

A Bill for an Act Relating to Revised Uniform Commercial Code Article 9—
Secured Transactions.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 490, Hawaii Revised Statutes, is amended by adding a new article 9 to read as follows:

**“ARTICLE 9.
SECURED TRANSACTIONS
PART 1. GENERAL PROVISIONS
SUBPART 1. SHORT TITLE, DEFINITIONS, AND GENERAL
CONCEPTS**

§490:9-101 Short title. This article may be cited as Uniform Commercial Code - Secured Transactions.

§490:9-102 Definitions and index of definitions. (a) In this chapter: “Accession” means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

“Account”, except as used in “account for”:

- (1) Means a right to payment of a monetary obligation, whether or not earned by performance:
 - (A) For property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of;
 - (B) For services rendered or to be rendered;
 - (C) For a policy of insurance issued or to be issued;
 - (D) For a secondary obligation incurred or to be incurred;
 - (E) For energy provided or to be provided;
 - (F) For the use or hire of a vessel under a charter or other contract;
 - (G) Arising out of the use of a credit or charge card or information contained on or for use with the card; or
 - (H) As winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state. The term includes health-care-insurance receivables.
- (2) Does not include:
 - (A) Rights to payment evidenced by chattel paper or an instrument;
 - (B) Commercial tort claims;
 - (C) Deposit accounts;
 - (D) Investment property;
 - (E) Letter-of-credit rights or letters of credit; or
 - (F) Rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

“Account debtor” means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

“Accounting”, except as used in “accounting for”, means a record:

- (1) Authenticated by a secured party;

- (2) Indicating the aggregate unpaid secured obligations as of a date not more than thirty-five days earlier or thirty-five days later than the date of the record; and
- (3) Identifying the components of the obligations in reasonable detail.

“Agricultural lien” means an interest, other than a security interest, in farm products:

- (1) Which secures payment or performance of an obligation for:
 - (A) Goods or services furnished in connection with a debtor’s farming operation; or
 - (B) Rent on real property leased by a debtor in connection with its farming operation;
- (2) Which is created by statute in favor of a person that:
 - (A) In the ordinary course of its business furnished goods or services to a debtor in connection with a debtor’s farming operation; or
 - (B) Leased real property to a debtor in connection with the debtor’s farming operation; and
- (3) Whose effectiveness does not depend on the person’s possession of the personal property.

“As-extracted collateral” means:

- (1) Oil, gas, or other minerals that are subject to a security interest that:
 - (A) Is created by a debtor having an interest in the minerals before extraction; and
 - (B) Attaches to the minerals as extracted; or
- (2) Accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

“Authenticate” means:

- (1) To sign; or
- (2) To execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record.

“Bank” means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions, and trust companies.

“Cash proceeds” means proceeds that are money, checks, deposit accounts, or the like.

“Certificate of title” means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest’s obtaining priority over the rights of a lien creditor with respect to the collateral.

“Chattel paper” means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this paragraph, “monetary obligation” means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term does not include charters or other contracts involving the use or hire of a vessel. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

“Collateral” means the property subject to a security interest or agricultural lien. The term includes:

- (1) Proceeds to which a security interest attaches;
- (2) Accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and

(3) Goods that are the subject of a consignment.

“Commercial tort claim” means a claim arising in tort with respect to which:

- (1) The claimant is an organization; or
- (2) The claimant is an individual and the claim:
 - (A) Arose in the course of the claimant’s business or profession; and
 - (B) Does not include damages arising out of personal injury to or the death of an individual.

“Commodity account” means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

“Commodity contract” means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:

- (1) Traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or
- (2) Traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.

“Commodity customer” means a person for which a commodity intermediary carries a commodity contract on its books.

“Commodity intermediary” means a person that:

- (1) Is registered as a futures commission merchant under federal commodities law; or
- (2) In the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.

“Communicate” means:

- (1) To send a written or other tangible record;
- (2) To transmit a record by any means agreed upon by the persons sending and receiving the record; or
- (3) In the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.

“Consignee” means a merchant to which goods are delivered in a consignment.

“Consignment” means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

- (1) The merchant:
 - (A) Deals in goods of that kind under a name other than the name of the person making delivery;
 - (B) Is not an auctioneer; and
 - (C) Is not generally known by its creditors to be substantially engaged in selling the goods of others;
- (2) With respect to each delivery, the aggregate value of the goods is \$1,000 or more at the time of delivery;
- (3) The goods are not consumer goods immediately before delivery; and
- (4) The transaction does not create a security interest that secures an obligation.

“Consignor” means a person that delivers goods to a consignee in a consignment.

“Consumer debtor” means a debtor in a consumer transaction.

“Consumer goods” means goods that are used or bought for use primarily for personal, family, or household purposes.

“Consumer-goods transaction” means a consumer transaction in which:

- (1) An individual incurs an obligation primarily for personal, family, or household purposes; and
- (2) A security interest in consumer goods secures the obligation.

“Consumer obligor” means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family, or household purposes.

“Consumer transaction” means a transaction in which (i) an individual incurs an obligation primarily for personal, family, or household purposes, (ii) a security interest secures the obligation, and (iii) the collateral is held or acquired primarily for personal, family, or household purposes. The term includes consumer-goods transactions.

“Continuation statement” means an amendment of a financing statement which:

- (1) Identifies, by its file number, the initial financing statement to which it relates; and
- (2) Indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

“Debtor” means:

- (1) A person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;
- (2) A seller of accounts, chattel paper, payment intangibles, or promissory notes; or
- (3) A consignee.

“Deposit account” means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.

“Document” means a document of title or a receipt of the type described in section 490:7-201(2).

“Electronic chattel paper” means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

“Encumbrance” means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

“Equipment” means goods other than inventory, farm products, or consumer goods.

“Farm products” means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:

- (1) Crops grown, growing, or to be grown, including:
 - (A) Crops produced on trees, vines, and bushes; and
 - (B) Aquatic goods produced in aquacultural operations;
- (2) Livestock, born or unborn, including aquatic goods produced in aquacultural operations;
- (3) Supplies used or produced in a farming operation; or
- (4) Products of crops or livestock in their unmanufactured states.

“Farming operation” means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

“File number” means the number assigned to an initial financing statement pursuant to section 490:9-519(a).

“Filing office” means an office designated in section 490:9-501 as the place to file a financing statement.

“Filing-office rule” means a rule adopted pursuant to section 490:9-526.

“Financing statement” means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

“Fixture filing” means the filing of a financing statement covering goods that are or are to become fixtures and satisfying section 490:9-502(a) and (b). The

term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

“Fixtures” means goods that have become so related to particular real property that an interest in them arises under real property law.

“General intangible” means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.

“Good faith” means honesty in fact and the observance of reasonable commercial standards of fair dealing.

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

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

“Health-care-insurance receivable” means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health-care goods or services provided.

“Instrument” means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include:

- (1) Investment property;
- (2) Letters of credit; or
- (3) Writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

“Inventory” means goods, other than farm products, which:

- (1) Are leased by a person as lessor;
- (2) Are held by a person for sale or lease or to be furnished under a contract of service;
- (3) Are furnished by a person under a contract of service; or
- (4) Consist of raw materials, work in process, or materials used or consumed in a business.

“Investment property” means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

“Jurisdiction of organization”, with respect to a registered organization, means the jurisdiction under whose law the organization is organized.

“Letter-of-credit right” means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

“Lien creditor” means:

- (1) A creditor that has acquired a lien on the property involved by attachment, levy, or the like;
- (2) An assignee for benefit of creditors from the time of assignment;
- (3) A trustee in bankruptcy from the date of the filing of the petition; or
- (4) A receiver in equity from the time of appointment.

“Manufactured home” means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States Secretary of Housing and Urban Development and complies with the standards established under Title 42 of the United States Code.

“Manufactured-home transaction” means a secured transaction:

- (A) That creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or
- (B) In which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

“Mortgage” means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.

“New debtor” means a person that becomes bound as debtor under section 490:9-203(d) by a security agreement previously entered into by another person.

“New value” means:

- (1) Money;
- (2) Money’s worth in property, services, or new credit; or
- (3) Release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

“Noncash proceeds” means proceeds other than cash proceeds.

“Obligor” means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral:

- (1) Owes payment or other performance of the obligation;
- (2) Has provided property other than the collateral to secure payment or other performance of the obligation; or
- (3) Is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

“Original debtor” means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under section 490:9-203(d).

“Payment intangible” means a general intangible under which the account debtor’s principal obligation is a monetary obligation.

“Person related to”, with respect to an individual, means:

- (1) The spouse of the individual;
- (2) A brother, brother-in-law, sister, or sister-in-law of the individual;

- (3) An ancestor or lineal descendant of the individual or the individual's spouse; or
- (4) Any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

"Person related to", with respect to an organization, means:

- (1) A person directly or indirectly controlling, controlled by, or under common control with the organization;
- (2) An officer or director of, or a person performing similar functions with respect to, the organization;
- (3) An officer or director of, or a person performing similar functions with respect to, a person described in paragraph (1);
- (4) The spouse of an individual described in paragraph (1), (2), or (3); or
- (5) An individual who is related by blood or marriage to an individual described in paragraph (1), (2), (3), or (4) and shares the same home with the individual.

"Proceeds" means the following property:

- (1) Whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;
- (2) Whatever is collected on, or distributed on account of, collateral;
- (3) Rights arising out of collateral;
- (4) To the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or
- (5) To the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

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

"Proposal" means a record authenticated by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to sections 490:9-620, 490:9-621, and 490:9-622.

"Public-finance transaction" means a secured transaction in connection with which:

- (1) Debt securities are issued;
- (2) All or a portion of the securities issued have an initial stated maturity of at least twenty years; and
- (3) The debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a state or a governmental unit of a state.

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

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

"Registered organization" means an organization organized solely under the law of a single state or the United States and as to which the state or the United

States must maintain a public record showing the organization to have been organized.

“Secondary obligor” means an obligor to the extent that:

- (1) The obligor’s obligation is secondary; or
- (2) The obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

“Secured party” means:

- (1) A person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;
- (2) A person that holds an agricultural lien;
- (3) A consignor;
- (4) A person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;
- (5) A trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or
- (6) A person that holds a security interest arising under section 490:2-401, 490:2-505, 490:2-711(3), 490:2A-508(e), 490:4-210, or 490:5-118.

“Security agreement” means an agreement that creates or provides for a security interest.

“Send”, in connection with a record or notification, means:

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

“Software” means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

“State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

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

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

“Termination statement” means an amendment of a financing statement which:

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

“Transmitting utility” means a person primarily engaged in the business of:

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

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

“Applicant”. Section 490:5-102.

- “Beneficiary”. Section 490:5-102.
 - “Broker”. Section 490:8-102.
 - “Certificated security”. Section 490:8-102.
 - “Check”. Section 490:3-104.
 - “Clearing corporation”. Section 490:8-102.
 - “Contract for sale”. Section 490:2-106.
 - “Customer”. Section 490:4-104.
 - “Entitlement holder”. Section 490:8-102.
 - “Financial asset”. Section 490:8-102.
 - “Holder in due course”. Section 490:3-302.
 - “Issuer” (with respect to a letter of credit or letter-of-credit right). Section 490:5-102.
 - “Issuer” (with respect to a security). Section 490:8-201.
 - “Lease”. Section 490:2A-103.
 - “Lease agreement”. Section 490:2A-103.
 - “Lease contract”. Section 490:2A-103.
 - “Leasehold interest”. Section 490:2A-103.
 - “Lessee”. Section 490:2A-103.
 - “Lessee in ordinary course of business”. Section 490:2A-103.
 - “Lessor”. Section 490:2A-103.
 - “Lessor’s residual interest”. Section 490:2A-103.
 - “Letter of credit”. Section 490:5-102.
 - “Merchant”. Section 490:2-104.
 - “Negotiable instrument”. Section 490:3-104.
 - “Nominated person”. Section 490:5-102.
 - “Note”. Section 490:3-104.
 - “Proceeds of a letter of credit”. Section 490:5-114.
 - “Prove”. Section 490:3-103.
 - “Sale”. Section 490:2-106.
 - “Securities account”. Section 490:8-501.
 - “Securities intermediary”. Section 490:8-102.
 - “Security”. Section 490:8-102.
 - “Security certificate”. Section 490:8-102.
 - “Security entitlement”. Section 490:8-102.
 - “Uncertificated security”. Section 490:8-102.
- (c) Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

§490:9-103 Purchase-money security interest; application of payments; burden of establishing. (a) In this section:

- (1) “Purchase-money collateral” means goods or software that secures a purchase-money obligation incurred with respect to that collateral; and
 - (2) “Purchase-money obligation” means an obligation of an obligor incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral if the value is in fact so used.
- (b) A security interest in goods is a purchase-money security interest:
- (1) To the extent that the goods are purchase-money collateral with respect to that security interest;
 - (2) If the security interest is in inventory that is or was purchase-money collateral, also to the extent that the security interest secures a purchase-money obligation incurred with respect to other inventory in which the secured party holds or held a purchase-money security interest; and

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

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

- (1) The debtor acquired its interest in the software in an integrated transaction in which it acquired an interest in the goods; and
- (2) The debtor acquired its interest in the software for the principal purpose of using the software in the goods.

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

(e) In a transaction other than a consumer-goods transaction, if the extent to which a security interest is a purchase-money security interest depends on the application of a payment to a particular obligation, the payment must be applied:

- (1) In accordance with any reasonable method of application to which the parties agree;
- (2) In the absence of the parties' agreement to a reasonable method, in accordance with any intention of the obligor manifested at or before the time of payment; or
- (3) In the absence of an agreement to a reasonable method and a timely manifestation of the obligor's intention, in the following order:
 - (A) To obligations that are not secured; and
 - (B) If more than one obligation is secured, to obligations secured by purchase-money security interests in the order in which those obligations were incurred.

(f) In a transaction other than a consumer-goods transaction, a purchase-money security interest does not lose its status as such, even if:

- (1) The purchase-money collateral also secures an obligation that is not a purchase-money obligation;
- (2) Collateral that is not purchase-money collateral also secures the purchase-money obligation; or
- (3) The purchase-money obligation has been renewed, refinanced, consolidated, or restructured.

(g) In a transaction other than a consumer-goods transaction, a secured party claiming a purchase-money security interest has the burden of establishing the extent to which the security interest is a purchase-money security interest.

(h) The limitation of the rules in subsections (e), (f), and (g) to transactions other than consumer-goods transactions is intended to leave to the court the determination of the proper rules in consumer-goods transactions. The court may not infer from that limitation the nature of the proper rule in consumer-goods transactions and may continue to apply established approaches.

§490:9-104 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 record that the bank will comply with instructions originated by the secured party directing disposition of the funds in the deposit account without further consent by the debtor; or
- (3) The secured party becomes the bank's customer with respect to the deposit account.

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

§490:9-105 Control of electronic chattel paper. A secured party has control of electronic chattel paper if the record or records comprising the chattel paper are created, stored, and assigned in such a manner that:

- (1) A single authoritative copy of the record or records exists which is unique, identifiable and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;
- (2) The authoritative copy identifies the secured party as the assignee of the record or records;
- (3) The authoritative copy is communicated to and maintained by the secured party or its designated custodian;
- (4) Copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the participation of the secured party;
- (5) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and
- (6) Any revision of the authoritative copy is readily identifiable as an authorized or unauthorized revision.

§490:9-106 Control of investment property. (a) A person has control of a certificated security, uncertificated security, or security entitlement as provided in section 490:8-106.

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

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

(c) A secured party having control of all security entitlements or commodity contracts carried in a securities account or commodity account has control over the securities account or commodity account.

§490:9-107 Control of letter-of-credit right. A secured party has control of a letter-of-credit right to the extent of any right to payment or performance by the issuer or any nominated person if the issuer or nominated person has consented to an assignment of proceeds of the letter of credit under section 490:5-114(c) or otherwise applicable law or practice.

§490:9-108 Sufficiency of description. (a) Except as otherwise provided in subsections (c), (d), and (e), a description of personal or real property is sufficient, whether or not it is specific, if it reasonably identifies what is described.

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

- (1) Specific listing;
- (2) Category;
- (3) Except as otherwise provided in subsection (e), a type of collateral defined in this chapter;
- (4) Quantity;
- (5) Computational or allocational formula or procedure; or
- (6) Except as otherwise provided in subsection (c), any other method, if the identity of the collateral is objectively determinable.

(c) A description of collateral as “all the debtor’s assets” or “all the debtor’s personal property” or using words of similar import does not reasonably identify the collateral.

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

- (1) The collateral by those terms or as investment property; or
- (2) The underlying financial asset or commodity contract.

(e) A description only by type of collateral defined in this chapter is an insufficient description of:

- (1) A commercial tort claim; or
- (2) In a consumer transaction, consumer goods, a security entitlement, a securities account, or a commodity account.

SUBPART 2. APPLICABILITY OF ARTICLE

§490:9-109 Scope. (a) Except as otherwise provided in subsections (c) and (d), this article applies to:

- (1) A transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;
- (2) An agricultural lien;
- (3) A sale of accounts, chattel paper, payment intangibles, or promissory notes;
- (4) A consignment;
- (5) A security interest arising under section 490:2-401, 490:2-505, 490:2-711(3), or 490:2A-508(e), as provided in section 490:9-110; and
- (6) A security interest arising under section 490:4-210 or 490:5-118.

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

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

- (1) A statute, regulation, or treaty of the United States preempts this article;
- (2) Another statute of this State expressly governs the creation, perfection, priority, or enforcement of a security interest created by this State or a governmental unit of this State;
- (3) A statute of another state, a foreign country, or a governmental unit of another state or a foreign country, other than a statute generally applicable to security interests, expressly governs creation, perfection, priority, or enforcement of a security interest created by the state, country, or governmental unit; or
- (4) The rights of a transferee beneficiary or nominated person under a letter of credit are independent and superior under section 490:5-114.

(d) This article does not apply to:

- (1) A landlord’s lien, other than an agricultural lien;
- (2) A lien, other than an agricultural lien, given by statute or other rule of law for services or materials, but section 490:9-333 applies with respect to priority of the lien;
- (3) An assignment of a claim for wages, salary, or other compensation of an employee;
- (4) A sale of accounts, chattel paper, payment intangibles, or promissory notes as part of a sale of the business out of which they arose;
- (5) An assignment of accounts, chattel paper, payment intangibles, or promissory notes which is for the purpose of collection only;
- (6) An assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract;

- (7) An assignment of a single account, payment intangible, or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness;
- (8) A transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health-care provider of a health-care-insurance receivable and any subsequent assignment of the right to payment, but sections 490:9-315 and 490:9-322 apply with respect to proceeds and priorities in proceeds;
- (9) An assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral;
- (10) A right of recoupment or set-off, but:
 - (A) Section 490:9-340 applies with respect to the effectiveness of rights of recoupment or set-off against deposit accounts; and
 - (B) Section 490:9-404 applies with respect to defenses or claims of an account debtor;
- (11) The creation or transfer of an interest in or lien on real property, including a lease or rents thereunder, except to the extent that provision is made for:
 - (A) Liens on real property in sections 490:9-203 and 490:9-308;
 - (B) Fixtures in section 490:9-334;
 - (C) Fixture filings in sections 490:9-501, 490:9-502, 490:9-512, 490:9-516, and 490:9-519; and
 - (D) Security agreements covering personal and real property in section 490:9-604;
- (12) An assignment of a claim arising in tort, other than a commercial tort claim, but sections 490:9-315 and 490:9-322 apply with respect to proceeds and priorities in proceeds;
- (13) An assignment of a deposit account in a consumer transaction, but sections 490:9-315 and 490:9-322 apply with respect to proceeds and priorities in proceeds;
- (14) A transfer by a governmental unit;
- (15) A claim or right to receive compensation for injuries or sickness as described in section 386-57 or title 26 United States Code section 104(a)(1) or (2), as amended from time to time; or
- (16) A claim or right to receive benefits under a special needs trust as described in title 42 United States Code section 1396p(d)(4), as amended from time to time.

§490:9-110 Security interests arising under Article 2 or 2A. A security interest arising under section 490:2-401, 490:2-505, 490:2-711(3), or 490:2A-508(e) is subject to this article. However, until the debtor obtains possession of the goods:

- (1) The security interest is enforceable, even if section 490:9-203(b)(3) has not been satisfied;
- (2) Filing is not required to perfect the security interest;
- (3) The rights of the secured party after default by the debtor are governed by Article 2 or 2A; and
- (4) The security interest has priority over a conflicting security interest created by the debtor.

**PART 2. EFFECTIVENESS OF SECURITY AGREEMENT;
ATTACHMENT OF SECURITY INTEREST; RIGHTS OF PARTIES
TO SECURITY AGREEMENT
SUBPART 1. EFFECTIVENESS AND ATTACHMENT**

§490:9-201 General effectiveness of security agreement. (a) Except as otherwise provided in this chapter, a security agreement is effective according to its terms between the parties, against purchasers of the collateral, and against creditors.

(b) A transaction subject to this article is subject to:

- (1) Any applicable rule of law which establishes a different rule for consumers;
- (2) Any other statute or regulation that regulates the rates, charges, agreements, and practices for loans, credit sales, or other extensions of credit; and
- (3) Any consumer-protection statute or regulation.

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

(d) This article does not:

- (1) Validate any rate, charge, agreement, or practice that violates a rule of law, statute, or regulation described in subsection (b); or
- (2) Extend the application of the rule of law, statute, or regulation to a transaction not otherwise subject to it.

§490:9-202 Title to collateral immaterial. Except as otherwise provided with respect to consignments or sales of accounts, chattel paper, payment intangibles, or promissory notes, the provisions of this article with regard to rights and obligations apply whether title to collateral is in the secured party or the debtor.

§490:9-203 Attachment and enforceability of security interest; proceeds; supporting obligations; formal requisites. (a) A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.

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

- (1) Value has been given;
- (2) The debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and
- (3) One of the following conditions is met:
 - (A) The debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;
 - (B) The collateral is not a certificated security and is in the possession of the secured party under section 490:9-313 pursuant to the debtor's security agreement;
 - (C) The collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under section 490:8-301 pursuant to the debtor's security agreement; or
 - (D) The collateral is deposit accounts, electronic chattel paper, investment property, or letter-of-credit rights, and the secured party has control under section 490:9-104, 490:9-105, 490:9-106, or 490:9-107 pursuant to the debtor's security agreement.

(c) Subsection (b) is subject to section 490:4-210 on the security interest of a collecting bank, section 490:5-118 on the security interest of a letter-of-credit issuer or nominated person, section 490:9-110 on a security interest arising under Article 2 or 2A, and section 490:9-206 on security interests in investment property.

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

- (1) The security agreement becomes effective to create a security interest in the person's property; or
- (2) The person becomes generally obligated for the obligations of the other person, including the obligation secured under the security agreement, and acquires or succeeds to all or substantially all of the assets of the other person.

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

- (1) The agreement satisfies subsection (b)(3) with respect to existing or after-acquired property of the new debtor to the extent the property is described in the agreement; and
- (2) Another agreement is not necessary to make a security interest in the property enforceable.

(f) The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by section 490:9-315 and is also attachment of a security interest in a supporting obligation for the collateral.

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

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

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

§490:9-204 After-acquired property; future advances. (a) Except as otherwise provided in subsection (b), a security agreement may create or provide for a security interest in after-acquired collateral.

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

- (1) Consumer goods, other than an accession when given as additional security, unless the debtor acquires rights in them within ten days after the secured party gives value; or
- (2) A commercial tort claim.

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

§490:9-205 Use or disposition of collateral permissible. (a) A security interest is not invalid or fraudulent against creditors solely because:

- (1) The debtor has the right or ability to:
 - (A) Use, commingle, or dispose of all or part of the collateral, including returned or repossessed goods;
 - (B) Collect, compromise, enforce, or otherwise deal with collateral;
 - (C) Accept the return of collateral or make repossessions; or
 - (D) Use, commingle, or dispose of proceeds; or

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

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

§490:9-206 Security interest arising in purchase or delivery of financial asset. (a) A security interest in favor of a securities intermediary attaches to a person's security entitlement if:

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

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

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

(c) A security interest in favor of a person that delivers a certificated security or other financial asset represented by a writing attaches to the security or other financial asset if:

(1) The security or other financial asset:

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

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

(2) The agreement calls for delivery against payment.

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

SUBPART 2. RIGHTS AND DUTIES

§490:9-207 Rights and duties of secured party having possession or control of collateral. (a) Except as otherwise provided in subsection (d), a secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession. In the case of chattel paper or an instrument, reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

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

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

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

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

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

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

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

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

(c) Except as otherwise provided in subsection (d), a secured party having possession of collateral or control of collateral under section 490:9-104, 490:9-105, 490:9-106, or 490:9-107:

- (1) May hold as additional security any proceeds, except money or funds, received from the collateral;
- (2) Shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and
- (3) May create a security interest in the collateral.

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

- (1) Subsection (a) does not apply unless the secured party is entitled under an agreement:
 - (A) To charge back uncollected collateral; or
 - (B) Otherwise to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other default of an account debtor or other obligor on the collateral; and
- (2) Subsections (b) and (c) do not apply.

§490:9-208 Additional duties of secured party having control of collateral. (a) This section applies to cases in which there is no outstanding secured obligation and the secured party is not committed to make advances, incur obligations, or otherwise give value.

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

- (1) A secured party having control of a deposit account under section 490:9-104(a)(2) shall send to the bank with which the deposit account is maintained an authenticated statement that releases the bank from any further obligation to comply with instructions originated by the secured party;
- (2) A secured party having control of a deposit account under section 490:9-104(a)(3) shall:
 - (A) Pay the debtor the balance on deposit in the deposit account; or
 - (B) Transfer the balance on deposit into a deposit account in the debtor's name;
- (3) A secured party, other than a buyer, having control of electronic chattel paper under section 490:9-105 shall:
 - (A) Communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian;
 - (B) If the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and
 - (C) Take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party;
- (4) A secured party having control of investment property under section 490:8-106(d)(2) or 490:9-106(b) shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity intermediary from any further

obligation to comply with entitlement orders or directions originated by the secured party; and

- (5) A secured party having control of a letter-of-credit right under section 490:9-107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party.

§490:9-209 Duties of secured party if account debtor has been notified of assignment. (a) Except as otherwise provided in subsection (c), this section applies if:

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

(b) Within ten days after receiving an authenticated demand by the debtor, a secured party shall send to an account debtor that has received notification of an assignment to the secured party as assignee under section 490:9-406(a) an authenticated record that releases the account debtor from any further obligation to the secured party.

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

§490:9-210 Request for accounting; request regarding list of collateral or statement of account. (a) In this section:

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

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

- (1) In the case of a request for an accounting, by authenticating and sending to the debtor an accounting; and
- (2) In the case of a request regarding a list of collateral or a request regarding a statement of account, by authenticating and sending to the debtor an approval or correction.

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

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

- (1) Disclaiming any interest in the collateral; and
- (2) If known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's security interest in the collateral.

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

- (1) Disclaiming any interest in the obligations; and
- (2) If known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the obligations.

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

PART 3. PERFECTION AND PRIORITY
SUBPART 1. LAW GOVERNING PERFECTION AND PRIORITY

§490:9-301 Law governing perfection and priority of security interests.

Except as otherwise provided in sections 490:9-303 through 490:9-306, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

- (1) Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.
- (2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral.
- (3) Except as otherwise provided in paragraph (4), while negotiable documents, goods, instruments, money, or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:
 - (A) Perfection of a security interest in the goods by filing a fixture filing;
 - (B) Perfection of a security interest in timber to be cut; and
 - (C) The effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.
- (4) The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.

§490:9-302 Law governing perfection and priority of agricultural liens.

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

§490:9-303 Law governing perfection and priority of security interests in goods covered by a certificate of title. (a) This section applies to goods covered by a certificate of title, even if there is no other relationship between the jurisdiction under whose certificate of title the goods are covered and the goods or the debtor.

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

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

§490:9-304 Law governing perfection and priority of security interests in deposit accounts. (a) The local law of a bank's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a deposit account maintained with that bank.

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

- (1) If an agreement between the bank and the debtor governing the deposit account expressly provides that a particular jurisdiction is the bank's jurisdiction for purposes of this part, this article, or this chapter, that jurisdiction is the bank's jurisdiction.
- (2) If paragraph (1) does not apply and an agreement between the bank and its customer governing the deposit account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the bank's jurisdiction.
- (3) If neither paragraph (1) nor paragraph (2) applies and an agreement between the bank and its customer governing the deposit account expressly provides that the deposit account is maintained at an office in a particular jurisdiction, that jurisdiction is the bank's jurisdiction.
- (4) If none of the preceding paragraphs applies, the bank's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the customer's account is located.
- (5) If none of the preceding paragraphs applies, the bank's jurisdiction is the jurisdiction in which the chief executive office of the bank is located.

§490:9-305 Law governing perfection and priority of security interests in investment property. (a) Except as otherwise provided in subsection (c), the following rules apply:

- (1) While a security certificate is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in the certificated security represented thereby.
- (2) The local law of the issuer's jurisdiction as specified in section 490:8-110(d) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in an uncertificated security.
- (3) The local law of the securities intermediary's jurisdiction as specified in section 490:8-110(e) governs perfection, the effect of perfection or

nonperfection, and the priority of a security interest in a security entitlement or securities account.

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

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

- (1) If an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that a particular jurisdiction is the commodity intermediary's jurisdiction for purposes of this part, this article, or this chapter, that jurisdiction is the commodity intermediary's jurisdiction.
- (2) If paragraph (1) does not apply and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.
- (3) If neither paragraph (1) nor paragraph (2) applies and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the commodity account is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.
- (4) If none of the preceding paragraphs applies, the commodity intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the commodity customer's account is located.
- (5) If none of the preceding paragraphs applies, the commodity intermediary's jurisdiction is the jurisdiction in which the chief executive office of the commodity intermediary is located.
- (c) The local law of the jurisdiction in which the debtor is located governs:
 - (1) Perfection of a security interest in investment property by filing;
 - (2) Automatic perfection of a security interest in investment property created by a broker or securities intermediary; and
 - (3) Automatic perfection of a security interest in a commodity contract or commodity account created by a commodity intermediary.

§490:9-306 Law governing perfection and priority of security interests in letter-of-credit rights. (a) Subject to subsection (c), the local law of the issuer's jurisdiction or a nominated person's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a letter-of-credit right if the issuer's jurisdiction or nominated person's jurisdiction is a state.

(b) For purposes of this part, an issuer's jurisdiction or nominated person's jurisdiction is the jurisdiction whose law governs the liability of the issuer or nominated person with respect to the letter-of-credit right as provided in section 490:5-116.

(c) This section does not apply to a security interest that is perfected only under section 490:9-308(d).

§490:9-307 Location of debtor. (a) In this section, "place of business" means a place where a debtor conducts its affairs.

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

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

- (2) A debtor that is an organization and has only one place of business is located at its place of business.
- (3) A debtor that is an organization and has more than one place of business is located at its chief executive office.
- (c) Subsection (b) applies only if a debtor's residence, place of business, or chief executive office, as applicable, is located in a jurisdiction whose law generally requires information concerning the existence of a nonpossessory security interest to be made generally available in a filing, recording, or registration system as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. If subsection (b) does not apply, the debtor is located in the District of Columbia.
- (d) A person that ceases to exist, have a residence, or have a place of business continues to be located in the jurisdiction specified by subsections (b) and (c).
- (e) A registered organization that is organized under the law of a state is located in that state.
- (f) Except as otherwise provided in subsection (i), a registered organization that is organized under the law of the United States and a branch or agency of a bank that is not organized under the law of the United States or a state are located:
- (1) In the state that the law of the United States designates, if the law designates a state of location;
 - (2) In the state that the registered organization, branch, or agency designates, if the law of the United States authorizes the registered organization, branch, or agency to designate its state of location; or
 - (3) In the District of Columbia, if neither paragraph (1) nor paragraph (2) applies.
- (g) A registered organization continues to be located in the jurisdiction specified by subsection (e) or (f) notwithstanding:
- (1) The suspension, revocation, forfeiture, or lapse of the registered organization's status as such in its jurisdiction of organization; or
 - (2) The dissolution, winding up, or cancellation of the existence of the registered organization.
- (h) The United States government is located in the District of Columbia.
- (i) A branch or agency of a bank that is not organized under the law of the United States or a state is located in the state in which the branch or agency is licensed, if all branches and agencies of the bank are licensed in only one state.
- (j) A foreign air carrier under the Federal Aviation Act of 1958, as amended, is located at the designated office of the agent upon which service of process may be made on behalf of the carrier.
- (k) This section applies only for purposes of this part.

SUBPART 2. PERFECTION

§490:9-308 When security interest or agricultural lien is perfected; continuity of perfection. (a) Except as otherwise provided in this section and section 490:9-309, a security interest is perfected if it has attached and all of the applicable requirements for perfection in sections 490:9-310 through 490:9-316 have been satisfied. A security interest is perfected when it attaches if the applicable requirements are satisfied before the security interest attaches.

(b) An agricultural lien is perfected if it has become effective and all of the applicable requirements for perfection in section 490:9-310 have been satisfied. An agricultural lien is perfected when it becomes effective if the applicable requirements are satisfied before the agricultural lien becomes effective.

(c) A security interest or agricultural lien is perfected continuously if it is originally perfected by one method under this article and is later perfected by

another method under this article, without an intermediate period when it was unperfected.

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

(e) Perfection of a security interest in a right to payment or performance also perfects a security interest in a security interest, mortgage, or other lien on personal or real property securing the right.

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

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

§490:9-309 Security interest perfected upon attachment. The following security interests are perfected when they attach:

- (1) A purchase-money security interest in consumer goods, except as otherwise provided in section 490:9-311(b) with respect to consumer goods that are subject to a statute or treaty described in section 490:9-311(a);
- (2) An assignment of accounts or payment intangibles which does not by itself or in conjunction with other assignments to the same assignee transfer a significant part of the assignor's outstanding accounts or payment intangibles;
- (3) A sale of a payment intangible;
- (4) A sale of a promissory note;
- (5) A security interest created by the assignment of a health-care-insurance receivable to the provider of the health-care goods or services;
- (6) A security interest arising under section 490:2-401, 490:2-505, 490:2-711(3), or 490:2A-508(e), until the debtor obtains possession of the collateral;
- (7) A security interest of a collecting bank arising under section 490:4-210;
- (8) A security interest of an issuer or nominated person arising under section 490:5-118;
- (9) A security interest arising in the delivery of a financial asset under section 490:9-206(c);
- (10) A security interest in investment property created by a broker or securities intermediary;
- (11) A security interest in a commodity contract or a commodity account created by a commodity intermediary;
- (12) An assignment for the benefit of all creditors of the transferor and subsequent transfers by the assignee thereunder; and
- (13) A security interest created by an assignment of a beneficial interest in a decedent's estate.

§490:9-310 When filing required to perfect security interest or agricultural lien; security interests and agricultural liens to which filing provisions do not apply. (a) Except as otherwise provided in subsection (b) and section 490:9-312(b), a financing statement must be filed to perfect all security interests and agricultural liens.

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

- (1) That is perfected under section 490:9-308(d), (e), (f), or (g);
- (2) That is perfected under section 490:9-309 when it attaches;
- (3) In property subject to a statute, regulation, or treaty described in section 490:9-311(a);

- (4) In goods in possession of a bailee which is perfected under section 490:9-312(d)(1) or (2);
- (5) In certificated securities, documents, goods, or instruments which is perfected without filing or possession under section 490:9-312(e), (f), or (g);
- (6) In collateral in the secured party's possession under section 490:9-313;
- (7) In a certificated security which is perfected by delivery of the security certificate to the secured party under section 490:9-313;
- (8) In deposit accounts, electronic chattel paper investment property, or letter-of-credit rights which is perfected by control under section 490:9-314;
- (9) In proceeds which is perfected under section 490:9-315; or
- (10) That is perfected under section 490:9-316.

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

§490:9-311 Perfection of security interests in property subject to certain statutes, regulations, and treaties. (a) Except as otherwise provided in subsection (d), the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

- (1) A statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt section 490:9-310(a);
- (2) Chapter 286; or
- (3) A certificate-of-title statute of another jurisdiction which provides for a security interest to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

(b) Compliance with the requirements of a statute, regulation, or treaty described in subsection (a) for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this article. Except as otherwise provided in subsection (d) and sections 490:9-313 and 490:9-316(d) and (e) for goods covered by a certificate of title, a security interest in property subject to a statute, regulation, or treaty described in subsection (a) may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

(c) Except as otherwise provided in subsection (d) and section 490:9-316(d) and (e), duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation, or treaty described in subsection (a) are governed by the statute, regulation, or treaty. In other respects, the security interest is subject to this article.

(d) During any period in which collateral is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling or leasing goods of that kind, this section does not apply to a security interest in that collateral created by that person as debtor.

§490:9-312 Perfection of security interests in chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letter-of-credit rights, and money; perfection by permissive filing; temporary perfection without filing or transfer of possession. (a) A security interest in chattel paper, negotiable documents, instruments, or investment property may be perfected by filing.

(b) Except as otherwise provided in section 490:9-315(c) and (d) for proceeds:

- (1) A security interest in a deposit account may be perfected only by control under section 490:9-314;
- (2) And except as otherwise provided in section 490:9-308(d), a security interest in a letter-of-credit right may be perfected only by control under section 490:9-314; and
- (3) A security interest in money may be perfected only by the secured party's taking possession under section 490:9-313.

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

- (1) A security interest in the goods may be perfected by perfecting a security interest in the document; and
- (2) A security interest perfected in the document has priority over any security interest that becomes perfected in the goods by another method during that time.

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

- (1) Issuance of a document in the name of the secured party;
- (2) The bailee's receipt of notification of the secured party's interest; or
- (3) Filing as to the goods.

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

(f) A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for twenty days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:

- (1) Ultimate sale or exchange; or
- (2) Loading, unloading, storing, shipping, transshipping manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.

(g) A perfected security interest in a certificated security or instrument remains perfected for twenty days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:

- (1) Ultimate sale or exchange; or
- (2) Presentation, collection, enforcement, renewal, or registration of transfer.

(h) After the twenty-day period specified in subsection (e), (f), or (g) expires, perfection depends upon compliance with this article.

§490:9-313 When possession by or delivery to secured party perfects security interest without filing. (a) Except as otherwise provided in subsection (b), a secured party may perfect a security interest in negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under section 490:8-301.

(b) With respect to goods covered by a certificate of title issued by this State, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in section 490:9-316(d).

(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) The person in possession authenticates a record acknowledging that it holds possession of the collateral for the secured party's benefit; or
- (2) The person takes possession of the collateral after having authenticated a record acknowledging that it will hold possession of collateral for the secured party's benefit.

(d) If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.

(e) A security interest in a certificated security in registered form is perfected by delivery when delivery of the certificated security occurs under section 490:8-301 and remains perfected by delivery until the debtor obtains possession of the security certificate.

(f) A person in possession of collateral is not required to acknowledge that it holds possession for a secured party's benefit.

(g) If a person acknowledges that it holds possession for the secured party's benefit:

- (1) The acknowledgment is effective under subsection (c) or section 490:8-301(a), even if the acknowledgment violates the rights of a debtor; and
- (2) Unless the person otherwise agrees or law other than this article otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.

(h) A secured party having possession of collateral does not relinquish possession by delivering the collateral to a person other than the debtor or a lessee of the collateral from the debtor in the ordinary course of the debtor's business if the person was instructed before the delivery or is instructed contemporaneously with the delivery:

- (1) To hold possession of the collateral for the secured party's benefit; or
- (2) To redeliver the collateral to the secured party.

(i) A secured party does not relinquish possession, even if a delivery under subsection (h) violates the rights of a debtor. A person to which collateral is delivered under subsection (h) does not owe any duty to the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees or law other than this article otherwise provides.

§490:9-314 Perfection by control. (a) A security interest in investment property, deposit accounts, letter-of-credit rights, or electronic chattel paper may be perfected by control of the collateral under section 490:9-104, 490:9-105, 490:9-106, or 490:9-107.

(b) A security interest in deposit accounts, electronic chattel paper, or letter-of-credit rights is perfected by control under section 490:9-104, 490:9-105, or 490:9-107 when the secured party obtains control and remains perfected by control only while the secured party retains control.

(c) A security interest in investment property is perfected by control under section 490:9-106 from the time the secured party obtains control and remains perfected by control until:

- (1) The secured party does not have control; and
- (2) One of the following occurs:
 - (A) If the collateral is a certificated security, the debtor has or acquires possession of the security certificate;

- (B) If the collateral is an uncertificated security the issuer has registered or registers the debtor as the registered owner; or
- (C) If the collateral is a security entitlement, the debtor is or becomes the entitlement holder.

§490:9-315 Secured party's rights on disposition of collateral and in proceeds. (a) Except as otherwise provided in this article and in section 490:2-403(2):

- (1) A security interest or agricultural lien continues in collateral notwithstanding sale, lease, license exchange, or other disposition thereof unless the secured party authorized the disposition free of the security interest or agricultural lien; and
 - (2) A security interest attaches to any identifiable proceeds of collateral.
- (b) Proceeds that are commingled with other property are identifiable proceeds:

- (1) If the proceeds are goods, to the extent provided by section 490:9-336; and
 - (2) If the proceeds are not goods, to the extent that the secured party identifies the proceeds by a method of tracing, including application of equitable principles, that is permitted under law other than this article with respect to commingled property of the type involved.
- (c) A security interest in proceeds is a perfected security interest if the security interest in the original collateral was perfected.

(d) A perfected security interest in proceeds becomes unperfected on the twenty-first day after the security interest attaches to the proceeds unless:

- (1) The following conditions are satisfied:
 - (A) A filed financing statement covers the original collateral;
 - (B) The proceeds are collateral in which a security interest may be perfected by filing in the office in which the financing statement has been filed; and
 - (C) The proceeds are not acquired with cash proceeds;
- (2) The proceeds are identifiable cash proceeds; or
- (3) The security interest in the proceeds is perfected other than under subsection (c) when the security interest attaches to the proceeds or within twenty days thereafter.

(e) If a filed financing statement covers the original collateral, a security interest in proceeds which remains perfected under subsection (d)(1) becomes unperfected at the later of:

- (1) When the effectiveness of the filed financing statement lapses under section 490:9-515 or is terminated under section 490:9-513; or
- (2) The twenty-first day after the security interest attaches to the proceeds.

§490:9-316 Continued perfection of security interest following change in governing law. (a) A security interest perfected pursuant to the law of the jurisdiction designated in section 490:9-301(1) or 490:9-305(c) remains perfected until the earliest of:

- (1) The time perfection would have ceased under the law of that jurisdiction;
- (2) The expiration of four months after a change of the debtor's location to another jurisdiction; or
- (3) The expiration of one year after a transfer of collateral to a person that thereby becomes a debtor and is located in another jurisdiction.

(b) If a security interest described in subsection (a) becomes perfected under the law of the other jurisdiction before the earliest time or event described in that

subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earliest time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(c) A possessory security interest in collateral, other than goods covered by a certificate of title and as-extracted collateral consisting of goods, remains continuously perfected if:

- (1) The collateral is located in one jurisdiction and subject to a security interest perfected under the law of that jurisdiction;
- (2) Thereafter the collateral is brought into another jurisdiction; and
- (3) Upon entry into the other jurisdiction, the security interest is perfected under the law of the other jurisdiction.

(d) Except as otherwise provided in subsection (e), a security interest in goods covered by a certificate of title which is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from this State remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered.

(e) A security interest described in subsection (d) becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value if the applicable requirements for perfection under section 490:9-311(b) or 490:9-313 are not satisfied before the earlier of:

- (1) The time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from this State; or
- (2) The expiration of four months after the goods had become so covered.

(f) A security interest in deposit accounts, letter-of-credit rights, or investment property which is perfected under the law of the bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's jurisdiction, as applicable, remains perfected until the earlier of:

- (1) The time the security interest would have become unperfected under the law of that jurisdiction; or
- (2) The expiration of four months after a change of the applicable jurisdiction to another jurisdiction.

(g) If a security interest described in subsection (f) becomes perfected under the law of the other jurisdiction before the earlier of the time or the end of the period described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier of that time or the end of that period, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

SUBPART 3. PRIORITY

§490:9-317 Interests that take priority over or take free of security interest or agricultural lien. (a) A security interest or agricultural lien is subordinate to the rights of:

- (1) A person entitled to priority under section 490:9-322; and
- (2) Except as otherwise provided in subsection (e), a person that becomes a lien creditor before the earlier of the time the security interest or agricultural lien is perfected or a financing statement covering the collateral is filed.

(b) Except as otherwise provided in subsection (e), a buyer, other than a secured party, of tangible chattel paper, documents, goods, instruments, or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) Except as otherwise provided in subsection (e), a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) A licensee of a general intangible or a buyer, other than a secured party, of accounts, electronic chattel paper, general intangibles, or investment property other than a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) Except as otherwise provided in sections 490:9-320 and 490:9-321, if a person files a financing statement with respect to a purchase-money security interest before or within twenty days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing.

§490:9-318 No interest retained in right to payment that is sold; rights and title of seller of account or chattel paper with respect to creditors and purchasers. (a) A debtor that has sold an account, chattel paper, payment intangible, or promissory note does not retain a legal or equitable interest in the collateral sold.

(b) For purposes of determining the rights of creditors of, and purchasers for value of an account or chattel paper from, a debtor that has sold an account or chattel paper, while the buyer's security interest is unperfected, the debtor is deemed to have rights and title to the account or chattel paper identical to those the debtor sold.

§490:9-319 Rights and title of consignee with respect to creditors and purchasers. (a) Except as otherwise provided in subsection (b), for purposes of determining the rights of creditors of, and purchasers for value of goods from, a consignee, while the goods are in the possession of the consignee, the consignee is deemed to have rights and title to the goods identical to those the consignor had or had power to transfer.

(b) For purposes of determining the rights of a creditor of a consignee, law other than this article determines the rights and title of a consignee while goods are in the consignee's possession if, under this part, a perfected security interest held by the consignor would have priority over the rights of the creditor.

§490:9-320 Buyer of goods. (a) Except as otherwise provided in subsection (e), a buyer in ordinary course of business, other than a person buying farm products from a person engaged in farming operations, takes free of a security interest created by the buyer's seller, even if the security interest is perfected and the buyer knows of its existence.

(b) Except as otherwise provided in subsection (e), a buyer of goods from a person who used or bought the goods for use primarily for personal, family, or household purposes takes free of a security interest, even if perfected, if the buyer buys:

- (1) Without knowledge of the security interest;
- (2) For value;
- (3) Primarily for the buyer's personal, family, or household purposes; and
- (4) Before the filing of a financing statement covering the goods.

(c) To the extent that it affects the priority of a security interest over a buyer of goods under subsection (b), the period of effectiveness of a filing made in the jurisdiction in which the seller is located is governed by section 490:9-316(a) and (b).

(d) A buyer in ordinary course of business buying oil, gas, or other minerals at the wellhead or minehead or after extraction takes free of an interest arising out of an encumbrance.

(e) Subsections (a) and (b) do not affect a security interest in goods in the possession of the secured party under section 490:9-313.

§490:9-321 Licensee of general intangible and lessee of goods in ordinary course of business. (a) In this section, “licensee in ordinary course of business” means a person that becomes a licensee of a general intangible in good faith, without knowledge that the license violates the rights of another person in the general intangible, and in the ordinary course from a person in the business of licensing general intangibles of that kind. A person becomes a licensee in the ordinary course if the license to the person comports with the usual or customary practices in the kind of business in which the licensor is engaged or with the licensor’s own usual or customary practices.

(b) A licensee in ordinary course of business takes its rights under a nonexclusive license free of a security interest in the general intangible created by the licensor, even if the security interest is perfected and the licensee knows of its existence.

(c) A lessee in ordinary course of business takes its leasehold interest free of a security interest in the goods created by the lessor, even if the security interest is perfected and the lessee knows of its existence.

§490:9-322 Priorities among conflicting security interests in and agricultural liens on same collateral. (a) Except as otherwise provided in this section, priority among conflicting security interests and agricultural liens in the same collateral is determined according to the following rules:

- (1) Conflicting perfected security interests and agricultural liens rank according to priority in time of filing or perfection. Priority dates from the earlier of the time a filing covering the collateral is first made or the security interest or agricultural lien is first perfected, if there is no period thereafter when there is neither filing nor perfection.
- (2) A perfected security interest or agricultural lien has priority over a conflicting unperfected security interest or agricultural lien.
- (3) The first security interest or agricultural lien to attach or become effective has priority if conflicting security interests and agricultural liens are unperfected.

(b) For the purposes subsection (a)(1):

- (1) The time of filing or perfection as to a security interest in collateral is also the time of filing or perfection as to a security interest in proceeds; and
- (2) The time of filing or perfection as to a security interest in collateral supported by a supporting obligation is also the time of filing or perfection as to a security interest in the supporting obligation.

(c) Except as otherwise provided in subsection (f), a security interest in collateral which qualifies for priority over a conflicting security interest under section 490:9-327, 490:9-328, 490:9-329, 490:9-330, or 490:9-331 also has priority over a conflicting security interest in:

- (1) Any supporting obligation for the collateral; and
- (2) Proceeds of the collateral if:

- (A) The security interest in proceeds is perfected;
- (B) The proceeds are cash proceeds or of the same type as the collateral; and
- (C) In the case of proceeds that are proceeds of proceeds, all intervening proceeds are cash proceeds, proceeds of the same type as the collateral, or an account relating to the collateral.

(d) Subject to subsection (e) and except as otherwise provided in subsection (f), if a security interest in chattel paper, deposit accounts, negotiable documents, instruments, investment property, or letter-of-credit rights is perfected by a method other than filing, conflicting perfected security interests in proceeds of the collateral rank according to priority in time of filing.

(e) Subsection (d) applies only if the proceeds of the collateral are not cash proceeds, chattel paper, negotiable documents, instruments, investment property, or letter-of-credit rights.

(f) Subsections (a) through (e) are subject to:

- (1) Subsection (g) and the other provisions of this part;
- (2) Section 490:4-210 with respect to a security interest of a collecting bank;
- (3) Section 490:5-118 with respect to a security interest of an issuer or nominated person; and
- (4) Section 490:9-110 with respect to a security interest arising under Article 2 or 2A.

(g) A perfected agricultural lien on collateral has priority over a conflicting security interest in or agricultural lien on the same collateral if the statute creating the agricultural lien so provides.

§490:9-323 Future advances. (a) Except as otherwise provided in subsection (c), for purposes of determining the priority of a perfected security interest under section 490:9-322(a)(1), perfection of the security interest dates from the time an advance is made to the extent that the security interest secures an advance that:

- (1) Is made while the security interest is perfected only:
 - (A) Under section 490:9-309 when it attaches; or
 - (B) Temporarily under section 490:9-312(e), (f), or (g); and
- (2) Is not made pursuant to a commitment entered into before or while the security interest is perfected by a method other than under section 490:9-309 or 490:9-312(e), (f), or (g).

(b) Except as otherwise provided in subsection (c), a security interest is subordinate to the rights of a person that becomes a lien creditor to the extent that the security interest secures an advance made more than forty-five days after the person becomes a lien creditor unless the advance is made:

- (1) Without knowledge of the lien; or
- (2) Pursuant to a commitment entered into without knowledge of the lien.

(c) Subsections (a) and (b) do not apply to a security interest held by a secured party that is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor.

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

- (1) The time the secured party acquires knowledge of the buyer's purchase; or
- (2) Forty-five days after the purchase.

(e) Subsection (d) does not apply if the advance is made pursuant to a commitment entered into without knowledge of the buyer's purchase and before the expiration of the forty-five-day period.

(f) Except as otherwise provided in subsection (g), a lessee of goods, other than a lessee in ordinary course of business, takes the leasehold interest free of a security interest to the extent that it secures advances made after the earlier of:

- (1) The time the secured party acquires knowledge of the lease; or
- (2) Forty-five days after the lease contract becomes enforceable.

(g) Subsection (f) does not apply if the advance is made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the forty-five-day period.

§490:9-324 Priority of purchase-money security interests. (a) Except as otherwise provided in subsection (g), a perfected purchase-money security interest in goods other than inventory or livestock has priority over a conflicting security interest in the same goods, and, except as otherwise provided in section 490:9-327, a perfected security interest in its identifiable proceeds also has priority, if the purchase-money security interest is perfected when the debtor receives possession of the collateral or within twenty days thereafter.

(b) Subject to subsection (c) and except as otherwise provided in subsection (g), a perfected purchase-money security interest in inventory has priority over a conflicting security interest in the same inventory, has priority over a conflicting security interest in chattel paper or an instrument constituting proceeds of the inventory and in proceeds of the chattel paper, if so provided in section 490:9-330, and, except as otherwise provided in section 490:9-327, also has priority in identifiable cash proceeds of the inventory to the extent the identifiable cash proceeds are received on or before the delivery of the inventory to a buyer, if:

- (1) The purchase-money security interest is perfected when the debtor receives possession of the inventory;
- (2) The purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;
- (3) The holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and
- (4) The notification states that the person sending the notification has or expects to acquire a purchase-money security interest in inventory of the debtor and describes the inventory.

(c) Subsection (b)(2) through (4) applies only if the holder of the conflicting security interest had filed a financing statement covering the same types of inventory:

- (1) If the purchase-money security interest is perfected by filing, before the date of the filing; or
- (2) If the purchase-money security interest is temporarily perfected without filing or possession under section 490:9-312(f), before the beginning of the twenty-day period thereunder.

(d) Subject to subsection (e) and except as otherwise provided in subsection (g), a perfected purchase-money security interest in livestock that are farm products has priority over a conflicting security interest in the same livestock, and, except as otherwise provided in section 490:9-327, a perfected security interest in their identifiable proceeds and identifiable products in their unmanufactured states also has priority, if:

- (1) The purchase-money security interest is perfected when the debtor receives possession of the livestock;
- (2) The purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;

- (3) The holder of the conflicting security interest receives the notification within six months before the debtor receives possession of the livestock; and
- (4) The notification states that the person sending the notification has or expects to acquire a purchase-money security interest in livestock of the debtor and describes the livestock.

(e) Subsection (d)(2) through (4) applies only if the holder of the conflicting security interest had filed a financing statement covering the same types of livestock:

- (1) If the purchase-money security interest is perfected by filing, before the date of the filing; or
- (2) If the purchase-money security interest is temporarily perfected without filing or possession under section 490:9-312(f), before the beginning of the twenty-day period thereunder.

(f) Except as otherwise provided in subsection (g), a perfected purchase-money security interest in software has priority over a conflicting security interest in the same collateral, and, except as otherwise provided in section 490:9-327, a perfected security interest in its identifiable proceeds also has priority, to the extent that the purchase-money security interest in the goods in which the software was acquired for use has priority in the goods and proceeds of the goods under this section.

(g) If more than one security interest qualifies for priority in the same collateral under subsection (a), (b), (d), or (f):

- (1) A security interest securing an obligation incurred as all or part of the price of the collateral has priority over a security interest securing an obligation incurred for value given to enable the debtor to acquire rights in or the use of collateral; and
- (2) In all other cases, section 490:9-322(a) applies to the qualifying security interests.

§490:9-325 Priority of security interests in transferred collateral. (a)

Except as otherwise provided in subsection (b), a security interest created by a debtor is subordinate to a security interest in the same collateral created by another person if:

- (1) The debtor acquired the collateral subject to the security interest created by the other person;
- (2) The security interest created by the other person was perfected when the debtor acquired the collateral; and
- (3) There is no period thereafter when the security interest is unperfected.

(b) Subsection (a) subordinates a security interest only if the security interest:

- (1) Otherwise would have priority solely under section 490:9-322(a) or 490:9-324; or
- (2) Arose solely under section 490:2-711(3) or 490:2A-508(e).

§490:9-326 Priority of security interests created by new debtor. (a)

Subject to subsection (b), a security interest created by a new debtor which is perfected by a filed financing statement that is effective solely under section 490:9-508 in collateral in which a new debtor has or acquires rights is subordinate to a security interest in the same collateral which is perfected other than by a filed financing statement that is effective solely under section 490:9-508.

(b) The other provisions of this part determine the priority among conflicting security interests in the same collateral perfected by filed financing statements that are effective solely under section 490:9-508. However, if the security agreements to which a new debtor became bound as debtor were not entered into by the same

original debtor, the conflicting security interests rank according to priority in time of the new debtor's having become bound.

§490:9-327 Priority of security interests in deposit account. The following rules govern priority among conflicting security interests in the same deposit account:

- (1) A security interest held by a secured party having control of the deposit account under section 490:9-104 has priority over a conflicting security interest held by a secured party that does not have control.
- (2) Except as otherwise provided in paragraphs (3) and (4), security interests perfected by control under section 490:9-314 rank according to priority in time of obtaining control.
- (3) Except as otherwise provided in paragraph (4), a security interest held by the bank with which the deposit account is maintained has priority over a conflicting security interest held by another secured party.
- (4) A security interest perfected by control under section 490:9-104(a)(3) has priority over a security interest held by the bank with which the deposit account is maintained.

§490:9-328 Priority of security interests in investment property. The following rules govern priority among conflicting security interests in the same investment property:

- (1) A security interest held by a secured party having control of investment property under section 490:9-106 has priority over a security interest held by a secured party that does not have control of the investment property.
- (2) Except as otherwise provided in paragraphs (3) and (4), conflicting security interests held by secured parties each of which has control under section 490:9-106 rank according to priority in time of:
 - (A) If the collateral is a security, obtaining control;
 - (B) If the collateral is a security entitlement carried in a securities account and:
 - (i) If the secured party obtained control under section 490:8-106(d)(1), the secured party's becoming the person for which the securities account is maintained;
 - (ii) If the secured party obtained control under section 490:8-106(d)(2), the securities intermediary's agreement to comply with the secured party's entitlement orders with respect to security entitlements carried or to be carried in the securities account; or
 - (iii) If the secured party obtained control through another person under section 490:8-106(d)(3), the time on which priority would be based under this paragraph if the other person were the secured party; or
 - (C) If the collateral is a commodity contract carried with a commodity intermediary, the satisfaction of the requirement for control specified in section 490:9-106(b)(2) with respect to commodity contracts carried or to be carried with the commodity intermediary.
- (3) A security interest held by a securities intermediary in a security entitlement or a securities account maintained with the securities intermediary has priority over a conflicting security interest held by another secured party.

- (4) A security interest held by a commodity intermediary in a commodity contract or a commodity account maintained with the commodity intermediary has priority over a conflicting security interest held by another secured party.
- (5) A security interest in a certificated security in registered form which is perfected by taking delivery under section 490:9-313(a) and not by control under section 490:9-314 has priority over a conflicting security interest perfected by a method other than control.
- (6) Conflicting security interests created by a broker securities intermediary, or commodity intermediary which are perfected without control under section 490:9-106 rank equally.
- (7) In all other cases, priority among conflicting security interests in investment property is governed by sections 490:9-322 and 490:9-323.

§490:9-329 Priority of security interests in letter-of-credit right. The following rules govern priority among conflicting security interests in the same letter-of-credit right:

- (1) A security interest held by a secured party having control of the letter-of-credit right under section 490:9-107 has priority to the extent of its control over a conflicting security interest held by a secured party that does not have control.
- (2) Security interests perfected by control under section 490:9-314 rank according to priority in time of obtaining control.

§490:9-330 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 the chattel paper or obtains control of the chattel paper under section 490:9-105; and
- (2) The chattel paper does not indicate that it 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 the chattel paper or obtains control of the chattel paper under section 490:9-105 in good faith, in the ordinary course of the purchaser's business, and without knowledge that the purchase violates the rights of the secured party.

(c) Except as otherwise provided in section 490:9-327, a purchaser having priority in chattel paper under subsection (a) or (b) also has priority in proceeds of the chattel paper to the extent that:

- (1) Section 490:9-322 provides for priority in the proceeds; or
- (2) The proceeds consist of the specific goods covered by the chattel paper or cash proceeds of the specific goods, even if the purchaser's security interest in the proceeds is unperfected.

(d) Except as otherwise provided in section 490:9-331(a), a purchaser of an instrument has priority over a security interest in the instrument perfected by a method other than possession if the purchaser gives value and takes possession of the instrument in good faith and without knowledge that the purchase violates the rights of the secured party.

(e) For purposes of subsections (a) and (b), the holder of a purchase-money security interest in inventory gives new value for chattel paper constituting proceeds of the inventory.

(f) For purposes of subsections (b) and (d), if chattel paper or an instrument indicates that it has been assigned to an identified secured party other than the purchaser, a purchaser of the chattel paper or instrument has knowledge that the purchase violates the rights of the secured party.

§490:9-331 Priority of rights of purchasers of instruments, documents, and securities under other articles; priority of interests in financial assets and security entitlements under Article 8. (a) This article does not limit the rights of a holder in due course of a negotiable instrument, a holder to which a negotiable document of title has been duly negotiated, or a protected purchaser of a security. These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided in Articles 3, 7, and 8.

(b) This article does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of a claim under Article 8.

(c) Filing under this article does not constitute notice of a claim or defense to the holders, or purchasers, or persons described in subsections (a) and (b).

§490:9-332 Transfer of money; transfer of funds from deposit account.

(a) A transferee of money takes the money free of a security interest unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

(b) A transferee of funds from a deposit account takes the funds free of a security interest in the deposit account unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

§490:9-333 Priority of certain liens arising by operation of law. (a) In this section, “possessory lien” means an interest, other than a security interest or an agricultural lien:

(1) Which secures payment or performance of an obligation for services or materials furnished with respect to goods by a person in the ordinary course of the person’s business;

(2) Which is created by statute or rule of law in favor of the person; and

(3) Whose effectiveness depends on the person’s possession of the goods.

(b) A possessory lien on goods has priority over a security interest in the goods unless the lien is created by a statute that expressly provides otherwise.

§490:9-334 Priority of security interests in fixtures and crops. (a) A security interest under this article may be created in goods that are fixtures or may continue in goods that become fixtures. A security interest does not exist under this article in ordinary building materials incorporated into an improvement on land.

(b) This article does not prevent creation of an encumbrance upon fixtures under real property law.

(c) In cases not governed by subsections (d) through (h), a security interest in fixtures is subordinate to a conflicting interest of an encumbrancer or owner of the related real property other than the debtor.

(d) Except as otherwise provided in subsection (h), a perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property and:

(1) The security interest is a purchase-money security interest;

(2) The interest of the encumbrancer or owner arises before the goods become fixtures; and

(3) The security interest is perfected by a fixture filing before the goods become fixtures or within twenty days thereafter.

(e) A perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if:

- (1) The debtor has an interest of record in the real property or is in possession of the real property and the security interest:
 - (A) Is perfected by a fixture filing before the interest of the encumbrancer or owner is of record; and
 - (B) Has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner;
- (2) Before the goods become fixtures, the security interest is perfected by any method permitted by this article and the fixtures are readily removable:
 - (A) Factory or office machines;
 - (B) Equipment that is not primarily used or leased for use in the operation of the real property; or
 - (C) Replacements of domestic appliances that are consumer goods;
- (3) The conflicting interest is a lien on the real property obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this article; or
- (4) The security interest is:
 - (A) Created in a manufactured home in a manufactured-home transaction; and
 - (B) Perfected pursuant to a statute described in section 490:9-311(a)(2).

(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 record, consented to the security interest or disclaimed an interest in the goods as fixtures; or
- (2) The debtor has a right to remove the goods as against the encumbrancer or owner.

(g) The priority of the security interest under subsection (f) continues for a reasonable time if the debtor's right to remove the goods as against the encumbrancer or owner terminates.

(h) A mortgage is a construction mortgage to the extent that it secures an obligation incurred for the construction of an improvement on land, including the acquisition cost of the land, if a recorded record of the mortgage so indicates. Except as otherwise provided in subsections (e) and (f), a security interest in fixtures is subordinate to a construction mortgage if a record of the mortgage is recorded before the goods become fixtures and the goods become fixtures before the completion of the construction. A mortgage has this priority to the same extent as a construction mortgage to the extent that it is given to refinance a construction mortgage.

(i) A perfected security interest in crops growing on real property has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property.

§490:9-335 Accessions. (a) A security interest may be created in an accession and continues in collateral that becomes an accession.

(b) If a security interest is perfected when the collateral becomes an accession, the security interest remains perfected in the collateral.

(c) Except as otherwise provided in subsection (d), the other provisions of this part determine the priority of a security interest in an accession.

(d) A security interest in an accession is subordinate to a security interest in the whole which is perfected by compliance with the requirements of a certificate-of-title statute under section 490:9-311(b).

(e) After default, subject to part 6, a secured party may remove an accession from other goods if the security interest in the accession has priority over the claims of every person having an interest in the whole.

(f) A secured party that removes an accession from other goods under subsection (e) shall promptly reimburse any holder of a security interest or other lien on, or owner of, the whole or of the other goods, other than the debtor, for the cost of repair of any physical injury to the whole or the other goods. The secured party need not reimburse the holder or owner for any diminution in value of the whole or the other goods caused by the absence of the accession removed or by any necessity for replacing it. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

§490:9-336 Commingled goods. (a) In this section, “commingled goods” means goods that are physically united with other goods in such a manner that their identity is lost in a product or mass.

(b) A security interest does not exist in commingled goods as such. However, a security interest may attach to a product or mass that results when goods become commingled goods.

(c) If collateral becomes commingled goods, a security interest attaches to the product or mass.

(d) If a security interest in collateral is perfected before the collateral becomes commingled goods, the security interest that attaches to the product or mass under subsection (c) is perfected.

(e) Except as otherwise provided in subsection (f), the other provisions of this part determine the priority of a security interest that attaches to the product or mass under subsection (c).

(f) If more than one security interest attaches to the product or mass under subsection (c), the following rules determine priority:

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

§490:9-337 Priority of security interests in goods covered by certificate of title. If, while a security interest in goods is perfected by any method under the law of another jurisdiction, this State issues a certificate of title that does not show that the goods are subject to the security interest or contain a statement that they may be subject to security interests not shown on the certificate:

- (1) A buyer of the goods, other than a person in the business of selling goods of that kind, takes free of the security interest if the buyer gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest; and
- (2) The security interest is subordinate to a conflicting security interest in the goods that attaches, and is perfected under section 490:9-311(b), after issuance of the certificate and without the conflicting secured party’s knowledge of the security interest.

§490:9-338 Priority of security interest or agricultural lien perfected by filed financing statement providing certain incorrect information. If a security interest or agricultural lien is perfected by a filed financing statement providing

information described in section 490:9-516(b)(5) which is incorrect at the time the financing statement is filed:

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

§490:9-339 Priority subject to subordination. This article does not preclude subordination by agreement by a person entitled to priority.

SUBPART 4. RIGHTS OF BANK

§490:9-340 Effectiveness of right of recoupment or set-off against deposit account. (a) Except as otherwise provided in subsection (c), a bank with which a deposit account is maintained may exercise any right of recoupment or set-off against a secured party that holds a security interest in the deposit account.

(b) Except as otherwise provided in subsection (c), the application of this article to a security interest in a deposit account does not affect a right of recoupment or set-off of the secured party as to a deposit account maintained with the secured party.

(c) The exercise by a bank of a set-off against a deposit account is ineffective against a secured party that holds a security interest in the deposit account which is perfected by control under section 490:9-104(a)(3), if the set-off is based on a claim against the debtor.

§490:9-341 Bank's rights and duties with respect to deposit account. Except as otherwise provided in section 490:9-340(c), and unless the bank otherwise agrees in an authenticated record, a bank's rights and duties with respect to a deposit account maintained with the bank are not terminated, suspended, or modified by:

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

§490:9-342 Bank's right to refuse to enter into or disclose existence of control agreement. This article does not require a bank to enter into an agreement of the kind described in section 490:9-104(a)(2), even if its customer so requests or directs. A bank that has entered into such an agreement is not required to confirm the existence of the agreement to another person unless requested to do so by its customer.

PART 4. RIGHTS OF THIRD PARTIES

§490:9-401 Alienability of debtor's rights. (a) Except as otherwise provided in subsection (b) and sections 490:9-406, 490:9-407, 490:9-408, and 490:9-409, whether a debtor's rights in collateral may be voluntarily or involuntarily transferred is governed by law other than this article.

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

§490:9-402 Secured party not obligated on contract of debtor or in tort.

The existence of a security interest, agricultural lien, or authority given to a debtor to dispose of or use collateral, without more, does not subject a secured party to liability in contract or tort for the debtor's acts or omissions.

§490:9-403 Agreement not to assert defenses against assignee. (a) In this section, "value" has the meaning provided in section 490:3-303(a).

(b) Except as otherwise provided in this section, an agreement between an account debtor and an assignor not to assert against an assignee any claim or defense that the account debtor may have against the assignor is enforceable by an assignee that takes an assignment:

- (1) For value;
- (2) In good faith;
- (3) Without notice of a claim of a property or possessory right to the property assigned; and
- (4) Without notice of a defense or claim in recoupment of the type that may be asserted against a person entitled to enforce a negotiable instrument under section 490:3-305(a).

(c) Subsection (b) does not apply to defenses of a type that may be asserted against a holder in due course of a negotiable instrument under section 490:3-305(b).

(d) In a consumer transaction, if a record evidences the account debtor's obligation, law other than this article requires that the record include a statement to the effect that the rights of an assignee are subject to claims or defenses that the account debtor could assert against the original obligee, and the record does not include such a statement:

- (1) The record has the same effect as if the record included such a statement; and
- (2) The account debtor may assert against an assignee those claims and defenses that would have been available if the record included such a statement.

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

(f) Except as otherwise provided in subsection (d), this section does not displace law other than this article which gives effect to an agreement by an account debtor not to assert a claim or defense against an assignee.

§490:9-404 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), the rights of an assignee are subject to:

- (1) All terms of the agreement between the account debtor and assignor and any defense or claim in recoupment arising from the transaction that gave rise to the contract; and
- (2) Any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives a notification of the assignment authenticated by the assignor or the assignee.

(b) Subject to subsection (c) and except as otherwise provided in subsection (d), the claim of an account debtor against an assignor may be asserted against an assignee under subsection (a) only to reduce the amount the account debtor owes.

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

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

(e) This section does not apply to an assignment of a health-care-insurance receivable.

§409:9-405 Modification of assigned contract. (a) A modification of or substitution for an assigned contract is effective against an assignee if made in good faith. The assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that the modification or substitution is a breach of contract by the assignor. This subsection is subject to subsections (b) through (d).

(b) Subsection (a) applies to the extent that:

- (1) The right to payment or a part thereof under an assigned contract has not been fully earned by performance; or
- (2) The right to payment or a part thereof has been fully earned by performance and the account debtor has not received notification of the assignment under section 490:9-406(a).

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

(d) This section does not apply to an assignment of a health-care-insurance receivable.

§490:9-406 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 (i), an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(b) Subject to subsection (h), notification is ineffective under subsection (a):

- (1) If it does not reasonably identify the rights assigned;
- (2) To the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this article; or
- (3) At the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:
 - (A) Only a portion of the account, chattel paper, or general intangible has been assigned to that assignee;
 - (B) A portion has been assigned to another assignee; or

(C) The account debtor knows that the assignment to that assignee is limited.

(c) Subject to subsection (h), if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (a).

(d) Except as otherwise provided in subsection (e) and sections 490:2A-303 and 490:9-407, and subject to subsection (h), a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

- (1) Prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper payment intangible, or promissory note; or
- (2) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default breach, right of recoupment, claim, defense termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

(e) Subsection (d) does not apply to the sale of a payment intangible or promissory note.

(f) Except as otherwise provided in sections 490:2A-303 and 490:9-407, and subject to subsections (h) and (i), a rule of law, statute, or regulation, that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation:

- (1) Prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in the account or chattel paper; or
- (2) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default breach, right of recoupment, claim, defense termination, right of termination, or remedy under the account or chattel paper.

(g) Subject to subsection (h), an account debtor may not waive or vary its option under subsection (b)(3).

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

(i) This section does not apply to an assignment of a health-care-insurance receivable.

§490:9-407 Restrictions on creation or enforcement of security interest in leasehold interest or in lessor's residual interest. (a) Except as otherwise provided in subsection (b), a term in a lease agreement is ineffective to the extent that it:

- (1) Prohibits, restricts, or requires the consent of a party to the lease to the assignment or transfer of to the creation, attachment, perfection, or enforcement of a security interest in, an interest of a party under the lease contract or in the lessor's residual interest in the goods; or
- (2) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a

default breach, right of recoupment, claim, defense termination, right of termination, or remedy under the lease.

(b) Except as otherwise provided in section 490:2A-303(g), a term described in subsection (a)(2) is effective to the extent that there is:

- (1) A transfer by the lessee of the lessee's right of possession or use of the goods in violation of the term; or
- (2) A delegation of a material performance of either party to the lease contract in violation of the term.

(c) The creation, attachment, perfection, or enforcement of a security interest in the lessor's interest under the lease contract or the lessor's residual interest in the goods is not a transfer that materially impairs the lessee's prospect of obtaining return performance or materially changes the duty of or materially increases the burden or risk imposed on the lessee within the purview of section 490:2A-303(d) unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the lessor.

§490:9-408 Restrictions on assignment of promissory notes, health-care-insurance receivables, and certain general intangibles ineffective. (a) Except as otherwise provided in subsection (b), a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health-care-insurance receivable, or general intangible, is ineffective to the extent that the term:

- (1) Would impair the creation, attachment, or perfection of a security interest; or
- (2) Provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note health-care-insurance receivable, or general intangible.

(b) Subsection (a) applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note.

(c) A rule of law, statute, or regulation, that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health-care-insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation:

- (1) Would impair the creation, attachment, or perfection of a security interest; or
- (2) Provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note health-care-insurance receivable, or general intangible.

(d) To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or general intangible or a rule of law, statute, or regulation described in subsection (c) would be effective under law other than this article but is ineffective under subsec-

tion (a) or (c), the creation, attachment, or perfection of a security interest in the promissory note, health-care-insurance receivable, or general intangible:

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

§490:9-409 Restrictions on assignment of letter-of-credit rights ineffective. (a) A term in a letter of credit or a rule of law, statute, regulation, custom, or practice applicable to the letter of credit which prohibits, restricts, or requires the consent of an applicant, issuer, or nominated person to a beneficiary's assignment of or creation of a security interest in a letter-of-credit right is ineffective to the extent that the term or rule of law, statute, regulation, custom, or practice:

- (1) Would impair the creation, attachment, or perfection of a security interest in the letter-of-credit right; or
- (2) Provides that the assignment or the creation attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment claim, defense, termination, right of termination, or remedy under the letter-of-credit right.

(b) To the extent that a term in a letter of credit is ineffective under subsection (a) but would be effective under law other than this article or a custom or practice applicable to the letter of credit, to the transfer of a right to draw or otherwise demand performance under the letter of credit, or to the assignment of a right to proceeds of the letter of credit, the creation, attachment, or perfection of a security interest in the letter-of-credit right:

- (1) Is not enforceable against the applicant, issuer nominated person, or transferee beneficiary;
- (2) Imposes no duties or obligations on the applicant issuer, nominated person, or transferee beneficiary; and
- (3) Does not require the applicant, issuer, nominated person, or transferee beneficiary to recognize the security interest, pay or render performance to the secured party, or accept payment or other performance from the secured party.

PART 5. FILING
SUBPART 1. FILING OFFICE; CONTENTS AND
EFFECTIVENESS OF FINANCING STATEMENT

§490:9-501 Filing office. (a) Except as otherwise provided in subsection (b), if the local law of this State governs perfection of a security interest or agricultural lien, the office in which to file a financing statement to perfect the security interest or agricultural lien is:

- (1) The office designated for the filing or recording of a record of a mortgage on the related real property, if:
 - (A) The collateral is as-extracted collateral or timber to be cut; or
 - (B) The financing statement is filed as a fixture filing and the collateral is goods that are or are to become fixtures; or
- (2) The bureau of conveyances, in all other cases including a case in which the collateral is goods that are or are to become fixtures and the financing statement is not filed as a fixture filing.

(b) The office in which to file a financing statement to perfect a security interest in collateral, including fixtures, of a transmitting utility is the bureau of conveyances. The financing statement also constitutes a fixture filing as to the collateral indicated in the financing statement which is or is to become fixtures.

§490:9-502 Contents of financing statement; record of mortgage as financing statement; time of filing financing statement. (a) Subject to subsection (b), a financing statement is sufficient only if it:

- (1) Provides the name of the debtor;
- (2) Provides the name of the secured party or a representative of the secured party; and
- (3) Indicates the collateral covered by the financing statement.

(b) Except as otherwise provided in section 490:9-501(b), to be sufficient, a financing statement that covers as-extracted collateral or timber to be cut, or which is filed as a fixture filing and covers goods that are or are to become fixtures, must satisfy subsection (a) and also:

- (1) Indicate that it covers this type of collateral;
- (2) Indicate that it is to be filed for record in the real property records;
- (3) Provide a description of the real property to which the collateral is related; and
- (4) If the debtor does not have an interest of record in the real property, provide the name of a record owner.

(c) A record of a mortgage is effective, from the date of recording, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if:

- (1) The record indicates the goods or accounts that it covers;
- (2) The goods are or are to become fixtures related to the real property described in the record or the collateral is related to the real property described in the record and is as-extracted collateral or timber to be cut;
- (3) The record satisfies with the requirements for a financing statement in this section other than an indication that it is to be filed in the real property records; and
- (4) The record is duly recorded.

(d) A financing statement may be filed before a security agreement is made or a security interest otherwise attaches.

§490:9-503 Name of debtor and secured party. (a) A financing statement sufficiently provides the name of the debtor:

- (1) If the debtor is a registered organization, only if the financing statement provides the name of the debtor indicated on the public record of the debtor's jurisdiction of organization which shows the debtor to have been organized;
 - (2) If the debtor is a decedent's estate, only if the financing statement provides the name of the decedent and indicates that the debtor is an estate;
 - (3) If the debtor is a trust or a trustee acting with respect to property held in trust, only if the financing statement:
 - (A) Provides the name specified for the trust in its organic documents or, if no name is specified provides the name of the settlor and additional information sufficient to distinguish the debtor from other trusts having one or more of the same settlors; and
 - (B) Indicates, in the debtor's name or otherwise that the debtor is a trust or is a trustee acting with respect to property held in trust; and
 - (4) In other cases:
 - (A) If the debtor has a name, only if it provides the individual or organizational name of the debtor; and
 - (B) If the debtor does not have a name, only if it provides the names of the partners, members associates, or other persons comprising the debtor.
- (b) A financing statement that provides the name of the debtor in accordance with subsection (a) is not rendered ineffective by the absence of:
- (1) A trade name or other name of the debtor; or
 - (2) Unless required under subsection (a)(4)(B), names of partners, members, associates, or other persons comprising the debtor.
- (c) A financing statement that provides only the debtor's trade name does not sufficiently provide the name of the debtor.
- (d) Failure to indicate the representative capacity of a secured party or representative of a secured party does not affect the sufficiency of a financing statement.
- (e) A financing statement may provide the name of more than one debtor and the name of more than one secured party.

§490:9-504 Indication of collateral. A financing statement sufficiently indicates the collateral that it covers only if the financing statement provides:

- (1) A description of the collateral pursuant to section 490:9-108; or
- (2) An indication that the financing statement covers all assets or all personal property.

§490:9-505 Filing and compliance with other statutes and treaties for consignments, leases, other bailments, and other transactions. (a) A consignor, lessor, or other bailor of goods, a licensor, or a buyer of a payment intangible or promissory note may file a financing statement, or may comply with a statute or treaty described in section 490:9-311(a), using the terms "consignor", "consignee", "lessor", "lessee", "bailor", "bailee", "licensor", "licensee", "owner", "registered owner", "buyer", "seller", or words of similar import, instead of the terms "secured party" and "debtor".

(b) This part applies to the filing of a financing statement under subsection (a) and, as appropriate, to compliance that is equivalent to filing a financing statement under section 490:9-311(b), but the filing or compliance is not of itself a factor in determining whether the collateral secures an obligation. If it is determined for another reason that the collateral secures an obligation, a security interest held by

the consignor, lessor, bailor, licensor, owner, or buyer which attaches to the collateral is perfected by the filing or compliance.

§490:9-506 Effect of errors or omissions. (a) A financing statement substantially satisfying the requirements of this part is effective, even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading.

(b) Except as otherwise provided in subsection (c), a financing statement that fails sufficiently to provide the name of the debtor in accordance with section 490:9-503(a) is seriously misleading.

(c) If a search of the records of the filing office under the debtor's correct name, using the filing office's standard search logic, if any, would disclose a financing statement that fails sufficiently to provide the name of the debtor in accordance with section 490:9-503(a), the name provided does not make the financing statement seriously misleading.

(d) For purposes of section 490:9-508(b), the "debtor's correct name" in subsection (c) means the correct name of the new debtor.

§490:9-507 Effect of certain events on effectiveness of financing statement. (a) A filed financing statement remains effective with respect to collateral that is sold, exchanged, leased, licensed, or otherwise disposed of and in which a security interest or agricultural lien continues, even if the secured party knows of or consents to the disposition.

(b) Except as otherwise provided in subsection (c) and section 490:9-508, a financing statement is not rendered ineffective if, after the financing statement is filed, the information provided in the financing statement becomes seriously misleading under section 490:9-506.

(c) If a debtor so changes its name that a filed financing statement becomes seriously misleading under section 490:9-506:

- (1) The financing statement is effective to perfect a security interest in collateral acquired by the debtor before, or within four months after, the change; and
- (2) The financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the change, unless an amendment to the financing statement which renders the financing statement not seriously misleading is filed within four months after the change.

§490:9-508 Effectiveness of financing statement if new debtor becomes bound by security agreement. (a) Except as otherwise provided in this section, a filed financing statement naming an original debtor is effective to perfect a security interest in collateral in which a new debtor has or acquires rights to the extent that the financing statement would have been effective had the original debtor acquired rights in the collateral.

(b) If the difference between the name of the original debtor and that of the new debtor causes a filed financing statement that is effective under subsection (a) to be seriously misleading under section 490:9-506:

- (1) The financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within four months after, the new debtor becomes bound under section 490:9-203(d); and
- (2) The financing statement is not effective to perfect a security interest in collateral acquired by the new debtor more than four months after the new debtor becomes bound under section 490:9-203(d) unless an initial

financing statement providing the name of the new debtor is filed before the expiration of that time.

(c) This section does not apply to collateral as to which a filed financing statement remains effective against the new debtor under section 490:9-507(a).

§490:9-509 Persons entitled to file a record. (a) A person may file an initial financing statement, amendment that adds collateral covered by a financing statement, or amendment that adds a debtor to a financing statement only if:

- (1) The debtor authorizes the filing in an authenticated record; or
- (2) The person holds an agricultural lien that has become effective at the time of filing and the financing statement covers only collateral in which the person holds an agricultural lien.

(b) By authenticating or becoming bound as debtor by a security agreement, a debtor or new debtor authorizes the filing of an initial financing statement, and an amendment, covering:

- (1) The collateral described in the security agreement; and
- (2) Property that becomes collateral under section 490:9-315(a)(2), whether or not the security agreement expressly covers proceeds.

(c) By acquiring collateral in which a security interest or agricultural lien continues under section 490:9-315(a)(1), a debtor authorizes the filing of an initial financing statement, and an amendment, covering the collateral and property that becomes collateral under section 490:9-315(a)(2).

(d) A person may file an amendment other than an amendment that adds collateral covered by a financing statement or an amendment that adds a debtor to a financing statement only if:

- (1) The secured party of record authorizes the filing; or
- (2) The amendment is a termination statement for a financing statement as to which the secured party of record has failed to file or send a termination statement as required by section 490:9-513(a) or (c) the debtor authorizes the filing, and the termination statement indicates that the debtor authorized it to be filed.

(e) If there is more than one secured party of record for a financing statement, each secured party of record may authorize the filing of an amendment under subsection (c).

§490:9-510 Effectiveness of filed record. (a) A filed record is effective only to the extent that it was filed by a person that may file it under section 490:9-509.

(b) A record authorized by one secured party of record does not affect the financing statement with respect to another secured party of record.

(c) A continuation statement that is not filed within the six-month period prescribed by section 490:9-515(d) is ineffective.

§490:9-511 Secured party of record. (a) A secured party of record with respect to a financing statement is a person whose name is provided as the name of the secured party or a representative of the secured party in an initial financing statement that has been filed. If an initial financing statement is filed under section 490:9-514(a), the assignee named in the initial financing statement is the secured party of record with respect to the financing statement.

(b) If an amendment of a financing statement which provides the name of a person as a secured party or a representative of a secured party is filed, the person named in the amendment is a secured party of record. If an amendment is filed under section 490:9-514(b), the assignee named in the amendment is a secured party of record.

(c) A person remains a secured party of record until the filing of an amendment of the financing statement which deletes the person.

§490:9-512 Amendment of financing statement. (a) Subject to section 490:9-509, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or, subject to subsection (e), otherwise amend the information provided in, a financing statement by filing an amendment that:

- (1) Identifies, by its file number, the initial financing statement to which the amendment relates; and
- (2) If the amendment relates to an initial financing statement filed or recorded in a filing office described in section 490:9-501(a)(1), provides the information specified in section 490:9-502(b).

(b) Except as otherwise provided in section 490:9-515, the filing of an amendment does not extend the period of effectiveness of the financing statement.

(c) A financing statement that is amended by an amendment that adds collateral is effective as to the added collateral only from the date of the filing of the amendment.

(d) A financing statement that is amended by an amendment that adds a debtor is effective as to the added debtor only from the date of the filing of the amendment.

- (e) An amendment is ineffective to the extent it:
- (1) Purports to delete all debtors and fails to provide the name of a debtor to be covered by the financing statement; or
 - (2) Purports to delete all secured parties of record and fails to provide the name of a new secured party of record.

§490:9-513 Termination statement. (a) A secured party shall cause the secured party of record for a financing statement to file a termination statement for the financing statement if the financing statement covers consumer goods and:

- (1) There is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or
- (2) The debtor did not authorize the filing of the initial financing statement.

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

- (1) Within one month after there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or
- (2) If earlier, within twenty days after the secured party receives an authenticated demand from a debtor.

(c) In cases not governed by subsection (a), within twenty days after a secured party receives an authenticated demand from a debtor, the secured party shall cause the secured party of record for a financing statement to send to the debtor a termination statement for the financing statement or file the termination statement in the filing office if:

- (1) Except in the case of a financing statement covering accounts or chattel paper that has been sold or goods that are the subject of a consignment, there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value;
- (2) The financing statement covers accounts or chattel paper that has been sold but as to which the account debtor or other person obligated has discharged its obligation;

- (3) The financing statement covers goods that were the subject of a consignment to the debtor but are not in the debtor's possession; or
- (4) The debtor did not authorize the filing of the initial financing statement.
- (d) Except as otherwise provided in section 490:9-510, upon the filing of a termination statement with the filing office, the financing statement to which the termination statement relates ceases to be effective.

§490:9-514 Assignment of powers of secured party of record. (a) Except as otherwise provided in subsection (c), an initial financing statement may reflect an assignment of all of the secured party's power to authorize an amendment to the financing statement by providing the name and mailing address of the assignee as the name and address of the secured party.

(b) Except as otherwise provided in subsection (c), a secured party of record may assign of record all or part of its power to authorize an amendment to a financing statement by filing in the filing office an amendment of the financing statement which:

- (1) Identifies, by its file number, the initial financing statement to which it relates;
- (2) Provides the name of the assignor; and
- (3) Provides the name and mailing address of the assignee.

(c) An assignment of record of a security interest in a fixture covered by a record of a mortgage which is effective as a financing statement filed as a fixture filing under section 490:9-502(c) may be made only by an assignment of record of the mortgage in the manner provided by law of this State other than this chapter.

§490:9-515 Duration and effectiveness of financing statement; effect of lapsed financing statement. (a) Except as otherwise provided in subsections (b), (e), (f), and (g), a filed financing statement is effective for a period of five years after the date of filing.

(b) Except as otherwise provided in subsections (e), (f), and (g), an initial financing statement filed in connection with a public-finance transaction or manufactured-home transaction is effective for a period of thirty years after the date of filing if it indicates that it is filed in connection with a public-finance transaction or manufactured-home transaction.

(c) The effectiveness of a filed financing statement lapses on the expiration of the period of its effectiveness unless before the lapse a continuation statement is filed pursuant to subsection (d). Upon lapse, a financing statement ceases to be effective and any security interest or agricultural lien that was perfected by the financing statement becomes unperfected, unless the security interest is perfected otherwise. If the security interest or agricultural lien becomes unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the collateral for value.

(d) A continuation statement may be filed only within six months before the expiration of the five-year period specified in subsection (a) or the thirty-year period specified in subsection (b), whichever is applicable.

(e) Except as otherwise provided in section 490:9-510, upon timely filing of a continuation statement, the effectiveness of the initial financing statement continues for a period of five years commencing on the day on which the financing statement would have become ineffective in the absence of the filing. Upon the expiration of the five-year period, the financing statement lapses in the same manner as provided in subsection (c), unless, before the lapse, another continuation statement is filed pursuant to subsection (d). Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the initial financing statement.

(f) If a debtor is a transmitting utility and a filed financing statement so indicates, the financing statement is effective until a termination statement is filed.

(g) A record of a mortgage that is effective as a financing statement filed as a fixture filing under section 490:9-502(c) remains effective as a financing statement filed as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real property.

§490:9-516 What constitutes filing; effectiveness of filing. (a) Except as otherwise provided in subsection (b), communication of a record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing.

(b) Filing does not occur with respect to a record that a filing office refuses to accept because:

- (1) The record is not communicated by a method or medium of communication authorized by the filing office;
- (2) An amount equal to or greater than the applicable filing fee is not tendered;
- (3) The filing office is unable to index the record because:
 - (A) In the case of an initial financing statement, the record does not provide a name for the debtor;
 - (B) In the case of an amendment or correction statement, the record:
 - (i) Does not identify the initial financing statement as required by section 490:9-512 or 490:9-518, as applicable; or
 - (ii) Identifies an initial financing statement whose effectiveness has lapsed under section 490:9-515;
 - (C) In the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates the record does not identify the debtor's last name; or
 - (D) In the case of a record filed in the filing office described in section 490:9-501(a)(1), the record does not provide a sufficient description of the real property to which it relates;
- (4) In the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;
- (5) In the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement to which the amendment relates, the record does not:
 - (A) Provide a mailing address for the debtor;
 - (B) Indicate whether the debtor is an individual or an organization; or
 - (C) If the financing statement indicates that the debtor is an organization, provide:
 - (i) A type of organization for the debtor;
 - (ii) A jurisdiction of organization for the debtor; or
 - (iii) An organizational identification number for the debtor or indicate that the debtor has none;
- (6) In the case of an assignment reflected in an initial financing statement under section 490:9-514(a) or an amendment filed under section 490:9-514(b), the record does not provide a name and mailing address for the assignee; or

- (7) In the case of a continuation statement, the record is not filed within the six-month period prescribed by section 490:9-515(d).
- (c) For purposes of subsection (b):
- (1) A record does not provide information if the filing office is unable to read or decipher the information; and
 - (2) A record that does not indicate that it is an amendment or identify an initial financing statement to which it relates, as required by section 490:9-512, 490:9-514, or 490:9-518, is an initial financing statement.
- (d) A record that is communicated to the filing office with tender of the filing fee, but which the filing office refuses to accept for a reason other than one set forth in subsection (b), is effective as a filed record except as against a purchaser of the collateral which gives value in reasonable reliance upon the absence of the record from the files.

§490:9-517 Effect of indexing errors. The failure of the filing office to index a record correctly does not affect the effectiveness of the filed record.

§490:9-518 Claim concerning inaccurate or wrongfully filed record. (a) A person may file in the filing office a correction statement with respect to a record indexed there under the person's name if the person believes that the record is inaccurate or was wrongfully filed.

- (b) A correction statement must:
- (1) Identify the record to which it relates by the file number assigned to the initial financing statement to which the record relates;
 - (2) Indicate that it is a correction statement; and
 - (3) Provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.
- (c) The filing of a correction statement does not affect the effectiveness of an initial financing statement or other filed record.

SUBPART 2. DUTIES AND OPERATION OF FILING OFFICE.

§490:9-519 Numbering, maintaining, and indexing records; communicating information provided in records. (a) For each record filed in a filing office, the filing office shall:

- (1) Assign a unique number to the filed record;
 - (2) Create a record that bears the number assigned to the filed record and the date and time of filing;
 - (3) Maintain the filed record for public inspection; and
 - (4) Index the filed record in accordance with subsections (c), (d), and (e).
- (b) A file number must include a digit that:
- (1) Is mathematically derived from or related to the other digits of the file number; and
 - (2) Aids the filing office in determining whether a number communicated as the file number includes a single-digit or transpositional error.
- (c) Except as otherwise provided in subsections (d) and (e), the filing office shall:
- (1) Index an initial financing statement according to the name of the debtor and index all filed records relating to the initial financing statement in a manner that associates with one another an initial financing statement and all filed records relating to the initial financing statement; and

- (2) Index a record that provides a name of a debtor which was not previously provided in the financing statement to which the record relates also according to the name that was not previously provided.
- (d) If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, the filing office shall index it:
 - (1) Under the names of the debtor and of each owner of record shown on the financing statement as if they were the mortgagors under a mortgage of the real property described; and
 - (2) To the extent that the law of this State provides for indexing of records of mortgages under the name of the mortgagee, under the name of the secured party as if the secured party were the mortgagee thereunder, or if indexing is by description, as if the financing statement were a record of a mortgage of the real property described.
- (e) If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, the filing office shall index an assignment filed under section 490:9-514(a) or an amendment filed under section 490:9-514(b):
 - (1) Under the name of the assignor as grantor; and
 - (2) To the extent that the law of this State provides for indexing a record of the assignment of a mortgage under the name of the assignee, under the name of the assignee.
- (f) The filing office shall maintain a capability:
 - (1) To retrieve a record by the name of the debtor and by the file number assigned to the initial financing statement to which the record relates; and
 - (2) To associate and retrieve with one another an initial financing statement and each filed record relating to the initial financing statement.
- (g) The filing office may not remove a debtor's name from the index until one year after the effectiveness of a financing statement naming the debtor lapses under section 490:9-515 with respect to all secured parties of record.
- (h) The filing office shall perform the acts required by subsections (a) through (e) at the time and in the manner prescribed by filing-office rule, but not later than two business days after the filing office receives the record in question.

§490:9-520 Acceptance and refusal to accept record. (a) A filing office shall refuse to accept a record for filing for a reason set forth in section 490:9-516(b) and may refuse to accept a record for filing only for a reason set forth in section 490:9-516(b).

(b) If a filing office refuses to accept a record for filing, it shall communicate to the person that presented the record the fact of and reason for the refusal and the date and time the record would have been filed had the filing office accepted it. The communication must be made at the time and in the manner prescribed by filing-office rule but in no event more than two business days after the filing office receives the record.

(c) A filed financing statement satisfying section 490:9-502(a) and (b) is effective, even if the filing office is required to refuse to accept it for filing under subsection (a). However, section 490:9-338 applies to a filed financing statement providing information described in section 490:9-516(b)(5) which is incorrect at the time the financing statement is filed.

(d) If a record communicated to a filing office provides information that relates to more than one debtor, this part applies as to each debtor separately.

§490:9-521 Uniform form of written financing statement and amendment. (a) A filing office that accepts written records for filing may not refuse to accept a written initial financing statement in the following form, except for a reason set forth in section 490:9-516(b):

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional)
B. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME				
OR				
1b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
1c. MAILING ADDRESS		CITY	STATE	POSTAL CODE
1d. TAX ID #: SSN OR EIN		ADD'L INFO RE ORGANIZATION DEBTOR	1e. TYPE OF ORGANIZATION	1f. JURISDICTION OF ORGANIZATION
			1g. ORGANIZATIONAL ID #, if any	<input type="checkbox"/> NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME				
OR				
2b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
2c. MAILING ADDRESS		CITY	STATE	POSTAL CODE
2d. TAX ID #: SSN OR EIN		ADD'L INFO RE ORGANIZATION DEBTOR	2e. TYPE OF ORGANIZATION	2f. JURISDICTION OF ORGANIZATION
			2g. ORGANIZATIONAL ID #, if any	<input type="checkbox"/> NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME				
OR				
3b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
3c. MAILING ADDRESS		CITY	STATE	POSTAL CODE

4. This FINANCING STATEMENT covers the following collateral:

5. ALTERNATIVE DESIGNATION (if applicable):	<input type="checkbox"/> LESSEE/LESSOR	<input type="checkbox"/> CONSIGNEE/CONSIGNOR	<input type="checkbox"/> BAILEE/BAILOR	<input type="checkbox"/> SELLER/BUYER	<input type="checkbox"/> AG. LIEN	<input type="checkbox"/> NON-UCC FILING
6. <input type="checkbox"/> This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS. Attach Addendum	<input type="checkbox"/> (if applicable)	7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) (optional)	<input type="checkbox"/> (ADDITIONAL FEE)	<input type="checkbox"/> All Debtors	<input type="checkbox"/> Debtor 1	<input type="checkbox"/> Debtor 2
8. OPTIONAL FILER REFERENCE DATA						

UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT		
9a. ORGANIZATION'S NAME		
9b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME, SUFFIX
10. MISCELLANEOUS:		
THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY		

11. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one name (11a or 11b) - do not abbreviate or combine names

11a. ORGANIZATION'S NAME				
OR				
11b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX	
11c. MAILING ADDRESS		CITY	STATE	POSTAL CODE
11d. TAX ID #: SSN OR EIN		11e. TYPE OF ORGANIZATION	11f. JURISDICTION OF ORGANIZATION	
ADD'L INFO RE ORGANIZATION DEBTOR		11g. ORGANIZATIONAL ID #, if any		
		<input type="checkbox"/> NONE		

12. ADDITIONAL SECURED PARTY'S or ASSIGNOR S/P'S NAME - insert only one name (12a or 12b)

12a. ORGANIZATION'S NAME				
OR				
12b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX	
12c. MAILING ADDRESS		CITY	STATE	POSTAL CODE

<p>13. This FINANCING STATEMENT covers <input type="checkbox"/> timber to be cut or <input type="checkbox"/> as-extracted collateral, or is filed as a <input type="checkbox"/> fixture filing.</p> <p>14. Description of real estate:</p> 	<p>16. Additional collateral description:</p>
<p>15. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):</p> 	

17. Check only if applicable and check only one box.

Debtor is a Trust or Trustee acting with respect to property held in trust or Decedent's Estate

18. Check only if applicable and check only one box.

Debtor is a TRANSMITTING UTILITY

Filed in connection with a Manufactured-Home Transaction — effective 30 years

Filed in connection with a Public-Finance Transaction — effective 30 years

(b) A filing office that accepts written records for filing may not refuse to accept a written financing statement amendment in the following form, except for a reason set forth in section 490:9-516(b):

UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional)
B. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE #	1b. This FINANCING STATEMENT AMENDMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS. <input type="checkbox"/>
--	--

2. TERMINATION: Effectiveness of the Financing Statement (identified above) is terminated with respect to security interest(s) of the Secured Party authorizing this Termination Statement.

3. CONTINUATION: Effectiveness of the Financing Statement (identified above) with respect to security interest(s) of the Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law.

4. ASSIGNMENT (full or partial): Give name of assignee in item 7a or 7b and address of assignee in item 7c; and also give name of assignor in item 9.

5. AMENDMENT (PARTY INFORMATION): This Amendment affects Debtor or Secured Party of record. Check only one of these two boxes.
Also check one of the following three boxes and provide appropriate information in items 6 and/or 7.

CHANGE name and/or address: Give current record name in item 6a or 6b; also give new name (if name change) in item 7a or 7b and/or new address (if address change) in item 7c. DELETE name: Give record name to be deleted in item 6a or 6b. ADD name: Complete item 7a or 7b, and also item 7c; also complete items 7d-7g (if applicable).

6. CURRENT RECORD INFORMATION:

6a. ORGANIZATION'S NAME				
OR	6b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX

7. CHANGED (NEW) OR ADDED INFORMATION:

7a. ORGANIZATION'S NAME				
OR	7b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX

7c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
---------------------	------	-------	-------------	---------

7d. TAX ID #, SSN OR EIN	ADD'L INFO RE ORGANIZATION DEBTOR	7e. TYPE OF ORGANIZATION	7f. JURISDICTION OF ORGANIZATION	7g. ORGANIZATIONAL ID #, if any
--------------------------	-----------------------------------	--------------------------	----------------------------------	---------------------------------

8. AMENDMENT (COLLATERAL CHANGE): check only one box.
Describe collateral deleted or added, or give entire restated collateral description, or describe collateral assigned. NONE

9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT (name of assignor, if this is an Assignment; if this is an Amendment authorized by a Debtor which adds collateral or adds the authorizing Debtor, or if this is a Termination authorized by a Debtor, check here and enter name of DEBTOR authorizing this Amendment.

9a. ORGANIZATION'S NAME				
OR	9b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX

10. OPTIONAL FILER REFERENCE DATA

UCC FINANCING STATEMENT AMENDMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

11. INITIAL FINANCING STATEMENT FILE # (same as item 1a on Amendment form)		
12. NAME OF PARTY AUTHORIZING THIS AMENDMENT (same as item 9 on Amendment form)		
12a. ORGANIZATION'S NAME		
OR		
12b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME, SUFFIX

13. Use this space for additional information

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

(c) A form that a filing office may not refuse to accept under subsection (a) or (b) must conform to the format prescribed for the form by the National Conference of Commissioners on Uniform State Laws.

§490:9-522 Maintenance and destruction of records. (a) The filing office shall maintain a record of the information provided in a filed financing statement for

at least one year after the effectiveness of the financing statement has lapsed under section 490:9-515 with respect to all secured parties of record. The record must be retrievable by using the name of the debtor and by using the file number assigned to the initial financing statement to which the record relates.

(b) Except to the extent that a statute governing disposition of public records provides otherwise, the filing office immediately may destroy any written record evidencing a financing statement. However, if the filing office destroys a written record, it shall maintain another record of the financing statement which complies with subsection (a).

§490:9-523 Information from filing office; sale or license of records. (a)

If a person that files a written record requests an acknowledgment of the filing, the filing office shall send to the person an image of the record showing the number assigned to the record pursuant to section 490:9-519(a)(1) and the date and time of the filing of the record. However, if the person furnishes a copy of the record to the filing office, the filing office may instead:

- (1) Note upon the copy the number assigned to the record pursuant to section 490:9-519(a)(1) and the date and time of the filing of the record; and
- (2) Send the copy to the person.

(b) If a person files a record other than a written record, the filing office shall communicate to the person an acknowledgment that provides:

- (1) The information in the record;
- (2) The number assigned to the record pursuant to section 490:9-519(a)(1); and
- (3) The date and time of the filing of the record.

(c) The filing office shall communicate or otherwise make available in a record the following information to any person that requests it:

- (1) Whether there is on file on a date and time specified by the filing office, but not a date earlier than three business days before the filing office receives the request, any financing statement that:
 - (A) Designates a particular debtor;
 - (B) Has not lapsed under section 490:9-515 with respect to all secured parties of record; and
 - (C) If the request so states, has lapsed under section 490:9-515 and a record of which is maintained by the filing office under section 490:9-522(a);
- (2) The date and time of filing of each financing statement; and
- (3) The information provided in each financing statement.

(d) In complying with its duty under subsection (c), the filing office may communicate information in any medium. However, if requested, the filing office shall communicate information by issuing its written certificate.

(e) The filing office shall perform the acts required by subsections (a) through (d) at the time and in the manner prescribed by filing-office rule, but not later than two business days after the filing office receives the request.

(f) At least weekly, the filing office shall offer to sell or license to the public on a nonexclusive basis, in bulk, copies of all records filed in it under this part, in every medium from time to time available to the filing office.

§490:9-524 Delay by filing office. Delay by the filing office beyond a time limit prescribed by this part is excused if:

- (1) The delay is caused by interruption of communication or computer facilities, war, emergency conditions failure of equipment, or other circumstances beyond control of the filing office; and

- (2) The filing office exercises reasonable diligence under the circumstances.

§490:9-525 Fees. (a) Except as otherwise provided in subsection (e), the fee for filing and indexing a record under this part, other than an initial financing statement of the kind described in section 490:9-502(c), shall be as specified by rules adopted under section 502-25 by the department of land and natural resources pursuant to chapter 91.

(b) Except as otherwise provided in subsection (e), the fee for filing and indexing an initial financing statement of the kind described in section 490:9-502(c) shall be as specified by rules adopted under section 502-25 by the department of land and natural resources pursuant to chapter 91.

(c) The number of names required to be indexed does not affect the amount of the fee in subsections (a) and (b).

(d) The fee for responding to a request for information from the filing office, including for issuing a certificate showing whether there is on file any financing statement naming a particular debtor shall be as specified by rules adopted under section 502-25 by the department of land and natural resources pursuant to chapter 91.

(e) This section does not require a fee with respect to a record of a mortgage which is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut under section 490:9-502(c). However, the recording and satisfaction fees that otherwise would be applicable to the record of the mortgage apply.

§490:9-526 Filing-office rules. (a) The department of land and natural resources shall adopt and publish rules to implement this article. The filing-office rules must be:

- (1) Consistent with this article; and
- (2) Adopted and published in accordance with chapter 91.

(b) To keep the filing-office rules and practices of the filing office in harmony with the rules and practices of filing offices in other jurisdictions that enact substantially this part, and to keep the technology used by the filing office compatible with the technology used by filing offices in other jurisdictions that enact substantially this part, the filing office, so far as is consistent with the purposes, policies, and provisions of this article, in adopting, amending, and repealing filing-office rules, shall:

- (1) Consult with filing offices in other jurisdictions that enact substantially this part; and
- (2) Consult the most recent version of the Model Rules promulgated by the International Association of Corporate Administrators or any successor organization; and
- (3) Take into consideration the rules and practices of and the technology used by, filing offices in other jurisdictions that enact substantially this part.

§490:9-527 Duty to report. The department of land and natural resources shall report annually, twenty days before the convening of each regular session of the legislature, to the governor and the legislature on the operation of the filing office. The report must contain a statement of the extent to which:

- (1) The filing-office rules are not in harmony with the rules of filing offices in other jurisdictions that enact substantially this part and the reasons for these variations; and

- (2) The filing-office rules are not in harmony with the most recent version of the Model Rules promulgated by the International Association of Corporate Administrators, or any successor organization, and the reasons for these variations.

PART 6. DEFAULT
SUBPART 1. DEFAULT AND ENFORCEMENT OF SECURITY INTEREST

§490:9-601 Rights after default; judicial enforcement; consignor or buyer of accounts, chattel paper, payment intangibles, or promissory notes. (a) After default, a secured party has the rights provided in this part and, except as otherwise provided in section 490:9-602, those provided by agreement of the parties. A secured party:

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

(b) A secured party in possession of collateral or control of collateral under section 490:9-104, 490:9-105, 490:9-106, or 490:9-107 has the rights and duties provided in section 490:9-207.

(c) The rights under subsections (a) and (b) are cumulative and may be exercised simultaneously.

(d) Except as otherwise provided in subsection (g) and section 490:9-605, after default, a debtor and an obligor have the rights provided in this part and by agreement of the parties.

(e) If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:

- (1) The date of perfection of the security interest or agricultural lien in the collateral;
- (2) The date of filing a financing statement covering the collateral; or
- (3) Any date specified in a statute under which the agricultural lien was created.

(f) A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this article.

(g) Except as otherwise provided in section 490:9-607(c), this part imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes.

§490:9-602 Waiver and variance of rights and duties. Except as otherwise provided in section 490:9-624, to the extent that they give rights to a debtor or obligor and impose duties on a secured party, the debtor or obligor may not waive or vary the rules stated in the following listed sections:

- (1) Section 490:9-207(b)(4)(C), which deals with use and operation of the collateral by the secured party;
- (2) Section 490:9-210, which deals with requests for an accounting and requests concerning a list of collateral and statement of account;
- (3) Section 490:9-607(c), which deals with collection and enforcement of collateral;

- (4) Sections 490:9-608(a) and 490:9-615(c) to the extent that they deal with application or payment of noncash proceeds of collection, enforcement, or disposition;
- (5) Sections 490:9-608(a) and 490:9-615(d) to the extent that they require accounting for or payment of surplus proceeds of collateral;
- (6) Section 490:9-609 to the extent that it imposes upon a secured party that takes possession of collateral without judicial process the duty to do so without breach of the peace;
- (7) Sections 490:9-610(b), 490:9-611, 490:9-613, and 490:9-614, which deal with disposition of collateral;
- (8) Section 490:9-615(f), which deals with calculation of a deficiency or surplus when a disposition is made to the secured party, a person related to the secured party, or a secondary obligor;
- (9) Section 490:9-616, which deals with explanation of the calculation of a surplus or deficiency;
- (10) Section 490:9-620, 490:9-621, and 490:9-622, which deal with acceptance of collateral in satisfaction of obligation;
- (11) Section 490:9-623, which deals with redemption of collateral;
- (12) Section 490:9-624, which deals with permissible waivers; and
- (13) Sections 490:9-625 and 490:9-626, which deal with the secured party's liability for failure to comply with this article.

§490:9-603 Agreement on standards concerning rights and duties. (a)

The parties may determine by agreement the standards measuring the fulfillment of the rights of a debtor or obligor and the duties of a secured party under a rule stated in section 490:9-602 if the standards are not manifestly unreasonable.

(b) Subsection (a) does not apply to the duty under section 490:9-609 to refrain from breaching the peace.

§490:9-604 Procedure if security agreement covers real property or fixtures. (a) If a security agreement covers both personal and real property, a secured party may proceed:

- (1) Under this part as to the personal property without prejudicing any rights with respect to the real property; or
- (2) As to both the personal property and the real property in accordance with the rights with respect to the real property, in which case the other provisions of this part do not apply.

(b) Subject to subsection (c), if a security agreement covers goods that are or become fixtures, a secured party may proceed:

- (1) Under this part; or
- (2) In accordance with the rights with respect to real property, in which case the other provisions of this part do not apply.

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

(d) A secured party that removes collateral shall promptly reimburse any encumbrancer or owner of the real property, other than the debtor, for the cost of repair of any physical injury caused by the removal. The secured party need not reimburse the encumbrancer or owner for any diminution in value of the real property caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

§490:9-605 Unknown debtor or secondary obligor. A secured party does not owe a duty based on its status as secured party:

- (1) To a person that is a debtor or obligor, unless the secured party knows:
 - (A) That the person is a debtor or obligor;
 - (B) The identity of the person; and
 - (C) How to communicate with the person; or
- (2) To a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:
 - (A) That the person is a debtor; and
 - (B) The identity of the person.

§490:9-606 Time of default for agricultural lien. For purposes of this part, a default occurs in connection with an agricultural lien at the time the secured party becomes entitled to enforce the lien in accordance with the statute under which it was created.

§490:9-607 Collection and enforcement by secured party. (a) If so agreed, and in any event after default, a secured party:

- (1) May notify an account debtor or other person obligated on collateral to make payment or otherwise render performance to or for the benefit of the secured party;
- (2) May take any proceeds to which the secured party is entitled under section 490:9-315;
- (3) May enforce the obligations of an account debtor or other person obligated on collateral and exercise the rights of the debtor with respect to the obligation of the account debtor or other person obligated on collateral to make payment or otherwise render performance to the debtor, and with respect to any property that secures the obligations of the account debtor or other person obligated on the collateral;
- (4) If it holds a security interest in a deposit account perfected by control under section 490:9-104(a)(1) may apply the balance of the deposit account to the obligation secured by the deposit account; and
- (5) If it holds a security interest in a deposit account perfected by control under section 490:9-104(a)(2) or (3), may instruct the bank to pay the balance of the deposit account to or for the benefit of the secured party.

(b) If necessary to enable a secured party to exercise under subsection (a)(3) the right of a debtor to enforce a mortgage nonjudicially, the secured party may record in the office in which a record of the mortgage is recorded:

- (1) A copy of the security agreement that creates or provides for a security interest in the obligation secured by the mortgage; and
- (2) The secured party's sworn affidavit in recordable form stating that:
 - (A) A default has occurred; and
 - (B) The secured party is entitled to enforce the mortgage nonjudicially.

(c) A secured party shall proceed in a commercially reasonable manner if the secured party:

- (1) Undertakes to collect from or enforce an obligation of an account debtor or other person obligated on collateral; and
- (2) Is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor or a secondary obligor.

(d) A secured party may deduct from the collections made pursuant to subsection (c) reasonable expenses of collection and enforcement, including reasonable attorney's fees and legal expenses incurred by the secured party.

(e) This section does not determine whether an account debtor, bank, or other person obligated on collateral owes a duty to a secured party.

§490:9-608 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:

- (1) A secured party shall apply or pay over for application the cash proceeds of collection or enforcement under this section in the following order to:
 - (A) The reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;
 - (B) The satisfaction of obligations secured by the security interest or agricultural lien under which the collection or enforcement is made; and
 - (C) The satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest or agricultural lien under which the collection or enforcement is made if the secured party receives an authenticated demand for proceeds before distribution of the proceeds is completed.
 - (2) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder complies the secured party need not comply with the holder's demand under paragraph (1)(C).
 - (3) A secured party need not apply or pay over for application noncash proceeds of collection and enforcement under this section unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.
 - (4) A secured party shall account to and pay a debtor for any surplus, and the obligor is liable for any deficiency.
- (b) If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes, the debtor is not entitled to any surplus, and the obligor is not liable for any deficiency.

§490:9-609 Secured party's right to take possession after default. (a) After default, a secured party:

- (1) May take possession of the collateral; and
 - (2) Without removal, may render equipment unusable and dispose of collateral on a debtor's premises under section 490:9-610.
- (b) A secured party may proceed under subsection (a):
- (1) Pursuant to judicial process; or
 - (2) Without judicial process, if it proceeds without breach of the peace.
- (c) If so agreed, and in any event after default, a secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties.

§490:9-610 Disposition of collateral after default. (a) After default, a secured party may sell, lease, license, or otherwise dispose of any or all of the collateral in its present condition or following any commercially reasonable preparation or processing.

(b) Every aspect of a disposition of collateral, including the method, manner, time, place, and other terms, must be commercially reasonable. If commercially reasonable, a secured party may dispose of collateral by public or private proceedings, by one or more contracts, as a unit or in parcels, and at any time and place and on any terms.

(c) A secured party may purchase collateral:

- (1) At a public disposition; or
- (2) At a private disposition only if the collateral is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations.

(d) A contract for sale, lease, license, or other disposition includes the warranties relating to title, possession, quiet enjoyment, and the like which by operation of law accompany a voluntary disposition of property of the kind subject to the contract.

(e) A secured party may disclaim or modify warranties under subsection (d):

- (1) In a manner that would be effective to disclaim or modify the warranties in a voluntary disposition of property of the kind subject to the contract of disposition; or
- (2) By communicating to the purchaser a record evidencing the contract for disposition and including an express disclaimer or modification of the warranties.

(f) A record is sufficient to disclaim warranties under subsection (e) if it indicates "There is no warranty relating to title, possession, quiet enjoyment, or the like in this disposition" or uses words of similar import.

§490:9-611 Notification before disposition of collateral. (a) In this section, "notification date" means the earlier of the date on which:

- (1) A secured party sends to the debtor and any secondary obligor an authenticated notification of disposition; or
- (2) The debtor and any secondary obligor waive the right to notification.

(b) Except as otherwise provided in subsection (d), a secured party that disposes of collateral under section 490:9-610 shall send to the persons specified in subsection (c) a reasonable authenticated notification of disposition.

(c) To comply with subsection (b), the secured party shall send an authenticated notification of disposition to:

- (1) The debtor;
- (2) Any secondary obligor; and
- (3) If the collateral is other than consumer goods:
 - (A) Any other person from which the secured party has received, before the notification date, an authenticated notification of a claim of an interest in the collateral;
 - (B) Any other secured party or lienholder that, ten days before the notification date, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:
 - (i) Identified the collateral;
 - (ii) Was indexed under the debtor's name as of that date; and
 - (iii) Was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date; and
 - (C) Any other secured party that, ten days before the notification date, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in section 490:9-311(a).

(d) Subsection (b) does not apply if the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market.

(e) A secured party complies with the requirement for notification prescribed by subsection (c)(3)(B) if:

- (1) Not later than twenty days or earlier than thirty days before the notification date, the secured party requests, in a commercially reasonable manner information concerning financing statements indexed under the debtor's name in the office indicated in subsection (c)(3)(B); and
- (2) Before the notification date, the secured party:
 - (A) Did not receive a response to the request for information; or
 - (B) Received a response to the request for information and sent an authenticated notification of disposition to each secured party named in that response whose financing statement covered the collateral.

§490:9-612 Timeliness of notification before disposition of collateral. (a) Except as otherwise provided in subsection (b), whether a notification is sent within a reasonable time is a question of fact.

(b) In a transaction other than a consumer transaction, a notification of disposition sent after default and ten days or more before the earliest time of disposition set forth in the notification is sent within a reasonable time before the disposition.

§490:9-613 Contents and form of notification before disposition of collateral: general. Except in a consumer-goods transaction, the following rules apply:

- (1) The contents of a notification of disposition are sufficient if the notification:
 - (A) Describes the debtor and the secured party;
 - (B) Describes the collateral that is the subject of the intended disposition;
 - (C) States the method of intended disposition;
 - (D) States that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting; and
 - (E) States the time and place of a public sale or the time after which any other disposition is to be made.
- (2) Whether the contents of a notification that lacks any of the information specified in paragraph (1) are nevertheless sufficient is a question of fact.
- (3) The contents of a notification providing substantially the information specified in paragraph (1) are sufficient, even if the notification includes:
 - (A) Information not specified by that paragraph; or
 - (B) Minor errors that are not seriously misleading.
- (4) A particular phrasing of the notification is not required.
- (5) The following form of notification and the form appearing in section 490:9-614(3), when completed each provides sufficient information:

NOTIFICATION OF DISPOSITION OF COLLATERAL

TO: [Name of debtor, obligor, or other person to which the notification is sent]

From: [Name, address, and telephone number of secured party]

Name of Debtor(s): [Include only if debtor(s) are not an addressee]

[For a public disposition:]

We will sell [or lease or license, as applicable] the [describe collateral]

[to the highest qualified bidder] in public as follows:

Day and Date:

Time: _____
 Place: _____

[For a private disposition:]

We will sell [or lease or license, as applicable] the _____ [describe collateral] privately sometime after _____ [day and date] _____.

You are entitled to an accounting of the unpaid indebtedness secured by the property that we intend to sell [or lease or license, as applicable] [for a charge of \$ _____]. You may request an accounting by calling us at _____ [telephone number] _____.

[End of Form]

§490:9-614 Contents and form of notification before disposition of collateral: Consumer-goods transaction. In a consumer-goods transaction, the following rules apply:

- (1) A notification of disposition must provide the following information:
 - (A) The information specified in section 490:9-613(1);
 - (B) A description of any liability for a deficiency of the person to which the notification is sent;
 - (C) A telephone number from which the amount that must be paid to the secured party to redeem the collateral under section 490:9-623 is available; and
 - (D) A telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available.
- (2) A particular phrasing of the notification is not required.
- (3) The following form of notification, when completed provides sufficient information:

_____ [Name and address of secured party] _____
 _____ [Date] _____

NOTICE OF OUR PLAN TO SELL PROPERTY

_____ [Name and address of any obligor who is also a debtor] _____
 Subject: _____ [Identification of Transaction] _____

We have your _____ [describe collateral] _____, because you broke promises in our agreement.

[For a public disposition:]

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

The sale will be held as follows:

Date: _____
 Time: _____
 Place: _____

You may attend the sale and bring bidders if you want.

[For a private disposition:]

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

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

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

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

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

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

[Names of all other debtors and obligors, if any] _____

[End of Form]

- (4) A notification in the form of paragraph (3) is sufficient, even if additional information appears at the end of the form.
- (5) A notification in the form of paragraph (3) is sufficient, even if it includes errors in information not required by paragraph (1), unless the error is misleading with respect to rights arising under this article.
- (6) If a notification under this section is not in the form of paragraph (3), law other than this article determines the effect of including information not required by paragraph (1).

§490:9-615 Application of proceeds of disposition; liability for deficiency and right to surplus. (a) A secured party shall apply or pay over for application the cash proceeds of disposition in the following order to:

- (1) The reasonable expenses of retaking, holding preparing for disposition, processing, and disposing and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;
- (2) The satisfaction of obligations secured by the security interest or agricultural lien under which the disposition is made;
- (3) The satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral if:
 - (A) The secured party receives from the holder of the subordinate security interest or other lien an authenticated demand for proceeds before distribution of the proceeds is completed; and
 - (B) In a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor; and
- (4) A secured party that is a consignor of the collateral if the secured party receives from the consignor an authenticated demand for proceeds before distribution of the proceeds is completed.

(b) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder does so, the secured party need not comply with the holder's demand under subsection (a)(3).

(c) A secured party need not apply or pay over for application noncash proceeds of disposition under this section unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(d) If the security interest under which a disposition is made secures payment or performance of an obligation, after making the payments and applications required by subsection (a) and permitted by subsection (c):

- (1) Unless subsection (a)(4) requires the secured party to apply or pay over cash proceeds to a consignor, the secured party shall account to and pay a debtor for any surplus; and
- (2) The obligor is liable for any deficiency.
- (e) If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes:
 - (1) The debtor is not entitled to any surplus; and
 - (2) The obligor is not liable for any deficiency.
- (f) The surplus or deficiency following a disposition is calculated based on the amount of proceeds that would have been realized in a disposition complying with this part to a transferee other than the secured party, a person related to the secured party, or a secondary obligor if:
 - (1) The transferee in the disposition is the secured party, a person related to the secured party, or a secondary obligor; and
 - (2) The amount of proceeds of the disposition is significantly below the range of proceeds that a complying disposition to a person other than the secured party, a person related to the secured party or a secondary obligor would have brought.
- (g) A secured party that receives cash proceeds of a disposition in good faith and without knowledge that the receipt violates the rights of the holder of a security interest or other lien that is not subordinate to the security interest or agricultural lien under which the disposition is made:
 - (1) Takes the cash proceeds free of the security interest or other lien;
 - (2) Is not obligated to apply the proceeds of the disposition to the satisfaction of obligations secured by the security interest or other lien; and
 - (3) Is not obligated to account to or pay the holder of the security interest or other lien for any surplus.

§490:9-616 Explanation of calculation of surplus or deficiency. (a) In this section:

- (1) "Explanation" means a writing that:
 - (A) States the amount of the surplus or deficiency;
 - (B) Provides an explanation in accordance with subsection (c) of how the secured party calculated the surplus or deficiency;
 - (C) States, if applicable, that future debits, credits, charges, including additional credit service charges or interest, rebates, and expenses may affect the amount of the surplus or deficiency; and
 - (D) Provides a telephone number or mailing address from which additional information concerning the transaction is available.
- (2) "Request" means a record:
 - (A) Authenticated by a debtor or consumer obligor;
 - (B) Requesting that the recipient provide an explanation; and
 - (C) Sent after disposition of the collateral under section 490:9-610.
- (b) In a consumer-goods transaction in which the debtor is entitled to a surplus or a consumer obligor is liable for a deficiency under section 490:9-615, the secured party shall:
 - (1) Send an explanation to the debtor or consumer obligor as applicable, after the disposition and:
 - (A) Before or when the secured party accounts to the debtor and pays any surplus or first makes written demand on the consumer obligor after the disposition for payment of the deficiency; and
 - (B) Within fourteen days after receipt of a request; or

(2) In the case of a consumer obligor who is liable for a deficiency, within fourteen days after receipt of a request, send to the consumer obligor a record waiving the secured party's right to a deficiency.

(c) To comply with subsection (a)(1)(B), a writing must provide the following information in the following order:

- (1) The aggregate amount of obligations secured by the security interest under which the disposition was made, and, if the amount reflects a rebate of unearned interest or credit service charge, an indication of that fact, calculated as of a specified date:
 - (A) If the secured party takes or receives possession of the collateral after default, not more than thirty-five days before the secured party takes or receives possession; or
 - (B) If the secured party takes or receives possession of the collateral before default or does not take possession of the collateral, not more than thirty-five days before the disposition;
- (2) The amount of proceeds of the disposition;
- (3) The aggregate amount of the obligations after deducting the amount of proceeds;
- (4) The amount, in the aggregate or by type, and types of expenses, including expenses of retaking, holding preparing for disposition, processing, and disposing of the collateral, and attorney's fees secured by the collateral which are known to the secured party and relate to the current disposition;
- (5) The amount, in the aggregate or by type, and types of credits, including rebates of interest or credit service charges, to which the obligor is known to be entitled and which are not reflected in the amount in paragraph (1); and
- (6) The amount of the surplus or deficiency.

(d) A particular phrasing of the explanation is not required. An explanation complying substantially with the requirements of subsection (a) is sufficient, even if it includes minor errors that are not seriously misleading.

(e) A debtor or consumer obligor is entitled without charge to one response to a request under this section during any six-month period in which the secured party did not send to the debtor or consumer obligor an explanation pursuant to subsection (b)(1). The secured party may require payment of a charge not exceeding \$25 for each additional response.

§490:9-617 Rights of transferee of collateral. (a) A secured party's disposition of collateral after default:

- (1) Transfers to a transferee for value all of the debtor's rights in the collateral;
- (2) Discharges the security interest under which the disposition is made; and
- (3) Discharges any subordinate security interest or other subordinate lien.

(b) A transferee that acts in good faith takes free of the rights and interests described in subsection (a), even if the secured party fails to comply with this article or the requirements of any judicial proceeding.

(c) If a transferee does not take free of the rights and interests described in subsection (a), the transferee takes the collateral subject to:

- (1) The debtor's rights in the collateral;
- (2) The security interest or agricultural lien under which the disposition is made; and
- (3) Any other security interest or other lien.

§490:9-618 Rights and duties of certain secondary obligors. (a) A secondary obligor acquires the rights and becomes obligated to perform the duties of the secured party after the secondary obligor:

- (1) Receives an assignment of a secured obligation from the secured party;
 - (2) Receives a transfer of collateral from the secured party and agrees to accept the rights and assume the duties of the secured party; or
 - (3) Is subrogated to the rights of a secured party with respect to collateral.
- (b) An assignment, transfer, or subrogation described in subsection (a):
- (1) Is not a disposition of collateral under section 490:9-610; and
 - (2) Relieves the secured party of further duties under this article.

§490:9-619 Transfer of record or legal title. (a) In this section, “transfer statement” means a record authenticated by a secured party stating:

- (1) That the debtor has defaulted in connection with an obligation secured by specified collateral;
- (2) That the secured party has exercised its post-default remedies with respect to the collateral;
- (3) That, by reason of the exercise, a transferee has acquired the rights of the debtor in the collateral; and
- (4) The name and mailing address of the secured party debtor, and transferee.

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

- (1) Accept the transfer statement;
- (2) Promptly amend its records to reflect the transfer; and
- (3) If applicable, issue a new appropriate certificate of title in the name of the transferee.

(c) A transfer of the record or legal title to collateral to a secured party under subsection (b) or otherwise is not of itself a disposition of collateral under this article and does not of itself relieve the secured party of its duties under this article.

§490:9-620 Acceptance of collateral in full or partial satisfaction of obligation; compulsory disposition of collateral. (a) Except as otherwise provided in subsection (g), a secured party may accept collateral in full or partial satisfaction of the obligation it secures only if:

- (1) The debtor consents to the acceptance under subsection (c);
- (2) The secured party does not receive, within the time set forth in subsection (d), a notification of objection to the proposal authenticated by:
 - (A) A person to which the secured party was required to send a proposal under section 490:9-621; or
 - (B) Any other person, other than the debtor, holding an interest in the collateral subordinate to the security interest that is the subject of the proposal;
- (3) If the collateral is consumer goods, the collateral is not in the possession of the debtor when the debtor consents to the acceptance; and
- (4) Subsection (e) does not require the secured party to dispose of the collateral or the debtor waives the requirement pursuant to section 490:9-624.

(b) A purported or apparent acceptance of collateral under this section is ineffective unless:

- (1) The secured party consents to the acceptance in an authenticated record or sends a proposal to the debtor; and
- (2) The conditions of subsection (a) are met.

(c) For purposes of this section:

- (1) A debtor consents to an acceptance of collateral in partial satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default; and
- (2) A debtor consents to an acceptance of collateral in full satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default or the secured party:
 - (A) Sends to the debtor after default a proposal that is unconditional or subject only to a condition that collateral not in the possession of the secured party be preserved or maintained;
 - (B) In the proposal, proposes to accept collateral in full satisfaction of the obligation it secures; and
 - (C) Does not receive a notification of objection authenticated by the debtor within twenty days after the proposal is sent.

(d) To be effective under subsection (a)(2), a notification of objection must be received by the secured party:

- (1) In the case of a person to which the proposal was sent pursuant to section 490:9-621, within twenty days after notification was sent to that person; and
- (2) In other cases:
 - (A) Within twenty days after the last notification was sent pursuant to section 490:9-621; or
 - (B) If a notification was not sent, before the debtor consents to the acceptance under subsection (c).

(e) A secured party that has taken possession of collateral shall dispose of the collateral pursuant to section 490:9-610 within the time specified in subsection (f) if:

- (1) Sixty per cent of the cash price has been paid in the case of a purchase-money security interest in consumer goods; or
- (2) Sixty per cent of the principal amount of the obligation secured has been paid in the case of a non-purchase-money security interest in consumer goods.

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

- (1) Within ninety days after taking possession; or
- (2) Within any longer period to which the debtor and all secondary obligors have agreed in an agreement to that effect entered into and authenticated after default.

(g) In a consumer transaction, a secured party may not accept collateral in partial satisfaction of the obligation it secures.

§490:9-621 Notification of proposal to accept collateral. (a) A secured party that desires to accept collateral in full or partial satisfaction of the obligation it secures shall send its proposal to:

- (1) Any person from which the secured party has received before the debtor consented to the acceptance, an authenticated notification of a claim of an interest in the collateral;
- (2) Any other secured party or lienholder that, ten days before the debtor consented to the acceptance, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:
 - (A) Identified the collateral;
 - (B) Was indexed under the debtor's name as of that date; and

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

(3) Any other secured party that, ten days before the debtor consented to the acceptance, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in section 490:9-311(a).

(b) A secured party that desires to accept collateral in partial satisfaction of the obligation it secures shall send its proposal to any secondary obligor in addition to the persons described in subsection (a).

§490:9-622 Effect of acceptance of collateral. (a) A secured party's acceptance of collateral in full or partial satisfaction of the obligation it secures:

- (1) Discharges the obligation to the extent consented to by the debtor;
- (2) Transfers to the secured party all of a debtor's rights in the collateral;
- (3) Discharges the security interest or agricultural lien that is the subject of the debtor's consent and any subordinate security interest or other subordinate lien; and
- (4) Terminates any other subordinate interest.

(b) A subordinate interest is discharged or terminated under subsection (a), even if the secured party fails to comply with this article.

§490:9-623 Right to redeem collateral. (a) A debtor, any secondary obligor, or any other secured party or lienholder may redeem collateral.

(b) To redeem collateral, a person shall tender:

- (1) Fulfillment of all obligations secured by the collateral; and
- (2) The reasonable expenses and attorney's fees described in section 490:9-615(a)(1).

(c) A redemption may occur at any time before a secured party:

- (1) Has collected collateral under section 490:9-607;
- (2) Has disposed of collateral or entered into a contract for its disposition under section 490:9-610; or
- (3) Has accepted collateral in full or partial satisfaction of the obligation it secures under section 490:9-622.

§490:9-624 Waiver. (a) A debtor or secondary obligor may waive the right to notification of disposition of collateral under section 490:9-611 only by an agreement to that effect entered into and authenticated after default.

(b) A debtor may waive the right to require disposition of collateral under section 490:9-620(e) only by an agreement to that effect entered into and authenticated after default.

(c) Except in a consumer-goods transaction, a debtor or secondary obligor may waive the right to redeem collateral under section 490:9-623 only by an agreement to that effect entered into and authenticated after default.

SUBPART 2. NONCOMPLIANCE WITH ARTICLE

§490:9-625 Remedies for secured party's failure to comply with article.

(a) If it is established that a secured party is not proceeding in accordance with this article, a court may order or restrain collection, enforcement, or disposition of collateral on appropriate terms and conditions.

(b) Subject to subsections (c), (d), and (f), a person is liable for damages in the amount of any loss caused by a failure to comply with this article. Loss caused by a failure to comply with a request under section 490:9-210 may include loss

resulting from the debtor's inability to obtain, or increased costs of, alternative financing.

(c) Except as otherwise provided in section 490:9-628:

- (1) A person that, at the time of the failure, was a debtor, was an obligor, or held a security interest in or other lien on the collateral may recover damages under subsection (b) for its loss; and
- (2) If the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply with this part may recover for that failure in any event an amount not less than the credit service charge plus ten per cent of the principal amount of the obligation or the time-price differential plus ten per cent of the cash price.

(d) A debtor whose deficiency is eliminated under section 490:9-626 may recover damages for the loss of any surplus. However, a debtor or secondary obligor whose deficiency is eliminated or reduced under section 490:9-626 may not otherwise recover under subsection (b) for noncompliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance.

(e) In addition to any damages recoverable under subsection (b), the debtor, consumer obligor, or person named as a debtor in a filed record, as applicable, may recover \$500 in each case from a person that:

- (1) Fails to comply with section 490:9-208;
- (2) Fails to comply with section 490:9-209;
- (3) Files a record that the person is not entitled to file under section 490:9-509(a);
- (4) Fails to cause the secured party of record to file or send a termination statement as required by section 490:9-513(a) or (c);
- (5) Fails to comply with section 490:9-616(b)(1) and whose failure is part of a pattern, or consistent with a practice, of noncompliance; or
- (6) Fails to comply with section 490:9-616(b)(2).

(f) A debtor or consumer obligor may recover damages under subsection (b) and, in addition, \$500 in each case from a person that, without reasonable cause, fails to comply with a request under section 490:9-210. A recipient of a request under section 490:9-210 which never claimed an interest in the collateral or obligations that are the subject of a request under that section has a reasonable excuse for failure to comply with the request within the meaning of this subsection.

(g) If a secured party fails to comply with a request regarding a list of collateral or a statement of account under section 490:9-210, the secured party may claim a security interest only as shown in the statement included in the request as against a person that is reasonably misled by the failure.

§490:9-626 Action in which deficiency or surplus is in issue. (a) In an action arising from a transaction, other than a consumer transaction, in which the amount of a deficiency or surplus is in issue, the following rules apply:

- (1) A secured party need not prove compliance with the provisions of this part relating to collection enforcement, disposition, or acceptance unless the debtor or a secondary obligor places the secured party's compliance in issue.
- (2) If the secured party's compliance is placed in issue the secured party has the burden of establishing that the collection, enforcement, disposition, or acceptance was conducted in accordance with this part.
- (3) Except as otherwise provided in section 490:9-628, if a secured party fails to prove that the collection enforcement, disposition, or acceptance was conducted in accordance with the provisions of this part relating to collection, enforcement, disposition, or acceptance, the li-

ability of a debtor or a secondary obligor for a deficiency is limited to an amount by which the sum of the secured obligation, expenses, and attorney's fees exceeds the greater of:

- (A) The proceeds of the collection, enforcement disposition, or acceptance; or
 - (B) The amount of proceeds that would have been realized had the noncomplying secured party proceeded in accordance with the provisions of this part relating to collection, enforcement disposition, or acceptance.
- (4) For purposes of paragraph (3)(B), the amount of proceeds that would have been realized is equal to the sum of the secured obligation, expenses, and attorney's fees unless the secured party proves that the amount is less than that sum.
 - (5) If a deficiency or surplus is calculated under section 490:9-615(f), the debtor or obligor has the burden of establishing that the amount of proceeds of the disposition is significantly below the range of prices that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

(b) The limitation of the rules in subsection (a) to transactions other than consumer transactions is intended to leave to the court the determination of the proper rules in consumer transactions. The court may not infer from that limitation the nature of the proper rule in consumer transactions and may continue to apply established approaches.

§490:9-627 Determination of whether conduct was commercially reasonable. (a) The fact that a greater amount could have been obtained by a collection, enforcement, disposition, or acceptance at a different time or in a different method from that selected by the secured party is not of itself sufficient to preclude the secured party from establishing that the collection, enforcement, disposition, or acceptance was made in a commercially reasonable manner.

(b) A disposition of collateral is made in a commercially reasonable manner if the disposition is made:

- (1) In the usual manner on any recognized market;
- (2) At the price current in any recognized market at the time of the disposition; or
- (3) Otherwise in conformity with reasonable commercial practices among dealers in the type of property that was the subject of the disposition.

(c) A collection, enforcement, disposition, or acceptance is commercially reasonable if it has been approved:

- (1) In a judicial proceeding;
- (2) By a bona fide creditors' committee;
- (3) By a representative of creditors; or
- (4) By an assignee for the benefit of creditors.

(d) Approval under subsection (c) need not be obtained, and lack of approval does not mean that the collection, enforcement, disposition, or acceptance is not commercially reasonable.

§490:9-628 Nonliability and limitation on liability of secured party; liability of secondary obligor. (a) Unless a secured party knows that a person is a debtor or obligor, knows the identity of the person, and knows how to communicate with the person:

- (1) The secured party is not liable to the person, or to a secured party or lienholder that has filed a financing statement against the person, for failure to comply with this article; and
- (2) The secured party's failure to comply with this article does not affect the liability of the person for a deficiency.
- (b) A secured party is not liable because of its status as secured party:
 - (1) To a person that is a debtor or obligor, unless the secured party knows:
 - (A) That the person is a debtor or obligor;
 - (B) The identity of the person; and
 - (C) How to communicate with the person; or
 - (2) To a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:
 - (A) That the person is a debtor; and
 - (B) The identity of the person.
- (c) A secured party is not liable to any person, and a person's liability for a deficiency is not affected, because of any act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer-goods transaction or a consumer transaction or that goods are not consumer goods, if the secured party's belief is based on its reasonable reliance on:
 - (1) A debtor's representation concerning the purpose for which collateral was to be used, acquired, or held; or
 - (2) An obligor's representation concerning the purpose for which a secured obligation was incurred.
- (d) A secured party is not liable to any person under section 490:9-625(c)(2) for its failure to comply with section 490:9-616.
- (e) A secured party is not liable under section 490:9-625(c)(2) more than once with respect to any one secured obligation.

PART 7. TRANSITION

§490:9-701 Effective date. This article takes effect on July 1, 2001.

§490:9-702 Savings clause. (a) Except as otherwise provided in this part, this article applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before this article takes effect.

(b) Except as otherwise provided in subsection (c) and sections 490:9-703 through 490:9-708:

- (1) Transactions and liens that were not governed by former Article 9, were validly entered into or created before this article takes effect, and would be subject to this article if they had been entered into or created after this article takes effect, and the rights, duties, and interests flowing from those transactions and liens, remain valid after this article takes effect; and
 - (2) The transactions and liens may be terminated, completed, consummated, and enforced as required or permitted by this article or by the law that otherwise would apply if this article had not taken effect.
- (c) This article does not affect an action, case, or proceeding commenced before this article takes effect.

§490:9-703 Security interest perfected before effective date. (a) A security interest that is enforceable immediately before this article takes effect and would have priority over the rights of a person that becomes a lien creditor at that time is a perfected security interest under this article if, when this article takes effect, the

applicable requirements for enforceability and perfection under this article are satisfied without further action.

(b) Except as otherwise provided in section 490:9-705, if, immediately before this article takes effect, a security interest is enforceable and would have priority over the rights of a person that becomes a lien creditor at that time, but the applicable requirements for enforceability or perfection under this article are not satisfied when this article takes effect, the security interest:

- (1) Is a perfected security interest for one year after this article takes effect;
- (2) Remains enforceable thereafter only if the security interest becomes enforceable under section 490:9-203 before the year expires; and
- (3) Remains perfected thereafter only if the applicable requirements for perfection under this article are satisfied before the year expires.

§490:9-704 Security interest unperfected before effective date. A security interest that is enforceable immediately before this article takes effect but which would be subordinate to the rights of a person that becomes a lien creditor at that time:

- (1) Remains an enforceable security interest for one year after this article takes effect;
- (2) Remains enforceable thereafter if the security interest becomes enforceable under section 490:9-203 when this article takes effect or within one year thereafter; and
- (3) Becomes perfected:
 - (A) Without further action, when this article takes effect if the applicable requirements for perfection under this article are satisfied before or at that time; or
 - (B) When the applicable requirements for perfection are satisfied if the requirements are satisfied after that time.

§490:9-705 Effectiveness of action taken before effective date. (a) If action, other than the filing of a financing statement, is taken before this article takes effect and the action would have resulted in priority of a security interest over the rights of a person that becomes a lien creditor had the security interest become enforceable before this article takes effect, the action is effective to perfect a security interest that attaches under this article within one year after this article takes effect. An attached security interest becomes unperfected one year after this article takes effect unless the security interest becomes a perfected security interest under this article before the expiration of that period.

(b) The filing of a financing statement before this article takes effect is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under this article.

(c) This article does not render ineffective an effective financing statement that, before this article takes effect, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in the former section 490:9-103. However, except as otherwise provided in subsections (d) and (e) and section 490:9-706, the financing statement ceases to be effective at the earlier of:

- (1) The time the financing statement would have ceased to be effective under the law of the jurisdiction in which it is filed; or
- (2) June 30, 2006.

(d) The filing of a continuation statement after this article takes effect does not continue the effectiveness of the financing statement filed before this article takes effect. However, upon the timely filing of a continuation statement after this article takes effect and in accordance with the law of the jurisdiction governing

perfection as provided in part 3, the effectiveness of a financing statement filed in the same office in that jurisdiction before this article takes effect continues for the period provided by the law of that jurisdiction.

(e) Subsection (c)(2) applies to a financing statement that, before this article takes effect, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in the former section 490:9-103 only to the extent that part 3 provides that the law of a jurisdiction other than a jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

(f) A financing statement that includes a financing statement filed before this article takes effect and a continuation statement filed after this article takes effect is effective only to the extent that it satisfies the requirements of part 5 for an initial financing statement.

§490:9-706 When initial financing statement suffices to continue effectiveness of financing statement. (a) The filing of an initial financing statement in the office specified in section 490:9-501 continues the effectiveness of a financing statement filed before this article takes effect if:

- (1) The filing of an initial financing statement in that office would be effective to perfect a security interest under this article;
- (2) The pre-effective-date financing statement was filed in an office in another state or another office in this State; and
- (3) The initial financing statement satisfies subsection (c).

(b) The filing of an initial financing statement under subsection (a) continues the effectiveness of the pre-effective-date financing statement:

- (1) If the initial financing statement is filed before this article takes effect, for the period provided in the former section 490:9-403 with respect to a financing statement; and
- (2) If the initial financing statement is filed after this article takes effect, for the period provided in section 490:9-515 with respect to an initial financing statement.

(c) To be effective for purposes of subsection (a), an initial financing statement must:

- (1) Satisfy the requirements of part 5 for an initial financing statement;
- (2) Identify the pre-effective-date financing statement by indicating the office in which the financing statement was filed and providing the dates of filing and file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement; and
- (3) Indicate that the pre-effective-date financing statement remains effective.

§490:9-707 Persons entitled to file initial financing statement or continuation statement. A person may file an initial financing statement or a continuation statement under this part if:

- (1) The secured party of record authorizes the filing; and
- (2) The filing is necessary under this part:
 - (A) To continue the effectiveness of a financing statement filed before this article takes effect; or
 - (B) To perfect or continue the perfection of a security interest.

§490:9-708 Priority. (a) This article determines the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before this article takes effect, the former Article 9 determines priority.

(b) For purposes of section 490:9-322(a), the priority of a security interest that becomes enforceable under section 490:9-203 of this article dates from the time this article takes effect if the security interest is perfected under this article by the filing of a financing statement before this article takes effect which would not have been effective to perfect the security interest under the former Article 9. This subsection does not apply to conflicting security interests each of which is perfected by the filing of such a financing statement.”

SECTION 2. Chapter 490, Hawaii Revised Statutes, is amended by adding to article 5 a new section to be appropriately designated and to read as follows:

“§490:5- Security interest of issuer or nominated person. (a) An issuer or nominated person has a security interest in a document presented under a letter of credit to the extent that the issuer or nominated person honors or gives value for the presentation.

(b) So long as and to the extent that an issuer or nominated person has not been reimbursed or has not otherwise recovered the value given with respect to a security interest in a document under subsection (a), the security interest continues and is subject to Article 9, but:

- (1) A security agreement is not necessary to make the security interest enforceable under section 490:9-203(b)(3);
- (2) If the document is presented in a medium other than a written or other tangible medium, the security interest is perfected; and
- (3) If the document is presented in a written or other tangible medium and is not a certificated security chattel paper, a document of title, an instrument, or a letter of credit, the security interest is perfected and has priority over a conflicting security interest in the document so long as the debtor does not have possession of the document.”

SECTION 3. Section 286-52, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Until the director of finance has issued the new certificate of registration and certificate of ownership as in subsection (d) provided, delivery of such vehicle shall be deemed not to have been made and title thereto shall be deemed not to have passed, and the intended transfer shall be deemed to be incomplete and not to be valid or effective for any purpose, notwithstanding any provision of the Uniform Commercial Code; provided that a security interest in a motor vehicle shall be perfected as provided in the Uniform Commercial Code, [sections 490:9-302(3)(b) and 490:9-302(4),] section 490:9-311 and that the validity, attachment, priority, and enforcement of such security interest shall be governed by Article 9 of the Code.”

SECTION 4. Section 476-1, Hawaii Revised Statutes, is amended by amending the definition of “goods” to read as follows:

““Goods” include all things which are movable at the time the credit sale is entered into or which will be movable when they thereafter come into existence or which are or will be fixtures [(section 490:9-313),] (sections 490:9-334 and 490:9-604), but except as provided in this paragraph does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like (including oil and gas) before extraction. “Goods” include standing timber which is to be cut and removed under a conveyance or contract for sale, the unborn young animals, growing crops, and merchandise certificates or coupons, issued by a credit

seller, to be used in the face amount in lieu of cash in exchange for goods sold by such a seller.”

SECTION 5. Section 506-1, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) A mortgage may secure the repayment of past debt, a debt incurred at the time the mortgage is executed, or a debt incurred for advances which may be made by the mortgagee subsequent to the execution of the mortgage even though the mortgagee is under no contractual duty to make these advances. Except as otherwise provided in [section 490:9-313] sections 490:9-334 and 490:9-604 of the Uniform Commercial Code with respect to security interests in fixtures, a mortgage which secures future advances, up to but not exceeding the maximum amount of future advances stated in the mortgage, shall be superior to any subsequently recorded mortgage, lien, or other encumbrances or conveyance, other than liens for real property taxes and assessments for public improvements, even though the subsequently recorded mortgage, lien, or other encumbrance or conveyance is recorded prior to the date upon which any advance or advances have been made.”

SECTION 6. Section 506-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Subject to the limitations contained in this chapter and to [section 490:9-313] sections 490:9-334 and 490:9-604 of the Uniform Commercial Code respecting security interests in fixtures, if the mortgage so provides, the lien of the mortgage may attach to additions, improvements, and purchases or substitutions made to supply the place of any real property or fixtures disposed of and to all other after-acquired real property or fixtures referred to in the mortgage when the mortgagor acquires an interest therein to the extent of the interest, but subject to existing liens and the lien of a purchase money mortgage given by the mortgagor of any such after-acquired real property or fixtures.”

SECTION 7. Section 712A-1, Hawaii Revised Statutes, is amended by amending the definition of “owner” to read as follows:

““Owner” means a person who is not a secured party within the meaning of section [[490:9-105(1)]] 490:9-102 and who has an interest in property, whether legal or equitable. A purported interest which is not in compliance with any statute requiring its recordation or reflection in public records in order to perfect the interest against a bona fide purchaser for value shall not be recognized as an interest against this State in an action pursuant to this chapter. An owner with power to convey property binds other owners, and a spouse binds the person’s spouse, by any act or omission.”

SECTION 8. Section 490:1-105, Hawaii Revised Statutes, is amended by amending subsection (2) to read as follows:

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

Rights of creditors against sold goods. Section 490:2-402.

Applicability of the Article on Leases. Sections 490:2A-105 and 490:2A-106.

Applicability of the Article on Bank Deposits and Collections. Section 490:4-102.

Governing law in the Article on Funds Transfers. Section 490:4A-507.

Letters of Credit. Section 490:5-116.

Applicability of the Article on Investment Securities. Section 490:8-110.

[Perfection provisions of the Article on Secured Transactions. Section 490:9-103.]

Law governing perfection, the effect of perfection or nonperfection, and the priority of security interests and agricultural liens. Sections 490:9-301 through 490:9-339.

SECTION 9. Section 490:1-201, Hawaii Revised Statutes, is amended as follows:

1. By amending the definition of “buyer in ordinary course of business” to read:

“(9) “Buyer in ordinary course of business” means a person [who] that buys goods in good faith [and], without knowledge that the sale [to him is in violation of] violates the [ownership] rights [or security interest] of [a third party] another person in the goods [buys], and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind [but does not include a pawnbroker. All persons who sell minerals or the like (including oil and gas) at wellhead or minehead shall be deemed to be persons]. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller’s own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. [“Buying”] A buyer in ordinary course of business may [be] buy for cash [or], by exchange of other property, or on secured or unsecured credit, and [includes receiving] may acquire goods or documents of title under a preexisting contract for sale [but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt]. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under Article 2 may be a buyer in ordinary course of business. A person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt is not a buyer in ordinary course of business.”

2. By amending the definition of “purchase” to read:

“(32) “Purchase” includes taking by sale, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.”

3. By amending the definition of “security interest” to read:

“(37) “Security interest” means an interest in personal property or fixtures which secures payment or performance of an obligation. [The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (section 490:2-401) is limited in effect to a reservation of a “security interest”.] The term also includes any interest of a consignor and a buyer of accounts [or], chattel paper [which], a payment intangible, or a promissory note in a transaction that is subject to Article 9. The special property interest of a buyer of goods on identification of those goods to a contract for sale under section 490:2-401 is not a “security interest”, but a buyer may also acquire a “security interest” by complying with Article 9. [Unless a consignment is intended as security, reservation of title thereunder is not a “security interest”, but a consignment in any event is subject to the provisions on consignment sales (section 490:2-326).] Except as otherwise provided in section 490:2-505, the right of a seller or lessor of goods under Article 2 or 2A to retain or acquire possession of the goods is not a “security interest”, but a seller or lessor may also acquire a “security interest” by complying with Article 9. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (section 490:2-401) is limited in effect to a reservation of a “security interest”.

Whether a transaction creates a lease or security interest is determined by the facts of each case; however, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee, and:

- (a) The original term of the lease is equal to or greater than the remaining economic life of the goods;
- (b) The lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;
- (c) The lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement; or
- (d) The lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

A transaction does not create a security interest merely because it provides that:

- (a) The present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;
- (b) The lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing, recording, or registration fees, or service or maintenance costs with respect to the goods;
- (c) The lessee has an option to renew the lease or to become the owner of the goods;
- (d) The lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed; or
- (e) The lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

For purposes of this subsection (37):

- (x) Additional consideration is not nominal if (i) when the option to renew the lease is granted to the lessee the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed, or (ii) when the option to become the owner of the goods is granted to the lessee the price is stated to be the fair market value of the goods determined at the time the option is to be performed. Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised;
- (y) "Reasonably predictable" and "remaining economic life of the goods" are to be determined with reference to the facts and circumstances at the time the transaction is entered into; and
- (z) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into."

SECTION 10. Section 490:1-206, Hawaii Revised Statutes, is amended by amending subsection (2) to read as follows:

“(2) Subsection (1) [of this section] does not apply to contracts for the sale of goods (section 490:2-201) nor of securities (section 490:8-113) nor to security agreements (section [490:9-203].] 490:9-201 or 490:9-203).”

SECTION 11. Section 490:2-103, Hawaii Revised Statutes, is amended by amending subsection (3) to read as follows:

“(3) The following definitions in other Articles apply to this Article:

“Check”. Section 490:3-104.

“Consignee”. Section 490:7-102.

“Consignor”. Section 490:7-102.

“Consumer goods”. Section [490:9-109.] 490:9-102.

“Dishonor”. Section 490:3-502.

“Draft”. Section 490:3-104.”

SECTION 12. Section 490:2-210, Hawaii Revised Statutes, is amended to read as follows:

“**§490:2-210 Delegation of performance; assignment of rights.** (1) A party may perform [his] the party’s duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having [his] the other party’s original promisor perform or control the acts required by the contract. No delegation of performance relieves the party delegating of any duty to perform or any liability for breach.

(2) [Unless] Except as otherwise provided in section 490:9-406, unless otherwise agreed, all rights of either seller or buyer can be assigned except where the assignment would materially change the duty of the other party, or increase materially the burden or risk imposed on [him] the other party by [his] the other party’s contract, or impair materially [his] the other party’s chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of the assignor’s due performance of [his] the assignor’s entire obligation can be assigned despite agreement otherwise.

(3) The creation, attachment, perfection, or enforcement of a security interest in the seller’s interest under a contract is not a transfer that materially changes the duty of or increases materially the burden or risk imposed on the buyer or impairs materially the buyer’s chance of obtaining return performance within the purview of subsection (2) unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the seller. Even in that event, the creation, attachment, perfection, and enforcement of the security interest remain effective, but:

(a) The seller is liable to the buyer for damages caused by the delegation to the extent that the damages could not reasonably be prevented by the buyer; and

(b) A court having jurisdiction may grant other appropriate relief, including cancellation of the contract for sale or an injunction against enforcement of the security interest or consummation of the enforcement.

[(3)] (4) Unless the circumstances indicate the contrary a prohibition of assignment of “the contract” is to be construed as barring only the delegation to the assignee of the assignor’s performance.

[(4)] (5) An assignment of “the contract” or of “all my rights under the contract” or an assignment in similar general terms is an assignment of rights and unless the language or the circumstances (as in an assignment for security) indicate the contrary, it is a delegation of performance of the duties of the assignor and its

acceptance by the assignee constitutes a promise by [him] the assignee to perform those duties. This promise is enforceable by either the assignor or the other party to the original contract.

[(5)] (6) The other party may treat any assignment which delegates performance as creating reasonable grounds for insecurity and may without prejudice to his rights against the assignor demand assurances from the assignee (section 490:2-609).”

SECTION 13. Section 490:2-326, Hawaii Revised Statutes, is amended to read as follows:

“§490:2-326 Sale on approval and sale or return; [consignment sales and] rights of creditors. (1) Unless otherwise agreed, if delivered goods may be returned by the buyer even though they conform to the contract, the transaction is:

- (a) A “sale on approval” if the goods are delivered primarily for use; and
- (b) A “sale or return” if the goods are delivered primarily for resale.

(2) [Except as provided in subsection (3), goods] Goods held on approval are not subject to the claims of the buyer’s creditors until acceptance; goods held on sale or return are subject to such claims while in the buyer’s possession.

[(3)] (3) Where goods are delivered to a person for sale and such person maintains a place of business at which he deals in goods of the kind involved, under a name other than the name of the person making delivery, then with respect to claims of creditors of the person conducting the business the goods are deemed to be on sale or return. The provisions of this subsection are applicable even though an agreement purports to reserve title to the person making delivery until payment or resale or uses such words as “on consignment” or “on memorandum”. However, this subsection is not applicable if the person making delivery

- (a) Complies with an applicable law providing for a consignor’s interest or the like to be evidenced by a sign, or
- (b) Establishes that the person conducting the business is generally known by his creditors to be substantially engaged in selling the goods of others, or
- (c) Complies with the filing provisions of the Article on Secured Transactions (Article 9).

(4)] (3) Any “or return” term of a contract for sale is to be treated as a separate contract for sale within the statute of frauds section of this Article (section 490:2-201) and as contradicting the sale aspect of the contract within the provisions of this Article on parol or extrinsic evidence (section 490:2-202).”

SECTION 14. Section 490:2-502, Hawaii Revised Statutes, is amended to read as follows:

“§490:2-502 Buyer’s right to goods on seller’s repudiation, failure to deliver, or insolvency. (1) Subject to [subsection] subsections (2) and (3), and even though the goods have not been shipped, a buyer who has paid a part or all of the price of goods in which [he] the buyer has a special property under the provisions of the immediately preceding section may on making and keeping good a tender of any unpaid portion of their price recover them from the seller if:

- (a) In the case of goods bought for personal, family, or household purposes, the seller repudiates or fails to deliver as required by the contract; or
- (b) In all cases, the seller becomes insolvent within ten days after receipt of the first installment on their price.

(2) The buyer's right to recover the goods under subsection (1)(a) vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver.

[(2)] (3) If the identification creating [his] the buyer's special property has been made by the buyer [he], the buyer acquires the right to recover the goods only if they conform to the contract for sale."

SECTION 15. Section 490:2-716, Hawaii Revised Statutes, is amended by amending subsection (3) to read as follows:

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

SECTION 16. Section 490:2A-103, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The following definitions in other Articles apply to this Article:

"Account". Section [490:9-106.] 490:9-102(a).

"Between merchants". Section 490:2-104(3).

"Buyer". Section 490:2-103(1)(a).

"Chattel paper". Section [490:9-105(1)(b).] 490:9-102(a).

"Consumer goods". Section [490:9-109(1).] 490:9-102(a).

"Document". Section [490:9-105(1)(f).] 490:9-102(a).

"Entrusting". Section 490:2-403(3).

["General intangibles". Section 490:9-106.]

"General intangible". Section 490:9-102(a).

"Good faith". Section 490:2-103(1)(b).

"Instrument". Section [490:9-105(1)(j).] 490:9-102(a).

"Merchant". Section 490:2-104(1).

"Mortgage". Section [490:9-105(1)(k).] 490:9-102(a).

"Pursuant to commitment". Section [490:9-105(1)(l).] 490:9-102(a).

"Receipt". Section 490:2-103(1)(c).

"Sale". Section 490:2-106(1).

"Sale on approval". Section 490:2-326.

"Sale or return". Section 490:2-326.

"Seller". Section 490:2-103(1)(d).

SECTION 17. Section 490:2A-303, Hawaii Revised Statutes, is amended to read as follows:

"§490:2A-303 Alienability of party's interest under lease contract or of lessor's residual interest in goods; delegation of performance; transfer of rights. (a) As used in this section, "creation of a security interest" includes the sale of a lease contract that is subject to Article 9, Secured Transactions, by reason of section [490:9-102(1)(b).] 490:9-109(a)(3).

(b) Except as provided in [subsections] subsection (c) and [(d),] section 490:9-407, a provision in a lease agreement which (i) prohibits the voluntary or involuntary transfer, including a transfer by sale, sublease, creation or enforcement of a security interest, or attachment, levy, or other judicial process, of an interest of a party under the lease contract or of the lessor's residual interest in the goods, or (ii) makes such a transfer an event of default, gives rise to the rights and remedies

provided in subsection [(e),] (d), but a transfer that is prohibited or is an event of default under the lease agreement is otherwise effective.

[(c) A provision in a lease agreement which (i) prohibits the creation or enforcement of a security interest in an interest of a party under the lease contract or in the lessor's residual interest in the goods, or (ii) makes such a transfer an event of default, is not enforceable unless, and then only to the extent that, there is an actual transfer by the lessee of the lessee's right of possession or use of the goods in violation of the provision or an actual delegation of a material performance of either party to the lease contract in violation of the provision. Neither the granting nor the enforcement of a security interest in (i) the lessor's interest under the lease contract or (ii) the lessor's residual interest in the goods is a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the lessee within the purview of subsection (e) unless, and then only to the extent that, there is an actual delegation of a material performance of the lessor.

(d)] (c) A provision in a lease agreement which (i) prohibits a transfer of a right to damages for default with respect to the whole lease contract or of a right to payment arising out of the transferor's due performance of the transferor's entire obligation, or (ii) makes such a transfer an event of default, is not enforceable, and such a transfer is not a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract within the purview of subsection [(e).] (d).

[(e)] (d) Subject to [subsections] subsection (c) and [(d):] section 490:9-407:

- (1) If a transfer is made which is made an event of default under a lease agreement, the party to the lease contract not making the transfer, unless that party waives the default or otherwise agrees, has the rights and remedies described in section 490:2A-501(b);
- (2) If paragraph (1) is not applicable and if a transfer is made that (i) is prohibited under a lease agreement or (ii) materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract, unless the party not making the transfer agrees at any time to the transfer in the lease contract or otherwise, then, except as limited by contract, (i) the transferor is liable to the party not making the transfer for damages caused by the transfer to the extent that the damages could not reasonably be prevented by the party not making the transfer and (ii) a court having jurisdiction may grant other appropriate relief, including cancellation of the lease contract or an injunction against the transfer.

[(f)] (e) A transfer of "the lease" or of "all my rights under the lease", or a transfer in similar general terms, is a transfer of rights and, unless the language or the circumstances, as in a transfer for security, indicate the contrary, the transfer is a delegation of duties by the transferor to the transferee. Acceptance by the transferee constitutes a promise by the transferee to perform those duties. The promise is enforceable by either the transferor or the other party to the lease contract.

[(g)] (f) Unless otherwise agreed by the lessor and the lessee, a delegation of performance does not relieve the transferor as against the other party of any duty to perform or of any liability for default.

[(h)] (g) In a consumer lease, to prohibit the transfer of an interest of a party under the lease contract or to make a transfer an event of default, the language must be specific, by a writing, and conspicuous."

SECTION 18. Section 490:2A-307, Hawaii Revised Statutes, is amended to read as follows:

“§490:2A-307 Priority of liens arising by attachment or levy on, security interests in, and other claims to goods. (a) Except as otherwise provided in section 490:2A-306, a creditor of a lessee takes subject to the lease contract.

(b) Except as otherwise provided in [subsections] subsection (c) and [(d) and in] sections 490:2A-306 and 490:2A-308, a creditor of a lessor takes subject to the lease contract unless[:

- (1) The] the creditor holds a lien that attached to the goods before the lease contract became enforceable[;
- (2) The creditor holds a security interest in the goods and the lessee did not give value and receive delivery of the goods without knowledge of the security interest; or
- (3) The creditor holds a security interest in the goods which was perfected (section 490:9-303) before the lease contract became enforceable.

(c) A lessee in the ordinary course of business takes the leasehold interest free of a security interest in the goods created by the lessor even though the security interest is perfected (section 490:9-303) and the lessee knows of its existence.

(d) A lessee other than a lessee in the ordinary course of business takes the leasehold interest free of a security interest to the extent that it secures future advances made after the secured party acquires knowledge of the lease or more than forty-five days after the lease contract becomes enforceable, whichever first occurs, unless the future advances are made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the forty-five-day period].

(c) Except as otherwise provided in sections 490:9-317, 490:9-321, and 490:9-323, a lessee takes a leasehold interest subject to a security interest held by a creditor of the lessor.”

SECTION 19. Section 490:2A-309, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) In this section:

- (1) Goods are “fixtures” when they become so related to particular real estate that an interest in them arises under real estate law;
- (2) A “fixture filing” is the filing, in the office where a record of a mortgage on the real estate would be filed or recorded, of a financing statement covering goods that are or are to become fixtures and conforming to the requirements of section [490:9-402(5);] 490:9-502(a) and (b);
- (3) A lease is a “purchase money lease” unless the lessee has possession or use of the goods or the right to possession or use of the goods before the lease agreement is enforceable;
- (4) A mortgage is a “construction mortgage” to the extent it secures an obligation incurred for the construction of an improvement on land including the acquisition cost of the land, if the recorded writing so indicates; and
- (5) “Encumbrance” includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests.”

SECTION 20. Section 490:4-210, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents, and

proceeds. So long as the bank does not receive final settlement for the item or give up possession of the item or accompanying documents for purposes other than collection, the security interest continues to that extent and is subject to Article 9, but:

- (1) No security agreement is necessary to make the security interest enforceable (section [490:9-203(1)(a);] 490:9-203(b)(3)(A));
- (2) No filing is required to perfect the security interest; and
- (3) The security interest has priority over conflicting perfected security interests in the item, accompanying documents, or proceeds.”

SECTION 21. Section 490:7-503, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) A document of title confers no right in goods against a person who before issuance of the document had a legal interest or a perfected security interest in them and who neither:

- (a) Delivered or entrusted them or any document of title covering them to the bailor or [his] the bailor’s nominee with actual or apparent authority to ship, store, or sell, or with power to obtain delivery under this Article (section 490:7-403) or with power of disposition under this chapter (sections 490:2-403 and [490:9-307]) 490:9-320 or other statute or rule of law; nor
- (b) Acquiesced in the procurement by the bailor or [his] the bailor’s nominee of any document of title.”

SECTION 22. Section 490:8-103, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) A commodity contract, as defined in section [490:9-115,] 490:9-102(a), is not a security or a financial asset.”

SECTION 23. Section 490:8-106, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (d) to read:

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

- (1) The purchaser becomes the entitlement holder; [or]
- (2) The securities intermediary has agreed that it will comply with entitlement orders originated by the purchaser without further consent by the entitlement holder[.]; or
- (3) Another person has control of the security entitlement on behalf of the purchaser or, having previously acquired control of the security entitlement, acknowledges that it has control on behalf of the purchaser.”

2. By amending subsection (f) to read:

“(f) A purchaser who has satisfied the requirements of subsection [(c)(2)] (c) or [(d)(2)] (d) has control, even if the registered owner in the case of subsection [(c)(2)] (c) or the entitlement holder in the case of subsection [(d)(2)] (d) retains the right to make substitutions for the uncertificated security or security entitlement, to originate instructions or entitlement orders to the issuer or securities intermediary, or otherwise to deal with the uncertificated security or security entitlement.”

SECTION 24. Section 490:8-110, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) The following rules determine a “securities intermediary’s jurisdiction” for purposes of this section:

- (1) If an agreement between the securities intermediary and its entitlement holder [specifies that it is governed by the law of a particular jurisdiction]

tion,] governing the securities account expressly provides that a particular jurisdiction is the securities intermediary's jurisdiction for purposes of this part, this article, or this chapter, that jurisdiction is the securities intermediary's jurisdiction.

- (2) If paragraph (1) does not apply and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.
- [(2)] (3) If neither paragraph (1) nor paragraph (2) applies and an agreement between the securities intermediary and its entitlement holder [does not specify the governing law as provided in paragraph (1), but] governing the securities account expressly [specifies] provides that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.
- [(3)] (4) If [an agreement between the securities intermediary and its entitlement holder does not specify a jurisdiction as provided in paragraph (1) or (2),] none of the preceding paragraphs applies, the securities intermediary's jurisdiction is the jurisdiction in which [is located] the office identified in an account statement as the office serving the entitlement holder's account[.] is located.
- [(4)] (5) If [an agreement between the securities intermediary and its entitlement holder does not specify a jurisdiction as provided in paragraph (1) or (2) and an account statement does not identify an office serving the entitlement holder's account as provided in paragraph (3),] none of the preceding paragraphs applies, the securities intermediary's jurisdiction is the jurisdiction in which [is located] the chief executive office of the securities intermediary[.] is located."

SECTION 25. Section 490:8-301, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Delivery of a certificated security to a purchaser occurs when:

- (1) The purchaser acquires possession of the security certificate;
- (2) Another person, other than a securities intermediary, either acquires possession of the security certificate on behalf of the purchaser or, having previously acquired possession of the certificate, acknowledges that it holds for the purchaser; or
- (3) A securities intermediary acting on behalf of the purchaser acquires possession of the security certificate, only if the certificate is in registered form and [has been] is:
 - (A) Registered in the name of the purchaser;
 - (B) Payable to the order of the purchaser; or
 - (C) [specially] Specially indorsed to the purchaser by an effective indorsement[.] and has not been indorsed to the securities intermediary or in blank."

SECTION 26. Section 490:8-302, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Except as otherwise provided in subsections (b) and (c), [upon delivery] a purchaser of a certificated or uncertificated security [to a purchaser, the purchaser] acquires all rights in the security that the transferor had or had power to transfer."

SECTION 27. Section 490:8-510, Hawaii Revised Statutes, is amended to read as follows:

§490:8-510 Rights of purchaser of security entitlement from entitlement holder. (a) [An] In a case not covered by the priority rules in Article 9 or the rules stated in subsection (c), an action based on an adverse claim to a financial asset or security entitlement, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who purchases a security entitlement, or an interest therein, from an entitlement holder if the purchaser gives value, does not have notice of the adverse claim, and obtains control.

(b) If an adverse claim could not have been asserted against an entitlement holder under section 490:8-502, the adverse claim cannot be asserted against a person who purchases a security entitlement, or an interest therein, from the entitlement holder.

(c) In a case not covered by the priority rules in [article] Article 9, a purchaser for value of a security entitlement, or an interest therein, who obtains control has priority over a purchaser of a security entitlement, or an interest therein, who does not obtain control. [Purchasers] Except as otherwise provided in subsection (d), purchasers who have control rank [equally, except that a] according to priority in time of:

- (1) The purchaser's becoming the person for whom the securities account, in which the security entitlement is carried, is maintained, if the purchaser obtained control under section 490:8-106(d)(1);
- (2) The securities intermediary's agreement to comply with the purchaser's entitlement orders with respect to security entitlements carried or to be carried in the securities account in which the security entitlement is carried, if the purchaser obtained control under section 490:8-106(d)(2); or
- (3) If the purchaser obtained control through another person under section 490:8-106(d)(3), the time on which priority would be based under this subsection if the other person were the secured party.

(d) A securities intermediary as purchaser has priority over a conflicting purchaser who has control unless otherwise agreed by the securities intermediary."

SECTION 28. Section 490:10-102, Hawaii Revised Statutes, is amended by amending subsection (2) to read as follows:

"(2) Transactions validly entered into before January 1, 1967, and the rights, duties, and interests flowing from them remain valid thereafter and may be terminated, completed, consummated, or enforced as required or permitted by any statute or other law repealed, amended, or modified by this chapter as though such repeal, amendment, or modification had not occurred; provided[, however,] that the perfection of a security interest, as defined in this chapter and however denominated in any law repealed, amended, or modified by this chapter:

- (a) Which was perfected on January 1, 1967, by a filing or recording under a law repealed by this chapter and requiring a further filing or recording to continue its perfection, continues until and will lapse on the date provided by the law so repealed for such further filing or recording;
- (b) Which was perfected on January 1, 1967, by a filing or recording under a law repealed by this chapter and requiring no further filing or recording to continue its perfection, continues until and will lapse twelve months after January 1, 1967;
- (c) Which was perfected on January 1, 1967, without any filing or recording, and for the perfection of which the filing of a financing statement would be required if this chapter applied, continues until and will lapse twelve months after January 1, 1967; unless, in each case, a continuation statement is filed by the secured party before the perfection of the

security interest would otherwise lapse. Any such continuation statement must be signed by the secured party, identify the security agreement, statement or notice, however denominated in any law repealed by this chapter, state the office where and the date when the last filing or recording was made with respect thereto, and the filing number, if any, or book and page, if any, of recording and further state that the security agreement, statement or notice, however denominated in any law repealed by this chapter, is still effective. Section [490:9-401(1)] 490:9-501 determines the proper place to file [such a] the continuation statement. Except as specified in this subsection [the provisions of section 490:9-403(3)], sections 490:9-515 and 490:9-522 apply to [such a] the continuation statement.”

SECTION 29. Section 490:11-106, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (2) to read:

“(2) If a security interest is perfected when the new U.C.C. takes effect, under a law other than the U.C.C. which requires no further filing, refile₂, or recording to continue its perfection, perfection continues until and will lapse three years after the new U.C.C. takes effect, unless a financing statement is filed as provided in subsection (4) or unless the security interest is perfected otherwise than by filing, or unless under [subsection (3) of] section [490:9-302] 490:9-311, the other law continues to govern filing.”

2. By amending subsection (4) to read:

“(4) A financing statement may be filed within six months before the perfection of a security interest would otherwise lapse. Any such financing statement may be signed by either the debtor or the secured party. It must identify the security agreement, statement₂, or notice (however denominated in any statute or other law repealed or modified by this Act), state the office where and the date when the last filing, refile₂, or recording, if any, was made with respect thereto, and the filing number, if any, or book and page, if any, of recording and further state that the security agreement, statement₂, or notice, however denominated, in another filing office under the U.C.C. or under any statute or other law repealed or modified by this Act is still effective. Section [490:9-401 and section 490:9-103 determine] 490:9-501 determines the proper place to file [such a] the financing statement. Except as specified in this subsection, [the provisions of] section [490:9-403(3) for continuation statements apply] 490:9-515 applies to [such a] the financing statement.”

SECTION 30. Article 9 of chapter 490, Hawaii Revised Statutes, in effect on June 30, 2001, is repealed.

SECTION 31. Statutory material to be repealed is bracketed, except that bracketed instructions in the forms and the “end of form” notations in sections 490:9-613 and 490:9-614 in section 1 of this Act shall not be repealed. New statutory material is underscored,¹ except that the underscoring in the forms in section 1 of this Act shall be set forth as part of the forms.

SECTION 32. This Act shall take effect on July 1, 2001.

(Approved June 19, 2000.)

Note

1. Edited pursuant to HRS §23G-16.5.