

SECOND REGULAR SESSION  
SENATE COMMITTEE SUBSTITUTE FOR

# HOUSE BILL NO. 1712

91ST GENERAL ASSEMBLY

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Reported from the Committee on Judiciary, April 25, 2002, with recommendation that the Senate Committee Substitute do pass.

3731S.05C

TERRY L. SPIELER, Secretary.

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## AN ACT

To repeal sections 347.143, 351.055, 351.182, 351.400, 351.455, 400.9-102, 400.9-109, 400.9-303, 400.9-317, 400.9-323, 400.9-406, 400.9-407, 400.9-408, 400.9-409, 400.9-504, 400.9-509, 400.9-513, 400.9-525, 400.9-602, 400.9-608, 400.9-611, 400.9-613, 400.9-615, 400.9-625 and 400.9-710, RSMo, and to enact in lieu thereof twenty-five new sections relating to business and commerce.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 347.143, 351.055, 351.182, 351.400, 351.455, 400.9-102, 400.9-109, 400.9-303, 400.9-317, 400.9-323, 400.9-406, 400.9-407, 400.9-408, 400.9-409, 400.9-504, 400.9-509, 400.9-513, 400.9-525, 400.9-602, 400.9-608, 400.9-611, 400.9-613, 400.9-615, 400.9-625 and 400.9-710, RSMo, are repealed and twenty-five new sections enacted in lieu thereof, to be known as sections 347.143, 351.055, 351.182, 351.400, 351.455, 400.9-102, 400.9-109, 400.9-303, 400.9-317, 400.9-323, 400.9-406, 400.9-407, 400.9-408, 400.9-409, 400.9-504, 400.9-509, 400.9-513, 400.9-525, 400.9-602, 400.9-608, 400.9-611, 400.9-613, 400.9-615, 400.9-625 and 400.9-710, to read as follows:

347.143. 1. A limited liability company may be dissolved involuntarily by a decree of the circuit court for the county in which the registered office of the limited liability company is situated in an action filed by the attorney general when it is established that the limited liability company:

- (1) Has procured its articles of organization through fraud;
- (2) Has exceeded or abused the authority conferred upon it by law;
- (3) Has carried on, conducted, or transacted its business in a fraudulent or illegal manner; or

**EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

9 (4) By the abuse of its powers contrary to the public policy of the state, has  
10 become liable to be dissolved.

11 2. On application by or for a member, the circuit court for the county in which  
12 the registered office of the limited liability company is located may decree dissolution of  
13 a limited liability company whenever:

14 **(1) The members are deadlocked in the management of the affairs of**  
15 **the limited liability company and the members are unable to break the**  
16 **deadlock; or**

17 **(2) It is not reasonably practicable to carry on the business in conformity with**  
18 **the operating agreement.**

351.055. The articles of incorporation shall set forth:

2 (1) The name of the corporation;

3 (2) The address, including street and number, if any, of its initial registered office  
4 in this state, and the name of its initial registered agent at such address;

5 (3) The aggregate number of shares which the corporation shall have the  
6 authority to issue, and the number of shares of each class, if any, that are to have a par  
7 value and the par value of each share of each such class, and the number of shares of  
8 each class, if any, that are to be without par value and also a statement of the  
9 preferences, qualifications, limitations, restrictions, and the special or relative rights  
10 including convertible rights, if any, in respect of the shares of each class;

11 (4) The extent, if any, to which the preemptive right of a shareholder to acquire  
12 additional shares is limited or denied;

13 (5) The name and place of residence of each incorporator;

14 (6) Either (a) the number of directors to constitute the first board of directors and  
15 a statement to the effect that thereafter the number of directors shall be fixed by, or in  
16 the manner provided in, the bylaws of the corporation, and that any changes shall be  
17 reported to the secretary of state within thirty calendar days of such change, or (b) the  
18 number of directors to constitute the board of directors, except that the number of  
19 directors to constitute the board of directors must be stated in the articles of  
20 incorporation if the corporation is to have less than three directors. The persons to  
21 constitute the first board of directors may, but need not, be named;

22 (7) The number of years the corporation is to continue, which may be any number  
23 or perpetual;

24 (8) The purposes for which the corporation is formed;

25 (9) If the incorporators, the directors pursuant to subsection 1 of section 351.090  
26 or the shareholders pursuant to subsection 2 of section 351.090 choose to do so, a

27 provision eliminating or limiting the personal liability of a director to the corporation or  
28 its shareholders for monetary damages for breach of fiduciary duty as a director,  
29 provided that such provision shall not eliminate or limit the liability of a director (a) for  
30 any breach of the director's duty of loyalty to the corporation or its shareholders, (b) for  
31 acts or omissions not in subjective good faith or which involve intentional misconduct or  
32 a knowing violation of law, (c) pursuant to section 351.345 or (d) for any transaction from  
33 which the director derived an improper personal benefit. No such provision shall  
34 eliminate or limit the liability of a director for any act or omission occurring prior to the  
35 date when such provision becomes effective. **On motion to dismiss, a person**  
36 **challenging the applicability of such a provision shall plead facts challenging**  
37 **such applicability with particularity, and on motion for summary judgment**  
38 **shall have the burden of proving that the provision does not apply.** All  
39 references in this subdivision to a director shall also be deemed to refer (e) to a member  
40 of the governing body of a corporation which is not authorized to issue capital stock and  
41 (f) to such other person or persons, if any, who, pursuant to a provision of the articles  
42 of incorporation in accordance with this chapter, exercise or perform any of the powers  
43 or duties otherwise conferred or imposed upon the board of directors by this chapter;  
44 (10) Any other provisions, not inconsistent with law, which the incorporators, the  
45 directors pursuant to subsection 1 of section 351.090 or the shareholders pursuant to  
46 subsection 2 of section 351.090 may choose to insert.

351.182. 1. Subject to any provisions in the articles of incorporation, every  
2 corporation may create and issue, whether or not in connection with the issue and sale  
3 of any shares of stock or other securities of the corporation, rights or options entitling  
4 the holders thereof to purchase from the corporation any shares of its capital stock of any  
5 class or classes, such rights or options to be evidenced by or in such instrument or  
6 instruments as is approved by the board of directors. If at the time the corporation  
7 issues rights or options, there is insufficient authorized and unissued shares to provide  
8 the shares needed if and when the rights or options are exercised, the granting of the  
9 rights or options shall not be invalid solely by reason of the lack of sufficient authorized  
10 but unissued shares.

11 2. The terms upon which any such shares may be purchased from the corporation  
12 upon the exercise of any such right or option, shall be as stated in the articles of  
13 incorporation, or in a resolution adopted by the board of directors providing for the  
14 creation and issue of such rights or options, and, in every case, shall be set forth or  
15 incorporated by reference in the instrument or instruments evidencing such rights or  
16 options. Such terms may include, but not be limited to:

- 17 (1) The duration of such rights or options, which may be limited or unlimited;  
18 (2) The price or prices at which any such shares may be purchased from the  
19 corporation upon the exercise of any such right or option;  
20 (3) The holders by whom such rights or options may be exercised;  
21 (4) The conditions to or which may preclude or limit the exercise, transfer or  
22 receipt of such rights or options, or which may invalidate or void such rights or options,  
23 including without limitation conditions based upon a specified number or percentage of  
24 outstanding shares, rights, options, convertible securities, or obligations of the  
25 corporation as to which any person or persons or their transferees own or offer to  
26 acquire; and  
27 (5) The conditions upon which such rights or options may be redeemed.

28 Such terms may be made dependent upon facts ascertainable outside the documents  
29 evidencing the rights, or the resolution providing for the issue of the rights or options  
30 adopted by the board of directors, if the manner in which the facts shall operate upon  
31 the exercise of the rights or options is clearly and expressly set forth in the document  
32 evidencing the rights or options, or in the resolution. In the absence of actual fraud in  
33 the transaction, the judgment of the directors as to the consideration for the issuance of  
34 such rights or options and the sufficiency thereof and the terms of such rights or options  
35 shall be conclusive. In case the shares of stock of the corporation to be issued upon the  
36 exercise of such rights or options shall be shares having a par value, the price or prices  
37 so to be received therefor shall not be less than the par value thereof. In case the shares  
38 of stock so to be issued shall be shares of stock without par value, the consideration  
39 therefor shall be determined in the manner provided in section 351.185. Nothing  
40 contained in subsection 1 of section 351.180 shall be deemed to limit the authority of the  
41 board of directors to determine, in its sole discretion, the terms of the rights or options  
42 issuable pursuant to this section.

43 **3. The board of directors may, by a resolution adopted by the board,**  
44 **authorize one or more officers of the corporation to do one or both of the**  
45 **following:**

46 **(1) Designate officers and employees of the corporation or of any of its**  
47 **subsidiaries to be recipients of such rights or options created by the**  
48 **corporation; and**

49 **(2) Determine the number of such rights or options to be received by**  
50 **such officers and employees;**  
51 **provided, however that the resolution so authorizing such officer or officers**  
52 **shall specify the total number of rights or options such officer or officers may**

53 **so award. The board of directors may not authorize an officer to designate**  
54 **himself or herself as a recipient of any such rights or options.**

351.400. 1. A sale, lease, or exchange or other disposition other than by  
2 mortgage, deed of trust or pledge, of all, or substantially all, the property and assets,  
3 with or without the goodwill, of a corporation, if not made in the usual and regular  
4 course of its business, may be made upon such terms and conditions and for such  
5 consideration, which may consist, in whole or in part, of money or property, real or  
6 personal, including shares of any other corporation, domestic or foreign, as may be  
7 authorized in the following manner:

8 (1) The board of directors may adopt a resolution recommending such sale, lease  
9 or exchange or other disposition and directing the submission thereof to a vote at a  
10 meeting of shareholders entitled to vote thereat, which may be either an annual or a  
11 special meeting, except that such proposed sale, lease or exchange need not be adopted  
12 by the board of directors and may be directly submitted to any annual or special meeting  
13 of shareholders;

14 (2) Written or printed notice stating that the purpose, or one of the purposes, of  
15 such meeting is to consider the sale, lease or exchange, or other disposition of all, or  
16 substantially all, of the property and assets of the corporation shall be given to each  
17 shareholder of record entitled to vote at such meeting within the time and in the manner  
18 provided by this chapter for the giving of notice of meetings of shareholders; if such  
19 meeting be an annual meeting, such purpose may be included in the notice of such  
20 annual meeting;

21 (3) At such meeting the shareholders may authorize such sale, lease or exchange,  
22 or other disposition and fix, or may authorize the board of directors to fix, any or all of  
23 the terms and conditions thereof and the consideration to be received by the corporation  
24 therefor. Such authorization shall require the affirmative vote of the holders of at least  
25 two-thirds of the outstanding shares entitled to vote at such meeting;

26 (4) After such authorization by a vote of shareholders, the board of directors  
27 nevertheless, in its discretion, may abandon such sale, lease, exchange, or other  
28 disposition of assets, subject to the rights of third parties under any contracts relating  
29 thereto, without further action or approval by shareholders.

30 **2. No approval of the shareholders is required, unless the articles of**  
31 **incorporation otherwise provide to:**

32 (1) **Sell, lease, exchange, or otherwise dispose of any or all of the**  
33 **corporation's property and assets, with or without the goodwill, in the usual**  
34 **and regular course of business;**

35           (2) Mortgage, encumber by deed of trust, or pledge, any or all of the  
36 corporation's property and assets, with or without goodwill;

37           (3) Transfer any or all of the corporation's property and assets, with  
38 or without goodwill, to one or more corporations or other entities, and not  
39 subject to section 351.017, all of the shares or interests of which are owned by  
40 the corporation;

41           (4) Distribute property and assets pro rata to the holders of one or  
42 more classes or series of the corporation's shares; or

43           (5) Sell, lease, exchange, or otherwise dispose of all or substantially all  
44 of its property and assets with or without goodwill if:

45           (a) The corporation is insolvent and a sale of cash or its equivalent is  
46 deemed advisable by the board of directors to meet the liabilities of the  
47 corporation; or

48           (b) The corporation was incorporated for the purpose of liquidating  
49 such property and assets.

50           3. Property and assets shall be deemed to be less than substantially all  
51 of a corporation's property and assets if the fair value of the property and  
52 assets as of the date of the most recent available financial information does  
53 not exceed two-thirds of the fair value of all of the property and assets of the  
54 corporation, and the annual revenues of the corporation for the most recent  
55 fiscal year for which such financial information is available represented or  
56 produced by such property and assets do not exceed two-thirds of the total  
57 revenues of the corporation for that period. This subsection is intended  
58 merely to create an irrebuttable presumption with respect to transactions  
59 described in this subsection and shall not create any inference that the sale  
60 of property and assets exceeding the amounts described in this subsection is  
61 the sale of substantially all of the property and assets of the corporation.

62           4. As used in subsection 2 of this section, the term "insolvent" means the  
63 corporation would not be able to pay its debts as they become due in the  
64 usual course of business, or the corporation's total assets would be less than  
65 the sum of its total liabilities.

351.455. 1. If a shareholder of a corporation which is a party to a merger or  
2 consolidation [shall file with such corporation, prior to or], **and in the case of a**  
3 **shareholder owning voting stock is entitled to vote** at the meeting of shareholders  
4 at which the plan of merger or consolidation is submitted to a vote, **shall file with**  
5 **such corporation prior to or at such meeting** a written objection to such plan of  
6 merger or consolidation, and shall not vote in favor thereof, and such shareholder, within

7 twenty days after the merger or consolidation is effected, shall make written demand on  
8 the surviving or new corporation for payment of the fair value of his shares as of the day  
9 prior to the date on which the vote was taken approving the merger or consolidation, the  
10 surviving or new corporation shall pay to such shareholder, upon surrender of his  
11 certificate or certificates representing said shares, the fair value thereof. Such demand  
12 shall state the number and class of the shares owned by such dissenting  
13 shareholder. Any shareholder failing to make demand within the twenty day period  
14 shall be conclusively presumed to have consented to the merger or consolidation and  
15 shall be bound by the terms thereof.

16 2. If within thirty days after the date on which such merger or consolidation was  
17 effected the value of such shares is agreed upon between the dissenting shareholder and  
18 the surviving or new corporation, payment therefor shall be made within ninety days  
19 after the date on which such merger or consolidation was effected, upon the surrender  
20 of his certificate or certificates representing said shares. Upon payment of the agreed  
21 value the dissenting shareholder shall cease to have any interest in such shares or in the  
22 corporation.

23 3. If within such period of thirty days the shareholder and the surviving or new  
24 corporation do not so agree, then the dissenting shareholder may, within sixty days after  
25 the expiration of the thirty day period, file a petition in any court of competent  
26 jurisdiction within the county in which the registered office of the surviving or new  
27 corporation is situated, asking for a finding and determination of the fair value of such  
28 shares, and shall be entitled to judgment against the surviving or new corporation for  
29 the amount of such fair value as of the day prior to the date on which such vote was  
30 taken approving such merger or consolidation, together with interest thereon to the date  
31 of such judgment. The judgment shall be payable only upon and simultaneously with  
32 the surrender to the surviving or new corporation of the certificate or certificates  
33 representing said shares. Upon the payment of the judgment, the dissenting shareholder  
34 shall cease to have any interest in such shares, or in the surviving or new  
35 corporation. Such shares may be held and disposed of by the surviving or new  
36 corporation as it may see fit. Unless the dissenting shareholder shall file such petition  
37 within the time herein limited, such shareholder and all persons claiming under him  
38 shall be conclusively presumed to have approved and ratified the merger or  
39 consolidation, and shall be bound by the terms thereof.

40 4. The right of a dissenting shareholder to be paid the fair value of his shares as  
41 herein provided shall cease if and when the corporation shall abandon the merger or  
42 consolidation.

43           **5. When the remedy provided for pursuant to this section is available**  
44 **with respect to a transaction, it shall be the exclusive remedy of the**  
45 **shareholder as to that transaction except in the case of fraud or lack of**  
46 **authorization for the transaction.**

400.9-102. (a) In this article:

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

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

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

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

23           (A) Authenticated by a secured party;

24           (B) Indicating the aggregate unpaid secured obligations as of a date not more  
25 than thirty-five days earlier or thirty-five days later than the date of the record; and

26           (C) Identifying the components of the obligations in reasonable detail;

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

29           (A) Which secures payment or performance of an obligation for:

30           (i) Goods or services furnished in connection with a debtor's farming operation;

31 or

32           (ii) Rent on real property leased by a debtor in connection with its farming



33 operation;

34 (B) Which is created by statute in favor of a person that:

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

37 (ii) Leased real property to a debtor in connection with the debtor's farming  
38 operation; and

39 (C) Whose effectiveness does not depend on the person's possession of the  
40 personal property;

41 (6) "As-extracted collateral" means:

42 (A) Oil, gas, or other minerals that are subject to a security interest that:

43 (i) Is created by a debtor having an interest in the minerals before extraction;  
44 and

45 (ii) Attaches to the minerals as extracted; or

46 (B) Accounts arising out of the sale at the wellhead or minehead of oil, gas, or  
47 other minerals in which the debtor had an interest before extraction;

48 (7) "Authenticate" means:

49 (A) To sign; or

50 (B) To execute or otherwise adopt a symbol, or encrypt or similarly process a  
51 record in whole or in part, with the present intent of the authenticating person to  
52 identify the person and adopt or accept a record;

53 (8) "Bank" means an organization that is engaged in the business of  
54 banking. The term includes savings banks, savings and loan associations, credit unions,  
55 and trust companies;

56 (9) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or  
57 the like;

58 (10) "Certificate of title" means a certificate of title with respect to which a  
59 statute provides for the security interest in question to be indicated on the certificate as  
60 a condition or result of the security interest's obtaining priority over the rights of a lien  
61 creditor with respect to the collateral;

62 (11) "Chattel paper" means a record or records that evidence both a monetary  
63 obligation and a security interest in specific goods, a security interest in specific goods  
64 and software used in the goods, **a security interest in specific goods and license**  
65 **of software used in the goods, a lease of specific goods, or a lease of specific**  
66 **goods and license of software used in the goods. In this paragraph, "monetary**  
67 **obligation" means a monetary obligation secured by the goods or owed under**  
68 **a lease of the goods and includes a monetary obligation with respect to**

69 **software used in the goods.** The term does not include (i) charters or other contracts  
70 involving the use or hire of a vessel or (ii) **records that evidence a right to**  
71 **payment arising out of the use of a credit or charge card or information**  
72 **contained on or for use with the card.** If a transaction is evidenced [both by a  
73 security agreement or lease and] by **records that include** an instrument or series of  
74 instruments, the group of records taken together constitutes chattel paper;

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

77 (A) Proceeds to which a security interest attaches;

78 (B) Accounts, chattel paper, payment intangibles, and promissory notes that have  
79 been sold; and

80 (C) Goods that are the subject of a consignment;

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

82 (A) The claimant is an organization; or

83 (B) The claimant is an individual and the claim:

84 (i) Arose in the course of the claimant's business or profession; and

85 (ii) Does not include damages arising out of personal injury to or the death of an  
86 individual;

87 (14) "Commodity account" means an account maintained by a commodity  
88 intermediary in which a commodity contract is carried for a commodity customer;

89 (15) "Commodity contract" means a commodity futures contract, an option on a  
90 commodity futures contract, a commodity option, or another contract if the contract or  
91 option is:

92 (A) Traded on or subject to the rules of a board of trade that has been designated  
93 as a contract market for such a contract pursuant to federal commodities laws; or

94 (B) Traded on a foreign commodity board of trade, exchange, or market, and is  
95 carried on the books of a commodity intermediary for a commodity customer;

96 (16) "Commodity customer" means a person for which a commodity intermediary  
97 carries a commodity contract on its books;

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

99 (A) Is registered as a futures commission merchant under federal commodities  
100 law; or

101 (B) In the ordinary course of its business provides clearance or settlement  
102 services for a board of trade that has been designated as a contract market pursuant to  
103 federal commodities law;

104 (18) "Communicate" means:

105 (A) To send a written or other tangible record;

106 (B) To transmit a record by any means agreed upon by the persons sending and  
107 receiving the record; or

108 (C) In the case of transmission of a record to or by a filing office, to transmit a  
109 record by any means prescribed by filing-office rule;

110 (19) "Consignee" means a merchant to which goods are delivered in a  
111 consignment;

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

114 (A) The merchant:

115 (i) Deals in goods of that kind under a name other than the name of the person  
116 making delivery;

117 (ii) Is not an auctioneer; and

118 (iii) Is not generally known by its creditors to be substantially engaged in selling  
119 the goods of others;

120 (B) With respect to each delivery, the aggregate value of the goods is one  
121 thousand dollars or more at the time of delivery;

122 (C) The goods are not consumer goods immediately before delivery; and

123 (D) The transaction does not create a security interest that secures an obligation;

124 (21) "Consignor" means a person that delivers goods to a consignee in a  
125 consignment;

126 (22) "Consumer debtor" means a debtor in a consumer transaction;

127 (23) "Consumer goods" means goods that are used or bought for use primarily for  
128 personal, family, or household purposes;

129 (24) "Consumer-goods transaction" means a consumer transaction in which:

130 (A) An individual incurs an obligation primarily for personal, family, or  
131 household purposes; and

132 (B) A security interest in consumer goods secures the obligation;

133 (25) "Consumer obligor" means an obligor who is an individual and who incurred  
134 the obligation as part of a transaction entered into primarily for personal, family, or  
135 household purposes;

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

141 (27) "Continuation statement" means an amendment of a financing statement  
142 which:

143 (A) Identifies, by its file number, the initial financing statement to which it  
144 relates; and

145 (B) Indicates that it is a continuation statement for, or that it is filed to continue  
146 the effectiveness of, the identified financing statement;

147 (28) "Debtor" means:

148 (A) A person having an interest, other than a security interest or other lien, in  
149 the collateral, whether or not the person is an obligor;

150 (B) A seller of accounts, chattel paper, payment intangibles, or promissory notes;  
151 or

152 (C) A consignee;

153 (29) "Deposit account" means a demand, time, savings, passbook, or similar  
154 account maintained with a bank. The term does not include investment property or  
155 accounts evidenced by an instrument;

156 (30) "Document" means a document of title or a receipt of the type described in  
157 section 400.7-201(2);

158 (31) "Electronic chattel paper" means chattel paper evidenced by a record or  
159 records consisting of information stored in an electronic medium;

160 (32) "Encumbrance" means a right, other than an ownership interest, in real  
161 property. The term includes mortgages and other liens on real property;

162 (33) "Equipment" means goods other than inventory, farm products, or consumer  
163 goods;

164 (34) "Farm products" means goods, other than standing timber, with respect to  
165 which the debtor is engaged in a farming operation and which are:

166 (A) Crops grown, growing, or to be grown, including:

167 (i) Crops produced on trees, vines, and bushes; and

168 (ii) Aquatic goods produced in aquacultural operations;

169 (B) Livestock, born or unborn, including aquatic goods produced in aquacultural  
170 operations;

171 (C) Supplies used or produced in a farming operation; or

172 (D) Products of crops or livestock in their unmanufactured states;

173 (35) "Farming operation" means raising, cultivating, propagating, fattening,  
174 grazing, or any other farming, livestock, or aquacultural operation;

175 (36) "File number" means the number assigned to an initial financing statement  
176 pursuant to section 400.9-519(a);

177 (37) "Filing office" means an office designated in section 400.9-501 as the place  
178 to file a financing statement;

179 (38) "Filing-office rule" means a rule adopted pursuant to section 400.9-526;

180 (39) "Financing statement" means a record or records composed of an initial  
181 financing statement and any filed record relating to the initial financing statement;

182 (40) "Fixture filing" means the filing of a financing statement covering goods that  
183 are or are to become fixtures and satisfying section 400.9-502(a) and (b). The term  
184 includes the filing of a financing statement covering goods of a transmitting utility which  
185 are or are to become fixtures;

186 (41) "Fixtures" means goods that have become so related to particular real  
187 property that an interest in them arises under real property law;

188 (42) "General intangible" means any personal property, including things in  
189 action, other than accounts, chattel paper, commercial tort claims, deposit accounts,  
190 documents, goods, instruments, investment property, letter-of-credit rights, letters of  
191 credit, money, and oil, gas, or other minerals before extraction. The term includes  
192 payment intangibles and software;

193 (43) "Good faith" means honesty in fact;

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

208 (45) "Governmental unit" means a subdivision, agency, department, county,  
209 parish, municipality, or other unit of the government of the United States, a state, or a  
210 foreign country. The term includes an organization having a separate corporate  
211 existence if the organization is eligible to issue debt on which interest is exempt from  
212 income taxation under the laws of the United States;

213 (46) "Health-care-insurance receivable" means an interest in or claim under a  
214 policy of insurance which is a right to payment of a monetary obligation for health-care  
215 goods or services provided;

216 (47) "Instrument" means a negotiable instrument or any other writing that  
217 evidences a right to the payment of a monetary obligation, is not itself a security  
218 agreement or lease, and is of a type that in ordinary course of business is transferred by  
219 delivery with any necessary indorsement or assignment. The term does not include (i)  
220 investment property, (ii) letters of credit, or (iii) writings that evidence a right to  
221 payment arising out of the use of a credit or charge card or information contained on or  
222 for use with the card;

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

224 (A) Are leased by a person as lessor;

225 (B) Are held by a person for sale or lease or to be furnished under a contract of  
226 service;

227 (C) Are furnished by a person under a contract of service; or

228 (D) Consist of raw materials, work in process, or materials used or consumed in  
229 a business;

230 (49) "Investment property" means a security, whether certificated or  
231 uncertificated, security entitlement, securities account, commodity contract, or  
232 commodity account;

233 (50) "Jurisdiction of organization", with respect to a registered organization,  
234 means the jurisdiction under whose law the organization is organized;

235 (51) "Letter-of-credit right" means a right to payment or performance under a  
236 letter of credit, whether or not the beneficiary has demanded or is at the time entitled  
237 to demand payment or performance. The term does not include the right of a beneficiary  
238 to demand payment or performance under a letter of credit;

239 (52) "Lien creditor" means:

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

242 (B) An assignee for benefit of creditors from the time of assignment;

243 (C) A trustee in bankruptcy from the date of the filing of the petition; or

244 (D) A receiver in equity from the time of appointment;

245 (53) "Manufactured home" means a structure, transportable in one or more  
246 sections, which, in the traveling mode, is eight body feet or more in width or forty body  
247 feet or more in length, or, when erected on site, is three hundred twenty or more square  
248 feet, and which is built on a permanent chassis and designed to be used as a dwelling

249 with or without a permanent foundation when connected to the required utilities, and  
250 includes the plumbing, heating, air-conditioning, and electrical systems contained  
251 therein. The term includes any structure that meets all of the requirements of this  
252 paragraph except the size requirements and with respect to which the manufacturer  
253 voluntarily files a certification required by the United States Secretary of Housing and  
254 Urban Development and complies with the standards established under Title 42 of the  
255 United States Code;

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

257 (A) That creates a purchase-money security interest in a manufactured home,  
258 other than a manufactured home held as inventory; or

259 (B) In which a manufactured home, other than a manufactured home held as  
260 inventory, is the primary collateral;

261 (55) "Mortgage" means a consensual interest in real property, including fixtures,  
262 which secures payment or performance of an obligation;

263 (56) "New debtor" means a person that becomes bound as debtor under section  
264 400.9-203(d) by a security agreement previously entered into by another person;

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

269 (58) "Noncash proceeds" means proceeds other than cash proceeds;

270 (59) ["Notice" means a properly filed financing statement;

271 (60)] "Obligor" means a person that, with respect to an obligation secured by a  
272 security interest in or an agricultural lien on the collateral, (i) owes payment or other  
273 performance of the obligation, (ii) has provided property other than the collateral to  
274 secure payment or other performance of the obligation, or (iii) is otherwise accountable  
275 in whole or in part for payment or other performance of the obligation. The term does  
276 not include issuers or nominated persons under a letter of credit;

277 [(61)] **(60)** "Original debtor", **except as used in section 400.9-310(c)**, means  
278 a person that, as debtor, entered into a security agreement to which a new debtor has  
279 become bound under section 400.9-203(d);

280 [(62)] **(61)** "Payment intangible" means a general intangible under which the  
281 account debtor's principal obligation is a monetary obligation;

282 [(63)] **(62)** "Person related to", with respect to an individual, means:

283 (A) The spouse of the individual;

284 (B) A brother, brother-in-law, sister, or sister-in-law of the individual;

285 (C) An ancestor or lineal descendant of the individual or the individual's spouse;  
286 or

287 (D) Any other relative, by blood or marriage, of the individual or the individual's  
288 spouse who shares the same home with the individual;

289 [(64)] **(63)** "Person related to", with respect to an organization, means:

290 (A) A person directly or indirectly controlling, controlled by, or under common  
291 control with the organization;

292 (B) An officer or director of, or a person performing similar functions with respect  
293 to, the organization;

294 (C) An officer or director of, or a person performing similar functions with respect  
295 to, a person described in subparagraph (A);

296 (D) The spouse of an individual described in subparagraph (A), (B), or (C); or

297 (E) An individual who is related by blood or marriage to an individual described  
298 in subparagraph (A), (B), (C), or (D) and shares the same home with the individual;

299 [(65)] **(64)** "Proceeds", **except as used in section 400.9-609(b)**, means the  
300 following property:

301 (A) Whatever is acquired upon the sale, lease, license, exchange, or other  
302 disposition of collateral;

303 (B) Whatever is collected on, or distributed on account of, collateral;

304 (C) Rights arising out of collateral;

305 (D) To the extent of the value of collateral, claims arising out of the loss,  
306 nonconformity, or interference with the use of, defects or infringement of rights in, or  
307 damage to, the collateral; or

308 (E) To the extent of the value of collateral and to the extent payable to the debtor  
309 or the secured party, insurance payable by reason of the loss or nonconformity of, defects  
310 or infringement of rights in, or damage to, the collateral;

311 [(66)] **(65)** "Promissory note" means an instrument that evidences a promise to  
312 pay a monetary obligation, does not evidence an order to pay, and does not contain an  
313 acknowledgment by a bank that the bank has received for deposit a sum of money or  
314 funds;

315 [(67)] **(66)** "Proposal" means a record authenticated by a secured party which  
316 includes the terms on which the secured party is willing to accept collateral in full or  
317 partial satisfaction of the obligation it secures pursuant to sections 400.9-620, 400.9-621  
318 and 400.9-622;

319 [(68)] **(67)** "Pursuant to commitment", with respect to an advance made or other  
320 value given by a secured party, means pursuant to the secured party's obligation,



321 whether or not a subsequent event of default or other event not within the secured  
322 party's control has relieved or may relieve the secured party from its obligation;

323 [(69)] **(68)** "Record", except as used in "for record", "of record", "record or legal  
324 title", and "record owner", means information that is inscribed on a tangible medium or  
325 which is stored in an electronic or other medium and is retrievable in perceivable form;

326 [(70)] **(69)** "Registered organization" means an organization organized solely  
327 under the law of a single state or the United States and as to which the state or the  
328 United States must maintain a public record showing the organization to have been  
329 organized;

330 [(71)] **(70)** "Secondary obligor" means an obligor to the extent that:

331 (A) The obligor's obligation is secondary; or

332 (B) The obligor has a right of recourse with respect to an obligation secured by  
333 collateral against the debtor, another obligor, or property of either;

334 [(72)] **(71)** "Secured party" means:

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

337 (B) A person that holds an agricultural lien;

338 (C) A consignor;

339 (D) A person to which accounts, chattel paper, payment intangibles, or  
340 promissory notes have been sold;

341 (E) A trustee, indenture trustee, agent, collateral agent, or other representative  
342 in whose favor a security interest or agricultural lien is created or provided for; or

343 (F) A person that holds a security interest arising under sections 400.2-401,  
344 400.2-505, 400.2-711(3), 400.2A-508(5), 400.4-210 or 400.5-118;

345 [(73)] **(72)** "Security agreement" means an agreement that creates or provides  
346 for a security interest;

347 [(74)] **(73)** "Send", in connection with a record or notification, means:

348 (A) To deposit in the mail, deliver for transmission, or transmit by any other  
349 usual means of communication, with postage or cost of transmission provided for,  
350 addressed to any address reasonable under the circumstances; or

351 (B) To cause the record or notification to be received within the time that it  
352 would have been received if properly sent under subparagraph (A);

353 [(75)] **(74)** "Software" means a computer program and any supporting  
354 information provided in connection with a transaction relating to the program. The term  
355 does not include a computer program that is included in the definition of goods;

356 [(76)] **(75)** "State" means a state of the United States, the District of Columbia,

357 Puerto Rico, the United States Virgin Islands, or any territory or insular possession  
 358 subject to the jurisdiction of the United States;

359 [(77)] **(76)** "Supporting obligation" means a letter-of-credit right or secondary  
 360 obligation that supports the payment or performance of an account, chattel paper, a  
 361 document, a general intangible, an instrument, or investment property;

362 [(78)] **(77)** "Tangible chattel paper" means chattel paper evidenced by a record  
 363 or records consisting of information that is inscribed on a tangible medium;

364 [(79)] **(78)** "Termination statement" means an amendment of a financing  
 365 statement which:

366 (A) Identifies, by its file number, the initial financing statement to which it  
 367 relates; and

368 (B) Indicates either that it is a termination statement or that the identified  
 369 financing statement is no longer effective;

370 [(80)] **(79)** "Transmitting utility" means a person primarily engaged in the  
 371 business of:

372 (A) Operating a railroad, subway, street railway, or trolley bus;

373 (B) Transmitting communications electrically, electromagnetically, or by light;

374 (C) Transmitting goods by pipeline or sewer; or

375 (D) Transmitting or producing and transmitting electricity, steam, gas, or water.

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

377 "Applicant" Section 400.5-102.

378 "Beneficiary" Section 400.5-102.

379 "Broker" Section 400.8-102.

380 "Certificated security" Section 400.8-102.

381 "Check" Section 400.3-104.

382 "Clearing corporation" Section 400.8-102.

383 "Contract for sale" Section 400.2-106.

384 "Customer" Section 400.4-104.

385 "Entitlement holder" Section 400.8-102.

386 "Financial asset" Section 400.8-102.

387 "Holder in due course" Section 400.3-302.

388 "Issuer" (with respect to a letter of  
 389 credit or letter-of-credit right) Section 400.5-102.

390 "Issuer" (with respect to a security) Section 400.8-201.

391 "Lease" Section 400.2A-103.

392 "Lease agreement" Section 400.2A-103.

393	"Lease contract"	Section 400.2A-103.
394	"Leasehold interest"	Section 400.2A-103.
395	"Lessee"	Section 400.2A-103.
396	"Lessee in ordinary course of	
397	business"	Section 400.2A-103.
398	"Lessor"	Section 400.2A-103.
399	"Lessor's residual interest"	Section 400.2A-103.
400	"Letter of credit"	Section 400.5-102.
401	"Merchant"	Section 400.2-104.
402	"Negotiable instrument"	Section 400.3-104.
403	"Nominated person"	Section 400.5-102.
404	"Note"	Section 400.3-104.
405	"Proceeds of a letter of credit"	Section 400.5-114.
406	"Prove"	Section 400.3-103.
407	"Sale"	Section 400.2-106.
408	"Securities account"	Section 400.8-501.
409	"Securities intermediary"	Section 400.8-102.
410	"Security"	Section 400.8-102.
411	"Security certificate"	Section 400.8-102.
412	"Security entitlement"	Section 400.8-102.
413	"Uncertificated security"	Section 400.8-102.
414	(c) This section contains general definitions and principles of construction and	
415	interpretation applicable throughout sections 400.9-103 to 400.9-708.	

400.9-109. (a) Except as otherwise provided in subsections (c) and (d), this article  
 2 applies to:

- 3 (1) A transaction, regardless of its form, that creates a security interest in
- 4 personal property or fixtures by contract;
- 5 (2) An agricultural lien;
- 6 (3) A sale of accounts, chattel paper, payment intangibles, or promissory notes;
- 7 (4) A consignment;
- 8 (5) A security interest arising under section 400.2-401, 400.2-505, 400.2-711(3)
- 9 or 400.2A-508(5), as provided in section 400.9-110; and
- 10 (6) A security interest arising under section 400.4-210 or 400.5-118.

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

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

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

16 **(2) Another statute of this state expressly governs the creation,**  
17 **perfection, priority, or enforcement of a security interest created by this state**  
18 **or a governmental unit of this state;**

19 [(2)] **(3)** A statute of another state, a foreign country, or a governmental unit of  
20 another state or a foreign country, other than a statute generally applicable to security  
21 interests, expressly governs creation, perfection, priority, or enforcement of a security  
22 interest created by the state, country, or governmental unit; or

23 [(3)] **(4)** The rights of a transferee beneficiary or nominated person under a  
24 letter of credit are independent and superior under section 400.5-114.

25 (d) This article does not apply to:

26 (1) A landlord's lien, other than an agricultural lien;

27 (2) A lien, other than an agricultural lien, given by statute or other rule of law  
28 for services or materials, but section 400.9-333 applies with respect to priority of the  
29 lien;

30 (3) An assignment of a claim for wages, salary, or other compensation of an  
31 employee;

32 (4) A sale of accounts, chattel paper, payment intangibles, or promissory notes  
33 as part of a sale of the business out of which they arose;

34 (5) An assignment of accounts, chattel paper, payment intangibles, or promissory  
35 notes which is for the purpose of collection only;

36 (6) An assignment of a right to payment under a contract to an assignee that is  
37 also obligated to perform under the contract;

38 (7) An assignment of a single account, payment intangible, or promissory note  
39 to an assignee in full or partial satisfaction of a preexisting indebtedness;

40 (8) A transfer of an interest in or an assignment of a claim under a policy of  
41 insurance, other than an assignment by or to a health-care provider of a  
42 health-care-insurance receivable and any subsequent assignment of the right to payment,  
43 but sections 400.9-315 and 400.9-322 apply with respect to proceeds and priorities in  
44 proceeds;

45 (9) An assignment of a right represented by a judgment, other than a judgment  
46 taken on a right to payment that was collateral;

47 (10) A right of recoupment or set-off, but:

48 (A) Section 400.9-340 applies with respect to the effectiveness of rights of  
49 recoupment or set-off against deposit accounts; and

50 (B) Section 400.9-404 applies with respect to defenses or claims of an account  
51 debtor;

52 (11) The creation or transfer of an interest in or lien on real property, including  
53 a lease or rents thereunder, except to the extent that provision is made for:

54 (A) Liens on real property in sections 400.9-203 and 400.9-308;

55 (B) Fixtures in section 400.9-334;

56 (C) Fixture filings in sections 400.9-501, 400.9-502, 400.9-512, 400.9-516 and  
57 400.9-519; and

58 (D) Security agreements covering personal and real property in section 400.9-604;

59 (12) An assignment of a claim arising in tort, other than a commercial tort claim,  
60 but sections 400.9-315 and 400.9-322 apply with respect to proceeds and priorities in  
61 proceeds; **or**

62 (13) An assignment of a deposit account in a consumer transaction, but sections  
63 400.9-315 and 400.9-322 apply with respect to proceeds and priorities in proceeds; or

64 (14) An assignment of a claim or right to receive compensation for injuries or  
65 sickness as described in 26 U.S.C. Section 104(a)(1) or (2), as amended from time to time;  
66 or

67 (15) An assignment of a claim or right to receive benefits under a special needs  
68 trust as described in 42 U.S.C. Section 1396p(d)(4), as amended from time to time; or

69 (16) A transfer by a government or governmental subdivision or agency.

400.9-303. (a) This section applies to goods covered by a certificate of title, even  
2 if there is no other relationship between the jurisdiction under whose certificate of title  
3 the goods are covered and the goods or the debtor.

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

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

15 (d) When a notice of lien is filed in accordance with chapter 301 or 306, RSMo,  
16 then the lien is perfected and this chapter shall not govern perfection or nonperfection

17 or the priority of the lien even though a valid application for a certificate of title and the  
18 applicable fee was not delivered to the appropriate authority or the certificate of title  
19 was not issued by such authority.

20 **(e) This section shall not apply to liens perfected in accordance with**  
21 **sections 700.350 to 700.390, RSMo, and the perfection or nonperfection, the**  
22 **priority and termination of the lien shall be governed by sections 700.350 to**  
23 **700.390, RSMo. Liens or encumbrances on manufactured homes perfected**  
24 **pursuant to sections 700.350 to 700.390, RSMo, after June 30, 2001 and before**  
25 **August 28, 2002, and the perfection or nonperfection, the priority,**  
26 **termination, rights, duties and interests flowing from them shall be as**  
27 **provided by sections 700.350 to 700.390, RSMo. Liens or encumbrances on**  
28 **manufactured homes perfected pursuant to article 9 of this chapter after June**  
29 **30, 2001 and before August 28, 2002, and the perfection or nonperfection, the**  
30 **priority, termination, rights, duties and interests flowing from them are and**  
31 **shall remain valid and may be terminated, completed, consummated or**  
32 **enforced as required or permitted by article 9 of this chapter.**

400.9-317. (a) [An unperfected] A security interest or agricultural lien is  
2 subordinate to the rights of:

3 (1) A person entitled to priority under section 400.9-322; and

4 (2) **Except as otherwise provided in subsection (e),** a person that becomes  
5 a lien creditor before the earlier of the time:

6 **(A)** The security interest or agricultural lien is perfected; or

7 **(B) One of the conditions specified in section 400.9-203(b)(3) is met and**  
8 a financing statement covering the collateral is filed.

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

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

18 (d) A licensee of a general intangible or a buyer, other than a secured party, of  
19 accounts, electronic chattel paper, general intangibles, or investment property other than  
20 a certificated security takes free of a security interest if the licensee or buyer gives value

21 without knowledge of the security interest and before it is perfected.

22 (e) Except as otherwise provided in sections 400.9-320 and 400.9-321, if a person  
23 files a financing statement with respect to a purchase-money security interest before or  
24 within twenty days after the debtor receives delivery of the collateral, the security  
25 interest takes priority over the rights of a buyer, lessee, or lien creditor which arise  
26 between the time the security interest attaches and the time of filing.

400.9-323. (a) Except as otherwise provided in subsection (c), for purposes of  
2 determining the priority of a perfected security interest under section 400.9-322(a)(1),  
3 perfection of the security interest dates from the time an advance is made to the extent  
4 that the security interest secures an advance that:

5 (1) Is made while the security interest is perfected only:

6 (A) Under section 400.9-309 when it attaches; or

7 (B) Temporarily under section 400.9-312(e), (f), or (g); and

8 (2) Is not made pursuant to a commitment entered into before or while the  
9 security interest is perfected by a method other than under section 400.9-309 or  
10 400.9-312(e), (f), or (g).

11 (b) Except as otherwise provided in subsection (c), a security interest is  
12 subordinate to the rights of a person that becomes a lien creditor [while the security  
13 interest is perfected only] to the extent that [it] **the security interest** secures  
14 [advances] **an advance** made more than forty-five days after the person becomes a lien  
15 creditor unless the advance is made:

16 (1) Without knowledge of the lien; or

17 (2) Pursuant to a commitment entered into without knowledge of the lien.

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

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

24 (1) The time the secured party acquires knowledge of the buyer's purchase; or

25 (2) Forty-five days after the purchase.

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

29 (f) Except as otherwise provided in subsection (g), a lessee of goods, other than  
30 a lessee in ordinary course of business, takes the leasehold interest free of a security

31 interest to the extent that it secures advances made after the earlier of:

32 (1) The time the secured party acquires knowledge of the lease; or

33 (2) Forty-five days after the lease contract becomes enforceable.

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

400.9-406. (a) Subject to subsections (b) through (i), an account debtor on an  
2 account, chattel paper, or a payment intangible may discharge its obligation by paying  
3 the assignor until, but not after, the account debtor receives a notification, authenticated  
4 by the assignor or the assignee, that the amount due or to become due has been assigned  
5 and that payment is to be made to the assignee. After receipt of the notification, the  
6 account debtor may discharge its obligation by paying the assignee and may not  
7 discharge the obligation by paying the assignor.

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

9 (1) If it does not reasonably identify the rights assigned;

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

13 (3) At the option of an account debtor, if the notification notifies the account  
14 debtor to make less than the full amount of any installment or other periodic payment  
15 to the assignee, even if:

16 (A) Only a portion of the account, chattel paper, or general intangible has been  
17 assigned to that assignee;

18 (B) A portion has been assigned to another assignee; or

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

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

24 (d) Except as otherwise provided in subsection (e) and sections 400.2A-303 and  
25 400.9-407, and subject to subsection (h), a term in an agreement between an account  
26 debtor and an assignor or in a promissory note is ineffective to the extent that it:

27 (1) Prohibits, restricts, or requires the consent of the account debtor or person  
28 obligated on the promissory note to the assignment or transfer of, or the creation,  
29 attachment, perfection, or enforcement of a security interest in, the account, chattel  
30 paper, payment intangible, or promissory note; or



31 (2) Provides that the **assignment or transfer or the** creation, attachment,  
32 perfection, or enforcement of the security interest may give rise to a default, breach,  
33 right of recoupment, claim, defense, termination, right of termination, or remedy under  
34 the account, chattel paper, payment intangible, or promissory note.

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

37 (f) Except as otherwise provided in sections 400.2A-303 and 400.9-407, and  
38 subject to subsections (h) and (i), a rule of law, statute, or regulation, that prohibits,  
39 restricts, or requires the consent of a government, governmental body or official, or  
40 account debtor to the assignment or transfer of, or creation of a security interest in, an  
41 account or chattel paper is ineffective to the extent that the rule of law, statute, or  
42 regulation:

43 (1) Prohibits, restricts, or requires the consent of the government, governmental  
44 body or official, or account debtor to the assignment or transfer of, or the creation,  
45 attachment, perfection, or enforcement of a security interest in, the account or chattel  
46 paper; or

47 (2) Provides that the **assignment or transfer or the** creation, attachment,  
48 perfection, or enforcement of the security interest may give rise to a default, breach,  
49 right of recoupment, claim, defense, termination, right of termination, or remedy under  
50 the account or chattel paper.

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

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

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

58 (j) This section prevails over any inconsistent provisions of any statutes, rules,  
59 and regulations.

400.9-407. (a) Except as otherwise provided in subsection (b), a term in a lease  
2 agreement is ineffective to the extent that it:

3 (1) Prohibits, restricts, or requires the consent of a party to the lease to the  
4 **assignment or transfer of, or the** creation, attachment, perfection, or enforcement  
5 of a security interest in an interest of a party under the lease contract or in the lessor's  
6 residual interest in the goods; or

7 (2) Provides that the **assignment or transfer or the** creation, attachment,

8 perfection, or enforcement of the security interest may give rise to a default, breach,  
9 right of recoupment, claim, defense, termination, right of termination, or remedy under  
10 the lease.

11 (b) Except as otherwise provided in section 400.2A-303(7), a term described in  
12 subsection (a)(2) is effective to the extent that there is:

13 (1) A transfer by the lessee of the lessee's right of possession or use of the goods  
14 in violation of the term; or

15 (2) A delegation of a material performance of either party to the lease contract  
16 in violation of the term.

17 (c) The creation, attachment, perfection, or enforcement of a security interest in  
18 the lessor's interest under the lease contract or the lessor's residual interest in the goods  
19 is not a transfer that materially impairs the lessee's prospect of obtaining return  
20 performance or materially changes the duty of or materially increases the burden or risk  
21 imposed on the lessee within the purview of section 400.2A-303(4) unless, and then only  
22 to the extent that, enforcement actually results in a delegation of material performance  
23 of the lessor. [Even in that event, the creation, attachment, perfection, and enforcement  
24 of the security interest remain effective.]

400.9-408. (a) Except as otherwise provided in subsection (b), a term in a  
2 promissory note or in an agreement between an account debtor and a debtor which  
3 relates to a health-care-insurance receivable or a general intangible, including a  
4 contract, permit, license, or franchise, and which term prohibits, restricts, or requires  
5 the consent of the person obligated on the promissory note or the account debtor to, the  
6 assignment or transfer of, or creation, attachment, or perfection of a security interest in,  
7 the promissory note, health-care-insurance receivable, or general intangible, is ineffective  
8 to the extent that the term:

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

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

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

18 (c) A rule of law, statute, or regulation that prohibits, restricts, or requires the  
19 consent of a government, governmental body or official, person obligated on a promissory

20 note, or account debtor to the assignment or transfer of, or creation of a security interest  
21 in, a promissory note, health-care-insurance receivable, or general intangible, including  
22 a contract, permit, license, or franchise between an account debtor and a debtor, is  
23 ineffective to the extent that the rule of law, statute, or regulation:

24 (1) Would impair the creation, attachment, or perfection of a security interest;  
25 or

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

30 (d) To the extent that a term in a promissory note or in an agreement between  
31 an account debtor and a debtor which relates to a health-care-insurance receivable or  
32 general intangible or a rule of law, statute, or regulation described in subsection (c)  
33 would be effective under law other than this article but is ineffective under subsection  
34 (a) or (c), the creation, attachment, or perfection of a security interest in the promissory  
35 note, health-care-insurance receivable, or general intangible:

36 (1) Is not enforceable against the person obligated on the promissory note or the  
37 account debtor;

38 (2) Does not impose a duty or obligation on the person obligated on the  
39 promissory note or the account debtor;

40 (3) Does not require the person obligated on the promissory note or the account  
41 debtor to recognize the security interest, pay or render performance to the secured party,  
42 or accept payment or performance from the secured party;

43 (4) Does not entitle the secured party to use or assign the debtor's rights under  
44 the promissory note, health-care-insurance receivable, or general intangible, including  
45 any related information or materials furnished to the debtor in the transaction giving  
46 rise to the promissory note, health-care-insurance receivable, or general intangible;

47 (5) Does not entitle the secured party to use, assign, possess, or have access to  
48 any trade secrets or confidential information of the person obligated on the promissory  
49 note or the account debtor; and

50 (6) Does not entitle the secured party to enforce the security interest in the  
51 promissory note, health-care-insurance receivable, or general intangible.

52 (e) This section prevails over any inconsistent provisions of any statutes, rules,  
53 and regulations.

400.9-409. (a) A term in a letter of credit or a rule of law, statute, regulation,  
2 custom, or practice applicable to the letter of credit which prohibits, restricts, or requires

3 the consent of an applicant, issuer, or nominated person to a beneficiary's assignment  
4 of or creation of a security interest in a letter-of-credit right is ineffective to the extent  
5 that the term or rule of law, statute, regulation, custom, or practice:

6 (1) Would impair the creation, attachment, or perfection of a security interest in  
7 the letter-of-credit right; or

8 (2) Provides that the **assignment or the** creation, attachment, or perfection of  
9 the security interest may give rise to a default, breach, right of recoupment, claim,  
10 defense, termination, right of termination, or remedy under the letter-of-credit right.

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

17 (1) Is not enforceable against the applicant, issuer, nominated person, or  
18 transferee beneficiary;

19 (2) Imposes no duties or obligations on the applicant, issuer, nominated person,  
20 or transferee beneficiary; and

21 (3) Does not require the applicant, issuer, nominated person, or transferee  
22 beneficiary to recognize the security interest, pay or render performance to the secured  
23 party, or accept payment or other performance from the secured party.

400.9-504. A financing statement sufficiently indicates the collateral that it  
2 covers [only] if the financing statement provides:

3 (1) A description of the collateral pursuant to section 400.9-108; or

4 (2) An indication that the financing statement covers all assets or all personal  
5 property.

400.9-509. (a) A person may file an initial financing statement, amendment that  
2 adds collateral covered by a financing statement, or amendment that adds a debtor to  
3 a financing statement only if:

4 (1) The debtor authorizes the filing in an authenticated record **or pursuant to**  
5 **subsection (b) or (c);** or

6 (2) The person holds an agricultural lien that has become effective at the time  
7 of filing and the financing statement covers only collateral in which the person holds an  
8 agricultural lien.

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

11 amendment, covering:

12 (1) The collateral described in the security agreement; and

13 (2) Property that becomes collateral under section 400.9-315(a)(2), whether or not  
14 the security agreement expressly covers proceeds.

15 **(c) By acquiring collateral in which a security interest or agricultural**  
16 **lien continues under section 400.9-315(a)(1), a debtor authorizes the filing of**  
17 **an initial financing statement, and an amendment, covering the collateral and**  
18 **property that becomes collateral under section 400.9-315(a)(2).**

19 **[(c)] (d)** A person may file an amendment other than an amendment that adds  
20 collateral covered by a financing statement or an amendment that adds a debtor to a  
21 financing statement only if:

22 (1) The secured party of record authorizes the filing; or

23 (2) The amendment is a termination statement for a financing statement as to  
24 which the secured party of record has failed to file or send a termination statement as  
25 required by section 400.9-513(a) or (c), the debtor authorizes the filing, and the  
26 termination statement indicates that the debtor authorized it to be filed.

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

400.9-513. (a) A secured party shall cause the secured party of record for a  
2 financing statement to file a termination statement for the financing statement if the  
3 financing statement covers consumer goods and:

4 (1) There is no obligation secured by the collateral covered by the financing  
5 statement and no commitment to make an advance, incur an obligation, or otherwise give  
6 value; or

7 (2) The debtor did not authorize the filing of the initial financing statement.

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

10 (1) Within one month after there is no obligation secured by the collateral  
11 covered by the financing statement and no commitment to make an advance, incur an  
12 obligation, or otherwise give value; or

13 (2) If earlier, within twenty days after the secured party receives an  
14 authenticated demand from a debtor.

15 (c) In cases not governed by subsection (a), within twenty days after a secured  
16 party receives an authenticated demand from a debtor, the secured party shall cause the  
17 secured party of record for a financing statement to send to the debtor a termination

18 statement for the financing statement or file the termination statement in the filing  
19 office if:

20 (1) Except in the case of a financing statement covering accounts or chattel paper  
21 that has been sold or goods that are the subject of a consignment, there is no obligation  
22 secured by the collateral covered by the financing statement and no commitment to make  
23 an advance, incur an obligation, or otherwise give value;

24 (2) The financing statement covers accounts or chattel paper that has been sold  
25 but as to which the account debtor or other person obligated has discharged its  
26 obligation;

27 (3) The financing statement covers goods that were the subject of a consignment  
28 to the debtor but are not in the debtor's possession; or

29 (4) The debtor did not authorize the filing of the initial financing statement.

30 (d) Except as otherwise provided in section 400.9-510, upon the filing of a  
31 termination statement with the filing office, the financing statement to which the  
32 termination statement relates ceases to be effective. Except as otherwise provided in  
33 section 400.9-510, for purposes of sections 400.9-519(g), 400.9-522(a), and 400.9-523(c),  
34 [upon] the filing **with the filing office** of a termination statement [with the filing  
35 office, a financing statement indicating that the debtor is a transmitting utility to which  
36 the termination statement relates ceases to be effective] **relating to a financing**  
37 **statement that indicates that the debtor is a transmitting utility also causes**  
38 **the effectiveness of the financing statement to lapse.**

400.9-525. (a) Except as otherwise provided in subsection (e), the fee for filing  
2 and indexing a record under this part, other than an initial financing statement of the  
3 kind described in section 400.9-502(c), is [the amount specified in subsection (c), if  
4 applicable, plus]:

5 (1) If the filing office is the secretary of state's office, then twelve dollars for the  
6 first page and one dollar for each subsequent page if the record is communicated in  
7 writing or by another medium authorized by filing-office rule, of which fee seven dollars  
8 is received and collected by the secretary of state on behalf of the [county employees'  
9 retirement fund established pursuant to section 50.1010, RSMo, provided, however, that  
10 in any charter county or city not within a county whose employees are not members of  
11 the county employees' retirement fund, the fee collected for the county employees'  
12 retirement fund established pursuant to section 50.1010, RSMo, shall go to the general  
13 revenue fund of that charter county or city not within a county] **counties of this state**  
14 **for deposit in the uniform commercial code transition fee trust fund; or**

15 (2) If the filing office is other than the secretary of state's office, then the fee

16 otherwise allowed by law.

17 (b) Except as otherwise provided in subsection (e), the fee for filing and indexing  
18 an initial financing statement of the kind described in section 400.9-502(c) is [the  
19 amount specified in subsection (c), if applicable, plus]:

20 (1) If the filing office is the secretary of state's office, then twelve dollars for the  
21 first page and one dollar for each subsequent page if the record is communicated in  
22 writing or by another medium authorized by filing-office rule, of which fee seven dollars  
23 is received and collected by the secretary of state on behalf of the [county employees'  
24 retirement fund established pursuant to section 50.1010, RSMo, provided, however, that  
25 in any charter county or city not within a county whose employees are not members of  
26 the county employees' retirement fund, the fee collected for the county employees'  
27 retirement fund established pursuant to section 50.1010, RSMo, shall go to the general  
28 revenue fund of that charter county or city not within a county] **counties of this state**  
29 **for deposit in the uniform commercial code transition fee trust fund; or**

30 (2) If the filing office is other than the secretary of state's office, then the fee  
31 otherwise allowed by law.

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

34 (d) The fee for responding to a request for information from the filing office,  
35 including for communicating whether there is on file any financing statement naming  
36 a particular debtor, is:

37 (1) If the filing office is the secretary of state's office, then twenty-two dollars for  
38 the first page and one dollar for each subsequent page if the record is communicated in  
39 writing or by another medium authorized by filing-office rule, of which fee seven dollars  
40 is received and collected by the secretary of state on behalf of the [county employees'  
41 retirement fund established pursuant to section 50.1010, RSMo, provided, however, that  
42 in any charter county or city not within a county whose employees are not members of  
43 the county employees' retirement fund, the fee collected for the county employees'  
44 retirement fund established pursuant to section 50.1010, RSMo, shall go to the general  
45 revenue fund of that charter county or city not within a county] **counties of this state**  
46 **for deposit in the uniform commercial code transition fee trust fund; or**

47 (2) If the filing office is other than the secretary of state's office, then the fee  
48 otherwise allowed by law.

49 (e) This section does not require a fee with respect to a record of a mortgage  
50 which is effective as a financing statement filed as a fixture filing or as a financing  
51 statement covering as-extracted collateral or timber to be cut under section

52 400.9-502(c). However, the recording and satisfaction fees that otherwise would be  
53 applicable to the record of the mortgage apply.

54 (f) The [secretary of state] **department of revenue** shall administer a special  
55 trust fund, which is hereby established, to be known as the "Uniform Commercial Code  
56 Transition Fee Trust Fund", and which shall be funded by seven dollars of each of the  
57 fees received and collected pursuant to subdivisions (a), (b) and [(c)] **(d)** of this section  
58 on behalf of the [county employees' retirement fund established pursuant to section  
59 50.1010, RSMo, or the general revenue fund of any charter county or city not within a  
60 county whose employees are not members of the county employees' retirement fund]  
61 **counties of this state for deposit in the uniform commercial code transition**  
62 **fee trust fund.**

63 (1) The secretary of state shall keep **and provide to the department of**  
64 **revenue and the county employees' retirement fund** accurate record of the moneys  
65 **to be deposited** in the uniform commercial code transition fee trust fund allocated to  
66 each county and city not within a county on the basis of where such record, financing  
67 statement or other document would have been filed prior to July 1, 2001, and **the**  
68 **department of revenue** shall distribute the moneys pursuant to subdivision (2) of this  
69 subsection on that basis.

70 (2) The moneys in the uniform commercial code transition fee trust fund shall be  
71 distributed to the county employees' retirement fund established pursuant to section  
72 50.1010, RSMo, or the general revenue fund of any charter county or city not within a  
73 county whose employees are not members of the county employees' retirement fund.

74 (3) The moneys in the uniform commercial code transition fee trust fund shall  
75 [not] be deemed to be [state funds] **"nonstate funds", as defined in article IV,**  
76 **section 15 of the Missouri constitution, to be administered by the department**  
77 **of revenue**, provided, however that interest, if any, earned by the money in the trust  
78 fund shall be deposited into the general revenue fund in the state treasury.

400.9-602. Except as otherwise provided in section 400.9-624, to the extent that  
2 they give rights to a debtor or obligor and impose duties on a secured party, [a secured  
3 party may not require] the debtor or obligor [to] **may not** waive or vary the rules stated  
4 in the following listed sections:

5 (1) Section 400.9-207(b)(4)(C), which deals with use and operation of the  
6 collateral by the secured party;

7 (2) Section 400.9-210, which deals with requests for an accounting and requests  
8 concerning a list of collateral and statement of account;

9 (3) Section 400.9-607(c), which deals with collection and enforcement of collateral;



10 (4) Sections 400.9-608(a) and 400.9-615(c) to the extent that they deal with  
11 application or payment of noncash proceeds of collection, enforcement, or disposition;

12 (5) Sections 400.9-608(a) and 400.9-615(d) to the extent that they require  
13 accounting for or payment of surplus proceeds of collateral;

14 (6) Section 400.9-609 to the extent that it imposes upon a secured party that  
15 takes possession of collateral without judicial process the duty to do so without breach  
16 of the peace;

17 (7) Sections 400.9-610(b), 400.9-611, 400.9-613 and 400.9-614, which deal with  
18 disposition of collateral;

19 **(8) Section 400.9-615(f), which deals with calculation of a deficiency or**  
20 **surplus when a disposition is made to the secured party, a person related to**  
21 **the secured party, or a secondary obligor;**

22 [(8)] **(9)** Section 400.9-616, which deals with explanation of the calculation of a  
23 surplus or deficiency;

24 [(9)] **(10)** Sections 400.9-620, 400.9-621 and 400.9-622, which deal with  
25 acceptance of collateral in satisfaction of obligation;

26 [(10)] **(11)** Section 400.9-623, which deals with redemption of collateral;

27 [(11)] **(12)** Section 400.9-624, which deals with permissible waivers; and

28 [(12)] **(13)** Sections 400.9-625 and 400.9-626, which deal with the secured party's  
29 liability for failure to comply with this article.

400.9-608. (a) If a security interest or agricultural lien secures payment or  
2 performance of an obligation, the following rules apply:

3 (1) A secured party shall apply or pay over for application the cash proceeds of  
4 collection or enforcement under [this] section **400.9-607** in the following order to:

5 (A) The reasonable expenses of collection and enforcement and, to the extent  
6 provided for by agreement and not prohibited by law, reasonable attorney's fees and legal  
7 expenses incurred by the secured party;

8 (B) The satisfaction of obligations secured by the security interest or agricultural  
9 lien under which the collection or enforcement is made; and

10 (C) The satisfaction of obligations secured by any subordinate security interest  
11 in or other lien on the collateral subject to the security interest or agricultural lien under  
12 which the collection or enforcement is made if the secured party receives an  
13 authenticated demand for proceeds before distribution of the proceeds is completed;

14 (2) If requested by a secured party, a holder of a subordinate security interest or  
15 other lien shall furnish reasonable proof of the interest or lien within a reasonable  
16 time. Unless the holder complies, the secured party need not comply with the holder's

17 demand under paragraph (1)(C);

18 (3) A secured party need not apply or pay over for application noncash proceeds  
19 of collection and enforcement under [this] section **400.9-607** unless the failure to do so  
20 would be commercially unreasonable. A secured party that applies or pays over for  
21 application noncash proceeds shall do so in a commercially reasonable manner;

22 (4) A secured party shall account to and pay a debtor for any surplus, and the  
23 obligor is liable for any deficiency.

24 (b) If the underlying transaction is a sale of accounts, chattel paper, payment  
25 intangibles, or promissory notes, the debtor is not entitled to any surplus, and the  
26 obligor is not liable for any deficiency.

400.9-611. (a) In this section, "notification date" means the earlier of the date  
2 on which:

3 (1) A secured party sends to the debtor and any secondary obligor an  
4 authenticated notification of disposition; or

5 (2) The debtor and any secondary obligor waive the right to notification.

6 (b) Except as otherwise provided in subsection (d), a secured party that disposes  
7 of collateral under section 400.9-610 shall send to the persons specified in subsection (c)  
8 a reasonable authenticated notification of disposition.

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

11 (1) The debtor;

12 (2) Any secondary obligor; and

13 (3) If the collateral is other than consumer goods:

14 (A) Any other person from which the secured party has received, before the  
15 notification date, an authenticated notification of a claim of an interest in the collateral;

16 (B) Any other secured party or lienholder that, ten days before the notification  
17 date, held a security interest in or other lien on the collateral perfected by the filing of  
18 a financing statement that:

19 (i) Identified the collateral;

20 (ii) Was indexed under the debtor's name as of that date; and

21 (iii) Was filed in the office in which to file a financing statement against the  
22 debtor covering the collateral as of that date; and

23 (C) Any other secured party that, ten days before the notification date, held a  
24 security interest in the collateral perfected by compliance with a statute, regulation, or  
25 treaty described in section 400.9-311(a).

26 (d) Subsection (b) does not apply if the collateral is perishable or threatens to

27 decline speedily in value or is of a type customarily sold on a recognized market.

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

30 (1) Not later than twenty days or earlier than thirty days before the notification  
31 date, the secured party requests, in a commercially reasonable manner, information  
32 concerning financing statements indexed under the debtor's name in the office indicated  
33 in subsection (c)(3)(B); and

34 (2) Before the notification date, the secured party:

35 (A) Did not receive a response to the request for information; or

36 (B) Received a response to the request for information and sent an authenticated  
37 notification of disposition to each secured party **or other lienholder** named in that  
38 response whose financing statement covered the collateral.

2 400.9-613. Except in a consumer-goods transaction, the following rules apply:

3 (1) The contents of a notification of disposition are sufficient if the notification:

4 (A) Describes the debtor and the secured party;

5 (B) Describes the collateral that is the subject of the intended disposition;

6 (C) States the method of intended disposition;

7 (D) States that the debtor is entitled to an accounting of the unpaid indebtedness  
8 and states the charge, if any, for an accounting; and

9 (E) States the time and place of a public [sale] **disposition** or the time after  
10 which any other disposition is to be made;

11 (2) Whether the contents of a notification that lacks any of the information  
12 specified in paragraph (1) are nevertheless sufficient is a question of fact;

13 (3) The contents of a notification providing substantially the information  
14 specified in paragraph (1) are sufficient, even if the notification includes:

15 (A) Information not specified by that paragraph; or

16 (B) Minor errors that are not seriously misleading;

17 (4) A particular phrasing of the notification is not required;

18 (5) The following form of notification and the form appearing in section  
19 400.9-614(3), when completed, each provides sufficient information:

20 NOTIFICATION OF DISPOSITION OF COLLATERAL

21 To: (Name of debtor, obligor, or other person to which the notification is sent)

22 From: (Name, address, and telephone number of secured party)

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

24 (For a public disposition:)

25 We will sell (or lease or license, as applicable) the (describe collateral) (to the

26 highest qualified bidder) in public as follows:

27 Day and Date: \_\_\_\_\_

28 Time: \_\_\_\_\_

29 Place: \_\_\_\_\_

30 (For a private disposition:)

31 We will sell (or lease or license, as applicable) the (describe collateral) privately  
32 sometime after (day and date).

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

36 (End of Form)

400.9-615. (a) A secured party shall apply or pay over for application the cash  
2 proceeds of disposition **under section 400.9-610** in the following order to:

3 (1) The reasonable expenses of retaking, holding, preparing for disposition,  
4 processing, and disposing, and, to the extent provided for by agreement and not  
5 prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured  
6 party;

7 (2) The satisfaction of obligations secured by the security interest or agricultural  
8 lien under which the disposition is made;

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

11 (A) The secured party receives from the holder of the subordinate security  
12 interest or other lien an authenticated demand for proceeds before distribution of the  
13 proceeds is completed; and

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

16 (4) A secured party that is a consignor of the collateral if the secured party  
17 receives from the consignor an authenticated demand for proceeds before distribution of  
18 the proceeds is completed.

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

23 (c) A secured party need not apply or pay over for application noncash proceeds  
24 of disposition under [this] section **400.9-610** unless the failure to do so would be  
25 commercially unreasonable. A secured party that applies or pays over for application

26 noncash proceeds shall do so in a commercially reasonable manner.

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

30 (1) Unless subsection (a)(4) requires the secured party to apply or pay over cash  
31 proceeds to a consignor, the secured party shall account to and pay a debtor for any  
32 surplus; and

33 (2) The obligor is liable for any deficiency.

34 (e) If the underlying transaction is a sale of accounts, chattel paper, payment  
35 intangibles, or promissory notes:

36 (1) The debtor is not entitled to any surplus; and

37 (2) The obligor is not liable for any deficiency.

38 (f) The surplus or deficiency following a disposition is calculated based on the  
39 amount of proceeds that would have been realized in a disposition complying with this  
40 part to a transferee other than the secured party, a person related to the secured party,  
41 or a secondary obligor if:

42 (1) The transferee in the disposition is the secured party, a person related to the  
43 secured party, or a secondary obligor; and

44 (2) The amount of proceeds of the disposition is significantly below the range of  
45 proceeds that a complying disposition to a person other than the secured party, a person  
46 related to the secured party, or a secondary obligor would have brought.

47 (g) A secured party that receives cash proceeds of a disposition in good faith and  
48 without notice that the receipt violates the rights of the holder of a security interest or  
49 other lien that is not subordinate to the security interest under which the disposition is  
50 made:

51 (1) Takes the cash proceeds free of the security interest or other lien;

52 (2) Is not obligated to apply the proceeds of the disposition to the satisfaction of  
53 obligations secured by the security interest or other lien; and

54 (3) Is not obligated to account to or pay the holder of the security interest or  
55 other lien for any surplus.

400.9-625. (a) If it is established that a secured party is not proceeding in  
2 accordance with this article, a court may order or restrain collection, enforcement, or  
3 disposition of collateral on appropriate terms and conditions.

4 (b) Subject to subsections (c), (d), and (f), a person is liable for damages in the  
5 amount of any loss caused by a failure to comply with this article. Loss caused by a  
6 failure to comply [with a request under section 400.9-210] may include loss resulting

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

8 (c) Except as otherwise provided in section 400.9-628:

9 (1) A person that, at the time of the failure, was a debtor, was an obligor, or held  
10 a security interest in or other lien on the collateral may recover damages under  
11 subsection (b) for its loss; and

12 (2) If the collateral is consumer goods, a person that was a debtor or a secondary  
13 obligor at the time a secured party failed to comply with this part may recover for that  
14 failure in any event an amount not less than the credit service charge plus ten percent  
15 of the principal amount of the obligation or the time-price differential plus ten percent  
16 of the cash price.

17 (d) A debtor whose deficiency is eliminated under section 400.9-626 may recover  
18 damages for the loss of any surplus. However, a debtor or secondary obligor whose  
19 deficiency is eliminated or reduced under section 400.9-626 may not otherwise recover  
20 under subsection (b) for noncompliance with the provisions of this part relating to  
21 collection, enforcement, disposition, or acceptance.

22 (e) In addition to any damages recoverable under subsection (b), the debtor,  
23 consumer obligor, or person named as a debtor in a filed record, as applicable, may  
24 recover five hundred dollars in each case from a person that:

25 (1) Fails to comply with section 400.9-208;

26 (2) Fails to comply with section 400.9-209;

27 (3) Files a record that the person is not entitled to file under section 400.9-509(a);

28 (4) Fails to cause the secured party of record to file or send a termination  
29 statement as required by section 400.9-513(a) or (c);

30 (5) Fails to comply with section 400.9-616(b)(1) and whose failure is part of a  
31 pattern, or consistent with a practice, of noncompliance; or

32 (6) Fails to comply with section 400.9-616(b)(2).

33 (f) A debtor or consumer obligor may recover damages under subsection (b) and,  
34 in addition, five hundred dollars in each case from a person that, without reasonable  
35 cause, fails to comply with a request under section 400.9-210. A recipient of a request  
36 under section 400.9-210 which never claimed an interest in the collateral or obligations  
37 that are the subject of a request under that section has a reasonable excuse for failure  
38 to comply with the request within the meaning of this subsection.

39 (g) If a secured party fails to comply with a request regarding a list of collateral  
40 or a statement of account under section 400.9-210, the secured party may claim a  
41 security interest only as shown in the **list or** statement included in the request as  
42 against a person that is reasonably misled by the failure.

43 (h) This section shall apply on and after January 1, 2003.

400.9-710. (a) In this section:

2 (1) "Former article 9 records" means:

3 a. Financing statements and other records that have been filed in the local-filing  
4 office before July 1, 2001, and that are, or upon processing and indexing will be, reflected  
5 in the index maintained, as of July 1, 2001, by the local-filing office for financing  
6 statements and other records filed in the local-filing office before July 1, 2001; and

7 b. The index as of July 1, 2001.

8 The term does not include records presented to a local-filing office for filing after July  
9 1, 2001, whether or not the records relate to financing statements filed in the local-filing  
10 office before July 1, 2001.

11 (2) "Local-filing office" means a filing office, other than the office of the secretary  
12 of state, that is designated as the proper place to file a financing statement under  
13 400.9-401 of former article 9. The term applies only with respect to a record that covers  
14 a type of collateral as to which the filing office is designated in that section as the proper  
15 place to file.

16 **(b) Except for a record terminating a former article 9 record, a local**  
17 **filing office shall not accept a record presented after June 30, 2001, whether**  
18 **or not the record relates to a financing statement filed in the local filing**  
19 **office before July 1, 2001. If the record terminating such former article 9**  
20 **record is in the standard form prescribed by the secretary of state, the**  
21 **uniform fee for filing and indexing the termination statement in the office of**  
22 **a county recorder shall be the same fee as set out in the former article 9**  
23 **before the effective date of this act.**

24 [(b)] (c) Until June 30, [2006] **2008**, each local-filing office must maintain all  
25 former article 9 records in accordance with former article 9. A former article 9 record  
26 that is not reflected on the index maintained on July 1, 2001, by the local-filing office  
27 must be processed and indexed, and reflected on the index as of July 1, 2001, as soon as  
28 practicable but in any event no later than thirty days after July 1, 2001.

29 [(c)] (d) Until at least June 30, 2008, each local-filing office must respond to  
30 requests for information with respect to former article 9 records relating to a debtor and  
31 issue certificates, in accordance with former article 9. The fees charged for responding  
32 to requests for information relating to a debtor and issuing certificates with respect to  
33 former article 9 records must be the fees in effect under former article 9 on July 1, 2001.

34 [(d)] (e) After June 30, [2006] **2008**, each local-filing office may remove and  
35 destroy, in accordance with any then applicable record retention law of this state, all

36 former article 9 records, including the related index.

37           [(e)] **(f)** This section does not apply, with respect to financing statements and  
38 other records, to a filing office in which mortgages or records of mortgages on real  
39 property are required to be filed or recorded, if:

40           (1) The collateral is timber to be cut or as-extracted collateral; or

41           (2) The record is or relates to a financing statement filed as a fixture and the  
42 collateral is goods that are or are to become fixtures.

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