of the judgment for damages obtained pursuant to subsection (1) of this section entitles the lessee to the use and possession of the goods not then disposed of for the remaining lease term of and in accordance with the lease agreement.
5. After default by the lessee under the lease contract of the type described in either subsection (1) of Section 2A-523 of this title or paragraph (a) of subsection (3) of Section 2A-523 of this title or, if agreed, after other default by the lessee, a lessor who is held not entitled to rent under this section must nevertheless be awarded damages for nonacceptance under Sections 2A-527 or 2A-528 of this title.

Section 2A-530 – Lessor's Incidental Damages

Incidental damages to an aggrieved lessor include any commercially reasonable charges, expenses, or commissions incurred in stopping delivery, in the transportation, care and custody of goods after the lessee's default, in connection with return or disposition of the goods, or otherwise resulting from the default.

Section 2A-531 – Standing to Sue Third Parties for Injury to Goods

1. If a third party so deals with goods that have been identified to a lease contract as to cause actionable injury to a party to the lease contract:
   a. The lessor has a right of action against the third party, and
   b. The lessee also has a right of action against the third party if the lessee:
      i. Has a security interest in the goods;
      ii. Has an insurable interest in the goods; or
      iii. Bears the risk of loss under the lease contract or has since the injury assumed that risk as against the lessor and the goods have been converted or destroyed.
2. If at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the lease contract and there is no arrangement between them for disposition of the recovery, his suit or settlement, subject to his own interest, is as a fiduciary for the other party to the lease contract.
3. Either party with the consent of the other may sue for the benefit of whom it may concern.

Section 2A-532 – Lessor's Right to Residual Interest

In addition to any other recovery permitted by this article or other law, the lessor may recover from the lessee an amount that will fully compensate the lessor for any loss of or damage to the lessor's residual interest in the goods caused by the default of the lessee.

Chapter 3 – Negotiable Instruments

Subchapter 1 – Short Title, Form and Interpretation

Section 3-101 – Short Title

This article may be cited as Uniform Commercial Code – Negotiable Instruments.

Section 3-102 – Subject Matter

a. This article applies to negotiable instruments. It does not apply to money, to payment orders governed by Article 4A of this title, or to securities governed by Article 8 of this title.
b. If there is conflict between this article and Article 4 or 9, Articles 4 and 9 govern.

c. Regulations of the Board of Governors of the Federal Reserve System and operating circulars of the Federal Reserve Banks supersede any inconsistent provision of this article to the extent of the inconsistency.

Section 3-103 – Definitions

a. In this chapter:
   1. "Acceptor" means a drawee who has accepted a draft;
   2. "Drawee" means a person ordered in a draft to make payment;
   3. "Drawer" means a person who signs or is identified in a draft as a person ordering payment;
   4. "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing;
   5. "Maker" means a person who signs or is identified in a note as a person undertaking to pay;
   6. "Order" means a written instruction to pay money signed by the person giving the instruction. The instruction may be addressed to any person, including the person giving the instruction, or to one or more persons jointly or in the alternative but not in succession. An authorization to pay is not an order unless the person authorized to pay is also instructed to pay;
   7. "Ordinary care" in the case of a person engaged in business means observance of reasonable commercial standards, prevailing in the area in which the person is located, with respect to the business in which the person is engaged. In the case of a bank that takes an instrument for processing for collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank's prescribed procedures and the bank's procedures do not vary unreasonably from general banking usage not disapproved by this article or Article 4 of this title;
   8. "Party" means a party to an instrument;
   9. "Promise" means a written undertaking to pay money signed by the person undertaking to pay. An acknowledgment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation;
   10. "Prove" with respect to a fact means to meet the burden of establishing the fact (subsection (8) of Section 1-201 title); and
   11. "Remitter" means a person who purchases an instrument from its issuer if the instrument is payable to an identified person other than the purchaser.
b. Other definitions applying to this article and the sections in which they appear in this title are:
   "Acceptance" Section 33-3-409
   "Accommodated party" Section 33-3-419
   "Accommodation party" Section 33-3-419
   "Alteration" Section 33-3-407

"Anomalous endorsement" Section 33-3-205
"Blank endorsement" Section 33-3-205
"Cashier's check" Section 33-3-104
"Certificate of deposit" Section 33-3-104
"Certified check" Section 33-3-409
"Check" Section 33-3-104
"Consideration" Section 33-3-303
"Draft" Section 33-3-104
"Holder in due course" Section 33-3-302
"Incomplete instrument" Section 33-3-115
"Endorsement" Section 33-3-204
"Endorser" Section 33-3-204
"Instrument" Section 33-3-104
"Issue" Section 33-3-105
"Issuer" Section 33-3-105
"Negotiable instrument" Section 33-3-104
"Negotiation" Section 33-3-201
"Note" Section 33-3-104
"Payable at a definite time" Section 33-3-108
"Payable on demand" Section 33-3-108
"Payable to bearer" Section 33-3-109
"Payable to order" Section 33-3-109
"Payment" Section 33-3-602
"Person entitled to enforce" Section 33-3-301
"Presentment" Section 33-3-501
"Reacquisition" Section 33-3-207
"Special endorsement" Section 33-3-205
"Teller's check" Section 33-3-104
"Transfer of instrument" Section 33-3-203
"Traveler's check" Section 33-3-104
"Value" Section 33-3-303

c. The following definitions in other articles of this title apply to this article:
"Bank" Section 33-4-105
"Banking day" Section 33-4-104
"Clearing house" Section 33-4-104
"Clearing house" Section 33-4-104
"Collecting bank" Section 33-4-105
"Depositary bank" Section 33-4-105

"Documentary draft" Section 33-4-104
"Intermediary bank" Section 33-4-105
"Item" Section 33-4-104
"Payor bank" Section 33-4-105
"Suspends payments" Section 33-4-104

In addition, Chapter 1 of the Uniform Commercial Code, this title, contains general definitions and principles of construction and interpretation applicable throughout this article.

Section 3-104 – Negotiable Instrument

a. Except as provided in subsections (c) and (d) of this section, "negotiable instrument" means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:
   1. Is payable to bearer or to order at the time it is issued or first comes into possession of a holder;
   2. Is payable on demand or at a definite time; and
   3. Does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain:
      i. An undertaking or power to give, maintain, or protect collateral to secure payment,
      ii. An authorization or power to the holder to confess judgment or realize on or dispose of collateral, or
      iii. A waiver of the benefit of any law intended for the advantage or protection of an obligor.
b. "Instrument" means a negotiable instrument.
c. An order that meets all of the requirements of subsection (a) of this section, except paragraph (1), and otherwise falls within the definition of "check" in subsection (f) of this section is a negotiable instrument and a check.
d. A promise or order other than a check is not an instrument if, at the time it is issued or first comes into possession of a holder it contains a conspicuous statement, however expressed, to the effect that the promise or order is not negotiable or is not an instrument governed by this article.
e. An instrument is a "note" if it is a promise and is a "draft" if it is an order. If an instrument falls within the definition of both "note" and "draft", a person entitled to enforce the instrument may treat it as either.
f. "Check" means:
      i. A draft, other than a documentary draft, payable on demand and drawn on a bank or

ii. A cashier's check or teller's check. An instrument may be a check even though it is described on its face by another term, such as "money order".

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

h. "Teller's check" means a draft drawn by a bank:
   i. On another bank, or
   ii. Payable at or through a bank.

i. "Traveler's check" means an instrument that:
   i. Is payable on demand,
   ii. Is drawn on or payable at or through a bank,
   iii. Is designated by the term "traveler's check" or by a substantially similar term, and
   iv. Requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the instrument.

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

Section 3-105 – Issue of Instrument

a. "Issue" means the first delivery of an instrument by the maker or drawer, whether to a holder or nonholder, for the purpose of giving rights on the instrument to any person.

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

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

Section 3-106 – Unconditional Promise or Order

a. Except as provided in this section, for the purposes of subsection (a) of Section 33-3-104 of this title, a promise or order is unconditional unless it states:
   i. An express condition to payment,
   ii. That the promise or order is subject to or governed by another writing, or
   iii. That rights or obligations with respect to the promise or order are stated in another writing. A reference to another writing does not of itself make the promise or order conditional.

b. A promise or order is not made conditional:
   i. By a reference to another writing for a statement of rights with respect to collateral, prepayment, or acceleration, or

ii. Because payment is limited to resort to a particular fund or source.

c. If a promise or order requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the promise or order, the condition does not make the promise or order conditional for the purposes of subsection (a) of Section 33-3-104 of this title. If the person whose specimen signature appears on an instrument fails to countersign the instrument, the failure to countersign is a defense to the obligation of the issuer, but the failure does not prevent a transferee of the instrument from becoming a holder of the instrument.

d. If a promise or order at the time it is issued or fist comes into possession of a holder contains a statement, required by applicable statutory or administrative law, to the effect that the rights of a holder or transferee are subject to claims or defenses that the issuer could assert against the original payee, the promise or order is not thereby made conditional for the purposes of subsection (a) of Section 3-104 of this title; but if the promise or order is an instrument, there cannot be a holder in due course of the instrument.

Section 3-107 – Instrument Payable in Foreign Money

Unless the instrument otherwise provides, an instrument that states the amount payable in foreign money may be paid in the foreign money or in an equivalent amount in dollars calculated by using the current bank-offered spot rate at the place of payment for the purchase of dollars on the day on which the instrument is paid.

Section 3-108 – Payable on Demand or at Definite Time

a. A promise or order is "payable on demand" if it (i) states that it is payable on demand or at sight, or otherwise indicates that it is payable at the will of the holder, or (ii) does not state any time of payment.

b. A promise or order is "payable at a definite time" if it is payable on elapse of a definite period of time after sight or acceptance or at a fixed date or dates or at a time or times readily ascertainable at the time the promise or order is issued, subject to rights of:

   i. Prepayment,

   ii. Acceleration,

   iii. Extension at the option of the holder, or

   iv. Extension to a further definite time at the option of the maker or acceptor or automatically upon or after a specified act or event.

c. If an instrument, payable at a fixed date, is also payable upon demand made before the fixed date, the instrument is payable on demand until the fixed date and, if demand for payment is not made before that date, becomes payable at a definite time on the fixed date.

Section 3-109 – Payable to Bearer or to Order

a. Promise or order is payable to bearer if it:
   1. States that it is payable to bearer or to the order of bearer or otherwise indicates that the person in possession of the promise or order is entitled to payment;
   2. Does not state a payee;
   3. States that it is payable to or to the order of cash or otherwise indicates that it is not payable to an identified person.
b. A promise or order that is not payable to bearer is payable to order if it is payable (i) to the order of an identified person or (ii) to an identified person or order. A promise or order that is payable to order is payable to the identified person.
c. An instrument payable to bearer may become payable to an identified person if it is specially endorsed pursuant to subsection (a) of Section 33-3-205 of this title. An instrument payable to an identified person may become payable to bearer if it is endorsed in blank pursuant to subsection (b) of Section 33-3-205 of this title.

Section 3-110 – Identification of Person to whom Instrument is Payable

a. The person to whom an instrument is initially payable is determined by the intent of the person, whether or not authorized, signing as, or in the name or behalf of, the issuer of the instrument. The instrument is payable to the person intended by the signer even if that person is identified in the instrument by a name or other identification that is not that of the intended person. If more than one person signs in the name or behalf of the issuer of an instrument and all the signers do not intend the same person as payee, the instrument is payable to any person intended by one or more of the signers.
b. If the signature of the issuer of an instrument is made by automated means, such as a check-writing machine, the payee of the instrument is determined by the intent of the person who supplied the name or identification of the payee, whether or not authorized to do so.
c. A person to whom an instrument is payable may be identified in any way, including by name, identifying number, office, or account number. For the purpose of determining the holder of an instrument, the following rules apply:
   1. If an instrument is payable to an account and the account is identified only by number, the instrument is payable to the person to whom the account is payable. If an instrument is payable to an account identified by number and by the name of a person, the instrument is payable to the named person, whether or not that person is the owner of the account identified by number.
   2. If an instrument is payable to:
      i. A trust, an estate, or a person described as trustee or representative of a trust or estate, the instrument is payable to the trustee, the representative, or a successor of either, whether or not the beneficiary or estate is also named;

ii. A person described as agent or similar representative of a named or identified person, the instrument is payable to the represented person, the representative, or a successor of the representative;

iii. A fund or organization that is not a legal entity, the instrument is payable to a representative of the members of the fund or organization; or

iv. An office or to a person described as holding an office, the instrument is payable to the named person, the incumbent of the office, or a successor to the incumbent.

d. If any instrument is payable to two or more persons alternatively, it is payable to any of them and may be negotiated, discharged, or enforced by any or all of them in possession of the instrument. If an instrument is payable to two or more persons not alternatively, it is payable to all of them and may be negotiated, discharged, or enforced only by all of them. If an instrument payable to two or more persons is ambiguous as to whether it is payable to the persons alternatively, the instrument is payable to the persons alternatively.

Section 3-111 – Place of Payment

Except as otherwise provided for items in Chapter 4 of this title, an instrument is payable at the place of payment stated in the instrument. If no place of payment is stated, an instrument is payable at the address of the drawee or maker stated in the instrument. If no address is stated, the place of payment is the place of business of the drawee or maker. If a drawee or maker has more than one place of business, the place of payment is any place of business of the drawee or maker chosen by the person entitled to enforce the instrument. If the drawee or maker has no place of business, the place of payment is the residence of the drawee or maker.

Section 3-113 – Date of Instrument

a. An instrument may be antedated or postdated. The date stated determines the time of payment if the instrument is payable at a fixed period after date. Except as provided in subsection (c) of Section 33-4-401 of this title, an instrument payable on demand is not payable before the date of the instrument.

b. If an instrument is undated, its date is the date of its issue or, in the case of an unissued instrument, the date it first comes into possession of a holder.

If an instrument contains contradictory terms, typewritten terms prevail over printed terms; handwritten terms prevail over both, and words prevail over numbers.

a. “Incomplete instrument” means a signed writing, whether or not issued by the signer, the contents of which show at the time of signing that it is incomplete but that the signer intended it to be completed by the addition of words or numbers.

b. Subject to subsection (c) of this section, if an incomplete instrument is an instrument under Section 33-3-104 of this title, it may be enforced according to its terms if it is not completed, or according to its terms as augmented by completion. If an incomplete instrument is not an instrument under Section 33-3-104 of this title, but, after completion, the requirements of Section 33-3-104 of this title are met, the instrument may be enforced according to its terms as augmented by completion.
c. If words or numbers are added to an incomplete instrument without authority of the signer, there is an alteration of the incomplete instrument under Section 33-3-407 of this title.
d. The burden of establishing that words or numbers were added to an incomplete instrument without authority of the signer is on the person asserting the lack of authority.

Section 3-116 – Joint and Several Liability; Contribution

a. Except as otherwise provided in the instrument, two or more persons who have the same liability on an instrument as makers, drawers, acceptors, endorsers who endorse as joint payees, or anomalous endorsers are jointly and severally liable in the capacity in which they sign.
b. Except as provided in subsection (e) of Section 33-3-419 of this title or by agreement of the affected parties, a party having joint and several liability that pays the instrument is entitled to receive from any party having the same joint and several liability contribution in accordance with applicable law.
c. Discharge of one party having joint and several liability by a person entitled to enforce the instrument does not affect the right under subsection (b) of this section of a party having the same joint and several liability to receive contribution from the party discharged.

Section 3-117 – Other Agreements Affecting Instrument

Subject to applicable law regarding exclusion of proof of contemporaneous or previous agreements, the obligation of a party to an instrument to pay the instrument may be modified, supplemented, or nullified by a separate agreement of the obligor and a person entitled to enforce the instrument, if the instrument is issued or the obligation is incurred in reliance on the agreement or as part of the same transaction giving rise to the agreement. To the extent an obligation is modified, supplemented, or nullified by an agreement under this section, the agreement is a defense to the obligation.

Section 3-118 – Statute of Limitations

i. Except as provided in subsection (e) of this section, an action to enforce the obligation of a party to pay a note payable at a definite time must be commenced within six (6) years after the due date or dates stated in the note or, if a due date is accelerated, within six (6) years after the accelerated due date.

j. Except as provided in subsection (d) or (e) of this section, if demand for payment is made to the maker of a note payable on demand, an action to enforce the obligation of a party to pay the note must be commenced within six (6) years after the demand. If no demand for payment is made to the maker, an action to enforce the note is barred if neither principal nor interest on the note has been paid for a continuous period of ten (10) years.
k. Except as provided in subsection (d) of this section, an action to enforce the obligation of a party to an unaccepted draft to pay the draft must be commenced within three (3) years after dishonor of the draft or ten (10) years after the date of the draft, whichever period expires first.
l. An action to enforce the obligation of the acceptor of a certified check or the issuer of a teller's check, cashier's check, or traveler's check must be commenced within three (3) years after demand for payment is made to the acceptor or issuer, as the case may be.
m. An action to enforce the obligation of a party to a certificate of deposit to pay the instrument must be commenced within six (6) years after demand for payment is made to the maker, but if the instrument states a due date and the maker is not required to pay before that date, the six year period begins when a demand for payment is in effect and the due date has passed.
n. An action to enforce the obligation of a party to pay an accepted draft, other than a certified check, must be commenced:
    i. Within six (6) years after the due date or dates stated in the draft or acceptance if the obligation of the acceptor is payable at a definite time, or
    ii. Within six (6) years after the date of the acceptance if the obligation of the acceptor is payable on demand.
o. Unless governed by other law regarding claims for indemnity or contribution, an action:
    i. For conversion of an instrument, for money had and received, or like action based on conversion,
    ii. For breach of warranty, or
    iii. To enforce an obligation, duty, or right arising under this article and not governed by this section must be commenced within three (3) years after the claim for relief accrues.

Section 3-119 – Notice of Right to Defend Action

In an action for breach of an obligation for which a third person is answerable over pursuant to this article or Article 4 of this title, the defendant may give the third person written notice of the litigation, and the person notified may then give similar notice to any other person who is answerable over. If the notice states similar notice to any other person who is answerable over. If the notice states:

i. That the person notified may come in and defend and

ii. That failure to do so will bind the person notified in an action later brought by the person giving the notice as to any determination of fact common to the two litigations, the person notified is so bound unless after.

Seasonable receipt of the notice the person notified does come in and defend.

Subchapter 2 – Transfer and Negotiation

Section 3-201 – Negotiation

a. "Negotiation" means a transfer of possession, whether voluntary or involuntary, of an instrument by a person other than the issuer to a person who thereby becomes its holder.
b. Except for negotiation by a remitter, if an instrument is payable to an identified person, negotiation requires transfer of possession of the instrument and its endorsement by the holder. If an instrument is payable to bearer, it may be negotiated by transfer of possession alone.

Section 3-202 – Negotiation Subject to Rescission

a. Negotiation is effective even if obtained:
    i. From an infant, a corporation exceeding its powers, or a person without capacity,
    ii. By fraud, duress, or mistake, or
    iii. In breach of duty or as part of an illegal transaction.
b. To the extent permitted by other law, negotiation may be rescinded or may be subject to other remedies, but those remedies may not be asserted against a subsequent holder in due course or a person paying the instrument in good faith and without knowledge of facts that are a basis for rescission or other remedy.

Section 3-203 – Transfer of Instrument; Rights Acquired by Transfer

a. An instrument is transferred when it is delivered by a person other than its issuer for the purpose of giving to the person receiving delivery the right to enforce the instrument.
b. Transfer of an instrument, whether or not the transfer is a negotiation, vests in the transferee any right of the transferor to enforce the instrument, including any right as a holder in due course, but the transferee cannot acquire rights of a holder in due course by a transfer, directly or indirectly, from a holder in due course if the transferee engaged in fraud or illegality affecting the instrument.
c. Unless otherwise agreed, if an instrument is transferred for value and the transferee does not become a holder because of lack of endorsement by the transferor, the transferee has a specifically enforceable right to the unqualified endorsement of the transferor, but negotiation of the instrument does not occur until the endorsement is made.

d. If a transferor purports to transfer less than the entire instrument, negotiation of the instrument does not occur. The transferee obtains no rights under this article and has only the rights of a partial assignee.

Section 3-204 – Endorsement

a. "Endorsement" means a signature, other than that of a signer as maker, drawer, or acceptor, that alone or accompanied by other words is made on an instrument for the purpose of:
   i. Negotiating the instrument,
      ii. Restricting payment of the instrument, or
      iii. Incurring endorser's liability on the instrument, but regardless of the intent of the signer, a signature and its accompanying words is an endorsement unless the accompanying words, terms of the instrument, place of the signature, or other circumstances unambiguously indicate that the signature was made for a purpose other than endorsement. For the purpose of determining whether a signature is made on an instrument, a paper affixed to the instrument is a part of the instrument.
b. "Endorser" means a person who makes an endorsement.
c. For the purpose of determining whether the transferee of an instrument is a holder, an endorsement that transfers a security interest in the instrument is effective as an unqualified endorsement of the instrument.
d. If an instrument is payable to a holder under a name that is not the name of the holder, endorsement may be made by the holder in the name stated in the instrument or in the holder's name or both, but signature in both names may be required by a person paying or taking the instrument for value or collection.

Section 3-205 – Special Endorsement; Blank Endorsement; Anomalous Endorsement

a. If an endorsement is made by the holder of an instrument, whether payable to an identified person or payable to bearer, and the endorsement identifies a person to whom it makes the instrument payable, it is a "special endorsement". When specially endorsed, and instrument becomes payable to the identified person and may be negotiated only by the endorsement of that person. The principles stated in Section 3-110 of this title apply to special endorsements.
b. If an endorsement is made by the holder of an instrument and it is not a special endorsement, it is a "blank endorsement". When endorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially endorsed.

c. The holder may convert a blank endorsement that consists only of a signature into a special endorsement by writing, above the signature of the endorser, words identifying the person to whom the instrument is made payable.
d. "Anomalous endorsement" means an endorsement made by a person who is not the holder of the instrument. An anomalous endorsement does not affect the manner in which the instrument may be negotiated.

Section 3-206 – Restrictive Endorsement

a. An endorsement limiting payment to a particular person or otherwise prohibiting further transfer or negotiation of the instrument is not effective to prevent further transfer or negotiation of the instrument.
b. An endorsement stating a condition to the right of the endorsee to receive payment does not affect the right of the endorsee to enforce the instrument. A person paying the instrument or taking it for value or collection may disregard the condition, and the rights and liabilities of that person are not affected by whether the condition has been fulfilled.
c. If an instrument bears an endorsement:
    i. Described in subsection (b) of Section 33-4-201 of this title, or
    ii. In blank or to a particular bank using the words "for deposit", "for collection", or other words indicating a purpose of having the instrument collected by a bank for the endorser or for a particular account, the following rules apply:
        1. A person, other than a bank, who purchases the instrument when so endorsed converts the instrument unless the amount paid for the instrument is received by the endorser or applied consistently with the endorsement;
        2. A depositary bank that purchases the instrument or takes it for collection when so endorsed converts the instrument unless the amount paid by the bank with respect to the instrument is received by the endorser or applied consistently with the endorsement;
        3. A payor bank that is also the depositary bank or that takes the instrument for immediate payment over the counter from a person other than a collecting bank converts the instrument unless the proceeds of the instrument are received by the endorser or applied consistently with the endorsement; and
        4. Except as otherwise provided in paragraph (3) of this subsection, a payor bank or intermediary bank may disregard the endorsement and is not liable if the proceeds of the instrument are not received by the endorser or applied consistently with the endorsement.
d. Except for an endorsement covered by subsection (c) of this section, if an instrument bears an endorsement using words to the effect that payment is to be made to the endorsee as agent,

trustee, or other fiduciary for the benefit of the endorser or another person, the following rules apply:

1. Unless there is notice of breach of fiduciary duty as provided in Section 33-3-307 of this title, a person who purchases the instrument form the endorsee or takes the instrument from the endorsee for collection or payment may pay the proceeds of payment or the value given for the instrument to the endorsee without regard to whether the endorsee violates a fiduciary duty to the endorser; and
2. A subsequent transferee of the instrument or person who pays the instrument is neither given notice nor otherwise affected by the restriction in the endorsement unless the transferee or payor knows that the fiduciary dealt with the instrument or its proceeds in breach of fiduciary duty.

e. The presence on an instrument of an endorsement to which this section applies does not prevent a purchaser of the instrument from becoming a holder in due course of the instrument unless the purchaser is a converter under subsection (c) of this section or has notice or knowledge of breach of fiduciary duty as stated in subsection (d) of this section.
f. In an action to enforce the obligation of a party to pay the instrument, the obligor has a defense if payment would violate an endorsement to which this section applies and the payment is not permitted by this section.

Section 3-207 – Reacquisition

Reacquisition of an instrument occurs if it is transferred to a former holder, by negotiation or otherwise. A former holder who reacquires the instrument may cancel endorsements made after the reacquirer first became a holder of the instrument. If the cancellation causes the instrument to be payable to the reaquirer or to bearer, the reaquirer may negotiate the instrument. An endorser whose endorsement is canceled is discharged, and the discharge is effective against any subsequent holder.

Subchapter 3 – Enforcement of Instruments

Section 3-301 – Person Entitled to Enforce Instrument

"Person entitled to enforce" an instrument means:

i. The holder of the instrument,
ii. A nonholder in possession of the instrument who has the rights of a holder, or
iii. A person not in possession of the instrument who is entitled to enforce the instrument pursuant to Section 33-3-309 or subsection (d) of Section 33-3-418 of this title.

A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument.

Section 3-302 – Holder in Due Course

a. Subject to subsection (c) of this section and subsection (d) of Section 33-3-106 of this title, "holder in due course" means the holder of an instrument if:
    1. The instrument when issued or negotiated to the holder does not bear such apparent evidence of forgery or alteration or is not otherwise so irregular or incomplete as to call into question its authenticity; and
    2. The holder took the instrument:
        i. For value,
        ii. In good faith,
        iii. Without notice that the instrument contains an unauthorized signature or has been altered,
        iv. Without notice that the instrument contains an unauthorized signature or has been altered,
        v. Without notice of any claim to the instrument described in Section 33-3-306 of this title, and
        vi. Without notice that any party has a defense or claim in recoupment described in subsection (a) of Section 33-3-305 of this title.
b. Notice of discharge of a party, other than discharge in an insolvency proceeding, is not notice of a defense under subsection (a) of this section, but discharge is effective against a person who became a holder in due course with notice of the discharge. Public filing or recording of a document does not of itself constitute notice of a defense, claim in recoupment, or claim to the instrument.
c. Except to the extent a transferor or predecessor in interest has rights as a holder in due course, a person does not acquire rights of a holder in due course of an instrument taken:
        i. By legal process or by purchase in an execution, bankruptcy, or creditor's sale or similar proceeding.
        ii. By purchase as part of a bulk transaction not in ordinary course of business of the transferor, or
        iii. As the successor in interest to an estate or other organization.
d. If, under paragraph (1) of subsection (a) of Section 33-3-303 of this title, the promise of performance that is the consideration for an instrument has been partially performed, the holder may assert rights as a holder in due course of the instrument only to the fraction of the amount payable under the instrument equal to the value of the partial performance divided by the value of the promised performance.
e. If:
        i. The person entitled to enforce an instrument has only a security interest in the instrument and

ii. The person obliged to pay the instrument has a defense, claim in recoupment, or claim to the instrument that may be asserted against the person who granted the security interest, the person entitled to enforce the instrument may assert rights as a holder in due course only to an amount payable under the instrument which, at the time of enforcement of the instrument, does not exceed the amount of the unpaid obligation secured.

f. To be effective, notice must be received at a time and in a manner that gives a reasonable opportunity to act on it.
g. This section is subject to any law limiting status as a holder in due course in particular classes of transactions.

Section 3-303 – Value and Consideration

a. An instrument is issued or transferred for value if:
   1. The instrument is issued or transferred for a promise of performance, to the extent the promise has been performed;
   2. The transferee acquires a security interest or other lien in the instrument other than a lien obtained by judicial proceeding;
   3. The instrument is issued or transferred as payment of, or as security for, an antecedent claim against any person, whether or not the claim is due;
   4. The instrument is issued or transferred in exchange for a negotiable instrument; or
   5. The instrument is issued or transferred in exchange for the incurring of an irrevocable obligation to a third party by the person taking the instrument.
b. "Consideration" means any consideration sufficient to support a simple contract. The drawer or maker of an instrument has a defense if the instrument is issued without consideration. If an instrument is issued for a promise of performance, the issuer has a defense to the extent performance of the promise is due and the promise has not been performed. If an instrument is issued for value as stated in subsection (a) of this section, the instrument is also issued for consideration.

Section 3-304 – Overdue Instrument

a. An instrument payable on demand becomes overdue at the earliest of the following times:
   1. On the day after the day demand for payment is duly made;
   2. If the instrument is a check, ninety (90) days after its date; or
   3. If the instrument is not a check, when the instrument has been outstanding for a period of time after its date which is unreasonably long under the circumstances of the particular case in light of the nature of the instrument and usage of the trade.
b. With respect to an instrument payable at a definite time the following rules apply:

1. If the principal is payable in installments and a due date has not been accelerated, the instrument becomes overdue upon default under the instrument for nonpayment of an installment, and the instrument remains overdue until the default is cured;
2. If the principal is not payable in installments and the due date has not been accelerated, the instrument becomes overdue on the day after the due date; and
3. If a due date with respect to principal has been accelerated, the instrument becomes overdue on the day after the accelerated due date.

c. Unless the due date of principal has been accelerated, an instrument does not become overdue if there is default in payment of interest but no default in payment of principal.

Section 3-305 – Defenses and Claims in Recoupment

a. Except as stated in subsection (b) of this section, the right to enforce the obligation of a party to pay an instrument is subject to the following:
   1. A defense of the obligor based on:
      i. Infancy of the obligor to the extent it is a defense to a simple contract,
      ii. Duress, lack of legal capacity, or illegality of the transaction which, under other law, nullifies the obligation of the obligor,
      iii. Fraud that induced the obligor to sign the instrument with neither knowledge nor reasonable opportunity to learn of its character or its essential terms, or
      iv. Discharge of the obligor in insolvency proceedings;
   2. A defense of the obligor stated in another section of this article or a defense of the obligor that would be available if the person entitled to enforce the instrument were enforcing a right to payment under a simple contract; and
   3. A claim in recoupment of the obligor against the original payee of the instrument if the claim arose from the transaction that gave rise to the instrument; but the claim of the obligor may be asserted against a transferee of the instrument only to reduce the amount owing on the instrument at the time the action is brought.

b. The right of a holder in due course to enforce the obligation of a party to pay the instrument is subject to defenses of the obligor stated in paragraph (1) of subsection (a) of this section, but is not subject to defenses of the obligor stated in paragraph (2) of subsection (a) of this section or claims in recoupment stated in paragraph (3) of subsection (a) of this section against a person other than the holder.

c. Except as stated in subsection (d) of this section, in an action to enforce the obligation of a party to pay the instrument, the obligor may not assert against the person entitled to enforce the instrument a defense, claim in recoupment, or claim to the instrument (Section 33-3-306 of this title) of another person, but the other person's claim to the instrument may be asserted by the obligor if the other person is joined in the action and personally asserts the claim against the person entitled to enforce the instrument. An obligor is not obliged to pay the instrument if the

person seeking enforcement of the instrument does not have rights of a holder in due course and the obligor proves that the instrument is a lost or stolen instrument.

d. In an action to enforce the obligation of an accommodation party to pay an instrument, the accommodation party may assert against the person entitled to enforce the instrument any defense or claim in recoupment under subsection (a) of this section that the accommodated party could assert against the person entitled to enforce the instrument, except the defenses of discharge in insolvency proceedings, infancy, and lack of legal capacity.

Section 3-306 – Claims to an Instrument

A person taking an instrument, other than a person having rights of a holder in due course, is subject to a claim of a property or possessory right in the instrument or its proceeds, including a claim to rescind a negotiation and to recover the instrument or its proceeds. A person having rights of a holder in due course takes free of the claim to the instrument.

Section 3-307 – Notice of Breach of Fiduciary

a. In this section:
    1. "Fiduciary" means an agent, trustee, partner, corporate officer or director, or other representative owing a fiduciary duty with respect to an instrument; and
    2. "Represented person" means the principal, beneficiary, partnership, corporation, or other person to whom the duty stated in paragraph (1) of this subsection is owed.
b. If,
    i. An instrument is taken from a fiduciary for payment or collection or for value,
    ii. The taker has knowledge of the fiduciary status of the fiduciary, and
    iii. The represented person makes a claim to the instrument or its proceeds on the basis that the transaction of the fiduciary is a breach of fiduciary duty, the following rules apply:
        1. Notice of breach of fiduciary duty by the fiduciary is notice of the claim of the represented person;
        2. In the case of an instrument payable to the represented person or the fiduciary as such, the taker has notice of the breach of fiduciary duty if the instrument is:
            i. Taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary,
            ii. Taken in a transaction known by the taker to be for the personal benefit of the fiduciary, or
            iii. Deposited to an account other than an account of the fiduciary, as such, or an account of the represented person;

3. If an instrument is issued by the represented person or the fiduciary as such, and made payable to the fiduciary personally, the taker does not have notice of the breach of fiduciary duty unless the taker knows of the breach of fiduciary duty; and
4. If an instrument is issued by the represented person or the fiduciary as such, to the taker as payee, the taker has notice of the breach of fiduciary duty if the instrument is:
    i. Taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary,
    ii. Taken in a transaction known by the taker to be for the personal benefit of the fiduciary, or
    iii. Deposited to an account other than an account of the fiduciary, as such, or an account of the represented person.

Section 3-308 – Proof of Signatures and Status as Holder in Due Course

a. In an action with respect to an instrument, the authenticity of, and authority to make, each signature on the instrument is admitted unless specifically denied in the pleadings. If the validity of a signature is denied in the pleadings, the burden of establishing validity is on the person claiming validity, but the signature is presumed to be authentic and authorized unless the action is to enforce the liability of the purported signer and the signer is dead or incompetent at the time of trial of the issue of validity of the signature. If an action to enforce the instrument is brought against a person as the undisclosed principal of a person who signed the instrument as a party to the instrument, the plaintiff has the burden of establishing that the defendant is liable on the instrument as a represented person under this act.
b. If the validity of signatures is admitted or proved and there is compliance with subsection (a) of this section, a plaintiff producing the instrument is entitled to payment if the plaintiff proves entitlement to enforce the instrument under this act, unless the defendant proves a defense or claim in recoupment. If a defense or claim in recoupment is proved, the right to payment of the plaintiff is subject to the defense or claim, except to the extent the plaintiff proves that the plaintiff has rights of a holder in due course which are not subject to the defense or claim.

Section 3-309 – Enforcement of Lost, Destroyed, or Stolen Instrument

a. A person not in possession of an instrument is entitled to enforce the instrument if:
    i. The person was in possession of the instrument and entitled to enforce it when loss of possession occurred,
    ii. The loss of possession was not the result of a transfer by the person or a lawful seizure, and

iii. The person cannot reasonably obtain possession of the instrument because the instrument was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

b. A person seeking enforcement of an instrument under subsection (a) of this section must prove the terms of the instrument and the person's right to enforce the instrument. If that proof is made, this act applies to the case as if the person seeking enforcement had produced the instrument. The court may not enter judgment in favor of the person seeking enforcement unless it finds that the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument. Adequate protection may be provided by any reasonable means.

Section 3-310 – Effect of Instrument on Obligation for which Taken

a. Unless otherwise agreed, if a certified check, cashier's check, or teller's check is taken for an obligation, the obligation is discharged to the same extent discharge would result if an amount of money equal to the amount of the instrument were taken in payment of the obligation. Discharge of the obligation does not affect any liability that the obligor may have as an endorser of the instrument.
b. Unless otherwise agreed and except as provided in subsection (a) of this section, if a note or an uncertified check is taken for an obligation, the obligation is suspended to the same extent the obligation would be discharged if an amount of money equal to the amount of the instrument were taken, and the following rules apply:
    1. In the case of an uncertified check, suspension of the obligation continues until dishonor of the check or until it is paid or certified. Payment or certification of the check results in discharge of the obligation to the extent of the amount of the check;
    2. In the case of a note, suspension of the obligation continues until dishonor of the note or until it is paid. Payment of the note results in discharge of the obligation to the extent of the payment;
    3. Except as provided in paragraph (4) of this subsection, if the check or note is dishonored and the obligee of the obligation for which the instrument was taken is the person entitled to enforce the instrument, the oblige may enforce either the instrument or the obligation. In the case of an instrument of a third person which is negotiated to the oblige by the obligor, discharge of the obligor on the instrument also discharges the obligation; and
    4. If the person entitled to enforce the instrument taken for an obligation is a person other than the obligee, the obligee may not enforce the obligation to the extent the obligation is suspended. If the obligee is the person entitled to enforce the instrument but no longer has possession of it because it was lost, stolen, or destroyed, the obligation may not be enforced

to the extent of the amount payable on the instrument, and to that extent the obligee's rights against the obligor are limited to enforcement of the instrument.

c. If an instrument other than one described in subsection (a) or (b) of this section is taken for an obligation, the effect is (i) that stated in subsection (a) of this section if the instrument is one on which a bank is liable as maker or acceptor, or (ii) that stated in subsection (b) of this section in any other case.

Section 3-311 – Accord and Satisfaction by Use of Instrument

a. If a person against whom a claim is asserted proves that:
    i. That person in good faith tendered an instrument to the claimant as full satisfaction of the claim,
    ii. The amount of the claim was unliquidated or subject to a bona fide dispute, and (iii) the claimant obtained payment of the instrument, the following subsections apply.
b. Unless subsection (c) of this section applies, the claim is discharged if the person against whom the claim is asserted proves that the instrument or an accompanying written communication contained a conspicuous statement to the effect that the instrument was tendered as full satisfaction of the claim.
c. Subject to subsection (d) of this section, a claim is not discharged under subsection (b) of this section if either of the following applies:
    1. The claimant, if an organization, proves that
        i. Within a reasonable time before the tender, the claimant sent a conspicuous statement to the person against whom the claim is asserted that communications concerning disputed debts, including an instrument tendered as full satisfaction of a debt, are to be sent to a designated person, office, or place, and
        ii. The instrument or accompanying communication was not received by that designated person, office or place; or
    2. The claimant, whether or not an organization, proves that within ninety (90) days after payment of the instrument, the claimant tendered repayment of the amount of the instrument to the person against whom the claim is asserted. This paragraph does not apply if the claimant is an organization that sent a statement complying with subparagraph (i) of paragraph (1) of this subsection.
d. A claim is discharged if the person against whom the claim is asserted proves that within a reasonable time before collection of the instrument was initiated, the claimant, or an agent of the claimant having direct responsibility with respect to the disputed obligation, knew that the instrument was tendered in full satisfaction of the claim.

Section 3-312 – Lost, Destroyed, or Stolen Cashier's Check, Teller's Check, or Certified Check

a. In this section:

1. “Check” means a cashier’s check, teller’s check, or certified check;
2. “Claimant” means a person who claims the right to receive the amount of a cashier’s check, teller’s check, or certified check that was lost, destroyed, or stolen;
3. “Declaration of loss” means a written statement, made under penalty of perjury, to the effect that:
    i. The declarer lost possession of a check,
    ii. The declarer is the drawer or payee of the check, in the case of a certified check, or the remitter or payee of the check, in the case of a cashier’s or teller’s check,
    iii. The loss of possession was not the result of a transfer by the declarer or a lawful seizure, and
    iv. The declarer cannot reasonably obtain possession of the check because the check was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.
4. “Obligated bank” means the issuer of a cashier’s check or a teller’s check or the acceptor of a certified check.

b. A claimant may assert a claim to the amount of a check by a communication to the obligated bank describing the check with reasonable certainty and requesting payment of the amount of the check, if
    i. The claimant is the drawer or payee of a certified check or the remitter or payee of a cashier’s check or teller’s check,
    ii. The communication contains or is accompanied by a declaration of loss of the claimant with respect to the check,
    iii. The communication is received at a time and in a manner affording the bank reasonable time to act on it before the check is paid, and
    iv. The claimant provides reasonable identification if requested by the obligated bank. Delivery of a declaration of loss is a warranty of the truth of the statements made in the declaration. If a claim is asserted in compliance with this subsection, the following rules apply:

c. The claim becomes enforceable at the later of:
    i. The time the claim is asserted, or
    ii. The ninetieth (90th) day following the date of the check, in the case of a cashier’s check or teller’s check, or the ninetieth (90th) day following the date of the acceptance, in the case of a certified check;

d. Until the claim becomes enforceable, it has no legal effect and the obligated bank may pay the check or, in the case of a teller’s check, may permit the drawee to pay the check. Payment to a person entitled to enforce the check discharges all liability of the obligated bank with respect to the check;

e. If the claim becomes enforceable before the check is presented for payment, the obligated bank is not obliged to pay the check; and
f. When the claim becomes enforceable, the obligated bank becomes obligated to pay the amount of the check to the claimant if payment of the check has not been made to a person entitled to enforce the check. Subject this act, payment to the claimant discharges all liability of the obligated bank with respect to the check.
g. If the obligated bank pays the amount of a check to a claimant under paragraph (iv) of subsection (b) of this section and the check is presented for payment by a person having rights of a holder in due course, the claimant is obliged to:
    i. Refund the payment to the obligated bank if the check is paid, or
    ii. Pay the amount of the check to the person having rights of a holder in due course if the check is dishonored.
h. If a claimant has the right to assert a claim under subsection (b) of this section and is also a person entitled to enforce a cashier's check, teller's check, or certified check which is lost, destroyed, or stolen, the claimant may assert rights with respect to the check either under this section or others section of this act.

Subchapter 4 – Liability of Parties

Section 3-401 – Signature

a. A person is not liable on an instrument unless:
    i. The person signed the instrument, or
    ii. The person is represented by an agent or representative who signed the instrument and the signature is binding on the represented person under Section 33-3-402 of this title.
b. A signature may be made:
    i. Manually or by means of a device or machine, and
    ii. By the use of any name, including a trade or assumed name, or by a word, mark, or symbol executed or adopted by a person with present intention to authenticate a writing.

Section 3-402 – Signature by Representative

a. If a person acting, or purporting to act, as a representative signs an instrument by signing either the name of the represented person or the name of the signer, the represented person is bound by the signature to the same extent the represented person would be bound if the signature were on a simple contract. If the represented person is bound, the signature of the representative is the "authorized signature of the represented person" and the represented person is liable on the instrument, whether or not identified in the instrument.

b. If a representative signs the name of the representative to an instrument and the signature is an authorized signature of the represented person, the following rules apply:
    1. If the form of the signature shows unambiguously that the signature is made on behalf of the represented person who is identified in the instrument, the representative is not liable on the instrument; and
    2. The represented person is not identified in the instrument the representative is liable on the instrument to a holder in due course that took the instrument without notice that the representative was not intended to be liable on the instrument. With respect to any other person, the representative is liable on the instrument unless the representative proves that the original parties did not intend the representative to be liable on the instrument.
c. If a representative signs the name of the representative as drawer of a check without indication of the representative status and the check is payable from an account of the represented person who is identified on the check, the signer is not liable on the check if the signature is an authorized signature of the represented person.

Section 3-403 – Unauthorized Signature

a. Unless otherwise provided in this article or Article 4 of this title, an unauthorized signature is ineffective except as the signature of the unauthorized signer in favor of a person who in good faith pays the instrument or takes it for value. An unauthorized signature may be ratified for all purposes of this article.
b. If the signature of more than one person is required to constitute the authorized signature of an organization, the signature of the organization is unauthorized if one of the required signatures is lacking.
c. The civil or criminal liability of a person who makes an unauthorized signature is not affected by any provision of this article which makes the unauthorized signature effective for the purposes of this article.

Section 3-404 – Imposters; Fictitious Payees

a. If an imposter, by use of the mails or otherwise, induces the issuer of an instrument to issue the instrument to the imposter, or to a person acting in concert with the imposter, by impersonating the payee of the instrument or a person authorized to act for the payee, an endorsement of the instrument by any person in the name of the payee is effective as the endorsement of the payee in favor of a person who, in good faith, pays the instrument or takes it for value or for collection.
b. If:
    i. A person whose intent determines to whom an instrument is payable (subsection (a) or (b) of Section 33-3-110 of this title) does not intend the person identified as payee to have any interest in the instrument, or

ii. The person identified as payee of an instrument is a fictitious person, the following rules apply until the instrument is negotiated by special endorsement:
    1. Any person in possession of the instrument is its holder; and
    2. An endorsement by any person in the name of the payee stated in the instrument is effective as the endorsement of the payee in favor of a person who, in good faith, pays the instrument or takes it for value or for collection.

c. Under subsection (a) or (b) of this section, an endorsement is made in the name of a payee if:
    i. It is made in a name substantially similar to that of the payee, or
    ii. The instrument, whether or not endorsed, is deposited in a depositary bank to an account in a name substantially similar to that of the payee.

d. With respect to an instrument to which subsection (a) or (b) of this section applies, if a person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss resulting from payment of the instrument, the person bearing the loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinary care contributed to the loss.

Section 3-405 – Employer's Responsibility for Fraudulent Endorsement by Employee

a. In this section:
    1. "Employee" includes an independent contractor and employee of an independent contractor retained by the employer;
    2. "Fraudulent endorsement" means:
        i. In the case of an instrument payable to the employer, a forged endorsement purporting to be that of the employer, or
        ii. In the case of an instrument with respect to which the employer is the issuer, a forged endorsement purporting to be that of the person identified as payee; and
    3. "Responsibility" with respect to instruments means authority:
        i. To sign or endorse instruments on behalf of the employer,
        ii. To process instruments received by the employer for bookkeeping purposes, for deposit to an account, or for other disposition,
        iii. To prepare or process instruments for issue in the name of the employer,
        iv. To supply information determining the names or addresses of payees of instruments to be issued in the name of the employer,
        v. To control the disposition of instruments to be issued in the name of the employer, or
        vi. To act otherwise with respect to instruments in a responsible capacity. "Responsibility" does not include authority that merely allows an employee to have access to instruments or blank or incomplete instrument forms that are being stored or transported or are part of incoming or outgoing mail, or similar access.

b. For the purpose of determining the rights and liabilities of a person who, in good faith, pays an instrument or takes it for value or for collection, if an employer entrusted an employee with responsibility with respect to the instrument and the employee or a person acting in concert with the employee makes a fraudulent endorsement of the instrument, the endorsement is effective as the endorsement of the person to whom the instrument is payable if it is made in the name of that person. If the person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss resulting from the fraud, the person bearing the loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinary care contributed to the loss.
c. Under subsection (b) of this section, an endorsement is made in the name of the person to whom an instrument is payable if:
    i. It is made in a name substantially similar to the name of that person or
    ii. The instrument, whether or not endorsed, is deposited in a depositary bank to an account in a name substantially similar to the name of that person.

Section 3-406 – Negligence Contributing to Forged Signature or Alteration of Instrument

a. A person whose failure to exercise ordinary care substantially contributes to an alteration of an instrument or to the making of a forged signature on an instrument is precluded from asserting the alteration or the forgery against a person who, in good faith, pays the instrument or takes it for value or for collection.
b. Under subsection (a) of this section, if the person asserting the preclusion fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss, the loss is allocated between the person precluded and the person asserting the preclusion according to the extent to which the failure of each to exercise ordinary care contributed to the loss.
c. Under subsection (a) of this section, the burden of proving failure to exercise ordinary care is on the person asserting the preclusion. Under subsection (b) of this section, the burden of proving failure to exercise ordinary care is on the person precluded.

Section 3-407 – Alteration

a. "Alteration" means:
    i. An unauthorized change in an instrument that purports to modify in any respect the obligation of a party, or
    ii. An unauthorized addition of words or numbers or other change to an incomplete instrument relating to the obligation of a party.
b. Except as provided in subsection (c) of this section, an alteration fraudulently made discharges a party whose obligation is affected by the alteration unless that party assents or is precluded

from asserting the alteration. No other alteration discharges a party, and the instrument may be enforced according to its original terms.

c. A payor bank or drawee paying a fraudulently altered instrument or a person taking it for value, in good faith and without notice of the alteration, may enforce rights with respect to the instrument:
    i. According to its original terms, or
    ii. In the case of an incomplete instrument altered by unauthorized completion, according to its terms as completed.

Section 3-408 – Drawee Not Liable on Unaccepted Draft

A check or other draft does not of itself operate as an assignment of funds in the hands of the drawee available for its payment, and the drawee is not liable on the instrument until the drawee accepts it.

Section 3-409 – Acceptance of Draft; Certified Check

a. "Acceptance" means the drawee's signed agreement to pay a draft as presented. It must be written on the draft and may consist of the drawee's signature alone. Acceptance may be made at any time and becomes effective when notification pursuant to instructions is given or the accepted draft is delivered for the purpose of giving rights on the acceptance to any person.
b. A draft may be accepted although it has not been signed by the drawer, is otherwise incomplete, is overdue, or has been dishonored.
c. If a draft is payable at a fixed period after sight and the acceptor fails to date the acceptance, the holder may complete the acceptance by supplying a date in good faith.
d. "Certified check" means a check accepted by the bank on which it is drawn. Acceptance may be made as stated in subsection (a) of this section or by a writing on the check which indicates that the check is certified. The drawee of a check has no obligation to certify the check, and refusal to certify is not dishonor of the check.

Section 3-410 – Acceptance Varying Draft

a. If the terms of a drawee's acceptance vary from the terms of the draft as presented, the holder may refuse the acceptance and treat the draft as presented, the holder may refuse the acceptance and treat the draft as dishonored. In that case, the drawee may cancel the acceptance.
b. The terms of a draft are not varied by an acceptance to pay at a particular bank or place in the United States, unless the acceptance states that the draft is to be paid only at that bank or place.
c. If the holder assents to an acceptance varying the terms of a draft, the obligation of each drawer and endorser that does not expressly assent to the acceptance is discharged.

Section 3-411 – Refusal to Pay Cashier's Checks, Teller's Checks, and Certified Checks

a. In this section, "obligated bank" means the acceptor of a certified check or the issuer of a cashier's check or teller's check bought from the issuer.
b. If the obligated bank wrongfully;
    i. Refuses to pay a cashiers' check or certified check,
    ii. Stops payment of a teller's check, or
    iii. Refuses to pay a dishonored teller's check, the person asserting the right to enforce the check is entitled to compensation for expenses and loss of interest resulting from the nonpayment and may recover consequential damages if the obligated bank refuses to pay after receiving notice of particular circumstances giving rise to the damages.
c. Expenses or consequential damages under subsection (b) of this section are not recoverable if the refusal of the obligated bank to pay occurs because;
    i. The bank suspends payments,
    ii. The obligated bank asserts a claim or defense of the bank that it has reasonable grounds to believe is available against the person entitled to enforce the instrument,
    iii. The obligated bank has a reasonable doubt whether the person demanding payment is the person entitled to enforce the instrument, or
    iv. Payment is prohibited by law.

Section 3-412 – Obligation of Issuer of Note or Cashier's Check

The issuer of a note or cashier's check or other draft drawn on the drawer is obliged to pay the instrument;

i. According to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder, or
ii. If the issuer signed an incomplete instrument, according to its terms when completed, to the extent stated in Sections 33-3-115 and 33-3-407 of this title. The obligation is owed to a person entitled to enforce the instrument or to an endorser who paid the instrument under Section 33-3-415 of this title.

Section 3-413 – Obligation of Acceptor

a. The acceptor of a draft is obliged to pay the draft:
    i. According to its terms at the time it was accepted, even though the acceptance states that the draft is payable "as originally drawn" or equivalent terms,

ii. If the acceptance caries the terms of the draft, according to the terms of the draft as varied, or

iii. If the acceptance is of a draft that is an incomplete instrument, according to its terms when completed, to the extent stated in Sections 33-3-115 and 33-3-407 of this title. The obligation is owed to a person entitled to enforce the draft or to the drawer or an endorser who paid the draft under Section 33-3-414 or 33-3-415 of this title.

b. If the certification of a check or other acceptance of a draft states the amount certified or accepted the obligation of the acceptor is that amount. If;

i. The certification or acceptance does not state an amount,

ii. The amount of the instrument is subsequently raised, and

iii. The instrument is then negotiated to a holder in due course, the obligation of the acceptor is the amount of the instrument at the time it was taken by the holder in due course.

Section 3-414 – Obligation of Drawer

a. This section does not apply to cashier's check or other drafts drawn on the drawer.

b. If an unaccepted draft is dishonored, the drawer is obliged to pay the draft;

i. According to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder, or

ii. If the drawer signed an incomplete instrument, according to its terms when completed, to the extent stated in Section 33-3-115 and 33-3-407 of this title. The obligation is owed to a person entitled to enforce the draft or to an endorser who paid the draft under Section 33-3-415 of this title.

c. If a draft is accepted by a bank, the drawer is discharged, regardless of when or by whom acceptance was obtained.

d. If a draft is accepted and the acceptor is not a bank, the obligation of the drawer to pay the draft is the draft is dishonored by the acceptor is the same as the obligation of an endorser under subsections (a) and (c) of Section 33-3-415 of this title.

e. If a draft states that it is drawn "without recourse" or otherwise disclaims liability of the drawer to pay the draft, the drawer is not liable under subsection (b) of this section to pay the draft if the draft is not a check. A disclaimer of the liability stated in subsection (b) of this section is not effective if the draft is a check.

f. If

i. A check is not presented for payment or given to a depositary bank for collection within thirty (30) days after its date,

ii. The drawee suspends payments after expiration of the thirty-day period without paying the check, and

iii. Because of the suspension of payments, the drawer is deprived of funds maintained with the drawee to cover payment of the check, the drawer to the extent deprived of funds may discharge its obligation to pay the check by assigning to the person entitled to enforce the check the rights of the drawer against the drawee with respect to the funds.

Section 3-415 – Obligation of Endorser

a. Subject to subsection (b), (c), (d), and (e) of this section and to subsection (d) of Section 33-3-419 of this title, if an instrument is dishonored, and endorser is obliged to pay the amount due on the instrument;
   i. According to the terms of the instrument at the time it was endorsed, or terms when completed, to the extent stated in Section 33-3-115 and 33-3-407 of this title. The obligation of the endorser is owed to a person entitled to enforce the instrument or to a subsequent endorser who paid the instrument under this section.
   ii. If the endorser endorsed an incomplete instrument, according to its terms when completed, to the extent stated in Section 33-3-115 and 33-3-407 of this title. The obligation of the endorser is owed to a person entitled to enforce the instrument or to a subsequent endorser who paid the instrument under this section.
b. If an endorsement states that it is made "without recourse" or otherwise disclaims liability of the endorser, the endorser is not liable under subsection (a) of this section to pay the instrument.
c. If notice of dishonor of an instrument is required by Section 33-3-503 of this title and notice of dishonor complying with that section is not given to an endorser, the liability of the endorser under subsection (a) of this section is discharged.
d. If a draft is accepted by a bank after an endorsement is made, the liability of the endorser under subsection (a) of this section is discharged.
e. If an endorser of a check is liable under subsection (a) of this section and the check is not presented for payment, or given to a depositary bank for collection, within thirty (30) days after the day the endorsement was made, the liability of the endorser under subsection (a) of this section is discharged.

Section 3-416 – Transfer Warranties

a. A person who transfers an instrument for consideration warrants to the transferee and, if the transfer is by endorsement, to any subsequent transferee that:
   1. The warrantor is a person entitled to enforce the instrument;
   2. All signatures on the instrument are authentic and authorized;

3. The instrument has not been altered;
4. The instrument is not subject to a defense or claim in recoupment of any party which can be asserted against the warrantor; and
5. The warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer.

b. A person to whom the warranties under subsection (a) of this section are made and who took the instrument in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but no more than the amount of the instrument plus expenses and loss of interest incurred as a result of the breach.
c. The warranties stated in subsection (a) of this section cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty (30) days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection (b) of this section is discharged to the extent of any loss caused by the delay in giving notice of the claim.
d. A claim for relief for breach of warranty under this section accrues when the claimant has reason to know of the breach.

Section 3-417 – Presentment Warranties

a. If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft,
    i. The person obtaining payment or acceptance, at the time of presentment, and
    ii. A previous transferor of the draft, at the time of transfer, warrant to the draw making payment or accepting the draft in good faith that:
        1. The warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;
        2. The draft has not been altered; and
        3. The warrantor has no knowledge that the signature of the drawer of the draft is unauthorized.
b. A drawee making payment may recover from any warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft, breach of warranty is a defense to the obligation of the acceptor. If the acceptor makes payment with respect to the

draft, the acceptor is entitled to recover from any warrantor for breach of warranty the amounts stated in this subsection.

c. If a drawee asserts a claim for breach of warranty under subsection (a) of this section based on an unauthorized endorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the endorsement is effective under Section 3-404 or 3-405 of this title or the drawer is precluded under Section 3-406 or 4-406 of this title from asserting against the drawee the unauthorized endorsement or alteration.

d. If;
    i. A dishonored draft is presented for payment to the drawer or an endorser or
    ii. Any other instrument is presented for payment to a party obliged to pay the instrument, and
    iii. Payment is received, the following rules apply:
        1. The person obtaining payment and a prior transferor of the instrument warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the instrument, a person entitled to enforce the instrument or authorized to obtain payment on behalf of a person entitled to enforce the instrument; and
        2. The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

e. The warranties stated in subsections (a) and (d) of this section cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty (90) days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection (b) or (d) of this section is discharged to the extent of any loss caused by the delay in giving notice of the claim.

f. A claim for relief for breach of warranty under this section accrues when the claimant has reason to know of the breach.

Section 3-418 – Payment or Acceptance by Mistake

a. Except as provided in subsection (c) of this section, if the drawee of a draft pays or accepts the draft and the drawee acted on the mistaken belief that:
    i. Payment of the draft had not been stopped pursuant to Section 33-4-403 of this title or
    ii. The signature of the drawer of the draft was authorized, the drawee may recover the amount of the draft from the person to whom or for whose benefit payment was made or, in the case of acceptance, may revoke the acceptance. Rights of the drawee under this subsection are not affected by failure of the drawee to exercise ordinary care in paying or accepting the draft.

b. Except as provided in subsection (c) of this section, if an instrument has been paid or accepted by mistake and the case is not covered by subsection (a) of this section, the person paying or accepting may, to the extent permitted by the law governing mistake and restitution,
    i. Recover the payment from the person to whom or for whose benefit payment was made or
    ii. In the case of acceptance, may revoke the acceptance.
c. The remedies provided by subsection (a) or (b) of this section may not be asserted against a person who took the instrument in good faith and for value or who in good faith changed position in reliance on the payment or acceptance. This subsection does not limit remedies provided by Section 33-3-417 or 33-4-407 of this title.
d. Notwithstanding Section 33-4-215 of this title, if an instrument is paid or accepted by mistake and the payor or acceptor recovers payment or revokes acceptance under subsection (a) or (b) of this section, the instrument is deemed not to have been paid or accepted and is treated as dishonored, and the person from whom payment is recovered has rights as a person entitled to enforce the dishonored instrument.

Section 3-419 – Instruments Signed for Accommodation

a. If an instrument is issued for value given for the benefit of a party to the instrument ("accommodated party") and another party to the instrument ("accommodation party") signs the instrument for the purpose of incurring liability on the instrument without being a direct beneficiary of the value given for the instrument, the instrument is signed by the accommodation party "for accommodation".
b. An accommodation party may sign the instrument as maker, drawer, acceptor, or endorser and, subject to subsection (d) of this section, is obliged to pay the instrument in the capacity in which the accommodation party signs. The obligation of an accommodation party may be enforced notwithstanding any statute of frauds and whether or not the accommodation party receives consideration for the accommodation.
c. A person signing an instrument is presumed to be an accommodation party and there is notice that the instrument is signed for accommodation if the signature is an anomalous endorsement or is accompanied by words indicating that the signer is acting as surety or guarantor with respect to the obligation of another party to the instrument. Except as provided in Section 33-3-605 of this title, the obligation of an accommodation party to pay the instrument is not affected by the fact that the person enforcing the obligation had notice when the instrument was taken by that person that the accommodation party signed the instrument for accommodation.
d. If the signature of a party to an instrument is accompanied by words indicating unambiguously that the party is guaranteeing collection rather than payment of the obligation of another party to the instrument, the signer is obliged to pay the amount due on the instrument to a person entitled to enforce the instrument only if:

i. Execution of judgment against the other party has been returned unsatisfied,
ii. The other party is insolvent or in an insolvency proceeding,
iii. The other party cannot be served with process, or
iv. It is otherwise apparent that payment cannot be obtained from the other party.

e. An accommodation party who pays the instrument is entitled to reimbursement from the accommodated party and is entitled to enforce the instrument against the accommodated party. An accommodated party who pays the instrument has no right of recourse against, and is not entitled to contribution from, an accommodation party.

Section 3-420 – Conversion of Instrument

a. The law applicable to conversion of personal property applies to instruments. An instrument is also converted if it is taken by transfer, other than a negotiation, from a person not entitled to enforce the instrument or a bank makes or obtains payment with respect to the instrument for a person not entitled to enforce the instrument or receive payment. An action for conversion of an instrument may not be brought by:
    i. The issuer or acceptor of the instrument or
    ii. A payee or endorsee who did not receive delivery of the instrument either directly or through delivery to an agent or a co-payee.
b. In an action under subsection (a) of this section, the measure of liability is presumed to be the amount payable on the instrument, but recovery may not exceed the amount of the plaintiff's interest in the instrument.
c. A representative, other than a depositary bank, who has in good faith dealt with an instrument or its proceeds on behalf of one who was not the person entitled to enforce the instrument is not liable in conversion to that person beyond the amount of any proceeds that it has not paid out.

Subchapter 5 – Dishonor

Section 3-501 – Presentment

a. "Presentment" means a demand made by or on behalf of a person entitled to enforce an instrument;
    i. To pay the instrument made to the drawee or a party obliged to pay the instrument or, in the case of a note or accepted draft payable at a bank, to the bank, or
    ii. To accept a draft made to the drawee.
b. The following rules are subject to Article 4 of this title, agreement of the parties, and clearing-house rules and the like:

1. Presentment may be made at the place of payment of the instrument and must be made at the place of payment if the instrument is payable at a bank in the United States; may be made by any commercially reasonable means, including an oral, written, or electronic communication; is effective when the demand for payment or acceptance is received by the person to whom presentment is made; and is effective if made to anyone of two or more makers, acceptors, drawees, or other payors;
2. Upon demand of the person to whom presentment is made, the person making presentment must:
    i. Exhibit the instrument,
    ii. Give reasonable identification and, if presentment is made on behalf of another person, reasonable evidence of authority to do so, and
    iii. Sign a receipt on the instrument for any payment made or surrender the instrument if full payment is made;
3. Without dishonoring the instrument, the party to whom presentment is made may:
    i. Return the instrument for lack of a necessary endorsement, or
    ii. Refuse payment or acceptance for failure of the presentment to comply with the terms of the instrument, an agreement of the parties, or other applicable law or rule; and
4. The party to whom presentment is made may treat presentment as occurring on the next business day after the day of presentment if the party to whom presentment is made has established a cutoff hour not earlier eh 2 o'clock p.m. for the receipt and processing of instruments presented for payment or acceptance and presentment is made after the cutoff hour.

Section 3-502 – Dishonor

a. "Presentment" means a demand made by or on behalf of a person entitled to enforce an instrument:
    i. To pay the instrument made to the drawee or a party obliged to pay the instrument or, in the case of a note or accepted draft payable at a bank, to the bank, or
    ii. To accept a draft made to the drawee.
b. The following rules are subject to Article 4 of this title, agreement of the parties, and clearing-house rules and the like:
    1. Presentment may be made at the place of payment of the instrument and must be made at the place of payment if the instrument is payable at a bank in the United States; may be made by any commercially reasonable means, including an oral, written, or electronic communication; is effective when the demand for payment or acceptance is received by the

person to whom presentment is made; and is effective if made to anyone of two or more makers, acceptors, drawees, or other payors;

2. Upon demand of the person to whom presentment is made, the person making presentment must:
    i. Exhibit the instrument,
    ii. Give reasonable identification and, if presentment is made on behalf of another person, reasonable evidence of authority to do so, and
    iii. Sign a receipt on the instrument for any payment made or surrender the instrument if full payment is made;
3. Without dishonoring the instrument, the party to whom presentment is made may:
    i. Return the instrument for lack of a necessary endorsement, or
    ii. Refuse payment or acceptance for failure of the presentment to comply with the terms of the instrument, an agreement of the parties, or other applicable law or rule; and
4. The party to whom presentment is made may treat presentment as occurring on the next business day after the day of presentment if the party to whom presentment is made has established a cutoff hour not earlier the 2 o'clock p.m. for the receipt and processing of instruments presented for payment or acceptance and presentment is made after the cutoff hour.

Section 3-503 – Notice of Dishonor

a. The obligation of an endorser stated in subsection (a) of Section 33-3-415 of this title and the obligation of a drawer stated in subsection (d) of Section 33-3-414 of this title may not be enforced unless;
    i. The endorsers or drawer is given notice of dishonor of the instrument complying with this section or
    ii. Notice of dishonor is excused under subsection (b) of Section 33-3-504 of this title.
b. Notice of dishonor may be given by any person; may be given by any commercially reasonable means, including an oral, written, or electronic communication; and is sufficient if it reasonably identifies the instrument and indicates that the instrument has been dishonored or has not been paid or accepted. Return of an instrument given to a bank for collection is sufficient notice of dishonor.
c. Subject to subsection (c) of Section 33-3-504 of this title, with respect to an instrument taken for collection by a collecting bank, notice of dishonor must be given:
    i. By the bank before midnight of the next bank day following the banking day on which the bank receives notice of dishonor of the instrument, or

ii. By any other person within thirty (30) days following the day on which the person receives notice of dishonor.

With respect to any other instrument, notice of dishonor must be given within thirty (30) days following the day on which dishonor occurs.

Section 3-504 – Excused Presentment and Notice of Dishonor

a. Presentment for payment or acceptance of an instrument is excused if;
    i. The person entitled to present the instrument cannot with reasonable diligence make presentment,
    ii. The maker or acceptor has repudiated an obligation to pay the instrument or is dead or insolvency proceedings,
    iii. By the terms of the instrument presentment is not necessary to enforce the obligation of endorsers or the drawer,
    iv. The drawer or endorser whose obligation is being enforced has waived presentment or otherwise has no reason to expect or right to require that the instrument be paid or accepted, or
    v. The drawer instructed the drawee not to pay or accept the draft or the drawee was not obligated to the drawer to pay the draft.
b. Notice of dishonor is excused if;
    i. By the terms of the instrument notice of dishonor is not necessary to enforce the obligation of a party to pay the instrument, or
    ii. The party whose obligation is being enforced waived notice of dishonor. A waiver of presentment is also a waiver of notice of dishonor.
    iii. Delay in giving notice of dishonor is excused if the delay was caused by circumstances beyond the control of the person giving the notice and the person giving the notice exercised reasonable diligence after the cause of the delay ceased to operate.

Section 3-505 – Evidence of Dishonor

a. The following are admissible as evidence and create a presumption of dishonor and of any notice of dishonor stated:
    1. A document regular in form as provided in subsection (b) of this section which purports to be a protest;
    2. A purported stamp or writing of the drawee, payor bank, or presenting bank on or accompanying the instrument stating that acceptance or payment has been refused unless reasons for the refusal are stated and the reasons are not consistent with dishonor; and

3. A book or record of the drawee, payor bank, or collecting bank, kept in the usual course of business which shows dishonor, even if there is no evidence of who made the entry.

b. A protest is a certificate of dishonor made by a United States consul or vice consul, or a notary public or other person authorized to administer oaths by the law of the place where dishonor occurs. It may be made upon information satisfactory to that person. The protest must identify the instrument and certify either that presentment has been made or, if not made, the reason why it was not made, and that the instrument has been dishonored by nonacceptance or nonpayment. The protest may also certify that notice of dishonor has been given to some or all parties.

Subchapter 6 – Discharge and Payment

Section 3-601 – Discharge and Effect of Discharge

a. The obligation of a party to pay the instrument is discharged as stated in this article or by an act or agreement with the party which would discharge an obligation to pay money under a simple contract.
b. Discharge of the obligation of a party is not effective against a person acquiring rights of a holder in due course of the instrument without notice of the discharge.

Section 3-602 – Payment

a. Subject to subsection (b) of this section, an instrument is paid to the extent payment is made:
    i. By or on behalf of a party obliged to pay the instrument, and
    ii. To a person entitled to enforce the instrument. To the extent of the payment, the obligation of the party obliged to pay the instrument is discharged even though payment is made with knowledge of a claim to the instrument under Section 33-3-306 of this title by another person.
b. The obligation of a party to pay the instrument is not discharged under subsection (a) of this section if:
    1. A claim to the instrument under Section 33-3-306 of this title is enforceable against the party receiving payment and
        i. Payment is made with knowledge by the payor that payment is prohibited by injunction or similar process of a court of competent jurisdiction, or
        ii. In the case of an instrument other than a cashier's check, teller's check, or certified check, the party making payment accepted, from the person having a claim to the instrument, indemnity against loss resulting from refusal to pay the person entitled to enforce the instrument; or
    2. The person making payment knows that the instrument is a stolen instrument and pays a person it knows is in wrongful possession of the instrument.

Section 3-603 – Tender of Payment

a. If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument, the effect of tender is governed by principles of law applicable to tender of payment under a simple contract.
b. If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument and the tender is refused, there is discharge, to the extent of the amount of the tender, of the obligation of an endorser or accommodation party having a right of recourse with respect to the obligation to which the tender relates.
c. If tender of payment of an amount due on an instrument is made to a person entitled to enforce the instrument, the obligation of the obligor to pay interest after the due date on the amount tendered is discharged. If presentment is required with respect to an instrument and the obligor is able and ready to pay on the due date at every place of payment stated in the instrument, the obligor is deemed to have made tender of payment on the due date to the person entitled to enforce the instrument.

Section 3-604 – Discharge by Cancellation or Renunciation

a. A person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument;
    i. By an intentional voluntary act, such as surrender of the instrument to the party, destruction, mutilation, or cancellation of the instrument, cancellation or striking out of the party's signature, or the addition of words to the instrument indicating discharge, or
    ii. By agreeing not to sue or otherwise renouncing rights against the party by a signed writing.
b. Cancellation or striking out of an endorsement pursuant to subsection (a) of this section does not affect the status and rights of a party derived from the endorsement.

Section 3-605 – Discharge of Endorsers, Accommodation, and Other Parties

a. In this section, the term "endorser" includes a drawer having the obligation described in subsection (d) of Section 33-3-414 of this title.
b. Discharge, under Section 33-3-604 of this title, of the obligation of a party to pay an instrument does not discharge the obligation of an endorser or accommodation party having a right of recourse against the discharged party.
c. If a person entitled to enforce an instrument agrees, with or without consideration, to an extension of the due date of the obligation of a party to pay the instrument, the extension discharges an endorser or accommodation party having a right to recourse against the party whose obligation is extended to the extent the endorser or accommodation party proves that

the extension caused loss to the endorser or accommodation party with respect to the right of recourse.

d. If a person entitled to enforce an instrument agrees, with or without consideration, to a material modification of the obligation of a party other than an extension of the due date, the modification discharges the obligation of an endorser or accommodation party with respect to the right of recourse. The loss suffered by the endorser or accommodation party as a result of the modification is equal to the amount of the right of recourse unless the person enforcing the instrument proves that no loss was caused by the modification or that the loss caused by the modification was an amount less than the amount of the right of recourse.

e. If the obligation of a party to pay an instrument is secured by an interest in collateral and a person entitled to enforce the instrument impairs the value of the interest in collateral, the obligation of an endorser or accommodation party having a right of recourse against the obligor is discharged to the extent of the impairment. The value of an interest in collateral is impaired to the extent:
    i. The value of the interest is reduced to an amount less than the amount of the right of recourse of the party asserting discharge, or
    ii. The reduction in value of the interest causes an increase in the amount by which the amount of the right of recourse exceeds the value of the interest. The burden of proving impairment is on the party asserting discharge.

f. If the obligation of a party is secured by an interest in collateral not provided by an accommodation party and a person entitled to enforce the instrument impairs the value of the interest in collateral, the obligation of any party who is jointly and severally liable with respect to the secured obligation is discharged to the extent the impairment causes the party asserting discharge to pay more than that party would have been obliged to pay, taking into account rights of contribution, if impairment had not occurred. If the party asserting discharge is an accommodation party not entitled to discharge under subsection (e) of this section, the party is deemed to have a right to contribution based on joint and several liability rather than a right to reimbursement. The burden of proving impairment is on the party asserting discharge.

g. Under subsection (e) or (f) of this section, impairing value of an interest in collateral includes:
    i. Failure to obtain or maintain perfection or recordation of the interest in collateral,
    ii. Release of collateral without substitution of collateral of equal value,
    iii. Failure to perform a duty to preserve the value of collateral owed, under Article 9 of this title or other law, to a debtor or surety or other person secondarily liable, or
    iv. Failure to comply with applicable law in disposing of collateral.

h. An accommodation party is not discharged under subsection (c), (d), or (e) of this section unless the person entitled to enforce the instrument knows of the accommodation or has notice under

subsection (c) of Section 33-3-419 of this title that the instrument was signed for accommodation.

i. A party is not discharged under this section if:
   i. The party asserting discharge consents to the event or conduct that is the basis of the discharge, or
      ii. The instrument or a separate agreement of the party provides for waiver of discharge under this section either specifically or by general language indicating that parties waive defenses based on suretyship or impairment of collateral.

Subchapter 7 – Advice of International Sight Draft – Reserved

Subchapter 8 – Miscellaneous – Reserved

Chapter 4 – Bank Deposits and Collections

Subchapter 1 – General Provisions and Definitions

Section 4-101 – Short Title

This article may be cited as Uniform Commercial Code – Bank Deposits and Collections.

Section 4-102 – Applicability

a. To the extent that items within this article are also within Articles 3 and 8 of this title, they are subject to those articles. If there is conflict, this article governs Article 3, but Article 8 governs this article.
b. The liability of a bank for action or nonaction with respect to any item handled by it for purposes of presentment, payment or collection is governed by the law of the place where the bank is located.

Section 4-103 – Variation by Agreement – Measure of Damages – Certain Action Constituting Ordinary Care

a. The effect of the provisions of this article may be varied by agreement, but the parties to the agreement cannot disclaim a bank's responsibility for its lack of good faith or failure to exercise ordinary care or limit the measure of damages for the lack or failure; however, the parties may determine by agreement the standards by which the bank's responsibility is to be measured if those standards are not manifestly unreasonable.
b. Federal Reserve regulations and operating circulars, clearing-house rules, and the like have the effect of agreements under subsection (a) of this section, whether or not specifically assented to by all parties interested in items handled.

c. Action or non-action approved by this article or pursuant to Federal Reserve regulations or operating circulars is the exercise of ordinary care and, in the absence of special instructions, action or non-action consistent with clearing house rules and the like or with a general banking usage not disapproved by this article, is prima facie the exercise of ordinary care.
d. The specification or approval of certain procedures by this article is not disapproval of other procedures that may be reasonable under the circumstances.
e. The measure of damages for failure to exercise ordinary care in handling an item is the amount of the item reduced by an amount that could not have been realized by the exercise of ordinary care. If there is also bad faith it includes any other damages the party suffered as a proximate consequence.

Section 4-104 – Definitions and Index of Definitions

a. In this article unless the context otherwise requires:
    1. "Account" means any deposit or credit account with a bank, including a demand, time, savings, passbook, share draft, or like account, other than an account evidenced by a certificate of deposit;
    2. "Afternoon" means the period of a day between noon and midnight;
    3. "Banking day" means the part of a day on which a bank is open to the public for carrying on substantially all of its banking functions;
    4. "Clearing house" means an association of banks or other payors regularly clearing items;
    5. "Customer" means a person having an account with a bank or for whom a bank has agreed to collect items, including a bank that maintains an account at another bank;
    6. "Documentary draft" means a draft to be presented for acceptance or payment if specified documents, certified securities (Section 8-102 of this title) or instructions for uncertificated securities (Section 8-102 of this title) or other certificates, statements, or the like are to be received by the drawee or other payor before acceptance or payment of the draft;
    7. "Draft" means a draft as defined in Section 3-104 of this title or an item, other than an instrument, that is an order;
    8. "Drawee" means a person ordered in a draft to make payment;
    9. "Item" means an instrument or a promise or order to pay money handled by a bank for collection or payment. The term does not include a payment order governed by Article 4A of this title or a credit or debit card slip;
    10. "Midnight deadline" with respect to a bank is midnight on its banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later;
    11. "Settle" means to pay in cash, by clearing-house settlement, in a charge or credit or by remittance, or otherwise as agreed. A settlement may be either provisional or final; and

12. “Suspends payments” with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over or that it ceases or refuses to make payments in the ordinary course of business.

b. Other definitions applying to this article and the sections of this title in which they appear are:
“Agreement for electronic presentment” Section 4-110.
“Bank” Section 4-105.
“Collecting bank” Section 4-105.
“Depositary bank” Section 4-105.
“Intermediary bank” Section 4-105.
“Payor bank” Section 4-105.
“Presenting bank” Section 1-105.
“Presentment Notice” Section 4-110.

c. “Control” as provided in Section 7-106 of this title and the following definitions in other articles of this title apply to this article.
“Acceptance” Section 3-409.
“Alteration” Section 3-407.
“Cashier’s check” Section 3-104.
“Certificate of deposit” Section 3-104.
“Certified check” Section 3-409.
“Check” Section 3-104.
“Draft” Section 3-104.
“Good faith” Section 3-103.
“Holder in due course” Section 3-302.
“Instrument” Section 3-104.
“Notice of dishonor” Section 3-503.
“Order” Section 3-103.
“Ordinary care” Section 3-103.
“Person entitled to enforce” Section 3-301.
“Presentment” Section 3-501.
“Promise” Section 3-103.
“Prove” Section 3-103.
“Teller’s check” Section 3-104.
“Unauthorized signature” Section 3-403.

d. In addition, Article 1 of this title contains general definitions and principles of construction and interpretation applicable throughout this article.

Section 4-105 – Bank; Depositary Bank; Payor Bank; Intermediary Bank; Collecting Bank; Presenting Bank

In this article:

1. “Bank” means a person engaged in the business of banking, including a savings bank, savings and loan association, credit union, or trust company;
2. “Depositary bank” means the first bank to take an item even though it is also the payor bank, unless the item is presented for immediate payment over the counter;
3. “Payor bank” means a bank that is the drawee of a draft;
4. “Intermediary bank” means a bank to which an item is transferred in course of collection except the depositary or payor bank;
5. “Collecting bank” means a bank handling an item for collection except the payor bank; and
6. “Presenting bank” means a bank presenting an item except a payor bank.

Section 4-106 – Payable Through or Payable at Bank – Collecting Bank

a. If an item states that it is “payable through” a bank identified in the item,
    i. The item designates the bank as a collecting bank and does not by itself authorize the bank to pay the item, and
    ii. The item may be presented for payment only by or through the bank.
b. If an item states that it is “payable at” a bank identified in the item,
    i. The item designates the bank as a collecting bank and does not by itself authorize the bank to pay the item, and
    ii. The item may be presented for payment only by or through the bank.
c. If a draft names a nonbank drawee and it is unclear whether a bank named in the draft is a co-drawee or a collecting bank, the bank is a collecting bank.

Section 4-107 – Separate Office of Bank

A branch or separate office of a bank is a separate bank for the purpose of computing the time within which and determining the place at or to which action may be taken or notice or order must be given under this article and under Article 3 of this title.

Section 4-108 – Time of Receipt of Items

a. For the purpose of allowing time to process items, prove balances, and make the necessary entries on its books to determine its position for the day, a bank may fix an afternoon hour of 2:00 p.m. or later as a cut-off hour for the handling of money and items and the making of entries on its books.
b. An item or deposit of money received on any day after a cut-off so fixed or after the close of the banking day may be treated as being received at the opening of the next banking day.

Section 4-109 – Delays

a. Unless otherwise instructed, a collecting bank in a good faith effort to secure payment of a specific item drawn on a payor other than a bank, and with or without the approval of any person involved, may waive, modify, or extend time limits imposed or permitted by this article for a period not exceeding two (2) additional banking days without discharge of drawers or endorsers or liability to its transferor or a prior party.
b. Delay by a collecting bank or payor bank beyond time limits prescribed or permitted by this article or by instructions is excused if:
    i. The delay is caused by interruption of communication or computer facilities, suspension of payments by another bank, war, emergency conditions, failure of equipment, or other circumstances beyond the control of the bank, and
    ii. The bank exercises such diligence as the circumstances require.

Section 4-110 – Electronic Presentment

a. "Agreement for electronic presentment" means an agreement, clearing-house rule, or Federal Reserve regulation or operating circular, providing that presentment of an item may be made by transmission of an image of an item or information describing the item ("presentment notice") rather than delivery of the item itself. The agreement may provide for procedures governing retention, presentment, payment, dishonor, and other matters concerning items subject to the agreement.
b. Presentment of an item pursuant to an agreement for presentment is made when the presentment notice is received.
c. If presentment is made by presentment notice, a reference to "item" or "check" in this article means the presentment notice unless the context otherwise indicates.

Section 4-111 – Statute of Limitations

An action to enforce an obligation, duty, or right arising under this article must be commenced within three (3) years after the claim for relief accrues.

Subchapter 2 – Collection of Items – Depositary and Collecting Banks

Section 4-201 – Status of Collecting Bank as Agent and Provisional Status of Credits – Applicability of Article – Item Endorsed Pay Any Bank

a. Unless a contrary intent clearly appears and before the time that a settlement given by a collecting bank for an item is or becomes final, the bank, with respect to the item, is an agent or subagent of the owner of the item and any settlement given for the item is provisional. This provision applies regardless of the form of endorsement or lack of endorsement and even though credit given for the item is subject to immediate withdrawal as of right or is in fact withdrawn; but the continuance of ownership of an item by its owner and any rights of the

owner to proceeds of the item are subject to rights of a collecting bank, such as those resulting from outstanding advances on the item and rights of recoupment or setoff. If an item is handled by banks for purposes of presentment, payment, collection, or return, the relevant provisions of this article apply even though action of parties clearly establishes that a particular bank has purchased the item and is the owner of it.

b. After an item has been endorsed with the words "pay any bank" or the like, only a bank may acquire the rights of a holder until the item has been:
   1. Returned to the customer initiating collection; or
   2. Specially endorsed by bank to a person who is not a bank.

Section 4-202 – Responsibility for Collection or Return – When Action Timely

a. A collecting bank must exercise ordinary care in:
   1. Presenting an item or sending it for presentment;
   2. Sending notice of dishonor or nonpayment or returning an item other than a documentary draft to the bank's transferor after learning that the item has not been paid or accepted, as the case may be;
   3. Settling for an item when the bank receives final settlement; and
   4. Notifying its transferor of any loss or delay in transit within a reasonable time after discovery thereof.

b. A collecting bank exercises ordinary care under subsection (a) of this section by taking proper action before its midnight deadline following receipt of an item, notice, or settlement. Taking proper action within a reasonably longer time may constitute the exercise of ordinary care, but the bank has the burden of establishing timeliness.

c. Subject to paragraph (1) of subsection (a) of this section, a bank is not liable for the insolvency, neglect, misconduct, mistake or default of another bank or person or for loss or destruction of an item in the possession of others or in transit.

Section 4-203 – Effect of Instructions

Subject to Chapter 3 of this title concerning conversion of instruments (Section 33-3-420 of this title) and restrictive endorsements (Section 33-3-206 of this title), only a collecting bank's transferor can give instructions that affect the bank or constitute notice to it, and a collecting bank is not liable to prior parties for any action taken pursuant to the instructions or in accordance with any agreement with its transferor.

Section 4-204 – Methods of Sending and Presenting; Sending Directly to Payor Bank

a. A collecting bank shall send items by a reasonably prompt method, taking into consideration relevant instructions, the nature of the item, the number of those items on hand, the cost of collection involved, and the method generally used by it or others to present those items.
b. A collecting bank may send:
    1. An item directly to the payor bank;
    2. An item to a nonbank payor if authorized by its transferor; and
    3. An item other than documentary draft to a nonbank payor, if authorized by Federal Reserve regulation or operating circular, clearing house rule, or the like.
c. Presentment may be made by a presenting bank at a place where the payor bank or other payor has requested that presentment be made.

Section 4-205 – Depositary Bank Holder of Unendorsed Item

If a customer delivers an item to a depositary bank for collection:

1. The depositary bank becomes a holder of the item at the time it receives the item for collection if the customer at the time of delivery was a holder of the item, whether or not the customer endorses the item, and, if the bank satisfies the other requirements of Section 33-3-302 of this title, it is a holder in due course; and
2. The depositary bank warrants to collecting banks, the payor bank or other payor, and the drawer that the amount of the item was paid to the customer or deposited to the customer's account.

Section 4-206 – Transfer between Banks

Any agreed method that identifies the transferor bank is sufficient for the item's further transfer to another bank.

Section 4-207 – Transfer Warranties

a. A customer or collecting bank that transfers an item and receives a settlement or other consideration warrants to the transferee and to any subsequent collecting bank that:
    1. The warrantor is a person entitled to enforce the item;
    2. All signatures on the item are authentic and authorized;
    3. The item has not been altered;
    4. The item is not subject to a defense or claim in recoupment (subsection (a) of Section 33-3-305 of this title) of any party that can be asserted against the warrantor; and
    5. The warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer.
b. If an item is dishonored, a customer or collecting bank transferring the item and receiving settlement or other consideration is obliged to pay the amount due on the item:

i. According to the terms of the item at the time it was transferred, or

ii. If the transfer was of an incomplete item, according to its terms when completed as stated in Sections 33-3-115 and 33-3-407 of this title. The obligation of a transferor is owed to the transferee and to any subsequent collecting bank that takes the item in good faith. A transferor cannot disclaim its obligation under this subsection by an endorsement stating that it is made "without recourse" or otherwise disclaiming liability.

c. A person to whom the warranties under subsection (a) of this section are made and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the item plus expenses and loss of interest incurred as a result of the breach.

d. The warranties stated in subsection (a) of this section cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty (30) days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

e. A claim for relief for breach of warranty under this section accrues when the claimant has reason to know of the breach.

Section 4-208 – Presentment Warranties

a. If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft,

i. The person obtaining payment or acceptance, at the time of presentment, and

ii. A previous transferor of the draft, at the time of transfer, warrant to the drawee that pays or accepts the draft in good faith that:

1. The warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;
2. The draft has not been altered; and
3. The warrantor has no knowledge that the signature of the purported drawer of the draft is unauthorized.

b. A drawee making payment may recover from a warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft;

i. Breach of warranty is a defense to the obligation of the acceptor, and
ii. If the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from a warrantor for breach of warranty the amount stated in this subsection.

c. A person to whom the warranties under subsection (a) of this section are made and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the item plus expenses and loss of interest incurred as a result of the breach.
d. The warranties stated in subsection (a) of this section cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty (30) days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.
e. A claim for relief for breach of warranty under this section accrues when the claimant has reason to know of the breach.

Section 4-208 – Presentment Warranties

a. If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft,
    i. The person obtaining payment or acceptance, at the time of presentment, and
    ii. A previous transferor of the draft, at the time of transfer, warrant to the drawee that pays or accepts the draft in good faith that:
        1. The warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;
        2. The draft has not been altered; and
        3. The warrantors have no knowledge that the signature of the purported drawer of the draft is unauthorized.
b. A drawee making payment may recover from a warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft;
    i. Breach of warranty is a defense to the obligation of the acceptor, and

ii. If the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from a warrantor for breach of warranty the amounts stated in this subsection.

c. If a drawee asserts a claim for breach of warranty under subsection (a) of this section based on an unauthorized endorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the endorsement is effective under Section 12A-3-404 or 33-3-405 of this title or the drawer is precluded under Section 33-3-406 or 33-4-406 of this title from asserting against the drawee the unauthorized endorsement or alteration.

d. If:

   i. A dishonored draft is presented for payment to the drawer or an endorser, or

   ii. Any other item is presented for payment to a party obliged to pay the item, and the item is paid, the person obtaining payment and a prior transferor of the item warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the item, a person entitled to enforce the item or authorized to obtain payment on behalf of a person entitled to enforce the item. The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

e. The warranties stated in subsections (a) and (d) of this section cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty (30) days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

f. A claim for relief for breach of warranty under this section accrues when the claimant has reason to know of the breach.

Section 4-209 – Encoding and Retention Warranties

a. A person who encodes information on or with respect to an item after issue warrants to any subsequent collecting bank and to the payor bank or other payor that the information is correctly encoded. If the customer of a depositary bank encodes, that bank also makes the warranty.

b. A person who undertakes to retain an item pursuant to an agreement for electronic presentment warrants to any subsequent collecting bank and to the payor bank or other payor that retention and presentment of the item comply with the agreement. If a customer of a depositary bank undertakes to retain an item, that bank also makes this warranty.

c. A person to whom warranties are made under this section and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss

suffered as a result of the breach, plus expenses and loss of interest incurred as a result of the breach.

Section 4-210 – Security Interest of Collecting Bank in Items, Accompanying Documents and Proceeds

a. A collecting bank has a security interest in an item and any accompanying documents or the proceeds of either:
    1. In case of an item deposited in an account, to the extent to which credit given for the item has been withdrawn or applied;
    2. In case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given, whether or not the credit is drawn upon or there is a right of charge-bank; or
    3. If it makes an advance on or against the item.
b. If credit given for several items received at one time or pursuant to a single agreement is withdrawn or applied in part, the security interest remains upon all the items, any accompanying documents or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.
c. Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents, and proceeds. So long as the bank does not receive final settlement for the item or give up possession of the item or possession or control of the accompanying documents for purposes other than collection, the security interest continues to that extent and is subject to Chapter 9 of this title, but:
    1. No security agreement is necessary to make the security interest enforceable;
    2. No filing is required to perfect the security interest; and
    3. The security interest has priority over conflicting perfected security interests in the item, accompanying documents, or proceeds.

Section 4-211 – When Bank Gives Value for Purposes of Holder in Due Course

For purposes of determining its status as a holder in due course, a bank has given value to the extent it has a security interest in an item, if the bank otherwise complies with the requirements of Section 33-3-302 of this title on what constitutes a holder in due course.

Section 4-212 – Presentment by Notice of Item Not Payable By, Through, or at Bank Liability of Drawer or Endorser

a. Unless otherwise instructed, a collecting bank may present an item not payable by, through, or at a bank by sending to the party to accept or pay a written notice that the bank holds the item for acceptance or payment. The notice must be sent in time to be received on or before the day when presentment is due and the bank must meet any requirement of the party to accept or

pay under Section 33-3-501 by the close of the bank's next banking day after it knows of the requirement.

b. If presentment is made by notice and payment, acceptance, or request for compliance with a requirement under Section 33-3-501 of this title is not received by the close of business on the day after maturity or, in the case of demand items, by the close of business on the third banking day after notice was sent, the presenting bank may treat the item as dishonored and charge any drawer or endorser by sending it notice of the facts.

Section 4-213 – Medium and Time of Settlement by Bank

a. With respect to settlement by a bank, the medium and time of settlement may be prescribed by Federal Reserve regulations or circulars, clearing-house rules, and the like, or agreement. In the absence of such prescription:
    1. The medium of settlement is cash or credit to an account in a Federal Reserve bank of or specified by the person to receive settlement; and
    2. The time of settlement, is:
        i. With respect to tender of settlement by cash, a cashier's check, or teller's check, when the cash or check is sent or delivered;
        ii. With respect to tender of settlement by credit in an account in a Federal Reserve bank, when the credit is made;
        iii. With respect to tender of settlement by a credit or debit to an account in a bank, when the credit or debit is made or, in the case of tender of settlement by authority to charge an account, when the authority is sent or delivered; or
        iv. With respect to tender of settlement by a funds transfer, when payment is made pursuant to subsection (a) of Section 12A-4A-406 of this title to the person receiving settlement.
b. If the tender of settlement is not by a medium authorized by subsection (a) of this section or the time of settlement is not fixed by subsection (a) of this section, no settlement occurs until the tender or settlement is accepted by the person receiving settlement.
c. If settlement for an item is made by cashier's check or teller's check and the person receiving settlement, before its midnight deadline:
    1. Presents or forwards the check for collection, settlement is final when the check is finally paid; or
    2. Fails to present or forward the check for collection, settlement is final at the midnight deadline of the person receiving settlement.
d. If settlement for an item is made by giving authority to charge the account of the bank giving settlement in the bank receiving settlement, settlement is final when the charge is made by the bank receiving settlement if there are funds available in the account for the amount of the item.

Section 4-214 – Right of Charge – Bank or Refund – Liability of Collecting Bank – Return of Item

a. If a collecting bank has made provisional settlement with its customer for an item and fails by reason of dishonor, suspension of payments by a bank, or otherwise to receive settlement for the item which is or becomes final, the bank may revoke the settlement given by it, charge back the amount of any credit given for the item to its customer's account, or obtain refund form its customer, whether or not it is able to return the item, if by its midnight deadline or within a longer reasonable time after it learns the facts it returns the item or sends notification of the facts. If the return or notice is delayed beyond the bank's midnight deadline or a longer reasonable time after it learns the facts, the bank may revoke the settlement, charge back the credit, or obtain refund from its customer, but it is liable for any loss resulting from the delay. These rights to revoke, charge back, and obtain refund terminate if and when a settlement for the item received by the bank is or becomes final.
b. A collecting bank returns an item when it is sent or delivered to the bank's customer or transferor or pursuant to its instructions.
c. A depositary bank that is also the payor may charge back the amount of an item to its customer's account or obtain refund in accordance with the section governing return of an item received by a payor bank for credit on its books (Section 33-4-301 of this title).
d. The right to charge bank is not affected by:
    1. Previous use of a credit given for the item; or
    2. Failure by any bank to exercise ordinary care with respect to the item, but a bank so failing remains liable.
e. A failure to charge bank or claim refund does not affect other rights of the bank against the customer or any other party.
f. If credit is given in dollars as the equivalent of the value of an item payable in foreign money, the dollar amount of any charge-back or refund must be calculated on the basis of the bank-offered spot rate for the foreign money prevailing on the day when the person entitled to the charge-back or refund learns that it will not receive payment in ordinary course.

Section 4-215 – Final Payment of Item by Payor Bank – When Provisional Debits and Credits become Final – When Certain Credits become Available for Withdrawal

a. An item is finally paid by a payor bank when the bank has first done any of the following:
    1. Paid the item in cash;
    2. Settled for the item without having a right to revoke the settlement under statute, clearing-house rule, or agreement; or
    3. Made a provisional settlement for the item and failed to revoke the settlement in the time and manner permitted by statute, clearing-house rule, or agreement.
b. If provisional settlement for an item does not become final, the item is not finally paid.

c. If provisional settlement for an item between the presenting and payor banks is made through a clearing-house or by debits or credits in an account between them, then to the extent that provisional debits or credits for the item are entered in accounts between the presenting and payor banks or between the presenting and successive prior collecting banks seriatim, they become final upon final payment of the items by the payor bank.
d. If a collecting bank receives a settlement for an item which is or becomes final, the bank is accountable to its customer for the amount of the item and any provisional credit given for the item in an account with its customer becomes final.
e. Subject to:
    i. Applicable law stating a time for availability of funds and
    ii. Any right of the bank to apply the credit to an obligation of the customer, credit given by a bank for an item in a customer's account becomes available for withdrawal as of right:
        1. If the bank has received a provisional settlement for the item, when the settlement becomes final and the bank has had a reasonable time to receive return of the item and the item has not been received within that time; or
        2. If the bank is both the depositary bank and the payor bank, and the item is finally paid, at the opening of the bank's second banking day following receipt of the item.
f. Subject to applicable law stating a time for availability of funds and any right of a bank to apply a deposit to an obligation of the depositor, a deposit of money becomes available for withdrawal as of right at the opening of the bank's new banking day after receipt of the deposit.

Section 4-216 – Insolvency and Preference

a. If an item is in or comes into the possession of a payor or collecting bank that suspends payment and the item has not been finally paid, the item must be returned by the receiver, trustee, or agent in charge of the closed bank to the presenting bank or the closed bank's customer.
b. If a payor bank finally pays an item and suspends payments without making a settlement for the item with its customer or the presenting bank which settlement is or becomes final, the owner of the item has a preferred claim against the payor bank.
c. If a payor bank gives or a collecting bank gives or receives a provisional settlement for an item and thereafter suspends payments, the suspension does not prevent or interfere with the settlement's becoming final if the finality occurs automatically upon the lapse of certain time or the happening of certain events.
d. If a collecting bank receives form subsequent parties settlement for an item, which settlement is or becomes final and the bank suspends payments without making a settlement is or becomes final and the bank suspends payments without making a settlement for the item with its

customer which settlement is or becomes final, the owner of the item has a preferred claim against the collecting bank.

Subchapter 3 – Collection of Items – Payor Banks

Section 4-301 – Deferred Posting; Recover of Payment by Return of Items; Time of Dishonor; Return of Items by Payor Bank

a. If a payor bank settles for a demand item other than a documentary draft presented otherwise than for immediate payment over the counter before midnight of the banking day of receipt, the payor bank may revoke the settlement and recover the settlement if, before it has made final payment and before its midnight deadline, it:
    1. Returns the item; or
    2. Sends written notice of dishonor or nonpayment if the item is unavailable for return.
b. If a demand item is received by a payor bank for credit on its books, it may return the item or send notice of dishonor and may revoke any credit given or recover the amount thereof withdrawn by its customer, if it acts within the time limit and in the manner specified in subsection (a) of this section.
c. Unless previous notice of dishonor has been sent an item is dishonored at the time when for purposes of dishonor it is returned or notice sent in accordance with this section.
d. An item is returned:
    1. As to an item presented through a clearing-house, when it is delivered to the presenting or last collecting bank or to the clearing-house or is sent or delivered in accordance with clearing-house rules; or
    2. In all other cases, when it is sent or delivered to the bank's customer or transferor or pursuant to instructions.

Section 4-302 – Payor Bank's Responsibility for Late Return of Item

a. If an item is presented to and received by a payor bank, the bank is accountable for the amount of:
    1. A demand item, other than a documentary draft, whether properly payable or not, if the bank, in any case in which it is not also the depositary bank, retains the item beyond midnight of the banking day of receipt without settling for it or, whether or not it is also the depositary bank, does not pay or return the item or send notice of dishonor until after its midnight deadline; or
    2. Any other properly payable item unless, within the time allowed for acceptance or payment of that item, the bank either accepts or pays the item or returns it and accompanying documents.

b. The liability of a payor bank to pay an item pursuant to subsection (a) of this section is subject to defenses based on breach of presentment warranty (Section 33-4-208 of this title) or proof that the person seeking enforcement of the liability presented or transferred the item for the purpose of defrauding the payor bank.

Section 4-303 – When Items Subject to Notice, Stop-Payment Order, Legal Process, or Setoff; Order in Which Items May be Charged or Certified

a. Any knowledge, notice, or stop-payment order received by, legal process served upon, or setoff exercised by a payor bank comes too late to terminate, suspend, or modify the bank's right or duty to pay an item or to charge its customer's account for the item if the knowledge, notice, stop-payment order, or thereon expires or the setoff is exercised after the earliest of the following:
    1. The bank accepts or certifies the item;
    2. The bank pays the item in cash;
    3. The bank settles for the item without having a right to revoke the settlement under statute, clearing-house rule, or agreement;
    4. The bank becomes accountable for the amount of the item under Section 33-4-302 of this title dealing with the payor bank's responsibility for late return of items; or
    5. With respect to checks, a cutoff hour no earlier than one (1) hour after the opening of the next banking day after the banking day on which the bank received the check and no later than the close of that next banking day or, if no cutoff hour is fixed, the close of the next banking day after the banking day on which the bank received the check.
b. Subject to subsection (a) of this section, items may be accepted, paid, certified, or charged to the indicated account of its customer in any order.

Subchapter 4 – Relationship between Payor Bank and Its Customer

Section 4-401 – When Bank May Charge Customer's Account

a. A bank may charge against the account of a customer an item that is properly payable from that account even though the charge creates an overdraft. An item is properly payable if it is authorized by the customer and is in accordance with any agreement between the customer and bank.
b. A customer is not liable for the amount of an overdraft if the customer neither signed the item nor benefited from the proceeds of the item.
c. A bank may charge against the account of a customer a check that is otherwise properly payable from the account, even though payment was made the postdating describing the check with reasonable certainty. The notice is effective for the period stated in subsection (b) of Section 33-4-403 of this title for stop-payment orders, and must be received at such time and in such

manner as to afford the bank a reasonable opportunity to act on it before the bank takes any action with respect to the check described in Section 33-4-303 of this title. If a bank charges against the account of a customer a check before the date stated in the notice of postdating, the bank is liable for damages for the loss resulting from its act. The loss may include damages for dishonor or subsequent items under Section 33-4-402 of this title.

d. A bank that in good faith makes payment to a holder may charge the indicated account of its customer according to:
    1. The original terms of the altered item; or
    2. The terms of the completed item, even though the bank knows the item has been completed unless the bank has notice that the completion was improper.

Section 4-402 – Bank's Liability to Customer for Wrongful Dishonor – Time for Determining Insufficiency of Account

a. Except as otherwise provided in this article, a payor bank wrongfully dishonors an item if it dishonors an item that is properly payable, but a bank may dishonor an item that would create an overdraft unless it has agreed to pay the overdraft.
b. A payor bank is liable to its customer for damages proximately caused by the wrongful dishonor of an item. Liability is limited to actual damages proved and may include damages for an arrest or prosecution of the customer or other consequential damages. Whether any consequential damages are proximately caused by the wrongful dishonor is a question of fact to be determined in each case.
c. A payor bank's determination of the customer's account balance on which a decision to dishonor for insufficiency of available funds is based and may be made at any time between the time the item is received by the payor bank and the time that the payor bank returns the item or gives notice in lieu of return, and no more than one (1) determination need be made. If, at the election of the payor bank, a subsequent balance determination is made for the purpose of reevaluating the bank's decision to dishonor the item, the account balance at that time is determinative of whether a dishonor for insufficiency of available funds is wrongful.

Section 4-403 – Customer's Right to Stop Payment; Burden of Proof of Loss

a. A customer or any person authorized to draw on the account if there is more than one person may stop payment of any item drawn on the customer's account or close the account by an order to the bank describing the item or account with reasonable certainty received at a time and in a manner that affords the bank a reasonable opportunity to act on it before any action by the bank with respect to the item described in Section 33-4-303 of this title. If the signature of more than one person is required to draw on an account, any of these persons may stop payment or close the account.

b. A stop-payment order is effective for six (6) months, but it lapses after fourteen (14) calendar days if the original order was oral and was not confirmed in writing within that period. A stop-payment order may be renewed for additional six-month periods by a writing given to the bank within a period during which the stop-payment order is effective.
c. The burden of establishing the fact and amount of loss resulting from the payment of an item contrary to a stop payment order or order to close an account is on the customer. The loss from payment of an item contrary to a stop-payment order may include damages for dishonor of subsequent items under Section 33-4-402 of this title.

Section 4-404 – Bank Not Obligated to Pay Check More Than Six Months Old

A bank is under no obligation to a customer having a checking account to pay a check, other than a certified check, which is presented more than six (6) months after its date, but it may charge its customer's account for a payment made thereafter in good faith.

Section 4-405 – Death or Incompetence of Customer

a. A payor or collecting bank's authority to accept, pay, or collect an item or to account for proceeds of its collection, if otherwise effective, is not rendered ineffective by incompetence of a customer of either bank existing at the time the item is issued or its collection is undertaken if the bank does not know of an adjudication of incompetence. Neither death nor incompetence of a customer revokes the authority to accept, pay, collect, or account until the bank knows of the fact of death or of an adjudication of incompetence and has reasonable opportunity to act on it.
b. Even with knowledge, a bank may for ten (10) days after the date of death pay or certify checks drawn on or before that date unless ordered to stop payment by a person claiming an interest in the account.

Section 4-406 – Customer's Duty to Discover and Report Unauthorized Signature or Alteration

a. A bank that sends or makes available to a customer a statement of account showing payment of items for the account shall either return or make available to the customer the items paid or provide information in the statement of account sufficient to allow the customer reasonably to identify the items paid. The statement of account provides sufficient information if the item is described by item number, amount, and date of payment.
b. If the items are not returned to the customer, the person retaining the items shall either retain the items or, if the items are destroyed, maintain the capacity to furnish legible copies of the items until the expiration of seven (7) years after receipt of the items. A customer may request an item from the bank that paid the item, and that bank must provide in a reasonable time

either the item or, if the items has been destroyed or is not otherwise obtainable, a legible copy of the item.

c. If a bank sends or makes available a statement of account or items pursuant to subsection (a) of this section, the customer must exercise reasonable promptness in examining the statement or the items to determine whether any payment was not authorized because of an alteration of an item or because a purported signature by or on behalf of the customer was not authorized. If, based on the statement or items provided, the customer should reasonably have discovered the unauthorized payment the customer must promptly notify the bank of the relevant facts.
d. If the bank proves that the customer failed, with respect to an item, to comply with the duties imposed on the customer by subsection (c) of this section, the customer is precluded from asserting against the bank:
    1. The customer's authorized signature or any alteration on the item, if the bank also proves that it suffered a loss by reason of the failure; and
    2. The customer's unauthorized signature or any alteration by the same wrongdoer on any other item paid in good faith by the bank if the payment was made before the bank received notice from the customer of the unauthorized signature or alteration and after the customer had been afforded a reasonable period of time, not exceeding thirty (30) days, in which to examine the item or statement of account and notify the bank.
e. If subsection (d) of this section applies and the customer proves that the bank failed to exercise ordinary care in paying the item and that the failure substantially contributed to loss, the loss is allocated between the customer precluded and the bank asserting the preclusion according to the extent to which the failure of the customer to comply with subsection (c) of this section and the failure of the bank to exercise ordinary care contributed to the loss. If the customer proves that the bank did not pay the item in good faith, the preclusion under subsection (d) of this section does not apply.
f. Without regard to care or lack of care of either the customer or the bank, a customer who does not within one (1) year after the statement or items are made available to the customer (subsection (a) of this section) discover and report the customer's unauthorized signature on or any alteration on the item is precluded from asserting against the bank the unauthorized signature or alteration. If there is a preclusion under this subsection, the payor bank may not recover for breach of warranty under Section 33-4-208 of this title with respect to the unauthorized signature or alteration to which the preclusion applies.

Section 4-407 – Payor Bank's Right to Subrogation on Improper Payment

If a payor bank has paid an item over the order of the drawer or maker to stop payment, or after an account has been closed, or otherwise under circumstances giving a basis for objection by the drawer or maker, to prevent unjust enrichment and only to the extent necessary to prevent loss to the bank by reason of its payment of the item, the payor bank is subrogated to the rights:

1. Of any holder in due course on the item against the drawer or maker;
2. Of the payee or any other holder of the item against the drawer or maker either on the item or under transaction out of which the item arose; and
3. Of the drawer or maker against the payee or any other holder of the item with respect to the transaction of which the item arose.

Subchapter 5 – Collections of Documentary Drafts

Section 4-501 – Handling of Documentary Drafts – Duty to Send for Presentment and To Notify

A bank that takes a documentary draft for collection shall present or send the draft and accompanying documents for presentment and, upon learning that the draft has not been paid or accepted in due course, shall seasonably notify its customer of the fact even though it may have discounted or bought the draft or extended credit available for withdrawal as of right.

Section 4-502 – Presentment of On Arrival Drafts

If a draft or the relevant instructions require presentment "on arrival", "when goods arrive" or the like, the collecting bank need not present until in its judgment a reasonable time for arrival of the goods has expired. Refusal to pay or accept because the goods have not arrived is not dishonor; the bank must notify its transferor of the refusal but need not present the draft again until it is instructed to do so or learns of the arrival of the goods.

Section 4-503 – Responsibility of Presenting Bank for Documents and Goods – Report of Reasons

Unless otherwise instructed and except as provided in Article 5 of this title, a bank presenting a documentary draft:

1. Must deliver the documents to the drawee on acceptance of the draft if it is payable more than three (3) days after presentment; otherwise, only on payment; and
2. Upon dishonor, either in the case of presentment for acceptance or presentment for payment, may seek and follow instructions from any referee in case of need designated in the draft or, if the presenting bank does not choose to utilize the referee's services, it must use diligence and good faith to ascertain the reason for dishonor, must notify its transferor of the dishonor and of the results of its effort to ascertain the reasons therefore, and must request instructions. However, the presenting bank is under no obligation with respect to goods represented by the documents except to follow any reasonable instructions seasonably received; it has a right to reimbursement for any expense incurred in following instructions and to prepayment of or indemnity for those expenses.

Section 4-504 – Privilege of Presenting Bank to Deal with Goods – Security Interest for Expenses

a. A presenting bank that, following the dishonor of a documentary draft, has seasonably requested instructions but does not receive them within a reasonable time may store, sell, or otherwise deal with the goods in any reasonable manner.
b. For its reasonable expenses incurred by action under subsection (a) of this section, the presenting bank has a lien upon the goods or their proceeds, which may be foreclosed in the same manner as an unpaid seller's lien.

Chapter 4A – Funds Transfers

Subchapter 1 – Subject Matter and Definitions

Section 4A-101 – Short Title

This Chapter, Sections 1 through 38, shall be known and may be cited as the Uniform Commercial Code – Funds Transfers.

Section 4A-102 – Subject Matter

Except as otherwise provided in Chapter 8 of this Title, this Chapter applies to funds transfers defined in this Title.

Section 4A-103 – Payment Order – Definitions

a. In this Chapter:
    1. "Payment order" means an instruction of a sender to a receiving bank, transmitted orally, electronically, or in writing, to pay, or to cause another bank to pay, a fixed or determinable amount of money to a beneficiary if:
        i. The instruction does not state a condition to payment to the beneficiary other than time of payment.
        ii. The receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender, and
        iii. The instruction is transmitted by the sender directly to the receiving bank or to an agent, funds=transfer system, or communication system for transmittal to the receiving bank.
    2. "Beneficiary" means the person to be paid by the beneficiary's bank.
    3. "Beneficiary's bank" means the bank identified in a payment order in which an account of the beneficiary is to be credited pursuant to the order or which otherwise is to make payment to the beneficiary if the order does not provide for payment to an account.
    4. "Receiving bank" means the bank to which the sender's instruction is addressed.
    5. "Sender" means the person giving the instruction to the receiving bank.

b. If an instruction complying with paragraph (1) of subsection (a) is to make more than one payment to a beneficiary, the instruction is a separate payment order with respect to each payment.
c. A payment order is issued when it is sent to the receiving bank.

Section 4A-104 – Funds Transfer – Definitions

In this Chapter:

a. "Funds transfer" means the series of transactions, beginning with the originator's payment order, made for the purpose of making payment to the beneficiary of the order. The term includes any payment order issued by the originator's bank or an intermediary bank intended to carry out the originator's payment order. A funds transfer is completed by acceptance by the beneficiary's bank of a payment order for the benefit of the beneficiary of the originator's payment order.
b. "Intermediary bank" means a receiving bank other than the originator's bank or the beneficiary's bank.
c. "Originator" means the sender of the first payment order in a funds transfer.
d. "Originator's bank" means
    i. The receiving bank to which the payment order of the originator is issued if the originator is not a bank, or
    ii. The originator if the originator is a bank.

Section 4A-105 – Other Definitions

a. In this Article:
    1. "Authorized account" means a deposit account of a customer in a bank designated by the customer as a source of payment of payment orders issued by the customer to the bank. If a customer does not so designate an account, any account of the customer is an authorized account if payment of a payment order from that account is not inconsistent with a restriction on the use of that account.
    2. "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company. A branch or separate office of a bank is a separate bank for purposes of this Article.
    3. "Customer" means a person, including a bank, having an account with a bank or from whom a bank has agreed to receive payment orders.
    4. "Funds-transfer business day" of a receiving bank means the part of a day during which the receiving bank is open for the receipt, processing, and transmittal of payment orders and cancellations and amendments of payment orders.

5. “Funds-transfer system” means a wire transfer network, automated clearing house, or other communication system of a clearing house or other association of banks through which a payment order by a bank may be transmitted to the bank to which the order is addressed.
6. “Good faith” means honesty in fact and the observance of reasonable commercial standards of fair dealing.
7. “Prove” with respect to a fact means to meet the burden of establishing the fact as provided in paragraph 8 of Section 33-1-201 of this Title. (b) Other definitions applying to this Article and the sections in which they appear are:
   “Acceptance” Section 4A-209
   “Beneficiary” Section 4A-103
   “Beneficiary’s Bank” Section 4A-103
   “Executed” Section 4A-301
   “Execution date” Section 4A-301
   “Funds transfer” Section 4A-104
   “Funds-transfer system rule” Section 4A-501
   “Intermediary bank” Section 4A-104
   “Originator” Section 4A-104
   “Originator’s bank” Section 4A-104
   “Payment by beneficiary’s bank to beneficiary” Section 4A-405
   “Payment by originator to beneficiary” Section 4A-406
   “Payment by sender to receiving bank” Section 4A-403
   “Payment date” Section 4A-401
   “Payment order” Section 4A-103
   “Receiving bank” Section 4A-103
   “Security procedure” Section 4A-201
   “Sender” Section 4A-103

b. The following definitions in Chapter 4 of this Title 33 apply to this Chapter:
   “Clearing house” Section 4-104
   “Item” Section 4-104
   “Suspends payments” Section 4-104
c. In addition Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this Chapter.

Section 4A-106 – Time Payment Order is Received

a. The time of receipt of a payment order or communication canceling or amending a payment order is determined by the rules applicable to receipt of a notice stated in Section 1-202 of this title. A receiving bank may fix a cut-off time or times on a funds-transfer business day for the receipt and processing of payment orders and communications canceling or amending payment

orders. Different cut-off times may apply to payment orders, cancellations, or amendments, or to different categories of payment orders, cancellations, or amendments. A cut-off time may apply to senders generally or different cut-off times may apply to different senders or categories of payment order is received after the close of a funds-transfer business day or after the appropriate cut-off time on a funds-transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds-transfer business day.

b. If this Chapter refers to an execution date or payment date or states a day on which a receiving bank is required to take action, and the date or day does not fall on a funds-transfer business day, the next day that is a funds-transfer business day is treated as the date or day stated, unless the contrary is stated in this Chapter.

Section 4A-107 – Federal Reserve Regulations and Operating Circulars

Regulations of the board of governors of the Federal Reserve System and operating circulars of the Federal Reserve Banks supersede any inconsistent provisions of this Chapter to the extent of the inconsistency.

Section 4A-108 – Exclusion of Consumer Transactions Governed by Federal Law

This Chapter does not apply to a funds transfer any part of which is governed by the Electronic Fund Transfer Act of 1978 (Title XX, Public Law 95-630, 92 Stat. 3728, 15 U.S.C. Section 1693 et seq.) as amended from time to time.

Subchapter 2 – Issue and Acceptance of Payment Orders

Section 4A-201 – Security Procedure

"Security procedure" means a procedure established by agreement of a customer and a receiving bank for the purpose of:

j. Verifying that a payment order or communication amending or canceling a payment order is that of the customer, or

    ii. Detecting error in the transmission or the content of the payment order or communication.

A security procedure may require the use of algorithms or other codes, identifying words or numbers, encryption, callback procedures, or similar security devices. Comparisons of a signature on a payment order or communication with an authorized specimen signature of the customer is not by itself a security procedure.

Section 4A-202 – Authorized and Verified Payment Orders

a. A payment order received by the receiving bank is the authorized order of the person identified as sender if that person authorized the order or is otherwise bound by it under the law of agency.
b. If a bank and its customer have agreed that the authenticity of payment orders issued to the bank in the name of the customer as sender will be verified pursuant to a security procedure, a payment order received by the receiving bank is effective as the order of the customer, whether or not authorized, if
    i. The security procedure is a commercially reasonable method of providing security against unauthorized payment orders, and
    ii. The bank proves that it accepted the payment order in good faith and in compliance with the security procedure and any written agreement or instruction of the customer restricting acceptance of payment orders issued in the name of the customer. The bank is not required to follow an instruction that violates a written agreement with the customer or notice of which is not received at a time and in a manner affording the bank a reasonably opportunity to act on it before the payment order is accepted.
c. Commercial reasonableness of a security procedure is a question of law to be determined by considering the wishes of the customer expressed to the bank, the circumstances of the customer known to the bank, including the size, type, and frequency of payment orders normally issued by the customer to the bank, alternative security procedures offered to the customer, and security procedures in general use by customers and receiving banks similarly situated. A security procedure is deemed to be commercially reasonable if
    i. The security procedure was chosen by the customer after the bank offered, and he customer refused, a security procedure that was commercially reasonable for that customer, and
    ii. The customer expressly agreed in writing to be bound by any payment order, whether or not authorized, issued in its name and accepted by the bank in compliance with the security procedure chosen by the customer.
d. The term “sender” in this Article includes the customer in whose name a payment order is issued if the order is the authorized order of the customer under subsection (a), or it is effective as the order of the customer under subsection (b).
e. This section applies to amendments and cancellations of payment orders to the same extent it applies to payment orders.
f. Except as provided in this section and in paragraph (1) of subsection (a) of Section 11 of this act rights and obligations arising under this section or Chapter 11 of this Title may not be varied by agreement.

Section 4A-203 – Unenforceability of Certain Verified Payment Orders

a. If an accepted payment order is not, under subsection (a) of Chapter 10 of this act, an authorized order of a customer identified as sender, but is effective as an order of the customer pursuant to subsection (b) of Chapter 10 of this act, the following rules apply:
    1. By express written agreement, the receiving bank may limit the extent to which it is entitled to enforce or retain payment of the payment order.
    2. The receiving bank is not entitled to enforce or retain payment of the payment order if the customer proves that the order was not caused, directly or indirectly, by a person
        i. Entrusted at any time with duties to act for the customer with respect to payment orders or the security procedure, or
        ii. Who obtained access to transmitting facilities of the customer or who obtained, from a source controlled by the customer and without authority of the receiving bank, information facilitating breach of the security procedure, regardless of how the information was obtained or whether the customer was at fault. Information includes any access device, computer software, or the like.
b. This section applies to amendments of payment orders to the same extent it applies to payment orders.

Section 4A-204 – Refund of Payment and Duty of Customer to Report with Respect to Unauthorized Payment Order

a. If a receiving bank accepts a payment order issued in the name of its customer as sender which is
    i. Not authorized and not effective as the order of the customer under Section 33-4A-202 of this title, or
    ii. Not enforceable, in whole or in part, against the customer under Section 33-4A-203 of this title, the bank shall refund any payment of the payment order received from the customer to the extent the bank is not entitled to enforce payment and shall pay interest on the refundable amount calculated from the date the bank received payment to the date of the refund. However, the customer is not entitled to interest from the bank on the amount to be refunded if the customer is not entitled to interest from the bank on the amount to be refunded if the customer fails to exercise ordinary care to determine that the order was not authorized by the customer and to notify the bank of the relevant facts within a reasonable time not exceeding ninety (90) days after the date the customer received notification from the bank that the

order was accepted or that the customer's account was debited with respect to the order. The bank is not entitled to any recovery from the customer on account of a failure by the customer to give notification as stated in this section.

b. "Reasonable time" under subsection (a) of this section may be fixed by agreement as stated in subsection (b) of Chapter 15 of this Title, but the obligation of a receiving bank to refund payment as stated in subsection (a) of this section may not otherwise be varied by agreement.

Section 4A-205 – Erroneous Payment Orders

a. If the receiving bank accepts a payment order issued in the name of its customer as sender which is
    i. Erroneously instructed payment to a beneficiary not intended by the sender,
        ii. Erroneously instructed payment in an amount greater than the amount intended by the sender, or
        iii. Was an erroneously transmitted duplicate of a payment order previously sent by the sender, the following rules apply:
            1. If the sender proves that the sender or a person acting on behalf of the sender pursuant to Section 14 of this act complied with the security procedure and that the error would have been detected if the receiving bank had also complied, the sender is not obliged to pay the order to the extent stated in paragraphs (2) and (3) of this subsection.
            2. If the funds transfer is completed on the basis of an erroneous payment order described in clause (i) or (iii) of subsection (a) of this section, the sender is not obliged to pay the order and the receiving bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.
            3. If the funds transfer is completed on the basis of a payment order described in clause (ii) of subsection (a) of this section, the sender is not obliged to pay the order to the extent the amount received by the beneficiary is greater than the amount intended by the sender. In that case, the receiving bank is entitled to recover from the beneficiary the excess amount received to the extent allowed by the law governing mistake and restitution.

b. If
    i. The sender of an erroneous payment order described in subsection (a) of this section is not obliged to pay all or part of the order, and
        ii. The sender receives notification from the receiving bank that the order was accepted by the bank or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care, on the basis of

information available to the sender, to discover the error with respect to the order and to advise the bank of the relevant facts within a reasonable time, not exceeding ninety (90) days, after the bank's notification was received by the sender. If the bank proves that the sender failed to perform that duty, the sender is liable to the bank for the loss the bank proves it incurred as a result of the failure, but the liability of the sender may not exceed the amount of the sender's order.

c. This section applies to amendments to payment orders to the same extent it applies to payment orders.

Section 4A-206 – Transmission of Payment Order through Funds – Transfer or Other Communication System

a. If a payment order addressed to a receiving bank is transmitted to a funds transfer system or other third party communication system for transmittal to the bank, the system is deemed to be an agent of the sender for the purpose of transmitting the payment order to the bank. If there is a discrepancy between the terms of the payment order transmitted to the system and the terms of the payment order transmitted by the system to the bank, the terms of the payment order of the sender are those transmitted by the system. This section does not apply to a funds transfer system of the Federal Reserve Banks.
b. This section applies to cancellations and amendments of payment orders to the same extent it applies to payment orders.

Section 4A-207 – Misdescription of Beneficiary

a. Subject to subsection (b) of this section, if, in a payment order received by the beneficiary's bank, the name, bank account number, or other identification of the beneficiary refers to a nonexistent or unidentifiable person or account, no person has rights as a beneficiary of the order and acceptance of the order cannot occur.
b. If a payment order received by the beneficiary's bank identified the beneficiary both by name and by an identifying or bank account number and the name and number identify different persons, the following rules apply:
    1. Except as otherwise provided in subsection (c) of this section, if the beneficiary's bank does not know that the name and number refer to different persons, it may rely on the number as the proper identification of the beneficiary of the order. The beneficiary's bank need not determine whether the name and number refer to the same person.
    2. If the beneficiary's bank pays the person identified by name or knows that the name and number identify different persons, no person has rights as beneficiary except the person paid by the beneficiary's bank if that person was entitled to receive payment from the

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

c. If
    i. A payment order described in subsection (b) of this section is accepted,
    ii. The originator's payment order described the beneficiary inconsistently by name and number, and
    iii. The beneficiary's bank pays the person identified by number as permitted by paragraph (1) of subsection (b) of this section, the following rules apply:
        1. If the originator is a bank, the originator is obliged to pay its order.
        2. If the originator is not a bank and proves that the person identified by number was not entitled to receive payment from the originator, the originator is not obliged to pay its order unless the originator's bank proves that the originator, before acceptance of the originator's order, had notice that payment of a payment order issued by the originator might be made by the beneficiary's bank on the basis of an identifying or bank account number even if it identified a person different from the named beneficiary. Proof of notice may be made by any admissible evidence. The originator's bank satisfies the burden of proof if it proves that originator, before the payment order was accepted, signed a writing stating the information to which the notice relates.

d. In a case governed by paragraph (1) of subsection (b) of this section, if the beneficiary's bank rightfully pays the person identified by number and that person was not entitled to receive payment from the originator, the amount paid may be recovered from that person to the extent allowed by the law governing mistake and restitution as follows:
    1. If the originator is obliged to pay its payment order as stated in subsection (c) of this section, the originator has the right to recover.
    2. If the originator is not a bank and is not obliged to pay its payment order, the originator's bank has the right to recover.

Section 4A-208 – Misdescription of Intermediary Bank or Beneficiary's Bank

a. This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank only by an identifying number.
    1. The receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank and need not determine whether the number identifies a bank.
    2. The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.

b. This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank both by name and an identifying number if the same and number identify different persons.
    1. If the sender is a bank, the receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank if the receiving bank, when it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person or whether the number refers to a bank. The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.
    2. If the sender is not a bank and the receiving bank proves that the sender, before the payment order was accepted, had notice that the receiving bank might rely on the number as the proper identification of the intermediary or beneficiary's bank even if it identifies a person different from the bank identified by name, the rights and obligations of the sender and the receiving bank are governed by paragraph (1) of subsection (b) of this section, as though the sender were a bank. Proof of notice may be made by any admissible evidence. The receiving bank satisfies the burden of proof if it proves that the sender, before the payment order was accepted, signed a writing stating the information to which the notice relates.
    3. Regardless of whether the sender is a bank, the receiving bank may rely on the name as the proper identification of the intermediary or beneficiary's bank if the receiving bank, at the time it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person.
    4. If the receiving bank knows that the name and number identify different persons, reliance on either the name or the number in executing the sender's payment order is a breach of the bank's obligation under this Title.

Section 4A-209 – Acceptance of Payment Order

a. Subject to subsection (d) of this section, a receiving bank other than the beneficiary's bank accepts a payment order when it executes the order.
b. Subject to subsections (c) and (d) of this section, a beneficiary's bank accepts a payment order at the earliest of the following times:
    1. When the bank
        i. Pays the beneficiary as stated in subsection (a) or (b) of Section 30 of this act, or
        ii. Notifies the beneficiary of receipt of the order or that the account of the beneficiary has been credited with respect to the order unless the notice indicates that the bank is rejecting the order or that funds with respect to the

order may not be withdrawn or used until receipt of payment from the sender of the order;

2. When the bank receives payment of the entire amount of the sender's; or
3. The opening of the next funds-transfer business day of the bank following the payment date of the order if, at the that time, the amount of the sender's order is fully covered by a withdrawable credit balance in an authorized account of the sender or the bank has otherwise received full payment from the sender, unless the order was rejected before that time or is rejected within
    i. One hour after that time, or
    ii. One hour after the opening of the next business day of the sender following the payment date if that time is later. If notice of rejection is received by the sender after the payment date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order for the number of days elapsing after the payment date to the day the sender receives notice or learns that the order was not accepted, counting that day as an elapsed day. If the withdrawable credit balance during that period falls below the amount of the order, the amount of interest payable is reduced accordingly.

c. Acceptance of a payment order cannot occur before the order is received by the receiving bank. Acceptance does not occur under paragraph (2) or (3) of subsection (b) of this section if the beneficiary of the payment order does not have an account with the receiving bank, the account has been closed, or the receiving bank is not permitted by law to receive credits for the beneficiary's account.
d. A payment order issued to the originator's bank cannot be accepted until the payment date if the bank is the beneficiary's bank or the execution date if the bank is not the beneficiary's bank. If the originator's bank executes the originator's payment order before the execution date or pays the beneficiary of the originator's payment order before the payment date and the payment order is subsequently canceled, the bank may recover from the beneficiary any payment received to the extent allowed by the law governing mistake and restitution.

Section 4A-210 – Rejection of Payment Order

a. A payment order is rejected by the receiving bank by a notice of rejection transmitted to the sender orally, electronically, or in writing. A notice of rejection need not use any particular words and is sufficient if it indicates that the receiving bank is rejecting the order or will not execute or pay the order. Rejection is effective when the notice is given if transmission is by a means that is reasonable in the circumstances. If notice of rejection is given by a means that is not reasonable, rejection is effective when the notice is received. If an agreement of the sender and receiving bank establishes the means to be used to reject a payment order,

i. Any means complying with the agreement is reasonable an
ii. Any means not complying is not reasonable unless no significant delay in receipt of the notice resulted from the use of the noncomplying means.

b. This subsection applies if a receiving bank other than the beneficiary's bank fails to execute a payment order despite the existence on the execution date of withdrawable credit balance in an authorized account of the sender sufficient to cover the order. If the sender does not receive notice of rejection of the order on the execution date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order for the number of days elapsing after the execution date to the earlier of the day the order is canceled, or the day the sender receives notice, or learns that the order was not executed, counting the final day of the period as an elapsed day. If the withdrawable credit balance during that period falls below the amount of the order, the amount of interest is reduced accordingly.
c. If a receiving bank suspends payments, all unaccepted payment orders issued to it are deemed rejected at the time the bank suspends payments.
d. Acceptance of a payment order precludes a later rejection of the order. Rejection of a payment order precludes a later acceptance of the order.

Section 4A-211 – Cancellation and Amendment of Payment Order

a. A communication of the sender of a payment order cancelling or amending the order may be transmitted to the receiving bank orally, electronically, or in writing. If a security procedure is in effect between the sender and the receiving bank, the communication is not effective to cancel or amend the order unless the communication is verified pursuant to the security procedure or the bank agrees to the cancellation or amendment.
b. Subject to subsection (a) of this section, a communication by the sender canceling or amending a payment order is effective to cancel or amend the order if notice of the communication is received at a time and in a manner affording the receiving bank a reasonably opportunity to act on the communication before the bank accepts the payment order.
c. After a payment order has been accepted, cancellation or amendment of the order is not effective unless the receiving bank agrees or a funds-transfer system rule allows cancellation or amendment without agreement of the bank.
    1. With respect to a payment order accepted by a receiving bank other than the beneficiary's bank, cancellation or amendment of the payment order issued by the receiving bank is also made.
    2. With respect to a payment order accepted by the beneficiary's bank, cancellation or amendment is not effective unless the order was issued in execution of an unauthorized payment order, or because of a mistake by a sender in the funds transfer which resulted in the issuance of a payment order

i. That is a duplicate of a payment order previously issued by the sender,
ii. That orders payment to a beneficiary not entitled to receive payment from the originator, or
iii. That orders payment in an amount greater than the amount the beneficiary was entitled to receive from the originator. If the payment order is canceled or amended, the beneficiary's bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

d. An unaccepted payment order is canceled by operation of law at the close of the fifth funds-transfer business day of the receiving bank after the execution date or payment date of the order.
e. A canceled payment order cannot be accepted. If an accepted payment order is canceled, the acceptance is nullified and no person has any right or obligation based on the acceptance. Amendment of a payment order is deemed to be cancellation of the original order at the time of amendment and issue of a new payment order in the amended form at the same time.
f. Unless otherwise provided in an agreement of the parties or in a funds-transfer system rule, if the receiving bank, after accepting a payment order, agrees to cancellation or amendment of the order by the sender or is bound by a funds-transfer system rule allowing cancellation or amendment without the bank's agreement, the sender, whether or not cancellation or amendment is effective, is liable to the bank for any loss and expenses, including reasonably attorney's fees, incurred by the bank as a result of the cancellation or amendment or attempted cancellation or amendment.
g. A payment order is not revoked by the death or legal incapacity of the sender unless the receiving bank knows of the death or of an adjudication of incapacity by a court of competent jurisdiction and has reasonably opportunity to act before acceptance of the order.
h. A funds-transfer system rule is not effective to the extent it conflicts with paragraph (2) of subsection (c) of this section.

Section 4A-212 – Liability and Duty of Receiving Bank Regarding Unaccepted Payment

If a receiving bank fails to accept a payment order that is obliged by express agreement to accept, the bank is liable for breach of the agreement to the extent provided in the agreement or in this Article, but does not otherwise have any duty to accept a payment order or, before acceptance, to take any action, or refrain from taking action, with respect to the order except as provided in this Article or by express agreement. Liability based on acceptance arises only when acceptance occurs, and liability is limited to that provided in this Chapter. A receiving bank is not the agent of the sender or beneficiary of the payment order it accepts, or of any other party to the funds transfer, and the bank owes no duty to any party to the funds transfer except as provided in this Article or by express agreement.

Subchapter 3 – Execution of Sender's Payment Order by Receiving Bank

Section 4A-301 – Execution and Execution Date

a. A payment order is "executed" by the receiving bank when it issues a payment order intended to carry out the payment order received by the bank. A payment order received by the beneficiary's bank can be accepted but cannot be executed.
b. "Execution date" of a payment order means the day on which the receiving bank may properly issue a payment order in execution of the sender's order. The execution date may be determined by instruction of the sender but cannot be earlier than the day the order is received and, unless otherwise determined, is the day the order is received. If the sender's instruction states a payment date, the execution date is the payment date or an earlier date on which execution is reasonably necessary to allow payment to the beneficiary on the payment date.

Section 4A-303 – Erroneous Execution of Payment Order

a. A receiving bank that
    i. Executes the payment order of the sender by issuing a payment order in an amount greater than the amount of the sender's order, or
    ii. Issues a payment order in execution of the sender's order and then issues a duplicate order, is entitled to payment of the amount of the sender's order if this Chapter otherwise complied with. The bank is entitled to recover from the beneficiary of the erroneous order the excess payment received to the extent allowed by the law governing mistake and restitution.
b. A receiving bank that executes the payment order of the sender by issuing a payment order in an amount less than the amount of the sender's order is entitled to payment of the amount of the sender's order if
    i. That subsection is otherwise satisfied and
    ii. The bank corrects its mistake by issuing an additional payment order for the benefit of the beneficiary of the sender's order. If the error is not corrected, the issuer of the erroneous order is entitled to receive or retain payment form the sender of the order it accepted only to the extent of the amount of the erroneous order. This subsection does not apply if the receiving bank executes the sender's payment order by issuing a payment order in an amount less than the amount of the sender's order for the purpose of obtaining payment of its charges for services and expenses pursuant to instruction of the sender.
c. If a receiving bank executes the payment order of the sender by issuing a payment order to a beneficiary different from the beneficiary of the sender's order and the funds transfer is completed on the basis of that error, the sender of the payment order that was erroneously executed and all previous senders in the funds transfer are not obliged to pay the payment

orders they issued. The issuer of the erroneous order is entitled to recover from the beneficiary of the order the payment received to the extent allowed by the law governing mistake and restitution.

Section 4A-304 – Duty of Sender to Report Erroneously Executed Payment Order

If the sender of a payment order that is erroneously executed receives notification from the receiving bank that the order was executed or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care to determine, on the basis of information available to the sender, that the order was erroneously executed and to notify the bank of the relevant facts within a reasonable time not exceeding ninety (90) days after the notification from the bank was received by the sender. If the sender fails to perform that duty, the bank is not obliged to pay interest on any amount refundable to the sender under this Title for the period before the bank learns of the execution error. The bank is not entitled to any recover from the sender on account of a failure by the sender to perform the duty stated in this section.

Section 4A-305 – Liability for Late or Improper Execution or Failure to Execute Payment

a. If a funds transfer is completed but execution of a payment order by the receiving bank in breach of this Title results in delay in payment to the beneficiary, the bank is obliged to pay interest to either the originator or the beneficiary of the funds transfer for the period of delay caused by the improper execution. Except as provided in subsection (c) of this section, additional damages are not recoverable.
b. If execution of a payment order by a receiving bank in breach of this Title results in
    i. Noncompletion of the funds transfer,
    ii. Failure to use an intermediary bank designated by the originator, or
    iii. Issuance of a payment order that does not comply with the terms of the payment order of the originator, the bank is liable to the originator for its expenses in the funds transfer and for incidental expenses and interest losses, to the extent not covered by subsection (a) of this section, resulting from the improper execution. Except as provided in subsection (c) of this section, additional damages are not recoverable.
c. In addition to the amounts payable under subsections (a) and (b) of this section, damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank.
d. If a receiving bank fails to execute a payment order it was obliged by express agreement to execute, the receiving bank is liable to the sender for its expenses in the transaction and for incidental expenses and interest losses resulting from the failure to execute. Additional damages, including consequential damages, are the failure to execute. Additional damages,

including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank, but are not otherwise recoverable.

e. Reasonable attorney's fees are recoverable if demand for compensation under subsection (a) or (b) of this section is made and refused before an action is brought on the claim. If a claim is made for breach of an agreement under subsection (d) of this section and the agreement does not provide for damages, reasonable attorney's fees are recoverable if demand for compensation under subsection (d) of this section is made and refused before an action is brought on the claim.
f. Except as stated in this section, the liability of a receiving bank under subsections (a) and (b) of this section may not be varied by agreement.

Subchapter 4 – Payment

Section 4A-401 – Payment Date

"Payment date" of a payment order means the day on which the amount of the order is payable to the beneficiary by the beneficiary's bank. The payment date may be determined by instruction of the sender but cannot be earlier than the day the order is received by the beneficiary's bank and, unless otherwise determined, is the day the order is received by the beneficiary's bank.

Section 4A-402 – Obligation of Sender to Pay Receiving Bank

a. This section is subject to Chapter 15 of this act.
b. With respect to a payment order issued to the beneficiary's bank, acceptance of the order by the bank obliges the sender to pay the bank the amount of the order, but payment is not due until the payment date of the order.
c. This subsection is subject to other provisions of this Title with respect to a payment order issued to a receiving bank other than the beneficiary's bank acceptance of the order by the receiving bank obliges the sender to pay the bank the amount of the sender's order. Payment by the sender is not due until the execution date of the sender's order. The obligation of that sender to pay its payment order is excused if the funds transfer is not completed by acceptance by the beneficiary's bank of a payment order instructing payment to the beneficiary of that sender's payment order.
d. If the sender of a payment order pays the order and was not obliged to pay all or part of the amount paid, the bank receiving payment is obliged to refund payment to the extent the sender was not obliged to pay. Interest is payable on the refundable amount from the date of payment.
e. If a funds transfer is not completed as stated in subsection (c) of this section and intermediary bank is obliged to refund payment as stated in subsection (d) of this section but is unable to do so because not permitted by applicable law or because the bank suspends payments, a sender in the funds transfer that executed a payment order in compliance with an instruction to route

the funds transfer through that intermediary bank is entitled to receive or retain payment from the sender of the payment order that it accepted. The first sender in the funds transfer that issued an instruction requiring routing through that intermediary bank is subrogated to the right of the bank that paid the intermediary bank to refund as stated in subsection (d) of this section.

f. The right of the sender of a payment order to be excused from the obligation to pay the order as stated in subsection (c) or to receive refund under subsection (d) of this section may not be varied by agreement.

Section 4A-403 – Payment by Sender to Receiving Bank

a. Payment of the sender's obligation to pay the receiving bank occurs as follows:
   1. If the sender is a bank, payment occurs when the receiving bank receives final settlement of the obligation through a Federal Reserve Bank or through a funds-transfer system.
   2. If the sender is a bank and the sender
      i. Credited an account of the receiving bank with the sender, or
      ii. Caused an account of the receiving bank in another bank to be credited, payment occurs when the credit is withdrawn or, if not withdrawn, at midnight of the day on which the credit is withdrawable and the receiving bank learns of that fact.
   3. If the receiving bank debits an account of the sender with the receiving bank, payment occurs when the debit is made to the extent the debit is covered by a withdrawable credit balance in the account.

b. If the sender and receiving bank are members of a fund transfer system that nets obligations multilaterally among participants, the receiving bank receives final settlement when settlement is complete in accordance with the rules of the system. The obligation of the sender to pay the amount of a payment order transmitted through the funds-transfer system may be satisfied, to the extent permitted by the rules of the system, by setting off and applying against the sender's obligation the right of the sender to receive payment from the receiving bank of the amount of any other payment order transmitted to the sender by the receiving bank through the funds transfer system. The aggregate balance of obligations owed by each sender to each receiving bank in the funds transfer system may be satisfied, to the extent permitted by the rules of the system, by setting off and applying against that balance the aggregate balance of obligations owed to the sender by other members of the system. The aggregate balance is determined after the right of setoff stated in the second sentence of this subsection has been exercised.

c. If two banks transmit payment orders to each other under an agreement that settlement of the obligations of each bank to the other will be made at the end of the day or other period, the total amount owed with respect to all orders transmitted by one bank shall be set off against the total amount owed with respect to all orders transmitted by the other bank. To the extent of the setoff, each bank has made payment to the other.

d. In a case not covered by subsection (a) of this section, the time when payment of the sender's obligation under subsections (b) or (c) occurs is governed by applicable principles of law that determine when an obligation is satisfied.

Section 4A-404 – Obligation of Beneficiary's Bank to Pay and Give Notice to Beneficiary

a. Subject to this Title, if a beneficiary's bank accepts a payment order, the bank is obliged to pay the amount of the order to the beneficiary of the order. Payment is due on the payment date of the order, but if acceptance occurs on the payment date after the close of the funds-transfer business day of the bank, payment is due on the next funds transfer business day. If the bank refuses to pay after demand by the beneficiary and receipt of notice of particular circumstances that will give rise to consequential damages as a result of nonpayment, the beneficiary may recover damages resulting from the refusal to pay to the extent the bank had notice of the damages, unless the bank proves that it did not pay because of a reasonable doubt concerning the right of the beneficiary to payment.
b. If a payment order accepted by the beneficiary's bank instructs payment to an account of the beneficiary, the bank is obliged to notify the beneficiary of receipt of the order before midnight of the next funds transfer business day following the payment date. If the payment order does not instruct payment to an account of the beneficiary, the bank is required to notify the beneficiary only if notice is required by the order. Notice may be given by first class mail or any other means reasonable in the circumstances. If the bank fails to give the required notice, the bank is obliged to pay interest to the beneficiary on the amount of the payment order from the day notice should have been given until the day the beneficiary learned of receipt of the payment order by the bank. Not other damages are recoverable. Reasonable attorney's fees are also recoverable if demand for interest is made and refused before an action is brought on the claim.
c. The right of a beneficiary to receive payment and damages as stated in subsection (a) of this section may not be varied by agreement or a funds-transfer system rule. The right of a beneficiary to be notified as stated in subsection (b) of this section may be varied by agreement of the beneficiary or by a funds-transfer system rule if the beneficiary is notified of the rule before initiation of the funds transfer.

Section 4A-405 – Payment by Beneficiary's Bank to Beneficiary

a. If the beneficiary's bank credits an account of the beneficiary of a payment order, payment of the bank's obligation under this act occurs when and to the extent
    i. The beneficiary is notified of the right to withdraw the credit,
    ii. The bank lawfully applies the credit to a debt of the beneficiary, or
    iii. Funds with respect to the order are otherwise made available to the beneficiary by the bank.

b. If the beneficiary's bank does not credit an account of the beneficiary of a payment order, the time when payment of the bank's obligation under this act occurs is governed by principles of law that determine when an obligation is satisfied.
c. Except as stated in subsections (d) and (e) of this section, if the beneficiary's bank pays the beneficiary of a payment order under a condition to payment or agreement of the beneficiary giving the bank the right to recover payment from the beneficiary if the bank does not receive payment of the order, the condition to payment or agreement is not enforceable.
d. A funds-transfer system rule may provide that payments made to beneficiaries of funds=transfers made through the system are provisional until receipt of payment by the beneficiary's bank of the payment order it accepted. A beneficiary's bank that makes a payment that is provisional under the rules is entitled to refund from the beneficiary if
    i. The rule requires that both the beneficiary and the originator be given notice of the provisional nature of the payment before the funds transfer is initiated,
    ii. The beneficiary, the beneficiary's bank and the originator's bank agreed to be bound by the rule, and
    iii. The beneficiary's bank did not receive payment of the payment order that it accepted. If the beneficiary is obliged to refund payment to the beneficiary's bank, acceptance of the payment order by the beneficiary's bank is nullified and no payment by the originator of the funds transfer to the beneficiary occurs under this act.
e. This subsection applies to a funds transfer that includes a payment order transmitted over a funds-transfer system that
    i. Nets obligations a multilaterally among participants, and
    ii. Has in effect a loss-sharing agreement among participants for the purpose of providing funds necessary to complete settlement of the obligations of one or more participants that do not meet their settlement obligations. If the beneficiary's bank in the funds transfer accepts a payment order and the system fails to complete settlement pursuant to its rules with respect to any payment order in the funds transfer.,
        1. The acceptance by the beneficiary's bank is nullified and no person has any right or obligation based on the acceptance,
        2. The beneficiary's bank is entitled to recover payment from the beneficiary,
        3. No payment by the originator to the beneficiary occurs under this act, and
        4. Each sender in the funds transfer is excused from its obligation to pay its payment order under this act because the funds transfer has not been completed.

Section 4A-406 – Payment by Originator to Beneficiary; Discharge of Underlying Obligation

a. The originator of a funds transfer pays the beneficiary of the originator's payment order
    i. At the time a payment order for the benefit of the beneficiary is accepted by the beneficiary's bank in the funds transfer and
    ii. In an amount equal to the amount of the order accepted by the beneficiary's bank, but not more than the amount of the originator's order.
b. If payment under subsection (a) of this section is made to satisfy an obligation, the obligation is discharged to the same extent discharge would result from payment to the beneficiary of the same amount in money, unless
    i. The payment under subsection (a) of this section was made by means prohibited by the contract of the beneficiary with respect to the obligation,
    ii. The beneficiary, within a reasonable time after receiving notice of receipt of the order by the beneficiary's bank, notified the originator of the beneficiary's refusal of the payment,
    iii. Funds with respect to the order were not withdrawn by the beneficiary or applied to a debt of the beneficiary, and
    iv. The beneficiary would suffer a loss that could reasonable have been avoided if payment had been made by a means complying with the contract. If payment by the originator does not result in discharge under this section, the originator is subrogated to the rights of the beneficiary to receive payment from the beneficiary's bank.
c. For the purpose of determining whether discharge of an obligation occurs under subsection (b), if the beneficiary's bank accepts a payment order in an amount equal to the amount of the originator's payment order less charges of one or more receiving banks in the funds transfer, payment to the beneficiary is deemed to be in the amount of the originator's order unless upon demand by the beneficiary the originator does not pay the beneficiary the amount of the deducted charges.
d. Rights of the originator or of the beneficiary of a funds transfer under this section may be varied only by agreement of the originator and the beneficiary.

Subchapter 5 – Miscellaneous Provisions

Section 4A-501 – Variation by Agreement and Effect of Funds

a. Except as otherwise provided in this Chapter, the rights and obligations of a party to a funds transfer may be varied by agreement of the affected party.
b. "Funds transfer system rule" means a rule of an association of banks
    i. Governing transmission of payment orders by means of a funds transfer system of the association or rights and obligations with respect to those orders, or

ii. To the extent the rule governs rights and obligations between banks that are parties to a funds transfer in which a Federal Reserve Bank, acting as an intermediary bank, send a payment order to the beneficiary's bank. Except as otherwise provided in this Chapter, a funds-transfer system rule governing rights and obligations between participating banks using the system may be effective even if the rule conflicts with this Chapter and indirectly affects another party to the funds transfer who does not consent to the rule. A funds transfer system rule may also govern rights and obligations of parties other than participating banks.

Section 4A-502 – Creditor Process Served on Receiving Bank – Set Off by Beneficiary's Bank

a. As used in this section, "Creditor process" means levy, attachment, garnishment, notice of lien, sequestration, or similar process issued by or on behalf of a creditor or other claimant with respect to an amount.
b. This subsection applies to a creditor process with respect to an authorized account of the sender of a payment order if the creditor process is served on the receiving bank. For the purpose of determining rights with respect to the creditor process, if the receiving bank accepts the payment order the balance in the authorized account is deemed to be reduced by the amount of the payment order to the extent the bank did not otherwise receive payment of the order, unless the creditor process is served at a time and in a manner affording the bank a reasonable opportunity to act on it before the bank accepts the payment order.
c. If a beneficiary's bank has received a payment order for payment to the beneficiary's account in the bank, the following rules apply:
    1. The bank may credit the beneficiary's account. The amount credited may be set off against an obligation owed by the beneficiary to the bank or may be applied to satisfy creditor process served on the bank with respect to the account.
    2. The bank may credit the beneficiary's account and allow withdrawal of the amount credited unless creditor process with respect to the account is served at a time and in a manner affording the bank a reasonable opportunity to act to prevent withdrawal.
    3. If creditor process with respect to the beneficiary's account has been served and the bank has had a reasonable opportunity to act on it, the bank may not reject the payment order except for a reason unrelated to the service of process.
d. Creditor process with respect to a payment by the originator to the beneficiary pursuant to a funds transfer may be served only on the beneficiary's bank with respect to the debt owed by that bank to the beneficiary. Any other bank served with the creditor process is not obliged to act with respect to the process.

Section 4A-503 – Injunction or Restraining Order with Respect to Funds Transfer

For proper cause and in compliance with applicable law, a court may restrain

i. A person from issuing a payment order to initiate a funds transfer,
ii. An originator's bank from executing the payment order of the originator, or
iii. The beneficiary's bank from releasing funds to the beneficiary or the beneficiary from withdrawing the funds.

A court may not otherwise restrain a person from issuing a payment order, paying or receiving payment of a payment order, or otherwise acting with respect to a funds transfer.

Section 4A-504 – Order in which Items and Payment Orders May be Charged to Account; Order of Withdrawals from Account

a. If a receiving bank has received more than one payment order of the sender or one or more payment orders and other items that are payable from the sender's account, the bank may charge the sender's account with respect to the various orders and items in any sequence.
b. In determining whether a credit to an account has been withdrawn by the holder of the account or applies to a debt of the holder of the account, credits first made to the account are first withdrawn or applied.

Section 4A-505 – Preclusion of Objection to Debit of Customer's Account

If a receiving bank has received payment from its customer with respect to a payment order issued in the name of the customer as sender and accepted by the bank, and the customer received notification reasonably identifying the order, the customer is precluded from asserting that the bank is not entitled to retain the payment unless the customer notifies the bank of the customer's objection to the payment within (1) one year after the notification was received by the customer.

Section 4A-506 – Rate of Interest

a. If, under this Article, a receiving bank is obliged to pay interest with respect to a payment order issued to the bank, the amount payable may be determined
    i. By agreement of the sender and receiving bank, or
    ii. By a funds transfer system rule if the payment order is transmitted through a funds transfer system.
b. If the amount of interest is not determined by an agreement or rule as stated in subsection (a) of this section, the amount is calculated by multiplying the applicable Federal Funds rate by the amount on which interest is payable. The applicable Federal Funds rate is the average of the Federal Funds rates published by the Federal Reserve Bank of New York for each of the days for which interest is payable divided by three hundred sixty (360). The Federal Funds rate for any day on which a published rate is not available is the same as the published rate for the next

preceding day for which there is a published rate. If a receiving bank that accepted a payment order is required to refund payment to the sender of the order because the funds transfer was not completed, but the failure to complete was not due to any fault by the bank, the interest payable is reduced by a percentage equal to the reserve requirement on deposits of the receiving bank.

Section 4A-507 – Choice of Law

a. The following rules apply unless the affected parties otherwise agree or subsection (c) of this section applies:
    1. The rights and obligations between the sender of a payment order and the receiving bank are governed by the law of the jurisdiction in which the receiving bank is located.
    2. The rights and obligations between the beneficiary's bank and the beneficiary are governed by the law of the jurisdiction in which the beneficiary's bank is located.
    3. The issue of when payment is made pursuant to a funds transfer by the originator to the beneficiary is governed by the law of the jurisdiction in which the beneficiary's bank is located.
b. If the parties described in each paragraph of subsection (a) have made an agreement selecting the law of a particular jurisdiction to govern rights and obligations between each other, the law of that jurisdiction governs those rights and obligations, whether or not the payment order or the funds transfer bears a reasonable relation to that jurisdiction.
c. A funds transfer system rule may select the law of a particular jurisdiction to govern
    i. Rights and obligations between participating banks with respect to payment orders transmitted or processed through the system, or
    ii. The rights and obligations of some or all parties to a funds transfer any part of which is carried out by means of the system.

    A choice of law made pursuant to clause (i) is binding on participating banks. A choice of law made pursuant to clause (ii) is binding on the originator, other sender, or a receiving bank having notice that the funds transfer system might be used in the funds transfer and of the choice of law by the system might be used in the funds transfer and of the choice of law by the system when the originator, other sender, or receiving bank issued or accepted a payment order. The beneficiary of a funds transfer is bound by the choice of law if, when the funds transfer is initiated, the beneficiary has notice that the funds transfer system might be used in the funds transfer and of the choice of law by the system. The law of a jurisdiction selected pursuant to this subsection may govern, whether or not that law bears a reasonable relation to the matter in issue.

d. In the event of inconsistency between an agreement under subsection (b) and a choice of law rule under subsection (c) of this section, the agreement under subsection (b) of this section prevails.
e. If a funds transfer is made by use of more than one funds transfer system and there is inconsistency between choice-of-law rules of the systems, the matter in issue is governed by the law of the selected jurisdiction that has the most significant relationship to the matter in issue.

Section 4A-551 – Validity of Prior Transactions

Transactions validly entered into before the effective date of this act and the rights, duties and interests flowing from them remain valid thereafter and may be terminated, completed, consummated or enforced as required or permitted by any statute or other law amended or repealed by this act as though such repeal or amendment has not occurred.

Chapter 5 – Letters of Credit

Section 5-101 – Short Title

This article shall be known and may be cited as Uniform Commercial Code – Letters of Credit.

Section 5-102 – Definitions

a. In this Chapter:
    1. "Adviser" means a person who, at the request of the issuer, a confirmer, or another adviser, notifies or requests another adviser to notify the beneficiary that a letter of credit has been issued, confirmed, or amended;
    2. "Applicant" means a person at whose request or for whose account a letter of credit is issued. The term includes a person who requests an issuer to issue a letter of credit on behalf of another if the person making the request undertakes an obligation to reimburse the issuer;
    3. "Beneficiary" means a person who under the terms of a letter of credit is entitled to have its complying presentation honored. The term includes a person to whom drawing rights have been transferred under a transferable letter of credit;
    4. "Confirmer" means a nominated person who undertakes, at the request or with the consent of the issuer, to honor a presentation under a letter of credit issued by another.
    5. "Dishonor" of a letter of credit means failure timely to honor or to take an interim action, such as acceptance of a draft, that may be required by the letter of credit;
    6. "Document" means a draft or other demand, document of title, investment security, certificate, invoice, or other record, statement, or representation of fact, law, right, or opinion:

i. Which is presented in a written or other medium permitted by the letter of credit or, unless prohibited by the letter of credit, by the standard practice referred to in subsection (e) of Section 33-5-108 of this title; and

ii. Which is capable of being examined for compliance with the terms and conditions of the letter of credit. A document may not be oral;

7. "Good faith" means honesty in fact in the conduct or transaction concerned;
8. "Honor" of a letter of credit means performance of the issuer's undertaking in the letter of credit to pay or deliver an item of value. Unless the letter of credit otherwise provides, "honor" occurs:
   i. Upon payment;
   ii. If the letter of credit provides for acceptance, upon acceptance of a draft and, at maturity, its payment; or
   iii. If the letter of credit provides for incurring a deferred obligation, upon incurring the obligation and, at maturity, its performance;
9. "Issuer" means a bank or other person that issued a letter of credit, but does not include an individual who makes an engagement for personal, family, or household purposes;
10. "Letter of credit" means a definite undertaking that satisfies the requirements of Section 33-5-104 of this title by an issuer to a beneficiary at the request or for the account of an applicant or, in the case of a financial institution, to itself or for its own account, to honor a documentary presentation by payment or delivery of an item of value;
11. "Nominated person" means a person whom the issuer:
   i. Designates or authorized to pay, accept, negotiate, or otherwise give value under a letter of credit; and
   ii. Undertakes by agreement or custom and practice to reimburse;
12. "Presentation: means delivery of a document to an issuer or nominated person for honor or giving of value under a letter of credit;
13. "Presenter" means a person making a presentation as or on behalf of a beneficiary or nominated person;
14. "Record" means information that is inscribed on a tangible medium, or that is stored and in an electronic or other medium and is retrievable in perceivable form; and
15. "Successor of a beneficiary" means a person who succeeds to substantially all of the rights of a beneficiary by operation of law, including a corporation with or into which the beneficiary has been merged or consolidated, an administrator, executor, personal representative, trustee in bankruptcy, debtor in possession, liquidator, and receiver.

b. Definitions in other articles of this title applying to this article and the sections in which they appear are: "Accept" or "Acceptance" Section 33-3-409. "Value" Section 33-3-303 and 33-4-211.

c. Chapter 1 of this title contains certain additional general definitions and principles of construction and interpretation applicable throughout this article.

Section 5-103 – Scope

a. This article applies to letters of credit and to certain rights and obligations arising out of transactions involving letters of credit.
b. The statement of a rule in this article does not by itself require, imply, or negate application of the same or a different rule to a situation not provided for, or to a person not specified, in this article.
c. With the exception of this subsection, subsections (a) and (d) of this section, paragraphs (9) and (10) of subsection (a) of Section 5-102 of this title, subsection (d) of Section 5-106 of this title, and subsection (d) of Section 5-114 of this title, and except to the extent prohibited in Section 15 of this act and subsection (d) of Section 5-117 of this title, the effect of this article may be varied by agreement or by a provision stated or incorporated by reference in an undertaking. A term in an agreement or undertaking generally excusing liability or generally limiting remedies for failure to perform obligations is not sufficient to vary obligations prescribed by this article.
d. Rights and obligations of an issuer to a beneficiary or a nominated person under a letter of credit are independent of the existence, performance, or nonperformance of a contract or arrangement out of which the letter of credit arises or which underlies it, including contracts or arrangements between the issuer and the applicant and between the applicant and the beneficiary.

Section 5-104 – Formal Requirements

A letter of credit, confirmation, advice, transfer, amendment, or cancellation may be issued in any form that is a record and is authenticated:

1. By a signature; or
2. In accordance with the agreement of the parties or the standard practice referred to in subsection (e) of Section 33-5-108 of this title.

Section 5-105 – Consideration

Consideration is not required to issue, amend, transfer, or cancel a letter of credit, advice, or confirmation.

Section 5-106 – Issuance, Amendment, Cancellation, and Duration

a. A letter of credit is issued and becomes enforceable according to its terms against the issuer when the issuer sends or otherwise transmits it to the person requested to advise or to the beneficiary. A letter of credit is revocable only if it so provides.
b. After a letter of credit is issued, rights and obligations of a beneficiary, applicant, confirmer, and issuer are not affected by an amendment or cancellation to which that person has not

consented except to that extent the letter of credit provides that it is revocable or that the issuer may amend or cancel the letter of credit without that consent.

c. If there is no stated expiration date or other provision that determines its duration, a letter of credit expires one (1) year after its stated date of issuance or, if none is stated, after the date on which it is issued.
d. A letter of credit that states that it is perpetual expires five (5) years after its stated date of issuance, or if none is stated, after the date on which it is issued.

Section 5-107 – Confirmer, Nominated Person, and Adviser

a. A confirmer is directly obligated on a letter of credit and has the rights and obligations of an issuer to the extent of its confirmation. The confirmer also has rights against and obligations to the issuer as if the issuer were an applicant and the confirmer had issued the letter of credit at the request and for the account of the issuer.
b. A nominated person who is not a confirmer is not obligated to honor or otherwise give value for a presentation.
c. A person requested to advise may decline to act as an adviser. An adviser that is not a confirmer is not obligated to honor or give value for a presentation. An adviser undertakes to the issuer and to the beneficiary accurately to advise the terms of the letter of credit, confirmation, amendment, or advice received by that person and undertakes to the beneficiary to check the apparent authenticity of the request to advise. Even if the advice is inaccurate, the letter of credit, confirmation, or amendment is enforceable as issued.
d. A person who notifies a transferee beneficiary of the terms of a letter of credit, confirmation, amendment, or advice has the rights and obligations of an adviser under subsection (c) of this section. The terms in the notice to the transferee under subsection (c) of this section. The terms in the notice to the transferee beneficiary may differ from the terms in any notice to the transferor beneficiary to the extent permitted by the letter of credit, confirmation, amendment, or advice received by the person who so notifies.

Section 5-108 – Issuer's Rights and Obligations

a. Except as otherwise provided in Section 33-5-109 of this title, an issuer shall honor a presentation that, as determined by the standard practice referred to in subsection (e) of this section, appears on its face strictly to comply with the terms and conditions of the letter of credit. Except as otherwise provided in Section 33-5-113 of this title and unless otherwise agreed with the applicant, an issuer shall dishonor a presentation that does not appear so to comply.
b. An issuer has a reasonable time after presentation, but not beyond the end of the seventh business day of the issuer after the day of its receipt of documents:
    1. To honor;

2. If the letter of credit provides for honor to be completed more than seven (7) business days after presentation, to accept a draft or incur a deferred obligation; or
3. To give notice to the presenter of discrepancies in the presentation.

c. Except as otherwise provided in subsection (d) of this section, an issuer is precluded from asserting as a basis for dishonor any discrepancy if timely notice is not given, or any discrepancy not stated in the notice if timely notice is given.

d. Failure to give the notice specified in subsection (b) of this section or to mention fraud, forgery, or expiration in the notice does not preclude the issuer from asserting as a basis for dishonor fraud or forgery as described in subsection (a) of Section 33-5-109 of this title or expiration of the letter of credit before presentation.

e. An issuer shall observe standard practice of financial institutions that regularly issue letters of credit. Determination of the issuer's observance of the standard practice is a matter of interpretation for the court. The court shall offer the parties a reasonable opportunity to present evidence of the standard practice.

f. An issuer is not responsible for:
   1. The performance or nonperformance of the underlying contract, arrangement, or transaction;
   2. An act or omission of others; or
   3. Observance or knowledge of the usage of a particular trade other than the standard practice referred to in subsection (e) of this section.

g. If an undertaking constituting a letter of credit under paragraph (10) of subsection (a) of Section 33-5-102 of this title contains nondocumentary conditions, an issuer shall disregard the nondocumentary conditions and treat them as if they were not stated.

h. An issuer that has dishonored a presentation shall return the documents or hold them at the disposal of, and send advice to that effect to, the presenter.

i. An issuer that has honored a presentation as permitted or required by this article:
   1. Is entitled to be reimbursed by the applicant in immediately available funds not later than the date of its payment of funds;
   2. Takes the documents free of claims of the beneficiary or presenter;
   3. Is precluded from asserting a right of recourse on a draft under Sections 33A-3-414 and 33-3-415 of this title;
   4. Except as otherwise provided in Sections 33-5-110 and 33-5-117 of this title, is precluded from restitution of money paid or other value given by mistake to the extent the mistake concerns discrepancies in the documents or tender which are apparent on the face of the presentation; and
   5. Is discharged to the extent of its performance under the letter of credit unless the issuer honored a presentation in which a required signature of a beneficiary was forged.

Section 5-109 – Fraud and Forgery

a. If the presentation is made that appears on its face strictly to comply with the terms and conditions of the letter of credit, but a required document is forged or materially fraudulent, or honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant:
    1. The issuer shall honor the presentation, if honor is demanded by:
        i. A nominated person who has given value in good faith and without notice of forgery or material fraud;
        ii. A confirmer who has honored its confirmation in good faith;
        iii. A holder in due course of a draft drawn under the letter of credit which was taken after acceptance by the issuer or nominated person; or
        iv. An assignee of the issuer's or nominated person's deferred obligation that was taken for value and without notice of forgery or material fraud after the obligation was incurred by the issuer or nominated person; and
    2. The issuer, acting in good faith, may honor or dishonor the presentation in any other case.
b. If an applicant claims that a required document is forged or materially fraudulent or that honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant, a court of competent jurisdiction may temporarily or permanently enjoin the issuer from honoring a presentation or grant similar relief against the issuer or other persons only if the court finds that:
    1. The relief is not prohibited under the law applicable to an accepted draft or deferred obligation incurred by the issuer;
    2. A beneficiary, issuer, or nominated person who may be adversely affected is adequately protected against loss that it may suffer because the relief is granted;
    3. All of the conditions to entitle a person to the relief under the law of this state have been met; and
    4. On the basis of the information submitted to the court, the applicant is more likely than not to succeed under its claim of forgery or material fraud and the person demanding honor does not qualify for protection under paragraph (1) of subsection (a) of this section.

Section 5-110 – Warranties

a. If its presentation is honored, the beneficiary warrants:
    1. To the issuer, any other person to whom presentation is made, and the applicant that there is no fraud or forgery of the kind described in subsection (a) of Section 33-5-109 of this title; and

2. To the applicant that the drawing does not violate any agreement between the applicant and beneficiary or any other agreement intended by them to be augmented by the letter of credit.

b. The warranties in subsection (a) of this section are in addition to warranties arising under Chapters 3, 4, 7 and 8 of this title because of the presentation or transfer of documents covered by any of those articles.

Section 5-111 – Remedies

a. If an issuer wrongfully dishonors or repudiates its obligation to pay money under a letter of credit before presentation, the beneficiary, successor, or nominated person presenting on its own behalf may recover from the issuer the amount that is the subject of the dishonor or repudiation. If the issuer's obligation under the letter of credit is not for the payment of money, the claimant may obtain specific performance or, at the claimant's election, recover an amount equal to the value of performance from the issuer. In either case, the claimant may also recover incidental but not consequential damages. The claimant is not obligated to take action to avoid damages that might be due from the issuer under this subsection. If, although not obligated to do so, the claimant avoids damages, the claimant's recovery from the issuer must be reduced by the amount of damages avoided. The issuer has the burden of proving the amount of damages avoided. The issuer has the burden of proving the amount of damages avoided. In the case of repudiation the claimant need not present any document.

b. If an issuer wrongfully dishonors a draft or demand presented under a letter of credit or honors a draft or demand in breach of its obligation to the applicant, the applicant may recover damages resulting from the breach, including incidental but not consequential damages, less any amount saved as a result of the breach.

c. If an adviser or nominated person other than a confirmer breaches an obligation under this article or an issuer breaches an obligation not covered in subsection (a) or (b) of this section, a person to whom the obligation is owed may recover damages resulting from the breach, including incidental but not consequential damages, less any amount saved as a result of the breach. To the extent of the confirmation, a confirmer has the liability of an issuer specified in this subsection and subsections (a) and (b) of this section.

d. An issuer, nominated person, or adviser who is found liable under subsection (a), (b), or (c) of this section shall pay interest on the amount owed thereunder from the date of wrongful dishonor or other appropriate date.

e. Reasonable attorney's fees and other expenses of litigation must be awarded to the prevailing party in an action in which a remedy is sought under this article.

f. Damages that would otherwise be payable by a party for breach of an obligation under this article may be liquidated by agreement or undertaking, but only in an amount or by a formula that is reasonable in light of the harm anticipated.

Section 5-112 – Transfer of Letter of Credit

a. Except as otherwise provided in Section 33-5-113 of this title, unless a letter of credit provides that it is transferable, the right of a beneficiary to draw or otherwise demand performance under a letter of credit may not be transferred.
b. Even is a letter of credit provides that it is transferable, the issuer may refuse to recognize or carry out a transfer if:
    1. The transfer would violate applicable law; or
    2. The transferor or transferee has failed to comply with any requirement stated in the letter of credit or any other requirement relating to transfer imposed by the issuer which is within the standard practice referred to in subsection (e) of Section 33-5-108 of this title or is otherwise reasonable under the circumstances.

Section 5-113 – Transfer by Operation of Law

a. A successor of a beneficiary may consent to amendments, sign and present documents, and receive payment or other items of value in the name of the beneficiary without disclosing its status as a successor.
b. A successor of a beneficiary may consent to amendments, sign and present documents, and receive payment or other items of value in its own name as the disclosed successor of the beneficiary. Except as otherwise provided in subsection (e) of this section, an issuer shall recognize a disclosed successor of a beneficiary as beneficiary in full substitution for its predecessor upon compliance with the requirements for recognition by the issuer of a transfer of compliance with the requirements for recognition by the issuer of a transfer of drawing rights by operation of law under the standard practice referred to in subsection (e) of Section 33-5-108 of this title or, in the absence of such a practice, compliance with other reasonable procedures sufficient to protect the issuer.
c. An issuer is not obligated to determine whether a purported successor is a successor of a beneficiary or whether the signature of a purported successor is genuine or authorized.
d. Honor of a purported successor's apparently complying presentation under subsection (a) or (b) of this section has the consequences specified in subsection (i) of Section 33-5-108 of this title even if the purported successor is not the successor of a beneficiary. Documents signed in the name of the beneficiary or of a disclosed successor by a person who is neither the beneficiary nor the successor of the beneficiary are forged documents for the purposes of Section 33-5-109 of this title.
e. An issuer whose rights of reimbursement are not covered by subsection (d) of this section or substantially similar law and any conformer or nominated person may decline to recognize a presentation under subsection (b) of this section.

f. A beneficiary whose name is changed after the issuance of a letter of credit has the same rights and obligations as a successor of a beneficiary under this section.

Section 5-114 – Assignment of Proceeds

a. In this section, "proceeds of a letter of credit" means the cash, check, accepted draft, or other item of value paid or delivered upon honor or giving of value by the issuer or any nominated person under the letter of credit. The term does not include a beneficiary's drawing rights or documents presented by the beneficiary.
b. A beneficiary may assign its right to part or all of the proceeds of a letter of credit. The beneficiary may do so before presentation as a present assignment of its right to receive proceeds contingent upon its compliance with the terms and conditions of the letter of credit.
c. An issuer or nominated person need not recognize an assignment of proceeds of a letter of credit until it consents to the assignment.
d. An issuer or nominated person has no obligation to give or withhold its consent to an assignment of proceeds of a letter of credit, but consent may not be unreasonably withheld if the assignee possesses and exhibits the letter of credit and presentation of the letter of credit is a condition to honor.
e. Rights of a transferee beneficiary or nominated person are independent of the beneficiary's assignment of the proceeds of a letter of credit and are superior to the assignee's right to the proceeds.
f. Neither the rights recognized by this section between an assignee and an issuer, transferee beneficiary, or nominated person nor the issuer's or nominated person's payment of proceeds to an assignee or a third person affect the rights between the assignee and any person other than the issuer, transferee beneficiary, or nominated person. The mode of creating and perfecting a security interest in or granting an assignment of a beneficiary's rights to proceeds is governed by Chapter 9 of this Title or other law. Against persons other than the issuer, transferee beneficiary, or nominated person, the rights and obligations arising upon the creation of a security interest or other assignment of a beneficiary's right to proceeds and its perfection are governed by Chapter 9 of this title or other law.

Section 5-115 – Statute of Limitations

An action to enforce a right or obligation arising under this article must be commenced within one (1) year after the expiration date of the relevant letter of credit or one (1) year after the cause of action accrues, whichever occurs later. A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach.

Section 5-116 – Choice of Law and Forum

a. The liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction chosen by an agreement in the form of a record signed or otherwise authenticated by the affected parties in the manner provided in Section 33-5-104 of this title or by a provision in the person's letter of credit, confirmation, or other undertaking. The jurisdiction whose law is chosen need not bear any relation to the transaction.
b. Unless subsection (a) of this section applies, the liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction in which the person is located. The person is considered to be located at the address indicated in the person's undertaking. If more than one address is indicated, the person is considered to be located at the address from which the person's undertaking was issued. For the purpose of jurisdiction, choice of law and recognition of inter branch letters of credit, but not enforcement of a judgment, all branches of a bank are considered separate judicial entities and a bank is considered to be located at the place where its relevant branch is considered to be located under this subsection.
c. Except as otherwise provided in this subsection, the liability of an issuer, nominated person, or adviser is governed by any rules of custom or practice, such as the Uniform Customs and Practice for Documentary Credits, to which the letter of credit, confirmation, or other undertaking is expressly made subject. If:
    1. This article would govern the liability of an issuer, nominated person, or adviser under subsection (a) or (b) of this section;
    2. The relevant undertaking incorporates rules of custom or practice; and
    3. There is conflict between this article and those rules applied to that undertaking those rules govern except to the extent of any conflict with the nonvariable provisions specified in subsection (c) of Section 12A-5-103 of this title.
d. If there is conflict between this article and Chapter 3, 4, 4A, or 9 of this title, this Chapter governs.
e. The forum for settling disputes arising out of an undertaking within this Chapter may be chosen in the manner and with the binding effect that governing law may be chosen in accordance with subsection (a) of this section.

Section 5-117 – Subrogation of Issuer, Applicant, and Nominated Person

a. An issuer that honors a beneficiary's presentation is subrogated to the rights of the beneficiary to the same extent as if the issuer were a secondary obligor of the underlying obligation owed to the beneficiary and of the applicant to the same extent as if the issuer were the secondary obligor of the underlying obligation owed to the applicant.
b. An applicant that reimburses an issuer is subrogated to the rights of the issuer against any beneficiary, presenter, or nominated person to the same extent as if the applicant were the secondary obligor of the obligations owed to the issuer and has the rights of subrogation of the issuer to the rights of the beneficiary stated in subsection (a) of this section.

c. A nominated person who pays or gives value against a draft or demand presented under a letter of credit is subrogated to the rights of:
    1. The issuer against the applicant to the same extent as if the nominated person were a secondary obligor of the obligation owed to the issuer by the applicant;
    2. The beneficiary to the same extent as if the nominated person were a secondary obligor of the underlying obligation owed to the beneficiary; and
    3. The applicant to the same extent as if the nominated person were a secondary obligor of the underlying obligation owed to the applicant.
d. Notwithstanding any agreement or term to the contrary, the rights of subrogation stated in subsections (a) and (b) of this section do not arise until the issuer honors the letter of credit or otherwise pays and the rights in subsection (c) of this section do not arise until the nominated person pays or otherwise gives value. Until, then, the issuer, nominated person, and the applicant do not derive under this section present or prospective rights forming the basis of a claim, defense, or excuse.

Section 5-118 – Applicability

This act applies to a letter of credit that is issued after passage of this Act. This act does not apply to a transaction, event, obligation, or duty arising out of or associated with a letter of credit that was issued before this Act's passage.

Section 5-118.1 – Security Interest of Issuer or Nominated Person

a. An issuer or nominated person has a security interest in a document presented under a letter of credit and any identifiable proceeds of the collateral to the extent that the issuer or nominated person honors or gives value for the presentation.
b. As long as and to the extent that an issuer or nominated person has not been reimbursed or has not otherwise recovered the value given with respect to a security interest in a document under subsection (a) of this section, the security interest continues and is subject to Chapter 9 of this title, but:
    1. A security agreement is not necessary to make the security interest enforceable under paragraph (3) of subsection (b) of Section 1-9-203 of this title;
    2. If the document is presented in a medium other than a written or other tangible medium, the security interest is perfected; and
    3. If the document is presented in a written or other tangible medium and is not a certificated security, chattel paper, a document of title, an instrument, or a letter of credit, so long as the debtor does not have possession of the document, the security is perfected and has priority over a conflicting security interest in the document.

Section 5-119 – Savings Clause

A transaction arising out of or associated with a letter of credit that was issued before the enactment of this Act, and the rights, obligations, and interests flowing from that transaction are governed by any statute or other law amended or repealed by this act as if repeal or amendment had not occurred and may be terminated, completed, consummated, or enforced under that statute or other law.

Chapter 6 – Bulk Sales – Reserved

Chapter 7 – Warehouse Receipts, Bills of Lading, and Other Documents of Title

Subchapter 1 – General

Section 7-101 – Short Title

This article shall be known and may be cited as Uniform Commercial Code – Documents of Title.

Section 7-102 – Definitions and Index of Definitions

a. In this article, unless the context otherwise requires
    1. "Bailee" means a person that by a warehouse receipt, bill of lading or other document of title acknowledges possession of goods and contracts to deliver them.
    2. "Carrier" means a person that issues a bill of lading.
    3. "Consignee" means a person named in a bill of lading to which or to whose order the bill promises delivery.
    4. "Consignor" mans the person named in a bill of lading as the person from whom the goods have been received for shipment.
    5. "Delivery order" means a record that contains an order to deliver goods directed to a warehouse, carrier, or other person that in the ordinary course of business issues warehouse receipts or bills of lading.
    6. "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.
    7. "Goods" means all things that are treated as movable for the purposes of a contract of storage or transportation.
    8. "Issuer" means a bailee that issues a document of title or, in the case of an unaccepted delivery order, the person that orders the possessor of goods to deliver. The term includes a person for which an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue document if the agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, even if the issuer did not receive any goods, the goods were misdescribed or in any other respect the agent or employee violated the issuer's instructions.

9. “Person entitled under the document” means the holder, in the case of a negotiable document of title, or the person to which delivery of the goods is to be made by the terms of, or pursuant to instructions in a record under, a nonnegotiable document of title.
10. “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
11. “Sign” means, with present intent to authenticate or adopt a record:
    a. To execute or adopt a tangible symbol; or
    b. To attach to or logically associate with the record an electronic sound, symbol, or process.
12. “Shipper” means a person that enters into a contract of transportation with a carrier.
13. “Warehouse” means a person engaged in the business of storing goods for hire.

b. Definitions in other articles applying to this article and the sections in which they appear are:
    1. “Contract for sale” Section 2-106.
    2. “Lessee in the ordinary course of business” Section 2A-103.
    3. “Receipt of goods” Section 2-103.

c. In addition Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this Chapter.

Section 7-103 – Relation of Article to Treaty or Statute

a. This Chapter is subject to any treaty or statute of the United States or regulator statute of this Nation to the extent the treaty, statute, or regulatory statute is applicable.
b. This article does not modify or repeal any law prescribing the form or content of a document of title or the services or facilities to be afforded by a bailee, or otherwise regulating a bailee’s business in respects not specifically treated in this article. However, violation of such a law does not affect the status of a document of title that otherwise is within the definition of a document of title.
c. This article modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C., Section 7001 et seq.) but does not modify, limit, or supersede Section 101 (c) of that act (15 U.S.C., Section 7001 et seq.) but does not modify, limit or supersede Section 101 (c) of that act (15 U.S.C., Section 7001 (c) or authorize electronic delivery of the notices described in Section 103 (b).
d. To the extent there is a conflict between any law governing electronic transactions and this article, this Chapter governs.

Section 7-104 – Negotiable and Nonnegotiable Document of Title

a. Except as otherwise provided in subsection (c) of this section, a document of title is negotiable if by its terms the goods are to be delivered to bearer or to the order of a named person.

b. A document of title other than one described in subsection (a) of this section is nonnegotiable. A bill of lading that states that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against an order in a record signed by the same or another named person.
c. A document of title is nonnegotiable if, at the time it is issued, the document has a conspicuous legend, however expressed, that it is nonnegotiable.

Section 7-105.1 – Reissuance in Alternative Medium

a. Upon request of a person entitled under an electronic document of title, the issuer of the electronic document may issue a tangible document of title as a substitute for the electronic document if:
    1. The person entitled under the electronic document surrenders control of the document to the issuer; and
    2. The tangible document when issued contains a statement that it is issued in substitution for the electronic document.
b. Upon issuance of a tangible document of title in substitution for an electronic document of title in accordance with subsection (a) of this section:
    1. The electronic document ceases to have any effort or validity; and
    2. The person that procured issuance of the tangible document warrants to all subsequent persons entitled under the tangible document that the warrantor was a person entitled under the electronic document when the warrantor surrendered control of the electronic document to the issuer.
c. Upon request of a person entitled under a tangible document of title, the issuer of the tangible document may issue an electronic document of title as a substitute for the tangible document if:
    1. The person entitled under the tangible document surrenders possession of the document to the issuer; and
    2. The electronic document when issued contains a statement that it is issued in substitution for the tangible document.
d. Upon issuance of electronic document of title in substitution for a tangible document of title in accordance with subsection (c) of this section:
    1. The tangible document ceases to have any effect or validity; and
    2. The person that procured issuance of the electronic document warrants to all subsequent persons entitled under the electronic document that the warrantor was a person entitled under the tangible document when the warrantor surrendered possession of the tangible document to the issuer.

Section 7-106 – Control of Electronic Document of Title

a. A person has control of an electronic document of title if a system employed for evidencing the transfer of interests in the electronic document reliably establishes that person as the person to which the electronic document was issued or transferred.
b. A system satisfied subsection (a) of this section, and a person is deemed to have control of an electronic document of title, if the document is created, stored, and assigned in such a manner that:
    1. A single authoritative copy of the document exists which is unique, identifiable, and, except as otherwise provided in paragraphs (4), (5), and (6) of this subsection, unalterable;
    2. The authoritative copy identifies the person asserting control as:
        a. The person to which the document was issued; or
        b. If the authoritative copy indicates that the document has been transferred, the person to which the document was most recently transferred;
    3. The authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;
    4. Copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;
    5. Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and
    6. Any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

Subchapter 2 – Warehouse Receipts – Special Provisions

Section 7-201 – Persons That May Issue a Warehouse Receipt – Storage under Bond

a. A warehouse receipt may be issued by any warehouse.
b. If goods, including distilled spirits and agricultural commodities, are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods is deemed to be a warehouse receipt even if issued by a person who is the owner of the goods and is not a warehouse.

Section 7-202 – Form of Warehouse Receipt – Effect of Omission

a. A warehouse receipt need not be in any particular form.
b. Unless a warehouse receipt provides for each of the following, the warehouse is liable for damages caused to a person injured by the omission:
    1. A statement of the location of the warehouse where the goods are stored;
    2. The date of the issue of the receipt;
    3. The unique identification code of the receipt;

4. A statement whether the goods received will be delivered to the bearer, to a named person, or to a named person or its order;
5. The rate of storage and handling charges, unless goods are stored under a field warehousing arrangement, in which case a statement of that fact is sufficient on a nonnegotiable receipt;
6. A description of the goods or of the packages containing them;
7. The signature of the warehouse or its agent;
8. If the receipt is issued for goods that the warehouse owns, either solely, jointly, or in common with others, a statement of the fact of that ownership; and
9. A statement of the amount of advances made and of liabilities incurred for which the warehouse claims a lien or security interest, unless the precise amount of advances made or liabilities incurred, at the time of the issue of the receipt, is unknown to the warehouse or to its agent that issued the receipt, in which case a statement of the fact that advances have been made or liabilities incurred and the purpose of the advances or liabilities is sufficient.

c. A warehouse may insert in its receipt any terms that are not contrary to the provisions of the Uniform Commercial Code and do not impair its obligation of delivery under Section 33-7-403 of this title or its duty of care under Section 33-7-204 of this title. Any contrary provisions are ineffective.

Section 7-203 – Liability for Non-Receipt or Misdescription

A party to or purchaser for value in good faith of a document of title, other than a bill of lading, that relies upon the description of the goods in the document may recover from the issuer damages caused by the non-receipt or misdescription of the goods, except to the extent that:

1. The document conspicuously indicates that the issuer does not know whether all or part of the goods in fact were received or conform to the description, such as a case in which the description is in terms of marks or labels or kind, quantity, or condition, or the receipt or description is qualified by “contents, condition, and quality unknown,” “said to contain” or words of similar import, is such indication is true; or
2. The party or purchaser otherwise has notice of the non-receipt or misdescription.

Section 7-204 – Duty of Care – Contractual Limitation of Warehouse’s Liability

a. A warehouse is liable for damages for loss of injury to the goods caused by its failure to exercise care with regard to the goods as a reasonably careful person would exercise under similar circumstances. Unless otherwise agreed, the warehouse is not liable for damages that could not have been avoided by the exercise of that care.
b. Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage beyond which the warehouse shall not be liable. Such a limitation is not effective with respect to the warehouse’s liability for conversion to its

own use. On request of the bailor in a record at the time of signing the storage agreement or within a reasonable time after receipt of the warehouse receipt, the warehouse's liability may be increased on part or all of the goods covered by the storage agreement or the warehouse receipt. In this event, increased rates may be charged based on an increased valuation of the goods.

c. Reasonable provisions as to the time and manner of presenting claims and commencing actions based on the bailment may be included in the warehouse receipt or storage agreement.

Section 7-205 – Title under Warehouse Receipt Defeated in Certain Cases

A buyer in the ordinary course of business of fungible goods sold and delivered by a warehouse that is also in the business of buying and selling such goods takes the goods free of any claim under a warehouse receipt even if the receipt is negotiable and has been duly negotiated.

Section 7-206 – Termination of Storage at Warehouse's Option

a. A warehouse, by giving notice to the person on whose account the goods are held and any other person known to claim an interest in the goods, may require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document of title, or, if a period is not fixed, within a stated period not less than thirty (30) days after the warehouse gives notice. If the goods are not removed before the date specified in the notice, the warehouse may sell them pursuant to Section 33-7-210 of this title.
b. If a warehouse in good faith believes that goods are about to deteriorate or decline in value to less than the amount if its lien within the time provided in subsection (a) of this section and Section 33-7-210 of this title, the warehouse may specify in the notice given under subsection (a) of this section any reasonable shorter time for removal of the goods and, if the goods are not removed, may sell them at public sale held not less than one (1) week after a single advertisement or posting.
c. If, as a result of a quality or condition of the goods of which the warehouse did not have notice at the time of deposit, the goods are a hazard to other property, the warehouse facilities, or other persons, the warehouse may sell the goods at public or private sale without advertisement or posting on reasonable notification to all persons known to claim an interest in the goods. If the warehouse, after a reasonable effort, is unable to sell the goods, it may dispose of them in any lawful manner and does not incur liability reason of that disposition.
d. A warehouse shall deliver the goods to any person entitled to them under this article upon due demand made at any time before sale or other disposition under this section.
e. A warehouse may satisfy its lien from the proceeds of any sale or disposition under this section but shall hold the balance for delivery on the demand of any person to which the warehouse would have been bound to deliver the goods.

Section 7-207 – Goods Must be Kept Separate – Fungible Goods

a. Unless the warehouse receipt otherwise provides, a warehouse shall keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods. However, different lots of fungible goods may be commingled.
b. If different lots of fungible goods are commingled, the goods are owned in common by the persons entitled thereto and the warehouse is severally liable to each owner for that owner's share. If, because of overissue, a mass of fungible goods is insufficient to meet all the receipts which the warehouse has issued against it, the persons entitled include all holders to which overissued receipts have been duly negotiated.

Section 7-208 – Altered Warehouse Receipts

If a blank in a negotiable tangible warehouse receipt has been filled in without authority, a good faith purchaser for value and without notice of the lack of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any tangible or electronic warehouse receipt enforceable against the issuer according to its original tenor.

Section 7-209 – Lien of Warehouse

a. A warehouse has a lien against the bailor on the goods covered by a warehouse receipt or storage agreement or on the proceeds thereof in its possession for charges for storage or transportation, including demurrage and terminal charges, insurance, labor, or other charges, present or future, in relation to the goods, and for expenses necessary for preservation of the goods or reasonable incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for similar charges or expenses in relation to other goods whenever deposited and it is stated in the warehouse receipt or storage agreement that a lien is claimed for charges and expenses in relation to other goods, the warehouse also has a lien against the goods covered by the warehouse receipt or storage agreement or on the goods have been delivered by the warehouse. However, as against a person to which a negotiable warehouse receipt is duly negotiated, a warehouse's lien is limited to charges in an amount or at a rate specified in the warehouse receipt or, if no charges in an amount or at a rate specified in the warehouse receipt or, if no charges are so specified, to a reasonable charge for storage of the specific goods covered by the receipt subsequent to the date of the receipt.
b. A ware house may also reserve a security interest against the bailor for the maximum amount specified on the receipt for charges other than those specified in subsection (a) of this section, such as for money advanced and interest. The security interest is governed by Chapter 9.
c. A warehouse's lien for charges and expenses under subsection (a) of this section or a security interest under subsection (b) of this section is also effective against any person that so entrusted the bailor with possession of the goods that a pledge of them by the bailor to a good faith

purchaser for value would have been valid. However, the lien or security interest is not effective against a person that before issuance of a document.

1. Delivers or entrusts the goods or any document of title covering the goods to the bailor or the bailor's nominee with:
   A. Actual or apparent authority to ship, store, or sell:
   B. Power to obtain delivery under Section 7-403 of this title; or
   C. Power of disposition under Section 2-403, 2A-304(2), 2A-305(2), and Chapter 9 of the Uniform Commercial Code or other statute or rule of law; or
2. Acquiesces in the procurement by the bailor or its nominee of any document.

d. A warehouse's lien on household goods for charges and expenses in relation to the goods under subsection (a) of this section is also effective against all persons if the depositor was the legal possessor of the goods at the time of deposit. In this subsection, "household goods" means furniture, furnishings, or personal effects used by the depositor in a dwelling.
e. A warehouse loses its lien on any goods that it voluntarily delivers or unjustifiably refuses to deliver.

Section 7-210 – Enforcement of Warehouseman's Lien

a. Except as provided in subsection (b) of this section, a warehouse's lien may be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a method different from that selected by the warehouse is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The warehouse sells in a commercially reasonable manner if the warehouse sells the goods in the usual manner in any recognized market therefore, sells at the price current in that market at the time of the sale, or otherwise sells in conformity with commercially reasonable practices among dealers in the type of goods sold. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.
b. A warehouse may enforce its lien on goods other than goods stored by a merchant in the course of its business, only if the following requirements are satisfied:
   1. All persons known to claim an interest in the goods must be notified.
   2. The notification must include an itemized statement of the claim, a description of the goods subject to a lien, a demand for payment within a specified time not less than ten (10) days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.

3. The sale must conform to the terms of the notification.
4. The sale must be held at the nearest suitable place to that where the goods are held or stored.
5. After the expiration of the time given in the notification, an advertisement of the sale must be published once a week for two (2) weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account they are being held, and the time and place of the sale. The sale must take place at least fifteen (15) days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least ten (10) days before the sale in not fewer than six conspicuous places in the neighborhood of the proposed sale.

c. Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonably expenses incurred in complying with this section. In that event, the goods may not be sold but must be retained by the warehouse subject to the terms of the receipt and this article.
d. A warehouse may buy at any public sale pursuant to this section.
e. A purchaser in good faith of goods sold to enforce a warehouse's lien takes the goods free of any rights of persons against which the lien was valid, despite the warehouse's noncompliance with this section.
f. A warehouse may satisfy its lien from the proceeds of any sale pursuant to this section but shall hold the balance, if any, for delivery on demand to any person to which the warehouse would have been bound to deliver the goods.
g. The rights provided by this section are in addition to all other rights allowed by law to a creditor against a debtor.
h. If a lien is on goods stored by a merchant in the course of its business the lien may be enforced in accordance with subsection (a) or (b) of this section.
i. A warehouse is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of willful violation, is liable for conversion.

Subchapter 3 – Bills of Lading – Special Provisions

Section 7-301 – Liability for Non-Receipt or Misdescription – "Said to Contain" – "Shipper's Load and Count" – Improper Handling

a. A consignee of a nonnegotiable bill of lading which has given value in good faith, or a holder to which a negotiable bill has been duly negotiated, relying upon the description of the goods in the bill or upon the date shown in the bill, may recover from the issuer damages caused by the misdating of the bill or the non-receipt or misdescription of the goods, except to the extent that the bill indicates that the issuer does not know whether any part or all of the goods in fact were

received or conform to the description, such as in a case in which the description is in terms of marks or labels or kind, quantity, or condition or the receipt or description is qualified by "contents or condition of contents of packages unknown," "said to contain," "shipper's weight, load and count" or words of similar import, is such indication is true.

b. If goods are loaded by an issuer of a bill of lading:
   1. The issuer shall count the packages of goods if shipped in packages and ascertain the kind and quantity if shipped in bulk freight; and
   2. Words such as "shipper's weight, load and count" or words or similar import indicating that the description was made by the shipper are ineffective except as to goods concealed by packages.
c. If bulk goods are loaded by a shipper that makes available to the issuer of a bill of lading, adequate facilities for weighing those goods, the issuer shall ascertain the kind and quantity within a reasonable time after receiving the shipper's request in a record to do so. In that case, "shipper's weight" or words of similar import are ineffective.
d. The issuer of a bill of lading, by including in the bill the words "shipper's weight, load and count" or words of similar import may indicate that the goods were loaded by the shipper, and, if that statement is true, the issuer shall not be liable for damages caused by the improper loading. However, omission of such words does not imply liability for such damages caused by improper loading.
e. A shipper guarantees to an issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition and weight, as furnished by the shipper, and the shipper shall indemnify the issuer against damage caused by inaccuracies in those particulars. The right of indemnity does not limit the issuer's responsibility and liability under the contract of carriage to any person other than the shipper.

Section 7-302 – Through Bills of Lading and Similar Documents of Title

a. The issuer of a through bill of lading, or other document embodying an undertaking to be performed in part by a person acting as its agent or by a performing carrier, is liable to any person entitled to recover on the bill or other document for any breach by the other person or the performing carrier of its obligation under the bill or document. However, to the extent that the bill or other document covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation, this liability for breach by the other person or the performing carrier may be varied by agreement of the parties.
b. If goods covered by a through bill of lading or other document of title embodying an undertaking to be performed in part by a person other than the issuer are received by that person, the person is subject, with respect to its own performance while the goods are in its possession, to the obligation of the issuer. The person's obligation is discharged by delivery of

the goods to another person pursuant to the bill or document and does not include liability for breach by any other person or by the issuer.

c. The issuer of a though bill of lading or other document of title described in subsection (a) of this section is entitled to recover from the connecting carrier, or other person in possession of the goods when the breach of the obligation under the bill or other document occurred:
    1. The amount it may be required to pay to any person entitled to recover on the bill or other document for the breach, as may be evidenced by an receipt, judgment, or transcript of judgment; and
    2. The amount of any expense reasonably incurred by the issuer in defending any action by any person entitled to recover on the bill or other document for the breach.

Section 7-303 – Diversion – Reconsignment – Change of Instructions

a. Unless the bill of lading otherwise provides, a carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods, without liability for misdelivery, on instructions from:
    1. The holder of a negotiable bill;
    2. The consignor on a nonnegotiable bill, even if the consignee has given contrary instructions;
    3. The consignee on a nonnegotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the tangible bill or in control of the electronic bill; or
    4. The consignee on a nonnegotiable bill, if the consignee is entitled as against the consignor to dispose of the goods.
b. Unless instructions described in subsection (a) of this section are included in a negotiable bill of lading, a person to which the bill is duly negotiated may hold the bailee according to the original terms.

Section 7-304 – Bills of Lading in a Set

a. Except as customary in international transportation, a tangible bill of lading may not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.
b. If a tangible bill of lading is lawfully issued in a set of parts, each of which has an identification code and is expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts constitutes one bill.
c. If a tangible negotiate bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to which the first due negotiation is made prevails as to both the document of title and the goods even if any later holder may have received the goods from the carrier in goods even if any later holder may have received the goods from the carrier in good faith and discharged the carrier's obligation by surrendering its part.

d. A person that negotiates or transfers a single part of a tangible bill of lading issued in a set is liable to holders of that part as if it were the whole set.
e. The bailee shall deliver in accordance with subchapter 4 of this Chapter against the first presented part of a tangible bill of lading lawfully issued in a set. Delivery in this manner discharges the bailee's obligation on the whole bill.

Section 7-305 – Destination Bills

a. Instead of issuing a bill of lading to the consignor at the place of shipment, a carrier, at the request of the consignor, may procure the bill to be issued at destination or at any other place designated in the request.
b. Upon request of a person entitled as against a carrier to control the goods while in transit and on surrender of possession or control of any outstanding bill of lading or other receipt covering the goods, the issuer, subject to Section 33-7-105 of this title, may procure a substitute bill to be issued at any place designated in the request.

Section 7-306 – Altered Bills of Lading

An unauthorized alteration or filing in of a blank in a bill of lading leaves the bill enforceable according to its original tenor.

Section 7-307 – Lien of Carrier

a. A carrier has a lien on the goods covered by a bill of lading or on the proceeds thereof in its possession for charges subsequent to the date of the carrier's receipt of the goods for storage or transportation, including demurrage and terminal charges, and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. However, against a purchaser for value of a negotiable bill of lading, a carrier's lien is limited to charges stated in the bill or the applicable tariffs or, if no charges are stated, a reasonable charge.
b. A lien for charges and expenses under subsection (a) of this section on goods that the carrier was required by law to receive for transportation is effective against the consignor or any person entitled to the goods unless the carrier had notice that the consignor lacked authority to subject the goods to those charges and expenses. Any other lien under subsection (a) of this section is effective against the consignor and any person that permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked authority.
c. A carrier loses its lien on any goods that it voluntarily delivers or unjustifiably refuses to deliver.

Section 7-308 – Enforcement of Carrier's Lien

a. A carrier's lien on goods may be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The carrier sells goods in a commercially reasonable manner if the carrier sells the goods in the usual manner in any recognized market therefore, sells at the price current in that market at the time of the sale, or otherwise sells in conformity with commercially reasonable practices among dealers in the type of goods sold. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.
b. Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying with this section. In that event, the goods may not be sold but must be retained by the carrier, subject to the terms of the bill of lading and this article.
c. A carrier may buy at any public sale pursuant to this section.
d. A purchaser in good faith of goods sold to enforce a carrier's lien takes the goods free of any rights of persons against which the lien was valid, despite the carrier's noncompliance with this section.
e. A carrier may satisfy its lien from the proceeds of any sale pursuant to this section but shall hold the balance, if any, for delivery on demand to any person to which the carrier would have been bound to deliver the goods.
f. The rights provided by this section are in addition to all other rights allowed by law to a creditor against a debtor.
g. A carrier's lien may be enforced pursuant to either subsection (a) of this section or the procedure set forth in subsection (b) of Section 33-7-210 of this title.
h. A carrier is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of willful violation, is liable for conversion.

Section 7-309 – Duty of Care – Contractual Limitation of Carrier's Liability

a. A carrier that issues a bill of lading, whether negotiable or nonnegotiable, shall exercise the degree of care in relation to the goods which a reasonably careful person would exercise under similar circumstances. This subsection does not affect any statute, regulation, or rule of law that imposes liability upon a common carrier for damages not caused by its negligence.
b. Damages may be limited by a term in the bill of lading or in a transportation agreement that the carrier's liability may not exceed a value stated in the bill or transportation agreement if the

carrier's rates are dependent upon value and the consignor is afforded an opportunity to declare a higher value and the consignor is advised of the opportunity. However, such a limitation is effective with respect to the carrier's liability for conversion to its own use.

c. Reasonable provisions as to the time and manner of presenting claims and commencing actions based on the shipment may be included in a bill of lading or transportation agreement.

Subchapter 4 – Warehouse Receipts and Bills of Lading – General Obligations

Section 7-401 – Irregularities in Issue of Receipt or Bill or Conduct of Issuer

The obligations imposed by this article on an issuer apply to a document of title even if:

1. The document does not comply with the requirements of this article or of any other statute, rule, or regulation regarding its issue, form or content;
2. The issuer violated laws regulating the conduct of its business;
3. The goods covered by the document were owned by the bailee at the time the document was issued; or
4. The person issuing the document is not a warehouse but the document purports to be a warehouse receipt.

Section 7-402 – Duplicate Receipt or Bill – Overissue

A duplicate or any other document of title purporting to cover goods already represented by an outstanding document of the same issuer does not confer any right in the goods, except as provided in the case of tangible bills of lading in a set of parts, overissue of documents for fungible goods, substitutes for lost, stolen, or destroyed documents, or substitute documents issued pursuant to Section 33-4-105.1 of this title. The issuer is liable for damages caused by its overissue or failure to identify a duplicate document as such by conspicuous notation.

Section 7-403 – Obligation of Bailee to Deliver – Excuse

a. A bailee shall deliver the goods to a person entitled under a document of title if the person complies with subsections (b) and (c) of this section, unless and to the extent that the bailee establishes any of the following:
    1. Delivery of the goods to a person whose receipt was rightful as against the claimant;
    2. Damage to or delay, loss or destruction of the goods for which the bailee is not liable;
    3. Previous sale or other disposition of the goods in lawful enforcement of a lien or on warehouse's lawful termination of storage;
    4. The exercise by a seller of its right to stop delivery pursuant to Section 33-2-705 of this title or by a lessor of its right to stop delivery pursuant to Section 33-2A-526 of this title;
    5. A diversion, reconsignment or other disposition pursuant to Section 7-303 of this title;

6. Release, satisfaction or any other personal defense against the claimant; or
7. Any other lawful excuse.

b. A person claiming goods covered by a document of title shall satisfy the bailee's lien if the bailee so requests or if the bailee is prohibited by law from delivering the goods until the charges are paid.

c. Unless the person claiming the goods is a person against which the document of title does not confer a right under subsection (a) of Section 33-7-503 of this title:
   1. The person claiming under a document shall surrender possession or control of any outstanding negotiable document covering the goods for cancellation or indication of partial deliveries; and
   2. The bailee shall cancel the document or conspicuously indicate in the document the partial delivery or the bailee is liable to any person to which the document is duly negotiated.

Section 7-404 – No Liability for Good-Faith Delivery Pursuant to Document of Title

A bailee that in good faith has received goods and delivered or otherwise disposed of the goods according to the terms of the document of title or pursuant to this article is not liable even if:

1. The person from which the bailee received the goods did not have authority to procure the document or to dispose of the goods; or
2. The person to which the bailee delivered the goods had no authority to receive the goods.

Part 5 – Warehouse Receipts and Bills of Lading – Negotiations and Transfer

Section 7-501 – Form of Negotiation and Requirements of Due Negotiation

a. The following rules apply to a negotiable tangible document of title:
   1. If the document's original terms run to the order of a named person, the document is negotiated by the named person's endorsement and delivery. After the named person's endorsement in blank or to bearer, any person may negotiate the document by delivery alone.
   2. If the document's original terms run to bearer, it is negotiated by delivery alone.
   3. If the document's original terms run to the order of a named person and it is delivered to the named person, the effect is the same as if the document had been negotiated.
   4. Negotiation of the document after it has been endorsed to a named person requires endorsement by the named person and delivery.
   5. A document is duly negotiated if it is negotiated in the manner stated in this subsection to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in

the regular course of business or financing or involves receiving the document in settlement or payment of a money obligation.

b. The following rules apply to a negotiable electronic document of title:
   1. If the document's original terms run to the order of a named person or to bearer, the document is negotiated by delivery of the document to another person. Endorsement by the named person is not required to negotiate the document.
   2. If the document's original terms run to the order of a named person and the named person has control of the document, the effect is the same as if the document had been negotiated.
   3. A document is duly negotiated if it is negotiated in the manner stated in this subsection to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves taking delivery of the document in settlement or payment of a monetary obligation.
c. Endorsement of a nonnegotiable document of title neither makes it negotiable nor adds to the transferee's rights.
d. The naming in a negotiable bill of lading of a person to be notified of the arrival of the goods does not limit the negotiability of the bill nor constitute notice to a purchaser of the bill of any interest of that person in the goods.

Section 7-502 – Rights Acquired By Due Negotiation

a. Subject to Sections 7-205 and 7-503 of this title, a holder to which a negotiable document of title has been duly negotiated acquires thereby:
   1. Title to the document;
   2. Title to the goods;
   3. All rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and
   4. The direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by the issuer except those arising under the terms of the document or under this article, but in the case of a delivery order, the bailee's obligation accrues only upon acceptance of the delivery order and the obligation acquired by the holder is that the issuer and any endorser will procure the acceptance of the bailee.
b. Subject to Section 7-503 of this title, title and rights acquired by due negotiation are not defeated by any stoppage of the goods represented by the document or by surrender of the goods by the bailee and are not impaired even if:
   1. The due negotiation or any prior due negotiation constituted a breach of duty;
   2. Any person has been deprived of possession of a negotiable tangible document or control of a negotiable electronic document by misrepresentation, fraud, accident, mistake, duress, loss, theft, or conversion; or

3. A previous sale or other transfer of the goods or document has been made to a third person.

Section 7-503 – Document of Title to Goods Defeated In Certain Cases

a. A document of title confers no right in goods against a person that before issuance of the document had a legal interest or a perfected security interest in the goods and that did not:
   1. Deliver or entrust the goods or any document of title covering the goods to the bailor or the bailor's nominee with:
      a. Actual or apparent authority to ship, store or sell;
      b. Power to obtain delivery under Section 7-403 of this title; or
      c. Power of disposition under Section 2-403, 2A-304(2), 2A-305(2), and Chapter 9 of this title or other statute or rule of law; or
   2. Acquiesce in the procurement by the bailor or its nominee of any document.
b. Title to goods based upon an unaccepted delivery order is subject to the rights of any person to which a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. That title may be defeated under Section 7-504 of this title to the same extent as the rights of the issuer or a transferee from the issuer.
c. Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of any person to which a bill issued by the freight forwarder is duly negotiated. However, delivery by the carrier in accordance with Subchapter 4 of this article pursuant to its own bill of lading discharges the carrier's obligation to deliver.

Section 7-504 – Rights Acquired in Absence of Due Negotiation – Effect of Diversion – Stoppage of Delivery

a. A transferee of a document of title, whether negotiable or nonnegotiable, to which the document has been delivered but not duly negotiated, acquires the title and rights that its transferor had or had actual authority to convey.
b. In the case of a nonnegotiable document of title, until but not after the bailee receives notification of the transfer, the rights of the transferee may be defeated:
   1. By those creditors of the transferor who could treat the sale as void under Section 2-402 or 2A-308 of this title;
   2. By a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of buyer's rights;
   3. By a lessee from the transferor in ordinary course of business if the bailee has delivered the goods to the lessee or received notification of the lessee's rights; or
   4. As against the bailee, by good faith dealings of the bailee with the transferor.
c. A diversion or other change of shipping instructions by the consignor in a nonnegotiable bill of lading which causes the bailee not to deliver to the consignee defeats the consignee's title to

the goods if the goods have been delivered to a buyer in ordinary course of business or a lessee in ordinary course of business and, in any event, defeats the consignee's rights against the bailee.

d. Delivery pursuant to a nonnegotiable document of title may be stopped by a seller under Section 2-705 of this title or a lessor under Section 2A-526 of this title, subject to the requirements of due notification in those sections. A bailee that honors the seller's or lessor's instructions is entitled to be indemnified by the seller or lessor against any resulting loss or expense.

Section 7-505 – Endorser Not a Guarantor for Other Parties

The endorsement of a tangible document of title issued by a bailee does not make the endorser liable for any default by the bailee or by previous endorsers.

Section 7-506 – Delivery without Endorsement – Right to Compel Endorsement

The transferee of a negotiable tangible document of title has a specifically enforceable right to have its transferor supply any necessary endorsement but the transfer becomes a negotiation only as of the time the endorsement is supplied.

Section 7-507 – Warranties on Negotiation or Transfer of Receipt or Bill

If a person negotiates or transfers a document of title for value, otherwise than as a mere intermediary under Section 7-508 of this title, unless otherwise agreed, the transferor in addition to any warranty made in selling or leasing the goods, warrants to its immediate purchaser only that:

1. The document is genuine;
2. The transferor does not have knowledge of any fact that would impair the document's validity or worth; and
3. The negotiation or transfer is rightful and fully effective with respect to the title to the document and the goods it represents.

Section 7-508 – Warranties of Collecting Bank as to Documents of Title

A collecting bank or other intermediary known to be entrusted with documents of title on behalf of another or with collection of a draft or other claim against delivery of documents warrants by the delivery of the documents only its own good faith and authority even if the collecting bank or other intermediary has purchased or made advances against the claim or draft to be collected.

Section 7-509 – Adequate Compliance with Commercial Contract

Whether a document is adequate to fulfill the obligations of a contract for sale, a contract for lease or the conditions of a letter of credit is determined by Chapter 2, 2A, or 5.

Subchapter 6 – Warehouse Receipts and Bills of Lading – Miscellaneous Provisions

Section 7-601 – Lost, Stolen, or Destroyed Documents of Title

a. If a document has been lost, stolen, or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with the order. If the document was negotiable, a court may not order delivery of the goods or issuance of a substitute document without the claimant's posting security unless it finds that any person that may suffer loss as a result of non-surrender of possession or control of the document is adequately protected against the loss. If the document was not negotiable, the court may require security. The court may also order payment of the bailee's reasonable costs and attorney fees in any action under this section.
b. A bailee that, without court order, delivers goods to a person claiming under a missing negotiable document of title is liable to any person injured thereby. If the delivery is not in good faith, the bailee is liable for conversion. Delivery in good faith is not conversion if the claimant posts security with the bailee in an amount at least double the value of the goods at the time of posting to indemnify any person injured by the delivery which files a notice of claim within one (1) year after the delivery.

Section 7-602 – Judicial Process against Goods Covered by Negotiable Document of Title

Unless a document of title was originally issued upon delivery of the goods by a person that did not have power to dispose of them, a lien does not attach by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless possession or control of the document is first surrendered to the bailee or the document's negotiation enjoined. The bailee may not be compelled to deliver the goods pursuant to process until possession or control of the document is surrendered to the bailee or to the court. A purchaser of the document for value without notice of the process or injunction takes free of the lien imposed by judicial process.

Section 7-603 – Conflicting Claims – Interpleader

If more than one person claims title or possession of the goods, the bailee is excused from delivery until the bailee has a reasonable time to ascertain the validity of the adverse claims or to commence an action for interpleader. The bailee may assert an interpleader either in defending an action for nondeilvery of the goods or by original action.

Subchapter 7 – Savings Clause and Applicability

Section 7-703 – Applicability

This article applies to a document of title that is issued or a bailment that arises on or after January 1, 2007. This article does not apply to a document of title that is issued or a bailment that arises before January 1, 2007, even if the document of title or bailment would be subject to this article if the document of title had been issued or bailment had arisen on or after January 1, 2007. This article does not apply to a right of action that has accrued before January 1, 2007.

Section 7-204 – Savings Clause

A document of title issued or a bailment that arises before January 1, 2007, and the rights, obligations, and interest flowing from that document or bailment are governed by any statute or other rule amended or repealed by this act as if amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule.

Chapter 8 – Investment Securities

Subchapter 1 – Short Title and General Matters

Section 8-101 – Short Title

This Chapter may be cited as Uniform Commercial Code – Investment Securities.

Section 8-102 – Definitions

a. In this Chapter:
    1. "Adverse claim" means a claim that a claimant has a property interest in a financial asset and that it is a violation of the rights of the claimant for another person to hold, transfer or deal with the financial asset;
    2. "Bearer form" as applied to a certificated security, means a form in which the security is payable to the bearer of the security certificate according to its term but not by reason of an endorsement;
    3. "Broker" means a person defined as a broker or dealer under the federal securities laws, but without excluding a bank acting in that capacity;
    4. "Certificated security" means a security that is represented by a certificate;
    5. "Clearing corporation" means:
        i. A person that is registered as a "clearing agency" under the federal securities laws;
        ii. A federal reserve bank; or
        iii. Any other person that provides clearance or settlement services with respect to financial assets that would require it to register as a clearing agency under the

federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including promulgation of rules, are subject to regulation by a federal or state governmental authority;

6. "Communicate" means to:
    i. Send a signed writing; or
    ii. Transmit information by any mechanism agreed upon by the persons transmitting and receiving the information;
7. "Entitlement holder" means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary. If a person acquires entitlement by virtue of paragraph (2) or (3) of subsection (b) of Section 33-8-501 of this title, that person is the entitlement holder;
8. "Entitlement order" means a notification communicated to a securities intermediary directing transfer or redemption of a financial asset to which the entitlement holder has a security entitlement;
9. "Financial asset" except as otherwise provided in Section 33-8-103 of this title, means:
    i. A security;
    ii. An obligation of a person or a share, participation or other interest in a person or in property or an enterprise of a person, which is, or is of a type, dealt in or traded on financial markets, or which is recognized in any area in which it is issued or dealt in as a medium for investment; or
    iii. Any property that is held by a securities intermediary for another person in a securities account if the securities intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under this article.

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

10. "Good faith" for purposes of the obligation of good faith in the performance or enforcement of contracts or duties within this article, means honesty in fact and the observance of reasonable commercial standards of fair dealing;
11. "Endorsement" means a signature that alone or accompanied by other words is made on a security certificate in registered form or on a separate document for the purpose of assigning, transferring or redeeming the security or granting a power to assign, transfer, or redeem it;
12. "Instruction" means a notification communicated to the issuer of an uncertificated security which directs that the transfer of the security be registered or that the security be redeemed;

13. “Registered form” as applied to a certificate security, means a form in which:
    i. The security certificate specifies a person entitled to the security; and
    ii. A transfer of the security may be registered upon books maintained for that purpose by or on behalf of the issuer, or the security certificate so states;
14. “securities intermediary” means:
    i. A clearing corporation; or
    ii. A person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.
15. “Security” except as otherwise provided in Section 33-8-103 of this title, means an obligation of an issuer or a share, participation, or other interest in an issuer or in property or an enterprise of an issuer:
    i. Which is represented by a security certificate in bearer or registered form, or the transfer of which may be registered upon books maintained for that purpose by or on behalf of the issuer;
    ii. Which is one of a class or series or by its terms is divisible into a class or series of shares, participations, interest, or obligations; and
    iii. Which:
        A. Is, or is of a type, dealt in or traded on securities exchanges or securities markets; or
        B. Is a medium for investment and by its terms expressly provides that it is a security governed by this article;
16. “Security certificate” means a certificate representing a security;
17. “Security entitlement” means the rights and property interest of an entitlement holder with respect to a financial asset specified in Part 5 of this Chapter; and
18. “Uncertificated security” means a security that is not represented by a certificate.

b. Other definitions applying to this article and the sections in which they appear are:
   “Appropriate person” Section 33-8-107
   “Control” Section 33-8-106
   “Delivery” Section 33-8-301
   “Investment company security” Section 33-8-103
   “Issuer” Section 33-8-210
   “Protected purchaser” Section 33-8-303
   “Securities account” Section 33-8-501
c. In addition, Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this article.
d. The characterization of a person, business, or transaction for purposes of this article does not determine the characterization of the person, business, or transaction for purposes of any other law, regulation, or rule.

Section 8-103 – Rules for Determining Whether Certain Obligations and Interests Are Securities or Financial Assets

a. A share or similar equity interest issued by a corporation, business trust, joint stock company, or similar entity is a security.
b. An "investment company security" is a security. "Investment company security" means a share or similar equity interest issued by an entity that is registered as an investment company under the deferral investment company laws, an interest in a unit investment trust that is so registered, or a face amount certificate issued by a face amount certificate company that is so registered. Investment company security does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.
c. An interest in a partnership or limited liability company is not a security unless it is dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that it is a security governed by this article, or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.
d. A writing that is a security certificate is governed by this Chapter and not by Chapter 3 of this Title, even though it also meets the requirements of that article. However, a negotiable instrument governed by Chapter 3 of this code is a financial asset if it is held in a securities account.
e. An option or similar obligation issued by a clearing corporation to its participants is not a security, but is a financial asset.
f. A commodity contract, as defined in paragraph (15) of subsection (a) of Section 1-9-102 of this title, is not a security or a financial asset.
g. A document of title is not a financial asset unless subparagraph (iii) of paragraph (9) of subsection (a) of Section 8-102 of this title applies.

Section 8-104 – Acquisition of Security on Financial Asset or Interest Therein

a. A person acquires a security or an interest therein, under this Chapter, if:
    1. The person is a purchaser to whom a security is delivered pursuant to Section 33-8-301 of this title; or
    2. The person acquires a security entitlement to the security pursuant to Section 33-8-501 of this title.
b. A person acquires a financial asset, other than a security, or an interest therein, under this article, if the person acquires a security entitlement to the financial asset.
c. A person who acquires a security entitlement to a security or other financial asset has the rights specified in Subchapter 5 of this Chapter, but is a purchaser of any security, security entitlement, or other financial asset held by the securities intermediary only to the extent provided in Section 33-8-503 of this title.

d. Unless the context shows that a different meaning is intended a person who is required by other law, regulation, rule, or agreement to transfer, deliver, present, surrender, exchange, or otherwise put in the possession of another person a security or financial asset satisfied that requirement by causing the other person to acquire an interest in the security or financial asset pursuant to subsection (a) or (b) of this section.

Section 8-105 – Notice of Adverse Claim

Notice of Adverse Claim.

a. A person has notice of an adverse claim if:
    1. The person knows of the adverse claim;
    2. The person is aware of facts sufficient to indicate that there is a significant probability that the adverse claim exists and deliberately avoids information that would establish the existence of the adverse claim; or
    3. The person has a duty, imposed by statute or regulation, to investigate whether an adverse claim exists, and the investigation so required would establish the existence of the adverse claim.
b. Having knowledge that a financial asset or interest therein is or has been transferred by a representative imposes no duty of inquiry into the rightfulness of a transaction and is not notice of an adverse claim. However, a person who knows that a representative has transferred a financial asset or interest therein in a transaction that is, or whose proceeds are being used, for the individual benefit of the representative or otherwise in breach of duty has notice of an adverse claim.
c. An act or event that creates a right to immediate performance of the principal obligation represented by a security certificate or sets a sate on or after which the certificate is to be presented or surrendered for redemption or exchange does not itself constitute notice of an adverse claim except in the case of a transfer more than:
    1. One (1) year after a date set for presentment or surrender for redemption or exchange; or
    2. Six (6) months after a date set for payment of money against presentation or surrender of the certificate, if money was available for payment on that date.
d. A purchaser of a certificated security has notice of an adverse claim if the security certificate:
    1. Whether in a bearer or registered form, has been endorsed “for collection” or “for surrender” or for some other purpose not involving transfer; or
    2. Is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor, but the mere writing of a name on the certificate is not such a statement.
e. Filing of a financing statement under Chapter 9 of this code is not notice of an adverse claim to a financial asset.

Section 8-106 - Control

a. A purchaser has “control” of a certificated security in bearer form if the certificated security is delivered to the purchaser.
b. A purchaser has “control” of a certificated security in registered form if the certificated security is delivered to the purchaser, and:
    1. The certificate is indorsed to the purchaser or in blank by an effective endorsement; or
    2. The certificate is registered in the name of the purchaser, upon original issue or registration of transfer by the issuer.
c. A purchaser has “control” of an uncertificated security if:
    1. The uncertificated security is delivered to the purchaser; or
    2. The issuer has agreed that it will comply with instructions originated by the purchaser without further consent by the registered owner.
d. A purchaser has “control” of a security entitlement if:
    1. The purchaser becomes the entitlement holder; or
    2. The securities intermediary has agreed that it will comply with entitlement orders originated by the purchaser without further consent by the entitlement holder, or
    3. Another person has control of the security entitlement on behalf of the purchaser or, having previously acquired control of the security entitlement, acknowledges that it has control on behalf of the purchaser.
e. If an interest in a security entitlement is granted by the entitlement holder to the entitlement holder’s own securities intermediary, the securities intermediary has control.
f. A purchaser who has satisfied the requirements of subsection (c) or (d) has control even if the registered owner in the case of subsection (c) or the entitlement holder in the case of subsection (d) retains the right to make substitutions for the uncertificated security or security entitlement, to originate instructions or entitlement orders to the issuer or securities intermediary, or otherwise to deal with the uncertificated security or security entitlement.
g. An issuer or a securities intermediary may not enter into an agreement of the kind described in subsection (c)(2) or (d)(2) without the consent of the registered owner or entitlement holder, but an issuer or a securities intermediary is not required to enter into such an agreement even though the registered owner or entitlement holder so directs. An issuer or securities intermediary that has entered into such an agreement is not required to confirm the existence of the agreement to another party unless requested to do so by the registered owner or entitlement holder.

Section 8-107 – Whether Endorsement, Instruction, or Entitlement Order is Effective

Whether endorsement, instruction, or entitlement order is effective

a. “Appropriate person” means:
   1. With respect to an endorsement, the person specified by a security certificate or by an effective special endorsement to be entitled to the security;
   2. With respect to an entitlement order, the entitlement;
   3. With respect to an instruction, the registered owner of an uncertificated security holder;
   4. If the person designated in paragraph 1, 2, or 3 of this subsection is deceased, the designated person’s successor taking under other law or the designated person’s personal representative acting for the estate of the decedent; or
   5. If the person designated in paragraph 1, 2, or 3 of this subsection lacks capacity, the designated person’s guardian, conservator, or other similar representative who has power under other law to transfer the security or financial asset.
b. An endorsement, instruction, or entitlement order is effective if:
   1. It is made by the appropriate person;
   2. It is made by a person who has power under the law of agency to transfer the security or financial asset on behalf of the appropriate person, including, in the case of an instruction or entitlement order, a person who has control under paragraph (2) of subsection (c) or paragraph (2) of subsection (d) of Section 12A-8-106 of this title; or
   3. The appropriate person has ratified it or is otherwise precluded from asserting its ineffectiveness.
c. An endorsement, instruction, or entitlement order made by a representative is effective even if:
   1. The representative has failed to comply with a controlling instrument or with the law of the state having jurisdiction of the representative relationship, including any law requiring the representative to obtain court approval of the transaction; or
   2. The representative’s action in making the endorsement, instruction, or entitlement order or using the proceeds of the transaction is otherwise a breach of duty.
d. If a security is registered in the name of or specially endorsed to a person described as a representative, or if a securities account is maintained in the name of a person described as a representative, an endorsement, instruction, or entitlement order made by the person is effective even though the person is no longer serving in the described capacity.
e. Effectiveness of an endorsement, instruction, or entitlement order is determined as of the date the endorsement, instruction, or entitlement order is made, and an endorsement, instruction, or entitlement order does not become ineffective by reason of any later change of circumstances.

Section 8-108 – Warranties in Direct Holding

a. A person who transfer a certificated security to a purchaser for value warrants to the purchaser, and an endorser, if the transfer is by endorsement, warrants to any subsequent purchaser, that:
   1. The certificate is genuine and has not been materially altered;

2. The transferor or endorser does not know of any fact that might impair the validity of the security;
3. There is no adverse claim to the security;
4. The transfer does not violate any restriction on transfer;
5. If the transfer is by endorsement, the endorsement is made by an appropriate person, or if the endorsement is by an agent, the agent has actual authority to act on behalf of the appropriate person; and
6. The transfer is otherwise effective and rightful.

b. A person who originates an instruction for registration of transfer of an uncertificated security to a purchaser for value warrants to the purchaser that:
   1. The instruction is made by an appropriate person, or if the instruction is by an agent, the agent has actual authority to act on behalf of the appropriate person;
   2. The security is valid;
   3. There is no adverse claim to the security; and
   4. At the time the instruction is presented to the issuer:
      i. The purchaser will be entitled to the registration of transfer;
      ii. The transfer will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction;
      iii. The transfer will not violate any restriction on transfer; and
      iv. The requested transfer will otherwise be effective and rightful.

c. A person who transfers an uncertificated security to a purchaser for value and does not originate an instruction in connection with the transfer warrants that:
   1. The uncertificated security is valid;
   2. There is no adverse claim to the security;
   3. The transfer does not violate any restriction on transfer; and
   4. The transfer is otherwise effective and rightful.

d. A person who endorses security certificate warrants to the issuer that:
   1. There is no adverse claim to the security; and
   2. The endorsement is effective.

e. A person who originates an instruction for registration of transfer of an uncertificated security warrants to the issuer that:
   1. The instruction is effective; and
   2. At the time the instruction is presented to the issuer, the purchaser will be entitled to the registration of transfer.

f. A person who presents a certificated security for registration of transfer or for payment or exchange warrants to the issuer that the person is entitled to the registration, payment, or exchange, but a purchaser for value and without notice of adverse claims to whom transfer is

registered warrants only that the person has no knowledge of any unauthorized signature in a necessary endorsement.

g. If a person acts as agent of another in delivering a certificated security to a purchaser, the identity of the principal was known to the person to whom the certificate was delivered, and the certificate delivered by the agent was received by the agent from the principal or received by the agent from another person at the direction of the principal, the person delivering the security certificate warrants that the delivering person has authority to act for the principal and does not know of any adverse claim to the certificated security.

h. A secured party who redelivers a security certificate received, or after payment and on order of the debtor delivers the security certificate to another person, makes only the warranties of an agent under subsection (g) of this section.

    i. Except as otherwise provided in subsection (g) of this section, a broker acting for a customer makes to the issuer and a purchaser the warranties provided in subsections (a) through (f) of this section.

    ii. A broker that delivers a security certificate to its customer, or causes its customer to be registered as the owner of an uncertificated security, makes to the customer the warranties provided in subsection (a) or (b) of this section, and has the rights and privileges of a purchaser under this section. The warranties of and in favor of the broker acting as an agent are in addition to applicable warranties given by and in favor of the customer.

Section 8-109 – Warranties in Indirect Holding

a. A person who originates an entitlement order to a securities intermediary warrants to the securities intermediary that:
    1. The entitlement order is made by an appropriate person, or if the entitlement order is by an agent, the agent has actual authority to act on behalf of the appropriate person; and
    2. There is no adverse claim to the security entitlement.

b. A person who delivers a security certificate to a securities intermediary for credit to a securities account or originates an instruction with respect to an uncertificated security directing that the uncertificated security be credited to a securities account makes to the securities intermediary the warranties specified in subsection (a) or (b) of Section 33-8-108 of this title.

c. If a securities intermediary delivers a security certificate to its entitlement holder or causes its entitlement holder to be registered as the owner of an uncertificated security, the securities intermediary makes to the entitlement holder the warranties specified in subsection (a) or (b) of Section 33-8-108 of this title.

Section 8-110 – Applicability – Choice of Law

a. The local law of the issuer's jurisdiction, as specified in subsection (d) of this section, governs:

1. The validity of a security;
2. The rights and duties of the issuer with respect to registration of transfer;
3. The effectiveness of registration of transfer by the issuer;
4. Whether the issuer owed any duties to an adverse claimant to a security; and
5. Whether an adverse claim can be asserted against a person to whom a transfer of a certificated or uncertificated security is registered or a person who obtains control of an uncertificated security.

b. The local law of the securities intermediary's jurisdiction, as specified in subsection (e) of this section, governs:
   1. Acquisition of a security entitlement from the securities intermediary;
   2. The rights and duties of the securities intermediary and entitlement holder arising out of a security entitlement;
   3. Whether the securities intermediary owes any duties to an adverse claimant to a security entitlement; and
   4. Whether an adverse claim can be asserted against a person who acquires a security entitlement from the securities intermediary or a person who purchases a security entitlement or interest therein from an entitlement holder.

c. The local law of the jurisdiction in which a security certificate is located at the time of delivery governs whether an adverse claim can be asserted against a person to whom the security certificate is delivered.

d. "Issuer's jurisdiction" means the jurisdiction under which the issuer of the security is organized or, if permitted by the law of that jurisdiction, the law of another jurisdiction specified by the issuer. An issuer organized under the law of this nation may specify the law of another jurisdiction as the law governing the matters specified in paragraphs (2) through (5) of subsection (a) of this section.

e. The following rules determine a "securities intermediary's jurisdiction" for purposes of this section:
   1. If an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that a particular jurisdiction is the securities intermediary's jurisdiction for purposes of this part, this article, or this title, that jurisdiction is the securities intermediary's jurisdiction;
   2. If paragraph (1) does not apply and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.
   3. If neither paragraph (1) nor paragraph (2) of this subsection applies and an agreement between the securities intermediary and its entitlement holder governing the securities

account expressly provides that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction;

4. If none of the preceding paragraphs of this subsection applies, the securities intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the entitlement holder's account is located; and
5. If none of the preceding paragraphs of this subsection applies, the securities intermediary's jurisdiction is the jurisdiction in which the chief executive office of the securities intermediary is located.

f. A securities intermediary's jurisdiction is not determined by the physical location of certificates representing financial assets, or by the jurisdiction in which is organized the issue of the financial asset with respect to which an entitlement holder has a security entitlement, or by the location of facilities for data processing or other recordkeeping concerning the account.

Section 8-111 – Clearing Corporation Rules

A rule adopted by a clearing corporation governing rights and obligations among the clearing corporation and its participants in the clearing corporation is effective even if the rule conflicts with this act and affects another party who does not consent to the rule.

Section 8-112 – Creditor's Legal Process

a. The interest of a debtor in a certificated security may be reached by a creditor only by actual seizure of the security certificate by the officer making the attachment or levy, except as otherwise provided in subsection (d) of this section. However, a certificated security for which the certificate has been surrendered to the issuer may be reached by a creditor by legal process upon the issuer.
b. The interest of a debtor in an uncertificated security may be reached by a creditor only by legal process upon the issuer at its chief executive office in the United States, except as otherwise provided in subsection (d) of this section.
c. The interest of a debtor in a security entitlement may be reached by a creditor only by legal process upon the securities entitlement may be reached by a creditor only by legal process upon the securities intermediary with whom the debtor's securities account is maintained, except as otherwise provided in subsection (d) of this section.
d. The interest of a debtor in a certificated security for which the certificate is in the possession of a secured party, or in an uncertificated security registered in the name of a secured party, or a security entitlement maintained in the name of a secured party, may be reached by a creditor by legal process upon the secured party.
e. A creditor whose debtor is the owner of a certificated security, uncertificated security, or security entitlement is entitled to aid from a court of competent jurisdiction, by injunction or otherwise, in reaching the certificated security, uncertificated security, or security entitlement

or in satisfying the claim by means allowed at law or in equity in regard to property that cannot readily be reached by other legal process.

Section 8-113 – Statute of Frauds Inapplicable

A contract or modification of a contract for the sale or purchase of a security is enforceable whether or not there is a writing signed or record authenticated by a party against whom enforcement is sought, even if the contract or modification is not capable of performance within one (1) year of its making.

Section 8-114 – Evidentiary Rules Concerning Certificated Securities

The following rules apply in an action on a certificated security against the issuer:

1. Unless specifically denied in the pleadings, each signature on a security certificate or in a necessary endorsement is admitted;
2. If the effectiveness of a signature is put in issue, the burden of establishing effectiveness is on the party claiming under the signature, but the signature is presumed to be genuine or authorized;
3. If signatures on a security certificate are admitted or established, production of the certificate entitles a holder to recover on it unless the defendant establishes a defense or a defect going to the validity of the security; and
4. If it is shown that a defense or defect exists, the plaintiff has the burden of establishing that the plaintiff or some person under whom the plaintiff claims is a person against whom the defense or defect cannot be asserted.

Section 8-115 – Securities Intermediary and Others Not Liable to Adverse Claimant

A securities intermediary that has transferred a financial asset pursuant to an effective entitlement order, or a broker or other agent or bailee that has dealt with a financial asset at the direction of its customer or principal, is not liable to a person having an adverse claim to the financial asset, unless the securities intermediary, or broker or other agent or bailee:

1. Took the action after it has been served with an injunction, restraining order, or other legal process enjoining it from doing so, issued by a court of competent jurisdiction, and had a reasonable opportunity to act on the injunction, restraining order, or other legal process; or
2. Acted in collusion with the wrongdoer in violating the rights of the adverse claimant; or
3. In the case of a security certificate that has been stolen, acted with notice of the adverse claim.

Section 8-116 – Securities Intermediary as Purchaser for Value

A securities intermediary that receives a financial asset and establishes a security entitlement to the financial asset in favor of an entitlement holder is a purchaser for value of the financial asset. A

securities intermediary that acquires a security entitlement to a financial asset from another securities intermediary acquires the security entitlement for value if the securities intermediary acquiring the security entitlement establishes a security entitlement to the financial asset in favor of an entitlement holder.

Subchapter 2 – Issue and Issuer

Section 8-201 – Issuer

a. With respect to an obligation on or a defense to a security, an "issuer" includes a person that:
    1. Places or authorizes the placing of its name on a security certificate, other than as authenticating trustee, registrar, transfer agent, or the like, to evidence a share, participation, or other interest in its property or in an enterprise, or to evidence its duty to perform an obligation represented by the certificate;
    2. Creates a share, participation, or other interest in its property or in an enterprise, or undertakes an obligation, that is an uncertificated security;
    3. Directly or indirectly creates a fractional interest in its rights or property, if the fractional interest is represented by a security certificate; or
    4. Becomes responsible for, or in place of, another person described as an issuer in this section.
b. With respect to an obligation on or defense to a security, a guarantor is an issuer to the extent of its guaranty, whether or not its obligation is noted on a security certificate.
c. With respect to a registration of a transfer, issuer means a person on whose behalf transfer books are maintained.

Section 8-202 – Issuer's Responsibility and Defenses; Notice of Defect or Defense

a. Even against a purchaser for value and without notice, the terms of a security include terms stated on the certificate and terms made part of the security by reference on the certificate to another instrument, indenture, or document or to a constitution, statute, ordinance, rule, regulation, order, or the like, to the extent the terms the referred to do not conflict with terms stated on the certificate. A reference under this subsection does not of itself charge a purchaser for value with notice of a defect going to the validity of the security, even if the certificate expressly states that a person accepting it admits notice. The terms of an uncertificated security include those stated in any instrument, indenture, or document or in a constitution, statute, ordinance, rule, regulation, order, or the like, pursuant to which the security is issued.
b. The following rules apply if an issuer asserts that a security is not valid:
    1. A security other than one issued by a government or governmental subdivision, agency, or instrumentality, even though issued with a defect going to its validity, is valid in the hands of a purchaser for value and without notice of the particular defect unless the defect involves a

violation of a constitutional provision. In that case, the security is valid in the hands of a purchaser for value and without notice of the defect, other than one who takes by original issue.

2. Paragraph (1) of this subsection applies to an issuer that is a government or governmental subdivision, agency, or instrumentality only if there has been substantial compliance with the legal requirements governing the issue or the issuer has received a substantial consideration for the issue as a whole or for the issuer has received a substantial consideration for the issue as a whole or for the particular security and a stated purpose of the issue is one for which the issuer has power to borrow money or issue the security.

c. Except as otherwise provided in Section 33-8-205 of this title, lack of genuineness of a certificated security is a complete defense, even against a purchaser for value and without notice.
d. All other defenses of the issuer of a security, including nondelivery and conditional delivery of a certificated security, are ineffective against a purchaser for value who has taken the certificated security without notice of the particular defense.
e. This section does not affect the right of a party to cancel a contract for a security "when, as and if issued" or "when distributed" in the event of a material change in the character of the security that is the subject of the contract or in the plan or arrangement pursuant to which the security is to be issued or distributed.
f. If a security is held by a securities intermediary against whom an entitlement holder has a security entitlement with respect to the security, the issuer may not assert any defense that the issuer could not assert if the entitlement holder held the security directly.

Section 8-203 – Staleness as Notice of Defects or Defenses

After an act or event, other than a call that has been revoked, creating a right to immediate performance of the principal obligation represented by a certificated security or setting a date on or after which the security is to be presented or surrendered for redemption or exchange, a purchaser is charged with notice of any defect in its issue or defense of the issuer, if the act or event:

1. Requires the payment of money, the delivery of a certificated security, the registration of transfer of an uncertificated security, or any of them on presentation or surrender of the security certificate, the money or security is available on the date set for payment or exchange, and the purchaser takes the security more than one (1) year after that date; or
2. Is not covered by paragraph (1) of this subsection and the purchaser takes the security more than two (2) years after the date set for surrender or presentation or the date on which performance became due.

Section 8-204 – Effect of Issuer's Restrictions on Transfer

A restriction on transfer of a security imposed by the issuer, even if otherwise is lawful, is ineffective against a person without knowledge of the restriction unless:

1. The security is certificated and the restriction is noted conspicuously on the security certificate; or
2. The security in uncertificated and the registered owner has been notified of the restriction.

Section 8-205 – Effect of Unauthorized Signature on Security Certificate

An unauthorized signature placed on a security certificate before or in the course of issue is ineffective, but the signature is effective in favor of a purchaser for value of the certificated security if the purchaser is without notice of the lack of authority and the signing has been done by:

1. An authenticating trustee, registrar, transfer agent, or other person entrusted by the issuer with the signing of the security certificate or of similar security certificates, or the immediate preparation for signing of any of them; or
2. An employee of the issuer or of any of the persons listed in paragraph (1) of this subsection, entrusted with responsible handling of the security certificate.

Section 8-206 – Completion or Alteration of Security Certificate

a. If a security certificate contains the signatures necessary to its issue or transfer but is incomplete in any other respect:
    1. Any person may complete it by filling in the blanks as authorized; and
    2. Even if the blanks are incorrectly filled in, the security certificate as completed is enforceable by a purchaser who took it for value and without notice of the incorrectness.
b. A complete security certificate that has been improperly altered, even if fraudulently, remains enforceable, but only according to its original terms.

Section 8-207 – Rights and Duties of Issuer with Respect to Registered Owners

a. Before due presentment for registration of transfer of a certificated security in registered form or of an instruction requesting registration of transfer of an uncertificated security, the issuer or indenture trustee may treat the registered owner as the person exclusively entitled to vote, receive notifications, and otherwise exercise all the rights and powers of an owner.
b. This Chapter does not affect the liability of the registered owner of a security for a call, assessment, or the like.

Section 8-208 – Effect of Signature of Authenticating Trustee, Registrar, or Transfer Agent

a. A person signing a security certificate as authenticating trustee, registrar, transfer agent, or the like, warrants to a purchaser for value of the certificated security, if the purchaser is without notice of a particular defect, that:
    1. The certificate is genuine;
    2. The person's own participation in the issue of the security is within the person's capacity and within the scope of the authority received by the person from the issuer; and
    3. The person has reasonable grounds to believe that the certificated security is in the form and within the amount the issuer is authorized to issue.
b. Unless otherwise agreed, a person signing under subsection (a) of this section does not assume responsibility for the validity of the security in other respects.

Section 8-209 – Issuer's Lien

A lien in favor of an issuer upon certificated security is valid against a purchaser only if the right of the issuer to the lien is noted conspicuously on the security certificate.

Section 8-210 – Overissue

a. In this section "overissue" means the issue of securities in excess of the amount the issuer has corporate power to issue, but an overissue does not occur if appropriate action has cured the overissue.
b. Except as otherwise provided in subsections (c) and (d) of this section, the provisions of this article which validate a security or compel its issue or reissue do not apply to the extent that validation, issue, or reissue would result in overissue.
c. If an identical security not constitution an overissue is reasonably available for purchase, a person entitled to issue or validation may compel the issuer to purchase the security and deliver it if certificated or register its transfer if uncertificated, against surrender of any certificate the person holds.
d. If a security is not reasonably available for purchase, a person entitled to issue or validation may recover from the issuer the price the person or the last purchaser for value paid for it with interest from the date of the person's demand.

Subchapter 3 – Purchase

a. Delivery of a certificated security to a purchaser occurs when:
    1. The purchaser acquires possession of the security certificate;
    2. Another person, other than a securities intermediary, either acquires possession of the security certificate on behalf of the purchaser or, having previously acquired possession of the certificate, acknowledges that it holds for the purchaser; or

3. A securities intermediary acting on behalf of the purchaser acquires possession of the security certificate, only if the certificate is in registered form and is
    i. Registered in the name of the purchaser,
    ii. Payable to the order of the purchaser, or
    iii. Specially endorsed to the purchaser by an effective endorsement and has not been endorsed to the securities intermediary or in blank.

b. Delivery of an uncertificated security to a purchaser occurs when:
    1. The issuer registers the purchaser as the registered owner, upon original issue or registration of transfer; or
    2. Another person, other than a securities intermediary, either becomes the registered owner of the uncertificated security on behalf of the purchaser or, having previously become the registered owner, acknowledges that it holds for the purchaser.

Section 8-302 – Rights of Purchaser

a. Except as otherwise provided in subsections (b) and (c) of this section, a purchaser of a certificated or uncertificated security acquires all rights in the security that the transferor had or had power to transfer.
b. A purchaser of a limited interest acquires rights only to the extent of the interest purchased.
c. A purchaser of a certificated security who as a previous holder had notice of an adverse claim does not improve its position by taking from a protected purchaser.

Section 8-303 – Protected Purchaser

a. "Protected purchaser" means a purchaser of a certificated or uncertificated security, or of an interest therein, who:
    1. Gives value;
    2. Does not have notice of any adverse claim to the security; and
    3. Obtains control of the certificated or uncertificated security.
b. In addition to acquiring the rights of a purchaser, a protected purchaser also acquires its interest in the security free of any adverse claim.

Section 8-304 – Endorsement

a. An endorsement may be in blank or special. An endorsement in blank includes an endorsement to bearer. A special endorsement specifies to whom a security is to be transferred or who has power to transfer it. A holder may convert a blank endorsement to a special endorsement.
b. An endorsement purporting to be only of part of a security certificate representing units intended by the issuer to be separately transferable is effective to the extent of the endorsement.

c. An endorsement, whether special or in blank, does not constitute a transfer until delivery of the certificate on which it appears or, if the endorsement is on a separate document, until delivery of both the document and the certificate.
d. If a security certificate is registered form has been delivered to a purchaser without a necessary endorsement, the purchaser may become a protected purchaser only when the endorsement is supplied. However, against a transferor, a transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary endorsement supplied.
e. An endorsement of a security certificate in bearer form may give notice of an adverse claim to the certificate, but it does not otherwise affect a right to registration that the holder possesses.
f. Unless otherwise agreed, a person making an endorsement assumes only the obligations provided in Section 33-8-108 of this title and not an obligation that the security will be honored by the issuer.

Section 8-305 – Instruction

a. If an instruction has been originated by an appropriate person but is incomplete in any other respect, any person may complete it as authorized and the issuer may rely on it as completed, even though it has been completed incorrectly.
b. Unless otherwise agreed, a person initiating an instruction assumes only the obligations imposed by Section 33-8-108 of this title and not an obligation that the security will be honored by the issuer.

Section 8-306 – Effect of Guaranteeing Signature, Endorsement, or Instruction

a. A person who guarantees a signature of an endorser of a security certificate warrants that at the time of signing:
    1. The signature was genuine;
    2. The signer was an appropriate person to endorse, or if the signature is by an agent, the agent had actual authority to act on behalf of the appropriate person; and
    3. The signer had legal capacity to sign.
b. A person who guarantees a signature of the originator of an instruction warrants that at the time of signing:
    1. The signature was genuine;
    2. The signer was an appropriate person to originate the instruction, or if the signature is by an agent, the agent had actual authority to act on behalf of the appropriate person, if the person specified in the instruction as the registered owner was, in fact, the registered owner, as to which fact the signature guarantor does not make a warranty; and
    3. The signer had legal capacity to sign.

c. A person who specially guarantees the signature of an originator of an instruction make the warranties of a signature guarantor under subsection (b) of this section and also warrants that at the time the instruction is presented to the issuer:
    1. The person specified in the instruction as the registered owner of the uncertificated security will be the registered owner; and
    2. The transfer of the uncertificated security requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction.
d. A guarantor under subsections (a) and (b) of this section or a special guarantor under subsection (c) of this section does not otherwise warrant the rightfulness of the transfer in all respects.
e. A person who guarantees an endorsement of a security certificate makes the warranties of a signature guarantor under subsection (a) of this section and also warrants the rightfulness of the transfer in all respects.
f. A person who guarantees an instruction requesting the transfer of an uncertificated security makes the warranties of a special signature guarantor under subsection (c) of this section and also warrants the rightfulness of the transfer in all respects.
g. An issuer may not require a special guaranty of signature, a guaranty of endorsement, or a guaranty of instruction as a condition to registration of transfer.
h. The warranties under this section are made to a person taking or dealing with the security in reliance on the guaranty, and the guarantor is liable to the person for loss resulting from their breach. An endorser or originator of an instruction whose signature, endorsement, or instruction has been guaranteed is liable to a guarantor for any loss suffered by the guarantor as a result of breach of the warranties of the guarantor.

Section 8-307 – Purchaser's Right to Requisites for Registration of Transfer

Unless otherwise agreed, the transferor of a security on due demand shall supply the purchaser with proof of authority to transfer or with any other requisite necessary to obtain registration of the transfer of the security, but if the transfer is not for value, a transferor need not comply unless the purchaser pays the necessary expenses. If the transferor fails within a reasonable time to comply with the demand, the purchaser may reject or rescind the transfer.

Subchapter 4 – Registration

Section 8-401 – Duty of Issuer to Register Transfer

a. If a certificated security in registered form is presented to an issuer with a request to register transfer or an instruction is presented to an issuer with a request to register transfer of an uncertificated security, the issuer shall register the transfer as requested if:

1. Under the terms of the security the person seeking registration of transfer is eligible to have the security registered in its name;
2. The endorsement or instruction is made by the appropriate person or by an agent who has actual authority to act on behalf of the appropriate person;
3. Reasonable assurance is given that the endorsement or instruction is genuine and authorized;
4. Any applicable law relating to the collection of taxes has been compiled with;
5. The transfer does not violate any restriction on transfer imposed by the issuer in accordance with Section 33-8-204 of this title;
6. A demand that the issuer not register transfer has not become effective under Section 33-8-403 of this title, or the issuer has compiled with subsection (b) of Section 33-8-403 of this title but no legal process or indemnity bond is obtained as provided in subsection (d) of Section 33-8-403 of this title; and
7. The transfer is in fact rightful or is to a protected purchaser.

b. If an issuer is under a duty to register a transfer of a security, the issuer is liable to a person presenting a certificated security or an instruction for registration or to the person's principal for loss resulting from unreasonable delay in registration or failure or refusal to register the transfer.

Section 8-402 – Assurance that Endorsement or Instruction is Effective

a. An issuer may require the following assurance that each necessary endorsement or each instruction is genuine and authorized:
    1. In all cases, a guaranty of the signature of the person making an endorsement or originating an instruction including, in the case of an instruction, reasonable assurance of identity;
    2. If the endorsement is made or the instruction is originated by an agent, appropriate assurance of actual authority to sign;
    3. If the endorsement is made or the instruction is originated by a fiduciary pursuant to paragraph (4) or (5) of subsection (a) of Section 33-8-107 of this title, appropriate evidence of appointment or incumbency;
    4. If there is more than one fiduciary, reasonable assurance that all who are required to sign have done so; and
    5. If the endorsement is made or the instruction is originated by a person not covered by another provision of this subsection, assurance appropriate to the case corresponding as nearly as may be to the provisions of this subsection.
b. An issuer may elect to require reasonable assurance beyond that specified in this section.
c. In this section:

1. "Guaranty of the signature" means a guaranty signed by or on behalf of a person reasonably believed by the issuer to be responsible. An issuer may adopt standards with respect to responsibility if they are not manifestly unreasonable.
2. "Appropriate evidence of appointment or incumbency" means:
    i. In the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of the court or an officer thereof and dated within sixty (60) days before the date of presentation for transfer; or
    ii. In any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by an issuer to be responsible or, in the absence of that document or certificate, other evidence the issuer reasonably considers appropriate.

Section 8-403 – Demand that Issuer Not Register Transfer

a. A person who is an appropriate person to make an endorsement or originate an instruction may demand that the issuer not register transfer of a security by communicating to the issuer a notification that identifies the registered owner and the issuer of which the security is a part and provides an address for communications directed to the person making the demand. The demand is effective only if it is received by the issuer at a time and in a manner affording the issuer reasonable opportunity to act on it.
b. If a certificated security in registered form is presented to an issuer with a request to register transfer or an instruction is presented to an issuer with a request to register transfer of an uncertificated security after a demand that the issuer not register transfer has become effective, the issuer shall promptly communicate to
    i. The person who initiated the demand at the address provided in the demand and
    ii. The person who presented the security for registration of transfer or initiated the instruction requesting registration of transfer a notification stating that:
        1. The certificated security has been presented for registration of transfer or instruction for registration of transfer of the uncertificated security has been received;
        2. A demand that the issuer not register transfer had previously been received; and
        3. The issuer will withhold registration of transfer for a period of time stated in the notification in order to provide the person who initiated the demand an opportunity to obtain legal process or an indemnity bond.
c. The period described in paragraph (3) of subsection (b) of this section may not exceed thirty (30) days after the date of communication of the notification. A shorter period may be specified by the issuer if it is not manifestly unreasonable.

d. An issuer is not liable to a person who initiated a demand that the issuer not register transfer for any loss the person suffers as a result of registration of a transfer pursuant to an effective endorsement or instruction if the person who initiated the demand does not, within the time stated in the issuer's communication either:
    1. Obtain an appropriate restraining order, injunction, or other process from a court of competent jurisdiction enjoining the issuer from registering the transfer; or
    2. File with the issuer an indemnity bond, sufficient in the issuer's judgment to protect the issuer and any transfer agent, registrar, or other agent of the issuer involved from any loss it or they may suffer by refusing to register the transfer.
e. This section does not relieve an issuer from liability for registering transfer pursuant to an endorsement or instruction that was not effective.

Section 8-404 – Wrongful Registration

a. Except as otherwise provided in Section 33-8-406 of this title, an issuer is liable for wrongful registration or transfer if the issuer has registered a transfer of a security to a person not entitled to it, and the transfer was registered:
    1. Pursuant to an ineffective endorsement or instruction;
    2. After a demand that the issuer not register transfer became effective under subsection (a) of Section 33-8-403 of this title and the issuer did not comply with subsection (b) of Section 33-8-403 of this title;
    3. After the issuer had been served with an injunction, restraining order, or other legal process enjoining it form registering the transfer, issued by a court of competent jurisdiction, and the issuer had a reasonable opportunity to act on the injunction, restraining order, or other legal process; or
    4. By an issuer acting in collusion with the wrongdoer.
b. An issuer that is liable for wrongful registration of transfer under subsection (a) of this section on demand shall provide the person entitled to the security with a like certificated or uncertificated security, and any payments or distributions that the person did not receive as a result of the wrongful registration. If an overissue would result, the issuer's liability to provide the person with a like security is governed by Section 33-8-210 of this title.
c. Except as otherwise provided in subsection (a) of this section or in a law relating to the collection of taxes, an issuer is not liable to an owner or other person suffering loss as a result of the registration of a transfer of a security if registration was made pursuant to an effective endorsement or instruction.

Section 8-405 – Replacement of Lost, Destroyed, or Wrongfully Taken Security Certificate

a. If an owner of a certificated security, whether in registered or bearer form, claims that the certificate has been lost, destroyed, or wrongfully taken, the issuer shall issue a new certificate if the owner:
    1. So requests before the issuer has notice that the certificate has been acquired by a protected purchaser;
    2. Files with the issuer a sufficient indemnity bond; and
    3. Satisfies other reasonable requirements imposed by the issuer.
b. If, after the issue of a new security certificate, a protected purchaser of the original certificate presents it for registration of transfer, the issuer shall register the transfer unless an overissue would result. In that case, the issuer's liability is governed by Section 33-8-210 of this title. In addition to any rights on the indemnity bond, an issuer may recover the new certificate from a person to whom it was issued or any person taking under that person, except a protected purchaser.

Section 8-405.1 – Obligation to Notify Issuer of Lost, Destroyed, or Wrongfully Taken Security Certificate

If a security certificate has been lost, apparently destroyed, or wrongfully taken, and the owner fails to notify the issuer of that fact within a reasonable time after the owner has notice of it and the issuer registers a transfer of the security before receiving notification, the owner may not assert against the issuer a claim for registering the transfer under Section 33-8-404 of this title or a claim to a new security certificate under Section 33-8-405 of this title.

Section 8-406 – Authenticating Trustee, Transfer Agent, and Registrar

A person acting as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of a transfer of its securities, in the issue of new security certificates or uncertificated securities, or in the cancellation of surrendered: security certificates has the same obligation to the holder or owner of a certificated or uncertificated security with regard to the particular functions performed as the issuer has in regard to those functions.

Subchapter 5 – Default

Section 8-501 – Securities Account – Acquisition of Security Entitlement from Securities Intermediary

a. "Securities account" means an account to which a financial asset is or may be credited in accordance with an agreement under which the person maintaining the account undertakes to treat the person for whom the account is maintained as entitled to exercise the rights that comprise the financial asset.
b. Except as otherwise provided in subsections (d) and (e) of this section, a person acquires a security entitlement if a securities intermediary:

1. Indicates by book entry that a financial asset has been credited to the person's securities account;
2. Receives a financial asset from the person or acquires a financial asset for the person and, in either case, accepts it for credit to the person's securities account; or
3. Becomes obligated under other law, regulation, or rule to credit a financial asset to the person's securities account.

c. If a condition of subsection (b) of this section has been met, a person has a security entitlement even though the securities intermediary does not itself hold the financial asset.
d. If a securities intermediary holds a financial asset for another person, and the financial asset is registered in the name of, payable to the order of, or specially endorsed to the other person, and has not been endorsed to the securities intermediary or in blank, the other person is treated as holding the financial asset directly rather than as having a security entitlement with respect to the financial asset.
e. Issuance of a security is not establishment of a security entitlement.

Section 8-502 – Assertion of Adverse Claim against Entitlement Holder

An action based on an adverse claim to a financial asset, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who acquires a security entitlement under Section 8-501 of this title for value and without notice of the adverse claim.

Section 8-503 – Property Interest of Entitlement Holder in Financial Asset Held by Securities Intermediary

a. To the extent necessary for a securities intermediary to satisfy all security entitlements with respect to a particular financial asset, all interests in that financial asset held by the securities intermediary are held by the securities intermediary for the entitlement holders, are not property of the securities intermediary, and are not subject to claims of creditors of the securities intermediary, except as otherwise provided in Section 33-8-511 of this title.
b. An entitlement holder's property interest with respect to a particular financial asset under subsection (a) of this section is a pro rata property interest in all interests in that financial asset held by the securities intermediary, without regard to the time the entitlement holder acquired the security entitlement or the time the securities intermediary acquired the interest in that financial asset.
c. An entitlement holder's property interest with respect to a particular financial asset under subsection (a) of this section may be enforced against the securities intermediary only by exercise of the entitlement holder's rights under Sections 33-8-505 through 33-8-508 of this title.

d. An entitlement holder's property interest with respect to a particular financial asset under subsection (a) of this section may be enforced against a purchaser of the financial asset or interest therein only if:
    1. Insolvency proceedings have been initiated by or against the securities intermediary;
    2. The securities intermediary does not have sufficient interests in the financial asset to satisfy the security entitlements of all of its entitlement holders to that financial asset;
    3. The securities intermediary violated its obligations under Section 33-8-504 of this title by transferring the financial asset or interest therein to the purchaser; and
    4. The purchaser is not protected under subsection (e) of this section. The trustee or other liquidator, acting on behalf of all entitlement holders having security entitlements with respect to a particular financial asset, may recover the financial asset, or interest therein, from the purchaser. If the trustee or other liquidator elects not to pursue that right, an entitlement holder whose security entitlement remains unsatisfied has the right to recover its interest in the financial asset from the purchaser.
e. An action based on the entitlement holder's property interest with respect to a particular financial asset under subsection (a) of this section, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against any purchaser of a financial asset or interest therein who gives value, obtains control, and does not act in collusion with the securities intermediary in violating the securities intermediary's obligations under Section 33-8-504 of this title.

Section 8-504 – Duty of Securities Intermediary to Maintain Financial Asset

a. A securities intermediary shall promptly obtain and thereafter maintain a financial asset in a quantity corresponding to the aggregate of all security entitlements it has established in favor of its entitlement holders with respect to that financial asset. The securities intermediary may maintain those financial assets directly or through one or more other securities intermediaries.
b. Except to the extent otherwise agreed by its entitlement holder, a securities intermediary may not grant any security interests in a financial asset it is obligated to maintain pursuant to subsection (a) of this section.
c. A securities intermediary satisfies the duty in subsection (a) of this section if:
    1. The securities intermediary act with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or
    2. In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to obtain and maintain the financial asset.
d. This section does not apply to a clearing corporation that is itself the obligor of an option or similar obligation to which its entitlement holders have security entitlements.

Section 8-505 – Duty of Securities Intermediary with Respect to Payments and Distributions

a. A securities intermediary shall take action to obtain a payment or distribution made by the issuer of a financial asset. A securities intermediary satisfies the duty if:
    1. The securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or
    2. In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to attempt to obtain the payment or distribution.
b. A securities intermediary is obligated to its entitlement holder for a payment or distribution made by the issuer of a financial asset if the payment or distribution is received by the securities intermediary.

Section 8-507 – Duty of Securities Intermediary to Comply with Entitlement Order

a. A securities intermediary shall comply with an entitlement order if the entitlement order is originated by the appropriate person, the securities intermediary has had reasonable opportunity to assure itself that the entitlement order is genuine and authorized, and the securities intermediary has had reasonable opportunity to comply with the entitlement order. A securities intermediary satisfies the duty if:
    1. The securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or
    2. In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to comply with the entitlement order.
b. If a securities intermediary transfers a financial asset pursuant to an ineffective entitlement order, the securities intermediary shall reestablish a security entitlement in favor of the person entitled to it and pay or credit any payments or distributions that the person did not receive as a result of the wrongful transfer. If the securities intermediary does not reestablish a security entitlement, the securities intermediary is liable to the entitlement holder for damages.

Section 8-508 – Duty of Securities Intermediary to Change Entitlement Holder's Position to Other Forms of Security Holding

A securities intermediary shall act at the direction of an entitlement holder to change a security entitlement into another available form of holding for which the entitlement holder is eligible, or to cause the financial asset to be transferred to a securities account of the entitlement holder with another securities intermediary. A securities intermediary satisfied the duty if:

1. The securities intermediary acts as agreed upon by the entitlement holder and the securities intermediary; or
2. In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder.

Section 8-509 – Specification of Duties of Securities Intermediary by Other Statute or Regulation; Manner of Performance of Duties of Securities Intermediary and Exercise of Rights of Entitlement Holder

a. If the substance of a duty imposed upon a securities intermediary by Sections 33-8-504 through 33-8-508 of this title is the subject of other statute, regulation, or rule, compliance with that statute, regulation, or rule satisfies the duty.
b. To the extent that specific standards for the performance of the duties of a securities intermediary or the exercise of the rights of an entitlement holder are not specified by other statute, regulation, or rule or by agreement between the securities intermediary and entitlement holder, the securities intermediary shall perform its duties and the entitlement holder shall exercise its rights in a commercially reasonable manner.
c. The obligation of a securities intermediary to perform the duties imposed by Sections 33-8-504 through 33-8-508 of this title is subject to:
    1. Rights of the securities intermediary arising out of a security interest under a security agreement with the entitlement holder or otherwise; and
    2. Rights of the securities intermediary under other law, regulation, rule, or agreement to withhold performance of its duties as a result of unfulfilled obligations of the entitlement holder to the securities intermediary.
d. Sections 33-8-504 through 33-8-508 of this title do not require a securities intermediary to take any action that is prohibited by other statute, regulation, or rule.

Section 8-510 – Rights of Purchaser of Security Entitlement from Entitlement Holder

a. In a case not covered by the priority rules in Chapter 9 or the rules stated in subsection (c), an action based on an adverse claim to a financial asset or security entitlement, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who purchases a security entitlement, or an interest therein, from an entitlement holder if the purchaser gave value, does not have notice of the adverse claim, and obtains control.
b. If an adverse claim could not have been asserted against an entitlement holder under Section 8-502 of this title, the adverse claim cannot be asserted against a person who purchases a security entitlement, or an interest therein, from the entitlement holder.
c. In a case not covered by the priority rules in Chapter 9 of this code, a purchaser for value of a security entitlement, or an interest therein, who obtains control has priority over a purchaser of a security entitlement, or an interest therein, who does not obtain control. Except as otherwise provided in subsection (d) of this section, purchasers who have control rank according to priority in time of:

1. The purchaser's becoming the person for whom the securities account, in which the security entitlement is carried, is maintained, if the purchaser obtained control under paragraph (1) of subsection (d) of Section 8-106 of this title;
2. The securities intermediary's agreement to comply with the purchaser's entitlement orders with respect to security entitlements carried or to be carried in the securities account in which the security entitlement is carried, if the purchaser obtained control under paragraph (2) of subsection (d) of Section 8-106 of this title; or
3. If the purchaser obtained control through another person under paragraph (3) of subsection (d) of Section 8-106 of this title, the time on which priority would be based under this subsection if the other person were the secured party.

d. A securities intermediary as purchaser has priority over a conflicting purchaser who has control unless otherwise agreed by the securities intermediary.

Section 8-510 – Rights of Purchaser of Security Entitlement from Entitlement Holder

a. In a case not covered by the priority rules in Chapter 9 or the rules stated in subsection (c), an action based on an adverse claim to a financial asset or security entitlement, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory may not be asserted against a person who purchases a security entitlement, or an interest therein, from an entitlement holder if the purchaser gave value, does not have notice of the adverse claim, and obtains control.
b. If an adverse claim could not have been asserted against an entitlement holder under Section 8-502 of this title, the adverse claim cannot be asserted against a person who purchases a security entitlement, or an interest therein, from the entitlement holder.
c. In a case not covered by the priority rules in Chapter 9 of this code, a purchaser for value of a security entitlement, or an interest therein, who obtains control has priority over a purchaser of a security entitlement, or an interest therein, who does not obtain control. Except as otherwise provided in subsection (d) of this section, purchasers who have control rank according to priority in time of:
    1. The purchaser's becoming the person for whom the securities account, in which the security entitlement is carried, is maintained, if the purchaser obtained control under paragraph (1) of subsection (d) of Section 8-106 of this title;
    2. The securities intermediary's agreement to comply with the purchaser's entitlement orders with respect to security entitlements carried or to be carried in the securities account in which the security entitlement is carried, if the purchaser obtained control under paragraph (2) of subsection (d) of Section 8-106 of this title; or
    3. If the purchaser obtained control through another person under paragraph (3) of subsection (d) of Section 8-106 of this title, the time on which priority would be based under this subsection if the other person were the secured party.

d. A securities intermediary as purchaser has priority over a conflicting purchaser who has control unless otherwise agreed by the securities intermediary.

Section 8-511 – Priority among Security Interests and Entitlement Holders

a. Except as otherwise provided in subsections (b) and (c) of this section, if a securities intermediary does not have sufficient interests in a particular financial asset to satisfy both its obligations to entitlement holders who have security entitlements to that financial asset and its obligation to a creditor of the securities intermediary who has a security interest in that financial asset, the claims of entitlement holders, other than the creditor, have priority, over the claim of the creditor.
b. A claim of a creditor of a securities intermediary who has a security interest in a financial asset held by a securities intermediary has priority over claims of the securities intermediary's entitlement holders who have security entitlements with respect to that financial asset if the creditor has control over the financial asset.
c. If a clearing corporation does not have sufficient financial assets to satisfy both its obligations to entitlement holders who have security entitlements with respect to a financial asset and its obligation to a creditor of the clearing corporation who has a security interest in that financial asset, the claim of the creditor has priority over the claims of entitlement holders.

Part 6 – Savings Clause

Section 8-603 – Savings Clause

a. This act does not affect an action or proceeding commenced before this act takes effect.
b. If a security interest in a security is perfected before this act takes effect, and the action by which the security interest was perfected would suffice to perfect a security interest under this act, no further action is required to continue perfection. If a security interest in a security is perfected before this act takes effect but the action by which the security interest under this act, the security interest remains perfected for a period of four months after the effective date and continues perfected thereafter if appropriate action to perfect under this act is taken within that period. If a security interest is perfected before this act takes effect and the security interest can be perfected by filing under this act, a financing statement signed by the secured party instead of the debtor may be filed within that period to continue perfection or thereafter to perfect.

Chapter 9 – Secured Transactions

Subchapter 1 – General Provisions

Section 9-101 – Short Title

This Chapter may be cited as the Commercial Code – Secured Transactions.

Section 9-102 - No Waiver of Sovereign Immunity

The sovereign immunity of neither this Nation nor of any of its agencies or instrumentalities is waived with respect to any provision of any transaction subject to this Chapter, absent a properly ratified, express waiver of sovereign immunity.

Section 9-103 – Purpose

This Chapter must be liberally construed and applied to promote its underlying purposes and policies, which are the promotion of economic development and the continued expansion of commercial practices involving this Nation.

Section 9-104 - No Application to Property not Alienable

This Chapter does not apply to any property interest the extent inconsistent with federal restrictions regarding sale, transfer or encumbrance.

Section 9-105 – Reserved.

Section 9-106 - General Definitions

A. In this Chapter:
    1. "Accession" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.
    2. "Account", except as used in "account for", means a right to payment of a monetary obligation, whether or not earned by performance,
        a. For property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of,
        b. For services rendered or to be rendered,
        c. For a policy of insurance issued or to be issued,
        d. For a secondary obligation incurred or to be incurred,
        e. For energy provided or to be provided,
        f. For the use or hire of a vessel under a charter or other contract,
        g. Arising out of the use of a credit or charge card or information contained on or for use with the card, or
        h. As winnings of a player in a lottery or other game of chance operated or sponsored by a tribe, governmental unit of a tribe, or person licensed or authorized to operate the game by a tribe or governmental unit of a tribe to

operate the game, a State, governmental unit of a State, or person licensed or authorized to operate the game by a State of governmental unit of a State. The term includes health-care-insurance receivables.

i. The term does not include
    i. Rights to payment evidenced by chattel paper or an instrument,
    ii. Commercial tort claims,
    iii. Deposit accounts,
    iv. Investment property,
    v. letter-of-credit rights or letters of credit, or
    vi. Rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

3. "Account debtor" means a person obligated on an account, chattel paper or general Intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.
    a. Authenticated by a secured party;
    b. Indicating the aggregate unpaid secured obligations as of a date not more than 35 days earlier or 35 days later than the date of the record; and
    c. Identifying the components of the obligations in reasonable detail.
5. "Agricultural lien" means an interest, other than a security interest, in farm products:
    a. Which secures payment or performance of an obligation for:
        i. Goods or services furnished in connection with a debtor's farming operation; or
        ii. Rent on real property leased by a debtor in connection with its farming operation;
    b. Which is created by statute in favor of a person that:
        i. In the ordinary course of its business furnished goods or services to a debtor in connection with a debtor's farming operation; or
        ii. Leased real property to a debtor in connection with the debtor's farming operation; and
    c. Whose effectiveness does not depend on the person's possession of the personal property.
6. As-extracted collateral means:
    a. Oil, gas, or other minerals that are subject to a security interest that:
        i. Is created by a debtor having an interest in the minerals before extraction; and
        ii. Attaches to the minerals as extracted; or

b. Accounts arising out of the sale at the wellhead or minehead of oil, gas or other minerals in which the debtor had an interest before extraction.

7. Authenticate" means
   a. To sign; or
   b. To execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record.
8. "Bank" means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions, and trust companies.
9. "Cash proceeds" means proceeds that are money, checks, deposit accounts or the like.
10. "Certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.
11. "Chattel paper" means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this paragraph, "monetary obligation" means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term does not include
    i. Charters or other contracts involving the use or hire of a vessel or
    ii. Records that evidence a right to payment arising out of the use of a credit or charge card, or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.
12. "Collateral" means the property subject to a security interest or agricultural lien. The term includes:
    a. Proceeds to which a security interest attaches;
    b. Accounts, chattel paper, payment intangibles and promissory notes that have been sold; and
    c. Goods that are the subject of a consignment.
13. "Commercial tort claim" means a claim arising in tort with respect to which:
    a. The claimant is an organization; or
    b. The claimant is an individual and the claim:
        i. Arose in the course of the claimant's business or profession; and

ii. Does not include damages arising out of personal injury to or the death of an individual.

14. "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.
15. "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:
    a. Traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or
    b. Traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.
16. "Commodity customer" means a person for which a commodity intermediary carries a commodity contract on its books.
17. "Commodity intermediary" means a person that:
    a. Is registered as a futures commission merchant under federal commodities law; or
    b. In the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.
18. "Communicate" means:
    a. To send a written or other tangible record;
    b. To transmit a record by any means agreed upon by the persons sending and receiving the record; or
    c. In the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.
19. "Consignee" means a merchant to which goods are delivered in a consignment.
20. "Consignment" means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:
    a. The merchant:
        i. Deals in goods of that kind under a name other than the name of the person making delivery;
        ii. Is not an auctioneer; and
        iii. Is not generally known by its creditors to be substantially engaged in selling the goods of others;
    b. With respect to each delivery, the aggregate value of the goods is $3,000 or more at the time of delivery;
    c. The goods are not consumer goods immediately before delivery; and
    d. The transaction does not create a security interest that secures an obligation.
21. "Consignor" means a person that delivers goods to a consignee in a consignment.
22. "Consumer debtor" means a debtor in a consumer transaction.

23. “Consumer goods” means goods that are used or bought for use primarily for personal, family or household purposes.
24. Consumer-goods transaction” means a consumer transaction in which:
    a. An individual incurs an obligation primarily for personal, family, or household purposes; and
    b. A security interest in consumer goods secures the obligation.
25. “Consumer obligor” means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family, or household purposes.
26. “Consumer transaction” means a transaction in which (i) an individual incurs an obligation primarily for personal, family, or household purposes, (ii) a security interest secures the obligation, and (iii) the collateral is held or acquired primarily for personal, family, or household purposes. The term includes consumer-goods transactions.
27. “Continuation statement” means an amendment of a financing statement which:
    a. Identifies, by its file number, the initial financing statement to which it relates; and
    b. Indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.
28. “Debtor” means:
    a. A person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;
    b. A seller of accounts, chattel paper, payment intangibles, or promissory notes; or
    c. A consignee.
29. “Deposit account” means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.
30. “Document” means a document of title or a receipt of the type described in Section 7-201(2).
31. “Electronic chattel paper” means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.
32. “Encumbrance” means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.
33. “Equipment” means goods other than inventory, farm products, or consumer goods.
34. “Farm products” means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:
    a. Crops grown, growing, or to be grown, including:
        i. Crops produced on trees, vines, and bushes; and
        ii. Aquatic goods produced in aquacultural operations;

b. Livestock, born or unborn, including aquatic goods produced in aquacultural operations;
c. Supplies used or produced in a farming operation; or
d. Products of crops or livestock in their unmanufactured states.

35. “Farming operation” means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, wild game or aquacultural operation.
36. “File number” means the number assigned to an initial financing statement pursuant to Section 9-519(A).
37. “Filing office” means an office designated in Section 9-501 as the place to file a financing statement.
38. “Filing-office rule” means a rule adopted pursuant to Section 9-526.
39. “Financing statement” means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.
40. “Fixture filing” means the filing of a financing statement covering goods that are, or are to become, fixtures and satisfying Section 9-502(A) and (B). The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.
41. “Fixtures” means goods that have become so related to particular real property that an interest in them arises under real property law.
42. “General intangible” means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.
43. “Good faith” means honesty in fact and the observance of reasonable commercial standards of fair dealing.
44. “Goods” means all things that are movable when a security interest attaches. The term includes
    i. Fixtures
    ii. Standing timber that is to be cut and removed under a conveyance or contract for sale
    iii. The unborn young of animals;
    iv. Crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes and (v) manufactured homes

The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if

i. The program is associated with the goods in such a manner that it customarily is considered part of the goods, or

ii. By becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas or other minerals before extraction.

45. "Governmental unit" means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a State, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.
46. "Health-care-insurance receivable" means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health care goods or services to be provided.
47. "Instrument" means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary endorsement or assignment. The term does not include (i)–an investment property, (ii) letters of credit, or (iii) that evidences a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.
48. "Inventory" means goods, other than farm products, which:
    a. Are leased by a person as lessor;
    b. Are held by a person for sale or lease or to be furnished under a contract of service;
    c. Are furnished by a person under a contract of service; or
    d. Consist of raw materials, work in process or materials used or consumed in a business.
49. "Investment property" means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.
50. "Jurisdiction of organization", with respect to a registered organization, means the jurisdiction under whose law the organization is organized.
51. "Letter-of-credit right" means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

52. “Lien creditor” means:
    a. A creditor that has acquired a lien on the property involved by attachment, levy, or the like;
    b. An assignee for benefit of creditors from the time of assignment;
    c. A trustee in bankruptcy from the date of the filing of the petition; or
    d. A receiver in equity from the time of appointment.
53. “Manufactured home” means any structure meeting the definitional requirements founds under 42 U.S.C. § 5402(6) (2004), as the same may be amended from time to time.
54. “Manufactured-home transaction” means a secured transaction:
    a. That creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or
    b. In which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.
55. “Mortgage” means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.
56. “Nation Party” means the Nation and any division, subdivision, branch, department, board, committee, commission, agency, enterprise, instrumentality, or entity wholly-owned or wholly-controlled, directly or indirectly, by the Nation, along with the successors and assigns of each.
57. “New debtor” means a person that becomes bound as debtor under Section 9-203(D) by a security agreement previously entered into by another person.
58. “New value” means (i) money, (ii) money’s worth in property, services, or new credit, or (iii) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.
59. “Noncash proceeds” means proceeds other than cash proceeds.
60. “Obligor” means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral, (i) owes payment or other performance of the obligation, (ii) has provided property other than the collateral to secure payment or other performance of the obligation, or (iii) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.
61. “Original debtor”, except as used in Section 9-310(D), means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under Section 9-203(D).
62. “Payment intangible” means a general intangible under which the account debtor’s principal obligation is a monetary obligation.
63. “Person related to”, with respect to an individual, means:

a. The spouse of the individual;
b. A brother, brother-in-law, sister, or sister-in-law of the individual;
c. An ancestor or lineal descendant of the individual or the individual's spouse; or
d. Any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

64. "Person related to", with respect to an organization, means:
    a. A person directly or indirectly controlling, controlled by, or under common control with the organization;
    b. An officer or director of, or a person performing similar functions with respect to, the organization; c.
    c. An officer or director of, or a person performing similar functions with respect to, a person described in subparagraph a;
    d. The spouse of an individual described in subparagraph a, b, or c; or
    e. An individual who is related by blood or marriage to an individual described in subparagraph a, b, c, or d and shares the same home with the individual.
65. "Pledged Revenues" means all or a designated portion of a Nation Party's money, earnings, income, and revenues (and any proceeds thereof), and all of the Nation Party's rights to, and interest with respect to, receiving the foregoing before actual possession, whether in the form of money, accounts, chattel paper, deposit accounts, negotiable documents, instruments, investment property, letter-of-credit rights or other assets, and the proceeds thereof, in which a Nation Party has granted a security interest to a secured party in a writing signed by the Nation Party.
66. "Proceeds", except as used in Section 9-609(B), means the following property:
    a. Whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;
    b. Whatever is collected on, or distributed on account of, collateral;
    c. Rights arising out of collateral;
    d. To the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or
    e. To the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.
67. "Promissory note" means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

68. “Proposal” means a record authenticated by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to Sections 9-620, 9-621, and 9-622.
69. “Public-finance transaction” means a secured transaction in connection with which:
    a. Debt securities are issued;
    b. All or a portion of the securities issued have an initial stated maturity of at least 20 years; and
    c. The debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a State or a governmental unit of a State.
70. “Pursuant to commitment”, with respect to an advance made or other value given by a secured party, means pursuant to the secured party’s obligation, whether or not a subsequent event of default or other event not within the secured party’s control has relieved or may relieve the secured party from its obligation.
71. “Record”, except as used in “for record, ”, “of record, ”, “record or legal title”, and “record owner”, means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.
72. “Registered organization” means an organization organized solely under the law of a single State or the United States and as to which the State or the United States must maintain a public record showing the organization to have been organized.
73. “Secondary obligor” means an obligor to the extent that:
    a. The obligor’s obligation is secondary; or
    b. The obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor or property of either.
74. “Secured party” means:
    a. A person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;
    b. A person that holds an agricultural lien;
    c. A consignor;
    d. A person to which accounts, chattel paper, payment intangibles or promissory notes have been sold;
    e. A trustee, indenture trustee, agent, collateral agent or other representative in whose favor a security interest or agricultural lien is created or provided for; or
    f. A person that holds a security interest arising under Section 2-401, 2-505, 2-711(3), 2A-508(5), 4-210, or 5-118.
75. “Security agreement” means an agreement that creates or provides for a security interest.
76. “Send”, in connection with a record or notification, means:

a. To deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or
b. To cause the record or notification to be received within the time that it would have been received if properly sent under subparagraph (A).

77. "Software" means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.
78. "State" means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.
79. "Supporting obligation" means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument, or investment property.
80. "Tangible chattel paper" means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.
81. "Termination statement" means an amendment of a financing statement which:
    a. Identifies, by its file number, the initial financing statement to which it relates; and
    b. Indicates either that it is a termination statement or that the identified financing statement is no longer effective.
82. "Transmitting utility" means a person primarily engaged in the business of:
    a. Operating a railroad, subway, street railway, or trolley bus;
    b. Transmitting communications electrically, electromagnetically, or by light;
    c. Transmitting goods by pipeline or sewer; or
    d. Transmitting or producing and transmitting electricity, steam, gas, or water.
83. "Tribal business day" means a day on which the Nation's governmental offices are open for conduct of their ordinary business.

B. Definitions in other Chapters. The following definitions in other articles apply to this Chapter:

"Applicant" Section 5-102
"Beneficiary" Section 5-102
"Broker" Section 8-102
"Certificated security" Section 8-102
"Check" Section 3-104
"Clearing corporation" Section 8-102
"Contract for sale" Section 2-106
"Customer" Section 4-104
"Entitlement holder" Section 8-102

“Financial asset” Section 8-102
“Holder in due course” Section 3-302
“Issuer” (with respect to a letter of credit or letter-of-credit right) Section 5-102
“Issuer” (with respect to a security Section 8-201
“Issuer” (with respect to documents of title) Section 7-102
“Lease” Section 2A-103
“Lease Agreement “Section 2A-103
“Lease contract” Section 2A-103
“Leasehold interest” Section 2A-103
“Lessee” Section 2A-103
“Lessee in ordinary course of business” Section 2A-103
“Lessor” Section 2A-103
“Lessor’s residual interest” Section2A-102
“Letter of credit” Section5-102
“Merchant” Section 2-104
“Negotiable instrument” Section3-104
“Nominated person” Section5-102
“Note” Section 3-104
“Proceeds of a letter of credit” Section 5-114
“Prove” Section 3-103
“Sale” Section 2-106
“Securities account” Section 8-501
“Securities intermediary” Section 8-102
“Security” Section 8-102
“Security certificate” Section 8-102
“Security entitlement” Section 8-102
“Uncertificated security” Section 8-102

C. Chapter 1 definitions and principles. Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this Chapter.

Section 9-107 – Notice; Knowledge

a. Subject to subsection F, a person has “notice” of a fact if the person:
    1. Has actual knowledge of it;
    2. Has received a notice or notification of it; or
    3. From all the facts and circumstances known to the person at the time in question, has reason to know that it exists.
b. “Knowledge” means actual knowledge. “Knows” has a corresponding meaning.

c. “Discover”, “learn”, or words of similar import refer to knowledge rather than to reason to know.
d. A person “notifies” or “gives” a notice or notification to another person by taking such steps as may be reaonably required to inform the other person in ordianry course, whether or not the other person actually comes to know of it.
e. Subject to subsection f, a person “receives” a notice or notification when:
    1. It comes to that person’s attention; or
    2. It is duly delivered in a form reasonable under the circumstances at the place of business through which the contract was made or at another location held out by that person as the place for receipt of such communications.
f. Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time it is brough to the attention of the individual conducting that transaction and, in any event, from the time it would have been brought to the individual’s attention if the organization had exercised due diligence. An oraganization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organiztaion to communicate information unless the communication is part of the individual’s regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

Section 9-108 – Value

Except as otherwise provided under applicable laws dealing with negotiable instruments, bank deposits, letters of credit and bulk transfers and sales, a person gives value for rights if the person acquires them:

a. In return for a binding commitment to extend credit or for the extension of immediately available credit, whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection;
b. As security for, or in total or partial satisfaction of, a preexisting claim;
c. By accepting delivery under a preexisting contract for purchase; or
d. In retrurn for nay consideration sufficient to support a simple contract.

Section 9-109 – Lesae Distinguished from Security Interest

a. Basis test. Whether a transaction in the form of a lease creates a lease or security interest is determined by the facts of each case.
b. Transactions that create security interests. A transaction in the form of a lease creates a security interest if the consideration that the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease and is not subject to termination by the lessee; and

1. The original term of th lease is equal to or greater than the remaining economic life of the goods;
2. The lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;
3. The lessee has the option to renew the lease for the remaining economic life of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement; or
4. The lessee has an option to become the owner of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement.

c. Factors that do not create security interests. A transaction in the form of a lease does not create a security inetest merely because:
    1. The present value of the consideration the lessee is obligated to pay the lessor for the right to possession and the use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;
    2. The lessee assumes the risk of loss of the goods;
    3. The lessee agrees to pay, with respect to the goods, taxes, insurance, filing, recording, or registration fees, or service or maintenance costs;
    4. The lessee has an option to renew the lease or to become the owner of the goods;
    5. The lessee has an option to renew the lease for a fixed rent that is qual to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed; or
    6. The lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

Section 9-110 - General Scope

a. General scope of Chapter. Except as otherwise provided in the section on excluded transactions, this Chapter applies to the following:
    1. A transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;
    2. An agricultural lien;
    3. A sale of accounts, chattel paper, payment intangibles or promissory notes;
    4. A consignment;
    5. A security interest arising under Section 2-401, 2-505, 2-711(3), or 2A-508(5), as provided in Section 9-121; and
    6. A security interest arising under Section 4-210 or 5-118.
b. Extent to which chapter does not apply. Except as otherwise roved in subsection C, this Chapter does not apply to the extent that:

1. A statute, regulation, or treaty of the United States preempts this Chapter;
2. A statute of a State, a foreign country, or a governmental unit of a State or a foreign country, other than a statue generally applicable to security interests, expressly governs creation, perfection, priority, or enforcement of a security interest created by the state, country, or governmental unit; or
3. The rights of a transferee beneficiary or nominated person under a letter of credit are independent and superior under applicable law.

c. Chapter applicable to Nation Parties. This Chapter governs the creation, perfection, priority, and enforcement of a security interest created by a Nation Party.
d. Security interest in secured obligation. The application of this Chapter to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this Chapter does not apply.

Section 9-111 - Excluded Transactions

This Chapter does not apply to:

a. A landlord's lien, other than an agricultural lien;
b. A lien, other than an agricultural lien, given by statute or other rule of law for services or materials, but 9-333 applies with respect to priority of the lien;
c. An assignment of a claim for wages, salary, or other compensation of an employee;
d. A sale of accounts, chattel paper, payment intangibles, or promissory notes as part of a sale of the business out of which they arose;
e. An assignment of accounts, chattel paper, payment intangibles, or promissory notes which is for the purpose of collection only;
f. An assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract;
g. An assignment of a single account, payment intangible, or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness;
h. A transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health-care provider of a health-care-insurance receivable and any subsequent assignment of the right to payment, but Sections 9-315 and 9-322 apply with respect to proceeds and priorities in proceeds;
i. An assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral;
j. A right of recoupment or set-off, but—(1) Section 9-340 applies with respect to the effectiveness of rights of recoupment or set-off against deposit accounts; and
   2. Section 9-404 applies with respect to defenses or claims of an account debtor;
k. The creation or transfer of an interest in or lien on real property, including a lease or rents thereunder, except to the extent that provision is made for:

1. Liens on real property in Sections 9-203 and 9-308;
2. Fixtures in Section 9-334;
3. Fixture filings in Sections 9-501, 9-502, 9-512, 9-516, and 9-519; and
4. Security agreements covering personal and real property in ~~§~~ Section 9-604;

l. An assignment of a claim arising in tort, other than a commercial tort claim, but Sections 9-315 and 9-322 apply with respect to proceeds and priorities in proceeds; or

m. An assignment of a deposit account in a consumer transaction, but Sections 9-315 and 9-322 apply with respect to proceeds and priorities in proceeds.

Section 9-112 – Administration of Chapter; Authority to Promulgate Regulations

Administration of Chapter; Authority to Promulgate Regulations. The Secretary of the Nation is charged withe the administration of this Chapter. In accordance with applicable administrative and interpretive rules, the Secretary of the Nation may promulgate regulations necessary for the effective implementation and enforcement of this Chapter.

Section 9-113 – Obligation of Good Faith

Every contract or duty within this Chapter imposes, with respect to its performance or enforcement, an obligation that each party be honest and act in a manner that is consistent with reasonable commercial standards of fair dealing.

Section 9-114 – Course of Performance, Course of Dealing and Usage of Trade

a. Course of performance defined. A "course of performance" is a sequence of conduct between the parties to a particular transaction that exists if:
   1. the agreement of the parties with respect to the transaction involves repeated occasions for payment by a party; and
   2. the other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection.

b. Course of dealing defined. A "course of dealing" is a sequence of conduct concerning previous transactions betewen the parties to a particular transaction that is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

c. Usage of trade. A "usage of trade" is any practice or method of dealing, including a local custom or tradition of this Nation, having such regularity of observance in a place, vocation, or trade as to justify an exception that it will be observed with respect to the transaction in question. The existence and scope of such a usage must be proved as facts. If it is established that such a usage is embodied in a trade code or similar record, the interpretation of the record is a question of law.

d. Effect. A course of performance or course of dealing between the parties or usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware is

releveant in ascertaining the meaning of the parties agreement, may give particular meaning to specified terms of the agreement, and may supplment or qualify the terms of the agreement. A usage of trade applicable in the place in which part of the performance under the agreement is to occur may be so utilized as to that part of the performance.

e. Practical construction; hierarchy. Except as otherwise provdided in subsection f, the express terms of an agreement and any applicable course of performance, course of dealing, or usage of trade must be construed whenever reasonable as consistent with each other. If such a construction is unreasonable:
    1. Express terms prevail over course of performance, course of dealing and usage of trade;
    2. Course of performance prevails over course of dealing and usage of trade;
    3. Course of dealing prevails over usage of trade.
f. Subject to other applicable law, a course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.
g. Evidence of relevant usage of trade offered by one party is not admissible unless that party has given the other party notice that the court finds sufficient to prevent unfair surprise to the other party.

Section 9-115 – Purchase – Money Security Interest

a. In this section:
    1. "Purchsae money collateral" means goods or software that secures a purchase money obligation incurred with respect to that collateral; and
    2. "Purchase money obligation" means an obligaiton of an obligor incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral if the value is in fact so used.
b. Purchase money security interest in goods. A security interest in goods is a purchase money security interest:
    1. To the extent that the goods are purchase money collateral with respect to that security interest;
    2. If the security interest is in inventory that is or was purchase money collateral, also the extent that the security interest secures a purchase money obligation incurred with respect to other inventory in which the secured party holds or held a purchase money security interest; and
    3. Also to the extent that the security interest secures a purchase money obligation incurred with respect to software in which the secured party holds or held a purchase money security interest.
c. Purchase-money security interest in software. A security interest in software is a purchase-money security interest to the extent that the security interest also secures a purchase-money obligation incurred with respect to goods in which the secure party holds or held a purchase-money security intertest if:

1. The debtor acquired its interest in the software in an integrated transaction in which it acquired an interest in the goods; and
2. The debtor acquired its interest in the software for the principal purpose of using the software in the goods.

d. Consignor's inventory purchase-money security interest. The security interest of a consignor in goods that are the subject of a consignment is a purchase-money security interest in inventory.

e. Application of payment in non-consumer-goods transaction. In a transaction other than a consumer-goods transaction, if the extent to which a security interest is a purchase-money security interest depends on the application of a payment to a particular obligation, the payment must be applied:
   1. In accordance with any reasonable method of application to which the parties agree;
   2. In the absence of the parties' agreement to a reasonable method, in accordnace with any intention of the obligor manifested at or before the time of payment; or
   3. In the absence of an agreement to a reasonable method and a timely manifestation of the obligor's intention, in the following order:
      a. To obligations that are not secured; and
      b. If more than one obligation is secured, to obligations secured by purchase-money security interests in the order in which those obligations were incurred.

f. No loss of status of purchase-money security interest in non-consumer-goods transaction. In a transaction other than a consumer-goods transaction, a purchase-money security interest does not lose its status as such, even if:
   1. The purchase-money collateral also secures an obligation that is not a purchase-money obligation;
   2. Collateral that is not purchase-money collateral also secures the purchase-money obligation; or
   3. The purchase-money obligation has been renewed, refinanced, consolidated or restructured.

g. Burden of proof in non-consumer-goods transaction. In a transaction other than a consumer-goods transaction, a secured party claiming a purchase-money security interest has the burden of establishing the extent to which the security interest is a purchase-money security interest.

Section 9-116 - Sufficiency of Description

a. Sufficiency of description. Except as otherwise provided in subsections B and C, a description of personal or real property is sufficient, whether or not it is specific, if it reasonably identifies what is described.

b. Examples of reasonable identification. Except as otherwise provided in subsection D, a description of collateral reasonably identifies the collateral if it identifies the collateral by:
   1. Specific listing;
   2. Category;

3. Except as otherwise provided in subsection E, a type of collateral defined in this Chapter;
4. Quantity;
5. Computational or allocational formula or procedure; or
6. Except as otherwise provided in subsection C, any other method, if the identity of the collateral is objectively determinable.

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

d. Investment property. Except as otherwise provided in subsection E, a description of a security entitlement, securities account, or commodity account is sufficient if it describes:
   1. The collateral by those terms or as investment property; or
   2. The underlying financial asset or commodity contract.

e. When description by type insufficient. A description only by type of collateral defined in this Chapter is an insufficient description of:
   1. A commercial tort claim; or
   2. In a consumer transaction, consumer goods, a security entitlement, a securities account, or a commodity account.

Section 9-117 - Control of Deposit Account

a. Requirements for control. A secured party has control of a deposit account if:
   1. The secured party is the bank with which the deposit account is maintained;
   2. The debtor, secured party, and bank have agreed in an authenticated record that the bank will comply with instructions originated by the secured party directing disposition of the funds in the deposit account without further consent by the debtor; or
   3. The secured party becomes the bank's customer with respect to the deposit account.

b. Debtor's right to direct disposition. A secured party that has satisfied subsection A has control, even if the debtor retains the right to direct the disposition of funds from the deposit account.

Section 9-118 - Control of Electronic Chattel Pater

A secured party has control of electronic chattel paper if the record or records comprising the chattel paper are created, stored, and assigned in such a manner that:

1. A single authoritative copy of the record or records exists which is unique, identifiable and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;
2. The authoritative copy identifies the secured party as the assignee of the record or records;

3. The authoritative copy is communicated to and maintained by the secured party or its designated custodian;
4. Copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the participation of the secured party;
5. Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and
6. Any revision of the authoritative copy is readily identifiable as an authorized or unauthorized revision.

Section 9-119 - Control of Investment Property

a. Control under Section 8-106. A person has control of a certificated security, uncertificated security, or security entitlement as provided in Section 8-106.
b. Control of commodity contract. A secured party has control of a commodity contract if:
   1. The secured party is the commodity intermediary with which the commodity contract is carried; or
   2. The commodity customer, secured party, and commodity intermediary have agreed that the commodity intermediary will apply any value distributed on account of the commodity contract as directed by the secured party without further consent by the commodity customer.
c. Effect of control of securities account or commodity account. A secured party having control of all security entitlements or commodity contracts carried in a securities account or commodity account has control over the securities account or commodity account.

Section 9-120 - Control of Letter of Credit Right

A secured party has control of a letter-of-credit right to the extent of any right to payment or performance by the issuer or any nominated person if the issuer or nominated person has consented to an assignment of proceeds of the letter of credit under Section 5-114(c) or otherwise applicable law or practice.

Section 9-121 - Security Interest Arising Under Chapter 2 or 2A

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

1. The security interest is enforceable, even if Section 9-203(B)(3) has not been satisfied;
2. Filing is not required to perfect the security interest;
3. The rights of the secured party after default by the debtor are governed as provided by Chapter 2 or 2A; and (4) the security interest has priority over a conflicting security interest created by the debtor.

Subchapter 2 – Effectiveness; Attachment; and Rights of Parties

Section 9-201 - General Effectiveness of Security Agreement

a. General effectiveness. Except as otherwise provided in this Chapter a security agreement is effective according to its terms between the parties, against purchasers of the collateral and against creditors.
b. Applicable consumer laws and other law. A transaction subject to this Chapter is subject to any applicable rule of law which establishes a different rule for consumers–any applicable tribal, federal or State statute or regulation that regulates the rates, charges, agreements and practices for loans, credit sales or other extensions of credit; and
    ii. any applicable consumer protection statute or regulation.
c. Other applicable law controls. In case of conflict between this Chapter and a rule of law, statute or regulation described in subsection B, the rule of law, statute or regulation prevails. Failure to comply with a statute or regulation described in subsection B has only the effect the statute or regulation specifies.
d. Further deference to other applicable law. This Chapter does not:
    1. Validate any rate, charge, agreement, or practice that violates a rule of law, statute, or regulation described in subsection B; or
    2. Extend the application of the rule of law, statute, or regulation to a transaction not otherwise subject to it.

Section 9-202 - Title to Collateral Immaterial

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

Section 9-203 - Attachment and Enforceability of Security Interest; Proceeds; Formal Requisites

a. Attachment. A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.
b. Enforceability. Except as otherwise provided in subsections c through i, a security interest is enforceable against the debtor and third parties with respect to the collateral only if :
    1. Value has been given;
    2. The debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and
    3. One of the following conditions is met:
        a. The debtor has signed a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;

b. The collateral is not a certificated security and is in the possession of the secured party under Section 9-313 pursuant to the debtor's security agreement;
c. The collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under Section 8-301 pursuant to the debtor's security agreement; or
d. The collateral is deposit accounts, electronic chattel paper, investment property, or letter-of-credit rights, and the secured party has control under Section 9-117, 9-118, 9-119, or 9-120 pursuant to the debtor's security agreement.

c. Other applicable law. Subsection B is subject to Section 4-210 on the security interest of a collecting bank, Section 5-118 on the security interest of a letter-of-credit issuer or nominated person Section 9-120 on a security interest arising as provided under Chapter 2 or 2A, and Section 9-206 on security interests in investment property.
d. When person becomes bound by another person's security agreement. A person becomes bound as debtor by a security agreement entered into by another person if, by operation of law other than this Chapter or by contract:
   1. The security agreement becomes effective to create a security interest in the person's property; or
   2. The person becomes generally obligated for the obligations of the other person, including the obligation secured under the security agreement, and acquires or succeeds to all or substantially all of the assets of the other person.
e. When Effect of new debtor becoming bound. If a new debtor becomes bound as debtor by a security agreement entered into by another person:
   1. The agreement satisfies subsection B(3) with respect to existing or after-acquired property of the new debtor to the extent the property is described in the agreement; and
   2. Another agreement is not necessary to make a security interest in the property enforceable.
f. Proceeds and supporting obligations. The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by Section 9-315 and is also attachment of a security interest in a supporting obligation for the collateral.
g. Lien securing right to payment. The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien.
h. Security entitlement carried in securities account. The attachment of a security interest in a securities account is also attachment of a security interest in the security entitlements carried in the securities account.
i. Commodity contracts carried in commodity account. The attachment of a security interest in a commodity account is also attachment of a security interest in the commodity contracts carried in the commodity account.

Section 9-204 - After-acquired Collateral; Future Advances

a. After-acquired collateral. Except as otherwise provided in subsection B, a security agreement may create or provide for a security interest in after acquired collateral.
b. When after -acquired property clause not effective. A security interest does not attach under a term constituting an after -acquired property clause to:
   1. Consumer goods, other than an accession when given as additional security, unless the debtor acquires rights in them within 10 days after the secured party gives value; or
   2. A commercial tort claim.
c. Future advances and other value. A security agreement may provide that collateral secures, or that accounts, chattel paper, payment intangibles, or promissory notes are sold in connection with, future advances or other value, whether or not the advances or value are given pursuant to commitment.

Section 9-205 - Use or Disposition of Collateral Permissible

a. When security interest not invalid or fraudulent. A security interest is not invalid or fraudulent against creditors solely because:
   1. The debtor has the right or ability to:
      a. Use, commingle, or dispose of all or part of the collateral, including returned or repossessed goods;
      b. Collect, compromise, enforce, or otherwise deal with collateral;
      c. Accept the return of collateral or make repossessions; or
      d. Use, commingle, or dispose of proceeds; or
   2. The secured party fails to require the debtor to account for proceeds or replace collateral.
b. Requirements of possession not relaxed. This section does not relax the requirements of possession if attachment, perfection, or enforcement of a security interest depends upon possession of the collateral by the secured party.

Section 9-206 - Security Interest Arising in Purchase or Delivery of Financial Asset

a. Security interest when person buys through securities intermediary. A security interest in favor of a securities intermediary attaches to a person's security entitlement if:
   1. The person buys a financial asset through the securities intermediary in a transaction in which the person is obligated to pay the purchase price to the securities intermediary at the time of the purchase; and
   2. The securities intermediary credits the financial asset to the buyer's securities account before the buyer pays the securities intermediary.
b. Security interest secures obligation to pay for financial asset. The security interest described in subsection A secures the person's obligation to pay for the financial asset.

c. Security interest in payment against delivery transaction. A security interest in favor of a person that delivers a certificated security or other financial asset represented by a writing attaches to the security or other financial asset if:
    1. The security or other financial asset:
        a. In the ordinary course of business is transferred by delivery with any necessary indorsement or assignment; and
        b. Is delivered under an agreement between persons in the business of dealing with such securities or financial assets; and
    2. The agreement calls for delivery against payment.
d. Security interest secures obligation to pay for delivery. The security interest described in subsection C secures the obligation to make payment for the delivery.

Section 9-207 - Rights and Duties of Secured Party Having Possession or Control of Collateral

a. Duty of care when secured party in possession. Except as otherwise provided in subsection D, a secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession. In the case of chattel paper or an instrument, reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.
b. Expenses, risks, duties, and rights when secured party in possession. Except as otherwise provided in subsection D, if a secured party has possession of collateral:
    1. Reasonable expenses, including the cost of insurance and payment of taxes or other charges, incurred in the custody, preservation, use, or operation of the collateral are chargeable to the debtor and are secured by the collateral;
    2. The risk of accidental loss or damage is on the debtor to the extent of a deficiency in any effective insurance coverage;
    3. The secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and
    4. The secured party may use or operate the collateral:
        a. For the purpose of preserving the collateral or its value;
        b. As permitted by an order of a court having competent jurisdiction; or
        c. Except in the case of consumer goods, in the manner and to the extent agreed by the debtor.
c. Duties and rights when secured party in possession or control. Except as otherwise provided in subsection D, a secured party having possession of collateral or control of collateral under Section 9-117, 9-118, 9-119, or 9-120:
    1. May hold as additional security any proceeds, except money or funds, received from the collateral;
    2. Shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and
    3. May create a security interest in the collateral.

d. Buyer of certain rights to payment. If the secured party is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor:
    1. Subsection A does not apply unless the secured party is entitled under an agreement:
        a. To charge back uncollected collateral; or
        b. Otherwise to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other default of an account debtor or other obligor on the collateral; and
    2. Subsections B and C do not apply.

Section 9-208 - Additional Duties of Secured Party Having Control of Collateral

a. Applicability of section. This section applies to cases in which there is no outstanding secured obligation and the secured party is not committed to make advances, incur obligations, or otherwise give value.
b. Duties of secured party after receiving demand from debtor. Within 10 days after receiving an authenticated demand by the debtor:
    1. A secured party having control of a deposit account under Section 9-117(A)(2) shall send to the bank with which the deposit account is maintained an authenticated statement that releases the bank from any further obligation to comply with instructions originated by the secured party;
    2. A secured party having control of a deposit account under Section 9-117 (A)(3) shall:
        a. Pay the debtor the balance on deposit in the deposit account; or
        b. Transfer the balance on deposit into a deposit account in the debtor's name;
    3. A secured party, other than a buyer, having control of electronic chattel paper under Section 9-118 shall:
        a. Communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian;
        b. If the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and
        c. Take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party;
    4. A secured party having control of investment property as described under Section 8-106(d)(2) or Section 9-119(B) shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity

intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party;

5. A secured party having control of a letter-of-credit right under Section 9-120 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party.

Section 9-209 - Duties of Secured Party if Account Debtor has been Notified of Assignment

a. Applicability of section. Except as otherwise provided in subsection C, this section applies if:
   1. There is no outstanding secured obligation; and
   2. The secured party is not committed to make advances, incur obligations, or otherwise give value.
b. Duties of secured party after receiving demand from debtor. Within 10 days after receiving an authenticated demand by the debtor, a secured party shall send to an account debtor that has received notification of an assignment to the secured party as assignee under Section 9-406(A) an authenticated record that releases the account debtor from any further obligation to the secured party.
c. Inapplicability to sales. This section does not apply to an assignment constituting the sale of an account, chattel paper, or payment intangible.

Section 9-210 - Request For Accounting; Request Regarding List Of Collateral Or Statement Of Account

a. Definitions. In this section:
   1. "Request" means a record of a type described in paragraph 2, 3, or 4.
   2. "Request for an accounting" means a record authenticated by a debtor requesting that the recipient provide an accounting of the unpaid obligations secured by collateral and reasonably identifying the transaction or relationship that is the subject of the request.
   3. "Request regarding a list of collateral" means a record authenticated by a debtor requesting that the recipient approve or correct a list of what the debtor believes to be the collateral securing an obligation and reasonably identifying the transaction or relationship that is the subject of the request.
   4. "Request regarding a statement of account" means a record authenticated by a debtor requesting that the recipient approve or correct a statement indicating what the debtor believes to be the aggregate amount of unpaid obligations secured by collateral as of a specified date and reasonably identifying the transaction or relationship that is the subject of the request.
b. Duty to respond to requests. Subject to subsections C, D, E, and F, a secured party, other than a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor, shall comply with a request within 14 days after receipt:

1. In the case of a request for an accounting, by authenticating and sending to the debtor an accounting; and
2. In the case of a request regarding a list of collateral or a request regarding a statement of account, by authenticating and sending to the debtor an approval or correction.

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

d. Request regarding list of collateral; no interest claimed. A person that receives a request regarding a list of collateral, claims no interest in the collateral when it receives the request, and claimed an interest in the collateral at an earlier time shall comply with the request within 14 days after receipt by sending to the debtor an authenticated record:
   1. Disclaiming any interest in the collateral; and
   2. If known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the collateral.

e. Request for accounting or regarding statement of account; no interest in obligation claimed. A person that receives a request for an accounting or a request regarding a statement of account, claims no interest in the obligations when it receives the request, and claimed an interest in the obligations at an earlier time shall comply with the request within 14 days after receipt by sending to the debtor an authenticated record:
   1. Disclaiming any interest in the obligations; and
   2. If known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the obligations.

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

Subchapter 3 – Perfection and Priority

Part I – Law Governing Perfection and Priority

Section 9-301- Law Governing Perfection and Priority of Security Interests

Except as otherwise provided in (Sections 9-303) through 9-306, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

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

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

Section 9-302 - Law Governing Perfection and Priority of Security Interests and Agricultural Liens

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

Section 9-303 – Law Governing Perfection and Priority of Security Interests in Goods Covered by a Certificate of Title

a. Applicability of section. This section applies to goods covered by a certificate of title, even if there is not other relationship between the jurisdiction under whose certificate of title the goods are covered and the goods or the debtor.
b. When goods covered by certificate of title. Goods become covered by a certificate of title when a valid application for the certificate of title and the applicable fee are delivered to the appropriate authority. Goods cease to be covered by a certificate of title at the earlier of the time the certificate of title ceases to be effective under the law of the issuing jurisdiction or the time the goods become covered subsequently by a certificate of title issued by another jurisdiction.
c. Applicable law. The local law of the jurisdiction under whose certificate of title the goods are covered govern perfection, the effect of perfection or nonperfection, and the priority of a security interest in goods covered by a certificate of title from the timte the goods become covered by the certificate of title until the goods cease to be covered by the certificate of title.

Section 9-304 - Law Governing Perfection and Priority of Security Interests in Deposit Accounts

a. Law of bank's jurisdiction governs. The local law of a bank's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a deposit account maintained with that bank.
b. Bank's jurisdiction. The following rules determine a bank's jurisdiction for purposes of this part:

1. If an agreement between the bank and the debtor governing the deposit account expressly provides that a particular jurisdiction is the bank's jurisdiction for purposes of this part or this Chapter, that jurisdiction is the bank's jurisdiction.
2. If paragraph (1) does not apply and an agreement between the bank and its customer governing the deposit account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the bank's jurisdiction.
3. If neither paragraph (1) nor paragraph (2) applies and an agreement between the bank and its customer governing the deposit account expressly provides that the deposit account is maintained at an office in a particular jurisdiction, that jurisdiction is the bank's jurisdiction.
4. If none of the preceding paragraphs applies, the bank's jurisdiction is_the jurisdiction in which the office identified in an account statement as the office serving the customer's account is located.
5. If none of the preceding paragraphs applies, the bank's jurisdiction is the jurisdiction in which the chief executive office of the bank is located.

Section 9-305 - Law Governing Perfection and Priority of Security Interests in Investment Property

a. Governing law; general rules. Except as otherwise provided in subsection C, the following rules apply:
   1. While a security certificate is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in the certificated security represented thereby.
   2. The local law of the issuer's jurisdiction as specified in Section 8-110(d) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in an uncertificated security.
   3. The local law of the securities intermediary's jurisdiction as specified in Section 8-110(e) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a security entitlement or securities account.
   4. The local law of the commodity intermediary's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a commodity contract or commodity account.
b. Commodity intermediary's jurisdiction. The following rules determine a commodity intermediary's jurisdiction for purposes of this part:
   1. If an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that a particular jurisdiction is the commodity intermediary's jurisdiction for purposes of this part or this Chapter, that jurisdiction is the commodity intermediary's jurisdiction.
   2. If paragraph (1) does not apply and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the

agreement is governed by the law of a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

3. If neither paragraph (1) nor paragraph (2) applies and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the commodity account is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.
4. If none of the preceding paragraphs applies, the commodity_intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the commodity customer's account is located.
5. If none of the preceding paragraphs applies, the commodity intermediary's jurisdiction is the jurisdiction in which the chief executive office of the commodity intermediary is located.

c. When perfection governed by law of jurisdiction where debtor located. The local law of the jurisdiction in which the debtor is located governs:
   1. Perfection of a security interest in investment property by filing;
   2. Automatic perfection of a security interest in investment property created by a broker or securities intermediary; and
   3. Automatic perfection of a security interest in a commodity contract or commodity account created by a commodity intermediary.

Section 9-306 - Law Governing Perfection and Priority of Security Interests in Letter of Credit Rights

a. Governing law; issuer's or nominated person's jurisdiction. Subject to subsection C, the local law of the issuer's jurisdiction or a nominated person's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a letter-of-credit right if the issuer's jurisdiction or nominated person's jurisdiction is a State.
b. Issuer's or nominated person's jurisdiction. For purposes of this part, an issuer's jurisdiction or nominated person's jurisdiction is the jurisdiction whose law governs the liability of the issuer or nominated person with respect to the letter-of-credit right as provided in Section 5-116.
c. When section not applicable. This section does not apply to a security interest that is perfected only under Section 9-308(D).

Section 9-307 - Location of Debtor

a. "Place of Business." In this section, "place of business" means a place where a debtor conducts its affairs.
b. Debtor's location: general rules. Except as otherwise provided in this section, the following rules determine a debtor's location:
   1. A debtor who is an individual is located at the individual's principal residence.
   2. Except as provided in paragraph (4), a debtor that is an organization and has only one place of business is located at its place of business.

3. Except as provided in paragraph (4), a debtor that is an organization and has more than one place of business is located at its chief executive office.
4. A debtor that is a Nation Party is located within the jurisdiction of the Nation.

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

d. Continuation of location; cessation of existence, etc. A person that ceases to exist, have a residence, or have a place of business continues to be located in the jurisdiction specified by subsections B and C.

e. Location of registered organization organized under State law. A registered organization that is organized under the law of a State is located in that State.

f. Location of registered organization organized under federal law; bank branches and agencies. Except as otherwise provided in subsection I, a registered organization that is organized under the law of the United States and a branch or agency of a bank that is not organized under the law of the United States or a State are located:
   1. In the State that the law of the United States designates, if the law designates a State of location;
   2. In the State that the registered organization, branch, or agency designates, if the law of the United States authorizes the registered organization, branch, or agency to designate its State of location; or
   3. In the District of Columbia, if neither paragraph (1) nor paragraph (2) applies.

g. Continuation of location: change in status of registered organization. A registered organization continues to be located in the jurisdiction specified by subsection E or F notwithstanding:
   1. The suspension, revocation, forfeiture, or lapse of the registered organization's status as such in its jurisdiction of organization; or
   2. The dissolution, winding up, or cancellation of the existence of the registered organization.

h. Location of United States. The United States is located in the District of Columbia:

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

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

k. Section applies only to this part. This section applies only for purposes of this part.

Section 9-308 - When Security Interest is Perfected; Continuity of Perfection

a. Perfection of security interest. Except as otherwise provided in this section and Section 9-309, a security interest is perfected if it has attached and all of the applicable requirements for perfection Sections 9-310 through 9-316 have been satisfied. A security interest is perfected when it attaches if the applicable requirements are satisfied before the security interest attaches.
b. Perfection of agricultural lien. An agricultural lien is perfected if it has become effective and all of the applicable requirements for perfection in Section 9-310 have been satisfied. An agricultural lien is perfected when it becomes effective if the applicable requirements are satisfied before the agricultural lien becomes effective.
c. Continuous perfection; perfection by different methods. A security interest or agricultural lien is perfected continuously if it is originally perfected by one method under this Chapter and is later perfected by another method under this Chapter, without an intermediate period when it was unperfected.
d. Supporting obligation. Perfection of a security interest in collateral also perfects a security interest in a supporting obligation for the collateral.
e. Lien securing right to payment. Perfection of a security interest in a right to payment or performance also perfects a security interest in a security interest, mortgage, or other lien on personal or real property securing the right.
f. Security entitlement carried in securities account. Perfection of a security interest in a securities account also perfects a security interest in security entitlements carried in the securities account.
g. Commodity contract carried in commodity account. Perfection of a security interest in a commodity account also perfects a security interest in the commodity contracts carried in the commodity account.

Section 9-309 - Security Interest Perfected upon Attachment

The following security interests are perfected when they attach:

1. A purchase-money security interest in consumer goods, except as otherwise provided in Section 9-311 (B) with respect to consumer goods that are subject to a statute or treaty described in Section 9-311(A);
2. An assignment of accounts or payment intangibles which does not by itself or in conjunction with other assignments to the same assignee transfer a significant part of the assignor's outstanding accounts or payment intangibles;
3. A sale of a payment intangible;
4. A sale of a promissory note;
5. A security interest created by the assignment of a health-care-insurance receivable to the provider of the health-care goods or services;

6. A security interest arising under Section 2-401, 2-505, 2-711(3), or 2A-508(5), until the debtor obtains possession of the collateral;
7. A security interest of a collecting bank under Section 4-210;
8. A security interest of an issuer or nominated person under Section 5-118;
9. A security interest arising in the delivery of a financial asset under Section 9-206(C);
10. A security interest in investment property created by a broker or securities intermediary;
11. A security interest in a commodity contract or a commodity account created by a commodity intermediary;
12. An assignment for the benefit of all creditors of the transferor and subsequent transfers by the assignee thereunder; and
13. A security interest created by an assignment of a beneficial interest in a decedent's estate.

Section 9-310 - When Filing Required to Perfect Security Interest or Agricultural Lien; Security Interests and Agricultural Liens to Which Filing Provisions Do Not Apply

a. General rule: perfection by filing. Except as otherwise provided in subsection B and Section 9-312(B), a financing statement must be filed to perfect all security interests and agricultural liens.
b. Exceptions: filing not necessary.The filing of a financing statement is not necessary to perfect a security interest:
    1. That is perfected under Section 9-308 (D), (E), (F), or (G);
    2. That is perfected under Section 9-309 when it attaches;
    3. In property subject to a statute, regulation, or treaty described in Section 9-311 (A,);
    4. In goods in possession of a bailee which is perfected under Section 9-312 (D)(1) or (2);
    5. In certificated securities, documents, goods, or instruments which is perfected without filing or possession under Section 9-312 (E,), (F), or (G);
    6. In collateral in the secured party's possession under Section 9-313;
    7. In a certificated security or an investment account which is perfected by delivery of the security certificate to the secured party under Section 9-313;
    8. In deposit accounts, electronic chattel paper, investment property, or letter-of-credit rights which is perfected by control under Section 9-314;
    9. In proceeds which is perfected under Section 9-315; or
    10. That is perfected under Section 9-316.
c. Assignment of perfected security interest. If a secured party assigns a perfected security interest or agricultural lien, a filing under this Chapter is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

Section 9-311 - Perfection of Security Interests in Property Subject to Certain Statutes, Regulations, and Treaties

a. Security interest subject to other law. Except as otherwise provided in subsection D, the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:
    1. A statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt Section 9-310(A);
    2. MCNCA Title 36; or
    3. A certificate-of-title statute of another jurisdiction which provides for a security interest to be indicated on the certificate as a condition or result of the security interest obtaining priority over the rights of a lien creditor with respect to the property.
b. Compliance with other law. Compliance with the requirements of a statute, regulation, or treaty described in subsection A for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this Chapter. Except as otherwise provided in subsection D and Sections 9-313 and 9-316(D) and (E) for goods covered by a certificate of title, a security interest in property subject to a statute, regulation, or treaty described in subsection A may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.
c. Duration and renewal of perfection. Except as otherwise provided in subsection D and Section 9-316(D) and (E), duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation, or treaty described in subsection A are governed by the statute, regulation, or treaty. In other respects, the security interest is subject to this Chapter.
d. Inapplicability to certain inventory. During any period in which collateral subject to a statute specified in subsection A(2) is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling goods of that kind, this section does not apply to a security interest in that collateral created by that person.

Section 9-312 - Perfection of Security Interests in Chattel Paper, Deposit Accounts, Documents, Goods Covered by Documents, Instruments, Investment Property, Letter-of-Credit Rights, Money and Pledged Revenues; Perfection By Permissive Filing; Temporary Perfection Without Filing or Transfer of Possession

a. Perfection by filing permitted. A security interest in chattel paper, negotiable documents, instruments, investment property or Pledged Revenues may be perfected by filing.
b. Control or possession of certain collateral. Except as otherwise provided in Section 9-315(C) and (D) for proceeds and subsection I for Pledged Revenues:
    1. A security interest in a deposit account may be perfected only by control under Section 9-314;

2. And except as otherwise provided in Section 9-308(D), a security interest in a letter-of-credit right may be perfected only by control under Section 9-314;
3. A security interest in money may be perfected only by the secured taking possession under Section 9-313.

c. Goods covered by negotiable document. While goods are in the possession of a bailee that has issued a negotiable document covering the goods:
   1. A security interest in the goods may be perfected by perfecting a security interest in the document; and
   2. A security interest perfected in the document has priority over any security interest that becomes perfected in the goods by another method during that time.

d. Goods covered by nonnegotiable document. While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:
   1. Issuance of a document in the name of the secured party;
   2. The bailee's receipt of notification of the secured party's interest; or
   3. Filing as to the goods.

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

f. Temporary perfection: goods or documents made available to debtor. A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for 20 days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:
   1. Ultimate sale or exchange; or
   2. Loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.

g. Temporary perfection: delivery of security certificate or instrument to debtor. A perfected security interest in a certificated security or instrument remains perfected for 20 days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:
   1. Ultimate sale or exchange; or
   2. Presentation, collection, enforcement, renewal, or registration of transfer.

h. Expiration of temporary perfection. After the 20 day period specified in subsection E, F, or G expires, perfection depends upon compliance with this Chapter.

i. Perfection of Pledged Revenues by Filing. Notwithstanding subsection B, a security interest in Pledged Revenues may be perfected by filing.

Section 9-313 - When Possession by Secured Party Perfects Security Interest Without Filing

a. Perfection by possession or delivery. Except as otherwise provided in subsection B, a secured party may perfect a security interest in negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under Section 8-301.
b. Goods covered by certificate of title. With respect to goods covered by a certificate of title issued by the Nation, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in Section 9-316-(D).
c. Collateral in possession of person other than debtor. With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when:
    1. The person in possession authenticates a record acknowledging that it holds possession of the collateral for the secured party's benefit; or
    2. The person takes possession of the collateral after having a record acknowledging that it will hold possession of collateral for the secured party's benefit.
d. Time of perfection by possession; continuation of perfection. If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.
e. Time of perfection by delivery; continuation of perfection. A security interest in a certificated security in registered form is perfected by delivery when delivery of the certificated security occurs under Section 8-301 of and remains perfected by delivery until the debtor obtains possession of the security certificate.
f. Acknowledgment not required. A person in possession of collateral is not required to acknowledge that it holds possession for a secured party's benefit.
g. Effectiveness of acknowledgment; no duties or confirmation. If a person acknowledges that it holds possession for the secured party's benefit:
    1. The acknowledgment is effective under subsection C or Section 8-301(a), even if the acknowledgment violates the rights of a debtor; and
    2. Unless the person otherwise agrees or law other than this Chapter otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.
h. Secured party's delivery to person other than debtor. A secured party having possession of collateral does not relinquish possession by delivering the collateral to a person other than the debtor or a lessee of the collateral from the debtor in the ordinary course of the debtor's business if the person was instructed before the delivery or is instructed contemporaneously with the delivery:

1. To hold possession of the collateral for the secured party's benefit; or
2. To redeliver the collateral to the secured party.

i. Effect of delivery under subsection H; no duties or confirmation. A secured party does not relinquish possession, even if a delivery under subsection H violates the rights of a debtor. A person to which collateral is delivered under subsection H does not owe any duty to the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees or law other than this Chapter otherwise provides.

Section 9-314 - Perfection by Control

a. Perfection by control. A security interest in investment property, deposit accounts, letter-of-credit rights, or electronic chattel paper may be perfected by control of the collateral under Section 9-117, 9-118, 9-119, or 9-120.
b. Specified collateral: time of perfection by control; continuation of perfection. A security interest in deposit accounts, electronic chattel paper, or letter-of-credit rights is perfected by control under Section 9-117, 9-118, or 9-120 when the secured party obtains control and remains perfected by control only while the secured party retains control.
c. Investment property: time of perfection by control; continuation of perfection. A security interest in investment property is perfected by control under Section 9-119 from the time the secured party obtains control and remains perfected by control until:
    1. The secured party does not have control; and
    2. One of the following occurs:
        a. If the collateral is a certificated security, the debtor has or acquires possession of the security certificate;
        b. If the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner; or
        c. If the collateral is a security entitlement, the debtor is or becomes the entitlement holder.

Section 9-315 - Secured Party's Rights on Disposition of Collateral and in Proceeds

a. Disposition of collateral: continuation of security interest or agricultural lien; proceeds. Except as otherwise provided in this Chapter and in Section 2-403(2):
    1. A security interest or agricultural lien continues in collateral notwithstanding sale, lease, license, exchange, or other disposition thereof unless the secured party authorized the disposition free of the security interest or agricultural lien; and
    2. A security interest attaches to any identifiable proceeds of collateral.
b. When commingled proceeds identifiable. Proceeds that are commingled with other property are identifiable proceeds:
    1. If the proceeds are goods, to the extent provided by Section 9-336; and

2. If the proceeds are not goods, to the extent that the secured party identifies the proceeds by a method of tracing, including application of equitable principles, that is permitted under law other than this Chapter with respect to commingled property of the type involved.

c. Perfection of security interest in proceeds. A security interest in proceeds is a perfected security interest if the security interest in the original collateral was perfected.

d. Continuation of perfection. A perfected security interest in proceeds becomes unperfected on the 21st day after the security interest attaches to the proceeds unless:
   1. The following conditions are satisfied:
      a. A filed financing statement covers the original collateral;
      b. The proceeds are collateral in which a security interest may be perfected by filing in the office in which the financing statement has been filed; and
      c. The proceeds are not acquired with cash proceeds;
   2. The proceeds are identifiable cash proceeds; or
   3. The security interest in the proceeds is perfected other than under subsection-C when the security interest attaches to the proceeds or within 20 days thereafter.

e. When perfected security interest in proceeds becomes unperfected. If a filed financing statement covers the original collateral, a security interest in proceeds which remains perfected under subsection D(1) becomes unperfected at the later of:
   1. When the effectiveness of the filed financing statement lapses under Section 9-515 or is terminated under Section 9-513; or

2. The 21st day after the security interest attaches to the proceeds.

Section 9-316 - Continued Perfection of Security Interest Following Change in Governing Law

a. General rule: effect on perfection of change in governing law. A security interest–perfected pursuant to the law of the jurisdiction designated in Section 9-301(1) or 9-305(C) remains perfected until the earliest of:
   1. The time perfection would have ceased under the law of that jurisdiction;
   2. The expiration of four months after a change of the debtor's location to another jurisdiction; or
   3. Expiration of one year after a transfer of collateral to a person that thereby becomes a debtor and located in another jurisdiction.

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

c. Possessory security interest in collateral moved to new jurisdiction. A possessory security interest in collateral, other than goods covered by a certificate of title and as-extracted collateral consisting of goods, remains continuously perfected if:
   1. The collateral is located in one jurisdiction and subject to a security interest perfected under the law of that jurisdiction;
   2. Thereafter the collateral is brought into another jurisdiction; and
   3. Upon entry into the other jurisdiction, the security interest is perfected under the law of the other jurisdiction.
d. Goods covered by certificate of title from the Nation. Except as otherwise provided in subsection E, a security interest in goods covered by a certificate of title which is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from the Nation remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered.
e. When subsection D security interest becomes unperfected against purchasers. A security interest described in subsection D becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value, if the applicable requirements for perfection under Section 9-311 (B) or § 9-313~~,~~ are not satisfied before the earlier of:
   1. The time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from the Nation; or
   2. The expiration of four months after the goods had become so covered.
f. Change in jurisdiction of bank, issuer, nominated person, securities intermediary, or commodity intermediary. A security interest in deposit accounts, letter-of-credit rights, or investment property which is perfected under the law of the bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's jurisdiction, as applicable, remains perfected until the earlier of:
   1. The time the security interest would have become unperfected under the law of that jurisdiction; or
   2. The expiration of four months after a change of the applicable jurisdiction to another jurisdiction.
g. Subsection F security interest perfected or unperfected under law of new jurisdiction.]
   If a security interest described in subsection F becomes perfected under the law of the other jurisdiction before the earlier of the time or the end of the period described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier of that time or the end of that period, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

Section 9-317 - Interests That Take Priority over or take free of Security Interest or Agricultural Lien

a. Conflicting security interest and rights of lien creditors. A security interest or agricultural lien is subordinate to the rights of:
    1. A person entitled to priority under Section 9-322; and
    2. Except as otherwise provided in subsection E, a person that becomes a lien creditor before the earlier of the time.
        a. The security interest or agricultural lien is perfected; or
        b. One of the conditions specified in Section 9-203(B)(3) is met and a financing statement covering the collateral is filed.
b. Buyers that receive delivery. Except as otherwise provided in subsection E, a buyer, other than a secured party, of tangible chattel paper, documents instruments, or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.
c. Lessees that receive delivery. Except as otherwise provided in subsection E, a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.
d. Licensees and buyers of certain collateral. A licensee of a general intangible or a buyer, other than a secured party, of accounts, electronic chattel paper, general intangibles, or investment property other than a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.
e. Purchase money security interest. Except as otherwise provided in Sections 9-320 and 9-321, if a person files a financing statement with respect to a purchase-money security interest before or within 20 days after the debtor receives delivery of the collateral , the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing.

Section 9-318 - No Interest Retained in Right to Payment That Is Sold; Rights and Title of Seller of Account or Chattel Paper With Respect to Creditors and Purchasers

a. Seller retains no interest. A debtor that has sold an account, chattel paper, payment intangible, or promissory note does not retain a legal or equitable interest in the collateral sold.
b. Deemed rights of debtor if buyer's security interest unperfected. For purposes of determining the rights of creditors of, and purchasers for value of an account or chattel paper from, a debtor that has sold an account or chattel paper, while the buyer's security interest is unperfected, the debtor is deemed to have rights and title to the account or chattel paper identical to those the debtor sold.

Section 9-319 - Rights and Title of Consignee With Respect to Creditors and Purchasers

a. Consignee has consignor's rights. Except as otherwise provided in subsection B, for purposes of determining the rights of creditors of, and purchasers for value of goods from, a consignee, while the goods are in the possession of the consignee, the consignee is deemed to have rights and title to the goods identical to those the consignor had or had power to transfer.
b. Applicability of other law. For purposes of determining the rights of a creditor of a consignee, law other than this Chapter determines the rights and title of a consignee while goods are in the consignee's possession if, under this part, a perfected security interest held by the consignor would have priority over the rights of the creditor.

Section 9-320 - Buyer of Goods

a. Buyer in ordinary course of business. Except as otherwise provided in subsection E, a buyer in ordinary course of business, other than a person buying farm products from a person engaged in farming operations, takes free of a security interest created by the buyer's seller, even if the security interest is perfected and the buyer knows of its existence.
b. Buyer of consumer goods. Except as otherwise provided in subsection E, a buyer of goods from a person who used or bought the goods for use primarily for personal, family, or household purposes takes free of a security interest, even if perfected, if the buyer buys:
    1. Without knowledge of the security interest;
    2. For value;
    3. Primarily for the buyer's personal, family, or household purposes; and
    4. Before the filing of a financing statement covering the goods.
c. Effectiveness of filing for subsection B. To the extent that it affects the priority of a security interest over a buyer of goods under subsection B, the period of effectiveness of a filing made in the jurisdiction in which the seller is located is governed by Section 9-316(A) and (B).
d. Buyer in ordinary course of business at wellhead or minehead. A buyer in ordinary course of business buying oil, gas, or other minerals at the wellhead or minehead or after extraction takes free of an interest arising out of an encumbrance.
e. Possessory security interest not affected. Subsections A and B do not affect a security interest in goods in the possession of the secured party under Section 9-313.

Section 9-321 - Licensee of General Intangible and Lessee of Goods in Ordinary Course of Business

a. "Licensee in ordinary course of business." In this section "licensee in ordinary course of business" means a person that becomes a licensee of a general intangible in good faith, without knowledge that the license violates the rights of another person in the general intangible-and in the ordinary course from a person in the business of licensing general intangibles of that kind. A person becomes a licensee in the ordinary course if the license to the person comports with the usual or customary practices in the kind of business in which the licensor is engaged or with the licensor's own usual or customary practices.

b. Rights of licensee in ordinary course of business. A licensee in ordinary course of business takes its rights under a nonexclusive license free of a security interest in the general intangible created by the licensor, even if the security interest is perfected and the licensee knows of its existence.
c. Rights of lessee in ordinary course of business. A lessee in ordinary course of business takes its leasehold interest free of a security interest in the goods created by the lessor, even if the security interest is perfected and the lessee knows of its existence.

Section 9-322 - Priorities Among Conflicting Security Interests in and Agricultural Liens on Same Collateral

a. General priority rules. Except as otherwise provided in this section, priority among conflicting security interests and agricultural liens in the same collateral is determined according to the following rules:
    1. Conflicting perfected security interests and agricultural liens rank according to priority in time of filing or perfection. Priority dates from the earlier of the time a filing covering the collateral is first made or the security interest or agricultural lien is first perfected, if there is no period thereafter when there is neither filing nor perfection.
    2. A perfected security interest or agricultural lien has priority over a conflicting unperfected security interest or agricultural lien.
    3. The first security interest or agricultural lien to attach or become effective has priority if conflicting security interests and agricultural liens are unperfected.
b. Time of perfection: proceeds and supporting obligations. For the purposes of subsection A(1):
    1. The time of filing or perfection as to a security interest in collateral is also the time of filing or perfection as to a security interest in proceeds; and
    2. The time of filing or perfection as to a security interest in collateral supported by a supporting obligation is also the time of filing or perfection as to a security interest in the supporting obligation.
c. Special priority rules: proceeds and supporting obligations. Except as otherwise provided in subsection F, a security interest in collateral which qualifies for priority over a conflicting security interest under Section 9-327, 9-328, 9-329, 9-330, or 9-331 also has priority over a conflicting security interest in:
    1. Any supporting obligation for the collateral; and
    2. Proceeds of the collateral if:
        A. The security interest in proceeds is perfected;
        B. The proceeds are cash proceeds or of the same type as the collateral; and
        C. In the case of proceeds that are proceeds of proceeds, all intervening proceeds are cash proceeds, proceeds of the same type as the collateral, or an account relating to the collateral.
d. First-to-file priority rule for certain collateral. Subject to subsection E and except as otherwise provided in subsection F, if a security interest in chattel paper, deposit accounts, negotiable

documents, instruments, investment property, or letter-of-credit rights is perfected by a method other than filing, conflicting perfected security interests in proceeds of the collateral rank according to priority in time of filing.

e. Applicability of subsection D. Subsection D applies only if the proceeds of the collateral are not cash proceeds, chattel paper, negotiable documents, instruments, investment property, or letter-of-credit rights.

f. Limitations on subsections A through E. Subsections A through E are subject to:
   1. Subsection G and the other provisions of this part;
   2. Section 4-210 with respect to a security interest of a collecting bank;
   3. Section 5-118 with respect to a security interest of an issuer or nominated person; and
   4. Section 9-110 with respect to a security interest arising under Chapter 2 or 2A.

g. Priority under agricultural lien statute. A perfected agricultural lien on collateral has priority over a conflicting security interest in or agricultural lien on the same collateral if the statute creating the agricultural lien so provides.

Section 9-323 - Future Advances

a. When priority based on time of advance. Except as otherwise provided in subsection C, for purposes of determining the priority of a perfected security interest under Section 9-322(A)(1), perfection of the security interest dates from the time an advance is made to the extent that the security interest secures an advance that:
   1. Is made while the security interest is perfected only:
      A. Under Section 9-309 when it attaches; or
      B. Temporarily under Section 9-312(E), (F), or (G); and
   2. Is not made pursuant to a commitment entered into before or while the security interest is perfected by a method other than under Section 9-309 or 9-312(E), (F), or (G).

b. Lien creditor. Except as otherwise provided in subsection C, a security interest is subordinate to the rights of a person that becomes a lien creditor to the extent that the security interest secures an advance made more than 45 days after the person becomes a lien creditor unless the advance is made:
   1. Without knowledge of the lien; or
   2. Pursuant to a commitment entered into without knowledge of the lien.

c. Buyer of receivables. Subsections A and B do not apply to a security interest held by a secured party that is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor.

d. Buyer of goods. Except as otherwise provided in subsection E, a buyer of goods other than a buyer in ordinary course of business takes free of a security interest to the extent that it secures advances made after the earlier of:
   1. The time the secured party acquires knowledge of the buyer's purchase; or
   2. 45 days after the purchase.

e. Advances made pursuant to commitment: priority of buyer of goods. Subsection D does not apply if the advance is made pursuant to a commitment entered into without knowledge of the buyer's purchase and before the expiration of the 45-day period.
f. Lessee of goods. Except as otherwise provided in subsection G, a lessee of goods, other than a lessee in ordinary course of business, takes the leasehold_interest free of a security interest to the extent that it secures advances made after the earlier of:
    1. The time the secured party acquires knowledge of the lease; or
    2. 45 days after the lease contract becomes enforceable.
g. Advances made pursuant to commitment: priority of lessee of goods. Subsection F does not apply if the advance is made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the 45-day period.

Section 9-324 - Priority among Purchase-Money Security Interests

a. General rule: purchase-money priority. Except as otherwise provided in subsection G, a perfected purchase-money security interest in goods other than inventory or livestock has priority over a conflicting security interest in the same goods, and, except as otherwise provided in Section 9-327, a perfected security interest in its identifiable proceeds also has priority, if the purchase-money security interest is perfected when the debtor receives possession of the collateral or within 20 days thereafter.
b. Inventory purchase-money priority. Subject to subsection C and except as otherwise provided in subsection G, a perfected purchase-money security interest in inventory has priority over a conflicting security interest in the same inventory, has priority over a conflicting security interest in chattel paper or an instrument constituting proceeds of the inventory and in proceeds of the chattel paper, if so provided in Section 9-330, and, except as otherwise provided in Section 9-327, also has priority in identifiable cash proceeds of the inventory to the extent the identifiable cash proceeds are received on or before the delivery of the inventory to a buyer, if:
    1. The purchase-money security interest is perfected when the debtor receives possession of the inventory;
    2. The purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;
    3. The holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and
    4. The notification states that the person sending the notification has or expects to acquire a purchase-money security interest in inventory of the debtor and describes the inventory.
c. Holders of conflicting inventory security interests to be notified. Subsections B(2) through (4) apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of inventory:
    1. If the purchase-money security interest is perfected by filing, before the date of the filing; or

2. If the purchase-money security interest is temporarily perfected without filing or possession under Section 9-312(F), before the beginning of the 20-day period thereunder.

d. Livestock purchase-money priority. Subject to subsection e and except as otherwise provided in subsection g, a perfected purchase-money security interest in livestock that are farm products has priority over a conflicting security interest in the same livestock, and, except as otherwise provided in Section 9-327, a perfected security interest in their identifiable proceeds and identifiable products in their unmanufactured states also has priority, if:
   1. The purchase-money security interest is perfected when the debtor receives possession of the livestock;
   2. The purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;
   3. The holder of the conflicting security interest receives the notification within six months before the debtor receives possession of the livestock; and
   4. The notification states that the person sending the notification has or expects to acquire a purchase-money security interest in livestock of the debtor and describes the livestock.

e. Holders of conflicting livestock security interests to be notified. Subsections D(2) through (4) apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of livestock:
   1. If the purchase-money security interest is perfected by filing, before the date of the filing; or
   2. If the purchase-money security interest is temporarily perfected without filing or possession under Section 9-312F, before the beginning of the 20-day period thereunder.

f. Software purchase-money priority. Except as otherwise provided in subsection G, a perfected purchase-money security interest in software has priority over a conflicting security interest in the same collateral, and, except as otherwise provided in Section 9-327, a perfected security interest in its identifiable proceeds also has priority, to the extent that the purchase-money security interest in the goods in which the software was acquired for use has priority in the goods and proceeds of the goods under this section.

g. Conflicting purchase-money security interests. If more than one security interest qualifies for priority in the same collateral under subsection a, b, c, or f:
   1. A security interest securing an obligation incurred as all or part of the price of the collateral has priority over a security interest securing an obligation incurred for value given to enable the debtor to acquire rights in or the use of collateral; and
   2. In all other cases, Section 9-322(A) applies to the qualifying security interests.

Section 9-325 - Priority of Security Interests in Transferred Collateral

a. Subordination of security interest in transferred collateral. Except as otherwise provided in subsection B, a security interest created by a debtor is subordinate to a security interest in the same collateral created by another person if:

1. The debtor acquired the collateral subject to the security interest created by the other person;
2. The security interest created by the other person was perfected when the debtor acquired the collateral; and
3. There is no period thereafter when the security interest is unperfected.

b. Limitation of subsection A subordination. Subsection A subordinates a security interest only if the security interest:
   1. Otherwise would have priority solely under Section 9-322(A) or 9-324; or
   2. Arose solely under Section 2-711(3) or 2A-508(5).

Section 9-326 - Priority of Security Interests Created by New Debtor

a. Subordination of security interest created by new debtor. Subject to subsection B, a security interest created by a new debtor which is perfected by a filed financing statement that is effective solely under Section 9-508 in collateral in which a new debtor has or acquires rights is subordinate to a security interest in the same collateral which is perfected other than by a filed financing statement that is effective solely under Section 9-508.
b. Priority under other provisions; multiple original debtors. The other provisions of this part determine the priority among conflicting security interests in the same collateral perfected by filed financing statements that are effective solely under Section 9-508. However, if the security agreements to which a new debtor became bound as debtor were not entered into by the same original debtor, the conflicting security interests rank according to priority in time of the new debtor's having become bound.

Section 9-327 - Priority of Security Interests in Deposit Account

The following rules govern priority among conflicting security interests in the same deposit account:

1. Except as otherwise provided in paragraph (5), a security interest held by a secured party having control of the deposit account under Section 9-117 has priority over a conflicting security interest held by a secured party that does not have control.
2. Except as otherwise provided in paragraphs (3) and (4), security_interests perfected by control under Section 9-314 rank according to priority in time of obtaining control.
3. Except as otherwise provided in paragraph (4), a security interest held by the bank with which the deposit account is maintained has priority over a conflicting security interest held by another secured party.
4. A security interest perfected by control under Section 9-117(A)(3) has priority over a security interest held by the bank with which the deposit account is maintained.
5. A security interest perfected by filing in Pledged Revenues has priority over a conflicting security interest perfected by control under Section 9-314.

Section 9-328 - Priority of Security Interests in Investment Property

The following rules govern priority among conflicting security interests in the same investment property:

1. Except as otherwise provided in paragraph (7), a security interest held by a secured party having control of investment property under Section 9-106 has priority over a security interest held by a secured party that does not have control of the investment property.
2. Except as otherwise provided in paragraphs (3) and (4), conflicting security interests held by secured parties each of which has control under Section 9-119 rank according to priority in time of:
   a. If the collateral is a security, obtaining control;
   b. If the collateral is a security entitlement carried in a securities account and:
      i. If the secured party obtained control under Section 8-106(d)(1), the secured party's becoming the person for which the securities account is maintained;
      ii. If the secured party obtained control under Section 8-106(d)(2), the securities intermediary's agreement to comply with the secured party's entitlement orders with respect to security entitlements carried or to be carried in the securities account; or
      iii. If the secured party obtained control through another person under Section 8-106(d)(3), the time on which priority would be based under this paragraph if the other person were the secured party; or
   c. If the collateral is a commodity contract carried with a commodity intermediary, the satisfaction of the requirement for control specified in Section 9-119(B)(2) with respect to commodity contracts carried or to be carried with the commodity intermediary.
3. A security interest held by a securities intermediary in a security entitlement or a securities account maintained with the securities intermediary has priority over a conflicting security interest held by another secured party.
4. A security interest held by a commodity intermediary in a commodity contract or a commodity account maintained with the commodity intermediary has priority over a conflicting security interest held by another secured party.
5. A security interest in a certificated security in registered form which is perfected by taking delivery under Section 9-313(A) and not by control under Section 9-314 has priority over a conflicting security interest perfected by a method other than control.
6. Conflicting security interests created by a broker, securities intermediary, or commodity intermediary which are perfected without control under Section 9-119 rank equally.
7. A security interest perfected by filing in Pledged Revenues has priority over a conflicting security interest perfected by control under Section 9-314.
8. In all other cases, priority among conflicting security interests in investment property is governed by Sections 9-322 and 9-323.

Section 9-329 - Priority of Security Interests in Letter-Of-Credit Right

The following rules govern priority among conflicting security interests in the same letter-of-credit right:

1. Except as otherwise provided in paragraph (3), a security interest held by a secured party having control of the letter-of-credit right under Section 9-120 has priority to the extent of its control over a conflicting security interest held by a secured party that does not have control.
2. Security interests perfected by control under Section 9-314 rank according to priority in time of obtaining control.

A security interest perfected by filing in Pledged Revenues has priority over a conflicting security interest by control under Section 9- 314.

Section 9-330 - Priority of Purchaser of Chattel Paper or Instrument

a. Purchaser's priority: security interest claimed merely as proceeds. A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed merely as proceeds of inventory subject to a security interest if:
    1. In good faith and in the ordinary course of the purchaser's business, the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under Section 9-118; and
    2. The chattel paper does not indicate that it has been assigned to an identified assignee other than the purchaser.
b. Purchaser's priority: other security interests. A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed other than merely as proceeds of inventory subject to a security interest if the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under Section 9-118 in good faith, in the ordinary course of the purchaser's business, and without knowledge that the purchase violates the rights of the secured party.
c. Chattel paper purchaser's priority in proceeds. Except as otherwise provided in Section 9-327, a purchaser having priority in chattel paper under subsection A or B also has priority in proceeds of the chattel paper to the extent that:
    1. Section 9-322 provides for priority in the proceeds; or
    2. The proceeds consist of the specific goods covered by the chattel paper or cash proceeds of the specific goods, even if the purchaser's security interest in the proceeds is unperfected.
d. Instrument purchaser's priority. Except as otherwise provided in Section 9-331(A), a purchaser of an instrument has priority over a security interest in the instrument perfected by a method other than possession if the purchaser gives value and takes possession of the instrument in good faith and without knowledge that the purchase violates the rights of the secured party.
e. Holder of purchase-money security interest gives new value. For purposes of subsections A and B, the holder of a purchase-money security interest in inventory gives new value for chattel paper constituting proceeds of the inventory.

f. Indication of assignment gives knowledge. For purposes of subsections B and D, if chattel paper or an instrument indicates that it has been assigned to an identified secured party other than the purchaser, a purchaser of the chattel paper or instrument has knowledge that the purchase violates the rights of the secured party.

Section 9-331 - Priority of Rights of Purchasers of Instruments, Documents, and Securities Under Other Chapters; Priority of Interests in Financial Assets and Security Entitlements Under Chapter 8

a. Rights under Articles 3, 7, and 8 not limited. This Chapter does not limit the rights of a holder in due course of a negotiable instrument, a holder to which a negotiable document of title has been duly negotiated, or a protected purchaser of a security. These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided in Chapters 3, 7, and 8.
b. Protection under Article 8. This Chapter does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of a claim under Chapter 8.
c. Filing not notice. Filing under this Chapter does not constitute notice of a claim or defense to the holders, or purchasers, or persons described in subsections A and B.

Section 9-332 - Transfer Of Money; Transfer Of Funds From Deposit Account

a. Transferee of money. Except as otherwise provided in subsection C, a transferee of money takes the money free of a security interest unless the transferee acts in collusion with the debtor in violating the rights of the secured party.
b. Transferee of funds from deposit account. Except as provided in subsection C, a transferee of funds from a deposit account takes the funds free of a security interest in the deposit account unless the transferee acts in collusion with the debtor in violating the rights of the secured party.
c. Transferee of Pledged Revenues. A transferee of money or funds from a deposit account which constitutes Pledged Revenues does not take the money or funds free of a security interest in Pledged Revenues perfected by filing.

Section 9-333 - Priority of Certain Liens Arising by Operation of Law

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

Section 9-334 - Priority of Security Interests in Fixtures and Crops

a. Security interest in fixtures under this Chapter. A security interest under this Chapter may be created in goods that are fixtures or may continue in goods that become fixtures. A security interest does not exist under this Chapter in ordinary building materials incorporated into an improvement on land.
b. Security interest in fixtures under real-property law. This Chapter does not prevent creation of an encumbrance upon fixtures under real property law.
c. General rule: subordination of security interest in fixtures. In cases not governed by subsections D through H, a security interest in fixtures is subordinate to a conflicting interest of an encumbrancer or owner of the related real property other than the debtor.
d. Fixtures purchase-money priority. Except as otherwise provided in subsection H, a perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property and:
    1. The security interest is a purchase-money security interest;
    2. The interest of the encumbrancer or owner arises before the goods become fixtures; and
    3. The security interest is perfected by a fixture filing before the goods become fixtures or within 20 days thereafter.
e. Priority of security interest in fixtures over interests in real property. A perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if:
    1. The debtor has an interest of record in the real property or is in possession of the real property and the security interest:
        a. Is perfected by a fixture filing before the interest of the encumbrancer or owner is of record; and
        b. Has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner;
    2. Before the goods become fixtures, the security interest is perfected by any method permitted by this Chapter and the fixtures are readily removable:
        a. Factory or office machines;
        b. Equipment that is not primarily used or leased for use in the operation of the real property; or
        c. Replacements of domestic appliances that are consumer goods;
    3. The conflicting interest is a lien on the real property obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this Chapter; or
    4. The security interest is:
        a. Created in a manufactured home in a manufactured-home transaction; and
        b. Perfected pursuant to a statute described in Section 9-311(A)(2).

f. Priority based on consent, disclaimer, or right to remove. A security interest in fixtures, whether or not perfected, has priority over a conflicting interest of an encumbrancer or owner of the real property if:
   1. The encumbrancer or owner has, in an authenticated record, consented to the security interest or disclaimed an interest in the goods as fixtures; or
   2. The debtor has a right to remove the goods as against the encumbrancer or owner.
g. Continuation of paragraph F(2) priority. The priority of the security interest under paragraph F(2) continues for a reasonable time if the debtor's right to remove the goods as against the encumbrancer or owner terminates.
h. Priority of construction mortgage. A mortgage is a construction mortgage to the extent that it secures an obligation incurred for the construction of an improvement on land, including the acquisition cost of the land, if a recorded record of the mortgage so indicates. Except as otherwise provided in subsections E and F, a security interest in fixtures is subordinate to a construction mortgage if a record of the mortgage is recorded before the goods become fixtures and the goods become fixtures before the completion of the construction. A mortgage has this priority to the same extent as a construction mortgage to the extent that it is given to refinance a construction mortgage.
i. Priority of security interest in crops. A perfected security interest in crops growing on real property has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property.

Section 9-335 - Accessions

a. Creation of security interest in accession. A security interest may be created in an accession and continues in collateral that becomes an accession.
b. Perfection of security interest. If a security interest is perfected when the collateral becomes an accession, the security interest remains perfected in the collateral.
c. Priority of security interest. Except as otherwise provided in subsection D, the other provisions of this part determine the priority of a security interest in an accession.
d. Compliance with certificate-of-title statute. A security interest in an accession is subordinate to a security interest in the whole which is perfected by compliance with the requirements of a certificate-of-title statute under Section 9-311(B).
e. Removal of accession after default. After default, subject to Part 6, a secured party may remove an accession from other goods if the security interest in the accession has priority over the claims of every person having an interest in the whole.
f. Reimbursement following removal. A secured party that removes an accession from other goods under subsection E shall promptly reimburse any holder of a security interest or other lien on, or owner of, the whole or of the other goods, other than the debtor, for the cost of repair of any physical injury to the whole or the other goods. The secured party need not reimburse the holder or owner for any diminution in value of the whole or the other goods caused by the

absence of the_accession removed or by any necessity for replacing it. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

Section 9-336 - Commingled Goods

a. "Commingled goods." In this section, "commingled goods" means goods that are physically united with other goods in such a manner that their identity is lost in a product or mass.
b. No security interest in commingled goods as such. A security interest does not exist in commingled goods as such. However, a security interest may attach to a product or mass that results when goods become commingled goods.
c. Attachment of security interest to product or mass. If collateral becomes commingled goods, a security interest attaches to the product or mass.
d. Perfection of security interest. If a security interest in collateral is perfected before the collateral becomes commingled goods, the security interest that attaches to the product or mass under subsection C is perfected.
e. Priority of security interest. Except as otherwise provided in subsection F, the other provisions of this part determine the priority of a security interest that attaches to the product or mass under subsection C.
f. Conflicting security interests in product or mass. If more than one security interest attaches to the product or mass under subsection C, the following rules determine priority:
    1. A security interest that is perfected under subsection D has priority over a security interest that is unperfected at the time the collateral becomes commingled goods.
    2. If more than one security interest is perfected under subsection D, the security interests rank equally in proportion to the value of the collateral at the time it became commingled goods.

Section 9-337 - Priority of Security Interests in Goods Covered by Certificate of Title

If, while a security interest in goods is perfected by any method under the law of another jurisdiction, this Nation issues a certificate of title that does not show that the goods are subject to the security interest or contain a statement that they may be subject to security interests not shown on the certificate:

1. A buyer of the goods, other than a person in the business of selling goods of that kind, takes free of the security interest if the buyer gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest; and
2. The security interest is subordinate to a conflicting security interest in the goods that attaches, and is perfected under Section 9-311(B), after issuance of_the certificate and without the conflicting secured party's knowledge of the security interest.

Section 9-338 - Priority of Security Interest or Agricultural Lien Perfected by Filed Financing Statement Providing Certain Incorrect Information

If a security interest or agricultural lien is perfected by a filed financing statement providing information described in Section 9-516(B)(5) which is incorrect at the time the financing statement is filed:

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

Section 9-339 - Priority Subject To Subordination

This Chapter does not preclude subordination by agreement by a person entitled to priority.

PART IV. RIGHTS OF BANK

Section 9-340 - Interests That Take Priority over Security Interest
Section 9-341 - Particular Priority Rules
Section 9-342 - Priority of Security Interests in Fixtures and Crops

Section 9-340 - Effectiveness of Right of Recoupment or Set-Off Against Deposit Account

a. Exercise of recoupment or set-off. Except as otherwise provided in subsection C, a bank with which a deposit account is maintained may exercise any right of recoupment or set-off against a secured party that holds a security interest in the deposit account.
b. Recoupment or setoff not affected by security interest. Except as otherwise provided in subsection C, the application of this Chapter to a security interest in a deposit account does not affect a right of recoupment or set-off of the secured party as to a deposit account maintained with the secured party.
c. When set-off ineffective. The exercise by a bank of a set-off against a deposit account is ineffective against a secured party that holds a security interest in the deposit account which is perfected by control under Section 9-117(A)(3), if the set-off is based on a claim against the debtor.

Section 9-341 - Bank's Rights and Duties With Respect to Deposit Account

a. Except as otherwise provided in Section 9-340(C), and unless the bank otherwise agrees in an authenticated record, a bank's rights and duties with respect to a deposit account maintained with the bank are not terminated, suspended, or modified by:

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

Section 9-342 - Bank's Right to Refuse to Enter Into or Disclose Existence of Control Agreement

This Chapter does not require a bank to enter into an agreement of the kind described in Section 9-117(A)(2), even if its customer so requests or directs. A bank that has entered into such an agreement is not required to confirm the existence of the agreement to another person unless requested to do so by its customer.

Subchapter 4 – Rights of Third Parties

Section 9-401 - Alienability Of Debtor's Rights

a. Other law governs alienability; exceptions. Except as otherwise provided in subsection B and Sections 9-406, 9-407, 9-408, and 9-409, whether a debtor's rights in collateral may be voluntarily or involuntarily transferred is governed by law other than this Chapter;
b. Agreement does not prevent transfer. An agreement between the debtor and secured party which prohibits a transfer of the debtor's rights in collateral or makes the transfer a default does not prevent the transfer from taking effect.

Section 9-402 - Secured Party Not Obligated on Contract of Debtor or In Tort

The existence of a security interest, agricultural lien, or authority given to a debtor to dispose of or use collateral, without more, does not subject a secured party to liability in contract or tort for the debtor's acts or omissions.

Section 9-403 - Rights of Agreement Not to Assert Defenses Against Assignee

a. "Value." In this section, "value" has the meaning provided in Section 3-303(a).
b. Agreement not to assert claim or defense. Except as otherwise provided in this section, an agreement between an account debtor and an assignor not to assert against an assignee any claim or defense that the account debtor may have against the assignor is enforceable by an assignee that takes an assignment:
    1. For value;
    2. In good faith;
    3. Without notice of a claim of a property or possessory right to the property assigned; and
    4. Without notice of a defense or claim in recoupment of the type that may be asserted against a person entitled to enforce a negotiable instrument under Section 3-305(a).
c. When subsection B not applicable. Subsection B does not apply to defenses of a type that may be asserted against a holder in due course of a negotiable instrument under Section 3-305(b).

d. Omission of required statement in consumer transaction. In a consumer transaction, if a record evidences the account debtor's obligation, law other than this Chapter requires that the record include a statement to the effect that the rights of an assignee are subject to claims or defenses that the account debtor could assert against the original obligee, and the record does not include such a statement:
    1. The record has the same effect as if the record included such a statement; and
    2. The account debtor may assert against an assignee those claims and defenses that would have been available if the record included such a statement.
e. Rule for individual under other law. This section is subject to law other than this Chapter which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.
f. Other law not displaced. Except as otherwise provided in subsection D, this section does not displace law other than this Chapter which gives effect to an agreement by an account debtor not to assert a claim or defense against an assignee.

Section 9-404 - Rights Acquired By Assignee; Claims and Defenses Against Assignee

a. Assignee's rights subject to terms, claims, and defenses; exceptions. Unless an account debtor has made an enforceable agreement not to assert defenses or claims, and subject to subsections b through e, the rights of an assignee are subject to:
    1. All terms of the agreement between the account debtor and assignor and any defense or claim in recoupment arising from the transaction that gave rise to the contract; and
    2. Any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives a notification of the assignment authenticated by the assignor or the assignee.
b. Account debtor's claim reduces amount owed to assignee. Subject to subsection C and except as otherwise provided in subsection D, the claim of an account debtor against an assignor may be asserted against an assignee under subsection A only to reduce the amount the account debtor owes.
c. Rule for individual under other law. This section is subject to law other than this Chapter which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.
d. Omission of required statement in consumer transaction. In a consumer transaction, if a record evidences the account debtor's obligation, law other than this Chapter requires that the record include a statement to the effect that the account debtor's recovery against an assignee with respect to claims and defenses against the assignor may not exceed amounts paid by the account debtor under the record, and the record does not include such a statement, the extent to which a claim of an account debtor against the assignor may be asserted against an assignee is determined as if the record included such a statement.
e. Inapplicability to health-care-insurance receivable. This section does not apply to an assignment of a health-care-insurance receivable.

Section 9-405 - Modification of Assigned Contract

a. Effect of modification on assignee. A modification of or substitution for an assigned contract is effective against an assignee if made in good faith. The assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that the modification or substitution is a breach of contract by the assignor. This subsection is subject to subsections B through D.
b. Applicability of subsection A. Subsection A applies to the extent that:
    1. The right to payment or a part thereof under an assigned contract has not been fully earned by performance; or
    2. The right to payment or a part thereof has been fully earned by performance and the account debtor has not received notification of the assignment under Section 9-406(A).
c. Rule for individual under other law. This section is subject to law other than this Chapter which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.
d. Inapplicability to health-care -insurance receivable. This section does not apply to an assignment of a health-care-insurance receivable.

Section 9-406 - Discharge of Account Debtor; Notification of Assignment; Identification and Proof of Assignment; Restrictions on Assignment of Accounts, Chattel Paper, Payment Intangibles, and Promissory Notes Ineffective

a. Discharge of account debtor; effect of notification. Subject to subsections B through I, an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the; assignor until, but not after, the account debtor; receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.
b. When notification ineffective. Subject to subsection H, notification is ineffective under subsection A:
    1. If it does not reasonably identify the rights assigned;
    2. To the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this Chapter; or
    3. At the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:
        a. Only a portion of the account, chattel paper, or payment intangible has been assigned to that assignee;
        b. A portion has been assigned to another assignee; or
        c. The account debtor knows that the assignment to that assignee is limited.

c. Proof of assignment. Subject to subsection H, if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection A.
d. Term restricting assignment generally ineffective. Except as otherwise provided in subsection E and Sections 2A-303 and 9-407, and subject to subsection H, a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:
    1. Prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note; or
    2. Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.
e. Inapplicability of subsection D to certain sales. Subsection D does not apply to the sale of a payment intangible or promissory note.
f. Legal restrictions on assignment generally ineffective. Except as otherwise provided in Sections 2A-303 and 9-407 and subject to subsections H and I, a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation:
    1. Prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in the account or chattel paper; or
    2. Provides that the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account or chattel paper.
g. Subsection B(3) not waivable. Subject to subsection H, an account debtor may not waive or vary its option under subsection B(3).
h. Rule for individual under other law. This section is subject to law other than this Chapter which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.
i. Inapplicability to health-care-insurance receivable. This section does not apply to an assignment of a health-care-insurance receivable.

Section 9-407 - Restrictions on Creation or Enforcement of Security Interest in Leasehold Interest or in Lessor's Residual Interest

a. Term restricting assignment generally ineffective. Except as otherwise provided in subsection B, a term in a lease agreement is ineffective to the extent that it:
   1. Prohibits, restricts, or requires the consent of a party to the lease to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in an interest of a party under the lease contract or in the lessor's residual interest in the goods; or
   2. Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the lease.
b. Effectiveness of certain terms. Except as otherwise provided in Section 2A-303(7), a term described in subsection A(2) is effective to the extent that there is:
   1. A transfer by the lessee of the lessee's right of possession or use of the goods in violation of the term; or
   2. A delegation of a material performance of either party to the lease contract in violation of the term.
c. Security interest not material impairment. The creation, attachment, perfection, or enforcement of a security interest in the lessor's interest under the lease contract or the lessor's residual interest in the goods is not a transfer that materially impairs the lessee's prospect of obtaining return performance or materially changes the duty of or materially increases the burden or risk imposed on the lessee within the purview of Section 2A-303(4) unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the lessor.

Section 9-408 - Restrictions on Assignment of Promissory Notes, Health-Care-Insurance Receivables, and Certain General Intangibles Ineffective

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

b. Applicability of subsection A to sales of certain rights to payment. Subsection A applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note.
c. Legal restrictions on assignment generally ineffective. A rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health-care-insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation:
    1. Would impair the creation, attachment, or perfection of a security interest; or
    2. Provides that the assignment or transfer or creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.
d. Limitation on ineffectiveness under subsections a and c. To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or general intangible or a rule of law, statute, or regulation described in subsection C would be effective under law other than this Chapter but is ineffective under subsection A or C, the creation, attachment, or perfection of a security interest in the promissory note, health-care-insurance receivable, or general intangible:
    1. Is not enforceable against the person obligated on the promissory note or the account debtor;
    2. Does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;
    3. Does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;
    4. Does not entitle the secured party to use or assign the debtor's rights under the promissory note, health-care-insurance receivable, or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health-care-insurance receivable, or general intangible;
    5. Does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and
    6. Does not entitle the secured party to enforce the security interest in the promissory note, health-care-insurance receivable, or general intangible.

Section 9-409 - Restrictions on Assignment of Letter-of-Credit Rights Ineffective

a. Term or law restricting assignment generally ineffective. A term in a letter of credit or a rule of law, statute, regulation, custom, or practice applicable to the letter of credit which prohibits, restricts, or requires the consent of an applicant, issuer, or nominated person to a beneficiary's assignment of or creation of a security interest in a letter-of-credit right is ineffective to the extent that the term or rule of law, statute, regulation, custom, or practice:
    1. Would impair the creation, attachment, or perfection of a security interest in the letter-of-credit right; or
    2. Provides that the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the letter-of-credit right.
b. Limitation on ineffectiveness under subsection A. To the extent that a term in a letter of credit is ineffective under subsection A but would be effective under law other than this Chapter or a custom or practice applicable to the letter of credit, to the transfer of a right to draw or otherwise demand performance under the letter of credit, or to the assignment of a right to proceeds of the letter of credit, the creation, attachment, or perfection of a security interest in the letter-of-credit right:
    1. Is not enforceable against the applicant, issuer, nominated person, or transferee beneficiary;
    2. Imposes no duties or obligations on the applicant, issuer, nominated person, or transferee beneficiary; and
    3. Does not require the applicant, issuer, nominated person, or transferee beneficiary to recognize the security interest, pay or render performance to the secured party, or accept payment or other performance from the secured party.

Subchapter 5 - Filing

Section 9-501 - Filing Office

a. Filing offices. Except as otherwise provided in subsection B, if the local law of this Nation governs perfection of a security interest or agricultural lien, the office in which to file a financing statement to perfect the security interest or agricultural lien is:
    1. The office designated for the filing or recording of a record of a mortgage on the related real property, if:
        a. The collateral is as-extracted collateral or timber to be cut; or
        b. The financing statement is filed as a fixture filing and the collateral is goods that are or are to become fixtures~~.~~or
    2. The office of the Secretary of the Nation, in all other cases, including a case in which the collateral is goods that are or are to become fixtures and the financing statement is not filed as a fixture filing.

b. Filing office for transmitting utilities. The office in which to file a financing statement to perfect a security interest in collateral, including fixtures, of a transmitting utility is the office of the Secretary of the Nation. The financing statement also constitutes a fixture filing as to the collateral indicated in the financing statement which is or is to become fixtures.

Section 9-502 - Contents of Financing Statement; Record of Mortgage as Financing Statement; Time of Filing Financing Statement

a. Sufficiency of financing statement. Subject to subsection B, a financing statement is sufficient only if it:
    1. Provides the name of the debtor;
    2. Provides the name of the secured party or a representative of the secured party; and
    3. Indicates the collateral covered by the financing statement.
b. Real-property-related financing statements. Except as otherwise provided in Section 9-501(B), to be sufficient, a financing statement that covers as-extracted collateral or timber to be cut, or which is filed as a fixture filing and covers goods that are or are to become fixtures, must satisfy subsection A and also:
    1. Indicate that it covers this type of collateral;
    2. Indicate that it is to be filed in the real property records;
    3. Provide a description of the real property to which the collateral is related; and
    4. If the debtor does not have an interest of record in the real property, provide the name of a record owner.
c. Record of mortgage as financing statement. A record of a mortgage is effective, from the date of recording, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if:
    1. The record indicates the goods or accounts that it covers;
    2. The goods are or are to become fixtures related to the real property described in the record or the collateral is related to the real property described in the record and is as-extracted collateral or timber to be cut;
    3. The record satisfies the requirements for a financing statement in this section other than an indication that it is to be filed in the real property records; and
    4. The record is recorded.
d. Filing before security agreement or attachment. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches.

Section 9-503 - Name of Debtor and Secured Party

a. Sufficiency of debtor's name. A financing statement sufficiently provides the name of the debtor:

1. If the debtor is a registered organization, only if the financing statement provides the name of the debtor indicated on the public record of the debtor's jurisdiction of organization which shows the debtor to have been organized;
2. If the debtor is a decedent's estate, only if the financing statement provides the name of the decedent and indicates that the debtor is an estate;
3. If the debtor is a trust or a trustee acting with respect to property held in trust, only if the financing statement:
   A. Provides the name specified for the trust in its organic documents or, if no name is specified, provides the name of the settlor and additional information sufficient to distinguish the debtor from other trusts having one or more of the same settlors; and
   B. Indicates, in the debtor's name or otherwise, that the debtor is a trust or is a trustee acting with respect to property held in trust; and
4. In other cases:
   A. If the debtor has a name, only if it provides the individual or organizational name of the debtor; and
   B. If the debtor does not have a name, only if it provides the names of the partners, members, associates, or other persons comprising the debtor.

b. Additional debtor-related information. A financing statement that provides the name of the debtor in accordance with subsection A is not rendered ineffective by the absence of:
   1. A trade name or name of the debtor; or
   2. Unless required under subsection A(4)(B), names of partners, members, associates, or other persons comprising the debtor.

c. Debtor's trade name insufficient. A financing statement that provides only the debtor's trade name does not sufficiently provide the name of the debtor.

d. Representative capacity. Failure to indicate the representative capacity of a secured party or representative of a secured party does not affect the sufficiency of a financing statement.

e. Multiple debtors and secured parties. A financing statement may provide the name of more than one debtor and the name of more than one secured party.

Section 9-504 - Indication of Collateral

A financing statement sufficiently indicates the collateral that it covers if the financing statement provides:

1. A description of the collateral pursuant to Section 9-116; or
2. An indication that the financing statement covers all assets or all personal property.

Section 9-505 - Filing and Compliance With Other Statutes and Treaties for Consignments, Leases, Other Bailments, and Other Transactions

a. Use of terms other than “debtor” and “secured party.” A consignor, lessor, or other bailor of goods, a licensor, or a buyer of a payment intangible or promissory note may file a financing statement, or may comply with a statute or treaty described in Section 9-311(A), using the terms “consignor”, “consignee”, “lessor”, “lessee”, “bailor”, “bailee”, “licensor”, “licensee”, “owner”, “registered owner”, “buyer”, “seller”, or words of similar import, instead of the terms “secured party” and “debtor”.
b. Effect of financing statement under subsection A. This part applies to the filing of a financing statement under subsection A and, as appropriate, to compliance that is equivalent to filing a financing statement under Section 9-311(B), but the filing or compliance is not of itself a factor in determining whether the collateral secures an obligation. If it is determined for another reason that the collateral secures an obligation, a security interest held by the consignor, lessor, bailor, licensor, owner, or buyer which attaches to the collateral is perfected by the filing or compliance.

Section 9-506 - Effect of Errors or Omissions

a. Minor errors and omissions. A financing statement substantially satisfying the requirements of this part is effective, even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading.
b. Financing statement seriously misleading. Except as otherwise provided in subsection C, a financing statement that fails sufficiently to provide the name of the debtor in accordance with Section 9-503(A) is seriously misleading.
c. Financing statement not seriously misleading. If a search of the records of the filing office under the debtor’s correct name, using the filing office’s standard search logic, if any, would disclose a financing statement that fails sufficiently to provide the name of the debtor in accordance with Section 9-503(A), the name provided does not make the financing statement seriously misleading.
d. “Debtor’s correct name.” For purposes of Section 9-508(B), the “debtor’s correct name” in subsection C means the correct name of the new debtor.

Section 9-507 - Effect of Certain Events on Effectiveness of Financing Statement

a. Disposition. A filed financing statement remains effective with respect to collateral that is sold, exchanged, leased, licensed, or otherwise disposed of and in which a security interest or agricultural lien continues, even if the secured party knows of or consents to the disposition.
b. Information becoming seriously misleading. Except as otherwise provided in subsection C and Section 9-508, a financing statement is not rendered ineffective if, after the financing statement is filed, the information provided in the financing statement becomes seriously misleading under Section 9-506.
c. Change debtor’s name. If a debtor so changes its name–that a filed financing statement becomes seriously misleading, under Section 9-506:

1. The financing statement is effective to perfect a security interest in collateral acquired by the debtor before, or within four months after, the change; and
2. The financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the change, unless an amendment to the financing statement which renders the financing statement not seriously misleading is filed within four months after the change.

Section 9-508 - Effectiveness of Financing Statement if New Debtor Becomes Bound by Security Agreement

a. Financing statement naming original debtor. Except as otherwise provided in this section, a filed financing statement naming an original debtor is effective to perfect a security interest in collateral in which a new debtor has or acquires rights to the extent that the financing statement would have been effective had the original debtor acquired rights in the collateral.
b. Financing statement becoming seriously misleading. If the difference between the name of the original debtor and that of the new debtor causes a filed financing statement that is effective under subsection A to be seriously misleading under Section 9-506:
    1. The financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within four months after, the new debtor becomes bound under Section 9-203(D); and
    2. The financing statement is not effective to perfect a security interest in collateral acquired by the new debtor more than four months after the new debtor becomes bound under Section 9-203(D) unless an initial financing statement providing the name of the new debtor is filed before the expiration of that time.
c. When section not applicable. This section does not apply to collateral as to which a filed financing statement remains effective against the new debtor under Section 9-507(A).

Section 9-509 - Persons Entitled to File a Record

a. Person entitled to file record. A person may file an initial financing statement, amendment that adds collateral covered by a financing statement, or amendment that adds a debtor to a financing statement only if:
    1. The debtor authorizes the filing in an authenticated record or pursuant to subsection B or C; or
    2. The person holds an agricultural lien that has become effective at the time of filing and the financing statement covers only collateral in which the person holds an agricultural lien.
b. Security agreement as authorization. By authenticating or becoming bound as debtor by a security agreement, a debtor or new debtor authorizes the filing of an initial financing statement, and an amendment, covering:

1. The collateral described in the security agreement; and
2. Property that becomes collateral under Section 9-315(A)(2), whether or not the security agreement expressly covers proceeds.

c. Acquisition of collateral as authorization. By acquiring collateral in which a security interest or agricultural lien continues under Section 9-315(A)(1), a debtor authorizes the filing of an initial financing statement, and an amendment, covering the collateral and property that becomes collateral under Section 9-315(A)(2).

d. Person entitled to file certain amendments. A person may file an amendment other than an amendment that adds collateral covered by a financing statement or an amendment that adds a debtor to a financing statement only if:
   1. The secured party of record authorizes the filing; or
   2. The amendment is a termination statement for a financing statement as to which the secured party of record has failed to file or send a termination statement as required by Section 9-513(A) or (C), the debtor authorizes the filing, and the termination statement indicates that the debtor authorized it to be filed.

e. Multiple secured parties of record. If there is more than one secured party of record for a financing statement, each secured party of record may authorize the filing of an amendment under subsection D.

Section 9-510 - Effectiveness of Filed Record

a. Filed record effective if authorized. A filed record is effective only to the extent that it was filed by a person that may file it under Section 9-509.

b. Authorization by one secured party of record. A record authorized by one secured party of record does not affect the financing statement with respect to another secured party of record.

c. Continuation statement not timely filed. A continuation statement that is not filed within the six-month period prescribed by Section 9-515(D) is ineffective.

Section 9-511 - Secured Party of Record

a. Secured party of record. A secured party of record with respect to a financing statement is a person whose name is provided as the name of the secured party or a representative of the secured party in an initial financing statement that has been filed. If an initial financing statement is filed under Section 9-514(A), the assignee named in the initial financing statement is the secured party of record with respect to the financing statement.

b. Amendment naming secured party of record. If an amendment of a financing statement which provides the name of a person as a secured party or a representative of a secured party is filed, the person named in the amendment is a secured party of record. If an amendment is filed under Section 9-514(B), the assignee named in the amendment is a secured party of record.

c. Amendment deleting secured party of record. A person remains a secured party of record until the filing of an amendment of the financing statement which deletes the person.

Section 9-512 - Amendment of Financing Statement

a. Amendment of information in financing statement. Subject to Section 9-509, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or, subject to subsection E, otherwise amend the information provided in, a financing statement by filing an amendment that:
   1. Identifies, by its file number, the initial financing statement to which the amendment relates; and
   2. If the amendment relates to an initial financing statement filed in a filing office described in Section 9-501(A)(1), provides the information specified in Section 9-502(B).
b. Period of effectiveness not affected. Except as otherwise provided in Section 9-515, the filing of an amendment does not extend the period of effectiveness of the financing statement.
c. Effectiveness of amendment adding collateral. A financing statement that is amended by an amendment that adds collateral is effective as to the added collateral only from the date of the filing of the amendment.
d. Effectiveness of amendment adding debtor. A financing statement that is amended by an amendment that adds a debtor is effective as to the added debtor only from the date of the filing of the amendment.
e. Certain amendments ineffective. An amendment is ineffective to the extent it:
   1. Purports to delete all debtors and fails to provide the name of a debtor to be covered by the financing statement; or
   2. Purports to delete all secured parties of record and fails to provide the name of a new secured party of record.

Section 9-513 - Termination Statement

a. Consumer goods. A secured party shall cause the secured party of record for a financing statement to file a termination statement for the financing statement if the financing statement covers consumer goods and:
   1. There is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or
   2. The debtor did not authorize the filing of the initial financing statement.
b. Time for compliance with subsection A. To comply with subsection A, a secured party shall cause the secured party of record to file the termination statement:
   1. Within one month after there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or

2. If earlier, within 20 days after the secured party receives an authenticated demand from a debtor.

c. Other collateral. In cases not governed by subsection A, within 20 days after a secured party receives an authenticated demand from a debtor, the secured party shall cause the secured party of record for a financing statement to send to the debtor a termination statement for the financing statement or file the termination statement in the filing office if:
   1. Except in the case of a financing statement covering accounts or chattel paper that has been sold or goods that are the subject of a consignment, there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value;
   2. The financing statement covers accounts or chattel paper that has been sold but as to which the account debtor or other person obligated has discharged its obligation;
   3. The financing statement covers goods that were the subject of a consignment to the debtor but are not in the debtor's possession; or
   4. The debtor did not authorize the filing of the initial financing statement.

d. Effect of filing termination statement. Except as otherwise provided in Section 9-510, upon the filing of a termination statement with the filing office, the financing statement to which the termination statement relates ceases to be effective. Except as otherwise provided in Section 9-510, for purposes of Sections 9-519(G), 9-522(A), and 9-523(C), the filing with the filing office of a termination statement relating to a financing statement that indicates that the debtor is a transmitting utility also causes the effectiveness of the financing statement to lapse.

Section 9-514 - Assignment Of Powers Of Secured Party Of Record

a. Assignment reflected on initial financing statement. Except as otherwise provided in subsection C, an initial financing statement may reflect an assignment of all of the secured party's power to authorize an amendment to the financing_statement by providing the name and mailing address of the assignee as the name and address of the secured party.

b. Assignment of filed financing statement. Except as otherwise provided in subsection C, a secured party of record may assign of record all or part of its power to authorize an amendment to a financing statement by filing in the filing office an amendment of the financing statement which:
   1. Identifies, by its file number, the initial financing statement to which it relates;
   2. Provides the name of the assignor; and
   3. Provides the name and mailing address of the assignee.

c. Assignment of record of mortgage. An assignment of record of a security interest in a fixture covered by a record of a mortgage which is effective as a financing statement filed as a fixture filing under Section 9-502(C) may be made only by an assignment of record of the mortgage in the manner provided by law of this Nation other than Title 33.

Section 9-515 - Duration and Effectiveness of Financing Statement; Effect of Lapsed Financing Statement

a. Five-year effectiveness. Except as otherwise provided in subsections B, E, F and G, a filed financing statement is effective for a period of five years after the date of filing.
b. Public-finance or manufactured-home transaction. Except as otherwise provided in subsections E, F, and G, an initial financing statement filed in connection with a public-finance transaction or manufactured-home transaction is effective for a period of 30 years after the date of filing if it indicates that it is filed in connection with a public-finance transaction or manufactured-home transaction.
c. Lapse and continuation of financing statement. The effectiveness of a filed financing statement lapses on the expiration of the period of its effectiveness unless before the lapse a continuation statement is filed pursuant to subsection D. Upon lapse, a financing statement ceases to be effective and any security interest or agricultural lien that was perfected by the financing statement becomes unperfected, unless the security interest is perfected otherwise. If the security interest or agricultural lien becomes unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the collateral for value.
d. When continuation statement may be filed. A continuation statement may be filed only within six months before the expiration of the five-year period specified in subsection A or the 30-year period specified in subsection B, whichever is applicable.
e. Effect of filing continuation statement. Except as otherwise provided in Section 9-510, upon timely filing of a continuation statement, the effectiveness of the initial financing statement continues for a period of five years commencing on the day on which the financing statement would have become ineffective in the absence of the filing. Upon the expiration of the five-year period, the financing statement lapses in the same manner as provided in subsection C, unless, before the lapse, another continuation statement is filed pursuant to subsection D. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the initial financing statement.
f. Transmitting utility financing statement If a debtor is a transmitting utility and a filed financing statement so indicates, the financing statement is effective until a termination statement is filed.
g. Record of mortgage as financing statement. A record of a mortgage that is effective as a financing statement filed as a fixture filing under Section 9-502(C) remains effective as a financing statement filed as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real property.

Section 9-516 - What Constitutes Filing; Effectiveness of Filing

a. What constitutes filing. Except as otherwise provided in subsection B, communication of a record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing.
b. Refusal to accept record; filing does not occur. Filing does not occur with respect to a record that a filing office refuses to accept because:
    1. The record is not communicated by a method or medium of communication authorized by the filing office;
    2. An amount equal to or greater than the applicable filing fee is not tendered;
    3. The filing office is unable to index the record because:
        A. In the case of an initial financing statement, the record does not provide a name for the debtor;
        B. In the case of an amendment or correction statement, the record:
            i. Does not identify the initial financing statement as required by Section 9-512 or 9-518, as applicable; or
            ii. Identifies an initial financing statement whose effectiveness has lapsed under Section 9-515;
        C. In the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's last name; or
        D. In the case of a record filed in the filing office described in Section 9-501(A)(1), the record does not provide a sufficient description of the real property to which it relates;
    4. In the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;
    5. In the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement to which the amendment relates, the record does not:
        A. Provide a mailing address for the debtor;
        B. Indicate whether the debtor is an individual or an organization; or
        C. If the financing statement indicates that the debtor is an organization, provide:
            i. A type of organization for the debtor;
            ii. A jurisdiction of organization for the debtor; or
            iii. An organizational identification number for the debtor or indicate that the debtor has none;

6. In the case of an assignment reflected in an initial financing statement under Section 9-514(A) or an amendment filed under Section 9-514(B), the record does not provide a name and mailing address for the assignee; or
7. In the case of a continuation statement, the record is not filed within the six-month period prescribed by Section 9-515(D).

c. Rules applicable to subsection B. For purposes of subsection B:
   1. A record does not provide information if the filing office is unable to read or decipher the information; and
   2. A record that does not indicate that it is an amendment or identify an initial financing statement to which it relates, as required by Section 9-512, 9-514, or 9-518, is an initial financing statement.

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

Section 9-517 - Effect of Indexing Errors

The failure of the filing office to index a record correctly does not affect the effectiveness of the filed record.

Section 9-518 - Claim Concerning Inaccurate or Wrongfully Filed Record

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

b. Sufficiency of correction statement. A correction statement must:
   1. Identify the record to which it relates by the file number assigned to the initial financing statement to which the record relates;
   2. Indicate that it is a correction statement; and
   3. Provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.

c. Record not affected by correction statement. The filing of a correction statement does not affect the effectiveness of an initial financing statement or other filed record.

Section 9-519 - Numbering, Maintaining, And Indexing Records; Communicating Information Provided In Records

a. Filing office duties. For each record filed in a filing office, the filing office shall:

1. Assign a unique number to the filed record;
2. Create a record that bears the number assigned to the filed record and the date and time of filing;
3. Maintain the filed record for public inspection; and
4. Index the filed record in accordance with subsections C, D, and E..

b. Reserved.

c. Indexing: general. Except as otherwise provided in subsections D and E, the filing office shall:
   1. Index an initial financing statement according to the name of the debtor and index all filed records relating to the initial financing statement in a manner that associates with one another an initial financing statement and all filed records relating to the initial financing statement; and
   2. Index a record that provides a name of a debtor which was not previously provided in the financing statement to which the record relates also according to the name that was not previously provided.

d. Indexing: real-property-related financing statement. If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, the filing office shall index it:
   1. Under the names of the debtor and of each owner of record shown on the financing statement as if they were the mortgagors under a mortgage of the real property described; and
   2. To the extent that the law of this Nation provides for indexing of records of mortgages under the name of the mortgagee, under the name of the secured party as if the secured party were the mortgagee thereunder, or, if indexing is by description, as if the financing statement were a record of a mortgage of the real property described.

e. Indexing: real-property-related assignment. If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, the filing office shall index an assignment filed under Section 9-514(A) or an amendment filed under Section 9-514(B):
   1. Under the name of the assignor as grantor; and
   2. To the extent that the law of this Nation provides for indexing a record of the assignment of a mortgage under the name of the assignee, under the name of the assignee.

f. Retrieval and association capability. The filing office shall maintain a capability:
   1. To retrieve a record by the name of the debtor and by the file number assigned to the initial financing statement to which the record relates; and
   2. To associate and retrieve with one another an initial financing statement and each filed record relating to the initial financing statement.

g. Removal of debtor's name. The filing office may not remove a debtor's name from the index until one year after the effectiveness of a financing statement naming the debtor lapses under Section 9-515 with respect to all secured parties of record.
h. Timeliness of filing office performance. The filing office shall perform the acts required by subsections A through E at the time and in the manner prescribed by filing-office rule, but not later than two business days after the filing office receives the record in question.
i. Inapplicability to real-property-related filing office. Subsection H do not apply to a filing office described in Section 9-501(A)(1).

Section 9-520 - Acceptance And Refusal To Accept Record

a. Mandatory refusal to accept record. A filing office shall refuse to accept a record for filing for a reason set forth in Section 9-516(B) and may refuse to accept a record for filing only for a reason set forth in Section 9-516(B).
b. Communication concerning refusal. If a filing office refuses to accept a record for filing, it shall communicate to the person that presented the record the fact of and reason for the refusal and the date and time the record would have been filed had the filing office accepted it. The communication must be made at the time and in the manner prescribed by filing-office rule but , in the case of a filing office described in Section 9-501(A)(2), in no event more than two business days after the filing office receives the record.
c. When filed financing statement effective. A filed financing statement satisfying Section 9-502(A) and (B) is effective, even if the filing office is required to refuse to accept it for filing under subsection A. However, Section 9-338 applies to a filed financing statement providing information described in Section 9-516(B)(5) which is incorrect at the time the financing statement is filed.
d. Separate application to multiple debtors. If a record communicated to a filing office provides information that relates to more than one debtor, this part applies as to each debtor separately.

Section 9-521 - Uniform Form Of Written Financing Statement And Amendment

a. Initial financing statement form. A filing office that accepts written records may not refuse to accept a written initial financing statement in the following form and format except for a reason set forth in Section 9-516(B):

UCC FINANCING STATEMENT

(a) FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME AND PHONE OF CONTACT AT FILER [optional]

_____

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

_____

_____ THE ABOVE SPACE IS FOR

_____ FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - Do not abbreviate or combine names

1a. ORGANIZATION'S NAME

_____

OR

1b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

_____

1c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

_____

1d. TAX ID. NO. ADD'L INFO. RE 1e. TYPE OF ORGANIZATION

SSN OR EIN ORGANIZATION DEBTOR

_____

1f. JURISDICTION OF ORGANIZATION 1g. ORGANIZATIONAL ID No., if any

_____[ ] NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME

_____

OR

2b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

_____

2c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

_____

2d. TAX ID. NO. ADD'L INFO. RE 2e. TYPE OF ORGANIZATION

SSN OR EIN ORGANIZATION DEBTOR

_____

2f. JURISDICTION OF ORGANIZATION 2g. ORGANIZATIONAL ID No., if any

_____[ ] NONE

3. SECURED PARTY'S NAME (or name of total assignee of assignor S/P) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME

_____

OR

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]: [ ] LESSEE/LESSOR

[ ] CONSIGNEE/CONSIGNOR [ ] BAILEE/BAILOR [ ] SELLER/BUYER
[ ] AG. LIEN [ ] NON-UCC FILING

6. [ ] This FINANCING STATEMENT is to be filed against the tract index in the REAL ESTATE RECORDS.

Attach Addendum [if applicable]

7. Check to REQUEST SEARCH REPORT(S) on Debtor(s)

[ ] All Debtors [ ] Debtor 1 [ ] Debtor 2 [ADDITIONAL FEE] [optional]

_____

8. OPTIONAL FILER REFERENCE DATA

_____

FILING OFFICE COPY - NATIONAL UCC FILING STATEMENT (FORM UCC 1))
[BACK OF FORM]
UCC FINANCING STATEMENT ADDENDUM
FOLLOW INSTRUCTIONS (front and back) CAREFULLY.

9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT

_____

9a. ORGANIZATION'S NAME

_____

OR

9b. INDIVIDUAL'S LAST NAME FIRST NAME 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 (11a or 11b) - do not abbreviate or combine names

11a. ORGANIZATION'S NAME

_____

OR

11b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

_____

11c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

_____

11d. TAX ID. NO. SSN OR EIN ADD'L INFO. RE ORGANIZATION DEBTOR

11e. TYPE OF ORGANIZATION

_____

11f. JURISDICTION OF ORGANIZATION 11g. ORGANIZATIONAL ID No., if any

_____[ ] NONE

12. [ ] ADDITIONAL SECURED PARTY'S or [ ] ASSIGNOR S/P'S NAME - insert only one name (12a or 12b).

12a. ORGANIZATION'S NAME

_____

OR

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 a [ ] fixture filing.

14. Description of real estate:

_____

_____

15. Name and address of a RECORD OWNER of the above-described real estate (if Debtor does not have 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
FILING OFFICE COPY - NATIONAL UCC FILING STATEMENT
(FORM UCC 1Ad)

b. Amendment form. A filing office that accepts written records may not refuse to accept a written record in the following form and format except for a reason set forth in Section 9-516(B):

UCC FINANCING STATEMENT AMENDMENT
(a) FOLLOW INSTRUCTIONS (front and back) CAREFULLY
A. NAME AND PHONE OF CONTACT AT FILER [optional]
_____
B. SEND ACKNOWLEDGMENT TO: (Name and Address)
_____
_____ THE ABOVE SPACE IS FOR
_____ FILING OFFICE USE ONLY
1a. INITIAL FINANCING STATEMENT FILE NO. _____
1b. [ ] This FINANCING STATEMENT AMENDMENT is to be filed against the tract index in the REAL ESTATE RECORDS.
2. [ ] 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. [ ] 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. [ ] 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 [ ] Debtor or [ ] Secured Party of record. Check only one of these two boxes. Also check one of the following three boxes and provide appropriate information in items 6 and/or 7.
[ ] 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.
[ ] DELETE name: Give record name to be deleted in item 6a or 6b.
[ ] 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. NO. ADD'L INFO. RE 7e. TYPE OF ORGANIZATION
SSN OR EIN ORGANIZATION
DEBTOR

_____

7f. JURISDICTION OF ORGANIZATION 7g. ORGANIZATIONAL ID No., if any

_____[ ] NONE

8. AMENDMENT (COLLATERAL CHANGE): check only one box
Describe collateral [ ] deleted or [ ] added, or give entire [ ] restated collateral description, or describe collateral [ ] 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 [ ] 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 FILE REFERENCE DATA

_____

FILING OFFICE COPY - NATIONAL UCC FINANCING STATEMENT AMENDMENT (FORM UCC3)

[BACK OF FORM]

UCC FINANCING STATEMENT AMENDMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

11. INITIAL FINANCING STATEMENT FILE NO. (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 LAST NAME FIRST NAME MIDDLE NAME SUFFIX

_____

13. USE THIS SPACE FOR ADDITIONAL INFORMATION

_____

_____THE ABOVE SPACE IS FOR

_____FILING OFFICE USE ONLY

FILING OFFICE COPY - NATIONAL UCC FINANCING STATEMENT AMENDMENT ADDENDUM (FORM UCC3Ad)

Section 9-522 - Maintenance and Destruction of Records

a. Post-lapse maintenance and retrieval of information. The filing office shall maintain a record of the information provided in a filed financing statement for at least one year after the effectiveness of the financing statement has lapsed under Section 9-515 with respect to all secured parties of record. The record must be retrievable by using the name of the debtor and by using the file number assigned to the initial financing statement to which the record relates.
b. Destruction of written records. Except to the extent that a statute governing disposition of public records provides otherwise, the filing office immediately may destroy any written record evidencing a financing statement. However, if the filing office destroys a written record, it shall maintain another record of the financing statement which complies with subsection A.

Section 9-523 - Information From Filing Office; Sale or License of Records

a. Acknowledgment of filing written record. If a person that files a written record requests an acknowledgment of the filing, the filing office shall send to the person an image of the record showing the number assigned to the record pursuant to Section 9-519(A)(1) and the date and time of the filing of the record. However, if the person furnishes a copy of the record to the filing office, the filing office may instead:
    1. Note upon the copy the number assigned to the record pursuant to Section 9-519(A)(1) and the date and time of the filing of the record; and
    2. Send the copy to the person.
b. Acknowledgment of filing other record. If a person files a record other than a written record, the filing office shall communicate to the person an acknowledgment that provides:
    1. The information in the record;
    2. The number assigned to the record pursuant to Section 9-519(A)(1); and
    3. The date and time of the filing of the record.
c. Communication of requested information. The filing office shall communicate or otherwise make available in a record the following information to any person that requests it:

1. Whether there is on file on a date and time specified by the filing office, but not a date earlier than three business days before the filing office receives the request, any financing statement that:
    A. Designates a particular debtor;
    B. Has not lapsed under Section 9-515 with respect to all secured parties of record; and
    C. If the request so states, has lapsed under Section 9-515 and a record of which is maintained by the filing office under Section 9-522(A);
2. The date and time of filing of each financing statement; and
3. The information provided in each financing statement.

d. Medium for communicating information. In complying with its duty under subsection C, the filing office may communicate information in any medium. However, if requested, the filing office shall communicate information by issuing its written certificate.

e. Timeliness of filing office performance. The filing office shall perform the acts required by subsections A through D at the time and in the manner prescribed by filing-office rule, but not later than two business days after the filing office receives the request.

f. Public availability of records. The filing office shall offer to sell or license to the public on a nonexclusive basis, in bulk, copies of all records filed in it under this part, in every medium from time to time available to the filing office.

Section 9-524 - Delay by Filing Office

Delay by the filing office beyond a time limit prescribed by this part is excused if:

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

Section 9-525 - Fees

a. Initial financing statement or other record: general rule. Except as otherwise provided in subsection E, the fee for filing and indexing a record under this part, other than an initial financing statement of the kind described in subsection B:
    1. $ 10 if the record is communicated in writing and consists of one or two pages;
    2. $ 1.00 for each additional page if the record is communicated in writing and consists of more than two pages; and
    3. $ 10.00 for one or two pages plus a $1.00 for each additional page if the record is communicated by another medium authorized by filing-office rule.

b. Initial financing statement: public-finance and manufactured-housing transactions. Except as otherwise provided in subsection E, the fee for filing and indexing an initial financing statement of the following kind is:
    1. $ 10.00 if the financing statement indicates that it is filed in connection with a public-finance transaction;

2. $10.00 if the financing statement indicates that it is filed in connection with a manufactured-home transaction.

c. Number of names. The number of names required to be indexed does not affect the amount of the fee in subsections A and B.

d. Response to information request. The fee for responding to a request for information from the filing office, including for issuing a certificate showing whether there is on file any financing statement naming a particular debtor, is:
   1. $ 10.00 if the request is communicated in writing; and
   2. $ 10.00 if the request is communicated by another medium authorized by filing-office rule.

e. Record of mortgage. This section does not require a fee with respect to a record of a mortgage which is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut under Section 9-502(C). However, the recording and satisfaction fees that otherwise would be applicable to the record of the mortgage apply.

Section 9-526 - Filing-Office Rules

The Secretary of the Nation may adopt and publish rules to implement this Chapter.

Subchapter 6 – Default

Part 1 – Default and Enforcement of Security Interest

Section 9-601 - Rights After Default; Judicial Enforcement; Consignor or Buyer of Accounts, Chattel Paper, Payment Intangibles, or Promissory Notes

a. Rights of secured party after default. After default, a secured party has the rights provided in this part–and, except as otherwise provided in–(Section 9-602), those provided by agreement of the parties. A secured party:
   1. May reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, or agricultural lien by any available judicial procedure; and
   2. If the collateral is documents, may proceed either as to the documents or as to the goods they cover.

b. Rights and duties of secured party in possession or control. A secured party in possession of collateral or control of collateral under Section 9-117, 9-118, 9-119, or 9-120 has the rights and duties provided in Section 9-207.

c. Rights cumulative; simultaneous exercise. The rights under subsections A and B are cumulative and may be exercised simultaneously.

d. Rights of debtor and obligor. Except as otherwise provided in subsection G and (Section 9-605), after default, a debtor and an obligor have the rights provided in this part and by agreement of the parties.

e. Lien of levy after judgment. If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:
   1. The date of perfection of the security interest or agricultural lien in the collateral;
   2. The date of filing a financing statement covering the collateral; or
   3. Any date specified in a statute under which the agricultural lien was created.
f. Execution sale. A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this Chapter.
g. Consignor or buyer of certain rights to payment. Except as otherwise provided in Section 9-607(C), this part imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes.

Section 9-602 - Waiver And Variance Of Rights And Duties

Except as otherwise provided in Section 9-624~~)~~, to the extent that they give rights to a debtor or obligor and impose duties on a secured party, the debtor or obligor may not waive or vary the rules stated in the following listed sections:

1. Section 207(b)(4)(c), which deals with use and operation of the collateral by the secured party;
2. Section 210, which deals with requests for an accounting– and requests concerning a list of collateral and statement of account;
3. Section (b), which deals with collection and enforcement of collateral;
4. Sections 9-608 (a) and 9-615 (c) to the extent that they deal with application or payment of noncash proceeds of collection, enforcement, or disposition;
5. Sections 9-608 (a) and 9-615 (d) to the extent that they require accounting for or payment of surplus proceeds of collateral;
6. Section 9-609~~,~~ to the extent that it imposes upon a secured party that takes possession of collateral without judicial process the duty to do so without breach of the peace;
7. Sections 9-610 (b), 9-611 and, 9-613, and 9-614, which deal with disposition-collateral;
8. Section 9-615 (f), which deals with calculation of a deficiency or surplus when a disposition is made to the secured party, a person related to the secured party, or a secondary obligor;
9. Section 9-616, which deals with explanation of the calculation of a surplus or deficiency;
10. Sections 9-620, 9-621, and 9-622, which deal with acceptance of collateral in satisfaction of obligation;
11. Section 9-623, which deals with redemption of collateral;
12. Section 9-624, which deals with permissible waivers; and
13. Sections 9-625 and 9-626, which deal with the secured party's liability for failure to comply with this Chapter.

Section 9-603 - Agreement on Standards Concerning Rights and Duties

a. Agreed standards. The parties may determine by agreement the standards measuring the fulfillment of the rights of a debtor or obligor and the duties of a secured party under a rule stated in ~~(~~Section 9-602~~)~~, if the standards are not manifestly unreasonable.
b. Agreed standards inapplicable to breach of peace. Subsection A does not apply to the duty under Section 9-609 to refrain from breaching the peace.

Section 9-604 - Procedure if Security Agreement Covers Real Property or Fixtures

a. Enforcement: personal and real property. If a security agreement covers both personal and real property, a secured party may proceed:
    1. Under this part as to the personal property without prejudicing any rights with respect to the real property; or
    2. As to both the personal property and the real property in accordance with the rights with respect to the real property, in which case the other provisions of this part do not apply.
b. Enforcement: fixtures. Subject to subsection C, if a security agreement covers goods that are or become fixtures, a secured party may proceed:
    1. Under this part; or
    2. In accordance with the rights with respect to real property, in which case the other provisions of this part do not apply.
c. Removal of fixtures. Subject to the other provisions of this part, if a secured party holding a security interest in fixtures has priority over all owners and encumbrancers of the real property, the secured party, after default, may remove the collateral from the real property.
d. Injury caused by removal. A secured party that removes collateral shall promptly reimburse any encumbrancer or owner of the real property, other than the debtor, for the cost of repair of any physical injury caused by the removal. The secured party need not reimburse the encumbrancer or owner for any diminution in value of the real property caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

Section 9-605 – Unknown Debtor or Secondary Obligor

A secured party does not owe a duty based on its status as secured party:

1. To a person that is a debtor or obligor, unless the secured party knows:
    a. That the person is a debtor or obligor;
    b. The identity of the person; and
    c. How to communicate with the person; or
2. To a secured party or lien holder that has filed a financing statement against a person, unless the secured party knows:
    a. That the person is a debtor; and
    b. The identity of the person.

Section 9-606 - Time of Default For Agricultural Lien

For purposes of this part, a default occurs in connection with an agricultural lien at the time the secured party becomes entitled to enforce the lien in accordance with the statute under which it was created.

Section 9-607 - Collection and Enforcement by Secured Party

a. Collection and enforcement generally. If so agreed, and in any event after default, a secured party:
    1. May notify an account debtor or other person obligated on collateral to make payment or otherwise render performance to or for the benefit of the secured party;
    2. May take any proceeds to which the secured party is entitled under Section 9-315;
    3. May enforce the obligations of an account debtor or other person obligated on collateral and exercise the rights of the debtor with respect to the obligation of the account debtor or other person obligated on collateral to make payment or otherwise render performance to the debtor, and with respect to any property that secures the obligations of the account debtor or other person obligated on the collateral;
    4. If it holds a security interest in a deposit account perfected by control under Section 9-117(A)(1), may apply the balance of the deposit account to the obligation secured by the deposit account; and
    5. If it holds a security interest in a deposit account perfected by control under Section 9-117(A)(2) or (3), may instruct the bank to pay the balance of the deposit account to or for the benefit of the secured party.
b. Nonjudicial enforcement of mortgage. If necessary to enable a secured party to exercise under subsection A(3) the right of a debtor to enforce a mortgage nonjudicially, the secured party may record in the office in which a record of the mortgage is recorded:
    1. A copy of the security agreement that creates or provides for a security interest in the obligation secured by the mortgage; and
    2. The secured party's sworn affidavit in recordable form stating that:
        A. A default has occurred; and
        B. The secured party is entitled to enforce the mortgage nonjudicially.
c. Commercially reasonable collection and enforcement. A secured party shall proceed in a commercially reasonable manner if the secured party:
    1. Undertakes to collect from or enforce an obligation of an account debtor or other person obligated on collateral; and
    2. Is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor or a secondary obligor.
d. Expenses of collection and enforcement. A secured party may deduct from the collections made pursuant to subsection C reasonable expenses of collection and enforcement, including reasonable attorney's fees and legal expenses incurred by the secured party.
e. Duties to secured party not affected. This section does not determine whether an account debtor, bank, or other person obligated on collateral owes a duty to a secured party.

Section 9-608 - Application of Proceeds of Collection or Enforcement; Liability For Deficiency and Right to Surplus

a. Application of proceeds, surplus, and deficiency if obligation secured. If a security interest or agricultural lien secures payment or performance of an obligation, the following rules apply:
   1. A secured party shall apply or pay over for application the cash proceeds of collection or enforcement under Section 9-607 in the following order to:
      A. The reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;
      B. The satisfaction of obligations secured by the security interest or agricultural lien under which the collection or enforcement is made; and
      C. The satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest or agricultural lien under which the collection or enforcement is made if the secured party receives an authenticated demand for proceeds before distribution of the proceeds is completed.
   2. If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder complies, the secured party need not comply with the holder's demand under paragraph (1)(C).
   3. A secured party need not apply or pay over for application noncash proceeds of collection and enforcement under Section 9-607 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.
   4. A secured party shall account to and pay a debtor for any surplus, and the obligor is liable for any deficiency.

   No surplus or deficiency in sales of certain rights to payment. If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes, the debtor is not entitled to any surplus, and the obligor is not liable for any deficiency.

Section 9-609 - Secured Party's Right to Take Possession After Default

a. Possession; rendering equipment unusable; disposition on debtor's premises. After default, a secured party:
   1. May~~;~~
   2. Take possession of the collateral; and
   3. Without removal, may render equipment unusable and dispose of collateral on a debtor's premises under Section 9-610.
b. Judicial and nonjudicial process. A secured party may proceed under subsection A:
   1. Pursuant to judicial process; or
   2. Without judicial process, if it proceeds without breach of the peace.

c. Assembly of collateral. If so agreed, and in any event after default, a secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties.

Section 9-610 - Disposition of Collateral After Default

a. Disposition after default. After default, a secured party may sell, lease, license, or otherwise dispose of any or all of the collateral in its present condition or following any commercially reasonable preparation or processing.
b. Commercially reasonable disposition. Every aspect of a disposition of collateral, including the method, manner, time, place, and other terms, must be commercially reasonable. If commercially reasonable, a secured party may dispose of collateral by public or private proceedings, by one or more contracts, as a unit or in parcels, and at any time and place and on any terms.
c. Purchase by secured party. A secured party may purchase collateral:
    1. At a public disposition; or
    2. At a private disposition only if the collateral is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations.
d. Warranties on disposition. A contract for sale, lease, license, or other disposition includes the warranties relating to title, possession, quiet enjoyment, and the like which by operation of law accompany a voluntary disposition of property of the kind subject to the contract.
e. Disclaimer of warranties. A secured party may disclaim or modify warranties under subsection d:
    1. In a manner that would be effective to disclaim or modify the warranties in a voluntary disposition of property of the kind subject to the contract of disposition; or
    2. By communicating to the purchaser a record evidencing the contract for disposition and including an express disclaimer or modification of the warranties.
f. Record sufficient to disclaim warranties. A record is sufficient to disclaim warranties under subsection E if it indicates "There is no warranty relating to title, possession, quiet enjoyment, or the like in this disposition" or uses words of similar import.

Section 9-611 - Notification Before Disposition of Collateral

a. "Notification date." In this section, "notification date" means the earlier of the date on which:
    1. A secured party sends to the debtor and any secondary obligor an authenticated notification of disposition; or
    2. The debtor and any secondary obligor waive the right to notification.
b. Notification of disposition required. Except as otherwise provided in subsection D, a secured party that disposes of collateral under Section 9-610 shall send to the persons specified in subsection D a reasonable authenticated notification of disposition.
c. Persons to be notified. To comply with subsection B, the secured party shall send an authenticated notification of disposition to:

1. The debtor;
2. Any secondary obligor; and
3. If the collateral is other than consumer goods:
   A. Any other person from which the secured party has received, before the notification date, an authenticated notification of a claim of an interest in the collateral;
   B. Any other secured party or lienholder that, 10 days before the notification date, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:
      i. Identified the collateral;
      ii. Was indexed under the debtor's name as of that date; and
      iii. Was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date; and
   C. Any other secured party that, 10 days before the notification date, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in Section 9-311(A).
   D. Subsection B inapplicable: perishable collateral; recognized market. Subsection B does not apply if the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market.
   E. Compliance with subsection (C)(3)(B). A secured party complies with the requirement for notification prescribed by subsection (C)(3)(B) if:
      1. Not later than 20 days or earlier than 30 calendar days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor's name in the office indicated in subsection (C)(3)(B); and
      2. Before the notification date, the secured party:
         A. Did not receive a response to the request for information; or
         B. Received a response to the request for information and sent an authenticated notification of disposition to each secured party or other lienholder named in that response whose financing statement covered the collateral

Section 9-612 - Timeliness of Notification Before Disposition of Collateral

a. Reasonable time is question of fact. Except as otherwise provided in subsection B, whether a notification is sent within a reasonable time is a question of fact.

10-day period sufficient in non-consumer transaction. In a transaction other than a consumer transaction, a notification of disposition-sent after_default and 10 days or more before the earliest time of disposition set forth in the notification is sent within a reasonable time before the disposition.

1. In a consumer transaction, 20 calendar days or more before the earliest time of disposition set forth in the notification; or

2. In all other transactions, 10 calendar days or more before the earliest time of disposition set forth in the notification.

Section 9-613 - Contents and Form of Notification Before Disposition of Collateral: General

Except in a consumer-goods transaction, the following rules apply:

1. The contents of a notification of disposition are sufficient if the notification:
    3. Describes the debtor and the secured party;
    4. Describes the collateral that is the subject of the intended disposition;
    5. States the method of intended disposition;
    6. States that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting; and
    7. States the time and place of a public disposition or the time after which any other disposition is to be made;
2. Whether the contents of a notification that lacks any of the information specified in paragraph (1) are nevertheless sufficient is a question of fact.
3. The contents of a notification providing substantially the information specified in paragraph (1) are sufficient, even if the notification includes:
    a. Information not specified by that paragraph; or
    b. Minor errors that are not seriously misleading.
4. A particular phrasing of the notification is not required
5. The following form of notification and the form appearing in Section (3), when completed, each provides sufficient information:

NOTIFICATION OF DISPOSITION OF COLLATERAL

To: [Name of debtor, obligor, or other person to which the notification is sent]
From: [Name, address, and telephone number of secured party]
Name of Debtor(s): [Include only if debtor(s) are not an addressee]
[For a public disposition under :]

We will sell [or lease or license, as applicable] the [describe collateral] [to the highest qualified bidder] in public as follows:
Day and Date: _____
Time: _____
Place: _____

[For a private disposition:]
We will sell [or lease or license, as applicable] the [describe collateral] privately sometime after [day and date].

You are entitled to an accounting of the unpaid indebtedness secured by the property that we intend to sell [or lease or license, as applicable] [for a charge of $ _____].

You may request an accounting by calling us at [telephone number]

[End of Form]

Section 9-614 - Contents and Form of Notification Before Disposition of Collateral: Consumer-Goods Transaction

In a consumer-goods transaction, the following rules apply:

1. A notification of disposition must provide the following information:
   a. The information specified in Section 9-613(1);
   b. A description of any liability for a deficiency of the person to which the notification is sent;
   c. A telephone number from which the amount that must be paid to the secured party to redeem the collateral under Section 9-623 is available; and
   d. A telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available.
2. A particular phrasing of the notification is not required.
3. The following form of notification, when completed, provides sufficient information:

[Name and address of secured party]

[Date]

NOTICE OF OUR PLAN TO SELL PROPERTY

[Name and address of any obligor who is also a debtor]

Subject: [Identification of Transaction]

We have your [describe collateral], because you broke promises in our agreement.

[For a public disposition:]

We will sell [describe collateral] at public sale. A sale could include a lease or license. The sale will be held as follows:

Date: _____

Time: _____

Place: _____

You may attend the sale and bring bidders if you want.

[For a private disposition:]

We will sell [describe collateral] at private sale sometime after [date]. A sale could include a lease or license.

The money that we get from the sale (after paying our costs) will reduce the amount you owe. If we get less money than you owe, you [will or will not, as applicable]] still owe us the difference. If

we get more money than you owe, you will get the extra money, unless we must pay it to someone else.

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

If you want us to explain to you in writing how we have figured the amount that you owe us, you may call us at " [telephone number]] [or write us at [secured party's address]] and request a written explanation. [We will charge you $ _____ for the explanation if we sent you another written explanation of the amount you owe us within the last six months.]

If you need more information about the sale call us at [telephone number]] [or write us at [secured party's address]].

We are sending this notice to the following other people who have an interest in [describe collateral] or who owe money under your agreement:

[Names of all other debtors and obligors, if any]

[End of Form]

(4) A notification in the form of paragraph (3) is sufficient, even if additional information appears at the end of the form.

(5) A notification in the form of paragraph (3) is sufficient, even if it includes errors in information not required by paragraph (1), unless the error is misleading with respect to rights arising under this Chapter.

(6) If a notification under this section is not in the form of paragraph (3), law other than this Chapter determines the effect of including information not required by paragraph (1).

Section 9-615 - Application Of Proceeds Of Disposition; Liability For Deficiency And Right To Surplus

A. Application of proceeds. A secured party shall apply or pay over for application the cash proceeds of disposition under Section 9-610 in the following order to:
   1. The reasonable expenses of retaking, holding, preparing for to the extent provided for agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;
   2. The satisfaction of obligations secured by or agricultural lien under which the disposition is made; the satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral if:
      a. The secured party receives from the holder of the subordinate security interest or other lien an authenticated demand for proceeds before distribution of the proceeds is completed; and
      b. In a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor; and

c. A secured party that is a consignor of the collateral if the secured party receives from the consignor an authenticated demand for proceeds before distribution of the proceeds is completed.

B. Proof of subordinate interest. If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder does so, the secured party need not comply with the holder's demand under subsection A(3).

C. Application of noncash proceeds. A secured party need not apply or pay over for application noncash proceeds of disposition under Section 9-610 unless the failure to do so would be commercially unreasonable. A secured party that applies_or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

D. Surplus or deficiency if obligation secured. If the security interest under which a disposition is made secures payment or performance of an obligation, after making the payments and applications required by subsection A and permitted by subsection C:
   1. Unless subsection A(4) requires the secured party to apply or pay over cash proceeds to a consignor, the secured party shall account to and pay a debtor for any surplus; and
   2. The obligor is liable for any deficiency.

E. No surplus or deficiency in sales of certain rights to payment. If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes:
   1. The debtor is not entitled to any surplus; and
   2. The obligor is not liable for any deficiency.

F. Calculation of surplus or deficiency in disposition to person related to secured party. The surplus or deficiency following a disposition is calculated based on the amount of proceeds that would have been realized in a disposition complying with this part to a transferee other than the secured party, a person related to the secured party, or a secondary obligor if:
   1. The transferee in the disposition is the secured party, a person related to the secured party, or a secondary obligor; and
   2. The amount of proceeds of the disposition is significantly below the range of proceeds that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

G. Cash proceeds received by junior secured party. A secured party that receives cash proceeds of a disposition in good faith and without knowledge that the receipt violates the rights of the holder of a security interest or other lien that is not subordinate to the security interest or agricultural lien under which the disposition is made:
   1. Takes the cash proceeds free of the security interest or other lien;
   2. Is not obligated to apply the proceeds of the disposition to the satisfaction of obligations secured by the security interest or other lien; and
   3. Is not obligated to account to or pay the holder of the security interest or other lien for any surplus.

Section 9-616 - Explanation of Calculation of Surplus or Deficiency

a. Definitions. In this section:
    1. "Explanation" means a writing that:
        A. States the amount of the surplus or deficiency;
        B. Provides an explanation in accordance with subsection C of how the secured party calculated the surplus or deficiency;
        C. States, if applicable, that future debits, credits, charges, including additional credit service charges or interest, rebates, and expenses may affect the amount of the surplus or deficiency; and
        D. Provides a telephone number or mailing address from which additional information concerning the transaction is available.
    2. "Request" means a record:\
        A. Authenticated by a debtor or consumer obligor;
        B. Requesting that the recipient provide an explanation; and
        C. Sent after disposition of the collateral under Section 9-610.
b. Explanation of calculation. In a consumer-goods transaction in which the debtor is entitled to a surplus or a consumer obligor is liable for a deficiency under Section 9-615, the secured party shall:
    1. Send an explanation to the debtor–or consumer obligor, as applicable, after the disposition and:
        A. Before or when the secured party accounts to the debtor and pays any surplus or first makes written demand on the consumer obligor after the disposition for payment of the deficiency; and
        B. Within 14 days after receipt of a request; or
    2. In the case of a consumer obligor who is liable for a deficiency, within 14 days after receipt of a request, send to the consumer obligor a record waiving the secured party's right to a deficiency.
c. Required information. To comply with subsection A(1)(B), a writing must provide the following information in the following order:
    1. The aggregate amount of obligations secured by the security interest under which the disposition was made, and, if the amount reflects a rebate of unearned interest or credit service charge, an indication of that fact, calculated as of a specified date:
        A. If the secured party takes or receives possession of the collateral after default, not more than 35 days before the secured party takes or receives possession; or
        B. If the secured party takes or receives possession of the collateral before default or does not take possession of the collateral, not more than 35 days before the disposition;
    2. The amount of proceeds of the disposition;
    3. The aggregate amount of the obligations after deducting the amount of proceeds;
    4. The amount, in the aggregate or by type, and types of expenses, including expenses of retaking, holding, preparing for disposition, processing, and disposing of the collateral, and attorney's fees secured by the collateral which are known to the secured party and relate to the current disposition;

5. The amount, in the aggregate or by type, and types of credits, including rebates of interest or credit service charges, to which the obligor is known to be entitled and which are not reflected in the amount in paragraph (1); and
6. The amount of the surplus or deficiency.

d. Substantial compliance. A particular phrasing of the explanation is not required. An explanation complying substantially with the requirements of subsection A is sufficient, even if it includes minor errors that are not seriously misleading.
e. Charges for responses. A debtor or consumer obligor is entitled without charge to one response to a request under this section during any six-month period in which the secured party did not send to the debtor or consumer obligor an explanation pursuant to subsection B(1). The secured party may require payment of a charge not exceeding $25 for each additional response.

Section 9-617 - Rights Of Transferee Of Collateral

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

Section 618 - Rights and Duties of Certain Secondary Obligors

a. Rights and duties of secondary obligor. A secondary obligor acquires the rights and becomes obligated to perform the duties of the secured party after the secondary obligor:
   1. Receives an assignment of a secured obligation from the secured party;
   2. Receives a transfer of collateral from the secured party and agrees to accept the rights and assume the duties of the secured party; or
   3. Is subrogated to the rights of a secured party with respect to collateral.
b. Effect of assignment, transfer, or subrogation. An assignment, transfer, or subrogation described in subsection A:
   1. Is not a disposition of collateral under Section 9-610; and
   2. Relieves the secured party of further duties under this Chapter.

Section 9-619 - Transfer of Record or Legal Title

a. "Transfer statement." In this section, "transfer statement" means a record authenticated by a secured party stating:
   1. That the debtor has defaulted in connection with an obligation secured by specified collateral;
   2. That the secured party has exercised its post-default remedies with respect to the collateral;
   3. That, by reason of the exercise, a transferee has acquired the rights of the debtor in the collateral; and
   4. The name and mailing address of the secured party, debtor, and transferee.
b. Effect of transfer statement. A transfer statement entitles the transferee to the transfer of record of all rights of the debtor in the collateral specified in the statement in any official filing, recording, registration, or certificate-of-title system covering the collateral. If a transfer statement is presented with the applicable fee and request form to the official or office responsible for maintaining the system, the official or office shall:
   1. Accept the transfer statement;
   2. Promptly amend its records to reflect the transfer; and
   3. If applicable, issue a new appropriate certificate of title in the name of the transferee.
c. Transfer not a disposition; no relief of secured party's duties. A transfer of the record or legal title to collateral to a secured party under subsection B or otherwise_is not of itself a disposition of collateral under this Chapter and does not of itself relieve the secured party of its duties under this Chapter.

Section 9-620 - Acceptance of Collateral in Full or Partial Satisfaction of Obligation; Compulsory Disposition of Collateral

a. Conditions to acceptance in satisfaction. Except as otherwise provided in subsection G, a secured party may accept collateral in full or partial satisfaction of the obligation it secures only if:
   1. The debtor consents to the acceptance under subsection C;
   2. The secured party does not receive, within the time set forth in subsection D, a notification of objection to the proposal authenticated by:
      A. A person to which the secured party was required to send a proposal under Section 9-621; or
      B. Any other person, other than the debtor, holding an interest in the collateral subordinate to the security interest that is the subject of the proposal;
   3. If the collateral is consumer goods, the collateral is not in the possession of the debtor when the debtor consents to the acceptance; and
   4. Subsection E does not require the secured party to dispose of the collateral or the debtor waives the requirement pursuant to Section 9-624.
b. Purported acceptance ineffective. A purported or apparent acceptance of collateral under this section is ineffective unless:

1. The secured party consents to the acceptance in an authenticated record or sends a proposal to the debtor; and
2. The conditions of subsection A are met.

c. Debtor's consent. For purposes of this section:
   1. A debtor consents to an acceptance of collateral in partial satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default; and
   2. A debtor consents to an acceptance of collateral in full satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default or the secured party:
      A. Sends to the debtor after default a proposal that is unconditional or subject only to a condition that collateral not in the possession of the secured party be preserved or maintained;
      B. In the proposal, proposes to accept collateral in full satisfaction of the obligation it secures; and
      C. Does not receive a notification of objection authenticated by the debtor within 20 days after the proposal is sent.

d. Effectiveness of notification. To be effective under subsection A(2), a notification of objection must be received by the secured party:
   1. In the case of a person to which the proposal was sent pursuant to Section 9-621, within 20 days after notification was sent to that person; and
   2. In other cases:
      A. Within 20 days after the last notification was sent pursuant to Section 9-621; or
      B. If a notification was not sent, before the debtor consents to the acceptance under subsection C.

e. Mandatory disposition of consumer goods. A secured party that has taken possession of collateral shall dispose of the collateral pursuant to Section 9-610 within the time specified in subsection F if:
   1. 60 percent of the cash price has been paid in the case of a purchase-money security interest in consumer goods; or
   2. 60 percent of the principal amount of the obligation secured has been paid in the case of a non-purchase-money security interest in consumer goods.

f. Compliance with mandatory disposition requirement. To comply with subsection E, the secured party shall dispose of the collateral:
   1. Within 90 days after taking possession; or
   2. Within any longer period to which the debtor and all secondary obligors have agreed in an agreement to that effect entered into and authenticated after default.

g. No partial satisfaction in consumer transaction. In a consumer transaction, a secured party may not accept collateral in partial satisfaction of the obligation it secures.

Section 9-621 - Notification of Proposal to Accept Collateral

a. Persons to which proposal to be sent. A secured party that desires to accept collateral in full or partial satisfaction of the obligation it secures shall send its proposal to:
    1. Any person from which the secured party has received, before the debtor consented to the acceptance, an authenticated notification of a claim of an interest in the collateral;
    2. Any other secured party or lienholder that, 10 days before the debtor consented to the acceptance, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:
        A. Identified the collateral;
        B. Was indexed under the debtor's name as of that date; and
        C. Was filed in the office or offices in which to file a financing statement against the debtor covering the collateral as of that date; and
    3. Any other secured party that, 10 days before the debtor consented to the acceptance, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in Section 9-311(A).
b. Proposal to be sent to secondary obligor in partial satisfaction. A secured party that desires to accept collateral in partial satisfaction of the obligation it secures shall send its proposal to any secondary obligor in addition to the persons described in subsection a.

Section 9-622 - Effect Of Acceptance Of Collateral

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

Section 9-623 - Right To Redeem Collateral

a. Persons that may redeem. A debtor, any secondary obligor, or any other secured party or lienholder may redeem collateral.
b. Requirements for redemption. To redeem collateral, a person shall tender:
    1. Fulfillment of all obligations secured by the collateral; and
    2. The reasonable expenses and attorney's fees described in Section 9-615(A)(1).
c. When redemption may occur. A redemption may occur at any time before a secured party:
    1. Has collected collateral under Section 9-607;
    2. Has disposed of collateral or entered into a contract for its disposition under Section 9-610; or

3. Has accepted collateral in full or partial satisfaction of the obligation it secures under Section 9-622.

Section 9-624 - Waiver

a. Waiver of disposition notification. A debtor or secondary obligor may waive the right to notification of disposition of collateral under Section 9-611 only by an agreement to that effect entered into and authenticated after default.
b. Waiver of mandatory disposition. A debtor may waive the right to require disposition of collateral under Section 9-620(e) only by an agreement to that effect entered into and authenticated after default.
c. Waiver of redemption right. Except in a consumer goods transaction, a debtor or secondary obligor may waive the right to redeem collateral under Section 9-623 only by an agreement to that effect entered into and authenticated after default.

Section 9-625 - Remedies for Secured Party's Failure To Comply With Chapter

a. Judicial orders concerning noncompliance. If it is established that a secured party is not proceeding in accordance with this Chapter, a court may order or restrain collection, enforcement, or disposition of collateral on appropriate terms and conditions.
b. Damages for noncompliance. Subject to subsections C, D, and F, a person is liable for damages in the amount of any loss caused by a failure to comply with this Chapter. Loss caused by a failure to comply may include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing.
c. Persons entitled to recover damages; statutory damages in consumer goods. transaction. Except as otherwise provided in Section 9-628,
    1. A person that, at the time of the failure, was a debtor, was an obligor, or held a security interest in or other lien on the collateral may recover damages under subsection B for its loss; and
    2. If the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply with this part may recover for that failure in any event an amount not less than the credit service charge plus 10 percent of the principal amount of the obligation or the time-price differential plus 10 percent of the cash price.
d. Recovery when deficiency eliminated or reduced. A debtor whose deficiency is eliminated under Section 9-626-may recover damages for the loss of any surplus. However, a debtor or secondary obligor whose deficiency is eliminated or reduced under Section 9-626 may not otherwise recover under subsection B for noncompliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance.
e. Statutory damages: noncompliance with specified provisions. In addition to any damages recoverable under subsection B, the debtor, consumer obligor, or person named as a debtor in a filed record, as applicable, may recover $500 in each case from a person that:
    1. Fails to comply with Section 9-208;

2. Fails to comply with
3. Files a record that the person is not entitled to file under Section 9-509(A);
4. Fails to cause the secured party of record to file or send a termination statement as required by Section 9- 513(A) or (C);
5. Fails to comply with{Section 9-616)(B)(1) and whose failure is part of a pattern, or consistent with a practice, of noncompliance.; or
6. Fails to comply with Section 9-616(B)(2).

f. Statutory damages: noncompliance with Section 9-210. A debtor or consumer obligor may recover damages under subsection B and, in addition, $500 in each case from a person that, without reasonable cause, fails to comply with a request under Section 9-210. A recipient of a request under Section 9- 210 which never claimed an interest in the collateral or obligations that are the subject of a request under that section has a reasonable excuse for failure to comply with the request within the meaning of this subsection.

g. Limitation of security interest: noncompliance with Section 9-210. If a secured party fails to comply with a request regarding a list of collateral or a statement of account under Section 9-10, the secured party may claim a security interest only as shown in the list or statement included in the request as against a person that is reasonably misled by the failure.

Section 9-626 - Action in Which Deficiency or Surplus is in Issue

a. Applicable rules if amount of deficiency or surplus in issue. In an action arising from a transaction, other than a consumer transaction, in which the amount of a deficiency or surplus is in issue, the following rules apply:
   1. A secured party need not prove compliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance unless the debtor or a secondary obligor places the secured party's compliance in issue.
   2. If the secured party's compliance is placed in issue, the secured party has the burden of establishing that the collection, enforcement, disposition, or acceptance was conducted in accordance with this part.
   3. Except as otherwise provided in Section 9-628, if a secured party fails to prove that the collection, enforcement, disposition, or acceptance was conducted in accordance with the provisions of this part relating to collection, enforcement, disposition, or acceptance, the liability of a debtor or a secondary obligor for a deficiency is limited to an amount by which the sum of the secured obligation, expenses, and attorney's fees exceeds the greater of:
      A. The proceeds of the collection, enforcement, disposition, or acceptance; or
      B. The amount of proceeds that would have been realized had the noncomplying secured party proceeded in accordance with the provisions of this part relating to collection, enforcement, disposition, or acceptance.
   4. For purposes of paragraph (3)(B), the amount of proceeds that would have been realized is equal to the sum of the secured obligation, expenses, and attorney's fees unless the secured party proves that the amount is less than that sum.

5. If a deficiency or surplus is calculated under Section 9-615(f), the debtor or obligor has the burden of establishing that the amount of proceeds of the disposition is significantly below the range of prices that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

b. Non-consumer transactions; no inference. The limitation of the rules in subsection A to transactions other than consumer transactions is intended to leave to the court the determination of the proper rules in consumer transactions. The court may not infer from that limitation the nature of the proper rule in consumer transactions and may continue to apply established approaches.

Section 9-627 - Determination of Whether Conduct was Commercially Reasonable

a. Greater amount obtainable under other circumstances; no preclusion of commercial reasonableness. The fact that a greater amount could have been obtained by a collection, enforcement, disposition, or acceptance at a different time or in a different method from that selected by the secured party is not of itself sufficient to preclude the secured party from establishing that the collection, enforcement, disposition, or acceptance was made in a commercially reasonable manner.

b. Dispositions that are commercially reasonable. A disposition of collateral is made in a commercially reasonable manner if the disposition is made:
   1. In the usual manner on any recognized market;
   2. At the price current in any recognized market at the time of the disposition; or
   3. Otherwise in conformity with reasonable commercial practices among dealers in the type of property that was the subject of the disposition.

c. Approval by court or on behalf of creditors. A collection, enforcement, disposition, or acceptance is commercially reasonable if it has been approved:
   1. In a judicial proceeding;
   2. By a bona fide creditors' committee;
   3. By a representative of creditors; or
   4. By an assignee for the benefit of creditors.

d. Approval under subsection c not necessary; absence of approval has no effect. Approval under subsection c need not be obtained, and lack of approval does not mean that the collection, enforcement, disposition, or acceptance is not commercially reasonable.

Section 9-628 - Nonliability and Limitation on Liability of Secured Party; Liability of Secondary Obligor

a. Limitation of liability of secured party for noncompliance with Chapter. Unless a secured party knows that a person is a debtor or obligor, knows the identity of the person, and knows how to communicate with the person:
   1. The secured party is not liable to the person, or to a secured party or lienholder that has filed a financing statement against the person, for failure to comply with this Chapter; and

2. The secured party's failure to comply with this Chapter does not affect the liability of the person for a deficiency.

b. Limitation of liability based on status as secured party. A secured party is not liable because of its status as secured party:
   1. To a person that is a debtor or obligor, unless the secured party knows:
      A. That the person is a debtor or obligor;
      B. The identity of the person; and
      C. How to communicate with the person; or
   2. To a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:
      A. That the person is a debtor; and
      B. The identity of the person.
      C. Limitation of liability if reasonable belief that transaction not a consumer-goods transaction or consumer transaction. A secured party is not liable to any person, and a person's liability for a deficiency is not affected, because of any act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer-goods transaction or a consumer transaction or that goods are not consumer goods, if the secured party's belief is based on its reasonable reliance on:
   3. A debtor's representation concerning the purpose for which collateral was to be used, acquired, or held; or
   4. An obligor's representation concerning the purpose for which a secured obligation was incurred.

c. Limitation of liability for statutory damages. A secured party is not liable to any person under Section 9-625 (c)(2)-for its failure to comply with Section 9-616~~,~~.

d. Limitation of multiple liability for statutory damages. A secured party is not liable under Section 9-625 (c)(2)-more than once with respect to any one secured obligation.

Section 9-629 – Attorney's Fees in Consumer Transactions

If the secured party's compliance with this Chapter is placed in issue in an action with respect to a consumer transaction, the following rules apply:

1. If the secured party would have been entitled to attorney's fees as the prevailing party, a consumer debtor or consumer obligor prevailing on the issue is entitled to the costs of the action and reasonable attorney's fees.
2. In other cases, the court may award to a consumer a debtor or consumer obligor prevailing on that issue the costs of the action and reasonable attorney's fees.
3. In determining the attorney's fees, the amount of the recovery on behalf of the prevailing consumer debtor or consumer obligor is not a controlling factor.

Subchapter 7 – Miscellaneous Provisions

Section 9-701 – Effective Date

This Chapter shall become effective on January 1, 2008.

Section 9-702 – Applicability

This chapter applies to a transaction within its scope that is entered into on or after the effective date of this Chapter. This Chapter does not apply to a transaction that is entered into before the effective date of this Chapter even is the transaction would be subject to this Chapter if it had been entered into after the effective date of this Chapter. This Chapter does not apply to a right of action that accrued before the effective date of this Chapter.

Section 9-703 – Savings Clause

A transaction entered into before the effective date of this Chapter, and the rights, obligations, and interests flowing from that transaction, are governed by any statute or other law amended or repealed by this Chapter as if amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other law.

Section 9-704 – Severability

If any provision of this Chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Chapter which can be given effect without the invalud provision or application, and to this end the provisions of this Chapter are severable.

Chapter 10 – Reserved

Chapter 11 – Reserved

Chapter 12 – Reserved

Chapter 13 – Reserved

Chapter 14 – Reserved

Chapter 15 – Uniform Electronic Transactions Act

Section 15-101 – Short Title

This Chapter shall be known and may be cited as the "Uniform Electronic Transactions Act."

Section 15-102 – Definitions

In this Chapter:

1. "Agreement" means the bargain of the parties in fact, as found in their language or inferred from other circumstances and from rules, regulations, and procedures given the effect of agreeements under laws otherwise applicable to a particular transaction.
2. "Automated transaction" means a transaction conducted or performed, in whole or in part, by electronic means or electronic records, in which the acts or records of one or both parties are

not reviewed by an individual in the ordinary course in forming a contract, performing under an existing contract, or fulfilling an obligation required by the transaction.

3. “Certification authority” means a person who issues a certificate for a digital signature.
4. “Computer program” means a set of statements or instructions to be used directly or indirectly in an information processing system in order to bring about a certain result.
5. “Contract” means the total legal obligation resulting from the parties’ agreement as affected by this act and other applicable law.
6. “Digital signature” means a typr of electronic signature consisting of a transformation of an electronic message using an asymmetric crypto system such that a person having the initial message and the signer’s public key can accurately determine whether:
   a. The transformation was created using the private key that corresponds to the signer’s public key; and
   b. The initial message has not been altered since the transformation was made.
7. “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
8. “Electronic agent” means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part, without review or action by an individual.
9. “Electronic record” means a record created, generated, sent, communicated, received, or stored by electronic means.
10. “Electronic signature” means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.
11. “Governmental agency” means an executive, legislative, or judicial agency, department, board, commission, authority, institution, or instrumentality of the federal government or of a state or of a county, municipality, or other political subdivision of a state.
12. “Information” means data, text, images, sounds, codes, computer programs, software, databases, or the like.
13. “Information processing system” means an electronic system for creating, generating, sending, receiving, storing, displaying, or processing information.
14. “Message” means a digital representation of information.
15. “Person” means an individual, corporation, business tryst, estate trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation, or any other legal or commercial entity.
16. “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
17. “Registered certification authority” means a certification authority who is registered with the Secretary and has been certified by the Secretary as meeting the standards set forth by regulation.
18. “Secretary” means the Muscogee (Creek) Nation Secretary of State.
19. “Security procedure” means a procedure employed for the purpose of veryifying that an electronic signature, record, or performance is that of a specific person or for detecting changes

or errors in the information in an electronic record. The term "security procedure" includes a procedure that requires the use of algorithm or other codes, identifying words or numbers, encryption, or callback or other acknowledgment procedures.

20. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term inlcues an Indian tribe or band, or Alaskan native village, which is recognized by federal law or formally acknowledged by a state.
21. "Transaction" means an action or set of actions occurring between two or more persons relating to the conduct of business, commercial, or governmental affairs.

Section 15-103 – Scope

a. Except as provided in subsection (b) of this section or as otherwise provided by law, this act applies to electronic records and electronic signatures relating to a transaction.
b. This act does not apply to a transaction to the extent it is governed by:
    1. A law governing the creation and execution of wills, codicils, or testamentary trusts;
    2. The Uniform Commercial Code, other than Sections 1-107 and 1-206 of Title 33 of the Muscogee (Creek) Code Annotated and Chapter 2, and Chapter 2A of Title 33 of the Muscogee (Creek) Code Annotated;
    3. Reserved;
    4. A consumer protection law of this Nation necessary to conform to existing federal requirements or to preserve existing consumer protection requirements.
c. This act applies to an electronic record or electronic signature otherwise excluded from the application of this act under subsection (b) of this section to the extent it is governed by a law other than those specified in subsection (b) of this section.
d. A transaction subject to this act is also subject to other applicable substantive law.

Section 15-104 – Prospective Application

This act applies to any electronic reocrd or electronic signature created, generated, sent, communicated, received, or stored on or after the effective date of this act.

Section 15-105 – Use of Electronic Records and Electronic Signatures – Variation by Agreement

a. This act does not require a record or signature to be created, generated, sent, communicated, received, stored, or otherwise processed or used by electronic means or in electronic form.
b. This act applies only to transactions betwee parties each of which has agreed to conduct transactions by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct.
c. A party that agrees to conduct a transaction by electronic means may refuse to conduct other transactions by electronic means. The right granted by this subsection may not be waived by agreement.

d. Except as otherwise provided in this act, the effect of any of its provisions may be varied by agreement. The presence in certain provisions of this act of the words "unless otherwise agreed", or words of similar import, doe not imply that the effect of other provisions may not be varied by agreement.
e. Whether an electronic record or electronic signature has legal consequences is determined by this act and other applicable law.

Section 15-106 – Construction and Application

This act must be construed and applied:

1. To facilitate electronic transactions consistent with other applicable law;
2. To be consistent with reasonable practices concerning electronic transactions and with the continued expansion of those practices; and
3. To effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it.

Section 15-107 – Legal Recognition of Electronic Records, Electronic Signatures, and Electronic Signatures

a. a record or signature may not be denied legal effect or enforceability solely because it is in electronic form.
b. A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.
c. If a law requires a record to be in writing, an electronic record satisfies the law.
d. If a law requires a signature, an electronic signature satisfies the law.

Section 15-108 – Provision of Information in Writing – Presentation of Records

a. If parties have agreed to conduct a transaction by electronic means and a law requires a person to provide, send, or deliver information in writing to another person, the requirement is satisfied if the information is provided, sent, or delivered, as the case may be, in an electronic record capable of retention by the recipient if the sender or its information processing system inhibits the ability of the recipient to print or store the electronic record.
b. If a law other than this act requires a record
    h. To be posted or displayed in a certain manner,
        ii. To be sent, communicated, or transmitted by a specified method, or
        iii. To contain information that is formatted in a certain manner, the following rules apply:
            1. The record must be posted or displayed in the manner specified in the other law;
            2. Except as otherwise provied in paragraph (2) of subsection (d) of this section, the record must be sent, communicated, or transmitted by the method specified in the other law; and

3. The record must contain the information formatted in the manner specified in the other law.

c. If a sender inhibits the ability of a recipient to store or print an electronic record, the electronic record is not enforceable against the recipient.
d. The requirements of this section may not be varied by agreement, but:
    1. To the extent a law other than this act requires information to be provided, sent, or delivered in writing but permits that requirement to be varied by agreement, the requirement under subsection (a) of this section that the information be in the form of an electronic record capable of retention may also be varied by agreement; and
    2. A requirement under a law other than this act to send, communicate, or transmit a record by first-class mail, postage prepaid, or regular United States mail, may be varied by agreement to the extent permitted by the other law.

Section 15-109 – Attribution and Effect of Electronic Record and Electronic Signature

a. An electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.
b. The effect of an electronic record or electronic signature attributed to a person under subsection (a) of this section is determined from the context and surrounding circumstances at the time of its creation, execution, or adoption, including the parties' agreement, if any, and otherwise as provided by law.

Section 15-110 – Effect of Change or Error

If a change or error in an electronic record occurs in a transmission between parties to a transaction, the following rules apply:

1. If the parties have agreed to use a security procedure to detect changes or errors and one party has conformed to the procedure, but the other party has not, and the nonconforming party would have detected the change or error had that party also conformed, the conforming party may avoid the effect of the changed or erroneous electronic record.
2. In an automated transaction involving an individual, the individual may avoid the effect of an electronic record that resulted from an error made by the individual in dealing with the electronic agent did not provide an opportunity for the prevention or corrention of the error and, at the time the indivdual learns of the error, the individual:
    a. Promptly notifies the other person of the error and that the individual did not intent to be bound by the electronic record received by the other person;
    b. Takes reasonable steps, including steps that conform to the other person's reasonable instructions, to return to the other person or, if instructed by the other person, to destroy the consideration received, if any, as a result of the erroneous electronic record; and

    c. Has not used or received any benefit or value from the consideration, if any, received from the other person.
3. If neither paragraph (1) nor paragraph (2) of this section applies, the change or error has the effect provided by other law, including the law of mistake, and the parties' contract, if any.
4. Paragraphs (2) and (3) of this section may not be varied by agreement.

Section 15-111 – Notarization and Acknowledgment

If a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.

Section 15-112 – Retention of Electronic Records – Originals

a. If a lw requires that a record be retained, the requirement is satisfied by retaining an electronic record of the information in the record which:
    1. Accurately reflects the informaiton set forth in the record after it was first generated in its final form as an electronic record or otherwise; and
    2. Remains accessible for later reference.
b. A requirement to retain a record in accordance with subsection (a) of this section does not apply to any information the sole purpose of which is to enable the record to be sent, communicated, or received.
c. A person may satisfy subsection (a) of this section by using the services of another person if the requirements of that subsection are satisfied.
d. If a law requires a record to be presented or retained in its original form, or provides consequences if the record is not presented or retained in its original form, that law is satisfied by an electronic record retained in accordance with subsection (a) of this section.
e. If a law requires retention of a check, that requirement is satisfied by retention of an electronic record of the information on the front and back of the check in accordance with subsection (a) of this section.
f. A record retained as an electronic record in accordance with subsection (a) of this section satisfies a law requiring a person to retain a record for evidentiary, audit, or like purposes, unless a law enacted after the effective date of thi sact specifically prohibits the use of an electronic record for the specified purpose.
g. This section does not preclude a governmental agency of this state from specifiying additional requirements for the retention of a record subject to the agency's jurisdiction.

Section 15-113 – Admissibility in Evidence

In a proceeding, evidence of a record or signature may not be excluded solely because it is in electronic form.

Section 15-114 – Automated Transaction

In an automated transaction, the following rules apply:

1. A contract may be formed by the interaction of electronic agents of the parties, even if no individual was aware of or reviewed the electronic agents actions or the resulting terms and agreements.
2. A contract may be formed by the interaction of an electronic agent and an individual, acting on the individual's own behalf or for another person, including by an interaction in which the individual performs actions that the individual is free to refuse to perform and which the individual knows or has reason to know will cause the electronic agent to complete the transaction or performance.
3. The terms of the contract are determined by the substantive law applicable to it.

Section 15-115 – Time and Place of Sending and Receipt

a. Unless otherwise agreed between the sender and the recipient, an electronic record is sent when it:
    1. Is addressed properly or otherwise directed propely to an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type snet and from which the recipient is able to retrieve the electronic record;
    2. Is in a form capable of being processed by that system; and
    3. Enters an information processing system outside the control of the sender or of a person that sent the electronic record on behalf of the sender or enters a region of the information processing system designated or used by the recipient which is under the control of the recipient.
b. Unless otherwise agreed between a sender and the recipient, an electronic record is received when:
    1. It enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record; and
    2. It is in a form capable of being processed by that system.
c. Subsection (b) of this section applies even if the place the information processing system is located is different from the place the electronic record is deemed to be received under subsection (d) of this section.
d. Unless otherwise expressly provided in the electronic record or agreed between the sender and the recipient, an electronic record is deemed to be sent from the sender's palce of business and to be received at the recipient's place of business. For purposes of this subection, the following rules apply:
    1. If the sender or recipient has more than one place of business, the place of business of that person is the place having the closest relationship to the underlying transaction.
    2. If the sender or the recipient does not have a place of business, the place of business is the sender's or recipient's residence, as the case may be.

e. An electronic record is received under subsection (b) of this section even if no individual is aware of its receipt.
f. Receipt of an electronic acknowledgment from an information processing system described in subsection (b) of this section establishes that a record was received but, by itself, does not establish that the content sent corresponds to the content received.
g. If a person is aware that an electronic record purportedly send under subsection (a) of this section, or purportedly received under subsection (b) of this receipt is determined by other applicable law. Except to the extent permitted by the other law, the requirements of this subsection may not be varied by agreement.

Section 15-116 – Transferable Records

a. In this section, "transferable record" means an electronic record that:
    1. Would be a note under Chapter 3 of the Uniform Commercial Code or a document under Chapter 7 of the Uniform Commercial Code if the electronic record were in writing; and
    2. The issuer of the electronic record expressly has agreed is a transferable record.
b. A person has control of a transferable record if a system employed for evidencing the transfer of interests in the transferable record reliably establishes that person as the person to which the transferable record was issued or transferred.
c. A system satisfies subsection (b) of this section, and a person is deemed to have control of a transferable record, if the transferable record is created, stored, and assigned in such a manner that:
    1. A single authoritative copy of the transferable record exists which is unique, identifiable, and, except as otherwise provided in paragraphs (4), (5), and (6) of this subsection, unalterable;
    2. The authoritative copy identifies the person asserting control as:
        A. The person to which the transferable record was issued, or
        B. If the authoritative copy indicates that the transferable record has been transferred, the person to which the transferable record was most recently transferred;
    3. The authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;
    4. Copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;
    5. Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and
    6. Any revision of the authoritative copy is readily identifiable as authorized or unauthorized.
d. Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in paragraph 20 of Section 1-201 of the Uniform Commercial Code, of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under the Uniform Commercial Code, including, if the applicable statutory requirements under

subsection (a) of Section 3-302, Section 7-501, or Section 9-308 of the Uniform Commercial Code are satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable document of title has been duly negotiated, or a purchaser, respectively. Delivery, possession, and endorsement are not required to obtain or exercise any of the rights under this subsection.

e. Except as otherwise agreed, an obligor under a transferable record has the same rights and defenses as an equivalent obligor under equivalent records or writings under the Uniform Commerical Code.
f. If requested by a person against which enforcement is sought, the person seeking to enforce the transferable record shall provide reasonable proof that the person is in control of the transferable record. Proof may include access to the authoritative copy of the transferable record and related business records sufficient to review the terms of the transferable record and to establish the identity of the person having control of the transferable record.

Section 15-117 – Creation and Retention of Electronic Records and Conversion of Written Records by Governmental Agencies

Each governmental agency of this Nation, shall determine whether, and the extent to which, it will create and retain electronic records and convert written records to electronic records.

Section 15-118 – Acceptance and Distribution of Electronic Records by Governmental Agencies

a. Except as otherwise provided in this Chapter, each governmental agency of this Nation shall determine whether, and the extent to which, it will send and accept electronic records and electronic signatures to and from other persons and otherwise create, generate, communicate, store, process, use, and rely upon electronic records and electronic signatures.
b. To the extent that a governmental agency uses electronic records and electronic signatures under subsection (a) of this section, the governmental agency, giving due consideration to security, may specify:
    1. The manner and formate in which the electronic records must be created, generated, sent, communicated, received, and stored and the systems established for those purposes;
    2. If electronic records must be signed by electronic means, the type of electronic signature required, the manner and format in which the electronic signature must be affixed to the electronic record, an the identity of, or criteria that must be met by, any thirs party used by a person filing a document to facilitate the process;
    3. Control possess and procedures as appropriate to ensure adequate preservation, disposition, integrity, security, confidentiality, and auditability of electronic records; and
    4. Any other required attributes for electronic records which are specified for corresponding nonelectronic records or reasonably necessary under the circumstances.
c. Except as otherwise provided in this Chapter, this Chapter does not require a governmental agency of this Nation to use or permit the use of electronic records or electronic signatres.

Section 15-119 – Interoperability

A governmental agency of this Nation which adopts standards pursuant to this Chapter may encourage and promote consistency and interoperability with similar requirements adopted by other governmental agencies of this Nation and other Indian Tribes, States and the federal government and nongivernmental persons interacting with governmental agencies of this Nation. If appropriate, those standards may specify differing levels of standards from which governmental agencies of this Nation may choose in implementing the most appropriate standard for a particular application.

Section 15-120 – Waiver of Information Transaction Laws by Governmental Agencies

Notwithstanding this Chapter, a governmental agency may waive the requirements of Muscogee (Creek) law governing:

i. The method of posting or display of a record or information
ii. The manner of communication or transmittal of a record or information, including but not limited to, first class or other United States mail requirements, or
iii. Formatting requirements of a record or information, with respect to the matters over which the agency has jurisdiction.

Section 15-121 – Acting as Registered Certification Authority

a. No person, other than a National agency, board, or commission, shall act as a registered certification authority in this Nation until such person:
    1. Registers with the Secretary of State, or other Muscogee (Creek) Nation authority appointed by the Prinipal Chief, on forms approved and provided by that officer or;
    2. Files with the official designated at subparagraph (a)(1) of this section, a good and sufficient surety bond, certificate of insurance, or other evidence of financial surety bond, certificate of insurance, or other evidence of financial security in the amount of Two Hundred Fifty Thousand Dollars ($250,000.00); and
    3. Meets the requirements of any rules promulgated by the official designated at subparagraph (a)(1) of this section.
b. Real estate transactions and district and appellate cour filings shall require the use of a registered certification authority.
c. If a registered certification authority fails to maintain any of the qualifications listed in subsection (a) of this section, the registration of the certification authority shall be deemed lapse.
d. Any person who knowingly acts as a registered certification authority who has not met the requirements set forth in subsection (a) of this section shall, upon conviction, be guilty of a misdemeanor and shall be punished by a fine of not more than Five Hundred Dollars ($500.00) or up to thirty (30) days in jail, or both, for each violation. Each violation shall be a separate offense under this section.

e. Notwithstanding any contractual provisions to the contrary, a certification authority shall be liable for damages suffered by any person injured as a result of the fraudulent or unauthorized acts of the certification authority.
f. In addition to any civil or criminal actions, the official indicated at subparagraph (a)(1) of this section, or the Attorney General may apply to the district court when a violation of this section has allegedly occurred for an order enjoining or restraining the person from continuing the acts specified in the complaint. The court may grant a temporary or permanent injunction or restraining order, with or without bond, as it deems just and proper.
g. The official indicated at subpargraph (a)(1) of this section is authorized to adopt rules to implement the provisions of this section, and related provisions.
h. The official indicated at subparagraph (a)(1) of this section shall have the authority to establish reciprocity with other Indian Tribes, States, and Foreign Nations for purposes of this section, and related provisions.