

1 H.206
2 Introduced by Representatives Marcotte of Coventry, Graning of Jericho, and
3 White of Bethel
4 Referred to Committee on
5 Date:
6 Subject: Uniform Commercial Code
7 Statement of purpose of bill as introduced: This bill proposes to revise the
8 Uniform Commercial Code.

9 An act relating to the Uniform Commercial Code
10 It is hereby enacted by the General Assembly of the State of Vermont:
11 Sec. 1. 9A V.S.A. article 1 is amended to read:

12 ARTICLE 1. GENERAL PROVISIONS

13 * * *

14 § 1—201. GENERAL DEFINITIONS

15 * * *

16 (b) Subject to definitions contained in other articles of this title that apply
17 to particular articles or parts thereof:

18 * * *

~~Conspicuous terms include the following:~~

~~(B) language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to 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.~~

* * *

(16) “Document of title” means a record (i) 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 (ii) that purports to

1 be issued by or addressed to a bailee and to cover goods in the bailee's
2 possession which are either identified or are fungible portions of an identified
3 mass. The term includes a bill of lading, transport document, dock warrant,
4 dock receipt, warehouse receipt, and order for delivery of goods. An
5 electronic document of title means a document of title evidenced by a record
6 consisting of information stored in an electronic medium. A tangible
7 document of title means a document of title evidenced by a record consisting
8 of information that is inscribed on a tangible medium.

9 (16A) "Electronic" means relating to technology having electrical,
10 digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

11 * * *

12 (21) "Holder" means:

13 (A) the person in possession of a negotiable instrument that is
14 payable either to bearer or to an identified person that is the person in
15 possession;

16 (B) the person in possession of a negotiable tangible document of
17 title if the goods are deliverable either to bearer or to the order of the person in
18 possession; or

19 (C) the person in control, other than pursuant to subsection 7-106(g)
20 of this title, of a negotiable electronic document of title.

21 * * *

* * *

* * *

(36) “~~Send~~” “Send,” in connection with a ~~writing~~, record, or notice notification, means:

§ 1—301. TERRITORIAL APPLICABILITY; PARTIES' POWER TO

1 CHOOSE APPLICABLE LAW

2 * * *

3 (c) If one of the following provisions of this title specifies the applicable
4 law, that provision governs and a contrary agreement is effective only to the
5 extent permitted by the law so specified:

6 * * *

7 (7) Sections 9—301 through 9—307. Law Governing Perfection, the
8 Effect of Perfection or Nonperfection, and the Priority of Security Interests;

9 (8) Section 12—107. Governing Law.

10 * * *

11 § 1—306. WAIVER OR RENUNCIATION OF CLAIM OR RIGHT AFTER
12 BREACH

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

16 * * *

17 Sec. 2. 9A V.S.A. article 2 is amended to read:

18 ARTICLE 2. SALES

19 * * *

20 § 2—102. SCOPE; CERTAIN SECURITY AND OTHER TRANSACTIONS

21 EXCLUDED FROM THIS ARTICLE

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

6 (a) Unless the context otherwise requires, and except as provided in
7 subsection (c) of this section, this article applies to transactions in goods and,
8 in the case of a hybrid transaction, it applies to the extent provided in
9 subsection (b) of this section.

10 (b) In a hybrid transaction:

11 (1) If the sale-of-goods aspects do not predominate, only the provisions
12 of this article which relate primarily to the sale-of-goods aspects of the
13 transaction apply, and the provisions that relate primarily to the transaction as
14 a whole do not apply.

15 (2) If the sale-of-goods aspects predominate, this article applies to the
16 transaction but does not preclude application in appropriate circumstances of
17 other law to aspects of the transaction which do not relate to the sale of goods.

18 (c) This article does not:

19 (1) apply to a transaction that, even though in the form of an
20 unconditional contract to sell or present sale, operates only to create a security
21 interest; or

* * *

* * *

(C) a sale, lease, or license of property other than goods.

* * *

(1) Except as otherwise provided in this section a contract for the sale of goods for the price of \$500 or more is not enforceable by way of action or defense unless there is ~~some writing~~ a record 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~~ the party's authorized agent or broker. A ~~writing~~ record is not insufficient because it omits or incorrectly

1 states a term agreed upon but the contract is not enforceable under this
2 ~~paragraph~~ subsection beyond the quantity of goods shown in ~~such writing~~ the
3 record.

4 (2) Between merchants if within a reasonable time a ~~writing~~ record in
5 confirmation of the contract and sufficient against the sender is received and
6 the party receiving it has reason to know its contents, it satisfies the
7 requirements of subsection (1) against ~~such~~ the party unless ~~written~~ notice in a
8 record of objection to its contents is given within ten days after it is received.

9 * * *

10 § 2—202. FINAL ~~WRITTEN~~ EXPRESSION: PAROL OR EXTRINSIC
11 EVIDENCE

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

18 (a) by course of performance, course of dealing, or usage of trade (§
19 1—303); and

1 (b) by evidence of consistent additional terms unless the court finds the
2 ~~writing~~ record to have been intended also as a complete and exclusive
3 statement of the terms of the agreement.

4 § 2—203. SEALS INOPERATIVE

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

9 * * *

10 § 2—205. FIRM OFFERS

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

17 * * *

18 § 2—209. MODIFICATION, RESCISSION, AND WAIVER

19 (1) An agreement modifying a contract within this article needs no
20 consideration to be binding.

1 (2) A signed agreement which excludes modification or rescission except
2 by a signed writing or other signed record cannot be otherwise modified or
3 rescinded, but except as between merchants such a requirement on a form
4 supplied by the merchant must be separately signed by the other party.

5 * * *

6 Sec. 3. 9A V.S.A. article 2A is amended to read:

7 ARTICLE 2A. LEASES

8 * * *

9 § 2A—102. SCOPE

10 (1) This article applies to any transaction, regardless of form, that creates a
11 lease, and, in the case of a hybrid lease, it applies to the extent provided in
12 subdivision (2) of this section.

13 (2) In a hybrid lease:

14 A) if the lease-of-goods aspects do not predominate:

15 (i) only the provisions of this article which relate primarily to the
16 lease-of-goods aspects of the transaction apply, and the provisions that relate
17 primarily to the transaction as a whole do not apply;

18 (ii) section 2A—209 of this title applies if the lease is a finance
19 lease; and

20 (iii) section 2A—407 of this title applies to the promises of the
21 lessee in a finance lease to the extent the promises are consideration for the

1 right to possession and use of the leased goods; and

2 (B) if the lease-of-goods aspects predominate, this article applies to
3 the transaction, but does not preclude application in appropriate circumstances
4 of other law to aspects of the lease which do not relate to the lease of goods.

5 § 2A—103. DEFINITIONS AND INDEX OF DEFINITIONS

6 (1) In this article unless the context otherwise requires:

7 * * *

8 (h) “Goods” means all things that are movable at the time of
9 identification to the lease contract, or are fixtures (§ 2A—309), but the term
10 does not include money, documents, instruments, accounts, chattel paper,
11 general intangibles, or minerals or the like, including oil and gas, before
12 extraction. The term also includes the unborn young of animals.

13 (h.1) “Hybrid lease” means a single transaction involving a lease of
14 goods and:

15 (i) the provision of services;

16 (ii) a sale of other goods; or

17 (iii) a sale, lease, or license of property other than goods.

18 * * *

19 § 2A—107. WAIVER OR RENUNCIATION OF CLAIM OR RIGHT

20 AFTER DEFAULT

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

4 * * *

5 § 2A—201. STATUTE OF FRAUDS

6 (1) A lease contract is not enforceable by way of action or defense unless:

7 * * *

8 (b) there is a ~~writing~~ record, signed by the party against whom
9 enforcement is sought or by that party's authorized agent, sufficient to indicate
10 that a lease contract has been made between the parties and to describe the
11 goods leased and the lease term.

12 (2) Any description of leased goods or of the lease term is sufficient and
13 satisfies subsection (1)(b) of this section, whether or not it is specific, if it
14 reasonably identifies what is described.

15 (3) A ~~writing~~ record is not insufficient because it omits or incorrectly states
16 a term agreed upon, but the lease contract is not enforceable under subsection
17 (1)(b) of this section beyond the lease term and the quantity of goods shown in
18 the ~~writing~~ record.

19 * * *

20 (5) The lease term under a lease contract referred to in subsection (4) of
21 this section is:

* * *

The affixing of a seal to a ~~writing~~ record evidencing a lease contract or an offer to enter into a lease contract does not render the ~~writing~~ record a sealed

1 instrument and the law with respect to sealed instruments does not apply to the
2 lease contract or offer.

3 * * *

4 § 2A—205. FIRM OFFERS

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

11 * * *

12 § 2A—208. MODIFICATION, RESCISSION AND WAIVER

13 (1) An agreement modifying a lease contract needs no consideration to be
14 binding.

15 (2) A signed lease agreement that excludes modification or rescission
16 except by a signed ~~writing~~ record may not be otherwise modified or rescinded,
17 but, except as between merchants, such a requirement on a form supplied by a
18 merchant must be separately signed by the other party.

19 * * *

20 Sec. 4. 9A V.S.A. article 3 is amended to read:

21 ARTICLE 3. COMMERCIAL PAPER

1 * * *

2 § 3—104. NEGOTIABLE INSTRUMENT

3 (a) Except as provided in subsections (c) and (d) of this section,
4 “negotiable instrument” means an unconditional promise or order to pay a
5 fixed amount of money, with or without interest or other charges described in
6 the promise or order, if it:

7 * * *

8 (3) does not state any other undertaking or instruction by the person
9 promising or ordering payment to do any act in addition to the payment of
10 money, but the promise or order may contain (i) an undertaking or power to
11 give, maintain, or protect collateral to secure payment, (ii) an authorization or
12 power to the holder to confess judgment or realize on or dispose of collateral,
13 ~~or~~ (iii) a waiver of the benefit of any law intended for the advantage or
14 protection of an obligor, (iv) a term that specifies the law that governs the
15 promise or order, or (v) an undertaking to resolve in a specified forum a
16 dispute concerning the promise or order.

17 * * *

18 § 3—105. ISSUE OF INSTRUMENT

19 (a) “Issue” means:

(2) if agreed by the payee, the first transmission by the drawer to the payee of an image of an item and information derived from the item that enables the depository bank to collect the item by transferring or presenting under federal law an electronic check.

* * *

§ 3—401. SIGNATURE NECESSARY FOR LIABILITY ON
INSTRUMENT

(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 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.~~

* * *

§ 3—604. DISCHARGE BY CANCELLATION OR RENUNCIATION

1 (a) A person entitled to enforce an instrument, with or without
2 consideration, may discharge the obligation of a party to pay the instrument (i)
3 by an intentional voluntary act, such as surrender of the instrument to the
4 party, destruction, mutilation, or cancellation of the instrument, cancellation or
5 striking out of the party's signature, or the addition of words to the instrument
6 indicating discharge, or (ii) by agreeing not to sue or otherwise renouncing
7 rights against the party by a signed ~~writing~~ record. The obligation of a party to
8 pay a check is not discharged solely by destruction of the check in connection
9 with a process in which information is extracted from the check and an image
10 of the check is made and, subsequently, the information and image are
11 transmitted for payment.

12 * * *

13 Sec. 5. 9A V.S.A. article 4A is amended to read:

14 ARTICLE 4A. FUNDS TRANSFERS

15 * * *

16 § 4A—103. PAYMENT ORDER—DEFINITIONS

17 (a) In this article:

18 (1) "Payment order" means an instruction of a sender to a receiving
19 bank, transmitted orally, ~~electronically, or in writing~~ or in a record, to pay, or
20 to cause another bank to pay, a fixed or determinable amount of money to a
21 beneficiary if:

1 (i) the instruction does not state a condition to payment to the
2 beneficiary other than time of payment;

3 (ii) the receiving bank is to be reimbursed by debiting an account of,
4 or otherwise receiving payment from, the sender; and

5 (iii) the instruction is transmitted by the sender directly to the
6 receiving bank or to an agent, funds-transfer system, or communication system
7 for transmittal to the receiving bank.

8 * * *

9 § 4A—201. SECURITY PROCEDURE

10 “Security procedure” means a procedure established by agreement of a
11 customer and a receiving bank for the purpose of (i) verifying that a payment
12 order or communication amending or cancelling a payment order is that of the
13 customer, or (ii) detecting error in the transmission or the content of the
14 payment order or communication. A security procedure may impose an
15 obligation on the receiving bank or the customer and may require the use of
16 algorithms or other codes, identifying words ~~or~~, numbers, symbols, sounds,
17 biometrics, encryption, callback procedures, or similar security devices.

18 Comparison of a signature on a payment order or communication with an
19 authorized specimen signature of the customer or requiring a payment order to
20 be sent from a known email address, IP address, or telephone number is not by
21 itself a security procedure.

§ 4A—202. AUTHORIZED AND VERIFIED PAYMENT ORDERS

* * *

(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 bank's obligations under the security procedure and any ~~written~~ agreement or instruction of the customer, evidenced by a record, 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~~ an agreement with the customer, evidenced by a record, or notice of which is not received at a time and in a manner affording the bank a reasonable 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

1 procedures in general use by customers and receiving banks similarly situated.

2 A security procedure is deemed to be commercially reasonable if (i) the
3 security procedure was chosen by the customer after the bank offered, and the
4 customer refused, a security procedure that was commercially reasonable for
5 that customer, and (ii) the customer expressly agreed in ~~writing~~ a record to be
6 bound by any payment order, whether or not authorized, issued in its name and
7 accepted by the bank in compliance with the bank's obligations under the
8 security procedure chosen by the customer.

9 * * *

10 § 4A—203. UNENFORCEABILITY OF CERTAIN VERIFIED PAYMENT
11 ORDERS

12 (a) If an accepted payment order is not, under subsection 4A—202(a) of
13 this title, an authorized order of a customer identified as sender, but is effective
14 as an order of the customer pursuant to subsection 4A—202(b) of this title, the
15 following rules apply:

16 (1) By express ~~written~~ agreement evidenced by a record, the receiving
17 bank may limit the extent to which it is entitled to enforce or retain payment of
18 the payment order.

19 * * *

20 § 4A—207. MISDESCRIPTION OF BENEFICIARY

21 * * *

1 (c) If (i) a payment order described in subsection (b) of this section is
2 accepted, (ii) the originator's payment order described the beneficiary
3 inconsistently by name and number, and (iii) the beneficiary's bank pays the
4 person identified by number as permitted by subdivision (b)(1) of this section,
5 the following rules apply:

6 (1) If the originator is a bank, the originator is obliged to pay its order.

7 (2) If the originator is not a bank and proves that the person identified
8 by number was not entitled to receive payment from the originator, the
9 originator is not obliged to pay its order unless the originator's bank proves
10 that the originator, before acceptance of the originator's order, had notice that
11 payment of a payment order issued by the originator might be made by the
12 beneficiary's bank on the basis of an identifying or bank account number even
13 if it identifies a person different from the named beneficiary. Proof of notice
14 may be made by any admissible evidence. The originator's bank satisfies the
15 burden of proof if it proves that the originator, before the payment order was
16 accepted, signed a ~~writing~~ record stating the information to which the notice
17 relates.

18 * * *

19 § 4A—208. MISDESCRIPTION OF INTERMEDIARY BANK OR
20 BENEFICIARY'S BANK

21 * * *

1 (b) This subsection applies to a payment order identifying an intermediary
2 bank or the beneficiary's bank both by name and an identifying number if the
3 name and number identify different persons.

4 * * *

5 (2) If the sender is not a bank and the receiving bank proves that the
6 sender, before the payment order was accepted, had notice that the receiving
7 bank might rely on the number as the proper identification of the intermediary
8 or beneficiary's bank even if it identifies a person different from the bank
9 identified by name, the rights and obligations of the sender and the receiving
10 bank are governed by subdivision (1) of this subsection, as though the sender
11 were a bank. Proof of notice may be made by any admissible evidence. The
12 receiving bank satisfies the burden of proof if it proves that the sender, before
13 the payment order was accepted, signed a writing record stating the
14 information to which the notice relates.

15 * * *

16 § 4A—210. REJECTION OF PAYMENT ORDER

17 (a) A payment order is rejected by the receiving bank by a notice of
18 rejection transmitted to the sender orally, ~~electronically~~, or in writing a record.
19 A notice of rejection need not use any particular words and is sufficient if it
20 indicates that the receiving bank is rejecting the order or will not execute or
21 pay the order. Rejection is effective when the notice is given if transmission is

1 by a means that is reasonable in the circumstances. If notice of rejection is
2 given by a means that is not reasonable, rejection is effective when the notice
3 is received. If an agreement of the sender and receiving bank establishes the
4 means to be used to reject a payment order, (i) any means complying with the
5 agreement is reasonable and (ii) any means not complying is not reasonable
6 unless no significant delay in receipt of the notice resulted from the use of the
7 noncomplying means.

8 * * *

9 § 4A—211. CANCELLATION AND AMENDMENT OF PAYMENT
10 ORDER

11 (a) A communication of the sender of a payment order cancelling or
12 amending the order may be transmitted to the receiving bank orally,
13 ~~electronically~~, or in ~~writing~~ a record. If a security procedure is in effect
14 between the sender and the receiving bank, the communication is not effective
15 to cancel or amend the order unless the communication is verified pursuant to
16 the security procedure or the bank agrees to the cancellation or amendment.

17 * * *

18 § 4A—305. LIABILITY FOR LATE OR IMPROPER EXECUTION OR
19 FAILURE TO EXECUTE PAYMENT ORDER

20 * * *

1 (c) In addition to the amounts payable under subsections (a) and (b) of this
2 section, damages, including consequential damages, are recoverable to the
3 extent provided in an express ~~written~~ agreement of the receiving bank,
4 evidenced by a record.

5 (d) If a receiving bank fails to execute a payment order it was obliged by
6 express agreement to execute, the receiving bank is liable to the sender for its
7 expenses in the transaction and for incidental expenses and interest losses
8 resulting from the failure to execute. Additional damages, including
9 consequential damages, are recoverable to the extent provided in an express
10 ~~written~~ agreement of the receiving bank, evidenced by a record, but are not
11 otherwise recoverable.

12 * * *

13 Sec. 6. 9A V.S.A. article 5 is amended to read:

14 ARTICLE 5. LETTERS OF CREDIT

15 * * *

16 § 5—104. FORMAL REQUIREMENTS

17 A letter of credit, confirmation, advice, transfer, amendment, or
18 cancellation may be issued in any form that is a signed record ~~and is~~
19 ~~authenticated (i) by a signature or (ii) in accordance with the agreement of the~~
20 ~~parties or the standard practice referred to in subsection 5—108(e) of this title.~~

21 * * *

1 § 5—116. CHOICE OF LAW AND FORUM

2 (a) The liability of an issuer, nominated person, or adviser for action or
3 omission is governed by the law of the jurisdiction chosen by an agreement in
4 the form of a record signed ~~or otherwise authenticated~~ by the affected parties
5 ~~in the manner provided in section 5—104 of this title~~ or by a provision in the
6 person's letter of credit, confirmation, or other undertaking. The jurisdiction
7 whose law is chosen need not bear any relation to the transaction.

8 (b) Unless subsection (a) of this section applies, the liability of an issuer,
9 nominated person, or adviser for action or omission is governed by the law of
10 the jurisdiction in which the person is located. The person is considered to be
11 located at the address indicated in the person's undertaking. If more than one
12 address is indicated, the person is considered to be located at the address from
13 which the person's undertaking was issued.

14 (c) For the purpose of jurisdiction, choice of law, and recognition of
15 interbranch letters of credit, but not enforcement of a judgment, all branches of
16 a bank are considered separate juridical entities and a bank is considered to be
17 located at the place where its relevant branch is considered to be located under
18 this subsection (d) of this section.

19 (d) A branch of a bank is considered to be located at the address indicated
20 in the branch's undertaking. If more than one address is indicated, the branch

1 is considered to be located at the address from which the undertaking was
2 issued.

3 ~~(e)~~(e) Except as otherwise provided in this subsection, the liability of an
4 issuer, nominated person, or adviser is governed by any rules of custom or
5 practice, such as the Uniform Customs and Practice for Documentary Credits,
6 to which the letter of credit, confirmation, or other undertaking is expressly
7 made subject. If (i) this article would govern the liability of an issuer,
8 nominated person, or adviser under subsection (a) or (b) of this section, (ii) the
9 relevant undertaking incorporates rules of custom or practice, and (iii) there is
10 conflict between this article and those rules as applied to that undertaking,
11 those rules govern except to the extent of any conflict with the nonvariable
12 provisions specified in subsection 5—103(c) of this title.

13 ~~(d)~~(f) If there is conflict between this article and Article 3, 4, 4A, or 9 of
14 this title, this article governs.

15 ~~(e)~~(g) The forum for settling disputes arising out of an undertaking within
16 this article may be chosen in the manner and with the binding effect that
17 governing law may be chosen in accordance with subsection (a) of this section.

18 * * *

1 Sec. 7. 9A V.S.A. article 7 is amended to read:

2 ARTICLE 7. DOCUMENTS OF TITLE

3 * * *

4 § 7—102. DEFINITIONS AND INDEX OF DEFINITIONS

5 (a) In this article, unless the context otherwise requires:

6 * * *

7 (9) “Sign” means, ~~with present intent to authenticate or adopt a record:~~

8 ~~(A) to execute or adopt a tangible symbol; or~~

9 ~~(B) to attach to or logically associate with the record an electronic~~

10 ~~sound, symbol, or process.~~[Reserved.]

11 * * *

12 § 7—106. CONTROL OF ELECTRONIC DOCUMENT OF TITLE

13 * * *

14 (b) A system satisfies subsection (a) of this section, and a person is ~~deemed~~
15 ~~to have~~ has control of an electronic document of title, if the document is
16 created, stored, and ~~assigned~~ transferred in ~~such~~ a manner that:

17 * * *

18 (4) copies or amendments that add or change an identified assignee
19 transferee of the authoritative copy can be made only with the consent of the
20 person asserting control;

21 * * *

1 (c) A system satisfies subsection (a) of this section, and a person has
2 control of an electronic document of title, if an authoritative electronic copy of
3 the document, a record attached to or logically associated with the electronic
4 copy, or a system in which the electronic copy is recorded:

5 (1) enables the person readily to identify each electronic copy as either
6 an authoritative copy or a nonauthoritative copy;

7 (2) enables the person readily to identify itself in any way, including by
8 name, identifying number, cryptographic key, office, or account number, as the
9 person to which each authoritative electronic copy was issued or transferred;
10 and

11 (3) gives the person exclusive power, subject to subsection (d) of this
12 section, to:

13 (A) prevent others from adding or changing the person to which each
14 authoritative electronic copy has been issued or transferred; and

15 (B) transfer control of each authoritative electronic copy.

16 (d) Subject to subsection (e) of this section, a power is exclusive under
17 subdivisions (c)(3)(A) and (c)(3)(B) of this section even if:

18 (1) the authoritative electronic copy, a record attached to or logically
19 associated with the authoritative electronic copy, or a system in which the
20 authoritative electronic copy is recorded limits the use of the document of title
21 or has a protocol that is programmed to cause a change, including a transfer or

1 loss of control; or

2 (2) the power is shared with another person.

3 (e) A power of a person is not shared with another person under
4 subdivision (d)(2) of this section and the person's power is not exclusive if:

5 (1) the person can exercise the power only if the power also is exercised
6 by the other person; and

7 (2) the other person:

8 (A) can exercise the power without exercise of the power by the
9 person; or

10 (B) is the transferor to the person of an interest in the document of
11 title.

12 (f) If a person has the powers specified in subdivisions (c)(3)(A) and
13 (c)(3)(B) of this section, the powers are presumed to be exclusive.

14 (g) A person has control of an electronic document of title if another
15 person, other than the transferor to the person of an interest in the document:

16 (1) has control of the document and acknowledges that it has control on
17 behalf of the person; or

18 (2) obtains control of the document after having acknowledged that it
19 will obtain control of the document on behalf of the person.

20 (h) A person that has control under this section is not required to
21 acknowledge that it has control on behalf of another person.

* * *

* * *

* * *

Control section 8—106

1 Controllable account section 9—102

2 Controllable electronic record section 12—102

3 Controllable payment intangible section 9—102

4 Delivery section 8—301

5 * * *

6 § 8—103. RULES FOR DETERMINING WHETHER CERTAIN

7 OBLIGATIONS AND INTERESTS ARE SECURITIES OR

8 FINANCIAL ASSETS

9 * * *

10 (h) A controllable account, controllable electronic record, or controllable
11 payment intangible is not a financial asset unless subdivisions 8—
12 102(a)(9)(iii) applies.

13 * * *

14 § 8—106. CONTROL

15 * * *

16 (d) A purchaser has “control” of a security entitlement if:

17 * * *

18 (3) ~~another person has control of the security entitlement on behalf of~~
19 ~~the purchaser or, having previously acquired control of the security~~
20 ~~entitlement, acknowledges that it has control on behalf of the purchaser, other~~
21 than the transferor to the purchaser of an interest in the security entitlement:

* * *

* * *

§ 8—110. APPLICABILITY; CHOICE OF LAW

* * *

* * *

§ 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~~ A protected purchaser also acquires its interest in the security free of any adverse claim.

* * *

Sec. 9. 9A V.S.A. article 9 is amended to read:

ARTICLE 9. SECURED TRANSACTIONS

* * *

§ 9—102. DEFINITIONS AND INDEX OF DEFINITIONS

(a) In this article:

(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,” “account statement,” “account to,” “commodity account” in subdivision (14) of this subsection, “customer’s account,” “deposit account” in subdivision (29) of this subsection, “on account of,” and “statement of account,” means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property

1 that has been or is to be sold, leased, licensed, assigned, or otherwise disposed
2 of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance
3 issued or to be issued, (iv) for a secondary obligation incurred or to be
4 incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a
5 vessel under a charter or other contract, (vii) arising out of the use of a credit
6 or charge card or information contained on or for use with the card, or (viii) as
7 winnings in a lottery or other game of chance operated or sponsored by a state,
8 governmental unit of a state, or person licensed or authorized to operate the
9 game by a state or governmental unit of a state. The term includes
10 controllable accounts and health-care-insurance receivables. The term does
11 not include (i) ~~rights to payment evidenced by chattel paper or an instrument~~
12 chattel paper, (ii) commercial tort claims, (iii) deposit accounts, (iv)
13 investment property, (v) letter-of-credit rights or letters of credit, ~~or~~ (vi) rights
14 to payment for money or funds advanced or sold, other than rights arising out
15 of the use of a credit or charge card or information contained on or for use
16 with the card, or (vii) rights to payment evidenced by an instrument.

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

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

* * *

18 (7B) “Assignor” means a person that (i) under a security agreement
19 creates or provides for a security interest that secures an obligation or (ii) sells
20 an account, chattel paper, payment intangible, or promissory note. The term
21 includes a secured party that has transferred a security interest to another

1 person.

2 * * *

3 (11) ~~“Chattel paper” means a record or records that evidence both a~~
4 ~~monetary obligation and a security interest in specific goods, a security interest~~
5 ~~in specific goods and software used in the goods, a security interest in specific~~
6 ~~goods and license of software used in the goods, a lease of specific goods, or a~~
7 ~~lease of specific goods and license of software used in the goods. In this~~
8 ~~subdivision, “monetary obligation” means a monetary obligation secured by~~
9 ~~the goods or owed under a lease of the goods and includes a monetary~~
10 ~~obligation with respect to software used in the goods. The term does not~~
11 ~~include:~~

12 (A) ~~Charters or other contracts involving the use or hire of a vessel.~~

13 (B) ~~Records that evidence a right to payment arising out of the use of~~
14 ~~a credit or charge card, or information contained on or for use with the card. If~~
15 ~~a transaction is evidenced by records that include an instrument or series of~~
16 ~~instruments, the group of records taken together constitutes chattel paper.~~

17 (11) “Chattel paper” means:

18 (A) a right to payment of a monetary obligation secured by specific
19 goods, if the right to payment and security agreement are evidenced by a
20 record; or

21 (B) a right to payment of a monetary obligation owed by a lessee

1 under a lease agreement with respect to specific goods and a monetary
2 obligation owed by the lessee in connection with the transaction giving rise to
3 the lease, if:

4 (i) the right to payment and lease agreement are evidenced by a
5 record; and

6 (ii) the predominant purpose of the transaction giving rise to the
7 lease was to give the lessee the right to possession and use of the goods.

8 The term does not include a right to payment arising out of a charter or other
9 contract involving the use or hire of a vessel or a right to payment arising out
10 of the use of a credit or charge card or information contained on or for use
11 with the card.

12 * * *

13 (27) “Continuation statement” means an amendment of a financing
14 statement which:

15 (A) identifies, by its file number, the initial financing statement to
16 which it relates; and

17 (B) indicates that it is a continuation statement for, or that it is filed
18 to continue the effectiveness of, the identified financing statement.

19 (27A) “Controllable account” means an account evidenced by a
20 controllable electronic record that provides that the account debtor undertakes
21 to pay the person that has control under section 12—105 of this title of the

1 controllable electronic record.

2 (27B) “Controllable payment intangible” means a payment intangible
3 evidenced by a controllable electronic record that provides that the account
4 debtor undertakes to pay the person that has control under section 12—105 of
5 this title of the controllable electronic record.

6 * * *

7 (31) ~~“Electronic chattel paper” means chattel paper evidenced by a~~
8 ~~record or records consisting of information stored in an electronic medium.~~

9 [Reserved.]

10 (31A) “Electronic money” means money in an electronic form.

11 * * *

12 (42) “General intangible” means any personal property, including things
13 in action, other than accounts, chattel paper, commercial tort claims, deposit
14 accounts, documents, goods, instruments, investment property, letter-of-credit
15 rights, letters of credit, money, and oil, gas, or other minerals before
16 extraction. The term includes controllable electronic records, payment
17 intangibles, and software.

18 * * *

19 (47) “Instrument” means a negotiable instrument or any other writing
20 that evidences a right to the payment of a monetary obligation, is not itself a
21 security agreement or lease, and is of a type that in ordinary course of business

1 is transferred by delivery with any necessary indorsement or assignment. The
2 term does not include (i) investment property, (ii) letters of credit, ~~or~~ (iii)
3 writings that evidence a right to payment arising out of the use of a credit or
4 charge card or information contained on or for use with the card, or (iv)
5 writings that evidence chattel paper.

6 * * *

7 (54A) “Money” has the meaning in subdivision 1—201(b)(24) of this
8 title, but does not include (i) a deposit account or (ii) money in an electronic
9 form that cannot be subjected to control under section 9—105A of this title.

10 * * *

11 (61) “Payment intangible” means a general intangible under which the
12 account debtor’s principal obligation is a monetary obligation. The term
13 includes a controllable payment intangible.

14 * * *

15 (65) “Production-money crops” means crops that secure a production
16 money obligation incurred with respect to those crops.

17 (66) “Production-money obligation” means an obligation of an obligor
18 incurred for new value given to enable the debtor to produce crops if the value
19 is in fact used for the production of the crops.

(69) “Proposal” means a record authenticated signed 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 of this title.

* * *

(78) “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 subdivision (A) of this subdivision (78). [Reserved.]~~

* * *

(82) ~~“Tangible chattel paper” means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.~~

[Reserved.]

(82A) “Tangible money” means money in a tangible form.

* * *

(b) “Control” as provided in section 7—106 of this title and the following definitions in other articles apply to this article:

“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.

“Controllable electronic record” Section 12—102.

“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.

1 “Issuer” (with respect to documents of title) Section 7—102.

2 “Issuer” (with respect to a security) Section 8—201.

3 “Lease” Section 2A—103.

4 “Lease agreement” Section 2A—103.

5 “Lease contract” Section 2A—103.

6 “Leasehold interest” Section 2A—103.

7 “Lessee” Section 2A—103.

8 “Lessee in ordinary course of business” Section 2A—103.

9 “Lessor” Section 2A—103.

10 “Lessor’s residual interest” Section 2A—103.

11 “Letter of credit” Section 5—102.

12 “Merchant” Section 2—104.

13 “Negotiable instrument” Section 3—104.

14 “Nominated person” Section 5—102.

15 “Note” Section 3—104.

16 “Proceeds of a letter of credit” Section 5—114.

17 “Protected purchaser” Section 8—303.

18 “Prove” Section 3—103.

19 “Qualifying purchaser” Section 12—102.

20 “Sale” Section 2—106.

21 * * *

§ 9—104. CONTROL OF DEPOSIT ACCOUNT

(a) 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 a~~ signed record that the bank will comply with instructions originated by the secured party directing disposition of the funds in the account without further consent by the debtor; ~~or~~

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

(4) another person, other than the debtor:

(A) has control of the deposit account and acknowledges that it has control on behalf of the secured party; or

(B) obtains control of the deposit account after having acknowledged that it will obtain control of the deposit account on behalf of the secured party.

* * *

§ 9—105. CONTROL OF ELECTRONIC CHATTEL PAPER

(a) ~~A secured party has control of electronic chattel paper if a system employed for evidencing the transfer of interests in the chattel paper reliably establishes the secured party as the person to which the chattel paper was assigned.~~

1 ~~(b) A system satisfies subsection (a) of this section if the record or records~~
2 ~~comprising the chattel paper are created, stored, and assigned in such a manner~~
3 ~~that:~~

4 ~~(1) a single authoritative copy of the record or records exists which is~~
5 ~~unique, identifiable and, except as otherwise provided in subdivisions (4), (5),~~
6 ~~and (6) of this subsection, unalterable;~~

7 ~~(2) the authoritative copy identifies the secured party as the assignee of~~
8 ~~the record or records;~~

9 ~~(3) the authoritative copy is communicated to and maintained by the~~
10 ~~secured party or its designated custodian;~~

11 ~~(4) copies or amendments that add or change an identified assignee of~~
12 ~~the authoritative copy can be made only with the consent of the secured party;~~

13 ~~(5) each copy of the authoritative copy and any copy of a copy is readily~~
14 ~~identifiable as a copy that is not the authoritative copy; and~~

15 ~~(6) any amendment of the authoritative copy is readily identifiable as~~
16 ~~authorized or unauthorized.~~

17 § 9—105. CONTROL OF ELECTRONIC COPY OF RECORD

18 EVIDENCING CHATTEL PAPER

19 (a) A purchaser has control of an authoritative electronic copy of a record
20 evidencing chattel paper if a system employed for evidencing the assignment
21 of interests in the chattel paper reliably establishes the purchaser as the person

1 to which the authoritative electronic copy was assigned.

2 (b) A system satisfies subsection (a) of this section if the record or records
3 evidencing the chattel paper are created, stored, and assigned in a manner that:

4 (1) a single authoritative copy of the record or records exists which is
5 unique, identifiable, and, except as otherwise provided in subdivisions (4), (5),
6 and (6) of this subsection, unalterable;

7 (2) the authoritative copy identifies the purchaser as the assignee of the
8 record or records;

9 (3) the authoritative copy is communicated to and maintained by the
10 purchaser or its designated custodian;

11 (4) copies or amendments that add or change an identified assignee of
12 the authoritative copy can be made only with the consent of the purchaser;

13 (5) each copy of the authoritative copy and any copy of a copy is readily
14 identifiable as a copy that is not the authoritative copy; and

15 (6) any amendment of the authoritative copy is readily identifiable as
16 authorized or unauthorized.

17 (c) A system satisfies subsection (a) of this section, and a purchaser has
18 control of an authoritative electronic copy of a record evidencing chattel paper,
19 if the electronic copy, a record attached to or logically associated with the
20 electronic copy, or a system in which the electronic copy is recorded:

21 (1) enables the purchaser readily to identify each electronic copy as

1 either an authoritative copy or a nonauthoritative copy;

2 (2) enables the purchaser readily to identify itself in any way, including
3 by name, identifying number, cryptographic key, office, or account number, as
4 the assignee of the authoritative electronic copy; and

5 (3) gives the purchaser exclusive power, subject to subsection (d) of this
6 section, to:

7 (A) prevent others from adding or changing an identified assignee of
8 the authoritative electronic copy; and

9 (B) transfer control of the authoritative electronic copy.

10 (d) Subject to subsection (e) of this section, a power is exclusive under
11 subdivisions (c)(3)(A) and (B) of this section even if:

12 (1) the authoritative electronic copy, a record attached to or logically
13 associated with the authoritative electronic copy, or a system in which the
14 authoritative electronic copy is recorded limits the use of the authoritative
15 electronic copy or has a protocol programmed to cause a change, including a
16 transfer or loss of control; or

17 (2) the power is shared with another person.

18 (e) A power of a purchaser is not shared with another person under
19 subdivision (d)(2) of this section and the purchaser's power is not exclusive if:

20 (1) the purchaser can exercise the power only if the power also is
21 exercised by the other person; and

1 (2) the other person:

2 (A) can exercise the power without exercise of the power by the
3 purchaser; or

4 (B) is the transferor to the purchaser of an interest in the chattel
5 paper.

6 (f) If a purchaser has the powers specified in subdivisions (c)(3)(A) and
7 (B) of this section, the powers are presumed to be exclusive.

8 (g) A purchaser has control of an authoritative electronic copy of a record
9 evidencing chattel paper if another person, other than the transferor to the
10 purchaser of an interest in the chattel paper:

11 (1) has control of the authoritative electronic copy and acknowledges
12 that it has control on behalf of the purchaser; or

13 (2) obtains control of the authoritative electronic copy after having
14 acknowledged that it will obtain control of the electronic copy on behalf of the
15 purchaser.

16 § 9—105A. CONTROL OF ELECTRONIC MONEY

17 (a) A person has control of electronic money if:

18 (1) the electronic money, a record attached to or logically associated
19 with the electronic money, or a system in which the electronic money is
20 recorded gives the person:

21 (A) power to avail itself of substantially all the benefit from the

1 electronic money; and

2 (B) exclusive power, subject to subsection (b) of this section, to:

3 (i) prevent others from availing themselves of substantially all the
4 benefit from the electronic money; and

5 (ii) transfer control of the electronic money to another person or
6 cause another person to obtain control of other electronic money as a result of
7 the transfer of the electronic money; and

8 (2) the electronic money, a record attached to or logically associated
9 with the electronic money, or a system in which the electronic money is
10 recorded enables the person readily to identify itself in any way, including by
11 name, identifying number, cryptographic key, office, or account number, as
12 having the powers under subdivision (1) of this subsection.

13 (b) Subject to subsection (c) of this section, a power is exclusive under
14 subdivisions (a)(1)(B)(i) and (ii) of this section even if:

15 (1) the electronic money, a record attached to or logically associated
16 with the electronic money, or a system in which the electronic money is
17 recorded limits the use of the electronic money or has a protocol programmed
18 to cause a change, including a transfer or loss of control; or

19 (2) the power is shared with another person.

20 (c) A power of a person is not shared with another person under
21 subdivision (b)(2) of this section and the person's power is not exclusive if:

1 (1) the person can exercise the power only if the power also is exercised
2 by the other person; and

3 (2) the other person:

4 (A) can exercise the power without exercise of the power by the
5 person; or

6 (B) is the transferor to the person of an interest in the electronic
7 money.

8 (d) If a person has the powers specified in subdivisions (a)(1)(B)(i) and (ii)
9 of this section, the powers are presumed to be exclusive.

10 (e) A person has control of electronic money if another person, other than
11 the transferor to the person of an interest in the electronic money:

12 (1) has control of the electronic money and acknowledges that it has
13 control on behalf of the person; or

14 (2) obtains control of the electronic money after having acknowledged
15 that it will obtain control of the electronic money on behalf of the person.

16 * * *

17 § 9—107A. CONTROL OF CONTROLLABLE ELECTRONIC RECORD,

18 CONTROLLABLE ACCOUNT, OR CONTROLLABLE

19 PAYMENT INTANGIBLE

20 (a) A secured party has control of a controllable electronic record as
21 provided in section 12—105 of this title.

1 (b) A secured party has control of a controllable account or controllable
2 payment intangible if the secured party has control of the controllable
3 electronic record that evidences the controllable account or controllable
4 payment intangible.

5 § 9—107B. NO REQUIREMENT TO ACKNOWLEDGE OR CONFIRM;

6 NO DUTIES

7 (a) A person that has control under section 9—104, 9—105, or 9—105A of
8 this title is not required to acknowledge that it has control on behalf of another
9 person.

10 (b) If a person acknowledges that it has or will obtain control on behalf of
11 another person, unless the person otherwise agrees or law other than this
12 article otherwise provides, the person does not owe any duty to the other
13 person and is not required to confirm the acknowledgment to any other person.

14 * * *

15 § 9—203. ATTACHMENT AND ENFORCEABILITY OF SECURITY

16 INTEREST; PROCEEDS; SUPPORTING OBLIGATIONS;

17 FORMAL REQUISITES

18 (a) A security interest attaches to collateral when it becomes enforceable
19 against the debtor with respect to the collateral, unless an agreement expressly
20 postpones the time of attachment.

1 (b) Except as otherwise provided in subsections (c) through (i) of this
2 section, a security interest is enforceable against the debtor and third parties
3 with respect to the collateral only if:

4 (1) value has been given;

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

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

8 (A) the debtor has ~~authenticated~~ signed a security agreement that
9 provides a description of the collateral and, if the security interest covers
10 timber to be cut, a description of the land concerned;

11 (B) the collateral is not a certificated security and is in the possession
12 of the secured party under section 9—313 of this title pursuant to the debtor's
13 security agreement;

14 (C) the collateral is a certificated security in registered form and the
15 security certificate has been delivered to the secured party under section 8-301
16 of this title pursuant to the debtor's security agreement; ~~or~~

17 (D) the collateral is controllable accounts, controllable electronic
18 records, controllable payment intangibles, deposit accounts, ~~electronic chattel~~
19 paper, electronic documents, electronic money, investment property, or letter-
20 of-credit rights, ~~or electronic documents,~~ and the secured party has control

1 under section 7—106, 9—104, 9—105, 9-105A, 9—106, ~~or~~ 9—107, or 9-
2 107A of this title pursuant to the debtor's security agreement; or

3 (E) the collateral is chattel paper and the secured party has
4 possession and control under section 9-314A of this title pursuant to the
5 debtor's security agreement.

6 * * *

7 § 9—204. AFTER-ACQUIRED PROPERTY; FUTURE ADVANCES

8 (a) Except as otherwise provided in subsection (b) of this section, a
9 security agreement may create or provide for a security interest in after-
10 acquired collateral.

11 (b) A Subject to subsection (b.1) of this section, a security interest does not
12 attach under a term constituting an after-acquired property clause to:

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

16 (2) a commercial tort claim.

17 (b.1) Subsection (b) of this section does not prevent a security interest from
18 attaching:

19 (1) to consumer goods as proceeds under subsection 9-315(a) of this
20 title or commingled goods under subsection 9-336(c) of this title;

21 (2) to a commercial tort claim as proceeds under subsection 9-315(a) of

1 this title; or

2 (3) under an after-acquired property clause to property that is proceeds
3 of consumer goods or a commercial tort claim.

4 * * *

5 § 9—207. RIGHTS AND DUTIES OF SECURED PARTY HAVING
6 POSSESSION OR CONTROL OF COLLATERAL

7 * * *

8 (c) Except as otherwise provided in subsection (d) of this section, a secured
9 party having possession of collateral or control of collateral under section 7—
10 106, 9—104, 9—105, 9-105A, 9-106, ~~or~~ 9-107, or 9-107A of this title:

11 * * *

12 § 9—208. ADDITIONAL DUTIES OF SECURED PARTY HAVING
13 CONTROL OF COLLATERAL

14 * * *

15 (b) Within 10 days after receiving ~~an authenticated~~ a signed demand by the
16 debtor:

17 (1) a secured party having control of a deposit account under
18 subdivision 9—104(a)(2) of this title shall send to the bank with which the
19 deposit account is maintained ~~an authenticated statement~~ a signed record that
20 releases the bank from any further obligation to comply with instructions
21 originated by the secured party;

* * *

(3) ~~a secured party, other than a buyer, having control of electronic chattel paper under section 9—105 of this title 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~~ a secured party, other than a buyer, having control under section 9-105 of this title of an authoritative electronic copy of a record evidencing chattel paper shall transfer control of the electronic copy to the debtor or a person designated by the debtor;

(4) a secured party having control of investment property under subdivision 8—106(d)(2) or subsection 9—106(b) of this title shall send to the

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

6 (5) a secured party having control of a letter-of-credit right under
7 section 9-107 of this title shall send to each person having an unfulfilled
8 obligation to pay or deliver proceeds of the letter of credit to the secured party
9 ~~an authenticated~~ a signed release from any further obligation to pay or deliver
10 proceeds of the letter of credit to the secured party; and

11 ~~(6) a secured party having control of an electronic document shall:~~
12 ~~(A) give control of the electronic document to the debtor or its~~
13 ~~designated custodian~~

14 ~~(B) if the debtor designates a custodian that is the designated~~
15 ~~custodian with which the authoritative copy of the electronic document is~~
16 ~~maintained for the secured party, communicate to the custodian an~~
17 ~~authenticated record releasing the designated custodian from any further~~
18 ~~obligation to comply with instructions originated by the secured party and~~
19 ~~instructing the custodian to comply with instructions originated by the debtor;~~
20 and

1 ~~(C) take appropriate action to enable the debtor or its designated~~
2 ~~eustodian to make copies of or revisions to the authoritative copy which add or~~
3 ~~change an identified assignee of the authoritative copy without the consent of~~
4 ~~the secured party~~ a secured party having control under section 7—106 of this
5 title of an authoritative electronic copy of an electronic document shall transfer
6 control of the electronic copy to the debtor or a person designated by the
7 debtor;

8 (7) a secured party having control under section 9-105A of this title of
9 electronic money shall transfer control of the electronic money to the debtor or
10 a person designated by the debtor; and

11 (8) a secured party having control under section 12-105 of this title of a
12 controllable electronic record, other than a buyer of a controllable account or
13 controllable payment intangible evidenced by the controllable electronic
14 record, shall transfer control of the controllable electronic record to the debtor
15 or a person designated by the debtor.

16 § 9—209. DUTIES OF SECURED PARTY IF ACCOUNT DEBTOR HAS
17 BEEN NOTIFIED OF ASSIGNMENT

18 * * *

19 (b) Within 10 days after receiving ~~an authenticated~~ a signed demand by the
20 debtor, a secured party shall send to an account debtor that has received
21 notification under subsection 9-406(a) or 12-106(b) of this title of an

1 assignment to the secured party as assignee ~~under subsection 9—406(a) of this~~
2 ~~title an authenticated~~ a signed record that releases the account debtor from any
3 further obligation to the secured party.

4 * * *

5 § 9—210. REQUEST FOR ACCOUNTING; REQUEST REGARDING LIST
6 OF COLLATERAL OR STATEMENT OF ACCOUNT

7 (a) In this section:

8 (1) “Request” means a record of a type described in subdivision (2), (3),
9 or (4) of this subsection.

10 (2) “Request for an accounting” means a record ~~authenticated~~ signed by
11 a debtor requesting that the recipient provide an accounting of the unpaid
12 obligations secured by collateral and reasonably identifying the transaction or
13 relationship that is the subject of the request.

14 (3) “Request regarding a list of collateral” means a record ~~authenticated~~
15 signed by a debtor requesting that the recipient approve or correct a list of
16 what the debtor believes to be the collateral securing an obligation and
17 reasonably identifying the transaction or relationship that is the subject of the
18 request.

19 (4) “Request regarding a statement of account” means a record
20 ~~authenticated~~ signed by a debtor requesting that the recipient approve or
21 correct a statement indicating what the debtor believes to be the aggregate

1 amount of unpaid obligations secured by collateral as of a specified date and
2 reasonably identifying the transaction or relationship that is the subject of the
3 request.

4 (b) Subject to subsections (c), (d), (e), and (f) of this section, a secured
5 party, other than a buyer of accounts, chattel paper, payment intangibles, or
6 promissory notes or a consignor, shall comply with a request within 14 days
7 after receipt:

8 (1) in the case of a request for an accounting, by ~~authenticating~~ signing
9 and sending to the debtor an accounting; and

10 (2) in the case of a request regarding a list of collateral or a request
11 regarding a statement of account, by ~~authenticating~~ signing and sending to the
12 debtor an approval or correction.

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

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

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

* * *

* * *

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

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

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

4 * * *

5 § 9—304. LAW GOVERNING PERFECTION AND PRIORITY OF
6 SECURITY INTERESTS IN DEPOSIT ACCOUNTS

7 (a) The local law of a bank's jurisdiction governs perfection, the effect of
8 perfection or nonperfection, and the priority of a security interest in a deposit
9 account maintained with that bank even if the transaction does not bear any
10 relation to the bank's jurisdiction.

11 * * *

12 § 9—305. LAW GOVERNING PERFECTION AND PRIORITY OF
13 SECURITY INTERESTS IN INVESTMENT PROPERTY

14 (a) Except as otherwise provided in subsection (c) of this section, the
15 following rules apply:

16 * * *

17 (5) Subdivisions (2), (3), and (4) of this subsection apply even if the
18 transaction does not bear any relation to the jurisdiction.

19 * * *

§ 9—306. LAW GOVERNING PERFECTION AND PRIORITY OF
SECURITY INTERESTS IN LETTER-OF-CREDIT RIGHTS

* * *

§ 9-306A. LAW GOVERNING PERFECTION AND PRIORITY OF
SECURITY INTERESTS IN CHATTEL PAPER

(a) Except as provided in subsection (d) of this section, if chattel paper is evidenced only by an authoritative electronic copy of the chattel paper or is evidenced by an authoritative electronic copy and an authoritative tangible copy, the local law of the chattel paper's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in the chattel paper, even if the transaction does not bear any relation to the chattel paper's jurisdiction.

(b) The following rules determine the chattel paper's jurisdiction under this section:

(1) If the authoritative electronic copy of the record evidencing chattel paper, or a record attached to or logically associated with the electronic copy and readily available for review, expressly provides that a particular jurisdiction is the chattel paper's jurisdiction for purposes of this section, this article, or the Uniform Commercial Code, that jurisdiction is the chattel paper's jurisdiction.

(2) If subdivision (1) of this subsection does not apply and the rules of

1 the system in which the authoritative electronic copy is recorded are readily
2 available for review and expressly provide that a particular jurisdiction is the
3 chattel paper's jurisdiction for purposes of this part, this article, or the
4 Uniform Commercial Code, that jurisdiction is the chattel paper's jurisdiction.

5 (3) If subdivisions (1) and (2) of this subsection do not apply and the
6 authoritative electronic copy, or a record attached to or logically associated
7 with the electronic copy and readily available for review, expressly provides
8 that the chattel paper is governed by the law of a particular jurisdiction, that
9 jurisdiction is the chattel paper's jurisdiction.

10 (4) If subdivisions (1), (2), and (3) of this subsection do not apply and
11 the rules of the system in which the authoritative electronic copy is recorded
12 are readily available for review and expressly provide that the chattel paper or
13 the system is governed by the law of a particular jurisdiction, that jurisdiction
14 is the chattel paper's jurisdiction.

15 (5) If subdivisions (1) through (4) of this subsection do not apply, the
16 chattel paper's jurisdiction is the jurisdiction in which the debtor is located.

17 (c) If an authoritative tangible copy of a record evidences chattel paper and
18 the chattel paper is not evidenced by an authoritative electronic copy, while the
19 authoritative tangible copy of the record evidencing chattel paper is located in
20 a jurisdiction, the local law of that jurisdiction governs:

21 (1) perfection of a security interest in the chattel paper by possession

1 under section 9-314A of this title; and

2 (2) the effect of perfection or nonperfection and the priority of a
3 security interest in the chattel paper.

4 (d) The local law of the jurisdiction in which the debtor is located governs
5 perfection of a security interest in chattel paper by filing.

6 § 9-306B. LAW GOVERNING PERFECTION AND PRIORITY OF

7 SECURITY INTERESTS IN CONTROLLABLE ACCOUNTS,

8 CONTROLLABLE ELECTRONIC RECORDS, AND

9 CONTROLLABLE PAYMENT INTANGIBLES

10 (a) Except as provided in subsection (b) of this section, the local law of the
11 controllable electronic record's jurisdiction specified in subsections 12-107(c)
12 and (d) of this title governs perfection, the effect of perfection or
13 nonperfection, and the priority of a security interest in a controllable electronic
14 record and a security interest in a controllable account or controllable payment
15 intangible evidenced by the controllable electronic record.

16 (b) The local law of the jurisdiction in which the debtor is located governs:

17 (1) perfection of a security interest in a controllable account,
18 controllable electronic record, or controllable payment intangible by filing;
19 and

20 (2) automatic perfection of a security interest in a controllable payment
21 intangible created by a sale of the controllable payment intangible.

* * *

§ 9—310. WHEN FILING REQUIRED TO PERFECT SECURITY

INTEREST OR AGRICULTURAL LIEN; SECURITY

INTERESTS AND AGRICULTURAL LIENS TO WHICH

FILING PROVISIONS DO NOT APPLY

* * *

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

* * *

(8) in controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, ~~electronic chattel paper~~, electronic documents, investment property, or letter-of-credit rights which is perfected by control under section 9—314 of this title;

(8.1) in chattel paper which is perfected by possession and control under section 9-314A of this title;

(9) in proceeds which is perfected under section 9—315 of this title; or

* * *

§ 9—312. PERFECTION OF SECURITY INTERESTS IN CHATTEL

PAPER, CONTROLLABLE ACCOUNTS, CONTROLLABLE

ELECTRONIC RECORDS, CONTROLLABLE PAYMENT

INTANGIBLES, DEPOSIT ACCOUNTS, NEGOTIABLE

1 DOCUMENTS, GOODS COVERED BY DOCUMENTS,
2 INSTRUMENTS, INVESTMENT PROPERTY, LETTER-OF-
3 CREDIT RIGHTS, AND MONEY; PERFECTION BY
4 PERMISSIVE FILING; TEMPORARY PERFECTION
5 WITHOUT FILING OR TRANSFER OF POSSESSION

6 (a) A security interest in chattel paper, ~~negotiable documents~~, controllable
7 accounts, controllable electronic records, controllable payment intangibles,
8 instruments, or investment property, or negotiable documents may be
9 perfected by filing.

10 (b) Except as otherwise provided in subsections 9—315(c) and (d) of this
11 title for proceeds:

12 * * *

13 (2) ~~and~~ except as otherwise provided in subsection 9—308(d) of this
14 title, a security interest in a letter-of-credit right may be perfected only by
15 control under section 9—314 of this title; ~~and~~

16 (3) a security interest in tangible money may be perfected only by the
17 secured party's taking possession under section 9—313 of this title; and

18 (4) a security interest in electronic money may be perfected only by
19 control under section 9—314 of this title.

20 * * *

* * *

* * *

(c) 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 (1) the person in possession ~~authenticates~~ signs a record acknowledging
2 that it holds possession of the collateral for the secured party's benefit; or

3 (2) the person takes possession of the collateral after having
4 ~~authenticated~~ signed a record acknowledging that it will hold possession of the
5 collateral for the secured party's benefit.

6 (d) If perfection of a security interest depends upon possession of the
7 collateral by a secured party, perfection occurs ~~no~~ not earlier than the time the
8 secured party takes possession and continues only while the secured party
9 retains possession.

10 * * *

11 § 9—314. PERFECTION BY CONTROL

12 (a) A security interest in ~~investment property, deposit accounts, letter-of-~~
13 ~~credit rights, electronic chattel paper, or electronic documents~~ controllable
14 accounts, controllable electronic records, controllable payment intangibles,
15 deposit accounts, electronic documents, electronic money, investment property,
16 or letter-of-credit rights may be perfected by control of the collateral under
17 section 7—106, 9—104, ~~9-105,~~ 9-105A, 9-106, ~~or 9-107,~~ or 9-107A of this
18 title.

19 (b) A security interest in ~~deposit accounts, electronic chattel paper, letter-~~
20 ~~of-credit rights, or electronic documents~~ controllable accounts, controllable
21 electronic records, controllable payment intangibles, deposit accounts,

1 electronic documents, electronic money, or letter-of-credit rights is perfected
2 by control under section 7—106, 9—104, ~~9-105, or 9—105A~~, 9-107, or 9—
3 107A of this title ~~when~~ not earlier than the time the secured party obtains
4 control and remains perfected by control only while the secured party retains
5 control.

6 (c) A security interest in investment property is perfected by control under
7 section 9—106 of this title ~~from~~ not earlier than the time the secured party
8 obtains control and remains perfected by control until:

9 * * *

10 § 9—314A. PERFECTION BY POSSESSION AND CONTROL OF
11 CHATTEL PAPER

12 (a) A secured party may perfect a security interest in chattel paper by
13 taking possession of each authoritative tangible copy of the record evidencing
14 the chattel paper and obtaining control of each authoritative electronic copy of
15 the electronic record evidencing the chattel paper.

16 (b) A security interest is perfected under subsection (a) of this section not
17 earlier than the time the secured party takes possession and obtains control and
18 remains perfected under subsection (a) of this section only while the secured
19 party retains possession and control.

20 (c) Subsections 9—313(c) and (f)–(i) of this title apply to perfection by
21 possession of an authoritative tangible copy of a record evidencing chattel

1 paper.

2 * * *

3 § 9—316. EFFECT OF CHANGE IN GOVERNING LAW

4 (a) A security interest perfected pursuant to the law of the jurisdiction
5 designated in subdivision 9—301(1) or in subsection 9—305(c), 9—306A(d),
6 or 9—306B(b) of this title remains perfected until the earliest of:

7 * * *

8 (f) A security interest in chattel paper, controllable accounts, controllable
9 electronic records, controllable payment intangibles, deposit accounts, letter-
10 of-credit rights, or investment property which is perfected under the law of the
11 chattel paper's jurisdiction, the controllable electronic record's jurisdiction, the
12 bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction,
13 the securities intermediary's jurisdiction, or the commodity intermediary's
14 jurisdiction, as applicable, remains perfected until the earlier of:

15 * * *

16 § 9—317. INTERESTS THAT TAKE PRIORITY OVER OR TAKE FREE
17 OF SECURITY INTEREST OR AGRICULTURAL LIEN

18 * * *

19 (b) Except as otherwise provided in subsection (e) of this section, a buyer,
20 other than a secured party, of tangible chattel paper, tangible documents, of
21 goods, instruments, tangible documents, or a certificated security takes free of

1 a security interest or agricultural lien if the buyer gives value and receives
2 delivery of the collateral without knowledge of the security interest or
3 agricultural lien and before it is perfected.

4 * * *

5 (d) A Subject to subsections (f)–(i) of this section, a licensee of a general
6 intangible or a buyer, other than a secured party, of accounts, electronic chattel
7 paper, electronic documents, general intangibles, or investment property other
8 than a certificated security collateral other than electronic money, goods,
9 instruments, tangible documents, or a certified security takes free of a security
10 interest if the licensee or buyer gives value without knowledge of the security
11 interest and before it is perfected.

12 * * *

13 (f) A buyer, other than a secured party, of chattel paper takes free of a
14 security interest if, without knowledge of the security interest and before it is
15 perfected, the buyer gives value and:

16 (1) receives delivery of each authoritative tangible copy of the record
17 evidencing the chattel paper; and

18 (2) if each authoritative electronic copy of the record evidencing the
19 chattel paper can be subjected to control under section 9-105 of this title,
20 obtains control of each authoritative electronic copy.

21 (g) A buyer of an electronic document takes free of a security interest if,

1 without knowledge of the security interest and before it is perfected, the buyer
2 gives value and, if each authoritative electronic copy of the document can be
3 subjected to control under section 7-106 of this title, obtains control of each
4 authoritative electronic copy.

5 (h) A buyer of a controllable electronic record takes free of a security
6 interest if, without knowledge of the security interest and before it is perfected,
7 the buyer gives value and obtains control of the controllable electronic record.

8 (i) A buyer, other than a secured party, of a controllable account or a
9 controllable payment intangible takes free of a security interest if, without
10 knowledge of the security interest and before it is perfected, the buyer gives
11 value and obtains control of the controllable account or controllable payment
12 intangible.

13 * * *

14 § 9—323. FUTURE ADVANCES

15 * * *

16 (d) Except as otherwise provided in subsection (e) of this section, a buyer
17 of goods ~~other than a buyer in ordinary course of business~~ takes free of a
18 security interest to the extent that it secures advances made after the earlier of:

19 * * *

20 (f) Except as otherwise provided in subsection (g) of this section, a lessee
21 of goods, ~~other than a lessee in ordinary course of business,~~ takes the leasehold

1 interest free of a security interest to the extent that it secures advances made
2 after the earlier of:

3 * * *

4 § 9—324. PRIORITY OF PURCHASE-MONEY SECURITY INTERESTS

5 * * *

6 (b) Subject to subsection (c) of this section and except as otherwise
7 provided in subsection (g) of this section, a perfected purchase-money security
8 interest in inventory has priority over a conflicting security interest in the same
9 inventory, has priority over a conflicting security interest in chattel paper or an
10 instrument constituting proceeds of the inventory and in proceeds of the chattel
11 paper, if so provided in section 9—330 of this title, and, except as otherwise
12 provided in section 9—327 of this title, also has priority in identifiable cash
13 proceeds of the inventory to the extent the identifiable cash proceeds are
14 received on or before the delivery of the inventory to a buyer, if:

15 (1) the purchase-money security interest is perfected when the debtor
16 receives possession of the inventory;

17 (2) the purchase-money secured party sends ~~an authenticated~~ a signed
18 notification to the holder of the conflicting security interest;

19 * * *

20 (d) Subject to subsection (e) of this section and except as otherwise
21 provided in subsection (g) of this section, a perfected purchase-money security

1 interest in livestock that are farm products has priority over a conflicting
2 security interest in the same livestock, and, except as otherwise provided in
3 section 9—327 of this title, a perfected security interest in their identifiable
4 proceeds and identifiable products in their unmanufactured states also has
5 priority, if:

6 (1) the purchase-money security interest is perfected when the debtor
7 receives possession of the livestock;

8 (2) the purchase-money secured party sends ~~an authenticated~~ a signed
9 notification to the holder of the conflicting security interest;

10 * * *

11 § 9—324A. PRIORITY OF PRODUCTION-MONEY SECURITY

12 INTERESTS AND AGRICULTURAL LIENS

13 (a) Except as otherwise provided in subsections (c), (d), and (e) of this
14 section, if the requirements of subsection (b) of this section are satisfied, a
15 perfected production-money security interest in production-money crops has
16 priority over a conflicting security interest in the same crops and, except as
17 otherwise provided in section 9—327 of this title, also has priority in their
18 identifiable proceeds.

19 (b) A production-money security interest has priority under subsection (a)
20 of this section if:

1 (1) the production-money security interest is perfected by filing when
2 the production-money secured party first gives new value to enable the debtor
3 to produce the crops;

4 (2) the production-money secured party sends an authenticated
5 notification to the holder of the conflicting security interest not less than 10 or
6 more than 30 days before the production-money secured party first gives new
7 value to enable the debtor to produce the crops if the holder had filed a
8 financing statement covering the crops before the date of the filing made by
9 the production-money secured party; and

10 (3) the notification states that the production-money secured party has
11 or expects to acquire a production-money security interest in the debtor's crops
12 and provides a description of the crops.

13 (c) Except as otherwise provided in subsection (d) or (e) of this section, if
14 more than one security interest qualifies for priority in the same collateral
15 under subsection (a) of this section, the security interests rank according to
16 priority in time of filing under subsection 9—322(a) of this title.

17 (d) To the extent that a person holding a perfected security interest in
18 production-money crops that are the subject of a production-money security
19 interest gives new value to enable the debtor to produce the production-money
20 crops and the value is in fact used for the production of the production-money

1 crops, the security interests rank according to priority in time of filing under
2 subsection 9—322(a) of this title.

3 (e) To the extent that a person holds both an agricultural lien and a
4 production-money security interest in the same collateral securing the same
5 obligations, the rules of priority applicable to agricultural liens govern priority.

6 * * *

7 § 9—326. PRIORITY OF SECURITY INTERESTS CREATED BY NEW
8 DEBTOR

9 * * *

10 § 9—326A. PRIORITY OF SECURITY INTEREST IN CONTROLLABLE
11 ACCOUNT, CONTROLLABLE ELECTRONIC RECORD,
12 AND CONTROLLABLE PAYMENT INTANGIBLE

13 A security interest in a controllable account, controllable electronic record,
14 or controllable payment intangible held by a secured party having control of
15 the account, electronic record, or payment intangible has priority over a
16 conflicting security interest held by a secured party that does not have control.

17 * * *

§ 9—330. PRIORITY OF PURCHASER OF CHATTEL PAPER OR
INSTRUMENT

(a) 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 each authoritative tangible copy of the record evidencing the chattel paper or, and obtains control of under section 9—105 of this title of each authoritative electronic copy of the record evidencing the chattel paper under section 9—105 of this title; and

(2) ~~the chattel paper does~~ authoritative copies of the record evidencing the chattel paper do not indicate that ~~it~~ the chattel paper has been assigned to an identified assignee other than the purchaser.

(b) 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 each authoritative tangible copy of the record evidencing the chattel paper or, and obtains control of under section 9—105 of this title of each authoritative electronic copy of the record evidencing the chattel paper under section 9—105 of this title in good faith, in the ordinary course of the

1 purchaser's business, and without knowledge that the purchase violates the
2 rights of the secured party.

3 * * *

4 (f) For purposes of subsections (b) and (d) of this section, if the
5 authoritative copies of the record evidencing chattel paper or an instrument
6 ~~indicates~~ indicate that ~~it~~ the chattel paper or instrument has been assigned to an
7 identified secured party other than the purchaser, a purchaser of the chattel
8 paper or instrument has knowledge that the purchase violates the rights of the
9 secured party.

10 § 9—331. PRIORITY OF RIGHTS OF PURCHASERS OF
11 INSTRUMENTS,

12 CONTROLLABLE ACCOUNTS, CONTROLLABLE
13 ELECTRONIC RECORDS, CONTROLLABLE PAYMENT
14 INTANGIBLES, DOCUMENTS, INSTRUMENTS, AND
15 SECURITIES UNDER OTHER ARTICLES; PRIORITY OF
16 INTERESTS IN FINANCIAL ASSETS AND SECURITY
17 ENTITLEMENTS AND PROTECTION AGAINST ASSERTION
18 OF CLAIM UNDER ARTICLE ARTICLES 8 AND 12

19 (a) This article does not limit the rights of a holder in due course of a
20 negotiable instrument, a holder to which a negotiable document of title has
21 been duly negotiated, ~~or a protected purchaser of a security,~~ or a qualifying

1 purchaser of a controllable account, controllable electronic record, or
2 controllable payment intangible. These holders or purchasers take priority
3 over an earlier security interest, even if perfected, to the extent provided in
4 Articles 3, 7, ~~and 8,~~ and 12 of this title.

5 (b) This article does not limit the rights of or impose liability on a person
6 to the extent that the person is protected against the assertion of an adverse
7 claim under Article 8 or 12 of this title.

8 * * *

9 § 9—332. TRANSFER OF MONEY; TRANSFER OF FUNDS FROM
10 DEPOSIT ACCOUNT

11 (a) A transferee of tangible money takes the money free of a security
12 interest ~~unless the transferee acts if the transferee receives possession of the~~
13 money without acting in collusion with the debtor in violating the rights of the
14 secured party.

15 (b) A transferee of funds from a deposit account takes the funds free of a
16 security interest in the deposit account ~~unless the transferee acts if the~~
17 transferee receives the funds without acting in collusion with the debtor in
18 violating the rights of the secured party.

19 (c) A transferee of electronic money takes the money free of a security
20 interest if the transferee obtains control of the money without acting in
21 collusion with the debtor in violating the rights of the secured party.

§ 9—334. PRIORITY OF SECURITY INTERESTS IN FIXTURES AND CROPS

(f) 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~~ a signed record, consented to the security interest or disclaimed an interest in the goods as fixtures; or

§ 9—341. BANK’S RIGHTS AND DUTIES WITH RESPECT TO
DEPOSIT ACCOUNT

Except as otherwise provided in subsection 9—340(c) of this title, and unless the bank otherwise agrees in an ~~authenticated~~ a signed record, a bank's rights and duties with respect to a deposit account maintained with the bank are not terminated, suspended, or modified by:

* * *

§ 9—404. RIGHTS ACQUIRED BY ASSIGNEE; CLAIMS AND
DEFENSES AGAINST ASSIGNEE

(a) Unless an account debtor has made an enforceable agreement not to assert defenses or claims, and subject to subsections (b) through (e) of this section, 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~~ signed by the assignor or the assignee.

* * *

§ 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) Subject to subsections (b) through ~~(h)~~(i) and ~~(l)~~ of this section, 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~~ signed by the assignor or the

1 assignee, that the amount due or to become due has been assigned and that
2 payment is to be made to the assignee. After receipt of the notification, the
3 account debtor may discharge its obligation by paying the assignee and may
4 not discharge the obligation by paying the assignor.

5 (b) Subject to ~~subsection (g)~~ subsections (h) and (l) of this section,
6 notification is ineffective under subsection (a) of this section:

7 * * *

8 (c) Subject to ~~subsection (g)~~ subsections (h) and (l) of this section, if
9 requested by the account debtor, an assignee shall seasonably furnish
10 reasonable proof that the assignment has been made. Unless the assignee
11 complies, the account debtor may discharge its obligation by paying the
12 assignor, even if the account debtor has received a notification under
13 subsection (a) of this section.

14 (d) In this subsection, “promissory note” includes a negotiable instrument
15 that evidences chattel paper. Except as otherwise provided in ~~subsection~~
16 subsections (e) and (k) of this section and sections 2A—303 and 9—407 of
17 this title, and subject to subsection ~~(g)~~(h) of this section, a term in an
18 agreement between an account debtor and an assignor or in a promissory note
19 is ineffective to the extent that it:

20 * * *

1 (e) Subsection (d) of this section does not apply to the sale of a payment
2 intangible or promissory note, other than a sale pursuant to a disposition under
3 section 9—610 of this title or an acceptance of collateral under section 9—620
4 of this title.

5 (f) ~~Subject to subsection (g) of this section, an account debtor may not~~
6 ~~waive or vary its option under subdivision (b)(3) of this section. Except as~~
7 ~~otherwise provided in subsection (k) of this section and sections 2A—303 and~~
8 ~~9—407 of this title and subject to subsections (h) and (i) of this section, a rule~~
9 ~~of law, statute, or regulation that prohibits, restricts, or requires the consent of~~
10 ~~a government, governmental body or official, or account debtor to the~~
11 ~~assignment or transfer of, or creation of a security interest in, an account or~~
12 ~~chattel paper is ineffective to the extent that the rule of law, statute, or~~
13 ~~regulation:~~

14 (1) prohibits, restricts, or requires the consent of the government,
15 governmental body or official, or account debtor to the assignment or transfer
16 of, or the creation, attachment, perfection, or enforcement of, a security
17 interest in the account or chattel paper; or

18 (2) provides that the assignment or transfer or the creation, attachment,
19 perfection, or enforcement of the security interest may give rise to a default,
20 breach, right of recoupment, claim, defense, termination, right of termination,
21 or remedy under the account or chattel paper.

§ 9—408. RESTRICTIONS ON ASSIGNMENT OF PROMISSORY
NOTES, HEALTH CARE INSURANCE RECEIVABLES, AND
CERTAIN GENERAL INTANGIBLES INEFFECTIVE

1 (a) Except as otherwise provided in ~~subsection~~ subsections (b) and (f) of
2 this section, a term in a promissory note or in an agreement between an
3 account debtor and a debtor which relates to a health care insurance receivable
4 or a general intangible, including a contract, permit, license, or franchise, and
5 which term prohibits, restricts, or requires the consent of the person obligated
6 on the promissory note or the account debtor to, the assignment or transfer of,
7 or creation, attachment, or perfection of a security interest in, the promissory
8 note, health care insurance receivable, or general intangible, is ineffective to
9 the extent that the term:

10 (1) would impair the creation, attachment, or perfection of a security
11 interest; or

12 (2) provides that the assignment or transfer or the creation, attachment,
13 or perfection of the security interest may give rise to a default, breach, right of
14 recoupment, claim, defense, termination, right of termination, or remedy under
15 the promissory note, health care insurance receivable, or general intangible.

16 (b) Subsection (a) of this section applies to a security interest in a payment
17 intangible or promissory note only if the security interest arises out of a sale of
18 the payment intangible or promissory note, other than a sale pursuant to a
19 disposition under section 9—610 of this title or an acceptance of collateral
20 under section 9—620 of this title.

1 (c) A Except as otherwise provided in subsection (f) of this section, a rule
2 of law, statute, or regulation, which prohibits, restricts, or requires the consent
3 of a government, governmental body or official, person obligated on a
4 promissory note, or account debtor to the assignment or transfer of, or creation
5 of a security interest in, a promissory note, health care insurance receivable, or
6 general intangible, including a contract, permit, license, or franchise between
7 an account debtor and a debtor, is ineffective to the extent that the rule of law,
8 statute, or regulation:

9 (1) would impair the creation, attachment, or perfection of a security
10 interest; or

11 (2) provides that the assignment or transfer or the creation, attachment,
12 or perfection of the security interest may give rise to a default, breach, right of
13 recoupment, claim, defense, termination, right of termination, or remedy under
14 the promissory note, health care insurance receivable, or general intangible.

15 (d) To the extent that a term in a promissory note or in an agreement
16 between an account debtor and a debtor which relates to a health care
17 insurance receivable or general intangible or a rule of law, statute, or
18 regulation described in subsection (c) of this section would be effective under
19 law other than this article but is ineffective under subsection (a) or (c) of this
20 section, the creation, attachment, or perfection of a security interest in the
21 promissory note, health care insurance receivable, or general intangible:

1 (1) is not enforceable against the person obligated on the promissory
2 note or the account debtor;

3 (2) does not impose a duty or obligation on the person obligated on the
4 promissory note or the account debtor;

5 (3) does not require the person obligated on the promissory note or the
6 account debtor to recognize the security interest, pay or render performance to
7 the secured party, or accept payment or performance from the secured party;

8 (4) does not entitle the secured party to use or assign the debtor's rights
9 under the promissory note, health care insurance receivable, or general
10 intangible, including any related information or materials furnished to the
11 debtor in the transaction giving rise to the promissory note, health care
12 insurance receivable, or general intangible;

13 (5) does not entitle the secured party to use, assign, possess, or have
14 access to any trade secrets or confidential information of the person obligated
15 on the promissory note or the account debtor; and

16 (6) does not entitle the secured party to enforce the security interest in
17 the promissory note, health care insurance receivable, or general intangible.

18 (e) This section prevails over any inconsistent provisions of this title.

19 (f) This section does not apply to a security interest in an ownership
20 interest in a general partnership, limited partnership, or limited liability
21 company.

* * *

* * *

* * *

(b) To comply with subsection (a) of this section, a secured party shall cause the secured party of record to file the termination statement:

(c) In cases not governed by subsection (a) of this section, within 20 days after a secured party receives ~~an authenticated~~ a signed 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:

* * *

§ 9—601. RIGHTS AFTER DEFAULT; JUDICIAL ENFORCEMENT;
CONSIGNOR OR BUYER ACCOUNTS; CHATTEL PAPER,
PAYMENT INTANGIBLES, OR PROMISSORY NOTES

* * *

(b) A secured party in possession of collateral or control of collateral under section 7—106, 9—104, 9—105, 9—105A, 9—106, ~~or~~ 9—107, or 9—107A of this title has the rights and duties provided in section 9—207 of this title.

* * *

§ 9—605. UNKNOWN DEBTOR OR SECONDARY OBLIGOR

(a) A Except as provided in subsection (b) of this section, a secured party does not owe a duty based on its status as secured party:

* * *

(b) A secured party owes a duty based on its status as a secured party to a person if, at the time the secured party obtains control of collateral that is a controllable account, controllable electronic record, or controllable payment intangible or at the time the security interest attaches to the collateral, whichever is later:

(1) the person is a debtor or obligor; and

(2) the secured party knows that the information in subdivision

(a)(1)(A), (B), or (C) of this section relating to the person is not provided by the collateral, a record attached to or logically associated with the collateral, or the system in which the collateral is recorded.

* * *

§ 9—608. APPLICATION OF PROCEEDS OF COLLECTION OR

ENFORCEMENT; LIABILITY FOR DEFICIENCY AND RIGHT
TO SURPLUS

(a) If a security interest or agricultural lien secures payment or performance of an obligation, the following rules apply:

* * *

* * *

(b) Except as otherwise provided in subsection (d) of this section, a secured party that disposes of collateral under section 9—610 of this title shall send to the persons specified in subsection (c) of this section a reasonable authenticated signed notification of disposition.

1 (c) To comply with subsection (b) of this section, the secured party shall
2 send ~~an authenticated~~ a signed notification of disposition to:

3 * * *

4 (3) if the collateral is other than consumer goods:

5 (A) any other person from which the secured party has received,
6 before the notification date, ~~an authenticated~~ a signed notification of a claim of
7 an interest in the collateral;

8 * * *

9 (e) A secured party complies with the requirement for notification
10 prescribed in subdivision (c)(3)(B) of this section if:

11 * * *

12 (2) before the notification date, the secured party:

13 (A) did not receive a response to the request for information; or

14 (B) received a response to the request for information and sent ~~an~~
15 ~~authenticated~~ a signed notification of disposition to each secured party named
16 in that response whose financing statement covered the collateral.

17 * * *

18 § 9—613. CONTENTS AND FORM OF NOTIFICATION BEFORE

19 DISPOSITION OF COLLATERAL: GENERAL

20 (a) Except in a consumer-goods transaction, the following rules apply:

21 * * *

(5) The following form of notification and the form appearing in subdivision ~~9—614(3)~~ 9—614(a)(3) of this title, when completed in accordance with the instructions in subsection (b) of this section and subsection 9—614(b) of this title, 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:~~

~~We will sell the [describe collateral] to the highest qualified bidder in public as follows:~~

~~Day and Date: _____~~

~~Time: _____~~

~~Place: _____~~

~~For a private disposition:~~

~~We will sell 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. You may request an accounting by calling us at [telephone number].~~

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)

{1} Name of any debtor that is not an addressee: (Name of each debtor)

{2} We will sell (describe collateral) (to the highest qualified bidder) at
public sale. A sale could include a lease or license. The sale will be held as
follows:

(Date)

(Time)

(Place)

{3} We will sell (describe collateral) at private sale sometime after (date).

A sale could include a lease or license.

{4} You are entitled to an accounting of the unpaid indebtedness secured
by the property that we intend to sell or, as applicable, lease or license.

{5} If you request an accounting you must pay a charge of \$ (amount).

{6} You may request an accounting by calling us at (telephone number).

(b) The following instructions apply to the form of notification in
subdivision (a)(5) of this section:

(1) The instructions in this subsection refer to the numbers in braces
before items in the form of notification in subdivision (a)(5) of this section.

Do not include the numbers or braces in the notification. The numbers and

1 braces are used only for the purpose of these instructions.

2 (2) Include and complete item {1} only if there is a debtor that is not an
3 addressee of the notification and list the name or names.

4 (3) Include and complete either item {2}, if the notification relates to a
5 public disposition of the collateral, or item {3}, if the notification relates to a
6 private disposition of the collateral. If item {2} is included, include the words
7 “to the highest qualified bidder” only if applicable.

8 (4) Include and complete items {4} and {6}.

9 (5) Include and complete item {5} only if the sender will charge the
10 recipient for an accounting.

11 § 9—614. CONTENTS AND FORM OF NOTIFICATION BEFORE
12 DISPOSITION OF COLLATERAL; CONSUMER GOODS
13 TRANSACTION

14 (a) In a consumer goods transaction, the following rules apply:

15 (1) A notification of disposition must provide the following
16 information:

17 (A) the information specified in subdivision 9—613(1) 9—613(a)(1)
18 of this title;

19 * * *

(3) The following form of notification, when completed in accordance
with the instructions in subsection (b) of this section, 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.

~~or~~

1 For a private disposition:

2 We will sell [describe collateral] at private sale sometime after
3 [date] A sale could include a lease or license.

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

8 You can get the property back at any time before we sell it by paying us the
9 full amount you owe (not just the past due payments), including our expenses.

10 To learn the exact amount you must pay, call us at [telephone number
11]

12 If you want us to explain to you in writing how we have figured the amount
13 that you owe us, you may call us at [telephone number] or
14 write us at [secured party's address] and request a
15 written explanation. We will charge you \$. for the explanation if we sent
16 you another written explanation of the amount you owe us within the last six
17 months.

18 If you need more information about the sale call us at [telephone
19 number] or write us at [secured party's address]
20

~~We are sending this notice to the following other people who have an interest
in [describe collateral] or who owe money under your agreement:~~

~~..... [it Names of all other debtors and obligors, if any]~~

~~(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: (Identify transaction)

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

{1} 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.

{2} We will sell (describe collateral) at private sale sometime after (date).

A sale could include a lease or license.

{3} 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

1 you owe, you will get the extra money, unless we must pay it to someone else.

2 {4} You can get the property back at any time before we sell it by paying
3 us the full amount you owe, not just the past due payments, including our
4 expenses. To learn the exact amount you must pay, call us at (telephone
5 number).

6 {5} If you want us to explain to you in (writing) (writing or in (description
7 of electronic record)) (description of electronic record) how we have figured
8 the amount that you owe us, {6} call us at (telephone number) (or) (write us at
9 (secured party's address)) (or contact us by (description of electronic
10 communication method)) {7} and request (a written explanation) (a written
11 explanation or an explanation in (description of electronic record)) (an
12 explanation in (description of electronic record)).

13 {8} We will charge you \$ (amount) for the explanation if we sent you
14 another written explanation of the amount you owe us within the last six
15 months.

16 {9} If you need more information about the sale (call us at (telephone
17 number)) (or) (write us at (secured party's address)) (or contact us by
18 (description of electronic communication method)).

19 {10} We are sending this notice to the following other people who have an
20 interest in (describe collateral) or who owe money under your agreement:
21 (Names of all other debtors and obligors, if any)

* * *

(b) The following instructions apply to the form of notification in subdivision (a)(3) of this section:

(1) The instructions in this subsection refer to the numbers in braces before items in the form of notification in subdivision (a)(3) of this section. Do not include the numbers or braces in the notification. The numbers and braces are used only for the purpose of these instructions.

(2) Include and complete either item {1}, if the notification relates to a public disposition of the collateral, or item {2}, if the notification relates to a private disposition of the collateral.

(3) Include and complete items {3}, {4}, {5}, {6}, and {7}.

(4) In item {5}, include and complete any one of the three alternative methods for the explanation—writing, writing or electronic record, or electronic record.

(5) In item {6}, include the telephone number. In addition, the sender may include and complete either or both of the two additional alternative methods of communication—writing or electronic communication—for the recipient of the notification to communicate with the sender. Neither of the two additional methods of communication is required to be included.

(6) In item {7}, include and complete the method or methods for the explanation—writing, writing or electronic record, or electronic record—

1 included in item {5}.

2 (7) Include and complete item {8} only if a written explanation is
3 included in item {5} as a method for communicating the explanation and the
4 sender will charge the recipient for another written explanation.

5 (8) In item {9}, include either the telephone number or the address or
6 both the telephone number and the address. In addition, the sender may
7 include and complete the additional method of communication—electronic
8 communication—for the recipient of the notification to communicate with the
9 sender. The additional method of electronic communication is not required to
10 be included.

11 (9) If item {10} does not apply, insert “None” after “agreement:”.

12 § 9—615. APPLICATION OF PROCEEDS OF DISPOSITION; LIABILITY

13 FOR DEFICIENCY AND RIGHT TO SURPLUS

14 (a) A secured party shall apply or pay over for application the cash
15 proceeds of disposition under section 9—610 of this title in the following
16 order to:

17 * * *

18 (3) the satisfaction of obligations secured by any subordinate security
19 interest in or other subordinate lien on the collateral if:

1 (A) the secured party receives from the holder of the subordinate
2 security interest or other lien ~~an authenticated~~ a signed demand for proceeds
3 before distribution of the proceeds is completed; and

4 (B) in a case in which a consignor has an interest in the collateral, the
5 subordinate security interest or other lien is senior to the interest of the
6 consignor; and

7 (4) a secured party that is a consignor of the collateral if the secured
8 party receives from the consignor ~~an authenticated~~ a signed demand for
9 proceeds before distribution of the proceeds is completed.

10 * * *

11 § 9—616. EXPLANATION OF CALCULATION OF SURPLUS OR
12 DEFICIENCY

13 (a) In this section:

14 (1) “Explanation” means a ~~writing~~ record that:

15 * * *

16 (2) “Request” means a record:

17 (A) ~~authenticated~~ signed by a debtor or consumer obligor;

18 * * *

19 (b) In a consumer goods transaction in which the debtor is entitled to a
20 surplus or a consumer obligor is liable for a deficiency under section 9—615
21 of this title, the secured party shall:

(A) before or when the secured party accounts to the debtor and pays any surplus or first makes ~~written~~ demand in a record on the consumer obligor after the disposition for payment of the deficiency; and

(c) To comply with subdivision (a)(1)(B) of this section, ~~a writing an~~ an explanation must provide the following information in the following order:

§ 9—619. TRANSFER OF RECORD OR LEGAL TITLE

* * *

SATISFACTION OF OBLIGATION; COMPULSORY

(a) Except as otherwise provided in subsection (g) of this section, 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) of this section;

* * *

* * *

* * *

1 (f) To comply with subsection (e) of this section, the secured party shall
2 dispose of the collateral:

- 3 (1) within 90 days after taking possession; or
4 (2) within any longer period to which the debtor and all secondary
5 obligors have agreed in an agreement to that effect entered into and
6 authenticated signed after default.

7 * * *

8 § 9—621. NOTIFICATION OF PROPOSAL TO ACCEPT COLLATERAL

9 (a) A secured party that desires to accept collateral in full or partial
10 satisfaction of the obligation it secures shall send its proposal to:

- 11 (1) any person from which the secured party has received, before the
12 debtor consented to the acceptance, ~~an authenticated~~ a signed notification of a
13 claim of an interest in the collateral;

14 * * *

15 § 9—624. WAIVER

16 (a) A debtor or secondary obligor may waive the right to notification of
17 disposition of collateral under section 9—611 of this title only by an
18 agreement to that effect entered into and ~~authenticated~~ signed after default.

19 (b) A debtor may waive the right to require disposition of collateral under
20 subsection 9—620(e) of this title only by an agreement to that effect entered
21 into and ~~authenticated~~ signed after default.

1 (c) Except in a consumer goods transaction, a debtor or secondary obligor
2 may waive the right to redeem collateral under section 9—623 of this title only
3 by an agreement to that effect entered into and authenticated signed after
4 default.

5 * * *

6 § 9—628. NONLIABILITY AND LIMITATION ON LIABILITY OF

7 SECURED PARTY; LIABILITY OF SECONDARY OBLIGOR

8 (a) ~~Unless~~ Subject to subsection (f) of this section, unless a secured party
9 knows that a person is a debtor or obligor, knows the identity of the person,
10 and knows how to communicate with the person:

11 * * *

12 (b) ~~A~~ Subject to subsection (f) of this section, a secured party is not liable
13 because of its status as secured party:

14 * * *

15 (f) Subsections (a) and (b) of this section do not apply to limit the liability
16 of a secured party to a person if, at the time the secured party obtains control
17 of collateral that is a controllable account, controllable electronic record, or
18 controllable payment intangible or at the time the security interest attaches to
19 the collateral, whichever is later:

20 (1) the person is a debtor or obligor; and

* * *

(2) “Qualifying purchaser” means a purchaser of a controllable electronic record or an interest in a controllable electronic record that obtains control of the controllable electronic record for value, in good faith, and

1 without notice of a claim of a property right in the controllable electronic
2 record.

3 (3) “Transferable record” has the meaning provided for that term:

4 (A) in section 201(a)(1) of the Electronic Signatures in Global and
5 National Commerce Act, 15 U.S.C. Section 7021(a)(1), as may be amended;
6 or

7 (B) as defined in 9 V.S.A. § 285.

8 (4) “Value” has the meaning provided in subsection 3—303(a) of this
9 title, as if references in that subsection to an “instrument” were references to a
10 controllable account, controllable electronic record, or controllable payment
11 intangible.

12 (b) The definitions in Article 9 of this title of “account debtor,”
13 “controllable account,” “controllable payment intangible,” “chattel paper,”
14 “deposit account,” “electronic money,” and “investment property” apply to this
15 article.

16 § 12—103. RELATION TO ARTICLE 9 AND CONSUMER LAWS

17 (a) If there is conflict between this article and Article 9, Article 9 governs.

18 (b) A transaction subject to this article is subject to any applicable rule of
19 law that establishes a different rule for consumers, to any other statute or rule
20 of this State that regulates the rates, charges, agreements, and practices for

1 loans, credit sales, or other extensions of credit, and to any consumer
2 protection statute or rule of this State.

3 (c) Article 1 of this title contains general definitions and principles of
4 construction and interpretation applicable throughout this article.

5 § 12—104. RIGHTS IN CONTROLLABLE ACCOUNT, CONTROLLABLE
6 ELECTRONIC RECORD, AND CONTROLLABLE PAYMENT
7 INTANGIBLE

8 (a) This section applies to the acquisition and purchase of rights in a
9 controllable account or controllable payment intangible, including the rights
10 and benefits under subsections (c), (d), (e), (g), and (h) of this section of a
11 purchaser and qualifying purchaser, in the same manner this section applies to
12 a controllable electronic record.

13 (b) To determine whether a purchaser of a controllable account or a
14 controllable payment intangible is a qualifying purchaser, the purchaser
15 obtains control of the account or payment intangible if it obtains control of the
16 controllable electronic record that evidences the account or payment
17 intangible.

18 (c) Except as provided in this section, law other than this article determines
19 whether a person acquires a right in a controllable electronic record and the
20 right the person acquires.

1 (d) A purchaser of a controllable electronic record acquires all rights in the
2 controllable electronic record that the transferor had or had power to transfer,
3 except that a purchaser of a limited interest in a controllable electronic record
4 acquires rights only to the extent of the interest purchased.

5 (e) A qualifying purchaser acquires its rights in the controllable electronic
6 record free of a claim of a property right in the controllable electronic record.

7 (f) Except as provided in subsections (a) and (e) of this section for a
8 controllable account and a controllable payment intangible or law other than
9 this article, a qualifying purchaser takes a right to payment, right to
10 performance, or other interest in property evidenced by the controllable
11 electronic record subject to a claim of a property right in the right to payment,
12 right to performance, or other interest in property.

13 (g) An action may not be asserted against a qualifying purchaser based on
14 both a purchase by the qualifying purchaser of a controllable electronic record
15 and a claim of a property right in another controllable electronic record,
16 whether the action is framed in conversion, replevin, constructive trust,
17 equitable lien, or other theory.

18 (h) Filing of a financing statement under Article 9 is not notice of a claim
19 of a property right in a controllable electronic record.

20 § 12—105. CONTROL OF CONTROLLABLE ELECTRONIC RECORD

1 (a) A person has control of a controllable electronic record if the electronic
2 record, a record attached to or logically associated with the electronic record,
3 or a system in which the electronic record is recorded:

4 (1) gives the person:

5 (A) power to avail itself of substantially all the benefit from the
6 electronic record; and

7 (B) exclusive power, subject to subsection (b) of this section, to:

8 (i) prevent others from availing themselves of substantially all the
9 benefit from the electronic record; and

10 (ii) transfer control of the electronic record to another person or
11 cause another person to obtain control of another controllable electronic record
12 as a result of the transfer of the electronic record; and

13 (2) enables the person readily to identify itself in any way, including by
14 name, identifying number, cryptographic key, office, or account number, as
15 having the powers specified in subdivision (1) of this subsection.

16 (b) Subject to subsection (c) of this section, a power is exclusive under
17 subdivisions (a)(1)(B)(i) and (ii) of this section even if:

18 (1) the controllable electronic record, a record attached to or logically
19 associated with the electronic record, or a system in which the electronic
20 record is recorded limits the use of the electronic record or has a protocol
21 programmed to cause a change, including a transfer or loss of control or a

1 modification of benefits afforded by the electronic record; or

2 (2) the power is shared with another person.

3 (c) A power of a person is not shared with another person under
4 subdivision (b)(2) of this section and the person's power is not exclusive if:

5 (1) the person can exercise the power only if the power also is exercised
6 by the other person; and

7 (2) the other person:

8 (A) can exercise the power without exercise of the power by the
9 person; or

10 (B) is the transferor to the person of an interest in the controllable
11 electronic record or a controllable account or controllable payment intangible
12 evidenced by the controllable electronic record.

13 (d) If a person has the powers specified in subdivisions (a)(1)(B)(i) and (ii)
14 of this section, the powers are presumed to be exclusive.

15 (e) A person has control of a controllable electronic record if another
16 person, other than the transferor to the person of an interest in the controllable
17 electronic record or a controllable account or controllable payment intangible
18 evidenced by the controllable electronic record:

19 (1) has control of the electronic record and acknowledges that it has
20 control on behalf of the person; or

21 (2) obtains control of the electronic record after having acknowledged

1 that it will obtain control of the electronic record on behalf of the person.

2 (f) A person that has control under this section is not required to
3 acknowledge that it has control on behalf of another person.

4 (g) If a person acknowledges that it has or will obtain control on behalf of
5 another person, unless the person otherwise agrees or law other than this
6 article or Article 9 otherwise provides, the person does not owe any duty to the
7 other person and is not required to confirm the acknowledgment to any other
8 person.

9 § 12—106. DISCHARGE OF ACCOUNT DEBTOR ON CONTROLLABLE

10 ACCOUNT OR CONTROLLABLE PAYMENT INTANGIBLE

11 (a) An account debtor on a controllable account or controllable payment
12 intangible may discharge its obligation by paying:

13 (1) the person having control of the controllable electronic record that
14 evidences the controllable account or controllable payment intangible; or

15 (2) except as provided in subsection (b) of this section, a person that
16 formerly had control of the controllable electronic record.

17 (b) Subject to subsection (d) of this section, the account debtor may not
18 discharge its obligation by paying a person that formerly had control of the
19 controllable electronic record if the account debtor receives a notification that:

20 (1) is signed by a person that formerly had control or the person to
21 which control was transferred;

1 (2) reasonably identifies the controllable account or controllable
2 payment intangible;

3 (3) notifies the account debtor that control of the controllable electronic
4 record that evidences the controllable account or controllable payment
5 intangible was transferred;

6 (4) identifies the transferee, in any reasonable way, including by name,
7 identifying number, cryptographic key, office, or account number; and

8 (5) provides a commercially reasonable method by which the account
9 debtor is to pay the transferee.

10 (c) After receipt of a notification that complies with subsection (b) of this
11 section, the account debtor may discharge its obligation by paying in
12 accordance with the notification and may not discharge the obligation by
13 paying a person that formerly had control.

14 (d) Subject to subsection (h) of this section, notification is ineffective
15 under subsection (b) of this section:

16 (1) unless, before the notification is sent, the account debtor and the
17 person that, at that time, had control of the controllable electronic record that
18 evidences the controllable account or controllable payment intangible agree in
19 a signed record to a commercially reasonable method by which a person may
20 furnish reasonable proof that control has been transferred;

1 (2) to the extent an agreement between the account debtor and seller of
2 a payment intangible limits the account debtor's duty to pay a person other
3 than the seller and the limitation is effective under law other than this article;
4 or

5 (3) at the option of the account debtor, if the notification notifies the
6 account debtor to:

7 (A) divide a payment;

8 (B) make less than the full amount of an installment or other periodic
9 payment; or

10 (C) pay any part of a payment by more than one method or to more
11 than one person.

12 (e) Subject to subsection (h) of this section, if requested by the account
13 debtor, the person giving the notification under subsection (b) of this section
14 seasonably shall furnish reasonable proof, using the method in the agreement
15 referred to in subdivision (d)(1) of this section, that control of the controllable
16 electronic record has been transferred. Unless the person complies with the
17 request, the account debtor may discharge its obligation by paying a person
18 that formerly had control, even if the account debtor has received a
19 notification under subsection (b) of this section.

20 (f) A person furnishes reasonable proof under subsection (e) of this section
21 that control has been transferred if the person demonstrates, using the method

1 in the agreement referred to in subdivision (d)(1) of this section, that the
2 transferee has the power to:

3 (1) avail itself of substantially all the benefit from the controllable
4 electronic record;

5 (2) prevent others from availing themselves of substantially all the
6 benefit from the controllable electronic record; and

7 (3) transfer the powers specified in subdivisions (1) and (2) of this
8 subsection to another person.

9 (g) Subject to subsection (h) of this section, an account debtor may not
10 waive or vary its rights under subdivision (d)(1) or subsection (e) of this
11 section or its option under subdivision (d)(3) of this section.

12 (h) This section is subject to law other than this article which establishes a
13 different rule for an account debtor who is an individual and who incurred the
14 obligation primarily for personal, family, or household purposes.

15 § 12—107. GOVERNING LAW

16 (a) Except as provided in subsection (b) of this section, the local law of a
17 controllable electronic record's jurisdiction governs a matter covered by this
18 article.

19 (b) For a controllable electronic record that evidences a controllable
20 account or controllable payment intangible, the local law of the controllable
21 electronic record's jurisdiction governs a matter covered by section 12—106

1 of this title unless an effective agreement determines that the local law of
2 another jurisdiction governs.

3 (c) The following rules determine a controllable electronic record's
4 jurisdiction under this section:

5 (1) If the controllable electronic record, or a record attached to or
6 logically associated with the controllable electronic record and readily
7 available for review, expressly provides that a particular jurisdiction is the
8 controllable electronic record's jurisdiction for purposes of this article or title,
9 that jurisdiction is the controllable electronic record's jurisdiction.

10 (2) If subdivision (1) of this subsection does not apply and the rules of
11 the system in which the controllable electronic record is recorded are readily
12 available for review and expressly provide that a particular jurisdiction is the
13 controllable electronic record's jurisdiction for purposes of this article or title,
14 that jurisdiction is the controllable electronic record's jurisdiction.

15 (3) If subdivisions (1) and (2) of this subsection do not apply and the
16 controllable electronic record, or a record attached to or logically associated
17 with the controllable electronic record and readily available for review,
18 expressly provides that the controllable electronic record is governed by the
19 law of a particular jurisdiction, that jurisdiction is the controllable electronic
20 record's jurisdiction.

1 (4) If subdivisions (1), (2), and (3) of this subsection do not apply and
2 the rules of the system in which the controllable electronic record is recorded
3 are readily available for review and expressly provide that the controllable
4 electronic record or the system is governed by the law of a particular
5 jurisdiction, that jurisdiction is the controllable electronic record’s jurisdiction.

6 (5) If subdivisions (1)–(4) of this subsection do not apply, the
7 controllable electronic record’s jurisdiction is the District of Columbia.

8 (d) If subdivision (5) of subsection (c) of this section applies and Article 12
9 is not in effect in the District of Columbia without material modification, the
10 governing law for a matter covered by this article is the law of the District of
11 Columbia as though Article 12 were in effect in the District of Columbia
12 without material modification. In this subsection, “Article 12” means Article
13 12 of Uniform Commercial Code Amendments (2022).

14 (e) To the extent subsections (a) and (b) of this section provide that the
15 local law of the controllable electronic record’s jurisdiction governs a matter
16 covered by this article, that law governs even if the matter or a transaction to
17 which the matter relates does not bear any relation to the controllable
18 electronic record’s jurisdiction.

19 (f) The rights acquired under section 12—104 of this title by a purchaser or
20 qualifying purchaser are governed by the law applicable under this section at
21 the time of purchase.

1 Sec. 11. TRANSITIONAL PROVISIONS FOR ARTICLES 9 AND 12 OF
2 THE UNIFORM COMMERCIAL CODE AMENDMENTS

3 (a) General provisions and definitions.

4 (1) This section may be cited as Transitional Provisions for Uniform
5 Commercial Code Amendments (2022).

6 (2) As used in this section:

7 (A) “Adjustment date” means July 1, 2026, or the date that is one
8 year after the effective date of this act, whichever is later.

9 (B) “Article 12” means Article 12 of the Uniform Commercial Code.

10 (C) “Article 12 property” means a controllable account, controllable
11 electronic record, or controllable payment intangible.

12 (D) “Controllable account” has the same meaning as in section 9—
13 102 of the Uniform Commercial Code—Secured Transactions.

14 (E) “Controllable electronic record” has the same meaning as in
15 section 12—102 of the Uniform Commercial Code—Controllable Electronic
16 Records.

17 (F) “Controllable payment intangible” has the same meaning as in
18 section 9—102 of the Uniform Commercial Code—Secured Transactions.

19 (G) “Electronic money” has the same meaning as in section 9-102 of
20 the Uniform Commercial Code—Secured Transactions.

1 (H) “Financing statement” has the same meaning as in section 9—
2 102 of the Uniform Commercial Code—Secured Transactions.

3 (3) Article 1 of the Uniform Commercial Code contains general
4 definitions and principles of construction and interpretation applicable
5 throughout this section.

6 (b) Saving clause and exceptions.

7 (1) Except as provided in subsections (c)—(g) of this section:

(A) A transaction validly entered into *before* July 1, 2025 and the
rights, duties, and interests flowing from the transaction remain valid
thereafter and may be terminated, completed, consummated, or enforced as
required or permitted by law other than the Uniform Commercial Code, or, if
applicable, the Uniform Commercial Code, as though this act had not taken
effect.

8 (B) Except as provided in subsections (c)—(g) of this section,
9 Article 9 as amended by this act and Article 12 apply to a transaction, lien, or
10 other interest in property, even if the transaction, lien, or interest was entered
11 into, created, or acquired before July 1, 2025.

12 (2) Except as provided in subdivision (3) of this subsection and
13 subsections (c)—(g) of this section:

14 (A) a transaction, lien, or interest in property that was validly entered
15 into, created, or transferred before July 1, 2025 and was not governed by the

1 Uniform Commercial Code, but would be subject to Article 9 as amended by
2 this act or Article 12 if it had been entered into, created, or transferred on or
3 after July 1, 2025, including the rights, duties, and interests flowing from the
4 transaction, lien, or interest, remains valid on and after July 1, 2025; and

5 (B) the transaction, lien, or interest may be terminated, completed,
6 consummated, and enforced as required or permitted by this act or by the law
7 that would apply if this act had not taken effect.

8 (3) This act does not affect an action, case, or proceeding commenced
9 before July 1, 2025.

10 (c) Security interest perfected before effective date.

11 (1) A security interest that is enforceable and perfected immediately
12 before July 1, 2025 is a perfected security interest under this act if, on July 1,
13 2025, the requirements for enforceability and perfection under this act are
14 satisfied without further action.

15 (2) If a security interest is enforceable and perfected immediately before
16 July 1, 2025, but the requirements for enforceability or perfection under this
17 act are not satisfied on July 1, 2025, the security interest:

18 (A) is a perfected security interest until the earlier of the time
19 perfection would have ceased under the law in effect immediately before July
20 1, 2025 or the adjustment date;

1 (B) remains enforceable thereafter only if the security interest
2 satisfies the requirements for enforceability under section 9—203 of the
3 Uniform Commercial Code, as amended by this act, before the adjustment
4 date; and

5 (C) remains perfected thereafter only if the requirements for
6 perfection under this act are satisfied before the time specified in subdivision
7 (A) of this subdivision (c)(2).

8 (d) Security interest unperfected before effective date. A security interest
9 that is enforceable immediately before July 1, 2025 but is unperfected at that
10 time:

11 (1) remains an enforceable security interest until the adjustment date;

12 (2) remains enforceable thereafter if the security interest becomes
13 enforceable under section 9—203 of the Uniform Commercial Code, as
14 amended by this act, on ~~July 1, 2025~~ or before the adjustment date; and

15 (3) becomes perfected:

16 (A) without further action, on July 1, 2025 if the requirements for
17 perfection under this act are satisfied before or at that time; or

18 (B) when the requirements for perfection are satisfied if the
19 requirements are satisfied after that time.

20 (e) Effectiveness of actions taken before effective date.

1 (1) If action, other than the filing of a financing statement, is taken
2 before July 1, 2025 and the action would have resulted in perfection of the
3 security interest had the security interest become enforceable before July 1,
4 2025, the action is effective to perfect a security interest that attaches under
5 this act before the adjustment date. An attached security interest becomes
6 unperfected on the adjustment date unless the security interest becomes a
7 perfected security interest under this act before the adjustment date.

8 (2) The filing of a financing statement before July 1, 2025 is effective to
9 perfect a security interest on July 1, 2025 to the extent the filing would satisfy
10 the requirements for perfection under this act.

11 (3) The taking of an action before July 1, 2025 is sufficient for the
12 enforceability of a security interest on July 1, 2025 if the action would satisfy
13 the requirements for enforceability under this act.

14 (f) Priority.

15 (1) Subject to subdivisions (2) and (3) of this subsection, this act
16 determines the priority of conflicting claims to collateral.

17 (2) Subject to subdivision (3) of this subsection, if the priorities of
18 claims to collateral were established before July 1, 2025, Article 9 as in effect
19 before July 1, 2025 determines priority.

20 (3) On the adjustment date, to the extent the priorities determined by
21 Article 9 as amended by this act modify the priorities established before July

1 1, 2025, the priorities of claims to Article 12 property and electronic money
2 established before July 1, 2025 cease to apply.

3 (g) Priority of claims when priority rules of Article 9 do not apply.

4 (1) Subject to subdivisions (2) and (3) of this subsection, Article 12
5 determines the priority of conflicting claims to Article 12 property when the
6 priority rules of Article 9 as amended by this act do not apply.

7 (2) Subject to subdivision (3) of this subsection, when the priority rules
8 of Article 9 as amended by this act do not apply and the priorities of claims to
9 Article 12 property were established before July 1, 2025, law other than
10 Article 12 determines priority.

11 (3) When the priority rules of Article 9 as amended by this act do not
12 apply, to the extent the priorities determined by this act modify the priorities
13 established before July 1, 2025, the priorities of claims to Article 12 property
14 established before July 1, 2025 cease to apply on the adjustment date.

Sec. 11a. INCLUSION OF OFFICIAL COMMENTS

Codification of the changes set forth in this act shall include the official
comments of the Uniform Commercial Code as set forth in the final official text
of the American Law Institute and the National Conference of Commissioners
on Uniform State Laws, provided that the comments shall, in addition, include
appropriate references to any Vermont variations to the official text.

15 Sec. 12. EFFECTIVE DATE

1 This act shall take effect on July 1, 2025.