

Senate Bill No. 474—Committee on Judiciary

FILE NUMBER.....

AN ACT relating to commercial transactions; revising the provisions of the Uniform Commercial Code governing secured transactions; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 104 of NRS is hereby amended by adding thereto a new section to read as follows:

1. In this section, "pre-effective-date financing statement" means a financing statement filed before July 1, 2001.

2. A person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in, a pre-effective-date financing statement pursuant to the law of the jurisdiction governing perfection as provided in part 3. The effectiveness of a pre-effective-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

3. Except as otherwise provided in subsection 4, if the law of this state governs perfection of a security interest, the information in a pre-effective-date financing statement may be amended on or after July 1, 2001, if:

(a) The pre-effective-date financing statement and an amendment are filed in the office specified in NRS 104.9501;

(b) An amendment is filed in the office specified in NRS 104.9501 concurrently with, or after the filing in that office of, an initial financing statement that satisfies the requirements of subsection 3 of NRS 104.9706; or

(c) An initial financing statement that provides the information as amended and satisfies the requirements of subsection 3 of NRS 104.9706 is filed in the office specified in NRS 104.9501.

4. If the law of this state governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement may be continued only under subsections 4 and 6 of NRS 104.9705 or 104.9706.

5. Whether or not the law of this state governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement filed in this state may be terminated on or after July 1, 2001, by filing a termination statement in the office in which the pre-effective-date financing statement is filed, unless an initial financing statement that satisfies the requirements of subsection 3 of NRS 104.9706 has been filed in the office specified by the law of the jurisdiction governing perfection as provided in part 3.

Sec. 2. NRS 104.1105 is hereby amended to read as follows:

104.1105 1. Except as otherwise provided in this section, when a transaction bears a reasonable relation to this state and also to another state or nation, the parties may agree that the law of this state or of such other state or nation governs their rights and duties. Failing such agreement, this chapter applies to transactions bearing an appropriate relation to this state.

2. Where one of the following provisions of this chapter specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. NRS 104.2402.

Applicability of the article on leases. NRS 104A.2105 and 104A.2106.

Applicability of the article on bank deposits and collections. NRS 104.4102.

Letters of credit. NRS 104.5116.

Applicability of the article on investment securities. NRS 104.8110.

Law governing perfection, the effect of perfection or nonperfection and the priority of security interests ~~+~~ *and agricultural liens*. NRS 104.9301 to 104.9307, inclusive.

Governing law in the article on funds transfers. NRS 104A.4507.

Sec. 3. NRS 104.2502 is hereby amended to read as follows:

104.2502 1. Subject to ~~subsection 2~~ *subsections 2 and 3*, and even though the goods have not been shipped, a buyer who has paid a part or all of the price of goods in which he has a special property under the provisions of the immediately preceding section may on making and keeping good a tender of any unpaid portion of their price recover them from the seller if:

(a) In the case of goods bought for personal, family or household purposes, the seller repudiates or fails to deliver as required by the contract; or

(b) In all cases, the seller becomes insolvent within 10 days after receipt of the first installment on their price.

2. *The right of the buyer to recover the goods under subsection 1 vests upon acquisition of a special property even if the seller has not then repudiated or failed to deliver.*

3. If the identification creating his special property has been made by the buyer he acquires the right to recover the goods only if they conform to the contract for sale.

Sec. 4. NRS 104.9102 is hereby amended to read as follows:

104.9102 1. In this article:

(a) “Accession” means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(b) “Account,” except as used in “account for,” means a right to payment of a monetary obligation, whether or not earned by performance, for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of; for services rendered or to be rendered; for a policy of insurance issued or to be issued; for a secondary obligation incurred or to be incurred; for energy provided or to be provided; for the use or hire of a vessel under a charter or other contract; arising out of the use of a credit or charge card or information contained on or for use with the card; or as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state. The term includes health-care-insurance receivables. The term does not include rights to payment evidenced by chattel paper or an instrument; commercial

tort claims; deposit accounts; investment property; letter-of-credit rights or letters of credit; or rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

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

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

(1) Authenticated by a secured party;

(2) Indicating the aggregate unpaid secured obligations as of a date not more than 35 days earlier or 35 days later than the date of the record; and

(3) Identifying the components of the obligations in reasonable detail.

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

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

(I) Goods or services furnished in connection with a debtor’s farming operation; or

(II) Rent on real property leased by a debtor in connection with its farming operation;

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

(I) In the ordinary course of its business furnished goods or services to a debtor in connection with his farming operation; or

(II) Leased real property to a debtor in connection with his farming operation; and

(3) Whose effectiveness does not depend on the person’s possession of the personal property.

(f) “As-extracted collateral” means:

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

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

(II) Attaches to the minerals as extracted; or

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

(g) “Authenticate” means:

(1) To sign; or

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

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

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

(j) “Certificate of title” means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the

certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

(k) "Chattel paper" means a record or records that evidence both a monetary obligation and a security interest in or a lease of specific goods or of specific goods and software used in the goods ~~[-]~~, *or a security interest in or a lease of specific goods and a license of software used in the goods.* The term does not include charters or other contracts involving the use or hire of a vessel ~~[-]~~, *or records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.* If a transaction is evidenced ~~both by a security agreement or lease and~~ by *records that include* an instrument or series of instruments, the group of records taken together constitutes chattel paper. *As used in this paragraph, "monetary obligation" means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods.*

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

- (1) Proceeds to which a security interest attaches;
- (2) Accounts, chattel paper, payment intangibles and promissory notes that have been sold; and
- (3) Goods that are the subject of a consignment.

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

- (1) The claimant is an organization; or
- (2) The claimant is a natural person and the claim:
 - (I) Arose in the course of his business or profession; and
 - (II) Does not include damages arising out of personal injury to or the death of a natural person.

(n) "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(o) "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option or another contract if the contract or option is:

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

(p) "Commodity customer" means a person for which a commodity intermediary carries a commodity contract on its books.

(q) "Commodity intermediary" means a person that:

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

(r) "Communicate" means:

- (1) To send a written or other tangible record;
- (2) To transmit a record by any means agreed upon by the persons sending and receiving the record; or
- (3) In the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.
- (s) “Consignee” means a merchant to which goods are delivered in a consignment.
- (t) “Consignment” means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:
 - (1) The merchant:
 - (I) Deals in goods of that kind under a name other than the name of the person making delivery;
 - (II) Is not an auctioneer; and
 - (III) Is not generally known by its creditors to be substantially engaged in selling the goods of others;
 - (2) With respect to each delivery, the aggregate value of the goods is \$1,000 or more at the time of delivery;
 - (3) The goods are not consumer goods immediately before delivery; and
 - (4) The transaction does not create a security interest that secures an obligation.
- (u) “Consignor” means a person that delivers goods to a consignee in a consignment.
- (v) “Consumer debtor” means a debtor in a consumer transaction.
- (w) “Consumer goods” means goods that are used or bought for use primarily for personal, family or household purposes.
- (x) “Consumer-goods transaction” means a consumer transaction to the extent that:
 - (1) A natural person incurs an obligation primarily for personal, family or household purposes; and
 - (2) A security interest in consumer goods or in consumer goods and software that is held or acquired primarily for personal, family or household purposes secures the obligation.
- (y) “Consumer obligor” means an obligor who is a natural person and who incurred the obligation as part of a transaction entered into primarily for personal, family or household purposes.
- (z) “Consumer transaction” means a transaction to the extent that a natural person incurs an obligation primarily for personal, family or household purposes; a security interest secures the obligation; and the collateral is held or acquired primarily for personal, family or household purposes. The term includes consumer-goods transactions.
- (aa) “Continuation statement” means a change of a financing statement which:
 - (1) Identifies, by its file number, the initial financing statement to which it relates; and
 - (2) Indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.
- (bb) “Debtor” means:
 - (1) A person having an interest, other than a security interest or other lien, in the collateral, whether or not he is an obligor;

(2) A seller of accounts, chattel paper, payment intangibles or promissory notes; or

(3) A consignee.

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

(dd) “Document” means a document of title or a receipt of the type described in subsection 2 of NRS 104.7201.

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

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

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

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

(1) Crops grown, growing or to be grown, including:

(I) Crops produced on trees, vines and bushes; and

(II) Aquatic goods produced in aquacultural operations;

(2) Livestock, born or unborn, including aquatic goods produced in aquacultural operations;

(3) Supplies used or produced in a farming operation; or

(4) Products of crops or livestock in their unmanufactured states.

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

(jj) “File number” means the number assigned to an initial financing statement pursuant to subsection 1 of NRS 104.9519.

(kk) “Filing office” means an office designated in NRS 104.9501 as the place to file a financing statement.

(ll) “Filing-office rule” means a rule adopted pursuant to NRS 104.9526.

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

(nn) “Fixture filing” means the filing of a financing statement covering goods that are or are to become fixtures and satisfying subsections 1 and 2 of NRS 104.9502. The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

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

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

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

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

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

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

(uu) “Instrument” means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary endorsement or assignment. The term does not include investment property, letters of credit or writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

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

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

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

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

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

include the right of a beneficiary to demand payment or performance under a letter of credit.

(zz) “Lien creditor” means:

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

or

- (4) A receiver in equity from the time of appointment.

(aaa) “Manufactured home” means a structure, transportable in one or more sections, which in the traveling mode, is 8 feet or more in body width or 40 feet or more in body length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning and electrical systems contained therein. The term includes any structure that meets all of the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States Secretary of Housing and Urban Development and complies with the standards established under Title 42 of the United States Code.

(bbb) “Manufactured-home transaction” means a secured transaction:

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

(ccc) “Mortgage” means a consensual interest in real property, including fixtures, which is created by a mortgage, deed of trust, or similar transaction.

(ddd) “New debtor” means a person that becomes bound as debtor under subsection 4 of NRS 104.9203 by a security agreement previously entered into by another person.

(eee) “New value” means money; money’s worth in property, services or new credit; or release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

(fff) “Noncash proceeds” means proceeds other than cash proceeds.

(ggg) “Obligor” means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral, owes payment or other performance of the obligation, has provided property other than the collateral to secure payment or other performance of the obligation, or is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include an issuer or a nominated person under a letter of credit.

(hhh) “Original debtor” means *, except as used in subsection 3 of NRS 104.9310*, a person that, as debtor, entered into a security agreement to which a new debtor has become bound under subsection 4 of NRS 104.9203.

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

(jjj) “Person related to,” with respect to a natural person, means:

- (1) His spouse;
- (2) His brother, brother-in-law, sister or sister-in-law;
- (3) His or his spouse’s ancestor or lineal descendant; or
- (4) Any other relative, by blood or marriage, of the person or his spouse who shares the same home with him.

(kkk) “Person related to,” with respect to an organization, means:

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

(lll) “Proceeds” means , *except as used in subsection 2 of NRS 104.9609*, the following property:

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

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

(nnn) “Proposal” means a record authenticated by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to NRS 104.9620, 104.9621 and 104.9622.

(ooo) “Public-finance transaction” means a secured transaction in connection with which:

- (1) Debt securities are issued;
- (2) All or a portion of the securities issued have an initial stated maturity of at least 20 years; and
- (3) The debtor, the obligor, the secured party, the account debtor or other person obligated on collateral, the assignor or assignee of a secured obligation, or the assignor or assignee of a security interest is a state or a governmental unit of a state.

(ppp) “Pursuant to commitment,” with respect to an advance made or other value given by a secured party, means pursuant to the secured party’s

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

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

(rrr) "Registered organization" means an organization organized solely under the law of a single state or the United States and as to which the state or the United States must maintain a public record showing the organization to have been organized.

(sss) "Secondary obligor" means an obligor to the extent that:

(1) The obligor's obligation is secondary; or

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

(ttt) "Secured party" means:

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

(2) A person that holds an agricultural lien;

(3) A consignor;

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

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

(6) A person that holds a security interest arising under NRS 104.2401, 104.2505, subsection 3 of NRS 104.2711, NRS 104.4210, 104.5118 or subsection 5 of NRS 104A.2508.

(uuu) "Security agreement" means an agreement that creates or provides for a security interest.

(vvv) "Send," in connection with a record or notification, means:

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

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

(www) "Software" means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is contained in goods unless the goods are a computer or computer peripheral.

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

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

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

(aaaa) “Termination statement” means a subsequent filing which:

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

(2) Indicates either that it is a termination statement or that the identified financing statement is no longer effective.

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

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

(2) Transmitting communications electrically, electromagnetically or by light;

(3) Transmitting goods by pipeline;

(4) Providing sewerage; or

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

2. The following definitions in other articles apply to this article:

“Applicant.” NRS 104.5102.

“Beneficiary.” NRS 104.5102.

“Broker.” NRS 104.8102.

“Certificated security.” NRS 104.8102.

“Check.” NRS 104.3104.

“Clearing corporation.” NRS 104.8102.

“Contract for sale.” NRS 104.2106.

“Customer.” NRS 104.4104.

“Entitlement holder.” NRS 104.8102.

“Financial asset.” NRS 104.8102.

“Holder in due course.” NRS 104.3302.

“Issuer.” NRS 104.5102.

“Lease.” NRS 104A.2103.

“Lease agreement.” NRS 104A.2103.

“Lease contract.” NRS 104A.2103.

“Leasehold interest.” NRS 104A.2103.

“Lessee.” NRS 104A.2103.

“Lessee in ordinary course of business.” NRS 104A.2103.

“Lessor.” NRS 104A.2103.

“Lessor’s residual interest.” NRS 104A.2103.

“Letter of credit.” NRS 104.5102.

“Merchant.” NRS 104.2104.

“Negotiable instrument.” NRS 104.3104.

“Nominated person.” NRS 104.5102.

“Note.” NRS 104.3104.

“Proceeds of a letter of credit.” NRS 104.5114.

“Prove.” NRS 104.3103.

“Sale.” NRS 104.2106.

“Securities account.” NRS 104.8501.

“Securities intermediary.” NRS 104.8102.

“Security.” NRS 104.8102.

“Security certificate.” NRS 104.8102.

“Security entitlement.” NRS 104.8102.

“Uncertificated security.” NRS 104.8102.

3. Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

Sec. 5. NRS 104.9104 is hereby amended to read as follows:

104.9104 1. A secured party has control of a deposit account if:

(a) The secured party is the bank with which the deposit account is maintained;

(b) The debtor, secured party and bank have agreed in an authenticated record that the bank will comply with instructions originated by the secured party directing disposition of the funds in the *deposit* account without further consent by the debtor; or

(c) The secured party becomes the bank’s customer with respect to the deposit account.

2. A secured party that has satisfied subsection 1 has control, even if the debtor retains the right to direct the disposition of funds from the deposit account.

Sec. 6. NRS 104.9109 is hereby amended to read as follows:

104.9109 1. Except as otherwise provided in subsections 3 and 4, this article applies to:

(a) A transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;

(b) An agricultural lien;

(c) A sale of accounts, chattel paper, payment intangibles or promissory notes;

(d) A consignment;

(e) A security interest arising under NRS 104.2401, 104.2505, subsection 3 of NRS 104.2711 ~~H~~ or subsection 5 of NRS 104A.2508, as provided in NRS 104.9110; and

(f) A security interest arising under NRS 104.4210 or 104.5118.

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

3. This article does not apply to the extent that:

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

~~(b) Another statute of this state expressly governs the creation, perfection, priority or enforcement of a security interest created by this state or a governmental unit of this state;~~

~~—(c) A statute of another state, a foreign country, or a governmental unit of another state or a foreign country, other than a statute generally applicable to security interests, expressly governs creation, perfection, priority, or enforcement of a security interest created by the state, country, or governmental unit; or~~

~~—(d)~~ The rights of a transferee beneficiary or nominated person under a letter of credit are independent and superior under NRS 104.5114.

4. This article does not apply to:

(a) A landlord’s lien, other than an agricultural lien;

(b) A lien, other than an agricultural lien, given by statute or other rule of law for services or materials, but NRS 104.9333 applies with respect to priority of the lien;

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

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

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

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

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

(h) A transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health-care provider of a health-care-insurance receivable and any subsequent assignment of the right to payment, but NRS 104.9315 and 104.9322 apply with respect to proceeds and priorities in proceeds;

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

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

(1) NRS 104.9340 applies with respect to the effectiveness of rights of recoupment or set-off against deposit accounts; and

(2) NRS 104.9404 applies with respect to defenses or claims of an account debtor;

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

(1) Liens on real property in NRS 104.9203 and 104.9308;

(2) Fixtures in NRS 104.9334;

(3) Fixture filings in NRS 104.9501, 104.9502, 104.9512, 104.9516 and 104.9519; and

(4) Security agreements covering personal and real property in NRS 104.9604;

(l) An assignment of a claim arising in tort, other than a commercial tort claim, but NRS 104.9315 and 104.9322 apply with respect to proceeds and priorities in proceeds; ~~for~~

(m) An assignment of a deposit account in a consumer transaction, but NRS 104.9315 and 104.9322 apply with respect to proceeds and priorities in proceeds ~~for~~; or

(n) A transfer by a government or governmental unit.

Sec. 7. NRS 104.9210 is hereby amended to read as follows:

104.9210 1. In this section:

(a) “Request” means a record of a type described in paragraph (b), (c) or (d).

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

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

(d) “Request regarding a statement of account” means a record authenticated by a debtor requesting that the recipient approve or correct a statement indicating what the debtor believes to be the aggregate amount of unpaid obligations secured by collateral as of a specified date and reasonably identifying the transaction or relationship that is the subject of the request.

2. Subject to subsections 3 to 6, inclusive, a secured party, other than a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor, shall comply with a request within 14 days after receipt:

(a) In the case of a request for an accounting, by authenticating and sending to the debtor an accounting; and

(b) In the case of a request regarding a list of collateral or a request regarding a statement of account, by authenticating and sending to the debtor an approval or correction.

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

4. A person that receives a request regarding a list of collateral, claims no interest in the collateral when it receives the request, and claimed an interest in the collateral at an earlier time shall comply with the request within 14 days after receipt by sending to the debtor an authenticated record:

(a) Disclaiming any interest in the collateral; and

(b) If known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient’s ~~security~~ interest in the collateral.

5. A person that receives a request for an accounting or a request regarding a statement of account, claims no interest in the obligations when it receives the request, and claimed an interest in the obligations at an earlier time shall comply with the request within 14 days after receipt by sending to the debtor an authenticated record:

(a) Disclaiming any interest in the obligations; and

(b) If known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient’s interest in the obligations.

6. A debtor is entitled without charge to one response to a request under this section during any 6-month period. The secured party may require payment of a charge not exceeding \$25 for each additional response.

Sec. 8. NRS 104.9311 is hereby amended to read as follows:

104.9311 1. Except as otherwise provided in subsection 4, the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(a) A statute, regulation or treaty of the United States whose requirements for a security interest’s obtaining priority over the rights of a

lien creditor with respect to the property preempt subsection 1 of NRS 104.9310;

(b) Chapter 105 of NRS, NRS 482.423 to 482.431, inclusive, 488.1793 to 488.1827, inclusive, and 489.501 to 489.581, inclusive; or

(c) A certificate-of-title statute of another jurisdiction which provides for a security interest to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

2. Compliance with the requirements of a statute, regulation or treaty described in subsection 1 for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this article. Except as otherwise provided in subsection 4, NRS 104.9313 and subsections 4 and 5 of NRS 104.9316 for goods covered by a certificate of title, a security interest in property subject to a statute, regulation or treaty described in subsection 1 may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

3. Except as otherwise provided in subsection 4 and subsections 4 and 5 of NRS 104.9316, duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation or treaty described in subsection 1 are governed by the statute, regulation or treaty. In other respects, the security interest is subject to this article.

4. During any period in which collateral *subject to a statute specified in paragraph (b) of subsection 1* is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling ~~for leasing~~ goods of that kind, this section does not apply to a security interest in that collateral created by that person. ~~as debtor.~~

Sec. 9. NRS 104.9317 is hereby amended to read as follows:

104.9317 1. ~~An unperfected~~ A security interest or agricultural lien is subordinate to the rights of:

(a) A person entitled to priority under NRS 104.9322; and

(b) A person that becomes a lien creditor before the earlier of the time ~~the~~ :

(1) The security interest or agricultural lien is perfected ; or

(2) *One of the conditions specified in paragraph (c) of subsection 2 of NRS 104.9203 is met and* a financing statement covering the collateral is filed.

2. Except as otherwise provided in subsection 5, a buyer, other than a secured party, of chattel paper, documents, goods, instruments, or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

3. Except as otherwise provided in subsection 5, a lessee of goods takes free of a security interest or agricultural lien if he gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

4. A licensee of a general intangible or a buyer, other than a secured party, of accounts, general intangibles or investment property other than a

certificated security takes free of a security interest if he gives value without knowledge of the security interest and before it is perfected.

5. Except as otherwise provided in NRS 104.9320 and 104.9321, if a person files a financing statement with respect to a purchase-money security interest before or within 20 days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee or lien creditor which arise between the time the security interest attaches and the time of filing.

Sec. 10. NRS 104.9323 is hereby amended to read as follows:

104.9323 1. Except as otherwise provided in subsection 3, for purposes of determining the priority of a perfected security interest under subsection 1 of NRS 104.9322, perfection of the security interest dates from the time an advance is made to the extent that the security interest secures an advance that:

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

(1) Under NRS 104.9309 when it attaches; or

(2) Temporarily under subsection 5, 6 or 7 of NRS 104.9312; and

(b) Is not made pursuant to a commitment entered into before or while the security interest is perfected by a method other than under NRS 104.9309 or subsection 5, 6 or 7 of NRS 104.9312.

2. Except as otherwise provided in subsection 3, a security interest is subordinate to the rights of a person that becomes a lien creditor ~~while the security interest is perfected only~~ to the extent that ~~it secures advances~~ *the security interest secures an advance* made more than 45 days after he becomes a lien creditor unless the advance is made:

(a) Without knowledge of the lien; or

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

3. Subsections 1 and 2 do not apply to a security interest held by a secured party that is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor.

4. Except as otherwise provided in subsection 5, a buyer of goods other than a buyer in the ordinary course of business takes free of a security interest to the extent that it secures advances made after the earlier of:

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

(b) Forty-five days after the purchase.

5. Subsection 4 does not apply if the advance is made pursuant to a commitment entered into without knowledge of the buyer's purchase and before the expiration of the 45-day period.

6. Except as otherwise provided in subsection 7, a lessee of goods, other than a lessee in ordinary course of business, takes the leasehold free of a security interest to the extent that it secures advances made after the earlier of:

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

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

7. Subsection 6 does not apply if the advance is made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the 45-day period.

Sec. 11. NRS 104.9331 is hereby amended to read as follows:

104.9331 1. This article does not limit the rights of a holder in due course of a negotiable instrument, a holder to which a negotiable document of title has been duly negotiated, or a protected purchaser of a security. These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided in articles 3, 7 and 8.

2. This article does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of ~~an~~ **adverse** a claim under article 8.

3. Filing under this article does not constitute notice of a claim or defense to the holders, or purchasers, or persons described in subsections 1 and 2.

Sec. 12. NRS 104.9334 is hereby amended to read as follows:

104.9334 1. A security interest under this article may be created in goods that are fixtures or may continue in goods that become fixtures. A security interest does not exist under this article in ordinary building materials incorporated into an improvement on land.

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

3. In cases not governed by subsections 4 to 8, inclusive, a security interest in fixtures is subordinate to a conflicting interest of an encumbrancer or owner of the related real property other than the debtor.

4. Except as otherwise provided in subsection 8, a perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property and:

- (a) The security interest is a purchase-money security interest;
- (b) The interest of the encumbrancer or owner arises before the goods become fixtures; and
- (c) The security interest is perfected by a fixture filing before the goods become fixtures or within 20 days thereafter.

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

(a) The debtor has an interest of record in the real property or is in possession of the real property and the security interest:

- (1) Is perfected by a fixture filing before the interest of the encumbrancer or owner is of record; and
- (2) Has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner;

(b) Before the goods become fixtures, the security interest is perfected by any method permitted by this article and the fixtures are readily removable:

- (1) Factory or office machines;
- (2) Equipment that is not primarily used or leased for use in the operation of the real property; or
- (3) Replacements of domestic appliances that are consumer goods;

(c) The conflicting interest is a lien on the real property obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this article; or

(d) The security interest is:

(1) Created in a manufactured home in a manufactured-home transaction; and

(2) Perfected pursuant to a statute described in paragraph (b) of subsection 1 of NRS 104.9311.

6. A security interest in fixtures, whether or not perfected, has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(a) The encumbrancer or owner has, in an authenticated record, consented to the security interest or disclaimed an interest in the goods as fixtures; or

(b) The debtor has a right to remove the goods as against the encumbrancer or owner.

7. The priority of the security interest under *paragraph (b) of subsection 6* continues for a reasonable time if the debtor's right to remove the goods as against the encumbrancer or owner terminates.

8. A mortgage is a construction mortgage to the extent that it secures an obligation incurred for the construction of an improvement on land, including the acquisition cost of the land, if the recorded record so indicates. Except as otherwise provided in subsections 5 and 6, a security interest in fixtures is subordinate to a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. A mortgage has this priority to the same extent as a construction mortgage to the extent that it is given to refinance a construction mortgage.

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

Sec. 13. NRS 104.9336 is hereby amended to read as follows:

104.9336 1. In this section, "commingled goods" means goods that are physically united with other goods in such a manner that their identity is lost in a product or mass.

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

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

4. If a security interest in collateral is perfected before the collateral becomes commingled goods, the security interest that attaches to the product or mass under subsection 3 is perfected.

5. Except as otherwise provided in subsection 6, the other provisions of this part determine the priority of a security interest that attaches to the product or mass under subsection 3.

6. If more than one security interest attaches to the product or mass under subsection 3, the following rules determine priority:

(a) A security interest that is perfected under subsection 4 has priority over a security interest that is unperfected at the time the collateral becomes commingled goods.

(b) If more than one security interest is perfected under subsection 4, the security interests rank equally in proportion to *the* value of the collateral at the time it became commingled goods.

Sec. 14. NRS 104.9406 is hereby amended to read as follows:

104.9406 1. Subject to subsections 2 to 8, inclusive, an account debtor on an account, chattel paper or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

2. Subject to subsection 8, notification is ineffective under subsection 1:

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

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

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

(1) Only a portion of the account, chattel paper or ~~general~~ *payment* intangible has been assigned to that assignee;

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

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

3. Subject to subsection 8, if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection 1.

4. Except as otherwise provided in subsection 5 and NRS 104.9407 and 104A.2303, and subject to subsection 8, a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

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

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

5. Subsection 4 does not apply to the sale of a payment intangible or promissory note.

6. Subject to subsections 7 and 8, a rule of law, statute, or regulation, that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or

transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute or regulation:

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

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

7. Subject to subsection 8, an account debtor may not waive or vary its option under paragraph (c) of subsection 2.

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

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

Sec. 15. NRS 104.9407 is hereby amended to read as follows:

104.9407 1. Except as otherwise provided in subsection 2, a term in a lease agreement is ineffective to the extent that it:

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

(b) Provides that the *assignment or transfer, or the* creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination or remedy under the lease.

2. Except as otherwise provided in subsection 7 of NRS 104A.2303, a term described in paragraph (b) of subsection 1 is effective to the extent that there is:

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

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

3. The creation, attachment, perfection, or enforcement of a security interest in the lessor's interest under the lease contract or the lessor's residual interest in the goods is not a transfer that materially impairs the lessee's prospect of obtaining return performance or materially changes the duty of or materially increases the burden or risk imposed on the lessee within the purview of subsection 4 of NRS 104A.2303 unless, and then only to the extent that, enforcement results in a delegation of a material performance of the lessor. Even in that event, the creation, attachment, perfection and enforcement of the security interest remain effective.

Sec. 16. NRS 104.9408 is hereby amended to read as follows:

104.9408 1. Except as otherwise provided in subsection 2, a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license or franchise, and prohibits,

restricts or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health-care-insurance receivable or general intangible, is ineffective to the extent that the term:

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

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

2. Subsection 1 applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note.

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

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

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

4. To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or general intangible or a rule of law, statute, or regulation described in subsection 3 would be effective under law other than this article but is ineffective under subsection 1 or 3, the creation, attachment or perfection of a security interest in the promissory note, health-care-insurance receivable or general intangible:

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

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

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

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

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

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

Sec. 17. NRS 104.9409 is hereby amended to read as follows:

104.9409 1. A term in a letter of credit or a rule of law, statute, regulation, custom or practice applicable to the letter of credit which prohibits, restricts or requires the consent of an applicant, issuer, or nominated person to a beneficiary's assignment of or creation of a security interest in a letter-of-credit right is ineffective to the extent that the term or rule of law, statute, regulation, custom or practice:

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

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

2. To the extent that a term in a letter of credit is ineffective under subsection 1 but would be effective under law other than this article or a custom or practice applicable to the letter of credit, to the transfer of a right to draw or otherwise demand performance under the letter of credit, or to the assignment of a right to proceeds of the letter of credit, the creation, attachment or perfection of a security interest in the letter-of-credit right:

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

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

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

Sec. 18. NRS 104.9504 is hereby amended to read as follows:

104.9504 A financing statement sufficiently indicates the collateral that it covers ~~only~~ if the financing statement provides:

1. A description of the collateral pursuant to NRS 104.9108; or

2. An indication that the financing statement covers all assets or all personal property.

Sec. 19. NRS 104.9509 is hereby amended to read as follows:

104.9509 1. A person may file an initial financing statement, amendment that adds collateral covered by a financing statement or amendment that adds a debtor to a financing statement only if:

(a) The debtor authorizes the filing in an authenticated record; ~~or~~

(b) The person holds an agricultural lien that has become effective at the time of filing and the financing statement covers only collateral in which he holds an agricultural lien ~~or~~; *or*

(c) Otherwise authorized by subsection 2 or 3.

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

- (a) The collateral described in the security agreement; and
- (b) Property that becomes collateral under paragraph (b) of subsection 1 of NRS 104.9315, whether or not the security agreement expressly covers proceeds.

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

- (a) The secured party of record authorizes the filing; or
- (b) The change is a termination statement for a financing statement as to which the secured party of record has failed to file or send a termination statement as required by subsection 1 or 3 of NRS 104.9513.

4. If there is more than one secured party of record for a financing statement, each secured party of record may authorize the filing of an amendment under subsection 3.

Sec. 20. NRS 104.9513 is hereby amended to read as follows:

104.9513 1. A secured party shall cause the secured party of record for a financing statement to file a termination statement for the financing statement if the financing statement covers consumer goods and:

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

2. To comply with subsection 1, a secured party shall cause the secured party of record to file the termination statement:

- (a) Within 1 month after there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation or otherwise give value; or
- (b) If earlier, within 20 days after the secured party receives an authenticated demand from a debtor.

3. In cases not governed by subsection 1, within 20 days after a secured party receives an authenticated demand from a debtor, the secured party shall cause the secured party of record for a financing statement to send to the debtor a termination statement for the financing statement or file the termination statement in the filing office if:

- (a) Except in the case of a financing statement covering accounts or chattel paper that has been sold or goods that are the subject of a consignment, there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation or otherwise give value;
- (b) The financing statement covers accounts or chattel paper that has been sold but as to which the account debtor or other person obligated has discharged its obligation;
- (c) The financing statement covers goods that were the subject of a consignment to the debtor but are not in the debtor's possession; or
- (d) The debtor did not authorize the filing of the initial financing statement.

4. Except as otherwise provided in NRS 104.9510, upon the filing of a termination statement with the filing office ~~the~~:

(a) *The* financing statement to which the termination statement relates ceases to be effective.

(b) *For the purposes of subsection 7 of NRS 104.9519, subsection 1 of NRS 104.9522 and subsection 3 of NRS 104.9523, a financing statement that indicates that the debtor is a transmitting utility causes the effectiveness of the financing statement to lapse.*

Sec. 21. NRS 104.9519 is hereby amended to read as follows:

104.9519 1. For each record filed in a filing office, the filing office shall:

- (a) Assign a unique number to the filed record;
- (b) Create a record that bears the number assigned to the filed record and the date and time of filing;
- (c) Maintain the filed record for public inspection; and
- (d) Index the filed record in accordance with subsections 3, 4 and 5.

2. Except as otherwise provided in subsection 9, a file number assigned after January 1, 2002, may include a digit that:

- (a) Is mathematically derived from or related to the other digits of the file number; and
- (b) Enables the filing office to detect whether a number communicated as the file number includes a single-digit or transpositional error.

3. Except as otherwise provided in subsections 4 and 5, the filing office shall:

- (a) Index an initial financing statement according to the name of the debtor and index all filed records relating to the initial financing statement in a manner that associates with one another an initial financing statement and all filed records relating to the initial financing statement; and

- (b) Index a record that provides a name of a debtor which was not previously provided in the financing statement to which the record relates also according to the name that was not previously provided.

4. If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, it must be filed for record and the filing office shall index it:

- (a) Under the names of the debtor and of each owner of record shown on the financing statement as if they were the mortgagors under a mortgage of the real property described; and

- (b) To the extent that the law of this state provides for indexing of mortgages under the name of the mortgagee, under the name of the secured party as if the secured party were the mortgagee thereunder.

5. If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, the filing office shall index an assignment filed under subsection 1 of NRS 104.9514 or an amendment filed under subsection 2 of that section:

- (a) Under the name of the assignor as grantor; and
- (b) To the extent that the law of this state provides for indexing the assignment of a mortgage of real property under the name of the assignee, under the name of the assignee.

6. The filing office shall maintain a capability:

- (a) To retrieve a record by the name of the debtor and:

- (1) If the filing office is described in paragraph (a) of subsection 1 of NRS 104.9501, by the file number assigned to the initial financing

statement to which the record relates and the date and time that the record was filed or recorded; or

(2) If the filing office is described in paragraph (b) of subsection 1 of NRS 104.9501, by the file number assigned to the initial financing statement to which the record relates; and

(b) To associate and retrieve with one another an initial financing statement and each filed record relating to the initial financing statement.

7. The filing office may not remove a debtor's name from the index until 1 year after the effectiveness of a financing statement naming the debtor lapses under NRS 104.9515 with respect to all secured parties of record.

8. The filing office shall perform the acts required by subsections 1 to 5, inclusive, within a reasonable time and in the manner prescribed by filing-office rule.

9. ~~Subsection 2 does~~ *Subsections 2 and 8 do* not apply to a filing office described in paragraph (a) of subsection 1 of NRS 104.9501.

Sec. 22. NRS 104.9525 is hereby amended to read as follows:

104.9525 1. Except as otherwise provided in subsection 5, the fee for filing and indexing a record under this part, other than an initial financing statement of the kind described in subsection ~~13~~ 2 of NRS 104.9502, is:

(a) Twenty dollars if the record is communicated in writing and consists of one or two pages;

(b) Forty dollars if the record is communicated in writing and consists of more than two pages, and \$1 for each page over 20 pages;

(c) Ten dollars if the record is communicated by another medium authorized by filing-office rule; and

(d) One dollar for each additional debtor, trade name or reference to another name under which business is done.

2. The filing officer may charge and collect \$1 for each page of copy or record of filings produced by him at the request of any person.

3. Except as otherwise provided in subsection 5, the fee for filing and indexing an initial financing statement of the kind described in subsection 3 of NRS 104.9502 is:

(a) Forty dollars if the financing statement indicates that it is filed in connection with a public-finance transaction; and

(b) Twenty dollars if the financing statement indicates that it is filed in connection with a manufactured-home transaction.

4. The fee for responding to a request for information from the filing office, including for issuing a certificate showing whether there is on file any financing statement naming a particular debtor, is:

(a) Twenty dollars if the request is communicated in writing; and

(b) Fifteen dollars if the request is communicated by another medium authorized by filing-office rule.

5. This section does not require a fee with respect to a mortgage that is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut under subsection 3 of NRS 104.9502. However, the fees for recording and satisfaction which otherwise would be applicable to the mortgage apply.

Sec. 23. NRS 104.9608 is hereby amended to read as follows:

104.9608 1. If a security interest or agricultural lien secures payment or performance of an obligation, the following rules apply:

(a) A secured party shall apply or pay over for application the cash proceeds of collection or enforcement under ~~this section~~ **NRS 104.9607** in the following order to:

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

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

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

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

(c) A secured party need not apply or pay over for application noncash proceeds of collection and enforcement under ~~this section~~ **NRS 104.9607** unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

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

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

Sec. 24. NRS 104.9613 is hereby amended to read as follows:

104.9613 Except in a consumer-goods transaction, the following rules apply:

1. The contents of a notification of disposition are sufficient if the notification:

(a) Describes the debtor and the secured party;

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

(c) States the method of intended disposition;

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

(e) States the time and place of a public ~~sale~~ **disposition** or the time after which any other disposition is to be made.

2. Whether the contents of a notification that lacks any of the information specified in subsection 1 are nevertheless sufficient is a question of fact.

3. The contents of a notification providing substantially the information specified in subsection 1 are sufficient, even if the notification includes:

- (a) Information not specified by that subsection; or
 - (b) Minor errors that are not seriously misleading.
4. A particular phrasing of the notification is not required.
5. The following form of notification and the form appearing in subsection 3 of NRS 104.9614, when completed, each provides sufficient information:

NOTIFICATION OF DISPOSITION OF COLLATERAL

To: [Name of debtor, obligor, or other person to which the notification is sent]
From: [Name, address, and telephone number of secured party]
Name of Debtor(s): [Include only if debtor(s) are not an addressee]

[For a public disposition:]

We will sell [or lease or license, *as applicable*] the [describe collateral] [to the highest qualified bidder] in public as follows:

Day and Date:
Time:
Place:

[For a private disposition:]

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

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

Sec. 25. NRS 104.9615 is hereby amended to read as follows:

104.9615 1. A secured party shall apply or pay over for application the cash proceeds of disposition ***under NRS 104.9610*** in the following order to:

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

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

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

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

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

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

2. If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder does so, the secured party need not comply with the holder's demand under paragraph (c) of subsection 1.

3. A secured party need not apply or pay over for application noncash proceeds of disposition under ~~this section~~ **NRS 104.9610** unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

4. If the security interest under which a disposition is made secures payment or performance of an obligation, after making the payments and applications required by subsection 1 and permitted by subsection 3:

(a) Unless paragraph (d) of subsection 1 requires the secured party to apply or pay over cash proceeds to a consignor, the secured party shall account to and pay a debtor for any surplus; and

(b) The obligor is liable for any deficiency.

5. If the underlying transaction is a sale of accounts, chattel paper, payment intangibles or promissory notes:

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

(b) The obligor is not liable for any deficiency.

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

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

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

7. A secured party that receives cash proceeds of a disposition in good faith and without knowledge that the receipt violates the rights of the holder of a security interest or other lien that is not subordinate to the security interest or agricultural lien under which the disposition is made:

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

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

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

Sec. 26. NRS 104.9625 is hereby amended to read as follows:

104.9625 1. If it is established that a secured party is not proceeding in accordance with this article, a court may order or restrain collection, enforcement or disposition of collateral on appropriate terms and conditions.

2. Subject to subsections 3, 4 and 6, a person is liable for damages in the amount of any loss caused by a failure to comply with this article. Loss caused by a failure to comply ~~with a request under NRS 104.9210~~ may

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

3. Except as otherwise provided in NRS 104.9628:

(a) A person that, at the time of the failure, was a debtor, was an obligor or held a security interest in or other lien on the collateral may recover damages under subsection 2 for its loss; and

(b) If the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply with this part may recover for that failure in any event an amount not less than the credit service charge plus 10 percent of the principal amount of the obligation or the time-price differential plus 10 percent of the cash price.

4. A debtor whose deficiency is eliminated under NRS 104.9626 may recover damages for the loss of any surplus. However, a debtor or secondary obligor whose deficiency is eliminated or reduced under that section may not otherwise recover under subsection 2 for noncompliance with the provisions of this part relating to collection, enforcement, disposition or acceptance.

5. In addition to any damages recoverable under subsection 2, the debtor, consumer obligor or person named as a debtor in a filed record, as applicable, may recover \$500 in each case from a person that:

(a) Fails to comply with NRS 104.9208;

(b) Fails to comply with NRS 104.9209;

(c) Files a record that he is not entitled to file under subsection 1 of NRS 104.9509;

(d) Fails to cause the secured party of record to file or send a termination statement as required by subsection 1 or 3 of NRS 104.9513;

(e) Fails to comply with paragraph (a) of subsection 2 of NRS 104.9616 and whose failure is part of a pattern, or consistent with a practice, of noncompliance; or

(f) Fails to comply with paragraph (b) of subsection 2 of NRS 104.9616.

6. A debtor or consumer obligor may recover damages under subsection 2 and, in addition, \$500 in each case from a person that, without reasonable cause, fails to comply with a request under NRS 104.9210. A recipient of a request under that section which never claimed an interest in the collateral or obligations that are the subject of a request under that section has a reasonable excuse for failure to comply with the request within the meaning of this subsection.

7. If a secured party fails to comply with a request regarding a list of collateral or a statement of account under NRS 104.9210, the secured party may claim a security interest only as shown in the *list or* statement included in the request as against a person that is reasonably misled by the failure.

Sec. 27. NRS 104.9705 is hereby amended to read as follows:

104.9705 1. If action, other than the filing of a financing statement, is taken before July 1, 2001, and the action would have resulted in priority of a security interest over the rights of a person that becomes a lien creditor had the security interest become enforceable before that date, the action is effective to perfect a security interest that attaches under this article as amended within 1 year after that date. An attached security interest becomes unperfected 1 year after July 1, 2001, unless the security interest

becomes a perfected security interest under this article as amended before the expiration of that period.

2. The filing of a financing statement before July 1, 2001, is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under this article as amended.

3. This article as amended does not render ineffective an effective financing statement that was filed before July 1, 2001, and satisfied the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in NRS 104.9103 as that section read at the time of filing. However, except as otherwise provided in subsections 4 and 5 and NRS 104.9706, the financing statement ceases to be effective at the earlier of:

(a) The time the financing statement would have ceased to be effective under the law of the jurisdiction in which it is filed; or

(b) June 30, 2006.

4. The filing of a continuation statement on or after July 1, 2001, does not continue the effectiveness of the financing statement filed before that date. However, upon the timely filing of a continuation statement after that date and in accordance with the law of the jurisdiction governing perfection as provided in part 3, the effectiveness of a financing statement filed in the same office in that jurisdiction before that date continues for the period provided by the law of that jurisdiction.

5. Paragraph (b) of subsection 3 applies to a financing statement that was filed against a transmitting utility before July 1, 2001, and satisfied the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in NRS 104.9103 as that section read at the time of filing only to the extent that part 3 provides that the law of a jurisdiction other than *the* jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

6. A financing statement that includes a financing statement filed before July 1, 2001, and a continuation statement filed after that date are effective only to the extent that the financing statement satisfies the requirements of part 5 for an initial financing statement.

Sec. 28. This act becomes effective at 12:01 a.m. on July 1, 2001.