

SENATE SUBSTITUTE FOR  
HOUSE BILL NO. 5228

**House Bill No. 5228, entitled**

A bill to amend 1962 PA 174, entitled "Uniform commercial code," by amending sections 1105, 1201, 2103, 2210, 2326, 2502, 2716, 2A103, 2A303, 2A307, 2A309, 2A525, 4210, 7503, 8103, 8106, 8110, 8301, 8302, 8510, 9102, 9103, 9104, 9105, 9106, 9107, 9108, 9109, 9110, 9201, 9202, 9203, 9204, 9205, 9206, 9207, 9208, 9301, 9302, 9303, 9304, 9305, 9306, 9307, 9308, 9309, 9310, 9311, 9312, 9313, 9314, 9315, 9316, 9317, 9318, 9401, 9402, 9403, 9404, 9405, 9406, 9407, 9408, 9409, 9501, 9502, 9503, 9504, 9505, 9506, and 9507 (MCL 440.1105, 440.1201, 440.2103, 440.2210, 440.2326, 440.2502, 440.2716, 440.2803, 440.2903, 440.2907, 440.2909, 440.2975, 440.4210, 440.7503, 440.8103, 440.8106, 440.8110, 440.8301, 440.8302, 440.8510, 440.9102, 440.9103, 440.9104, 440.9105, 440.9106, 440.9107, 440.9108, 440.9109, 440.9110, 440.9201, 440.9202, 440.9203, 440.9204, 440.9205, 440.9206, 440.9207, 440.9208, 28 2 440.9301, 440.9302, 440.9303, 440.9304, 440.9305, 440.9306, 440.9307, 440.9308, 440.9309, 440.9310, 440.9311, 440.9312, 440.9313, 440.9314, 440.9315, 440.9316, 440.9317, 440.9318, 440.9401, 440.9402, 440.9403, 440.9404, 440.9405, 440.9406, 440.9407, 440.9408, 440.9409, 440.9501, 440.9502, 440.9503, 440.9504, 440.9505, 440.9506, and 440.9507), sections 1105, 9203, and 9402 as amended by 1998 PA 489, section 1201 as amended and sections 2A103, 2A303, 2A307, and 2A309 and 2A525 as added by 1992 PA 101, section 2326 as amended by 1982 PA 397, section 4210 as amended by 1993 PA 130, sections 8103, 8106, 8301, 8302, 9301, 9302, 9303, 9306, 9309, and 9312 as amended and sections 8110 and 8510 as added by 1998 PA 278, sections 9103, 9104, 9105, 9106, 9304, and 9305 as amended by 1998 PA 488, section 9307 as amended by 1985 PA 199, section 9313 as amended by 1980 PA 53, section 9401 as amended by 1990 PA 288, sections 9403 and 9404 as amended by 1992 PA 186, sections 9405 and 9407 as amended by 1988 PA 130, and section 9406 as amended by 1989 PA 216, and by adding sections 5118, 9209, 9210, 9319, 9320, 9321, 9322, 9323, 9324, 9325, 9326, 9327, 9328, 9329, 9330, 9331, 9332, 9333, 9334, 9335, 9336, 9337, 9338, 9339, 9340, 9341, 9342, 9508, 9509, 9510, 9511, 9512, 9513, 9514, 9515, 9516, 9517, 9518, 9519, 9520, 9521, 9522, 9523, 9524, 9525, 9526, 9527, 9601, 9602, 9603, 9604, 9605, 9606, 9607, 9608, 9609, 9610, 9611, 9612, 9613, 9614, 9615, 9616, 9617, 9618, 9619, 9620, 9621, 9622, 9623, 9624, 9625, 9626, 9627, 9628, 9701, 9702, 9703, 9704, 9705, 9706, 9707, 9708, and 9709; and to repeal acts and parts of acts.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

2

02120'99 (S-1)

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

3

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 1105. (1) Except as provided in this section, if a  
2 transaction bears a reasonable relation to this state and also to  
3 another state or nation the parties may agree that the law either  
4 of this state or of the other state or nation shall govern their  
5 rights and duties. Failing agreement this act applies to trans-  
6 actions bearing an appropriate relation to this state.

7       (2) If 1 of the following provisions of this act specifies  
8 the applicable law, that provision governs and a contrary agree-  
9 ment is effective only to the extent permitted by the law  
10 (including the conflict of laws rules) specified:

11   Rights of creditors against sold	
12   goods.	Section 2402.
13   APPLICABILITY OF THE ARTICLE ON	
14   LEASES.	SECTIONS 2A105 AND 2A106.
15   Applicability of the article on	
16   bank deposits and collections.	Section 4102.
17   Governing law in the article on	
18   funds transfers.	Section <del>4A502</del> 4A507.
19   Letters of credit.	Section <del>5156</del> 5116.
20   Applicability of the article on	
21   investment securities.	Section 8110.
22 <del>Applicability of the article on</del>	
23 <del>leases.</del>	<del>Sections 2A105 and 2A106.</del>
24 <del>Perfection provisions of the</del>	
25 <del>article on secured transactions.</del>	<del>Section 9103.</del>

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

4

1 LAW GOVERNING PERFECTION, THE  
2 EFFECT OF PERFECTION OR NONPER-  
3 FECTION, AND THE PRIORITY OF  
4 SECURITY INTERESTS AND AGRICUL-  
5 TURAL LIENS.

SECTIONS 9301 THROUGH  
9307.

7 Sec. 1201. Subject to additional definitions contained in  
8 the subsequent articles of this act which are applicable to spe-  
9 cific articles or parts of this act, and unless the context oth-  
10 erwise requires, in this act:

11 (1) "Action" in the sense of a judicial proceeding includes  
12 recoupment, counterclaim, setoff, suit in equity, and any other  
13 proceedings in which rights are determined.

14 (2) "Aggrieved party" means a party entitled to resort to a  
15 remedy.

16 (3) "Agreement" means the bargain of the parties in fact as  
17 found in their language or by implication from other circum-  
18 stances including course of dealing or usage of trade or course  
19 of performance as provided in this act (sections 1205 and 2208).  
20 Whether an agreement has legal consequences is determined by the  
21 provisions of this act, if applicable; otherwise by the law of  
22 contracts (section 1103). (Compare "Contract".)

23 (4) "Bank" means any person engaged in the business of  
24 banking.

25 (5) "Bearer" means the person in possession of an instru-  
26 ment, document of title, or certificated security payable to  
27 bearer or indorsed in blank.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

5

1       (6) "Bill of lading" means a document evidencing the receipt  
2 of goods for shipment issued by a person engaged in the business  
3 of transporting or forwarding goods, and includes an airbill.

4 "Airbill" means a document serving for air transportation as a  
5 bill of lading does for marine or rail transportation, and  
6 includes an air consignment note or air waybill.

7       (7) "Branch" includes a separately incorporated foreign  
8 branch of a bank.

9       (8) "Burden of establishing a fact" means the burden of per-  
10 suading the triers of fact that the existence of the fact is more  
11 probable than its nonexistence.

12       (9) "Buyer in ordinary course of business" means a person  
13 ~~who in good faith and without knowledge that the sale to him or~~  
14 ~~her is in violation of the ownership rights or security interest~~  
15 ~~of a third party in the goods buys in ordinary course from a~~  
16 ~~person in the business of selling goods of that kind but does not~~  
17 ~~include a pawnbroker. All persons who sell minerals or the like,~~  
18 ~~including oil and gas, at wellhead or minehead shall be deemed to~~  
19 ~~be persons in the business of selling goods of that kind.~~

20 ~~"Buying" may be for cash or by exchange of other property or on~~  
21 ~~secured or unsecured credit and includes receiving goods or docu=~~  
22 ~~ments of title under a preexisting contract for sale but does not~~  
23 ~~include a transfer in bulk or as security for or in total or par=~~  
24 ~~tial satisfaction of a money debt. THAT BUYS GOODS IN GOOD~~  
25 ~~FAITH, WITHOUT KNOWLEDGE THAT THE SALE VIOLATES THE RIGHTS OF~~  
26 ~~ANOTHER PERSON IN THE GOOD, AND IN THE ORDINARY COURSE FROM A~~  
27 ~~PERSON, OTHER THAN A PAWNBROKER, IN THE BUSINESS OF SELLING GOODS~~

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

6

1 OF THAT KIND. A PERSON BUYS GOODS IN THE ORDINARY COURSE IF THE  
2 SALE TO THE PERSON COMPORTS WITH THE USUAL OR CUSTOMARY PRACTICES  
3 IN THE KIND OF BUSINESS IN WHICH THE SELLER IS ENGAGED OR WITH  
4 THE SELLER'S OWN USUAL OR CUSTOMARY PRACTICES. A PERSON THAT  
5 SELLS OIL, GAS, OR OTHER MINERALS AT THE WELLHEAD OR MINEHEAD IS  
6 A PERSON IN THE BUSINESS OF SELLING GOODS OF THAT KIND. A BUYER  
7 IN ORDINARY COURSE OF BUSINESS MAY BUY FOR CASH, BY EXCHANGE OF  
8 OTHER PROPERTY, OR ON SECURED OR UNSECURED CREDIT, AND MAY  
9 ACQUIRE GOODS OR DOCUMENTS OF TITLE UNDER A PREEEXISTING CONTRACT  
10 FOR SALE. ONLY A BUYER THAT TAKES POSSESSION OF THE GOODS OR HAS  
11 A RIGHT TO RECOVER THE GOODS FROM THE SELLER UNDER ARTICLE 2 MAY  
12 BE A BUYER IN ORDINARY COURSE OF BUSINESS. A PERSON THAT  
13 ACQUIRES GOODS IN A TRANSFER IN BULK OR AS SECURITY FOR OR IN  
14 TOTAL OR PARTIAL SATISFACTION OF A MONEY DEBT IS NOT A BUYER IN  
15 ORDINARY COURSE OF BUSINESS.

16 (10) "Conspicuous": A term or clause is conspicuous when it  
17 is so written that a reasonable person against whom it is to  
18 operate ought to have noticed it. A printed heading in capitals  
19 (as: non-negotiable bill of lading) is conspicuous. Language in  
20 the body of a form is "conspicuous" if it is in larger or other  
21 contrasting type or color. But in a telegram any stated term is  
22 "conspicuous". Whether a term or clause is "conspicuous" or not  
23 is for decision by the court.

24 (11) "Contract" means the total legal obligation which  
25 results from the parties' agreement as affected by this act and  
26 any other applicable rules of law. (Compare "Agreement".)

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

7

1       (12) "Creditor" includes a general creditor, a secured  
2 creditor, a lien creditor and any representative of creditors,  
3 including an assignee for the benefit of creditors, a trustee in  
4 bankruptcy, a receiver in equity, and an executor or administra-  
5 tor of an insolvent debtor's or assignor's estate.

6       (13) "Defendant" includes a person in the position of  
7 defendant in a cross action or counterclaim.

8       (14) "Delivery" with respect to instruments, documents of  
9 title, chattel paper, or certificated securities means voluntary  
10 transfer of possession.

11       (15) "Document of title" includes bill of lading, dock war-  
12 rant, dock receipt, warehouse receipt, or order for the delivery  
13 of goods, and also any other document which in the regular course  
14 of business or financing is treated as adequately evidencing that  
15 the person in possession of it is entitled to receive, hold, and  
16 dispose of the document and the goods it covers. To be a docu-  
17 ment of title a document must purport to be issued by or  
18 addressed to a bailee and purport to cover goods in the bailee's  
19 possession which are either identified or are fungible portions  
20 of an identified mass.

21       (16) "Fault" means wrongful act, omission, or breach.

22       (17) "Fungible" with respect to goods or securities means  
23 goods or securities of which any unit is, by nature or usage of  
24 trade, the equivalent of any other like unit. Goods which are  
25 not fungible shall be deemed fungible for the purposes of this  
26 act to the extent that under a particular agreement or document  
27 unlike units are treated as equivalents.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

8

1 (18) "Genuine" means free of forgery or counterfeiting.

2 (19) "Good faith" means honesty in fact in the conduct or  
3 transaction concerned.

4 (20) "Holder", with respect to a negotiable instrument,  
5 means the person in possession if the instrument is payable to  
6 bearer or, in the case of an instrument payable to an identified  
7 person, if the identified person is in possession. Holder, with  
8 respect to a document of title, means the person in possession if  
9 the goods are deliverable to bearer or to the order of the person  
10 in possession.

11 (21) To "honor" is to pay or to accept and pay, or where a  
12 credit so engages to purchase or discount a draft complying with  
13 the terms of the credit.

14 (22) "Insolvency proceedings" includes any assignment for  
15 the benefit of creditors or other proceedings intended to liqui-  
16 date or rehabilitate the estate of the person involved.

17 (23) A person is "insolvent" who either has ceased to pay  
18 his or her debts in the ordinary course of business or cannot pay  
19 his or her debts as they become due or is insolvent within the  
20 meaning of the federal bankruptcy law.

21 (24) "Money" means a medium of exchange authorized or  
22 adopted by a domestic or foreign government and includes a mone-  
23 tary unit of account established by an intergovernmental organi-  
24 zation or by agreement between 2 or more nations.

25 (25) A person has "notice" of a fact when ~~—(a) He~~ HE or  
26 she has actual knowledge of it; ~~—or (b) He~~ HE or she has  
27 received a notice or notification of it; or ~~—(c) From~~ FROM all



**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

9

1 the facts and circumstances known to him or her at the time in  
2 question he or she has reason to know that it exists. A person  
3 "knows" or has "knowledge" of a fact when he or she has actual  
4 knowledge of it. "Discover" or "learn" or a word or phrase of  
5 similar import refers to knowledge rather than to reason to  
6 know. The time and circumstances under which a notice or notifi-  
7 cation may cease to be effective are not determined by this act.

8 (26) A person "notifies" or "gives" a notice or notification  
9 to another by taking such steps as may be reasonably required to  
10 inform the other in ordinary course whether or not such other  
11 actually comes to know of it. A person "receives" a notice or  
12 notification when 1 OF THE FOLLOWING OCCURS:

13 (a) It comes to his or her attention. ~~or~~

14 (b) It is duly delivered at the place of business through  
15 which the contract was made or at any other place held out by him  
16 or her as the place for receipt of such communications.

17 (27) Notice, knowledge, or a notice or notification received  
18 by an organization is effective for a particular transaction from  
19 the time when it is brought to the attention of the individual  
20 conducting that transaction, and in any event from the time when  
21 it would have been brought to the individual's attention if the  
22 organization had exercised due diligence. An organization exer-  
23 cises due diligence if it maintains reasonable routines for com-  
24 municating significant information to the person conducting the  
25 transaction and there is reasonable compliance with the  
26 routines. Due diligence does not require an individual acting  
27 for the organization to communicate information unless such

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

10

1 communication is part of his or her regular duties or unless he  
2 or she has reason to know of the transaction and that the trans-  
3 action would be materially affected by the information.

4 (28) "Organization" includes a corporation, government, or  
5 governmental subdivision or agency, business trust, estate,  
6 trust, partnership or association, 2 or more persons having a  
7 joint or common interest, or any other legal or commercial  
8 entity.

9 (29) "Party", as distinct from "third party", means a person  
10 who has engaged in a transaction or made an agreement within this  
11 act.

12 (30) "Person" includes an individual or an organization (see  
13 section 1102).

14 (31) "Presumption" or "presumed" means that the trier of  
15 fact must find the existence of the fact presumed unless and  
16 until evidence is introduced which would support a finding of its  
17 nonexistence.

18 (32) "Purchase" includes taking by sale, discount, negotia-  
19 tion, mortgage, pledge, lien, SECURITY INTEREST, issue or reis-  
20 sue, gift, or any other voluntary transaction creating an inter-  
21 est in property.

22 (33) "Purchaser" means a person who takes by purchase.

23 (34) "Remedy" means any remedial right to which an aggrieved  
24 party is entitled with or without resort to a tribunal.

25 (35) "Representative" includes an agent, an officer of a  
26 corporation or association, and a trustee, executor, or

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

11

1 administrator of an estate, or any other person empowered to act  
2 for another.

3 (36) "Rights" includes remedies.

4 (37) "Security interest" means an interest in personal prop-  
5 erty or fixtures which secures payment or performance of an  
6 obligation. ~~The retention or reservation of title by a seller~~  
7 ~~of goods notwithstanding shipment or delivery to the buyer~~  
8 ~~(section 2401) is limited in effect to a reservation of a~~  
9 ~~"security interest".~~ The term also includes any interest of a  
10 CONSIGNOR AND A buyer of ~~accounts or~~ AN ACCOUNT, chattel paper,  
11 ~~which~~ A PAYMENT INTANGIBLE, OR A PROMISSORY NOTE IN A TRANSAC-  
12 TION THAT is subject to article 9. The special property interest  
13 of a buyer of goods on identification of those goods to a con-  
14 tract for sale under section 2401 is not a "security interest",  
15 but a buyer may also acquire a "security interest" by complying  
16 with article 9. ~~Unless a consignment is intended as security,~~  
17 ~~reservation of title thereunder is not a "security interest", but~~  
18 ~~a consignment in any event is subject to the provisions on con-~~  
19 ~~signment sales (section 2326).~~ EXCEPT AS OTHERWISE PROVIDED IN  
20 SECTION 2505, THE RIGHT OF A SELLER OR LESSOR OF GOODS UNDER  
21 ARTICLE 2 OR 2A TO RETAIN OR ACQUIRE POSSESSION OF THE GOODS IS  
22 NOT A "SECURITY INTEREST", BUT A SELLER OR LESSOR MAY ALSO  
23 ACQUIRE A "SECURITY INTEREST" BY COMPLYING WITH ARTICLE 9. THE  
24 RETENTION OR RESERVATION OF TITLE BY A SELLER OF GOODS NOTWITH-  
25 STANDING SHIPMENT OR DELIVERY TO THE BUYER (SECTION 2401) IS  
26 LIMITED IN EFFECT TO A RESERVATION OF A "SECURITY INTEREST".  
27 Whether a transaction creates a lease or security interest is

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

12

1 determined by the facts of each case; however, a transaction  
2 creates a security interest if the consideration the lessee is to  
3 pay the lessor for the right to possession and use of the goods  
4 is an obligation for the term of the lease not subject to termi-  
5 nation by the lessee, and any of the following:

6       (a) The original term of the lease is equal to or greater  
7 than the remaining economic life of the goods.

8       (b) The lessee is bound to renew the lease for the remaining  
9 economic life of the goods or is bound to become the owner of the  
10 goods.

11       (c) The lessee has an option to renew the lease for the  
12 remaining economic life of the goods for no additional considera-  
13 tion or nominal additional consideration upon compliance with the  
14 lease agreement.

15       (d) The lessee has an option to become the owner of the  
16 goods for no additional consideration or nominal additional con-  
17 sideration upon compliance with the lease agreement.

18       A transaction does not create a security interest merely  
19 because it provides any of the following:

20       (a) The present value of the consideration the lessee is  
21 obligated to pay the lessor for the right to possession and use  
22 of the goods is substantially equal to or is greater than the  
23 fair market value of the goods at the time the lease is entered  
24 into.

25       (b) The lessee assumes risk of loss of the goods, or agrees  
26 to pay taxes, insurance, filing, recording, or registration fees,  
27 or service or maintenance costs with respect to the goods.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

13

1 (c) The lessee has an option to renew the lease or to become  
2 the owner of the goods.

3 (d) The lessee has an option to renew the lease for a fixed  
4 rent that is equal to or greater than the reasonably predictable  
5 fair market rent for the use of the goods for the term of the  
6 renewal at the time the option is to be performed.

7 (e) The lessee has an option to become the owner of the  
8 goods for a fixed price that is equal to or greater than the rea-  
9 sonably predictable fair market value of the goods at the time  
10 the option is to be performed.

11 As used in this subsection:

12 (a) Additional consideration is not nominal if when the  
13 option to renew the lease is granted to the lessee the rent is  
14 stated to be the fair market rent for the use of the goods for  
15 the term of the renewal determined at the time the option is to  
16 be performed, or when the option to become the owner of the goods  
17 is granted to the lessee, the price is stated to be the fair  
18 market value of the goods determined at the time the option is to  
19 be performed. Additional consideration is nominal if it is less  
20 than the lessee's reasonably predictable cost of performing under  
21 the lease agreement if the option is not exercised.

22 (b) "Present value" means the amount as of a date certain of  
23 1 or more sums payable in the future, discounted to the date  
24 certain. The discount is determined by the interest rate speci-  
25 fied by the parties if the rate is not manifestly unreasonable at  
26 the time the transaction is entered into; otherwise, the discount  
27 is determined by a commercially reasonable rate that takes into

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

14

1 account the facts and circumstances of each case at the time the  
2 transaction was entered into.

3 (c) "Reasonably predictable" and "remaining economic life of  
4 the goods" are to be determined with reference to the facts and  
5 circumstances at the time the transaction is entered into.

6 (38) "Send" in connection with any writing or notice means  
7 to deposit in the mail or deliver for transmission by any other  
8 usual means of communication with postage or cost of transmission  
9 provided for and properly addressed and in the case of an instru-  
10 ment to an address specified thereon or otherwise agreed, or if  
11 there be none to any address reasonable under the circumstances.  
12 The receipt of any writing or notice within the time at which it  
13 would have arrived, if properly sent, has the effect of a proper  
14 sending.

15 (39) "Signed" includes any symbol executed or adopted by a  
16 party with present intention to authenticate a writing, including  
17 a carbon copy of his or her signature.

18 (40) "Surety" includes guarantor.

19 (41) "Telegram" includes a message transmitted by radio,  
20 teletype, cable, any mechanical method of transmission, or the  
21 like.

22 (42) "Term" means that portion of an agreement which relates  
23 to a particular matter.

24 (43) "Unauthorized" signature means one made without actual,  
25 implied or apparent authority and includes a forgery.

26 (44) "Value". Except as otherwise provided with respect to  
27 negotiable instruments and bank collections (sections 3303, 4208,

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

15

1 and 4209) a person gives "value" for rights if the person  
2 acquires them:

3 (a) In return for a binding commitment to extend credit or  
4 for the extension of immediately available credit whether or not  
5 drawn upon and whether or not a charge-back is provided for in  
6 the event of difficulties in collection; or

7 (b) As security for or in total or partial satisfaction of a  
8 preexisting claim; or

9 (c) By accepting delivery pursuant to a preexisting contract  
10 for purchase; or

11 (d) Generally, in return for any consideration sufficient to  
12 support a simple contract.

13 (45) "Warehouse receipt" means a receipt issued by a person  
14 engaged in the business of storing goods for hire.

15 (46) "Written" or "writing" includes printing, typewriting,  
16 or any other intentional reduction to tangible form.

17 Sec. 2103. (1) In this article unless the context otherwise  
18 requires:

19 (a) "Buyer" means a person who buys or contracts to buy  
20 goods.

21 (b) "Good faith" in the case of a merchant means honesty in  
22 fact and the observance of reasonable commercial standards of  
23 fair dealing in the trade.

24 (c) "Receipt" of goods means taking physical possession of  
25 them.

26 (d) "Seller" means a person who sells or contracts to sell  
27 goods.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

16

1       (2) Other definitions applying to this article or to  
2 specified parts thereof, and the sections in which they appear  
3 are:

4

5	"Acceptance".	Section 2606.
6	"Banker's credit".	Section 2325.
7	"Between merchants".	Section 2104.
8	"Cancellation".	Section 2106(4).
9	"Commercial unit".	Section 2105.
10	"Confirmed credit".	Section 2325.
11	"Conforming to contract".	Section 2106.
12	"Contract for sale".	Section 2106.
13	"Cover".	Section 2712.
14	"Entrusting".	Section 2403.
15	"Financing agency".	Section 2104.
16	"Future goods".	Section 2105.
17	"Goods".	Section 2105.
18	"Identification".	Section 2501.
19	"Installment contract".	Section 2612.
20	"Letter of credit".	Section 2325.
21	"Lot".	Section 2105.
22	"Merchant".	Section 2104.
23	"Overseas".	Section 2323.
24	"Person in position of seller".	Section 2707.
25	"Present sale".	Section 2106.
26	"Sale".	Section 2106.



**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

17

1 "Sale on approval". Section 2326.

2 "Sale or return". Section 2326.

3 "Termination". Section 2106.

4 (3) The following definitions in other articles apply to  
5 this article:

6

7 "Check". Section 3104.

8 "Consignee". Section 7102.

9 "Consignor". Section 7102.

10 "Consumer goods". Section ~~9109~~

11 9102.

12 "Dishonor". Section ~~3507~~

13 3502.

14 "Draft". Section 3104.

15 (4) In addition article 1 contains general definitions and  
16 principles of construction and interpretation applicable through-  
17 out this article.

18 Sec. 2210. (1) A party may perform ~~his~~ THAT PARTY'S duty  
19 through a delegate unless otherwise agreed or unless the other  
20 party has a substantial interest in having ~~his~~ THAT OTHER  
21 PARTY'S original promisor perform or control the acts required by  
22 the contract. No delegation of performance relieves the party  
23 delegating of any duty to perform or any liability for breach.

24 (2) Unless otherwise agreed all rights of either seller or  
25 buyer can be assigned except where the assignment would materi-  
26 ally change the duty of the other party, or increase materially  
27 the burden or risk imposed on ~~him~~ THE OTHER PARTY by ~~his~~ THAT

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

18

1 OTHER PARTY'S contract, or impair materially ~~his~~ THE OTHER  
2 PARTY'S chance of obtaining return performance. A right to dam-  
3 ages for breach of the whole contract or a right arising out of  
4 the assignor's due performance of his OR HER entire obligation  
5 can be assigned despite agreement otherwise.

6 (3) THE CREATION, ATTACHMENT, PERFECTION, OR ENFORCEMENT OF  
7 A SECURITY INTEREST IN THE SELLER'S INTEREST UNDER A CONTRACT IS  
8 NOT A TRANSFER THAT MATERIALLY CHANGES THE DUTY OF OR INCREASES  
9 MATERIALLY THE BURDEN OR RISK IMPOSED ON THE BUYER OR IMPAIRS  
10 MATERIALLY THE BUYER'S CHANCE OF OBTAINING RETURN PERFORMANCE  
11 WITHIN THE PURVIEW OF SUBSECTION (2) UNLESS, AND THEN ONLY TO THE  
12 EXTENT THAT, ENFORCEMENT ACTUALLY RESULTS IN A DELEGATION OF  
13 MATERIAL PERFORMANCE OF THE SELLER. EVEN IN THAT EVENT, THE CRE-  
14 ATION, ATTACHMENT, PERFECTION, AND ENFORCEMENT OF THE SECURITY  
15 INTEREST REMAIN EFFECTIVE, BUT (i) THE SELLER IS LIABLE TO THE  
16 BUYER FOR DAMAGES CAUSED BY THE DELEGATION TO THE EXTENT THAT THE  
17 DAMAGES COULD NOT REASONABLY BE PREVENTED BY THE BUYER, AND (ii)  
18 A COURT HAVING JURISDICTION MAY GRANT OTHER APPROPRIATE RELIEF,  
19 INCLUDING CANCELLATION OF THE CONTRACT FOR SALE OR AN INJUNCTION  
20 AGAINST ENFORCEMENT OF THE SECURITY INTEREST OR CONSUMMATION OF  
21 THE ENFORCEMENT.

22 (4) ~~-(3)-~~ Unless the circumstances indicate the contrary a  
23 prohibition of assignment of "the contract" is to be construed as  
24 barring only the delegation to the assignee of the assignor's  
25 performance.

26 (5) ~~-(4)-~~ An assignment of "the contract" or of "all my  
27 rights under the contract" or an assignment in similar general

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

19

1 terms is an assignment of rights and unless the language or the  
2 circumstances (as in an assignment for security) indicate the  
3 contrary, it is a delegation of performance of the duties of the  
4 assignor and its acceptance by the assignee constitutes a promise  
5 by ~~him~~ THE ASSIGNEE to perform those duties. This promise is  
6 enforceable by either the assignor or the other party to the  
7 original contract.

8       (6) ~~(5)~~ The other party may treat any assignment which  
9 delegates performance as creating reasonable grounds for insecurity  
10 ity and may without prejudice to ~~his~~ THAT OTHER PARTY'S rights  
11 against the assignor demand assurances from the assignee (section  
12 2609).

13       Sec. 2326. (1) Unless otherwise agreed, if delivered goods  
14 may be returned by the buyer even though they conform to the contract,  
15 the transaction is

16       (a) A "sale on approval" if the goods are delivered primarily  
17 for use, and

18       (b) A "sale or return" if the goods are delivered primarily  
19 for resale.

20       (2) ~~Except as provided in subsection (3), goods~~ GOODS held  
21 on approval are not subject to the claims of the buyer's creditors  
22 until acceptance; goods held on sale or return are subject  
23 to such claims while in the buyer's possession.

24       ~~(3) Where goods are delivered to a person for sale and such~~  
25 ~~person maintains a place of business at which he deals in goods~~  
26 ~~of the kind involved, under a name other than the name of the~~  
27 ~~person making delivery, then with respect to claims of creditors~~

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

20

1 ~~of the person conducting the business the goods are deemed to be~~  
2 ~~on sale or return. The provisions of this subsection are appli-~~  
3 ~~cable even though an agreement purports to reserve title to the~~  
4 ~~person making delivery until payment or resale or uses such words~~  
5 ~~as "on consignment" or "on memorandum". However, this subsection~~  
6 ~~is not applicable if the person making delivery~~

7 ~~(a) Complies with an applicable law providing for a~~  
8 ~~consignor's interest or the like to be evidenced by a sign; or~~

9 ~~(b) Establishes that the person conducting the business is~~  
10 ~~generally known by his creditors to be substantially engaged in~~  
11 ~~selling the goods of others; or~~

12 ~~(c) Complies with the filing provisions of the article on~~  
13 ~~secured transactions (article 9).~~

14 ~~(3) (4)~~ Any "or return" term of a contract for sale is to  
15 be treated as a separate contract for sale within the statute of  
16 frauds section of this article (section 2201) and as contradict-  
17 ing the sale aspect of the contract within the provisions of this  
18 article on parol or extrinsic evidence (section 2202).

19 ~~(4) (5)~~ Whenever a person delivers or causes to be deliv-  
20 ered a work of fine art to an art dealer for the purpose of sale,  
21 or exhibition and sale, to the public on a commission, the work  
22 of fine art is not subject to the claims of the art dealer's  
23 creditors. For the purposes of this subsection, the terms "art  
24 dealer", "commission", and "fine art" have the meanings ascribed  
25 to them in section 1 of ~~Act No. 90 of the Public Acts of 1979,~~  
26 ~~being section 442.311 of the Michigan Compiled Laws~~ 1979 PA 90,  
27 MCL 442.311.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

21

1       Sec. 2502. (1) Subject to ~~subsection~~ SUBSECTIONS (2) AND  
2 (3) and even though the goods have not been shipped a buyer who  
3 has paid a part or all of the price of goods in which he OR SHE  
4 has a special property under the provisions of the immediately  
5 preceding section may on making and keeping good a tender of any  
6 unpaid portion of their price recover them from the seller if  
7 ~~the seller becomes insolvent within 10 days after receipt of the~~  
8 ~~first installment on their price.~~ 1 OF THE FOLLOWING OCCURS:

9       (A) IN THE CASE OF GOODS BOUGHT FOR PERSONAL, FAMILY, OR  
10 HOUSEHOLD PURPOSES, THE SELLER REPUDIATES OR FAILS TO DELIVER AS  
11 REQUIRED BY THE CONTRACT.

12       (B) IN ALL CASES, THE SELLER BECOMES INSOLVENT WITHIN 10  
13 DAYS AFTER RECEIPT OF THE FIRST INSTALLMENT ON THEIR PRICE.

14       (2) THE BUYER'S RIGHT TO RECOVER THE GOODS UNDER SUBSECTION  
15 (1)(A) VESTS UPON ACQUISITION OF A SPECIAL PROPERTY, EVEN IF THE  
16 SELLER HAD NOT THEN REPUDIATED OR FAILED TO DELIVER.

17       (3) ~~-(2)-~~ If the identification creating his OR HER special  
18 property has been made by the buyer he OR SHE acquires the right  
19 to recover the goods only if they conform to the contract for  
20 sale.

21       Sec. 2716. (1) Specific performance may be decreed where  
22 the goods are unique or in other proper circumstances.

23       (2) The decree for specific performance may include such  
24 terms and conditions as to payment of the price, damages, or  
25 other relief as the court may deem just.

26       (3) The buyer has a right of replevin or recovery in a claim  
27 and delivery proceeding for goods identified to the contract if

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

22

1 after reasonable effort he OR SHE is unable to effect cover for  
2 such goods or the circumstances reasonably indicate that such  
3 effort will be unavailing or if the goods have been shipped under  
4 reservation and satisfaction of the security interest in them has  
5 been made or tendered. IN THE CASE OF GOODS BOUGHT FOR PERSONAL,  
6 FAMILY, OR HOUSEHOLD PURPOSES, THE BUYER'S RIGHT OF REPLEVIN  
7 VESTS UPON ACQUISITION OF A SPECIAL PROPERTY, EVEN IF THE SELLER  
8 HAD NOT THEN REPUDIATED OR FAILED TO DELIVER.

9       Sec. 2A103. (1) In this article unless the context other-  
10 wise requires:

11       (a) "Buyer in ordinary course of business" means a person  
12 who in good faith and without knowledge that the sale to him or  
13 her is in violation of the ownership rights or security interest  
14 or leasehold interest of a third party in the goods buys in ordi-  
15 nary course from a person in the business of selling goods of  
16 that kind but does not include a pawnbroker. "Buying" may be for  
17 cash or by exchange of other property or on secured or unsecured  
18 credit and includes receiving goods or documents of title under a  
19 pre-existing contract for sale but does not include a transfer in  
20 bulk or as security for or in total or partial satisfaction of a  
21 money debt.

22       (b) "Cancellation" occurs when either party puts an end to  
23 the lease contract for default by the other party.

24       (c) "Commercial unit" means such a unit of goods as by com-  
25 mercial usage is a single whole for purposes of lease and divi-  
26 sion of which materially impairs its character or value on the  
27 market or in use. A commercial unit may be a single article, as

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

23

1 a machine, or a set of articles, as a suite of furniture or a  
2 line of machinery, or a quantity, as a gross or carload, or any  
3 other unit treated in use or in the relevant market as a single  
4 whole.

5 (d) "Conforming" means goods or performance under a lease  
6 contract that are in accordance with the obligations under the  
7 lease contract.

8 (e) "Consumer lease" means a lease that a lessor regularly  
9 engaged in the business of leasing or selling makes to a lessee  
10 who is an individual and who takes under the lease primarily for  
11 a personal, family, or household purpose, if the total payments  
12 to be made under the lease contract, excluding payments for  
13 options to renew or buy, do not exceed \$25,000.00.

14 (f) "Fault" means wrongful act, omission, breach, or  
15 default.

16 (g) "Finance lease" means a lease with respect to which all  
17 of the following apply:

18 (i) The lessor does not select, manufacture, or supply the  
19 goods.

20 (ii) The lessor acquires the goods or the right to posses-  
21 sion and use of the goods in connection with the lease.

22 (iii) One of the following occurs:

23 (A) The lessee receives a copy of the contract by which the  
24 lessor acquired the goods or the right to possession and use of  
25 the goods before signing the lease contract.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

24

1 (B) The lessee's approval of the contract by which the  
2 lessor acquired the goods or the right to possession and use of  
3 the goods is a condition to effectiveness of the lease contract.

4 (C) The lessee, before signing the lease contract, receives  
5 an accurate and complete statement designating the promises and  
6 warranties, and any disclaimers of warranties, limitations or  
7 modifications of remedies, or liquidated damages, including those  
8 of a third party, such as the manufacturer of the goods, provided  
9 to the lessor by the person supplying the goods in connection  
10 with or as part of the contract by which the lessor acquired the  
11 goods or the right to possession and use of the goods.

12 (D) If the lease is not a consumer lease, the lessor, before  
13 the lessee signs the lease contract, informs the lessee in writ-  
14 ing of the following:

15 (I) The identity of the person supplying the goods to the  
16 lessor, unless the lessee has selected that person and directed  
17 the lessor to acquire the goods or the right to possession and  
18 use of the goods from that person.

19 (II) The lessee is entitled under this article to the prom-  
20 ises and warranties, including those of any third party, provided  
21 to the lessor by the person supplying the goods in connection  
22 with or as part of the contract by which the lessor acquired the  
23 goods or the right to possession and use of the goods.

24 (III) The lessee may communicate with the person supplying  
25 the goods to the lessor and receive an accurate and complete  
26 statement of those promises and warranties, including any  
27 disclaimers and limitations of them or of remedies.



**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

25

1       (h) "Goods" means all things that are movable at the time of  
2 identification to the lease contract, or are fixtures (section  
3 2A309), but the term does not include money, documents, instru-  
4 ments, accounts, chattel paper, general intangibles, or minerals  
5 or the like, including oil and gas, before extraction. The term  
6 also includes the unborn young of animals.

7       (i) "Installment lease contract" means a lease contract that  
8 authorizes or requires the delivery of goods in separate lots to  
9 be separately accepted, even though the lease contract contains a  
10 clause "each delivery is a separate lease" or its equivalent.

11       (j) "Lease" means a transfer of the right to possession and  
12 use of goods for a term in return for consideration, but a sale,  
13 including a sale on approval or a sale or return, or retention or  
14 creation of a security interest is not a lease. Unless the con-  
15 text clearly indicates otherwise, the term includes a sublease.

16       (k) "Lease agreement" means the bargain, with respect to the  
17 lease, of the lessor and the lessee in fact as found in their  
18 language or by implication from other circumstances including  
19 course of dealing or usage of trade or course of performance as  
20 provided in this article. Unless the context clearly indicates  
21 otherwise, the term includes a sublease agreement.

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

26       (m) "Leasehold interest" means the interest of the lessor or  
27 the lessee under a lease contract.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

26

1       (n) "Lessee" means a person who acquires the right to  
2 possession and use of goods under a lease. Unless the context  
3 clearly indicates otherwise, the term includes a sublessee.

4       (o) "Lessee in ordinary course of business" means a person  
5 who in good faith and without knowledge that the lease to him or  
6 her is in violation of the ownership rights or security interest  
7 or leasehold interest of a third party in the goods leases in  
8 ordinary course from a person in the business of selling or leas-  
9 ing goods of that kind but does not include a pawnbroker.

10 "Leasing" may be for cash or by exchange of other property or on  
11 secured or unsecured credit and includes receiving goods or docu-  
12 ments of title under a pre-existing lease contract but does not  
13 include a transfer in bulk or as security for or in total or par-  
14 tial satisfaction of a money debt.

15       (p) "Lessor" means a person who transfers the right to pos-  
16 session and use of goods under a lease. Unless the context  
17 clearly indicates otherwise, the term includes a sublessor.

18       (q) "Lessor's residual interest" means the lessor's interest  
19 in the goods after expiration, termination, or cancellation of  
20 the lease contract.

21       (r) "Lien" means a charge against or interest in goods to  
22 secure payment of a debt or performance of an obligation, but the  
23 term does not include a security interest.

24       (s) "Lot" means a parcel or a single article that is the  
25 subject matter of a separate lease or delivery, whether or not it  
26 is sufficient to perform the lease contract.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

27

1 (t) "Merchant lessee" means a lessee that is a merchant with  
2 respect to goods of the kind subject to the lease.

3 (u) "Present value" means the amount as of a date certain of  
4 1 or more sums payable in the future, discounted to the date  
5 certain. The discount is determined by the interest rate speci-  
6 fied by the parties if the rate was not manifestly unreasonable  
7 at the time the transaction was entered into; otherwise, the dis-  
8 count is determined by a commercially reasonable rate that takes  
9 into account the facts and circumstances of each case at the time  
10 the transaction was entered into.

11 (v) "Purchase" includes taking by sale, lease, mortgage,  
12 security interest, pledge, gift, or any other voluntary transac-  
13 tion creating an interest in goods.

14 (w) "Sublease" means a lease of goods the right to posses-  
15 sion and use of which was acquired by the lessor as a lessee  
16 under an existing lease.

17 (x) "Supplier" means a person from whom a lessor buys or  
18 leases goods to be leased under a finance lease.

19 (y) "Supply contract" means a contract under which a lessor  
20 buys or leases goods to be leased.

21 (z) "Termination" occurs when either party pursuant to a  
22 power created by agreement or law puts an end to the lease con-  
23 tract otherwise than for default.

24 (2) Other definitions applying to this article and the sec-  
25 tions in which they appear are:

26 "Accessions".

Section 2A310(1).

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

28

- 1 "Construction mortgage". Section 2A309(1)(d).  
2 "Encumbrance". Section 2A309(1)(e).  
3 "Fixtures". Section 2A309(1)(a).  
4 "Fixture filing". Section 2A309(1)(b).  
5 "Purchase money lease". Section 2A309(1)(c).  
6 (3) The following definitions in other articles apply to  
7 this article:  
8 "Account". Section ~~9106~~ 9102(1)(B).  
9 "Between merchants". Section 2104(3).  
10 "Buyer". Section 2103(1)(a).  
11 "Chattel paper". Section ~~9105(1)(b)~~ 9102(1)(K).  
12 "Consumer goods". Section ~~9109(1)~~ 9102(1)(W).  
13 "Document". Section ~~9105(1)(f)~~ 9102(1)(DD).  
14 "Entrusting". Section 2403(3).  
15 "General ~~intangibles~~ INTANGIBLE". Section ~~9106~~ 9102(1)(PP).  
16 "Good faith". Section 2103(1)(b).  
17 "Instrument". Section ~~9105(1)(i)~~ 9102(1)(UU).  
18 "Merchant". Section 2104(1).  
19 "Mortgage". Section ~~9105(1)(j)~~ 9102(1)(CCC).  
20 "Pursuant to commitment". Section ~~9105(1)(k)~~ 9102(1)(SSS).  
21 "Receipt". Section 2103(1)(c).  
22 "Sale". Section 2106(1).  
23 "Sale on approval". Section ~~2326(1)(a)~~ 2326.  
24 "Sale or return". Section ~~2326(1)(b)~~ 2326.  
25 "Seller". Section 2103(1)(d).

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

29

1       (4) In addition article 1 contains general definitions and  
2 principles of construction and interpretation applicable  
3 throughout this article.

4       Sec. 2A303. (1) As used in this section, "creation of a  
5 security interest" includes the sale of a lease contract that is  
6 subject to article 9, secured transactions, by reason of section  
7 ~~9102(1)(b)~~ 9109(1)(C).

8       (2) Except as provided in ~~subsections~~ SUBSECTION (3) and  
9 ~~(4)~~ SECTION 9407, a provision in a lease agreement (i) which  
10 prohibits the voluntary or involuntary transfer, including a  
11 transfer by sale, sublease, creation, or enforcement of a secur-  
12 ity interest, or attachment, levy, or other judicial process, of  
13 an interest of a party under the lease contract or of the  
14 lessor's residual interest in the goods, or (ii) makes such a  
15 transfer an event of default, gives rise to the rights and reme-  
16 dies provided in subsection ~~(5)~~ (4), but a transfer that is  
17 prohibited or is an event of default under the lease agreement is  
18 otherwise effective.

19       ~~(3) A provision in a lease agreement which prohibits the~~  
20 ~~creation or enforcement of a security interest in an interest of~~  
21 ~~a party under the lease contract or in the lessor's residual~~  
22 ~~interest in the goods, or makes such a transfer an event of~~  
23 ~~default, is not enforceable unless, and then only to the extent~~  
24 ~~that, there is an actual transfer by the lessee of the lessee's~~  
25 ~~right of possession or use of the goods in violation of the pro-~~  
26 ~~vision or an actual delegation of a material performance of~~  
27 ~~either party to the lease contract in violation of the~~

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

30

1 ~~provision. Neither the granting nor the enforcement of a~~  
2 ~~security interest in (i) the lessor's interest under the lease~~  
3 ~~contract or (ii) the lessor's residual interest in the goods is a~~  
4 ~~transfer that materially impairs the prospect of obtaining return~~  
5 ~~performance by, materially changes the duty of, or materially~~  
6 ~~increases the burden or risk imposed on, the lessee within the~~  
7 ~~purview of subsection (5) unless, and then only to the extent~~  
8 ~~that, there is an actual delegation of a material performance of~~  
9 ~~the lessor.~~

10       (3) ~~—(4)—~~ A provision in a lease agreement which (i) prohib-  
11 its a transfer of a right to damages for default with respect to  
12 the whole lease contract or of a right to payment arising out of  
13 the transferor's due performance of the transferor's entire obli-  
14 gation, or (ii) makes such a transfer an event of default, is not  
15 enforceable, and such a transfer is not a transfer that materi-  
16 ally impairs the prospect of obtaining return performance by,  
17 materially changes the duty of, or materially increases the  
18 burden or risk imposed on, the other party to the lease contract  
19 within the purview of subsection ~~—(5)—~~ (4).

20       (4) ~~—(5)—~~ Subject to ~~—subsections—~~ SUBSECTION (3) and ~~—(4)—~~  
21 SECTION 9407, the following rules apply:

22       (a) If a transfer is made which is made an event of default  
23 under a lease agreement, the party to the lease contract not  
24 making the transfer, unless that party waives the default or oth-  
25 erwise agrees, has the rights and remedies described in section  
26 2A501(2).

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

31

1       (b) If subdivision (a) is not applicable and if a transfer  
2 is made that (i) is prohibited under a lease agreement or (ii)  
3 materially impairs the prospect of obtaining return performance  
4 by, materially changes the duty of, or materially increases the  
5 burden or risk imposed on, the other party to the lease contract,  
6 unless the party not making the transfer agrees at any time to  
7 the transfer in the lease contract or otherwise, then, except as  
8 limited by contract, the transferor is liable to the party not  
9 making the transfer for damages caused by the transfer to the  
10 extent that the damages could not reasonably be prevented by the  
11 party not making the transfer and a court having jurisdiction may  
12 grant other appropriate relief, including cancellation of the  
13 lease contract or an injunction against the transfer.

14       (5) ~~—(6)—~~ A transfer of "the lease" or of "all my rights  
15 under the lease" or a transfer in similar general terms is a  
16 transfer of rights and, unless the language or the circumstances,  
17 as in a transfer for security, indicate the contrary, the trans-  
18 fer is a delegation of duties by the transferor to the  
19 transferee. Acceptance by the transferee constitutes a promise  
20 by the transferee to perform those duties. The promise is  
21 enforceable by either the transferor or the other party to the  
22 lease contract.

23       (6) ~~—(7)—~~ Unless otherwise agreed by the lessor and the  
24 lessee, a delegation of performance does not relieve the trans-  
25 feror as against the other party of any duty to perform or of any  
26 liability for default.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

32

1       (7) ~~-(8)-~~ In a consumer lease, to prohibit the transfer of  
2 an interest of a party under the lease contract or to make a  
3 transfer an event of default, the language must be specific, by a  
4 writing, and conspicuous.

5       Sec. 2A307. (1) Except as otherwise provided in section  
6 2A306, a creditor of a lessee takes subject to the lease  
7 contract.

8       (2) Except as otherwise provided in ~~subsections~~ SUBSECTION  
9 (3) ~~and (4)~~ and in sections 2A306 and 2A308, a creditor of a  
10 lessor takes subject to the lease contract ~~except as follows:~~  
11 ~~(a) The~~ UNLESS THE creditor holds a lien that attached to the  
12 goods before the lease contract became enforceable.

13       ~~-(b) The creditor holds a security interest in the goods and~~  
14 ~~the lessee did not give value and receive delivery of the goods~~  
15 ~~without knowledge of the security interest.~~

16       ~~(c) The creditor holds a security interest in the goods~~  
17 ~~which was perfected (section 9303) before the lease contract~~  
18 ~~became enforceable.~~

19       (3) ~~A lessee in the ordinary course of business takes the~~  
20 ~~leasehold interest free of a security interest in the goods cre-~~  
21 ~~ated by the lessor even though the security interest is perfected~~  
22 ~~(section 9303) and the lessee knows of its existence. EXCEPT AS~~  
23 OTHERWISE PROVIDED IN SECTIONS 9317, 9321, AND 9323, A LESSEE  
24 TAKES A LEASEHOLD INTEREST SUBJECT TO A SECURITY INTEREST HELD BY  
25 A CREDITOR OF THE LESSOR.

26       ~~-(4) A lessee other than a lessee in the ordinary course of~~  
27 ~~business takes the leasehold interest free of a security interest~~



**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

33

1 ~~to the extent that it secures future advances made after the~~  
2 ~~secured party acquires knowledge of the lease or more than 45~~  
3 ~~days after the lease contract becomes enforceable, whichever~~  
4 ~~first occurs, unless the future advances are made pursuant to a~~  
5 ~~commitment entered into without knowledge of the lease and before~~  
6 ~~the expiration of the 45-day period.~~

7       Sec. 2A309. (1) As used in this section:

8       (a) "Goods" are "fixtures" when they become so related to  
9 particular real estate that an interest in them arises under real  
10 estate law.

11       (b) A "fixture filing" is the filing, in the office where a  
12 RECORD OF A mortgage on the real estate would be filed or  
13 recorded, ~~or~~ of a financing statement covering goods that are  
14 or are to become fixtures and conforming to the requirements of  
15 section ~~9402(5)~~ 9502(1) AND (2).

16       (c) A "lease" is a "purchase money lease" unless the lessee  
17 has possession or use of the goods or the right to possession or  
18 use of the goods before the lease agreement is enforceable.

19       (d) A "mortgage" is a "construction mortgage" to the extent  
20 it secures an obligation incurred for the construction of an  
21 improvement on land including the acquisition cost of the land,  
22 if the recorded writing so indicates.

23       (e) "Encumbrance" includes real estate mortgages and other  
24 liens on real estate and all other rights in real estate that are  
25 not ownership interests.

26       (2) Under this article a lease may be of goods that are  
27 fixtures or may continue in goods that become fixtures, but no

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

34

1 lease exists under this article of ordinary building materials  
2 incorporated into an improvement on land.

3       (3) This article does not prevent creation of a lease of  
4 fixtures pursuant to real estate law.

5       (4) The perfected interest of a lessor of fixtures has pri-  
6 ority over a conflicting interest of an encumbrancer or owner of  
7 the real estate if either of the following applies:

8       (a) The lease is a purchase money lease, the conflicting  
9 interest of the encumbrancer or owner arises before the goods  
10 become fixtures, the interest of the lessor is perfected by a  
11 fixture filing before the goods become fixtures or within 10 days  
12 thereafter, and the lessee has an interest of record in the real  
13 estate or is in possession of the real estate.

14       (b) The interest of the lessor is perfected by a fixture  
15 filing before the interest of the encumbrancer or owner is of  
16 record, the lessor's interest has priority over any conflicting  
17 interest of a predecessor in title of the encumbrancer or owner,  
18 and the lessee has an interest of record in the real estate or is  
19 in possession of the real estate.

20       (5) The interest of a lessor of fixtures, whether or not  
21 perfected, has priority over the conflicting interest of an  
22 encumbrancer or owner of the real estate if any of the following  
23 apply:

24       (a) The fixtures are readily removable factory or office  
25 machines, readily removable equipment that is not primarily used  
26 or leased for use in the operation of the real estate, or readily  
27 removable replacements of domestic appliances that are goods

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

35

1 subject to a consumer lease, and before the goods become  
2 fixtures, the lease contract is enforceable.

3 (b) The conflicting interest is a lien on the real estate  
4 obtained by legal or equitable proceedings after the lease con-  
5 tract is enforceable.

6 (c) The encumbrancer or owner has consented in writing to  
7 the lease or has disclaimed an interest in the goods as  
8 fixtures.

9 (d) The lessee has a right to remove the goods as against  
10 the encumbrancer or owner. If the lessee's right to remove ter-  
11 minates, the priority of the interest of the lessor continues for  
12 a reasonable time.

13 (6) Notwithstanding subsection (4)(a) but otherwise subject  
14 to subsections (4) and (5), the interest of a lessor of fixtures,  
15 including the lessor's residual interest, is subordinate to the  
16 conflicting interest of an encumbrancer of the real estate under  
17 a construction mortgage recorded before the goods become fixtures  
18 if the goods become fixtures before the completion of the  
19 construction. To the extent given to refinance a construction  
20 mortgage, the conflicting interest of an encumbrancer of the real  
21 estate under a mortgage has this priority to the same extent as  
22 the encumbrancer of the real estate under the construction  
23 mortgage.

24 (7) In cases not within the preceding subsections, priority  
25 between the interest of a lessor of fixtures, including the  
26 lessor's residual interest, and the conflicting interest of an  
27 encumbrancer or owner of the real estate who is not the lessee is

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228 as amended December 5, 2000 36

1 determined by the priority rules governing conflicting interests  
2 in real estate.

3 (8) If the interest of a lessor of fixtures, including the  
4 lessor's residual interest, has priority over all conflicting  
5 interests of all owners and encumbrancers of the real estate, the  
6 lessor or the lessee may (i) on default, expiration, termination,  
7 or cancellation of the lease agreement but subject to the lease  
8 agreement and this article, or (ii) if necessary to enforce other  
9 rights and remedies of the lessor or lessee under this article,  
10 remove the goods from the real estate, free and clear of all con-  
11 flicting interests of all owners and encumbrancers of the real  
12 estate, but the lessor or lessee must reimburse any encumbrancer  
13 or owner of the real estate who is not the lessee and who has not  
14 otherwise agreed for the cost of repair of any physical injury,  
15 but not for any diminution in value of the real estate caused by  
16 the absence of the goods removed or by any necessity of replacing  
17 them. A person entitled to reimbursement may refuse permission  
18 to remove until the party seeking removal gives adequate security  
19 for the performance of this obligation.

20 (9) Even though the lease agreement does not create a secur-  
21 ity interest, the interest of a lessor of fixtures, including the  
22 lessor's residual interest, is perfected by filing a financing  
23 statement as a fixture filing for leased goods that are or are to  
24 become fixtures in accordance with the relevant provisions of  
25 article 9.

Sec. 2A525. (1) If a lessor discovers the lessee to be insolvent, the lessor may refuse to deliver the goods.

(2) After a default by the lessee under the lease contract of the type described in section 2A523(1) or 2A523(3)(a) or, if agreed, after other default by the lessee, the ~~lessee~~ LESSOR has the right to take possession of the goods. If the lease contract so provides, the lessor may require the lessee to assemble the goods and make them available to the lessor at a place to be designated by the lessor which is reasonably convenient to both parties. Without removal, the lessor may render unusable any goods employed in trade or business, and may dispose of goods on the lessee's premises (section 2A527).

(3) The lessor may proceed under subsection (2) without judicial process if that can be done without breach of the peace or the lessor may proceed by action.

**HB 5228, As Passed Senate, December 5, 2000**

1       Sec. 4210. (1) A collecting bank has a security interest in  
2 an item and any accompanying documents or the proceeds of any of  
3 the following:

4       (a) In case of an item deposited in an account to the extent  
5 to which credit given for the item has been withdrawn or  
6 applied.

7       (b) In case of an item for which it has given credit avail-  
8 able for withdrawal as of right, to the extent of the credit  
9 given whether or not the credit is drawn upon and whether or not  
10 there is a right of charge-back.

11       (c) If it makes an advance on or against the item.

12       (2) If credit given for several items received at one time  
13 or pursuant to a single agreement is withdrawn or applied in part  
14 the security interest remains upon all the items, any accompany-  
15 ing documents or the proceeds of either. For the purpose of this  
16 section, credits first given are first withdrawn.

17       (3) Receipt by a collecting bank of a final settlement for  
18 an item is a realization on its security interest in the item,  
19 accompanying documents and proceeds. So long as the bank does  
20 not receive final settlement for the item or give up possession  
21 of the item or accompanying documents for purposes other than  
22 collection, the security interest continues to that extent and is  
23 subject to article 9 except for the following:

24       (a) No security agreement is necessary to make the security  
25 interest enforceable ~~—(subsection (1)(b) of (section 9203—~~  
26 9203(2)(C)(i)).

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

38

1 (b) No filing is required to perfect the security interest.

2 (c) The security interest has priority over conflicting  
3 perfected security interests in the item, accompanying documents  
4 or proceeds.

5 SEC. 5118. (1) AN ISSUER OR NOMINATED PERSON HAS A SECURITY  
6 INTEREST IN A DOCUMENT PRESENTED UNDER A LETTER OF CREDIT TO THE  
7 EXTENT THAT THE ISSUER OR NOMINATED PERSON HONORS OR GIVES VALUE  
8 FOR THE PRESENTATION.

9 (2) SO LONG AS AND TO THE EXTENT THAT AN ISSUER OR NOMINATED  
10 PERSON HAS NOT BEEN REIMBURSED OR HAS NOT OTHERWISE RECOVERED THE  
11 VALUE GIVEN WITH RESPECT TO A SECURITY INTEREST IN A DOCUMENT  
12 UNDER SUBSECTION (1), THE SECURITY INTEREST CONTINUES AND IS  
13 SUBJECT TO ARTICLE 9, BUT ALL OF THE FOLLOWING APPLY:

14 (A) A SECURITY AGREEMENT IS NOT NECESSARY TO MAKE THE SECUR-  
15 ITY INTEREST ENFORCEABLE UNDER SECTION 9203(2)(C).

16 (B) IF THE DOCUMENT IS PRESENTED IN A MEDIUM OTHER THAN A  
17 WRITTEN OR OTHER TANGIBLE MEDIUM, THE SECURITY INTEREST IS  
18 PERFECTED.

19 (C) IF THE DOCUMENT IS PRESENTED IN A WRITTEN OR OTHER TAN-  
20 GIBLE MEDIUM AND IS NOT A CERTIFICATED SECURITY, CHATTEL PAPER, A  
21 DOCUMENT OF TITLE, AN INSTRUMENT, OR A LETTER OF CREDIT, THE  
22 SECURITY INTEREST IS PERFECTED AND HAS PRIORITY OVER A CONFLICT-  
23 ING SECURITY INTEREST IN THE DOCUMENT SO LONG AS THE DEBTOR DOES  
24 NOT HAVE POSSESSION OF THE DOCUMENT.

25 Sec. 7503. (1) A document of title confers no right in  
26 goods against a person who before issuance of the document had a

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

39

1 legal interest or a perfected security interest in them and who  
2 DID neither OF THE FOLLOWING:

3       (a) ~~delivered~~ DELIVERED or entrusted them or any document  
4 of title covering them to the bailor or his OR HER nominee with  
5 actual or apparent authority to ship, store or sell or with power  
6 to obtain delivery under this article (section 7403) or with  
7 power of disposition under this act (sections 2403 and ~~9307~~  
8 9320) or other statute or rule of law. ~~nor~~

9       (b) ~~acquiesced~~ ACQUIESCED in the procurement by the bailor  
10 or his OR HER nominee of any document of title.

11       (2) Title to goods based upon an unaccepted delivery order  
12 is subject to the rights of anyone to whom a negotiable warehouse  
13 receipt or bill of lading covering the goods has been duly  
14 negotiated. Such a title may be defeated under the next section  
15 to the same extent as the rights of the issuer or a transferee  
16 from the issuer.

17       (3) Title to goods based upon a bill of lading issued to a  
18 freight forwarder is subject to the rights of anyone to whom a  
19 bill issued by the freight forwarder is duly negotiated; but  
20 delivery by the carrier in accordance with part 4 of this article  
21 pursuant to its own bill of lading discharges the carrier's obli-  
22 gation to deliver.

23       Sec. 8103. (1) A share or similar equity interest issued by  
24 a corporation, business trust, joint stock company, or similar  
25 entity is a security.

26       (2) An investment company security is a security.

27 "Investment company security" means a share or similar equity

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

40

1 interest issued by an entity that is registered as an investment  
2 company under the federal investment company laws, an interest in  
3 a unit investment trust that is so registered, or a face-amount  
4 certificate issued by a face-amount certificate company that is  
5 so registered. Investment company security does not include an  
6 insurance policy or endowment policy or annuity contract issued  
7 by an insurance company.

8       (3) An interest in a partnership or limited liability com-  
9 pany is not a security unless it is dealt in or traded on securi-  
10 ties exchanges or in securities markets, its terms expressly pro-  
11 vide that it is a security governed by this article, or it is an  
12 investment company security. However, an interest in a partner-  
13 ship or limited liability company is a financial asset if it is  
14 held in a securities account.

15       (4) A writing that is a security certificate is governed by  
16 this article and not by article 3, even though it also meets the  
17 requirements of that article. However, a negotiable instrument  
18 governed by article 3 is a financial asset if it is held in a  
19 securities account.

20       (5) An option or similar obligation issued by a clearing  
21 corporation to its participants is not a security, but is a  
22 financial asset.

23       (6) A commodity contract, AS DEFINED IN SECTION 9102(1)(O),  
24 is not a security or a financial asset.

25       Sec. 8106. (1) A purchaser has "control" of a certificated  
26 security in bearer form if the certificated security is delivered  
27 to the purchaser.



**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

41

1       (2) A purchaser has "control" of a certificated security in  
2 registered form if the certificated security is delivered to the  
3 purchaser and if either of the following applies:

4       (a) The certificate is indorsed to the purchaser or in blank  
5 by an effective indorsement.

6       (b) The certificate is registered in the name of the pur-  
7 chaser, upon original issue or registration of transfer by the  
8 issuer.

9       (3) A purchaser has "control" of an uncertificated security  
10 if either of the following applies:

11       (a) The uncertificated security is delivered to the  
12 purchaser.

13       (b) The issuer has agreed that it will comply with instruc-  
14 tions originated by the purchaser without further consent by the  
15 registered owner.

16       (4) A purchaser has "control" of a security entitlement if  
17 ~~either~~ 1 of the following applies:

18       (a) The purchaser becomes the entitlement holder.

19       (b) The securities intermediary has agreed that it will  
20 comply with entitlement orders originated by the purchaser with-  
21 out further consent by the entitlement holder.

22       (C) ANOTHER PERSON HAS CONTROL OF THE SECURITY ENTITLEMENT  
23 ON BEHALF OF THE PURCHASER OR, HAVING PREVIOUSLY ACQUIRED CONTROL  
24 OF THE SECURITY ENTITLEMENT, ACKNOWLEDGES THAT IT HAS CONTROL ON  
25 BEHALF OF THE PURCHASER.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

42

1       (5) If an interest in a security entitlement is granted by  
2 the entitlement holder to the entitlement holder's own securities  
3 intermediary, the securities intermediary has control.

4       (6) A purchaser who has satisfied the requirements of sub-  
5 section (3)(b) or (4)(b) has control even if the registered owner  
6 in the case of subsection (3)(b) or the entitlement holder in the  
7 case of subsection (4)(b) retains the right to make substitutions  
8 for the uncertificated security or security entitlement, to orig-  
9 inate instructions or entitlement orders to the issuer or securi-  
10 ties intermediary, or otherwise to deal with the uncertificated  
11 security or security entitlement.

12       (7) An issuer or a securities intermediary may not enter  
13 into an agreement of the kind described in subsection (3)(b) or  
14 (4)(b) without the consent of the registered owner or entitlement  
15 holder, but an issuer or a securities intermediary is not  
16 required to enter into such an agreement even though the regis-  
17 tered owner or entitlement holder so directs. An issuer or  
18 securities intermediary that has entered into such an agreement  
19 is not required to confirm the existence of the agreement to  
20 another party unless requested to do so by the registered owner  
21 or entitlement holder.

22       Sec. 8110. (1) The law of the issuer's jurisdiction, as  
23 specified in subsection (4), governs all of the following:

24       (a) The validity of a security.

25       (b) The rights and duties of the issuer with respect to reg-  
26 istration of transfer.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

43

1 (c) The effectiveness of registration of transfer by the  
2 issuer.

3 (d) Whether the issuer owes any duties to an adverse claim-  
4 ant to a security.

5 (e) Whether an adverse claim can be asserted against a  
6 person to whom transfer of a certificated or uncertificated  
7 security is registered or a person who obtains control of an  
8 uncertificated security.

9 (2) The law of the securities intermediary's jurisdiction,  
10 as specified in subsection (5), governs all of the following:

11 (a) Acquisition of a security entitlement from the securi-  
12 ties intermediary.

13 (b) The rights and duties of the securities intermediary and  
14 entitlement holder arising out of a security entitlement.

15 (c) Whether the securities intermediary owes any duties to  
16 an adverse claimant to a security entitlement.

17 (d) Whether an adverse claim can be asserted against a  
18 person who acquires a security entitlement from the securities  
19 intermediary or a person who purchases a security entitlement or  
20 interest therein from an entitlement holder.

21 (3) The law of the jurisdiction in which a security certifi-  
22 cate is located at the time of delivery governs whether an  
23 adverse claim can be asserted against a person to whom the secur-  
24 ity certificate is delivered.

25 (4) "Issuer's jurisdiction" means the jurisdiction under  
26 which the issuer of the security is organized or, if permitted by  
27 the law of that jurisdiction, the law of another jurisdiction

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

44

1 specified by the issuer. An issuer organized under the law of  
2 this state may specify the law of another jurisdiction as the law  
3 governing the matters specified in subsection (1)(b) through  
4 (e).

5 (5) The following rules determine a "securities  
6 intermediary's jurisdiction" for the purposes of this section:

7 (a) If an agreement between the securities intermediary and  
8 its entitlement holder ~~specifies that it is governed by the law~~  
9 ~~of a particular jurisdiction~~ GOVERNING THE SECURITIES ACCOUNT  
10 EXPRESSLY PROVIDES THAT A PARTICULAR JURISDICTION IS THE SECURI-  
11 TIES INTERMEDIARY'S JURISDICTION FOR PURPOSES OF THIS PART, THIS  
12 ARTICLE, OR THIS AMENDATORY ACT, that jurisdiction is the securi-  
13 ties intermediary's jurisdiction.

14 (B) IF SUBDIVISION (A) DOES NOT APPLY AND AN AGREEMENT  
15 BETWEEN THE SECURITIES INTERMEDIARY AND ITS ENTITLEMENT HOLDER  
16 GOVERNING THE SECURITIES ACCOUNT EXPRESSLY PROVIDES THAT THE  
17 AGREEMENT IS GOVERNED BY THE LAW OF A PARTICULAR JURISDICTION,  
18 THAT JURISDICTION IS THE SECURITIES INTERMEDIARY'S JURISDICTION.

19 (C) ~~(b)~~ If NEITHER SUBDIVISION (A) NOR SUBDIVISION (B)  
20 APPLIES AND an agreement between the securities intermediary and  
21 its entitlement holder ~~does not specify the governing law as~~  
22 ~~provided in subdivision (a), but~~ GOVERNING THE SECURITIES  
23 ACCOUNT expressly ~~specifies~~ PROVIDES that the securities  
24 account is maintained at an office in a particular jurisdiction,  
25 that jurisdiction is the securities intermediary's jurisdiction.

26 (D) ~~(c)~~ If ~~an agreement between the securities~~  
27 ~~intermediary and its entitlement holder does not specify a~~

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

45

1 ~~jurisdiction as provided in subdivision (a) or (b)~~ NONE OF THE  
2 PRECEDING SUBDIVISIONS APPLY, the securities intermediary's  
3 jurisdiction is the jurisdiction in which ~~is located~~ the office  
4 identified in an account statement as the office serving the  
5 entitlement holder's account IS LOCATED.

6 (E) ~~(d) If an agreement between the securities intermedi-~~  
7 ~~ary and its entitlement holder does not specify a jurisdiction as~~  
8 ~~provided in subdivision (a) or (b) and an account statement does~~  
9 ~~not identify an office serving the entitlement holder's account~~  
10 ~~as provided in subdivision (c)~~ NONE OF THE PRECEDING SUBDIVI-  
11 SIONS APPLY, the securities intermediary's jurisdiction is the  
12 jurisdiction in which ~~is located~~ the chief executive office of  
13 the securities intermediary IS LOCATED.

14 (6) A securities intermediary's jurisdiction is not deter-  
15 mined by the physical location of certificates representing  
16 financial assets, or by the jurisdiction in which is organized  
17 the issuer of the financial asset with respect to which an enti-  
18 tlement holder has a security entitlement, or by the location of  
19 facilities for data processing or other record-keeping concerning  
20 the account.

21 Sec. 8301. (1) Delivery of a certificated security to a  
22 purchaser occurs when 1 of the following occurs:

23 (a) The purchaser acquires possession of the security  
24 certificate.

25 (b) Another person, other than a securities intermediary,  
26 either acquires possession of the security certificate on behalf

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

46

1 of the purchaser or, having previously acquired possession of the  
2 certificate, acknowledges that it holds for the purchaser.

3 (c) A securities intermediary acting on behalf of the pur-  
4 chaser acquires possession of the security certificate, only if  
5 the certificate is in registered form and ~~has been~~ IS (i) REG-  
6 ISTERED IN THE NAME OF THE PURCHASER, (ii) PAYABLE TO THE ORDER  
7 OF THE PURCHASER, OR (iii) specially indorsed to the purchaser by  
8 an effective indorsement AND HAS NOT BEEN ENDORSED TO THE SECURI-  
9 TIES INTERMEDIARY OR IN BLANK.

10 (2) Delivery of an uncertificated security to a purchaser  
11 occurs when either of the following occurs:

12 (a) The issuer registers the purchaser as the registered  
13 owner, upon original issue or registration of transfer.

14 (b) Another person, other than a securities intermediary,  
15 either becomes the registered owner of the uncertificated secur-  
16 ity on behalf of the purchaser or, having previously become the  
17 registered owner, acknowledges that it holds for the purchaser.

18 Sec. 8302. (1) Except as otherwise provided in subsections  
19 (2) and (3), ~~upon delivery~~ A PURCHASER of a certificated or  
20 uncertificated security ~~to a purchaser, the purchaser~~ acquires  
21 all rights in the security that the transferor had or had power  
22 to transfer.

23 (2) A purchaser of a limited interest acquires rights only  
24 to the extent of the interest purchased.

25 (3) A purchaser of a certificated security who as a previous  
26 holder had notice of an adverse claim does not improve its  
27 position by taking from a protected purchaser.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

47

1       Sec. 8510. (1) ~~An~~ IN A CASE NOT COVERED BY THE PRIORITY  
2 RULES IN ARTICLE 9 OR THE RULES STATED IN SUBSECTION (3), AN  
3 action based on an adverse claim to a financial asset or security  
4 entitlement, whether framed in conversion, replevin, constructive  
5 trust, equitable lien, or other theory, may not be asserted  
6 against a person who purchases a security entitlement, or an  
7 interest in a security entitlement, from an entitlement holder if  
8 the purchaser gives value, does not have notice of the adverse  
9 claim, and obtains control.

10       (2) If an adverse claim could not have been asserted against  
11 an entitlement holder under section 8502, the adverse claim  
12 cannot be asserted against a person who purchases a security  
13 entitlement, or an interest in a security entitlement, from the  
14 entitlement holder.

15       (3) In a case not covered by the priority rules in  
16 article 9, a purchaser for value of a security entitlement, or an  
17 interest in a security entitlement, who obtains control has pri-  
18 ority over a purchaser of a security entitlement, or an interest  
19 in a security entitlement, who does not obtain control.

20 ~~Purchasers~~ EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (4),  
21 PURCHASERS who have control rank ~~equally, except that a~~  
22 ACCORDING TO PRIORITY IN TIME OF 1 OF THE FOLLOWING:

23       (A) THE PURCHASER'S BECOMING THE PERSON FOR WHOM THE SECURI-  
24 TIES ACCOUNT, IN WHICH THE SECURITY ENTITLEMENT IS CARRIED, IS  
25 MAINTAINED, IF THE PURCHASER OBTAINED CONTROL UNDER SECTION  
26 8106(4)(A).

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

48

1 (B) THE SECURITIES INTERMEDIARY'S AGREEMENT TO COMPLY WITH  
2 THE PURCHASER'S ENTITLEMENT ORDERS WITH RESPECT TO SECURITY  
3 ENTITLEMENTS CARRIED OR TO BE CARRIED IN THE SECURITIES ACCOUNT  
4 IN WHICH THE SECURITY ENTITLEMENT IS CARRIED, IF THE PURCHASER  
5 OBTAINED CONTROL UNDER SECTION 8106(4)(B).

6 (C) IF THE PURCHASER OBTAINED CONTROL THROUGH ANOTHER PERSON  
7 UNDER SECTION 8106(4)(C), THE TIME ON WHICH PRIORITY WOULD BE  
8 BASED UNDER THIS SUBSECTION IF THE OTHER PERSON WERE THE SECURED  
9 PARTY.

10 (4) A securities intermediary as purchaser has priority over  
11 a conflicting purchaser who has control unless otherwise agreed  
12 by the securities intermediary.

13 ARTICLE 9

14 SECURED TRANSACTIONS ~~; SALES OF ACCOUNTS, AND CHATTEL PAPER~~

15 PART 1

16 ~~SHORT TITLE, APPLICABILITY, AND DEFINITIONS~~ GENERAL PROVISIONS

17 SUBPART 1. SHORT TITLE, DEFINITIONS, AND GENERAL CONCEPTS

18 Sec. 9102. ~~(1) Except as otherwise provided in section~~  
19 ~~9104 on excluded transactions, this article applies;~~

20 ~~(a) To any transaction (regardless of its form) which is~~  
21 ~~intended to create a security interest in personal property or~~  
22 ~~fixtures including goods, documents, instruments, general intan-~~  
23 ~~gibles, chattel paper or accounts; and also~~

24 ~~(b) To any sale of accounts or chattel paper.~~

25 ~~(2) This article applies to security interests created by~~  
26 ~~contract including pledge, assignment, chattel mortgage, chattel~~  
27 ~~trust, trust deed, factor's lien, equipment trust, conditional~~



**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

49

1 ~~sale, trust receipt, other lien or title retention contract, and~~  
2 ~~lease or consignment intended as security. This article does not~~  
3 ~~apply to statutory liens except as provided in section 9310.~~

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

8 (1) AS USED IN THIS ARTICLE:

9 (A) "ACCESSION" MEANS GOODS THAT ARE PHYSICALLY UNITED WITH  
10 OTHER GOODS IN SUCH A MANNER THAT THE IDENTITY OF THE ORIGINAL  
11 GOODS IS NOT LOST.

12 (B) "ACCOUNT", EXCEPT AS USED IN "ACCOUNT FOR", MEANS A  
13 RIGHT TO PAYMENT OF A MONETARY OBLIGATION, WHETHER OR NOT EARNED  
14 BY PERFORMANCE, FOR PROPERTY THAT HAS BEEN OR IS TO BE SOLD,  
15 LEASED, LICENSED, ASSIGNED, OR OTHERWISE DISPOSED OF, FOR SERV-  
16 ICES RENDERED OR TO BE RENDERED, FOR A POLICY OF INSURANCE ISSUED  
17 OR TO BE ISSUED, FOR A SECONDARY OBLIGATION INCURRED OR TO BE  
18 INCURRED, FOR ENERGY PROVIDED OR TO BE PROVIDED, FOR THE USE OR  
19 HIRE OF A VESSEL UNDER A CHARTER OR OTHER CONTRACT, ARISING OUT  
20 OF THE USE OF A CREDIT OR CHARGE CARD OR INFORMATION CONTAINED ON  
21 OR FOR USE WITH THE CARD, OR AS WINNINGS IN A LOTTERY OR OTHER  
22 GAME OF CHANCE OPERATED OR SPONSORED BY A STATE, GOVERNMENTAL  
23 UNIT OF A STATE, OR PERSON LICENSED OR AUTHORIZED TO OPERATE THE  
24 GAME BY A STATE OR GOVERNMENTAL UNIT OF A STATE. THE TERM  
25 INCLUDES HEALTH-CARE-INSURANCE RECEIVABLES. THE TERM DOES NOT  
26 INCLUDE RIGHTS TO PAYMENT EVIDENCED BY CHATTEL PAPER OR AN  
27 INSTRUMENT, COMMERCIAL TORT CLAIMS, DEPOSIT ACCOUNTS, INVESTMENT

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

50

1 PROPERTY, LETTER-OF-CREDIT RIGHTS OR LETTERS OF CREDIT, OR RIGHTS  
2 TO PAYMENT FOR MONEY OR FUNDS ADVANCED OR SOLD, OTHER THAN RIGHTS  
3 ARISING OUT OF THE USE OF A CREDIT OR CHARGE CARD OR INFORMATION  
4 CONTAINED ON OR FOR USE WITH THE CARD.

5 (C) "ACCOUNT DEBTOR" MEANS A PERSON OBLIGATED ON AN ACCOUNT,  
6 CHATTEL PAPER, OR GENERAL INTANGIBLE. THE TERM DOES NOT INCLUDE  
7 PERSONS OBLIGATED TO PAY A NEGOTIABLE INSTRUMENT, EVEN IF THE  
8 INSTRUMENT CONSTITUTES PART OF CHATTEL PAPER.

9 (D) "ACCOUNTING", EXCEPT AS USED IN "ACCOUNTING FOR", MEANS  
10 A RECORD THAT MEETS ALL OF THE FOLLOWING REQUIREMENTS:

11 (i) AUTHENTICATED BY A SECURED PARTY.

12 (ii) INDICATING THE AGGREGATE UNPAID SECURED OBLIGATIONS AS  
13 OF A DATE NOT MORE THAN 35 DAYS EARLIER OR 35 DAYS LATER THAN THE  
14 DATE OF THE RECORD.

15 (iii) IDENTIFYING THE COMPONENTS OF THE OBLIGATIONS IN REA-  
16 SONABLE DETAIL.

17 (E) "AGRICULTURAL LIEN" MEANS AN INTEREST, OTHER THAN A  
18 SECURITY INTEREST, IN FARM PRODUCTS THAT MEETS ALL OF THE FOLLOW-  
19 ING REQUIREMENTS:

20 (i) THE INTEREST SECURES PAYMENT OR PERFORMANCE OF AN OBLI-  
21 GATION FOR 1 OR MORE OF THE FOLLOWING:

22 (A) GOODS OR SERVICES FURNISHED IN CONNECTION WITH A  
23 DEBTOR'S FARMING OPERATION.

24 (B) RENT ON REAL PROPERTY LEASED BY A DEBTOR IN CONNECTION  
25 WITH ITS FARMING OPERATION.

26 (ii) THE INTEREST IS CREATED BY STATUTE IN FAVOR OF A PERSON  
27 THAT DID 1 OR MORE OF THE FOLLOWING:

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

51

1 (A) IN THE ORDINARY COURSE OF ITS BUSINESS FURNISHED GOODS  
2 OR SERVICES TO A DEBTOR IN CONNECTION WITH A DEBTOR'S FARMING  
3 OPERATION.

4 (B) LEASED REAL PROPERTY TO A DEBTOR IN CONNECTION WITH THE  
5 DEBTOR'S FARMING OPERATION.

6 (iii) THE EFFECTIVENESS OF THE INTEREST DOES NOT DEPEND ON  
7 THE PERSON'S POSSESSION OF THE PERSONAL PROPERTY.

8 (F) "AS-EXTRACTED COLLATERAL" MEANS 1 OR MORE OF THE  
9 FOLLOWING:

10 (i) OIL, GAS, OR OTHER MINERALS THAT ARE SUBJECT TO A SECUR-  
11 ITY INTEREST THAT IS CREATED BY A DEBTOR HAVING AN INTEREST IN  
12 THE MINERALS BEFORE EXTRACTION AND ATTACHES TO THE MINERALS AS  
13 EXTRACTED.

14 (ii) ACCOUNTS ARISING OUT OF THE SALE AT THE WELLHEAD OR  
15 MINEHEAD OF OIL, GAS, OR OTHER MINERALS IN WHICH THE DEBTOR HAD  
16 AN INTEREST BEFORE EXTRACTION.

17 (G) "AUTHENTICATE" MEANS 1 OF THE FOLLOWING:

18 (i) TO SIGN.

19 (ii) TO EXECUTE OR OTHERWISE ADOPT A SYMBOL, OR ENCRYPT OR  
20 SIMILARLY PROCESS A RECORD IN WHOLE OR IN PART, WITH THE PRESENT  
21 INTENT OF THE AUTHENTICATING PERSON TO IDENTIFY THE PERSON AND  
22 ADOPT OR ACCEPT A RECORD.

23 (H) "BANK" MEANS AN ORGANIZATION THAT IS ENGAGED IN THE  
24 BUSINESS OF BANKING. THE TERM INCLUDES SAVINGS BANKS, SAVINGS  
25 AND LOAN ASSOCIATIONS, CREDIT UNIONS, AND TRUST COMPANIES.

26 (I) "CASH PROCEEDS" MEANS PROCEEDS THAT ARE MONEY, CHECKS,  
27 DEPOSIT ACCOUNTS, OR THE LIKE.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

52

1       (J) "CERTIFICATE OF TITLE" MEANS A CERTIFICATE OF TITLE WITH  
2 RESPECT TO WHICH A STATUTE PROVIDES FOR THE SECURITY INTEREST IN  
3 QUESTION TO BE INDICATED ON THE CERTIFICATE AS A CONDITION OR  
4 RESULT OF THE SECURITY INTEREST'S OBTAINING PRIORITY OVER THE  
5 RIGHTS OF A LIEN CREDITOR WITH RESPECT TO THE COLLATERAL.

6       (K) "CHATTEL PAPER" MEANS A RECORD OR RECORDS THAT EVIDENCE  
7 BOTH A MONETARY OBLIGATION AND A SECURITY INTEREST IN SPECIFIC  
8 GOODS, A SECURITY INTEREST IN SPECIFIC GOODS AND SOFTWARE USED IN  
9 THE GOODS, A SECURITY INTEREST IN SPECIFIC GOODS AND LICENSE OF  
10 SOFTWARE USED IN THE GOODS, A LEASE OF SPECIFIC GOODS, OR A LEASE  
11 OF SPECIFIC GOODS AND LICENSE OF SOFTWARE USED IN THE GOODS. AS  
12 USED IN THIS SUBDIVISION, "MONETARY OBLIGATION" MEANS A MONETARY  
13 OBLIGATION SECURED BY THE GOODS OR OWED UNDER A LEASE OF THE  
14 GOODS AND INCLUDES A MONETARY OBLIGATION WITH RESPECT TO SOFTWARE  
15 USED IN THE GOODS. THE TERM DOES NOT INCLUDE CHARTERS OR OTHER  
16 CONTRACTS INVOLVING THE USE OR HIRE OF A VESSEL, OR RECORDS THAT  
17 EVIDENCE A RIGHT TO PAYMENT ARISING OUT OF THE USE OF A CREDIT OR  
18 CHARGE CARD OR INFORMATION CONTAINED ON OR FOR USE WITH THE  
19 CARD. IF A TRANSACTION IS EVIDENCED BY RECORDS THAT INCLUDE AN  
20 INSTRUMENT OR SERIES OF INSTRUMENTS, THE GROUP OF RECORDS TAKEN  
21 TOGETHER CONSTITUTES CHATTEL PAPER.

22       (l) "COLLATERAL" MEANS THE PROPERTY SUBJECT TO A SECURITY  
23 INTEREST OR AGRICULTURAL LIEN. THE TERM INCLUDES 1 OR MORE OF  
24 THE FOLLOWING:

25       (i) PROCEEDS TO WHICH A SECURITY INTEREST ATTACHES.

26       (ii) ACCOUNTS, CHATTEL PAPER, PAYMENT INTANGIBLES, AND  
27 PROMISSORY NOTES THAT HAVE BEEN SOLD.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

53

1       (iii) GOODS THAT ARE THE SUBJECT OF A CONSIGNMENT.

2       (M) "COMMERCIAL TORT CLAIM" MEANS A CLAIM ARISING IN TORT  
3 WITH RESPECT TO WHICH 1 OF THE FOLLOWING APPLIES:

4       (i) THE CLAIMANT IS AN ORGANIZATION.

5       (ii) THE CLAIMANT IS AN INDIVIDUAL AND THE CLAIM AROSE IN  
6 THE COURSE OF THE CLAIMANT'S BUSINESS OR PROFESSION AND DOES NOT  
7 INCLUDE DAMAGES ARISING OUT OF PERSONAL INJURY TO OR THE DEATH OF  
8 AN INDIVIDUAL.

9       (N) "COMMODITY ACCOUNT" MEANS AN ACCOUNT MAINTAINED BY A  
10 COMMODITY INTERMEDIARY IN WHICH A COMMODITY CONTRACT IS CARRIED  
11 FOR A COMMODITY CUSTOMER.

12       (O) "COMMODITY CONTRACT" MEANS A COMMODITY FUTURES CONTRACT,  
13 AN OPTION ON A COMMODITY FUTURES CONTRACT, A COMMODITY OPTION, OR  
14 ANOTHER CONTRACT IF THE CONTRACT OR OPTION IS 1 OF THE  
15 FOLLOWING:

16       (i) TRADED ON OR SUBJECT TO THE RULES OF A BOARD OF TRADE  
17 THAT HAS BEEN DESIGNATED AS A CONTRACT MARKET FOR SUCH A CONTRACT  
18 PURSUANT TO FEDERAL COMMODITIES LAWS.

19       (ii) TRADED ON A FOREIGN COMMODITY BOARD OF TRADE, EXCHANGE,  
20 OR MARKET, AND IS CARRIED ON THE BOOKS OF A COMMODITY INTERMEDI-  
21 ARY FOR A COMMODITY CUSTOMER.

22       (P) "COMMODITY CUSTOMER" MEANS A PERSON FOR WHICH A COMMOD-  
23 ITY INTERMEDIARY CARRIES A COMMODITY CONTRACT ON ITS BOOKS.

24       (Q) "COMMODITY INTERMEDIARY" MEANS 1 OF THE FOLLOWING:

25       (i) A PERSON THAT IS REGISTERED AS A FUTURES COMMISSION MER-  
26 CHANT UNDER FEDERAL COMMODITIES LAW.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

54

1       (ii) A PERSON THAT IN THE ORDINARY COURSE OF ITS BUSINESS  
2 PROVIDES CLEARANCE OR SETTLEMENT SERVICES FOR A BOARD OF TRADE  
3 THAT HAS BEEN DESIGNATED AS A CONTRACT MARKET PURSUANT TO FEDERAL  
4 COMMODITIES LAW.

5       (R) "COMMUNICATE" MEANS 1 OR MORE OF THE FOLLOWING:

6       (i) TO SEND A WRITTEN OR OTHER TANGIBLE RECORD.

7       (ii) TO TRANSMIT A RECORD BY ANY MEANS AGREED UPON BY THE  
8 PERSONS SENDING AND RECEIVING THE RECORD.

9       (iii) IN THE CASE OF TRANSMISSION OF A RECORD TO OR BY A  
10 FILING OFFICE, TO TRANSMIT A RECORD BY ANY MEANS PRESCRIBED BY  
11 FILING-OFFICE RULE.

12       (S) "CONSIGNEE" MEANS A MERCHANT TO WHICH GOODS ARE DELIV-  
13 ERED IN A CONSIGNMENT.

14       (T) "CONSIGNMENT" MEANS A TRANSACTION, REGARDLESS OF ITS  
15 FORM, IN WHICH A PERSON DELIVERS GOODS TO A MERCHANT FOR THE PUR-  
16 POSE OF SALE AND THAT MEETS ALL OF THE FOLLOWING:

17       (i) THE MERCHANT DEALS IN GOODS OF THAT KIND UNDER A NAME  
18 OTHER THAN THE NAME OF THE PERSON MAKING DELIVERY, IS NOT AN AUC-  
19 TIONEER, AND IS NOT GENERALLY KNOWN BY ITS CREDITORS TO BE SUB-  
20 STANTIALLY ENGAGED IN SELLING THE GOODS OF OTHERS.

21       (ii) WITH RESPECT TO EACH DELIVERY, THE AGGREGATE VALUE OF  
22 THE GOODS IS \$1,000.00 OR MORE AT THE TIME OF DELIVERY.

23       (iii) THE GOODS ARE NOT CONSUMER GOODS IMMEDIATELY BEFORE  
24 DELIVERY.

25       (iv) THE TRANSACTION DOES NOT CREATE A SECURITY INTEREST  
26 THAT SECURES AN OBLIGATION.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

55

1 (U) "CONSIGNOR" MEANS A PERSON THAT DELIVERS GOODS TO A  
2 CONSIGNEE IN A CONSIGNMENT.

3 (V) "CONSUMER DEBTOR" MEANS A DEBTOR IN A CONSUMER  
4 TRANSACTION.

5 (W) "CONSUMER GOODS" MEANS GOODS THAT ARE USED OR BOUGHT FOR  
6 USE PRIMARILY FOR PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES.

7 (X) "CONSUMER-GOODS TRANSACTION" MEANS A CONSUMER TRANSAC-  
8 TION IN WHICH AN INDIVIDUAL INCURS AN OBLIGATION PRIMARILY FOR  
9 PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES AND A SECURITY INTEREST  
10 IN CONSUMER GOODS SECURES THE OBLIGATION.

11 (Y) "CONSUMER OBLIGOR" MEANS AN OBLIGOR WHO IS AN INDIVIDUAL  
12 AND WHO INCURRED THE OBLIGATION AS PART OF A TRANSACTION ENTERED  
13 INTO PRIMARILY FOR PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES.

14 (Z) "CONSUMER TRANSACTION" MEANS A TRANSACTION IN WHICH AN  
15 INDIVIDUAL INCURS AN OBLIGATION PRIMARILY FOR PERSONAL, FAMILY,  
16 OR HOUSEHOLD PURPOSES, A SECURITY INTEREST SECURES THE OBLIGA-  
17 TION, AND THE COLLATERAL IS HELD OR ACQUIRED PRIMARILY FOR PER-  
18 SONAL, FAMILY, OR HOUSEHOLD PURPOSES. THE TERM INCLUDES  
19 CONSUMER-GOODS TRANSACTIONS.

20 (AA) "CONTINUATION STATEMENT" MEANS AN AMENDMENT OF A  
21 FINANCING STATEMENT WHICH IDENTIFIES, BY ITS FILE NUMBER, THE  
22 INITIAL FINANCING STATEMENT TO WHICH IT RELATES AND INDICATES  
23 THAT IT IS A CONTINUATION STATEMENT FOR, OR THAT IT IS FILED TO  
24 CONTINUE THE EFFECTIVENESS OF, THE IDENTIFIED FINANCING  
25 STATEMENT.

26 (BB) "DEBTOR" MEANS 1 OF THE FOLLOWING:

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

56

1       (i) A PERSON HAVING AN INTEREST, OTHER THAN A SECURITY  
2 INTEREST OR OTHER LIEN, IN THE COLLATERAL, WHETHER OR NOT THE  
3 PERSON IS AN OBLIGOR.

4       (ii) A SELLER OF ACCOUNTS, CHATTEL PAPER, PAYMENT INTANGI-  
5 BLES, OR PROMISSORY NOTES.

6       (iii) A CONSIGNEE.

7       (CC) "DEPOSIT ACCOUNT" MEANS A DEMAND, TIME, SAVINGS, PASS-  
8 BOOK, OR SIMILAR ACCOUNT MAINTAINED WITH A BANK. THE TERM DOES  
9 NOT INCLUDE INVESTMENT PROPERTY OR ACCOUNTS EVIDENCED BY AN  
10 INSTRUMENT.

11       (DD) "DOCUMENT" MEANS A DOCUMENT OF TITLE OR A RECEIPT OF  
12 THE TYPE DESCRIBED IN SECTION 7201(2).

13       (EF) "ELECTRONIC CHATTEL PAPER" MEANS CHATTEL PAPER EVI-  
14 DENCED BY A RECORD OR RECORDS CONSISTING OF INFORMATION STORED IN  
15 AN ELECTRONIC MEDIUM.

16       (FG) "ENCUMBRANCE" MEANS A RIGHT, OTHER THAN AN OWNERSHIP  
17 INTEREST, IN REAL PROPERTY. THE TERM INCLUDES MORTGAGES AND  
18 OTHER LIENS ON REAL PROPERTY.

19       (GG) "EQUIPMENT" MEANS GOODS OTHER THAN INVENTORY, FARM PRO-  
20 DUCTS, OR CONSUMER GOODS.

21       (HH) "FARM PRODUCTS" MEANS GOODS, OTHER THAN STANDING  
22 TIMBER, WITH RESPECT TO WHICH THE DEBTOR IS ENGAGED IN A FARMING  
23 OPERATION AND WHICH ARE 1 OF THE FOLLOWING:

24       (i) CROPS GROWN, GROWING, OR TO BE GROWN, INCLUDING CROPS  
25 PRODUCED ON TREES, VINES, AND BUSHES, AND AQUATIC GOODS PRODUCED  
26 IN AQUACULTURAL OPERATIONS.



**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

57

1       (ii) LIVESTOCK, BORN OR UNBORN, INCLUDING AQUATIC GOODS  
2 PRODUCED IN AQUACULTURAL OPERATIONS.

3       (iii) SUPPLIES USED OR PRODUCED IN A FARMING OPERATION.

4       (iv) PRODUCTS OF CROPS OR LIVESTOCK IN THEIR UNMANUFACTURED  
5 STATES.

6       (II) "FARMING OPERATION" MEANS RAISING, CULTIVATING, PROPA-  
7 GATING, FATTENING, GRAZING, OR ANY OTHER FARMING, LIVESTOCK, OR  
8 AQUACULTURAL OPERATION.

9       (JJ) "FILE NUMBER" MEANS THE NUMBER ASSIGNED TO AN INITIAL  
10 FINANCING STATEMENT PURSUANT TO SECTION 9519(1).

11       (KK) "FILING OFFICE" MEANS AN OFFICE DESIGNATED IN SECTION  
12 9501 AS THE PLACE TO FILE A FINANCING STATEMENT.

13       (LL) "FILING-OFFICE RULE" MEANS A RULE ADOPTED PURSUANT TO  
14 SECTION 9526.

15       (MM) "FINANCING STATEMENT" MEANS A RECORD OR RECORDS COM-  
16 POSED OF AN INITIAL FINANCING STATEMENT AND ANY FILED RECORD  
17 RELATING TO THE INITIAL FINANCING STATEMENT.

18       (NN) "FIXTURE FILING" MEANS THE FILING OF A FINANCING STATE-  
19 MENT COVERING GOODS THAT ARE OR ARE TO BECOME FIXTURES AND SATIS-  
20 FYING SECTION 9502(1) AND (2). THE TERM INCLUDES THE FILING OF A  
21 FINANCING STATEMENT COVERING GOODS OF A TRANSMITTING UTILITY  
22 WHICH ARE OR ARE TO BECOME FIXTURES.

23       (OO) "FIXTURES" MEANS GOODS THAT HAVE BECOME SO RELATED TO  
24 PARTICULAR REAL PROPERTY THAT AN INTEREST IN THEM ARISES UNDER  
25 REAL PROPERTY LAW.

26       (PP) "GENERAL INTANGIBLE" MEANS ANY PERSONAL PROPERTY,  
27 INCLUDING THINGS IN ACTION, OTHER THAN ACCOUNTS, CHATTEL PAPER,

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

58

1 COMMERCIAL TORT CLAIMS, DEPOSIT ACCOUNTS, DOCUMENTS, GOODS,  
2 INSTRUMENTS, INVESTMENT PROPERTY, LETTER-OF-CREDIT RIGHTS, LET-  
3 TERS OF CREDIT, MONEY, AND OIL, GAS, OR OTHER MINERALS BEFORE  
4 EXTRACTION. THE TERM INCLUDES PAYMENT INTANGIBLES AND SOFTWARE.

5 (QQ) "GOOD FAITH" MEANS HONESTY IN FACT AND THE OBSERVANCE  
6 OF REASONABLE COMMERCIAL STANDARDS OF FAIR DEALING.

7 (RR) "GOODS" MEANS ALL THINGS THAT ARE MOVABLE WHEN A SECUR-  
8 ITY INTEREST ATTACHES. THE TERM INCLUDES FIXTURES, STANDING  
9 TIMBER THAT IS TO BE CUT AND REMOVED UNDER A CONVEYANCE OR CON-  
10 TRACT FOR SALE, THE UNBORN YOUNG OF ANIMALS, CROPS GROWN, GROW-  
11 ING, OR TO BE GROWN, EVEN IF THE CROPS ARE PRODUCED ON TREES,  
12 VINES, OR BUSHES, AND MANUFACTURED HOMES. THE TERM ALSO INCLUDES  
13 A COMPUTER PROGRAM EMBEDDED IN GOODS AND ANY SUPPORTING INFORMA-  
14 TION PROVIDED IN CONNECTION WITH A TRANSACTION RELATING TO THE  
15 PROGRAM IF THE PROGRAM IS ASSOCIATED WITH THE GOODS IN SUCH A  
16 MANNER THAT IT CUSTOMARILY IS CONSIDERED PART OF THE GOODS, OR BY  
17 BECOMING THE OWNER OF THE GOODS, A PERSON ACQUIRES A RIGHT TO USE  
18 THE PROGRAM IN CONNECTION WITH THE GOODS. THE TERM DOES NOT  
19 INCLUDE A COMPUTER PROGRAM EMBEDDED IN GOODS THAT CONSIST SOLELY  
20 OF THE MEDIUM IN WHICH THE PROGRAM IS EMBEDDED. THE TERM ALSO  
21 DOES NOT INCLUDE ACCOUNTS, CHATTEL PAPER, COMMERCIAL TORT CLAIMS,  
22 DEPOSIT ACCOUNTS, DOCUMENTS, GENERAL INTANGIBLES, INSTRUMENTS,  
23 INVESTMENT PROPERTY, LETTER-OF-CREDIT RIGHTS, LETTERS OF CREDIT,  
24 MONEY, OR OIL, GAS, OR OTHER MINERALS BEFORE EXTRACTION.

25 (SS) "GOVERNMENTAL UNIT" MEANS A SUBDIVISION, AGENCY,  
26 DEPARTMENT, COUNTY, PARISH, MUNICIPALITY, OR OTHER UNIT OF THE  
27 GOVERNMENT OF THE UNITED STATES, A STATE, OR A FOREIGN COUNTRY.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

59

1 THE TERM INCLUDES AN ORGANIZATION HAVING A SEPARATE CORPORATE  
2 EXISTENCE IF THE ORGANIZATION IS ELIGIBLE TO ISSUE DEBT ON WHICH  
3 INTEREST IS EXEMPT FROM INCOME TAXATION UNDER THE LAWS OF THE  
4 UNITED STATES.

5 (TT) "HEALTH-CARE-INSURANCE RECEIVABLE" MEANS AN INTEREST IN  
6 OR CLAIM UNDER A POLICY OF INSURANCE WHICH IS A RIGHT TO PAYMENT  
7 OF A MONETARY OBLIGATION FOR HEALTH-CARE GOODS OR SERVICES  
8 PROVIDED.

9 (UU) "INSTRUMENT" MEANS A NEGOTIABLE INSTRUMENT OR ANY OTHER  
10 WRITING THAT EVIDENCES A RIGHT TO THE PAYMENT OF A MONETARY OBLI-  
11 GATION, IS NOT ITSELF A SECURITY AGREEMENT OR LEASE, AND IS OF A  
12 TYPE THAT IN ORDINARY COURSE OF BUSINESS IS TRANSFERRED BY DELIV-  
13 ERY WITH ANY NECESSARY INDORSEMENT OR ASSIGNMENT. THE TERM DOES  
14 NOT INCLUDE INVESTMENT PROPERTY, LETTERS OF CREDIT, OR WRITINGS  
15 THAT EVIDENCE A RIGHT TO PAYMENT ARISING OUT OF THE USE OF A  
16 CREDIT OR CHARGE CARD OR INFORMATION CONTAINED ON OR FOR USE WITH  
17 THE CARD.

18 (VV) "INVENTORY" MEANS GOODS, OTHER THAN FARM PRODUCTS, THAT  
19 MEET 1 OF THE FOLLOWING:

20 (i) ARE LEASED BY A PERSON AS LESSOR.

21 (ii) ARE HELD BY A PERSON FOR SALE OR LEASE OR TO BE FUR-  
22 NISHED UNDER A CONTRACT OF SERVICE.

23 (iii) ARE FURNISHED BY A PERSON UNDER A CONTRACT OF  
24 SERVICE.

25 (iv) CONSIST OF RAW MATERIALS, WORK IN PROCESS, OR MATERIALS  
26 USED OR CONSUMED IN A BUSINESS.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

60

1 (WW) "INVESTMENT PROPERTY" MEANS A SECURITY, WHETHER  
2 CERTIFICATED OR UNCERTIFICATED, SECURITY ENTITLEMENT, SECURITIES  
3 ACCOUNT, COMMODITY CONTRACT, OR COMMODITY ACCOUNT.

4 (XX) "JURISDICTION OF ORGANIZATION", WITH RESPECT TO A REG-  
5 ISTERED ORGANIZATION, MEANS THE JURISDICTION UNDER WHOSE LAW THE  
6 ORGANIZATION IS ORGANIZED.

7 (YY) "LETTER-OF-CREDIT RIGHT" MEANS A RIGHT TO PAYMENT OR  
8 PERFORMANCE UNDER A LETTER OF CREDIT, WHETHER OR NOT THE BENEFI-  
9 CIARY HAS DEMANDED OR IS AT THE TIME ENTITLED TO DEMAND PAYMENT  
10 OR PERFORMANCE. THE TERM DOES NOT INCLUDE THE RIGHT OF A BENEFI-  
11 CIARY TO DEMAND PAYMENT OR PERFORMANCE UNDER A LETTER OF CREDIT.

12 (ZZ) "LIEN CREDITOR" MEANS 1 OR MORE OF THE FOLLOWING:

13 (i) A CREDITOR THAT HAS ACQUIRED A LIEN ON THE PROPERTY  
14 INVOLVED BY ATTACHMENT, LEVY, OR THE LIKE.

15 (ii) AN ASSIGNEE FOR BENEFIT OF CREDITORS FROM THE TIME OF  
16 ASSIGNMENT.

17 (iii) A TRUSTEE IN BANKRUPTCY FROM THE DATE OF THE FILING OF  
18 THE PETITION.

19 (iv) A RECEIVER IN EQUITY FROM THE TIME OF APPOINTMENT.

20 (AAA) "MANUFACTURED HOME" MEANS A STRUCTURE, TRANSPORTABLE  
21 IN 1 OR MORE SECTIONS, WHICH, IN THE TRAVELING MODE, IS 8 BODY  
22 FEET OR MORE IN WIDTH OR 40 BODY FEET OR MORE IN LENGTH, OR WHEN  
23 ERECTED ON SITE, IS 320 OR MORE SQUARE FEET, AND WHICH IS BUILT  
24 ON A PERMANENT CHASSIS AND DESIGNED TO BE USED AS A DWELLING WITH  
25 OR WITHOUT A PERMANENT FOUNDATION WHEN CONNECTED TO THE REQUIRED  
26 UTILITIES, AND INCLUDES THE PLUMBING, HEATING, AIR-CONDITIONING,  
27 AND ELECTRICAL SYSTEMS CONTAINED THEREIN. THE TERM INCLUDES ANY

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

61

1 STRUCTURE THAT MEETS ALL OF THE REQUIREMENTS OF THIS PARAGRAPH  
2 EXCEPT THE SIZE REQUIREMENTS AND WITH RESPECT TO WHICH THE MANU-  
3 FACTURER VOLUNTARILY FILES A CERTIFICATION REQUIRED BY THE SECRE-  
4 TARY OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND COM-  
5 PLIES WITH THE STANDARDS ESTABLISHED UNDER TITLE 42 OF THE UNITED  
6 STATES CODE.

7 (BBB) "MANUFACTURED-HOME TRANSACTION" MEANS A SECURED TRANS-  
8 ACTION THAT CREATES A PURCHASE-MONEY SECURITY INTEREST IN A MANU-  
9 FACTURED HOME, OTHER THAN A MANUFACTURED HOME HELD AS INVENTORY,  
10 OR IN WHICH A MANUFACTURED HOME, OTHER THAN A MANUFACTURED HOME  
11 HELD AS INVENTORY, IS THE PRIMARY COLLATERAL.

12 (CCC) "MORTGAGE" MEANS A CONSENSUAL INTEREST IN REAL PROPER-  
13 TY, INCLUDING FIXTURES, WHICH SECURES PAYMENT OR PERFORMANCE OF  
14 AN OBLIGATION.

15 (DDD) "NEW DEBTOR" MEANS A PERSON THAT BECOMES BOUND AS  
16 DEBTOR UNDER SECTION 9203(4) BY A SECURITY AGREEMENT PREVIOUSLY  
17 ENTERED INTO BY ANOTHER PERSON.

18 (EEE) "NEW VALUE" MEANS MONEY, MONEY'S WORTH IN PROPERTY,  
19 SERVICES, OR NEW CREDIT, OR RELEASE BY A TRANSFEREE OF AN INTER-  
20 EST IN PROPERTY PREVIOUSLY TRANSFERRED TO THE TRANSFEREE. THE  
21 TERM DOES NOT INCLUDE AN OBLIGATION SUBSTITUTED FOR ANOTHER  
22 OBLIGATION.

23 (FFF) "NONCASH PROCEEDS" MEANS PROCEEDS OTHER THAN CASH  
24 PROCEEDS.

25 (GGG) "OBLIGOR" MEANS A PERSON THAT, WITH RESPECT TO AN  
26 OBLIGATION SECURED BY A SECURITY INTEREST IN OR AN AGRICULTURAL  
27 LIEN ON THE COLLATERAL, OWES PAYMENT OR OTHER PERFORMANCE OF THE

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

62

1 OBLIGATION, HAS PROVIDED PROPERTY OTHER THAN THE COLLATERAL TO  
2 SECURE PAYMENT OR OTHER PERFORMANCE OF THE OBLIGATION, OR IS OTH-  
3 ERWISE ACCOUNTABLE IN WHOLE OR IN PART FOR PAYMENT OR OTHER PER-  
4 FORMANCE OF THE OBLIGATION. THE TERM DOES NOT INCLUDE ISSUERS OR  
5 NOMINATED PERSONS UNDER A LETTER OF CREDIT.

6 (HHH) "ORIGINAL DEBTOR" MEANS, EXCEPT AS USED IN  
7 SECTION 9310(3), A PERSON THAT, AS DEBTOR, ENTERED INTO A SECUR-  
8 ITY AGREEMENT TO WHICH A NEW DEBTOR HAS BECOME BOUND UNDER SEC-  
9 TION 9203(4).

10 (III) "PAYMENT INTANGIBLE" MEANS A GENERAL INTANGIBLE UNDER  
11 WHICH THE ACCOUNT DEBTOR'S PRINCIPAL OBLIGATION IS A MONETARY  
12 OBLIGATION.

13 (JJJ) "PERSON RELATED TO", WITH RESPECT TO AN INDIVIDUAL,  
14 MEANS 1 OR MORE OF THE FOLLOWING:

15 (i) THE SPOUSE OF THE INDIVIDUAL.

16 (ii) A BROTHER, BROTHER-IN-LAW, SISTER, OR SISTER-IN-LAW OF  
17 THE INDIVIDUAL.

18 (iii) AN ANCESTOR OR LINEAL DESCENDANT OF THE INDIVIDUAL OR  
19 THE INDIVIDUAL'S SPOUSE.

20 (iv) ANY OTHER RELATIVE, BY BLOOD OR MARRIAGE, OF THE INDI-  
21 VIDUAL OR THE INDIVIDUAL'S SPOUSE WHO SHARES THE SAME HOME WITH  
22 THE INDIVIDUAL.

23 (KKK) "PERSON RELATED TO", WITH RESPECT TO AN ORGANIZATION,  
24 MEANS 1 OR MORE OF THE FOLLOWING:

25 (i) A PERSON DIRECTLY OR INDIRECTLY CONTROLLING, CONTROLLED  
26 BY, OR UNDER COMMON CONTROL WITH THE ORGANIZATION.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

63

1       (ii) AN OFFICER OR DIRECTOR OF, OR A PERSON PERFORMING  
2 SIMILAR FUNCTIONS WITH RESPECT TO, THE ORGANIZATION.

3       (iii) AN OFFICER OR DIRECTOR OF, OR A PERSON PERFORMING SIM-  
4 ILAR FUNCTIONS WITH RESPECT TO, A PERSON DESCRIBED IN SUBPARA-  
5 GRAPH (i).

6       (iv) THE SPOUSE OF AN INDIVIDUAL DESCRIBED IN SUBPARAGRAPH  
7 (i), (ii), OR (iii).

8       (v) AN INDIVIDUAL WHO IS RELATED BY BLOOD OR MARRIAGE TO AN  
9 INDIVIDUAL DESCRIBED IN SUBPARAGRAPH (i), (ii), (iii), OR (iv)  
10 AND SHARES THE SAME HOME WITH THE INDIVIDUAL.

11       (III) "PROCEEDS" MEANS, EXCEPT AS USED IN SECTION 9609(2), 1  
12 OR MORE OF THE FOLLOWING PROPERTY:

13       (i) WHATEVER IS ACQUIRED UPON THE SALE, LEASE, LICENSE,  
14 EXCHANGE, OR OTHER DISPOSITION OF COLLATERAL.

15       (ii) WHATEVER IS COLLECTED ON, OR DISTRIBUTED ON ACCOUNT OF,  
16 COLLATERAL.

17       (iii) RIGHTS ARISING OUT OF COLLATERAL.

18       (iv) TO THE EXTENT OF THE VALUE OF COLLATERAL, CLAIMS ARISING  
19 OUT OF THE LOSS, NONCONFORMITY, OR INTERFERENCE WITH THE USE  
20 OF, DEFECTS OR INFRINGEMENT OF RIGHTS IN, OR DAMAGE TO, THE  
21 COLLATERAL.

22       (v) TO THE EXTENT OF THE VALUE OF COLLATERAL AND TO THE  
23 EXTENT PAYABLE TO THE DEBTOR OR THE SECURED PARTY, INSURANCE PAY-  
24 ABLE BY REASON OF THE LOSS OR NONCONFORMITY OF, DEFECTS OR  
25 INFRINGEMENT OF RIGHTS IN, OR DAMAGE TO, THE COLLATERAL.

26       (MMM) "PROMISSORY NOTE" MEANS AN INSTRUMENT THAT EVIDENCES A  
27 PROMISE TO PAY A MONETARY OBLIGATION, DOES NOT EVIDENCE AN ORDER

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228 as amended November 30, 2000

64

1 TO PAY, AND DOES NOT CONTAIN AN ACKNOWLEDGMENT BY A BANK THAT THE  
2 BANK HAS RECEIVED FOR DEPOSIT A SUM OF MONEY OR FUNDS.

3 (NNN) "PROPOSAL" MEANS A RECORD AUTHENTICATED BY A SECURED  
4 PARTY WHICH INCLUDES THE TERMS ON WHICH THE SECURED PARTY IS  
5 WILLING TO ACCEPT COLLATERAL IN FULL OR PARTIAL SATISFACTION OF  
6 THE OBLIGATION IT SECURES PURSUANT TO SECTIONS 9620, 9621, AND  
7 9622.

8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]

17 (OOO) "PURSUANT TO COMMITMENT", WITH RESPECT TO AN ADVANCE  
18 MADE OR OTHER VALUE GIVEN BY A SECURED PARTY, MEANS PURSUANT TO  
19 THE SECURED PARTY'S OBLIGATION, WHETHER OR NOT A SUBSEQUENT EVENT  
20 OF DEFAULT OR OTHER EVENT NOT WITHIN THE SECURED PARTY'S CONTROL  
21 HAS RELIEVED OR MAY RELIEVE THE SECURED PARTY FROM ITS  
22 OBLIGATION.

23 (PPP) "RECORD", EXCEPT AS USED IN "FOR RECORD", "OF RECORD",  
24 "RECORD OR LEGAL TITLE", AND "RECORD OWNER", MEANS INFORMATION  
25 THAT IS INSCRIBED ON A TANGIBLE MEDIUM OR WHICH IS STORED IN AN  
26 ELECTRONIC OR OTHER MEDIUM AND IS RETRIEVABLE IN PERCEIVABLE  
27 FORM.



**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228 as amended November 30, 2000

65

1       (QQQ) "REGISTERED ORGANIZATION" MEANS AN ORGANIZATION  
2 ORGANIZED SOLELY UNDER THE LAW OF A SINGLE STATE OR THE UNITED  
3 STATES AND AS TO WHICH THE STATE OR THE UNITED STATES MUST MAIN-  
4 TAIN A PUBLIC RECORD SHOWING THE ORGANIZATION TO HAVE BEEN  
5 ORGANIZED.

6       (RRR) "SECONDARY OBLIGOR" MEANS AN OBLIGOR TO THE EXTENT  
7 THAT THE OBLIGOR'S OBLIGATION IS SECONDARY OR THE OBLIGOR HAS A  
8 RIGHT OF RECOURSE WITH RESPECT TO AN OBLIGATION SECURED BY COL-  
9 LATERAL AGAINST THE DEBTOR, ANOTHER OBLIGOR, OR PROPERTY OF  
10 EITHER.

11       (SSS) "SECURED PARTY" MEANS 1 OR MORE OF THE FOLLOWING:

12       (i) A PERSON IN WHOSE FAVOR A SECURITY INTEREST IS CREATED  
13 OR PROVIDED FOR UNDER A SECURITY AGREEMENT, WHETHER OR NOT ANY  
14 OBLIGATION TO BE SECURED IS OUTSTANDING.

15       (ii) A PERSON THAT HOLDS AN AGRICULTURAL LIEN.

16       (iii) A CONSIGNOR.

17       (iv) A PERSON TO WHICH ACCOUNTS, CHATTEL PAPER, PAYMENT  
18 INTANGIBLES, OR PROMISSORY NOTES HAVE BEEN SOLD.

19       (v) A TRUSTEE, INDENTURE TRUSTEE, AGENT, COLLATERAL AGENT,  
20 OR OTHER REPRESENTATIVE IN WHOSE FAVOR A SECURITY INTEREST OR  
21 AGRICULTURAL LIEN IS CREATED OR PROVIDED FOR.

22       (vi) A PERSON THAT HOLDS A SECURITY INTEREST ARISING UNDER  
23 SECTION 2401, 2505, 2711(3), 2A508(5), 4210, OR 5118.

24       (TTT) "SECURITY AGREEMENT" MEANS AN AGREEMENT THAT CREATES  
25 OR PROVIDES FOR A SECURITY INTEREST.

26       (UUU) "SEND", IN CONNECTION WITH A RECORD OR NOTIFICATION,  
27 MEANS 1 OF THE FOLLOWING:

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228 as amended November 30, 2000

66

1       (i) TO DEPOSIT IN THE MAIL, DELIVER FOR TRANSMISSION, OR  
2 TRANSMIT BY ANY OTHER USUAL MEANS OF COMMUNICATION, WITH POSTAGE  
3 OR COST OF TRANSMISSION PROVIDED FOR, ADDRESSED TO ANY ADDRESS  
4 REASONABLE UNDER THE CIRCUMSTANCES.

5       (ii) TO CAUSE THE RECORD OR NOTIFICATION TO BE RECEIVED  
6 WITHIN THE TIME THAT IT WOULD HAVE BEEN RECEIVED IF PROPERLY SENT  
7 UNDER SUBPARAGRAPH (i).

8       (VVV) "SOFTWARE" MEANS A COMPUTER PROGRAM AND ANY SUPPORTING  
9 INFORMATION PROVIDED IN CONNECTION WITH A TRANSACTION RELATING TO  
10 THE PROGRAM. THE TERM DOES NOT INCLUDE A COMPUTER PROGRAM THAT  
11 IS INCLUDED IN THE DEFINITION OF GOODS.

12       (WWW) "STATE" MEANS A STATE OF THE UNITED STATES, THE  
13 DISTRICT OF COLUMBIA, PUERTO RICO, THE UNITED STATES VIRGIN  
14 ISLANDS, OR ANY TERRITORY OR INSULAR POSSESSION SUBJECT TO THE  
15 JURISDICTION OF THE UNITED STATES.

16       (XXX) "SUPPORTING OBLIGATION" MEANS A LETTER-OF-CREDIT RIGHT  
17 OR SECONDARY OBLIGATION THAT SUPPORTS THE PAYMENT OR PERFORMANCE  
18 OF AN ACCOUNT, CHATTEL PAPER, A DOCUMENT, A GENERAL INTANGIBLE,  
19 AN INSTRUMENT, OR INVESTMENT PROPERTY.

20       (YYY) "TANGIBLE CHATTEL PAPER" MEANS CHATTEL PAPER EVIDENCED  
21 BY A RECORD OR RECORDS CONSISTING OF INFORMATION THAT IS  
22 INSCRIBED ON A TANGIBLE MEDIUM.

23       (ZZZ) "TERMINATION STATEMENT" MEANS AN AMENDMENT OF A  
24 FINANCING STATEMENT THAT IDENTIFIES, BY ITS FILE NUMBER, THE INI-  
25 TIAL FINANCING STATEMENT TO WHICH IT RELATES AND INDICATES EITHER  
26 THAT IT IS A TERMINATION STATEMENT OR THAT THE IDENTIFIED  
27 FINANCING STATEMENT IS NO LONGER EFFECTIVE.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228 as amended November 30, 2000

67

1 (AAAA) "TRANSMITTING UTILITY" MEANS A PERSON PRIMARILY  
2 ENGAGED IN THE BUSINESS OF 1 OF THE FOLLOWING:

3 (i) OPERATING A RAILROAD, SUBWAY, STREET RAILWAY, OR TROLLEY  
4 BUS.

5 (ii) TRANSMITTING COMMUNICATIONS ELECTRICALLY, ELECTROMAG-  
6 NETICALLY, OR BY LIGHT.

7 (iii) TRANSMITTING GOODS BY PIPELINE OR SEWER.

8 (iv) TRANSMITTING OR PRODUCING AND TRANSMITTING ELECTRICITY,  
9 STEAM, GAS, OR WATER.

10 (2) THE FOLLOWING DEFINITIONS IN OTHER ARTICLES APPLY TO  
11 THIS ARTICLE:

12	"APPLICANT"	SECTION 5102
13	"BENEFICIARY"	SECTION 5102
14	"BROKER"	SECTION 8102
15	"CERTIFICATED SECURITY"	SECTION 8102
16	"CHECK"	SECTION 3104
17	"CLEARING CORPORATION"	SECTION 8102
18	"CONTRACT FOR SALE"	SECTION 2106
19	"CUSTOMER"	SECTION 4104
20	"ENTITLEMENT HOLDER"	SECTION 8102
21	"FINANCIAL ASSET"	SECTION 8102
22	"HOLDER IN DUE COURSE"	SECTION 3302
23	"ISSUER" (WITH RESPECT TO A LETTER	
24	OF CREDIT OR LETTER-OF-CREDIT RIGHT)	SECTION 5102
25	"ISSUER" (WITH RESPECT TO A	
26	SECURITY)	SECTION 8201

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

68

1	"LEASE"	SECTION 2A103
2	"LEASE AGREEMENT"	SECTION 2A103
3	"LEASE CONTRACT"	SECTION 2A103
4	"LEASEHOLD INTEREST"	SECTION 2A103
5	"LESSEE"	SECTION 2A103
6	"LESSEE IN ORDINARY COURSE OF	
7	BUSINESS"	SECTION 2A103
8	"LESSOR"	SECTION 2A103
9	"LESSOR'S RESIDUAL INTEREST"	SECTION 2A103
10	"LETTER OF CREDIT"	SECTION 5102
11	"MERCHANT"	SECTION 2104
12	"NEGOTIABLE INSTRUMENT"	SECTION 3104
13	"NOMINATED PERSON"	SECTION 5102
14	"NOTE"	SECTION 3104
15	"PROCEEDS OF A LETTER OF CREDIT"	SECTION 5114
16	"PROVE"	SECTION 3103
17	"SALE"	SECTION 2106
18	"SECURITIES ACCOUNT"	SECTION 8501
19	"SECURITIES INTERMEDIARY"	SECTION 8102
20	"SECURITY"	SECTION 8102
21	"SECURITY CERTIFICATE"	SECTION 8102
22	"SECURITY ENTITLEMENT"	SECTION 8102
23	"UNCERTIFICATED SECURITY"	SECTION 8102.
24	(3) ARTICLE 1 CONTAINS GENERAL DEFINITIONS AND PRINCIPLES OF	
25	CONSTRUCTION AND INTERPRETATION APPLICABLE THROUGHOUT THIS	
26	ARTICLE.	

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

69

1       Sec. 9103. ~~-(1) Documents, instruments, and ordinary~~  
2 ~~goods.~~

3       ~~(a) This subsection applies to documents, instruments,~~  
4 ~~rights to proceeds of written letters of credit, and goods other~~  
5 ~~than those covered by a certificate of title described in subsec-~~  
6 ~~tion (2), mobile goods described in subsection (3), and minerals~~  
7 ~~described in subsection (5).~~

8       ~~(b) Except as otherwise provided in this subsection, perfec-~~  
9 ~~tion and the effect of perfection or nonperfection of a security~~  
10 ~~interest in collateral are governed by the law of the jurisdic-~~  
11 ~~tion where the collateral is when the last event occurs on which~~  
12 ~~is based the assertion that the security interest is perfected or~~  
13 ~~unperfected.~~

14       ~~(c) If the parties to a transaction creating a purchase~~  
15 ~~money security interest in goods in 1 jurisdiction understand at~~  
16 ~~the time that the security interest attaches that the goods will~~  
17 ~~be kept in another jurisdiction, then the law of the other juris-~~  
18 ~~diction governs the perfection and the effect of perfection or~~  
19 ~~nonperfection of the security interest from the time it attaches~~  
20 ~~until 30 days after the debtor receives possession of the goods~~  
21 ~~and thereafter if the goods are taken to the other jurisdiction~~  
22 ~~before the end of the 30-day period.~~

23       ~~(d) When collateral is brought into and kept in this state~~  
24 ~~while subject to a security interest perfected under the law of~~  
25 ~~the jurisdiction from which the collateral was removed, the~~  
26 ~~security interest remains perfected, but if action is required by~~  
27 ~~part 3 of this article to perfect the security interest:~~

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

70

1       ~~(i) If the action is not taken before the expiration of the~~  
2 ~~period of perfection in the other jurisdiction or the end of 4~~  
3 ~~months after the collateral is brought into this state, whichever~~  
4 ~~period first expires, the security interest becomes unperfected~~  
5 ~~at the end of that period and is thereafter deemed to have been~~  
6 ~~unperfected as against a person who became a purchaser after~~  
7 ~~removal.~~

8       ~~(ii) If the action is taken before the expiration of the~~  
9 ~~period specified in subparagraph (i), the security interest con-~~  
10 ~~tinues perfected thereafter.~~

11       ~~(iii) For the purpose of priority over a buyer of consumer~~  
12 ~~goods, (section 9307(14)), the period of the effectiveness of a~~  
13 ~~filing in the jurisdiction from which the collateral is removed~~  
14 ~~is governed by the rules relating to perfection in subparagraphs~~  
15 ~~(i) and (ii).~~

16       ~~(2) Certificate of title.~~

17       ~~(a) This subsection applies to goods covered by a certifi-~~  
18 ~~cate of title issued under a statute of this state or of another~~  
19 ~~jurisdiction under the law of which indication of a security~~  
20 ~~interest on the certificate is required as a condition of~~  
21 ~~perfection.~~

22       ~~(b) Except as otherwise provided in this subsection, perfec-~~  
23 ~~tion and the effect of perfection or nonperfection of the secur-~~  
24 ~~ity interest are governed by the law (including the conflict of~~  
25 ~~laws rules) of the jurisdiction issuing the certificate until 4~~  
26 ~~months after the goods are removed from that jurisdiction and~~  
27 ~~thereafter until the goods are registered in another~~

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

71

1 ~~jurisdiction, but in any event not beyond surrender of the~~  
2 ~~certificate. After the expiration of that period, the goods are~~  
3 ~~not covered by the certificate of title within the meaning of~~  
4 ~~this section.~~

5 ~~(c) Except with respect to the rights of a buyer described~~  
6 ~~in the next paragraph, a security interest, perfected in another~~  
7 ~~jurisdiction otherwise than by notation on a certificate of~~  
8 ~~title, in goods brought into this state and thereafter covered by~~  
9 ~~a certificate of title issued by this state, is subject to the~~  
10 ~~rules stated in paragraph (d) of subsection (1).~~

11 ~~(d) If goods are brought into this state while a security~~  
12 ~~interest therein is perfected in any manner under the law of the~~  
13 ~~jurisdiction from which the goods are removed and a certificate~~  
14 ~~of title is issued by the state and the certificate does not show~~  
15 ~~that the goods are subject to the security interest or that they~~  
16 ~~may be subject to security interests not shown on the certifi-~~  
17 ~~cate, the security interest is subordinate to the rights of a~~  
18 ~~buyer of the goods who is not in the business of selling goods of~~  
19 ~~that kind to the extent that he or she gives value and receives~~  
20 ~~delivery of the goods after issuance of the certificate and with-~~  
21 ~~out knowledge of the security interest.~~

22 ~~(3) Accounts, general intangibles, and mobile goods.~~

23 ~~(a) This subsection applies to accounts (other than an~~  
24 ~~account described in subsection (5) on minerals) and general~~  
25 ~~intangibles (other than uncertificated securities), and to goods~~  
26 ~~which are mobile and which are of a type normally used in more~~  
27 ~~than 1 jurisdiction, such as motor vehicles, trailers, rolling~~

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

72

1 ~~stock, airplanes, shipping containers, road building and~~  
2 ~~construction machinery, and commercial harvesting machinery and~~  
3 ~~the like, if the goods are equipment or are inventory leased or~~  
4 ~~held for lease by the debtor to others, and are not covered by a~~  
5 ~~certificate of title described in subsection (2).~~

6 ~~(b) The law (including the conflict of laws rules) of the~~  
7 ~~jurisdiction in which the debtor is located governs the perfec-~~  
8 ~~tion and the effect of perfection or nonperfection of the secur-~~  
9 ~~ity interest.~~

10 ~~(c) If, however, the debtor is located in a jurisdiction~~  
11 ~~which is not a part of the United States, and which does not pro-~~  
12 ~~vide for perfection of the security interest by filing or record-~~  
13 ~~ing in that jurisdiction, the law of the jurisdiction in the~~  
14 ~~United States in which the debtor has its major executive office~~  
15 ~~in the United States governs the perfection and the effect of~~  
16 ~~perfection or nonperfection of the security interest through~~  
17 ~~filing. In the alternative, if the debtor is located in a juris-~~  
18 ~~isdiction which is not a part of the United States or Canada and~~  
19 ~~the collateral is accounts or general intangibles for money due~~  
20 ~~or to become due, the security interest may be perfected by noti-~~  
21 ~~fication to the account debtor. As used in this paragraph,~~  
22 ~~"United States" includes its territories and possessions and the~~  
23 ~~commonwealth of Puerto Rico.~~

24 ~~(d) A debtor shall be deemed located at his or her place of~~  
25 ~~business if he or she has one, at his or her chief executive~~  
26 ~~office if he or she has more than 1 place of business, otherwise~~  
27 ~~at his or her residence. If, however, the debtor is a foreign~~



**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

73

~~1 air carrier under the federal aviation act of 1958, 49~~  
~~2 U.S.C. 1301, it shall be deemed located at the designated office~~  
~~3 of the agent upon whom service of process may be made on behalf~~  
~~4 of the foreign air carrier.~~

~~5 (e) A security interest perfected under the law of the~~  
~~6 jurisdiction of the location of the debtor is perfected until the~~  
~~7 expiration of 4 months after a change of the debtor's location to~~  
~~8 another jurisdiction, or until perfection would have ceased by~~  
~~9 the law of the first jurisdiction, whichever period first~~  
~~10 expires. Unless perfected in the new jurisdiction before the end~~  
~~11 of that period, it becomes unperfected thereafter and is deemed~~  
~~12 to have been unperfected as against a person who became a pur=~~  
~~13 chaser after the change.~~

~~14 (4) Chattel paper.~~

~~15 The rules stated for goods in subsection (1) apply to a pos=~~  
~~16 sessory security interest in chattel paper. The rules stated for~~  
~~17 accounts in subsection (3) apply to a nonpossessory security~~  
~~18 interest in chattel paper, but the security interest may not be~~  
~~19 perfected by notification to the account debtor.~~

~~20 (5) Minerals.~~

~~21 Perfection and the effect of perfection or nonperfection of~~  
~~22 a security interest which is created by a debtor who has an~~  
~~23 interest in minerals or the like (including oil and gas) before~~  
~~24 extraction and which attaches thereto as extracted, or which~~  
~~25 attaches to an account resulting from the sale thereof at the~~  
~~26 wellhead or minehead are governed by the law (including the~~

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

74

1 ~~conflict of laws rules) of the jurisdiction where the wellhead or~~  
2 ~~minehead is located.~~

3 ~~(6) Investment property.~~

4 ~~(a) This subsection applies to investment property.~~

5 ~~(b) Except as otherwise provided in paragraph (f), during~~  
6 ~~the time that a security certificate is located in a jurisdic=~~  
7 ~~tion, perfection of a security interest, the effect of perfection~~  
8 ~~or nonperfection, and the priority of a security interest in the~~  
9 ~~certificated security represented thereby are governed by the~~  
10 ~~local law of that jurisdiction.~~

11 ~~(c) Except as otherwise provided in paragraph (f), perfec=~~  
12 ~~tion of a security interest, the effect of perfection or nonper=~~  
13 ~~fection, and the priority of a security interest in an uncertifi=~~  
14 ~~cated security are governed by the local law of the issuer's~~  
15 ~~jurisdiction as specified in section 8110(4).~~

16 ~~(d) Except as otherwise provided in paragraph (f), perfec=~~  
17 ~~tion of a security interest, the effect of perfection or nonper=~~  
18 ~~fection, and the priority of a security interest in a security~~  
19 ~~entitlement or securities account are governed by the local law~~  
20 ~~of the securities intermediary's jurisdiction as specified in~~  
21 ~~section 8110(5).~~

22 ~~(e) Except as otherwise provided in paragraph (f), perfec=~~  
23 ~~tion of a security interest, the effect of perfection or nonper=~~  
24 ~~fection, and the priority of a security interest in a commodity~~  
25 ~~contract or commodity account are governed by the local law of~~  
26 ~~the commodity intermediary's jurisdiction. The following rules~~

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

75

1 ~~determine a "commodity intermediary's jurisdiction" for purposes~~  
2 ~~of this paragraph.~~

3 ~~(i) If an agreement between the commodity intermediary and~~  
4 ~~commodity customer specifies that it is governed by the law of a~~  
5 ~~particular jurisdiction, that jurisdiction is the commodity~~  
6 ~~intermediary's jurisdiction.~~

7 ~~(ii) If an agreement between the commodity intermediary and~~  
8 ~~commodity customer does not specify the governing law as provided~~  
9 ~~in subparagraph (i), but expressly specifies that the commodity~~  
10 ~~account is maintained at an office in a particular jurisdiction,~~  
11 ~~that jurisdiction is the commodity intermediary's jurisdiction.~~

12 ~~(iii) If an agreement between the commodity intermediary and~~  
13 ~~commodity customer does not specify a jurisdiction as provided in~~  
14 ~~subparagraph (i) or (ii), the commodity intermediary's jurisdic=~~  
15 ~~tion is the jurisdiction in which is located the office identi=~~  
16 ~~fied in an account statement as the office serving the commodity~~  
17 ~~customer's account.~~

18 ~~(iv) If an agreement between the commodity intermediary and~~  
19 ~~commodity customer does not specify a jurisdiction as provided in~~  
20 ~~subparagraph (i) or (ii) and an account statement does not iden=~~  
21 ~~tify an office serving the commodity customer's account as pro=~~  
22 ~~vided in subparagraph (iii), the commodity intermediary's juris=~~  
23 ~~diction is the jurisdiction in which is located the chief execu=~~  
24 ~~tive office of the commodity intermediary.~~

25 ~~(f) Perfection of a security interest by filing, automatic~~  
26 ~~perfection of a security interest in investment property granted~~  
27 ~~by a broker or securities intermediary, and automatic perfection~~

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

76

~~1 of a security interest in a commodity contract or commodity  
2 account granted by a commodity intermediary are governed by the  
3 local law of the jurisdiction in which the debtor is located.~~

4 (1) AS USED IN THIS SECTION:

5 (A) "PURCHASE-MONEY COLLATERAL" MEANS GOODS OR SOFTWARE THAT  
6 SECURES A PURCHASE-MONEY OBLIGATION INCURRED WITH RESPECT TO THAT  
7 COLLATERAL.

8 (B) "PURCHASE-MONEY OBLIGATION" MEANS AN OBLIGATION OF AN  
9 OBLIGOR INCURRED AS ALL OR PART OF THE PRICE OF THE COLLATERAL OR  
10 FOR VALUE GIVEN TO ENABLE THE DEBTOR TO ACQUIRE RIGHTS IN OR THE  
11 USE OF THE COLLATERAL IF THE VALUE IS IN FACT SO USED.

12 (2) A SECURITY INTEREST IN GOODS IS A PURCHASE-MONEY SECUR-  
13 ITY INTEREST TO THE FOLLOWING EXTENT, AS APPLICABLE:

14 (A) TO THE EXTENT THAT THE GOODS ARE PURCHASE-MONEY COLLAT-  
15 ERAL WITH RESPECT TO THAT SECURITY INTEREST.

16 (B) IF THE SECURITY INTEREST IS IN INVENTORY THAT IS OR WAS  
17 PURCHASE-MONEY COLLATERAL, ALSO TO THE EXTENT THAT THE SECURITY  
18 INTEREST SECURES A PURCHASE-MONEY OBLIGATION INCURRED WITH  
19 RESPECT TO OTHER INVENTORY IN WHICH THE SECURED PARTY HOLDS OR  
20 HELD A PURCHASE-MONEY SECURITY INTEREST.

21 (C) ALSO TO THE EXTENT THAT THE SECURITY INTEREST SECURES A  
22 PURCHASE-MONEY OBLIGATION INCURRED WITH RESPECT TO SOFTWARE IN  
23 WHICH THE SECURED PARTY HOLDS OR HELD A PURCHASE-MONEY SECURITY  
24 INTEREST.

25 (3) A SECURITY INTEREST IN SOFTWARE IS A PURCHASE-MONEY  
26 SECURITY INTEREST TO THE EXTENT THAT THE SECURITY INTEREST ALSO  
27 SECURES A PURCHASE-MONEY OBLIGATION INCURRED WITH RESPECT TO

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

77

1 GOODS IN WHICH THE SECURED PARTY HOLDS OR HELD A PURCHASE-MONEY  
2 SECURITY INTEREST IF THE DEBTOR ACQUIRED ITS INTEREST IN THE  
3 SOFTWARE IN AN INTEGRATED TRANSACTION IN WHICH IT ACQUIRED AN  
4 INTEREST IN THE GOODS, AND THE DEBTOR ACQUIRED ITS INTEREST IN  
5 THE SOFTWARE FOR THE PRINCIPAL PURPOSE OF USING THE SOFTWARE IN  
6 THE GOODS.

7       (4) THE SECURITY INTEREST OF A CONSIGNOR IN GOODS THAT ARE  
8 THE SUBJECT OF A CONSIGNMENT IS A PURCHASE-MONEY SECURITY INTER-  
9 EST IN INVENTORY.

10       (5) IN A TRANSACTION OTHER THAN A CONSUMER-GOODS TRANSAC-  
11 TION, IF THE EXTENT TO WHICH A SECURITY INTEREST IS A  
12 PURCHASE-MONEY SECURITY INTEREST DEPENDS ON THE APPLICATION OF A  
13 PAYMENT TO A PARTICULAR OBLIGATION, THE PAYMENT MUST BE APPLIED  
14 IN 1 OF THE FOLLOWING, AS APPLICABLE:

15       (A) IN ACCORDANCE WITH ANY REASONABLE METHOD OF APPLICATION  
16 TO WHICH THE PARTIES AGREE.

17       (B) IN THE ABSENCE OF THE PARTIES' AGREEMENT TO A REASONABLE  
18 METHOD, IN ACCORDANCE WITH ANY INTENTION OF THE OBLIGOR MANI-  
19 FESTED AT OR BEFORE THE TIME OF PAYMENT.

20       (C) IN THE ABSENCE OF AN AGREEMENT TO A REASONABLE METHOD  
21 AND A TIMELY MANIFESTATION OF THE OBLIGOR'S INTENTION, IN THE  
22 FOLLOWING ORDER:

23       (i) TO OBLIGATIONS THAT ARE NOT SECURED.

24       (ii) IF MORE THAN 1 OBLIGATION IS SECURED, TO OBLIGATIONS  
25 SECURED BY PURCHASE-MONEY SECURITY INTERESTS IN THE ORDER IN  
26 WHICH THOSE OBLIGATIONS WERE INCURRED.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

78

1           (6) IN A TRANSACTION OTHER THAN A CONSUMER-GOODS  
2 TRANSACTION, A PURCHASE-MONEY SECURITY INTEREST DOES NOT LOSE ITS  
3 STATUS AS SUCH, EVEN IF THE PURCHASE-MONEY COLLATERAL ALSO  
4 SECURES AN OBLIGATION THAT IS NOT A PURCHASE-MONEY OBLIGATION,  
5 COLLATERAL THAT IS NOT PURCHASE-MONEY COLLATERAL ALSO SECURES THE  
6 PURCHASE-MONEY OBLIGATION, OR THE PURCHASE-MONEY OBLIGATION HAS  
7 BEEN RENEWED, REFINANCED, CONSOLIDATED, OR RESTRUCTURED.

8           (7) IN A TRANSACTION OTHER THAN A CONSUMER-GOODS TRANSAC-  
9 TION, A SECURED PARTY CLAIMING A PURCHASE-MONEY SECURITY INTEREST  
10 HAS THE BURDEN OF ESTABLISHING THE EXTENT TO WHICH THE SECURITY  
11 INTEREST IS A PURCHASE-MONEY SECURITY INTEREST.

12           (8) THE LIMITATION OF THE RULES IN SUBSECTIONS (5), (6), AND  
13 (7) TO TRANSACTIONS OTHER THAN CONSUMER-GOODS TRANSACTIONS IS  
14 INTENDED TO LEAVE TO THE COURT THE DETERMINATION OF THE PROPER  
15 RULES IN CONSUMER-GOODS TRANSACTIONS. THE COURT MAY NOT INFER  
16 FROM THAT LIMITATION THE NATURE OF THE PROPER RULE IN  
17 CONSUMER-GOODS TRANSACTIONS AND MAY CONTINUE TO APPLY ESTABLISHED  
18 APPROACHES.

19           Sec. 9104. ~~This article does not apply:~~

20           ~~(a) To a security interest subject to any statute of the~~  
21 ~~United States to the extent that such statute governs the rights~~  
22 ~~of parties to and third parties affected by transactions in par-~~  
23 ~~ticular types of property; or~~

24           ~~(b) To a landlord's lien; or~~

25           ~~(c) To a lien given by a statute or other rule of law for~~  
26 ~~services or materials except as provided in section 9310 on~~  
27 ~~priority of such liens; or~~

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

79

1       ~~(d) To a transfer of a claim for wages, salary, or other~~  
2 ~~compensation of an employee; or~~

3       ~~(e) To a transfer by a government or governmental subdivi-~~  
4 ~~sion or agency; or~~

5       ~~(f) To a sale of accounts or chattel paper as part of a sale~~  
6 ~~of the business out of which they arose, or an assignment of~~  
7 ~~accounts or chattel paper which is for the purpose of collection~~  
8 ~~only, or a transfer of a right to payment under a contract to an~~  
9 ~~assignee who is also to do the performance under the contract or~~  
10 ~~a transfer of a single account to an assignee in whole or partial~~  
11 ~~satisfaction of a preexisting indebtedness; or~~

12       ~~(g) To a transfer of an interest or claim in or under any~~  
13 ~~policy of insurance except as provided with respect to proceeds~~  
14 ~~(section 9306) and priorities in proceeds (section 9312); or~~

15       ~~(h) To a right represented by a judgment, (other than a~~  
16 ~~judgment taken on a right to payment which was collateral); or~~

17       ~~(i) To any right of setoff; or~~

18       ~~(j) Except to the extent that provision is made for fixtures~~  
19 ~~in section 9313, to the creation or transfer of an interest in or~~  
20 ~~lien on real estate, including a lease or rents thereunder; or~~

21       ~~(k) To a transfer in whole or in part of any claim arising~~  
22 ~~out of tort; or~~

23       ~~(l) To a transfer of an interest in any deposit account~~  
24 ~~(section 9105(1)), except as provided with respect to proceeds~~  
25 ~~(section 9306) and priorities in proceeds (section 9312).~~

26       ~~(m) To a transfer of an interest in a letter of credit other~~  
27 ~~than the rights to proceeds of a written letter of credit.~~

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

80

1 (1) A SECURED PARTY HAS CONTROL OF A DEPOSIT ACCOUNT IF 1 OR  
2 MORE OF THE FOLLOWING APPLY:

3 (A) THE SECURED PARTY IS THE BANK WITH WHICH THE DEPOSIT  
4 ACCOUNT IS MAINTAINED.

5 (B) THE DEBTOR, SECURED PARTY, AND BANK HAVE AGREED IN AN  
6 AUTHENTICATED RECORD THAT THE BANK WILL COMPLY WITH INSTRUCTIONS  
7 ORIGINATED BY THE SECURED PARTY DIRECTING DISPOSITION OF THE  
8 FUNDS IN THE DEPOSIT ACCOUNT WITHOUT FURTHER CONSENT BY THE  
9 DEBTOR.

10 (C) THE SECURED PARTY BECOMES THE BANK'S CUSTOMER WITH  
11 RESPECT TO THE DEPOSIT ACCOUNT.

12 (2) A SECURED PARTY THAT HAS SATISFIED SUBSECTION (1) HAS  
13 CONTROL, EVEN IF THE DEBTOR RETAINS THE RIGHT TO DIRECT THE DIS-  
14 POSITION OF FUNDS FROM THE DEPOSIT ACCOUNT.

15 Sec. 9105. ~~-(1) As used in this article unless the context~~  
16 ~~otherwise requires:~~

17 ~~(a) "Account debtor" means the person who is obligated on an~~  
18 ~~account, chattel paper, or general intangible.~~

19 ~~(b) "Chattel paper" means a writing or writings which evi-~~  
20 ~~dence both a monetary obligation and a security interest in or a~~  
21 ~~lease of specific goods, but a charter or other contract involv-~~  
22 ~~ing the use or hire of a vessel is not chattel paper. When a~~  
23 ~~transaction is evidenced both by such a security agreement or a~~  
24 ~~lease and by an instrument or a series of instruments, the group~~  
25 ~~of writings taken together constitutes chattel paper.~~



**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

81

1       ~~(c) "Collateral" means the property subject to a security~~  
2 ~~interest, and includes accounts and chattel paper which have been~~  
3 ~~sold.~~

4       ~~(d) "Debtor" means the person who owes payment or other per=~~  
5 ~~formance of the obligation secured, whether or not he or she owns~~  
6 ~~or has rights in the collateral, and includes the seller of~~  
7 ~~accounts or chattel paper. Where the debtor and the owner of the~~  
8 ~~collateral are not the same person, the term "debtor" means the~~  
9 ~~owner of the collateral in any provision of the article dealing~~  
10 ~~with the collateral, the obligor in any provision dealing with~~  
11 ~~the obligation, and may include both where the context so~~  
12 ~~requires.~~

13       ~~(e) "Deposit account" means a demand, time, savings, pass=~~  
14 ~~book, or like account maintained with a bank, savings and loan~~  
15 ~~association, credit union, or like organization, other than an~~  
16 ~~account evidenced by a certificate of deposit.~~

17       ~~(f) "Document" means document of title as defined in the~~  
18 ~~general definitions of article 1, section 1201 and a receipt of~~  
19 ~~the kind described in section 7201(2).~~

20       ~~(g) "Encumbrance" includes real estate mortgages and other~~  
21 ~~liens on real estate and all other rights in real estate that are~~  
22 ~~not ownership interests.~~

23       ~~(h) "Goods" includes all things which are movable at the~~  
24 ~~time the security interest attaches or which are fixtures as~~  
25 ~~described in section 9313, but does not include money, documents,~~  
26 ~~instruments, investment property, accounts, chattel paper,~~  
27 ~~general intangibles, or minerals or the like including, but not~~

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

82

1 ~~limited to, oil and gas before extraction. Goods also include~~  
2 ~~standing timber which is to be cut and removed under a conveyance~~  
3 ~~or contract for sale, the unborn young of animals, and growing~~  
4 ~~crops.~~

5 ~~(i) "Instrument" means a negotiable instrument as defined in~~  
6 ~~section 3104 or any other writing which evidences a right to the~~  
7 ~~payment of money and is not itself a security agreement or lease~~  
8 ~~and is of a type which is in ordinary course of business trans=~~  
9 ~~ferred by delivery with any necessary indorsement or assignment.~~  
10 ~~The term does not include investment property.~~

11 ~~(j) "Mortgage" means a consensual interest created by a real~~  
12 ~~estate mortgage, a trust deed on real estate, or the like.~~

13 ~~(k) An advance is made "pursuant to commitment" if the~~  
14 ~~secured party has bound himself or herself to make it, whether or~~  
15 ~~not a subsequent event of default or other event not within his~~  
16 ~~or her control has relieved or may relieve him or her from his or~~  
17 ~~her obligation.~~

18 ~~(l) "Security agreement" means an agreement which creates or~~  
19 ~~provides for a security interest.~~

20 ~~(m) "Secured party" means a lender, seller, or other person~~  
21 ~~in whose favor there is a security interest, including a person~~  
22 ~~to whom accounts or chattel paper have been sold. When the hold=~~  
23 ~~ers of obligations issued under an indenture of trust, equipment~~  
24 ~~trust agreement, or the like are represented by a trustee or~~  
25 ~~other person, the representative is the secured party.~~

26 ~~(n) "Tax identification number" means a social security~~  
27 ~~number or federal employer tax identification number.~~

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

83

1       ~~(o) "Transmitting utility" means any person primarily~~  
2 ~~engaged in the railroad, street railway, or trolley bus business,~~  
3 ~~the electric or electronics communications transmission business,~~  
4 ~~the transmission of goods by pipeline, or the transmission or the~~  
5 ~~production and transmission of electricity, steam, gas or water,~~  
6 ~~or the provision of sewer service.~~

7       ~~(2) Other definitions applying to this article and the sec=~~  
8 ~~tions in which they appear are:~~

9	<del>"Account".</del>	<del>Section 9106.</del>
10	<del>"Attach".</del>	<del>Section 9203.</del>
11	<del>"Commodity contract".</del>	<del>Section 9115.</del>
12	<del>"Commodity customer".</del>	<del>Section 9115.</del>
13	<del>"Commodity intermediary".</del>	<del>Section 9115.</del>
14	<del>"Construction mortgage".</del>	<del>Section 9313(1).</del>
15	<del>"Consumer goods".</del>	<del>Section 9109(1).</del>
16	<del>"Control".</del>	<del>Section 9115.</del>
17	<del>"Equipment".</del>	<del>Section 9109(2).</del>
18	<del>"Farm products".</del>	<del>Section 9109(3).</del>
19	<del>"Fixture".</del>	<del>Section 9313.</del>
20	<del>"Fixture filing".</del>	<del>Section 9313.</del>
21	<del>"General intangibles".</del>	<del>Section 9106.</del>
22	<del>"Inventory".</del>	<del>Section 9109(4).</del>
23	<del>"Investment property".</del>	<del>Section 9115.</del>
24	<del>"Lien creditor".</del>	<del>Section 9301(3).</del>
25	<del>"Proceeds".</del>	<del>Section 9306(1).</del>

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

84

1       ~~"Purchase money security interest".                   Section 9107.~~  
2       ~~"United States".   Section 9103.~~  
3       ~~(3) The following definitions in other articles apply to~~  
4 ~~this article:~~  
  
5       ~~"Broker".   Section 8102.~~  
6       ~~"Certificated security".                                   Section 8102.~~  
7       ~~"Check".   Section 3104.~~  
8       ~~"Clearing corporation".                                   Section 8102.~~  
9       ~~"Contract for sale".                                       Section 2106.~~  
10       ~~"Control".    Section 8102.~~  
11       ~~"Delivery".   Section 8102.~~  
12       ~~"Entitlement holder".                                       Section 8102.~~  
13       ~~"Financial asset".   Section 8102.~~  
14       ~~"Holder in due course".                                   Section 3302.~~  
15       ~~"Letter of credit".    Section 5102.~~  
16       ~~"Note".    Section 3104.~~  
17       ~~"Proceeds of a letter of credit".                        Section 5114.~~  
18       ~~"Sale".   Section 2106.~~  
19       ~~"Security intermediary".                                   Section 8102.~~  
20       ~~"Security".   Section 8102.~~  
21       ~~"Security certificate".                                     Section 8102.~~  
22       ~~"Security entitlement".                                     Section 8102.~~  
23       ~~"Uncertificated security".                               Section 8102.~~  
24       ~~(4) In addition article 1 contains general definitions and~~  
25 ~~principles of construction and interpretation applicable~~  
26 ~~throughout this article.  A SECURED PARTY HAS CONTROL OF~~

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

85

1 ELECTRONIC CHATTEL PAPER IF THE RECORD OR RECORDS COMPRISING THE  
2 CHATTEL PAPER ARE CREATED, STORED, AND ASSIGNED IN SUCH A MANNER  
3 THAT ALL OF THE FOLLOWING APPLY:

4 (A) A SINGLE AUTHORITATIVE COPY OF THE RECORD OR RECORDS  
5 EXISTS WHICH IS UNIQUE, IDENTIFIABLE, AND, EXCEPT AS OTHERWISE  
6 PROVIDED IN SUBDIVISIONS (D), (E), AND (F), UNALTERABLE.

7 (B) THE AUTHORITATIVE COPY IDENTIFIES THE SECURED PARTY AS  
8 THE ASSIGNEE OF THE RECORD OR RECORDS.

9 (C) THE AUTHORITATIVE COPY IS COMMUNICATED TO AND MAINTAINED  
10 BY THE SECURED PARTY OR ITS DESIGNATED CUSTODIAN.

11 (D) COPIES OR REVISIONS THAT ADD OR CHANGE AN IDENTIFIED  
12 ASSIGNEE OF THE AUTHORITATIVE COPY CAN BE MADE ONLY WITH THE PAR-  
13 TICIPATION OF THE SECURED PARTY.

14 (E) EACH COPY OF THE AUTHORITATIVE COPY AND ANY COPY OF A  
15 COPY IS READILY IDENTIFIABLE AS A COPY THAT IS NOT THE AUTHORITA-  
16 TIVE COPY.

17 (F) ANY REVISION OF THE AUTHORITATIVE COPY IS READILY IDEN-  
18 TIFIABLE AS AN AUTHORIZED OR UNAUTHORIZED REVISION.

19 Sec. 9106. ~~"Account" means any right to payment for goods~~  
20 ~~sold or leased or for services rendered which is not evidenced by~~  
21 ~~an instrument or chattel paper whether or not it has been earned~~  
22 ~~by performance. "General intangibles" means any personal prop-~~  
23 ~~erty (including things in action) other than goods, accounts,~~  
24 ~~chattel paper, documents, instruments, investment property,~~  
25 ~~rights to proceeds of written letters of credit, and money. All~~  
26 ~~rights to payment earned or unearned under a charter or other~~

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

86

~~1 contract involving the use or hire of a vessel and all rights  
2 incident to the charter or contract are accounts.~~

3 (1) A PERSON HAS CONTROL OF A CERTIFICATED SECURITY, UNCER-  
4 TIFICATED SECURITY, OR SECURITY ENTITLEMENT AS PROVIDED IN SEC-  
5 TION 8106.

6 (2) A SECURED PARTY HAS CONTROL OF A COMMODITY CONTRACT IF  
7 EITHER OF THE FOLLOWING IS MET:

8 (A) THE SECURED PARTY IS THE COMMODITY INTERMEDIARY WITH  
9 WHICH THE COMMODITY CONTRACT IS CARRIED.

10 (B) THE COMMODITY CUSTOMER, SECURED PARTY, AND COMMODITY  
11 INTERMEDIARY HAVE AGREED THAT THE COMMODITY INTERMEDIARY WILL  
12 APPLY ANY VALUE DISTRIBUTED ON ACCOUNT OF THE COMMODITY CONTRACT  
13 AS DIRECTED BY THE SECURED PARTY WITHOUT FURTHER CONSENT BY THE  
14 COMMODITY CUSTOMER.

15 (3) A SECURED PARTY HAVING CONTROL OF ALL SECURITY ENTITLE-  
16 MENTS OR COMMODITY CONTRACTS CARRIED IN A SECURITIES ACCOUNT OR  
17 COMMODITY ACCOUNT HAS CONTROL OVER THE SECURITIES ACCOUNT OR COM-  
18 MODITY ACCOUNT.

19 Sec. 9107. ~~A security interest is a "purchase money secur-~~  
20 ~~ity interest" to the extent that it is~~

21 ~~(a) taken or retained by the seller of the collateral to~~  
22 ~~secure all or part of its price; or~~

23 ~~(b) taken by a person who by making advances or incurring an~~  
24 ~~obligation gives value to enable the debtor to acquire rights in~~  
25 ~~or the use of collateral if such value is in fact so used. A~~

26 SECURED PARTY HAS CONTROL OF A LETTER-OF-CREDIT RIGHT TO THE  
27 EXTENT OF ANY RIGHT TO PAYMENT OR PERFORMANCE BY THE ISSUER OR

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

87

1 ANY NOMINATED PERSON IF THE ISSUER OR NOMINATED PERSON HAS  
2 CONSENTED TO AN ASSIGNMENT OF PROCEEDS OF THE LETTER OF CREDIT  
3 UNDER SECTION 5114(3) OR OTHERWISE APPLICABLE LAW OR PRACTICE.

4       Sec. 9108. ~~Where a secured party makes an advance, incurs~~  
5 ~~an obligation, releases a perfected security interest, or other-~~  
6 ~~wise gives new value which is to be secured in whole or in part~~  
7 ~~by after-acquired property his security interest in the~~  
8 ~~after-acquired collateral shall be deemed to be taken for a new~~  
9 ~~value and not as security for an antecedent debt if the debtor~~  
10 ~~acquires his rights in such collateral either in the ordinary~~  
11 ~~course of his business or under a contract of purchase made pur-~~  
12 ~~suant to the security agreement within a reasonable time after~~  
13 ~~new value is given.~~

14       (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTIONS (3), (4),  
15 AND (5), A DESCRIPTION OF PERSONAL OR REAL PROPERTY IS SUFFI-  
16 CIENT, WHETHER OR NOT IT IS SPECIFIC, IF IT REASONABLY IDENTIFIES  
17 WHAT IS DESCRIBED.

18       (2) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (4), A  
19 DESCRIPTION OF COLLATERAL REASONABLY IDENTIFIES THE COLLATERAL IF  
20 IT IDENTIFIES THE COLLATERAL BY 1 OR MORE OF THE FOLLOWING:

21       (A) SPECIFIC LISTING.

22       (B) CATEGORY.

23       (C) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (5), A TYPE  
24 OF COLLATERAL DEFINED IN THE UNIFORM COMMERCIAL CODE.

25       (D) QUANTITY.

26       (E) COMPUTATIONAL OR ALLOCATIONAL FORMULA OR PROCEDURE.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

88

1 (F) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3), ANY  
2 OTHER METHOD, IF THE IDENTITY OF THE COLLATERAL IS OBJECTIVELY  
3 DETERMINABLE.

4 (3) A DESCRIPTION OF COLLATERAL AS "ALL THE DEBTOR'S ASSETS"  
5 OR "ALL THE DEBTOR'S PERSONAL PROPERTY" OR USING WORDS OF SIMILAR  
6 IMPORT DOES NOT REASONABLY IDENTIFY THE COLLATERAL.

7 (4) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (5), A  
8 DESCRIPTION OF A SECURITY ENTITLEMENT, SECURITIES ACCOUNT, OR  
9 COMMODITY ACCOUNT IS SUFFICIENT IF IT DESCRIBES 1 OR MORE OF THE  
10 FOLLOWING:

11 (A) THE COLLATERAL BY THE TERM SECURITY ENTITLEMENT, SECURI-  
12 TIES ACCOUNT, OR COMMODITY ACCOUNT, OR AS INVESTMENT PROPERTY.

13 (B) THE UNDERLYING FINANCIAL ASSET OR COMMODITY CONTRACT.

14 (5) A DESCRIPTION ONLY BY TYPE OF COLLATERAL DEFINED IN THE  
15 UNIFORM COMMERCIAL CODE IS AN INSUFFICIENT DESCRIPTION OF EITHER  
16 OF THE FOLLOWING:

17 (A) A COMMERCIAL TORT CLAIM.

18 (B) IN A CONSUMER TRANSACTION, CONSUMER GOODS, A SECURITY  
19 ENTITLEMENT, A SECURITIES ACCOUNT, OR A COMMODITY ACCOUNT.

20 SUBPART 2. APPLICABILITY OF ARTICLE

21 Sec. 9109. ~~Goods are~~

22 ~~(1) "consumer goods" if they are used or bought for use pri-~~  
23 ~~marily for personal, family or household purposes;~~

24 ~~(2) "equipment" if they are used or bought for use primarily~~  
25 ~~in business (including farming or a profession) or by a debtor~~  
26 ~~who is a nonprofit organization or a governmental subdivision or~~



**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

89

1 ~~agency or if the goods are not included in the definitions of~~  
2 ~~inventory, farm products or consumer goods;~~

3 ~~(3) "farm products" if they are crops or livestock or sup=~~  
4 ~~plies used or produced in farming operations or if they are pro=~~  
5 ~~ducts of crops or livestock in their unmanufactured states (such~~  
6 ~~as ginned cotton, wool-clip, maple syrup, milk and eggs), and if~~  
7 ~~they are in the possession of a debtor engaged in raising, fat=~~  
8 ~~tening, grazing or other farming operations. If goods are farm~~  
9 ~~products they are neither equipment nor inventory;~~

10 ~~(4) "inventory" if they are held by a person who holds them~~  
11 ~~for sale or lease or to be furnished under contracts of service~~  
12 ~~or if he has so furnished them, or if they are raw materials,~~  
13 ~~work in process or materials used or consumed in a business.~~  
14 ~~Inventory of a person is not to be classified as his equipment.~~

15 (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTIONS (3) AND (4),  
16 THIS ARTICLE APPLIES TO ALL OF THE FOLLOWING:

17 (A) A TRANSACTION, REGARDLESS OF ITS FORM, THAT CREATES A  
18 SECURITY INTEREST IN PERSONAL PROPERTY OR FIXTURES BY CONTRACT.

19 (B) AN AGRICULTURAL LIEN.

20 (C) A SALE OF ACCOUNTS, CHATTEL PAPER, PAYMENT INTANGIBLES,  
21 OR PROMISSORY NOTES.

22 (D) A CONSIGNMENT.

23 (E) A SECURITY INTEREST ARISING UNDER SECTION 2401, 2505,  
24 2711(3), OR 2A508(5), AS PROVIDED IN SECTION 9110.

25 (F) A SECURITY INTEREST ARISING UNDER SECTION 4210 OR 5118.

26 (2) THE APPLICATION OF THIS ARTICLE TO A SECURITY INTEREST  
27 IN A SECURED OBLIGATION IS NOT AFFECTED BY THE FACT THAT THE

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

90

1 OBLIGATION IS ITSELF SECURED BY A TRANSACTION OR INTEREST TO  
2 WHICH THIS ARTICLE DOES NOT APPLY.

3 (3) THIS ARTICLE DOES NOT APPLY TO THE EXTENT THAT 1 OR MORE  
4 OF THE FOLLOWING APPLY:

5 (A) A STATUTE, REGULATION, OR TREATY OF THE UNITED STATES  
6 PREEMPTS THIS ARTICLE.

7 (B) ANOTHER STATUTE OF THIS STATE EXPRESSLY GOVERNS THE CRE-  
8 ATION, PERFECTION, PRIORITY, OR ENFORCEMENT OF A SECURITY INTER-  
9 EST CREATED BY THIS STATE OR A GOVERNMENTAL UNIT OF THIS STATE.

10 (C) A STATUTE OF ANOTHER STATE, A FOREIGN COUNTRY, OR A GOV-  
11 ERNMENTAL UNIT OF ANOTHER STATE OR FOREIGN COUNTRY, OTHER THAN A  
12 STATUTE GENERALLY APPLICABLE TO SECURITY INTERESTS, EXPRESSLY  
13 GOVERNS CREATION, PERFECTION, PRIORITY, OR ENFORCEMENT OF A  
14 SECURITY INTEREST CREATED BY THAT STATE, COUNTRY, OR GOVERNMENTAL  
15 UNIT.

16 (D) THE RIGHTS OF A TRANSFEREE BENEFICIARY OR NOMINATED  
17 PERSON UNDER A LETTER OF CREDIT ARE INDEPENDENT AND SUPERIOR  
18 UNDER SECTION 5114.

19 (4) THIS ARTICLE DOES NOT APPLY TO ANY OF THE FOLLOWING:

20 (A) A LANDLORD'S LIEN, OTHER THAN AN AGRICULTURAL LIEN.

21 (B) A LIEN, OTHER THAN AN AGRICULTURAL LIEN, GIVEN BY STAT-  
22 UTE OR OTHER RULE OF LAW FOR SERVICES OR MATERIALS, BUT SECTION  
23 9333 APPLIES WITH RESPECT TO PRIORITY OF THE LIEN.

24 (C) AN ASSIGNMENT OF A CLAIM FOR WAGES, SALARY, OR OTHER  
25 COMPENSATION OF AN EMPLOYEE.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

91

1 (D) A SALE OF ACCOUNTS, CHATTEL PAPER, PAYMENT INTANGIBLES,  
2 OR PROMISSORY NOTES AS PART OF A SALE OF THE BUSINESS OUT OF  
3 WHICH THEY AROSE.

4 (E) AN ASSIGNMENT OF ACCOUNTS, CHATTEL PAPER, PAYMENT INTAN-  
5 GIBLES, OR PROMISSORY NOTES THAT IS FOR THE PURPOSE OF COLLECTION  
6 ONLY.

7 (F) AN ASSIGNMENT OF A RIGHT TO PAYMENT UNDER A CONTRACT TO  
8 AN ASSIGNEE THAT IS ALSO OBLIGATED TO PERFORM UNDER THE  
9 CONTRACT.

10 (G) AN ASSIGNMENT OF A SINGLE ACCOUNT, PAYMENT INTANGIBLE,  
11 OR PROMISSORY NOTE TO AN ASSIGNEE IN FULL OR PARTIAL SATISFACTION  
12 OF A PREEXISTING INDEBTEDNESS.

13 (H) A TRANSFER OF AN INTEREST IN OR AN ASSIGNMENT OF A CLAIM  
14 UNDER A POLICY OF INSURANCE, OTHER THAN AN ASSIGNMENT BY OR TO A  
15 HEALTH-CARE PROVIDER OF A HEALTH-CARE-INSURANCE RECEIVABLE AND  
16 ANY SUBSEQUENT ASSIGNMENT OF THE RIGHT TO PAYMENT, BUT SECTIONS  
17 9315 AND 9322 APPLY WITH RESPECT TO PROCEEDS AND PRIORITIES IN  
18 PROCEEDS.

19 (I) AN ASSIGNMENT OF A RIGHT REPRESENTED BY A JUDGMENT,  
20 OTHER THAN A JUDGMENT TAKEN ON A RIGHT TO PAYMENT THAT WAS  
21 COLLATERAL.

22 (J) A RIGHT OF RECOUPMENT OF SET-OFF, BUT SECTION 9340  
23 APPLIES WITH RESPECT TO THE EFFECTIVENESS OF RIGHTS OF RECOUPMENT  
24 OR SET-OFF AGAINST DEPOSIT ACCOUNTS AND SECTION 9404 APPLIES WITH  
25 RESPECT TO DEFENSES OR CLAIMS OF AN ACCOUNT DEBTOR.

26 (K) THE CREATION OR TRANSFER OF AN INTEREST IN OR LIEN ON  
27 REAL PROPERTY, INCLUDING A LEASE OR RENTS THEREUNDER, EXCEPT TO

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

92

1 THE EXTENT THAT PROVISION IS MADE FOR 1 OR MORE OF THE  
2 FOLLOWING:

3 (i) LIENS ON REAL PROPERTY IN SECTIONS 9203 AND 9308.

4 (ii) FIXTURES IN SECTION 9334.

5 (iii) FIXTURE FILINGS IN SECTIONS 9501, 9502, 9512, 9516,  
6 AND 9519.

7 (iv) SECURITY AGREEMENTS COVERING PERSONAL AND REAL PROPERTY  
8 IN SECTION 9604.

9 (l) THE CREATION OF OR TRANSFER OF AN INTEREST IN OR LIEN ON  
10 A LAND CONTRACT MORTGAGE GOVERNED BY SECTIONS 6 THROUGH 11 OF  
11 1879 PA 237, MCL 565.356 TO 565.361.

12 (M) A TRANSFER BY A GOVERNMENTAL UNIT OR GOVERNMENTAL SUBDI-  
13 VISION OR AGENCY.

14 (N) AN ASSIGNMENT OF A CLAIM ARISING IN TORT, OTHER THAN A  
15 COMMERCIAL TORT CLAIM, BUT SECTIONS 9315 AND 9322 APPLY WITH  
16 RESPECT TO PROCEEDS AND PRIORITIES IN PROCEEDS.

17 (O) AN ASSIGNMENT OF A DEPOSIT ACCOUNT IN A CONSUMER TRANS-  
18 ACTION, BUT SECTIONS 9315 AND 9322 APPLY WITH RESPECT TO PROCEEDS  
19 AND PRIORITIES IN PROCEEDS.

20 Sec. 9110. ~~For the purposes of this article any descrip-~~  
21 ~~tion of personal property or real estate is sufficient whether or~~  
22 ~~not it is specific if it reasonably identifies what is~~  
23 ~~described.~~ A SECURITY INTEREST ARISING UNDER SECTION 2401, 2505,  
24 2711(3), OR 2A508(5) IS SUBJECT TO THIS ARTICLE. HOWEVER, UNTIL  
25 THE DEBTOR OBTAINS POSSESSION OF THE GOODS, ALL OF THE FOLLOWING  
26 APPLY:

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

93

1 (A) THE SECURITY INTEREST IS ENFORCEABLE, EVEN IF SECTION  
2 9203(2)(C) HAS NOT BEEN SATISFIED.

3 (B) FILING IS NOT REQUIRED TO PERFECT THE SECURITY  
4 INTEREST.

5 (C) THE RIGHTS OF THE SECURED PARTY AFTER DEFAULT BY THE  
6 DEBTOR ARE GOVERNED BY ARTICLE 2 OR 2A.

7 (D) THE SECURITY INTEREST HAS PRIORITY OVER A CONFLICTING  
8 SECURITY INTEREST CREATED BY THE DEBTOR.

9 PART 2

10 ~~VALIDITY OF SECURITY AGREEMENT AND~~ EFFECTIVENESS OF SECURITY  
11 AGREEMENT; ATTACHMENT OF SECURITY INTEREST;

12 RIGHTS OF PARTIES ~~THERETO~~ TO SECURITY AGREEMENT

13 SUBPART 1. EFFECTIVENESS AND ATTACHMENT

14 Sec. 9201. ~~Except as otherwise provided by this act a~~  
15 ~~security agreement is effective according to its terms between~~  
16 ~~the parties, against purchasers of the collateral and against~~  
17 ~~creditors. Nothing in this article validates any charge or prac-~~  
18 ~~tice illegal under any statute or regulation thereunder governing~~  
19 ~~usury, small loans, retail installment sales, or the like, or~~  
20 ~~extends the application of any such statute or regulation to any~~  
21 ~~transaction not otherwise subject thereto.~~

22 (1) EXCEPT AS OTHERWISE PROVIDED IN THIS ACT, A SECURITY  
23 AGREEMENT IS EFFECTIVE ACCORDING TO ITS TERMS BETWEEN THE PAR-  
24 TIES, AGAINST PURCHASERS OF THE COLLATERAL, AND AGAINST  
25 CREDITORS.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

94

1       (2) A TRANSACTION SUBJECT TO THIS ARTICLE IS SUBJECT TO ANY  
2 APPLICABLE RULE OF LAW THAT ESTABLISHES A DIFFERENT RULE FOR  
3 CONSUMERS AND TO EACH OF THE FOLLOWING, AS APPLICABLE:

4       (A) THE REGULATORY LOAN ACT OF 1963, 1939 PA 21, MCL 493.1  
5 TO 493.26.

6       (B) 1939 PA 305, MCL 566.301 TO 566.302.

7       (C) THE MOTOR VEHICLE SALES FINANCE ACT, 1950 (EX SESS)  
8 PA 27, MCL 492.101 TO 492.141.

9       (D) THE MOBILE HOME COMMISSION ACT, 1987 PA 96, MCL 125.2301  
10 TO 125.2349.

11       (E) THE MICHIGAN VEHICLE CODE, 1949 PA 300, MCL 257.1 TO  
12 257.923.

13       (F) 1978 PA 387, MCL 257.931 TO 257.937.

14       (G) 1986 PA 87, MCL 257.1401 TO 257.1410.

15       (H) THE GRAIN DEALERS ACT, 1939 PA 141, MCL 285.61 TO  
16 285.82A.

17       (I) THE MICHIGAN FAMILY FARM DEVELOPMENT ACT, 1982 PA 220,  
18 MCL 285.251 TO 285.279.

19       (J) THE NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT,  
20 1994 PA 451, MCL 324.101 TO 324.90106.

21       (K) 1982 PA 459, MCL 325.851 TO 325.858.

22       (L) 1970 PA 90, MCL 442.311 TO 442.315.

23       (M) 1971 PA 227, MCL 445.111 TO 445.117.

24       (N) THE RETAIL INSTALLMENT SALES ACT, 1966 PA 224,  
25 MCL 445.851 TO 445.873.

26       (O) THE MICHIGAN CONSUMER PROTECTION ACT, 1976 PA 331,  
27 MCL 445.901 TO 445.922.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

95

1 (P) THE HOME IMPROVEMENT FINANCE ACT, 1965 PA 332,

2 MCL 445.1102 TO 445.1431.

3 (Q) 1941 PA 338, MCL 566.1.

4 (R) THE GARAGE KEEPER'S LIEN ACT, 1915 PA 312, MCL 570.301

5 TO 570.309.

6 (S) 1939 PA 3, MCL 460.1 TO 460.10CC.

7 (3) IN CASE OF CONFLICT BETWEEN THIS ARTICLE AND A RULE OF  
8 LAW, STATUTE, OR REGULATION DESCRIBED IN SUBSECTION (2), THE RULE  
9 OF LAW, STATUTE, OR REGULATION CONTROLS. FAILURE TO COMPLY WITH  
10 A STATUTE OR REGULATION DESCRIBED IN SUBSECTION (2) HAS ONLY THE  
11 EFFECT THE STATUTE OR REGULATION SPECIFIES.

12 (4) THIS ARTICLE DOES NOT VALIDATE ANY RATE, CHARGE, AGREE-  
13 MENT, OR PRACTICE THAT VIOLATES A RULE OF LAW, STATUTE, OR REGU-  
14 LATION DESCRIBED IN SUBSECTION (2), OR EXTEND THE APPLICATION OF  
15 THE RULE OF LAW, STATUTE, OR REGULATION TO A TRANSACTION NOT OTH-  
16 ERWISE SUBJECT TO IT.

17 Sec. 9202. ~~Each provision of this article with regard to~~  
18 ~~rights, obligations and remedies applies whether title to collat-~~  
19 ~~eral is in the secured party or in the debtor.~~ EXCEPT AS OTHER-  
20 WISE PROVIDED WITH RESPECT TO CONSIGNMENTS OR SALES OF ACCOUNTS,  
21 CHATTEL PAPER, PAYMENT INTANGIBLES, OR PROMISSORY NOTES, THE PRO-  
22 VISIONS OF THIS ARTICLE WITH REGARD TO RIGHTS AND OBLIGATIONS  
23 APPLY WHETHER TITLE TO COLLATERAL IS IN THE SECURED PARTY OR THE  
24 DEBTOR.

25 Sec. 9203. ~~(1) Subject to section 4208 on the security~~  
26 ~~interest of a collecting bank, sections 9115 and 9116 on security~~  
27 ~~interests in investment property, and section 9113 on a security~~

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

96

1 ~~interest arising under the article on sales, a security interest~~  
2 ~~is not enforceable against the debtor or third parties with~~  
3 ~~respect to the collateral and does not attach unless all of the~~  
4 ~~following are true:~~

5       ~~(a) The collateral is in the possession of the secured party~~  
6 ~~pursuant to agreement, the collateral is investment property and~~  
7 ~~the secured party has control pursuant to agreement, or the~~  
8 ~~debtor has signed a security agreement that contains a descrip-~~  
9 ~~tion of the collateral and in addition, when the security inter-~~  
10 ~~est covers timber to be cut, a description of the land~~  
11 ~~concerned.~~

12       ~~(b) Value has been given.~~

13       ~~(c) The debtor has rights in the collateral.~~

14       ~~(2) A security interest attaches when it becomes enforceable~~  
15 ~~against the debtor with respect to the collateral. Attachment~~  
16 ~~occurs as soon as all of the events specified in subsection (1)~~  
17 ~~have taken place unless explicit agreement postpones the time of~~  
18 ~~attaching.~~

19       ~~(3) Unless otherwise agreed a security agreement gives the~~  
20 ~~secured party the rights to proceeds provided by section 9306.~~

21       ~~(4) A transaction, although subject to this article, is also~~  
22 ~~subject to the regulatory loan act of 1963, 1939 PA 21, MCL 493.1~~  
23 ~~to 493.26, 1939 PA 305, MCL 566.301 to 566.302, and the motor~~  
24 ~~vehicle sales finance act, 1950 (Ex Sess) PA 27, MCL 492.101 to~~  
25 ~~492.141. If a conflict arises between this article and another~~  
26 ~~statute, the other statute controls. Failure to comply with any~~



**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

97

1 ~~applicable statute has only the effect that is specified in that~~  
2 ~~statute.~~

3 (1) A SECURITY INTEREST ATTACHES TO COLLATERAL WHEN IT  
4 BECOMES ENFORCEABLE AGAINST THE DEBTOR WITH RESPECT TO THE COL-  
5 LATERAL, UNLESS AN AGREEMENT EXPRESSLY POSTPONES THE TIME OF  
6 ATTACHMENT.

7 (2) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTIONS (3) THROUGH  
8 (9), A SECURITY INTEREST IS ENFORCEABLE AGAINST THE DEBTOR AND  
9 THIRD PARTIES WITH RESPECT TO THE COLLATERAL ONLY IF ALL OF THE  
10 FOLLOWING ARE MET:

11 (A) VALUE HAS BEEN GIVEN.

12 (B) THE DEBTOR HAS RIGHTS IN THE COLLATERAL OR THE POWER TO  
13 TRANSFER RIGHTS IN THE COLLATERAL TO A SECURED PARTY.

14 (C) ONE OR MORE OF THE FOLLOWING CONDITIONS ARE MET:

15 (i) THE DEBTOR HAS AUTHENTICATED A SECURITY AGREEMENT THAT  
16 PROVIDES A DESCRIPTION OF THE COLLATERAL AND, IF THE SECURITY  
17 INTEREST COVERS TIMBER TO BE CUT, A DESCRIPTION OF THE LAND  
18 CONCERNED.

19 (ii) THE COLLATERAL IS NOT A CERTIFICATED SECURITY AND IS IN  
20 THE POSSESSION OF THE SECURED PARTY UNDER SECTION 9313 PURSUANT  
21 TO THE DEBTOR'S SECURITY AGREEMENT.

22 (iii) THE COLLATERAL IS A CERTIFICATED SECURITY IN REGIS-  
23 TERED FORM AND THE SECURITY CERTIFICATE HAS BEEN DELIVERED TO THE  
24 SECURED PARTY UNDER SECTION 8301 PURSUANT TO THE DEBTOR'S SECUR-  
25 ITY AGREEMENT.

26 (iv) THE COLLATERAL IS DEPOSIT ACCOUNTS, ELECTRONIC CHATTEL  
27 PAPER, INVESTMENT PROPERTY, OR LETTER-OF-CREDIT RIGHTS, AND THE

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

98

1 SECURED PARTY HAS CONTROL UNDER SECTION 9104, 9105, 9106, OR 9107  
2 PURSUANT TO THE DEBTOR'S SECURITY AGREEMENT.

3 (3) SUBSECTION (2) IS SUBJECT TO SECTION 4210 ON THE SECUR-  
4 ITY INTEREST OF A COLLECTING BANK, SECTION 5118 ON THE SECURITY  
5 INTEREST OF A LETTER-OF-CREDIT ISSUER OR NOMINATED PERSON, SEC-  
6 TION 9110 ON A SECURITY INTEREST ARISING UNDER ARTICLE 2 OR 2A,  
7 AND SECTION 9206 ON SECURITY INTERESTS IN INVESTMENT PROPERTY.

8 (4) A PERSON BECOMES BOUND AS DEBTOR BY A SECURITY AGREEMENT  
9 ENTERED INTO BY ANOTHER PERSON IF, BY OPERATION OF LAW OTHER THAN  
10 THIS ARTICLE OR BY CONTRACT, EITHER OF THE FOLLOWING OCCURS:

11 (A) THE SECURITY AGREEMENT BECOMES EFFECTIVE TO CREATE A  
12 SECURITY INTEREST IN THE PERSON'S PROPERTY.

13 (B) THE PERSON BECOMES GENERALLY OBLIGATED FOR THE OBLIGA-  
14 TIONS OF THE OTHER PERSON, INCLUDING THE OBLIGATION SECURED UNDER  
15 THE SECURITY AGREEMENT, AND ACQUIRES OR SUCCEEDS TO ALL OR SUB-  
16 STANTIAL ALL OF THE ASSETS OF THE OTHER PERSON.

17 (5) IF A NEW DEBTOR BECOMES BOUND AS DEBTOR BY A SECURITY  
18 AGREEMENT ENTERED INTO BY ANOTHER PERSON, THE AGREEMENT SATISFIES  
19 SUBSECTION (2)(C) WITH RESPECT TO EXISTING OR AFTER-ACQUIRED  
20 PROPERTY OF THE NEW DEBTOR TO THE EXTENT THE PROPERTY IS  
21 DESCRIBED IN THE AGREEMENT, AND ANOTHER AGREEMENT IS NOT NECES-  
22 SARY TO MAKE A SECURITY INTEREST IN THE PROPERTY ENFORCEABLE.

23 (6) THE ATTACHMENT OF A SECURITY INTEREST IN COLLATERAL  
24 GIVES THE SECURED PARTY THE RIGHTS TO PROCEEDS PROVIDED BY SEC-  
25 TION 9315 AND IS ALSO ATTACHMENT OF A SECURITY INTEREST IN A SUP-  
26 PORTING OBLIGATION FOR THE COLLATERAL.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

99

1       (7) THE ATTACHMENT OF A SECURITY INTEREST IN A RIGHT TO  
2 PAYMENT OR PERFORMANCE SECURED BY A SECURITY INTEREST OR OTHER  
3 LIEN ON PERSONAL OR REAL PROPERTY IS ALSO ATTACHMENT OF A SECUR-  
4 ITY INTEREST IN THE SECURITY INTEREST, MORTGAGE, OR OTHER LIEN.

5       (8) THE ATTACHMENT OF A SECURITY INTEREST IN A SECURITIES  
6 ACCOUNT IS ALSO ATTACHMENT OF A SECURITY INTEREST IN THE SECURITY  
7 ENTITLEMENTS CARRIED IN THE SECURITIES ACCOUNT.

8       (9) THE ATTACHMENT OF A SECURITY INTEREST IN A COMMODITY  
9 ACCOUNT IS ALSO ATTACHMENT OF A SECURITY INTEREST IN THE COMMOD-  
10 ITY CONTRACTS CARRIED IN THE COMMODITY ACCOUNT.

11       Sec. 9204. ~~-(1) Except as provided in subsection (2), a~~  
12 ~~security agreement may provide that any or all obligations cov-~~  
13 ~~ered by the security agreement are to be secured by~~  
14 ~~after-acquired collateral.~~

15       ~~(2) No security interest attaches under an after-acquired~~  
16 ~~property clause to consumer goods other than accessions (section~~  
17 ~~9314) when given as additional security unless the debtor~~  
18 ~~acquires rights in them within 10 days after the secured party~~  
19 ~~gives value.~~

20       ~~(3) Obligations covered by a security agreement may include~~  
21 ~~future advances or other value whether or not the advances or~~  
22 ~~value are given pursuant to commitment (section 9105(1)).~~

23       (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (2), A SECUR-  
24 ITY AGREEMENT MAY CREATE OR PROVIDE FOR A SECURITY INTEREST IN  
25 AFTER-ACQUIRED COLLATERAL.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

100

1 (2) A SECURITY INTEREST DOES NOT ATTACH UNDER A TERM  
2 CONSTITUTING AN AFTER-ACQUIRED PROPERTY CLAUSE TO EITHER OF THE  
3 FOLLOWING:

4 (A) CONSUMER GOODS, OTHER THAN AN ACCESSION WHEN GIVEN AS  
5 ADDITIONAL SECURITY, UNLESS THE DEBTOR ACQUIRES RIGHTS IN THEM  
6 WITHIN 10 DAYS AFTER THE SECURED PARTY GIVES VALUE.

7 (B) A COMMERCIAL TORT CLAIM.

8 (3) A SECURITY AGREEMENT MAY PROVIDE THAT COLLATERAL  
9 SECURES, OR THAT ACCOUNTS, CHATTEL PAPER, PAYMENT INTANGIBLES, OR  
10 PROMISSORY NOTES ARE SOLD IN CONNECTION WITH, FUTURE ADVANCES OR  
11 OTHER VALUE, WHETHER OR NOT THE ADVANCES OR VALUE ARE GIVEN PUR-  
12 SUANT TO COMMITMENT.

13 Sec. 9205. ~~A security interest is not invalid or fraudu-~~  
14 ~~lent against creditors by reason of liberty in the debtor to use,~~  
15 ~~commingle, or dispose of all or part of the collateral,~~  
16 ~~(including returned or repossessed goods), or to collect or com-~~  
17 ~~promise accounts or chattel paper, or to accept the return of~~  
18 ~~goods or make repossessions, or to use, commingle, or dispose of~~  
19 ~~proceeds, or by reason of the failure of the secured party to~~  
20 ~~require the debtor to account for proceeds or replace~~  
21 ~~collateral. This section does not relax the requirements of pos-~~  
22 ~~session where perfection of a security interest depends upon pos-~~  
23 ~~session of the collateral by the secured party or by a bailee.~~

24 (1) A SECURITY INTEREST IS NOT INVALID OR FRAUDULENT AGAINST  
25 CREDITORS SOLELY BECAUSE OF EITHER OF THE FOLLOWING:

26 (A) THE DEBTOR HAS THE RIGHT OR ABILITY TO DO 1 OR MORE OF  
27 THE FOLLOWING:

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

101

1       (i) USE, COMMINGLE, OR DISPOSE OF ALL OR PART OF THE  
2 COLLATERAL, INCLUDING RETURNED OR REPOSSESSED GOODS.

3       (ii) COLLECT, COMPROMISE, ENFORCE, OR OTHERWISE DEAL WITH  
4 COLLATERAL.

5       (iii) ACCEPT THE RETURN OF COLLATERAL OR MAKE  
6 REPOSSESSIONS.

7       (iv) USE, COMMINGLE, OR DISPOSE OF PROCEEDS.

8       (B) THE SECURED PARTY FAILS TO REQUIRE THE DEBTOR TO ACCOUNT  
9 FOR PROCEEDS OR REPLACE COLLATERAL.

10       (2) THIS SECTION DOES NOT RELAX THE REQUIREMENTS OF POSSES-  
11 SION IF ATTACHMENT, PERFECTION, OR ENFORCEMENT OR A SECURITY  
12 INTEREST DEPENDS UPON POSSESSION OF THE COLLATERAL BY THE SECURED  
13 PARTY.

14       Sec. 9206. ~~—(1) Subject to any statute or decision which~~  
15 ~~establishes a different rule for buyers or lessees of consumer~~  
16 ~~goods, an agreement by a buyer or lessee that he will not assert~~  
17 ~~against an assignee any claim or defense which he may have~~  
18 ~~against the seller or lessor is enforceable by an assignee who~~  
19 ~~takes his assignment for value, in good faith and without notice~~  
20 ~~of a claim or defense, except as to defenses of a type which may~~  
21 ~~be asserted against a holder in due course of a negotiable~~  
22 ~~instrument under the article on commercial paper (article 3). A~~  
23 ~~buyer who as part of one transaction signs both a negotiable~~  
24 ~~instrument and a security agreement makes such an agreement.~~

25       ~~(2) When a seller retains a purchase money security interest~~  
26 ~~in goods the article on sales (article 2) governs the sale and~~

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

102

1 ~~any disclaimer, limitation or modification of the seller's~~  
2 ~~warranties.~~

3       (1) A SECURITY INTEREST IN FAVOR OF A SECURITIES INTERMEDI-  
4 ARY ATTACHES TO A PERSON'S SECURITY ENTITLEMENT IF THE PERSON  
5 BUYS A FINANCIAL ASSET THROUGH THE SECURITIES INTERMEDIARY IN A  
6 TRANSACTION IN WHICH THE PERSON IS OBLIGATED TO PAY THE PURCHASE  
7 PRICE TO THE SECURITIES INTERMEDIARY AT THE TIME OF THE PURCHASE,  
8 AND THE SECURITIES INTERMEDIARY CREDITS THE FINANCIAL ASSET TO  
9 THE BUYER'S SECURITIES ACCOUNT BEFORE THE BUYER PAYS THE SECURI-  
10 TIES INTERMEDIARY.

11       (2) THE SECURITY INTEREST DESCRIBED IN SUBSECTION (1)  
12 SECURES THE PERSON'S OBLIGATION TO PAY FOR THE FINANCIAL ASSET.

13       (3) A SECURITY INTEREST IN FAVOR OF A PERSON THAT DELIVERS A  
14 CERTIFICATED SECURITY OR OTHER FINANCIAL ASSET REPRESENTED BY A  
15 WRITING ATTACHES TO THE SECURITY OR OTHER FINANCIAL ASSET IF BOTH  
16 OF THE FOLLOWING ARE MET:

17       (A) THE SECURITY OR OTHER FINANCIAL ASSET IN THE ORDINARY  
18 COURSE OF BUSINESS IS TRANSFERRED BY DELIVERY WITH ANY NECESSARY  
19 INDORSEMENT OR ASSIGNMENT, AND IS DELIVERED UNDER AN AGREEMENT  
20 BETWEEN PERSONS IN THE BUSINESS OF DEALING WITH THE SECURITIES OR  
21 FINANCIAL ASSETS.

22       (B) THE AGREEMENT CALLS FOR DELIVERY AGAINST PAYMENT.

23       (4) THE SECURITY INTEREST DESCRIBED IN SUBSECTION (3)  
24 SECURES THE OBLIGATION TO MAKE PAYMENT FOR THE DELIVERY.

25                               SUBPART 2. RIGHTS AND DUTIES

26       Sec. 9207. ~~-(1) A secured party must use reasonable care in~~  
27 ~~the custody and preservation of collateral in his possession. In~~

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

103

1 ~~the case of an instrument or chattel paper reasonable care~~  
2 ~~includes taking necessary steps to preserve rights against prior~~  
3 ~~parties unless otherwise agreed.~~

4       ~~(2) Unless otherwise agreed, when collateral is in the~~  
5 ~~secured party's possession~~

6       ~~(a) reasonable expenses (including the cost of any insurance~~  
7 ~~and payment of taxes or other charges) incurred in the custody,~~  
8 ~~preservation, use or operation of the collateral are chargeable~~  
9 ~~to the debtor and are secured by the collateral;~~

10       ~~(b) the risk of accidental loss or damage is on the debtor~~  
11 ~~to the extent of any deficiency in any effective insurance cover-~~  
12 ~~age;~~

13       ~~(c) the secured party may hold as additional security any~~  
14 ~~increase or profits (except money) received from the collateral,~~  
15 ~~but money so received, unless remitted to the debtor, shall be~~  
16 ~~applied in reduction of the secured obligation;~~

17       ~~(d) the secured party must keep the collateral identifiable~~  
18 ~~but fungible collateral may be commingled;~~

19       ~~(e) the secured party may repledge the collateral upon terms~~  
20 ~~which do not impair the debtor's right to redeem it.~~

21       ~~(3) A secured party is liable for any loss caused by his~~  
22 ~~failure to meet any obligation imposed by the preceding subsec-~~  
23 ~~tions but does not lose his security interest.~~

24       ~~(4) A secured party may use or operate the collateral for~~  
25 ~~the purpose of preserving the collateral or its value or pursuant~~  
26 ~~to the order of a court of appropriate jurisdiction or, except in~~

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

104

~~1 the case of consumer goods, in the manner and to the extent  
2 provided in the security agreement.~~

3       (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (4), A  
4 SECURED PARTY SHALL USE REASONABLE CARE IN THE CUSTODY AND PRE-  
5 SERVATION OF COLLATERAL IN THE SECURED PARTY'S POSSESSION. IN  
6 THE CASE OF CHATTEL PAPER OR AN INSTRUMENT, REASONABLE CARE  
7 INCLUDES TAKING NECESSARY STEPS TO PRESERVE RIGHTS AGAINST PRIOR  
8 PARTIES UNLESS OTHERWISE AGREED.

9       (2) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (4), IF A  
10 SECURED PARTY HAS POSSESSION OF COLLATERAL ALL OF THE FOLLOWING  
11 APPLY:

12       (A) REASONABLE EXPENSES, INCLUDING THE COST OF INSURANCE AND  
13 PAYMENT OF TAXES OR OTHER CHARGES, INCURRED IN THE CUSTODY, PRE-  
14 SERVATION, USE, OR OPERATION OF THE COLLATERAL ARE CHARGEABLE TO  
15 THE DEBTOR AND ARE SECURED BY THE COLLATERAL.

16       (B) THE RISK OF ACCIDENTAL LOSS OR DAMAGE IS ON THE DEBTOR  
17 TO THE EXTENT OF A DEFICIENCY IN ANY EFFECTIVE INSURANCE  
18 COVERAGE.

19       (C) THE SECURED PARTY SHALL KEEP THE COLLATERAL IDENTIFI-  
20 FIABLE, BUT FUNGIBLE COLLATERAL MAY BE COMMINGLED.

21       (D) THE SECURED PARTY MAY USE OR OPERATE THE COLLATERAL FOR  
22 THE PURPOSE OF PRESERVING THE COLLATERAL OR ITS VALUE; AS PERMIT-  
23 TED BY AN ORDER OF A COURT HAVING COMPETENT JURISDICTION; OR  
24 EXCEPT IN THE CASE OF CONSUMER GOODS, IN THE MANNER AND TO THE  
25 EXTENT AGREED BY THE DEBTOR.

26       (3) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (4), A  
27 SECURED PARTY HAVING POSSESSION OF COLLATERAL OR CONTROL OF



**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

105

1 COLLATERAL UNDER SECTION 9104, 9105, 9106, OR 9107 MAY HOLD AS  
2 ADDITIONAL SECURITY ANY PROCEEDS, EXCEPT MONEY OR FUNDS, RECEIVED  
3 FROM THE COLLATERAL, SHALL APPLY MONEY OR FUNDS RECEIVED FROM THE  
4 COLLATERAL TO REDUCE THE SECURED OBLIGATION UNLESS REMITTED TO  
5 THE DEBTOR, AND MAY CREATE A SECURITY INTEREST IN THE  
6 COLLATERAL.

7 (4) IF THE SECURED PARTY IS A BUYER OF ACCOUNTS, CHATTEL  
8 PAPER, PAYMENT INTANGIBLES, OR PROMISSORY NOTES OR A CONSIGNOR,  
9 SUBSECTIONS (2) AND (3) DO NOT APPLY, AND SUBSECTION (1) DOES NOT  
10 APPLY UNLESS THE SECURED PARTY IS ENTITLED UNDER AN AGREEMENT TO  
11 CHARGE BACK UNCOLLECTED COLLATERAL OR OTHERWISE TO FULL OR  
12 LIMITED RECOURSE AGAINST THE DEBTOR OR A SECONDARY OBLIGOR BASED  
13 ON THE NONPAYMENT OR OTHER DEFAULT OF AN ACCOUNT DEBTOR OR OTHER  
14 OBLIGOR ON THE COLLATERAL.

15 Sec. 9208. ~~-(1) A debtor may sign a statement indicating~~  
16 ~~what he believes to be the aggregate amount of unpaid indebted-~~  
17 ~~ness as of a specified date and may send it to the secured party~~  
18 ~~with a request that the statement be approved or corrected and~~  
19 ~~returned to the debtor. When the security agreement or any other~~  
20 ~~record kept by the secured party identifies the collateral a~~  
21 ~~debtor may similarly request the secured party to approve or cor-~~  
22 ~~rect a list of the collateral.~~

23 ~~(2) The secured party must comply with such a request within~~  
24 ~~2 weeks after receipt by sending a written correction or~~  
25 ~~approval. If the secured party claims a security interest in all~~  
26 ~~of a particular type of collateral owned by the debtor he may~~  
27 ~~indicate that fact in his reply and need not approve or correct~~

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

106

1 ~~an itemized list of such collateral. If the secured party~~  
2 ~~without reasonable excuse fails to comply he is liable for any~~  
3 ~~loss caused to the debtor thereby; and if the debtor has properly~~  
4 ~~included in his request a good faith statement of the obligation~~  
5 ~~or a list of the collateral or both the secured party may claim a~~  
6 ~~security interest only as shown in the statement against persons~~  
7 ~~misled by his failure to comply. If he no longer has an interest~~  
8 ~~in the obligation or collateral at the time the request is~~  
9 ~~received he must disclose the name and address of any successor~~  
10 ~~in interest known to him and he is liable for any loss caused to~~  
11 ~~the debtor as a result of failure to disclose. A successor in~~  
12 ~~interest is not subject to this section until a request is~~  
13 ~~received by him.~~

14 ~~(3) A debtor is entitled to such a statement once every 6~~  
15 ~~months without charge. The secured party may require payment of~~  
16 ~~a charge not exceeding \$10.00 for each additional statement~~  
17 ~~furnished.~~

18 (1) THIS SECTION APPLIES TO CASES IN WHICH THERE IS NO OUT-  
19 STANDING SECURED OBLIGATION AND THE SECURED PARTY IS NOT COMMIT-  
20 TED TO MAKE ADVANCES, INCUR OBLIGATIONS, OR OTHERWISE GIVE  
21 VALUE.

22 (2) WITHIN 10 DAYS AFTER RECEIVING AN AUTHENTICATED DEMAND  
23 BY THE DEBTOR, A SECURED PARTY SHALL DO ALL OF THE FOLLOWING THAT  
24 APPLY TO THE SECURED PARTY:

25 (A) A SECURED PARTY HAVING CONTROL OF A DEPOSIT ACCOUNT  
26 UNDER SECTION 9104(1)(B) SHALL SEND TO THE BANK WITH WHICH THE  
27 DEPOSIT ACCOUNT IS MAINTAINED AN AUTHENTICATED STATEMENT THAT

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

107

1 RELEASES THE BANK FROM ANY FURTHER OBLIGATION TO COMPLY WITH  
2 INSTRUCTIONS ORIGINATED BY THE SECURED PARTY.

3 (B) A SECURED PARTY HAVING CONTROL OF A DEPOSIT ACCOUNT  
4 UNDER SECTION 9104(1)(C) SHALL PAY THE DEBTOR THE BALANCE ON  
5 DEPOSIT IN THE DEPOSIT ACCOUNT OR TRANSFER THE BALANCE ON DEPOSIT  
6 INTO A DEPOSIT ACCOUNT IN THE DEBTOR'S NAME.

7 (C) A SECURED PARTY, OTHER THAN A BUYER, HAVING CONTROL OF  
8 ELECTRONIC CHATTEL PAPER UNDER SECTION 9105 SHALL DO ALL OF THE  
9 FOLLOWING:

10 (i) COMMUNICATE THE AUTHORITATIVE COPY OF THE ELECTRONIC  
11 CHATTEL PAPER TO THE DEBTOR OR ITS DESIGNATED CUSTODIAN.

12 (ii) IF THE DEBTOR DESIGNATES A CUSTODIAN THAT IS THE DESIG-  
13 NATED CUSTODIAN WITH WHICH THE AUTHORITATIVE COPY OF THE ELEC-  
14 TRONIC CHATTEL PAPER IS MAINTAINED FOR THE SECURED PARTY, COMMU-  
15 NICATE TO THE CUSTODIAN AN AUTHENTICATED RECORD RELEASING THE  
16 DESIGNATED CUSTODIAN FROM ANY FURTHER OBLIGATION TO COMPLY WITH  
17 INSTRUCTIONS ORIGINATED BY THE SECURED PARTY AND INSTRUCTING THE  
18 CUSTODIAN TO COMPLY WITH INSTRUCTIONS ORIGINATED BY THE DEBTOR.

19 (iii) TAKE APPROPRIATE ACTION TO ENABLE THE DEBTOR OR ITS  
20 DESIGNATED CUSTODIAN TO MAKE COPIES OF OR REVISIONS TO THE  
21 AUTHORITATIVE COPY THAT ADD OR CHANGE AN IDENTIFIED ASSIGNEE OF  
22 THE AUTHORITATIVE COPY WITHOUT THE CONSENT OF THE SECURED PARTY.

23 (D) A SECURED PARTY HAVING CONTROL OF INVESTMENT PROPERTY  
24 UNDER SECTION 8106(4)(B) OR SECTION 9106(2) SHALL SEND TO THE  
25 SECURITIES INTERMEDIARY OR COMMODITY INTERMEDIARY WITH WHICH THE  
26 SECURITY ENTITLEMENT OR COMMODITY CONTRACT IS MAINTAINED AN  
27 AUTHENTICATED RECORD THAT RELEASES THE SECURITIES INTERMEDIARY OR

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

108

1 COMMODITY INTERMEDIARY FROM ANY FURTHER OBLIGATION TO COMPLY WITH  
2 ENTITLEMENT ORDERS OR DIRECTIONS ORIGINATED BY THE SECURED  
3 PARTY.

4 (E) A SECURED PARTY HAVING CONTROL OF A LETTER-OF-CREDIT  
5 RIGHT UNDER SECTION 9107 SHALL SEND TO EACH PERSON HAVING AN  
6 UNFULFILLED OBLIGATION TO PAY OR DELIVER PROCEEDS OF THE LETTER  
7 OF CREDIT TO THE SECURED PARTY AN AUTHENTICATED RELEASE FROM ANY  
8 FURTHER OBLIGATION TO PAY OR DELIVER PROCEEDS OF THE LETTER OF  
9 CREDIT TO THE SECURED PARTY.

10 SEC. 9209. (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION  
11 (3), THIS SECTION APPLIES IF THERE IS NO OUTSTANDING SECURED  
12 OBLIGATION AND THE SECURED PARTY IS NOT COMMITTED TO MAKE  
13 ADVANCES, INCUR OBLIGATIONS, OR OTHERWISE GIVE VALUE.

14 (2) WITHIN 10 DAYS AFTER RECEIVING AN AUTHENTICATED DEMAND  
15 BY THE DEBTOR, A SECURED PARTY SHALL SEND TO AN ACCOUNT DEBTOR  
16 THAT HAS RECEIVED NOTIFICATION OF AN ASSIGNMENT TO THE SECURED  
17 PARTY AS ASSIGNEE UNDER SECTION 9406(1) AN AUTHENTICATED RECORD  
18 THAT RELEASES THE ACCOUNT DEBTOR FROM ANY FURTHER OBLIGATION TO  
19 THE SECURED PARTY.

20 (3) THIS SECTION DOES NOT APPLY TO AN ASSIGNMENT CONSTITUT-  
21 ING THE SALE OF AN ACCOUNT, CHATTEL PAPER, OR PAYMENT INTANGIBLE.

22 SEC. 9210. (1) AS USED IN THIS SECTION:

23 (A) "REQUEST" MEANS A RECORD OF A TYPE DESCRIBED IN SUBDIVI-  
24 SION (B), (C), OR (D).

25 (B) "REQUEST FOR AN ACCOUNTING" MEANS A RECORD AUTHENTICATED  
26 BY A DEBTOR REQUESTING THAT THE RECIPIENT PROVIDE AN ACCOUNTING  
27 OF THE UNPAID OBLIGATIONS SECURED BY COLLATERAL AND REASONABLY

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

109

1 IDENTIFYING THE TRANSACTION OR RELATIONSHIP THAT IS THE SUBJECT  
2 OF THE REQUEST.

3 (C) "REQUEST REGARDING A LIST OF COLLATERAL" MEANS A RECORD  
4 AUTHENTICATED BY A DEBTOR REQUESTING THAT THE RECIPIENT APPROVE  
5 OR CORRECT A LIST OF WHAT THE DEBTOR BELIEVES TO BE THE COLLAT-  
6 ERAL SECURING AN OBLIGATION AND REASONABLY IDENTIFYING THE TRANS-  
7 ACTION OR RELATIONSHIP THAT IS THE SUBJECT OF THE REQUEST.

8 (D) "REQUEST REGARDING A STATEMENT OF ACCOUNT" MEANS A  
9 RECORD AUTHENTICATED BY A DEBTOR REQUESTING THAT THE RECIPIENT  
10 APPROVE OR CORRECT A STATEMENT INDICATING WHAT THE DEBTOR  
11 BELIEVES TO BE THE AGGREGATE AMOUNT OF UNPAID OBLIGATIONS SECURED  
12 BY COLLATERAL AS OF A SPECIFIED DATE AND REASONABLY IDENTIFYING  
13 THE TRANSACTION OR RELATIONSHIP THAT IS THE SUBJECT OF THE  
14 REQUEST.

15 (2) SUBJECT TO SUBSECTIONS (3), (4), (5), AND (6), A SECURED  
16 PARTY, OTHER THAN A BUYER OF ACCOUNTS, CHATTEL PAPER, PAYMENT  
17 INTANGIBLES, OR PROMISSORY NOTES OR A CONSIGNOR, SHALL COMPLY  
18 WITH A REQUEST IN THE FOLLOWING MANNER WITHIN 14 DAYS AFTER THE  
19 RECEIPT OF THE REQUEST:

20 (A) IN THE CASE OF A REQUEST FOR AN ACCOUNTING, BY AUTHENTI-  
21 CATING AND SENDING TO THE DEBTOR AN ACCOUNTING.

22 (B) IN THE CASE OF A REQUEST REGARDING A LIST OF COLLATERAL  
23 OR A REQUEST REGARDING A STATEMENT OF ACCOUNT, BY AUTHENTICATING  
24 AND SENDING TO THE DEBTOR AN APPROVAL OR CORRECTION.

25 (3) A SECURED PARTY THAT CLAIMS A SECURITY INTEREST IN ALL  
26 OF A PARTICULAR TYPE OF COLLATERAL OWNED BY THE DEBTOR MAY COMPLY  
27 WITH A REQUEST REGARDING A LIST OF COLLATERAL BY SENDING TO THE

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

110

1 DEBTOR AN AUTHENTICATED RECORD INCLUDING A STATEMENT TO THAT  
2 EFFECT WITHIN 14 DAYS AFTER RECEIPT.

3 (4) A PERSON THAT RECEIVES A REQUEST REGARDING A LIST OF  
4 COLLATERAL, CLAIMS NO INTEREST IN THE COLLATERAL WHEN IT RECEIVES  
5 THE REQUEST, AND CLAIMED AN INTEREST IN THE COLLATERAL AT AN EAR-  
6 LIER TIME SHALL COMPLY WITH THE REQUEST WITHIN 14 DAYS AFTER  
7 RECEIPT BY SENDING TO THE DEBTOR AN AUTHENTICATED RECORD DIS-  
8 CLAIMING ANY INTEREST IN THE COLLATERAL, AND IF KNOWN TO THE  
9 RECIPIENT, PROVIDING THE NAME AND MAILING ADDRESS OF ANY ASSIGNEE  
10 OF OR SUCCESSOR TO THE RECIPIENT'S INTEREST IN THE COLLATERAL.

11 (5) A PERSON THAT RECEIVES A REQUEST FOR AN ACCOUNTING OR A  
12 REQUEST REGARDING A STATEMENT OF ACCOUNT, CLAIMS NO INTEREST IN  
13 THE OBLIGATIONS WHEN IT RECEIVES THE REQUEST, AND CLAIMED AN  
14 INTEREST IN THE OBLIGATIONS AT AN EARLIER TIME SHALL COMPLY WITH  
15 THE REQUEST WITHIN 14 DAYS AFTER RECEIPT BY SENDING TO THE DEBTOR  
16 AN AUTHENTICATED RECORD DISCLAIMING ANY INTEREST IN THE OBLIGA-  
17 TIONS, AND IF KNOWN TO THE RECIPIENT, PROVIDING THE NAME AND  
18 MAILING ADDRESS OF ANY ASSIGNEE OF OR SUCCESSOR TO THE  
19 RECIPIENT'S INTEREST IN THE OBLIGATIONS.

20 (6) A DEBTOR IS ENTITLED WITHOUT CHARGE TO 1 RESPONSE TO A  
21 REQUEST UNDER THIS SECTION DURING ANY 6-MONTH PERIOD. THE  
22 SECURED PARTY MAY REQUIRE PAYMENT OF A CHARGE NOT EXCEEDING  
23 \$25.00 FOR EACH ADDITIONAL RESPONSE.

24 PART 3

25 ~~RIGHTS OF THIRD PARTIES; PERFECTED AND UNPERFECTED SECURITY~~

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

111

~~INTERESTS; RULES OF PERFECT AND PRIORITY~~

SUBPART 1. LAW GOVERNING PERFECTION AND PRIORITY

Sec. 9301. ~~-(1) Except as otherwise provided in subsection (2), an unperfected security interest is subordinate to the rights of:~~

~~(a) Persons entitled to priority under section 9312;~~

~~(b) A person who becomes a lien creditor before the security interest is perfected;~~

~~(c) In the case of goods, instruments, documents, and chat-~~

~~tel paper, a person who is not a secured party and who is a~~

~~transferee in bulk or other buyer not in ordinary course of busi-~~

~~ness, or is a buyer of farm products in the ordinary course of~~

~~business, to the extent that the person gives value and receives~~

~~delivery of the collateral without knowledge of the security~~

~~interest and before it is perfected;~~

~~(d) In the case of accounts, general intangibles, and~~

~~investment property, a person who is not a secured party and who~~

~~is a transferee to the extent that the person gives value without~~

~~knowledge of the security interest and before it is perfected.~~

~~(2) If the secured party files with respect to a purchase~~

~~money security interest before or within 20 days after the debtor~~

~~receives possession of the collateral, the secured party takes~~

~~priority over the rights of a transferee in bulk or of a lien~~

~~creditor which arise between the time the security interest~~

~~attaches and the time of filing.~~

~~(3) A "lien creditor" means a creditor who has acquired a~~

~~lien on the property involved by attachment, levy, or the like~~

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

112

1 ~~and includes an assignee for benefit of creditors from the time~~  
2 ~~of assignment, and a trustee in bankruptcy from the date of the~~  
3 ~~filing of the petition or a receiver in equity from the time of~~  
4 ~~appointment.~~

5 ~~(4) A person who becomes a lien creditor while a security~~  
6 ~~interest is perfected takes subject to the security interest only~~  
7 ~~to the extent that it secures advances made before the person~~  
8 ~~becomes a lien creditor or within 45 days thereafter or made~~  
9 ~~without knowledge of the lien or pursuant to a commitment entered~~  
10 ~~into without knowledge of the lien. EXCEPT AS OTHERWISE PROVIDED~~  
11 ~~IN SECTIONS 9303 THROUGH 9306, THE FOLLOWING RULES DETERMINE THE~~  
12 ~~LAW GOVERNING PERFECTION, THE EFFECT OF PERFECTION OR NONPERFEC-~~  
13 ~~TION, AND THE PRIORITY OF A SECURITY INTEREST IN COLLATERAL:~~

14 (A) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, WHILE A  
15 DEBTOR IS LOCATED IN A JURISDICTION, THE LOCAL LAW OF THAT JURIS-  
16 DICTION GOVERNS PERFECTION, THE EFFECT OF PERFECTION OR NONPER-  
17 FECTION, AND THE PRIORITY OF A SECURITY INTEREST IN COLLATERAL.

18 (B) WHILE COLLATERAL IS LOCATED IN A JURISDICTION, THE LOCAL  
19 LAW OF THAT JURISDICTION GOVERNS PERFECTION, THE EFFECT OF PER-  
20 FECTION OR NONPERFECTION, AND THE PRIORITY OF A POSSESSORY SECUR-  
21 ITY INTEREST IN THAT COLLATERAL.

22 (C) EXCEPT AS OTHERWISE PROVIDED IN SUBDIVISION (D), WHILE  
23 NEGOTIABLE DOCUMENTS, GOODS, INSTRUMENTS, MONEY, OR TANGIBLE  
24 CHATTEL PAPER IS LOCATED IN A JURISDICTION, THE LOCAL LAW OF THAT  
25 JURISDICTION GOVERNS PERFECTION OF A SECURITY INTEREST IN THE  
26 GOODS BY FILING A FIXTURE FILING, PERFECTION OF A SECURITY  
27 INTEREST IN TIMBER TO BE CUT, AND THE EFFECT OF PERFECTION OR



**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

113

1 NONPERFECTION AND THE PRIORITY OF A NONPOSSESSORY SECURITY

2 INTEREST IN THE COLLATERAL.

3 (D) THE LOCAL LAW OF THE JURISDICTION IN WHICH THE WELLHEAD  
4 OR MINEHEAD IS LOCATED GOVERNS PERFECTION, THE EFFECT OF PERFEC-  
5 TION OR NONPERFECTION, AND THE PRIORITY OF A SECURITY INTEREST IN  
6 AS-EXTRACTED COLLATERAL.

7 Sec. 9302. ~~(1) A financing statement must be filed to per-~~  
8 ~~fect all security interests except the following:~~

9 ~~(a) A security interest in collateral in possession of the~~  
10 ~~secured party under section 9305;~~

11 ~~(b) A security interest temporarily perfected in instru-~~  
12 ~~ments, certificated securities, or documents without delivery~~  
13 ~~under section 9304 or in proceeds for a 10-day period under sec-~~  
14 ~~tion 9306;~~

15 ~~(c) A security interest created by an assignment of a bene-~~  
16 ~~ficial interest in a trust or a decedent's estate;~~

17 ~~(d) A purchase money security interest in consumer goods;~~  
18 ~~other than a vehicle, mobile home, or watercraft, for which a~~  
19 ~~certificate of title is required by the laws of this state, and~~  
20 ~~fixture filing is required for priority over conflicting inter-~~  
21 ~~ests in fixtures to the extent provided in section 9313;~~

22 ~~(e) An assignment of accounts which does not alone or in~~  
23 ~~conjunction with other assignments to the same assignee transfer~~  
24 ~~a significant part of the outstanding accounts of the assignor;~~

25 ~~(f) A security interest of a collecting bank (section 4210)~~  
26 ~~or arising under the article on sales (see section 9113) or~~  
27 ~~covered in subsection (3) of this section;~~

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

114

1       ~~(g) An assignment for the benefit of all the creditors of~~  
2 ~~the transferor, and subsequent transfers by the assignee~~  
3 ~~thereunder.~~

4       ~~(h) A security interest in investment property which is per-~~  
5 ~~fectured without filing under section 9115 or section 9116.~~

6       ~~(2) If a secured party assigns a perfected security inter-~~  
7 ~~est, no filing under this article is required in order to con-~~  
8 ~~tinue the perfected status of the security interest against cred-~~  
9 ~~itors of and transferees from the original debtor.~~

10       ~~(3) The filing of a financing statement otherwise required~~  
11 ~~by this article is not necessary or effective to perfect a secur-~~  
12 ~~ity interest in property subject to:~~

13       ~~(a) A statute or treaty of the United States which provides~~  
14 ~~for a national or international registration or a national or~~  
15 ~~international certificate of title or which specifies a place of~~  
16 ~~filing different from that specified in this article for filing~~  
17 ~~of the security interest; or~~

18       ~~(b) The following statutes of this state: (i) section 216~~  
19 ~~of the Michigan vehicle code, Act No. 300 of the Public Acts of~~  
20 ~~1949, being section 257.216 of the Michigan Compiled Laws; (ii)~~  
21 ~~section 80320 of part 803 (watercraft transfer and certificate of~~  
22 ~~title) of the natural resources and environmental protection act,~~  
23 ~~Act No. 451 of the Public Acts of 1994, being section 324.80320~~  
24 ~~of the Michigan Compiled Laws; and (iii) section 30 of the mobile~~  
25 ~~home commission act, Act No. 96 of the Public Acts of 1987, being~~  
26 ~~section 125.2330 of the Michigan Compiled Laws; but during any~~  
27 ~~period in which collateral is inventory held for sale by a person~~

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

115

1 ~~who is in the business of selling goods of that kind, the filing~~  
2 ~~provisions of this article (part 4) apply to a security interest~~  
3 ~~in that collateral created by that person as debtor; or~~

4 ~~(c) A certificate of title statute of another jurisdiction~~  
5 ~~under the law of which indication of a security interest on the~~  
6 ~~certificate is required as a condition of perfection as provided~~  
7 ~~in section 9103(2).~~

8 ~~(4) Compliance with a statute or treaty described in subsec-~~  
9 ~~tion (3)(a) or (3)(c), or in the case of subsection (3)(b)(i),~~  
10 ~~compliance with section 217 or 238 of Act No. 300 of the Public~~  
11 ~~Acts of 1949, being sections 257.217 and 257.238 of the Michigan~~  
12 ~~Compiled Laws, or in the case of subsection (3)(b)(ii), compli-~~  
13 ~~ance with section 80320 of part 803 of Act No. 451 of the Public~~  
14 ~~Acts of 1994, or in the case of subsection (3)(b)(iii), compli-~~  
15 ~~ance with section 30a or 30d of Act No. 96 of the Public Acts of~~  
16 ~~1987, being sections 125.2330a and 125.2330d of the Michigan~~  
17 ~~Compiled Laws, is equivalent to the filing of a financing state-~~  
18 ~~ment under this article, and a security interest in property~~  
19 ~~subject to the statute or treaty can be perfected only by compli-~~  
20 ~~ance therewith except as provided in section 9103 on multiple~~  
21 ~~state transactions. Duration and renewal of perfection of a~~  
22 ~~security interest perfected by compliance with the statute or~~  
23 ~~treaty are governed by the provisions of the statute or treaty.~~  
24 ~~In other respects the security interest is subject to this~~  
25 ~~article. WHILE FARM PRODUCTS ARE LOCATED IN A JURISDICTION, THE~~  
26 ~~LOCAL LAW OF THAT JURISDICTION GOVERNS PERFECTION, THE EFFECT OF~~

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

116

1 PERFECTION OR NONPERFECTION, AND THE PRIORITY OF AN AGRICULTURAL  
2 LIEN ON THE FARM PRODUCTS.

3       Sec. 9303. ~~-(1) A security interest is perfected when it~~  
4 ~~has attached and when all of the applicable steps required for~~  
5 ~~perfection have been taken. Such steps are specified in sections~~  
6 ~~9115, 9302, 9304, 9305 and 9306. If such steps are taken before~~  
7 ~~the security interest attaches, it is perfected at the time when~~  
8 ~~it attaches.~~

9       ~~(2) If a security interest is originally perfected in any~~  
10 ~~way permitted under this article and is subsequently perfected in~~  
11 ~~some other way under this article, without an intermediate period~~  
12 ~~when it was unperfected, the security interest shall be deemed to~~  
13 ~~be perfected continuously for the purposes of this article.~~

14       (1) THIS SECTION APPLIES TO GOODS COVERED BY A CERTIFICATE  
15 OF TITLE, EVEN IF THERE IS NO OTHER RELATIONSHIP BETWEEN THE  
16 JURISDICTION UNDER WHOSE CERTIFICATE OF TITLE THE GOODS ARE COV-  
17 ERED AND THE GOODS OR THE DEBTOR.

18       (2) GOODS BECOME COVERED BY A CERTIFICATE OF TITLE WHEN A  
19 VALID APPLICATION FOR THE CERTIFICATE OF TITLE AND THE APPLICABLE  
20 FEE ARE DELIVERED TO THE APPROPRIATE AUTHORITY. GOODS CEASE TO  
21 BE COVERED BY A CERTIFICATE OF TITLE AT THE EARLIER OF THE TIME  
22 THE CERTIFICATE OF TITLE CEASES TO BE EFFECTIVE UNDER THE LAW OF  
23 THE ISSUING JURISDICTION OR THE TIME THE GOODS BECOME COVERED  
24 SUBSEQUENTLY BY A CERTIFICATE OF TITLE ISSUED BY ANOTHER  
25 JURISDICTION.

26       (3) THE LOCAL LAW OF THE JURISDICTION UNDER WHOSE  
27 CERTIFICATE OF TITLE THE GOODS ARE COVERED GOVERNS PERFECTION,

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

117

1 THE EFFECT OF PERFECTION OR NONPERFECTION, AND THE PRIORITY OF A  
2 SECURITY INTEREST IN GOODS COVERED BY A CERTIFICATE OF TITLE FROM  
3 THE TIME THE GOODS BECOME COVERED BY THE CERTIFICATE OF TITLE  
4 UNTIL THE GOODS CEASE TO BE COVERED BY THE CERTIFICATE OF TITLE.

5       Sec. 9304. ~~-(1) A security interest in chattel paper or~~  
6 ~~negotiable documents may be perfected by filing. A security~~  
7 ~~interest in the rights to proceeds of a written letter of credit~~  
8 ~~can be perfected only by the secured party's taking possession of~~  
9 ~~the letter of credit. A security interest in money or instru=~~  
10 ~~ments, other than instruments which constitute part of chattel~~  
11 ~~paper, can be perfected only by the secured party's taking pos=~~  
12 ~~session, except as provided in subsections (4) and (5) and sec=~~  
13 ~~tion 9306(2) and (3) on proceeds.~~

14       ~~(2) During the period that goods are in the possession of~~  
15 ~~the issuer of a negotiable document therefor, a security interest~~  
16 ~~in the goods is perfected by perfecting a security interest in~~  
17 ~~the document, and a security interest in the goods otherwise per=~~  
18 ~~fectured during such period is subject thereto.~~

19       ~~(3) A security interest in goods in the possession of a~~  
20 ~~bailee other than one who has issued a negotiable document there=~~  
21 ~~for is perfected by issuance of a document in the name of the~~  
22 ~~security party or by the bailee's receipt of notification of the~~  
23 ~~secured party's interest or by filing as to the goods.~~

24       ~~(4) A security interest in instruments, certificated securi=~~  
25 ~~ties, or negotiable documents is perfected without filing or the~~  
26 ~~taking of possession for a period of 21 days from the time it~~

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

118

1 ~~attaches to the extent that it arises for a new value given under~~  
2 ~~a written security agreement.~~

3 ~~(5) A security interest remains perfected for a period of 21~~  
4 ~~days without filing where a secured party having a perfected~~  
5 ~~security interest in an instrument, a certificated security, a~~  
6 ~~negotiable document, or goods in possession of a bailee other~~  
7 ~~than one who has issued a negotiable document therefor:~~

8 ~~(a) Makes available to the debtor the goods or documents~~  
9 ~~representing the goods for the purpose of ultimate sale or~~  
10 ~~exchange or for the purpose of loading, unloading, storing, ship-~~  
11 ~~ping, transshipping, manufacturing, processing, or otherwise~~  
12 ~~dealing with them in a manner preliminary to their sale or~~  
13 ~~exchange; but priority between conflicting security interests in~~  
14 ~~the goods is subject to section 9312(3); or~~

15 ~~(b) Delivers the instrument or certificated security to the~~  
16 ~~debtor for the purpose of ultimate sale or exchange or of presen-~~  
17 ~~tation, collection, renewal, or registration of transfer.~~

18 ~~(6) After the 21-day period in subsections (4) and (5), per-~~  
19 ~~fection depends upon compliance with applicable provisions of~~  
20 ~~this article.~~

21 ~~(1) THE LOCAL LAW OF A BANK'S JURISDICTION GOVERNS PERFEC-~~  
22 ~~TION, THE EFFECT OF PERFECTION OR NONPERFECTION, AND THE PRIORITY~~  
23 ~~OF A SECURITY INTEREST IN A DEPOSIT ACCOUNT MAINTAINED WITH THAT~~  
24 ~~BANK.~~

25 ~~(2) THE FOLLOWING RULES DETERMINE A BANK'S JURISDICTION FOR~~  
26 ~~PURPOSES OF THIS PART:~~

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

119

1 (A) IF AN AGREEMENT BETWEEN THE BANK AND THE DEBTOR  
2 GOVERNING THE DEPOSIT ACCOUNT EXPRESSLY PROVIDES THAT A  
3 PARTICULAR JURISDICTION IS THE BANK'S JURISDICTION FOR THE PUR-  
4 POSE OF THIS PART, THIS ARTICLE, OR THIS ACT, THAT JURISDICTION  
5 IS THE BANK'S JURISDICTION.

6 (B) IF SUBDIVISION (A) DOES NOT APPLY AND AN AGREEMENT  
7 BETWEEN THE BANK AND ITS CUSTOMER GOVERNING THE DEPOSIT ACCOUNT  
8 EXPRESSLY PROVIDES THAT THE AGREEMENT IS GOVERNED BY THE LAW OF A  
9 PARTICULAR JURISDICTION, THAT JURISDICTION IS THE BANK'S  
10 JURISDICTION.

11 (C) IF NEITHER SUBDIVISION (A) NOR (B) APPLIES AND AN AGREE-  
12 MENT BETWEEN THE BANK AND ITS CUSTOMER GOVERNING THE DEPOSIT  
13 ACCOUNT EXPRESSLY PROVIDES THAT THE DEPOSIT ACCOUNT IS MAINTAINED  
14 AT AN OFFICE IN A PARTICULAR JURISDICTION, THAT JURISDICTION IS  
15 THE BANK'S JURISDICTION.

16 (D) IF NONE OF THE PRECEDING SUBDIVISIONS APPLY, THE BANK'S  
17 JURISDICTION IS THE JURISDICTION IN WHICH THE OFFICE IDENTIFIED  
18 IN AN ACCOUNT STATEMENT AS THE OFFICE SERVING THE CUSTOMER'S  
19 ACCOUNT IS LOCATED.

20 (E) IF NONE OF THE PRECEDING SUBDIVISIONS APPLY, THE BANK'S  
21 JURISDICTION IS THE JURISDICTION IN WHICH THE CHIEF EXECUTIVE  
22 OFFICE OF THE BANK IS LOCATED.

23 Sec. 9305. ~~A security interest in letters of credit and~~  
24 ~~advices of credit (section 5116(2)(a)), goods, instruments,~~  
25 ~~money, negotiable documents, or chattel paper may be perfected by~~  
26 ~~the secured party's taking possession of the collateral. A~~  
27 ~~security interest in the rights to proceeds of a written letter~~

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

120

1 ~~of credit can be perfected only by the secured party's taking~~  
2 ~~possession of the letter of credit. If such collateral other~~  
3 ~~than goods covered by a negotiable document is held by a bailee,~~  
4 ~~the secured party is deemed to have possession from the time the~~  
5 ~~bailee receives notification of the secured party's interest. A~~  
6 ~~security interest is perfected by possession from the time pos-~~  
7 ~~session is taken without relation back and continues only so long~~  
8 ~~as possession is retained, unless otherwise specified in this~~  
9 ~~article. The security interest may be otherwise perfected as~~  
10 ~~provided in this article before or after the period of possession~~  
11 ~~by the secured party.~~

12 (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3), THE FOL-  
13 LOWING RULES APPLY:

14 (A) WHILE A SECURITY CERTIFICATE IS LOCATED IN A JURISDIC-  
15 TION, THE LOCAL LAW OF THAT JURISDICTION GOVERNS PERFECTION, THE  
16 EFFECT OF PERFECTION OR NONPERFECTION, AND THE PRIORITY OF A  
17 SECURITY INTEREST IN THE CERTIFICATED SECURITY REPRESENTED  
18 THEREBY.

19 (B) THE LOCAL LAW OF THE ISSUER'S JURISDICTION AS SPECIFIED  
20 IN SECTION 8110(4) GOVERNS PERFECTION, THE EFFECT OF PERFECTION  
21 OR NONPERFECTION, AND THE PRIORITY OF A SECURITY INTEREST IN AN  
22 UNCERTIFICATED SECURITY.

23 (C) THE LOCAL LAW OF THE SECURITIES INTERMEDIARY'S JURISDIC-  
24 TION AS SPECIFIED IN SECTION 8110(5) GOVERNS PERFECTION, THE  
25 EFFECT OF PERFECTION OR NONPERFECTION, AND THE PRIORITY OF A  
26 SECURITY INTEREST IN A SECURITY ENTITLEMENT OR SECURITIES  
27 ACCOUNT.



**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

121

1 (D) THE LOCAL LAW OF THE COMMODITY INTERMEDIARY'S  
2 JURISDICTION GOVERNS PERFECTION, THE EFFECT OF PERFECTION OR NON-  
3 PERFECTION, AND THE PRIORITY OF A SECURITY INTEREST IN A COMMOD-  
4 ITY CONTRACT OR COMMODITY ACCOUNT.

5 (2) THE FOLLOWING RULES DETERMINE A COMMODITY INTERMEDIARY'S  
6 JURISDICTION FOR PURPOSES OF THIS PART:

7 (A) IF AN AGREEMENT BETWEEN THE COMMODITY INTERMEDIARY AND  
8 COMMODITY CUSTOMER GOVERNING THE COMMODITY ACCOUNT EXPRESSLY PRO-  
9 VIDES THAT A PARTICULAR JURISDICTION IS THE COMMODITY  
10 INTERMEDIARY'S JURISDICTION FOR PURPOSES OF THIS PART, THIS ARTI-  
11 CLE, OR THIS ACT, THAT JURISDICTION IS THE COMMODITY  
12 INTERMEDIARY'S JURISDICTION.

13 (B) IF SUBDIVISION (A) DOES NOT APPLY AND AN AGREEMENT  
14 BETWEEN THE COMMODITY INTERMEDIARY AND COMMODITY CUSTOMER GOVERN-  
15 ING THE COMMODITY ACCOUNT EXPRESSLY PROVIDES THAT THE AGREEMENT  
16 IS GOVERNED BY THE LAW OF A PARTICULAR JURISDICTION, THAT JURIS-  
17 DICTION IS THE COMMODITY INTERMEDIARY'S JURISDICTION.

18 (C) IF NEITHER SUBDIVISION (A) NOR (B) APPLIES AND AN AGREE-  
19 MENT BETWEEN THE COMMODITY INTERMEDIARY AND COMMODITY CUSTOMER  
20 GOVERNING THE COMMODITY ACCOUNT EXPRESSLY PROVIDES THAT THE COM-  
21 MODITY ACCOUNT IS MAINTAINED AT AN OFFICE IN A PARTICULAR JURIS-  
22 DICTION, THAT JURISDICTION IS THE COMMODITY INTERMEDIARY'S  
23 JURISDICTION.

24 (D) IF NONE OF THE PRECEDING SUBDIVISIONS APPLY, THE COMMOD-  
25 ITY INTERMEDIARY'S JURISDICTION IS THE JURISDICTION IN WHICH THE  
26 OFFICE IDENTIFIED IN AN ACCOUNT STATEMENT AS THE OFFICE SERVING  
27 THE COMMODITY CUSTOMER'S ACCOUNT IS LOCATED.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

122

1 (E) IF NONE OF THE PRECEDING SUBDIVISIONS APPLY, THE  
2 COMMODITY INTERMEDIARY'S JURISDICTION IS THE JURISDICTION IN  
3 WHICH THE CHIEF EXECUTIVE OFFICE OF THE COMMODITY INTERMEDIARY IS  
4 LOCATED.

5 (3) THE LOCAL LAW OF THE JURISDICTION IN WHICH THE DEBTOR IS  
6 LOCATED GOVERNS PERFECTION OF A SECURITY INTEREST IN INVESTMENT  
7 PROPERTY BY FILING, AUTOMATIC PERFECTION OF A SECURITY INTEREST  
8 IN INVESTMENT PROPERTY CREATED BY A BROKER OR SECURITIES INTERME-  
9 DIARY, AND AUTOMATIC PERFECTION OF A SECURITY INTEREST IN A COM-  
10 MODITY CONTRACT OR COMMODITY ACCOUNT CREATED BY A COMMODITY  
11 INTERMEDIARY.

12 Sec. 9306. ~~-(1) "Proceeds" includes whatever is received~~  
13 ~~upon the sale, exchange, collection or other disposition of col-~~  
14 ~~lateral, or proceeds. Insurance payable by reason of loss or~~  
15 ~~damage to the collateral is proceeds, except to the extent that~~  
16 ~~it is payable to a person other than a party to the security~~  
17 ~~agreement. Any payments or distributions made with respect to~~  
18 ~~investment property collateral are proceeds. Money, checks,~~  
19 ~~deposit accounts, and the like are "cash proceeds". All other~~  
20 ~~proceeds are "noncash proceeds".~~

21 ~~-(2) Except where this article otherwise provides, a security~~  
22 ~~interest continues in collateral notwithstanding sale, exchange~~  
23 ~~or other disposition thereof unless the disposition was autho-~~  
24 ~~rized by the secured party in the security agreement or other-~~  
25 ~~wise, and also continues in any identifiable proceeds including~~  
26 ~~collections received by the debtor.~~

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

123

1       ~~(3) The security interest in proceeds is a continuously~~  
2 ~~perfected security interest if the interest in the original~~  
3 ~~collateral was perfected but it ceases to be a perfected security~~  
4 ~~interest and becomes unperfected 10 days after receipt of the~~  
5 ~~proceeds by the debtor unless:~~

6       ~~(a) A filed financing statement covers the original collat=~~  
7 ~~eral and the proceeds are collateral in which a security interest~~  
8 ~~may be perfected by filing in the office or offices where the~~  
9 ~~financing statement has been filed and, if the proceeds are~~  
10 ~~acquired with cash proceeds, the description of collateral in the~~  
11 ~~financing statement indicates the types of property constituting~~  
12 ~~the proceeds; or~~

13       ~~(b) A filed financing statement covers the original collat=~~  
14 ~~eral and the proceeds are identifiable cash proceeds; or~~

15       ~~(c) The original collateral was investment property and the~~  
16 ~~proceeds are identifiable cash proceeds; or~~

17       ~~(d) The security interest in the proceeds is perfected~~  
18 ~~before the expiration of the 10-day period. Except as provided~~  
19 ~~in this section, a security interest in proceeds can be perfected~~  
20 ~~only by the methods or under the circumstances permitted in this~~  
21 ~~article for original collateral of the same type.~~

22       ~~(4) In the event of insolvency proceedings instituted by or~~  
23 ~~against a debtor, a secured party with a perfected security~~  
24 ~~interest in proceeds has a perfected security interest only in~~  
25 ~~the following proceeds:~~

26       ~~(a) In identifiable noncash proceeds and in separate deposit~~  
27 ~~accounts containing only proceeds;~~

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

124

1       ~~(b) In identifiable cash proceeds in the form of money which~~  
2 ~~is neither commingled with other money nor deposited in a deposit~~  
3 ~~account prior to the insolvency proceedings;~~

4       ~~(c) In identifiable cash proceeds in the form of checks and~~  
5 ~~the like which are not deposited in a deposit account prior to~~  
6 ~~the insolvency proceedings; and~~

7       ~~(d) In all cash and deposit accounts of the debtor, in which~~  
8 ~~proceeds have been commingled with other funds, but the perfected~~  
9 ~~security interest under this paragraph (d) is~~

10       ~~(i) Subject to any right of setoff; and~~

11       ~~(ii) Limited to an amount not greater than the amount of any~~  
12 ~~cash proceeds received by the debtor within 10 days before the~~  
13 ~~institution of the insolvency proceedings less the sum of (i) the~~  
14 ~~payments to the secured party on account of cash proceeds~~  
15 ~~received by the debtor during such period and (ii) the cash pro-~~  
16 ~~ceeds received by the debtor during such period to which the~~  
17 ~~secured party is entitled under paragraphs (a) through (c) of~~  
18 ~~this subsection.~~

19       ~~(5) If a sale of goods results in an account or chattel~~  
20 ~~paper which is transferred by the seller to a secured party, and~~  
21 ~~if the goods are returned to or are repossessed by the seller or~~  
22 ~~the secured party, the following rules determine priorities:~~

23       ~~(a) If the goods were collateral at the time of sale for an~~  
24 ~~indebtedness of the seller which is still unpaid, the original~~  
25 ~~security interest attaches again to the goods and continues as a~~  
26 ~~perfected security interest if it was perfected at the time when~~  
27 ~~the goods were sold. If the security interest was originally~~

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

125

1 ~~perfected by a filing which is still effective, nothing further~~  
2 ~~is required to continue the perfected status; in any other case,~~  
3 ~~the secured party must take possession of the returned or repos=~~  
4 ~~sessed goods or must file.~~

5 ~~(b) An unpaid transferee of the chattel paper has a security~~  
6 ~~interest in the goods against the transferor. Such security~~  
7 ~~interest is prior to a security interest asserted under paragraph~~  
8 ~~(a) to the extent that the transferee of the chattel paper was~~  
9 ~~entitled to priority under section 9308.~~

10 ~~(c) An unpaid transferee of the account has a security~~  
11 ~~interest in the goods against the transferor. Such security~~  
12 ~~interest is subordinate to a security interest asserted under~~  
13 ~~paragraph (a).~~

14 ~~(d) A security interest of an unpaid transferee asserted~~  
15 ~~under paragraph (b) or (c) must be perfected for protection~~  
16 ~~against creditors of the transferor and purchasers of the~~  
17 ~~returned or repossessed goods.~~

18 (1) SUBJECT TO SUBSECTION (3), THE LOCAL LAW OF THE ISSUER'S  
19 JURISDICTION OR A NOMINATED PERSON'S JURISDICTION GOVERNS PERFEC-  
20 TION, THE EFFECT OF PERFECTION OR NONPERFECTION, AND THE PRIORITY  
21 OF A SECURITY INTEREST IN A LETTER-OF-CREDIT RIGHT IF THE  
22 ISSUER'S JURISDICTION OR NOMINATED PERSON'S JURISDICTION IS A  
23 STATE.

24 (2) FOR PURPOSES OF THIS PART, AN ISSUER'S JURISDICTION OR  
25 NOMINATED PERSON'S JURISDICTION IS THE JURISDICTION WHOSE LAW  
26 GOVERNS THE LIABILITY OF THE ISSUER OR NOMINATED PERSON WITH

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

126

1 RESPECT TO THE LETTER-OF-CREDIT RIGHT AS PROVIDED IN SECTION  
2 5116.

3 (3) THIS SECTION DOES NOT APPLY TO A SECURITY INTEREST THAT  
4 IS PERFECTED ONLY UNDER SECTION 9308(4).

5 Sec. 9307. ~~-(1) Except as otherwise provided by subsection~~  
6 ~~(10), a buyer in ordinary course of business, as defined in sec=~~  
7 ~~tion 1201(9), takes free of a security interest created by his or~~  
8 ~~her seller even though the security interest is perfected and~~  
9 ~~even though the buyer knows of its existence.~~

10 ~~(2) Subsections (3) to (10) shall apply in the case of a~~  
11 ~~person buying farm products from a person engaged in farming~~  
12 ~~operations.~~

13 ~~(3) If requested by the secured party, a debtor engaged in~~  
14 ~~farming operations who gives a security interest in farm products~~  
15 ~~shall provide to the secured party a written list identifying~~  
16 ~~potential buyers and points of delivery of the farm products.~~  
17 ~~Except as otherwise provided by subsection (4), the number of~~  
18 ~~potential buyers for each commodity shall not exceed 5. If a~~  
19 ~~potential buyer has more than 1 point of delivery, each addi=~~  
20 ~~tional point of delivery shall be counted as a potential buyer.~~

21 ~~(4) A debtor engaged in farming operations who provides a~~  
22 ~~written list of potential buyers to a secured party pursuant to~~  
23 ~~subsection (3) shall not sell farm products that secure the debt~~  
24 ~~to a buyer who is not identified on the list without the prior~~  
25 ~~written consent of the secured party. A person who knowingly or~~  
26 ~~intentionally violates this subsection is guilty of a felony,~~  
27 ~~punishable by imprisonment for not more than 3 years or a fine of~~

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

127

1 ~~not more than \$10,000.00, or both. If appropriate given the~~  
2 ~~facts and circumstances of the case, the court shall place the~~  
3 ~~person on probation upon the condition that restitution be made~~  
4 ~~to the secured party. Payment of, or application of the proceeds~~  
5 ~~to, the debt upon which the security interest is based shall be~~  
6 ~~an absolute defense to a prosecution under this subsection if the~~  
7 ~~payment or application is made prior to commencement of~~  
8 ~~prosecution.~~

9       ~~(5) A secured party who is provided with a written list of~~  
10 ~~potential buyers pursuant to subsection (3) may notify buyers~~  
11 ~~identified on the list of the security interest as provided in~~  
12 ~~this subsection. A secured party shall not notify a person not~~  
13 ~~identified on the list, except that the secured party may notify~~  
14 ~~a buyer concerning whom the secured party has given prior written~~  
15 ~~consent pursuant to subsection (4) or to whom the secured party~~  
16 ~~has reasonable cause to believe the debtor is about to sell the~~  
17 ~~farm products. A notice provided pursuant to this subsection~~  
18 ~~shall be in writing, and shall be mailed by certified mail or~~  
19 ~~delivered by another method by which receipt can be verified.~~  
20 ~~The notice may be in a form agreed upon in writing by the buyer~~  
21 ~~and the secured party, but in absence of such an agreement the~~  
22 ~~notice shall be an original financing statement or a carbon, pho-~~  
23 ~~tographic, or other reproduction of an original that is effective~~  
24 ~~under section 9402, or a statement that contains all of the~~  
25 ~~following:~~

26       ~~(a) The full name and address of the debtor.~~

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

128

- 1       ~~(b) The full name and address of the secured party.~~
- 2       ~~(c) A description of the collateral.~~
- 3       ~~(d) The date and location of the filing of the security~~  
4 ~~interest.~~
- 5       ~~(e) The date and signature of the secured party.~~
- 6       ~~(6) If the debt that is the basis of the security interest~~  
7 ~~is satisfied, the secured party shall notify in writing each~~  
8 ~~potential buyer to whom the secured party sent notice under sub-~~  
9 ~~section (5). The notice may be given within a time period agreed~~  
10 ~~upon in writing by the buyer and the secured party, but in~~  
11 ~~absence of such an agreement the notice shall be given within 11~~  
12 ~~days after the debt is satisfied.~~
- 13       ~~(7) A secured party who does any of the following is guilty~~  
14 ~~of a misdemeanor, punishable by imprisonment for not more than~~  
15 ~~90 days or a fine of not more than \$1,000.00, or both:~~
- 16       ~~(a) Knowingly or intentionally gives false or misleading~~  
17 ~~information in a notice provided pursuant to subsection (5).~~
- 18       ~~(b) Sends notice to a potential buyer other than as permit-~~  
19 ~~ted in subsection (5).~~
- 20       ~~(c) Fails to notify a potential buyer of the satisfaction of~~  
21 ~~a debt within the time period prescribed by subsection (6).~~
- 22       ~~(8) A buyer of farm products who receives notice pursuant to~~  
23 ~~subsection (5) of a security interest in the farm products shall~~  
24 ~~make payment for the farm products by check or other instrument~~  
25 ~~made payable to the seller and the secured party jointly, except~~  
26 ~~that payment may be made directly to the secured party if~~  
27 ~~authorized in writing by the seller. This subsection shall not~~



**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

129

1 ~~apply to any payment or partial payment made before notice under~~  
2 ~~subsection (5) has been received by the buyer. A buyer of farm~~  
3 ~~products who violates this subsection is guilty of a misdemeanor,~~  
4 ~~punishable by imprisonment for not more than 90 days or a fine of~~  
5 ~~not more than \$1,000.00, or both. Payment of the debt upon which~~  
6 ~~the security interest is based shall be an absolute defense to a~~  
7 ~~prosecution under this subsection if payment is made prior to~~  
8 ~~commencement of prosecution.~~

9       ~~(9) As used in subsections (2) to (8), "person buying farm~~  
10 ~~products" or "buyer" includes a commission merchant or selling~~  
11 ~~agent who sells farm products in the ordinary course of business~~  
12 ~~for a person engaged in farming operations.~~

13       ~~(10) A buyer in ordinary course of business who receives~~  
14 ~~notice pursuant to subsection (5), who buys farm products from a~~  
15 ~~person engaged in farming operations, and who withholds all or~~  
16 ~~part of the proceeds of the sale from the seller in order to sat-~~  
17 ~~isfy a debt owed by the seller to the buyer, takes subject to a~~  
18 ~~security interest in those farm products created by the seller,~~  
19 ~~unless the debt owed by the seller to the buyer was secured by a~~  
20 ~~prior perfected security interest. For purposes of this subsec-~~  
21 ~~tion, "debt" does not include the cost of harvesting; processing,~~  
22 ~~including packaging, freezing, canning, and drying; storing; or~~  
23 ~~marketing the farm products, or transporting the farm products to~~  
24 ~~market.~~

25       ~~(11) Except as otherwise provided by subsection (12), a com-~~  
26 ~~mission merchant or selling agent who sells farm products, in the~~  
27 ~~ordinary course of business, for a person engaged in farming~~

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

130

1 ~~operations shall not be liable to the holder of a security~~  
2 ~~interest in those farm products even though the security interest~~  
3 ~~is perfected and even though the commission merchant or selling~~  
4 ~~agent knows of its existence.~~

5       ~~(12) A commission merchant or selling agent who sells farm~~  
6 ~~products, in the ordinary course of business, for a person~~  
7 ~~engaged in farming operations, and who receives notice pursuant~~  
8 ~~to subsection (5), shall not be protected from liability under~~  
9 ~~subsection (11) if the commission merchant or selling agent with=~~  
10 ~~holds from the seller all or part of the proceeds of a sale of~~  
11 ~~the farm products in order to satisfy a debt owed by the seller~~  
12 ~~to the commission merchant or selling agent, unless the debt was~~  
13 ~~secured by a prior perfected security interest. For purposes of~~  
14 ~~this subsection, "debt" does not include the cost of harvesting,~~  
15 ~~processing, including packaging, freezing, canning, and drying,~~  
16 ~~storing, or marketing the farm products, or transporting the farm~~  
17 ~~products to market.~~

18       ~~(13) A prosecution under subsections (8) to (10) shall not~~  
19 ~~be commenced after the expiration of 2 years following the date~~  
20 ~~the violation occurred.~~

21       ~~(14) In the case of consumer goods, a buyer takes free of a~~  
22 ~~security interest even though perfected if the buyer buys without~~  
23 ~~knowledge of the security interest, for value and for the buyer's~~  
24 ~~own personal, family, or household purposes unless prior to the~~  
25 ~~purchase the secured party has filed a financing statement cover=~~  
26 ~~ing such goods.~~

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

131

1       ~~(15) A buyer other than a buyer in ordinary course of~~  
2 ~~business under subsection (1) takes free of a security interest~~  
3 ~~to the extent that it secures future advances made after the~~  
4 ~~secured party acquires knowledge of the purchase, or more than 45~~  
5 ~~days after the purchase, whichever first occurs, unless made pur-~~  
6 ~~suant to a commitment entered into without knowledge of the pur-~~  
7 ~~chase and before the expiration of the 45-day period.~~

8       (1) AS USED IN THIS SECTION, "PLACE OF BUSINESS" MEANS A  
9 PLACE WHERE A DEBTOR CONDUCTS ITS AFFAIRS.

10       (2) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE FOL-  
11 LOWING RULES DETERMINE A DEBTOR'S LOCATION:

12       (A) A DEBTOR WHO IS AN INDIVIDUAL IS LOCATED AT THE  
13 INDIVIDUAL'S PRINCIPAL RESIDENCE.

14       (B) A DEBTOR THAT IS AN ORGANIZATION AND HAS ONLY 1 PLACE OF  
15 BUSINESS IS LOCATED AT ITS PLACE OF BUSINESS.

16       (C) A DEBTOR THAT IS AN ORGANIZATION AND HAS MORE THAN 1  
17 PLACE OF BUSINESS IS LOCATED AT ITS CHIEF EXECUTIVE OFFICE.

18       (3) SUBSECTION (2) APPLIES ONLY IF A DEBTOR'S RESIDENCE,  
19 PLACE OF BUSINESS, OR CHIEF EXECUTIVE OFFICE, AS APPLICABLE, IS  
20 LOCATED IN A JURISDICTION WHOSE LAW GENERALLY REQUIRES INFORMA-  
21 TION CONCERNING THE EXISTENCE OF A NONPOSSESSORY SECURITY INTER-  
22 EST TO BE MADE GENERALLY AVAILABLE IN A FILING, RECORDING, OR  
23 REGISTRATION SYSTEM AS A CONDITION OR RESULT OF THE SECURITY  
24 INTEREST'S OBTAINING PRIORITY OVER THE RIGHTS OF A LIEN CREDITOR  
25 WITH RESPECT TO THE COLLATERAL. IF SUBSECTION (2) DOES NOT  
26 APPLY, THE DEBTOR IS LOCATED IN THE DISTRICT OF COLUMBIA.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

132

1       (4) A PERSON THAT CEASES TO EXIST, HAVE A RESIDENCE, OR HAVE  
2 A PLACE OF BUSINESS CONTINUES TO BE LOCATED IN THE JURISDICTION  
3 SPECIFIED BY SUBSECTIONS (2) AND (3).

4       (5) A REGISTERED ORGANIZATION THAT IS ORGANIZED UNDER THE  
5 LAW OF A STATE IS LOCATED IN THAT STATE.

6       (6) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (9), A REGIS-  
7 TERED ORGANIZATION THAT IS ORGANIZED UNDER THE LAW OF THE UNITED  
8 STATES AND A BRANCH OR AGENCY OF A BANK THAT IS NOT ORGANIZED  
9 UNDER THE LAW OF THE UNITED STATES OR A STATE ARE LOCATED IN 1 OF  
10 THE FOLLOWING:

11       (A) IN THE STATE THAT THE LAW OF THE UNITED STATES DESIG-  
12 NATES, IF THE LAW DESIGNATES A STATE OF LOCATION.

13       (B) IN THE STATE THAT THE REGISTERED ORGANIZATION, BRANCH,  
14 OR AGENCY DESIGNATES, IF THE LAW OF THE UNITED STATES AUTHORIZES  
15 THE REGISTERED ORGANIZATION, BRANCH, OR AGENCY TO DESIGNATE ITS  
16 STATE OF LOCATION.

17       (C) IN THE DISTRICT OF COLUMBIA, IF NEITHER SUBDIVISION (A)  
18 NOR (B) APPLIES.

19       (7) A REGISTERED ORGANIZATION CONTINUES TO BE LOCATED IN THE  
20 JURISDICTION SPECIFIED BY SUBSECTION (5) OR (6) NOTWITHSTANDING  
21 THE OCCURRENCE OF 1 OF THE FOLLOWING:

22       (A) THE SUSPENSION, REVOCATION, FORFEITURE, OR LAPSE OF THE  
23 REGISTERED ORGANIZATION'S STATUS AS SUCH IN ITS JURISDICTION OF  
24 ORGANIZATION.

25       (B) THE DISSOLUTION, WINDING UP, OR CANCELLATION OF THE  
26 EXISTENCE OF THE REGISTERED ORGANIZATION.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

133

1 (8) THE UNITED STATES IS LOCATED IN THE DISTRICT OF  
2 COLUMBIA.

3 (9) A BRANCH OR AGENCY OF A BANK THAT IS NOT ORGANIZED UNDER  
4 THE LAW OF THE UNITED STATES OR A STATE IS LOCATED IN THE STATE  
5 IN WHICH THE BRANCH OR AGENCY IS LICENSED, IF ALL BRANCHES AND  
6 AGENCIES OF THE BANK ARE LICENSED IN ONLY 1 STATE.

7 (10) A FOREIGN AIR CARRIER IS LOCATED AT THE DESIGNATED  
8 OFFICE OF THE AGENT UPON WHICH SERVICE OF PROCESS MAY BE MADE ON  
9 BEHALF OF THE CARRIER UNDER SECTION 46103 OF TITLE 49 OF THE  
10 UNITED STATES CODE, 49 U.S.C. 46103.

11 (11) THIS SECTION APPLIES ONLY FOR PURPOSES OF THIS PART.

12 SUBPART 2. PERFECTION

13 Sec. 9308. ~~A purchaser of chattel paper or an instrument~~  
14 ~~who gives new value and takes possession of it in the ordinary~~  
15 ~~course of his business has priority over a security interest in~~  
16 ~~the chattel paper or instrument.~~

17 ~~(a) Which is perfected under section 9304 (permissive filing~~  
18 ~~and temporary perfection) or under section 9306 (perfection as to~~  
19 ~~proceeds) if he acts without knowledge that the specific paper or~~  
20 ~~instrument is subject to a security interest; or~~

21 ~~(b) Which is claimed merely as proceeds of inventory subject~~  
22 ~~to a security interest (section 9306) even though he knows that~~  
23 ~~the specific paper or instrument is subject to the security~~  
24 ~~interest.~~

25 (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION AND SECTION  
26 9309, A SECURITY INTEREST IS PERFECTED IF IT HAS ATTACHED AND ALL  
27 OF THE APPLICABLE REQUIREMENTS FOR PERFECTION IN SECTIONS 9310

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

134

1 THROUGH 9316 HAVE BEEN SATISFIED. A SECURITY INTEREST IS  
2 PERFECTED WHEN IT ATTACHES IF THE APPLICABLE REQUIREMENTS ARE  
3 SATISFIED BEFORE THE SECURITY INTEREST ATTACHES.

4 (2) AN AGRICULTURAL LIEN IS PERFECTED IF IT HAS BECOME  
5 EFFECTIVE AND ALL OF THE APPLICABLE REQUIREMENTS FOR PERFECTION  
6 IN SECTION 9310 HAVE BEEN SATISFIED. AN AGRICULTURAL LIEN IS  
7 PERFECTED WHEN IT BECOMES EFFECTIVE IF THE APPLICABLE REQUIRE-  
8 MENTS ARE SATISFIED BEFORE THE AGRICULTURAL LIEN BECOMES  
9 EFFECTIVE.

10 (3) A SECURITY INTEREST OR AGRICULTURAL LIEN IS PERFECTED  
11 CONTINUOUSLY IF IT IS ORIGINALLY PERFECTED BY 1 METHOD UNDER THIS  
12 ARTICLE AND IS LATER PERFECTED BY ANOTHER METHOD UNDER THIS ARTI-  
13 CLE, WITHOUT AN INTERMEDIATE PERIOD WHEN IT WAS UNPERFECTED.

14 (4) PERFECTION OF A SECURITY INTEREST IN COLLATERAL ALSO  
15 PERFECTS A SECURITY INTEREST IN A SUPPORTING OBLIGATION FOR THE  
16 COLLATERAL.

17 (5) PERFECTION OF A SECURITY INTEREST IN A RIGHT TO PAYMENT  
18 OR PERFORMANCE ALSO PERFECTS A SECURITY INTEREST IN A SECURITY  
19 INTEREST, MORTGAGE, OR OTHER LIEN ON PERSONAL OR REAL PROPERTY  
20 SECURING THE RIGHT.

21 (6) PERFECTION OF A SECURITY INTEREST IN A SECURITIES  
22 ACCOUNT ALSO PERFECTS A SECURITY INTEREST IN THE SECURITY ENTI-  
23 TLEMENTS CARRIED IN THE SECURITIES ACCOUNT.

24 (7) PERFECTION OF A SECURITY INTEREST IN A COMMODITY ACCOUNT  
25 ALSO PERFECTS A SECURITY INTEREST IN THE COMMODITY CONTRACTS CAR-  
26 RIED IN THE COMMODITY ACCOUNT.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

135

1       Sec. 9309. ~~Nothing in this article limits the rights of a~~  
2 ~~holder in due course of a negotiable instrument (section 3302) or~~  
3 ~~a holder to whom a negotiable document of title has been duly~~  
4 ~~negotiated (section 7501) or a protected purchaser of a security~~  
5 ~~(section 8303) and such holders or purchasers take priority over~~  
6 ~~an earlier security interest even though perfected. Filing under~~  
7 ~~this article does not constitute notice of the security interest~~  
8 ~~to such holders or purchasers.~~ EACH OF THE FOLLOWING SECURITY  
9 INTERESTS IS PERFECTED WHEN IT ATTACHES:

10       (A) A PURCHASE-MONEY SECURITY INTEREST IN CONSUMER GOODS,  
11 EXCEPT AS OTHERWISE PROVIDED IN SECTION 9311(2) WITH RESPECT TO  
12 CONSUMER GOODS THAT ARE SUBJECT TO A STATUTE OR TREATY DESCRIBED  
13 IN SECTION 9311(1).

14       (B) AN ASSIGNMENT OF ACCOUNTS OR PAYMENT INTANGIBLES WHICH  
15 DOES NOT BY ITSELF OR IN CONJUNCTION WITH OTHER ASSIGNMENTS TO  
16 THE SAME ASSIGNEE TRANSFER A SIGNIFICANT PART OF THE ASSIGNOR'S  
17 OUTSTANDING ACCOUNTS OR PAYMENT INTANGIBLES.

18       (C) A SALE OF A PAYMENT INTANGIBLE.

19       (D) A SALE OF A PROMISSORY NOTE.

20       (E) A SECURITY INTEREST CREATED BY THE ASSIGNMENT OF A  
21 HEALTH-CARE-INSURANCE RECEIVABLE TO THE PROVIDER OF THE  
22 HEALTH-CARE GOODS OR SERVICES.

23       (F) A SECURITY INTEREST ARISING UNDER SECTION 2401, 2505,  
24 2711(3), OR 2A508(5), UNTIL THE DEBTOR OBTAINS POSSESSION OF THE  
25 COLLATERAL.

26       (G) A SECURITY INTEREST OF A COLLECTING BANK ARISING UNDER  
27 SECTION 4210.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

136

1 (H) A SECURITY INTEREST OF AN ISSUER OR NOMINATED PERSON  
2 ARISING UNDER SECTION 5118.

3 (I) A SECURITY INTEREST ARISING IN THE DELIVERY OF A FINAN-  
4 CIAL ASSET UNDER SECTION 9206(3).

5 (J) A SECURITY INTEREST IN INVESTMENT PROPERTY CREATED BY A  
6 BROKER OR SECURITIES INTERMEDIARY.

7 (K) A SECURITY INTEREST IN A COMMODITY CONTRACT OR A COMMOD-  
8 ITY ACCOUNT CREATED BY A COMMODITY INTERMEDIARY.

9 (L) AN ASSIGNMENT FOR THE BENEFIT OF ALL CREDITORS OF THE  
10 TRANSFEROR AND SUBSEQUENT TRANSFERS BY THE ASSIGNEE THEREUNDER.

11 (M) A SECURITY INTEREST CREATED BY AN ASSIGNMENT OF A BENE-  
12 FICIAL INTEREST IN A DECEDENT'S ESTATE.

13 Sec. 9310. ~~When a person in the ordinary course of his~~  
14 ~~business furnishes services or materials with respect to goods~~  
15 ~~subject to a security interest, a lien upon goods in the posses-~~  
16 ~~sion of such person given by statute or rule of law for such~~  
17 ~~materials or services takes priority over a perfected security~~  
18 ~~interest unless the lien is statutory and the statute expressly~~  
19 ~~provides otherwise.~~

20 (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (2) AND SEC-  
21 TION 9312(2), A FINANCING STATEMENT MUST BE FILED TO PERFECT ALL  
22 SECURITY INTERESTS AND AGRICULTURAL LIENS.

23 (2) THE FILING OF A FINANCING STATEMENT IS NOT NECESSARY TO  
24 PERFECT 1 OR MORE OF THE FOLLOWING:

25 (A) A SECURITY INTEREST THAT IS PERFECTED UNDER SECTION  
26 9308(4), (5), (6), OR (7).



**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

137

1 (B) A SECURITY INTEREST THAT IS PERFECTED UNDER SECTION 9309  
2 WHEN IT ATTACHES.

3 (C) A SECURITY INTEREST IN PROPERTY SUBJECT TO A STATUTE,  
4 REGULATION, OR TREATY DESCRIBED IN SECTION 9311(1).

5 (D) A SECURITY INTEREST IN GOODS IN POSSESSION OF A BAILEE  
6 THAT IS PERFECTED UNDER SECTION 9312(4)(A) OR (B).

7 (E) A SECURITY INTEREST IN CERTIFICATED SECURITIES, DOCU-  
8 MENTS, GOODS, OR INSTRUMENTS THAT IS PERFECTED WITHOUT FILING OR  
9 POSSESSION UNDER SECTION 9312(5), (6), OR (7).

10 (F) A SECURITY INTEREST IN COLLATERAL IN THE SECURED PARTY'S  
11 POSSESSION UNDER SECTION 9313.

12 (G) A SECURITY INTEREST IN A CERTIFICATED SECURITY THAT IS  
13 PERFECTED BY DELIVERY OF THE SECURITY CERTIFICATE TO THE SECURED  
14 PARTY UNDER SECTION 9313.

15 (H) A SECURITY INTEREST IN DEPOSIT ACCOUNTS, ELECTRONIC  
16 CHATTEL PAPER, INVESTMENT PROPERTY, OR LETTER-OF-CREDIT RIGHTS  
17 THAT IS PERFECTED BY CONTROL UNDER SECTION 9314.

18 (I) A SECURITY INTEREST IN PROCEEDS THAT IS PERFECTED UNDER  
19 SECTION 9315.

20 (J) A SECURITY INTEREST THAT IS PERFECTED UNDER SECTION  
21 9316.

22 (3) IF A SECURED PARTY ASSIGNS A PERFECTED SECURITY INTEREST  
23 OR AGRICULTURAL LIEN, A FILING UNDER THIS ARTICLE IS NOT REQUIRED  
24 TO CONTINUE THE PERFECTED STATUS OF THE SECURITY INTEREST AGAINST  
25 CREDITORS OF AND TRANSFEREES FROM THE ORIGINAL DEBTOR.

26 Sec. 9311. ~~The debtor's rights in collateral may be~~  
27 ~~voluntarily or involuntarily transferred (by way of sale,~~

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

138

~~1 creation of a security interest, attachment, levy, garnishment or  
2 other judicial process) notwithstanding a provision in the secur-  
3 ity agreement prohibiting any transfer or making the transfer  
4 constitute a default.~~

5 (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (4), THE  
6 FILING OF A FINANCING STATEMENT IS NOT NECESSARY OR EFFECTIVE TO  
7 PERFECT A SECURITY INTEREST IN PROPERTY SUBJECT TO 1 OR MORE OF  
8 THE FOLLOWING:

9 (A) A STATUTE, REGULATION, OR TREATY OF THE UNITED STATES  
10 WHOSE REQUIREMENTS FOR A SECURITY INTEREST'S OBTAINING PRIORITY  
11 OVER THE RIGHTS OF A LIEN CREDITOR WITH RESPECT TO THE PROPERTY  
12 PREEMPT SECTION 9310(1).

13 (B) THE FOLLOWING STATUTES OF THIS STATE:

14 (i) CHAPTER II OF THE MICHIGAN VEHICLE CODE, 1949 PA 300,  
15 MCL 257.201 TO 257.259.

16 (ii) PART 803 OF THE NATURAL RESOURCES AND ENVIRONMENTAL  
17 PROTECTION ACT, 1994 PA 451, MCL 324.80301 TO 324.80322.

18 (iii) PART 811 OF THE NATURAL RESOURCES AND ENVIRONMENTAL  
19 PROTECTION ACT, 1994 PA 451, MCL 324.81101 TO 324.81150.

20 (iv) SECTIONS 30 THROUGH 30H OF THE MOBILE HOME COMMISSION  
21 ACT, 1987 PA 96, MCL 125.2330 TO 125.2330H.

22 (C) A CERTIFICATE-OF-TITLE STATUTE OF ANOTHER JURISDICTION  
23 WHICH PROVIDES FOR A SECURITY INTEREST TO BE INDICATED ON THE  
24 CERTIFICATE AS A CONDITION OR RESULT OF THE SECURITY INTEREST'S  
25 OBTAINING PRIORITY OVER THE RIGHTS OF A LIEN CREDITOR WITH  
26 RESPECT TO THE PROPERTY.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

139

1       (2) COMPLIANCE WITH THE REQUIREMENTS OF A STATUTE,  
2 REGULATION, OR TREATY DESCRIBED IN SUBSECTION (1) FOR OBTAINING  
3 PRIORITY OVER THE RIGHTS OF A LIEN CREDITOR IS EQUIVALENT TO THE  
4 FILING OF A FINANCING STATEMENT UNDER THIS ARTICLE. EXCEPT AS  
5 OTHERWISE PROVIDED IN SUBSECTION (4) AND SECTIONS 9313 AND  
6 9316(4) AND (5) FOR GOODS COVERED BY A CERTIFICATE OF TITLE, A  
7 SECURITY INTEREST IN PROPERTY SUBJECT TO A STATUTE, REGULATION,  
8 OR TREATY DESCRIBED IN SUBSECTION (1) MAY BE PERFECTED ONLY BY  
9 COMPLIANCE WITH THOSE REQUIREMENTS, AND A SECURITY INTEREST SO  
10 PERFECTED REMAINS PERFECTED NOTWITHSTANDING A CHANGE IN THE USE  
11 OR TRANSFER OF POSSESSION OF THE COLLATERAL.

12       (3) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (4) AND SEC-  
13 TION 9316(4) AND (5), DURATION AND RENEWAL OF PERFECTION OF A  
14 SECURITY INTEREST PERFECTED BY COMPLIANCE WITH THE REQUIREMENTS  
15 PRESCRIBED BY A STATUTE, REGULATION, OR TREATY DESCRIBED IN SUB-  
16 SECTION (1) ARE GOVERNED BY THE STATUTE, REGULATION, OR TREATY.  
17 IN OTHER RESPECTS, THE SECURITY INTEREST IS SUBJECT TO THIS  
18 ARTICLE.

19       (4) DURING ANY PERIOD IN WHICH COLLATERAL SUBJECT TO A STAT-  
20 UTE SPECIFIED IN SUBSECTION (1)(B) IS INVENTORY HELD FOR SALE OR  
21 LEASE BY A PERSON OR LEASED BY THAT PERSON AS LESSOR AND THAT  
22 PERSON IS IN THE BUSINESS OF SELLING GOODS OF THAT KIND, THIS  
23 SECTION DOES NOT APPLY TO A SECURITY INTEREST IN THAT COLLATERAL  
24 CREATED BY THAT PERSON.

25       Sec. 9312. ~~-(1) The rules of priority stated in other sec-~~  
26 ~~tions of this part and in the following sections shall govern~~  
27 ~~when applicable: section 4210 with respect to the security~~

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

140

1 ~~interests of collecting banks in items being collected,~~  
2 ~~accompanying documents and proceeds; section 9103 on security~~  
3 ~~interests related to other jurisdictions; section 9114 on con-~~  
4 ~~signments; and section 9115 on security interests in investment~~  
5 ~~property.~~

6 ~~(2) A perfected security interest in crops for new value~~  
7 ~~given to enable the debtor to produce the crops during the pro-~~  
8 ~~duction season and given not more than 3 months before the crops~~  
9 ~~become growing crops by planting or otherwise takes priority over~~  
10 ~~an earlier perfected security interest to the extent that such~~  
11 ~~earlier interest secures obligations due more than 6 months~~  
12 ~~before the crops become growing crops by planting or otherwise,~~  
13 ~~even though the person giving new value had knowledge of the ear-~~  
14 ~~lier security interest.~~

15 ~~(3) Except as provided in subsection (4), a perfected pur-~~  
16 ~~chase money security interest in inventory has priority over a~~  
17 ~~conflicting security interest in the same inventory and also has~~  
18 ~~priority in identifiable cash proceeds received on or before the~~  
19 ~~delivery of the inventory to a buyer if:~~

20 ~~(a) The purchase money security interest is perfected at the~~  
21 ~~time the debtor receives possession of the inventory; and~~

22 ~~(b) The purchase money secured party gives notification in~~  
23 ~~writing to the holder of the conflicting security interest if the~~  
24 ~~holder had filed a financing statement covering the same types of~~  
25 ~~inventory; (i) before the date of the filing made by the purchase~~  
26 ~~money secured party; or, (ii) before the beginning of the 21-day~~

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

141

1 ~~period where the purchase money security interest is temporarily~~  
2 ~~perfected without filing or possession (section 9304(5)); and~~

3 ~~(c) The holder of the conflicting security interest receives~~  
4 ~~the notification within 5 years before the debtor receives pos-~~  
5 ~~session of the inventory; and~~

6 ~~(d) The notification states that the person giving the~~  
7 ~~notice has or expects to acquire a purchase money security inter-~~  
8 ~~est in inventory of the debtor, describing such inventory by item~~  
9 ~~or type.~~

10 ~~(4) A purchase money security interest in inventory collat-~~  
11 ~~eral which consists entirely of farm produce as defined in the~~  
12 ~~grain dealers act, Act No. 141 of the Public Acts of 1939, being~~  
13 ~~sections 285.61 to 285.82a of the Michigan Compiled Laws, and~~  
14 ~~which is retained by the producer of the farm produce shall have~~  
15 ~~priority over a conflicting security interest in the same collat-~~  
16 ~~eral, except for a security interest specified in subsection (2),~~  
17 ~~if the purchase money security interest is perfected at the time~~  
18 ~~the debtor receives possession of the collateral or within 20~~  
19 ~~days thereafter.~~

20 ~~(5) A purchase money security interest in collateral other~~  
21 ~~than inventory has priority over a conflicting security interest~~  
22 ~~in the same collateral or its proceeds if the purchase money~~  
23 ~~security interest is perfected at the time the debtor receives~~  
24 ~~possession of the collateral or within 20 days thereafter.~~

25 ~~(6) In all cases not governed by other rules stated in this~~  
26 ~~section, including cases of purchase money security interests~~  
27 ~~which do not qualify for the special priorities set forth in~~

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

142

1 ~~subsections (3), (4), and (5) of this section, priority between~~  
2 ~~conflicting security interests in the same collateral shall be~~  
3 ~~determined according to the following rules:~~

4 ~~(a) Conflicting security interests rank according to prior-~~  
5 ~~ity in time of filing or perfection. Priority dates from the~~  
6 ~~time a filing is first made covering the collateral or the time~~  
7 ~~the security interest is first perfected, whichever is earlier,~~  
8 ~~provided that there is no period thereafter when there is neither~~  
9 ~~filing nor perfection.~~

10 ~~(b) So long as conflicting security interests are unper-~~  
11 ~~fected, the first to attach has priority.~~

12 ~~(7) For the purposes of subsection (6) a date of filing or~~  
13 ~~perfection as to collateral is also a date of filing or perfec-~~  
14 ~~tion as to proceeds.~~

15 ~~(8) If future advances are made while a security interest is~~  
16 ~~perfected by filing, the taking of possession, or under section~~  
17 ~~9115 or section 9116 on investment property, the security inter-~~  
18 ~~est has the same priority for the purposes of subsection (6) or~~  
19 ~~section 9115(5) with respect to the future advances as it does~~  
20 ~~with respect to the first advance. If a commitment is made~~  
21 ~~before or while the security interest is so perfected, the secur-~~  
22 ~~ity interest has the same priority with respect to advances made~~  
23 ~~pursuant thereto. In other cases a perfected security interest~~  
24 ~~has priority from the date the advance is made.~~

25 ~~(1) A SECURITY INTEREST IN CHATTEL PAPER, NEGOTIABLE DOCU-~~  
26 ~~MENTS, INSTRUMENTS, OR INVESTMENT PROPERTY MAY BE PERFECTED BY~~  
27 ~~FILING.~~

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

143

1       (2) EXCEPT AS OTHERWISE PROVIDED IN SECTION 9315(3) AND (4)  
2 FOR PROCEEDS, A SECURITY INTEREST IN A DEPOSIT ACCOUNT, A  
3 LETTER-OF-CREDIT RIGHT, OR MONEY MAY BE PERFECTED ONLY AS  
4 FOLLOWS:

5       (A) A SECURITY INTEREST IN A DEPOSIT ACCOUNT MAY BE PERFEC-  
6 TED ONLY BY CONTROL UNDER SECTION 9314.

7       (B) EXCEPT AS OTHERWISE PROVIDED IN SECTION 9308(4), A  
8 SECURITY INTEREST IN A LETTER-OF-CREDIT RIGHT MAY BE PERFECTED  
9 ONLY BY CONTROL UNDER SECTION 9314.

10       (C) A SECURITY INTEREST IN MONEY MAY BE PERFECTED ONLY BY  
11 THE SECURED PARTY'S TAKING POSSESSION UNDER SECTION 9313.

12       (3) WHILE GOODS ARE IN THE POSSESSION OF A BAILEE THAT HAS  
13 ISSUED A NEGOTIABLE DOCUMENT COVERING THE GOODS, A SECURITY  
14 INTEREST IN THE GOODS MAY BE PERFECTED BY PERFECTING A SECURITY  
15 INTEREST IN THE DOCUMENT, AND A SECURITY INTEREST PERFECTED IN  
16 THE DOCUMENT HAS PRIORITY OVER ANY SECURITY INTEREST THAT BECOMES  
17 PERFECTED IN THE GOODS BY ANOTHER METHOD DURING THAT TIME.

18       (4) WHILE GOODS ARE IN THE POSSESSION OF A BAILEE THAT HAS  
19 ISSUED A NONNEGOTIABLE DOCUMENT COVERING THE GOODS, A SECURITY  
20 INTEREST IN THE GOODS MAY BE PERFECTED BY 1 OR MORE OF THE  
21 FOLLOWING:

22       (A) ISSUANCE OF A DOCUMENT IN THE NAME OF THE SECURED  
23 PARTY.

24       (B) THE BAILEE'S RECEIPT OF NOTIFICATION OF THE SECURED  
25 PARTY'S INTEREST.

26       (C) FILING AS TO THE GOODS.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

144

1       (5) A SECURITY INTEREST IN CERTIFICATED SECURITIES,  
2 NEGOTIABLE DOCUMENTS, OR INSTRUMENTS IS PERFECTED WITHOUT FILING  
3 OR THE TAKING OF POSSESSION FOR A PERIOD OF 20 DAYS FROM THE TIME  
4 IT ATTACHES TO THE EXTENT THAT IT ARISES FOR NEW VALUE GIVEN  
5 UNDER AN AUTHENTICATED SECURITY AGREEMENT.

6       (6) A PERFECTED SECURITY INTEREST IN A NEGOTIABLE DOCUMENT  
7 OR GOODS IN POSSESSION OF A BAILEE, OTHER THAN ONE THAT HAS  
8 ISSUED A NEGOTIABLE DOCUMENT FOR THE GOODS, REMAINS PERFECTED FOR  
9 20 DAYS WITHOUT FILING IF THE SECURED PARTY MAKES AVAILABLE TO  
10 THE DEBTOR THE GOODS OR DOCUMENTS REPRESENTING THE GOODS FOR THE  
11 PURPOSE OF ULTIMATE SALE OR EXCHANGE, OR FOR THE PURPOSE OF LOAD-  
12 ING, UNLOADING, STORING, SHIPPING, TRANSSHIPPING, MANUFACTURING,  
13 PROCESSING, OR OTHERWISE DEALING WITH THEM IN A MANNER PRELIMI-  
14 NARY TO THEIR SALE OR EXCHANGE:

15       (7) A PERFECTED SECURITY INTEREST IN A CERTIFICATED SECURITY  
16 OR INSTRUMENT REMAINS PERFECTED FOR 20 DAYS WITHOUT FILING IF THE  
17 SECURED PARTY DELIVERS THE SECURITY CERTIFICATE OR INSTRUMENT TO  
18 THE DEBTOR FOR THE PURPOSE OF ULTIMATE SALE OR EXCHANGE OR FOR  
19 THE PURPOSE OF PRESENTATION, COLLECTION, ENFORCEMENT, RENEWAL, OR  
20 REGISTRATION OF TRANSFER.

21       (8) AFTER THE 20-DAY PERIOD SPECIFIED IN SUBSECTION (5),  
22 (6), OR (7) EXPIRES, PERFECTION DEPENDS UPON COMPLIANCE WITH THIS  
23 ARTICLE.

24       Sec. 9313. ~~-(1) In this section and in the provisions of~~  
25 ~~part 4 of this article referring to fixture filing, unless the~~  
26 ~~context otherwise requires.~~



**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

145

1       ~~(a) Goods are "fixtures" when they become so related to~~  
2 ~~particular real estate that an interest in them arises under real~~  
3 ~~estate law. However, crops growing or to be grown are not~~  
4 ~~fixtures.~~

5       ~~(b) A "fixture filing" is the filing in the office where a~~  
6 ~~mortgage on the real estate would be filed or recorded of a~~  
7 ~~financing statement covering goods which are or are to become~~  
8 ~~fixtures.~~

9       ~~(c) A mortgage is a "construction mortgage" to the extent~~  
10 ~~that it secures an obligation incurred for the construction of an~~  
11 ~~improvement on land which may include the acquisition cost of the~~  
12 ~~land, and if the recorded writing so indicates.~~

13       ~~(2) A security interest under this article may be created in~~  
14 ~~goods which are fixtures or may continue in goods which becomes~~  
15 ~~fixtures, but no security interest exists under this article in~~  
16 ~~ordinary building materials incorporated into an improvement on~~  
17 ~~land.~~

18       ~~(3) This article does not prevent creation of an encumbrance~~  
19 ~~upon fixtures pursuant to real estate law.~~

20       ~~(4) A perfected security interest in fixtures has priority~~  
21 ~~over the conflicting interest of an encumbrancer or owner of the~~  
22 ~~real estate where:~~

23       ~~(a) The security interest is a purchase money security~~  
24 ~~interest, the interest of the encumbrancer or owner arises before~~  
25 ~~the goods become fixtures, the security interest is perfected by~~  
26 ~~a fixture filing before the goods become fixtures or within 10~~

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

146

1 ~~days thereafter, and the debtor has an interest of record in the~~  
2 ~~real estate or is in possession of the real estate; or~~

3       ~~(b) The security interest is perfected by a fixture filing~~  
4 ~~before the interest of the encumbrancer or owner is of record,~~  
5 ~~the security interest has priority over any conflicting interest~~  
6 ~~of a predecessor in title of the encumbrancer or owner, and the~~  
7 ~~debtor has an interest of record in the real estate or is in pos=~~  
8 ~~session of the real estate; or~~

9       ~~(c) The fixtures are readily removable factory or office~~  
10 ~~machines or readily removable replacements of domestic appliances~~  
11 ~~which are consumer goods, and before the goods become fixtures~~  
12 ~~the security interest is perfected by any method permitted by~~  
13 ~~this article; or~~

14       ~~(d) The conflicting interest is a lien on the real estate~~  
15 ~~obtained by legal or equitable proceedings after the security~~  
16 ~~interest was perfected by any method permitted by this article.~~

17       ~~(5) A security interest in fixtures, whether or not perfec=~~  
18 ~~ted, has priority over the conflicting interest of an encum=~~  
19 ~~brancer or owner of the real estate where:~~

20       ~~(a) The encumbrancer or owner has consented in writing to~~  
21 ~~the security interest or has disclaimed an interest in the goods~~  
22 ~~as fixtures; or~~

23       ~~(b) The debtor has a right to remove the goods as against~~  
24 ~~the encumbrancer or owner. If the debtor's right terminates, the~~  
25 ~~priority of the security interest continues for a reasonable~~  
26 ~~time.~~

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

147

1       ~~(6) Notwithstanding subsection (4)(a) but otherwise subject~~  
2 ~~to subsections (4) and (5), a security interest in fixtures is~~  
3 ~~subordinate to a construction mortgage recorded before the goods~~  
4 ~~become fixtures if the goods become fixtures before the comple-~~  
5 ~~tion of the construction. To the extent that it is given to~~  
6 ~~refinance a construction mortgage, a mortgage has this priority~~  
7 ~~to the same extent as the construction mortgage.~~

8       ~~(7) In cases not within the preceding subsections, a secur-~~  
9 ~~ity interest in fixtures is subordinate to the conflicting inter-~~  
10 ~~est of an encumbrancer or owner of the related real estate who is~~  
11 ~~not the debtor.~~

12       ~~(8) When a secured party has priority over all owners and~~  
13 ~~encumbrances of the real estate, he or she may, on default,~~  
14 ~~subject to the provisions of part 5 of this article, remove his~~  
15 ~~or her collateral from the real estate, but he or she must reim-~~  
16 ~~burse any encumbrancer or owner of the real estate who is not the~~  
17 ~~debtor and who has not otherwise agreed for the cost of repair of~~  
18 ~~any physical injury, but not for any diminution in value of the~~  
19 ~~real estate caused by the absence of the goods removed or by any~~  
20 ~~necessity for replacing them. A person entitled to reimbursement~~  
21 ~~may refuse permission to remove until the secured party gives~~  
22 ~~adequate security for the performance of this obligation.~~

23       (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (2), A  
24 SECURED PARTY MAY PERFECT A SECURITY INTEREST IN NEGOTIABLE DOCU-  
25 MENTS, GOODS, INSTRUMENTS, MONEY, OR TANGIBLE CHATTEL PAPER BY  
26 TAKING POSSESSION OF THE COLLATERAL. A SECURED PARTY MAY PERFECT

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

148

1 A SECURITY INTEREST IN CERTIFICATED SECURITIES BY TAKING DELIVERY  
2 OF THE CERTIFICATED SECURITIES UNDER SECTION 8301.

3 (2) WITH RESPECT TO GOODS COVERED BY A CERTIFICATE OF TITLE  
4 ISSUED BY THIS STATE, A SECURED PARTY MAY PERFECT A SECURITY  
5 INTEREST IN THE GOODS BY TAKING POSSESSION OF THE GOODS ONLY IN  
6 THE CIRCUMSTANCES DESCRIBED IN SECTION 9316(5).

7 (3) WITH RESPECT TO COLLATERAL OTHER THAN CERTIFICATED  
8 SECURITIES AND GOODS COVERED BY A DOCUMENT, A SECURED PARTY TAKES  
9 POSSESSION OF COLLATERAL IN THE POSSESSION OF A PERSON OTHER THAN  
10 THE DEBTOR, THE SECURED PARTY, OR A LESSEE OF THE COLLATERAL FROM  
11 THE DEBTOR IN THE ORDINARY COURSE OF THE DEBTOR'S BUSINESS, WHEN  
12 THE PERSON IN POSSESSION AUTHENTICATES A RECORD ACKNOWLEDGING  
13 THAT IT HOLDS POSSESSION OF THE COLLATERAL FOR THE SECURED  
14 PARTY'S BENEFIT, OR THE PERSON TAKES POSSESSION OF THE COLLATERAL  
15 AFTER HAVING AUTHENTICATED A RECORD ACKNOWLEDGING THAT IT WILL  
16 HOLD POSSESSION OF COLLATERAL FOR THE SECURED PARTY'S BENEFIT.

17 (4) IF THE PERFECTION OF A SECURITY INTEREST DEPENDS UPON  
18 POSSESSION OF THE COLLATERAL BY A SECURED PARTY, PERFECTION  
19 OCCURS NO EARLIER THAN THE TIME THE SECURED PARTY TAKES POSSES-  
20 SION AND CONTINUES ONLY WHILE THE SECURED PARTY RETAINS  
21 POSSESSION.

22 (5) A SECURITY INTEREST IN A CERTIFICATED SECURITY IN REGIS-  
23 TERED FORM IS PERFECTED BY DELIVERY WHEN DELIVERY OF THE CERTIFI-  
24 CATED SECURITY OCCURS UNDER SECTION 8301 AND REMAINS PERFECTED BY  
25 DELIVERY UNTIL THE DEBTOR OBTAINS POSSESSION OF THE SECURITY  
26 CERTIFICATE.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

149

1 (6) A PERSON IN POSSESSION OF COLLATERAL IS NOT REQUIRED TO  
2 ACKNOWLEDGE THAT IT HOLDS POSSESSION FOR A SECURED PARTY'S  
3 BENEFIT.

4 (7) IF A PERSON ACKNOWLEDGES THAT IT HOLDS POSSESSION FOR  
5 THE SECURED PARTY'S BENEFIT, THE ACKNOWLEDGMENT IS EFFECTIVE  
6 UNDER SUBSECTION (3) OR SECTION 8301(1), EVEN IF THE ACKNOWLEDG-  
7 MENT VIOLATES THE RIGHTS OF A DEBTOR, AND UNLESS THE PERSON OTH-  
8 ERWISE AGREES OR LAW OTHER THAN THIS ARTICLE OTHERWISE PROVIDES,  
9 THE PERSON DOES NOT OWE ANY DUTY TO THE SECURED PARTY AND IS NOT  
10 REQUIRED TO CONFIRM THE ACKNOWLEDGMENT TO ANOTHER PERSON.

11 (8) A SECURED PARTY HAVING POSSESSION OF COLLATERAL DOES NOT  
12 RELINQUISH POSSESSION BY DELIVERING THE COLLATERAL TO A PERSON  
13 OTHER THAN THE DEBTOR OR A LESSEE OF THE COLLATERAL FROM THE  
14 DEBTOR IN THE ORDINARY COURSE OF THE DEBTOR'S BUSINESS IF THE  
15 PERSON WAS INSTRUCTED BEFORE THE DELIVERY OR IS INSTRUCTED CON-  
16 TEMPORANEOUSLY WITH THE DELIVERY TO HOLD POSSESSION OF THE COL-  
17 LATERAL FOR THE SECURED PARTY'S BENEFIT, OR TO REDELIVER THE COL-  
18 LATERAL TO THE SECURED PARTY.

19 (9) A SECURED PARTY DOES NOT RELINQUISH POSSESSION, EVEN IF  
20 A DELIVERY UNDER SUBSECTION (8) VIOLATES THE RIGHTS OF A DEBTOR.  
21 A PERSON TO WHICH COLLATERAL IS DELIVERED UNDER SUBSECTION (8)  
22 DOES NOT OWE ANY DUTY TO THE SECURED PARTY AND IS NOT REQUIRED TO  
23 CONFIRM THE DELIVERY TO ANOTHER PERSON UNLESS THE PERSON OTHER-  
24 WISE AGREES OR LAW OTHER THAN THIS ARTICLE OTHERWISE PROVIDES.

25 Sec. 9314. ~~-(1) A security interest in goods which attaches~~  
26 ~~before they are installed in or affixed to other goods takes~~  
27 ~~priority as to the goods installed or affixed (called in this~~

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

150

1 ~~section "accessions") over the claims of all persons to the whole~~  
2 ~~except as stated in subsection (3) and subject to section~~  
3 ~~9315(1).~~

4 ~~(2) A security interest which attaches to goods after they~~  
5 ~~become part of a whole is valid against all persons subsequently~~  
6 ~~acquiring interests in the whole except as stated in subsection~~  
7 ~~(3) but is invalid against any person with an interest in the~~  
8 ~~whole at the time the security interest attaches to the goods who~~  
9 ~~has not in writing consented to the security interest or dis=~~  
10 ~~claimed an interest in the goods as part of the whole.~~

11 ~~(3) The security interests described in subsections (1) and~~  
12 ~~(2) do not take priority over~~

13 ~~(a) a subsequent purchaser for value of any interest in the~~  
14 ~~whole; or~~

15 ~~(b) a creditor with a lien on the whole subsequently~~  
16 ~~obtained by judicial proceedings; or~~

17 ~~(c) a creditor with a prior perfected security interest in~~  
18 ~~the whole to the extent that he makes subsequent advances~~  
19 ~~if the subsequent purchase is made, the lien by judicial proceed=~~  
20 ~~ings obtained or the subsequent advance under the prior perfected~~  
21 ~~security interest is made or contracted for without knowledge of~~  
22 ~~the security interest and before it is perfected. A purchaser of~~  
23 ~~the whole at a foreclosure sale other than the holder of a per=~~  
24 ~~fectured security interest purchasing at his own foreclosure sale~~  
25 ~~is a subsequent purchaser within this section.~~

26 ~~(4) When under subsections (1) or (2) and (3) a secured~~  
27 ~~party has an interest in accessions which has priority over the~~

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

151

~~1 claims of all persons who have interests in the whole, he may on  
2 default subject to the provisions of part 5 remove his collateral  
3 from the whole but he must reimburse any encumbrancer or owner of  
4 the whole who is not the debtor and who has not otherwise agreed  
5 for the cost of repair of any physical injury but not for any  
6 diminution in value of the whole caused by the absence of the  
7 goods removed or by any necessity for replacing them. A person  
8 entitled to reimbursement may refuse permission to remove until  
9 the secured party gives adequate security for the performance of  
10 this obligation.~~

11       (1) A SECURITY INTEREST IN INVESTMENT PROPERTY, DEPOSIT  
12 ACCOUNTS, LETTER-OF-CREDIT RIGHTS, OR ELECTRONIC CHATTEL PAPER  
13 MAY BE PERFECTED BY CONTROL OF THE COLLATERAL UNDER SECTION 9104,  
14 9105, 9106, OR 9107.

15       (2) A SECURITY INTEREST IN DEPOSIT ACCOUNTS, ELECTRONIC  
16 CHATTEL PAPER, OR LETTER-OF-CREDIT RIGHTS IS PERFECTED BY CONTROL  
17 UNDER SECTION 9104, 9105, OR 9107 WHEN THE SECURED PARTY OBTAINS  
18 CONTROL AND REMAINS PERFECTED BY CONTROL ONLY WHILE THE SECURED  
19 PARTY RETAINS CONTROL.

20       (3) A SECURITY INTEREST IN INVESTMENT PROPERTY IS PERFECTED  
21 BY CONTROL UNDER SECTION 9106 FROM THE TIME THE SECURED PARTY  
22 OBTAINS CONTROL AND REMAINS PERFECTED BY CONTROL UNTIL BOTH OF  
23 THE FOLLOWING OCCUR:

24       (A) THE SECURED PARTY DOES NOT HAVE CONTROL.

25       (B) ONE OF THE FOLLOWING OCCURS:

26       (i) IF THE COLLATERAL IS A CERTIFICATED SECURITY, THE DEBTOR  
27 HAS OR ACQUIRES POSSESSION OF THE SECURITY CERTIFICATE.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

152

1       (ii) IF THE COLLATERAL IS AN UNCERTIFICATED SECURITY, THE  
2 ISSUER HAS REGISTERED OR REGISTERS THE DEBTOR AS THE REGISTERED  
3 OWNER.

4       (iii) IF THE COLLATERAL IS A SECURITY ENTITLEMENT, THE  
5 DEBTOR IS OR BECOMES THE ENTITLEMENT HOLDER.

6       Sec. 9315. ~~(1) If a security interest in goods was perfec-~~  
7 ~~ted and subsequently the goods or a part thereof have become part~~  
8 ~~of a product or mass, the security interest continues in the pro-~~  
9 ~~duct or mass if~~

10       ~~(a) the goods are so manufactured, processed, assembled or~~  
11 ~~commingled that their identity is lost in the product or mass; or~~

12       ~~(b) a financing statement covering the original goods also~~  
13 ~~covers the product into which the goods have been manufactured,~~  
14 ~~processed or assembled.~~

15       ~~In a case to which paragraph (b) applies, no separate secur-~~  
16 ~~ity interest in that part of the original goods which has been~~  
17 ~~manufactured, processed or assembled into the product may be~~  
18 ~~claimed under section 9314.~~

19       ~~(2) When under subsection (1) more than one security inter-~~  
20 ~~est attaches to the product or mass, they rank equally according~~  
21 ~~to the ratio that the cost of the goods to which each interest~~  
22 ~~originally attached bears to the cost of the total product or~~  
23 ~~mass.~~

24       (1) EXCEPT AS OTHERWISE PROVIDED IN THIS ARTICLE AND IN SEC-  
25 TION 2403(2), BOTH OF THE FOLLOWING APPLY:

26       (A) A SECURITY INTEREST OR AGRICULTURAL LIEN CONTINUES IN  
27 COLLATERAL NOTWITHSTANDING SALE, LEASE, LICENSE, EXCHANGE, OR



**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

153

1 OTHER DISPOSITION THEREOF UNLESS THE SECURED PARTY AUTHORIZED THE  
2 DISPOSITION FREE OF THE SECURITY INTEREST OR AGRICULTURAL LIEN.

3 (B) A SECURITY INTEREST ATTACHES TO ANY IDENTIFIABLE PRO-  
4 CEEDS OF COLLATERAL.

5 (2) PROCEEDS THAT ARE COMMINGLED WITH OTHER PROPERTY ARE  
6 IDENTIFIABLE PROCEEDS TO 1 OF THE FOLLOWING EXTENTS:

7 (A) IF THE PROCEEDS ARE GOODS, TO THE EXTENT PROVIDED BY  
8 SECTION 9336.

9 (B) IF THE PROCEEDS ARE NOT GOODS, TO THE EXTENT THAT THE  
10 SECURED PARTY IDENTIFIES THE PROCEEDS BY A METHOD OF TRACING,  
11 INCLUDING APPLICATION OF EQUITABLE PRINCIPLES, THAT IS PERMITTED  
12 UNDER LAW OTHER THAN THIS ARTICLE WITH RESPECT TO COMMINGLED  
13 PROPERTY OF THE TYPE INVOLVED.

14 (3) A SECURITY INTEREST IN PROCEEDS IS A PERFECTED SECURITY  
15 INTEREST IF THE SECURITY INTEREST IN THE ORIGINAL COLLATERAL WAS  
16 PERFECTED.

17 (4) A PERFECTED SECURITY INTEREST IN PROCEEDS BECOMES UNPER-  
18 FECTED ON THE TWENTY-FIRST DAY AFTER THE SECURITY INTEREST  
19 ATTACHES TO THE PROCEEDS UNLESS 1 OF THE FOLLOWING IS MET:

20 (A) ALL OF THE FOLLOWING CONDITIONS ARE SATISFIED:

21 (i) A FILED FINANCING STATEMENT COVERS THE ORIGINAL  
22 COLLATERAL.

23 (ii) THE PROCEEDS ARE COLLATERAL IN WHICH A SECURITY INTER-  
24 EST MAY BE PERFECTED BY FILING IN THE OFFICE IN WHICH THE FINANC-  
25 ING STATEMENT HAS BEEN FILED.

26 (iii) THE PROCEEDS ARE NOT ACQUIRED WITH CASH PROCEEDS.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

154

1 (B) THE PROCEEDS ARE IDENTIFIABLE CASH PROCEEDS.

2 (C) THE SECURITY INTEREST IN THE PROCEEDS IS PERFECTED OTHER  
3 THAN UNDER SUBSECTION (3) WHEN THE SECURITY INTEREST ATTACHES TO  
4 THE PROCEEDS OR WITHIN 20 DAYS THEREAFTER.

5 (5) IF A FILED FINANCING STATEMENT COVERS THE ORIGINAL COL-  
6 LATERAL, A SECURITY INTEREST IN PROCEEDS WHICH REMAINS PERFECTED  
7 UNDER SUBSECTION (4)(A) BECOMES UNPERFECTED AT THE LATER OF WHEN  
8 THE EFFECTIVENESS OF THE FILED FINANCING STATEMENT LAPSES UNDER  
9 SECTION 9515 OR IS TERMINATED UNDER SECTION 9513, OR THE  
10 TWENTY-FIRST DAY AFTER THE SECURITY INTEREST ATTACHES TO THE  
11 PROCEEDS.

12 Sec. 9316. ~~Nothing in this article prevents subordination~~  
13 ~~by agreement by any person entitled to priority.~~

14 (1) A SECURITY INTEREST PERFECTED PURSUANT TO THE LAW OF THE  
15 JURISDICTION DESIGNATED IN SECTION 9301(A) OR 9305(3) REMAINS  
16 PERFECTED UNTIL THE EARLIEST OF THE FOLLOWING:

17 (A) THE TIME PERFECTION WOULD HAVE CEASED UNDER THE LAW OF  
18 THAT JURISDICTION.

19 (B) THE EXPIRATION OF 4 MONTHS AFTER A CHANGE OF THE  
20 DEBTOR'S LOCATION TO ANOTHER JURISDICTION.

21 (C) THE EXPIRATION OF 1 YEAR AFTER A TRANSFER OF COLLATERAL  
22 TO A PERSON THAT THEREBY BECOMES A DEBTOR AND IS LOCATED IN  
23 ANOTHER JURISDICTION.

24 (2) IF A SECURITY INTEREST DESCRIBED IN SUBSECTION (1)  
25 BECOMES PERFECTED UNDER THE LAW OF THE OTHER JURISDICTION BEFORE  
26 THE EARLIEST TIME OR EVENT DESCRIBED IN THAT SUBSECTION, IT  
27 REMAINS PERFECTED THEREAFTER. IF THE SECURITY INTEREST DOES NOT

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

155

1 BECOME PERFECTED UNDER THE LAW OF THE OTHER JURISDICTION BEFORE  
2 THE EARLIEST TIME OR EVENT, IT BECOMES UNPERFECTED AND IS DEEMED  
3 NEVER TO HAVE BEEN PERFECTED AS AGAINST A PURCHASER OF THE COL-  
4 LATERAL FOR VALUE.

5 (3) A POSSESSORY SECURITY INTEREST IN COLLATERAL, OTHER THAN  
6 GOODS COVERED BY A CERTIFICATE OF TITLE AND AS-EXTRACTED COLLAT-  
7 ERAL CONSISTING OF GOODS, REMAINS CONTINUOUSLY PERFECTED IF ALL  
8 OF THE FOLLOWING ARE MET:

9 (A) THE COLLATERAL IS LOCATED IN 1 JURISDICTION AND SUBJECT  
10 TO A SECURITY INTEREST PERFECTED UNDER THE LAW OF THAT  
11 JURISDICTION.

12 (B) THEREAFTER, THE COLLATERAL IS BROUGHT INTO ANOTHER  
13 JURISDICTION.

14 (C) UPON ENTRY OF THE COLLATERAL INTO THE OTHER JURISDIC-  
15 TION, THE SECURITY INTEREST IS PERFECTED UNDER THE LAW OF THE  
16 OTHER JURISDICTION.

17 (4) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (5), A SECUR-  
18 ITY INTEREST IN GOODS COVERED BY A CERTIFICATE OF TITLE THAT IS  
19 PERFECTED BY ANY METHOD UNDER THE LAW OF ANOTHER JURISDICTION  
20 WHEN THE GOODS BECOME COVERED BY A CERTIFICATE OF TITLE FROM THIS  
21 STATE REMAINS PERFECTED UNTIL THE SECURITY INTEREST WOULD HAVE  
22 BECOME UNPERFECTED UNDER THE LAW OF THE OTHER JURISDICTION HAD  
23 THE GOODS NOT BECOME SO COVERED.

24 (5) A SECURITY INTEREST DESCRIBED IN SUBSECTION (4) BECOMES  
25 UNPERFECTED AS AGAINST A PURCHASER OF THE GOODS FOR VALUE AND IS  
26 DEEMED NEVER TO HAVE BEEN PERFECTED AS AGAINST A PURCHASER OF THE  
27 GOODS FOR VALUE IF THE APPLICABLE REQUIREMENTS FOR PERFECTION

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

156

1 UNDER SECTION 9311(2) OR 9313 ARE NOT SATISFIED BEFORE THE  
2 EARLIER OF THE FOLLOWING:

3 (A) THE TIME THE SECURITY INTEREST WOULD HAVE BECOME UNPER-  
4 FECTED UNDER THE LAW OF THE OTHER JURISDICTION HAD THE GOODS NOT  
5 BECOME COVERED BY A CERTIFICATE OF TITLE FROM THIS STATE.

6 (B) THE EXPIRATION OF 4 MONTHS AFTER THE GOODS HAD BECOME SO  
7 COVERED.

8 (6) A SECURITY INTEREST IN DEPOSIT ACCOUNTS,  
9 LETTER-OF-CREDIT RIGHTS, OR INVESTMENT PROPERTY THAT IS PERFECTED  
10 UNDER THE LAW OF THE BANK'S JURISDICTION, THE ISSUER'S JURISDIC-  
11 TION, A NOMINATED PERSON'S JURISDICTION, THE SECURITIES  
12 INTERMEDIARY'S JURISDICTION, OR THE COMMODITY INTERMEDIARY'S  
13 JURISDICTION, AS APPLICABLE, REMAINS PERFECTED UNTIL THE EARLIER  
14 OF THE FOLLOWING:

15 (A) THE TIME THE SECURITY INTEREST WOULD HAVE BECOME UNPER-  
16 FECTED UNDER THE LAW OF THAT JURISDICTION.

17 (B) THE EXPIRATION OF 4 MONTHS AFTER A CHANGE OF THE APPLI-  
18 CABLE JURISDICTION TO ANOTHER JURISDICTION.

19 (7) IF A SECURITY INTEREST DESCRIBED IN SUBSECTION (6)  
20 BECOMES PERFECTED UNDER THE LAW OF THE OTHER JURISDICTION BEFORE  
21 THE EARLIER OF THE TIME OR THE END OF THE PERIOD DESCRIBED IN  
22 THAT SUBSECTION, IT REMAINS PERFECTED THEREAFTER. IF THE SECUR-  
23 ITY INTEREST DOES NOT BECOME PERFECTED UNDER THE LAW OF THE OTHER  
24 JURISDICTION BEFORE THE EARLIER OF THAT TIME OR THE END OF THAT  
25 PERIOD, IT BECOMES UNPERFECTED AND IS DEEMED NEVER TO HAVE BEEN  
26 PERFECTED AS AGAINST A PURCHASER OF THE COLLATERAL FOR VALUE.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

157

SUBPART 3. PRIORITY

Sec. 9317. ~~The mere existence of a security interest or authority given to the debtor to dispose of or use collateral does not impose contract or tort liability upon the secured party for the debtor's acts or omissions.~~

(1) A SECURITY INTEREST OR AGRICULTURAL LIEN IS SUBORDINATE TO THE RIGHTS OF 1 OR MORE OF THE FOLLOWING:

(A) A PERSON ENTITLED TO PRIORITY UNDER SECTION 9322.

(B) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (5), A PERSON THAT BECOMES A LIEN CREDITOR BEFORE THE EARLIER OF THE FOLLOWING:

(i) THE TIME THE SECURITY INTEREST OR AGRICULTURAL LIEN IS PERFECTED.

(ii) THE TIME 1 OF THE CONDITIONS SPECIFIED IN SECTION 9203(2)(C) IS MET AND A FINANCING STATEMENT COVERING THE COLLATERAL IS FILED.

(2) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (5), 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.

(3) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (5), A LESSEE OF GOODS TAKES FREE OF A SECURITY INTEREST OR AGRICULTURAL LIEN IF THE LESSEE GIVES VALUE AND RECEIVES DELIVERY OF THE COLLATERAL

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

158

1 WITHOUT KNOWLEDGE OF THE SECURITY INTEREST OR AGRICULTURAL LIEN  
2 AND BEFORE IT IS PERFECTED.

3 (4) A LICENSEE OF A GENERAL INTANGIBLE OR A BUYER, OTHER  
4 THAN A SECURED PARTY, OF ACCOUNTS, ELECTRONIC CHATTEL PAPER, GEN-  
5 ERAL INTANGIBLES, OR INVESTMENT PROPERTY OTHER THAN A CERTIFI-  
6 CATED SECURITY TAKES FREE OF A SECURITY INTEREST IF THE LICENSEE  
7 OR BUYER GIVES VALUE WITHOUT KNOWLEDGE OF THE SECURITY INTEREST  
8 AND BEFORE IT IS PERFECTED.

9 (5) EXCEPT AS OTHERWISE PROVIDED IN SECTIONS 9320 AND 9321,  
10 IF A PERSON FILES A FINANCING STATEMENT WITH RESPECT TO A  
11 PURCHASE-MONEY SECURITY INTEREST BEFORE OR WITHIN 20 DAYS AFTER  
12 THE DEBTOR RECEIVES DELIVERY OF THE COLLATERAL, THE SECURITY  
13 INTEREST TAKES PRIORITY OVER THE RIGHTS OF A BUYER, LESSEE, OR  
14 LIEN CREDITOR THAT ARISE BETWEEN THE TIME THE SECURITY INTEREST  
15 ATTACHES AND THE TIME OF FILING.

16 Sec. 9318. ~~(1) Unless an account debtor has made an~~  
17 ~~enforceable agreement not to assert defenses or claims arising~~  
18 ~~out of a sale as provided in section 9206 the rights of an~~  
19 ~~assignee are subject to:~~

20 ~~(a) All the terms of the contract between the account debtor~~  
21 ~~and assignor and any defense or claim arising therefrom; and~~

22 ~~(b) Any other defense or claim of the account debtor against~~  
23 ~~the assignor which accrues before the account debtor receives~~  
24 ~~notification of the assignment.~~

25 ~~(2) So far as the right to payment or a part thereof under~~  
26 ~~an assigned contract has not been fully earned by performance,~~  
27 ~~and notwithstanding notification of the assignment, any~~

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

159

1 ~~modification of or substitution for the contract made in good~~  
2 ~~faith and in accordance with reasonable commercial standards is~~  
3 ~~effective against an assignee unless the account debtor has oth-~~  
4 ~~erwise agreed but the assignee acquires corresponding rights~~  
5 ~~under the modified or substituted contract. The assignment may~~  
6 ~~provide that such modification or substitution is a breach by the~~  
7 ~~assignor.~~

8       ~~(3) The account debtor is authorized to pay the assignor~~  
9 ~~until the account debtor receives notification that the amount~~  
10 ~~due or to become due has been assigned and that payment is to be~~  
11 ~~made to the assignee. A notification which does not reasonably~~  
12 ~~identify the rights assigned is ineffective. If requested by the~~  
13 ~~account debtor, the assignee must seasonably furnish reasonable~~  
14 ~~proof that the assignment has been made and unless he does so the~~  
15 ~~account debtor may pay the assignor.~~

16       ~~(4) A term in any contract between an account debtor and an~~  
17 ~~assignor is ineffective if it prohibits assignment of an account~~  
18 ~~or prohibits creation of a security interest in a general intan-~~  
19 ~~gible for money due or to become due or requires the account~~  
20 ~~debtor's consent to such assignment or security interest.~~

21       ~~(1) A DEBTOR THAT HAS SOLD AN ACCOUNT, CHATTEL PAPER, PAY-~~  
22 ~~MENT INTANGIBLES, OR PROMISSORY NOTE DOES NOT RETAIN A LEGAL OR~~  
23 ~~EQUITABLE INTEREST IN THE COLLATERAL SOLD.~~

24       ~~(2) FOR PURPOSES OF DETERMINING THE RIGHTS OF CREDITORS OF,~~  
25 ~~AND PURCHASERS FOR VALUE OF AN ACCOUNT OR CHATTEL PAPER FROM, A~~  
26 ~~DEBTOR THAT HAS SOLD AN ACCOUNT OR CHATTEL PAPER, WHILE THE~~  
27 ~~BUYER'S SECURITY INTEREST IS UNPERFECTED, THE DEBTOR IS DEEMED TO~~

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

160

1 HAVE RIGHTS AND TITLE TO THE ACCOUNT OR CHATTEL PAPER IDENTICAL  
2 TO THOSE THE DEBTOR SOLD.

3       SEC. 9319. (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION  
4 (2), FOR PURPOSES OF DETERMINING THE RIGHTS OF CREDITORS OF, AND  
5 PURCHASERS FOR VALUE OF GOODS FROM, A CONSIGNEE, WHILE THE GOODS  
6 ARE IN THE POSSESSION OF THE CONSIGNEE, THE CONSIGNEE IS DEEMED  
7 TO HAVE RIGHTS AND TITLE TO THE GOODS IDENTICAL TO THOSE THE CON-  
8 SIGNOR HAD OR HAD POWER TO TRANSFER.

9       (2) FOR PURPOSES OF DETERMINING THE RIGHTS OF A CREDITOR OF  
10 A CONSIGNEE, LAW OTHER THAN THIS ARTICLE DETERMINES THE RIGHTS  
11 AND TITLE OF A CONSIGNEE WHILE GOODS ARE IN THE CONSIGNEE'S POS-  
12 SESSION IF, UNDER THIS PART, A PERFECTED SECURITY INTEREST HELD  
13 BY THE CONSIGNOR WOULD HAVE PRIORITY OVER THE RIGHTS OF THE  
14 CREDITOR.

15       SEC. 9320. (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION  
16 (5), A BUYER IN ORDINARY COURSE OF BUSINESS, OTHER THAN A PERSON  
17 BUYING FARM PRODUCTS FROM A PERSON ENGAGED IN FARMING OPERATIONS,  
18 TAKES FREE OF A SECURITY INTEREST CREATED BY THE BUYER'S SELLER,  
19 EVEN IF THE SECURITY INTEREST IS PERFECTED AND THE BUYER KNOWS OF  
20 ITS EXISTENCE.

21       (2) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (5), A BUYER  
22 OF GOODS FROM A PERSON WHO USED OR BOUGHT THE GOODS FOR USE PRI-  
23 MARILY FOR PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES TAKES FREE OF  
24 A SECURITY INTEREST, EVEN IF PERFECTED, IF THE BUYER BUYS WITHOUT  
25 KNOWLEDGE OF THE SECURITY INTEREST, FOR VALUE, PRIMARILY FOR THE  
26 BUYER'S PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES, AND BEFORE THE  
27 FILING OF A FINANCING STATEMENT COVERING THE GOODS.



**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

161

1       (3) TO THE EXTENT THAT IT AFFECTS THE PRIORITY OF A SECURITY  
2 INTEREST OVER A BUYER OF GOODS UNDER SUBSECTION (2), THE PERIOD  
3 OF EFFECTIVENESS OF A FILING MADE IN THE JURISDICTION IN WHICH  
4 THE SELLER IS LOCATED IS GOVERNED BY SECTION 9316(1) AND (2).

5       (4) A BUYER IN ORDINARY COURSE OF BUSINESS BUYING OIL, GAS,  
6 OR OTHER MINERALS AT THE WELLHEAD OR MINEHEAD OR AFTER EXTRACTION  
7 TAKES FREE OF AN INTEREST ARISING OUT OF AN ENCUMBRANCE.

8       (5) SUBSECTIONS (1) AND (2) DO NOT AFFECT A SECURITY INTER-  
9 EST IN GOODS IN THE POSSESSION OF THE SECURED PARTY UNDER  
10 SECTION 9313.

11       (6) SUBSECTIONS (7) TO (14) SHALL APPLY IN THE CASE OF A  
12 PERSON BUYING FARM PRODUCTS FROM A PERSON ENGAGED IN FARMING  
13 OPERATIONS.

14       (7) IF REQUESTED BY THE SECURED PARTY, A DEBTOR ENGAGED IN  
15 FARMING OPERATIONS WHO GIVES A SECURITY INTEREST IN FARM PRODUCTS  
16 SHALL PROVIDE TO THE SECURED PARTY A WRITTEN LIST IDENTIFYING  
17 POTENTIAL BUYERS AND POINTS OF DELIVERY OF THE FARM PRODUCTS.  
18 EXCEPT AS OTHERWISE PROVIDED BY SUBSECTION (8), THE NUMBER OF  
19 POTENTIAL BUYERS FOR EACH COMMODITY SHALL NOT EXCEED 5. IF A  
20 POTENTIAL BUYER HAS MORE THAN 1 POINT OF DELIVERY, EACH ADDI-  
21 TIONAL POINT OF DELIVERY SHALL BE COUNTED AS A POTENTIAL BUYER.

22       (8) A DEBTOR ENGAGED IN FARMING OPERATIONS WHO PROVIDES A  
23 WRITTEN LIST OF POTENTIAL BUYERS TO A SECURED PARTY PURSUANT TO  
24 SUBSECTION (7) SHALL NOT SELL FARM PRODUCTS THAT SECURE THE DEBT  
25 TO A BUYER WHO IS NOT IDENTIFIED ON THE LIST WITHOUT THE PRIOR  
26 WRITTEN CONSENT OF THE SECURED PARTY. A PERSON WHO KNOWINGLY OR  
27 INTENTIONALLY VIOLATES THIS SUBSECTION IS GUILTY OF A FELONY,

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

162

1 PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 3 YEARS OR A FINE OF  
2 NOT MORE THAN \$10,000.00, OR BOTH. IF APPROPRIATE GIVEN THE  
3 FACTS AND CIRCUMSTANCES OF THE CASE, THE COURT SHALL PLACE THE  
4 PERSON ON PROBATION UPON THE CONDITION THAT RESTITUTION BE MADE  
5 TO THE SECURED PARTY. PAYMENT OF, OR APPLICATION OF THE PROCEEDS  
6 TO, THE DEBT UPON WHICH THE SECURITY INTEREST IS BASED IS AN  
7 ABSOLUTE DEFENSE TO A PROSECUTION UNDER THIS SUBSECTION IF THE  
8 PAYMENT OR APPLICATION IS MADE PRIOR TO COMMENCEMENT OF  
9 PROSECUTION.

10 (9) A SECURED PARTY WHO IS PROVIDED WITH A WRITTEN LIST OF  
11 POTENTIAL BUYERS PURSUANT TO SUBSECTION (7) MAY NOTIFY BUYERS  
12 IDENTIFIED ON THE LIST OF THE SECURITY INTEREST AS PROVIDED IN  
13 THIS SUBSECTION. A SECURED PARTY SHALL NOT NOTIFY A PERSON NOT  
14 IDENTIFIED ON THE LIST, EXCEPT THAT THE SECURED PARTY MAY NOTIFY  
15 A BUYER CONCERNING WHOM THE SECURED PARTY HAS GIVEN PRIOR WRITTEN  
16 CONSENT PURSUANT TO SUBSECTION (8) OR TO WHOM THE SECURED PARTY  
17 HAS REASONABLE CAUSE TO BELIEVE THE DEBTOR IS ABOUT TO SELL THE  
18 FARM PRODUCTS. A NOTICE PROVIDED PURSUANT TO THIS SUBSECTION  
19 SHALL BE IN WRITING AND SHALL BE MAILED BY CERTIFIED MAIL OR  
20 DELIVERED BY ANOTHER METHOD BY WHICH RECEIPT CAN BE VERIFIED.  
21 THE NOTICE MAY BE IN A FORM AGREED UPON IN WRITING BY THE BUYER  
22 AND THE SECURED PARTY, BUT IN ABSENCE OF SUCH AN AGREEMENT THE  
23 NOTICE SHALL BE AN ORIGINAL FINANCING STATEMENT OR A CARBON, PHO-  
24 TOGRAPHIC, OR OTHER REPRODUCTION OF AN ORIGINAL OR A STATEMENT  
25 THAT CONTAINS ALL OF THE FOLLOWING:

26 (A) THE FULL NAME AND ADDRESS OF THE DEBTOR.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

163

1 (B) THE FULL NAME AND ADDRESS OF THE SECURED PARTY.

2 (C) A DESCRIPTION OF THE COLLATERAL.

3 (D) THE DATE AND LOCATION OF THE FILING OF THE SECURITY  
4 INTEREST.

5 (E) THE DATE AND SIGNATURE OF THE SECURED PARTY.

6 (10) IF THE DEBT THAT IS THE BASIS OF THE SECURITY INTEREST  
7 IS SATISFIED, THE SECURED PARTY SHALL NOTIFY IN WRITING EACH  
8 POTENTIAL BUYER TO WHOM THE SECURED PARTY SENT NOTICE UNDER SUB-  
9 SECTION (9). THE NOTICE MAY BE GIVEN WITHIN A TIME PERIOD AGREED  
10 UPON IN WRITING BY THE BUYER AND THE SECURED PARTY, BUT IN  
11 ABSENCE OF SUCH AN AGREEMENT THE NOTICE SHALL BE GIVEN WITHIN 11  
12 DAYS AFTER THE DEBT IS SATISFIED.

13 (11) A SECURED PARTY WHO DOES ANY OF THE FOLLOWING IS GUILTY  
14 OF A MISDEMEANOR, PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 90  
15 DAYS OR A FINE OF NOT MORE THAN \$1,000.00, OR BOTH:

16 (A) KNOWINGLY OR INTENTIONALLY GIVES FALSE OR MISLEADING  
17 INFORMATION IN A NOTICE PROVIDED PURSUANT TO SUBSECTION (9).

18 (B) SENDS NOTICE TO A POTENTIAL BUYER OTHER THAN AS PERMIT-  
19 TED IN SUBSECTION (9).

20 (C) FAILS TO NOTIFY A POTENTIAL BUYER OF THE SATISFACTION OF  
21 A DEBT WITHIN THE TIME PERIOD PRESCRIBED BY SUBSECTION (10).

22 (12) A BUYER OF FARM PRODUCTS WHO RECEIVES NOTICE PURSUANT  
23 TO SUBSECTION (9) OF A SECURITY INTEREST IN THE FARM PRODUCTS  
24 SHALL MAKE PAYMENT FOR THE FARM PRODUCTS BY CHECK OR OTHER  
25 INSTRUMENT MADE PAYABLE TO THE SELLER AND THE SECURED PARTY  
26 JOINTLY, EXCEPT THAT PAYMENT MAY BE MADE DIRECTLY TO THE SECURED  
27 PARTY IF AUTHORIZED IN WRITING BY THE SELLER. THIS SUBSECTION

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

164

1 DOES NOT APPLY TO ANY PAYMENT OR PARTIAL PAYMENT MADE BEFORE  
2 NOTICE UNDER SUBSECTION (9) HAS BEEN RECEIVED BY THE BUYER. A  
3 BUYER OF FARM PRODUCTS WHO VIOLATES THIS SUBSECTION IS GUILTY OF  
4 A MISDEMEANOR, PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 90  
5 DAYS OR A FINE OF NOT MORE THAN \$1,000.00, OR BOTH. PAYMENT OF  
6 THE DEBT UPON WHICH THE SECURITY INTEREST IS BASED IS AN ABSOLUTE  
7 DEFENSE TO A PROSECUTION UNDER THIS SUBSECTION IF PAYMENT IS MADE  
8 PRIOR TO COMMENCEMENT OF PROSECUTION.

9 (13) AS USED IN SUBSECTIONS (6) TO (12), "PERSON BUYING FARM  
10 PRODUCTS" OR "BUYER" INCLUDES A COMMISSION MERCHANT OR SELLING  
11 AGENT WHO SELLS FARM PRODUCTS IN THE ORDINARY COURSE OF BUSINESS  
12 FOR A PERSON ENGAGED IN FARMING OPERATIONS.

13 (14) A BUYER IN ORDINARY COURSE OF BUSINESS WHO RECEIVES  
14 NOTICE PURSUANT TO SUBSECTION (9), WHO BUYS FARM PRODUCTS FROM A  
15 PERSON ENGAGED IN FARMING OPERATIONS, AND WHO WITHHOLDS ALL OR  
16 PART OF THE PROCEEDS OF THE SALE FROM THE SELLER IN ORDER TO SAT-  
17 ISFY A DEBT OWED BY THE SELLER TO THE BUYER, TAKES SUBJECT TO A  
18 SECURITY INTEREST IN THOSE FARM PRODUCTS CREATED BY THE SELLER,  
19 UNLESS THE DEBT OWED BY THE SELLER TO THE BUYER WAS SECURED BY A  
20 PRIOR PERFECTED SECURITY INTEREST. FOR PURPOSES OF THIS SUBSEC-  
21 TION, "DEBT" DOES NOT INCLUDE THE COST OF HARVESTING; PROCESSING,  
22 INCLUDING PACKAGING, FREEZING, CANNING, AND DRYING; STORING; MAR-  
23 KETING; OR TRANSPORTING FARM PRODUCTS TO MARKET.

24 (15) EXCEPT AS OTHERWISE PROVIDED BY SUBSECTION (16), A COM-  
25 MISSION MERCHANT OR SELLING AGENT WHO SELLS FARM PRODUCTS, IN THE  
26 ORDINARY COURSE OF BUSINESS, FOR A PERSON ENGAGED IN FARMING  
27 OPERATIONS IS NOT LIABLE TO THE HOLDER OF A SECURITY INTEREST IN

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

165

1 THOSE FARM PRODUCTS EVEN THOUGH THE SECURITY INTEREST IS  
2 PERFECTED AND EVEN THOUGH THE COMMISSION MERCHANT OR SELLING  
3 AGENT KNOWS OF ITS EXISTENCE.

4 (16) A COMMISSION MERCHANT OR SELLING AGENT WHO SELLS FARM  
5 PRODUCTS, IN THE ORDINARY COURSE OF BUSINESS, FOR A PERSON  
6 ENGAGED IN FARMING OPERATIONS, AND WHO RECEIVES NOTICE PURSUANT  
7 TO SUBSECTION (9), SHALL NOT BE PROTECTED FROM LIABILITY UNDER  
8 SUBSECTION (15) IF THE COMMISSION MERCHANT OR SELLING AGENT WITH-  
9 HOLDS FROM THE SELLER ALL OR PART OF THE PROCEEDS OF A SALE OF  
10 THE FARM PRODUCTS IN ORDER TO SATISFY A DEBT OWED BY THE SELLER  
11 TO THE COMMISSION MERCHANT OR SELLING AGENT, UNLESS THE DEBT WAS  
12 SECURED BY A PRIOR PERFECTED SECURITY INTEREST. FOR PURPOSES OF  
13 THIS SUBSECTION, "DEBT" DOES NOT INCLUDE THE COST OF HARVESTING;  
14 PROCESSING, INCLUDING PACKAGING, FREEZING, CANNING, AND DRYING;  
15 STORING; MARKETING; OR TRANSPORTING FARM PRODUCTS TO MARKET.

16 (17) A PROSECUTION UNDER SUBSECTIONS (12) TO (14) SHALL NOT  
17 BE COMMENCED AFTER THE EXPIRATION OF 2 YEARS FOLLOWING THE DATE  
18 THE VIOLATION OCCURRED.

19 SEC. 9321. (1) AS USED IN THIS SECTION, "LICENSEE IN ORDI-  
20 NARY COURSE OF BUSINESS" MEANS A PERSON THAT BECOMES A LICENSEE  
21 OF A GENERAL INTANGIBLE IN GOOD FAITH, WITHOUT KNOWLEDGE THAT THE  
22 LICENSE VIOLATES THE RIGHTS OF ANOTHER PERSON IN THE GENERAL  
23 INTANGIBLE, AND IN THE ORDINARY COURSE FROM A PERSON IN THE BUSI-  
24 NESS OF LICENSING GENERAL INTANGIBLES OF THAT KIND. A PERSON  
25 BECOMES A LICENSEE IN THE ORDINARY COURSE IF THE LICENSE TO THE  
26 PERSON COMPORTS WITH THE USUAL OR CUSTOMARY PRACTICES IN THE KIND

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

166

1 OF BUSINESS IN WHICH THE LICENSOR IS ENGAGED OR WITH THE  
2 LICENSOR'S OWN USUAL OR CUSTOMARY PRACTICES.

3 (2) A LICENSEE IN ORDINARY COURSE OF BUSINESS TAKES ITS  
4 RIGHTS UNDER A NONEXCLUSIVE LICENSE FREE OF A SECURITY INTEREST  
5 IN THE GENERAL INTANGIBLE CREATED BY THE LICENSOR, EVEN IF THE  
6 SECURITY INTEREST IS PERFECTED AND THE LICENSEE KNOWS OF ITS  
7 EXISTENCE.

8 (3) A LESSEE IN ORDINARY COURSE OF BUSINESS TAKES ITS LEASE-  
9 HOLD INTEREST FREE OF A SECURITY INTEREST IN THE GOODS CREATED BY  
10 THE LESSOR, EVEN IF THE SECURITY INTEREST IS PERFECTED AND THE  
11 LESSEE KNOWS OF ITS EXISTENCE.

12 SEC. 9322. (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SEC-  
13 TION, PRIORITY AMONG CONFLICTING SECURITY INTERESTS AND AGRICUL-  
14 TURAL LIENS IN THE SAME COLLATERAL IS DETERMINED ACCORDING TO THE  
15 FOLLOWING RULES:

16 (A) CONFLICTING PERFECTED SECURITY INTERESTS AND AGRICUL-  
17 TURAL LIENS RANK ACCORDING TO PRIORITY IN TIME OF FILING OR  
18 PERFECTION. PRIORITY DATES FROM THE EARLIER OF THE TIME A FILING  
19 COVERING THE COLLATERAL IS FIRST MADE OR THE SECURITY INTEREST OR  
20 AGRICULTURAL LIEN IS FIRST PERFECTED, IF THERE IS NO PERIOD  
21 THEREAFTER WHEN THERE IS NEITHER FILING NOR PERFECTION.

22 (B) A PERFECTED SECURITY INTEREST OR AGRICULTURAL LIEN HAS  
23 PRIORITY OVER A CONFLICTING UNPERFECTED SECURITY INTEREST OR  
24 AGRICULTURAL LIEN.

25 (C) THE FIRST SECURITY INTEREST OR AGRICULTURAL LIEN TO  
26 ATTACH OR BECOME EFFECTIVE HAS PRIORITY IF CONFLICTING SECURITY  
27 INTERESTS AND AGRICULTURAL LIENS ARE UNPERFECTED.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

167

1 (2) FOR THE PURPOSES OF SUBSECTION (1)(A), BOTH OF THE  
2 FOLLOWING APPLY:

3 (A) THE TIME OF FILING OR PERFECTION AS TO A SECURITY INTER-  
4 EST IN COLLATERAL IS ALSO THE TIME OF FILING OR PERFECTION AS TO  
5 A SECURITY INTEREST IN PROCEEDS.

6 (B) THE TIME OF FILING OF PERFECTION AS TO A SECURITY INTER-  
7 EST IN COLLATERAL SUPPORTED BY A SUPPORTING OBLIGATION IS ALSO  
8 THE TIME OF FILING OR PERFECTION AS TO A SECURITY INTEREST IN THE  
9 SUPPORTING OBLIGATION.

10 (3) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (6), A SECUR-  
11 ITY INTEREST IN COLLATERAL THAT QUALIFIES FOR PRIORITY OVER A  
12 CONFLICTING SECURITY INTEREST UNDER SECTION 9327, 9328, 9329,  
13 9330, OR 9331 ALSO HAS PRIORITY OVER A CONFLICTING SECURITY  
14 INTEREST IN 1 OR MORE OF THE FOLLOWING:

15 (A) ANY SUPPORTING OBLIGATION FOR THE COLLATERAL.

16 (B) PROCEEDS OF THE COLLATERAL IF ALL OF THE FOLLOWING ARE  
17 MET:

18 (i) THE SECURITY INTEREST IN PROCEEDS IS PERFECTED.

19 (ii) THE PROCEEDS ARE CASH PROCEEDS OR OF THE SAME TYPE AS  
20 THE COLLATERAL.

21 (iii) IN THE CASE OF PROCEEDS THAT ARE PROCEEDS OF PROCEEDS,  
22 ALL INTERVENING PROCEEDS ARE CASH PROCEEDS, PROCEEDS OF THE SAME  
23 TYPE AS THE COLLATERAL, OR AN ACCOUNT RELATING TO THE  
24 COLLATERAL.

25 (4) SUBJECT TO SUBSECTION (5) AND EXCEPT AS OTHERWISE PRO-  
26 VIDED IN SUBSECTION (6), IF A SECURITY INTEREST IN CHATTEL PAPER,  
27 DEPOSIT ACCOUNTS, NEGOTIABLE DOCUMENTS, INSTRUMENTS, INVESTMENT

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

168

1 PROPERTY, OR LETTER-OF-CREDIT RIGHTS IS PERFECTED BY A METHOD  
2 OTHER THAN FILING, CONFLICTING PERFECTED SECURITY INTERESTS IN  
3 PROCEEDS OF THE COLLATERAL RANK ACCORDING TO PRIORITY IN TIME OF  
4 FILING.

5 (5) SUBSECTION (4) APPLIES ONLY IF THE PROCEEDS OF THE COL-  
6 LATERAL ARE NOT CASH PROCEEDS, CHATTEL PAPER, NEGOTIABLE DOCU-  
7 MENTS, INSTRUMENTS, INVESTMENT PROPERTY, OR LETTER-OF-CREDIT  
8 RIGHTS.

9 (6) SUBSECTIONS (1) THROUGH (5) ARE SUBJECT TO ALL OF THE  
10 FOLLOWING:

11 (A) SUBSECTION (7) AND THE OTHER PROVISIONS OF THIS PART.

12 (B) SECTION 4210 WITH RESPECT TO A SECURITY INTEREST OF A  
13 COLLECTING BANK.

14 (C) SECTION 5118 WITH RESPECT TO A SECURITY INTEREST OF AN  
15 ISSUER OR NOMINATED PERSON.

16 (D) SECTION 9110 WITH RESPECT TO A SECURITY INTEREST ARISING  
17 UNDER ARTICLE 2 OR 2A.

18 (7) A PERFECTED AGRICULTURAL LIEN ON COLLATERAL HAS PRIORITY  
19 OVER A CONFLICTING SECURITY INTEREST IN OR AGRICULTURAL LIEN ON  
20 THE SAME COLLATERAL IF THE STATUTE CREATING THE AGRICULTURAL LIEN  
21 SO PROVIDES.

22 SEC. 9323. (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION  
23 (3), FOR PURPOSES OF DETERMINING THE PRIORITY OF A PERFECTED  
24 SECURITY INTEREST UNDER SECTION 9322(1)(A), PERFECTION OF THE  
25 SECURITY INTEREST DATES FROM THE TIME AN ADVANCE IS MADE TO THE  
26 EXTENT THAT THE SECURITY INTEREST SECURES AN ADVANCE THAT MEETS  
27 BOTH OF THE FOLLOWING:



**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

169

1 (A) IS MADE WHILE THE SECURITY INTEREST IS PERFECTED ONLY  
2 UNDER 1 OF THE FOLLOWING:

3 (i) UNDER SECTION 9309 WHEN IT ATTACHES.

4 (ii) TEMPORARILY UNDER SECTION 9312(5), (6), OR (7).

5 (B) IS NOT MADE PURSUANT TO A COMMITMENT ENTERED INTO BEFORE  
6 OR WHILE THE SECURITY INTEREST IS PERFECTED BY A METHOD OTHER  
7 THAN UNDER SECTION 9309 OR 9312(5), (6), OR (7).

8 (2) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3), A SECUR-  
9 ITY INTEREST IS SUBORDINATE TO THE RIGHTS OF A PERSON THAT  
10 BECOMES A LIEN CREDITOR TO THE EXTENT THAT THE SECURITY INTEREST  
11 SECURES AN ADVANCE MADE MORE THAN 45 DAYS AFTER THE PERSON  
12 BECOMES A LIEN CREDITOR UNLESS THE ADVANCE IS MADE WITHOUT KNOWL-  
13 EDGE OF THE LIEN, OR PURSUANT TO A COMMITMENT ENTERED INTO WITH-  
14 OUT KNOWLEDGE OF THE LIEN.

15 (3) SUBSECTIONS (1) AND (2) DO NOT APPLY TO A SECURITY  
16 INTEREST HELD BY A SECURED PARTY THAT IS A BUYER OF ACCOUNTS,  
17 CHATTEL PAPER, PAYMENT INTANGIBLES, OR PROMISSORY NOTES OR A  
18 CONSIGNOR.

19 (4) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (5), A BUYER  
20 OF GOODS OTHER THAN A BUYER IN ORDINARY COURSE OF BUSINESS TAKES  
21 FREE OF A SECURITY INTEREST TO THE EXTENT THAT IT SECURES  
22 ADVANCES MADE AFTER THE EARLIER OF THE FOLLOWING:

23 (A) THE TIME THE SECURED PARTY ACQUIRES KNOWLEDGE OF THE  
24 BUYER'S PURCHASE.

25 (B) FORTY-FIVE DAYS AFTER THE PURCHASE.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

170

1 (5) SUBSECTION (4) DOES NOT APPLY IF THE ADVANCE IS MADE  
2 PURSUANT TO A COMMITMENT ENTERED INTO WITHOUT KNOWLEDGE OF THE  
3 BUYER'S PURCHASE AND BEFORE THE EXPIRATION OF THE 45-DAY PERIOD.

4 (6) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (7), A LESSEE  
5 OF GOODS, OTHER THAN A LESSEE IN ORDINARY COURSE OF BUSINESS,  
6 TAKES THE LEASEHOLD INTEREST FREE OF A SECURITY INTEREST TO THE  
7 EXTENT THAT IT SECURES ADVANCES MADE AFTER THE EARLIER OF THE  
8 FOLLOWING:

9 (A) THE TIME THE SECURED PARTY ACQUIRES KNOWLEDGE OF THE  
10 LEASE.

11 (B) FORTY-FIVE DAYS AFTER THE LEASE CONTRACT BECOMES  
12 ENFORCEABLE.

13 (7) SUBSECTION (6) DOES NOT APPLY IF THE ADVANCE IS MADE  
14 PURSUANT TO A COMMITMENT ENTERED INTO WITHOUT KNOWLEDGE OF THE  
15 LEASE AND BEFORE THE EXPIRATION OF THE 45-DAY PERIOD.

16 SEC. 9324. (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION  
17 (7), A PERFECTED PURCHASE-MONEY SECURITY INTEREST IN GOODS OTHER  
18 THAN INVENTORY OR LIVESTOCK HAS PRIORITY OVER A CONFLICTING  
19 SECURITY INTEREST IN THE SAME GOODS, AND, EXCEPT AS OTHERWISE  
20 PROVIDED IN SECTION 9327, A PERFECTED SECURITY INTEREST IN ITS  
21 IDENTIFIABLE PROCEEDS ALSO HAS PRIORITY, IF THE PURCHASE-MONEY  
22 SECURITY INTEREST IS PERFECTED WHEN THE DEBTOR RECEIVES POSSES-  
23 SION OF THE COLLATERAL OR WITHIN 20 DAYS THEREAFTER.

24 (2) SUBJECT TO SUBSECTION (3) AND EXCEPT AS OTHERWISE PRO-  
25 VIDED IN SUBSECTION (7), A PERFECTED PURCHASE-MONEY SECURITY  
26 INTEREST IN INVENTORY HAS PRIORITY OVER A CONFLICTING SECURITY  
27 INTEREST IN THE SAME INVENTORY, HAS PRIORITY OVER A CONFLICTING

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

171

1 SECURITY INTEREST IN CHATTEL PAPER OR AN INSTRUMENT CONSTITUTING  
2 PROCEEDS OF THE INVENTORY AND IN PROCEEDS OF THE CHATTEL PAPER,  
3 IF SO PROVIDED IN SECTION 9330, AND, EXCEPT AS OTHERWISE PROVIDED  
4 IN SECTION 9327, ALSO HAS PRIORITY IN IDENTIFIABLE CASH PROCEEDS  
5 OF THE INVENTORY TO THE EXTENT THE IDENTIFIABLE CASH PROCEEDS ARE  
6 RECEIVED ON OR BEFORE THE DELIVERY OF THE INVENTORY TO A BUYER,  
7 IF ALL OF THE FOLLOWING ARE MET:

8 (A) THE PURCHASE-MONEY SECURITY INTEREST IS PERFECTED WHEN  
9 THE DEBTOR RECEIVES POSSESSION OF THE INVENTORY.

10 (B) THE PURCHASE-MONEY SECURED PARTY SENDS AN AUTHENTICATED  
11 NOTIFICATION TO THE HOLDER OF THE CONFLICTING SECURITY INTEREST.

12 (C) THE HOLDER OF THE CONFLICTING SECURITY INTEREST RECEIVES  
13 THE NOTIFICATION WITHIN 5 YEARS BEFORE THE DEBTOR RECEIVES POS-  
14 SESSION OF THE INVENTORY.

15 (D) THE NOTIFICATION STATES THAT THE PERSON SENDING THE  
16 NOTIFICATION HAS OR EXPECTS TO ACQUIRE A PURCHASE-MONEY SECURITY  
17 INTEREST IN INVENTORY OF THE DEBTOR AND DESCRIBES THE INVENTORY.

18 (3) SUBSECTION (2)(B) THROUGH (D) APPLY ONLY IF THE HOLDER  
19 OF THE CONFLICTING SECURITY INTEREST HAD FILED A FINANCING STATE-  
20 MENT COVERING THE SAME TYPES OF INVENTORY BEFORE 1 OF THE  
21 FOLLOWING:

22 (A) IF THE PURCHASE-MONEY SECURITY INTEREST IS PERFECTED BY  
23 FILING, BEFORE THE DATE OF THE FILING.

24 (B) IF THE PURCHASE-MONEY SECURITY INTEREST IS TEMPORARILY  
25 PERFECTED WITHOUT FILING OR POSSESSION UNDER SECTION 9312(6),  
26 BEFORE THE BEGINNING OF THE 20-DAY PERIOD THEREUNDER.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

172

1       (4) SUBJECT TO SUBSECTION (5) AND EXCEPT AS OTHERWISE  
2 PROVIDED IN SUBSECTION (7), A PERFECTED PURCHASE-MONEY SECURITY  
3 INTEREST IN LIVESTOCK THAT ARE FARM PRODUCTS HAS PRIORITY OVER A  
4 CONFLICTING SECURITY INTEREST IN THE SAME LIVESTOCK, AND, EXCEPT  
5 AS OTHERWISE PROVIDED IN SECTION 9327, A PERFECTED SECURITY  
6 INTEREST IN THEIR IDENTIFIABLE PROCEEDS AND IDENTIFIABLE PRODUCTS  
7 IN THEIR UNMANUFACTURED STATES ALSO HAS PRIORITY, IF ALL OF THE  
8 FOLLOWING ARE MET:

9       (A) THE PURCHASE-MONEY SECURITY INTEREST IS PERFECTED WHEN  
10 THE DEBTOR RECEIVES POSSESSION OF THE LIVESTOCK.

11       (B) THE PURCHASE-MONEY SECURED PARTY SENDS AN AUTHENTICATED  
12 NOTIFICATION TO THE HOLDER OF THE CONFLICTING SECURITY INTEREST.

13       (C) THE HOLDER OF THE CONFLICTING SECURITY INTEREST RECEIVES  
14 THE NOTIFICATION WITHIN 6 MONTHS BEFORE THE DEBTOR RECEIVES POS-  
15 SESSION OF THE LIVESTOCK.

16       (D) THE NOTIFICATION STATES THAT THE PERSON SENDING THE  
17 NOTIFICATION HAS OR EXPECTS TO ACQUIRE A PURCHASE-MONEY SECURITY  
18 INTEREST IN LIVESTOCK OF THE DEBTOR AND DESCRIBES THE LIVESTOCK.

19       (5) SUBSECTION (4)(B) THROUGH (D) APPLY ONLY IF THE HOLDER  
20 OF THE CONFLICTING SECURITY INTEREST HAD FILED A FINANCING STATE-  
21 MENT COVERING THE SAME TYPES OF LIVESTOCK BEFORE 1 OF THE  
22 FOLLOWING:

23       (A) IF THE PURCHASE-MONEY SECURITY INTEREST IS PERFECTED BY  
24 FILING, BEFORE THE DATE OF THE FILING.

25       (B) IF THE PURCHASE-MONEY SECURITY INTEREST IS TEMPORARILY  
26 PERFECTED WITHOUT FILING OR POSSESSION UNDER SECTION 9312(6),  
27 BEFORE THE BEGINNING OF THE 20-DAY PERIOD THEREUNDER.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

173

1       (6) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (7), A  
2 PERFECTED PURCHASE-MONEY SECURITY INTEREST IN SOFTWARE HAS PRIOR-  
3 ITY OVER A CONFLICTING SECURITY INTEREST IN THE SAME COLLATERAL,  
4 AND, EXCEPT AS OTHERWISE PROVIDED IN SECTION 9327, A PERFECTED  
5 SECURITY INTEREST IN ITS IDENTIFIABLE PROCEEDS ALSO HAS PRIORITY,  
6 TO THE EXTENT THAT THE PURCHASE-MONEY SECURITY INTEREST IN THE  
7 GOODS IN WHICH THE SOFTWARE WAS ACQUIRED FOR USE HAS PRIORITY IN  
8 THE GOODS AND PROCEEDS OF THE GOODS UNDER THIS SECTION.

9       (7) IF MORE THAN 1 SECURITY INTEREST QUALIFIES FOR PRIORITY  
10 IN THE SAME COLLATERAL UNDER SUBSECTION (1), (2), (4), OR (6), 1  
11 OF THE FOLLOWING APPLIES:

12       (A) A SECURITY INTEREST SECURING AN OBLIGATION INCURRED AS  
13 ALL OR PART OF THE PRICE OF THE COLLATERAL HAS PRIORITY OVER A  
14 SECURITY INTEREST SECURING AN OBLIGATION INCURRED FOR VALUE GIVEN  
15 TO ENABLE THE DEBTOR TO ACQUIRE RIGHTS IN OR THE USE OF  
16 COLLATERAL.

17       (B) IN ALL OTHER CASES, SECTION 9322(1) APPLIES TO THE QUAL-  
18 IFYING SECURITY INTEREST.

19       SEC. 9325. (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION  
20 (2), A SECURITY INTEREST CREATED BY A DEBTOR IS SUBORDINATE TO A  
21 SECURITY INTEREST IN THE SAME COLLATERAL CREATED BY ANOTHER  
22 PERSON IF ALL OF THE FOLLOWING ARE MET:

23       (A) THE DEBTOR ACQUIRED THE COLLATERAL SUBJECT TO THE SECUR-  
24 ITY INTEREST CREATED BY THE OTHER PERSON.

25       (B) THE SECURITY INTEREST CREATED BY THE OTHER PERSON WAS  
26 PERFECTED WHEN THE DEBTOR ACQUIRED THE COLLATERAL.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

174

1 (C) THERE IS NO PERIOD THEREAFTER WHEN THE SECURITY INTEREST  
2 IS UNPERFECTED.

3 (2) SUBSECTION (1) SUBORDINATES A SECURITY INTEREST ONLY IF  
4 THE SECURITY INTEREST OTHERWISE WOULD HAVE PRIORITY SOLELY UNDER  
5 SECTION 9322(1) OR 9324, OR AROSE SOLELY UNDER SECTION 2711(3) OR  
6 2A508(5).

7 SEC. 9326. (1) SUBJECT TO SUBSECTION (2), A SECURITY INTER-  
8 EST CREATED BY A NEW DEBTOR THAT IS PERFECTED BY A FILED FINANC-  
9 ING STATEMENT THAT IS EFFECTIVE SOLELY UNDER SECTION 9508 IN COL-  
10 LATERAL IN THAT A NEW DEBTOR HAS OR ACQUIRES RIGHTS IS SUBORDI-  
11 NATE TO A SECURITY INTEREST IN THE SAME COLLATERAL THAT IS PER-  
12 FECTED OTHER THAN BY A FILED FINANCING STATEMENT THAT IS EFFEC-  
13 TIVE SOLELY UNDER SECTION 9508.

14 (2) THE OTHER PROVISIONS OF THIS PART DETERMINE THE PRIORITY  
15 AMONG CONFLICTING SECURITY INTERESTS IN THE SAME COLLATERAL PER-  
16 FECTED BY FILED FINANCING STATEMENTS THAT ARE EFFECTIVE SOLELY  
17 UNDER SECTION 9508. HOWEVER, IF THE SECURITY AGREEMENTS TO WHICH  
18 A NEW DEBTOR BECAME BOUND AS DEBTOR WERE NOT ENTERED INTO BY THE  
19 SAME ORIGINAL DEBTOR, THE CONFLICTING SECURITY INTERESTS RANK  
20 ACCORDING TO PRIORITY IN TIME OF THE NEW DEBTOR'S HAVING BECOME  
21 BOUND.

22 SEC. 9327. THE FOLLOWING RULES GOVERN PRIORITY AMONG CON-  
23 FLICTING SECURITY INTERESTS IN THE SAME DEPOSIT ACCOUNT:

24 (A) A SECURITY INTEREST HELD BY A SECURED PARTY HAVING CON-  
25 TROL OF THE DEPOSIT ACCOUNT UNDER SECTION 9104 HAS PRIORITY OVER  
26 A CONFLICTING SECURITY INTEREST HELD BY A SECURED PARTY THAT DOES  
27 NOT HAVE CONTROL.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

175

1 (B) EXCEPT AS OTHERWISE PROVIDED IN SUBDIVISIONS (C) AND  
2 (D), SECURITY INTERESTS PERFECTED BY CONTROL UNDER SECTION 9314  
3 RANK ACCORDING TO PRIORITY IN TIME OF OBTAINING CONTROL.

4 (C) EXCEPT AS OTHERWISE PROVIDED IN SUBDIVISION (D), A  
5 SECURITY INTEREST HELD BY THE BANK WITH WHICH THE DEPOSIT ACCOUNT  
6 IS MAINTAINED HAS PRIORITY OVER A CONFLICTING SECURITY INTEREST  
7 HELD BY ANOTHER SECURED PARTY.

8 (D) A SECURITY INTEREST PERFECTED BY CONTROL UNDER SECTION  
9 9104(1)(C) HAS PRIORITY OVER A SECURITY INTEREST HELD BY THE BANK  
10 WITH WHICH THE DEPOSIT ACCOUNT IS MAINTAINED.

11 SEC. 9328. THE FOLLOWING RULES GOVERN PRIORITY AMONG CON-  
12 FFLICTING SECURITY INTERESTS IN THE SAME INVESTMENT PROPERTY:

13 (A) A SECURITY INTEREST HELD BY A SECURED PARTY HAVING CON-  
14 TROL OF INVESTMENT PROPERTY UNDER SECTION 9106 HAS PRIORITY OVER  
15 A SECURITY INTEREST HELD BY A SECURED PARTY THAT DOES NOT HAVE  
16 CONTROL OF THE INVESTMENT PROPERTY.

17 (B) EXCEPT AS OTHERWISE PROVIDED IN SUBDIVISIONS (C) AND  
18 (D), CONFLICTING SECURITY INTERESTS HELD BY SECURED PARTIES EACH  
19 OF WHICH HAS CONTROL UNDER SECTION 9106 RANK ACCORDING TO PRIOR-  
20 ITY IN TIME OF 1 OF THE FOLLOWING:

21 (i) IF THE COLLATERAL IS A SECURITY, OBTAINING CONTROL.

22 (ii) IF THE COLLATERAL IS A SECURITY ENTITLEMENT CARRIED IN  
23 A SECURITIES ACCOUNT, ACCORDING TO 1 OF THE FOLLOWING:

24 (A) IF THE SECURED PARTY OBTAINED CONTROL UNDER SECTION  
25 8106(4)(A), THE SECURED PARTY'S BECOMING THE PERSON FOR WHICH THE  
26 SECURITIES ACCOUNT IS MAINTAINED.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

176

1 (B) IF THE SECURED PARTY OBTAINED CONTROL UNDER SECTION  
2 8106(4)(B), THE SECURITIES INTERMEDIARY'S AGREEMENT TO COMPLY  
3 WITH THE SECURED PARTY'S ENTITLEMENT ORDERS WITH RESPECT TO  
4 SECURITY ENTITLEMENTS CARRIED OR TO BE CARRIED IN THE SECURITIES  
5 ACCOUNT.

6 (C) IF THE SECURED PARTY OBTAINED CONTROL THROUGH ANOTHER  
7 PERSON UNDER SECTION 8106(4)(C), THE TIME ON WHICH PRIORITY WOULD  
8 BE BASED UNDER THIS PARAGRAPH IF THE OTHER PERSON WERE THE  
9 SECURED PARTY.

10 (iii) IF THE COLLATERAL IS A COMMODITY CONTRACT CARRIED WITH  
11 A COMMODITY INTERMEDIARY, THE SATISFACTION OF THE REQUIREMENT FOR  
12 CONTROL SPECIFIED IN SECTION 9106(2)(B) WITH RESPECT TO COMMODITY  
13 CONTRACTS CARRIED OR TO BE CARRIED WITH THE COMMODITY  
14 INTERMEDIARY.

15 (C) A SECURITY INTEREST HELD BY A SECURITIES INTERMEDIARY IN  
16 A SECURITY ENTITLEMENT OR A SECURITIES ACCOUNT MAINTAINED WITH  
17 THE SECURITIES INTERMEDIARY HAS PRIORITY OVER A CONFLICTING  
18 SECURITY INTEREST HELD BY ANOTHER SECURED PARTY.

19 (D) A SECURITY INTEREST HELD BY A COMMODITY INTERMEDIARY IN  
20 A COMMODITY CONTRACT OR A COMMODITY ACCOUNT MAINTAINED WITH THE  
21 COMMODITY INTERMEDIARY HAS PRIORITY OVER A CONFLICTING SECURITY  
22 INTEREST HELD BY ANOTHER SECURED PARTY.

23 (E) A SECURITY INTEREST IN A CERTIFICATED SECURITY IN REGIS-  
24 TERED FORM THAT IS PERFECTED BY TAKING DELIVERY UNDER SECTION  
25 9313(1) AND NOT BY CONTROL UNDER SECTION 9314 HAS PRIORITY OVER A  
26 CONFLICTING SECURITY INTEREST PERFECTED BY A METHOD OTHER THAN  
27 CONTROL.



**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

177

1 (F) CONFLICTING SECURITY INTERESTS CREATED BY A BROKER,  
2 SECURITIES INTERMEDIARY, OR COMMODITY INTERMEDIARY THAT ARE PER-  
3 FECTED WITHOUT CONTROL UNDER SECTION 9106 RANK EQUALLY.

4 (G) IN ALL OTHER CASES, PRIORITY AMONG CONFLICTING SECURITY  
5 INTERESTS IN INVESTMENT PROPERTY IS GOVERNED BY SECTIONS 9322 AND  
6 9323.

7 SEC. 9329. THE FOLLOWING RULES GOVERN PRIORITY AMONG CON-  
8 FFLICTING SECURITY INTERESTS IN THE SAME LETTER-OF-CREDIT RIGHT:

9 (A) A SECURITY INTEREST HELD BY A SECURED PARTY HAVING CON-  
10 TROL OF THE LETTER-OF-CREDIT RIGHT UNDER SECTION 9107 HAS PRIOR-  
11 ITY TO THE EXTENT OF ITS CONTROL OVER A CONFLICTING SECURITY  
12 INTEREST HELD BY A SECURED PARTY THAT DOES NOT HAVE CONTROL.

13 (B) SECURITY INTERESTS PERFECTED BY CONTROL UNDER SECTION  
14 9314 RANK ACCORDING TO PRIORITY IN TIME OF OBTAINING CONTROL.

15 SEC. 9330. (1) A PURCHASER OF CHATTEL PAPER HAS PRIORITY  
16 OVER A SECURITY INTEREST IN THE CHATTEL PAPER THAT IS CLAIMED  
17 MERELY AS PROCEEDS OF INVENTORY SUBJECT TO A SECURITY INTEREST IF  
18 BOTH OF THE FOLLOWING ARE MET:

19 (A) IN GOOD FAITH AND IN THE ORDINARY COURSE OF THE  
20 PURCHASER'S BUSINESS, THE PURCHASER GIVES NEW VALUE AND TAKES  
21 POSSESSION OF THE CHATTEL PAPER OR OBTAINS CONTROL OF THE CHATTEL  
22 PAPER UNDER SECTION 9105.

23 (B) THE CHATTEL PAPER DOES NOT INDICATE THAT IT HAS BEEN  
24 ASSIGNED TO AN IDENTIFIED ASSIGNEE OTHER THAN THE PURCHASER.

25 (2) A PURCHASER OF CHATTEL PAPER HAS PRIORITY OVER A SECUR-  
26 ITY INTEREST IN THE CHATTEL PAPER THAT IS CLAIMED OTHER THAN  
27 MERELY AS PROCEEDS OF INVENTORY SUBJECT TO A SECURITY INTEREST IF

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

178

1 THE PURCHASER GIVES NEW VALUE AND TAKES POSSESSION OF THE CHATTEL  
2 PAPER OR OBTAINS CONTROL OF THE CHATTEL PAPER UNDER SECTION 9105  
3 IN GOOD FAITH, IN THE ORDINARY COURSE OF THE PURCHASER'S BUSI-  
4 NESS, AND WITHOUT KNOWLEDGE THAT THE PURCHASE VIOLATES THE RIGHTS  
5 OF THE SECURED PARTY.

6 (3) EXCEPT AS OTHERWISE PROVIDED IN SECTION 9327, A PUR-  
7 CHASER HAVING PRIORITY IN CHATTEL PAPER UNDER SUBSECTION (1) OR  
8 (2) ALSO HAS PRIORITY IN PROCEEDS OF THE CHATTEL PAPER TO THE  
9 EXTENT THAT SECTION 9322 PROVIDES FOR PRIORITY IN THE PROCEEDS,  
10 OR THE PROCEEDS CONSIST OF THE SPECIFIC GOODS COVERED BY THE  
11 CHATTEL PAPER OR CASH PROCEEDS OF THE SPECIFIC GOODS, EVEN IF THE  
12 PURCHASER'S SECURITY INTEREST IN THE PROCEEDS IS UNPERFECTED.

13 (4) EXCEPT AS OTHERWISE PROVIDED IN SECTION 9331(1), A PUR-  
14 CHASER OF AN INSTRUMENT HAS PRIORITY OVER A SECURITY INTEREST IN  
15 THE INSTRUMENT PERFECTED BY A METHOD OTHER THAN POSSESSION IF THE  
16 PURCHASER GIVES VALUE AND TAKES POSSESSION OF THE INSTRUMENT IN  
17 GOOD FAITH AND WITHOUT KNOWLEDGE THAT THE PURCHASE VIOLATES THE  
18 RIGHTS OF THE SECURED PARTY.

19 (5) FOR PURPOSES OF SUBSECTIONS (1) AND (2), THE HOLDER OF A  
20 PURCHASE-MONEY SECURITY INTEREST IN INVENTORY GIVES NEW VALUE FOR  
21 CHATTEL PAPER CONSTITUTING PROCEEDS OF THE INVENTORY.

22 (6) FOR PURPOSES OF SUBSECTIONS (2) AND (4), IF CHATTEL  
23 PAPER OR AN INSTRUMENT INDICATES THAT IT HAS BEEN ASSIGNED TO AN  
24 IDENTIFIED SECURED PARTY OTHER THAN THE PURCHASER, A PURCHASER OF  
25 THE CHATTEL PAPER OR INSTRUMENT HAS KNOWLEDGE THAT THE PURCHASE  
26 VIOLATES THE RIGHTS OF THE SECURED PARTY.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

179

1        SEC. 9331. (1) THIS ARTICLE DOES NOT LIMIT THE RIGHTS OF A  
2 HOLDER IN DUE COURSE OF A NEGOTIABLE INSTRUMENT, A HOLDER TO  
3 WHICH A NEGOTIABLE DOCUMENT OF TITLE HAS BEEN DULY NEGOTIATED, OR  
4 A PROTECTED PURCHASER OF A SECURITY. THESE HOLDERS OR PURCHASERS  
5 TAKE PRIORITY OVER AN EARLIER SECURITY INTEREST, EVEN IF PERFEC-  
6 TED, TO THE EXTENT PROVIDED IN ARTICLES 3, 7, AND 8.

7        (2) THIS ARTICLE DOES NOT LIMIT THE RIGHTS OF OR IMPOSE  
8 LIABILITY ON A PERSON TO THE EXTENT THAT THE PERSON IS PROTECTED  
9 AGAINST THE ASSERTION OF A CLAIM UNDER ARTICLE 8.

10       (3) FILING UNDER THIS ARTICLE DOES NOT CONSTITUTE NOTICE OF  
11 A CLAIM OR DEFENSE TO THE HOLDERS, OR PURCHASERS, OR PERSONS  
12 DESCRIBED IN SUBSECTIONS (1) AND (2).

13       SEC. 9332. (1) A TRANSFEREE OF MONEY TAKES THE MONEY FREE  
14 OF A SECURITY INTEREST UNLESS THE TRANSFEREE ACTS IN COLLUSION  
15 WITH THE DEBTOR IN VIOLATING THE RIGHTS OF THE SECURED PARTY.

16       (2) A TRANSFEREE OF FUNDS FROM A DEPOSIT ACCOUNT TAKES THE  
17 FUNDS FREE OF A SECURITY INTEREST IN THE DEPOSIT ACCOUNT UNLESS  
18 THE TRANSFEREE ACTS IN COLLUSION WITH THE DEBTOR IN VIOLATING THE  
19 RIGHTS OF THE SECURED PARTY.

20       SEC. 9333. (1) AS USED IN THIS SECTION, "POSSESSORY LIEN"  
21 MEANS AN INTEREST, OTHER THAN A SECURITY INTEREST OR AN AGRICUL-  
22 TURAL LIEN, THAT MEETS ALL OF THE FOLLOWING:

23       (A) IT SECURES PAYMENT OR PERFORMANCE OF AN OBLIGATION FOR  
24 SERVICES OR MATERIALS FURNISHED WITH RESPECT TO GOODS BY A PERSON  
25 IN THE ORDINARY COURSE OF THE PERSON'S BUSINESS.

26       (B) IT IS CREATED BY STATUTE OR RULE OF LAW IN FAVOR OF THE  
27 PERSON.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

180

1 (C) ITS EFFECTIVENESS DEPENDS ON THE PERSON'S POSSESSION OF  
2 THE GOODS.

3 (2) A POSSESSORY LIEN ON GOODS HAS PRIORITY OVER A SECURITY  
4 INTEREST IN THE GOODS UNLESS THE LIEN IS CREATED BY A STATUTE  
5 THAT EXPRESSLY PROVIDES OTHERWISE.

6 SEC. 9334. (1) A SECURITY INTEREST UNDER THIS ARTICLE MAY  
7 BE CREATED IN GOODS THAT ARE FIXTURES OR MAY CONTINUE IN GOODS  
8 THAT BECOME FIXTURES. A SECURITY INTEREST DOES NOT EXIST UNDER  
9 THIS ARTICLE IN ORDINARY BUILDING MATERIALS INCORPORATED INTO AN  
10 IMPROVEMENT ON LAND.

11 (2) THIS ARTICLE DOES NOT PREVENT CREATION OF AN ENCUMBRANCE  
12 UPON FIXTURES UNDER REAL PROPERTY LAW.

13 (3) IN CASES NOT GOVERNED BY SUBSECTIONS (4) THROUGH (8), A  
14 SECURITY INTEREST IN FIXTURES IS SUBORDINATE TO A CONFLICTING  
15 INTEREST OF AN ENCUMBRANCER OR OWNER OF THE RELATED REAL PROPERTY  
16 OTHER THAN THE DEBTOR.

17 (4) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (8), A PER-  
18 FECTED SECURITY INTEREST IN FIXTURES HAS PRIORITY OVER A CON-  
19 FFLICTING INTEREST OF AN ENCUMBRANCER OR OWNER OF THE REAL PROP-  
20 ERTY IF THE DEBTOR HAS AN INTEREST OF RECORD IN OR IS IN POSSES-  
21 SION OF THE REAL PROPERTY AND ALL OF THE FOLLOWING ARE MET:

22 (A) THE SECURITY INTEREST IS A PURCHASE-MONEY SECURITY  
23 INTEREST.

24 (B) THE INTEREST OF THE ENCUMBRANCER OR OWNER ARISES BEFORE  
25 THE GOODS BECOME FIXTURES.

26 (C) THE SECURITY INTEREST IS PERFECTED BY A FIXTURE FILING  
27 BEFORE THE GOODS BECOME FIXTURES OR WITHIN 20 DAYS THEREAFTER.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

181

1       (5) A PERFECTED SECURITY INTEREST IN FIXTURES HAS PRIORITY  
2 OVER A CONFLICTING INTEREST OF AN ENCUMBRANCER OR OWNER OF THE  
3 REAL PROPERTY IN EACH OF THE FOLLOWING CIRCUMSTANCES:

4       (A) IF THE DEBTOR HAS AN INTEREST OF RECORD IN THE REAL  
5 PROPERTY OR IS IN POSSESSION OF THE REAL PROPERTY, AND THE SECUR-  
6 ITY INTEREST IS PERFECTED BY A FIXTURE FILING BEFORE THE INTEREST  
7 OF THE ENCUMBRANCER OR OWNER IS OF RECORD AND HAS PRIORITY OVER  
8 ANY CONFLICTING INTEREST OF A PREDECESSOR IN TITLE OF THE ENCUM-  
9 BRANCER OR OWNER.

10       (B) IF BEFORE THE GOODS BECOME FIXTURES, THE SECURITY INTER-  
11 EST IS PERFECTED BY ANY METHOD PERMITTED BY THIS ARTICLE AND THE  
12 FIXTURES ARE READILY REMOVABLE FACTORY OR OFFICE MACHINES,  
13 READILY REMOVABLE EQUIPMENT THAT IS NOT PRIMARILY USED OR LEASED  
14 FOR USE IN THE OPERATION OF THE REAL PROPERTY, OR READILY REMOV-  
15 ABLE REPLACEMENTS OF DOMESTIC APPLIANCES THAT ARE CONSUMER  
16 GOODS.

17       (C) IF THE CONFLICTING INTEREST IS A LIEN ON THE REAL PROP-  
18 ERTY OBTAINED BY LEGAL OR EQUITABLE PROCEEDINGS AFTER THE SECUR-  
19 ITY INTEREST WAS PERFECTED BY ANY METHOD PERMITTED BY THIS  
20 ARTICLE.

21       (D) IF THE SECURITY INTEREST IS CREATED IN A MANUFACTURED  
22 HOME IN A MANUFACTURED-HOME TRANSACTION AND PERFECTED PURSUANT TO  
23 A STATUTE DESCRIBED IN SECTION 9311(1)(B).

24       (6) A SECURITY INTEREST IN FIXTURES, WHETHER OR NOT PERFEC-  
25 TED, HAS PRIORITY OVER A CONFLICTING INTEREST OF AN ENCUMBRANCER  
26 OR OWNER OF THE REAL PROPERTY IF EITHER OF THE FOLLOWING IS MET:

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

182

1 (A) THE ENCUMBRANCER OR OWNER HAS, IN AN AUTHENTICATED  
2 RECORD, CONSENTED TO THE SECURITY INTEREST OR DISCLAIMED AN  
3 INTEREST IN THE GOODS AS FIXTURES.

4 (B) THE DEBTOR HAS A RIGHT TO REMOVE THE GOODS AS AGAINST  
5 THE ENCUMBRANCER OR OWNER.

6 (7) THE PRIORITY OF THE SECURITY INTEREST UNDER SUBSECTION  
7 (6)(B) CONTINUES FOR A REASONABLE TIME IF THE DEBTOR'S RIGHT TO  
8 REMOVE THE GOODS AS AGAINST THE ENCUMBRANCER OR OWNER  
9 TERMINATES.

10 (8) A MORTGAGE IS A CONSTRUCTION MORTGAGE TO THE EXTENT THAT  
11 IT SECURES AN OBLIGATION INCURRED FOR THE CONSTRUCTION OF AN  
12 IMPROVEMENT ON LAND, INCLUDING THE ACQUISITION COST OF THE LAND,  
13 IF A RECORDED RECORD OF THE MORTGAGE SO INDICATES. EXCEPT AS  
14 OTHERWISE PROVIDED IN SUBSECTIONS (5) AND (6), A SECURITY INTER-  
15 EST IN FIXTURES IS SUBORDINATE TO A CONSTRUCTION MORTGAGE IF A  
16 RECORD OF THE MORTGAGE IS RECORDED BEFORE THE GOODS BECOME FIX-  
17 TURES AND THE GOODS BECOME FIXTURES BEFORE THE COMPLETION OF THE  
18 CONSTRUCTION. A MORTGAGE HAS THIS PRIORITY TO THE SAME EXTENT AS  
19 A CONSTRUCTION MORTGAGE TO THE EXTENT THAT IT IS GIVEN TO REFI-  
20 NANCE A CONSTRUCTION MORTGAGE.

21 (9) A PERFECTED SECURITY INTEREST IN CROPS GROWING ON REAL  
22 PROPERTY HAS PRIORITY OVER A CONFLICTING INTEREST OF AN ENCUM-  
23 BRANCER OR OWNER OF THE REAL PROPERTY IF THE DEBTOR HAS AN INTER-  
24 EST OR RECORD IN OR IS IN POSSESSION OF THE REAL PROPERTY.

25 SEC. 9335. (1) A SECURITY INTEREST MAY BE CREATED IN AN  
26 ACCESSION AND CONTINUES IN COLLATERAL THAT BECOMES AN ACCESSION.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

183

1       (2) IF A SECURITY INTEREST IS PERFECTED WHEN THE COLLATERAL  
2 BECOMES AN ACCESSION, THE SECURITY INTEREST REMAINS PERFECTED IN  
3 THE COLLATERAL.

4       (3) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (4), THE  
5 OTHER PROVISIONS OF THIS PART DETERMINE THE PRIORITY OF A SECUR-  
6 ITY INTEREST IN AN ACCESSION.

7       (4) A SECURITY INTEREST IN AN ACCESSION IS SUBORDINATE TO A  
8 SECURITY INTEREST IN THE WHOLE WHICH IS PERFECTED BY COMPLIANCE  
9 WITH THE REQUIREMENTS OF A CERTIFICATE-OF-TITLE STATUTE UNDER  
10 SECTION 9311(2).

11       (5) AFTER DEFAULT, SUBJECT TO PART 6 OF THIS ARTICLE, A  
12 SECURED PARTY MAY REMOVE AN ACCESSION FROM OTHER GOODS IF THE  
13 SECURITY INTEREST IN THE ACCESSION HAS PRIORITY OVER THE CLAIMS  
14 OF EVERY PERSON HAVING AN INTEREST IN THE WHOLE.

15       (6) A SECURED PARTY THAT REMOVES AN ACCESSION FROM OTHER  
16 GOODS UNDER SUBSECTION (5) SHALL PROMPTLY REIMBURSE ANY HOLDER OF  
17 A SECURITY INTEREST OR OTHER LIEN ON, OR OWNER OF, THE WHOLE OR  
18 OF THE OTHER GOODS, OTHER THAN THE DEBTOR, FOR THE COST OF REPAIR  
19 OF ANY PHYSICAL INJURY TO THE WHOLE OR THE OTHER GOODS. THE  
20 SECURED PARTY NEED NOT REIMBURSE THE HOLDER OR OWNER FOR ANY DIM-  
21 INUTION IN VALUE OF THE WHOLE OR THE OTHER GOODS CAUSED BY THE  
22 ABSENCE OF THE ACCESSION REMOVED OR BY ANY NECESSITY FOR REPLAC-  
23 ING IT. A PERSON ENTITLED TO REIMBURSEMENT MAY REFUSE PERMISSION  
24 TO REMOVE UNTIL THE SECURED PARTY GIVES ADEQUATE ASSURANCE FOR  
25 THE PERFORMANCE OF THE OBLIGATION TO REIMBURSE.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

184

1        SEC. 9336. (1) AS USED IN THIS SECTION, "COMMINGLED GOODS"  
2 MEANS GOODS THAT ARE PHYSICALLY UNITED WITH OTHER GOODS IN SUCH A  
3 MANNER THAT THEIR IDENTITY IS LOST IN A PRODUCT OR MASS.

4        (2) A SECURITY INTEREST DOES NOT EXIST IN COMMINGLED GOODS  
5 AS SUCH. HOWEVER, A SECURITY INTEREST MAY ATTACH TO A PRODUCT OR  
6 MASS THAT RESULTS WHEN GOODS BECOME COMMINGLED GOODS.

7        (3) IF COLLATERAL BECOMES COMMINGLED GOODS, A SECURITY  
8 INTEREST ATTACHES TO THE PRODUCT OR MASS.

9        (4) IF A SECURITY INTEREST IN COLLATERAL IS PERFECTED BEFORE  
10 THE COLLATERAL BECOMES COMMINGLED GOODS, THE SECURITY INTEREST  
11 THAT ATTACHES TO THE PRODUCT OR MASS UNDER SUBSECTION (3) IS  
12 PERFECTED.

13        (5) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (6), THE  
14 OTHER PROVISIONS OF THIS PART DETERMINE THE PRIORITY OF A SECUR-  
15 ITY INTEREST THAT ATTACHES TO THE PRODUCT OR MASS UNDER SUBSEC-  
16 TION (3).

17        (6) IF MORE THAN 1 SECURITY INTEREST ATTACHES TO THE PRODUCT  
18 OR MASS UNDER SUBSECTION (3), THE FOLLOWING RULES DETERMINE  
19 PRIORITY:

20        (A) A SECURITY INTEREST THAT IS PERFECTED UNDER SUBSECTION  
21 (4) HAS PRIORITY OVER A SECURITY INTEREST THAT IS UNPERFECTED AT  
22 THE TIME THE COLLATERAL BECOMES COMMINGLED GOODS.

23        (B) IF MORE THAN 1 SECURITY INTEREST IS PERFECTED UNDER SUB-  
24 SECTION (4), THE SECURITY INTERESTS RANK EQUALLY IN PROPORTION TO  
25 THE VALUE OF THE COLLATERAL AT THE TIME IT BECAME COMMINGLED  
26 GOODS.



**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

185

1        SEC. 9337. IF, WHILE A SECURITY INTEREST IN GOODS IS  
2 PERFECTED BY ANY METHOD UNDER THE LAW OF ANOTHER JURISDICTION,  
3 THIS STATE ISSUES A CERTIFICATE OF TITLE THAT DOES NOT SHOW THAT  
4 THE GOODS ARE SUBJECT TO THE SECURITY INTEREST OR CONTAIN A  
5 STATEMENT THAT THEY MAY BE SUBJECT TO SECURITY INTERESTS NOT  
6 SHOWN ON THE CERTIFICATE, BOTH OF THE FOLLOWING APPLY:

7        (A) A BUYER OF THE GOODS, OTHER THAN A PERSON IN THE BUSI-  
8 NESS OF SELLING GOODS OF THAT KIND, TAKES FREE OF THE SECURITY  
9 INTEREST IF THE BUYER GIVES VALUE AND RECEIVES DELIVERY OF THE  
10 GOODS AFTER ISSUANCE OF THE CERTIFICATE AND WITHOUT KNOWLEDGE OF  
11 THE SECURITY INTEREST.

12        (B) THE SECURITY INTEREST IS SUBORDINATE TO A CONFLICTING  
13 SECURITY INTEREST IN THE GOODS THAT ATTACHES, AND IS PERFECTED  
14 UNDER SECTION 9311(2), AFTER ISSUANCE OF THE CERTIFICATE AND  
15 WITHOUT THE CONFLICTING SECURED PARTY'S KNOWLEDGE OF THE SECURITY  
16 INTERESTS.

17        SEC. 9338. IF A SECURITY INTEREST OR AGRICULTURAL LIEN IS  
18 PERFECTED BY A FILED FINANCING STATEMENT PROVIDING INFORMATION  
19 DESCRIBED IN SECTION 9516(2)(E) THAT IS INCORRECT AT THE TIME THE  
20 FINANCING STATEMENT IS FILED, ALL OF THE FOLLOWING APPLY:

21        (A) THE SECURITY INTEREST OR AGRICULTURAL LIEN IS SUBORDI-  
22 NATE TO A CONFLICTING PERFECTED SECURITY INTEREST IN THE COLLAT-  
23 ERAL TO THE EXTENT THAT THE HOLDER OF THE CONFLICTING SECURITY  
24 INTEREST GIVES VALUE IN REASONABLE RELIANCE UPON THE INCORRECT  
25 INFORMATION.

26        (B) A PURCHASER, OTHER THAN A SECURED PARTY, OF THE  
27 COLLATERAL TAKES FREE OF THE SECURITY INTEREST OR AGRICULTURAL

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

186

1 LIEN TO THE EXTENT THAT, IN REASONABLE RELIANCE UPON THE  
2 INCORRECT INFORMATION, THE PURCHASER GIVES VALUE AND, IN THE CASE  
3 OF CHATTEL PAPER, DOCUMENTS, GOODS, INSTRUMENTS, OR A SECURITY  
4 CERTIFICATE, RECEIVES DELIVERY OF THE COLLATERAL.

5 SEC. 9339. THIS ARTICLE DOES NOT PRECLUDE SUBORDINATION BY  
6 AGREEMENT BY A PERSON ENTITLED TO PRIORITY.

7 SUBPART 4. RIGHTS OF BANK

8 SEC. 9340. (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION  
9 (3), A BANK WITH WHICH A DEPOSIT ACCOUNT IS MAINTAINED MAY EXER-  
10 CISE ANY RIGHT OF RECOUPMENT OR SETOFF AGAINST A SECURED PARTY  
11 THAT HOLDS A SECURITY INTEREST IN THE DEPOSIT ACCOUNT.

12 (2) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3), THE  
13 APPLICATION OF THIS ARTICLE TO A SECURITY INTEREST IN A DEPOSIT  
14 ACCOUNT DOES NOT AFFECT A RIGHT OF RECOUPMENT OR SETOFF OF THE  
15 SECURED PARTY AS TO A DEPOSIT ACCOUNT MAINTAINED WITH THE SECURED  
16 PARTY.

17 (3) THE EXERCISE BY A BANK OF A SETOFF AGAINST A DEPOSIT  
18 ACCOUNT IS INEFFECTIVE AGAINST A SECURED PARTY THAT HOLDS A  
19 SECURITY INTEREST IN THE DEPOSIT ACCOUNT THAT IS PERFECTED BY  
20 CONTROL UNDER SECTION 9104(1)(C), IF THE SETOFF IS BASED ON A  
21 CLAIM AGAINST THE DEBTOR.

22 SEC. 9341. EXCEPT AS OTHERWISE PROVIDED IN SECTION 9340(3),  
23 AND UNLESS THE BANK OTHERWISE AGREES IN AN AUTHENTICATED RECORD,  
24 A BANK'S RIGHTS AND DUTIES WITH RESPECT TO A DEPOSIT ACCOUNT  
25 MAINTAINED WITH THE BANK ARE NOT TERMINATED, SUSPENDED, OR MODI-  
26 FIED BY 1 OR MORE OF THE FOLLOWING:

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

187

1 (A) THE CREATION, ATTACHMENT, OR PERFECTION OF A SECURITY  
2 INTEREST IN THE DEPOSIT ACCOUNT.

3 (B) THE BANK'S KNOWLEDGE OF THE SECURITY INTEREST.

4 (C) THE BANK'S RECEIPT OF INSTRUCTIONS FROM THE SECURED  
5 PARTY.

6 SEC. 9342. THIS ARTICLE DOES NOT REQUIRE A BANK TO ENTER  
7 INTO AN AGREEMENT OF THE KIND DESCRIBED IN SECTION 9104(1)(B),  
8 EVEN IF ITS CUSTOMER SO REQUESTS OR DIRECTS. A BANK THAT HAS  
9 ENTERED INTO SUCH AN AGREEMENT IS NOT REQUIRED TO CONFIRM THE  
10 EXISTENCE OF THE AGREEMENT TO ANOTHER PERSON UNLESS REQUESTED TO  
11 DO SO BY ITS CUSTOMER.

12 PART 4

13 ~~FILING~~ RIGHTS OF THIRD PARTIES

14 Sec. 9401. ~~(1) The proper place to file in order to per-~~  
15 ~~fect a security interest is as follows:~~

16 ~~(a) When the collateral is equipment used in farming opera-~~  
17 ~~tions, or farm products, or accounts or general intangibles aris-~~  
18 ~~ing from or relating to the sale of farm products by a farmer, or~~  
19 ~~consumer goods, then in the office of the register of deeds in~~  
20 ~~the county of the debtor's residence, or if the debtor is not a~~  
21 ~~resident of this state, then in the office of the register of~~  
22 ~~deeds in the county where the goods are kept, and, in addition,~~  
23 ~~when the collateral is crops, growing or to be grown, in the~~  
24 ~~office of the register of deeds in the county where the land is~~  
25 ~~located, but shall not be recorded in the real estate records of~~  
26 ~~the county.~~

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

188

1       ~~(b) When the collateral is timber to be cut or is minerals~~  
2 ~~or the like (including oil and gas), or accounts subject to~~  
3 ~~section 9103(5), or when the financing statement is filed as a~~  
4 ~~fixture filing under section 9313 and the collateral is goods~~  
5 ~~which are or are to become fixtures, then in the office where a~~  
6 ~~mortgage on the real estate would be filed or recorded.~~

7       ~~(c) In all other cases, in the office of the secretary of~~  
8 ~~state.~~

9       ~~(2) A filing which is made in good faith in an improper~~  
10 ~~place or not in all of the places required by this section is~~  
11 ~~nevertheless effective with regard to any collateral as to which~~  
12 ~~the filing complied with the requirements of this article and is~~  
13 ~~also effective with regard to collateral covered by the financing~~  
14 ~~statement against any person who has knowledge of the contents of~~  
15 ~~such financing statement.~~

16       ~~(3) A filing which is made in the proper place in this state~~  
17 ~~continues effective even though the debtor's residence or place~~  
18 ~~of business or the location of the collateral or its use, which~~  
19 ~~ever controlled the original filing, is thereafter changed.~~

20       ~~(4) The rules stated in section 9103 determine whether~~  
21 ~~filing is necessary in this state.~~

22       ~~(5) Notwithstanding the preceding subsections, and subject~~  
23 ~~to section 9302(3), the proper place to file in order to perfect~~  
24 ~~a security interest in collateral, including fixtures, of a~~  
25 ~~transmitting utility is the office of the secretary of state.~~  
26 ~~This filing constitutes a fixture filing (section 9313) as to the~~  
27 ~~collateral described therein which is or is to become fixtures.~~

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

189

1       ~~(6) For the purposes of this section, the residence of an~~  
2 ~~organization is its place of business if it has one or its chief~~  
3 ~~executive office if it has more than 1 place of business.~~

4       (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (2) AND SEC-  
5 TIONS 9406, 9407, 9408, AND 9409, WHETHER A DEBTOR'S RIGHTS IN  
6 COLLATERAL MAY BE VOLUNTARILY OR INVOLUNTARILY TRANSFERRED IS  
7 GOVERNED BY LAW OTHER THAN THIS ARTICLE.

8       (2) AN AGREEMENT BETWEEN THE DEBTOR AND SECURED PARTY THAT  
9 PROHIBITS A TRANSFER OF THE DEBTOR'S RIGHTS IN COLLATERAL OR  
10 MAKES THE TRANSFER A DEFAULT DOES NOT PREVENT THE TRANSFER FROM  
11 TAKING EFFECT.

12       Sec. 9402. ~~-(1) A financing statement is sufficient if it~~  
13 ~~gives the names of the debtor and the secured party, in printed~~  
14 ~~or typewritten form, is signed by the debtor, gives an address of~~  
15 ~~the secured party from which information concerning the security~~  
16 ~~interest may be obtained, gives a mailing address of the debtor,~~  
17 ~~and contains a statement indicating the types or describing the~~  
18 ~~items of collateral. A financing statement may be filed before a~~  
19 ~~security agreement is made or a security interest otherwise~~  
20 ~~attaches. If the financing statement covers timber to be cut,~~  
21 ~~covers minerals or similar substances, including oil and gas, or~~  
22 ~~accounts subject to section 9103(5), or if the financing state=~~  
23 ~~ment is filed as a fixture filing under section 9313 and the col=~~  
24 ~~lateral is goods that are or are to become fixtures, the state=~~  
25 ~~ment shall also comply with subsection (5). A copy of the secur=~~  
26 ~~ity agreement is sufficient as a financing statement if it~~  
27 ~~contains the above information and is signed by the debtor. A~~

## 190

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

191

1 Address.....  
2 ~~Name of secured party (or assignee).....~~  
3 ~~Social security number or federal employer tax identification number~~  
4 ~~of debtor (when required).....~~  
5 Address.....  
6 ~~1. This financing statement covers the following types or items~~  
7 ~~of property:~~  
8 ~~(Describe).....~~  
9 ~~2. (If applicable check box below)~~  
10 ~~a. The goods are to become fixtures on \_\_\_\_\_ [ ]~~  
11 ~~b. The above described timber is standing on \_\_\_\_\_ [ ]~~  
12 ~~c. The above described minerals or the like (including~~  
13 ~~oil and gas) are to be extracted from the wellhead~~  
14 ~~or minehead of the well or mine located on \_\_\_\_\_ [ ]~~  
15 ~~d. The above described accounts include accounts~~  
16 ~~resulting from the sale of minerals or the like~~  
17 ~~(including oil and gas) to be extracted from the~~  
18 ~~wellhead or minehead of the well or mine located on \_\_\_\_\_ [ ]~~  
19 ~~(Describe real estate).....~~  
20 ~~If 1 of the above boxes is checked, this financing statement is to~~  
21 ~~be~~  
22 ~~recorded in the real estate records. If the debtor does not have an~~  
23 ~~interest of record, the name of the record owner is.....~~  
24 ~~3. (If products of collateral are claimed) Products of the col=~~  
25 ~~lateral are also covered.~~  
26 ~~(Use whichever is applicable)~~  
27 ~~Signature of debtor (or assignor).....~~  
Signature of secured party (or assignee).....

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

192

1       ~~(4) A financing statement may be amended by filing a writing~~  
2 ~~signed by both the debtor and the secured party that identifies~~  
3 ~~the original filing by file number and, if applicable, by liber~~  
4 ~~and page. An amendment also may, but is not required to, include~~  
5 ~~the debtor's tax identification number. An amendment does not~~  
6 ~~extend the period of effectiveness of a financing statement. If~~  
7 ~~any amendment adds collateral, it is effective as to the added~~  
8 ~~collateral only from the filing date of the amendment. As used~~  
9 ~~in this article, unless the context otherwise requires,~~  
10 ~~"financing statement" means the original financing statement and~~  
11 ~~any amendments.~~

12       ~~(5) A financing statement covering timber to be cut, cover=~~  
13 ~~ing minerals or similar substances, including oil and gas, or~~  
14 ~~accounts subject to section 9103(5), or a financing statement~~  
15 ~~filed as a fixture filing under section 9313 if the debtor is not~~  
16 ~~a transmitting utility, shall show that it covers this type of~~  
17 ~~collateral, recite that it is to be recorded in the real estate~~  
18 ~~records, and contain a description of the real estate sufficient~~  
19 ~~if it were contained in a mortgage of the real estate to give~~  
20 ~~constructive notice of the mortgage under the law of this state.~~  
21 ~~If the debtor does not have an interest of record in the real~~  
22 ~~estate, the financing statement shall show the name of a record~~  
23 ~~owner.~~

24       ~~(6) A mortgage is effective as a financing statement filed~~  
25 ~~as a fixture filing from the date of its recording if all of the~~  
26 ~~following apply:~~



**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

193

1       ~~(a) The goods are described in the mortgage by item or~~  
2 ~~type.~~

3       ~~(b) The goods are or are to become fixtures related to the~~  
4 ~~real estate described in the mortgage.~~

5       ~~(c) The mortgage complies with the requirements for a~~  
6 ~~financing statement in this section other than a recital that it~~  
7 ~~is to be recorded in the real estate records.~~

8       ~~(d) The mortgage is duly recorded. Other than the regular~~  
9 ~~recording and satisfaction fees for the mortgage, a fee for the~~  
10 ~~financing statement is not required.~~

11       ~~(7) A financing statement sufficiently shows the name of the~~  
12 ~~debtor if it includes the individual, partnership, or corporate~~  
13 ~~name of the debtor, whether or not it adds other trade names or~~  
14 ~~the names of partners. If the debtor changes his or her name, or~~  
15 ~~in the case of an organization, its name, identity, or corporate~~  
16 ~~structure, so that a filed financing statement becomes seriously~~  
17 ~~misleading, the filing is not effective to perfect a security~~  
18 ~~interest in collateral acquired by the debtor more than 4 months~~  
19 ~~after the debtor notifies the secured party in writing of the~~  
20 ~~change, unless a new appropriate financing statement is filed~~  
21 ~~before the expiration of that time. A filed financing statement~~  
22 ~~remains effective for collateral transferred by the debtor even~~  
23 ~~though the secured party knows of or consents to the transfer.~~

24       ~~(8) A financing statement substantially complying with the~~  
25 ~~requirements of this section is effective even though it contains~~  
26 ~~minor errors that are not seriously misleading.~~

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

194

1       ~~(9) Any financing statement, indicating that it is to be~~  
2 ~~recorded in the real estate records, as provided in subsections~~  
3 ~~(3) and (5), and any continuation statement, termination state=~~  
4 ~~ment, amendment, or assignment relating to the statement and~~  
5 ~~meeting the formal requisites of this section, section 9404, and~~  
6 ~~section 9405, shall be recorded by the register of deeds of the~~  
7 ~~county in which the real property described in the financing~~  
8 ~~statement is located, notwithstanding the provisions for witness=~~  
9 ~~ing and acknowledging instruments to be recorded in the real~~  
10 ~~property records contained in section 47 of 1846 RS 65,~~  
11 ~~MCL 565.47.~~

12       ~~(10) Each register of deeds shall certify on every financing~~  
13 ~~statement indicating that it is to be recorded in the real estate~~  
14 ~~records, as provided in subsections (3) and (5), and any continu=~~  
15 ~~ation statement, termination statement, amendment, or assignment~~  
16 ~~relating to the statement and meeting the formal requisites of~~  
17 ~~this section, section 9404, and section 9405, the date and time~~  
18 ~~when it was received for record, and a reference to the liber and~~  
19 ~~page where it is recorded.~~

20       ~~(11) Each register of deeds shall enter any financing state=~~  
21 ~~ment indicating that it is to be recorded in the real estate~~  
22 ~~records, as provided in subsections (3) and (5), and any continu=~~  
23 ~~ation statement, termination statement, amendment, or assignment~~  
24 ~~relating to the statement and meeting the formal requisites of~~  
25 ~~this section, section 9404, and section 9405, in an entry book~~  
26 ~~where a real estate mortgage would be entered, noting in the~~  
27 ~~entry book the day, hour, and minute of reception, and other~~

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

195

1 ~~particulars in the order in which the financing statements,~~  
2 ~~continuation statements, termination statements, amendments, and~~  
3 ~~assignments are respectively received, and each instrument shall~~  
4 ~~be considered recorded at the time so noted.~~

5       ~~(12) Each register of deeds shall index each financing~~  
6 ~~statement, continuation statement, termination statement, amend=~~  
7 ~~ment, or assignment, recorded under subsection (11), in a book or~~  
8 ~~card index under the name of the debtor, and, if applicable,~~  
9 ~~under the name of the record owner of the real estate, in the~~  
10 ~~same manner as recordings of real estate mortgages are indexed.~~

11       ~~(13) Beginning April 1, 1990 all original filings of a~~  
12 ~~security agreement or a financing statement tendered to the sec=~~  
13 ~~retary of state shall contain the tax identification number of~~  
14 ~~each debtor except for the following:~~

15       ~~(a) A reproduction of a security agreement or of a financing~~  
16 ~~statement filed under the last sentence of subsection (1) if the~~  
17 ~~security agreement was entered into or the financing statement~~  
18 ~~was filed before April 1, 1990.~~

19       ~~(b) A financing statement filed under subsection (2).~~

20       ~~(c) A financing statement that is accompanied by a certifi=~~  
21 ~~cate prescribed by the secretary of state and is signed by the~~  
22 ~~debtor stating that the debtor does not have a tax identification~~  
23 ~~number.~~

24       ~~(14) If an original filing of a security agreement or a~~  
25 ~~financing statement fails to contain the tax identification~~  
26 ~~number of each debtor and is not exempted under subsection (13),~~  
27 ~~the secretary of state shall not accept it for filing and shall~~

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

196

1 ~~return it to the secured party or other person who submitted it.~~  
2 ~~If the records of the secretary of state indicate that a debtor's~~  
3 ~~tax identification number contained on a financing statement~~  
4 ~~received for filing is or may be incorrect, the secretary of~~  
5 ~~state shall nevertheless accept and file the financing~~  
6 ~~statement. The secretary of state may request the secured party~~  
7 ~~or other person who submitted the financing statement to file an~~  
8 ~~amendment to the statement giving the debtor's correct tax iden-~~  
9 ~~tification number. The signature of the debtor shall not be~~  
10 ~~required on an amendment that changes only the debtor's tax iden-~~  
11 ~~tification number.~~

12       ~~(15) Notwithstanding subsections (13) and (14), if the sec-~~  
13 ~~retary of state files a financing statement that does not con-~~  
14 ~~tain, or that incorrectly states, the debtor's tax identification~~  
15 ~~number and if the financing statement otherwise complies with~~  
16 ~~applicable requirements, the financing statement shall be consid-~~  
17 ~~ered sufficient, valid, and effective.~~

18       ~~(16) The secretary of state shall adopt and utilize computer~~  
19 ~~assisted search procedures to enable the secretary of state to~~  
20 ~~provide information to a person making a request under~~  
21 ~~section 9407(2). The secretary of state shall provide the infor-~~  
22 ~~mation requested by a person under section 9407(2) as accurate~~  
23 ~~and complete as the information the person would have received if~~  
24 ~~the same request had been processed under the search procedures~~  
25 ~~followed by the secretary of state immediately before the imple-~~  
26 ~~mentation of computer assisted searches. THE EXISTENCE OF A~~  
27 ~~SECURITY INTEREST, AGRICULTURAL LIEN, OR AUTHORITY GIVEN TO A~~

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

197

1 DEBTOR TO DISPOSE OF OR USE COLLATERAL, WITHOUT MORE, DOES NOT  
2 SUBJECT A SECURED PARTY TO LIABILITY IN CONTRACT OR TORT FOR THE  
3 DEBTOR'S ACTS OR OMISSIONS.

4       Sec. 9403. ~~-(1) Presentation for filing of a financing~~  
5 ~~statement and tender of the filing fee or acceptance of the~~  
6 ~~statement by the filing officer constitutes filing under this~~  
7 ~~article.~~

8       ~~(2) Except as provided in subsection (7), a filed financing~~  
9 ~~statement is effective for a period of 5 years after the date of~~  
10 ~~filing. The effectiveness of a filed financing statement lapses~~  
11 ~~on the expiration of the 5-year period, unless a continuation~~  
12 ~~statement is filed within 6 months before the lapse. If a secur-~~  
13 ~~ity interest perfected by filing exists at the time insolvency~~  
14 ~~proceedings are commenced by or against the debtor, the security~~  
15 ~~interest remains perfected until termination of the insolvency~~  
16 ~~proceedings and thereafter for a period of 60 days or until expi-~~  
17 ~~ration of the 5-year period, whichever occurs later. Upon lapse,~~  
18 ~~the security interest becomes unperfected, unless it is perfected~~  
19 ~~without filing. If the security interest becomes unperfected~~  
20 ~~upon lapse, it is considered to have been unperfected as against~~  
21 ~~a person who became a purchaser or lien creditor before the~~  
22 ~~lapse.~~

23       ~~(3) A continuation statement may be filed or recorded by the~~  
24 ~~secured party within 6 months before the expiration of the 5-year~~  
25 ~~period specified in subsection (2). A continuation statement~~  
26 ~~shall be signed by the secured party, identify the original~~  
27 ~~statement by file number and, if the original financing statement~~

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

198

1 ~~describes real property, by the liber and page where the property~~  
2 ~~is recorded, and state that the original statement is still~~  
3 ~~effective. A continuation statement also may, but is not~~  
4 ~~required to, include the debtor's tax identification number. A~~  
5 ~~continuation statement signed by a person other than the secured~~  
6 ~~party of record shall be accompanied by a separate written state=~~  
7 ~~ment of assignment that is signed by the secured party of record~~  
8 ~~and that complies with section 9405(2), including payment of the~~  
9 ~~required fee. Upon timely filing of the continuation statement,~~  
10 ~~the effectiveness of the financing statement is continued for 5~~  
11 ~~years after the last date to which the filing was effective~~  
12 ~~whereupon it lapses in the same manner as provided in subsection~~  
13 ~~(2) unless another continuation statement is filed before the~~  
14 ~~lapse. Succeeding continuation statements may be filed in the~~  
15 ~~same manner to continue the effectiveness of the financing~~  
16 ~~statement. Unless a statute on disposition of public records~~  
17 ~~provides otherwise, the filing officer may remove a lapsed state=~~  
18 ~~ment from the files and destroy it immediately if he or she has~~  
19 ~~retained a reproduction pursuant to the records media act, or in~~  
20 ~~other cases after 1 year after the lapse. The filing officer~~  
21 ~~shall so arrange matters by physical annexation of financing~~  
22 ~~statements to continuation statements or other related filings,~~  
23 ~~or by other means, that if he or she physically destroys the~~  
24 ~~financing statements of a period more than 5 years past, those~~  
25 ~~which have been continued by a continuation statement or which~~  
26 ~~are still effective under subsection (7) shall be retained.~~

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

199

1       ~~(4) Except as provided in subsection (8), a filing officer~~  
2 ~~shall mark a statement with a file number and with the date and~~  
3 ~~hour of filing and shall hold the statement or a reproduction of~~  
4 ~~the statement pursuant to the records media act for public~~  
5 ~~inspection. In addition, the filing officer shall index the~~  
6 ~~statements according to the name of the debtor and shall note in~~  
7 ~~the index the file number and the address of the debtor given in~~  
8 ~~the statement.~~

9       ~~(5) The uniform fee for filing and indexing and for stamping~~  
10 ~~a copy furnished by the secured party to show the date and place~~  
11 ~~of filing for an original financing statement, for a continuation~~  
12 ~~statement, for an amendment of a financing statement, or for an~~  
13 ~~assignment shall be as follows:~~

14       ~~(a) For a filing with the secretary of state or the register~~  
15 ~~of deeds, \$3.00 if the statement includes the information~~  
16 ~~required under this act for the filing, and is in the standard~~  
17 ~~form prescribed by the secretary of state. For a statement not~~  
18 ~~complying with these requirements, the fee is \$6.00.~~

19       ~~(b) For a filing with a register of deeds, if the financing~~  
20 ~~statement, continuation statement, assignment, or amendment indi-~~  
21 ~~cates that it is to be recorded in the real estate records, as~~  
22 ~~provided in sections 9402(3) and 9402(5), \$5.00 for the first~~  
23 ~~page and \$2.00 for each additional page.~~

24       ~~(6) The uniform fee for each name more than 1 required to be~~  
25 ~~indexed is \$3.00. The secured party may, at his or her option,~~  
26 ~~show a trade name for a person, and an extra uniform indexing fee~~  
27 ~~of \$3.00 shall be paid with respect to that name.~~

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

200

1       ~~(7) If the debtor is a transmitting utility under section~~  
2 ~~9401(5) and a filed financing statement so states, it is effec-~~  
3 ~~tive until a termination statement is filed. A real estate mort-~~  
4 ~~gage that is effective as a fixture filing under section 9402(6)~~  
5 ~~remains effective as a fixture filing until the mortgage is~~  
6 ~~released or satisfied of record or its effectiveness otherwise~~  
7 ~~terminates as to the real estate.~~

8       ~~(8) If a financing statement covers timber to be cut, covers~~  
9 ~~minerals or the like including oil and gas, or accounts subject~~  
10 ~~to section 9103(5), or is filed as a fixture filing, it shall be~~  
11 ~~recorded, and the filing officer shall index it under the names~~  
12 ~~of the debtor and any owner of record shown on the financing~~  
13 ~~statement in the same fashion as if they were the mortgagors in a~~  
14 ~~mortgage of the real estate described, and, to the extent that~~  
15 ~~the law of this state provides for indexing of mortgages under~~  
16 ~~the name of the mortgagee, under the name of the secured party as~~  
17 ~~if he or she were the mortgagee of the mortgage, or where index-~~  
18 ~~ing is by description, in the same fashion as if the financing~~  
19 ~~statement were a mortgage of the real estate described.~~

20       (1) AS USED IN THIS SECTION, "VALUE" HAS THE MEANING PRO-  
21 VIDED IN SECTION 3303(1).

22       (2) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, AN AGREE-  
23 MENT BETWEEN AN ACCOUNT DEBTOR AND AN ASSIGNOR NOT TO ASSERT  
24 AGAINST AN ASSIGNEE ANY CLAIM OR DEFENSE THAT THE ACCOUNT DEBTOR  
25 MAY HAVE AGAINST THE ASSIGNOR IS ENFORCEABLE BY AN ASSIGNEE THAT  
26 TAKES AN ASSIGNMENT FOR VALUE, IN GOOD FAITH, WITHOUT NOTICE OF A  
27 CLAIM OF A PROPERTY OR POSSESSORY RIGHT TO THE PROPERTY ASSIGNED,



**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

201

1 AND WITHOUT NOTICE OF A DEFENSE OR CLAIM IN RECOUPMENT OF THE  
2 TYPE THAT MAY BE ASSERTED AGAINST A PERSON ENTITLED TO ENFORCE A  
3 NEGOTIABLE INSTRUMENT UNDER SECTION 3305(1).

4 (3) SUBSECTION (2) DOES NOT APPLY TO DEFENSES OF A TYPE THAT  
5 MAY BE ASSERTED AGAINST A HOLDER IN DUE COURSE OF A NEGOTIABLE  
6 INSTRUMENT UNDER SECTION 3305(2).

7 (4) IN A CONSUMER TRANSACTION, IF A RECORD EVIDENCES THE  
8 ACCOUNT DEBTOR'S OBLIGATION, LAW OTHER THAN THIS ARTICLE REQUIRES  
9 THAT THE RECORD INCLUDE A STATEMENT TO THE EFFECT THAT THE RIGHTS  
10 OF AN ASSIGNEE ARE SUBJECT TO CLAIMS OR DEFENSES THAT THE ACCOUNT  
11 DEBTOR COULD ASSERT AGAINST THE ORIGINAL OBLIGEE, AND THE RECORD  
12 DOES NOT INCLUDE SUCH A STATEMENT, ALL OF THE FOLLOWING APPLY:

13 (A) THE RECORD HAS THE SAME EFFECT AS IF THE RECORD INCLUDED  
14 SUCH A STATEMENT.

15 (B) THE ACCOUNT DEBTOR MAY ASSERT AGAINST AN ASSIGNEE THOSE  
16 CLAIMS AND DEFENSES THAT WOULD HAVE BEEN AVAILABLE IF THE RECORD  
17 INCLUDED SUCH A STATEMENT.

18 (5) THIS SECTION IS SUBJECT TO LAW OTHER THAN THIS ARTICLE  
19 THAT ESTABLISHES A DIFFERENT RULE FOR AN ACCOUNT DEBTOR WHO IS AN  
20 INDIVIDUAL AND WHO INCURRED THE OBLIGATION PRIMARILY FOR PERSON-  
21 AL, FAMILY, OR HOUSEHOLD PURPOSES.

22 (6) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (4), THIS  
23 SECTION DOES NOT DISPLACE LAW OTHER THAN THIS ARTICLE THAT GIVES  
24 EFFECT TO AN AGREEMENT BY AN ACCOUNT DEBTOR NOT TO ASSERT A CLAIM  
25 OR DEFENSE AGAINST AN ASSIGNEE.

26 Sec. 9404. ~~-(1) If a financing statement covering consumer~~  
27 ~~goods is filed on or after January 1, 1979, then within 1 month~~

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

202

~~1 or within 10 days following written demand by the debtor,  
2 whichever occurs first, after there is no outstanding secured  
3 obligation and no commitment to make advances, incur obligations,  
4 or otherwise give value, and the secured party does not in good  
5 faith expect to make optional future advances, the secured party  
6 shall file with each filing officer with whom the financing  
7 statement was filed a termination statement to the effect that he  
8 or she no longer claims a security interest under the financing  
9 statement, which shall be identified by file number, and if the  
10 original financing statement describes real property, by liber  
11 and page of recording of the financing statement. In other  
12 cases, if there is no outstanding secured obligation and no com=  
13 mitment to make advances, incur obligations, or otherwise give  
14 value and the secured party does not in good faith expect to make  
15 future optional advances, the secured party shall, on written  
16 demand of the debtor, send for each filing officer with whom the  
17 financing statement was filed a termination statement to the  
18 effect that he or she no longer claims a security interest under  
19 the financing statement, which shall be identified by file  
20 number. With respect to original financing statements filed  
21 before July 1, 1976 with a filing officer other than the secre=  
22 tary of state, the secured party may elect to send the statement  
23 directly to the debtor instead of the filing officer. A termina=  
24 tion statement may, but is not required to, include the debtor's  
25 tax identification number. A termination statement signed by a  
26 person other than the secured party of record shall be  
27 accompanied by a separate written statement of assignment signed~~

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

203

1 ~~by the secured party of record complying with section 9405(2),~~  
2 ~~including payment of the required fee. If the affected secured~~  
3 ~~party fails to file such a termination statement as required by~~  
4 ~~this subsection, or to send such a termination statement within~~  
5 ~~the required period, he or she is liable to the debtor for any~~  
6 ~~loss caused to the debtor by that failure. In addition, the~~  
7 ~~secured party is liable to the debtor for \$100.00 if he or she~~  
8 ~~fails to file the termination statement within 20 days after~~  
9 ~~written demand for the termination statement by the debtor.~~

10       ~~(2) On presentation to the filing officer of a termination~~  
11 ~~statement, the filing officer shall note it in the index. If the~~  
12 ~~filing officer has received the termination statement in dupli-~~  
13 ~~cate, he or she shall return 1 copy of the termination statement~~  
14 ~~to the secured party stamped to show the time of receipt of the~~  
15 ~~termination statement. If the filing officer has a reproduction~~  
16 ~~of the financing statement pursuant to the records media act, and~~  
17 ~~of any related continuation statement, statement of assignment,~~  
18 ~~and statement of release, he or she may remove the originals from~~  
19 ~~the files at any time after receipt of the termination statement,~~  
20 ~~or if the filing officer has no such record, he or she may remove~~  
21 ~~them from the files at any time after 1 year after receipt of the~~  
22 ~~termination statement.~~

23       ~~(3) If the termination statement is in the standard form~~  
24 ~~prescribed by the secretary of state, the uniform fee for filing~~  
25 ~~and indexing a termination statement is \$1.00, and otherwise is~~  
26 ~~\$1.00, plus, in each case an additional fee of \$1.00 for each~~  
27 ~~additional name against which the termination statement is~~

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

204

~~1 required to be indexed, except that a fee shall not be charged  
2 for the filing and indexing of a termination statement with  
3 respect to an original financing statement filed after June 30,  
4 1976, unless the filing was made with the register of deeds as  
5 provided in sections 9402(3) and 9402(5), and in that event the  
6 fee is the same as that required to file a discharge of a real  
7 estate mortgage.~~

8       (1) UNLESS AN ACCOUNT DEBTOR HAS MADE AN ENFORCEABLE AGREE-  
9 MENT NOT TO ASSERT DEFENSES OR CLAIMS, AND SUBJECT TO SUBSECTIONS  
10 (2) THROUGH (5), THE RIGHTS OF AN ASSIGNEE ARE SUBJECT TO ALL OF  
11 THE FOLLOWING:

12       (A) ALL TERMS OF THE AGREEMENT BETWEEN THE ACCOUNT DEBTOR  
13 AND ASSIGNOR AND ANY DEFENSE OR CLAIM IN RECOUPMENT ARISING FROM  
14 THE TRANSACTION THAT GAVE RISE TO THE CONTRACT.

15       (B) ANY OTHER DEFENSE OR CLAIM OF THE ACCOUNT DEBTOR AGAINST  
16 THE ASSIGNOR THAT ACCRUES BEFORE THE ACCOUNT DEBTOR RECEIVES A  
17 NOTIFICATION OF THE ASSIGNMENT AUTHENTICATED BY THE ASSIGNOR OR  
18 THE ASSIGNEE.

19       (2) SUBJECT TO SUBSECTION (3) AND EXCEPT AS OTHERWISE PRO-  
20 VIDED IN SUBSECTION (4), THE CLAIM OF AN ACCOUNT DEBTOR AGAINST  
21 AN ASSIGNOR MAY BE ASSERTED AGAINST AN ASSIGNEE UNDER SUBSECTION  
22 (1) ONLY TO REDUCE THE AMOUNT THE ACCOUNT DEBTOR OWES.

23       (3) THIS SECTION IS SUBJECT TO LAW OTHER THAN THIS ARTICLE  
24 THAT ESTABLISHES A DIFFERENT RULE FOR AN ACCOUNT DEBTOR WHO IS AN  
25 INDIVIDUAL AND WHO INCURRED THE OBLIGATION PRIMARILY FOR PERSON-  
26 AL, FAMILY, OR HOUSEHOLD PURPOSES.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

205

1       (4) IN A CONSUMER TRANSACTION, IF A RECORD EVIDENCES THE  
2 ACCOUNT DEBTOR'S OBLIGATION, LAW OTHER THAN THIS ARTICLE REQUIRES  
3 THAT THE RECORD INCLUDE A STATEMENT TO THE EFFECT THAT THE  
4 ACCOUNT DEBTOR'S RECOVERY AGAINST AN ASSIGNEE WITH RESPECT TO  
5 CLAIMS AND DEFENSES AGAINST THE ASSIGNOR MAY NOT EXCEED AMOUNTS  
6 PAID BY THE ACCOUNT DEBTOR UNDER THE RECORD, AND THE RECORD DOES  
7 NOT INCLUDE SUCH A STATEMENT, THE EXTENT TO WHICH A CLAIM OF AN  
8 ACCOUNT DEBTOR AGAINST THE ASSIGNOR MAY BE ASSERTED AGAINST AN  
9 ASSIGNEE IS DETERMINED AS IF THE RECORD INCLUDED SUCH A  
10 STATEMENT.

11       (5) THIS SECTION DOES NOT APPLY TO AN ASSIGNMENT OF A  
12 HEALTH-CARE-INSURANCE RECEIVABLE.

13       Sec. 9405. ~~-(1) A financing statement may disclose an~~  
14 ~~assignment of a security interest in the collateral described in~~  
15 ~~the financing statement by indication in the financing statement~~  
16 ~~of the name and address of the assignee, or by an assignment~~  
17 ~~itself or a copy of the assignment on the face or back of the~~  
18 ~~statement. On presentation to the filing officer of the financ=~~  
19 ~~ing statement, the filing officer shall mark the same as provided~~  
20 ~~in section 9403(4). The uniform fee for filing, indexing, and~~  
21 ~~furnishing filing data for a financing statement indicating an~~  
22 ~~assignment is \$3.00, if the statement is in the standard form~~  
23 ~~prescribed by the secretary of state. For statements not comply=~~  
24 ~~ing with these requirements, the fee is \$6.00, plus an additional~~  
25 ~~fee of \$3.00 for each name more than 1 against which the financ=~~  
26 ~~ing statement is required to be indexed.~~

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

206

1       ~~(2) A secured party may assign of record all or a part of~~  
2 ~~his or her rights under a financing statement by filing, in the~~  
3 ~~place where the original financing statement was filed, a sepa-~~  
4 ~~rate written statement of assignment signed by the secured party~~  
5 ~~of record and setting forth the name of the secured party of~~  
6 ~~record and the debtor, the file number, and if the original~~  
7 ~~financing statement describes real property, by the liber and~~  
8 ~~page where the property is recorded, the date of filing of the~~  
9 ~~financing statement, the name and address of the assignee and a~~  
10 ~~description of the collateral assigned. A copy of the assignment~~  
11 ~~is sufficient as a separate statement if it complies with the~~  
12 ~~preceding sentence. An assignment also may, but is not required~~  
13 ~~to, include the debtor's tax identification number. On presenta-~~  
14 ~~tion to the filing officer of a separate statement, the filing~~  
15 ~~officer shall mark the separate statement with the date and hour~~  
16 ~~of the filing. The filing officer shall note the assignment on~~  
17 ~~the index of the financing statement, or for a fixture filing, a~~  
18 ~~filing covering timber to be cut, or covering minerals or the~~  
19 ~~like including oil and gas, or accounts subject to section~~  
20 ~~9103(5), he or she shall index the assignment under the name of~~  
21 ~~the assignor as grantor and, to the extent that the law of this~~  
22 ~~state provides for indexing the assignment of a mortgage under~~  
23 ~~the name of the assignee, he or she shall index the assignment of~~  
24 ~~the financing statement under the name of the assignee. The uni-~~  
25 ~~form fee for filing, indexing, and furnishing filing data about a~~  
26 ~~separate statement of assignment is \$3.00, if the statement is in~~  
27 ~~the standard form prescribed by the secretary of state. For~~

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

207

1 ~~statements not complying with these requirements, the fee is~~  
2 ~~\$6.00, plus an additional fee of \$3.00 for each name more than 1~~  
3 ~~against which the statement of assignment is required to be~~  
4 ~~indexed. Notwithstanding the provisions of this subsection, an~~  
5 ~~assignment of record of a security interest in a fixture con-~~  
6 ~~tained in a mortgage effective as a fixture filing under section~~  
7 ~~9402(6) may be made only by an assignment of the mortgage in the~~  
8 ~~manner provided by the law of this state other than this act.~~

9 ~~(3) After the disclosure or filing of an assignment under~~  
10 ~~this section, the assignee is the secured party of record.~~

11 (1) A MODIFICATION OF OR SUBSTITUTION FOR AN ASSIGNED CON-  
12 TRACT IS EFFECTIVE AGAINST AN ASSIGNEE IF MADE IN GOOD FAITH.  
13 THE ASSIGNEE ACQUIRES CORRESPONDING RIGHTS UNDER THE MODIFIED OR  
14 SUBSTITUTED CONTRACT. THE ASSIGNMENT MAY PROVIDE THAT THE MODI-  
15 FICATION OR SUBSTITUTION IS A BREACH OF CONTRACT BY THE  
16 ASSIGNOR. THIS SUBSECTION IS SUBJECT TO SUBSECTIONS (2) THROUGH  
17 (4).

18 (2) SUBSECTION (1) APPLIES TO THE EXTENT THAT THE RIGHT TO  
19 PAYMENT OR A PART THEREOF UNDER AN ASSIGNED CONTRACT HAS NOT BEEN  
20 FULLY EARNED BY PERFORMANCE, OR TO THE EXTENT THAT THE RIGHT TO  
21 PAYMENT OR A PART THEREOF HAS BEEN FULLY EARNED BY PERFORMANCE  
22 AND THE ACCOUNT DEBTOR HAS NOT RECEIVED NOTIFICATION OF THE  
23 ASSIGNMENT UNDER SECTION 9406(1).

24 (3) THIS SECTION IS SUBJECT TO LAW OTHER THAN THIS ARTICLE  
25 THAT ESTABLISHES A DIFFERENT RULE FOR AN ACCOUNT DEBTOR WHO IS AN  
26 INDIVIDUAL AND WHO INCURRED THE OBLIGATION PRIMARILY FOR  
27 PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

208

1       (4) THIS SECTION DOES NOT APPLY TO AN ASSIGNMENT OF A  
2 HEALTH-CARE-INSURANCE RECEIVABLE.

3       Sec. 9406. ~~A secured party of record may by his or her~~  
4 ~~signed statement release all or a part of any collateral~~  
5 ~~described in a filed financing statement. The statement of~~  
6 ~~release is sufficient if it contains a description of the collat=~~  
7 ~~eral being released, the name and address of the debtor, the name~~  
8 ~~and address of the secured party, and the file number of the~~  
9 ~~financing statement. A statement of release may, but is not~~  
10 ~~required to, include the debtor's tax identification number. A~~  
11 ~~statement of release signed by a person other than the secured~~  
12 ~~party of record shall be accompanied by a separate written state=~~  
13 ~~ment of assignment signed by the secured party of record and com=~~  
14 ~~plying with section 9405(2), including payment of the required~~  
15 ~~fee. Upon presentation of the statement of release to the filing~~  
16 ~~officer, he or she shall mark the statement with the hour and~~  
17 ~~date of filing and shall also note this information on the margin~~  
18 ~~of the index of the filing of the financing statement. The uni=~~  
19 ~~form fee for filing and noting a statement of release is \$3.00 if~~  
20 ~~the statement is in the standard form prescribed by the secretary~~  
21 ~~of state. For financing statements not complying with the~~  
22 ~~requirements of this section as to form, the fee is \$6.00, plus~~  
23 ~~an additional fee of \$3.00 for each name more than 1 against~~  
24 ~~which the statement of release is required to be indexed.~~

25       (1) SUBJECT TO SUBSECTIONS (2) THROUGH (9), AN ACCOUNT  
26 DEBTOR ON AN ACCOUNT, CHATTEL PAPER, OR A PAYMENT INTANGIBLE MAY  
27 DISCHARGE ITS OBLIGATION BY PAYING THE ASSIGNOR UNTIL, BUT NOT



**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

209

1 AFTER, THE ACCOUNT DEBTOR RECEIVES A NOTIFICATION, AUTHENTICATED  
2 BY THE ASSIGNOR OR THE ASSIGNEE, THAT THE AMOUNT DUE OR TO BECOME  
3 DUE HAS BEEN ASSIGNED AND THAT PAYMENT IS TO BE MADE TO THE  
4 ASSIGNEE. AFTER RECEIPT OF THE NOTIFICATION, THE ACCOUNT DEBTOR  
5 MAY DISCHARGE ITS OBLIGATION BY PAYING THE ASSIGNEE AND MAY NOT  
6 DISCHARGE THE OBLIGATION BY PAYING THE ASSIGNOR.

7 (2) SUBJECT TO SUBSECTION (8), NOTIFICATION IS INEFFECTIVE  
8 UNDER SUBSECTION (1) IF 1 OR MORE OF THE FOLLOWING APPLY:

9 (A) IF NOTIFICATION DOES NOT REASONABLY IDENTIFY THE RIGHTS  
10 ASSIGNED.

11 (B) TO THE EXTENT THAT AN AGREEMENT BETWEEN AN ACCOUNT  
12 DEBTOR AND A SELLER OF A PAYMENT INTANGIBLE LIMITS THE ACCOUNT  
13 DEBTOR'S DUTY TO PAY A PERSON OTHER THAN THE SELLER AND THE LIMI-  
14 TATION IS EFFECTIVE UNDER LAW OTHER THAN THIS ARTICLE.

15 (C) AT THE OPTION OF AN ACCOUNT DEBTOR, IF THE NOTIFICATION  
16 NOTIFIES THE ACCOUNT DEBTOR TO MAKE LESS THAN THE FULL AMOUNT OF  
17 ANY INSTALLMENT OR OTHER PERIODIC PAYMENT TO THE ASSIGNEE, EVEN  
18 IF 1 OR MORE OF THE FOLLOWING OCCUR:

19 (i) ONLY A PORTION OF THE ACCOUNT, CHATTEL PAPER, OR PAYMENT  
20 INTANGIBLE HAS BEEN ASSIGNED TO THAT ASSIGNEE.

21 (ii) A PORTION HAS BEEN ASSIGNED TO ANOTHER ASSIGNEE.

22 (iii) THE ACCOUNT DEBTOR KNOWS THAT THE ASSIGNMENT TO THAT  
23 ASSIGNEE IS LIMITED.

24 (3) SUBJECT TO SUBSECTION (8), IF REQUESTED BY THE ACCOUNT  
25 DEBTOR, AN ASSIGNEE SHALL SEASONABLY FURNISH REASONABLE PROOF  
26 THAT THE ASSIGNMENT HAS BEEN MADE. UNLESS THE ASSIGNEE COMPLIES,  
27 THE ACCOUNT DEBTOR MAY DISCHARGE ITS OBLIGATION BY PAYING THE

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

210

1 ASSIGNOR, EVEN IF THE ACCOUNT DEBTOR HAS RECEIVED A NOTIFICATION  
2 UNDER SUBSECTION (1).

3 (4) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (5) AND SEC-  
4 TIONS 2A303 AND 9407, AND SUBJECT TO SUBSECTION (8), A TERM IN AN  
5 AGREEMENT BETWEEN AN ACCOUNT DEBTOR AND AN ASSIGNOR OR IN A PROM-  
6 ISSORY NOTE IS INEFFECTIVE TO THE EXTENT THAT IT DOES 1 OR MORE  
7 OF THE FOLLOWING:

8 (A) PROHIBITS, RESTRICTS, OR REQUIRES THE CONSENT OF THE  
9 ACCOUNT DEBTOR OR PERSON OBLIGATED ON THE PROMISSORY NOTE TO THE  
10 ASSIGNMENT OR TRANSFER OF, OR THE CREATION, ATTACHMENT, PERFEC-  
11 TION, OR ENFORCEMENT OF A SECURITY INTEREST IN, THE ACCOUNT,  
12 CHATTEL PAPER, PAYMENT INTANGIBLE, OR PROMISSORY NOTE.

13 (B) PROVIDES THAT THE ASSIGNMENT OR TRANSFER OR THE CRE-  
14 ATION, ATTACHMENT, PERFECTION, OR ENFORCEMENT OF THE SECURITY  
15 INTEREST MAY GIVE RISE TO A DEFAULT, BREACH, RIGHT OF RECOUPMENT,  
16 CLAIM, DEFENSE, TERMINATION, RIGHT OF TERMINATION, OR REMEDY  
17 UNDER THE ACCOUNT, CHATTEL PAPER, PAYMENT INTANGIBLE, OR PROMIS-  
18 SORY NOTE.

19 (5) SUBSECTION (4) DOES NOT APPLY TO THE FOLLOWING:

20 (A) A CLAIM OR RIGHT TO RECEIVE AN AMOUNT THAT WOULD BE  
21 EXCLUDED FROM GROSS INCOME UNDER SECTION 104(a)(1) OR (2) OF THE  
22 INTERNAL REVENUE CODE OF 1986, 26 U.S.C. 104.

23 (B) A CLAIM OR RIGHT TO RECEIVE BENEFITS FROM A SPECIAL  
24 NEEDS TRUST. FOR PURPOSES OF THIS SUBDIVISION, A "SPECIAL NEEDS  
25 TRUST" IS A TRUST DESCRIBED IN SECTION 1917(d)(4)(A), (B), OR (C)  
26 OF TITLE XIX OF THE SOCIAL SECURITY ACT, 42 U.S.C. 1396p.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

211

1 (C) THE SALE OF A PAYMENT INTANGIBLE OR PROMISSORY NOTE.

2 (6) EXCEPT AS OTHERWISE PROVIDED IN SECTIONS 2A303 AND 9407

3 AND SUBJECT TO SUBSECTIONS (8) AND (9), A RULE OF LAW, STATUTE,

4 OR REGULATION, THAT PROHIBITS, RESTRICTS, OR REQUIRES THE CONSENT

5 OF A GOVERNMENT, GOVERNMENTAL BODY OR OFFICIAL, OR ACCOUNT DEBTOR

6 TO THE ASSIGNMENT OR TRANSFER OF, OR CREATION OF A SECURITY

7 INTEREST IN, AN ACCOUNT OR CHATTEL PAPER IS INEFFECTIVE TO THE

8 EXTENT THAT THE RULE OF LAW, STATUTE, OR REGULATION DOES 1 OR

9 MORE OF THE FOLLOWING:

10 (A) PROHIBITS, RESTRICTS, OR REQUIRES THE CONSENT OF THE

11 GOVERNMENT, GOVERNMENTAL BODY OR OFFICIAL, OR ACCOUNT DEBTOR TO

12 THE ASSIGNMENT OR TRANSFER OF, OR THE CREATION, ATTACHMENT, PER-

13 FECTION, OR ENFORCEMENT OF A SECURITY INTEREST IN, THE ACCOUNT OR

14 CHATTEL PAPER.

15 (B) PROVIDES THAT THE ASSIGNMENT OR TRANSFER OR THE CRE-

16 ATION, ATTACHMENT, PERFECTION, OR ENFORCEMENT OF THE SECURITY

17 INTEREST MAY GIVE RISE TO A DEFAULT, BREACH, RIGHT OF RECOUPMENT,

18 CLAIM, DEFENSE, TERMINATION, RIGHT OF TERMINATION, OR REMEDY

19 UNDER THE ACCOUNT OR CHATTEL PAPER.

20 (7) SUBJECT TO SUBSECTION (8), AN ACCOUNT DEBTOR MAY NOT

21 WAIVE OR VARY ITS OPTION UNDER SUBSECTION (2)(C).

22 (8) THIS SECTION IS SUBJECT TO LAW OTHER THAN THIS ARTICLE

23 THAT ESTABLISHES A DIFFERENT RULE FOR AN ACCOUNT DEBTOR WHO IS AN

24 INDIVIDUAL AND WHO INCURRED THE OBLIGATION PRIMARILY FOR PERSON-

25 AL, FAMILY, OR HOUSEHOLD PURPOSES.

26 (9) THIS SECTION DOES NOT APPLY TO AN ASSIGNMENT OF A

27 HEALTH-CARE-INSURANCE RECEIVABLE.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

212

1       Sec. 9407. ~~-(1) If the person filing a financing statement,~~  
2 ~~termination statement, statement of assignment, or statement of~~  
3 ~~release furnishes the filing officer a copy of the statement, the~~  
4 ~~filing officer shall upon request note upon the copy the file~~  
5 ~~number and date and hour of the filing of the original and~~  
6 ~~deliver or send the copy to the person.~~

7       ~~(2) Upon request of any person, the filing officer shall~~  
8 ~~issue a certificate showing whether there is on file, on the date~~  
9 ~~and hour stated on the certificate, any presently effective~~  
10 ~~financing statement naming a particular debtor and any statement~~  
11 ~~of assignment and if there is, giving the date and hour of filing~~  
12 ~~of each statement and the names and addresses of each secured~~  
13 ~~party in the statement. The uniform fee for a certificate is~~  
14 ~~\$3.00 if the request for the certificate is in the standard form~~  
15 ~~prescribed by the secretary of state and, for certificates which~~  
16 ~~concern financing statements filed beginning September 1, 1988,~~  
17 ~~includes the social security number of the debtor or the debtor's~~  
18 ~~federal employer tax identification number. If the request does~~  
19 ~~not comply with these requirements, the fee is \$6.00. Upon~~  
20 ~~request, the filing officer shall furnish a copy of a filed~~  
21 ~~financing statement or statement of assignment for a uniform fee~~  
22 ~~of \$1.00 per page. The secretary of state shall charge an addi-~~  
23 ~~tional fee of \$25.00 if a person requests expediting of the regu-~~  
24 ~~lar search process. The secretary of state shall promulgate~~  
25 ~~rules under the administrative procedures act of 1969, Act~~  
26 ~~No. 306 of the Public Acts of 1969, being sections 24.201 to~~

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

213

1 ~~24.328 of the Michigan Compiled Laws, to define what constitutes~~  
2 ~~expediting of the regular search process.~~

3 (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (2), A TERM  
4 IN A LEASE AGREEMENT IS INEFFECTIVE TO THE EXTENT THAT IT DOES 1  
5 OR MORE OF THE FOLLOWING:

6 (A) PROHIBITS, RESTRICTS, OR REQUIRES THE CONSENT OF A PARTY  
7 TO THE LEASE TO THE ASSIGNMENT OR TRANSFER OF, OR THE CREATION,  
8 ATTACHMENT, PERFECTION, OR ENFORCEMENT OF A SECURITY INTEREST IN,  
9 AN INTEREST OF A PARTY UNDER THE LEASE CONTRACT OR IN THE  
10 LESSOR'S RESIDUAL INTEREST IN THE GOODS.

11 (B) PROVIDES THAT THE ASSIGNMENT OR TRANSFER OR THE CRE-  
12 ATION, ATTACHMENT, PERFECTION, OR ENFORCEMENT OF THE SECURITY  
13 INTEREST MAY GIVE RISE TO A DEFAULT, BREACH, RIGHT OF RECOUPMENT,  
14 CLAIM, DEFENSE, TERMINATION, RIGHT OF TERMINATION, OR REMEDY  
15 UNDER THE LEASE.

16 (2) EXCEPT AS OTHERWISE PROVIDED IN SECTION 2A303(7), A TERM  
17 DESCRIBED IN SUBSECTION (1)(B) IS EFFECTIVE TO THE EXTENT THAT  
18 THERE IS 1 OR MORE OF THE FOLLOWING:

19 (A) A TRANSFER BY THE LESSEE OF THE LESSEE'S RIGHT OF POS-  
20 SESSION OR USE OF THE GOODS IN VIOLATION OF THE TERM.

21 (B) A DELEGATION OF A MATERIAL PERFORMANCE OF EITHER PARTY  
22 TO THE LEASE CONTRACT IN VIOLATION OF THE TERM.

23 (3) THE CREATION, ATTACHMENT, PERFECTION, OR ENFORCEMENT OF  
24 A SECURITY INTEREST IN THE LESSOR'S INTEREST UNDER THE LEASE CON-  
25 TRACT OR THE LESSOR'S RESIDUAL INTEREST IN THE GOODS IS NOT A  
26 TRANSFER THAT MATERIALLY IMPAIRS THE LESSEE'S PROSPECT OF  
27 OBTAINING RETURN PERFORMANCE OR MATERIALLY CHANGES THE DUTY OF OR

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

214

1 MATERIALLY INCREASES THE BURDEN OR RISK IMPOSED ON THE LESSEE  
2 WITHIN THE PURVIEW OF SECTION 2A303(4) UNLESS, AND THEN ONLY TO  
3 THE EXTENT THAT, ENFORCEMENT ACTUALLY RESULTS IN A DELEGATION OF  
4 MATERIAL PERFORMANCE OF THE LESSOR.

5       Sec. 9408. ~~Registers of deeds need not accept at standard~~  
6 ~~rates after January 1, 1964 chattel instruments or financing~~  
7 ~~statements for filing unless prepared on paper 8 1/2x13 inches in~~  
8 ~~size, with a 1/2 inch in length and width allowed for tolerance~~  
9 ~~before such papers shall be deemed nonstandard, and of not less~~  
10 ~~than 16 pound weight. Nonstandard chattel papers in size or~~  
11 ~~weight may be filed by paying 50 cents extra for each paper so~~  
12 ~~filed.~~

13       (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (2) OR (4), A  
14 TERM IN A PROMISSORY NOTE OR IN AN AGREEMENT BETWEEN AN ACCOUNT  
15 DEBTOR AND A DEBTOR THAT RELATES TO A HEALTH-CARE-INSURANCE  
16 RECEIVABLE OR A GENERAL INTANGIBLE, INCLUDING A CONTRACT, PERMIT,  
17 LICENSE, OR FRANCHISE, AND WHICH TERM PROHIBITS, RESTRICTS, OR  
18 REQUIRES THE CONSENT OF THE PERSON OBLIGATED ON THE PROMISSORY  
19 NOTE OR THE ACCOUNT DEBTOR TO, THE ASSIGNMENT OR TRANSFER OF, OR  
20 CREATION, ATTACHMENT, OR PERFECTION OF A SECURITY INTEREST IN,  
21 THE PROMISSORY NOTE, HEALTH-CARE-INSURANCE RECEIVABLE, OR GENERAL  
22 INTANGIBLE, IS INEFFECTIVE TO THE EXTENT THAT THE TERM DOES 1 OR  
23 MORE OF THE FOLLOWING:

24       (A) WOULD IMPAIR THE CREATION, ATTACHMENT, OR PERFECTION OF  
25 A SECURITY INTEREST.

26       (B) PROVIDES THAT THE ASSIGNMENT OR TRANSFER OR THE  
27 CREATION, ATTACHMENT, OR PERFECTION OF THE SECURITY INTEREST MAY

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

215

1 GIVE RISE TO A DEFAULT, BREACH, RIGHT OF RECOUPMENT, CLAIM,  
2 DEFENSE, TERMINATION, RIGHT OF TERMINATION, OR REMEDY UNDER THE  
3 PROMISSORY NOTE, HEALTH-CARE-INSURANCE RECEIVABLE, OR GENERAL  
4 INTANGIBLE.

5 (2) SUBSECTION (1) APPLIES TO A SECURITY INTEREST IN A PAY-  
6 MENT INTANGIBLE OR PROMISSORY NOTE ONLY IF THE SECURITY INTEREST  
7 ARISES OUT OF A SALE OF THE PAYMENT INTANGIBLE OR PROMISSORY  
8 NOTE.

9 (3) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (4), A RULE  
10 OF LAW, STATUTE, OR REGULATION THAT PROHIBITS, RESTRICTS, OR  
11 REQUIRES THE CONSENT OF A GOVERNMENT, GOVERNMENTAL BODY OR OFFI-  
12 CIAL, PERSON OBLIGATED ON A PROMISSORY NOTE, OR ACCOUNT DEBTOR TO  
13 THE ASSIGNMENT OR TRANSFER OF, OR CREATION OF A SECURITY INTEREST  
14 IN, A PROMISSORY NOTE, HEALTH-CARE-INSURANCE RECEIVABLE, OR GEN-  
15 ERAL INTANGIBLE, INCLUDING A CONTRACT, PERMIT, LICENSE, OR FRAN-  
16 CHISE BETWEEN AN ACCOUNT DEBTOR AND A DEBTOR, IS INEFFECTIVE TO  
17 THE EXTENT THAT THE RULE OF LAW, STATUTE, OR REGULATION DOES 1 OR  
18 MORE OF THE FOLLOWING:

19 (A) WOULD IMPAIR THE CREATION, ATTACHMENT, OR PERFECTION OF  
20 A SECURITY INTEREST.

21 (B) PROVIDES THAT THE ASSIGNMENT OR TRANSFER OR THE CRE-  
22 ATION, ATTACHMENT, OR PERFECTION OF THE SECURITY INTEREST MAY  
23 GIVE RISE TO A DEFAULT, BREACH, RIGHT OF RECOUPMENT, CLAIM,  
24 DEFENSE, TERMINATION, RIGHT OF TERMINATION, OR REMEDY UNDER THE  
25 PROMISSORY NOTE, HEALTH-CARE-INSURANCE RECEIVABLE, OR GENERAL  
26 INTANGIBLE.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

216

1       (4) TO THE EXTENT THAT A TERM IN A PROMISSORY NOTE OR IN AN  
2 AGREEMENT BETWEEN AN ACCOUNT DEBTOR AND A DEBTOR THAT RELATES TO  
3 A HEALTH-CARE-INSURANCE RECEIVABLE OR GENERAL INTANGIBLE OR A  
4 RULE OF LAW, STATUTE, OR REGULATION DESCRIBED IN SUBSECTION (3)  
5 WOULD BE EFFECTIVE UNDER LAW OTHER THAN THIS ARTICLE BUT IS INEF-  
6 FECTIVE UNDER SUBSECTION (1) OR (3), THE CREATION, ATTACHMENT, OR  
7 PERFECTION OF A SECURITY INTEREST IN THE PROMISSORY NOTE,  
8 HEALTH-CARE-INSURANCE RECEIVABLE, OR GENERAL INTANGIBLE IS NOT OR  
9 DOES NOT DO ALL OF THE FOLLOWING:

10       (A) IS NOT ENFORCEABLE AGAINST THE PERSON OBLIGATED ON THE  
11 PROMISSORY NOTE OR THE ACCOUNT DEBTOR.

12       (B) DOES NOT IMPOSE A DUTY OR OBLIGATION ON THE PERSON OBLI-  
13 GATED ON THE PROMISSORY NOTE OR THE ACCOUNT DEBTOR.

14       (C) DOES NOT REQUIRE THE PERSON OBLIGATED ON THE PROMISSORY  
15 NOTE OR THE ACCOUNT DEBTOR TO RECOGNIZE THE SECURITY INTEREST,  
16 PAY OR RENDER PERFORMANCE TO THE SECURED PARTY, OR ACCEPT PAYMENT  
17 OR PERFORMANCE FROM THE SECURED PARTY.

18       (D) DOES NOT ENTITLE THE SECURED PARTY TO USE OR ASSIGN THE  
19 DEBTOR'S RIGHTS UNDER THE PROMISSORY NOTE, HEALTH-CARE-INSURANCE  
20 RECEIVABLE, OR GENERAL INTANGIBLE, INCLUDING ANY RELATED INFORMA-  
21 TION OR MATERIALS FURNISHED TO THE DEBTOR IN THE TRANSACTION  
22 GIVING RISE TO THE PROMISSORY NOTE, HEALTH-CARE-INSURANCE RECEIV-  
23 ABLE, OR GENERAL INTANGIBLE.

24       (E) DOES NOT ENTITLE THE SECURED PARTY TO USE, ASSIGN, POS-  
25 SESS, OR HAVE ACCESS TO ANY TRADE SECRETS OR CONFIDENTIAL INFOR-  
26 MATION OF THE PERSON OBLIGATED ON THE PROMISSORY NOTE OR THE  
27 ACCOUNT DEBTOR.



**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

217

1 (F) DOES NOT ENTITLE THE SECURED PARTY TO ENFORCE THE  
2 SECURITY INTEREST IN THE PROMISSORY NOTE, HEALTH-CARE-INSURANCE  
3 RECEIVABLE, OR GENERAL INTANGIBLE.

4 (5) SUBSECTIONS (1) AND (3) DO NOT APPLY TO EITHER OF THE  
5 FOLLOWING:

6 (A) A CLAIM OR RIGHT TO RECEIVE AN AMOUNT THAT WOULD BE  
7 EXCLUDED FROM GROSS INCOME UNDER SECTION 104(a)(1) OR (2) OF THE  
8 INTERNAL REVENUE CODE OF 1986, 26 U.S.C. 104.

9 (B) A CLAIM OR RIGHT TO RECEIVE BENEFITS FROM A SPECIAL  
10 NEEDS TRUST. FOR PURPOSES OF THIS SUBDIVISION, A "SPECIAL NEEDS  
11 TRUST" IS A TRUST DESCRIBED IN SECTION 1917(d)(4)(A), (B), OR (C)  
12 OF TITLE XIX OF THE SOCIAL SECURITY ACT, 42 U.S.C. 1396p.

13 Sec. 9409. ~~The fees collected by the secretary of state~~  
14 ~~under this act shall be deposited in the general fund and are~~  
15 ~~appropriated to the department of state to cover the secretary of~~  
16 ~~state's expenses of administering this act, including the cost of~~  
17 ~~converting secretary of state uniform commercial code records~~  
18 ~~from a manual to an electronic data processing record-keeping~~  
19 ~~system. Any unexpended and unencumbered balance remaining at the~~  
20 ~~close of each fiscal year shall revert to the general fund.~~

21 (1) A TERM IN A LETTER OF CREDIT OR A RULE OF LAW, STATUTE,  
22 REGULATION, CUSTOM, OR PRACTICE APPLICABLE TO THE LETTER OF  
23 CREDIT THAT PROHIBITS, RESTRICTS, OR REQUIRES THE CONSENT OF AN  
24 APPLICANT, ISSUER, OR NOMINATED PERSON TO A BENEFICIARY'S ASSIGN-  
25 MENT OF OR CREATION OF A SECURITY INTEREST IN A LETTER-OF-CREDIT  
26 RIGHT IS INEFFECTIVE TO THE EXTENT THAT THE TERM OR RULE OF LAW,

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

218

1 STATUTE, REGULATION, CUSTOM, OR PRACTICE DOES 1 OR MORE OF THE  
2 FOLLOWING:

3 (A) WOULD IMPAIR THE CREATION, ATTACHMENT, OR PERFECTION OF  
4 A SECURITY INTEREST IN THE LETTER-OF-CREDIT RIGHT.

5 (B) PROVIDES THAT THE ASSIGNMENT OR THE CREATION, ATTACH-  
6 MENT, OR PERFECTION OF THE SECURITY INTEREST MAY GIVE RISE TO A  
7 DEFAULT, BREACH, RIGHT OF RECOUPMENT, CLAIM, DEFENSE, TERMINA-  
8 TION, RIGHT OF TERMINATION, OR REMEDY UNDER THE LETTER-OF-CREDIT  
9 RIGHT.

10 (2) TO THE EXTENT THAT A TERM IN A LETTER OF CREDIT IS INEF-  
11 FECTIVE UNDER SUBSECTION (1) BUT WOULD BE EFFECTIVE UNDER LAW  
12 OTHER THAN THIS ARTICLE OR A CUSTOM OR PRACTICE APPLICABLE TO THE  
13 LETTER OF CREDIT, TO THE TRANSFER OF A RIGHT TO DRAW OR OTHERWISE  
14 DEMAND PERFORMANCE UNDER THE LETTER OF CREDIT, OR TO THE ASSIGN-  
15 MENT OF A RIGHT TO PROCEEDS OF THE LETTER OF CREDIT, THE CRE-  
16 ATION, ATTACHMENT, OR PERFECTION OF A SECURITY INTEREST IN THE  
17 LETTER-OF-CREDIT RIGHT, THE TERM IS NOT ENFORCEABLE AGAINST THE  
18 APPLICANT, ISSUER, NOMINATED PERSON, OR TRANSFEREE BENEFICIARY,  
19 IMPOSES NO DUTIES OR OBLIGATIONS ON THE APPLICANT, ISSUER, NOMI-  
20 NATED PERSON, OR TRANSFEREE BENEFICIARY, AND DOES NOT REQUIRE THE  
21 APPLICANT, ISSUER, NOMINATED PERSON, OR TRANSFEREE BENEFICIARY TO  
22 RECOGNIZE THE SECURITY INTEREST, PAY OR RENDER PERFORMANCE TO THE  
23 SECURED PARTY, OR ACCEPT PAYMENT OR OTHER PERFORMANCE FROM THE  
24 SECURED PARTY.

25

PART 5

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

219

~~DEFAULT~~ FILING

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

Sec. 9501. ~~(1) When a debtor is in default under a secur-~~

~~ity agreement, a secured party has the rights and remedies pro-~~

~~vided in this part and except as limited by subsection (3) those~~

~~provided in the security agreement. He may reduce his claim to~~

~~judgment, foreclose, or otherwise enforce the security interest~~

~~by any available judicial procedure. If the collateral is docu-~~

~~ments the secured party may proceed either as to the documents,~~

~~or as to the goods covered thereby. A secured party in posses-~~

~~sion has the rights, remedies, and duties provided in section~~

~~9207. The rights and remedies referred to in this subsection are~~

~~cumulative.~~

~~(2) After default, the debtor has the rights and remedies~~

~~provided in this part, those provided in the security agreement,~~

~~and those provided in section 9207.~~

~~(3) To the extent that they give rights to the debtor and~~

~~impose duties on the secured party, the rules stated in the sub-~~

~~sections referred to below may not be waived or varied except as~~

~~provided with respect to compulsory disposition of collateral~~

~~(section 9504(3) and section 9505) and with respect to redemption~~

~~of collateral (section 9506) but the parties may by agreement~~

~~determine the standards by which the fulfillment of these rights~~

~~and duties is to be measured if such standards are not manifestly~~

~~unreasonable.~~

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

220

1       ~~(a) subsection (2) of section 9502 and subsection (2) of~~  
2 ~~section 9504 insofar as they require accounting for surplus~~  
3 ~~proceeds of collateral;~~

4       ~~(b) subsection (3) of section 9504 and subsection (1) of~~  
5 ~~section 9505 which deal with disposition of collateral;~~

6       ~~(c) subsection (2) of section 9505 which deals with accep-~~  
7 ~~tance of collateral as discharge of obligation;~~

8       ~~(d) section 9506 which deals with redemption of collateral;~~  
9 ~~and~~

10       ~~(e) subsection (1) of section 9507 which deals with the~~  
11 ~~secured party's liability for failure to comply with this part.~~

12       ~~(4) If the security agreement covers both real and personal~~  
13 ~~property, the secured party may proceed under this part as to the~~  
14 ~~personal property or he may proceed as to both the real and the~~  
15 ~~personal property in accordance with his rights and remedies in~~  
16 ~~respect of the real property in which case the provisions of this~~  
17 ~~part do not apply.~~

18       ~~(5) When a secured party has reduced his claim to judgment~~  
19 ~~the lien of any levy which may be made upon his collateral by~~  
20 ~~virtue of any execution based upon the judgment shall relate back~~  
21 ~~to the date of the perfection of the security interest in such~~  
22 ~~collateral. A judicial sale, pursuant to such execution, is a~~  
23 ~~foreclosure of the security interest by judicial procedure within~~  
24 ~~the meaning of this section, and the secured party may purchase~~  
25 ~~at the sale and thereafter hold the collateral free of any other~~  
26 ~~requirements of this article.~~

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

221

1       (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (2), THE  
2 OFFICE IN WHICH TO FILE A FINANCING STATEMENT TO PERFECT THE  
3 SECURITY INTEREST OR AGRICULTURAL LIEN IS 1 OF THE FOLLOWING:

4       (A) THE OFFICE DESIGNATED FOR THE FILING OR RECORDING OF A  
5 RECORD OF A MORTGAGE ON THE RELATED REAL PROPERTY, IF THE COLLAT-  
6 ERAL IS AS-EXTRACTED COLLATERAL OR TIMBER TO BE CUT, OR THE  
7 FINANCING STATEMENT IS FILED AS A FIXTURE FILING AND THE COLLAT-  
8 ERAL IS GOODS THAT ARE OR ARE TO BECOME FIXTURES.

9       (B) THE OFFICE OF SECRETARY OF STATE IN ALL OTHER CASES,  
10 INCLUDING A CASE IN WHICH THE COLLATERAL IS GOODS THAT ARE OR ARE  
11 TO BECOME FIXTURES AND THE FINANCING STATEMENT IS NOT FILED AS A  
12 FIXTURE FILING.

13       (2) THE OFFICE IN WHICH TO FILE A FINANCING STATEMENT TO  
14 PERFECT A SECURITY INTEREST IN COLLATERAL, INCLUDING FIXTURES, OF  
15 A TRANSMITTING UTILITY IS THE OFFICE OF THE SECRETARY OF STATE.  
16 THE FINANCING STATEMENT ALSO CONSTITUTES A FIXTURE FILING AS TO  
17 THE COLLATERAL INDICATED IN THE FINANCING STATEMENT WHICH IS OR  
18 IS TO BECOME FIXTURES.

19       (3) ANY FINANCING STATEMENT FILED UNDER SUBSECTION (1)(A)  
20 WITH A REGISTER OF DEEDS AND ANY CONTINUATION STATEMENT, TERMINA-  
21 TION STATEMENT, AMENDMENT, OR ASSIGNMENT RELATING TO THE FINANC-  
22 ING STATEMENT AND MEETING THE FORMAL REQUISITES OF THIS PART  
23 SHALL BE RECORDED BY THE REGISTER OF DEEDS, NOTWITHSTANDING THE  
24 PROVISIONS FOR WITNESSING AND ACKNOWLEDGING INSTRUMENTS TO BE  
25 RECORDED IN THE REAL PROPERTY RECORDS CONTAINED IN SECTION 47 OF  
26 1846 RS 65, MCL 565.47.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

222

1       Sec. 9502. ~~-(1) When so agreed and in any event on default~~  
2 ~~the secured party is entitled to notify an account debtor or the~~  
3 ~~obligor on an instrument to make payment to him whether or not~~  
4 ~~the assignor was theretofore making collections on the collateral,~~  
5 ~~and also to take control of any proceeds to which he is enti-~~  
6 ~~tled under section 9306.~~

7       ~~(2) A secured party who by agreement is entitled to charge~~  
8 ~~back uncollected collateral or otherwise to full or limited~~  
9 ~~recourse against the debtor and who undertakes to collect from~~  
10 ~~the account debtors or obligors must proceed in a commercially~~  
11 ~~reasonable manner and may deduct his reasonable expenses of real-~~  
12 ~~ization from the collections. If the security agreement secures~~  
13 ~~an indebtedness, the secured party must account to the debtor for~~  
14 ~~any surplus, and unless otherwise agreed, the debtor is liable~~  
15 ~~for any deficiency. But, if the underlying transaction was a~~  
16 ~~sale of accounts or chattel paper, the debtor is entitled to any~~  
17 ~~surplus or is liable for any deficiency only if the security~~  
18 ~~agreement so provides.~~

19       (1) SUBJECT TO SUBSECTION (2), A FINANCING STATEMENT IS SUF-  
20 FICIENT ONLY IF IT DOES ALL OF THE FOLLOWING:

21       (A) PROVIDES THE NAME OF THE DEBTOR.

22       (B) PROVIDES THE NAME OF THE SECURED PARTY OR A REPRESENTA-  
23 TIVE OF THE SECURED PARTY.

24       (C) INDICATES THE COLLATERAL COVERED BY THE FINANCING  
25 STATEMENT.

26       (2) EXCEPT AS OTHERWISE PROVIDED IN SECTION 9501(2), TO BE  
27 SUFFICIENT, A FINANCING STATEMENT THAT COVERS AS-EXTRACTED

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

223

1 COLLATERAL OR TIMBER TO BE CUT, OR THAT IS FILED AS A FIXTURE  
2 FILING AND COVERS GOODS THAT ARE OR ARE TO BECOME FIXTURES, MUST  
3 SATISFY SUBSECTION (1) AND ALSO DO ALL OF THE FOLLOWING:

4 (A) INDICATE THAT IT COVERS THIS TYPE OF COLLATERAL.

5 (B) INDICATE THAT IT IS TO BE RECORDED IN THE REAL PROPERTY  
6 RECORDS.

7 (C) PROVIDE A DESCRIPTION OF THE REAL PROPERTY TO WHICH THE  
8 COLLATERAL IS RELATED SUFFICIENT TO GIVE CONSTRUCTIVE NOTICE OF A  
9 MORTGAGE UNDER THE LAW OF THIS STATE IF THE DESCRIPTION WERE CON-  
10 TAINED IN A RECORD OF THE MORTGAGE OF THE REAL PROPERTY.

11 (D) IF THE DEBTOR DOES NOT HAVE AN INTEREST OF RECORD IN THE  
12 REAL PROPERTY, PROVIDE THE NAME OF A RECORD OWNER.

13 (3) A RECORD OF A MORTGAGE IS EFFECTIVE, FROM THE DATE OF  
14 RECORDING, AS A FINANCING STATEMENT FILED AS A FIXTURE FILING OR  
15 AS A FINANCING STATEMENT COVERING AS-EXTRACTED COLLATERAL OR  
16 TIMBER TO BE CUT ONLY IF ALL OF THE FOLLOWING APPLY:

17 (A) THE RECORD INDICATES THE GOODS OR ACCOUNTS THAT IT  
18 COVERS.

19 (B) THE GOODS ARE OR ARE TO BECOME FIXTURES RELATED TO THE  
20 REAL PROPERTY DESCRIBED IN THE RECORD OR THE COLLATERAL IS  
21 RELATED TO THE REAL PROPERTY DESCRIBED IN THE RECORD AND IS  
22 AS-EXTRACTED COLLATERAL OR TIMBER TO BE CUT.

23 (C) THE RECORD SATISFIES THE REQUIREMENTS FOR A FINANCING  
24 STATEMENT IN THIS SECTION OTHER THAN AN INDICATION THAT IT IS TO  
25 BE FILED IN THE REAL PROPERTY RECORDS.

26 (D) THE RECORD IS DULY RECORDED.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

224

1 (4) A FINANCING STATEMENT MAY BE FILED BEFORE A SECURITY  
2 AGREEMENT IS MADE OR A SECURITY INTEREST OTHERWISE ATTACHES.

3 Sec. 9503. ~~Unless otherwise agreed a secured party has on~~  
4 ~~default the right to take possession of the collateral. In~~  
5 ~~taking possession a secured party may proceed without judicial~~  
6 ~~process if this can be done without breach of the peace or may~~  
7 ~~proceed by action. If the security agreement so provides the~~  
8 ~~secured party may require the debtor to assemble the collateral~~  
9 ~~and make it available to the secured party at a place to be des-~~  
10 ~~ignated by the secured party which is reasonably convenient to~~  
11 ~~both parties. Without removal a secured party may render equip-~~  
12 ~~ment unusable, and may dispose of collateral on the debtor's~~  
13 ~~premises under section 9504.~~

14 (1) A FINANCING STATEMENT SUFFICIENTLY PROVIDES THE NAME OF  
15 THE DEBTOR IF IT MEETS ALL OF THE FOLLOWING THAT APPLY TO THE  
16 DEBTOR:

17 (A) IF THE DEBTOR IS A REGISTERED ORGANIZATION, ONLY IF THE  
18 FINANCING STATEMENT PROVIDES THE NAME OF THE DEBTOR INDICATED ON  
19 THE PUBLIC RECORD OF THE DEBTOR'S JURISDICTION OF ORGANIZATION  
20 WHICH SHOWS THE DEBTOR TO HAVE BEEN ORGANIZED.

21 (B) IF THE DEBTOR IS A DECEDENT'S ESTATE, ONLY IF THE  
22 FINANCING STATEMENT PROVIDES THE NAME OF THE DECEDENT AND INDI-  
23 CATES THAT THE DEBTOR IS AN ESTATE.

24 (C) IF THE DEBTOR IS A TRUST OR A TRUSTEE ACTING WITH  
25 RESPECT TO PROPERTY HELD IN TRUST, ONLY IF THE FINANCING STATE-  
26 MENT DOES BOTH OF THE FOLLOWING:



**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

225

1       (i) PROVIDES THE NAME SPECIFIED FOR THE TRUST IN ITS ORGANIC  
2 DOCUMENTS OR, IF NO NAME IS SPECIFIED, PROVIDES THE NAME OF THE  
3 SETTLOR AND ADDITIONAL INFORMATION SUFFICIENT TO DISTINGUISH THE  
4 DEBTOR FROM OTHER TRUSTS HAVING 1 OR MORE OF THE SAME SETTLORS.

5       (ii) INDICATES, IN THE DEBTOR'S NAME OR OTHERWISE, THAT THE  
6 DEBTOR IS A TRUST OR IS A TRUSTEE ACTING WITH RESPECT TO PROPERTY  
7 HELD IN TRUST.

8       (D) IN OTHER CASES, SATISFIES 1 OF THE FOLLOWING:

9       (i) IF THE DEBTOR HAS A NAME, ONLY IF IT PROVIDES THE INDI-  
10 VIDUAL OR ORGANIZATIONAL NAME OF THE DEBTOR.

11       (ii) IF THE DEBTOR DOES NOT HAVE A NAME, ONLY IF IT PROVIDES  
12 THE NAMES OF THE PARTNERS, MEMBERS, ASSOCIATES, OR OTHER PERSONS  
13 COMPRISING THE DEBTOR.

14       (2) A FINANCING STATEMENT THAT PROVIDES THE NAME OF THE  
15 DEBTOR IN ACCORDANCE WITH SUBSECTION (1) IS NOT RENDERED INEFFEC-  
16 TIVE BY THE ABSENCE OF 1 OR MORE OF THE FOLLOWING:

17       (A) A TRADE NAME OR OTHER NAME OF THE DEBTOR.

18       (B) UNLESS REQUIRED UNDER SUBSECTION (1)(D)(ii), NAMES OF  
19 PARTNERS, MEMBERS, ASSOCIATES, OR OTHER PERSONS COMPRISING THE  
20 DEBTOR.

21       (3) A FINANCING STATEMENT THAT PROVIDES ONLY THE DEBTOR'S  
22 TRADE NAME DOES NOT SUFFICIENTLY PROVIDE THE NAME OF THE DEBTOR.

23       (4) FAILURE TO INDICATE THE REPRESENTATIVE CAPACITY OF A  
24 SECURED PARTY OR REPRESENTATIVE OF A SECURED PARTY DOES NOT  
25 AFFECT THE SUFFICIENCY OF A FINANCING STATEMENT.

26       (5) A FINANCING STATEMENT MAY PROVIDE THE NAME OF MORE THAN  
27 1 DEBTOR AND THE NAME OF MORE THAN 1 SECURED PARTY.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

226

1       Sec. 9504. ~~-(1) A secured party after default may sell,~~  
2 ~~lease, or otherwise dispose of any or all of the collateral in~~  
3 ~~its then condition or following any commercially reasonable prep-~~  
4 ~~aration or processing. Any sale of goods is subject to the arti-~~  
5 ~~cle on sales (article 2). The proceeds of disposition shall be~~  
6 ~~applied in the order following to:~~

7       ~~(a) The reasonable expenses of retaking, holding, preparing~~  
8 ~~for sale or lease, selling, leasing, and the like and, to the~~  
9 ~~extent provided for in the agreement and not prohibited by law,~~  
10 ~~the reasonable attorneys' fees and legal expenses incurred by the~~  
11 ~~secured party;~~

12       ~~(b) The satisfaction of indebtedness secured by the security~~  
13 ~~interest under which the disposition is made;~~

14       ~~(c) The satisfaction of indebtedness secured by any subordi-~~  
15 ~~nate security interest in the collateral if written notification~~  
16 ~~of demand therefor is received before distribution of the pro-~~  
17 ~~ceeds is completed. If requested by the secured party, the~~  
18 ~~holder of a subordinate security interest must seasonably furnish~~  
19 ~~reasonable proof of his interest, and unless he does so, the~~  
20 ~~secured party need not comply with his demand.~~

21       ~~(2) If the security interest secures an indebtedness, the~~  
22 ~~secured party must account to the debtor for any surplus, and,~~  
23 ~~unless otherwise agreed, the debtor is liable for any~~  
24 ~~deficiency. But if the underlying transaction was a sale of~~  
25 ~~accounts or chattel paper, the debtor is entitled to any surplus~~  
26 ~~or is liable for any deficiency only if the security agreement so~~  
27 ~~provides.~~

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

227

1       ~~(3) Disposition of the collateral may be by public or~~  
2 ~~private proceedings and may be made by way of 1 or more~~  
3 ~~contracts. Sale or other disposition may be as a unit or in par-~~  
4 ~~cels and at any time and place and on any terms but every aspect~~  
5 ~~of the disposition including the method, manner, time, place, and~~  
6 ~~terms must be commercially reasonable. Unless collateral is per-~~  
7 ~~ishable or threatens to decline speedily in value or is of a type~~  
8 ~~customarily sold on a recognized market, reasonable notification~~  
9 ~~of the time and place of any public sale or reasonable notifica-~~  
10 ~~tion of the time after which any private sale or other intended~~  
11 ~~disposition is to be made shall be sent by the secured party to~~  
12 ~~the debtor, if he has not signed after default a statement~~  
13 ~~renouncing or modifying his right to notification of sale. In~~  
14 ~~the case of consumer goods no other notification need be sent.~~  
15 ~~In other cases notification shall be sent to any other secured~~  
16 ~~party from whom the secured party has received (before sending~~  
17 ~~his notification to the debtor or before the debtor's renuncia-~~  
18 ~~tion of his rights) written notice of a claim of an interest in~~  
19 ~~the collateral. The secured party may buy at any public sale and~~  
20 ~~if the collateral is of a type customarily sold in a recognized~~  
21 ~~market or is of a type which is the subject of widely distributed~~  
22 ~~standard price quotations he may buy at private sale.~~  
23       ~~(4) When collateral is disposed of by a secured party after~~  
24 ~~default, the disposition transfers to a purchaser for value all~~  
25 ~~of the debtor's rights therein, discharges the security interest~~  
26 ~~under which it is made and any security interest or lien~~  
27 ~~subordinate thereto. The purchaser takes free of all such rights~~

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

228

1 ~~and interests even though the secured party fails to comply with~~  
2 ~~the requirements of this part or of any judicial proceedings:~~

3 ~~(a) In the case of a public sale, if the purchaser has no~~  
4 ~~knowledge of any defects in the sale and if he does not buy in~~  
5 ~~collusion with the secured party, other bidders or the person~~  
6 ~~conducting the sale; or~~

7 ~~(b) In any other case, if the purchaser acts in good faith.~~

8 ~~(5) A person who is liable to a secured party under a guar-~~  
9 ~~anty, indorsement, repurchase agreement, or the like and who~~  
10 ~~receives a transfer of collateral from the secured party or is~~  
11 ~~subrogated to his rights has thereafter the rights and duties of~~  
12 ~~the secured party. Such a transfer of collateral is not a sale~~  
13 ~~or disposition of the collateral under this article. A FINANCING~~  
14 ~~STATEMENT SUFFICIENTLY INDICATES THE COLLATERAL THAT IT COVERS IF~~  
15 ~~THE FINANCING STATEMENT PROVIDES 1 OF THE FOLLOWING:~~

16 ~~(A) A DESCRIPTION OF THE COLLATERAL PURSUANT TO SECTION~~  
17 ~~9108.~~

18 ~~(B) AN INDICATION THAT THE FINANCING STATEMENT COVERS ALL~~  
19 ~~ASSETS OR ALL PERSONAL PROPERTY.~~

20 ~~Sec. 9505. (1) If the debtor has paid 60% of the cash~~  
21 ~~price in the case of a purchase money security interest in con-~~  
22 ~~sumer goods or 60% of the loan in the case of another security~~  
23 ~~interest in consumer goods, and has not signed after default a~~  
24 ~~statement renouncing or modifying his rights under this part a~~  
25 ~~secured party who has taken possession of collateral must dispose~~  
26 ~~of it under section 9504, and if he fails to do so within 90 days~~  
27 ~~after he takes possession the debtor at his option may recover in~~

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

229

1 ~~conversion or under section 9507(1) on secured party's~~  
2 ~~liability.~~

3       ~~(2) In any other case involving consumer goods or any other~~  
4 ~~collateral a secured party in possession may, after default, pro-~~  
5 ~~pose to retain the collateral in satisfaction of the obligation.~~  
6 ~~Written notice of such proposal shall be sent to the debtor if he~~  
7 ~~has not signed after default a statement renouncing or modifying~~  
8 ~~his rights under this subsection. In the case of consumer goods~~  
9 ~~no other notice need be given. In other cases notice shall be~~  
10 ~~sent to any other secured party from whom the secured party has~~  
11 ~~received (before sending his notice to the debtor or before the~~  
12 ~~debtor's renunciation of his rights) written notice of a claim of~~  
13 ~~an interest in the collateral. If the secured party receives~~  
14 ~~objection in writing from a person entitled to receive notifica-~~  
15 ~~tion within 21 days after the notice was sent, the secured party~~  
16 ~~must dispose of the collateral under section 9504. In the~~  
17 ~~absence of such written objection the secured party may retain~~  
18 ~~the collateral in satisfaction of the debtor's obligation.~~

19       (1) A CONSIGNOR, LESSOR, OR OTHER BAILOR OF GOODS, A LICEN-  
20 SOR, OR A BUYER OF A PAYMENT INTANGIBLE OR PROMISSORY NOTE MAY  
21 FILE A FINANCING STATEMENT, OR MAY COMPLY WITH A STATUTE OR  
22 TREATY DESCRIBED IN SECTION 9311(1), USING THE TERMS "CONSIGNOR",  
23 "CONSIGNEE", "LESSOR", "LESSEE", "BAILOR", "BAILEE", "LICENSOR",  
24 "LICENSEE", "OWNER", "REGISTERED OWNER", "BUYER", "SELLER", OR  
25 WORDS OF SIMILAR IMPORT, INSTEAD OF THE TERMS "SECURED PARTY" AND  
26 "DEBTOR".

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

230

1       (2) THIS PART APPLIES TO THE FILING OF A FINANCING STATEMENT  
2 UNDER SUBSECTION (1) AND, AS APPROPRIATE, TO COMPLIANCE THAT IS  
3 EQUIVALENT TO FILING A FINANCING STATEMENT UNDER SECTION 9311(2),  
4 BUT THE FILING OR COMPLIANCE IS NOT OF ITSELF A FACTOR IN DETER-  
5 MINING WHETHER THE COLLATERAL SECURES AN OBLIGATION. IF IT IS  
6 DETERMINED FOR ANOTHER REASON THAT THE COLLATERAL SECURES AN  
7 OBLIGATION, A SECURITY INTEREST HELD BY THE CONSIGNOR, LESSOR,  
8 BAILOR, LICENSOR, OWNER, OR BUYER WHICH ATTACHES TO THE COLLAT-  
9 ERAL IS PERFECTED BY THE FILING OR COMPLIANCE.

10       Sec. 9506. ~~At any time before the secured party has dis-~~  
11 ~~posed of collateral or entered into a contract for its disposi-~~  
12 ~~tion under section 9504 or before the obligation has been dis-~~  
13 ~~charged under section 9505(2) the debtor or any other secured~~  
14 ~~party may unless otherwise agreed in writing after default redeem~~  
15 ~~the collateral by tendering fulfillment of all obligations~~  
16 ~~secured by the collateral as well as the expenses reasonably~~  
17 ~~incurred by the secured party in retaking, holding and preparing~~  
18 ~~the collateral for disposition, in arranging for the sale, and to~~  
19 ~~the extent provided in the agreement and not prohibited by law,~~  
20 ~~his reasonable attorney's fees and legal expenses.~~

21       (1) A FINANCING STATEMENT SUBSTANTIALLY SATISFYING THE  
22 REQUIREMENTS OF THIS PART IS EFFECTIVE, EVEN IF IT HAS MINOR  
23 ERRORS OR OMISSIONS, UNLESS THE ERRORS OR OMISSIONS MAKE THE  
24 FINANCING STATEMENT SERIOUSLY MISLEADING.

25       (2) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3), A  
26 FINANCING STATEMENT THAT FAILS SUFFICIENTLY TO PROVIDE THE NAME

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

231

1 OF THE DEBTOR IN ACCORDANCE WITH SECTION 9503(1) IS SERIOUSLY  
2 MISLEADING.

3 (3) IF A SEARCH OF THE RECORDS OF THE FILING OFFICE UNDER  
4 THE DEBTOR'S CORRECT NAME, USING THE FILING OFFICE'S STANDARD  
5 SEARCH LOGIC, IF ANY, WOULD DISCLOSE A FINANCING STATEMENT THAT  
6 FAILS SUFFICIENTLY TO PROVIDE THE NAME OF THE DEBTOR IN ACCORD-  
7 ANCE WITH SECTION 9503(1), THE NAME PROVIDED DOES NOT MAKE THE  
8 FINANCING STATEMENT SERIOUSLY MISLEADING.

9 (4) FOR PURPOSES OF SECTION 9508(2), THE "DEBTOR'S CORRECT  
10 NAME" IN SUBSECTION (3) MEANS THE CORRECT NAME OF THE NEW DEBTOR.

11 Sec. 9507. ~~-(1) If it is established that the secured party~~  
12 ~~is not proceeding in accordance with the provisions of this part~~  
13 ~~disposition may be ordered or restrained on appropriate terms and~~  
14 ~~conditions. If the disposition has occurred the debtor or any~~  
15 ~~person entitled to notification or whose security interest has~~  
16 ~~been made known to the secured party prior to the disposition has~~  
17 ~~a right to recover from the secured party any loss caused by a~~  
18 ~~failure to comply with the provisions of this part. If the col-~~  
19 ~~lateral is consumer goods, the debtor has a right to recover in~~  
20 ~~any event an amount not less than the credit service charge plus~~  
21 ~~10% of the principal amount of the debt or the time price differ-~~  
22 ~~ential plus 10% of the cash price.~~

23 ~~(2) The fact that a better price could have been obtained by~~  
24 ~~a sale at a different time or in a different method from that~~  
25 ~~selected by the secured party is not of itself sufficient to~~  
26 ~~establish that the sale was not made in a commercially reasonable~~  
27 ~~manner. If the secured party either sells the collateral in the~~

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

232

~~1 usual manner in any recognized market therefor or if he sells at  
2 the price current in such market at the time of his sale or if he  
3 has otherwise sold in conformity with reasonable commercial prac=  
4 tices among dealers in the type of property sold he has sold in a  
5 commercially reasonable manner. The principles stated in the 2  
6 preceding sentences with respect to sales also apply as may be  
7 appropriate to other types of disposition. A disposition which  
8 has been approved in any judicial proceeding or by any bona fide  
9 creditors' committee or representative of creditors shall conclu=  
10 sively be deemed to be commercially reasonable, but this sentence  
11 does not indicate that any such approval must be obtained in any  
12 case nor does it indicate that any disposition not so approved is  
13 not commercially reasonable.~~

14       (1) A FILED FINANCING STATEMENT REMAINS EFFECTIVE WITH  
15 RESPECT TO COLLATERAL THAT IS SOLD, EXCHANGED, LEASED, LICENSED,  
16 OR OTHERWISE DISPOSED OF AND IN WHICH A SECURITY INTEREST OR  
17 AGRICULTURAL LIEN CONTINUES, EVEN IF THE SECURED PARTY KNOWS OF  
18 OR CONSENTS TO THE DISPOSITION.

19       (2) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3) AND SEC=  
20 TION 9508, A FINANCING STATEMENT IS NOT RENDERED INEFFECTIVE IF,  
21 AFTER THE FINANCING STATEMENT IS FILED, THE INFORMATION PROVIDED  
22 IN THE FINANCING STATEMENT BECOMES SERIOUSLY MISLEADING UNDER  
23 SECTION 9506.

24       (3) IF A DEBTOR SO CHANGES ITS NAME THAT A FILED FINANCING  
25 STATEMENT BECOMES SERIOUSLY MISLEADING UNDER SECTION 9506, BOTH  
26 OF THE FOLLOWING APPLY:



**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

233

1       (A) THE FINANCING STATEMENT IS EFFECTIVE TO PERFECT A  
2 SECURITY INTEREST IN COLLATERAL ACQUIRED BY THE DEBTOR BEFORE, OR  
3 WITHIN 4 MONTHS AFTER, THE CHANGE.

4       (B) THE FINANCING STATEMENT IS NOT EFFECTIVE TO PERFECT A  
5 SECURITY INTEREST IN COLLATERAL ACQUIRED BY THE DEBTOR MORE THAN  
6 4 MONTHS AFTER THE CHANGE, UNLESS AN AMENDMENT TO THE FINANCING  
7 STATEMENT THAT RENDERS THE FINANCING STATEMENT NOT SERIOUSLY MIS-  
8 LEADING IS FILED WITHIN 4 MONTHS AFTER THE CHANGE.

9       SEC. 9508. (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SEC-  
10 TION, A FILED FINANCING STATEMENT NAMING AN ORIGINAL DEBTOR IS  
11 EFFECTIVE TO PERFECT A SECURITY INTEREST IN COLLATERAL IN WHICH A  
12 NEW DEBTOR HAS OR ACQUIRES RIGHTS TO THE EXTENT THAT THE FINANC-  
13 ING STATEMENT WOULD HAVE BEEN EFFECTIVE HAD THE ORIGINAL DEBTOR  
14 ACQUIRED RIGHTS IN THE COLLATERAL.

15       (2) IF THE DIFFERENCE BETWEEN THE NAME OF THE ORIGINAL  
16 DEBTOR AND THAT OF THE NEW DEBTOR CAUSES A FILED FINANCING STATE-  
17 MENT THAT IS EFFECTIVE UNDER SUBSECTION (1) TO BE SERIOUSLY MIS-  
18 LEADING UNDER SECTION 9506, BOTH OF THE FOLLOWING APPLY:

19       (A) THE FINANCING STATEMENT IS EFFECTIVE TO PERFECT A SECUR-  
20 ITY INTEREST IN COLLATERAL ACQUIRED BY THE NEW DEBTOR BEFORE, AND  
21 WITHIN 4 MONTHS AFTER, THE NEW DEBTOR BECOMES BOUND UNDER SECTION  
22 9203(4).

23       (B) THE FINANCING STATEMENT IS NOT EFFECTIVE TO PERFECT A  
24 SECURITY INTEREST IN COLLATERAL ACQUIRED BY THE NEW DEBTOR MORE  
25 THAN 4 MONTHS AFTER THE NEW DEBTOR BECOMES BOUND UNDER SECTION  
26 9203(4) UNLESS AN INITIAL FINANCING STATEMENT PROVIDING THE NAME  
27 OF THE NEW DEBTOR IS FILED BEFORE THE EXPIRATION OF THAT TIME.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

234

1       (3) THIS SECTION DOES NOT APPLY TO COLLATERAL AS TO WHICH A  
2 FILED FINANCING STATEMENT REMAINS EFFECTIVE AGAINST THE NEW  
3 DEBTOR UNDER SECTION 9507(1).

4       SEC. 9509. (1) A PERSON MAY FILE AN INITIAL FINANCING  
5 STATEMENT, AMENDMENT THAT ADDS COLLATERAL COVERED BY A FINANCING  
6 STATEMENT, OR AMENDMENT THAT ADDS A DEBTOR TO A FINANCING STATE-  
7 MENT ONLY IF 1 OF THE FOLLOWING OCCURS:

8       (A) THE DEBTOR AUTHORIZES THE FILING IN AN AUTHENTICATED  
9 RECORD OR PURSUANT TO SUBSECTION (2) OR (3).

10       (B) THE PERSON HOLDS AN AGRICULTURAL LIEN THAT HAS BECOME  
11 EFFECTIVE AT TIME OF FILING AND THE FINANCING STATEMENT COVERS  
12 ONLY COLLATERAL IN WHICH THE PERSON HOLDS AN AGRICULTURAL LIEN.

13       (2) BY AUTHENTICATING OR BECOMING BOUND AS DEBTOR BY A  
14 SECURITY AGREEMENT, A DEBTOR OR NEW DEBTOR AUTHORIZES THE FILING  
15 OF AN INITIAL FINANCING STATEMENT, AND AN AMENDMENT, COVERING  
16 BOTH OF THE FOLLOWING:

17       (A) THE COLLATERAL DESCRIBED IN THE SECURITY AGREEMENT.

18       (B) PROPERTY THAT BECOMES COLLATERAL UNDER SECTION  
19 9315(1)(B), WHETHER OR NOT THE SECURITY AGREEMENT EXPRESSLY  
20 COVERS PROCEEDS.

21       (3) BY ACQUIRING COLLATERAL IN WHICH A SECURITY INTEREST OR  
22 AGRICULTURAL LIEN CONTINUES UNDER SECTION 9315(1)(A), A DEBTOR  
23 AUTHORIZES THE FILING OF AN INITIAL FINANCING STATEMENT, AND AN  
24 AMENDMENT, COVERING THE COLLATERAL AND PROPERTY THAT BECOMES COL-  
25 LATERAL UNDER SECTION 9315(1)(B).

26       (4) A PERSON MAY FILE AN AMENDMENT OTHER THAN AN AMENDMENT  
27 THAT ADDS COLLATERAL COVERED BY A FINANCING STATEMENT OR AN

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

235

1 AMENDMENT THAT ADDS A DEBTOR TO A FINANCING STATEMENT ONLY IF 1  
2 OF THE FOLLOWING APPLIES:

3 (A) THE SECURED PARTY OF RECORD AUTHORIZES THE FILING.

4 (B) THE AMENDMENT IS A TERMINATION STATEMENT FOR A FINANCING  
5 STATEMENT AS TO WHICH THE SECURED PARTY OF RECORD HAS FAILED TO  
6 FILE OR SEND A TERMINATION STATEMENT AS REQUIRED BY SECTION  
7 9513(1) OR (3), THE DEBTOR AUTHORIZES THE FILING, AND THE TERMI-  
8 NATION STATEMENT INDICATES THAT THE DEBTOR AUTHORIZED IT TO BE  
9 FILED.

10 (5) IF THERE IS MORE THAN 1 SECURED PARTY OF RECORD FOR A  
11 FINANCING STATEMENT, EACH SECURED PARTY OF RECORD MAY AUTHORIZE  
12 THE FILING OF AN AMENDMENT UNDER SUBSECTION (4).

13 SEC. 9510. (1) A FILED RECORD IS EFFECTIVE ONLY TO THE  
14 EXTENT THAT IT WAS FILED BY A PERSON THAT MAY FILE IT UNDER SEC-  
15 TION 9509.

16 (2) A RECORD AUTHORIZED BY 1 SECURED PARTY OF RECORD DOES  
17 NOT AFFECT THE FINANCING STATEMENT WITH RESPECT TO ANOTHER  
18 SECURED PARTY OF RECORD.

19 (3) A CONTINUATION STATEMENT THAT IS NOT FILED WITHIN THE  
20 6-MONTH PERIOD PRESCRIBED BY SECTION 9515(4) IS INEFFECTIVE.

21 SEC. 9511. (1) A SECURED PARTY OF RECORD WITH RESPECT TO A  
22 FINANCING STATEMENT IS A PERSON WHOSE NAME IS PROVIDED AS THE  
23 NAME OF THE SECURED PARTY OR A REPRESENTATIVE OF THE SECURED  
24 PARTY IN AN INITIAL FINANCING STATEMENT THAT HAS BEEN FILED. IF  
25 AN INITIAL FINANCING STATEMENT IS FILED UNDER SECTION 9514(1),  
26 THE ASSIGNEE NAMED IN THE INITIAL FINANCING STATEMENT IS THE  
27 SECURED PARTY OF RECORD WITH RESPECT TO THE FINANCING STATEMENT.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

236

1       (2) IF AN AMENDMENT OF A FINANCING STATEMENT THAT PROVIDES  
2 THE NAME OF A PERSON AS A SECURED PARTY OR A REPRESENTATIVE OF A  
3 SECURED PARTY IS FILED, THE PERSON NAMED IN THE AMENDMENT IS A  
4 SECURED PARTY OF RECORD. IF AN AMENDMENT IS FILED UNDER SECTION  
5 9514(2), THE ASSIGNEE NAMED IN THE AMENDMENT IS A SECURED PARTY  
6 OF RECORD.

7       (3) A PERSON REMAINS A SECURED PARTY OF RECORD UNTIL THE  
8 FILING OF AN AMENDMENT OF THE FINANCING STATEMENT THAT DELETES  
9 THE PERSON.

10       SEC. 9512. (1) SUBJECT TO SECTION 9509, A PERSON MAY ADD OR  
11 DELETE COLLATERAL COVERED BY, CONTINUE OR TERMINATE THE EFFEC-  
12 TIVENESS OF, OR, SUBJECT TO SUBSECTION (5), OTHERWISE AMEND THE  
13 INFORMATION PROVIDED IN, A FINANCING STATEMENT BY FILING AN  
14 AMENDMENT THAT DOES BOTH OF THE FOLLOWING:

15       (A) IDENTIFIES, BY ITS FILE NUMBER, AND, IF APPLICABLE, BY  
16 LIBER AND PAGE, THE INITIAL FINANCING STATEMENT TO WHICH THE  
17 AMENDMENT RELATES.

18       (B) IF THE AMENDMENT RELATES TO AN INITIAL FINANCING STATE-  
19 MENT FILED OR RECORDED IN A FILING OFFICE DESCRIBED IN SECTION  
20 9501(1)(A), PROVIDES THE DATE THAT THE INITIAL FINANCING STATE-  
21 MENT WAS FILED OR RECORDED AND THE INFORMATION SPECIFIED IN SEC-  
22 TION 9502(2).

23       (2) EXCEPT AS OTHERWISE PROVIDED IN SECTION 9515, THE FILING  
24 OF AN AMENDMENT DOES NOT EXTEND THE PERIOD OF EFFECTIVENESS OF  
25 THE FINANCING STATEMENT.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

237

1       (3) A FINANCING STATEMENT THAT IS AMENDED BY AN AMENDMENT  
2 THAT ADDS COLLATERAL IS EFFECTIVE AS TO THE ADDED COLLATERAL ONLY  
3 FROM THE DATE OF THE FILING OF THE AMENDMENT.

4       (4) A FINANCING STATEMENT THAT IS AMENDED BY AN AMENDMENT  
5 THAT ADDS A DEBTOR IS EFFECTIVE AS TO THE ADDED DEBTOR ONLY FROM  
6 THE DATE OF THE FILING OF THE AMENDMENT.

7       (5) AN AMENDMENT IS INEFFECTIVE TO THE EXTENT 1 OR MORE OF  
8 THE FOLLOWING APPLY TO IT:

9       (A) IT PURPORTS TO DELETE ALL DEBTORS AND FAILS TO PROVIDE  
10 THE NAME OF A DEBTOR TO BE COVERED BY THE FINANCING STATEMENT.

11       (B) IT PURPORTS TO DELETE ALL SECURED PARTIES OF RECORD AND  
12 FAILS TO PROVIDE THE NAME OF A NEW SECURED PARTY OF RECORD.

13       SEC. 9513. (1) A SECURED PARTY SHALL CAUSE THE SECURED  
14 PARTY OF RECORD FOR A FINANCING STATEMENT TO FILE A TERMINATION  
15 STATEMENT FOR THE FINANCING STATEMENT IF THE FINANCING STATEMENT  
16 COVERS CONSUMER GOODS AND 1 OR MORE OF THE FOLLOWING APPLY:

17       (A) THERE IS NO OBLIGATION SECURED BY THE COLLATERAL COVERED  
18 BY THE FINANCING STATEMENT AND NO COMMITMENT TO MAKE AN ADVANCE,  
19 INCUR AN OBLIGATION, OR OTHERWISE GIVE VALUE.

20       (B) THE DEBTOR DID NOT AUTHORIZE THE FILING OF THE INITIAL  
21 FINANCING STATEMENT.

22       (2) TO COMPLY WITH SUBSECTION (1), A SECURED PARTY SHALL  
23 CAUSE THE SECURED PARTY OF RECORD TO FILE THE TERMINATION STATE-  
24 MENT WITHIN 1 OF THE FOLLOWING PERIODS:

25       (A) WITHIN 1 MONTH AFTER THERE IS NO OBLIGATION SECURED BY  
26 THE COLLATERAL COVERED BY THE FINANCING STATEMENT AND NO

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

238

1 COMMITMENT TO MAKE AN ADVANCE, INCUR AN OBLIGATION, OR OTHERWISE  
2 GIVE VALUE.

3 (B) IF EARLIER, WITHIN 20 DAYS AFTER THE SECURED PARTY  
4 RECEIVES AN AUTHENTICATED DEMAND FROM A DEBTOR.

5 (3) IN CASES NOT GOVERNED BY SUBSECTION (1), WITHIN 20 DAYS  
6 AFTER A SECURED PARTY RECEIVES AN AUTHENTICATED DEMAND FROM A  
7 DEBTOR, THE SECURED PARTY SHALL CAUSE THE SECURED PARTY OF RECORD  
8 FOR A FINANCING STATEMENT TO SEND TO THE DEBTOR A TERMINATION  
9 STATEMENT FOR THE FINANCING STATEMENT OR FILE THE TERMINATION  
10 STATEMENT IN THE FILING OFFICE IF 1 OR MORE OF THE FOLLOWING  
11 APPLY:

12 (A) EXCEPT IN THE CASE OF A FINANCING STATEMENT COVERING  
13 ACCOUNTS OR CHATTEL PAPER THAT HAS BEEN SOLD OR GOODS THAT ARE  
14 THE SUBJECT OF A CONSIGNMENT, THERE IS NO OBLIGATION SECURED BY  
15 THE COLLATERAL COVERED BY THE FINANCING STATEMENT AND NO COMMIT-  
16 MENT TO MAKE AN ADVANCE, INCUR AN OBLIGATION, OR OTHERWISE GIVE  
17 VALUE.

18 (B) THE FINANCING STATEMENT COVERS ACCOUNTS OR CHATTEL PAPER  
19 THAT HAS BEEN SOLD BUT AS TO WHICH THE ACCOUNT DEBTOR OR OTHER  
20 PERSON OBLIGATED HAS DISCHARGED ITS OBLIGATION.

21 (C) THE FINANCING STATEMENT COVERS GOODS THAT WERE THE  
22 SUBJECT OF A CONSIGNMENT TO THE DEBTOR BUT ARE NOT IN THE  
23 DEBTOR'S POSSESSION.

24 (D) THE DEBTOR DID NOT AUTHORIZE THE FILING OF THE INITIAL  
25 FINANCING STATEMENT.

26 (4) EXCEPT AS OTHERWISE PROVIDED IN SECTION 9510, UPON THE  
27 FILING OF A TERMINATION STATEMENT WITH THE FILING OFFICE, THE

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

239

1 FINANCING STATEMENT TO WHICH THE TERMINATION STATEMENT RELATES  
2 CEASES TO BE EFFECTIVE. EXCEPT AS OTHERWISE PROVIDED IN  
3 SECTION 9510, FOR PURPOSES OF SECTIONS 9519(7), 9522(1), AND  
4 9523(3), THE FILING WITH THE FILING OFFICE OF A TERMINATION  
5 STATEMENT RELATING TO A FINANCING STATEMENT THAT INDICATES THAT  
6 THE DEBTOR IS A TRANSMITTING UTILITY ALSO CAUSES THE EFFECTIVE-  
7 NESS OF THE FINANCING STATEMENT TO LAPSE.

8 SEC. 9514. (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION  
9 (3), AN INITIAL FINANCING STATEMENT MAY REFLECT AN ASSIGNMENT OF  
10 ALL OF THE SECURED PARTY'S POWER TO AUTHORIZE AN AMENDMENT TO THE  
11 FINANCING STATEMENT PROVIDING THE NAME AND MAILING ADDRESS OF THE  
12 ASSIGNEE AS THE NAME AND ADDRESS OF THE SECURED PARTY.

13 (2) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3), A  
14 SECURED PARTY OF RECORD MAY ASSIGN OF RECORD ALL OR PART OF ITS  
15 POWER TO AUTHORIZE AN AMENDMENT TO A FINANCING STATEMENT BY  
16 FILING IN THE FILING OFFICE AN AMENDMENT OF THE FINANCING STATE-  
17 MENT THAT DOES ALL OF THE FOLLOWING:

18 (A) IDENTIFIES, BY ITS FILE NUMBER, THE INITIAL FINANCING  
19 STATEMENT TO WHICH IT RELATES.

20 (B) PROVIDES THE NAME OF THE ASSIGNOR.

21 (C) PROVIDES THE NAME AND MAILING ADDRESS OF THE ASSIGNEE.

22 (3) AN ASSIGNMENT OF RECORD OF A SECURITY INTEREST IN A FIX-  
23 TURE COVERED BY A RECORD OF A MORTGAGE WHICH IS EFFECTIVE AS A  
24 FINANCING STATEMENT FILED AS A FIXTURE FILING UNDER SECTION  
25 9502(3) MAY BE MADE ONLY BY AN ASSIGNMENT OF RECORD OF THE MORT-  
26 GAGE IN THE MANNER PROVIDED BY LAW OF THIS STATE OTHER THAN THIS  
27 ACT.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228 as amended November 30, 2000

240

1        SEC. 9515. (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTIONS  
2 (2), (5), (6), AND (7), A FILED FINANCING STATEMENT IS EFFECTIVE  
3 FOR A PERIOD OF 5 YEARS AFTER THE DATE OF FILING.

4        (2) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTIONS (5), (6),  
5 AND (7), AN INITIAL FINANCING STATEMENT FILED IN CONNECTION WITH  
6 A [REDACTED] MANUFACTURED-HOME TRANSACTION IS  
7 EFFECTIVE FOR A PERIOD OF 30 YEARS AFTER THE DATE OF FILING IF IT  
8 INDICATES THAT IT IS FILED IN CONNECTION WITH A [REDACTED]  
9 [REDACTED] MANUFACTURED-HOME TRANSACTION.

10        (3) THE EFFECTIVENESS OF A FILED FINANCING STATEMENT LAPSES  
11 ON THE EXPIRATION OF THE PERIOD OF ITS EFFECTIVENESS UNLESS  
12 BEFORE THE LAPSE A CONTINUATION STATEMENT IS FILED PURSUANT TO  
13 SUBSECTION (4). UPON LAPSE, A FINANCING STATEMENT CEASES TO BE  
14 EFFECTIVE AND ANY SECURITY INTEREST OR AGRICULTURAL LIEN THAT WAS  
15 PERFECTED BY THE FINANCING STATEMENT BECOMES UNPERFECTED, UNLESS  
16 THE SECURITY INTEREST IS PERFECTED OTHERWISE. IF THE SECURITY  
17 INTEREST OR AGRICULTURAL LIEN BECOMES UNPERFECTED UPON LAPSE, IT  
18 IS DEEMED NEVER TO HAVE BEEN PERFECTED AS AGAINST A PURCHASER OF  
19 THE COLLATERAL FOR VALUE.

20        (4) A CONTINUATION STATEMENT MAY BE FILED ONLY WITHIN 6  
21 MONTHS BEFORE THE EXPIRATION OF THE 5-YEAR PERIOD SPECIFIED IN  
22 SUBSECTION (1) OR THE 30-YEAR PERIOD SPECIFIED IN SUBSECTION (2),  
23 WHICHEVER IS APPLICABLE.

24        (5) EXCEPT AS OTHERWISE PROVIDED IN SECTION 9510, UPON  
25 TIMELY FILING OF A CONTINUATION STATEMENT, THE EFFECTIVENESS OF  
26 THE INITIAL FINANCING STATEMENT CONTINUES FOR A PERIOD OF 5 YEARS  
27 COMMENCING ON THE DAY ON WHICH THE FINANCING STATEMENT WOULD HAVE



**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

241

1 BECOME INEFFECTIVE IN THE ABSENCE OF THE FILING. UPON THE  
2 EXPIRATION OF THE 5-YEAR PERIOD, THE FINANCING STATEMENT LAPSES  
3 IN THE SAME MANNER AS PROVIDED IN SUBSECTION (3), UNLESS, BEFORE  
4 THE LAPSE, ANOTHER CONTINUATION STATEMENT IS FILED PURSUANT TO  
5 SUBSECTION (4). SUCCEEDING CONTINUATION STATEMENTS MAY BE FILED  
6 IN THE SAME MANNER TO CONTINUE THE EFFECTIVENESS OF THE INITIAL  
7 FINANCING STATEMENT.

8 (6) IF A DEBTOR IS A TRANSMITTING UTILITY AND A FILED  
9 FINANCING STATEMENT SO INDICATES, THE FINANCING STATEMENT IS  
10 EFFECTIVE UNTIL A TERMINATION STATEMENT IS FILED.

11 (7) A RECORD OF A MORTGAGE THAT IS EFFECTIVE AS A FINANCING  
12 STATEMENT FILED AS A FIXTURE FILING UNDER SECTION 9502(3) REMAINS  
13 EFFECTIVE AS A FINANCING STATEMENT FILED AS A FIXTURE FILING  
14 UNTIL THE MORTGAGE IS RELEASED OR SATISFIED OF RECORD OR ITS  
15 EFFECTIVENESS OTHERWISE TERMINATES AS TO THE REAL PROPERTY.

16 SEC. 9516. (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION  
17 (2), COMMUNICATION OF A RECORD TO A FILING OFFICE AND TENDER OF  
18 THE FILING FEE OR ACCEPTANCE OF THE RECORD BY THE FILING OFFICE  
19 CONSTITUTES FILING.

20 (2) FILING DOES NOT OCCUR WITH RESPECT TO A RECORD THAT A  
21 FILING OFFICE REFUSES TO ACCEPT BECAUSE OF 1 OR MORE OF THE  
22 FOLLOWING:

23 (A) THE RECORD IS NOT COMMUNICATED BY A METHOD OR MEDIUM OF  
24 COMMUNICATION AUTHORIZED BY THE FILING OFFICE.

25 (B) AN AMOUNT EQUAL TO OR GREATER THAN THE APPLICABLE FILING  
26 FEE IS NOT TENDERED.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

242

1 (C) THE FILING OFFICE IS UNABLE TO INDEX THE RECORD BECAUSE  
2 OF 1 OR MORE OF THE FOLLOWING:

3 (i) IN THE CASE OF AN INITIAL FINANCING STATEMENT, THE  
4 RECORD DOES NOT PROVIDE A NAME FOR THE DEBTOR.

5 (ii) IN THE CASE OF AN AMENDMENT OR CORRECTION STATEMENT,  
6 THE RECORD DOES NOT IDENTIFY THE INITIAL FINANCING STATEMENT AS  
7 REQUIRED BY SECTION 9512 OR 9518, AS APPLICABLE, OR IDENTIFIES AN  
8 INITIAL FINANCING STATEMENT WHOSE EFFECTIVENESS HAS LAPSED UNDER  
9 SECTION 9515.

10 (iii) IN THE CASE OF AN INITIAL FINANCING STATEMENT THAT  
11 PROVIDES THE NAME OF A DEBTOR IDENTIFIED AS AN INDIVIDUAL OR AN  
12 AMENDMENT THAT PROVIDES A NAME OF A DEBTOR IDENTIFIED AS AN INDI-  
13 VIDUAL THAT WAS NOT PREVIOUSLY PROVIDED IN THE FINANCING STATE-  
14 MENT TO WHICH THE RECORD RELATES, THE RECORD DOES NOT IDENTIFY  
15 THE DEBTOR'S LAST NAME.

16 (iv) IN THE CASE OF A RECORD FILED OR RECORDED IN THE FILING  
17 OFFICE DESCRIBED IN SECTION 9501(1)(A), THE RECORD DOES NOT PRO-  
18 VIDE A SUFFICIENT DESCRIPTION OF THE REAL PROPERTY TO WHICH IT  
19 RELATES.

20 (D) IN THE CASE OF AN INITIAL FINANCING STATEMENT OR AN  
21 AMENDMENT THAT ADDS A SECURED PARTY OF RECORD, THE RECORD DOES  
22 NOT PROVIDE A NAME AND MAILING ADDRESS FOR THE SECURED PARTY OF  
23 RECORD.

24 (E) IN THE CASE OF AN INITIAL FINANCING STATEMENT OR AN  
25 AMENDMENT THAT PROVIDES A NAME OF A DEBTOR WHICH WAS NOT PREVI-  
26 OUSLY PROVIDED IN THE FINANCING STATEMENT TO WHICH THE AMENDMENT

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

243

1 RELATES, THE RECORD DOES NOT PROVIDE OR INDICATE 1 OR MORE OF THE  
2 FOLLOWING:

3 (i) PROVIDE A MAILING ADDRESS FOR THE DEBTOR.

4 (ii) INDICATE WHETHER THE DEBTOR IS AN INDIVIDUAL OR AN  
5 ORGANIZATION.

6 (iii) IF THE FINANCING STATEMENT INDICATES THAT THE DEBTOR  
7 IS AN ORGANIZATION, PROVIDE 1 OR MORE OF THE FOLLOWING:

8 (A) A TYPE OF ORGANIZATION FOR THE DEBTOR.

9 (B) A JURISDICTION OF ORGANIZATION FOR THE DEBTOR.

10 (C) AN ORGANIZATIONAL IDENTIFICATION NUMBER FOR THE DEBTOR  
11 OR INDICATE THAT THE DEBTOR HAS NONE.

12 (F) IN THE CASE OF AN ASSIGNMENT REFLECTED IN AN INITIAL  
13 FINANCING STATEMENT UNDER SECTION 9514(1) OR AN AMENDMENT FILED  
14 UNDER SECTION 9514(2), THE RECORD DOES NOT PROVIDE A NAME AND  
15 MAILING ADDRESS FOR THE ASSIGNEE.

16 (G) IN THE CASE OF A CONTINUATION STATEMENT, THE RECORD IS  
17 NOT FILED WITHIN THE 6-MONTH PERIOD PRESCRIBED BY SECTION  
18 9515(4).

19 (3) FOR PURPOSES OF SUBSECTION (2), BOTH OF THE FOLLOWING  
20 APPLY:

21 (A) A RECORD DOES NOT PROVIDE INFORMATION IF THE FILING  
22 OFFICE IS UNABLE TO READ OR DECIPHER THE INFORMATION.

23 (B) A RECORD THAT DOES NOT INDICATE THAT IT IS AN AMENDMENT  
24 OR IDENTIFY AN INITIAL FINANCING STATEMENT TO WHICH IT RELATES,  
25 AS REQUIRED BY SECTION 9512, 9514, OR 9518, IS AN INITIAL FINANC-  
26 ING STATEMENT.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

244

1       (4) A RECORD THAT IS COMMUNICATED TO THE FILING OFFICE WITH  
2 TENDER OF THE FILING FEE, BUT WHICH THE FILING OFFICE REFUSES TO  
3 ACCEPT FOR A REASON OTHER THAN ONE SET FORTH IN SUBSECTION (2),  
4 IS EFFECTIVE AS A FILED RECORD EXCEPT AS AGAINST A PURCHASER OF  
5 THE COLLATERAL WHICH GIVES VALUE IN REASONABLE RELIANCE UPON THE  
6 ABSENCE OF THE RECORD FROM THE FILES.

7       SEC. 9517. THE FAILURE OF THE FILING OFFICE TO INDEX A  
8 RECORD CORRECTLY DOES NOT AFFECT THE EFFECTIVENESS OF THE FILED  
9 RECORD.

10       SEC. 9518. (1) A PERSON MAY FILE IN THE FILING OFFICE A  
11 CORRECTION STATEMENT WITH RESPECT TO A RECORD INDEXED THERE UNDER  
12 THE PERSON'S NAME IF THE PERSON BELIEVES THAT THE RECORD IS INAC-  
13 CURATE OR WAS WRONGFULLY FILED.

14       (2) A CORRECTION STATEMENT MUST DO ALL OF THE FOLLOWING:

15       (A) IDENTIFY THE RECORD TO WHICH IT RELATES BY BOTH OF THE  
16 FOLLOWING:

17       (i) THE FILE NUMBER ASSIGNED TO THE INITIAL FINANCING STATE-  
18 MENT TO WHICH THE RECORD RELATES.

19       (ii) IF THE CORRECTION STATEMENT RELATES TO A RECORD FILED  
20 OR RECORDED IN A FILING OFFICE DESCRIBED IN SECTION 9501(1)(A),  
21 THE DATE THAT THE INITIAL FINANCING STATEMENT WAS FILED OR  
22 RECORDED AND THE INFORMATION SPECIFIED IN SECTION 9502(2).

23       (B) INDICATE THAT IT IS A CORRECTION STATEMENT.

24       (C) PROVIDE THE BASIS FOR THE PERSON'S BELIEF THAT THE  
25 RECORD IS INACCURATE AND INDICATE THE MANNER IN WHICH THE PERSON  
26 BELIEVES THE RECORD SHOULD BE AMENDED TO CURE ANY INACCURACY OR

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

245

1 PROVIDE THE BASIS FOR THE PERSON'S BELIEF THAT THE RECORD WAS  
2 WRONGFULLY FILED.

3 (3) THE FILING OF A CORRECTION STATEMENT DOES NOT AFFECT THE  
4 EFFECTIVENESS OF AN INITIAL FINANCING STATEMENT OR OTHER FILED  
5 RECORD.

6 SUBPART 2. DUTIES AND OPERATION OF FILING OFFICE  
7 SEC. 9519. (1) FOR EACH RECORD FILED IN A FILING OFFICE,  
8 THE FILING OFFICE SHALL DO ALL OF THE FOLLOWING:

9 (A) ASSIGN A UNIQUE NUMBER TO THE FILED RECORD.

10 (B) CREATE A RECORD THAT BEARS THE NUMBER ASSIGNED TO THE  
11 FILED RECORD AND THE DATE AND TIME OF FILING.

12 (C) MAINTAIN THE FILED RECORD FOR PUBLIC INSPECTION.

13 (D) INDEX THE FILED RECORD IN ACCORDANCE WITH SUBSECTIONS  
14 (3), (4), AND (5).

15 (2) A FILE NUMBER ASSIGNED AFTER JANUARY 1, 2002 MUST  
16 INCLUDE A DIGIT THAT IS MATHEMATICALLY DERIVED FROM OR RELATED TO  
17 THE OTHER DIGITS OF THE FILE NUMBER, AND AIDS THE FILING OFFICE  
18 IN DETERMINING WHETHER A NUMBER COMMUNICATED AS THE FILE NUMBER  
19 INCLUDES A SINGLE-DIGIT OR TRANSPOSITIONAL ERROR.

20 (3) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTIONS (4) AND (5),  
21 THE FILING OFFICE SHALL DO BOTH OF THE FOLLOWING:

22 (A) INDEX AN INITIAL FINANCING STATEMENT ACCORDING TO THE  
23 NAME OF THE DEBTOR AND INDEX ALL FILED RECORDS RELATING TO THE  
24 INITIAL FINANCING STATEMENT IN A MANNER THAT ASSOCIATES WITH ONE  
25 ANOTHER AN INITIAL FINANCING STATEMENT AND ALL FILED RECORDS  
26 RELATING TO THE INITIAL FINANCING STATEMENT.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

246

1       (B) INDEX A RECORD THAT PROVIDES A NAME OF A DEBTOR THAT WAS  
2 NOT PREVIOUSLY PROVIDED IN THE FINANCING STATEMENT TO WHICH THE  
3 RECORD RELATES ALSO ACCORDING TO THE NAME THAT WAS NOT PREVIOUSLY  
4 PROVIDED.

5       (4) IF A FINANCING STATEMENT IS FILED AS A FIXTURE FILING OR  
6 COVERS AS-EXTRACTED COLLATERAL OR TIMBER TO BE CUT, IT MUST BE  
7 FILED FOR RECORD AND THE FILING OFFICE SHALL INDEX IT UNDER BOTH  
8 OF THE FOLLOWING:

9       (A) UNDER THE NAMES OF THE DEBTOR AND OF EACH OWNER OF  
10 RECORD SHOWN ON THE FINANCING STATEMENT AS IF THEY WERE THE MORT-  
11 GAGORS UNDER A MORTGAGE OF THE REAL PROPERTY DESCRIBED.

12       (B) TO THE EXTENT THAT THE LAW OF THIS STATE PROVIDES FOR  
13 INDEXING OF RECORDS OF MORTGAGES UNDER THE NAME OF THE MORTGAGEE,  
14 UNDER THE NAME OF THE SECURED PARTY AS IF THE SECURED PARTY WERE  
15 THE MORTGAGEE THEREUNDER, OR, IF INDEXING IS BY DESCRIPTION, AS  
16 IF THE FINANCING STATEMENT WERE A RECORD OF A MORTGAGE OF THE  
17 REAL PROPERTY DESCRIBED.

18       (5) IF A FINANCING STATEMENT IS FILED AS A FIXTURE FILING OR  
19 COVERS AS-EXTRACTED COLLATERAL OR TIMBER TO BE CUT, THE FILING  
20 OFFICE SHALL INDEX AN ASSIGNMENT FILED UNDER SECTION 9514(1) OR  
21 AN AMENDMENT FILED UNDER SECTION 9514(2) UNDER BOTH OF THE  
22 FOLLOWING:

23       (A) UNDER THE NAME OF THE ASSIGNOR AS GRANTOR.

24       (B) TO THE EXTENT THAT THE LAW OF THIS STATE PROVIDES FOR  
25 INDEXING A RECORD OF THE ASSIGNMENT OF A MORTGAGE UNDER THE NAME  
26 OF THE ASSIGNEE, UNDER THE NAME OF THE ASSIGNEE.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

247

1       (6) THE FILING OFFICE SHALL MAINTAIN A CAPABILITY TO DO BOTH  
2 OF THE FOLLOWING:

3       (A) TO RETRIEVE A RECORD BY THE NAME OF THE DEBTOR AND BY 1  
4 OF THE FOLLOWING:

5       (i) IF THE FILING OFFICE IS DESCRIBED IN SECTION 9501(1)(A),  
6 BY THE FILE NUMBER ASSIGNED TO THE INITIAL FINANCING STATEMENT TO  
7 WHICH THE RECORD RELATES AND THE DATE THAT THE RECORD WAS FILED  
8 OR RECORDED.

9       (ii) IF THE FILING OFFICE IS DESCRIBED IN SECTION  
10 9501(1)(B), BY THE FILE NUMBER ASSIGNED TO THE INITIAL FINANCING  
11 STATEMENT TO WHICH THE RECORD RELATES.

12       (B) TO ASSOCIATE AND RETRIEVE WITH ONE ANOTHER AN INITIAL  
13 FINANCING STATEMENT AND EACH FILED RECORD RELATING TO THE INITIAL  
14 FINANCING STATEMENT.

15       (7) THE FILING OFFICE SHALL NOT REMOVE A DEBTOR'S NAME FROM  
16 THE INDEX UNTIL 1 YEAR AFTER THE EFFECTIVENESS OF A FINANCING  
17 STATEMENT NAMING THE DEBTOR LAPSES UNDER SECTION 9515 WITH  
18 RESPECT TO ALL SECURED PARTIES OF RECORD.

19       (8) THE FILING OFFICE SHALL PERFORM THE ACTS REQUIRED BY  
20 SUBSECTIONS (1) THROUGH (5) AT THE TIME AND IN THE MANNER PRE-  
21 SCRIBED BY FILING-OFFICE RULE, BUT NOT LATER THAN 2 BUSINESS DAYS  
22 AFTER THE FILING OFFICE RECEIVES THE RECORD IN QUESTION.

23       (9) SUBSECTIONS (2) AND (8) DO NOT APPLY TO A FILING OFFICE  
24 DESCRIBED IN SECTION 9501(1)(A).

25       SEC. 9520. (1) A FILING OFFICE SHALL REFUSE TO ACCEPT A  
26 RECORD FOR FILING FOR A REASON SET FORTH IN SECTION 9516(2) AND

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

248

1 MAY REFUSE TO ACCEPT A RECORD FOR FILING ONLY FOR A REASON SET  
2 FORTH IN SECTION 9516(2).

3       (2) IF A FILING OFFICE REFUSES TO ACCEPT A RECORD FOR  
4 FILING, IT SHALL COMMUNICATE TO THE PERSON THAT PRESENTED THE  
5 RECORD THE FACT OF AND REASON FOR THE REFUSAL AND THE DATE AND  
6 TIME THE RECORD WOULD HAVE BEEN FILED HAD THE FILING OFFICE  
7 ACCEPTED IT. THE COMMUNICATION MUST BE MADE AT THE TIME AND IN  
8 THE MANNER PRESCRIBED BY FILING-OFFICE RULE BUT, IN THE CASE OF A  
9 FILING OFFICE DESCRIBED IN SECTION 9501(1)(B), IN NO EVENT MORE  
10 THAN 2 BUSINESS DAYS AFTER THE FILING OFFICE RECEIVES THE  
11 RECORD.

12       (3) A FILED FINANCING STATEMENT SATISFYING SECTION 9502(1)  
13 AND (2) IS EFFECTIVE, EVEN IF THE FILING OFFICE IS REQUIRED TO  
14 REFUSE TO ACCEPT IT FOR FILING UNDER SUBSECTION (1). HOWEVER,  
15 SECTION 9338 APPLIES TO A FILED FINANCING STATEMENT PROVIDING  
16 INFORMATION DESCRIBED IN SECTION 9516(2)(E) THAT IS INCORRECT AT  
17 THE TIME THE FINANCING STATEMENT IS FILED.

18       (4) IF A RECORD COMMUNICATED TO A FILING OFFICE PROVIDES  
19 INFORMATION THAT RELATES TO MORE THAN 1 DEBTOR, THIS PART APPLIES  
20 AS TO EACH DEBTOR SEPARATELY.

21       SEC. 9521. (1) A FILING OFFICE THAT ACCEPTS WRITTEN RECORDS  
22 FOR FILING SHALL NOT REFUSE TO ACCEPT A WRITTEN INITIAL FINANCING  
23 STATEMENT IN THE FOLLOWING FORM, EXCEPT FOR A REASON SET FORTH IN  
24 SECTION 9516(2):

25                               UCC FINANCING STATEMENT  
26 FOLLOW INSTRUCTIONS (FRONT AND BACK) CAREFULLY



**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

249

1 A. NAME AND PHONE OF CONTACT AT FILER [OPTIONAL]

2

3 B. SEND ACKNOWLEDGMENT TO: (NAME AND ADDRESS)

4 \_\_\_\_\_ THE ABOVE SPACE IS FOR

5 \_\_\_\_\_ FILING OFFICE USE ONLY

6 1. DEBTOR'S EXACT FULL LEGAL NAME - INSERT ONLY 1 DEBTOR NAME

7 (1A OR 1B) - DO NOT ABBREVIATE OR COMBINE NAMES

8 1A. ORGANIZATION'S NAME

9

10 OR 1B. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

11

12 1C. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

13

14 1D. TAX ID. NO. ADD'L INFO. RE 1E. TYPE OF ORGANIZATION

15 SSN OR EIN ORGANIZATION

16 DEBTOR

17

18 1F. JURISDICTION OF ORGANIZATION 1G. ORGANIZATIONAL ID. NO.,  
19 IF ANY

20 \_\_\_\_\_ [ ] NONE

21 2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - INSERT ONLY 1

22 DEBTOR NAME (2A OR 2B) - DO NOT ABBREVIATE OR COMBINE NAMES

23 2A. ORGANIZATION'S NAME

24

25 OR 2B. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

26

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

250

1 2C. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY  
2 \_\_\_\_\_  
3 2D. TAX ID. NO. ADD'L INFO. RE 2E. TYPE OF ORGANIZATION  
4 SSN OR EIN ORGANIZATION  
5 DEBTOR  
6 \_\_\_\_\_  
7 2F. JURISDICTION OF ORGANIZATION 2G. ORGANIZATIONAL ID. NO.,  
8 IF ANY  
9 \_\_\_\_\_[ ] NONE  
10 3. SECURED PARTY'S NAME (OR NAME OF TOTAL ASSIGNEE OF ASSIGNOR  
11 S/P) - INSERT ONLY 1 SECURED PARTY NAME (3A OR 3B)  
12 3A. ORGANIZATION'S NAME  
13 \_\_\_\_\_  
14 OR 3B. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX  
15 \_\_\_\_\_  
16 3C. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY  
17 \_\_\_\_\_  
18 4. THIS FINANCING STATEMENT COVERS THE FOLLOWING COLLATERAL:  
19 \_\_\_\_\_  
20 5. ALTERNATIVE DESIGNATION [IF APPLICABLE]: [ ] LESSEE/LESSOR  
21 [ ] CONSIGNEE/CONSIGNOR [ ] BAILEE/BAILOR [ ] SELLER/BUYER  
22 [ ] AG. LIEN [ ] NON-UCC FILING  
23 6. [ ] THIS FINANCING STATEMENT IS TO BE FILED (FOR RECORD)  
24 (OR RECORDED) IN THE REAL ESTATE RECORDS.  
25 ATTACH ADDENDUM [IF APPLICABLE]  
26 7. CHECK TO REQUEST SEARCH REPORT(S) ON DEBTOR(S)

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

251

1       [ ] ALL DEBTORS   [ ] DEBTOR 1   [ ] DEBTOR 2

2       [ADDITIONAL FEE]       [OPTIONAL]

3       \_\_\_\_\_

4 8.   OPTIONAL FILER REFERENCE DATA

5       \_\_\_\_\_

6 FILING OFFICE COPY - NATIONAL UCC FILING STATEMENT (FORM UCC 1)

7 (REV. 07/29/98)

8                                       [BACK OF FORM]

9                                       UCC FINANCING STATEMENT ADDENDUM

10 FOLLOW INSTRUCTIONS (FRONT AND BACK) CAREFULLY.

11 9.   NAME OF FIRST DEBTOR (1A OR 1B) ON RELATED FINANCING

12       STATEMENT

13       \_\_\_\_\_

14       9A.   ORGANIZATION'S NAME

15       \_\_\_\_\_

16 OR   9B.   INDIVIDUAL'S LAST NAME   FIRST NAME   MIDDLE NAME   SUFFIX

17       \_\_\_\_\_

18 10.   MISCELLANEOUS:

19       \_\_\_\_\_ THE ABOVE SPACE IS FOR

20       \_\_\_\_\_ FILING OFFICE USE ONLY

21 11.   ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - INSERT ONLY 1

22       NAME (11A OR 11B) - DO NOT ABBREVIATE OR COMBINE NAMES

23       11A.   ORGANIZATION'S NAME

24       \_\_\_\_\_

25 OR   11B.   INDIVIDUAL'S LAST NAME   FIRST NAME   MIDDLE NAME   SUFFIX

26       \_\_\_\_\_

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

252

1 11C. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY  
2 \_\_\_\_\_  
3 11D. TAX ID. NO. ADD'L INFO. RE 11E. TYPE OF ORGANIZATION  
4 SSN OR EIN ORGANIZATION  
5 DEBTOR  
6 \_\_\_\_\_  
7 11F. JURISDICTION OF ORGANIZATION 11G. ORGANIZATIONAL  
8 ID. NO., IF ANY  
9 \_\_\_\_\_[ ] NONE  
10 12. [ ] ADDITIONAL SECURED PARTY'S OR [ ] ASSIGNOR S/P'S NAME -  
11 INSERT ONLY 1 NAME (12A OR 12B).  
12 12A. ORGANIZATION'S NAME  
13 \_\_\_\_\_  
14 OR 12B. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX  
15 \_\_\_\_\_  
16 12C. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY  
17 \_\_\_\_\_  
18 13. THIS FINANCING STATEMENT COVERS [ ] TIMBER TO BE CUT OR  
19 [ ] AS-EXTRACTED COLLATERAL, OR IS FILED AS A [ ] FIXTURE  
20 FILING.  
21 14. DESCRIPTION OF REAL ESTATE:  
22 \_\_\_\_\_  
23 15. NAME AND ADDRESS OF A RECORD OWNER OF THE ABOVE-DESCRIBED  
24 REAL ESTATE (IF DEBTOR DOES NOT HAVE RECORD INTEREST):  
25 16. ADDITIONAL COLLATERAL DESCRIPTION:  
26 \_\_\_\_\_

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

253

- 1 17. CHECK ONLY IF APPLICABLE AND CHECK ONLY 1 BOX:  
2 DEBTOR IS A ☐ TRUST OR ☐ TRUSTEE ACTING WITH RESPECT TO  
3 PROPERTY HELD IN TRUST OR ☐ DECEDENT'S ESTATE  
4 18. CHECK ONLY IF APPLICABLE AND CHECK ONLY 1 BOX:  
5 ☐ DEBTOR IS A TRANSMITTING UTILITY  
6 ☐ FILED IN CONNECTION WITH A MANUFACTURED-HOME TRANSACTION  
7 - EFFECTIVE 30 YEARS  
8 ☐ FILED IN CONNECTION WITH A PUBLIC-FINANCE TRANSACTION -  
9 EFFECTIVE 30 YEARS  
10 FILING OFFICE COPY - NATIONAL UCC FILING STATEMENT  
11 (FORM UCC 1AD) (REV.07/29/98)  
12 (2) A FILING OFFICE THAT ACCEPTS WRITTEN RECORDS FOR FILING  
13 SHALL NOT REFUSE TO ACCEPT A WRITTEN FINANCING STATEMENT AMEND-  
14 MENT IN THE FOLLOWING FORM, EXCEPT FOR A REASON SET FORTH IN SEC-  
15 TION 9516(2):  
16 UCC FINANCING STATEMENT AMENDMENT  
17 FOLLOW INSTRUCTIONS (FRONT AND BACK) CAREFULLY  
18 A. NAME AND PHONE OF CONTACT AT FILER [OPTIONAL]  
19 \_\_\_\_\_  
20 B. SEND ACKNOWLEDGMENT TO: (NAME AND ADDRESS)  
21 \_\_\_\_\_ THE ABOVE SPACE IS FOR  
22 \_\_\_\_\_ FILING OFFICE USE ONLY  
23 1A. INITIAL FINANCING STATEMENT FILE NO.  
24 \_\_\_\_\_  
25 1B. ☐ THIS FINANCING STATEMENT AMENDMENT IS TO BE FILED (FOR  
26 RECORD) (OR RECORDED) IN THE REAL ESTATE RECORDS.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

254

- 1 2. ☐ TERMINATION: EFFECTIVENESS OF THE FINANCING STATEMENT  
2 IDENTIFIED ABOVE IS TERMINATED WITH RESPECT TO SECURITY  
3 INTEREST(S) OF THE SECURED PARTY AUTHORIZING THIS TERMINATION  
4 STATEMENT.
- 5 3. ☐ CONTINUATION: EFFECTIVENESS OF THE FINANCING STATEMENT  
6 IDENTIFIED ABOVE WITH RESPECT TO SECURITY INTEREST(S) OF THE  
7 SECURED PARTY AUTHORIZING THIS CONTINUATION STATEMENT IS CON-  
8 TINUED FOR THE ADDITIONAL PERIOD PROVIDED BY APPLICABLE LAW.
- 9 4. ☐ ASSIGNMENT (FULL OR PARTIAL): GIVE NAME OF ASSIGNEE IN  
10 ITEM 7A OR 7B AND ADDRESS OF ASSIGNEE IN ITEM 7C; AND ALSO  
11 GIVE NAME OF ASSIGNOR IN ITEM 9.  
12 \_\_\_\_\_
- 13 5. AMENDMENT (PARTY INFORMATION): THIS AMENDMENT AFFECTS  
14 ☐ DEBTOR OR ☐ SECURED PARTY OF RECORD. CHECK ONLY 1 OF  
15 THESE 2 BOXES. ALSO CHECK 1 OF THE FOLLOWING THREE BOXES AND  
16 PROVIDE APPROPRIATE INFORMATION IN ITEMS 6 AND/OR 7.  
17 ☐ CHANGE NAME AND/OR ADDRESS: GIVE CURRENT RECORD NAME IN  
18 ITEM 6A OR 6B; ALSO GIVE NEW NAME (IF NAME CHANGE) IN ITEM 7A  
19 OR 7B AND/OR NEW ADDRESS (IF ADDRESS CHANGE) IN ITEM 7C.  
20 ☐ DELETE NAME: GIVE RECORD NAME TO BE DELETED IN ITEM 6A  
21 OR 6B.  
22 ☐ ADD NAME: COMPLETE ITEM 7A OR 7B, AND ALSO ITEM 7C; ALSO  
23 COMPLETE ITEMS 7D-7G (IF APPLICABLE).
- 24 6. CURRENT RECORD INFORMATION:  
25 6A. ORGANIZATION'S NAME  
26 \_\_\_\_\_

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

255

1 OR 6B. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

2

3 7. CHANGED (NEW) OR ADDED INFORMATION:

4 7A. ORGANIZATION'S NAME

5

6 OR 7B. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

7

8 7C. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

9

10 7D. TAX ID. NO. ADD'L INFO. RE 7E. TYPE OF ORGANIZATION

11 SSN OR EIN ORGANIZATION

12 DEBTOR

13

14 7F. JURISDICTION OF ORGANIZATION 7G. ORGANIZATIONAL ID. NO.,  
15 IF ANY

16 \_\_\_\_\_[ ] NONE

17 8. AMENDMENT (COLLATERAL CHANGE): CHECK ONLY 1 BOX

18 DESCRIBE COLLATERAL [ ] DELETED OR [ ] ADDED, OR GIVE

19 ENTIRE [ ] RESTATED COLLATERAL DESCRIPTION, OR DESCRIBE

20 COLLATERAL [ ] ASSIGNED.

21

22 9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT

23 (NAME OF ASSIGNOR, IF THIS IS AN ASSIGNMENT). IF THIS IS AN

24 AMENDMENT AUTHORIZED BY A DEBTOR WHICH ADDS COLLATERAL OR

25 ADDS THE AUTHORIZING DEBTOR, OR IF THIS IS A TERMINATION

26 AUTHORIZED BY A DEBTOR, CHECK HERE [ ] AND ENTER NAME OF

27 DEBTOR AUTHORIZING THIS AMENDMENT.

House Bill No. 5228 256

256

6 \_\_\_\_\_

8 (FORM UCC3) (REV. 07/29/98)

UCC FINANCING STATEMENT AMENDMENT ADDENDUM

**12** 11. INITIAL FINANCING STATEMENT FILE NO. (SAME AS ITEM 1A ON

---

14

16 AMENDMENT FORM)

18

20

22 THIS SPACE IS FOR

24 FILING OFFICE COPY - NATIONAL UCC FINANCING STATEMENT AMENDMENT

**25** ADDENDUM (FORM UCC3AD) (REV. 07/29/98)



**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

257

1       (3) A FORM THAT A FILING OFFICE MAY NOT REFUSE TO ACCEPT  
2 UNDER SUBSECTION (1) OR (2) MUST CONFORM TO THE FORMAT PRESCRIBED  
3 FOR THE FORM BY THE NATIONAL CONFERENCE OF COMMISSIONERS.

4       SEC. 9522. (1) THE FILING OFFICE SHALL MAINTAIN A RECORD OF  
5 THE INFORMATION PROVIDED IN A FILED FINANCING STATEMENT FOR AT  
6 LEAST 1 YEAR AFTER THE EFFECTIVENESS OF THE FINANCING STATEMENT  
7 HAS LAPSED UNDER SECTION 9515 WITH RESPECT TO ALL SECURED PARTIES  
8 OF RECORD. THE RECORD MUST BE RETRIEVABLE BY USING THE NAME OF  
9 THE DEBTOR AND 1 OF THE FOLLOWING:

10       (A) IF THE RECORD WAS FILED OR RECORDED IN THE FILING OFFICE  
11 DESCRIBED IN SECTION 9501(1)(A), BY USING THE FILE NUMBER  
12 ASSIGNED TO THE INITIAL FINANCING STATEMENT TO WHICH THE RECORD  
13 RELATES AND THE DATE THAT THE RECORD WAS FILED OR RECORDED.

14       (B) IF RECORD WAS FILED IN THE FILING OFFICE DESCRIBED IN  
15 SECTION 9501(1)(B), BY USING THE FILE NUMBER ASSIGNED TO THE INI-  
16 TIAL FINANCING STATEMENT TO WHICH THE RECORD RELATES.

17       (2) EXCEPT TO THE EXTENT THAT A STATUTE GOVERNING DISPOS-  
18 TION OF PUBLIC RECORDS PROVIDES OTHERWISE, THE FILING OFFICE  
19 IMMEDIATELY MAY DESTROY ANY WRITTEN RECORD EVIDENCING A FINANCING  
20 STATEMENT. HOWEVER, IF THE FILING OFFICE DESTROYS A WRITTEN  
21 RECORD, IT SHALL MAINTAIN ANOTHER RECORD OF THE FINANCING STATE-  
22 MENT THAT COMPLIES WITH SUBSECTION (1).

23       SEC. 9523. (1) IF A PERSON THAT FILES A WRITTEN RECORD  
24 REQUESTS AN ACKNOWLEDGMENT OF THE FILING, THE FILING OFFICE SHALL  
25 SEND TO THE PERSON AN IMAGE OF THE RECORD SHOWING THE NUMBER  
26 ASSIGNED TO THE RECORD PURSUANT TO SECTION 9519(1)(A) AND THE  
27 DATE AND TIME OF THE FILING OF THE RECORD. HOWEVER, IF THE

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

258

1 PERSON FURNISHES A COPY OF THE RECORD TO THE FILING OFFICE, THE  
2 FILING OFFICE MAY INSTEAD DO BOTH OF THE FOLLOWING:

3 (A) NOTE UPON THE COPY THE NUMBER ASSIGNED TO THE RECORD  
4 PURSUANT TO SECTION 9519(1)(A) AND THE DATE AND TIME OF THE  
5 FILING OF THE RECORD.

6 (B) SEND THE COPY TO THE PERSON.

7 (2) IF A PERSON FILES A RECORD OTHER THAN A WRITTEN RECORD,  
8 THE FILING OFFICE SHALL COMMUNICATE TO THE PERSON AN ACKNOWLEDG-  
9 MENT THAT PROVIDES ALL OF THE FOLLOWING:

10 (A) THE INFORMATION IN THE RECORD.

11 (B) THE NUMBER ASSIGNED TO THE RECORD PURSUANT TO SECTION  
12 9519(1)(A).

13 (C) THE DATE AND TIME OF THE FILING OF THE RECORD.

14 (3) THE FILING OFFICE SHALL COMMUNICATE OR OTHERWISE MAKE  
15 AVAILABLE IN A RECORD 1 OR MORE OF THE FOLLOWING INFORMATION TO  
16 ANY PERSON THAT REQUESTS IT:

17 (A) WHETHER THERE IS ON FILE ON A DATE AND TIME SPECIFIED BY  
18 THE FILING OFFICE, BUT NOT A DATE EARLIER THAN 3 BUSINESS DAYS  
19 BEFORE THE FILING OFFICE RECEIVES THE REQUEST, ANY FINANCING  
20 STATEMENT THAT MEETS ALL OF THE FOLLOWING:

21 (i) DESIGNATES A PARTICULAR DEBTOR OR, IF THE REQUEST SO  
22 STATES, DESIGNATES A PARTICULAR DEBTOR AT THE ADDRESS SPECIFIED  
23 IN THE REQUEST.

24 (ii) HAS NOT LAPSED UNDER SECTION 9515 WITH RESPECT TO ALL  
25 SECURED PARTIES OF RECORD.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228 as amended November 30, 2000

259

1       (iii) IF THE REQUEST SO STATES, HAS LAPSED UNDER SECTION  
2 9515 AND A RECORD OF WHICH IS MAINTAINED BY THE FILING OFFICE  
3 UNDER SECTION 9522(1).

4       (B) THE DATE AND TIME OF FILING OF EACH FINANCING  
5 STATEMENT.

6       (C) THE INFORMATION PROVIDED IN EACH FINANCING STATEMENT.

7       (4) IN COMPLYING WITH ITS DUTY UNDER SUBSECTION (3), THE  
8 FILING OFFICE MAY COMMUNICATE INFORMATION IN ANY MEDIUM.  
9 HOWEVER, IF REQUESTED, THE FILING OFFICE SHALL COMMUNICATE INFOR-  
10 MATION BY ISSUING ITS WRITTEN CERTIFICATE OR ANOTHER RECORD THAT  
11 CAN BE ADMITTED INTO EVIDENCE IN THE COURTS OF THIS STATE WITHOUT  
12 EXTRINSIC EVIDENCE OF ITS AUTHENTICITY.

13       (5) THE FILING OFFICE SHALL PERFORM THE ACTS REQUIRED BY  
14 SUBSECTIONS (1) THROUGH (4) AT THE TIME AND IN THE MANNER PRE-  
15 SCRIBED BY FILING-OFFICE RULE, BUT, IN THE CASE OF A FILING  
16 OFFICE DESCRIBED IN SECTION 9501(1)(B), NOT LATER THAN 2 BUSINESS  
17 DAYS AFTER THE FILING OFFICE RECEIVES THE REQUEST.

18       (6) AT LEAST WEEKLY, AT THE PER RECORD RATE UNDER SECTION 9525,  
19 THE FILING OFFICE SHALL OFFER TO SELL  
20 OR LICENSE TO THE PUBLIC ON A NONEXCLUSIVE BASIS, IN BULK, COPIES  
21 OF ALL RECORDS FILED IN IT UNDER THIS PART, IN EVERY MEDIUM FROM  
22 TIME TO TIME AVAILABLE TO THE FILING OFFICE.

23       SEC. 9524. DELAY BY THE FILING OFFICE BEYOND A TIME LIMIT  
24 PRESCRIBED BY THIS PART IS EXCUSED IF BOTH OF THE FOLLOWING  
25 APPLY:

26       (A) THE DELAY IS CAUSED BY INTERRUPTION OF COMMUNICATION OR  
COMPUTER FACILITIES, WAR, EMERGENCY CONDITIONS, FAILURE OF

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

260

1 EQUIPMENT, OR OTHER CIRCUMSTANCES BEYOND CONTROL OF THE FILING  
2 OFFICE.

3 (B) THE FILING OFFICE EXERCISES REASONABLE DILIGENCE UNDER  
4 THE CIRCUMSTANCES.

5 SEC. 9525. (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION  
6 (3), THE FEE FOR FILING AND INDEXING A RECORD UNDER THIS PART IS  
7 \$10.00, PLUS 1 OR MORE OF THE FOLLOWING, IF APPLICABLE:

8 (A) IF THE RECORD IS A FINANCING STATEMENT IN A FORM OTHER  
9 THAN THE FORM CONTAINED IN SECTION 9521(1), OR THE RECORD IS A  
10 FINANCING STATEMENT AMENDMENT IN A FORM OTHER THAN THE FORM CON-  
11 TAINED IN SECTION 9521(2), AN ADDITIONAL FEE OF \$7.00.

12 (B) IF THE RECORD CONTAINS MORE THAN 100 PAGES, AN ADDI-  
13 TIONAL FEE OF \$12.00.

14 (C) IF THE FILING OFFICE IS REQUIRED TO INDEX MORE THAN 2  
15 NAMES, AN ADDITIONAL FEE OF \$10.00 FOR EACH NAME MORE THAN 2 THAT  
16 THE FILING OFFICE IS REQUIRED TO INDEX.

17 (2) A FILING OFFICE SHALL CHARGE A PERSON A FEE FOR RESPOND-  
18 ING TO A REQUEST FOR A SEARCH OF THE RECORDS FILED WITH A FILING  
19 OFFICE CONCERNING A DEBTOR, INCLUDING ISSUANCE OF A CERTIFICATE  
20 DESCRIBING EACH PRESENTLY EFFECTIVE RECORD FILED CONCERNING THE  
21 DEBTOR IF REQUESTED. THE FEE IS \$6.00, PLUS 1 OR MORE OF THE  
22 FOLLOWING, IF APPLICABLE:

23 (A) IF THE PERSON REQUESTS A CERTIFICATE AND THE SEARCH DIS-  
24 CLOSURES MORE THAN 100 PRESENTLY EFFECTIVE RECORDS FILED CONCERNING  
25 THE DEBTOR, AN ADDITIONAL FEE OF \$6.00.

26 (B) IF THE PERSON REQUESTS EXPEDITING OF THE REGULAR SEARCH  
27 PROCESS, AN ADDITIONAL FEE OF \$25.00.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

261

1 (C) IF THE PERSON REQUESTS COPIES OF THE PRESENTLY EFFECTIVE  
2 RECORDS DISCLOSED BY THE SEARCH, AN ADDITIONAL FEE OF \$2.00 PER  
3 PAGE.

4 (D) IF THE FILING OFFICE IS THE SECRETARY OF STATE AND THE  
5 PERSON REQUESTS THAT THE SECRETARY OF STATE INCLUDE AN IMPRESSION  
6 OF THE OFFICIAL SEAL OF THE SECRETARY OF STATE ON THE CERTIFI-  
7 CATE, AN ADDITIONAL FEE OF \$6.00.

8 (3) THIS SECTION DOES NOT REQUIRE A FEE WITH RESPECT TO A  
9 RECORD OF A MORTGAGE THAT IS EFFECTIVE AS A FINANCING STATEMENT  
10 FILED AS A FIXTURE FILING OR AS A FINANCING STATEMENT COVERING  
11 AS-EXTRACTED COLLATERAL OR TIMBER TO BE CUT UNDER SECTION  
12 9502(3). HOWEVER, THE RECORDING AND SATISFACTION FEES THAT OTH-  
13 ERWISE WOULD BE APPLICABLE TO THE RECORD OF THE MORTGAGE APPLY.

14 SEC. 9526. (1) THE SECRETARY OF STATE SHALL ADOPT AND PUB-  
15 LISH RULES TO IMPLEMENT THIS ARTICLE. THE FILING-OFFICE RULES  
16 MUST BE CONSISTENT WITH THIS ARTICLE AND ADOPTED AND PUBLISHED IN  
17 ACCORDANCE WITH THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969  
18 PA 306, MCL 24.201 TO 24.328.

19 (2) TO KEEP THE FILING-OFFICE RULES AND PRACTICES OF THE  
20 FILING OFFICE IN HARMONY WITH THE RULES AND PRACTICES OF FILING  
21 OFFICES IN OTHER JURISDICTIONS THAT ENACT SUBSTANTIALLY THIS  
22 PART, AND TO KEEP THE TECHNOLOGY USED BY THE FILING OFFICE COM-  
23 PATIBLE WITH THE TECHNOLOGY USED BY FILING OFFICES IN OTHER  
24 JURISDICTIONS THAT ENACT SUBSTANTIALLY THIS PART, THE SECRETARY  
25 OF STATE, SO FAR AS IS CONSISTENT WITH THE PURPOSES, POLICIES,  
26 AND PROVISIONS OF THIS ARTICLE, IN ADOPTING, AMENDING, AND  
27 REPEALING FILING-OFFICE RULES, SHALL DO ALL OF THE FOLLOWING:

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

262

1 (A) CONSULT WITH FILING OFFICES IN OTHER JURISDICTIONS THAT  
2 ENACT SUBSTANTIALLY THIS PART.

3 (B) CONSULT THE MOST RECENT VERSION OF THE MODEL RULES  
4 PROMULGATED BY THE INTERNATIONAL ASSOCIATION OF CORPORATE ADMIN-  
5 ISTRATORS OR ANY SUCCESSOR ORGANIZATION.

6 (C) TAKE INTO CONSIDERATION THE RULES AND PRACTICES OF, AND  
7 THE TECHNOLOGY USED BY, FILING OFFICES IN OTHER JURISDICTIONS  
8 THAT ENACT SUBSTANTIALLY THIS PART.

9 SEC. 9527. THE SECRETARY OF STATE SHALL REPORT ANNUALLY TO  
10 THE GOVERNOR AND LEGISLATURE ON THE OPERATION OF THE FILING  
11 OFFICE. THE REPORT MUST CONTAIN A STATEMENT OF THE EXTENT TO  
12 WHICH THE FILING-OFFICE RULES ARE NOT IN HARMONY WITH THE RULES  
13 OF FILING OFFICES IN OTHER JURISDICTIONS THAT ENACT SUBSTANTIALLY  
14 THIS PART AND THE REASONS FOR THESE VARIATIONS, AND THE  
15 FILING-OFFICE RULES ARE NOT IN HARMONY WITH THE MOST RECENT VER-  
16 SION OF THE MODEL RULES PROMULGATED BY THE INTERNATIONAL ASSOCIA-  
17 TION OF CORPORATE ADMINISTRATORS, OR ANY SUCCESSOR ORGANIZATION,  
18 AND THE REASONS FOR THESE VARIATIONS.

19 PART 6

20 DEFAULT

21 SUBPART 1. DEFAULT AND ENFORCEMENT OF SECURITY INTEREST

22 SEC. 9601. (1) AFTER DEFAULT, A SECURED PARTY HAS THE  
23 RIGHTS PROVIDED IN THIS PART AND, EXCEPT AS OTHERWISE PROVIDED IN  
24 SECTION 9602, THOSE PROVIDED BY AGREEMENT OF THE PARTIES. A  
25 SECURED PARTY MAY DO 1 OR MORE OF THE FOLLOWING:

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

263

1 (A) MAY REDUCE A CLAIM TO JUDGMENT, FORECLOSE, OR OTHERWISE  
2 ENFORCE THE CLAIM, SECURITY INTEREST, OR AGRICULTURAL LIEN BY ANY  
3 AVAILABLE JUDICIAL PROCEDURE.

4 (B) IF THE COLLATERAL IS DOCUMENTS, MAY PROCEED EITHER AS TO  
5 THE DOCUMENTS OR AS TO THE GOODS THEY COVER.

6 (2) A SECURED PARTY IN POSSESSION OF COLLATERAL OR CONTROL  
7 OF COLLATERAL UNDER SECTION 9104, 9105, 9106, OR 9107 HAS THE  
8 RIGHTS AND DUTIES PROVIDED IN SECTION 9207.

9 (3) THE RIGHTS UNDER SUBSECTIONS (1) AND (2) ARE CUMULATIVE  
10 AND MAY BE EXERCISED SIMULTANEOUSLY.

11 (4) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (7) AND SEC-  
12 TION 9605, AFTER DEFAULT, A DEBTOR AND AN OBLIGOR HAVE THE RIGHTS  
13 PROVIDED IN THIS PART AND BY AGREEMENT OF THE PARTIES.

14 (5) IF A SECURED PARTY HAS REDUCED ITS CLAIM TO JUDGMENT,  
15 THE LIEN OF ANY LEVY THAT MAY BE MADE UPON THE COLLATERAL BY  
16 VIRTUE OF AN EXECUTION BASED UPON THE JUDGMENT RELATES BACK TO  
17 THE EARLIEST OF THE FOLLOWING:

18 (A) THE DATE OF PERFECTION OF THE SECURITY INTEREST OR AGRI-  
19 CULTURAL LIEN IN THE COLLATERAL.

20 (B) THE DATE OF FILING A FINANCING STATEMENT COVERING THE  
21 COLLATERAL.

22 (C) ANY DATE SPECIFIED IN A STATUTE UNDER WHICH THE AGRICUL-  
23 TURAL LIEN WAS CREATED.

24 (6) A SALE PURSUANT TO AN EXECUTION IS A FORECLOSURE OF THE  
25 SECURITY INTEREST OR AGRICULTURAL LIEN BY JUDICIAL PROCEDURE  
26 WITHIN THE MEANING OF THIS SECTION. A SECURED PARTY MAY PURCHASE

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

264

1 AT THE SALE AND THEREAFTER HOLD THE COLLATERAL FREE OF ANY OTHER  
2 REQUIREMENTS OF THIS ARTICLE.

3 (7) EXCEPT AS OTHERWISE PROVIDED IN SECTION 9607(3), THIS  
4 PART IMPOSES NO DUTIES UPON A SECURED PARTY THAT IS A CONSIGNOR  
5 OR IS A BUYER OF ACCOUNTS, CHATTEL PAPER, PAYMENT INTANGIBLES, OR  
6 PROMISSORY NOTES.

7 SEC. 9602. EXCEPT AS OTHERWISE PROVIDED IN SECTION 9624, TO  
8 THE EXTENT THAT THEY GIVE RIGHTS TO A DEBTOR OR OBLIGOR AND  
9 IMPOSE DUTIES ON A SECURED PARTY, THE DEBTOR OR OBLIGOR MAY NOT  
10 WAIVE OR VARY THE RULES STATED IN THE FOLLOWING LISTED SECTIONS:

11 (A) SECTION 9207(2)(D)(iii), WHICH DEALS WITH USE AND OPERA-  
12 TION OF THE COLLATERAL BY THE SECURED PARTY.

13 (B) SECTION 9210, WHICH DEALS WITH REQUESTS FOR AN ACCOUNT-  
14 ING AND REQUESTS CONCERNING A LIST OF COLLATERAL AND STATEMENT OF  
15 ACCOUNT.

16 (C) SECTION 9607(3), WHICH DEALS WITH COLLECTION AND  
17 ENFORCEMENT OF COLLATERAL.

18 (D) SECTIONS 9608(1) AND 9615(3) TO THE EXTENT THAT THEY  
19 DEAL WITH APPLICATION OR PAYMENT OF NONCASH PROCEEDS OF COLLEC-  
20 TION, ENFORCEMENT, OR DISPOSITION.

21 (E) SECTIONS 9608(1) AND 9615(4) TO THE EXTENT THAT THEY  
22 REQUIRE ACCOUNTING FOR OR PAYMENT OF SURPLUS PROCEEDS OF  
23 COLLATERAL.

24 (F) SECTION 9609 TO THE EXTENT THAT IT IMPOSES UPON A  
25 SECURED PARTY THAT TAKES POSSESSION OF COLLATERAL WITHOUT JUDI-  
26 CIAL PROCESS THE DUTY TO DO SO WITHOUT BREACH OF THE PEACE.



**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

265

1 (G) SECTIONS 9610(2), 9611, 9613, AND 9614, WHICH DEAL WITH  
2 DISPOSITION OF COLLATERAL.

3 (H) SECTION 9615(6), WHICH DEALS WITH CALCULATION OF A DEFICI-  
4 CIENCY OR SURPLUS WHEN A DISPOSITION IS MADE TO THE SECURED  
5 PARTY, A PERSON RELATED TO THE SECURED PARTY, OR A SECONDARY  
6 OBLIGOR.

7 (I) SECTION 9616, WHICH DEALS WITH EXPLANATION OF THE CALCU-  
8 LATION OF A SURPLUS OR DEFICIENCY.

9 (J) SECTIONS 9620, 9621, AND 9622, WHICH DEAL WITH ACCEP-  
10 TANCE OF COLLATERAL IN SATISFACTION OF OBLIGATION.

11 (K) SECTION 9623, WHICH DEALS WITH REDEMPTION OF  
12 COLLATERAL.

13 (L) SECTION 9624, WHICH DEALS WITH PERMISSIBLE WAIVERS.

14 (M) SECTIONS 9625 AND 9626, WHICH DEAL WITH THE SECURED  
15 PARTY'S LIABILITY FOR FAILURE TO COMPLY WITH THIS ARTICLE.

16 SEC. 9603. (1) THE PARTIES MAY DETERMINE BY AGREEMENT THE  
17 STANDARDS MEASURING THE FULFILLMENT OF THE RIGHTS OF A DEBTOR OR  
18 OBLIGOR AND THE DUTIES OF A SECURED PARTY UNDER A RULE STATED IN  
19 SECTION 9602 IF THE STANDARDS ARE NOT MANIFESTLY UNREASONABLE.

20 (2) SUBSECTION (1) DOES NOT APPLY TO THE DUTY UNDER SECTION  
21 9609 TO REFRAIN FROM BREACHING THE PEACE.

22 SEC. 9604. (1) IF A SECURITY AGREEMENT COVERS BOTH PERSONAL  
23 AND REAL PROPERTY, A SECURED PARTY MAY DO EITHER OF THE  
24 FOLLOWING:

25 (A) PROCEED UNDER THIS PART AS TO THE PERSONAL PROPERTY  
26 WITHOUT PREJUDICING ANY RIGHTS WITH RESPECT TO THE REAL  
27 PROPERTY.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

266

1 (B) PROCEED AS TO BOTH THE PERSONAL PROPERTY AND THE REAL  
2 PROPERTY IN ACCORDANCE WITH THE RIGHTS WITH RESPECT TO THE REAL  
3 PROPERTY, IN WHICH CASE THE OTHER PROVISIONS OF THIS PART DO NOT  
4 APPLY.

5 (2) SUBJECT TO SUBSECTION (3), IF A SECURITY AGREEMENT  
6 COVERS GOODS THAT ARE OR BECOME FIXTURES, A SECURED PARTY MAY DO  
7 EITHER OF THE FOLLOWING:

8 (A) PROCEED UNDER THIS PART.

9 (B) PROCEED IN ACCORDANCE WITH THE RIGHTS WITH RESPECT TO  
10 REAL PROPERTY, IN WHICH CASE THE OTHER PROVISIONS OF THIS PART DO  
11 NOT APPLY.

12 (3) SUBJECT TO THE OTHER PROVISIONS OF THIS PART, IF A  
13 SECURED PARTY HOLDING A SECURITY INTEREST IN FIXTURES HAS PRIOR-  
14 ITY OVER ALL OWNERS AND ENCUMBRANCERS OF THE REAL PROPERTY, THE  
15 SECURED PARTY, AFTER DEFAULT, MAY REMOVE THE COLLATERAL FROM THE  
16 REAL PROPERTY.

17 (4) A SECURED PARTY THAT REMOVES COLLATERAL SHALL PROMPTLY  
18 REIMBURSE ANY ENCUMBRANCER OR OWNER OF THE REAL PROPERTY, OTHER  
19 THAN THE DEBTOR, FOR THE COST OF REPAIR OF ANY PHYSICAL INJURY  
20 CAUSED BY THE REMOVAL. THE SECURED PARTY NEED NOT REIMBURSE THE  
21 ENCUMBRANCER OR OWNER FOR ANY DIMINUTION IN VALUE OF THE REAL  
22 PROPERTY CAUSED BY THE ABSENCE OF THE GOODS REMOVED OR BY ANY  
23 NECESSITY OF REPLACING THEM. A PERSON ENTITLED TO REIMBURSEMENT  
24 MAY REFUSE PERMISSION TO REMOVE UNTIL THE SECURED PARTY GIVES  
25 ADEQUATE ASSURANCE FOR THE PERFORMANCE OF THE OBLIGATION TO  
26 REIMBURSE.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

267

1        SEC. 9605. A SECURED PARTY DOES NOT OWE A DUTY BASED ON ITS  
2 STATUS AS SECURED PARTY TO EITHER OF THE FOLLOWING:

3        (A) TO A PERSON THAT IS A DEBTOR OR OBLIGOR, UNLESS THE  
4 SECURED PARTY KNOWS ALL OF THE FOLLOWING:

5            (i) THAT THE PERSON IS A DEBTOR OR OBLIGOR.

6            (ii) THE IDENTITY OF THE PERSON.

7            (iii) HOW TO COMMUNICATE WITH THE PERSON.

8        (B) TO A SECURED PARTY OR LIENHOLDER THAT HAS FILED A  
9 FINANCING STATEMENT AGAINST A PERSON, UNLESS THE SECURED PARTY  
10 KNOWS BOTH OF THE FOLLOWING:

11            (i) THAT THE PERSON IS A DEBTOR.

12            (ii) THE IDENTITY OF THE PERSON.

13        SEC. 9606. FOR PURPOSES OF THIS PART, A DEFAULT OCCURS IN  
14 CONNECTION WITH AN AGRICULTURAL LIEN AT THE TIME THE SECURED  
15 PARTY BECOMES ENTITLED TO ENFORCE THE LIEN IN ACCORDANCE WITH THE  
16 STATUTE UNDER WHICH IT WAS CREATED.

17        SEC. 9607. (1) IF SO AGREED, AND IN ANY EVENT AFTER  
18 DEFAULT, A SECURED PARTY MAY DO 1 OR MORE OF THE FOLLOWING:

19            (A) NOTIFY AN ACCOUNT DEBTOR OR OTHER PERSON OBLIGATED ON  
20 COLLATERAL TO MAKE PAYMENT OR OTHERWISE RENDER PERFORMANCE TO OR  
21 FOR THE BENEFIT OF THE SECURED PARTY.

22            (B) TAKE ANY PROCEEDS TO WHICH THE SECURED PARTY IS ENTITLED  
23 UNDER SECTION 9315.

24            (C) ENFORCE THE OBLIGATIONS OF AN ACCOUNT DEBTOR OR OTHER  
25 PERSON OBLIGATED ON COLLATERAL AND EXERCISE THE RIGHTS OF THE  
26 DEBTOR WITH RESPECT TO THE OBLIGATION OF THE ACCOUNT DEBTOR OR  
27 OTHER PERSON OBLIGATED ON COLLATERAL TO MAKE PAYMENT OR OTHERWISE

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

268

1 RENDER PERFORMANCE TO THE DEBTOR, AND WITH RESPECT TO ANY  
2 PROPERTY THAT SECURES THE OBLIGATIONS OF THE ACCOUNT DEBTOR OR  
3 OTHER PERSON OBLIGATED ON THE COLLATERAL.

4 (D) IF IT HOLDS A SECURITY INTEREST IN A DEPOSIT ACCOUNT  
5 PERFECTED BY CONTROL UNDER SECTION 9104(1)(A), APPLY THE BALANCE  
6 OF THE DEPOSIT ACCOUNT TO THE OBLIGATION SECURED BY THE DEPOSIT  
7 ACCOUNT.

8 (E) IF IT HOLDS A SECURITY INTEREST IN A DEPOSIT ACCOUNT  
9 PERFECTED BY CONTROL UNDER SECTION 9104(1)(B) OR (C), INSTRUCT  
10 THE BANK TO PAY THE BALANCE OF THE DEPOSIT ACCOUNT TO OR FOR THE  
11 BENEFIT OF THE SECURED PARTY.

12 (2) IF NECESSARY TO ENABLE A SECURED PARTY TO EXERCISE UNDER  
13 SUBSECTION (1)(C) THE RIGHT OF A DEBTOR TO ENFORCE A MORTGAGE  
14 NONJUDICIALLY, THE SECURED PARTY MAY RECORD BOTH OF THE FOLLOWING  
15 IN THE OFFICE IN WHICH A RECORD OF THE MORTGAGE IS RECORDED:

16 (A) A COPY OF THE SECURITY AGREEMENT THAT CREATES OR PRO-  
17 VIDES FOR A SECURITY INTEREST IN THE OBLIGATION SECURED BY THE  
18 MORTGAGE.

19 (B) THE SECURED PARTY'S SWORN AFFIDAVIT IN RECORDABLE FORM  
20 STATING THAT A DEFAULT HAS OCCURRED AND THE SECURED PARTY IS  
21 ENTITLED TO ENFORCE THE MORTGAGE NONJUDICIALLY.

22 (3) A SECURED PARTY SHALL PROCEED IN A COMMERCIALY REASON-  
23 ABLE MANNER IF THE SECURED PARTY MEETS BOTH OF THE FOLLOWING:

24 (A) UNDERTAKES TO COLLECT FROM OR ENFORCE AN OBLIGATION OF  
25 AN ACCOUNT DEBTOR OR OTHER PERSON OBLIGATED ON COLLATERAL.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

269

1 (B) IS ENTITLED TO CHARGE BACK UNCOLLECTED COLLATERAL OR  
2 OTHERWISE TO FULL OR LIMITED RECOURSE AGAINST THE DEBTOR OR A  
3 SECONDARY OBLIGOR.

4 (4) A SECURED PARTY MAY DEDUCT FROM THE COLLECTIONS MADE  
5 PURSUANT TO SUBSECTION (3) REASONABLE EXPENSES OF COLLECTION AND  
6 ENFORCEMENT, INCLUDING REASONABLE ATTORNEY FEES AND LEGAL  
7 EXPENSES INCURRED BY THE SECURED PARTY.

8 (5) THIS SECTION DOES NOT DETERMINE WHETHER AN ACCOUNT  
9 DEBTOR, BANK, OR OTHER PERSON OBLIGATED ON COLLATERAL OWES A DUTY  
10 TO A SECURED PARTY.

11 SEC. 9608. (1) IF A SECURITY INTEREST OR AGRICULTURAL LIEN  
12 SECURES PAYMENT OR PERFORMANCE OF AN OBLIGATION, THE FOLLOWING  
13 RULES APPLY:

14 (A) A SECURED PARTY SHALL APPLY OR PAY OVER FOR APPLICATION  
15 THE CASH PROCEEDS OF COLLECTION OR ENFORCEMENT UNDER SECTION 9607  
16 IN THE FOLLOWING ORDER TO:

17 (i) THE REASONABLE EXPENSES OF COLLECTION AND ENFORCEMENT  
18 AND, TO THE EXTENT PROVIDED FOR BY AGREEMENT AND NOT PROHIBITED  
19 BY LAW, REASONABLE ATTORNEY FEES AND LEGAL EXPENSES INCURRED BY  
20 THE SECURED PARTY.

21 (ii) THE SATISFACTION OF OBLIGATIONS SECURED BY THE SECURITY  
22 INTEREST OR AGRICULTURAL LIEN UNDER WHICH THE COLLECTION OR  
23 ENFORCEMENT IS MADE.

24 (iii) THE SATISFACTION OF OBLIGATIONS SECURED BY ANY SUBOR-  
25 DINATE SECURITY INTEREST IN OR OTHER LIEN ON THE COLLATERAL  
26 SUBJECT TO THE SECURITY INTEREST OR AGRICULTURAL LIEN UNDER WHICH  
27 THE COLLECTION OR ENFORCEMENT IS MADE IF THE SECURED PARTY

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

270

1 RECEIVES AN AUTHENTICATED DEMAND FOR PROCEEDS BEFORE DISTRIBUTION  
2 OF THE PROCEEDS IS COMPLETED.

3 (B) IF REQUESTED BY A SECURED PARTY, A HOLDER OF A SUBORDI-  
4 NATE SECURITY INTEREST OR OTHER LIEN SHALL FURNISH REASONABLE  
5 PROOF OF THE INTEREST OR LIEN WITHIN A REASONABLE TIME. UNLESS  
6 THE HOLDER COMPLIES, THE SECURED PARTY NEED NOT COMPLY WITH THE  
7 HOLDER'S DEMAND UNDER SUBDIVISION (A)(iii).

8 (C) A SECURED PARTY NEED NOT APPLY OR PAY OVER FOR APPLICA-  
9 TION NONCASH PROCEEDS OF COLLECTION AND ENFORCEMENT UNDER  
10 SECTION 9607 UNLESS THE FAILURE TO DO SO WOULD BE COMMERCIALY  
11 UNREASONABLE. A SECURED PARTY THAT APPLIES OR PAYS OVER FOR  
12 APPLICATION NONCASH PROCEEDS SHALL DO SO IN A COMMERCIALY REA-  
13 SONABLE MANNER.

14 (D) A SECURED PARTY SHALL ACCOUNT TO AND PAY A DEBTOR FOR  
15 ANY SURPLUS, AND THE OBLIGOR IS LIABLE FOR ANY DEFICIENCY.

16 (2) IF THE UNDERLYING TRANSACTION IS A SALE OF ACCOUNTS,  
17 CHATTEL PAPER, PAYMENT INTANGIBLES, OR PROMISSORY NOTES, THE  
18 DEBTOR IS NOT ENTITLED TO ANY SURPLUS, AND THE OBLIGOR IS NOT  
19 LIABLE FOR ANY DEFICIENCY.

20 SEC. 9609. (1) AFTER DEFAULT, A SECURED PARTY MAY DO 1 OR  
21 MORE OF THE FOLLOWING:

22 (A) TAKE POSSESSION OF THE COLLATERAL.

23 (B) WITHOUT REMOVAL, RENDER EQUIPMENT UNUSABLE AND DISPOSE  
24 OF COLLATERAL ON A DEBTOR'S PREMISES UNDER SECTION 9610.

25 (2) A SECURED PARTY MAY PROCEED UNDER SUBSECTION (1) EITHER  
26 PURSUANT TO JUDICIAL PROCESS, OR WITHOUT JUDICIAL PROCESS IF IT  
27 PROCEEDS WITHOUT BREACH OF THE PEACE.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

271

1       (3) IF SO AGREED, AND IN ANY EVENT AFTER DEFAULT, A SECURED  
2 PARTY MAY REQUIRE THE DEBTOR TO ASSEMBLE THE COLLATERAL AND MAKE  
3 IT AVAILABLE TO THE SECURED PARTY AT A PLACE TO BE DESIGNATED BY  
4 THE SECURED PARTY THAT IS REASONABLY CONVENIENT TO BOTH PARTIES.

5       SEC. 9610. (1) AFTER DEFAULT, A SECURED PARTY MAY SELL,  
6 LEASE, LICENSE, OR OTHERWISE DISPOSE OF ANY OR ALL OF THE COLLAT-  
7 ERAL IN ITS PRESENT CONDITION OR FOLLOWING ANY COMMERCIALY REA-  
8 SONABLE PREPARATION OR PROCESSING.

9       (2) EVERY ASPECT OF A DISPOSITION OF COLLATERAL, INCLUDING  
10 THE METHOD, MANNER, TIME, PLACE, AND OTHER TERMS, MUST BE COMMER-  
11 CIALY REASONABLE. IF COMMERCIALY REASONABLE, A SECURED PARTY  
12 MAY DISPOSE OF COLLATERAL BY PUBLIC OR PRIVATE PROCEEDINGS, BY 1  
13 OR MORE CONTRACTS, AS A UNIT OR IN PARCELS, AND AT ANY TIME AND  
14 PLACE AND ON ANY TERMS.

15       (3) A SECURED PARTY MAY PURCHASE COLLATERAL EITHER AT A  
16 PUBLIC DISPOSITION, OR AT A PRIVATE DISPOSITION ONLY IF THE COL-  
17 LATERAL IS OF A KIND THAT IS CUSTOMARILY SOLD ON A RECOGNIZED  
18 MARKET OR THE SUBJECT OF WIDELY DISTRIBUTED STANDARD PRICE  
19 QUOTATIONS.

20       (4) A CONTRACT FOR SALE, LEASE, LICENSE, OR OTHER DISPOSI-  
21 TION INCLUDES THE WARRANTIES RELATING TO TITLE, POSSESSION, QUIET  
22 ENJOYMENT, AND THE LIKE WHICH BY OPERATION OF LAW ACCOMPANY A  
23 VOLUNTARY DISPOSITION OF PROPERTY OF THE KIND SUBJECT TO THE  
24 CONTRACT.

25       (5) A SECURED PARTY MAY DISCLAIM OR MODIFY WARRANTIES UNDER  
26 SUBSECTION (4) EITHER IN A MANNER THAT WOULD BE EFFECTIVE TO  
27 DISCLAIM OR MODIFY THE WARRANTIES IN A VOLUNTARY DISPOSITION OF

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

272

1 PROPERTY OF THE KIND SUBJECT TO THE CONTRACT OF DISPOSITION, OR  
2 BY COMMUNICATING TO THE PURCHASER A RECORD EVIDENCING THE CON-  
3 TRACT FOR DISPOSITION AND INCLUDING AN EXPRESS DISCLAIMER OR MOD-  
4 IFICATION OF THE WARRANTIES.

5 (6) A RECORD IS SUFFICIENT TO DISCLAIM WARRANTIES UNDER SUB-  
6 SECTION (5) IF IT INDICATES "THERE IS NO WARRANTY RELATING TO  
7 TITLE, POSSESSION, QUIET ENJOYMENT, OR THE LIKE IN THIS  
8 DISPOSITION" OR USES WORDS OF SIMILAR IMPORT.

9 SEC. 9611. (1) AS USED IN THIS SECTION, "NOTIFICATION DATE"  
10 MEANS THE EARLIER OF THE DATE ON WHICH 1 OF THE FOLLOWING  
11 OCCURS:

12 (A) A SECURED PARTY SENDS TO THE DEBTOR AND ANY SECONDARY  
13 OBLIGOR AN AUTHENTICATED NOTIFICATION OF DISPOSITION.

14 (B) THE DEBTOR AND ANY SECONDARY OBLIGOR WAIVE THE RIGHT TO  
15 NOTIFICATION.

16 (2) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (4), A  
17 SECURED PARTY THAT DISPOSES OF COLLATERAL UNDER SECTION 9610  
18 SHALL SEND TO THE PERSONS SPECIFIED IN SUBSECTION (3) A REASON-  
19 ABLE AUTHENTICATED NOTIFICATION OF DISPOSITION.

20 (3) TO COMPLY WITH SUBSECTION (2), THE SECURED PARTY SHALL  
21 SEND AN AUTHENTICATED NOTIFICATION OF DISPOSITION TO ALL OF THE  
22 FOLLOWING:

23 (A) THE DEBTOR.

24 (B) ANY SECONDARY OBLIGOR.

25 (C) IF THE COLLATERAL IS OTHER THAN CONSUMER GOODS, ALL OF  
26 THE FOLLOWING, AS APPLICABLE:



**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

273

1       (i) ANY OTHER PERSON FROM WHICH THE SECURED PARTY HAS  
2 RECEIVED, BEFORE THE NOTIFICATION DATE, AN AUTHENTICATED  
3 NOTIFICATION OF A CLAIM OF AN INTEREST IN THE COLLATERAL.

4       (ii) ANY OTHER SECURED PARTY OR LIENHOLDER THAT, 10 DAYS  
5 BEFORE THE NOTIFICATION DATE, HELD A SECURITY INTEREST IN OR  
6 OTHER LIEN ON THE COLLATERAL PERFECTED BY THE FILING OF A FINANC-  
7 ING STATEMENT THAT IDENTIFIED THE COLLATERAL, WAS INDEXED UNDER  
8 THE DEBTOR'S NAME AS OF THAT DATE, AND WAS FILED IN THE OFFICE IN  
9 WHICH TO FILE A FINANCING STATEMENT AGAINST THE DEBTOR COVERING  
10 THE COLLATERAL AS OF THAT DATE.

11       (iii) ANY OTHER SECURED PARTY THAT, 10 DAYS BEFORE THE NOTI-  
12 FICATION DATE, HELD A SECURITY INTEREST IN THE COLLATERAL PERFEC-  
13 TED BY COMPLIANCE WITH A STATUTE, REGULATION, OR TREATY DESCRIBED  
14 IN SECTION 9311(1).

15       (4) SUBSECTION (2) DOES NOT APPLY IF THE COLLATERAL IS PER-  
16 ISHABLE OR THREATENS TO DECLINE SPEEDILY IN VALUE OR IS OF A TYPE  
17 CUSTOMARILY SOLD ON A RECOGNIZED MARKET.

18       (5) A SECURED PARTY COMPLIES WITH THE REQUIREMENT FOR NOTI-  
19 FICATION PRESCRIBED BY SUBSECTION (3)(C)(ii) IF THE SECURED PARTY  
20 DOES BOTH OF THE FOLLOWING:

21       (A) NOT LATER THAN 20 DAYS OR EARLIER THAN 30 DAYS BEFORE  
22 THE NOTIFICATION DATE, THE SECURED PARTY REQUESTS, IN A COMMER-  
23 CIALY REASONABLE MANNER, INFORMATION CONCERNING FINANCING STATE-  
24 MENTS INDEXED UNDER THE DEBTOR'S NAME IN THE OFFICE INDICATED IN  
25 SUBSECTION (3)(C)(ii).

26       (B) BEFORE THE NOTIFICATION DATE, 1 OF THE FOLLOWING  
27 APPLIES:

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

274

1       (i) THE SECURED PARTY DID NOT RECEIVE A RESPONSE TO THE  
2 REQUEST FOR INFORMATION.

3       (ii) THE SECURED PARTY RECEIVED A RESPONSE TO THE REQUEST  
4 FOR INFORMATION AND SENT AN AUTHENTICATED NOTIFICATION OF DISPO-  
5 SITION TO EACH SECURED PARTY OR OTHER LIENHOLDER NAMED IN THAT  
6 RESPONSE WHOSE FINANCING STATEMENT COVERED THE COLLATERAL.

7       SEC. 9612. (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION  
8 (2), WHETHER A NOTIFICATION IS SENT WITHIN A REASONABLE TIME IS A  
9 QUESTION OF FACT.

10       (2) IN A TRANSACTION OTHER THAN A CONSUMER TRANSACTION, A  
11 NOTIFICATION OF DISPOSITION SENT AFTER DEFAULT AND 10 DAYS OR  
12 MORE BEFORE THE EARLIEST TIME OF DISPOSITION SET FORTH IN THE  
13 NOTIFICATION IS SENT WITHIN A REASONABLE TIME BEFORE THE  
14 DISPOSITION.

15       SEC. 9613. EXCEPT IN A CONSUMER-GOODS TRANSACTION, THE FOL-  
16 LOWING RULES APPLY:

17       (A) THE CONTENTS OF A NOTIFICATION OF DISPOSITION ARE SUFFI-  
18 CIENT IF THE NOTIFICATION DOES ALL OF THE FOLLOWING:

19       (i) DESCRIBES THE DEBTOR AND THE SECURED PARTY.

20       (ii) DESCRIBES THE COLLATERAL THAT IS THE SUBJECT OF THE  
21 INTENDED DISPOSITION.

22       (iii) STATES THE METHOD OF INTENDED DISPOSITION.

23       (iv) STATES THAT THE DEBTOR IS ENTITLED TO AN ACCOUNTING OF  
24 THE UNPAID INDEBTEDNESS AND STATES THE CHARGE, IF ANY, FOR AN  
25 ACCOUNTING.

26       (v) STATES THE TIME AND PLACE OF A PUBLIC DISPOSITION OR THE  
27 TIME AFTER WHICH ANY OTHER DISPOSITION IS TO BE MADE.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

275

1 (B) WHETHER THE CONTENTS OF A NOTIFICATION THAT LACKS ANY OF  
2 THE INFORMATION SPECIFIED IN SUBDIVISION (A) ARE NEVERTHELESS  
3 SUFFICIENT IS A QUESTION OF FACT.

4 (C) THE CONTENTS OF A NOTIFICATION PROVIDING SUBSTANTIALLY  
5 THE INFORMATION SPECIFIED IN SUBDIVISION (A) ARE SUFFICIENT, EVEN  
6 IF THE NOTIFICATION INCLUDES INFORMATION NOT SPECIFIED BY THAT  
7 PARAGRAPH OR MINOR ERRORS THAT ARE NOT SERIOUSLY MISLEADING.

8 (D) A PARTICULAR PHRASING OF THE NOTIFICATION IS NOT  
9 REQUIRED.

10 (E) THE FOLLOWING FORM OF NOTIFICATION AND THE FORM APPEAR-  
11 ING IN SECTION 9614(C), WHEN COMPLETED, EACH PROVIDES SUFFICIENT  
12 INFORMATION:

13 NOTIFICATION OF DISPOSITION OF COLLATERAL

14 TO: [NAME OF DEBTOR, OBLIGOR, OR OTHER PERSON TO  
15 WHICH THE NOTIFICATION IS SENT]  
16 FROM: [NAME, ADDRESS, AND TELEPHONE NUMBER OF  
17 SECURED PARTY]  
18 NAME OF DEBTOR(S): [INCLUDE ONLY IF DEBTOR(S) ARE NOT AN  
19 ADDRESSEE]  
20 [FOR A PUBLIC DISPOSITION:]

21 WE WILL SELL [OR LEASE OR LICENSE, AS APPLICABLE] THE  
22 [DESCRIBE COLLATERAL] [TO THE HIGHEST QUALIFIED BIDDER] IN PUBLIC  
23 AS FOLLOWS:

24 DAY AND DATE: \_\_\_\_\_

25 TIME: \_\_\_\_\_

26 PLACE: \_\_\_\_\_

27 [FOR A PRIVATE DISPOSITION:]

28 WE WILL SELL [OR LEASE OR LICENSE, AS APPLICABLE] THE  
29 [DESCRIBE COLLATERAL] PRIVATELY SOMETIME AFTER [DAY AND DATE].

## 276

5 [END OF FORM]

8 (A) A NOTIFICATION OF DISPOSITION MUST PROVIDE ALL OF THE  
9 FOLLOWING INFORMATION:

13 (iii) A TELEPHONE NUMBER FROM WHICH THE AMOUNT THAT MUST BE  
14 PAID TO THE SECURED PARTY TO REDEEM THE COLLATERAL UNDER SECTION  
15 9623 IS AVAILABLE.

21 (C) THE FOLLOWING FORM OF NOTIFICATION, WHEN COMPLETED, PRO-  
22 VIDES SUFFICIENT INFORMATION:

24 [ DATE ]

**26** [NAME AND ADDRESS OF ANY OBLIGOR WHO IS ALSO A DEBTOR]

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

277

1 SUBJECT: [IDENTIFICATION OF TRANSACTION]

2 WE HAVE YOUR [DESCRIBE COLLATERAL], BECAUSE YOU BROKE  
3 PROMISES IN OUR AGREEMENT.

4 [FOR A PUBLIC DISPOSITION:]

5 WE WILL SELL [DESCRIBE COLLATERAL] AT PUBLIC SALE. A SALE  
6 COULD INCLUDE A LEASE OR LICENSE. THE SALE WILL BE HELD AS  
7 FOLLOWS:

8 DATE: \_\_\_\_\_

9 TIME: \_\_\_\_\_

10 PLACE: \_\_\_\_\_

11 YOU MAY ATTEND THE SALE AND BRING BIDDERS IF YOU WANT.

12 [FOR A PRIVATE DISPOSITION:]

13 WE WILL SELL [DESCRIBE COLLATERAL] AT PRIVATE SALE SOMETIME  
14 AFTER [DATE]. A SALE COULD INCLUDE A LEASE OR LICENSE.

15 THE MONEY THAT WE GET FROM THE SALE (AFTER PAYING OUR COSTS)  
16 WILL REDUCE THE AMOUNT YOU OWE. IF WE GET LESS MONEY THAN YOU  
17 OWE, YOU [WILL OR WILL NOT, AS APPLICABLE] STILL OWE US THE  
18 DIFFERENCE. IF WE GET MORE MONEY THAN YOU OWE, YOU WILL GET THE  
19 EXTRA MONEY, UNLESS WE MUST PAY IT TO SOMEONE ELSE.

20 YOU CAN GET THE PROPERTY BACK AT ANY TIME BEFORE WE SELL IT  
21 BY PAYING US THE FULL AMOUNT YOU OWE (NOT JUST THE PAST DUE  
22 PAYMENTS), INCLUDING OUR EXPENSES. TO LEARN THE EXACT AMOUNT YOU  
23 MUST PAY, CALL US AT [TELEPHONE NUMBER].

24 IF YOU WANT US TO EXPLAIN TO YOU IN WRITING HOW WE HAVE FIG-  
25 URED THE AMOUNT THAT YOU OWE US, YOU MAY CALL US AT [TELEPHONE  
26 NUMBER] [OR WRITE US AT [SECURED PARTY'S ADDRESS]] AND REQUEST A  
27 WRITTEN EXPLANATION. [WE WILL CHARGE YOU \$\_\_\_\_\_ FOR

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

278

1 THE EXPLANATION IF WE SENT YOU ANOTHER WRITTEN EXPLANATION OF THE  
2 AMOUNT YOU OWE US WITHIN THE LAST 6 MONTHS.]

3 IF YOU NEED MORE INFORMATION ABOUT THE SALE, CALL US AT  
4 [TELEPHONE NUMBER] [OR WRITE US AT [SECURED PARTY'S ADDRESS]].

5 WE ARE SENDING THIS NOTICE TO THE FOLLOWING OTHER PEOPLE WHO  
6 HAVE AN INTEREST IN [DESCRIBE COLLATERAL] OR WHO OWE MONEY UNDER  
7 YOUR AGREEMENT: [NAMES OF ALL OTHER DEBTORS AND OBLIGORS, IF  
8 ANY].

9 [END OF FORM]

10 (D) A NOTIFICATION IN THE FORM OF SUBDIVISION (C) IS SUFFI-  
11 CIENT, EVEN IF ADDITIONAL INFORMATION APPEARS AT THE END OF THE  
12 FORM.

13 (E) A NOTIFICATION IN THE FORM OF SUBDIVISION (C) IS SUFFI-  
14 CIENT, EVEN IF IT INCLUDES ERRORS IN INFORMATION NOT REQUIRED BY  
15 SUBDIVISION (A), UNLESS THE ERROR IS MISLEADING WITH RESPECT TO  
16 RIGHTS ARISING UNDER THIS ARTICLE.

17 (F) IF A NOTIFICATION UNDER THIS SECTION IS NOT IN THE FORM  
18 OF SUBDIVISION (C), LAW OTHER THAN THIS ARTICLE DETERMINES THE  
19 EFFECT OF INCLUDING INFORMATION NOT REQUIRED BY SUBDIVISION (A).

20 SEC. 9615. (1) A SECURED PARTY SHALL APPLY OR PAY OVER FOR  
21 APPLICATION THE CASH PROCEEDS OF DISPOSITION UNDER SECTION 9610  
22 IN THE FOLLOWING ORDER:

23 (A) TO THE REASONABLE EXPENSES OF RETAKING, HOLDING, PREPAR-  
24 ING FOR DISPOSITION, PROCESSING, AND DISPOSING, AND, TO THE  
25 EXTENT PROVIDED FOR BY AGREEMENT AND NOT PROHIBITED BY LAW, REA-  
26 SONABLE ATTORNEY FEES AND LEGAL EXPENSES INCURRED BY THE SECURED  
27 PARTY.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

279

1 (B) TO THE SATISFACTION OF OBLIGATIONS SECURED BY THE  
2 SECURITY INTEREST OR AGRICULTURAL LIEN UNDER WHICH THE DISPOSI-  
3 TION IS MADE.

4 (C) TO THE SATISFACTION OF OBLIGATIONS SECURED BY ANY SUBOR-  
5 DINATE SECURITY INTEREST IN OR OTHER SUBORDINATE LIEN ON THE COL-  
6 LATERAL IF BOTH OF THE FOLLOWING, IF APPLICABLE, ARE MET:

7 (i) THE SECURED PARTY RECEIVES FROM THE HOLDER OF THE SUBOR-  
8 DINATE SECURITY INTEREST OR OTHER LIEN AN AUTHENTICATED DEMAND  
9 FOR PROCEEDS BEFORE DISTRIBUTION OF THE PROCEEDS IS COMPLETED.

10 (ii) IN A CASE IN WHICH A CONSIGNOR HAS AN INTEREST IN THE  
11 COLLATERAL, THE SUBORDINATE SECURITY INTEREST OR OTHER LIEN IS  
12 SENIOR TO THE INTEREST OF THE CONSIGNOR.

13 (D) TO A SECURED PARTY THAT IS A CONSIGNOR OF THE COLLATERAL  
14 IF THE SECURED PARTY RECEIVES FROM THE CONSIGNOR AN AUTHENTICATED  
15 DEMAND FOR PROCEEDS BEFORE DISTRIBUTION OF THE PROCEEDS IS  
16 COMPLETED.

17 (2) IF REQUESTED BY A SECURED PARTY, A HOLDER OF A SUBORDI-  
18 NATE SECURITY INTEREST OR OTHER LIEN SHALL FURNISH REASONABLE  
19 PROOF OF THE INTEREST OR LIEN WITHIN A REASONABLE TIME. UNLESS  
20 THE HOLDER DOES SO, THE SECURED PARTY NEED NOT COMPLY WITH THE  
21 HOLDER'S DEMAND UNDER SUBSECTION (1)(C).

22 (3) A SECURED PARTY NEED NOT APPLY OR PAY OVER FOR APPLICA-  
23 TION NONCASH PROCEEDS OF DISPOSITION UNDER SECTION 9610 UNLESS  
24 THE FAILURE TO DO SO WOULD BE COMMERCIALY UNREASONABLE. A  
25 SECURED PARTY THAT APPLIES OR PAYS OVER FOR APPLICATION NONCASH  
26 PROCEEDS SHALL DO SO IN A COMMERCIALY REASONABLE MANNER.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

280

1       (4) IF THE SECURITY INTEREST UNDER WHICH A DISPOSITION IS  
2 MADE SECURES PAYMENT OR PERFORMANCE OF AN OBLIGATION, AFTER  
3 MAKING THE PAYMENTS AND APPLICATIONS REQUIRED BY SUBSECTION (1)  
4 AND PERMITTED BY SUBSECTION (3), BOTH OF THE FOLLOWING APPLY:

5       (A) UNLESS SUBSECTION (1)(D) REQUIRES THE SECURED PARTY TO  
6 APPLY OR PAY OVER CASH PROCEEDS TO A CONSIGNOR, THE SECURED PARTY  
7 SHALL ACCOUNT TO AND PAY A DEBTOR FOR ANY SURPLUS.

8       (B) THE OBLIGOR IS LIABLE FOR ANY DEFICIENCY.

9       (5) IF THE UNDERLYING TRANSACTION IS A SALE OF ACCOUNTS,  
10 CHATTEL PAPER, PAYMENT INTANGIBLES, OR PROMISSORY NOTES, THE  
11 DEBTOR IS NOT ENTITLED TO ANY SURPLUS, AND THE OBLIGOR IS NOT  
12 LIABLE FOR ANY DEFICIENCY.

13       (6) THE SURPLUS OR DEFICIENCY FOLLOWING A DISPOSITION IS  
14 CALCULATED BASED ON THE AMOUNT OF PROCEEDS THAT WOULD HAVE BEEN  
15 REALIZED IN A DISPOSITION COMPLYING WITH THIS PART TO A TRANS-  
16 Feree OTHER THAN THE SECURED PARTY, A PERSON RELATED TO THE  
17 SECURED PARTY, OR A SECONDARY OBLIGOR IF BOTH OF THE FOLLOWING  
18 APPLY:

19       (A) THE TRANSFEREE IN THE DISPOSITION IS THE SECURED PARTY,  
20 A PERSON RELATED TO THE SECURED PARTY, OR A SECONDARY OBLIGOR.

21       (B) THE AMOUNT OF PROCEEDS OF THE DISPOSITION IS SIGNIFI-  
22 CANTLY BELOW THE RANGE OF PROCEEDS THAT A COMPLYING DISPOSITION  
23 TO A PERSON OTHER THAN THE SECURED PARTY, A PERSON RELATED TO THE  
24 SECURED PARTY, OR A SECONDARY OBLIGOR WOULD HAVE BROUGHT.

25       (7) ALL OF THE FOLLOWING APPLY TO A SECURED PARTY THAT  
26 RECEIVES CASH PROCEEDS OF A DISPOSITION IN GOOD FAITH AND WITHOUT  
27 KNOWLEDGE THAT THE RECEIPT VIOLATES THE RIGHTS OF THE HOLDER OF A



**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

281

1 SECURITY INTEREST OR OTHER LIEN THAT IS NOT SUBORDINATE TO THE  
2 SECURITY INTEREST OR AGRICULTURAL LIEN UNDER WHICH THE DISPOSI-  
3 TION IS MADE:

4 (A) THE SECURED PARTY TAKES THE CASH PROCEEDS FREE OF THE  
5 SECURITY INTEREST OR OTHER LIEN.

6 (B) THE SECURED PARTY IS NOT OBLIGATED TO APPLY THE PROCEEDS  
7 OF THE DISPOSITION TO THE SATISFACTION OF OBLIGATIONS SECURED BY  
8 THE SECURITY INTEREST OR OTHER LIEN.

9 (C) THE SECURED PARTY IS NOT OBLIGATED TO ACCOUNT TO OR PAY  
10 THE HOLDER OF THE SECURITY INTEREST OR OTHER LIEN FOR ANY  
11 SURPLUS.

12 SEC. 9616. (1) AS USED IN THIS SECTION:

13 (A) "EXPLANATION" MEANS A WRITING THAT DOES ALL OF THE  
14 FOLLOWING:

15 (i) STATES THE AMOUNT OF THE SURPLUS OR DEFICIENCY.

16 (ii) PROVIDES AN EXPLANATION IN ACCORDANCE WITH SUBSECTION  
17 (3) OF HOW THE SECURED PARTY CALCULATED THE SURPLUS OR  
18 DEFICIENCY.

19 (iii) STATES, IF APPLICABLE, THAT FUTURE DEBITS, CREDITS,  
20 CHARGES, INCLUDING ADDITIONAL CREDIT SERVICE CHARGES OR INTEREST,  
21 REBATES, AND EXPENSES MAY AFFECT THE AMOUNT OF THE SURPLUS OR  
22 DEFICIENCY.

23 (iv) PROVIDES A TELEPHONE NUMBER OR MAILING ADDRESS FROM  
24 WHICH ADDITIONAL INFORMATION CONCERNING THE TRANSACTION IS  
25 AVAILABLE.

26 (B) "REQUEST" MEANS A RECORD THAT MEETS ALL OF THE  
27 FOLLOWING:

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

282

- 1       (i) AUTHENTICATED BY A DEBTOR OR CONSUMER OBLIGOR.
- 2       (ii) REQUESTING THAT THE RECIPIENT PROVIDE AN EXPLANATION.
- 3       (iii) SENT AFTER DISPOSITION OF THE COLLATERAL UNDER SECTION
- 4 9610.
- 5       (2) IN A CONSUMER-GOODS TRANSACTION IN WHICH THE DEBTOR IS
- 6 ENTITLED TO A SURPLUS OR A CONSUMER OBLIGOR IS LIABLE FOR A DEFICIENCY UNDER SECTION 9615, THE SECURED PARTY SHALL DO BOTH OF THE
- 7 FOLLOWING:
- 8
- 9       (A) SEND AN EXPLANATION TO THE DEBTOR OR CONSUMER OBLIGOR,
- 10 AS APPLICABLE, AFTER THE DISPOSITION AND IN ACCORDANCE WITH BOTH
- 11 OF THE FOLLOWING:
- 12       (i) SENT BEFORE OR WHEN THE SECURED PARTY ACCOUNTS TO THE
- 13 DEBTOR AND PAYS ANY SURPLUS OR FIRST MAKES WRITTEN DEMAND ON THE
- 14 CONSUMER OBLIGOR AFTER THE DISPOSITION FOR PAYMENT OF THE
- 15 DEFICIENCY.
- 16       (ii) SENT WITHIN 14 DAYS AFTER RECEIPT OF A REQUEST.
- 17       (B) IN THE CASE OF A CONSUMER OBLIGOR WHO IS LIABLE FOR A
- 18 DEFICIENCY, WITHIN 14 DAYS AFTER RECEIPT OF A REQUEST, SEND TO
- 19 THE CONSUMER OBLIGOR A RECORD WAIVING THE SECURED PARTY'S RIGHT
- 20 TO A DEFICIENCY.
- 21       (3) TO COMPLY WITH SUBSECTION (1)(A)(ii), A WRITING MUST
- 22 PROVIDE THE FOLLOWING INFORMATION IN THE FOLLOWING ORDER:
- 23       (A) THE AGGREGATE AMOUNT OF OBLIGATIONS SECURED BY THE
- 24 SECURITY INTEREST UNDER WHICH THE DISPOSITION WAS MADE, AND, IF
- 25 THE AMOUNT REFLECTS A REBATE OF UNEARNED INTEREST OR CREDIT SERVICE CHARGE, AN INDICATION OF THAT FACT, CALCULATED AS OF A
- 26 SPECIFIED DATE, THAT IS 1 OF THE FOLLOWING:
- 27

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

283

1        (i) IF THE SECURED PARTY TAKES OR RECEIVES POSSESSION OF THE  
2 COLLATERAL AFTER DEFAULT, NOT MORE THAN 35 DAYS BEFORE THE  
3 SECURED PARTY TAKES OR RECEIVES POSSESSION.

4        (ii) IF THE SECURED PARTY TAKES OR RECEIVES POSSESSION OF  
5 THE COLLATERAL BEFORE DEFAULT OR DOES NOT TAKE POSSESSION OF THE  
6 COLLATERAL, NOT MORE THAN 35 DAYS BEFORE THE DISPOSITION.

7        (B) THE AMOUNT OF PROCEEDS OF THE DISPOSITION.

8        (C) THE AGGREGATE AMOUNT OF THE OBLIGATIONS AFTER DEDUCTING  
9 THE AMOUNT OF PROCEEDS.

10       (D) THE AMOUNT, IN THE AGGREGATE OR BY TYPE, AND TYPES OF  
11 EXPENSES, INCLUDING EXPENSES OF RETAKING, HOLDING, PREPARING FOR  
12 DISPOSITION, PROCESSING, AND DISPOSING OF THE COLLATERAL, AND  
13 ATTORNEY FEES SECURED BY THE COLLATERAL THAT ARE KNOWN TO THE  
14 SECURED PARTY AND RELATE TO THE CURRENT DISPOSITION.

15       (E) THE AMOUNT, IN THE AGGREGATE OR BY TYPE, AND TYPES OF  
16 CREDITS, INCLUDING REBATES OF INTEREST OR CREDIT SERVICE CHARGES,  
17 TO WHICH THE OBLIGOR IS KNOWN TO BE ENTITLED AND THAT ARE NOT  
18 REFLECTED IN THE AMOUNT IN SUBDIVISION (A).

19       (F) THE AMOUNT OF THE SURPLUS OR DEFICIENCY.

20       (4) A PARTICULAR PHRASING OF THE EXPLANATION IS NOT  
21 REQUIRED. AN EXPLANATION COMPLYING SUBSTANTIALLY WITH THE  
22 REQUIREMENTS OF SUBSECTION (1) IS SUFFICIENT, EVEN IF IT INCLUDES  
23 MINOR ERRORS THAT ARE NOT SERIOUSLY MISLEADING.

24       (5) A DEBTOR OR CONSUMER OBLIGOR IS ENTITLED WITHOUT CHARGE  
25 TO 1 RESPONSE TO A REQUEST UNDER THIS SECTION DURING ANY 6-MONTH  
26 PERIOD IN WHICH THE SECURED PARTY DID NOT SEND TO THE DEBTOR OR  
27 CONSUMER OBLIGOR AN EXPLANATION PURSUANT TO SUBSECTION (2)(A).

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

284

1 THE SECURED PARTY MAY REQUIRE PAYMENT OF A CHARGE NOT EXCEEDING  
2 \$25.00 FOR EACH ADDITIONAL RESPONSE.

3 SEC. 9617. (1) A SECURED PARTY'S DISPOSITION OF COLLATERAL  
4 AFTER DEFAULT DOES ALL OF THE FOLLOWING:

5 (A) TRANSFERS TO A TRANSFEREE FOR VALUE ALL OF THE DEBTOR'S  
6 RIGHTS IN THE COLLATERAL.

7 (B) DISCHARGES THE SECURITY INTEREST UNDER WHICH THE DISPO-  
8 SITION IS MADE.

9 (C) DISCHARGES ANY SUBORDINATE SECURITY INTEREST OR OTHER  
10 SUBORDINATE LIEN.

11 (2) A TRANSFEREE THAT ACTS IN GOOD FAITH TAKES FREE OF THE  
12 RIGHTS AND INTERESTS DESCRIBED IN SUBSECTION (1), EVEN IF THE  
13 SECURED PARTY FAILS TO COMPLY WITH THIS ARTICLE OR THE REQUIRE-  
14 MENTS OF ANY JUDICIAL PROCEEDING.

15 (3) IF A TRANSFEREE DOES NOT TAKE FREE OF THE RIGHTS AND  
16 INTERESTS DESCRIBED IN SUBSECTION (1), THE TRANSFEREE TAKES THE  
17 COLLATERAL SUBJECT TO ALL OF THE FOLLOWING:

18 (A) THE DEBTOR'S RIGHTS IN THE COLLATERAL.

19 (B) THE SECURITY INTEREST OR AGRICULTURAL LIEN UNDER WHICH  
20 THE DISPOSITION IS MADE.

21 (C) ANY OTHER SECURITY INTEREST OR OTHER LIEN.

22 SEC. 9618. (1) A SECONDARY OBLIGOR ACQUIRES THE RIGHTS AND  
23 BECOMES OBLIGATED TO PERFORM THE DUTIES OF THE SECURED PARTY  
24 AFTER ALL OF THE FOLLOWING:

25 (A) THE SECONDARY OBLIGOR RECEIVES AN ASSIGNMENT OF A  
26 SECURED OBLIGATION FROM THE SECURED PARTY.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

285

1       (B) THE SECONDARY OBLIGOR RECEIVES A TRANSFER OF COLLATERAL  
2 FROM THE SECURED PARTY AND AGREES TO ACCEPT THE RIGHTS AND ASSUME  
3 THE DUTIES OF THE SECURED PARTY.

4       (C) THE SECONDARY OBLIGOR IS SUBROGATED TO THE RIGHTS OF A  
5 SECURED PARTY WITH RESPECT TO COLLATERAL.

6       (2) AN ASSIGNMENT, TRANSFER, OR SUBROGATION DESCRIBED IN  
7 SUBSECTION (1) RESULTS IN BOTH OF THE FOLLOWING:

8       (A) IT IS NOT A DISPOSITION OF COLLATERAL UNDER SECTION  
9 9610.

10       (B) IT RELIEVES THE SECURED PARTY OF FURTHER DUTIES UNDER  
11 THIS ARTICLE.

12       SEC. 9619. (1) AS USED IN THIS SECTION, "TRANSFER  
13 STATEMENT" MEANS A RECORD AUTHENTICATED BY A SECURED PARTY STAT-  
14 ING ALL OF THE FOLLOWING:

15       (A) THAT THE DEBTOR HAS DEFAULTED IN CONNECTION WITH AN  
16 OBLIGATION SECURED BY SPECIFIED COLLATERAL.

17       (B) THAT THE SECURED PARTY HAS EXERCISED ITS POSTDEFAULT  
18 REMEDIES WITH RESPECT TO THE COLLATERAL.

19       (C) THAT, BY REASON OF THE EXERCISE, A TRANSFEREE HAS  
20 ACQUIRED THE RIGHTS OF THE DEBTOR IN THE COLLATERAL.

21       (D) THE NAME AND MAILING ADDRESS OF THE SECURED PARTY,  
22 DEBTOR, AND TRANSFEREE.

23       (2) A TRANSFER STATEMENT ENTITLES THE TRANSFEREE TO THE  
24 TRANSFER OF RECORD OF ALL RIGHTS OF THE DEBTOR IN THE COLLATERAL  
25 SPECIFIED IN THE STATEMENT IN ANY OFFICIAL FILING, RECORDING,  
26 REGISTRATION, OR CERTIFICATE-OF-TITLE SYSTEM COVERING THE  
27 COLLATERAL. IF A TRANSFER STATEMENT IS PRESENTED WITH THE

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

286

1 APPLICABLE FEE AND REQUEST FORM TO THE OFFICIAL OR OFFICE  
2 RESPONSIBLE FOR MAINTAINING THE SYSTEM, THE OFFICIAL OR OFFICE  
3 SHALL DO ALL OF THE FOLLOWING:

4 (A) ACCEPT THE TRANSFER STATEMENT.

5 (B) PROMPTLY AMEND ITS RECORDS TO REFLECT THE TRANSFER.

6 (C) IF APPLICABLE, ISSUE A NEW APPROPRIATE CERTIFICATE OF  
7 TITLE IN THE NAME OF THE TRANSFEREE.

8 (3) A TRANSFER OF THE RECORD OR LEGAL TITLE TO COLLATERAL TO  
9 A SECURED PARTY UNDER SUBSECTION (2) OR OTHERWISE IS NOT OF  
10 ITSELF A DISPOSITION OF COLLATERAL UNDER THIS ARTICLE AND DOES  
11 NOT OF ITSELF RELIEVE THE SECURED PARTY OF ITS DUTIES UNDER THIS  
12 ARTICLE.

13 SEC. 9620. (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION  
14 (7), A SECURED PARTY MAY ACCEPT COLLATERAL IN FULL OR PARTIAL  
15 SATISFACTION OF THE OBLIGATION IT SECURES ONLY IF ALL OF THE FOL-  
16 LOWING ARE MET:

17 (A) THE DEBTOR CONSENTS TO THE ACCEPTANCE UNDER SUBSECTION  
18 (3).

19 (B) THE SECURED PARTY DOES NOT RECEIVE, WITHIN THE TIME SET  
20 FORTH IN SUBSECTION (4), A NOTIFICATION OF OBJECTION TO THE PRO-  
21 POSAL AUTHENTICATED BY 1 OF THE FOLLOWING:

22 (i) A PERSON TO WHICH THE SECURED PARTY WAS REQUIRED TO SEND  
23 A PROPOSAL UNDER SECTION 9621.

24 (ii) ANY OTHER PERSON, OTHER THAN THE DEBTOR, HOLDING AN  
25 INTEREST IN THE COLLATERAL SUBORDINATE TO THE SECURITY INTEREST  
26 THAT IS THE SUBJECT OF THE PROPOSAL.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

287

1 (C) IF THE COLLATERAL IS CONSUMER GOODS, THE COLLATERAL IS  
2 NOT IN THE POSSESSION OF THE DEBTOR WHEN THE DEBTOR CONSENTS TO  
3 THE ACCEPTANCE.

4 (D) SUBSECTION (5) DOES NOT REQUIRE THE SECURED PARTY TO  
5 DISPOSE OF THE COLLATERAL OR THE DEBTOR WAIVES THE REQUIREMENT  
6 PURSUANT TO SECTION 9624.

7 (2) A PURPORTED OR APPARENT ACCEPTANCE OF COLLATERAL UNDER  
8 THIS SECTION IS INEFFECTIVE UNLESS BOTH OF THE FOLLOWING OCCUR:

9 (A) THE SECURED PARTY CONSENTS TO THE ACCEPTANCE IN AN  
10 AUTHENTICATED RECORD OR SENDS A PROPOSAL TO THE DEBTOR.

11 (B) THE CONDITIONS OF SUBSECTION (1) ARE MET.

12 (3) ALL OF THE FOLLOWING APPLY FOR PURPOSES OF THIS  
13 SECTION:

14 (A) A DEBTOR CONSENTS TO AN ACCEPTANCE OF COLLATERAL IN PAR-  
15 TIAL SATISFACTION OF THE OBLIGATION IT SECURES ONLY IF THE DEBTOR  
16 AGREES TO THE TERMS OF THE ACCEPTANCE IN A RECORD AUTHENTICATED  
17 AFTER DEFAULT.

18 (B) A DEBTOR CONSENTS TO AN ACCEPTANCE OF COLLATERAL IN FULL  
19 SATISFACTION OF THE OBLIGATION IT SECURES ONLY IF THE DEBTOR  
20 AGREES TO THE TERMS OF THE ACCEPTANCE IN A RECORD AUTHENTICATED  
21 AFTER DEFAULT OR THE SECURED PARTY MEETS ALL OF THE FOLLOWING  
22 REQUIREMENTS:

23 (i) SENDS TO THE DEBTOR AFTER DEFAULT A PROPOSAL THAT IS  
24 UNCONDITIONAL OR SUBJECT ONLY TO A CONDITION THAT COLLATERAL NOT  
25 IN THE POSSESSION OF THE SECURED PARTY BE PRESERVED OR  
26 MAINTAINED.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

288

1       (ii) IN THE PROPOSAL, PROPOSES TO ACCEPT COLLATERAL IN FULL  
2 SATISFACTION OF THE OBLIGATION IT SECURES.

3       (iii) DOES NOT RECEIVE A NOTIFICATION OF OBJECTION AUTHENTI-  
4 CATED BY THE DEBTOR WITHIN 20 DAYS AFTER THE PROPOSAL IS SENT.

5       (4) TO BE EFFECTIVE UNDER SUBSECTION (1)(B), A NOTIFICATION  
6 OF OBJECTION MUST BE RECEIVED BY THE SECURED PARTY WITHIN OR  
7 BEFORE 1 OF THE FOLLOWING:

8       (A) IN THE CASE OF A PERSON TO WHICH THE PROPOSAL WAS SENT  
9 PURSUANT TO SECTION 9621, WITHIN 20 DAYS AFTER NOTIFICATION WAS  
10 SENT TO THAT PERSON.

11       (B) IN OTHER CASES, 1 OF THE FOLLOWING:

12       (i) WITHIN 20 DAYS AFTER THE LAST NOTIFICATION WAS SENT PUR-  
13 SUANT TO SECTION 9621.

14       (ii) IF A NOTIFICATION WAS NOT SENT, BEFORE THE DEBTOR CON-  
15 SENDS TO THE ACCEPTANCE UNDER SUBSECTION (3).

16       (5) A SECURED PARTY THAT HAS TAKEN POSSESSION OF COLLATERAL  
17 SHALL DISPOSE OF THE COLLATERAL PURSUANT TO SECTION 9610 WITHIN  
18 THE TIME SPECIFIED IN SUBSECTION (6) IF 1 OF THE FOLLOWING IS  
19 MET:

20       (A) SIXTY PERCENT OF THE CASH PRICE HAS BEEN PAID IN THE  
21 CASE OF A PURCHASE-MONEY SECURITY INTEREST IN CONSUMER GOODS.

22       (B) SIXTY PERCENT OF THE PRINCIPAL AMOUNT OF THE OBLIGATION  
23 SECURED HAS BEEN PAID IN THE CASE OF A NON-PURCHASE-MONEY SECUR-  
24 ITY INTEREST IN CONSUMER GOODS.

25       (6) TO COMPLY WITH SUBSECTION (5), THE SECURED PARTY SHALL  
26 DISPOSE OF THE COLLATERAL WITHIN 1 OF THE FOLLOWING:



**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

289

1 (A) WITHIN 90 DAYS AFTER TAKING POSSESSION.

2 (B) WITHIN ANY LONGER PERIOD TO WHICH THE DEBTOR AND ALL  
3 SECONDARY OBLIGORS HAVE AGREED IN AN AGREEMENT TO THAT EFFECT  
4 ENTERED INTO AND AUTHENTICATED AFTER DEFAULT.

5 (7) IN A CONSUMER TRANSACTION, A SECURED PARTY MAY NOT  
6 ACCEPT COLLATERAL IN PARTIAL SATISFACTION OF THE OBLIGATION IT  
7 SECURES.

8 SEC. 9621. (1) A SECURED PARTY THAT DESIRES TO ACCEPT COL-  
9 LATERAL IN FULL OR PARTIAL SATISFACTION OF THE OBLIGATION IT  
10 SECURES SHALL SEND ITS PROPOSAL TO ALL OF THE FOLLOWING:

11 (A) ANY PERSON FROM WHICH THE SECURED PARTY HAS RECEIVED,  
12 BEFORE THE DEBTOR CONSENTED TO THE ACCEPTANCE, AN AUTHENTICATED  
13 NOTIFICATION OF A CLAIM OF AN INTEREST IN THE COLLATERAL.

14 (B) ANY OTHER SECURED PARTY OR LIENHOLDER THAT, 10 DAYS  
15 BEFORE THE DEBTOR CONSENTED TO THE ACCEPTANCE, HELD A SECURITY  
16 INTEREST IN OR OTHER LIEN ON THE COLLATERAL PERFECTED BY THE  
17 FILING OF A FINANCING STATEMENT THAT MET ALL OF THE FOLLOWING:

18 (i) IDENTIFIED THE COLLATERAL.

19 (ii) WAS INDEXED UNDER THE DEBTOR'S NAME AS OF THAT DATE.

20 (iii) WAS FILED IN THE OFFICE OR OFFICES IN WHICH TO FILE A  
21 FINANCING STATEMENT AGAINST THE DEBTOR COVERING THE COLLATERAL AS  
22 OF THAT DATE.

23 (C) ANY OTHER SECURED PARTY THAT, 10 DAYS BEFORE THE DEBTOR  
24 CONSENTED TO THE ACCEPTANCE, HELD A SECURITY INTEREST IN THE COL-  
25 LATERAL PERFECTED BY COMPLIANCE WITH A STATUTE, REGULATION, OR  
26 TREATY DESCRIBED IN SECTION 9311(1).

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

290

1       (2) A SECURED PARTY THAT DESIRES TO ACCEPT COLLATERAL IN  
2 PARTIAL SATISFACTION OF THE OBLIGATION IT SECURES SHALL SEND ITS  
3 PROPOSAL TO ANY SECONDARY OBLIGOR IN ADDITION TO THE PERSONS  
4 DESCRIBED IN SUBSECTION (1).

5       SEC. 9622. (1) A SECURED PARTY'S ACCEPTANCE OF COLLATERAL  
6 IN FULL OR PARTIAL SATISFACTION OF THE OBLIGATION IT SECURES DOES  
7 ALL OF THE FOLLOWING:

8       (A) DISCHARGES THE OBLIGATION TO THE EXTENT CONSENTED TO BY  
9 THE DEBTOR.

10       (B) TRANSFERS TO THE SECURED PARTY ALL OF A DEBTOR'S RIGHTS  
11 IN THE COLLATERAL.

12       (C) DISCHARGES THE SECURITY INTEREST OR AGRICULTURAL LIEN  
13 THAT IS THE SUBJECT OF THE DEBTOR'S CONSENT AND ANY SUBORDINATE  
14 SECURITY INTEREST OR OTHER SUBORDINATE LIEN.

15       (D) TERMINATES ANY OTHER SUBORDINATE INTEREST.

16       (2) A SUBORDINATE INTEREST IS DISCHARGED OR TERMINATED UNDER  
17 SUBSECTION (1), EVEN IF THE SECURED PARTY FAILS TO COMPLY WITH  
18 THIS ARTICLE.

19       SEC. 9623. (1) A DEBTOR, ANY SECONDARY OBLIGOR, OR ANY  
20 OTHER SECURED PARTY OR LIENHOLDER MAY REDEEM COLLATERAL.

21       (2) TO REDEEM COLLATERAL, A PERSON SHALL TENDER BOTH OF THE  
22 FOLLOWING:

23       (A) FULFILLMENT OF ALL OBLIGATIONS SECURED BY THE  
24 COLLATERAL.

25       (B) THE REASONABLE EXPENSES AND ATTORNEY FEES DESCRIBED IN  
26 SECTION 9615(1)(A).

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

291

1 (3) A REDEMPTION MAY OCCUR AT ANY TIME BEFORE A SECURED  
2 PARTY HAS DONE 1 OF THE FOLLOWING:

3 (A) HAS COLLECTED COLLATERAL UNDER SECTION 9607.

4 (B) HAS DISPOSED OF COLLATERAL OR ENTERED INTO A CONTRACT  
5 FOR ITS DISPOSITION UNDER SECTION 9610.

6 (C) HAS ACCEPTED COLLATERAL IN FULL OR PARTIAL SATISFACTION  
7 OF THE OBLIGATION IT SECURES UNDER SECTION 9622.

8 SEC. 9624. (1) A DEBTOR OR SECONDARY OBLIGOR MAY WAIVE THE  
9 RIGHT TO NOTIFICATION OF DISPOSITION OF COLLATERAL UNDER SECTION  
10 9611 ONLY BY AN AGREEMENT TO THAT EFFECT ENTERED INTO AND AUTHEN-  
11 TICATED AFTER DEFAULT.

12 (2) A DEBTOR MAY WAIVE THE RIGHT TO REQUIRE DISPOSITION OF  
13 COLLATERAL UNDER SECTION 9620(5) ONLY BY AN AGREEMENT TO THAT  
14 EFFECT ENTERED INTO AND AUTHENTICATED AFTER DEFAULT.

15 (3) EXCEPT IN A CONSUMER-GOODS TRANSACTION, A DEBTOR OR SEC-  
16 ONDARY OBLIGOR MAY WAIVE THE RIGHT TO REDEEM COLLATERAL UNDER  
17 SECTION 9623 ONLY BY AN AGREEMENT TO THAT EFFECT ENTERED INTO AND  
18 AUTHENTICATED AFTER DEFAULT.

19 SUBPART 2. NONCOMPLIANCE WITH ARTICLE

20 SEC. 9625. (1) IF IT IS ESTABLISHED THAT A SECURED PARTY IS  
21 NOT PROCEEDING IN ACCORDANCE WITH THIS ARTICLE, A COURT MAY ORDER  
22 OR RESTRAIN COLLECTION, ENFORCEMENT, OR DISPOSITION OF COLLATERAL  
23 ON APPROPRIATE TERMS AND CONDITIONS.

24 (2) SUBJECT TO SUBSECTIONS (3), (4), AND (6), A PERSON IS  
25 LIABLE FOR DAMAGES IN THE AMOUNT OF ANY LOSS CAUSED BY A FAILURE  
26 TO COMPLY WITH THIS ARTICLE. LOSS CAUSED BY A FAILURE TO COMPLY

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

292

1 MAY INCLUDE LOSS RESULTING FROM THE DEBTOR'S INABILITY TO OBTAIN,  
2 OR INCREASED COSTS OF, ALTERNATIVE FINANCING.

3 (3) EXCEPT AS OTHERWISE PROVIDED IN SECTION 9628, BOTH OF  
4 THE FOLLOWING APPLY:

5 (A) A PERSON THAT, AT THE TIME OF THE FAILURE, WAS A DEBTOR,  
6 WAS AN OBLIGOR, OR HELD A SECURITY INTEREST IN OR OTHER LIEN ON  
7 THE COLLATERAL MAY RECOVER DAMAGES UNDER SUBSECTION (2) FOR ITS  
8 LOSS.

9 (B) IF THE COLLATERAL IS CONSUMER GOODS, A PERSON THAT WAS A  
10 DEBTOR OR A SECONDARY OBLIGOR AT THE TIME A SECURED PARTY FAILED  
11 TO COMPLY WITH THIS PART MAY RECOVER FOR THAT FAILURE IN ANY  
12 EVENT AN AMOUNT NOT LESS THAN THE CREDIT SERVICE CHARGE PLUS 10%  
13 OF THE PRINCIPAL AMOUNT OF THE OBLIGATION OR THE TIME-PRICE DIF-  
14 FERENTIAL PLUS 10% OF THE CASH PRICE.

15 (4) A DEBTOR WHOSE DEFICIENCY IS ELIMINATED UNDER SECTION  
16 9626 MAY RECOVER DAMAGES FOR THE LOSS OF ANY SURPLUS. HOWEVER, A  
17 DEBTOR OR SECONDARY OBLIGOR WHOSE DEFICIENCY IS ELIMINATED OR  
18 REDUCED UNDER SECTION 9626 MAY NOT OTHERWISE RECOVER UNDER SUB-  
19 SECTION (2) FOR NONCOMPLIANCE WITH THE PROVISIONS OF THIS PART  
20 RELATING TO COLLECTION, ENFORCEMENT, DISPOSITION, OR ACCEPTANCE.

21 (5) IN ADDITION TO ANY DAMAGES RECOVERABLE UNDER SUBSECTION  
22 (2), THE DEBTOR, CONSUMER OBLIGOR, OR PERSON NAMED AS A DEBTOR IN  
23 A FILED RECORD, AS APPLICABLE, MAY RECOVER \$500.00 IN EACH CASE  
24 FROM A PERSON THAT DOES 1 OR MORE OF THE FOLLOWING:

25 (A) FAILS TO COMPLY WITH SECTION 9208.

26 (B) FAILS TO COMPLY WITH SECTION 9209.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

293

1 (C) FILES A RECORD THAT THE PERSON IS NOT ENTITLED TO FILE  
2 UNDER SECTION 9509(1).

3 (D) FAILS TO CAUSE THE SECURED PARTY OF RECORD TO FILE OR  
4 SEND A TERMINATION STATEMENT AS REQUIRED BY SECTION 9513(1) OR  
5 (3).

6 (E) FAILS TO COMPLY WITH SECTION 9616(2)(A) AND WHOSE FAIL-  
7 URE IS PART OF A PATTERN, OR CONSISTENT WITH A PRACTICE, OF  
8 NONCOMPLIANCE.

9 (F) FAILS TO COMPLY WITH SECTION 9616(2)(B).

10 (6) A DEBTOR OR CONSUMER OBLIGOR MAY RECOVER DAMAGES UNDER  
11 SUBSECTION (2) AND, IN ADDITION, \$500.00 IN EACH CASE FROM A  
12 PERSON THAT, WITHOUT REASONABLE CAUSE, FAILS TO COMPLY WITH A  
13 REQUEST UNDER SECTION 9210. A RECIPIENT OF A REQUEST UNDER SEC-  
14 TION 9210 THAT NEVER CLAIMED AN INTEREST IN THE COLLATERAL OR  
15 OBLIGATIONS THAT ARE THE SUBJECT OF A REQUEST UNDER THAT SECTION  
16 HAS A REASONABLE EXCUSE FOR FAILURE TO COMPLY WITH THE REQUEST  
17 WITHIN THE MEANING OF THIS SUBSECTION.

18 (7) IF A SECURED PARTY FAILS TO COMPLY WITH A REQUEST  
19 REGARDING A LIST OF COLLATERAL OR A STATEMENT OF ACCOUNT UNDER  
20 SECTION 9210, THE SECURED PARTY MAY CLAIM A SECURITY INTEREST  
21 ONLY AS SHOWN IN THE LIST OR STATEMENT INCLUDED IN THE REQUEST AS  
22 AGAINST A PERSON THAT IS REASONABLY MISLED BY THE FAILURE.

23 SEC. 9626. (1) IN AN ACTION ARISING FROM A TRANSACTION,  
24 OTHER THAN A CONSUMER TRANSACTION, IN WHICH THE AMOUNT OF A DEFICI-  
25 CIENCY OR SURPLUS IS IN ISSUE, THE FOLLOWING RULES APPLY:

26 (A) A SECURED PARTY NEED NOT PROVE COMPLIANCE WITH THE  
27 PROVISIONS OF THIS PART RELATING TO COLLECTION, ENFORCEMENT,

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

294

1 DISPOSITION, OR ACCEPTANCE UNLESS THE DEBTOR OR A SECONDARY  
2 OBLIGOR PLACES THE SECURED PARTY'S COMPLIANCE IN ISSUE.

3 (B) IF THE SECURED PARTY'S COMPLIANCE IS PLACED IN ISSUE,  
4 THE SECURED PARTY HAS THE BURDEN OF ESTABLISHING THAT THE COLLEC-  
5 TION, ENFORCEMENT, DISPOSITION, OR ACCEPTANCE WAS CONDUCTED IN  
6 ACCORDANCE WITH THIS PART.

7 (C) EXCEPT AS OTHERWISE PROVIDED IN SECTION 9628, IF A  
8 SECURED PARTY FAILS TO PROVE THAT THE COLLECTION, ENFORCEMENT,  
9 DISPOSITION, OR ACCEPTANCE WAS CONDUCTED IN ACCORDANCE WITH THE  
10 PROVISIONS OF THIS PART RELATING TO COLLECTION, ENFORCEMENT, DIS-  
11 POSITION, OR ACCEPTANCE, THE LIABILITY OF A DEBTOR OR A SECONDARY  
12 OBLIGOR FOR A DEFICIENCY IS LIMITED TO AN AMOUNT BY WHICH THE SUM  
13 OF THE SECURED OBLIGATION, EXPENSES, AND ATTORNEY FEES EXCEEDS  
14 THE GREATER OF 1 OF THE FOLLOWING:

15 (i) THE PROCEEDS OF THE COLLECTION, ENFORCEMENT, DISPOSI-  
16 TION, OR ACCEPTANCE.

17 (ii) THE AMOUNT OF PROCEEDS THAT WOULD HAVE BEEN REALIZED  
18 HAD THE NONCOMPLYING SECURED PARTY PROCEEDED IN ACCORDANCE WITH  
19 THE PROVISIONS OF THIS PART RELATING TO COLLECTION, ENFORCEMENT,  
20 DISPOSITION, OR ACCEPTANCE.

21 (D) FOR PURPOSES OF SUBDIVISION (C)(ii), THE AMOUNT OF PRO-  
22 CEEDS THAT WOULD HAVE BEEN REALIZED IS EQUAL TO THE SUM OF THE  
23 SECURED OBLIGATION, EXPENSES, AND ATTORNEY FEES UNLESS THE  
24 SECURED PARTY PROVES THAT THE AMOUNT IS LESS THAN THAT SUM.

25 (E) IF A DEFICIENCY OR SURPLUS IS CALCULATED UNDER SECTION  
26 9615(6), THE DEBTOR OR OBLIGOR HAS THE BURDEN OF ESTABLISHING  
27 THAT THE AMOUNT OF PROCEEDS OF THE DISPOSITION IS SIGNIFICANTLY

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

295

1 BELOW THE RANGE OF PRICES THAT A COMPLYING DISPOSITION TO A  
2 PERSON OTHER THAN THE SECURED PARTY, A PERSON RELATED TO THE  
3 SECURED PARTY, OR A SECONDARY OBLIGOR WOULD HAVE BROUGHT.

4 (2) THE LIMITATION OF THE RULES IN SUBSECTION (1) TO TRANS-  
5 ACTIONS OTHER THAN CONSUMER TRANSACTIONS IS INTENDED TO LEAVE TO  
6 THE COURT THE DETERMINATION OF THE PROPER RULES IN CONSUMER  
7 TRANSACTIONS. THE COURT MAY NOT INFER FROM THAT LIMITATION THE  
8 NATURE OF THE PROPER RULE IN CONSUMER TRANSACTIONS AND MAY CON-  
9 TINUE TO APPLY ESTABLISHED APPROACHES.

10 SEC. 9627. (1) THE FACT THAT A GREATER AMOUNT COULD HAVE  
11 BEEN OBTAINED BY A COLLECTION, ENFORCEMENT, DISPOSITION, OR  
12 ACCEPTANCE AT A DIFFERENT TIME OR IN A DIFFERENT METHOD FROM THAT  
13 SELECTED BY THE SECURED PARTY IS NOT OF ITSELF SUFFICIENT TO PRE-  
14 CLUDE THE SECURED PARTY FROM ESTABLISHING THAT THE COLLECTION,  
15 ENFORCEMENT, DISPOSITION, OR ACCEPTANCE WAS MADE IN A COMMER-  
16 Cially REASONABLE MANNER.

17 (2) A DISPOSITION OF COLLATERAL IS MADE IN A COMMERCIALY  
18 REASONABLE MANNER IF THE DISPOSITION IS MADE IN THE USUAL MANNER  
19 ON ANY RECOGNIZED MARKET, AT THE PRICE CURRENT IN ANY RECOGNIZED  
20 MARKET AT THE TIME OF THE DISPOSITION, OR OTHERWISE IN CONFORMITY  
21 WITH REASONABLE COMMERCIAL PRACTICES AMONG DEALERS IN THE TYPE OF  
22 PROPERTY THAT WAS THE SUBJECT OF THE DISPOSITION.

23 (3) A COLLECTION, ENFORCEMENT, DISPOSITION, OR ACCEPTANCE IS  
24 COMMERCIALY REASONABLE IF IT HAS BEEN APPROVED IN A JUDICIAL  
25 PROCEEDING, BY A BONA FIDE CREDITORS' COMMITTEE, BY A REPRESENTA-  
26 TIVE OF CREDITORS, OR BY AN ASSIGNEE FOR THE BENEFIT OF  
27 CREDITORS.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

296

1       (4) APPROVAL UNDER SUBSECTION (3) NEED NOT BE OBTAINED, AND  
2 LACK OF APPROVAL DOES NOT MEAN THAT THE COLLECTION, ENFORCEMENT,  
3 DISPOSITION, OR ACCEPTANCE IS NOT COMMERCIALY REASONABLE.

4       SEC. 9628. (1) UNLESS A SECURED PARTY KNOWS THAT A PERSON  
5 IS A DEBTOR OR OBLIGOR, KNOWS THE IDENTITY OF THE PERSON, AND  
6 KNOWS HOW TO COMMUNICATE WITH THE PERSON, BOTH OF THE FOLLOWING  
7 APPLY:

8       (A) THE SECURED PARTY IS NOT LIABLE TO THE PERSON, OR TO A  
9 SECURED PARTY OR LIENHOLDER THAT HAS FILED A FINANCING STATEMENT  
10 AGAINST THE PERSON, FOR FAILURE TO COMPLY WITH THIS ARTICLE.

11       (B) THE SECURED PARTY'S FAILURE TO COMPLY WITH THIS ARTICLE  
12 DOES NOT AFFECT THE LIABILITY OF THE PERSON FOR A DEFICIENCY.

13       (2) A SECURED PARTY IS NOT LIABLE BECAUSE OF ITS STATUS AS  
14 SECURED PARTY TO EITHER OF THE FOLLOWING:

15       (A) TO A PERSON THAT IS A DEBTOR OR OBLIGOR, UNLESS THE  
16 SECURED PARTY KNOWS ALL OF THE FOLLOWING:

17       (i) THAT THE PERSON IS A DEBTOR OR OBLIGOR.

18       (ii) THE IDENTITY OF THE PERSON.

19       (iii) HOW TO COMMUNICATE WITH THE PERSON.

20       (B) TO A SECURED PARTY OR LIENHOLDER THAT HAS FILED A  
21 FINANCING STATEMENT AGAINST A PERSON, UNLESS THE SECURED PARTY  
22 KNOWS BOTH OF THE FOLLOWING:

23       (i) THAT THE PERSON IS A DEBTOR.

24       (ii) THE IDENTITY OF THE PERSON.

25       (3) A SECURED PARTY IS NOT LIABLE TO ANY PERSON, AND A  
26 PERSON'S LIABILITY FOR A DEFICIENCY IS NOT AFFECTED, BECAUSE OF  
27 ANY ACT OR OMISSION ARISING OUT OF THE SECURED PARTY'S REASONABLE



**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

297

1 BELIEF THAT A TRANSACTION IS NOT A CONSUMER-GOODS TRANSACTION OR  
2 A CONSUMER TRANSACTION OR THAT GOODS ARE NOT CONSUMER GOODS, IF  
3 THE SECURED PARTY'S BELIEF IS BASED ON ITS REASONABLE RELIANCE ON  
4 1 OR MORE OF THE FOLLOWING:

5 (A) A DEBTOR'S REPRESENTATION CONCERNING THE PURPOSE FOR  
6 WHICH COLLATERAL WAS TO BE USED, ACQUIRED, OR HELD.

7 (B) AN OBLIGOR'S REPRESENTATION CONCERNING THE PURPOSE FOR  
8 WHICH A SECURED OBLIGATION WAS INCURRED.

9 (4) A SECURED PARTY IS NOT LIABLE TO ANY PERSON UNDER SEC-  
10 TION 9625(3)(B) FOR ITS FAILURE TO COMPLY WITH SECTION 9616.

11 (5) A SECURED PARTY IS NOT LIABLE UNDER SECTION 9625(3)(B)  
12 MORE THAN ONCE WITH RESPECT TO ANY 1 SECURED OBLIGATION.

13 PART 7

14 TRANSITION

15 SEC. 9701. AS USED IN THIS PART, "THIS AMENDATORY ACT"  
16 MEANS THE AMENDATORY ACT THAT ADDED THIS PART.

17 SEC. 9702. (1) EXCEPT AS OTHERWISE PROVIDED IN THIS PART,  
18 THIS AMENDATORY ACT APPLIES TO A TRANSACTION OR LIEN WITHIN ITS  
19 SCOPE, EVEN IF THE TRANSACTION OR LIEN WAS ENTERED INTO OR CRE-  
20 ATED BEFORE THIS AMENDATORY ACT TAKES EFFECT.

21 (2) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3) AND SEC-  
22 TIONS 9703 THROUGH 9709, BOTH OF THE FOLLOWING APPLY:

23 (A) TRANSACTIONS AND LIENS THAT WERE NOT GOVERNED BY THIS  
24 ARTICLE BEFORE THIS AMENDATORY ACT TAKES EFFECT, WERE VALIDLY  
25 ENTERED INTO OR CREATED BEFORE THIS AMENDATORY ACT TAKES EFFECT,  
26 AND WOULD BE SUBJECT TO THIS AMENDATORY ACT IF THEY HAD BEEN  
27 ENTERED INTO OR CREATED AFTER THIS AMENDATORY ACT TAKES EFFECT,

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

298

1 AND THE RIGHTS, DUTIES, AND INTERESTS FLOWING FROM THOSE  
2 TRANSACTIONS AND LIENS REMAIN VALID AFTER THIS AMENDATORY ACT  
3 TAKES EFFECT.

4 (B) THE TRANSACTIONS AND LIENS MAY BE TERMINATED, COMPLETED,  
5 CONSUMMATED, AND ENFORCED AS REQUIRED OR PERMITTED BY THIS AMEN-  
6 DATORY ACT OR BY THE LAW THAT OTHERWISE WOULD APPLY IF THIS AMEN-  
7 DATORY ACT HAD NOT TAKEN EFFECT.

8 (3) THIS AMENDATORY ACT DOES NOT AFFECT AN ACTION, CASE, OR  
9 PROCEEDING COMMENCED BEFORE THIS AMENDATORY ACT TAKES EFFECT.

10 SEC. 9703. (1) A SECURITY INTEREST THAT IS ENFORCEABLE  
11 IMMEDIATELY BEFORE THIS AMENDATORY ACT TAKES EFFECT AND WOULD  
12 HAVE PRIORITY OVER THE RIGHTS OF A PERSON THAT BECOMES A LIEN  
13 CREDITOR AT THAT TIME IS A PERFECTED SECURITY INTEREST UNDER THIS  
14 AMENDATORY ACT IF, WHEN THIS AMENDATORY ACT TAKES EFFECT, THE  
15 APPLICABLE REQUIREMENTS FOR ENFORCEABILITY AND PERFECTION UNDER  
16 THIS AMENDATORY ACT ARE SATISFIED WITHOUT FURTHER ACTION.

17 (2) EXCEPT AS OTHERWISE PROVIDED IN SECTION 9705, IF, IMME-  
18 DIATELY BEFORE THIS AMENDATORY ACT TAKES EFFECT, A SECURITY  
19 INTEREST IS ENFORCEABLE AND WOULD HAVE PRIORITY OVER THE RIGHTS  
20 OF A PERSON THAT BECOMES A LIEN CREDITOR AT THAT TIME, BUT THE  
21 APPLICABLE REQUIREMENTS FOR ENFORCEABILITY OR PERFECTION UNDER  
22 THIS AMENDATORY ACT ARE NOT SATISFIED WHEN THIS AMENDATORY ACT  
23 TAKES EFFECT, ALL OF THE FOLLOWING APPLY TO THE SECURITY  
24 INTEREST:

25 (A) THE SECURITY INTEREST IS A PERFECTED SECURITY INTEREST  
26 FOR 1 YEAR AFTER THIS AMENDATORY ACT TAKES EFFECT.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

299

1 (B) THE SECURITY INTEREST REMAINS ENFORCEABLE THEREAFTER  
2 ONLY IF THE SECURITY INTEREST BECOMES ENFORCEABLE UNDER SECTION  
3 9203 BEFORE THE YEAR EXPIRES.

4 (C) THE SECURITY INTEREST REMAINS PERFECTED THEREAFTER ONLY  
5 IF THE APPLICABLE REQUIREMENTS FOR PERFECTION UNDER THIS AMENDA-  
6 TORY ACT ARE SATISFIED BEFORE THE YEAR EXPIRES.

7 SEC. 9704. ALL OF THE FOLLOWING APPLY TO A SECURITY INTER-  
8 EST THAT IS ENFORCEABLE IMMEDIATELY BEFORE THIS AMENDATORY ACT  
9 TAKES EFFECT BUT WHICH WOULD BE SUBORDINATE TO THE RIGHTS OF A  
10 PERSON THAT BECOMES A LIEN CREDITOR AT THAT TIME:

11 (A) THE SECURITY INTEREST REMAINS AN ENFORCEABLE SECURITY  
12 INTEREST FOR 1 YEAR AFTER THIS AMENDATORY ACT TAKES EFFECT.

13 (B) THE SECURITY INTEREST REMAINS ENFORCEABLE THEREAFTER IF  
14 THE SECURITY INTEREST BECOMES ENFORCEABLE UNDER SECTION 9203 WHEN  
15 THIS AMENDATORY ACT TAKES EFFECT OR WITHIN 1 YEAR THEREAFTER.

16 (C) THE SECURITY INTEREST BECOMES PERFECTED UNDER 1 OF THE  
17 FOLLOWING:

18 (i) WITHOUT FURTHER ACTION, WHEN THIS AMENDATORY ACT TAKES  
19 EFFECT IF THE APPLICABLE REQUIREMENTS FOR PERFECTION UNDER THIS  
20 AMENDATORY ACT ARE SATISFIED BEFORE OR AT THAT TIME.

21 (ii) WHEN THE APPLICABLE REQUIREMENTS FOR PERFECTION ARE  
22 SATISFIED IF THE REQUIREMENTS ARE SATISFIED AFTER THAT TIME.

23 SEC. 9705. (1) IF ACTION, OTHER THAN THE FILING OF A  
24 FINANCING STATEMENT, IS TAKEN BEFORE THIS AMENDATORY ACT TAKES  
25 EFFECT AND THE ACTION WOULD HAVE RESULTED IN PRIORITY OF A SECUR-  
26 ITY INTEREST OVER THE RIGHTS OF A PERSON THAT BECOMES A LIEN  
27 CREDITOR HAD THE SECURITY INTEREST BECOME ENFORCEABLE BEFORE THIS

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

300

1 AMENDATORY ACT TAKES EFFECT, THE ACTION IS EFFECTIVE TO PERFECT A  
2 SECURITY INTEREST THAT ATTACHES UNDER THIS AMENDATORY ACT WITHIN  
3 1 YEAR AFTER THIS AMENDATORY ACT TAKES EFFECT. AN ATTACHED  
4 SECURITY INTEREST BECOMES UNPERFECTED 1 YEAR AFTER THIS AMENDA-  
5 TORY ACT TAKES EFFECT UNLESS THE SECURITY INTEREST BECOMES A PER-  
6 FECTED SECURITY INTEREST UNDER THIS AMENDATORY ACT BEFORE THE  
7 EXPIRATION OF THAT PERIOD.

8 (2) THE FILING OF A FINANCING STATEMENT BEFORE THIS AMENDA-  
9 TORY ACT TAKES EFFECT IS EFFECTIVE TO PERFECT A SECURITY INTEREST  
10 TO THE EXTENT THE FILING WOULD SATISFY THE APPLICABLE REQUIRE-  
11 MENTS FOR PERFECTION UNDER THIS AMENDATORY ACT.

12 (3) THIS AMENDATORY ACT DOES NOT RENDER INEFFECTIVE AN  
13 EFFECTIVE FINANCING STATEMENT THAT, BEFORE THIS AMENDATORY ACT  
14 TAKES EFFECT, IS FILED AND SATISFIES THE APPLICABLE REQUIREMENTS  
15 FOR PERFECTION UNDER THE LAW OF THE JURISDICTION GOVERNING PER-  
16 FECTION AS PROVIDED IN SECTION 9103 BEFORE THIS AMENDATORY ACT  
17 TAKES EFFECT. HOWEVER, EXCEPT AS OTHERWISE PROVIDED IN SUBSEC-  
18 TIONS (4) AND (5) AND SECTION 9706, THE FINANCING STATEMENT  
19 CEASES TO BE EFFECTIVE AT THE EARLIER OF THE FOLLOWING:

20 (A) THE TIME THE FINANCING STATEMENT WOULD HAVE CEASED TO BE  
21 EFFECTIVE UNDER THE LAW OF THE JURISDICTION IN WHICH IT IS  
22 FILED.

23 (B) JUNE 30, 2006.

24 (4) THE FILING OF A CONTINUATION STATEMENT AFTER THIS AMEN-  
25 DATORY ACT TAKES EFFECT DOES NOT CONTINUE THE EFFECTIVENESS OF  
26 THE FINANCING STATEMENT FILED BEFORE THIS AMENDATORY ACT TAKES  
27 EFFECT. HOWEVER, UPON THE TIMELY FILING OF A CONTINUATION

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

301

1 STATEMENT AFTER THIS AMENDATORY ACT TAKES EFFECT AND IN  
2 ACCORDANCE WITH THE LAW OF THE JURISDICTION GOVERNING PERFECTION  
3 AS PROVIDED IN PART 3, THE EFFECTIVENESS OF A FINANCING STATEMENT  
4 FILED IN THE SAME OFFICE IN THAT JURISDICTION BEFORE THIS AMENDA-  
5 TORY ACT TAKES EFFECT CONTINUES FOR THE PERIOD PROVIDED BY THE  
6 LAW OF THAT JURISDICTION.

7       (5) SUBSECTION (3)(B) APPLIES TO A FINANCING STATEMENT THAT,  
8 BEFORE THIS AMENDATORY ACT TAKES EFFECT, IS FILED AGAINST A  
9 TRANSMITTING UTILITY AND SATISFIES THE APPLICABLE REQUIREMENTS  
10 FOR PERFECTION UNDER THE LAW OF THE JURISDICTION GOVERNING PER-  
11 FECTION AS PROVIDED IN SECTION 9103 BEFORE THIS AMENDATORY ACT  
12 TAKES EFFECT ONLY TO THE EXTENT THAT PART 3 PROVIDES THAT THE LAW  
13 OF A JURISDICTION OTHER THAN THE JURISDICTION IN WHICH THE  
14 FINANCING STATEMENT IS FILED GOVERNS PERFECTION OF A SECURITY  
15 INTEREST IN COLLATERAL COVERED BY THE FINANCING STATEMENT.

16       (6) A FINANCING STATEMENT THAT INCLUDES A FINANCING STATE-  
17 MENT FILED BEFORE THIS AMENDATORY ACT TAKES EFFECT AND A CONTINU-  
18 ATION STATEMENT FILED AFTER THIS AMENDATORY ACT TAKES EFFECT IS  
19 EFFECTIVE ONLY TO THE EXTENT THAT IT SATISFIES THE REQUIREMENTS  
20 OF PART 5 FOR AN INITIAL FINANCING STATEMENT.

21       SEC. 9706. (1) THE FILING OF AN INITIAL FINANCING STATEMENT  
22 IN THE OFFICE SPECIFIED IN SECTION 9501 CONTINUES THE EFFECTIVE-  
23 NESS OF A FINANCING STATEMENT FILED BEFORE THIS AMENDATORY ACT  
24 TAKES EFFECT IF ALL OF THE FOLLOWING APPLY:

25       (A) THE FILING OF AN INITIAL FINANCING STATEMENT IN THAT  
26 OFFICE WOULD BE EFFECTIVE TO PERFECT A SECURITY INTEREST UNDER  
27 THIS AMENDATORY ACT.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

302

1 (B) THE PRE-EFFECTIVE-DATE FINANCING STATEMENT WAS FILED IN  
2 AN OFFICE IN ANOTHER STATE OR ANOTHER OFFICE IN THIS STATE.

3 (C) THE INITIAL FINANCING STATEMENT SATISFIES SUBSECTION  
4 (3).

5 (2) THE FILING OF AN INITIAL FINANCING STATEMENT UNDER SUB-  
6 SECTION (1) CONTINUES THE EFFECTIVENESS OF THE PRE-EFFECTIVE-DATE  
7 FINANCING STATEMENT IF BOTH OF THE FOLLOWING APPLY:

8 (A) IF THE INITIAL FINANCING STATEMENT IS FILED BEFORE THIS  
9 AMENDATORY ACT TAKES EFFECT, FOR THE PERIOD PROVIDED IN SECTION  
10 9403 BEFORE THIS AMENDATORY ACT TAKES EFFECT WITH RESPECT TO A  
11 FINANCING STATEMENT.

12 (B) IF THE INITIAL FINANCING STATEMENT IS FILED AFTER THIS  
13 AMENDATORY ACT TAKES EFFECT, FOR THE PERIOD PROVIDED IN SECTION  
14 9515 WITH RESPECT TO AN INITIAL FINANCING STATEMENT.

15 (3) TO BE EFFECTIVE FOR PURPOSES OF SUBSECTION (1), AN INI-  
16 TIAL FINANCING STATEMENT MUST DO ALL OF THE FOLLOWING:

17 (A) SATISFY THE REQUIREMENTS OF PART 5 FOR AN INITIAL  
18 FINANCING STATEMENT.

19 (B) IDENTIFY THE PRE-EFFECTIVE-DATE FINANCING STATEMENT BY  
20 INDICATING THE OFFICE IN WHICH THE FINANCING STATEMENT WAS FILED  
21 AND PROVIDING THE DATES OF FILING AND FILE NUMBERS, IF ANY, OF  
22 THE FINANCING STATEMENT AND OF THE MOST RECENT CONTINUATION  
23 STATEMENT FILED WITH RESPECT TO THE FINANCING STATEMENT.

24 (C) INDICATE THAT THE PRE-EFFECTIVE-DATE FINANCING STATEMENT  
25 REMAINS EFFECTIVE.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

303

1        SEC. 9707. (1) AS USED IN THIS SECTION, "PRE-EFFECTIVE-DATE  
2 FINANCING STATEMENT" MEANS A FINANCING STATEMENT FILED BEFORE  
3 THIS AMENDATORY ACT TAKES EFFECT.

4        (2) AFTER THIS AMENDATORY ACT TAKES EFFECT, A PERSON MAY ADD  
5 OR DELETE COLLATERAL COVERED BY, CONTINUE OR TERMINATE THE EFFEC-  
6 TIVENESS OF, OR OTHERWISE AMEND THE INFORMATION PROVIDED IN, A  
7 PRE-EFFECTIVE-DATE FINANCING STATEMENT ONLY IN ACCORDANCE WITH  
8 THE LAW OF THE JURISDICTION GOVERNING PERFECTION AS PROVIDED IN  
9 PART 3. HOWEVER, THE EFFECTIVENESS OF A PRE-EFFECTIVE-DATE  
10 FINANCING STATEMENT ALSO MAY BE TERMINATED IN ACCORDANCE WITH THE  
11 LAW OF THE JURISDICTION IN WHICH THE FINANCING STATEMENT IS  
12 FILED.

13        (3) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (4), IF THE  
14 LAW OF THIS STATE GOVERNS PERFECTION OF A SECURITY INTEREST, THE  
15 INFORMATION IN A PRE-EFFECTIVE-DATE FINANCING STATEMENT MAY BE  
16 AMENDED AFTER THIS AMENDATORY ACT TAKES EFFECT ONLY IF 1 OF THE  
17 FOLLOWING IS MET:

18        (A) THE PRE-EFFECTIVE-DATE FINANCING STATEMENT AND AN AMEND-  
19 MENT ARE FILED IN THE OFFICE SPECIFIED IN SECTION 9501.

20        (B) AN AMENDMENT IS FILED IN THE OFFICE SPECIFIED IN  
21 SECTION 9501 CONCURRENTLY WITH, OR AFTER THE FILING IN THAT  
22 OFFICE OF, AN INITIAL FINANCING STATEMENT THAT SATISFIES  
23 SECTION 9706(3).

24        (C) AN INITIAL FINANCING STATEMENT THAT PROVIDES THE INFOR-  
25 MATION AS AMENDED AND SATISFIES SECTION 9706(3) IS FILED IN THE  
26 OFFICE SPECIFIED IN SECTION 9501.

**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228

304

1       (4) IF THE LAW OF THIS STATE GOVERNS PERFECTION OF A  
2 SECURITY INTEREST, THE EFFECTIVENESS OF A PRE-EFFECTIVE-DATE  
3 FINANCING STATEMENT MAY BE CONTINUED ONLY UNDER SECTION 9705(4)  
4 AND (6) OR 9706.

5       (5) WHETHER OR NOT THE LAW OF THIS STATE GOVERNS PERFECTION  
6 OF A SECURITY INTEREST, THE EFFECTIVENESS OF A PRE-EFFECTIVE-DATE  
7 FINANCING STATEMENT FILED IN THIS STATE MAY BE TERMINATED AFTER  
8 THIS AMENDATORY ACT TAKES EFFECT BY FILING A TERMINATION STATE-  
9 MENT IN THE OFFICE IN WHICH THE PRE-EFFECTIVE-DATE FINANCING  
10 STATEMENT IS FILED, UNLESS AN INITIAL FINANCING STATEMENT THAT  
11 SATISFIES SECTION 9706(3) HAS BEEN FILED IN THE OFFICE SPECIFIED  
12 BY THE LAW OF THE JURISDICTION GOVERNING PERFECTION AS PROVIDED  
13 IN PART 3 AS THE OFFICE IN WHICH TO FILE A FINANCING STATEMENT.

14       SEC. 9708. A PERSON MAY FILE AN INITIAL FINANCING STATEMENT  
15 OR A CONTINUATION STATEMENT UNDER THIS PART IF BOTH OF THE FOL-  
16 LOWING APPLY:

17       (A) THE SECURED PARTY OF RECORD AUTHORIZES THE FILING.

18       (B) THE FILING IS NECESSARY UNDER THIS PART TO DO 1 OF THE  
19 FOLLOWING:

20       (i) TO CONTINUE THE EFFECTIVENESS OF A FINANCING STATEMENT  
21 FILED BEFORE THIS AMENDATORY ACT TAKES EFFECT.

22       (ii) TO PERFECT OR CONTINUE THE PERFECTION OF A SECURITY  
23 INTEREST.

24       SEC. 9709. (1) THIS AMENDATORY ACT DETERMINES THE PRIORITY  
25 OF CONFLICTING CLAIMS TO COLLATERAL. HOWEVER, IF THE RELATIVE  
26 PRIORITIES OF THE CLAIMS WERE ESTABLISHED BEFORE THIS AMENDATORY



**HB 5228, As Passed Senate, December 5, 2000**

House Bill No. 5228 as amended December 5, 2000

305

1 ACT TAKES EFFECT, THIS ARTICLE AS IN EFFECT BEFORE THIS

2 AMENDATORY ACT TAKES EFFECT DETERMINES PRIORITY.

3 (2) FOR PURPOSES OF SECTION 9322(1), THE PRIORITY OF A

4 SECURITY INTEREST THAT BECOMES ENFORCEABLE UNDER SECTION 9203 OF

5 THIS AMENDATORY ACT DATES FROM THE TIME THIS AMENDATORY ACT TAKES

6 EFFECT IF THE SECURITY INTEREST IS PERFECTED UNDER THIS AMENDA-

7 TORY ACT BY THE FILING OF A FINANCING STATEMENT BEFORE THIS AMEN-

8 DATORY ACT TAKES EFFECT WHICH WOULD NOT HAVE BEEN EFFECTIVE TO

9 PERFECT THE SECURITY INTEREST UNDER THIS ARTICLE AS IN EFFECT

10 BEFORE THIS AMENDATORY ACT TAKES EFFECT. THIS SUBSECTION DOES

11 NOT APPLY TO CONFLICTING SECURITY INTERESTS EACH OF WHICH IS PER-

12 FECTED BY THE FILING OF A FINANCING STATEMENT DESCRIBED IN THIS

13 SUBSECTION.

14 Enacting section 1. This amendatory act takes effect July

15 1, 2001.

16 Enacting section 2. Sections 9112, 9113, 9114, 9115, 9116,

17 9408a, and 9410 of the uniform commercial code, 1962 PA 174,

18 MCL 440.9112, 440.9113, 440.9114, 440.9115, 440.9116, 440.9408a,

19 and 440.9410, are repealed.

20

21

22