



January 27, 2000

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## HOUSE BILL No. 1326

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DIGEST OF HB 1326 (Updated January 26, 2000 9:33 AM - DI 76)

**Citations Affected:** IC 4-22; IC 6-8.1; IC 8-1; IC 9-17; IC 9-31; IC 12-17; IC 20-12; IC 24-5; IC 24-7; IC 26-1; IC 32-1; IC 32-8.

**Synopsis:** Uniform Commercial Code. Adopts a revised Article 9 of the Uniform Commercial Code concerning secured transactions. Makes conforming amendments.

**Effective:** July 1, 2001.

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January 11, 2000, read first time and referred to Committee on Courts and Criminal Code.  
January 26, 2000, amended, reported — Do Pass.

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HB 1326—LS 6756/DI 69+



January 27, 2000

Second Regular Session 111th General Assembly (2000)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1999 General Assembly.

## HOUSE BILL No. 1326

A BILL FOR AN ACT concerning commercial law.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 4-22-2-13 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 13. (a) Subject to  
3 subsections (b), (c), and (d), this chapter applies to the addition,  
4 amendment, or repeal of a rule in every rulemaking action.  
5 (b) This chapter does not apply to the following agencies:  
6 (1) Any military officer or board.  
7 (2) Any state educational institution (as defined in  
8 IC 20-12-0.5-1).  
9 (c) This chapter does not apply to a rulemaking action that results  
10 in any of the following rules:  
11 (1) A resolution or directive of any agency that relates solely to  
12 internal policy, internal agency organization, or internal procedure  
13 and does not have the effect of law.  
14 (2) A restriction or traffic control determination of a purely local  
15 nature that:  
16 (A) is ordered by the commissioner of the Indiana department  
17 of transportation;

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1 (B) is adopted under IC 9-20-1-3(d), IC 9-21-4-7, or  
2 IC 9-20-7; and

3 (C) applies only to one (1) or more particularly described  
4 intersections, highway portions, bridge causeways, or viaduct  
5 areas.

6 (3) A rule adopted by the secretary of state under ~~IC 26-1-9-408.~~  
7 **IC 26-1-9.1-526.**

8 (4) An executive order or proclamation issued by the governor.

9 (d) Except as specifically set forth in IC 13-14-9, sections 24, 26,  
10 27, and 29 of this chapter do not apply to rulemaking actions under  
11 IC 13-14-9.

12 SECTION 2. IC 6-8.1-3-16 IS AMENDED TO READ AS  
13 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 16. (a) The department  
14 shall prepare a list of all outstanding tax warrants for listed taxes each  
15 month. The list shall identify each taxpayer liable for a warrant by  
16 name, address, amount of tax, and either Social Security number or  
17 employer identification number. Unless the department renews the  
18 warrant, the department shall exclude from the list a warrant issued  
19 more than ten (10) years before the date of the list. The department  
20 shall certify a copy of the list to the bureau of motor vehicles.

21 (b) The department shall prescribe and furnish tax release forms for  
22 use by tax collecting officials. A tax collecting official who collects  
23 taxes in satisfaction of an outstanding warrant shall issue to the  
24 taxpayers named on the warrant a tax release stating that the tax has  
25 been paid. The department may also issue a tax release:

26 (1) to a taxpayer who has made arrangements satisfactory to the  
27 department for the payment of the tax; or

28 (2) by action of the commissioner under IC 6-8.1-8-2(k).

29 (c) The department may not issue or renew:

30 (1) a certificate under IC 6-2.5-8;

31 (2) a license under IC 6-6-1.1 or IC 6-6-2.5; or

32 (3) a permit under IC 6-6-4.1;

33 to a taxpayer whose name appears on the most recent monthly warrant  
34 list, unless that taxpayer pays the tax, makes arrangements satisfactory  
35 to the department for the payment of the tax, or a release is issued  
36 under IC 6-8.1-8-2(k).

37 (d) The bureau of motor vehicles shall, before issuing the title to a  
38 motor vehicle under IC 9-17, determine whether the purchaser's or  
39 assignee's name is on the most recent monthly warrant list. If the  
40 purchaser's or assignee's name is on the list, the bureau shall enter as  
41 a lien on the title the name of the state as the lienholder unless the  
42 bureau has received notice from the commissioner under

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- 1 IC 6-8.1-8-2(k). The tax lien on the title:  
 2 (1) is subordinate to a perfected security interest (as defined and  
 3 perfected in accordance with ~~IC 26-1-9~~; **IC 26-1-9.1**); and  
 4 (2) shall otherwise be treated in the same manner as other title  
 5 liens.
- 6 (e) The commissioner is the custodian of all titles for which the state  
 7 is the sole lienholder under this section. Upon receipt of the title by the  
 8 department, the commissioner shall notify the owner of the  
 9 department's receipt of the title.
- 10 (f) The department shall reimburse the bureau of motor vehicles for  
 11 all costs incurred in carrying out this section.
- 12 (g) Notwithstanding IC 6-8.1-8, a person who is authorized to  
 13 collect taxes, interest, or penalties on behalf of the department under  
 14 IC 6-2.1, IC 6-3, or IC 6-3.5 may not, except as provided in subsection  
 15 (h) or (i), receive a fee for collecting the taxes, interest, or penalties if:  
 16 (1) the taxpayer pays the taxes, interest, or penalties as  
 17 consideration for the release of a lien placed under subsection (d)  
 18 on a motor vehicle title; or  
 19 (2) the taxpayer has been denied a certificate or license under  
 20 subsection (c) within sixty (60) days before the date the taxes,  
 21 interest, or penalties are collected.
- 22 (h) In the case of a sheriff, subsection (g) does not apply if:  
 23 (1) the sheriff collects the taxes, interest, or penalties within sixty  
 24 (60) days after the date the sheriff receives the tax warrant; or  
 25 (2) the sheriff collects the taxes, interest, or penalties through the  
 26 sale or redemption, in a court proceeding, of a motor vehicle that  
 27 has a lien placed on its title under subsection (d).
- 28 (i) In the case of a person other than a sheriff:  
 29 (1) subsection (g)(2) does not apply if the person collects the  
 30 taxes, interests, or penalties within sixty (60) days after the date  
 31 the commissioner employs the person to make the collection; and  
 32 (2) subsection (g)(1) does not apply if the person collects the  
 33 taxes, interest, or penalties through the sale or redemption, in a  
 34 court proceeding, of a motor vehicle that has a lien placed on its  
 35 title under subsection (d).
- 36 SECTION 3. IC 8-1-5-1 IS AMENDED TO READ AS FOLLOWS  
 37 [EFFECTIVE JULY 1, 2001]: Sec. 1. (a) Notwithstanding any other  
 38 statute or rule of law of the state, any mortgage executed and recorded  
 39 by a public utility, as defined in IC 8-1-2-1, or by any corporation or  
 40 other business entity engaged in the railroad business or the  
 41 transmission of oil, gas, or petroleum products by pipeline, in the  
 42 manner provided for the execution and recording of mortgages upon

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1 real estate:

2 (1) may include all or any part of the property of the mortgagor,  
3 real, personal, or mixed, chattels real and fixtures; and

4 (2) shall, upon its recordation, constitute a valid and perfected  
5 lien upon all and every part of the property of the mortgagor  
6 described in the mortgage and situated in any county in this state  
7 where the mortgage is or shall be recorded in the manner  
8 provided for recording real estate mortgages. Neither the  
9 mortgage nor any statement respecting the mortgage or any of the  
10 property described in the mortgage need be otherwise filed or  
11 refiled in order to perfect or continue perfection of the lien  
12 created by the mortgage.

13 (b) The term "mortgage", as used in this chapter, includes deeds of  
14 trust and any and all documents creating an interest in property to  
15 secure the payment of bonds, notes, debentures, and like securities, and  
16 any instrument executed to supplement any mortgage.

17 (c) If it is executed and recorded as provided in this section and by  
18 its terms covers some or all of the after-acquired property of the  
19 mortgagor, the mortgage constitutes a valid and perfected lien upon the  
20 interest of the mortgagor in the after-acquired property from the date  
21 the mortgagor acquires an interest in the property.

22 (d) Notwithstanding the date of the mortgage's execution or  
23 recordation, if collateral covered by ~~IC 26-1-9~~ **IC 26-1-9.1** was or is  
24 perfected in compliance with the recordation requirements contained  
25 in this section, the recordation was or is equivalent to the highest form  
26 of filing or perfection under ~~IC 26-1-9~~ **IC 26-1-9.1**.

27 SECTION 4. IC 9-17-6-6 IS AMENDED TO READ AS FOLLOWS  
28 [EFFECTIVE JULY 1, 2001]: Sec. 6. Except as otherwise provided,  
29 ~~IC 26-1-9~~ **IC 26-1-9.1** applies to a security interest in a manufactured  
30 home.

31 SECTION 5. IC 9-31-2-24 IS AMENDED TO READ AS  
32 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 24. (a) A security  
33 agreement covering a security interest in a watercraft that is not  
34 inventory held for sale can be perfected only if the bureau indicates the  
35 security interest on the certificate of title or duplicate. Except as  
36 otherwise provided in this section, ~~IC 26-1-9~~ **IC 26-1-9.1** applies to  
37 security interests in watercraft.

38 (b) The secured party, upon presentation of a properly completed  
39 application for certificate of title to the bureau together with the fee  
40 prescribed by IC 9-29-15-1, may have a notation of the lien made on  
41 the face of the certificate of title to be issued by the bureau. The bureau  
42 shall enter the notation and the date of the notation and shall note the



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1 lien and the date of the lien in the bureau's files.

2 (c) Whenever a lien is discharged, the holder shall note the  
3 discharge on the certificate of title over the holder's signature.

4 SECTION 6. IC 12-17-2-33 IS AMENDED TO READ AS  
5 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 33. (a) The bureau  
6 shall, each month, prepare a list of each person against whom a child  
7 support obligation lien is held under IC 31-16-16-3 (or IC 31-2-11-9  
8 before its repeal). The list must identify each person liable for a lien by  
9 name, address, amount of lien, and either Social Security number or  
10 employer identification number. The bureau shall certify a copy of the  
11 list to the bureau of motor vehicles.

12 (b) The bureau of motor vehicles shall, before issuing the title to a  
13 motor vehicle under IC 9-17, determine whether the purchaser's or  
14 assignee's name is on the most recent monthly lien list. If the  
15 purchaser's or assignee's name is on the list, the bureau shall enter as  
16 a lien on the title the name of the state as the lienholder. The state's lien  
17 on a title under this section is subordinate to a prior perfected security  
18 interest if the interest is defined and perfected under either of the  
19 following:

20 (1) ~~IC 26-1-9~~; **IC 26-1-9.1**.

21 (2) IC 32-8.

22 (c) A lien against the title under this section must be treated in the  
23 same manner as any other subordinate title lien.

24 (d) The bureau shall prescribe and furnish release forms for use by  
25 the bureau. When the amount of the lien is paid, the bureau shall issue  
26 to the person against whom the lien was held a release stating that the  
27 amount represented by the lien has been paid. The bureau may also  
28 issue a release to a person against whom the lien is held if the person  
29 has made arrangements, agreed to by the bureau, for the payment of the  
30 amount represented by the lien.

31 (e) The director of the bureau or the director's designee is the  
32 custodian of all titles having the state as the sole lienholder under this  
33 section. Upon receiving a title from the bureau of motor vehicles under  
34 this section, the director shall notify the owner of the motor vehicle.

35 (f) The bureau shall reimburse the bureau of motor vehicles for all  
36 costs incurred by the bureau in implementing this section.

37 SECTION 7. IC 20-12-21.2-9 IS AMENDED TO READ AS  
38 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 9. Notwithstanding  
39 IC 26-1-9-302(1)(a), a security interest in education loans is perfected  
40 by:

41 (1) possession under IC 26-1-9-305; or

42 (2) filing a financing statement in the office of the secretary of

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1 state under ~~IC 26-1-9-401, IC 26-1-9-402, or IC 26-1-9-403.~~  
 2 **IC 26-1-9.1-501.**

3 SECTION 8. IC 24-5-16-7 IS AMENDED TO READ AS  
 4 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 7. As used in this  
 5 chapter, "secured party" has the meaning set forth in ~~IC 26-1-9-105(m).~~  
 6 **IC 26-1-9.1-102(a)(72).**

7 SECTION 9. IC 24-5-16-8 IS AMENDED TO READ AS  
 8 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 8. As used in this  
 9 chapter, "security agreement" has the meaning set forth in  
 10 ~~IC 26-1-9-105(f).~~ **IC 26-1-9.1-102(a)(73).**

11 SECTION 10. IC 24-7-1-2 IS AMENDED TO READ AS  
 12 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2. Except as provided  
 13 in this article, the provisions of:

- 14 (1) the Federal Consumer Credit Protection Act and regulations  
 15 adopted under it;  
 16 (2) IC 24-4.5;  
 17 (3) IC 26-1-1-201(37);  
 18 (4) IC 26-1-2 concerning the creation of a security interest in  
 19 property;  
 20 (5) ~~IC 26-1-9~~ **IC 26-1-9.1**; and  
 21 (6) rules adopted under the statutes described in subdivisions (2)  
 22 through (5);

23 do not apply to a rental purchase agreement.

24 SECTION 11. IC 26-1-1-105 IS AMENDED TO READ AS  
 25 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 105. (1) Except as  
 26 provided in this section, when a transaction bears a reasonable relation  
 27 to this state and also to another state or nation the parties may agree  
 28 that the law either of this state or of such other state or nation shall  
 29 govern their rights and duties. Failing such agreement, IC 26-1 applies  
 30 to transactions bearing an appropriate relation to this state.

31 (2) Where one of the following provisions of IC 26-1 specifies the  
 32 applicable law, that provision governs and a contrary agreement is  
 33 effective only to the extent permitted by the law (including the conflict  
 34 of laws rules) so specified:

- 35 IC 26-1-2-402 concerning rights of creditors against sold goods.  
 36 IC 26-1-2.1-105 and IC 26-1-2.1-106 concerning leases.  
 37 IC 26-1-4-102 concerning bank deposits and collections.  
 38 IC 26-1-4.1-507 concerning funds transfers.  
 39 IC 26-1-5.1-116 concerning letters of credit.  
 40 IC 26-1-6.1-103 concerning bulk sales.  
 41 IC 26-1-8.1-110 concerning investment securities.  
 42 ~~IC 26-1-9-103 concerning perfection of secured transactions.~~



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1           **IC 26-1-9.1-301 through IC 26-1-9.1-307 concerning the**  
 2           **perfection, the effect of perfection or nonperfection, and the**  
 3           **priority of security interests.**

4           SECTION 12. IC 26-1-1-201 IS AMENDED TO READ AS  
 5           FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 201. Subject to  
 6           additional definitions contained in IC 26-1-2 through IC 26-1-10 which  
 7           are applicable to specific provisions, and unless the context otherwise  
 8           requires, in IC 26-1:

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

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

13           (3) "Agreement" means the bargain of the parties in fact as found  
 14           in their language or by implication from other circumstances  
 15           including course of dealing or usage of trade or course of  
 16           performance as provided in IC 26-1-1-205 and IC 26-1-2-208.

17           Whether an agreement has legal consequences is determined by  
 18           the provisions of IC 26-1, if applicable; otherwise by the law of  
 19           contracts (IC 26-1-1-103). (Compare "Contract".)

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

21           (5) "Bearer" means the person in possession of an instrument,  
 22           document of title, or certificated security payable to bearer or  
 23           endorsed in blank.

24           (6) "Bill of lading" means a document evidencing the receipt of  
 25           goods for shipment issued by a person engaged in the business of  
 26           transporting or forwarding goods, and includes an airbill. "Airbill"  
 27           means a document serving for air transportation as a bill of lading  
 28           does for marine or rail transportation, and includes an air  
 29           consignment note or air waybill.

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

32           (8) "Burden of establishing" a fact means the burden of  
 33           persuading the triers of fact that the existence of the fact is more  
 34           probable than its nonexistence.

35           (9) "Buyer in ordinary course of business" means a person ~~who~~  
 36           **that buys goods** in good faith ~~and~~ without knowledge that the  
 37           sale ~~to him is in violation of~~ **violates** the ~~ownership~~ rights or  
 38           security interest of a ~~third party~~ **another person** in the goods, ~~and~~  
 39           **buys** in the ordinary course from a person, ~~other than a~~  
 40           **pawnbroker**, in the business of selling goods of that kind. ~~but~~  
 41           ~~does not include a pawnbroker. All persons who sell minerals or~~  
 42           ~~the like (including oil and gas) at a wellhead or minehead shall be~~

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1 deemed to be persons **A person buys goods in the ordinary**  
 2 **course of business if the sale to the person comports with the**  
 3 **usual or customary practices in the kind of business in which**  
 4 **the seller is engaged or with the seller's own usual or**  
 5 **customary practices. A person that sells oil, gas, or other**  
 6 **minerals at the wellhead or minehead is a person in the**  
 7 **business of selling goods of that kind. "Buying" A buyer in**  
 8 **ordinary course of business may be buy for cash, or by**  
 9 **exchange of other property, or on secured or unsecured credit, and**  
 10 **includes receiving may require goods or documents of title under**  
 11 **a preexisting contract for sale. but does not include a transfer in**  
 12 **bulk or as security for or in total or partial satisfaction of a money**  
 13 **debt. Only a buyer that takes possession of the goods or has a**  
 14 **right to recover the goods from that seller under IC 26-1-2**  
 15 **may be a buyer in ordinary course of business. A person that**  
 16 **acquires goods in a transfer in bulk or as security for or total**  
 17 **or partial satisfaction of a money debt is not a buyer in**  
 18 **ordinary course of business.**

19 (10) "Conspicuous". A term or clause is conspicuous when it is so  
 20 written that a reasonable person against whom it is to operate  
 21 ought to have noticed it. A printed heading in capitals (as:  
 22 NONNEGOTIABLE BILL OF LADING) is conspicuous.  
 23 Language in the body of a form is conspicuous if it is in larger or  
 24 other contrasting type or color. But in a telegram any stated term  
 25 is conspicuous. Whether a term or clause is conspicuous or not is  
 26 for decision by the court.

27 (11) "Contract" means the total legal obligation which results  
 28 from the parties' agreement as affected by this Act and any other  
 29 applicable rules of law. (Compare "Agreement".)

30 (12) "Creditor" includes a general creditor, a secured creditor, a  
 31 lien creditor and any representative of creditors, including an  
 32 assignee for the benefit of creditors, a trustee in bankruptcy, a  
 33 receiver in equity, and an executor or administrator of an  
 34 insolvent debtor's or assignor's estate.

35 (13) "Defendant" includes a person in the position of defendant  
 36 in a cross-action or counterclaim.

37 (14) "Delivery" with respect to instruments, documents of title,  
 38 chattel paper, or certificated securities means voluntary transfer  
 39 of possession.

40 (15) "Document of title" includes bill of lading, dock warrant,  
 41 dock receipt, warehouse receipt, or order for the delivery of goods  
 42 and also any other document, which in the regular course of

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1 business or financing, is treated as adequately evidencing that the  
 2 person in possession of it is entitled to receive, hold, and dispose  
 3 of the document and the goods it covers. To be a document of  
 4 title, a document must purport to be issued by or addressed to a  
 5 bailee and purport to cover goods in the bailee's possession which  
 6 are either identified or are fungible portions of an identified mass.

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

8 (17) "Fungible" with respect to goods or securities means goods  
 9 or securities of which any unit is, by nature or usage of trade, the  
 10 equivalent of any other like unit. Goods which are not fungible  
 11 shall be deemed fungible for the purposes of IC 26-1 to the extent  
 12 that under a particular agreement or document unlike units are  
 13 treated as equivalents.

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

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

17 (20) "Holder" with respect to a negotiable instrument, means the  
 18 person in possession if the instrument is payable to bearer or, in  
 19 the case of an instrument, payable to an identified person if the  
 20 identified person is in possession. "Holder" with respect to a  
 21 document of title, means the person in possession if the goods are  
 22 deliverable to bearer or to the order of the person in possession.

23 (21) To "honor" is to pay or to accept and pay or where a credit so  
 24 engages to purchase or discount a draft complying with the terms  
 25 of the credit.

26 (22) "Insolvency proceedings" includes any assignment for the  
 27 benefit of creditors or other proceedings intended to liquidate or  
 28 rehabilitate the estate of the person involved.

29 (23) A person is "insolvent" who either has ceased to pay his  
 30 debts in the ordinary course of business or cannot pay his debts as  
 31 they become due or is insolvent within the meaning of the federal  
 32 bankruptcy law.

33 (24) "Money" means a medium of exchange authorized or  
 34 adopted by a domestic or foreign government and includes a  
 35 monetary unit of account established by an intergovernmental  
 36 organization or by agreement between two (2) or more nations.

37 (25) A person has "notice" of a fact when:

38 (a) he has actual knowledge of it; **or**

39 (b) he has received a notice or notification of it; or

40 (c) from all the facts and circumstances known to him at the  
 41 time in question he has reason to know that it exists.

42 A person "knows" or has "knowledge" of a fact when he has

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actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by IC 26-1.

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

- (a) it comes to his attention; or
- (b) it is duly delivered at the place of business through which the contract was made or at any other place held out by him as the place for receipt of such communications.

(27) Notice, knowledge, or a notice of notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction and, in any event, from the time when it would have been brought to his attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

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

(29) "Party", as distinct from "third party", means a person who has engaged in a transaction or made an agreement within IC 26-1.

(30) "Person" includes an individual or an organization. (See IC 26-1-1-102.)

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

(32) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, **security interest**, issue or reissue, gift, or

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1 any other voluntary transaction creating an interest in property.

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

3 (33a) "Registered mail" includes certified mail.

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

6 (35) "Representative" includes an agent, an officer of a  
7 corporation or association, and a trustee, executor, or  
8 administrator of an estate, or any other person empowered to act  
9 for another.

10 (36) "Rights" includes remedies.

11 (37) "Security interest" means an interest in personal property or  
12 fixtures which secures payment or performance of an obligation.

13 ~~The retention or reservation of title by a seller of goods~~  
14 ~~notwithstanding shipment or delivery to the buyer (~~IC~~~~  
15 ~~26-1-2-401)~~ **is limited in effect to a reservation of a security**

16 **interest.** The term also includes any interest of a **consignor and**  
17 **a buyer of accounts, or chattel paper, which a payment**

18 **intangible, or a promissory note in a transaction that** is subject

19 **to ~~IC 26-1-9.~~ IC 26-1-9.1.** The special property interest of a buyer

20 of goods on identification of such goods to a contract for sale

21 under IC 26-1-2-401 is not a security interest, but a buyer may

22 also acquire a security interest by complying with ~~IC 26-1-9.~~

23 ~~Unless a lease or consignment is intended as security, reservation~~

24 ~~of title thereunder is not a security interest but a consignment is~~

25 ~~in any event subject to the provisions on consignment sales (~~IC~~~~

26 ~~26-1-2-326).~~ **IC 26-1-9.1. Except as otherwise provided in**

27 **IC 26-1-2-505, the right of a seller or lessor of goods under**

28 **IC 26-1-2 or IC 26-1-2.1 to retain or acquire possession of the**

29 **goods is not a "security interest", but a seller or lessor may**

30 **also acquire a "security interest" by complying with**

31 **IC 26-1-9.1. The retention or reservation of title by a seller of**

32 **goods notwithstanding shipment or delivery to the buyer (IC**

33 **26-1-2-401) is limited in effect to a reservation of a "security**

34 **interest".** Whether a transaction creates a lease or security

35 interest is determined by the facts of each case. However, a

36 transaction creates a security interest if the consideration the

37 lessee is to pay the lessor for the right to possession and use of the

38 goods is an obligation for the term of the lease not subject to

39 termination by the lessee and:

- 40 (a) the original term of the lease is equal to or greater than the  
41 remaining economic life of the goods;

- 42 (b) the lessee is bound to renew the lease for the remaining

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economic life of the goods or is bound to become the owner of the goods;

(c) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement; or

(d) the lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

A transaction does not create a security interest merely because it provides that:

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

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

(c) the lessee has an option to renew the lease or to become the owner of the goods;

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

(e) the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

For purposes of this subsection:

(x) Additional consideration is not nominal if:

(i) when the option to renew the lease is granted to the lessee the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed; or

(ii) when the option to become the owner of the goods is granted to the lessee the price is stated to be the fair market value of the goods determined at the time the option is to be performed.

Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised.

(y) "Reasonably predictable" and "remaining economic life of

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the goods" are to be determined with reference to the facts and circumstances at the time the transaction is entered into. ~~and~~ (z) "Present value" means the amount as of a date certain of one (1) or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into. Otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

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

(39) "Signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing.

(40) "Surety" includes guarantor.

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

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

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

(44) "Value". Except as otherwise provided with respect to negotiable instruments and bank collections (IC 26-1-3.1-303, IC 26-1-4-208, and IC 26-1-4-209) a person gives value for rights if he acquires them:

- (a) in return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a chargeback is provided for in the event of difficulties in collection;
- (b) as security for or in total or partial satisfaction of a preexisting claim;
- (c) by accepting delivery pursuant to a preexisting contract for purchase; or

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

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

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

SECTION 13. IC 26-1-1-206 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 206. (1) Except in the cases described in subsection (2), a contract for the sale of personal property is not enforceable by way of action or defense beyond five thousand dollars (\$5,000) in amount or value of remedy unless there is some writing which indicates that a contract for sale has been made between the parties at a defined or stated price, reasonably identifies the subject matter, and is signed by the party against whom enforcement is sought or by his authorized agent.

(2) Subsection (1) does not apply to contracts for the sale of goods (IC 26-1-2-201) nor to security agreements (~~IC 26-1-9-203~~): (IC 26-1-9.1-201).

SECTION 14. IC 26-1-1.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]:

**Chapter 1.5. UCC Forms**

**Sec. 1. The forms in this chapter may be used for filings under this article.**

**Sec. 2. The following forms are set forth below:**

- (1) IC 26-1-9.1 financing statement.
- (2) IC 26-1-9.1 financing statement amendment.

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UCC FINANCING STATEMENT  
FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT FILER (optional)	
B. SEND ACKNOWLEDGMENT TO: (Name and Address)	
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THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

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

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

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

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

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

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

4. This FINANCING STATEMENT covers the following collateral:

5. ALTERNATIVE DESIGNATION (if applicable)  LESSEE/LESSOR  CONSIGNEE/CONSIGNOR  BAILEE/BAILOR  SELLER/BUYER  AG. LIEN  NON-UCC FILING

6.  This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS Attached Addendum [if applicable] 7. Check to REQUEST SEARCH REPORTS(S) on Debtor(s) [ADDITIONAL FEE] [optional]  All Debtors  Debtor 1  Debtor 2

8. OPTIONAL FILER REFERENCE DATA

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FILING OFFICE COPY —NATIONAL UCC FINANCING STATEMENT (FORM UCC1) (REV. 04/23/98)

COPY

HB 1326—LS 6756/DI 69+



UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT

9a. ORGANIZATION'S NAME

9b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME, SUFFIX

10. MISCELLANEOUS:

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

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

11a. ORGANIZATION'S NAME

OR 11b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

11c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

11d. TAX ID# SSN OR EIN ADDL INFO RE 11e. TYPE OF ORGANIZATION 11f. JURISDICTION OF ORGANIZATION 11g. ORGANIZATION ID#, if any DEBTOR NONE

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

12a. ORGANIZATION'S NAME

OR 12b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

12c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

13. This FINANCING STATEMENT covers [ ] amber to be out or [ ] as-extracted collateral, or is filed as a [ ] future filing.

14. Description of real estate:

16. Additional collateral description:

15. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

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

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

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

- Debtor is a TRANSMITTING UTILITY
Filed in connection with a Manufactured-Home Transaction —effective 30 years
Filed in connection with a Public-Finance Transaction —effective 30 years

FILING OFFICE COPY—NATIONAL UCC FINANCING STATEMENT ADDENDUM (FORM UCC1Ad)(REV. 04/23/98)



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UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT FILER (optional)
B. SEND ACKNOWLEDGMENT TO: (Name and Address)
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THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE # \_\_\_\_\_

1b. This FINANCING STATEMENT AMENDMENT is  to be filed (for record) (or recorded) in the REAL ESTATE RECORDS.

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

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

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

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

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

6. CURRENT RECORD INFORMATION:

6a. ORGANIZATION'S NAME \_\_\_\_\_

OR

6b. INDIVIDUAL'S NAME	FIRST NAME	MIDDLE NAME	SUFFIX
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7. CHANGED (NEW) OR ADDED INFORMATION:

7a. ORGANIZATION'S NAME \_\_\_\_\_

OR

7b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
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7c. ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
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7d. TAX ID#	SSN OR EIN	ADDL INFO RE ORGANIZATION DEBTOR	7e. TYPE OF ORGANIZATION	7f. JURISDICTION OF ORGANIZATION	7g. ORGANIZATION ID#, if any	<input type="checkbox"/> NONE
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8. AMENDMENT (COLLATERAL CHANGE): Check only one box. Describe collateral  Deleted or  Added, or give entire  restated collateral description, or describe collateral  assigned.

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

9a. ORGANIZATION'S NAME \_\_\_\_\_

OR

9b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
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10. OPTIONAL FILER REFERENCE DATA \_\_\_\_\_

FILING OFFICE COPY —NATIONAL UCC FINANCING STATEMENT AMENDMENT(FORM UCC3) (REV. 04/23/98)

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UCC FINANCING STATEMENT AMENDMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

11. INITIAL FINANCING STATEMENT FILE # (same as item 1a on amendment form)

12. NAME OF PARTY AUTHORIZING THIS AMENDMENT (same as item 9 on Amendment form)

12a ORGANIZATION'S NAME

OR

12b INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME, SUFFIX
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13. Use this space for additional information

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

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FILING OFFICE COPY —NATIONAL UCC FINANCING STATEMENT AMENDMENT ADDENDUM(FORM UCC3Ad) (REV. 04/23/98)

1 **END OF IC 26-1-9.1 FINANCING STATEMENT AMENDMENT**

**HB 1326—LS 6756/DI 69+**



1 SECTION 15. IC 26-1-2-103 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 103. (1) In IC 26-1-2,  
3 unless the context otherwise requires:

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

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

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

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

10 (2) Other definitions applying to IC 26-1-2, or to specified parts  
11 thereof, and the sections in which they appear are:

12 "Acceptance". IC 26-1-2-606.

13 "Banker's credit". IC 26-1-2-325.

14 "Between merchants". IC 26-1-2-104.

15 "Cancellation". IC 26-1-2-106(4).

16 "Commercial unit". IC 26-1-2-105.

17 "Confirmed credit". IC 26-1-2-325.

18 "Conforming to contract". IC 26-1-2-106.

19 "Contract for sale". IC 26-1-2-106.

20 "Cover". IC 26-1-2-712.

21 "Entrusting". IC 26-1-2-403.

22 "Financing agency". IC 26-1-2-104.

23 "Future goods". IC 26-1-2-105.

24 "Goods". IC 26-1-2-105.

25 "Identification". IC 26-1-2-501.

26 "Installment contract". IC 26-1-2-612.

27 "Letter of credit". IC 26-1-2-325.

28 "Lot". IC 26-1-2-105.

29 "Merchant". IC 26-1-2-104.

30 "Overseas". IC 26-1-2-323.

31 "Person in the position of seller". IC 26-1-2-707.

32 "Present sale". IC 26-1-2-106.

33 "Sale". IC 26-1-2-106.

34 "Sale on approval". IC 26-1-2-326.

35 "Sale or return". IC 26-1-2-326.

36 "Termination". IC 26-1-2-106.

37 (3) The following definitions apply to IC 26-1-2:

38 "Check". IC 26-1-3.1-104.

39 "Consignee". IC 26-1-7-102.

40 "Consignor". IC 26-1-7-102.

41 "Consumer goods". ~~IC 26-1-9-109~~; **IC 26-1-9.1-102.**

42 "Dishonor". IC 26-1-3.1-502.

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1 "Draft". IC 26-1-3.1-104.

2 (4) In addition, IC 26-1-1 contains general definitions and principles  
3 of construction and interpretation applicable throughout IC 26-1-2.

4 SECTION 16. IC 26-1-2-210 IS AMENDED TO READ AS  
5 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 210. (1) A party may  
6 perform his duty through a delegate, unless otherwise agreed, or unless  
7 the other party has a substantial interest in having his original promisor  
8 perform or control the acts required by the contract. No delegation of  
9 performance relieves the party delegating of any duty to perform or any  
10 liability for breach.

11 (2) Unless otherwise agreed, all rights of either seller or buyer can  
12 be assigned except where the assignment would materially change the  
13 duty of the other party, or increase materially the burden or risk  
14 imposed on him by his contract, or impair materially his chance of  
15 obtaining return performance. A right to damages for breach of the  
16 whole contract or a right arising out of the assignor's due performance  
17 of his entire obligation can be assigned despite agreement otherwise.

18 (3) **The creation, attachment, perfection, or enforcement of a**  
19 **security interest in the seller's interest under a contract is not a**  
20 **transfer that materially changes the duty of or increases materially**  
21 **the burden or risk imposed on the buyer or impairs materially the**  
22 **buyer's chance of obtaining return performance within the**  
23 **purview of subsection (2) unless, and then only to the extent that,**  
24 **enforcement actually results in a delegation of material**  
25 **performance of the seller. Even in that event, the creation,**  
26 **attachment, perfection, and enforcement of the security interest**  
27 **remain effective, but (i) the seller is liable to the buyer for damages**  
28 **caused by the delegation to the extent that the damages could not**  
29 **reasonably be prevented by the buyer, and (ii) a court having**  
30 **jurisdiction may grant other appropriate relief, including**  
31 **cancellation of the contract for sale or an injunction against**  
32 **enforcement of the security interest or consummation of the**  
33 **enforcement.**

34 (4) Unless the circumstances indicate the contrary, a prohibition of  
35 assignment of "the contract" is to be construed as barring only the  
36 delegation to the assignee of the assignor's performance.

37 ~~(4)~~ (5) An assignment of "the contract" or of "all my rights under the  
38 contract" or an assignment in similar general terms is an assignment of  
39 rights, and unless the language or the circumstances (as in an  
40 assignment for security) indicate the contrary, it is a delegation of  
41 performance of the duties of the assignor, and its acceptance by the  
42 assignee constitutes a promise by him to perform those duties. This



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1 promise is enforceable by either the assignor or the other party to the  
2 original contract.

3 ~~(5)~~ (6) The other party may treat any assignment which delegates  
4 performance as creating reasonable grounds for insecurity and may,  
5 without prejudice to his rights against the assignor, demand assurances  
6 from the assignee (IC 26-1-2-609).

7 SECTION 17. IC 26-1-2-326 IS AMENDED TO READ AS  
8 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 326. (1) Unless  
9 otherwise agreed, if delivered goods may be returned by the buyer even  
10 though they conform to the contract, the transaction is:

11 (a) a "sale on approval" if the goods are delivered primarily for  
12 use; and

13 (b) a "sale or return" if the goods are delivered primarily for  
14 resale.

15 (2) Except as provided in subsection ~~(3)~~; Goods held on approval  
16 are not subject to the claims of the buyer's creditors until acceptance.  
17 Goods held on sale or return are subject to such claims while in the  
18 buyer's possession.

19 ~~(3)~~ Where goods are delivered to a person for sale and such person  
20 maintains a place of business at which he deals in goods of the kind  
21 involved; under a name other than the name of the person making  
22 delivery; then with respect to claims of creditors of the person  
23 conducting the business the goods are deemed to be on sale or return.  
24 The provisions of this subsection are applicable even though an  
25 agreement purports to reserve title to the person making delivery until  
26 payment or resale or uses such words as "on consignment" or "on  
27 memorandum." However, this subsection is not applicable if the person  
28 making delivery:

29 (a) complies with an applicable law providing for a consignor's  
30 interest or the like to be evidenced by a sign; or

31 (b) establishes that the person conducting the business is  
32 generally known by his creditors to be substantially engaged in  
33 selling the goods of others; or

34 (c) complies with the filing provisions of IC 26-1-9 on secured  
35 transactions.

36 ~~(4)~~ (3) Any "or return" term of a contract for sale is to be treated as  
37 a separate contract for sale within the statute of frauds section (IC  
38 26-2-2-201) and as contradicting the sale aspect of the contract within  
39 the provisions of IC 26-1-2-202 on parol or extrinsic evidence.

40 SECTION 18. IC 26-1-2-401 IS AMENDED TO READ AS  
41 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 401. Each provision of  
42 IC 26-1-2 with regard to the rights, obligations, and remedies of the

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1 seller, the buyer, purchasers, or other third parties applies irrespective  
 2 of title to the goods, except where the provision refers to such title.  
 3 Insofar as situations are not covered by the other provisions of  
 4 IC 26-1-2 and matters concerning title become material, the following  
 5 rules apply:

6 (1) Title to goods cannot pass under a contract for sale prior to  
 7 their identification to the contract (IC 26-1-2-501), and unless  
 8 otherwise explicitly agreed, the buyer acquires by their  
 9 identification a special property as limited by IC 26-1. Any  
 10 retention or reservation by the seller of the title (property) in  
 11 goods shipped or delivered to the buyer is limited in effect to a  
 12 reservation of a security interest. Subject to these provisions and  
 13 to the provisions of ~~IC 26-1-9~~ **IC 26-1-9.1** on secured  
 14 transactions, title to goods passes from the seller to the buyer in  
 15 any manner and on any conditions explicitly agreed on by the  
 16 parties.

17 (2) Unless otherwise explicitly agreed, title passes to the buyer at  
 18 the time and place at which the seller completes his performance  
 19 with reference to the physical delivery of the goods, despite any  
 20 reservation of a security interest and even though a document of  
 21 title is to be delivered at a different time or place, and in  
 22 particular despite any reservation of a security interest by the bill  
 23 of lading:

24 (a) if the contract requires or authorizes the seller to send the  
 25 goods to the buyer but does not require him to deliver them at  
 26 destination, title passes to the buyer at the time and place of  
 27 shipment; but

28 (b) if the contract requires delivery at destination, title passes  
 29 on tender there.

30 (3) Unless otherwise explicitly agreed, where delivery is to be  
 31 made without moving the goods:

32 (a) if the seller is to deliver a document of title, title passes at  
 33 the time when and the place where he delivers such  
 34 documents; or

35 (b) if the goods are at the time of contracting already identified  
 36 and no documents are to be delivered, title passes at the time  
 37 and place of contracting.

38 (4) A rejection or other refusal by the buyer to receive or retain  
 39 the goods, whether or not justified, or a justified revocation of  
 40 acceptance revests title to the goods in the seller. Such revesting  
 41 occurs by operation of law and is not a "sale".

42 SECTION 19. IC 26-1-2-402 IS AMENDED TO READ AS

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1 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 402. (1) Except as  
 2 provided in subsections (2) and (3), rights of unsecured creditors of the  
 3 seller with respect to goods which have been identified to a contract for  
 4 sale are subject to the buyer's rights to recover the goods under  
 5 IC 26-1-2-502 and IC 26-1-2-716.

6 (2) A creditor of the seller may treat a sale or an identification of  
 7 goods to a contract for sale as void if as against him a retention of  
 8 possession by the seller is fraudulent under any rule of law of the state  
 9 where the goods are situated, except that retention of possession in  
 10 good faith and current course of trade by a merchant-seller for a  
 11 commercially reasonable time after a sale or identification is not  
 12 fraudulent.

13 (3) Nothing in IC 26-1-2 shall be deemed to impair the rights of  
 14 creditors of the seller:

15 (a) under the provisions of ~~IC 26-1-9~~ **IC 26-1-9.1** on secured  
 16 transactions; or

17 (b) where identification to the contract or delivery is made not in  
 18 current course of trade but in satisfaction of or as security for a  
 19 pre-existing claim for money, security, or the like and is made  
 20 under circumstances which under any rule of law of the state  
 21 where the goods are situated would apart from IC 26-1-2  
 22 constitute the transaction a fraudulent transfer or voidable  
 23 preference.

24 SECTION 20. IC 26-1-2-403 IS AMENDED TO READ AS  
 25 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 403. (1) A purchaser  
 26 of goods acquires all title which his transferor had or had power to  
 27 transfer, except that a purchaser of a limited interest acquires rights  
 28 only to the extent of the interest purchased. A person with voidable title  
 29 has power to transfer a good title to a good faith purchaser for value.  
 30 When goods have been delivered under a transaction of purchase, the  
 31 purchaser has such power even though:

32 (a) the transferor was deceived as to the identity of the purchaser;  
 33 or

34 (b) the delivery was in exchange for a check which is later  
 35 dishonored; or

36 (c) it was agreed that the transaction was to be a "cash sale"; or

37 (d) the delivery was procured through fraud punishable as theft  
 38 under the criminal law.

39 (2) Any entrusting of possession of goods to a merchant who deals  
 40 in goods of that kind gives him power to transfer all rights of the  
 41 entruster to a buyer in ordinary course of business.

42 (3) "Entrusting" includes any delivery and any acquiescence in

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1 retention of possession regardless of any condition expressed between  
 2 the parties to the delivery or acquiescence and regardless of whether  
 3 the procurement of the entrusting or the possessor's disposition of the  
 4 goods have been such as to be theft under the criminal law.

5 (4) The rights of other purchasers of goods and of lien creditors are  
 6 governed by ~~IC 26-1-9~~ **IC 26-1-9.1** on secured transactions,  
 7 IC 26-1-6.1 on bulk sales, and IC 26-1-7 on documents of title.

8 SECTION 21. IC 26-1-2-502 IS AMENDED TO READ AS  
 9 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 502. (1) Subject to  
 10 ~~subsection~~ **subsections (2) and (3)** and even though the goods have not  
 11 been shipped, a buyer who has paid a part or all of the price of goods  
 12 in which he has a special property under the provisions of  
 13 IC 26-1-2-501 may on making and keeping good a tender of any unpaid  
 14 portion of their price recover them from the seller if:

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

18 **(b) in other cases,** the seller becomes insolvent within ten (10)  
 19 days after receipt of the first installment on their price.

20 (2) **The buyer's right to recover the goods under subsection**  
 21 **(1)(a) vests upon acquisition of a special property, even if the seller**  
 22 **had not then repudiated or failed to deliver.**

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

26 SECTION 22. IC 26-1-2-716 IS AMENDED TO READ AS  
 27 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 716. (1) Specific  
 28 performance may be decreed where the goods are unique or in other  
 29 proper circumstances.

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

33 (3) The buyer has a right of replevin for goods identified to the  
 34 contract if after reasonable effort he is unable to effect cover for such  
 35 goods or the circumstances reasonably indicate that such effort will be  
 36 unavailing or if the goods have been shipped under reservation and  
 37 satisfaction of the security interest in them has been made or tendered.  
 38 **In the case of goods bought for personal, family, or household**  
 39 **purposes, the buyer's right of replevin vests upon acquisition of a**  
 40 **special property, even if the seller had not then repudiated or failed**  
 41 **to deliver.**

42 SECTION 23. IC 26-1-2.1-103 IS AMENDED TO READ AS



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1 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 103. (1) Unless the  
2 context otherwise requires, in IC 26-1-2.1:

3 (a) "Buyer in ordinary course of business" means a person who in  
4 good faith and without knowledge that the sale to the person is in  
5 violation of the ownership rights or security interest or leasehold  
6 interest of a third party in the goods, buys in ordinary course from  
7 a person in the business of selling goods of that kind but does not  
8 include a pawnbroker. "Buying" may be for cash or by exchange  
9 of other property or on secured or unsecured credit and includes  
10 receiving goods or documents of title under a pre-existing  
11 contract for sale but does not include a transfer in bulk or as  
12 security for or in total or partial satisfaction of a money debt.

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

15 (c) "Commercial unit" means such a unit of goods as by  
16 commercial usage is a single whole for purposes of lease and  
17 division of which materially impairs its character or value on the  
18 market or in use. A commercial unit may be a single article, as a  
19 machine, or a set of articles, as a suite of furniture or a line of  
20 machinery, or a quantity, as a gross or carload, or any other unit  
21 treated in use or in the relevant market as a single whole.

22 (d) "Conforming" goods or performance under a lease contract  
23 means goods or performance that are in accordance with the  
24 obligations under the lease contract.

25 (e) "Consumer lease" means a lease that a lessor regularly  
26 engaged in the business of leasing or selling makes to a lessee  
27 who is an individual and who takes under the lease primarily for  
28 a personal, family, or household purpose if the total payments to  
29 be made under the lease contract, excluding payments for options  
30 to renew or buy, do not exceed twenty-five thousand dollars  
31 (\$25,000).

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

33 (g) "Finance lease" means a lease with respect to which:

- 34 (i) the lessor does not select, manufacture, or supply the goods;  
35 (ii) the lessor acquires the goods or the right to possession and  
36 use of the goods in connection with the lease; and  
37 (iii) one (1) of the following occurs:

38 (A) the lessee receives a copy of the contract by which the  
39 lessor acquired the goods or the right to possession and use  
40 of the goods before signing the lease contract;

41 (B) the lessee's approval of the contract by which the lessor  
42 acquired the goods or the right to possession and use of the

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- 1 goods is a condition to effectiveness of the lease contract;  
2 (C) the lessee, before signing the lease contract, receives an  
3 accurate and complete statement designating the promises  
4 and warranties, and any disclaimers of warranties,  
5 limitations, or modifications of remedies, or liquidated  
6 damages, including those of a third party, such as the  
7 manufacturer of the goods, provided to the lessor by the  
8 person supplying the goods in connection with or as part of  
9 the contract by which the lessor acquired the goods or the  
10 right to possession and use of the goods; or  
11 (D) if the lease is not a consumer lease, the lessor, before the  
12 lessee signs the lease contract, informs the lessee in writing:  
13 (a) of the identity of the person supplying the goods to the  
14 lessor, unless the lessee has selected that person and  
15 directed the lessor to acquire the goods or the right to  
16 possession and use of the goods from that person; (b) that  
17 the lessee is entitled under IC 26-1-2.1 to the promises and  
18 warranties, including those of any third party, provided to  
19 the lessor by the person supplying the goods in connection  
20 with or as part of the contract by which the lessor acquired  
21 the goods or the right to possession and use of the goods;  
22 and (c) that the lessee may communicate with the person  
23 supplying the goods to the lessor and receive an accurate  
24 and complete statement of those promises and warranties,  
25 including any disclaimers and limitations of them or of  
26 remedies.
- 27 (h) "Goods" means all things that are movable at the time of  
28 identification to the lease contract, or are fixtures (IC  
29 26-1-2.1-309), but the term does not include money, documents,  
30 instruments, accounts, chattel paper, general intangibles, or  
31 minerals or the like, including oil and gas, before extraction. The  
32 term also includes the unborn young of animals.
- 33 (i) "Installment lease contract" means a lease contract that  
34 authorizes or requires the delivery of goods in separate lots to be  
35 separately accepted, even though the lease contract contains a  
36 clause "each delivery is a separate lease" or its equivalent.
- 37 (j) "Lease" means a transfer of the right to possession and use of  
38 goods for a term in return for consideration, but a sale, including  
39 a sale on approval or a sale or return, or retention or creation of a  
40 security interest is not a lease. Unless the context clearly indicates  
41 otherwise, the term includes a sublease.
- 42 (k) "Lease agreement" means the bargain, with respect to the

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- 1 lease, of the lessor and the lessee in fact as found in their  
 2 language or by implication from other circumstances including  
 3 course of dealing or usage of trade or course of performance as  
 4 provided in IC 26-1-2.1. Unless the context clearly indicates  
 5 otherwise, the term includes a sublease agreement.
- 6 (l) "Lease contract" means the total legal obligation that results  
 7 from the lease agreement as affected by IC 26-1-2.1 and any other  
 8 applicable rules of law. Unless the context clearly indicates  
 9 otherwise, the term includes a sublease contract.
- 10 (m) "Leasehold interest" means the interest of the lessor or the  
 11 lessee under a lease contract.
- 12 (n) "Lessee" means a person who acquires the right to possession  
 13 and use of goods under a lease. Unless the context clearly  
 14 indicates otherwise, the term includes a sublessee.
- 15 (o) "Lessee in ordinary course of business" means a person who  
 16 in good faith and without knowledge that the lease to the person  
 17 is in violation of the ownership rights or security interest or  
 18 leasehold interest of a third party in the goods leases in ordinary  
 19 course from a person in the business of selling or leasing goods of  
 20 that kind but does not include a pawnbroker. "Leasing" may be for  
 21 cash or by exchange of other property or on secured or unsecured  
 22 credit and includes receiving goods or documents of title under a  
 23 pre-existing lease contract but does not include a transfer in bulk  
 24 or as security for or in total or partial satisfaction of a money debt.
- 25 (p) "Lessor" means a person who transfers the right to possession  
 26 and use of goods under a lease. Unless the context clearly  
 27 indicates otherwise, the term includes a sublessor.
- 28 (q) "Lessor's residual interest" means the lessor's interest in the  
 29 goods after expiration, termination, or cancellation of the lease  
 30 contract.
- 31 (r) "Lien" means a charge against or interest in goods to secure  
 32 payment of a debt or performance of an obligation, but the term  
 33 does not include a security interest.
- 34 (s) "Lot" means a parcel or a single article that is the subject  
 35 matter of a separate lease or delivery, whether or not it is  
 36 sufficient to perform the lease contract.
- 37 (t) "Merchant lessee" means a lessee that is a merchant with  
 38 respect to goods of the kind subject to the lease.
- 39 (u) "Present value" means the amount as of a date certain of one  
 40 (1) or more sums payable in the future, discounted to the date  
 41 certain. The discount is determined by the interest rate specified  
 42 by the parties if the rate was not manifestly unreasonable at the

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- 1 time the transaction was entered into; otherwise, the discount is  
 2 determined by a commercially reasonable rate that takes into  
 3 account the facts and circumstances of each case at the time the  
 4 transaction was entered into.
- 5 (v) "Purchase" includes taking by sale, lease, mortgage, security  
 6 interest, pledge, gift, or any other voluntary transaction creating  
 7 an interest in goods.
- 8 (w) "Sublease" means a lease of goods the right to possession and  
 9 use of which was acquired by the lessor as a lessee under an  
 10 existing lease.
- 11 (x) "Supplier" means a person from whom a lessor buys or leases  
 12 goods to be leased under a finance lease.
- 13 (y) "Supply contract" means a contract under which a lessor buys  
 14 or leases goods to be leased.
- 15 (z) "Termination" occurs when either party pursuant to a power  
 16 created by agreement or law puts an end to the lease contract  
 17 otherwise than for default.
- 18 (2) Other definitions applying to IC 26-1-2.1 and the sections in  
 19 which they appear are:
- 20 "Accessions". IC 26-1-2.1-310(1).  
 21 "Construction mortgage". IC 26-1-2.1-309(1)(d).  
 22 "Encumbrance". IC 26-1-2.1-309(1)(e).  
 23 "Fixtures". IC 26-1-2.1-309(1)(a).  
 24 "Fixture filing". IC 26-1-2.1-309(1)(b).  
 25 "Purchase money lease". IC 26-1-2.1-309(1)(c).
- 26 (3) The following definitions in other chapters apply to IC 26-1-2.1:  
 27 "Account". ~~IC 26-1-9-106~~; **IC 26-1-9.1-102(a)(2)**.  
 28 "Between merchants". IC 26-1-2-104(3).  
 29 "Buyer". IC 26-1-2-103(1)(a).  
 30 "Chattel paper". ~~IC 26-1-9-105(1)(b)~~; **IC 26-1-9.1-102(a)(11)**.  
 31 "Consumer goods". ~~IC 26-1-9-109(1)~~; **IC 26-1-9.1-102(a)(23)**.  
 32 "Document". ~~IC 26-1-9-105(1)(f)~~; **IC 26-1-9.1-102(a)(30)**.  
 33 "Entrusting". IC 26-1-2-403(3).  
 34 "General intangibles". ~~IC 26-1-9-106~~; **IC 26-1-9.1-102(a)(42)**.  
 35 "Good faith". IC 26-1-2-103(1)(b).  
 36 "Instrument". ~~IC 26-1-9-105(1)(i)~~; **IC 26-1-9.1-102(a)(47)**.  
 37 "Merchant". IC 26-1-2-104(1).  
 38 "Mortgage". ~~IC 26-1-9-105(1)(j)~~; **IC 26-1-9.1-102(a)(55)**.  
 39 "Pursuant to commitment". ~~IC 26-1-9-105(1)(k)~~;  
 40 **IC 26-1-9.1-102(a)(68)**.  
 41 "Receipt". IC 26-1-2-103(1)(c).  
 42 "Sale". IC 26-1-2-106(1).



1 "Sale on approval". IC 26-1-2-326.

2 "Sale or return". IC 26-1-2-326.

3 "Seller". IC 26-1-2-103(1)(d).

4 (4) In addition, IC 26-1-1 contains general definitions and principles  
5 of construction and interpretation applicable throughout IC 26-1-2.1.

6 SECTION 24. IC 26-1-2.1-303 IS AMENDED TO READ AS  
7 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 303. (1) As used in this  
8 section, "creation of a security interest" includes the sale of a lease  
9 contract that is subject to IC 26-1-9, by reason of ~~IC 26-1-9-102(1)(b)~~.  
10 **IC 26-1-9.1-109(a)(3).**

11 (2) Except as provided in ~~subsections subsection~~ (3) and ~~(4)~~;  
12 **IC 26-1-9.1-407**, a provision in a lease agreement which (i) prohibits  
13 the voluntary or involuntary transfer, including a transfer by sale,  
14 sublease, creation or enforcement of a security interest, or attachment,  
15 levy, or other judicial process, of an interest of a party under the lease  
16 contract or of the lessor's residual interest in the goods, or (ii) makes  
17 such a transfer an event of default, gives rise to the rights and remedies  
18 provided in subsection ~~(5)~~; **(4)**, but a transfer that is prohibited or is an  
19 event of default under the lease agreement is otherwise effective.

20 ~~(3) A provision in a lease agreement which (i) prohibits the creation~~  
21 ~~or enforcement of a security interest in an interest of a party under the~~  
22 ~~lease contract or in the lessor's residual interest in the goods; or (ii)~~  
23 ~~makes such a transfer an event of default; is not enforceable unless; and~~  
24 ~~then only to the extent that; there is an actual transfer by the lessee of~~  
25 ~~the lessee's right of possession or use of the goods in violation of the~~  
26 ~~provision or an actual delegation of a material performance of either~~  
27 ~~party to the lease contract in violation of the provision. Neither the~~  
28 ~~granting nor the enforcement of a security interest in (i) the lessor's~~  
29 ~~interest under the lease contract or (ii) the lessor's residual interest in~~  
30 ~~the goods is a transfer that materially impairs the prospect of obtaining~~  
31 ~~return performance by; materially changes the duty of; or materially~~  
32 ~~increases the burden or risk imposed on; the lessee within the purview~~  
33 ~~of subsection (5) unless; and then only to the extent that; there is an~~  
34 ~~actual delegation of a material performance of the lessor.~~

35 ~~(4)~~ **(3)** A provision in a lease agreement which (i) prohibits a  
36 transfer of a right to damages for default with respect to the whole lease  
37 contract or of a right to payment arising out of the transferor's due  
38 performance of the transferor's entire obligation, or (ii) makes such a  
39 transfer an event of default, is not enforceable, and such a transfer is  
40 not a transfer that materially impairs the prospect of obtaining return  
41 performance by, materially changes the duty of, or materially increases  
42 the burden or risk imposed on, the other party to the lease contract



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within the purview of subsection ~~(5)~~: **(4)**.

~~(5)~~ **(4)** Subject to subsections (3) and ~~(4)~~ **and IC 26-1-9.1-407:**

(a) if a transfer is made which is made an event of default under a lease agreement, the party to the lease contract not making the transfer, unless that party waives the default or otherwise agrees, has the rights and remedies described in IC 26-1-2.1-501(2); **or** (b) if subdivision (a) is not applicable and if a transfer is made that (i) is prohibited under a lease agreement or (ii) materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract, unless the party not making the transfer agrees at any time to the transfer in the lease contract or otherwise, then, except as limited by contract, (i) the transferor is liable to the party not making the transfer for damages caused by the transfer to the extent that the damages could not reasonably be prevented by the party not making the transfer and (ii) a court having jurisdiction may grant other appropriate relief, including cancellation of the lease contract or an injunction against the transfer.

~~(6)~~ **(5)** A transfer of "the lease" or of "all my rights under the lease", or a transfer in similar general terms, is a transfer of rights and, unless the language or the circumstances, as in a transfer for security, indicate the contrary, the transfer is a delegation of duties by the transferor to the transferee. Acceptance by the transferee constitutes a promise by the transferee to perform those duties. The promise is enforceable by either the transferor or the other party to the lease contract.

~~(7)~~ **(6)** Unless otherwise agreed by the lessor and the lessee, a delegation of performance does not relieve the transferor as against the other party of any duty to perform or of any liability for default.

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

SECTION 25. IC 26-1-2.1-307 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 307. (1) Except as otherwise provided in IC 26-1-2.1-306, a creditor of a lessee takes subject to the lease contract.

(2) Except as otherwise provided in ~~subsections~~ **subsection (3) and** ~~(4)~~ and in IC 26-1-2.1-306 and IC 26-1-2.1-308, a creditor of a lessor takes subject to the lease contract unless

- ~~(a)~~ the creditor holds a lien that attached to the goods before the lease contract became enforceable.
- ~~(b)~~ the creditor holds a security interest in the goods and the

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1 lessee did not give value and receive delivery of the goods  
 2 without knowledge of the security interest; or  
 3 (c) the creditor holds a security interest in the goods which was  
 4 perfected (IC 26-1-2.1-303) before the lease contract became  
 5 enforceable.

6 (3) A lessee in the ordinary course of business takes the leasehold  
 7 interest free of a security interest in the goods created by the lessor  
 8 even though the security interest is perfected (IC 26-1-2.1-303) and the  
 9 lessee knows of its existence.

10 (4) A lessee other than a lessee in the ordinary course of business  
 11 takes the leasehold interest free of a security interest to the extent that  
 12 it secures future advances made after the secured party acquires  
 13 knowledge of the lease or more than forty-five (45) days after the lease  
 14 contract becomes enforceable; whichever first occurs; unless the future  
 15 advances are made pursuant to a commitment entered into without  
 16 knowledge of the lease and before the expiration of the forty-five (45)  
 17 day period.

18 (3) Except as otherwise provided in IC 26-1-9.1-317,  
 19 IC 26-1-9.1-321, and IC 26-1-9.1-323, a lessee takes a leasehold  
 20 interest subject to a security interest held by a creditor of the  
 21 lessor.

22 SECTION 26. IC 26-1-2.1-309 IS AMENDED TO READ AS  
 23 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 309. (1) In this section:

- 24 (a) goods are "fixtures" when they become so related to particular
- 25 real estate that an interest in them arises under real estate law;
- 26 (b) a "fixture filing" is the filing, in the office where a mortgage
- 27 on the real estate would be filed or recorded, of a financing
- 28 statement covering goods that are or are to become fixtures and
- 29 conforming to the requirements of IC 26-1-9-402(4);
- 30 **IC 26-1-9.1-502(a) and IC 26-1-9.1-502(b);**
- 31 (c) a lease is a "purchase money lease" unless the lessee has
- 32 possession or use of the goods or the right to possession or use of
- 33 the goods before the lease agreement is enforceable;
- 34 (d) a mortgage is a "construction mortgage" to the extent it
- 35 secures an obligation incurred for the construction of an
- 36 improvement on land including the acquisition cost of the land, if
- 37 the recorded writing so indicates; and
- 38 (e) "encumbrance" includes real estate mortgages and other liens
- 39 on real estate and all other rights in real estate that are not
- 40 ownership interests.

41 (2) Under IC 26-1-2.1 a lease may be of goods that are fixtures or  
 42 may continue in goods that become fixtures, but no lease exists under

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1 IC 26-1-2.1 of ordinary building materials incorporated into an  
 2 improvement on land.

3 (3) IC 26-1-2.1 does not prevent creation of a lease of fixtures  
 4 pursuant to real estate law.

5 (4) The perfected interest of a lessor of fixtures has priority over a  
 6 conflicting interest of an encumbrancer or owner of the real estate if:

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

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

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

22 (a) the fixtures are readily removable factory or office machines,  
 23 readily removable equipment that is not primarily used or leased  
 24 for use in the operation of the real estate, or readily removable  
 25 replacements of domestic appliances that are goods subject to a  
 26 consumer lease, and before the goods become fixtures the lease  
 27 contract is enforceable; or

28 (b) the conflicting interest is a lien on the real estate obtained by  
 29 legal or equitable proceedings after the lease contract is  
 30 enforceable; or

31 (c) the encumbrancer or owner has consented in writing to the  
 32 lease or has disclaimed an interest in the goods as fixtures; or

33 (d) the lessee has a right to remove the goods as against the  
 34 encumbrancer or owner. If the lessee's right to remove terminates,  
 35 the priority of the interest of the lessor continues for a reasonable  
 36 time.

37 (6) Notwithstanding subsection 4(a) but otherwise subject to  
 38 subsections (4) and (5), the interest of a lessor of fixtures, including the  
 39 lessor's residual interest, is subordinate to the conflicting interest of an  
 40 encumbrancer of the real estate under a construction mortgage recorded  
 41 before the goods become fixtures if the goods become fixtures before  
 42 the completion of the construction. To the extent given to refinance a

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1 construction mortgage, the conflicting interest of an encumbrancer of  
 2 the real estate under a mortgage has this priority to the same extent as  
 3 the encumbrancer of the real estate under the construction mortgage.

4 (7) In cases not within the preceding subsections, priority between  
 5 the interest of a lessor of fixtures, including the lessor's residual  
 6 interest, and the conflicting interest of an encumbrancer or owner of the  
 7 real estate who is not the lessee is determined by the priority rules  
 8 governing conflicting interests in real estate.

9 (8) If the interest of a lessor of fixtures, including the lessor's  
 10 residual interest, has priority over all conflicting interests of all owners  
 11 and encumbrancers of the real estate, the lessor or the lessee may (i) on  
 12 default, expiration, termination, or cancellation of the lease agreement  
 13 but subject to the lease agreement and IC 26-1-2.1, or (ii) if necessary  
 14 to enforce other rights and remedies of the lessor or lessee under  
 15 IC 26-1-2.1, remove the goods from the real estate, free and clear of all  
 16 conflicting interests of all owners and encumbrancers of the real estate,  
 17 but the lessor or lessee must reimburse any encumbrancer or owner of  
 18 the real estate who is not the lessee and who has not otherwise agreed  
 19 for the cost of repair of any physical injury, but not for any diminution  
 20 in value of the real estate caused by the absence of the goods removed  
 21 or by any necessity of replacing them. A person entitled to  
 22 reimbursement may refuse permission to remove until the party seeking  
 23 removal gives adequate security for the performance of this obligation.

24 (9) Even though the lease agreement does not create a security  
 25 interest, the interest of a lessor of fixtures, including the lessor's  
 26 residual interest, is perfected by filing a financing statement as a fixture  
 27 filing for leased goods that are or are to become fixtures in accordance  
 28 with the relevant provisions of ~~IC 26-1-9~~ **IC 26-1-9.1**.

29 SECTION 27. IC 26-1-3.1-102 IS AMENDED TO READ AS  
 30 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 102. (a) IC 26-1-3.1  
 31 applies to negotiable instruments. It does not apply to money, to  
 32 payment orders governed by IC 26-1-4.1, or to securities governed by  
 33 IC 26-1-8.1.

34 (b) If there is conflict between IC 26-1-3.1 and IC 26-1-4 or  
 35 ~~IC 26-1-9~~ **IC 26-1-9.1**, IC 26-1-4, and ~~IC 26-1-9~~ **IC 26-1-9.1** govern.

36 (c) Regulations of the Board of Governors of the Federal Reserve  
 37 System and operating circulars of the Federal Reserve Banks supersede  
 38 any inconsistent provision of IC 26-1-3.1 to the extent of the  
 39 inconsistency.

40 SECTION 28. IC 26-1-3.1-605 IS AMENDED TO READ AS  
 41 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 605. (a) In this section,  
 42 the term "endorser" includes a drawer having the obligation described

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1 in IC 26-1-3.1-414(d).

2 (b) Discharge, under IC 26-1-3.1-604, of the obligation of a party to  
3 pay an instrument does not discharge the obligation of an endorser or  
4 accommodation party having a right of recourse against the discharged  
5 party.

6 (c) If a person entitled to enforce an instrument agrees, with or  
7 without consideration, to an extension of the due date of the obligation  
8 of a party to pay the instrument, the extension discharges an endorser  
9 or accommodation party having a right of recourse against the party  
10 whose obligation is extended to the extent the endorser or  
11 accommodation party proves that the extension caused loss to the  
12 endorser or accommodation party with respect to the right of recourse.

13 (d) If a person entitled to enforce an instrument agrees, with or  
14 without consideration, to a material modification of the obligation of  
15 a party other than an extension of the due date, the modification  
16 discharges the obligation of an endorser or accommodation party  
17 having a right of recourse against the person whose obligation is  
18 modified to the extent the modification causes loss to the endorser or  
19 accommodation party with respect to the right of recourse. The loss  
20 suffered by the endorser or accommodation party as a result of the  
21 modification is equal to the amount of the right of recourse unless the  
22 person enforcing the instrument proves that no loss was caused by the  
23 modification or that the loss caused by the modification was an amount  
24 less than the amount of the right of recourse.

25 (e) If the obligation of a party to pay an instrument is secured by an  
26 interest in collateral and a person entitled to enforce the instrument  
27 impairs the value of the interest in collateral, the obligation of an  
28 endorser or accommodation party having a right of recourse against the  
29 obligor is discharged to the extent of the impairment. The value of an  
30 interest in collateral is impaired to the extent:

31 (1) the value of the interest is reduced to an amount less than the  
32 amount of the right of recourse of the party asserting discharge;  
33 or

34 (2) the reduction in value of the interest causes an increase in the  
35 amount by which the amount of the right of recourse exceeds the  
36 value of the interest.

37 The burden of proving impairment is on the party asserting discharge.

38 (f) If the obligation of a party is secured by an interest in collateral  
39 not provided by an accommodation party and a person entitled to  
40 enforce the instrument impairs the value of the interest in collateral, the  
41 obligation of any party who is jointly and severally liable with respect  
42 to the secured obligation is discharged to the extent the impairment



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1 causes the party asserting discharge to pay more than that party would  
 2 have been obliged to pay, taking into account rights of contribution, if  
 3 impairment had not occurred. If the party asserting discharge is an  
 4 accommodation party not entitled to discharge under subsection (e), the  
 5 party is considered to have a right to contribution based on joint and  
 6 several liability rather than a right to reimbursement. The burden of  
 7 proving impairment is on the party asserting discharge.

8 (g) Under subsection (e) or (f), impairing value of an interest in  
 9 collateral includes:

- 10 (1) failure to obtain or maintain perfection or recordation of the
- 11 interest in collateral;
- 12 (2) release of collateral without substitution of collateral of equal
- 13 value;
- 14 (3) failure to perform a duty to preserve the value of collateral
- 15 owed, under ~~IC 26-1-9~~ **IC 26-1-9.1** or other law, to a debtor or
- 16 surety or other person secondarily liable; or
- 17 (4) failure to comply with applicable law in disposing of
- 18 collateral.

19 (h) An accommodation party is not discharged under subsection (c),  
 20 (d), or (e) unless the person entitled to enforce the instrument knows of  
 21 the accommodation or has notice under IC 26-1-3.1-419(c) that the  
 22 instrument was signed for accommodation.

23 (i) A party is not discharged under this section if:

- 24 (1) the party asserting discharge consents to the event or conduct
- 25 that is the basis of the discharge; or
- 26 (2) the instrument or a separate agreement of the party provides
- 27 for waiver of discharge under this section either specifically or by
- 28 general language indicating that parties waive defenses based on
- 29 suretyship or impairment of collateral.

30 SECTION 29. IC 26-1-4-210 IS AMENDED TO READ AS  
 31 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 210. (a) A collecting  
 32 bank has a security interest in an item and any accompanying  
 33 documents or the proceeds of either:

- 34 (1) in the case of an item deposited in an account, to the extent to
- 35 which credit given for the item has been withdrawn or applied;
- 36 (2) in the case of an item for which it has given credit available
- 37 for withdrawal as of right, to the extent of the credit given,
- 38 whether or not the credit is drawn upon or there is a right of
- 39 charge-back; or
- 40 (3) if it makes an advance on or against the item.

41 (b) If credit given for several items received at one (1) time or under  
 42 a single agreement is withdrawn or applied in part, the security interest

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1 remains upon all the items, any accompanying documents, or the  
2 proceeds of either. For the purpose of this section, credits first given  
3 are first withdrawn.

4 (c) Receipt by a collecting bank of a final settlement for an item is  
5 a realization on its security interest in the item, accompanying  
6 documents, and proceeds. So long as the bank does not receive final  
7 settlement for the item or give up possession of the item or  
8 accompanying documents for purposes other than collection, the  
9 security interest continues to that extent and is subject to IC 26-1-9,  
10 but:

11 (1) no security agreement is necessary to make the security  
12 interest enforceable (~~IC 26-1-9-203(1)(a)~~); (**IC**  
13 **26-1-9.1-203(b)(3)(A)**);

14 (2) no filing is required to perfect the security interest; and

15 (3) the security interest has priority over conflicting perfected  
16 security interests in the item, accompanying documents, or  
17 proceeds.

18 SECTION 30. IC 26-1-5.1-114 IS AMENDED TO READ AS  
19 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 114. (a) In this section,  
20 "proceeds of a letter of credit" means the cash, check, accepted draft,  
21 or other item of value paid or delivered upon honor or giving of value  
22 by the issuer or any nominated person under the letter of credit. The  
23 term does not include a beneficiary's drawing rights or documents  
24 presented by the beneficiary.

25 (b) A beneficiary may assign its right to part or all of the proceeds  
26 of a letter of credit. The beneficiary may do so before presentation as  
27 a present assignment of its right to receive proceeds contingent upon  
28 its compliance with the terms and conditions of the letter of credit.

29 (c) An issuer or nominated person need not recognize an assignment  
30 of proceeds of a letter of credit until it consents to the assignment.

31 (d) An issuer or nominated person has no obligation to give or  
32 withhold its consent to an assignment of proceeds of a letter of credit,  
33 but consent may not be unreasonably withheld if the assignee possesses  
34 and exhibits the letter of credit and presentation of the letter of credit  
35 is a condition to honor.

36 (e) Rights of a transferee beneficiary or nominated person are  
37 independent of the beneficiary's assignment of the proceeds of a letter  
38 of credit and are superior to the assignee's right to the proceeds.

39 (f) Neither the rights recognized by this section between an assignee  
40 and an issuer, transferee beneficiary, or nominated person nor the  
41 issuer's or nominated person's payment of proceeds to an assignee or a  
42 third person affects the rights between the assignee and any person

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1 other than the issuer, transferee beneficiary, or nominated person. The  
 2 mode of creating and perfecting a security interest in or granting an  
 3 assignment of a beneficiary's rights to proceeds is governed by  
 4 ~~IC 26-1-9~~ **IC 26-1-9.1** or other law. Against persons other than the  
 5 issuer, transferee beneficiary, or nominated person, the rights and  
 6 obligations arising upon the creation of a security interest or other  
 7 assignment of a beneficiary's right to proceeds and its perfection are  
 8 governed by ~~IC 26-1-9~~ **IC 26-1-9.1** or other law.

9 SECTION 31. IC 26-1-5.1-116 IS AMENDED TO READ AS  
 10 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 116. (a) The liability of  
 11 an issuer, nominated person, or adviser for action or omission is  
 12 governed by the law of the jurisdiction chosen by an agreement in the  
 13 form of a record signed or otherwise authenticated by the affected  
 14 parties in the manner provided in IC 26-1-5.1-104 or by a provision in  
 15 the person's letter of credit, confirmation, or other undertaking. The  
 16 jurisdiction whose law is chosen need not bear any relation to the  
 17 transaction.

18 (b) Unless subsection (a) applies, the liability of an issuer,  
 19 nominated person, or adviser for action or omission is governed by the  
 20 law of the jurisdiction in which the person is located. The person is  
 21 considered to be located at the address indicated in the person's  
 22 undertaking. If more than one (1) address is indicated, the person is  
 23 considered to be located at the address from which the person's  
 24 undertaking was issued. For the purpose of jurisdiction, choice of law,  
 25 and recognition of interbranch letters of credit, but not enforcement of  
 26 a judgment, all branches of a bank are considered separate juridical  
 27 entities and a bank is considered to be located at the place where its  
 28 relevant branch is considered to be located under this subsection.

29 (c) Except as otherwise provided in this subsection, the liability of  
 30 an issuer, nominated person, or adviser is governed by any rules of  
 31 custom or practice, such as the Uniform Customs and Practice for  
 32 Documentary Credits, to which the letter of credit, confirmation, or  
 33 other undertaking is expressly made subject. If:

34 (i) IC 26-1-5.1 would govern the liability of an issuer, nominated  
 35 person, or adviser under subsection (a) or (b);

36 (ii) the relevant undertaking incorporates rules of custom or  
 37 practice; and

38 (iii) there is conflict between IC 26-1-5.1 and those rules as  
 39 applied to that undertaking;

40 those rules govern except to the extent of any conflict with the  
 41 nonvariable provisions specified in IC 26-1-5.1-103(c).

42 (d) If there is conflict between IC 26-1-5.1 and IC 26-1-3.1,

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1 IC 26-1-4, IC 26-1-4.1, or ~~IC 26-1-9~~ **IC 26-1-9.1**, IC 26-1-5.1 governs.

2 (e) The forum for settling disputes arising out of an undertaking  
3 within IC 26-1-5.1 may be chosen in the manner and with the binding  
4 effect that governing law may be chosen in accordance with subsection  
5 (a).

6 SECTION 32. IC 26-1-5.1-118 IS ADDED TO THE INDIANA  
7 CODE AS A NEW SECTION TO READ AS FOLLOWS  
8 [EFFECTIVE JULY 1, 2001]: **Sec. 118. (a) An issuer or nominated**  
9 **person has a security interest in a document presented under a**  
10 **letter of credit to the extent that the issuer or nominated person**  
11 **honors or gives value for the presentation.**

12 (b) **So long as and to the extent that an issuer or nominated**  
13 **person has not been reimbursed or has not otherwise recovered the**  
14 **value given with respect to a security interest in a document under**  
15 **subsection (a), the security interest continues and is subject to**  
16 **IC 26-1-9.1, but:**

17 (1) **a security agreement is not necessary to make the security**  
18 **interest enforceable under IC 26-1-9.1-203(b)(3);**

19 (2) **if the document is presented in a medium other than a**  
20 **written or other tangible medium, the security interest is**  
21 **perfected; and**

22 (3) **if the document is presented in a written or other tangible**  
23 **medium and is not a certificated security, chattel paper, a**  
24 **document of title, an instrument, or a letter of credit, the**  
25 **security interest is perfected and has priority over a**  
26 **conflicting security interest in the document so long as the**  
27 **debtor does not have possession of the document.**

28 SECTION 33. IC 26-1-6.1-102, AS AMENDED BY P.L.154-1999,  
29 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
30 JULY 1, 2001]: **Sec. 102. (1) In this chapter, unless the context**  
31 **otherwise requires:**

32 (a) "Assets" means the inventory that is the subject of a bulk sale  
33 and any tangible and intangible personal property used or held for  
34 use primarily in, or arising from, the seller's business and sold in  
35 connection with that inventory, but the term does not include:

36 (i) fixtures ~~(IC 26-1-9-313(1)(a))~~ **(IC 26-1-9.1-102(a)(41))**  
37 other than readily removable factory and office machines;

38 (ii) the lessee's interest in a lease of real property; or

39 (iii) property to the extent it is generally exempt from creditor  
40 process under nonbankruptcy law.

41 (b) "Auctioneer" means a person whom the seller engages to  
42 direct, conduct, control, or be responsible for a sale by auction.

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- 1 (c) "Bulk sale" means:  
2 (i) in the case of a sale by auction or a sale or series of sales  
3 conducted by a liquidator on the seller's behalf, a sale or series  
4 of sales not in the ordinary course of the seller's business of  
5 more than half of the seller's inventory, as measured by value  
6 on the date of the bulk-sale agreement, if on that date the  
7 auctioneer or liquidator has notice, or after reasonable inquiry  
8 would have had notice, that the seller will not continue to  
9 operate the same or a similar kind of business after the sale or  
10 series of sales; and  
11 (ii) in all other cases, a sale not in the ordinary course of the  
12 seller's business of more than half the seller's inventory, as  
13 measured by value on the date of the bulk-sale agreement, if  
14 on that date the buyer has notice, or after reasonable inquiry  
15 would have had notice, that the seller will not continue to  
16 operate the same or a similar kind of business after the sale.  
17 (d) "Claim" means a right to payment from the seller, whether or  
18 not the right is reduced to judgment, liquidated, fixed, matured,  
19 disputed, secured, legal, or equitable. The term includes costs of  
20 collection and attorney's fees only to the extent that the laws of  
21 this state permit the holder of the claim to recover them in an  
22 action against the obligor.  
23 (e) "Claimant" means a person holding a claim incurred in the  
24 seller's business other than:  
25 (i) an unsecured and unmatured claim for employment  
26 compensation and benefits, including commissions and  
27 vacation, severance, and sick-leave pay; and  
28 (ii) a claim for injury to an individual or to property, or for  
29 breach of warranty, unless:  
30 (A) a right of action for the claim has accrued;  
31 (B) the claim has been asserted against the seller; and  
32 (C) the seller knows the identity of the person asserting the  
33 claim and the basis upon which the person has asserted it.  
34 (f) "Creditor" means a claimant or other person holding a claim.  
35 (g) (i) "Date of the bulk sale" means:  
36 (A) if the sale is by auction or is conducted by a liquidator  
37 on the seller's behalf, the date on which more than ten  
38 percent (10%) of the net proceeds is paid to or for the  
39 benefit of the seller; and  
40 (B) in all other cases, the later of the date on which:  
41 (I) more than ten percent (10%) of the net contract price is  
42 paid to or for the benefit of the seller; or

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- 1 (II) more than ten percent (10%) of the assets, as measured  
 2 by value, are transferred to the buyer.
- 3 (ii) For purposes of this subsection:
- 4 (A) delivery of a negotiable instrument (IC  
 5 26-1-3.1-104(a)(1)) to or for the benefit of the seller in  
 6 exchange for assets constitutes payment of the contract price  
 7 pro tanto;
- 8 (B) to the extent that the contract price is deposited in an  
 9 escrow, the contract price is paid to or for the benefit of the  
 10 seller when the seller acquires the unconditional right to  
 11 receive the deposit or when the deposit is delivered to the  
 12 seller or for the benefit of the seller, whichever is earlier;  
 13 and
- 14 (C) an asset is transferred when a person holding an  
 15 unsecured claim can no longer obtain through judicial  
 16 proceedings rights to the asset that are superior to those of  
 17 the buyer arising as a result of the bulk sale. A person  
 18 holding an unsecured claim can obtain those superior rights  
 19 to a tangible asset at least until the buyer has an  
 20 unconditional right, under the bulk-sale agreement, to  
 21 possess the asset, and a person holding an unsecured claim  
 22 can obtain those superior rights to an intangible asset at least  
 23 until the buyer has an unconditional right, under the  
 24 bulk-sale agreement, to use the asset.
- 25 (h) "Date of the bulk-sale agreement" means:
- 26 (i) in the case of a sale by auction or conducted by a liquidator  
 27 (subsection (c)(i)), the date on which the seller engages the  
 28 auctioneer or liquidator; and
- 29 (ii) in all other cases, the date on which a bulk-sale agreement  
 30 becomes enforceable between the buyer and the seller.
- 31 (i) "Debt" means liability on a claim.
- 32 (j) "Liquidator" means a person who is regularly engaged in the  
 33 business of disposing of assets for businesses contemplating  
 34 liquidation or dissolution.
- 35 (k) "Net contract price" means the new consideration the buyer is  
 36 obligated to pay for the assets less:
- 37 (i) the amount of any proceeds of the sale of an asset, to the  
 38 extent the proceeds are applied in partial or total satisfaction  
 39 of a debt secured by the asset; and
- 40 (ii) the amount of any debt to the extent it is secured by a  
 41 security interest or lien that is enforceable against the asset  
 42 before and after it has been sold to a buyer. If a debt is secured

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1 by an asset and other property of the seller, the amount of the  
 2 debt secured by a security interest or lien that is enforceable  
 3 against the asset is determined by multiplying the debt by a  
 4 fraction, the numerator of which is the value of the new  
 5 consideration for the asset on the date of the bulk sale and the  
 6 denominator of which is the value of all property securing the  
 7 debt on the date of the bulk sale.

8 (l) "Net proceeds" means the new consideration received for  
 9 assets sold at a sale by auction or a sale conducted by a liquidator  
 10 on the seller's behalf less:

11 (i) commissions and reasonable expenses of the sale;

12 (ii) the amount of any proceeds of the sale of an asset, to the  
 13 extent the proceeds are applied in partial or total satisfaction  
 14 of a debt secured by the asset; and

15 (iii) the amount of any debt to the extent it is secured by a  
 16 security interest or lien that is enforceable against the asset  
 17 before and after it has been sold to a buyer. If a debt is secured  
 18 by an asset and other property of the seller, the amount of the  
 19 debt secured by a security interest or lien that is enforceable  
 20 against the asset is determined by multiplying the debt by a  
 21 fraction, the numerator of which is the value of the new  
 22 consideration for the asset on the date of the bulk sale and the  
 23 denominator of which is the value of all property securing the  
 24 debt on the date of the bulk sale.

25 (m) A sale is "in the ordinary course of the seller's business" if the  
 26 sale comports with usual or customary practices in the kind of  
 27 business in which the seller is engaged or with the seller's own  
 28 usual or customary practices.

29 (n) "United States" includes its territories and possessions and the  
 30 Commonwealth of Puerto Rico.

31 (o) "Value" means fair market value.

32 (p) "Verified" means signed and sworn to or affirmed.

33 (2) The following definitions apply to this chapter:

34 (a) "Buyer." IC 26-1-2-103(1)(a).

35 (b) "Equipment." ~~IC 26-1-9-109(2)~~; **IC 26-1-9.1-102(a)(33)**.

36 (c) "Inventory." ~~IC 26-1-9-109(4)~~; **IC 26-1-9.1-102(a)(48)**.

37 (d) "Sale." IC 26-1-2-106(1).

38 (e) "Seller." IC 26-1-2-103(1)(d).

39 (3) In addition, IC 26-1-1 contains general definitions and principles  
 40 of construction and interpretation applicable throughout this chapter.

41 SECTION 34. IC 26-1-6.1-103 IS AMENDED TO READ AS  
 42 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 103. (1) Except as

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1 otherwise provided in subsection (3), this chapter applies to a bulk sale  
2 if:

3 (a) the seller's principal business is the sale of inventory from  
4 stock; and

5 (b) on the date of the bulk-sale agreement the seller is located in  
6 Indiana or, if the seller is located in a jurisdiction that is not a part  
7 of the United States, the seller's major executive office in the  
8 United States is in Indiana.

9 (2) A seller is deemed to be located at the seller's place of business.  
10 If a seller has more than one (1) place of business, the seller is deemed  
11 located at the seller's chief executive office.

12 (3) This chapter does not apply to:

13 (a) a transfer made to secure payment or performance of an  
14 obligation;

15 (b) a transfer of collateral to a secured party pursuant to  
16 ~~IC 26-1-9-503~~; **IC 26-1-9.1-609**;

17 (c) a sale of collateral pursuant to ~~IC 26-1-9-504~~;  
18 **IC 26-1-9.1-610**;

19 (d) retention of collateral pursuant to ~~IC 26-1-9-505~~;  
20 **IC 26-1-9.1-620**;

21 (e) a sale of an asset encumbered by a security interest or lien if  
22 (i) all the proceeds of the sale are applied in partial or total  
23 satisfaction of the debt secured by the security interest or lien, or  
24 (ii) the security interest or lien is enforceable against the asset  
25 after it has been sold to the buyer and the net contract price is zero  
26 (0);

27 (f) a general assignment for the benefit of creditors or to a  
28 subsequent transfer by the assignee;

29 (g) a sale by an executor, administrator, receiver, trustee in  
30 bankruptcy, or any public officer under judicial process;

31 (h) a sale made in the course of judicial or administrative  
32 proceedings for the dissolution or reorganization of an  
33 organization;

34 (i) a sale to a buyer whose principal place of business is in the  
35 United States and who:

36 (i) not earlier than twenty-one (21) days before the date of the  
37 bulk sale, (A) obtains from the seller a verified and dated list  
38 of claimants of whom the seller has notice three (3) days  
39 before the seller sends or delivers the list to the buyer or (B)  
40 conducts a reasonable inquiry to discover the claimants;

41 (ii) assumes in full the debts owed to claimants of whom the  
42 buyer has knowledge on the date the buyer receives the list of

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- 1 claimants from the seller or on the date the buyer completes  
 2 the reasonable inquiry, as the case may be;  
 3 (iii) is not insolvent after the assumption; and  
 4 (iv) gives written notice of the assumption not later than thirty  
 5 (30) days after the date of the bulk sale by sending or  
 6 delivering a notice to the claimants identified in subparagraph  
 7 (ii) or by filing a notice in the office of the secretary of state;  
 8 (j) a sale to a buyer whose principal place of business is in the  
 9 United States and who:  
 10 (i) assumes in full the debts that were incurred in the seller's  
 11 business before the date of the bulk sale;  
 12 (ii) is not insolvent after the assumption; and  
 13 (iii) gives written notice of the assumption not later than thirty  
 14 (30) days after the date of the bulk sale by sending or  
 15 delivering a notice to each creditor whose debt is assumed or  
 16 by filing a notice in the office of the secretary of state;  
 17 (k) a sale to a new organization that is organized to take over and  
 18 continue the business of the seller and that has its principal place  
 19 of business in the United States if:  
 20 (i) the buyer assumes in full the debts that were incurred in the  
 21 seller's business before the date of the bulk sale;  
 22 (ii) the seller receives nothing from the sale except an interest  
 23 in the new organization that is subordinate to the claims  
 24 against the organization arising from the assumption; and  
 25 (iii) the buyer gives written notice of the assumption not later  
 26 than thirty (30) days after the date of the bulk sale by sending  
 27 or delivering a notice to each creditor whose debt is assumed  
 28 or by filing a notice in the office of the secretary of state;  
 29 (l) a sale of assets having:  
 30 (i) a value, net of liens, and security interests of less than ten  
 31 thousand dollars (\$10,000). If a debt is secured by assets and  
 32 other property of the seller, the net value of the assets is  
 33 determined by subtracting from their value an amount equal to  
 34 the product of the debt multiplied by a fraction, the numerator  
 35 of which is the value of the assets on the date of the bulk sale  
 36 and the denominator of which is the value of all property  
 37 securing the debt on the date of the bulk sale; or  
 38 (ii) a value of more than twenty-five million dollars  
 39 (\$25,000,000);  
 40 on the date of the bulk-sale agreement; or  
 41 (m) a sale required by, and made pursuant to, statute.  
 42 (4) The notice under subsection (3)(i)(iv) must state:

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- 1 (i) that a sale that may constitute a bulk sale has been or will  
 2 be made;  
 3 (ii) the date or prospective date of the bulk sale;  
 4 (iii) the individual, partnership, or corporate names and the  
 5 addresses of the seller and buyer;  
 6 (iv) the address to which inquiries about the sale may be made,  
 7 if different from the seller's address; and  
 8 (v) that the buyer has assumed or will assume in full the debts  
 9 owed to claimants of whom the buyer has knowledge on the  
 10 date the buyer receives the list of claimants from the seller or  
 11 completes a reasonable inquiry to discover the claimants.
- 12 (5) The notice under subsections (3)(j)(iii) and (3)(k)(iii) must state:  
 13 (i) that a sale that may constitute a bulk sale has been or will  
 14 be made;  
 15 (ii) the date or prospective date of the bulk sale;  
 16 (iii) the individual, partnership, or corporate names and the  
 17 addresses of the seller and buyer;  
 18 (iv) the address to which inquiries about the sale may be made,  
 19 if different from the seller's address; and  
 20 (v) that the buyer has assumed or will assume the debts that  
 21 were incurred in the seller's business before the date of the  
 22 bulk sale.
- 23 (6) For purposes of subsection (3)(l), the value of assets is presumed  
 24 to be equal to the price the buyer agrees to pay for the assets. However,  
 25 in a sale by auction or a sale conducted by a liquidator on the seller's  
 26 behalf, the value of assets is presumed to be the amount the auctioneer  
 27 or liquidator reasonably estimates the assets will bring at auction or  
 28 upon liquidation.
- 29 SECTION 35. IC 26-1-6.1-109 IS AMENDED TO READ AS  
 30 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 109. (1) Presentation  
 31 of a notice or list of claimants for filing and tender of the filing fee or  
 32 acceptance of the notice or list by the secretary of state constitutes  
 33 filing under IC 26-1-6.1.
- 34 (2) The secretary of state shall:  
 35 (a) mark each notice or list with a file number and with the date  
 36 and hour of filing;  
 37 (b) hold the notice or list or a copy for public inspection;  
 38 (c) index the notice or list according to each name given for the  
 39 seller and for the buyer; and  
 40 (d) note in the index the file number and the addresses of the  
 41 seller and buyer given in the notice or list.
- 42 (3) If the person filing a notice or list furnishes the secretary of state

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1 with a copy, the secretary of state upon request shall note upon the copy  
 2 the file number and date and hour of the filing of the original and send  
 3 or deliver the copy to the person.

4 (4) The fee for filing and indexing and for stamping a copy  
 5 furnished by the person filing to show the date and place of filing is set  
 6 forth in ~~IC 26-1-9-401~~. **IC 26-1-9.1.**

7 (5) Upon request of any person, the secretary of state shall issue a  
 8 certificate showing whether any notice or list with respect to a  
 9 particular seller or buyer is on file on the date and hour stated in the  
 10 certificate. If a notice or list is on file, the certificate must give the date  
 11 and hour of filing of each notice or list and the name and address of  
 12 each seller, buyer, auctioneer, or liquidator. The fee for the certificate  
 13 is set forth in IC 26-1-9-401. Upon request of any person, the secretary  
 14 of state shall furnish a copy of any filed notice or list for the fee that is  
 15 set forth in IC 26-1-9-401.

16 (6) The secretary of state shall keep each notice or list for two (2)  
 17 years after it is filed.

18 SECTION 36. IC 26-1-7-209 IS AMENDED TO READ AS  
 19 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 209. (1) A  
 20 warehouseman has a lien against the bailor on the goods covered by a  
 21 warehouse receipt or on the proceeds thereof in his possession for  
 22 charges for storage or transportation (including demurrage and terminal  
 23 charges), insurance, labor, or charges present or future in relation to the  
 24 goods, and for expenses necessary for preservation of the goods or  
 25 reasonably incurred in their sale pursuant to law. If the person on  
 26 whose account the goods are held is liable for like charges or expenses  
 27 in relation to other goods whenever deposited and it is stated in the  
 28 receipt that a lien is claimed for charges and expenses in relation to  
 29 other goods, the warehouseman also has a lien against him for such  
 30 charges and expenses whether or not the other goods have been  
 31 delivered by the warehouseman. But against a person to whom a  
 32 negotiable warehouse receipt is duly negotiated, a warehouseman's lien  
 33 is limited to charges in an amount or at a rate specified on the receipt  
 34 or if no charges are so specified then to a reasonable charge for storage  
 35 of the goods covered by the receipt subsequent to the date of the  
 36 receipt.

37 (2) The warehouseman may also reserve a security interest against  
 38 the bailor for a maximum amount specified on the receipt for charges  
 39 other than those specified in subsection (1), such as for money  
 40 advanced and interest. Such a security interest is governed by ~~IC 26-1-9~~  
 41 **IC 26-1-9.1** on secured transactions.

42 (3) A warehouseman's lien for charges and expenses under

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1 subsection (1) or a security interest under subsection (2) is also  
 2 effective against any person who so entrusted the bailor with  
 3 possession of the goods that a pledge of them by him to a good faith  
 4 purchaser for value would have been valid but is not effective against  
 5 a person as to whom the document confers no right in the goods  
 6 covered by it under IC 26-1-7-503.

7 (4) A warehouseman loses his lien on any goods which he  
 8 voluntarily delivers or which he unjustifiably refuses to deliver.

9 SECTION 37. IC 26-1-7-503 IS AMENDED TO READ AS  
 10 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 503. (1) A document  
 11 of title confers no right in goods against a person who before issuance  
 12 of the document had a legal interest or a perfected security interest in  
 13 them and who neither:

- 14 (a) delivered or entrusted them or any document of title covering  
 15 them to the bailor or his nominee with actual or apparent authority  
 16 to ship, store, or sell or with power to obtain delivery under  
 17 IC 26-1-7-403 or with power of disposition under IC 26-1-2-403,  
 18 ~~IC 26-1-9-307~~ **IC 26-1-9.1-320**, or other statute or rule of law; nor  
 19 (b) acquiesced in the procurement by the bailor or his nominee of  
 20 any document of title.

21 (2) Title to goods based upon an unaccepted delivery order is  
 22 subject to the rights of anyone to whom a negotiable warehouse receipt  
 23 or bill of lading covering the goods has been duly negotiated. Such a  
 24 title may be defeated under IC 26-1-7-504 to the same extent as the  
 25 rights of the issuer or a transferee from the issuer.

26 (3) Title to goods based upon a bill of lading issued to a freight  
 27 forwarder is subject to the rights of anyone to whom a bill issued by the  
 28 freight forwarder covering such goods has been duly negotiated, but  
 29 delivery by the carrier in accordance with IC 26-1-7-401 through  
 30 IC 26-1-7-404 pursuant to its own bill of lading discharges the carrier's  
 31 obligation to deliver.

32 SECTION 38. IC 26-1-8.1-103 IS AMENDED TO READ AS  
 33 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 103. (a) A share or  
 34 similar equity interest issued by a corporation, business trust, joint  
 35 stock company, or similar entity is a security.

36 (b) An "investment company security" is a security. "Investment  
 37 company security" means a share or similar equity interest issued by an  
 38 entity that is registered as an investment company under the federal  
 39 investment company laws, an interest in a unit investment trust that is  
 40 so registered, or a face amount certificate issued by a face amount  
 41 certificate company that is so registered. Investment company security  
 42 does not include an insurance policy or endowment policy or annuity



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1 contract issued by an insurance company.

2 (c) An interest in a partnership or limited liability company is not a  
3 security unless it is dealt in or traded on securities exchanges or in  
4 securities markets, its terms expressly provide that it is a security  
5 governed by IC 26-1-8.1, or it is an investment company security.  
6 However, an interest in a partnership or limited liability company is a  
7 financial asset if it is held in a securities account.

8 (d) A writing that is a security certificate is governed by IC 26-1-8.1  
9 and not by IC 26-1-3.1, even though it also meets the requirements of  
10 that article. However, a negotiable instrument governed by IC 26-1-3.1  
11 is a financial asset if it is held in a securities account.

12 (e) An option or a similar obligation issued by a clearing corporation  
13 to its participants is not a security, but it is a financial asset.

14 (f) A commodity contract (as defined in ~~IC 26-1-9-115~~)  
15 **IC 26-1-9.1-102(a)(15)**), is not a security or a financial asset.

16 SECTION 39. IC 26-1-8.1-105 IS AMENDED TO READ AS  
17 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 105. (a) A person has  
18 notice of an adverse claim if:

- 19 (1) the person knows of the adverse claim;  
20 (2) the person is aware of facts sufficient to indicate that there is  
21 a significant probability that the adverse claim exists and  
22 deliberately avoids information that would establish the existence  
23 of the adverse claim; or  
24 (3) the person has a duty, imposed by statute or regulation, to  
25 investigate whether an adverse claim exists, and the investigation  
26 so required would establish the existence of the adverse claim.

27 (b) Having knowledge that a financial asset or interest therein is or  
28 has been transferred by a representative imposes no duty of inquiry into  
29 the rightfulness of a transaction and is not notice of an adverse claim.  
30 However, a person who knows that a representative has transferred a  
31 financial asset or interest therein in a transaction that is, or whose  
32 proceeds are being used, for the individual benefit of the representative  
33 or otherwise in breach of duty has notice of an adverse claim.

34 (c) An act or event that creates a right to immediate performance of  
35 the principal obligation represented by a security certificate or sets a  
36 date on or after which the certificate is to be presented or surrendered  
37 for redemption or exchange does not itself constitute notice of an  
38 adverse claim except in the case of a transfer more than:

- 39 (1) one (1) year after a date set for presentment or surrender for  
40 redemption or exchange; or  
41 (2) six (6) months after a date set for payment of money against  
42 presentation or surrender of the certificate, if money was available

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- 1 for payment on that date.
- 2 (d) A purchaser of a certificated security has notice of an adverse  
3 claim if the security certificate:
- 4 (1) whether in bearer or registered form, has been endorsed "for  
5 collection" or "for surrender" or for some other purpose not  
6 involving transfer; or
- 7 (2) is in bearer form and has on it an unambiguous statement that  
8 it is the property of a person other than the transferor, but the  
9 mere writing of a name on the certificate is not such a statement.
- 10 (e) Filing of a financing statement under ~~IC 26-1-9~~ **IC 26-1-9.1** is  
11 not notice of an adverse claim to a financial asset.
- 12 SECTION 40. IC 26-1-8.1-106 IS AMENDED TO READ AS  
13 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 106. (a) A purchaser  
14 has "control" of a certificated security in bearer form if the certificated  
15 security is delivered to the purchaser.
- 16 (b) A purchaser has "control" of a certificated security in registered  
17 form if the certificated security is delivered to the purchaser, and:
- 18 (1) the certificate is endorsed to the purchaser or in blank by an  
19 effective endorsement; or
- 20 (2) the certificate is registered in the name of the purchaser, upon  
21 original issue or registration of transfer by the issuer.
- 22 (c) A purchaser has "control" of an uncertificated security if:
- 23 (1) the uncertificated security is delivered to the purchaser; or  
24 (2) the issuer has agreed that it will comply with instructions  
25 originated by the purchaser without further consent by the  
26 registered owner.
- 27 (d) A purchaser has "control" of a security entitlement if:
- 28 (1) the purchaser becomes the entitlement holder; ~~or~~  
29 (2) the securities intermediary has agreed that it will comply with  
30 entitlement orders originated by the purchaser without further  
31 consent by the entitlement holder; **or**
- 32 **(3) another person has control of the security entitlement on**  
33 **behalf of the purchaser or, having previously acquired control**  
34 **of the security entitlement, acknowledges that it has control**  
35 **on behalf of the purchaser.**
- 36 (e) If an interest in a security entitlement is granted by the  
37 entitlement holder to the entitlement holder's own securities  
38 intermediary, the securities intermediary has control.
- 39 (f) A purchaser who has satisfied the requirements of subsection  
40 ~~(e)(2)~~ **(c)** or ~~(d)(2)~~ **(d)** has control even if the registered owner in the  
41 case of subsection ~~(e)(2)~~ **(c)** or the entitlement holder in the case of  
42 subsection ~~(d)(2)~~ **(d)** retains the right to make substitutions for the

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1       uncertificated security or security entitlement, to originate instructions  
 2       or entitlement orders to the issuer or a securities intermediary, or  
 3       otherwise to deal with the uncertificated security or security  
 4       entitlement.

5       (g) An issuer or a securities intermediary may not enter into an  
 6       agreement of the kind described in subsection (c)(2) or (d)(2) without  
 7       the consent of the registered owner or entitlement holder, but an issuer  
 8       or a securities intermediary is not required to enter into such an  
 9       agreement even though the registered owner or entitlement holder so  
 10      directs. An issuer or securities intermediary that has entered into such  
 11      an agreement is not required to confirm the existence of the agreement  
 12      to another party unless requested to do so by the registered owner or  
 13      entitlement holder.

14      SECTION 41. IC 26-1-8.1-110 IS AMENDED TO READ AS  
 15      FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 110. (a) The local law  
 16      of the issuer's jurisdiction, as specified in subsection (d), governs:

- 17       (1) the validity of a security;
- 18       (2) the rights and duties of the issuer with respect to registration  
 19       of transfer;
- 20       (3) the effectiveness of registration of transfer by the issuer;
- 21       (4) whether the issuer owes any duties to an adverse claimant to  
 22       a security; and
- 23       (5) whether an adverse claim can be asserted against a person to  
 24       whom transfer of a certificated or uncertificated security is  
 25       registered or a person who obtains control of an uncertificated  
 26       security.

27      (b) The local law of the securities intermediary's jurisdiction, as  
 28      specified in subsection (e), governs:

- 29       (1) acquisition of a security entitlement from the securities  
 30       intermediary;
- 31       (2) the rights and duties of the securities intermediary and  
 32       entitlement holder arising out of a security entitlement;
- 33       (3) whether the securities intermediary owes any duties to an  
 34       adverse claimant to a security entitlement; and
- 35       (4) whether an adverse claim can be asserted against a person  
 36       who acquires a security entitlement from the securities  
 37       intermediary or a person who purchases a security entitlement or  
 38       interest therein from an entitlement holder.

39      (c) The local law of the jurisdiction in which a security certificate  
 40      is located at the time of delivery governs whether an adverse claim can  
 41      be asserted against a person to whom the security certificate is  
 42      delivered.



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1 (d) "Issuer's jurisdiction" means the jurisdiction under which the  
 2 issuer of the security is organized or, if permitted by the law of that  
 3 jurisdiction, the law of another jurisdiction specified by the issuer. An  
 4 issuer organized under the law of this state may specify the law of  
 5 another jurisdiction as the law governing the matters specified in  
 6 subsection (a)(2) through (a)(5).

7 (e) The following rules determine a "securities intermediary's  
 8 jurisdiction" for purposes of this section:

9 (1) If an agreement between the securities intermediary and its  
 10 entitlement holder ~~specifies that it is governed by the law of a~~  
 11 ~~particular jurisdiction; governing the securities account~~  
 12 ~~expressly provides that a particular jurisdiction is the~~  
 13 ~~securities intermediary's jurisdiction for purposes of~~  
 14 ~~IC 26-1-8.1-101 through IC 26-1-8.1-116, that jurisdiction is the~~  
 15 securities intermediary's jurisdiction.

16 (2) ~~If subdivision (1) does not apply, and an agreement~~  
 17 ~~between the securities intermediary and its entitlement holder~~  
 18 ~~expressly provides that the agreement is governed by the law~~  
 19 ~~of a particular jurisdiction, that jurisdiction is the securities~~  
 20 ~~intermediary's jurisdiction.~~

21 (3) ~~If neither subdivision (1) nor subdivision (2) applies, and~~  
 22 ~~an agreement between the securities intermediary and its~~  
 23 ~~entitlement holder does not specify the governing law as provided~~  
 24 ~~in subdivision (1); but governing the securities account~~  
 25 ~~expressly specifies provides that the securities account is~~  
 26 ~~maintained at an office in a particular jurisdiction, that~~  
 27 ~~jurisdiction is the securities intermediary's jurisdiction.~~

28 (3) (4) ~~If an agreement between the securities intermediary and its~~  
 29 ~~entitlement holder does not specify a jurisdiction as provided in~~  
 30 ~~subdivision (1) or (2); none of the preceding subdivisions apply,~~  
 31 ~~the securities intermediary's jurisdiction is the jurisdiction in~~  
 32 ~~which is located the office identified in an account statement as~~  
 33 ~~the office serving the entitlement holder's account is located.~~

34 (4) (5) ~~If an agreement between the securities intermediary and its~~  
 35 ~~entitlement holder does not specify a jurisdiction as provided in~~  
 36 ~~subdivision (1) or (2) and an account statement does not identify~~  
 37 ~~an office serving the entitlement holder's account as provided in~~  
 38 ~~subdivision (3); none of the preceding subdivisions apply, the~~  
 39 ~~securities intermediary's jurisdiction is the jurisdiction in which~~  
 40 ~~is located the chief executive office of the securities intermediary~~  
 41 ~~is located.~~

42 (f) A securities intermediary's jurisdiction is not determined by the

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1 physical location of certificates representing financial assets, or by the  
2 jurisdiction in which is organized the issuer of the financial asset with  
3 respect to which an entitlement holder has a security entitlement, or by  
4 the location of facilities for data processing or other record keeping  
5 concerning the account.

6 SECTION 42. IC 26-1-8.1-301 IS AMENDED TO READ AS  
7 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 301. (a) Delivery of a  
8 certificated security to a purchaser occurs when:

- 9 (1) the purchaser acquires possession of the security certificate;
- 10 (2) another person, other than a securities intermediary, either  
11 acquires possession of the security certificate on behalf of the  
12 purchaser or, having previously acquired possession of the  
13 certificate, acknowledges that it holds for the purchaser; or
- 14 (3) a securities intermediary acting on behalf of the purchaser  
15 acquires possession of the security certificate, only if the  
16 certificate is in registered form and ~~has been~~ **is (i) registered in  
17 the name of the purchaser, (ii) payable to the order of the  
18 purchaser, or (iii) specially endorsed to the purchaser by an  
19 effective endorsement and has not been endorsed to the  
20 securities intermediary or in blank.**

21 (b) Delivery of an uncertificated security to a purchaser occurs  
22 when:

- 23 (1) the issuer registers the purchaser as the registered owner, upon  
24 original issue or registration of transfer; or
- 25 (2) another person, other than a securities intermediary, either  
26 becomes the registered owner of the uncertificated security on  
27 behalf of the purchaser or, having previously become the  
28 registered owner, acknowledges that it holds for the purchaser.

29 SECTION 43. IC 26-1-8.1-302 IS AMENDED TO READ AS  
30 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 302. (a) Except as  
31 otherwise provided in subsections (b) and (c), ~~upon delivery a  
32 purchaser~~ **of a certificated or uncertificated security to a purchaser, the  
33 purchaser** acquires all rights in the security that the transferor had or  
34 had power to transfer.

35 (b) A purchaser of a limited interest acquires rights only to the  
36 extent of the interest purchased.

37 (c) A purchaser of a certificated security who as a previous holder  
38 had notice of an adverse claim does not improve its position by taking  
39 from a protected purchaser.

40 SECTION 44. IC 26-1-8.1-510 IS AMENDED TO READ AS  
41 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 510. (a) **In a case not  
42 covered by the priority rules in IC 26-1-9.1 or the rules stated in**

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1 **subsection (c)**, an action based on an adverse claim to a financial asset  
 2 or security entitlement, whether framed in conversion, replevin,  
 3 constructive trust, equitable lien, or other theory, may not be asserted  
 4 against a person who purchases a security entitlement, or an interest  
 5 therein, from an entitlement holder if the purchaser gives value, does  
 6 not have notice of the adverse claim, and obtains control.

7 (b) If an adverse claim could not have been asserted against an  
 8 entitlement holder under IC 26-1-8.1-502, the adverse claim cannot be  
 9 asserted against a person who purchases a security entitlement, or an  
 10 interest therein, from the entitlement holder.

11 (c) In a case not covered by the priority rules in ~~IC 26-1-9;~~  
 12 **IC 26-1-9.1**, a purchaser for value of a security entitlement, or an  
 13 interest therein, who obtains control has priority over a purchaser of a  
 14 security entitlement, or an interest therein, who does not obtain control.  
 15 **Except as otherwise provided in subsection (d)**, purchasers who have  
 16 control rank ~~equally, except that~~ **according to priority in time of:**

17 (1) **the purchaser's becoming the person for whom the**  
 18 **securities account, in which the security entitlement is carried,**  
 19 **is maintained, if the purchaser obtained control under**  
 20 **IC 26-1-8.1-106(d)(1);**

21 (2) **the securities intermediary's agreement to comply with the**  
 22 **purchaser's entitlement orders with respect to security**  
 23 **entitlements carried or to be carried in the securities account**  
 24 **in which the security entitlement is carried, if the purchaser**  
 25 **obtained control under IC 26-1-8.1-106(d)(2); or**

26 (3) **if the purchaser obtained control through another person**  
 27 **under IC 26-1-8.1-106(d)(3), the time on which priority would**  
 28 **be based under this subsection if the other person were the**  
 29 **secured party.**

30 (d) A securities intermediary as purchaser has priority over a  
 31 conflicting purchaser who has control unless otherwise agreed by the  
 32 securities intermediary.

33 SECTION 45. IC 26-1-9.1 IS ADDED TO THE INDIANA CODE  
 34 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
 35 JULY 1, 2001]:

36 **Chapter 9.1. Secured Transactions**

37 **Sec. 101. This article may be cited as Uniform Commercial**  
 38 **Code—Secured Transactions.**

39 **Sec. 102. (a) In this article:**

40 (1) "Accession" means goods that are physically united with  
 41 other goods in such a manner that the identity of the original  
 42 goods is not lost.

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- 1 (2) "Account", except as used in "account for", means a right  
 2 to payment of a monetary obligation, whether or not earned  
 3 by performance (i) for property that has been or is to be sold,  
 4 leased, licensed, assigned, or otherwise disposed of, (ii) for  
 5 services rendered or to be rendered, (iii) for a policy of  
 6 insurance issued or to be issued, (iv) for a secondary  
 7 obligation incurred or to be incurred, (v) for energy provided  
 8 or to be provided, (vi) for the use or hire of a vessel under a  
 9 charter or other contract, (vii) arising out of the use of a  
 10 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  
 12 of chance operated or sponsored by a state, governmental unit  
 13 of a state, or person licensed or authorized to operate the  
 14 game by a state or governmental unit of a state. The term  
 15 includes health-care-insurance receivables. The term does not  
 16 include (i) rights to payment evidenced by chattel paper or an  
 17 instrument, (ii) commercial tort claims, (iii) deposit accounts,  
 18 (iv) investment property, (v) letter-of-credit rights or letters  
 19 of credit, or (vi) rights to payment for money or funds  
 20 advanced or sold, other than rights arising out of the use of a  
 21 credit or charge card or information contained on or for use  
 22 with the card.
- 23 (3) "Account debtor" means a person obligated on an  
 24 account, chattel paper, or general intangible. The term does  
 25 not include persons obligated to pay a negotiable instrument,  
 26 even if the instrument constitutes part of chattel paper.
- 27 (4) "Accounting", except as used in "accounting for", means  
 28 a record:
- 29 (A) authenticated by a secured party;
  - 30 (B) indicating the aggregate unpaid secured obligations as
  - 31 of a date not more than thirty-five (35) days earlier or
  - 32 thirty-five (35) days later than the date of the record; and
  - 33 (C) identifying the components of the obligations in
  - 34 reasonable detail.
- 35 (5) "Agricultural lien" means an interest, other than a  
 36 security interest, in farm products:
- 37 (A) that secures payment or performance of an obligation
  - 38 for:
  - 39 (i) goods or services furnished in connection with a
  - 40 debtor's farming operation; or
  - 41 (ii) rent on real property leased by a debtor in
  - 42 connection with the debtor's farming operation;

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- 1                   **(B) that is created by statute in favor of a person that:**
- 2                    (i) in the ordinary course of its business furnished goods
- 3                    or services to a debtor in connection with the debtor's
- 4                    farming operation; or
- 5                    (ii) leased real property to a debtor in connection with
- 6                    the debtor's farming operation; and
- 7                   **(C) whose effectiveness does not depend on the person's**
- 8                    possession of the personal property.
- 9                   **(6) "As-extracted collateral" means:**
- 10                  (A) oil, gas, or other minerals that are subject to a security
- 11                  interest that:
- 12                  (i) is created by a debtor having an interest in the
- 13                  minerals before extraction; and
- 14                  (ii) attaches to the minerals as extracted; or
- 15                  **(B) accounts arising out of the sale at the wellhead or**
- 16                  **minehead of oil, gas, or other minerals in which the debtor**
- 17                  **had an interest before extraction.**
- 18                  **(7) "Authenticate" means:**
- 19                  (A) to sign; or
- 20                  **(B) to execute or otherwise adopt a symbol, or encrypt or**
- 21                  **similarly process a record in whole or in part, with the**
- 22                  **present intent of the authenticating person to identify the**
- 23                  **person and adopt or accept a record.**
- 24                  **(8) "Bank" means an organization that is engaged in the**
- 25                  **business of banking. The term includes savings banks, savings**
- 26                  **and loan associations, credit unions, and trust companies.**
- 27                  **(9) "Cash proceeds" means proceeds that are money, checks,**
- 28                  **deposit accounts, or the like.**
- 29                  **(10) "Certificate of title" means a certificate of title with**
- 30                  **respect to which a statute provides for the security interest in**
- 31                  **question to be indicated on the certificate as a condition or**
- 32                  **result of the security interest's obtaining priority over the**
- 33                  **rights of a lien creditor with respect to the collateral.**
- 34                  **(11) "Chattel paper" means a record or records that evidence**
- 35                  **both a monetary obligation and a security interest in specific**
- 36                  **goods, a security interest in specific goods and software used**
- 37                  **in the goods, a lease of specific goods, or a lease of specific**
- 38                  **goods and a license of software used in the goods. In this**
- 39                  **subdivision, "monetary obligation" means a monetary**
- 40                  **obligation secured by the goods or owed under a lease of the**
- 41                  **goods and includes a monetary obligation with respect to**
- 42                  **software used in the goods. The term "chattel paper" does not**

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1 include charters or other contracts involving the use or hire  
 2 of a vessel. If a transaction is evidenced by records that  
 3 include an instrument or series of instruments, the group of  
 4 records taken together constitutes chattel paper.

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

7 (A) proceeds to which a security interest attaches;

8 (B) accounts, chattel paper, payment intangibles, and  
 9 promissory notes that have been sold; and

10 (C) goods that are the subject of a consignment.

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

13 (A) the claimant is an organization; or

14 (B) the claimant is an individual and the claim:

15 (i) arose in the course of the claimant's business or  
 16 profession; and

17 (ii) does not include damages arising out of personal  
 18 injury to or the death of an individual.

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

22 (15) "Commodity contract" means a commodity futures  
 23 contract, an option on a commodity futures contract, a  
 24 commodity option, or another contract if the contract or  
 25 option is:

26 (A) traded on or subject to the rules of a board of trade  
 27 that has been designated as a contract market for such a  
 28 contract pursuant to federal commodities laws; or

29 (B) traded on a foreign commodity board of trade,  
 30 exchange, or market, and is carried on the books of a  
 31 commodity intermediary for a commodity customer.

32 (16) "Commodity customer" means a person for which a  
 33 commodity intermediary carries a commodity contract on its  
 34 books.

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

36 (A) is registered as a futures commission merchant under  
 37 federal commodities law; or

38 (B) in the ordinary course of its business provides  
 39 clearance or settlement services for a board of trade that  
 40 has been designated as a contract market pursuant to  
 41 federal commodities law.

42 (18) "Communicate" means:

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- 1 (A) to send a written or other tangible record;
- 2 (B) to transmit a record by any means agreed upon by the
- 3 persons sending and receiving the record; or
- 4 (C) in the case of transmission of a record to or by a filing
- 5 office, to transmit a record by any means prescribed by
- 6 filing-office rule.
- 7 (19) "Consignee" means a merchant to which goods are
- 8 delivered in a consignment.
- 9 (20) "Consignment" means a transaction, regardless of its
- 10 form, in which a person delivers goods to a merchant for the
- 11 purpose of sale and:
- 12 (A) the merchant:
- 13 (i) deals in goods of that kind under a name other than
- 14 the name of the person making delivery;
- 15 (ii) is not an auctioneer; and
- 16 (iii) is not generally known by its creditors to be
- 17 substantially engaged in selling the goods of others;
- 18 (B) with respect to each delivery, the aggregate value of the
- 19 goods is one thousand dollars (\$1,000) or more at the time
- 20 of delivery;
- 21 (C) the goods are not consumer goods immediately before
- 22 delivery; and
- 23 (D) the transaction does not create a security interest that
- 24 secures an obligation.
- 25 (21) "Consignor" means a person that delivers goods to a
- 26 consignee in a consignment.
- 27 (22) "Consumer debtor" means a debtor in a consumer
- 28 transaction.
- 29 (23) "Consumer goods" means goods that are used or bought
- 30 for use primarily for personal, family, or household purposes.
- 31 (24) "Consumer-goods transaction" means a consumer
- 32 transaction in which:
- 33 (A) an individual incurs an obligation primarily for
- 34 personal, family, or household purposes; and
- 35 (B) a security interest in consumer goods secures the
- 36 obligation.
- 37 (25) "Consumer obligor" means an obligor who is an
- 38 individual and who incurred the obligation as part of a
- 39 transaction entered into primarily for personal, family, or
- 40 household purposes.
- 41 (26) "Consumer transaction" means a transaction in which (i)
- 42 an individual incurs an obligation primarily for personal,

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1 family, or household purposes, (ii) a security interest secures  
 2 the obligation, and (iii) the collateral is held or acquired  
 3 primarily for personal, family, or household purposes. The  
 4 term includes consumer-goods transactions.

5 (27) "Continuation statement" means an amendment of a  
 6 financing statement that:

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

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

12 (28) "Debtor" means:

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

16 (B) a seller of accounts, chattel paper, payment intangibles,  
 17 or promissory notes; or

18 (C) a consignee.

19 (29) "Deposit account" means a demand, time, savings,  
 20 passbook, or similar account maintained with a bank. The  
 21 term does not include investment property or accounts  
 22 evidenced by an instrument.

23 (30) "Document" means a document of title or a receipt of the  
 24 type described in IC 26-1-7-201(2).

25 (31) "Electronic chattel paper" means chattel paper  
 26 evidenced by a record or records consisting of information  
 27 stored in an electronic medium.

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

31 (33) "Equipment" means goods other than inventory, farm  
 32 products, or consumer goods.

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

36 (A) crops grown, growing, or to be grown, including:

37 (i) crops produced on trees, vines, and bushes; and

38 (ii) aquatic goods produced in aquacultural operations;

39 (B) livestock, born or unborn, including aquatic goods  
 40 produced in aquacultural operations;

41 (C) supplies used or produced in a farming operation; or

42 (D) products of crops or livestock in their unmanufactured

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- 1 states.
- 2 (35) "Farming operation" means raising, cultivating,  
3 propagating, fattening, grazing, or any other farming,  
4 livestock, or aquacultural operation.
- 5 (36) "File number" means the number assigned to an initial  
6 financing statement pursuant to IC 26-1-9.1-519(a).
- 7 (37) "Filing office" means an office designated in  
8 IC 26-1-9.1-501 as the place to file a financing statement.
- 9 (38) "Filing-office rule" means a rule adopted pursuant to  
10 IC 26-1-9.1-526.
- 11 (39) "Financing statement" means a record or records  
12 composed of an initial financing statement and any filed  
13 record relating to the initial financing statement.
- 14 (40) "Fixture filing" means the filing of a financing statement  
15 covering goods that are or are to become fixtures and  
16 satisfying IC 26-1-9.1-502(a) and IC 26-1-9.1-502(b). The term  
17 includes the filing of a financing statement covering goods of  
18 a transmitting utility which are or are to become fixtures.
- 19 (41) "Fixtures" means goods that have become so related to  
20 particular real property that an interest in them arises under  
21 real property law.
- 22 (42) "General intangible" means any personal property,  
23 including things in action, other than accounts, chattel paper,  
24 commercial tort claims, deposit accounts, documents, goods,  
25 instruments, investment property, letter-of-credit rights,  
26 letters of credit, money, and oil, gas, or other minerals before  
27 extraction. The term includes payment intangibles and  
28 software.
- 29 (43) "Good faith" means honesty in fact and the observance  
30 of reasonable commercial standards of fair dealing.
- 31 (44) "Goods" means all things that are movable when a  
32 security interest attaches. The term includes (i) fixtures, (ii)  
33 standing timber that is to be cut and removed under a  
34 conveyance or contract for sale, (iii) the unborn young of  
35 animals, (iv) crops grown, growing, or to be grown, even if the  
36 crops are produced on trees, vines, or bushes, and (v)  
37 manufactured homes. The term also includes a computer  
38 program embedded in goods and any supporting information  
39 provided in connection with a transaction relating to the  
40 program if (i) the program is associated with the goods in  
41 such a manner that it customarily is considered part of the  
42 goods, or (ii) by becoming the owner of the goods, a person



1 acquires a right to use the program in connection with the  
 2 goods. The term does not include a computer program  
 3 embedded in goods that consist solely of the medium with  
 4 which the program is embedded. The term also does not  
 5 include accounts, chattel paper, commercial tort claims,  
 6 deposit accounts, documents, general intangibles, instruments,  
 7 investment property, letter-of-credit rights, letters of credit,  
 8 money, or oil, gas, or other minerals before extraction.

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

16 (46) "Health-care-insurance receivable" means an interest in  
 17 or claim under a policy of insurance that is a right to payment  
 18 of a monetary obligation for health-care goods or services  
 19 provided.

20 (47) "Instrument" means a negotiable instrument or any  
 21 other writing that evidences a right to the payment of a  
 22 monetary obligation, is not itself a security agreement or  
 23 lease, and is of a type that in the ordinary course of business  
 24 is transferred by delivery with any necessary endorsement or  
 25 assignment. The term does not include (i) investment  
 26 property, (ii) letters of credit, or (iii) writings that evidence a  
 27 right to payment arising out of the use of a credit or charge  
 28 card or information contained on or for use with the card.

29 (48) "Inventory" means goods, other than farm products,  
 30 that:

31 (A) are leased by a person as lessor;

32 (B) are held by a person for sale or lease or to be furnished  
 33 under a contract of service;

34 (C) are furnished by a person under a contract of service;  
 35 or

36 (D) consist of raw materials, work in process, or materials  
 37 used or consumed in a business.

38 (49) "Investment property" means a security, whether  
 39 certificated or uncertificated, security entitlement, securities  
 40 account, commodity contract, or commodity account.

41 (50) "Jurisdiction of organization", with respect to a  
 42 registered organization, means the jurisdiction under whose

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law the organization is organized.

**(51) "Letter-of-credit right" means a right to payment and 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.**

**(52) "Lien creditor" means:**

- (A) a creditor that has acquired a lien on the property involved by attachment, levy, or the like;**
- (B) an assignee for benefit of creditors from the time of assignment;**
- (C) a trustee in bankruptcy from the date of the filing of the petition; or**
- (D) a receiver in equity from the time of appointment.**

**(53) "Manufactured home" means a structure, transportable in one (1) or more sections, which, in the traveling mode, is eight (8) body feet or more in width or forty (40) body feet or more in length, or, when erected on site, is three hundred twenty (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 subdivision 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.**

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

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

**(55) "Mortgage" means a consensual interest in real property, including fixtures, that secures payment or performance of an obligation.**

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**(56) "New debtor" means a person that becomes bound as debtor under IC 26-1-9.1-203(d) by a security agreement previously entered into by another person.**

**(57) "New value" means (i) money, (ii) money's worth in property, services, or new credit, or (iii) 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.**

**(58) "Noncash proceeds" means proceeds other than cash proceeds.**

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

**(60) "Original debtor" means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under IC 26-1-9.1-203(d).**

**(61) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation.**

**(62) "Person related to", with respect to an individual, means:**  
**(A) the spouse of the individual;**  
**(B) a brother, brother-in-law, sister, or sister-in-law of the individual;**  
**(C) an ancestor or lineal descendant of the individual or the individual's spouse; or**  
**(D) any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.**

**(63) "Person related to", with respect to an organization, means:**  
**(A) a person directly or indirectly controlling, controlled by, or under common control with the organization;**  
**(B) an officer or director of, or a person performing similar functions with respect to, the organization;**  
**(C) an officer or director of, or a person performing similar functions with respect to, a person described in**

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- 1 clause (A);
- 2 (D) the spouse of an individual described in clause (A), (B),
- 3 or (C); or
- 4 (E) an individual who is related by blood or marriage to an
- 5 individual described in clause (A), (B), (C), or (D) and
- 6 shares the same home with the individual.
- 7 (64) "Proceeds" means the following property:
- 8 (A) Whatever is acquired upon the sale, lease, license,
- 9 exchange, or other disposition of collateral.
- 10 (B) Whatever is collected on, or distributed on account of,
- 11 collateral.
- 12 (C) Rights arising out of collateral.
- 13 (D) To the extent of the value of collateral, claims arising
- 14 out of the loss, nonconformity, or interference with the use
- 15 of, defects or infringement of rights in, or damage to, the
- 16 collateral.
- 17 (E) To the extent of the value of collateral and to the extent
- 18 payable to the debtor or the secured party, insurance
- 19 payable by reason of the loss or nonconformity of, defects
- 20 or infringement of rights in, or damage to, the collateral.
- 21 (65) "Promissory note" means an instrument that evidences
- 22 a promise to pay a monetary obligation, does not evidence an
- 23 order to pay, and does not contain an acknowledgment by a
- 24 bank that the bank has received for deposit a sum of money or
- 25 funds.
- 26 (66) "Proposal" means a record authenticated by a secured
- 27 party that includes the terms on which the secured party is
- 28 willing to accept collateral in full or partial satisfaction of the
- 29 obligation it secures pursuant to IC 26-1-9.1-620,
- 30 IC 26-1-9.1-621, and IC 26-1-9.1-622.
- 31 (67) "Public-finance transaction" means a secured
- 32 transaction in connection with which:
- 33 (A) debt securities are issued;
- 34 (B) all or a portion of the securities issued have an initial
- 35 stated maturity of at least twenty (20) years; and
- 36 (C) the debtor, obligor, secured party, account debtor, or
- 37 other person obligated on collateral, assignor or assignee
- 38 of a secured obligation, or assignor or assignee of a
- 39 security interest is a state or a governmental unit of a state.
- 40 (68) "Pursuant to commitment", with respect to an advance
- 41 made or other value given by a secured party, means
- 42 pursuant to the secured party's obligation, whether or not a

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1 subsequent event of default or other event not within the  
 2 secured party's control has relieved or may relieve the  
 3 secured party from its obligation.

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

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

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

15 (A) the obligor's obligation is secondary; or

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

19 (72) "Secured party" means:

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

23 (B) a person that holds an agricultural lien;

24 (C) a consignor;

25 (D) a person to which accounts, chattel paper, payment  
 26 intangibles, or promissory notes have been sold;

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

30 (F) a person that holds a security interest arising under  
 31 IC 26-1-2-401, IC 26-1-2-505, IC 26-1-2-711(3),  
 32 IC 26-1-2.1-508(5), IC 26-1-4-210, or IC 26-1-5.1-118.

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

35 (74) "Send", in connection with a record or notification,  
 36 means:

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

41 (B) to cause the record or notification to be received within  
 42 the time that it would have been received if properly sent



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under clause (A).

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

(76) "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.

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

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

(79) "Termination statement" means an amendment of a financing statement that:

- (A) identifies, by its file number, the initial financing statement to which it relates; and
- (B) indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(80) "Transmitting utility" means a person primarily engaged in the business of:

- (A) operating a railroad, subway, street railway, or trolley bus;
- (B) transmitting communications electrically, electromagnetically, or by light;
- (C) transmitting goods by pipeline or sewer; or
- (D) transmitting or producing and transmitting electricity, steam, gas, or water.

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

- "Applicant" IC 26-1-5.1-102.
- "Beneficiary" IC 26-1-5.1-102.
- "Broker" IC 26-1-8.1-102.
- "Certificated security" IC 26-1-8.1-102.
- "Check" IC 26-1-3.1-104.
- "Clearing corporation" IC 26-1-8.1-102.
- "Contract for sale" IC 26-1-2-106.

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- 1        **"Customer" IC 26-1-4-104.**  
2        **"Entitlement holder" IC 26-1-8.1-102.**  
3        **"Financial asset" IC 26-1-8.1-102.**  
4        **"Holder in due course" IC 26-1-3.1-302.**  
5        **"Issuer" (with respect to a letter of credit or letter-of-credit**  
6        **right) IC 26-1-5.1-102.**  
7        **"Issuer" (with respect to a security) IC 26-1-8.1-201.**  
8        **"Lease" IC 26-1-2.1-103.**  
9        **"Lease agreement" IC 26-1-2.1-103.**  
10       **"Lease contract" IC 26-1-2.1-103.**  
11       **"Leasehold interest" IC 26-1-2.1-103.**  
12       **"Lessee" IC 26-1-2.1-103.**  
13       **"Lessee in ordinary course of business" IC 26-1-2.1-103.**  
14       **"Lessor" IC 26-1-2.1-103.**  
15       **"Lessor's residual interest" IC 26-1-2.1-103.**  
16       **"Letter of credit" IC 26-1-5.1-102.**  
17       **"Merchant" IC 26-1-2-104.**  
18       **"Negotiable instrument" IC 26-1-3.1-104.**  
19       **"Nominated person" IC 26-1-5.1-102.**  
20       **"Note" IC 26-1-3.1-104.**  
21       **"Proceeds of a letter of credit" IC 26-1-5.1-114.**  
22       **"Prove" IC 26-1-3.1-103.**  
23       **"Sale" IC 26-1-2-106.**  
24       **"Securities account" IC 26-1-8.1-501.**  
25       **"Securities intermediary" IC 26-1-8.1-102.**  
26       **"Security" IC 26-1-8.1-102.**  
27       **"Security certificate" IC 26-1-8.1-102.**  
28       **"Security entitlement" IC 26-1-8.1-102.**  
29       **"Uncertificated security" IC 26-1-8.1-102.**  
30       **(c) Article 1 contains general definitions and principles of**  
31       **construction and interpretation applicable throughout this article.**  
32       **Sec. 103. (a) In this section:**  
33           **(1) "Purchase-money collateral" means goods or software**  
34           **that secures a purchase-money obligation incurred with**  
35           **respect to that collateral.**  
36           **(2) "Purchase-money obligation" means an obligation of an**  
37           **obligor incurred as all or part of the price of the collateral or**  
38           **for value given to enable the debtor to acquire rights in, or the**  
39           **use of the collateral if the value is in fact so used.**  
40       **(b) A security interest in goods is a purchase-money security**  
41       **interest:**  
42           **(1) to the extent that the goods are purchase-money collateral**

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1 with respect to that security interest;

2 (2) if the security interest is in inventory that is or was  
3 purchase-money collateral, also to the extent that the security  
4 interest secures a purchase-money obligation incurred with  
5 respect to other inventory in which the secured party holds or  
6 held a purchase-money security interest; and

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

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

16 (1) the debtor acquired its interest in the software in an  
17 integrated transaction in which it acquired an interest in the  
18 goods; and

19 (2) the debtor acquired its interest in the software for the  
20 principal purpose of using the software in the goods.

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

24 (e) If the extent to which a security interest is a purchase-money  
25 security interest depends on the application of a payment to a  
26 particular obligation, the payment must be applied:

27 (1) in accordance with any reasonable method of application  
28 to which the parties agree;

29 (2) in the absence of the parties' agreement to a reasonable  
30 method, in accordance with any intention of the obligor  
31 manifested at or before the time of payment; or

32 (3) in the absence of an agreement to a reasonable method and  
33 a timely manifestation of the obligor's intention, in the  
34 following order:

35 (A) To obligations that are not secured.

36 (B) If more than one (1) obligation is secured, to  
37 obligations secured by purchase-money security interests  
38 in the order in which those obligations were incurred.

39 (f) A purchase-money security interest does not lose its status as  
40 such, even if:

41 (1) the purchase-money collateral also secures an obligation  
42 that is not a purchase-money obligation;

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

5           (g) A secured party claiming a purchase-money security interest  
 6           has the burden of establishing the extent to which the security  
 7           interest is a purchase-money security interest.

8           Sec. 104. (a) A secured party has control of a deposit account if:

- 9           (1) the secured party is the bank with which the deposit
- 10           account is maintained;
- 11           (2) the debtor, secured party, and bank have agreed in an
- 12           authenticated record that the bank will comply with
- 13           instructions originated by the secured party directing
- 14           disposition of the funds in the account without further consent
- 15           by the debtor; or
- 16           (3) the secured party becomes the bank's customer with
- 17           respect to the deposit account.

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

21           Sec. 105. A secured party has control of electronic chattel paper  
 22           if the record or records comprising the chattel paper are created,  
 23           stored, and assigned in such a manner that:

- 24           (1) a single authoritative copy of the record or records exists
- 25           which is unique, identifiable and, except as otherwise
- 26           provided in subdivisions (4), (5), and (6), unalterable;
- 27           (2) the authoritative copy identifies the secured party as the
- 28           assignee of the record or records;
- 29           (3) the authoritative copy is communicated to and maintained
- 30           by the secured party or its designated custodian;
- 31           (4) copies or revisions that add or change an identified
- 32           assignee of the authoritative copy can be made only with the
- 33           participation of the secured party;
- 34           (5) each copy of the authoritative copy and any copy of a copy
- 35           is readily identifiable as a copy that is not the authoritative
- 36           copy; and
- 37           (6) any revision of the authoritative copy is readily
- 38           identifiable as an authorized or unauthorized revision.

39           Sec. 106. (a) A person has control of a certificated security,  
 40           uncertificated security, or security entitlement as provided in  
 41           IC 26-1-8.1-106.

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

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(1) the secured party is the commodity intermediary with which the commodity contract is carried; or

(2) the commodity customer, secured party, and commodity intermediary have agreed that the commodity intermediary will apply any value distributed on account of the commodity contract as directed by the secured party without further consent by the commodity customer.

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

Sec. 107. A secured party has control of a letter-of-credit right to the extent of any right to payment or performance by the issuer or any nominated person if the issuer or nominated person has consented to an assignment of proceeds of the letter of credit under IC 26-1-5.1-114(c) or otherwise applicable law or practice.

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

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

- (1) specific listing;
- (2) category;
- (3) except as otherwise provided in subsection (e), a type of collateral defined in IC 26-1;
- (4) quantity;
- (5) computational or allocational formula or procedure; or
- (6) except as otherwise provided in subsection (c), any other method, if the identity of the collateral is objectively determinable.

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

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

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

(e) A description only by type of collateral defined in IC 26-1 is an insufficient description of:

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- 1           (1) a commercial tort claim; or
- 2           (2) in a consumer transaction, consumer goods, a security
- 3           entitlement, a securities account, or a commodity account.
- 4           **Sec. 109. (a) Except as otherwise provided in subsections (c) and**
- 5           **(d), this article applies to:**
- 6           (1) a transaction, regardless of its form, that creates a security
- 7           interest in personal property or fixtures by contract;
- 8           (2) an agricultural lien;
- 9           (3) a sale of accounts, chattel paper, payment intangibles, or
- 10          promissory notes;
- 11          (4) a consignment;
- 12          (5) a security interest arising under IC 26-1-2-401,
- 13          IC 26-1-2-505, IC 26-1-2-711(3), or IC 26-1-2.1-508(5), as
- 14          provided in IC 26-1-9.1-110;
- 15          (6) a security interest arising under IC 26-1-4-210 or
- 16          IC 26-1-5.1-118; and
- 17          (7) a transfer of an interest or a claim in contractual right of
- 18          a person to receive commissions or other compensation
- 19          payable by an insurer (as defined in IC 27-1-2-3).
- 20          **(b) The application of this article to a security interest in a**
- 21          **secured obligation is not affected by the fact that the obligation is**
- 22          **itself secured by a transaction or interest to which this article does**
- 23          **not apply.**
- 24          **(c) This article does not apply to the extent that:**
- 25          (1) a statute, regulation, or treaty of the United States
- 26          preempts this article; or
- 27          (2) the rights of a transferee beneficiary or nominated person
- 28          under a letter of credit are independent and superior under
- 29          IC 26-1-5.1-114.
- 30          **(d) This article does not apply to:**
- 31          (1) a landlord's lien, other than an agricultural lien;
- 32          (2) a lien, other than an agricultural lien, given by statute or
- 33          other rule of law for services or materials, but IC 26-1-9.1-333
- 34          applies with respect to priority of the lien;
- 35          (3) an assignment of a claim for wages, salary, or other
- 36          compensation of an employee;
- 37          (4) a sale of accounts, chattel paper, payment intangibles, or
- 38          promissory notes as part of a sale of the business out of which
- 39          they arose;
- 40          (5) an assignment of accounts, chattel paper, payment
- 41          intangibles, or promissory notes that is for the purpose of
- 42          collection only;

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- 1 (6) an assignment of a right to payment under a contract to an  
 2 assignee that is also obligated to perform under the contract;  
 3 (7) an assignment of a single account, payment intangible, or  
 4 promissory note to an assignee in full or partial satisfaction of  
 5 a preexisting indebtedness;  
 6 (8) a transfer of an interest in or an assignment of a claim  
 7 under a policy of insurance, other than a transfer described  
 8 in subsection (a)(7), or an assignment by or to a health-care  
 9 provider of a health-care-insurance receivable and any  
 10 subsequent assignment of the right to payment, but  
 11 IC 26-1-9.1-315 and IC 26-1-9.1-322 apply with respect to  
 12 proceeds and priorities in proceeds;  
 13 (9) an assignment of a right represented by a judgment, other  
 14 than a judgment taken on a right to payment that was  
 15 collateral;  
 16 (10) a right of recoupment or set-off, but:  
 17 (A) IC 26-1-9.1-340 applies with respect to the effectiveness  
 18 of rights of recoupment or set-off against deposit accounts;  
 19 and  
 20 (B) IC 26-1-9.1-404 applies with respect to defenses or  
 21 claims of an account debtor;  
 22 (11) the creation or transfer of an interest in or lien on real  
 23 property, including a lease or rents thereunder, except to the  
 24 extent that provision is made for:  
 25 (A) liens on real property in IC 26-1-9.1-203 and  
 26 IC 26-1-9.1-308;  
 27 (B) fixtures in IC 26-1-9.1-334;  
 28 (C) fixture filings in IC 26-1-9.1-501, IC 26-1-9.1-502,  
 29 IC 26-1-9.1-512, IC 26-1-9.1-516, and IC 26-1-9.1-519; and  
 30 (D) security agreements covering personal and real  
 31 property in IC 26-1-9.1-604;  
 32 (12) an assignment of a claim arising in tort, other than a  
 33 commercial tort claim, but IC 26-1-9.1-315 and  
 34 IC 26-1-9.1-322 apply with respect to proceeds and priorities  
 35 in proceeds;  
 36 (13) an assignment of a deposit account in a consumer  
 37 transaction, but IC 26-1-9.1 and IC 26-1-9.1-322 apply with  
 38 respect to proceeds and priorities in proceeds;  
 39 (14) the creation, perfection, priority, or enforcement of a  
 40 security interest created by the state, another state, or a  
 41 foreign country, or a governmental unit of the state, another  
 42 state or a foreign country; or

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1 (15) a pledge of revenues, other money, or property made  
2 under IC 5-1-14-4.

3 Sec. 110. A security interest arising under IC 26-1-2-401,  
4 IC 26-1-2-505, IC 26-1-2-711(3), or IC 26-1-2.1-508(5) is subject to  
5 this article. However, until the debtor obtains possession of the  
6 goods:

7 (1) the security interest is enforceable, even if  
8 IC 26-1-9.1-203(b)(3) has not been satisfied;

9 (2) filing is not required to perfect the security interest;

10 (3) the rights of the secured party after default by the debtor  
11 are governed by IC 26-1-2 or IC 26-1-2.1; and

12 (4) the security interest has priority over a conflicting security  
13 interest created by the debtor.

14 Sec. 201. (a) Except as otherwise provided in IC 26-1, a security  
15 agreement is effective according to its terms between the parties,  
16 against purchasers of the collateral, and against creditors.

17 (b) A transaction subject to this article is subject to any  
18 applicable rule of law that establishes a different rule for  
19 consumers.

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

25 (d) This article does not:

26 (1) validate any rate, charge, agreement, or practice that  
27 violates a rule of law, statute, or regulation described in  
28 subsection (b); or

29 (2) extend the application of the rule of law, statute, or  
30 regulation to a transaction not otherwise subject to it.

31 Sec. 202. Except as otherwise provided with respect to  
32 consignments or sales of accounts, chattel paper, payment  
33 intangibles, or promissory notes, the provisions of this article with  
34 regard to rights and obligations apply whether title to collateral is  
35 in the secured party or the debtor.

36 Sec. 203. (a) A security interest attaches to collateral when it  
37 becomes enforceable against the debtor with respect to the  
38 collateral, unless an agreement expressly postpones the time of  
39 attachment.

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



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- 1           (1) value has been given;
- 2           (2) the debtor has rights in the collateral or the power to
- 3           transfer rights in the collateral to a secured party; and
- 4           (3) one (1) of the following conditions is met:
  - 5               (A) The debtor has authenticated a security agreement that
  - 6               provides a description of the collateral and, if the security
  - 7               interest covers timber to be cut, a description of the land
  - 8               concerned.
  - 9               (B) The collateral is not a certificated security and is in the
  - 10              possession of the secured party under IC 26-1-9.1-313
  - 11              pursuant to the debtor's security agreement.
  - 12              (C) The collateral is a certificated security in registered
  - 13              form and the security certificate has been delivered to the
  - 14              secured party under IC 26-1-8.1-301 pursuant to the
  - 15              debtor's security agreement.
  - 16              (D) The collateral is deposit accounts, electronic chattel
  - 17              paper, investment property, or letter-of-credit rights, and
  - 18              the secured party has control under IC 26-1-9.1-104,
  - 19              IC 26-1-9.1-105, IC 26-1-9.1-106, or IC 26-1-9.1-107
  - 20              pursuant to the debtor's security agreement.
- 21           (c) Subsection (b) is subject to IC 26-1-4-210 on the security
- 22           interest of a collecting bank, IC 26-1-5.1-118 on the security
- 23           interest of a letter-of-credit issuer or nominated person,
- 24           IC 26-1-9.1-110 on a security interest arising under IC 26-1-2 or
- 25           IC 26-1-2.1, and IC 26-1-9.1-206 on security interests in investment
- 26           property.
- 27           (d) A person becomes bound as debtor by a security agreement
- 28           entered into by another person if, by operation of law other than
- 29           this article or by contract:
  - 30               (1) the security agreement becomes effective to create a
  - 31               security interest in the person's property; or
  - 32               (2) the person becomes generally obligated for the obligations
  - 33               of the other person, including the obligation secured under the
  - 34               security agreement, and acquires or succeeds to all or
  - 35               substantially all of the assets of the other person.
- 36           (e) If a new debtor becomes bound as debtor by a security
- 37           agreement entered into by another person:
  - 38               (1) the agreement satisfies subsection (b)(3) with respect to
  - 39               existing or after-acquired property of the new debtor to the
  - 40               extent the property is described in the agreement; and
  - 41               (2) another agreement is not necessary to make a security
  - 42               interest in the property enforceable.

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1 (f) The attachment of a security interest in collateral gives the  
2 secured party the rights to proceeds provided by IC 26-1-9-315 and  
3 is also attachment of a security interest in a supporting obligation  
4 for the collateral.

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

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

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

15 **Sec. 204. (a) Except as otherwise provided in subsection (b), a**  
16 **security agreement may create or provide for a security interest in**  
17 **after-acquired collateral.**

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

- 20 (1) consumer goods, other than an accession when given as  
21 additional security, unless the debtor acquires rights in them  
22 within ten (10) days after the secured party gives value; or  
23 (2) a commercial tort claim.

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

29 **Sec. 205. (a) A security interest is not invalid or fraudulent**  
30 **against creditors solely because:**

- 31 (1) the debtor has the right or ability to:  
32 (A) use, commingle, or dispose of all or part of the  
33 collateral, including returned or repossessed goods;  
34 (B) collect, compromise, enforce, or otherwise deal with  
35 collateral;  
36 (C) accept the return of collateral or make repossessions;  
37 or  
38 (D) use, commingle, or dispose of proceeds; or  
39 (2) the secured party fails to require the debtor to account for  
40 proceeds or replace collateral.

41 (b) This section does not relax the requirements of possession if  
42 attachment, perfection, or enforcement of a security interest

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1 depends upon possession of the collateral by the secured party.

2 **Sec. 206. (a) A security interest in favor of a securities**  
3 **intermediary attaches to a person's security entitlement if:**

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

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

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

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

16 (1) the security or other financial asset:

17 (A) in the ordinary course of business is transferred by  
18 delivery with any necessary endorsement or assignment;  
19 and

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

23 (2) the agreement calls for delivery against payment.

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

26 **Sec. 207. (a) Except as otherwise provided in subsection (d), a**  
27 **secured party shall use reasonable care in the custody and**  
28 **preservation of collateral in the secured party's possession. In the**  
29 **case of chattel paper or an instrument, reasonable care includes**  
30 **taking necessary steps to preserve rights against prior parties**  
31 **unless otherwise agreed.**

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

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

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

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

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

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- 1 (A) for the purpose of preserving the collateral or its value;  
 2 (B) as permitted by an order of a court having competent  
 3 jurisdiction; or  
 4 (C) except in the case of consumer goods, in the manner  
 5 and to the extent agreed by the debtor.
- 6 (c) Except as otherwise provided in subsection (d), a secured  
 7 party having possession of collateral or control of collateral under  
 8 IC 26-1-9.1-104, IC 26-1-9.1-105, IC 26-1-9.1-106, or  
 9 IC 26-1-9.1-107:
- 10 (1) may hold as additional security any proceeds, except  
 11 money or funds, received from the collateral;  
 12 (2) shall apply money or funds received from the collateral to  
 13 reduce the secured obligation, unless remitted to the debtor;  
 14 and  
 15 (3) may create a security interest in the collateral.
- 16 (d) If the secured party is a buyer of accounts, chattel paper,  
 17 payment intangibles, or promissory notes or a consignor:
- 18 (1) subsection (a) does not apply unless the secured party is  
 19 entitled under an agreement:
- 20 (A) to charge back uncollected collateral; or  
 21 (B) otherwise to full or limited recourse against the debtor  
 22 or a secondary obligor based on the nonpayment or other  
 23 default of an account debtor or other obligor on the  
 24 collateral; and
- 25 (2) subsections (b) and (c) do not apply.
- 26 **Sec. 208.** (a) This section applies to cases in which there is no  
 27 outstanding secured obligation, and the secured party is not  
 28 committed to make advances, incur obligations, or otherwise give  
 29 value.
- 30 (b) Within ten (10) days after receiving an authenticated  
 31 demand by the debtor:
- 32 (1) a secured party having control of a deposit account under  
 33 IC 26-1-9.1-104(a)(2) shall send to the bank with which the  
 34 deposit account is maintained an authenticated statement that  
 35 releases the bank from any further obligation to comply with  
 36 instructions originated by the secured party;
- 37 (2) a secured party having control of a deposit account under  
 38 IC 26-1-9.1-104(a)(3) shall:
- 39 (A) pay the debtor the balance on deposit in the deposit  
 40 account; or  
 41 (B) transfer the balance on deposit into a deposit account  
 42 in the debtor's name;

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**(3) a secured party, other than a buyer, having control of electronic chattel paper under IC 26-1-9.1-105 shall:**

**(A) communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian;**

**(B) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and**

**(C) take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy that add or change an identified assignee of the authoritative copy without the consent of the secured party;**

**(4) a secured party having control of investment property under IC 26-1-8.1-106(d)(2) or IC 26-1-9.1-106(b) shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party; and**

**(5) a secured party having control of a letter-of-credit right under IC 26-1-9.1-107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party.**

**Sec. 209. (a) Except as otherwise provided in subsection (c), this section applies if:**

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

**(b) Within ten (10) days after receiving an authenticated demand by the debtor, a secured party shall send to an account debtor that has received notification of an assignment to the secured party as assignee under IC 26-1-9.1-406(a) an authenticated record that releases the account debtor from any further obligation to the secured party.**

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

3 Sec. 210. (a) In this section the following definitions apply:

4 (1) "Request" means a record of a type described in  
5 subdivision (2), (3), or (4).

6 (2) "Request for an accounting" means a record authenticated  
7 by a debtor requesting that the recipient provide an  
8 accounting of the unpaid obligations secured by collateral and  
9 reasonably identifying the transaction or relationship that is  
10 the subject of the request.

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

17 (4) "Request regarding a statement of account" means a  
18 record authenticated by a debtor requesting that the recipient  
19 approve or correct a statement indicating what the debtor  
20 believes to be the aggregate amount of unpaid obligations  
21 secured by collateral as of a specified date and reasonably  
22 identifying the transaction or relationship that is the subject  
23 of the request.

24 (b) Subject to subsections (c), (d), (e), and (f), a secured party,  
25 other than a buyer of accounts, chattel paper, payment intangibles,  
26 or promissory notes or a consignor, shall comply with a request  
27 within fourteen (14) days after receipt:

28 (1) in the case of a request for an accounting, by  
29 authenticating and sending to the debtor an accounting; and

30 (2) in the case of a request regarding a list of collateral or a  
31 request regarding a statement of account, by authenticating  
32 and sending to the debtor an approval or correction.

33 (c) A secured party that claims a security interest in all of a  
34 particular type of collateral owned by the debtor may comply with  
35 a request regarding a list of collateral by sending to the debtor an  
36 authenticated record, including a statement to that effect within  
37 fourteen (14) days after receipt.

38 (d) A person that receives a request regarding a list of collateral,  
39 claims no interest in the collateral when it receives the request, and  
40 claimed an interest in the collateral at an earlier time shall comply  
41 with the request within fourteen (14) days after receipt by sending  
42 to the debtor an authenticated record:

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- 1           (1) disclaiming any interest in the collateral; and
- 2           (2) if known to the recipient, providing the name and mailing
- 3           address of any assignee of or successor to the recipient's
- 4           security interest in the collateral.
- 5           (e) A person that receives a request for an accounting or a
- 6           request regarding a statement of account, claims no interest in the
- 7           obligations when the person receives the request, and claimed an
- 8           interest in the obligations at an earlier time shall comply with the
- 9           request within fourteen (14) days after receipt by sending to the
- 10          debtor an authenticated record:
- 11           (1) disclaiming any interest in the obligations; and
- 12           (2) if known to the recipient, providing the name and mailing
- 13           address of any assignee of or successor to the recipient's
- 14           interest in the obligations.
- 15          (f) A debtor is entitled without charge to one (1) response to a
- 16          request under this section during any six (6) month period. The
- 17          secured party may require payment of a charge not exceeding
- 18          twenty-five dollars (\$25) for each additional response.
- 19          Sec. 301. Except as otherwise provided in IC 26-1-9.1-303
- 20          through IC 26-1-9.1-306, the following rules determine the law
- 21          governing perfection, the effect of perfection or nonperfection, and
- 22          the priority of a security interest in collateral:
- 23           (1) Except as otherwise provided in this section, while a
- 24           debtor is located in a jurisdiction, the local law of that
- 25           jurisdiction governs perfection, the effect of perfection or
- 26           nonperfection, and the priority of a security interest in
- 27           collateral.
- 28           (2) While collateral is located in a jurisdiction, the local law of
- 29           that jurisdiction governs perfection, the effect of perfection or
- 30           nonperfection, and the priority of a possessory security
- 31           interest in that collateral.
- 32           (3) Except as otherwise provided in subdivision (4), while
- 33           negotiable documents, goods, instruments, money, or tangible
- 34           chattel paper is located in a jurisdiction, the local law of that
- 35           jurisdiction governs:
- 36           (A) perfection of a security interest in the goods by filing a
- 37           fixture filing;
- 38           (B) perfection of a security interest in timber to be cut; and
- 39           (C) the effect of perfection or nonperfection and the
- 40           priority of a nonpossessory security interest in the
- 41           collateral.
- 42           (4) The local law of the jurisdiction in which the wellhead or

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1 minehead is located governs perfection, the effect of  
 2 perfection or nonperfection, and the priority of a security  
 3 interest in as-extracted collateral.

4 **Sec. 302.** While farm products are located in a jurisdiction, the  
 5 local law of that jurisdiction governs perfection, the effect of  
 6 perfection or nonperfection, and the priority of an agricultural lien  
 7 on the farm products.

8 **Sec. 303. (a)** This section applies to goods covered by a  
 9 certificate of title, even if there is no other relationship between the  
 10 jurisdiction under whose certificate of title the goods are covered  
 11 and the goods or the debtor.

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

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

25 **Sec. 304. (a)** The local law of a bank's jurisdiction governs  
 26 perfection, the effect of perfection or nonperfection, and the  
 27 priority of a security interest in a deposit account maintained with  
 28 that bank.

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

31 (1) If an agreement between the bank and the debtor  
 32 governing the deposit account expressly provides that a  
 33 particular jurisdiction is the bank's jurisdiction for purposes  
 34 of IC 26-1, that jurisdiction is the bank's jurisdiction.

35 (2) If subdivision (1) does not apply and an agreement  
 36 between the bank and its customer governing the deposit  
 37 account expressly provides that the agreement is governed by  
 38 the law of a particular jurisdiction, that jurisdiction is the  
 39 bank's jurisdiction.

40 (3) If neither subdivision (1) nor subdivision (2) applies, and  
 41 an agreement between the bank and its customer governing  
 42 the deposit account expressly provides that the deposit

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account is maintained at an office in a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

(4) If none of the preceding subdivisions apply, the bank's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the customer's account is located.

(5) If none of the preceding subdivisions apply, the bank's jurisdiction is the jurisdiction in which the chief executive office of the bank is located.

**Sec. 305. (a) Except as otherwise provided in subsection (c), the following rules apply:**

(1) While a security certificate is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in the certificated security represented thereby.

(2) The local law of the issuer's jurisdiction as specified in IC 26-1-8.1-110(d) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in an uncertificated security.

(3) The local law of the securities intermediary's jurisdiction as specified in IC 26-1-8.1-110(e) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a security entitlement or securities account.

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

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

(1) If an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that a particular jurisdiction is the commodity intermediary's jurisdiction for purposes of IC 26-1, that jurisdiction is the commodity intermediary's jurisdiction.

(2) If subdivision (1) does not apply, and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(3) If neither subdivision (1) nor subdivision (2) applies, and

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1 an agreement between the commodity intermediary and  
2 commodity customer governing the commodity account  
3 expressly provides that the commodity account is maintained  
4 at an office in a particular jurisdiction, that jurisdiction is the  
5 commodity intermediary's jurisdiction.

6 (4) If none of the preceding subdivisions apply, the commodity  
7 intermediary's jurisdiction is the jurisdiction in which the  
8 office identified in an account statement as the office serving  
9 the commodity customer's account is located.

10 (5) If none of the preceding subdivisions apply, the commodity  
11 intermediary's jurisdiction is the jurisdiction in which the  
12 chief executive office of the commodity intermediary is  
13 located.

14 (c) The local law of the jurisdiction in which the debtor is  
15 located governs:

16 (1) perfection of a security interest in investment property by  
17 filing;

18 (2) automatic perfection of a security interest in investment  
19 property created by a broker or securities intermediary; and

20 (3) automatic perfection of a security interest in a commodity  
21 contract or commodity account created by a commodity  
22 intermediary.

23 Sec. 306. (a) Subject to subsection (c), the local law of the  
24 issuer's jurisdiction or a nominated person's jurisdiction governs  
25 perfection, the effect of perfection or nonperfection, and the  
26 priority of a security interest in a letter-of-credit right if the  
27 issuer's jurisdiction or nominated person's jurisdiction is a state.

28 (b) For purposes of this part, an issuer's jurisdiction or  
29 nominated person's jurisdiction is the jurisdiction whose law  
30 governs the liability of the issuer or nominated person with respect  
31 to the letter-of-credit right as provided in IC 26-1-5.1-116.

32 (c) This section does not apply to a security interest that is  
33 perfected only under IC 26-1-9.1-308(d).

34 Sec. 307. (a) In this section, "place of business" means a place  
35 where a debtor conducts its affairs.

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

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

40 (2) A debtor that is an organization and has only one (1) place  
41 of business is located at its place of business.

42 (3) A debtor that is an organization and has more than one (1)

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1 place of business is located at its chief executive office.

2 (c) Subsection (b) applies only if a debtor's residence, place of  
3 business, or chief executive office, as applicable, is located in a  
4 jurisdiction whose law generally requires information concerning  
5 the existence of a nonpossessory security interest to be made  
6 generally available in a filing, recording, or registration system as  
7 a condition or result of the security interest's obtaining priority  
8 over the rights of a lien creditor with respect to the collateral. If  
9 subsection (b) does not apply, the debtor is located in the District  
10 of Columbia.

11 (d) A person that ceases to exist, have a residence, or have a  
12 place of business continues to be located in the jurisdiction  
13 specified by subsections (b) and (c).

14 (e) A registered organization that is organized under the law of  
15 a state is located in that state.

16 (f) Except as otherwise provided in subsection (i), a registered  
17 organization that is organized under the law of the United States  
18 and a branch or agency of a bank that is not organized under the  
19 law of the United States or a state are located:

20 (1) in the state that the law of the United States designates, if  
21 the law designates a state of location;

22 (2) in the state that the registered organization, branch, or  
23 agency designates, if the law of the United States authorizes  
24 the registered organization, branch, or agency to designate its  
25 state of location; or

26 (3) in the District of Columbia, if neither paragraph (1) nor  
27 paragraph (2) applies.

28 (g) A registered organization continues to be located in the  
29 jurisdiction specified by subsection (e) or (f) notwithstanding:

30 (1) the suspension, revocation, forfeiture, or lapse of the  
31 registered organization's status as such in its jurisdiction of  
32 organization; or

33 (2) the dissolution, winding up, or cancellation of the existence  
34 of the registered organization.

35 (h) The United States is located in the District of Columbia.

36 (i) A branch or agency of a bank that is not organized under the  
37 law of the United States or a state is located in the state in which  
38 the branch or agency is licensed, if all branches and agencies of the  
39 bank are licensed in only one state.

40 (j) A foreign air carrier under the Federal Aviation Act of 1958,  
41 as amended, is located at the designated office of the agent upon  
42 which service of process may be made on behalf of the carrier.



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1 (k) This section applies only for purposes of this part.

2 Sec. 308. (a) Except as otherwise provided in this section and  
3 IC 26-1-9.1-309, a security interest is perfected if it has attached  
4 and all of the applicable requirements for perfection in  
5 IC 26-1-9.1-310 through IC 26-1-9.1-316 have been satisfied. A  
6 security interest is perfected when it attaches if the applicable  
7 requirements are satisfied before the security interest attaches.

8 (b) An agricultural lien is perfected if it has become effective  
9 and all of the applicable requirements for perfection in  
10 IC 26-1-9.1-310 have been satisfied. An agricultural lien is  
11 perfected when it becomes effective if the applicable requirements  
12 are satisfied before the agricultural lien becomes effective.

13 (c) A security interest or agricultural lien is perfected  
14 continuously if it is originally perfected by one method under this  
15 article and is later perfected by another method under this article,  
16 without an intermediate period when it was unperfected.

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

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

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

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

29 Sec. 309. The following security interests are perfected when  
30 they attach:

31 (1) A purchase-money security interest in consumer goods,  
32 except as otherwise provided in IC 26-1-9.1-311(b) with  
33 respect to consumer goods that are subject to a statute or  
34 treaty described in IC 26-1-9.1-311(a).

35 (2) An assignment of accounts or payment intangibles which  
36 does not by itself or in conjunction with other assignments to  
37 the same assignee transfer a significant part of the assignor's  
38 outstanding accounts or payment intangibles.

39 (3) A sale of a payment intangible.

40 (4) A sale of a promissory note.

41 (5) A security interest created by the assignment of a  
42 health-care-insurance receivable to the provider of the

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- 1 health-care goods or services.
- 2 (6) A security interest arising under IC 26-1-2-401,
- 3 IC 26-1-2-505, IC 26-1-2-711(3), or IC 26-1-2.1-508(5), until
- 4 the debtor obtains possession of the collateral.
- 5 (7) A security interest of a collecting bank arising under
- 6 IC 26-1-4-210.
- 7 (8) A security interest of an issuer or nominated person
- 8 arising under IC 26-1-5.1-118.
- 9 (9) A security interest arising in the delivery of a financial
- 10 asset under IC 26-1-9.1-206(c).
- 11 (10) A security interest in investment property created by a
- 12 broker or securities intermediary.
- 13 (11) A security interest in a commodity contract or a
- 14 commodity account created by a commodity intermediary.
- 15 (12) An assignment for the benefit of all creditors of the
- 16 transferor and subsequent transfers by the assignee
- 17 thereunder.
- 18 (13) A security interest created by an assignment of a
- 19 beneficial interest in a decedent's estate.
- 20 **Sec. 310. (a) Except as otherwise provided in subsection (b) and**
- 21 **IC 26-1-9.1-312(b), a financing statement must be filed to perfect**
- 22 **all security interests and agricultural liens.**
- 23 **(b) The filing of a financing statement is not necessary to perfect**
- 24 **a security interest:**
- 25 **(1) that is perfected under IC 26-1-9.1-308(d),**
- 26 **IC 26-1-9.1-308(e), IC 26-1-9.1-308(f), or IC 26-1-9.1-308(g);**
- 27 **(2) that is perfected under IC 26-1-9.1-309 when it attaches;**
- 28 **(3) in property subject to a statute, regulation, or treaty**
- 29 **described in IC 26-1-9.1-311(a);**
- 30 **(4) in goods in possession of a bailee that are perfected under**
- 31 **IC 26-1-9.1-312(d)(1) or IC 26-1-9.1-312(d)(2);**
- 32 **(5) in certificated securities, documents, goods, or instruments**
- 33 **which is perfected without filing or possession under**
- 34 **IC 26-1-9.1-312(e), IC 26-1-9.1-312(f), or IC 26-1-9.1-312(g);**
- 35 **(6) in collateral in the secured party's possession under**
- 36 **IC 26-1-9.1-313;**
- 37 **(7) in a certificated security which is perfected by delivery of**
- 38 **the security certificate to the secured party under**
- 39 **IC 26-1-9.1-313;**
- 40 **(8) in deposit accounts, electronic chattel paper, investment**
- 41 **property, or letter-of-credit rights which is perfected by**
- 42 **control under IC 26-1-9.1-314;**

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1 (9) in proceeds which is perfected under IC 26-1-9.1-315; or  
 2 (10) that is perfected under IC 26-1-9.1-316.

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

7 Sec. 311. (a) Except as otherwise provided in subsection (d), the  
 8 filing of a financing statement is not necessary or effective to  
 9 perfect a security interest in property subject to:

10 (1) a statute, regulation, or treaty of the United States whose  
 11 requirements for a security interest's obtaining priority over  
 12 the rights of a lien creditor with respect to the property  
 13 preempt IC 26-1-9.1-310(a);

14 (2) any Indiana certificate-of-title statute covering  
 15 automobiles, trailers, mobile homes, boats, farm tractors, or  
 16 the like, which provides for a security interest to be indicated  
 17 on the certificate as a condition or result of perfection; or

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

23 (b) Compliance with the requirements of a statute, regulation,  
 24 or treaty described in subsection (a) for obtaining priority over the  
 25 rights of a lien creditor is equivalent to the filing of a financing  
 26 statement under this article. Except as otherwise provided in  
 27 subsection (d), IC 26-1-9.1-313, IC 26-1-9.1-316(d), and  
 28 IC 26-1-9.1-316(e) for goods covered by a certificate of title, a  
 29 security interest in property subject to a statute, regulation, or  
 30 treaty described in subsection (a) may be perfected only by  
 31 compliance with those requirements, and a security interest so  
 32 perfected remains perfected notwithstanding a change in the use or  
 33 transfer of possession of the collateral.

34 (c) Except as otherwise provided in subsection (d),  
 35 IC 26-1-9.1-316(d), and IC 26-1-9.1-316(e), duration and renewal  
 36 of perfection of a security interest perfected by compliance with the  
 37 requirements prescribed by a statute, regulation, or treaty  
 38 described in subsection (a) are governed by the statute, regulation,  
 39 or treaty. In other respects, the security interest is subject to this  
 40 article.

41 (d) During any period in which collateral is inventory held for  
 42 sale or lease by a person or leased by that person as lessor, and that

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1 person is in the business of selling or leasing goods of that kind, this  
 2 section does not apply to a security interest in that collateral  
 3 created by that person as debtor, but instead, the filing provisions  
 4 of IC 26-1-9.1-501 through IC 26-1-9.1-527 apply.

5 **Sec. 312. (a) A security interest in chattel paper, negotiable**  
 6 **documents, instruments, or investment property may be perfected**  
 7 **by filing.**

8 **(b) Except as otherwise provided in IC 26-1-9.1-315(c) and**  
 9 **IC 26-1-9.1-315(d), for proceeds:**

10 **(1) a security interest in a deposit account may be perfected**  
 11 **only by control under IC 26-1-9.1-314;**

12 **(2) and except as otherwise provided in IC 26-1-9.1-308(d), a**  
 13 **security interest in a letter-of-credit right may be perfected**  
 14 **only by control under IC 26-1-9.1-314; and**

15 **(3) a security interest in money may be perfected only by the**  
 16 **secured party's taking possession under IC 26-1-9.1-313.**

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

19 **(1) a security interest in the goods may be perfected by**  
 20 **perfecting a security interest in the document; and**

21 **(2) a security interest perfected in the document has priority**  
 22 **over any security interest that becomes perfected in the goods**  
 23 **by another method during that time.**

24 **(d) While goods are in the possession of a bailee that has issued**  
 25 **a nonnegotiable document covering the goods, a security interest**  
 26 **in the goods may be perfected by:**

27 **(1) issuance of a document in the name of the secured party;**

28 **(2) the bailee's receipt of notification of the secured party's**  
 29 **interest; or**

30 **(3) filing as to the goods.**

31 **(e) A security interest in certificated securities, negotiable**  
 32 **documents, or instruments is perfected without filing or the taking**  
 33 **of possession for a period of twenty (20) days from the time it**  
 34 **attaches to the extent that it arises for new value given under an**  
 35 **authenticated security agreement.**

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

42 **(1) ultimate sale or exchange; or**



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- 1           (2) loading, unloading, storing, shipping, transshipping,  
2           manufacturing, processing, or otherwise dealing with them in  
3           a manner preliminary to their sale or exchange.
- 4           (g) A perfected security interest in a certificated security or  
5           instrument remains perfected for twenty (20) days without filing  
6           if the secured party delivers the security certificate or instrument  
7           to the debtor for the purpose of:
- 8               (1) ultimate sale or exchange; or  
9               (2) presentation, collection, enforcement, renewal, or  
10              registration of transfer.
- 11          (h) After the twenty (20) day period specified in subsection (e),  
12          (f), or (g) expires, perfection depends upon compliance with this  
13          article.
- 14          Sec. 313. (a) Except as otherwise provided in subsection (b), a  
15          secured party may perfect a security interest in negotiable  
16          documents, goods, instruments, money, or tangible chattel paper  
17          by taking possession of the collateral. A secured party may perfect  
18          a security interest in certificated securities by taking delivery of the  
19          certificated securities under IC 26-1-8.1-301.
- 20          (b) With respect to goods covered by a certificate of title issued  
21          by this state, a secured party may perfect a security interest in the  
22          goods by taking possession of the goods only in the circumstances  
23          described in IC 26-1-9.1-316(d).
- 24          (c) With respect to collateral other than certificated securities  
25          and goods covered by a document, a secured party takes possession  
26          of collateral in the possession of a person other than the debtor, the  
27          secured party, or a lessee of the collateral from the debtor in the  
28          ordinary course of the debtor's business, when:
- 29               (1) the person in possession authenticates a record  
30               acknowledging that it holds possession of the collateral for the  
31               secured party's benefit; or  
32               (2) the person takes possession of the collateral after having  
33               authenticated a record acknowledging that it will hold  
34               possession of collateral for the secured party's benefit.
- 35          (d) If perfection of a security interest depends upon possession  
36          of the collateral by a secured party, perfection occurs not earlier  
37          than the time the secured party takes possession and continues only  
38          while the secured party retains possession.
- 39          (e) A security interest in a certificated security in registered  
40          form is perfected by delivery when delivery of the certificated  
41          security occurs under IC 26-1-8.1-301 and remains perfected by  
42          delivery until the debtor obtains possession of the security

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- 1 certificate.
- 2 (f) A person in possession of collateral is not required to
- 3 acknowledge that it holds possession for a secured party's benefit.
- 4 (g) If a person acknowledges that it holds possession for the
- 5 secured party's benefit:
- 6 (1) the acknowledgment is effective under subsection (c) or
- 7 IC 26-1-8.1-301(a), even if the acknowledgment violates the
- 8 rights of a debtor; and
- 9 (2) unless the person otherwise agrees or a law other than this
- 10 article otherwise provides, the person does not owe any duty
- 11 to the secured party and is not required to confirm the
- 12 acknowledgment to another person.
- 13 (h) A secured party having possession of collateral does not
- 14 relinquish possession by delivering the collateral to a person other
- 15 than the debtor or a lessee of the collateral from the debtor in the
- 16 ordinary course of the debtor's business if the person was
- 17 instructed before the delivery or is instructed contemporaneously
- 18 with the delivery:
- 19 (1) to hold possession of the collateral for the secured party's
- 20 benefit; or
- 21 (2) to redeliver the collateral to the secured party.
- 22 (i) A secured party does not relinquish possession, even if a
- 23 delivery under subsection (h) violates the rights of a debtor. A
- 24 person to which collateral is delivered under subsection (h) does
- 25 not owe any duty to the secured party and is not required to
- 26 confirm the delivery to another person unless the person otherwise
- 27 agrees or law other than this article otherwise provides.
- 28 **Sec. 314. (a) A security interest in investment property, deposit**
- 29 **accounts, letter-of-credit rights, or electronic chattel paper may be**
- 30 **perfected by control of the collateral under IC 26-1-9.1-104,**
- 31 **IC 26-1-9.1-105, IC 26-1-9.1-106, or IC 26-1-9.1-107.**
- 32 (b) A security interest in deposit accounts, electronic chattel
- 33 paper, or letter-of-credit rights is perfected by control under
- 34 IC 26-1-9.1-104, IC 26-1-9.1-105, or IC 26-1-9.1-107 when the
- 35 secured party obtains control and remains perfected by control
- 36 only while the secured party retains control.
- 37 (c) A security interest in investment property is perfected by
- 38 control under IC 26-1-9.1-106 from the time the secured party
- 39 obtains control and remains perfected by control until:
- 40 (1) the secured party does not have control; and
- 41 (2) one of the following occurs:
- 42 (A) if the collateral is a certificated security, the debtor has

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- 1                   or acquires possession of the security certificate;
- 2                   (B) if the collateral is an uncertificated security, the issuer
- 3                   has registered or registers the debtor as the registered
- 4                   owner; or
- 5                   (C) if the collateral is a security entitlement, the debtor is
- 6                   or becomes the entitlement holder.

7                   **Sec. 315. (a) Except as otherwise provided in this article and in**  
 8 **IC 26-1-2-403(2):**

- 9                   (1) a security interest or agricultural lien continues in
- 10                  collateral notwithstanding sale, lease, license, exchange, or
- 11                  other disposition thereof unless the secured party authorized
- 12                  the disposition free of the security interest or agricultural
- 13                  lien; and
- 14                  (2) a security interest attaches to any identifiable proceeds of
- 15                  collateral.

16                  **(b) Proceeds that are commingled with other property are**  
 17 **identifiable proceeds:**

- 18                  (1) if the proceeds are goods, to the extent provided by
- 19                  IC 26-1-9.1-336; and
- 20                  (2) if the proceeds are not goods, to the extent that the secured
- 21                  party identifies the proceeds by a method of tracing, including
- 22                  application of equitable principles, that is permitted under
- 23                  law other than this article with respect to commingled
- 24                  property of the type involved.

25                  **(c) A security interest in proceeds is a perfected security interest**  
 26 **if the security interest in the original collateral was perfected.**

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

- 30                  (1) the following conditions are satisfied:
- 31                   (A) A filed financing statement covers the original
- 32                   collateral.
- 33                   (B) The proceeds are collateral in which a security interest
- 34                   may be perfected by filing in the office in which the
- 35                   financing statement has been filed.
- 36                   (C) The proceeds are not acquired with cash proceeds.
- 37                  (2) the proceeds are identifiable cash proceeds; or
- 38                  (3) the security interest in the proceeds is perfected other than
- 39                  under subsection (c) when the security interest attaches to the
- 40                  proceeds or within twenty (20) days thereafter.

41                  **(e) If a filed financing statement covers the original collateral,**  
 42 **a security interest in proceeds which remains perfected under**

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1 subsection (d)(1) becomes unperfected at the later of:

- 2 (1) when the effectiveness of the filed financing statement  
3 lapses under IC 26-1-9.1-515 or is terminated under  
4 IC 26-1-9.1-513; or  
5 (2) the twenty-first day after the security interest attaches to  
6 the proceeds.

7 **Sec. 316. (a) A security interest perfected pursuant to the law of**  
8 **the jurisdiction designated in IC 26-1-9.1-301(1) or**  
9 **IC 26-1-9.1-305(c) remains perfected until the earliest of:**

- 10 (1) the time perfection would have ceased under the law of  
11 that jurisdiction;  
12 (2) the expiration of four (4) months after a change of the  
13 debtor's location to another jurisdiction;  
14 (3) the expiration of one (1) year after a transfer of collateral  
15 to a person that thereby becomes a debtor and is located in  
16 another jurisdiction; or  
17 (4) the expiration of one (1) year after a new debtor located in  
18 another jurisdiction becomes bound under IC 26-1-9.1-203(d).

19 (b) If a security interest described in subsection (a) becomes  
20 perfected under the law of the other jurisdiction before the earliest  
21 time or event described in that subsection, it remains perfected  
22 thereafter. If the security interest does not become perfected under  
23 the law of the other jurisdiction before the earliest time or event,  
24 it becomes unperfected and is deemed never to have been perfected  
25 as against a purchaser of the collateral for value.

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

- 29 (1) the collateral is located in one (1) jurisdiction and subject  
30 to a security interest perfected under the law of that  
31 jurisdiction;  
32 (2) thereafter the collateral is brought into another  
33 jurisdiction; and  
34 (3) upon entry into the other jurisdiction, the security interest  
35 is perfected under the law of the other jurisdiction.

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

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1 (e) A security interest described in subsection (d) becomes  
 2 unperfected as against a purchaser of the goods for value and is  
 3 deemed never to have been perfected as against a purchaser of the  
 4 goods for value if the applicable requirements for perfection under  
 5 IC 26-1-9.1-311(b) or IC 26-1-9.1-313 are not satisfied before the  
 6 earlier of:

7 (1) the time the security interest would have become  
 8 unperfected under the law of the other jurisdiction had the  
 9 goods not become covered by a certificate of title from this  
 10 state; or

11 (2) the expiration of four (4) months after the goods had  
 12 become so covered.

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

19 (1) the time the security interest would have become  
 20 unperfected under the law of that jurisdiction; or

21 (2) the expiration of four (4) months after a change of the  
 22 applicable jurisdiction to another jurisdiction.

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

31 Sec. 317. (a) An unperfected security interest or agricultural lien  
 32 is subordinate to the rights of:

33 (1) a person entitled to priority under IC 26-1-9.1-322; and

34 (2) a person that becomes a lien creditor before the earlier of  
 35 the time the security interest or agricultural lien is perfected  
 36 or a financing statement covering the collateral is filed.

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



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

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

12 (e) Except as otherwise provided in IC 26-1-9.1-320 and  
 13 IC 26-1-9.1-321, if a person files a financing statement with respect  
 14 to a purchase-money security interest before or within twenty (20)  
 15 days after the debtor receives delivery of the collateral, the security  
 16 interest takes priority over the rights of a buyer, lessee, or lien  
 17 creditor that arise between the time the security interest attaches  
 18 and the time of filing.

19 Sec. 318. (a) A debtor that has sold an account, chattel paper,  
 20 payment intangible, or promissory note does not retain a legal or  
 21 equitable interest in the collateral sold.

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

27 Sec. 319. (a) Except as otherwise provided in subsection (b), for  
 28 purposes of determining the rights of creditors of, and purchasers  
 29 for value of goods from, a consignee, while the goods are in the  
 30 possession of the consignee, the consignee has rights and title to the  
 31 goods identical to those the consignor had or had power to  
 32 transfer.

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

38 Sec. 320. (a) Except as otherwise provided in this subsection and  
 39 subsection (e), a buyer in ordinary course of business takes free of  
 40 a security interest created by the buyer's seller, even if the security  
 41 interest is perfected and the buyer knows of its existence. The  
 42 following apply whenever a person is buying farm products from

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1 a person engaged in farming operations who has created a security  
2 interest on the farm products:

3 (1) A person buying farm products from a person engaged in  
4 farming operations is not protected by this subsection if he  
5 has received prior written notice of the security interest.  
6 "Written notice" means an original financing statement or a  
7 carbon, photographic, or other reproduction of an original  
8 that is effective under IC 26-1-9.1-502, or a notice on a form  
9 prescribed by the secretary of state or a carbon,  
10 photographic, or other reproduction of the form that contains  
11 the following:

12 (A) The full name and address of the debtor.

13 (B) The full name and address of the secured party.

14 (C) A description of the collateral.

15 (D) The date and location of the filing of the security  
16 interest.

17 (E) The date on which written notice is issued.

18 A written notice expires eighteen (18) months after the date  
19 the secured party signs the notice or at the time the debt that  
20 appears on the notice is satisfied, whichever occurs first.  
21 Notice must be received before a buyer of farm products has  
22 made full payment to the person engaged in farming  
23 operations for the farm products if the notice is to be  
24 considered "prior written notice".

25 (2) A secured party must, within fifteen (15) days of the  
26 satisfaction of the debt, inform in writing each potential buyer  
27 listed by the debtor whenever a debt has been satisfied and  
28 written notice, as required by subdivision (1), had been  
29 previously sent to that buyer.

30 (3) A debtor engaged in farming operations who has created  
31 a security interest in farm products must provide the secured  
32 party with a written list of potential buyers of the farm  
33 products at the time the debt is incurred if such a list is  
34 requested by the secured party. The debtor may not sell farm  
35 products to a buyer who does not appear on the list (if the list  
36 is requested by the secured party) unless the secured party  
37 has given prior written permission to the debtor to sell to  
38 someone who does not appear on the list, or the debtor  
39 satisfies the debt for that secured party on the farm products  
40 he sells within fifteen (15) days of the date of sale. A debtor  
41 who knowingly or intentionally sells to a buyer who does not  
42 appear on the list (if the list is requested by the secured party)



1 and who does not meet one (1) of the above exceptions,  
 2 commits a Class C misdemeanor. A secured party commits a  
 3 Class C infraction if the secured party knowingly or  
 4 intentionally gives false or misleading information on the  
 5 notice required by subdivision (a) or the secured party fails  
 6 within fifteen (15) days of satisfaction of the debt to notify  
 7 purchasers to whom a written notice had been previously sent  
 8 under subdivision (1) of the satisfaction of the debt.

9 (4) A purchaser of farm products buying from a person  
 10 engaged in farming operations must issue a check for  
 11 payment jointly to the debtor and those secured parties from  
 12 whom he has received prior written notice of a security  
 13 interest as provided for in subdivision (1). A purchaser who  
 14 fails to issue a jointly payable check as required by this  
 15 subdivision is not protected by this subdivision. A purchaser  
 16 of farm products (on which there is a perfected security  
 17 interest) buying from a person engaged in farming operations  
 18 who withholds all or part of the proceeds of the sale from the  
 19 seller, in order to satisfy a prior debt ("prior debt" does not  
 20 include the costs of marketing the farm product or the cost of  
 21 transporting the farm product to the market) owed by the  
 22 seller to the buyer, commits a Class C infraction.

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

- 27 (1) without knowledge of the security interest;
- 28 (2) for value;
- 29 (3) primarily for the buyer's personal, family, or household
- 30 purposes; and
- 31 (4) before the filing of a financing statement covering the
- 32 goods.

33 (c) To the extent that it affects the priority of a security interest  
 34 over a buyer of goods under subsection (b), the period of  
 35 effectiveness of a filing made in the jurisdiction in which the seller  
 36 is located is governed by IC 26-1-9.1-316(a) and IC 26-1-9.1-316(b).

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

40 (e) Subsections (a) and (b) do not affect a security interest in  
 41 goods in the possession of the secured party under IC 26-1-9.1-313.

42 Sec. 321. (a) In this section, "licensee in ordinary course of

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1 **business"** means a person that becomes a licensee of a general  
 2 **intangible in good faith, without knowledge that the license violates**  
 3 **the rights of another person in the general intangible, and in the**  
 4 **ordinary course from a person in the business of licensing general**  
 5 **intangibles of that kind. A person becomes a licensee in the**  
 6 **ordinary course if the license to the person comports with the usual**  
 7 **or customary practices in the kind of business in which the licensor**  
 8 **is engaged or with the licensor's own usual or customary practices.**

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

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

17 **Sec. 322. (a) Except as otherwise provided in this section,**  
 18 **priority among conflicting security interests and agricultural liens**  
 19 **in the same collateral is determined according to the following**  
 20 **rules:**

21 (1) **Conflicting perfected security interests and agricultural**  
 22 **liens rank according to priority in time of filing or perfection.**  
 23 **Priority dates from the earlier of the time a filing covering the**  
 24 **collateral is first made or the security interest or agricultural**  
 25 **lien is first perfected, if there is no period thereafter when**  
 26 **there is neither filing nor perfection.**

27 (2) **A perfected security interest or agricultural lien has**  
 28 **priority over a conflicting unperfected security interest or**  
 29 **agricultural lien.**

30 (3) **The first security interest or agricultural lien to attach or**  
 31 **become effective has priority if conflicting security interests**  
 32 **and agricultural liens are unperfected.**

33 (b) **For the purposes of subsection (a)(1):**

34 (1) **the time of filing or perfection as to a security interest in**  
 35 **collateral is also the time of filing or perfection as to a security**  
 36 **interest in proceeds; and**

37 (2) **the time of filing or perfection as to a security interest in**  
 38 **collateral supported by a supporting obligation is also the**  
 39 **time of filing or perfection as to a security interest in the**  
 40 **supporting obligation.**

41 (c) **Except as otherwise provided in subsection (f), a security**  
 42 **interest in collateral which qualifies for priority over a conflicting**

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1 security interest under IC 26-1-9.1-327, IC 26-1-9.1-328,  
 2 IC 26-1-9.1-329, IC 26-1-9.1-330, or IC 26-1-9.1-331 also has  
 3 priority over a conflicting security interest in:

- 4 (1) any supporting obligation for the collateral; and  
 5 (2) proceeds of the collateral if:  
 6 (A) the security interest in proceeds is perfected;  
 7 (B) the proceeds are cash proceeds or of the same type as  
 8 the collateral; and  
 9 (C) in the case of proceeds that are proceeds of proceeds,  
 10 all intervening proceeds are cash proceeds, proceeds of the  
 11 same type as the collateral, or an account relating to the  
 12 collateral.

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

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

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

- 23 (1) subsection (g) and the other provisions of this part;  
 24 (2) IC 26-1-4-210 with respect to a security interest of a  
 25 collecting bank;  
 26 (3) IC 26-1-5.1-118 with respect to a security interest of an  
 27 issuer or nominated person; and  
 28 (4) IC 26-1-9.1-110 with respect to a security interest arising  
 29 under IC 26-1-2 or IC 26-1-2.1.

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

33 Sec. 323. (a) Except as otherwise provided in subsection (c), for  
 34 purposes of determining the priority of a perfected security interest  
 35 under IC 26-1-9.1-322(a)(1), perfection of the security interest  
 36 dates from the time an advance is made to the extent that the  
 37 security interest secures an advance that:

- 38 (1) is made while the security interest is perfected only:  
 39 (A) under IC 26-1-9.1-309 when it attaches; or  
 40 (B) temporarily under IC 26-1-9.1-312(e),  
 41 IC 26-1-9.1-312(f), or IC 26-1-9.1-312(g); and  
 42 (2) is not made pursuant to a commitment entered into before

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1 or while the security interest is perfected by a method other  
 2 than under IC 26-1-9.1-309, IC 26-1-9.1-312(e),  
 3 IC 26-1-9.1-312(f), or IC 26-1-9.1-312(g).

4 (b) Except as otherwise provided in subsection (c), a security  
 5 interest is subordinate to the rights of a person that becomes a lien  
 6 creditor while the security interest is perfected only to the extent  
 7 that it secures advances made more than forty-five (45) days after  
 8 the person becomes a lien creditor unless the advance is made:

9 (1) without knowledge of the lien; or

10 (2) pursuant to a commitment entered into without knowledge  
 11 of the lien.

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

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

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

21 (2) forty-five (45) days after the purchase.

22 (e) Subsection (d) does not apply if the advance is made  
 23 pursuant to a commitment entered into without knowledge of the  
 24 buyer's purchase and before the expiration of the forty-five (45)  
 25 day period.

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

30 (1) the time the secured party acquires knowledge of the lease;  
 31 or

32 (2) forty-five (45) days after the lease contract becomes  
 33 enforceable.

34 (g) Subsection (f) does not apply if the advance is made pursuant  
 35 to a commitment entered into without knowledge of the lease and  
 36 before the expiration of the forty-five (45) day period.

37 Sec. 324. (a) Except as otherwise provided in subsection (g), a  
 38 perfected purchase-money security interest in goods other than  
 39 inventory or livestock has priority over a conflicting security  
 40 interest in the same goods, and, except as otherwise provided in  
 41 IC 26-1-9.1-327, a perfected security interest in its identifiable  
 42 proceeds also has priority, if the purchase-money security interest

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1 is perfected when the debtor receives possession of the collateral or  
2 within twenty (20) days thereafter.

3 (b) Subject to subsection (c) and except as otherwise provided  
4 in subsection (g), a perfected purchase-money security interest in  
5 inventory has priority over a conflicting security interest in the  
6 same inventory, has priority over a conflicting security interest in  
7 chattel paper or an instrument constituting proceeds of the  
8 inventory and in proceeds of the chattel paper, if so provided in  
9 IC 26-1-9.1-330, and, except as otherwise provided in  
10 IC 26-1-9.1-327, also has priority in identifiable cash proceeds of  
11 the inventory to the extent the identifiable cash proceeds are  
12 received on or before the delivery of the inventory to a buyer, if:

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

15 (2) the purchase-money secured party sends an authenticated  
16 notification to the holder of the conflicting security interest;

17 (3) the holder of the conflicting security interest receives the  
18 notification within five (5) years before the debtor receives  
19 possession of the inventory; and

20 (4) the notification states that the person sending the  
21 notification has or expects to acquire a purchase-money  
22 security interest in inventory of the debtor and describes the  
23 inventory.

24 (c) Subsections (b)(2) through (b)(4) apply only if the holder of  
25 the conflicting security interest had filed a financing statement  
26 covering the same types of inventory:

27 (1) if the purchase-money security interest is perfected by  
28 filing, before the date of the filing; or

29 (2) if the purchase-money security interest is temporarily  
30 perfected without filing or possession under  
31 IC 26-1-9.1-312(f), before the beginning of the twenty (20) day  
32 period thereunder.

33 (d) Subject to subsection (e) and except as otherwise provided  
34 in subsection (g), a perfected purchase-money security interest in  
35 livestock that are farm products has priority over a conflicting  
36 security interest in the same livestock, and, except as otherwise  
37 provided in IC 26-1-9.1-327, a perfected security interest in their  
38 identifiable proceeds and identifiable products in their  
39 unmanufactured states also has priority, if:

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

42 (2) the purchase-money secured party sends an authenticated

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1 notification to the holder of the conflicting security interest;  
 2 (3) the holder of the conflicting security interest receives the  
 3 notification within six (6) months before the debtor receives  
 4 possession of the livestock; and  
 5 (4) the notification states that the person sending the  
 6 notification has or expects to acquire a purchase-money  
 7 security interest in livestock of the debtor and describes the  
 8 livestock.

9 (e) Subsections (d)(2) through (d)(4) apply only if the holder of  
 10 the conflicting security interest had filed a financing statement  
 11 covering the same types of livestock:

12 (1) if the purchase-money security interest is perfected by  
 13 filing, before the date of the filing; or

14 (2) if the purchase-money security interest is temporarily  
 15 perfected without filing or possession under  
 16 IC 26-1-9.1-312(f), before the beginning of the twenty (20) day  
 17 period thereunder.

18 (f) Except as otherwise provided in subsection (g), a perfected  
 19 purchase-money security interest in software has priority over a  
 20 conflicting security interest in the same collateral, and, except as  
 21 otherwise provided in IC 26-1-9.1-327, a perfected security interest  
 22 in its identifiable proceeds also has priority, to the extent that the  
 23 purchase-money security interest in the goods in which the  
 24 software was acquired for use has priority in the goods and  
 25 proceeds of the goods under this section.

26 (g) If more than one (1) security interest qualifies for priority in  
 27 the same collateral under subsection (a), (b), (d), or (f):

28 (1) a security interest securing an obligation incurred as all or  
 29 part of the price of the collateral has priority over a security  
 30 interest securing an obligation incurred for value given to  
 31 enable the debtor to acquire rights in or the use of collateral;  
 32 and

33 (2) in all other cases, IC 26-1-9.1-322(a) applies to the  
 34 qualifying security interests.

35 Sec. 325. (a) Except as otherwise provided in subsection (b), a  
 36 security interest created by a debtor is subordinate to a security  
 37 interest in the same collateral created by another person if:

38 (1) the debtor acquired the collateral subject to the security  
 39 interest created by the other person;

40 (2) the security interest created by the other person was  
 41 perfected when the debtor acquired the collateral; and

42 (3) there is no period thereafter when the security interest is

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unperfected.

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

- (1) otherwise would have priority solely under IC 26-1-9.1-322(a) or IC 26-1-9.1-324; or
- (2) arose solely under IC 26-1-2-711(3) or IC 26-1-2.1-508(5).

Sec. 326. (a) Subject to subsection (b), a security interest created by a new debtor which is perfected by a filed financing statement that is effective solely under IC 26-1-9.1-508 in collateral in which a new debtor has or acquires rights is subordinate to a security interest in the same collateral that is perfected by another method.

(b) The other provisions of IC 26-1-9.1-301 through IC 26-1-9.1-342 determine the priority among conflicting security interests in the same collateral perfected by filed financing statements that are effective solely under IC 26-1-9-508. However, if the security agreements to which a new debtor became bound as a debtor were not entered into by the same original debtor, the conflicting security interests rank according to priority in time of the new debtor's having become bound.

Sec. 327. The following rules govern priority among conflicting security interests in the same deposit account:

- (1) A security interest held by a secured party having control of the deposit account under IC 26-1-9.1-104 has priority over a conflicting security interest held by a secured party that does not have control.
- (2) Except as otherwise provided in subdivisions (3) and (4), security interests perfected by control under IC 26-1-9.1-314 rank according to priority in time of obtaining control.
- (3) Except as otherwise provided in subdivision (4), a security interest held by the bank with which the deposit account is maintained has priority over a conflicting security interest held by another secured party.
- (4) A security interest perfected by control under IC 26-1-9.1-104(a)(3) has priority over a security interest held by the bank with which the deposit account is maintained.

Sec. 328. The following rules govern priority among conflicting security interests in the same investment property:

- (1) A security interest held by a secured party having control of investment property under IC 26-1-9.1-106 has priority over a security interest held by a secured party that does not have control of the investment property.
- (2) Except as otherwise provided in subdivisions (3) and (4),

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1 conflicting security interests held by secured parties each of  
 2 which has control under IC 26-1-9.1-106 rank according to  
 3 priority in time of:

4 (A) if the collateral is a security, obtaining control;

5 (B) if the collateral is a security entitlement carried in a  
 6 securities account and:

7 (i) if the secured party obtained control under  
 8 IC 26-1-8.1-106(d)(1), the secured party's becoming the  
 9 person for which the securities account is maintained;

10 (ii) if the secured party obtained control under  
 11 IC 26-1-8.1-106(d)(2), the securities intermediary's  
 12 agreement to comply with the secured party's  
 13 entitlement orders with respect to security entitlements  
 14 carried or to be carried in the securities account; or

15 (iii) if the secured party obtained control through  
 16 another person under IC 26-1-8.1-106(d)(3), the time on  
 17 which priority would be based under this subdivision if  
 18 the other person were the secured party; or

19 (C) if the collateral is a commodity contract carried with  
 20 a commodity intermediary, the satisfaction of the  
 21 requirement for control specified in IC 26-1-9.1-106(b)(2)  
 22 with respect to commodity contracts carried or to be  
 23 carried with the commodity intermediary.

24 (3) A security interest held by a securities intermediary in a  
 25 security entitlement or a securities account maintained with  
 26 the securities intermediary has priority over a conflicting  
 27 security interest held by another secured party.

28 (4) A security interest held by a commodity intermediary in a  
 29 commodity contract or a commodity account maintained with  
 30 the commodity intermediary has priority over a conflicting  
 31 security interest held by another secured party.

32 (5) A security interest in a certificated security in registered  
 33 form which is perfected by taking delivery under  
 34 IC 26-1-9.1-313(a) and not by control under IC 26-1-9.1-314  
 35 has priority over a conflicting security interest perfected by  
 36 a method other than control.

37 (6) Conflicting security interests created by a broker,  
 38 securities intermediary, or commodity intermediary, which  
 39 are perfected without control under IC 26-1-9.1-106 rank  
 40 equally.

41 (7) In all other cases, priority among conflicting security  
 42 interests in investment property is governed by



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**IC 26-1-9.1-322 and IC 26-1-9.1-323.**

**Sec. 329. The following rules govern priority among conflicting security interests in the same letter-of-credit right:**

**(1) A security interest held by a secured party having control of the letter-of-credit right under IC 26-1-9.1-107 has priority to the extent of its control over a conflicting security interest held by a secured party that does not have control.**

**(2) Security interests perfected by control under IC 26-1-9.1-314 rank according to priority in time of obtaining control.**

**Sec. 330. (a) A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed merely as proceeds of inventory subject to a security interest if:**

**(1) in good faith and in the ordinary course of the purchaser's business, the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under IC 26-1-9.1-105; and**

**(2) the chattel paper does not indicate that it has been assigned to an identified assignee other than the purchaser.**

**(b) A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed other than merely as proceeds of inventory subject to a security interest if the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under IC 26-1-9.1-105 in good faith, in the ordinary course of the purchaser's business, and without knowledge that the purchase violates the rights of the secured party.**

**(c) Except as otherwise provided in IC 26-1-9.1-327, a purchaser having priority in chattel paper under subsection (a) or (b) also has priority in proceeds of the chattel paper to the extent that:**

**(1) IC 26-1-9.1-322 provides for priority in the proceeds; or**

**(2) the proceeds consist of the specific goods covered by the chattel paper or cash proceeds of the specific goods, even if the purchaser's security interest in the proceeds is unperfected.**

**(d) Except as otherwise provided in IC 26-1-9.1-331(a), a purchaser of an instrument has priority over a security interest in the instrument perfected by a method other than possession if the purchaser gives value and takes possession of the instrument in good faith and without knowledge that the purchase violates the rights of the secured party.**

**(e) For purposes of subsections (a) and (b), the holder of a**

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1 purchase-money security interest in inventory gives new value for  
2 chattel paper constituting proceeds of the inventory.

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

8 Sec. 331. (a) This article does not limit the rights of a holder in  
9 due course of a negotiable instrument, a holder to which a  
10 negotiable document of title has been duly negotiated, or a  
11 protected purchaser of a security. These holders or purchasers take  
12 priority over an earlier security interest, even if perfected, to the  
13 extent provided in IC 26-1-3.1, IC 26-1-7, and IC 26-1-8.1.

14 (b) This article does not limit the rights of or impose liability on  
15 a person to the extent that the person is protected against the  
16 assertion of an adverse claim under IC 26-1-8.1.

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

20 Sec. 332. (a) A transferee of money takes the money free of a  
21 security interest unless the transferee acts in collusion with the  
22 debtor in violating the rights of the secured party.

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

27 Sec. 333. (a) In this section, "possessory lien" means an interest,  
28 other than a security interest or an agricultural lien:

- 29 (1) that secures payment or performance of an obligation for
- 30 services or materials furnished with respect to goods by a
- 31 person in the ordinary course of the person's business;
- 32 (2) that is created by statute or rule of law in favor of the
- 33 person; and
- 34 (3) whose effectiveness depends on the person's possession of
- 35 the goods.

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

39 Sec. 334. (a) A security interest under this article may be  
40 created in goods that are fixtures or may continue in goods that  
41 become fixtures. A security interest does not exist under this article  
42 in ordinary building materials incorporated into an improvement

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- on land.
- (b) This article does not prevent creation of an encumbrance upon fixtures under real property law.
- (c) In cases not governed by subsections (d) through (h), a security interest in fixtures is subordinate to a conflicting interest of an encumbrancer or owner of the related real property other than the debtor.
- (d) Except as otherwise provided in subsection (h), a perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property and:
  - (1) the security interest is a purchase-money security interest;
  - (2) the interest of the encumbrancer or owner arises before the goods become fixtures; and
  - (3) the security interest is perfected by a fixture filing before the goods become fixtures or within twenty (20) days thereafter.
- (e) A perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if:
  - (1) the debtor has an interest of record in the real property or is in possession of the real property and the security interest:
    - (A) is perfected by a fixture filing before the interest of the encumbrancer or owner is of record; and
    - (B) has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner;
  - (2) before the goods become fixtures, the security interest is perfected by any method permitted by this article and the fixtures are readily removable:
    - (A) factory or office machines;
    - (B) equipment that is not primarily used or leased for use in the operation of the real property; or
    - (C) replacements of domestic appliances that are consumer goods;
  - (3) the conflicting interest is a lien on the real property obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this article; or
  - (4) the security interest is:
    - (A) created in a manufactured home in a manufactured-home transaction; and
    - (B) perfected pursuant to a statute described in

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1           **IC 26-1-9.1-311(a)(2).**

2           **(f) A security interest in fixtures, whether or not perfected, has**  
 3 **priority over a conflicting interest of an encumbrancer or owner**  
 4 **of the real property if:**

5           **(1) the encumbrancer or owner has, in an authenticated**  
 6 **record, consented to the security interest or disclaimed an**  
 7 **interest in the goods as fixtures; or**

8           **(2) the debtor has a right to remove the goods against the**  
 9 **encumbrancer or owner.**

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

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

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

28          **Sec. 335. (a) A security interest may be created in an accession**  
 29 **and continues in collateral that becomes an accession.**

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

33          **(c) Except as otherwise provided in subsection (d), the other**  
 34 **provisions of IC 26-1-9.1-301 through IC 26-1-9.1-342 determine**  
 35 **the priority of a security interest in an accession.**

36          **(d) A security interest in an accession is subordinate to a**  
 37 **security interest in the whole which is perfected by compliance**  
 38 **with the requirements of a certificate-of-title statute under**  
 39 **IC 26-1-9.1-311(b).**

40          **(e) After default, subject to subsection (f), a secured party may**  
 41 **remove an accession from other goods if the security interest in the**  
 42 **accession has priority over the claims of every person having an**



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interest in the whole.

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

Sec. 336. (a) As used in this section, "commingled goods" means goods that are physically united with other goods in such a manner that their identity is lost in a product or mass.

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

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

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

(e) Except as otherwise provided in subsection (f), the other provisions of IC 26-1-9.1-301 through IC 26-1-9.1-342 determine the priority of a security interest that attaches to the product or mass under subsection (c).

(f) If more than one (1) security interest attaches to the product or mass under subsection (c), the following rules determine priority:

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

(2) If more than one (1) security interest is perfected under subsection (d), the security interests rank equally in proportion to value of the collateral at the time it became commingled goods.

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

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1 (1) a buyer of the goods, other than a person in the business of  
 2 selling goods of that kind, takes free of the security interest if  
 3 the buyer gives value and receives delivery of the goods after  
 4 issuance of the certificate and without knowledge of the  
 5 security interest; and

6 (2) the security interest is subordinate to a conflicting security  
 7 interest in the goods that attaches, and is perfected under  
 8 IC 26-1-9.1-311(b,) after issuance of the certificate and  
 9 without the conflicting secured party's knowledge of the  
 10 security interest.

11 **Sec. 338.** If a security interest or agricultural lien is perfected by  
 12 a filed financing statement providing information described in  
 13 IC 26-1-9.1-516(b)(5) that is incorrect at the time the financing  
 14 statement is filed:

15 (1) the security interest or agricultural lien is subordinate to  
 16 a conflicting perfected security interest in the collateral to the  
 17 extent that the holder of the conflicting security interest gives  
 18 value in reasonable reliance upon the incorrect information;  
 19 and

20 (2) a purchaser, other than a secured party, of the collateral  
 21 takes free of the security interest or agricultural lien to the  
 22 extent that, in reasonable reliance upon the incorrect  
 23 information, the purchaser gives value and, in the case of  
 24 chattel paper, documents, goods, instruments, or a security  
 25 certificate, receives delivery of the collateral.

26 **Sec. 339.** This article does not preclude subordination by  
 27 agreement by a person entitled to priority.

28 **Sec. 340.** (a) Except as otherwise provided in subsection (c), a  
 29 bank with which a deposit account is maintained may exercise any  
 30 right of recoupment or set-off against a secured party that holds a  
 31 security interest in the deposit account.

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

36 (c) The exercise by a bank of a set-off against a deposit account  
 37 is ineffective against a secured party that holds a security interest  
 38 in the deposit account which is perfected by control under  
 39 IC 26-1-9.1-104(a)(3), if the set-off is based on a claim against the  
 40 debtor.

41 **Sec. 341.** Except as otherwise provided in IC 26-1-9.1-340(c),  
 42 and unless the bank otherwise agrees in an authenticated record,



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1 a bank's rights and duties with respect to a deposit account  
 2 maintained with the bank are not terminated, suspended, or  
 3 modified by:

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

8 **Sec. 342.** This article does not require a bank to enter into an  
 9 agreement of the kind described in IC 26-1-9.1-104(a)(2), even if its  
 10 customer so requests or directs. A bank that has entered into such  
 11 an agreement is not required to confirm the existence of the  
 12 agreement to another person unless requested to do so by its  
 13 customer.

14 **Sec. 401.** (a) Except as otherwise provided in subsection (b) and  
 15 IC 26-1-9.1-406, IC 26-1-9.1-407, IC 26-1-9.1-408, and  
 16 IC 26-1-9.1-409, whether a debtor's rights in collateral may be  
 17 voluntarily or involuntarily transferred is governed by law other  
 18 than this article.

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

22 **Sec. 402.** The existence of a security interest, agricultural lien,  
 23 or authority given to a debtor to dispose of or use collateral,  
 24 without more, does not subject a secured party to liability in  
 25 contract or tort for the debtor's acts or omissions.

26 **Sec. 403.** (a) As used in this section, "value" has the meaning  
 27 provided in IC 26-1-3-303(a).

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

- 33 (1) for value;  
 34 (2) in good faith;  
 35 (3) without notice of a claim of a property or possessory right  
 36 to the property assigned; and  
 37 (4) without notice of a defense or claim in recoupment of the  
 38 type that may be asserted against a person entitled to enforce  
 39 a negotiable instrument under IC 26-1-3.1-305(a).

40 (c) Subsection (b) does not apply to defenses of a type that may  
 41 be asserted against a holder in due course of a negotiable  
 42 instrument under IC 26-1-3.1-305(b).



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

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

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

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

20 **Sec. 404. (a)** Unless an account debtor has made an enforceable  
21 agreement not to assert defenses or claims, and subject to  
22 subsections (b) through (e), the rights of an assignee are subject to:

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

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

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

38 (d) In a consumer transaction, if a record evidences the account  
39 debtor's obligation, law other than this article requires that the  
40 record include a statement to the effect that the account debtor's  
41 recovery against an assignee with respect to claims and defenses  
42 against the assignor may not exceed amounts paid by the account

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1 debtor under the record, and the record does not include such a  
 2 statement, the extent to which a claim of an account debtor against  
 3 the assignor may be asserted against an assignee is determined as  
 4 if the record included such a statement.

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

7 **Sec. 405. (a)** A modification of or substitution for an assigned  
 8 contract is effective against an assignee if made in good faith. The  
 9 assignee acquires corresponding rights under the modified or  
 10 substituted contract. The assignment may provide that the  
 11 modification or substitution is a breach of contract by the assignor.  
 12 This subsection is subject to subsections (b) through (d).

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

14 (1) the right to payment or a part thereof under an assigned  
 15 contract has not been fully earned by performance; or

16 (2) the right to payment or a part thereof has been fully  
 17 earned by performance and the account debtor has not  
 18 received notification of the assignment under  
 19 IC 26-1-9.1-406(a).

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

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

26 **Sec. 406. (a)** Subject to subsections (b) through (h), an account  
 27 debtor on an account, chattel paper, or a payment intangible may  
 28 discharge its obligation by paying the assignor until, but not after,  
 29 the account debtor receives a notification, authenticated by the  
 30 assignor or the assignee, that the amount due or to become due has  
 31 been assigned and that payment is to be made to the assignee. After  
 32 receipt of the notification, the account debtor may discharge its  
 33 obligation by paying the assignee and may not discharge the  
 34 obligation by paying the assignor.

35 (b) Subject to subsection (g), notification is ineffective under  
 36 subsection (a):

37 (1) if it does not reasonably identify the rights assigned;

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

42 (3) at the option of an account debtor, if the notification

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1 notifies the account debtor to make less than the full amount  
2 of any installment or other periodic payment to the assignee,  
3 even if:

4 (A) only a portion of the account, chattel paper, or general  
5 intangible has been assigned to that assignee;

6 (B) a portion has been assigned to another assignee; or

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

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

15 (d) Except as otherwise provided in subsection (e) and  
16 IC 26-1-2.1-303 and IC 26-1-9.1-407, and subject to subsection (g),  
17 a term in an agreement between an account debtor and an assignor  
18 or in a promissory note is ineffective to the extent that it:

19 (1) prohibits, restricts, or requires the consent of the account  
20 debtor or person obligated on the promissory note to the  
21 assignment or transfer of, or the creation, attachment,  
22 perfection, or enforcement of a security interest in, the  
23 account, chattel paper, payment intangible, or promissory  
24 note; or

25 (2) provides that the assignment or transfer or the creation,  
26 attachment, perfection, or enforcement of the security interest  
27 may give rise to a default, breach, right of recoupment, claim,  
28 defense, termination, right of termination, or remedy under  
29 the account, chattel paper, payment intangible, or promissory  
30 note.

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

33 (f) Except as provided in IC 26-1-2.1-303 and IC 26-1-9-407, and  
34 subject to subsections (h) and (i), a rule of law, statute, or  
35 regulation that prohibits, restricts, or requires the consent of a  
36 government, governmental body or official, or account debtor to  
37 the assignment or transfer of, or creation of a security interest in,  
38 an account or chattel paper is ineffective to the extent that the rule  
39 of law, statute, or regulation:

40 (1) prohibits, restricts, or requires the consent of the  
41 government, governmental body or official, or account debtor  
42 to the assignment or transfer of, or the creation, attachment,

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1 perfection, or enforcement of a security interest in the account  
 2 or chattel paper; or  
 3 (2) provides that the assignment or transfer or the creation,  
 4 attachment, perfection, or enforcement of the security interest  
 5 may give rise to a default, right of recoupment, claim, defense,  
 6 termination, right of termination, or remedy under the  
 7 account or chattel paper.  
 8 (g) Subject to subsection (h), an account debtor may not waive  
 9 or vary its option under subsection (b)(3).  
 10 (h) This section is subject to law other than this article which  
 11 establishes a different rule for an account debtor who is an  
 12 individual and who incurred the obligation primarily for personal,  
 13 family, or household purposes.  
 14 (i) This section does not apply to an assignment of a  
 15 health-care-insurance receivable.  
 16 Sec. 407. (a) Except as otherwise provided in subsection (b), a  
 17 term in a lease agreement is ineffective to the extent that it:  
 18 (1) prohibits, restricts, or requires the consent of a party to  
 19 the lease to the creation, attachment, perfection, or  
 20 enforcement of a security interest in an interest of a party  
 21 under the lease contract or in the lessor's residual interest in  
 22 the goods; or  
 23 (2) provides that the creation, attachment, perfection, or  
 24 enforcement of the security interest may give rise to a default,  
 25 breach, right of recoupment, claim, defense, termination,  
 26 right of termination, or remedy under the lease.  
 27 (b) Except as otherwise provided in IC 26-1-2.1-303(7), a term  
 28 described in subsection (a)(2) is effective to the extent that there is:  
 29 (1) a transfer by the lessee of the lessee's right of possession or  
 30 use of the goods in violation of the term; or  
 31 (2) a delegation of a material performance of either party to  
 32 the lease contract in violation of the term.  
 33 (c) The creation, attachment, perfection, or enforcement of a  
 34 security interest in the lessor's interest under the lease contract or  
 35 the lessor's residual interest in the goods is not a transfer that  
 36 materially impairs the lessee's prospect of obtaining return  
 37 performance or materially changes the duty of or materially  
 38 increases the burden or risk imposed on the lessee within the  
 39 purview of IC 26-1-2.1-303(4) unless, and then only to the extent  
 40 that, enforcement actually results in a delegation of material  
 41 performance of the seller. Even in that event, the creation,  
 42 attachment, perfection, and enforcement of the security interest

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remain effective.

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

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

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

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

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

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

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1 of a security interest in the promissory note, health-care-insurance  
2 receivable, or general intangible:

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

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

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

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

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

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

24 (e) This section prevails over any inconsistent provision in  
25 statute, administrative rule, or regulation.

26 Sec. 409. (a) A term in a letter-of-credit or a rule of law, statute,  
27 regulation, custom, or practice applicable to the letter-of-credit  
28 that prohibits, restricts, or requires the consent of an applicant,  
29 issuer, or nominated person to a beneficiary's assignment of or  
30 creation of a security interest in a letter-of-credit right is  
31 ineffective to the extent that the term or rule of law, statute,  
32 regulation, custom, or practice:

33 (1) would impair the creation, attachment, or perfection of a  
34 security interest in the letter-of-credit right; or

35 (2) provides that the creation, attachment, or perfection of the  
36 security interest may give rise to a default, breach, right of  
37 recoupment, claim, defense, termination, right of termination,  
38 or remedy under the letter-of-credit right.

39 (b) To the extent that a term in a letter-of-credit is ineffective  
40 under subsection (a) but would be effective under law other than  
41 this article or a custom or practice applicable to the  
42 letter-of-credit, to the transfer of a right to draw or otherwise

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1 demand performance under the letter-of-credit, or to the  
 2 assignment of a right to proceeds of the letter-of-credit, the  
 3 creation, attachment, or perfection of a security interest in the  
 4 letter-of-credit right:

5 (1) is not enforceable against the applicant, issuer, nominated  
 6 person, or transferee beneficiary;

7 (2) imposes no duties or obligations on the applicant, issuer,  
 8 nominated person, or transferee beneficiary; and

9 (3) does not require the applicant, issuer, nominated person,  
 10 or transferee beneficiary to recognize the security interest,  
 11 pay or render performance to the secured party, or accept  
 12 payment or other performance from the secured party.

13 **Sec. 501. (a)** Except as otherwise provided in subsection (b), if  
 14 the local law of this state governs perfection of a security interest  
 15 or agricultural lien, the office in which to file a financing statement  
 16 to perfect the security interest or agricultural lien is:

17 (1) the office designated for the filing or recording of a record  
 18 of a mortgage on the related real property, if:

19 (A) the collateral is as-extracted collateral or timber to be  
 20 cut; or

21 (B) the financing statement is filed as a fixture filing and  
 22 the collateral is goods that are or are to become fixtures;  
 23 or

24 (2) the office of the secretary of state, in all other cases,  
 25 including a case in which the collateral is goods that are or are  
 26 to become fixtures and the financing statement is not filed as  
 27 a fixture filing.

28 (b) The office in which to file a financing statement to perfect a  
 29 security interest in collateral, including fixtures, of a transmitting  
 30 utility is the office of the secretary of state. The financing statement  
 31 also constitutes a fixture filing as to the collateral indicated in the  
 32 financing statement which is or is to become fixtures.

33 **Sec. 502. (a)** Subject to subsection (b), a financing statement is  
 34 sufficient only if it:

35 (1) provides the name of the debtor;

36 (2) provides the name of the secured party or a representative  
 37 of the secured party; and

38 (3) indicates the collateral covered by the financing statement.

39 (b) Except as otherwise provided in IC 26-1-9.1-501(b), to be  
 40 sufficient, a financing statement that covers as-extracted collateral  
 41 or timber to be cut, or which is filed as a fixture filing and covers  
 42 goods that are or are to become fixtures, must satisfy subsection (a)



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**and also:**

- (1) indicate that it covers this type of collateral;**
- (2) indicate that it is to be filed in the real property records;**
- (3) provide a description of the real property to which the collateral is related that is sufficient to give constructive notice of a mortgage under the law of this state if the description were contained in a record of the mortgage of the real property; and**
- (4) if the debtor does not have an interest of record in the real property, provide the name of a record owner.**

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

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

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

**(e) The provisions of IC 36-2-11-15 requiring the identification of draftsmen of instruments transferring interest in real estate do not apply to IC 26-1.**

**Sec. 503. (a) A financing statement sufficiently provides the name of the debtor:**

- (1) if the debtor is a registered organization, only if the financing statement provides the name of the debtor indicated on the public record of the debtor's jurisdiction of organization which shows the debtor to have been organized;**
- (2) if the debtor is a decedent's estate, only if the financing statement provides the name of the decedent and indicates that the debtor is an estate;**
- (3) if the debtor is a trust or a trustee acting with respect to property held in trust, only if the financing statement:**
  - (A) provides the name specified for the trust in its organic documents or, if no name is specified, provides the name of the settlor and additional information sufficient to**

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- 1 distinguish the debtor from other trusts having one (1) or  
 2 more of the same settlors; and  
 3 (B) indicates, in the debtor's name or otherwise, that the  
 4 debtor is a trust or is a trustee acting with respect to  
 5 property held in trust; and  
 6 (4) in other cases:  
 7 (A) if the debtor has a name, only if it provides the  
 8 individual or organizational name of the debtor; and  
 9 (B) if the debtor does not have a name, only if it provides  
 10 the names of the partners, members, associates, or other  
 11 persons comprising the debtor.  
 12 (b) A financing statement that provides the name of the debtor  
 13 in accordance with subsection (a) is not rendered ineffective by the  
 14 absence of:  
 15 (1) a trade name or other name of the debtor; or  
 16 (2) unless required under subsection (a)(4)(B), names of  
 17 partners, members, associates, or other persons comprising  
 18 the debtor.  
 19 (c) A financing statement that provides only the debtor's trade  
 20 name does not sufficiently provide the name of the debtor.  
 21 (d) Failure to indicate the representative capacity of a secured  
 22 party or representative of a secured party does not affect the  
 23 sufficiency of a financing statement.  
 24 (e) A financing statement may provide the name of more than  
 25 one (1) debtor and the name of more than one (1) secured party.  
 26 Sec. 504. A financing statement sufficiently indicates the  
 27 collateral that it covers only if the financing statement provides:  
 28 (1) a description of the collateral pursuant to IC 26-1-9.1-108;  
 29 or  
 30 (2) an indication that the financing statement covers all assets  
 31 or all personal property.  
 32 Sec. 505. (a) A consignor, lessor, or other bailor of goods or a  
 33 buyer of a payment intangible or a promissory note may file a  
 34 financing statement, or may comply with a statute or treaty  
 35 described in IC 26-1-9.1-311(a), using the terms "consignor",  
 36 "consignee", "lessor", "lessee", "bailor", "bailee", "owner",  
 37 "registered owner", "buyer", "seller", or words of similar import,  
 38 instead of the terms "secured party" and "debtor".  
 39 (b) IC 26-1-9.1-501 through IC 26-1-9.1-527 apply to the filing  
 40 of a financing statement under subsection (a) and, as appropriate,  
 41 to compliance that is equivalent to filing a financing statement  
 42 under IC 26-1-9.1-311(b), but the filing or compliance is not of

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1       itself a factor in determining whether the collateral secures an  
 2       obligation. If it is determined for another reason that the collateral  
 3       secures an obligation, a security interest held by the consignor,  
 4       lessor, bailor, owner, or buyer which attaches to the collateral is  
 5       perfected by the filing or compliance.

6       **Sec. 506. (a)** A financing statement substantially satisfying the  
 7       requirements of IC 26-1-9.1-501 through IC 26-1-9.1-527 is  
 8       effective, even if it has minor errors or omissions, unless the errors  
 9       or omissions make the financing statement seriously misleading.

10       **(b)** Except as otherwise provided in subsection (c), a financing  
 11       statement that fails sufficiently to provide the name of the debtor  
 12       in accordance with IC 26-1-9.1-503(a) is seriously misleading.

13       **(c)** If a search of the records of the filing office under the  
 14       debtor's correct name, using the filing office's standard search  
 15       logic, if any, would disclose a financing statement that fails to  
 16       sufficiently provide the name of the debtor in accordance with  
 17       IC 26-1-9.1-503(a), the name provided does not make the financing  
 18       statement seriously misleading.

19       **(d)** For purposes of IC 26-1-9.1-508(b), the "debtor's correct  
 20       name" in subsection (c) means the correct name of the new debtor.

21       **Sec. 507. (a)** A filed financing statement remains effective with  
 22       respect to collateral that is sold, exchanged, leased, licensed, or  
 23       otherwise disposed of and in which a security interest or  
 24       agricultural lien continues, even if the secured party knows of or  
 25       consents to the disposition.

26       **(b)** Except as otherwise provided in subsection (c) and  
 27       IC 26-1-9.1-508, a financing statement is not rendered ineffective  
 28       if, after the financing statement is filed, the information provided  
 29       in the financing statement becomes seriously misleading under  
 30       IC 26-1-9.1-506.

31       **(c)** If a debtor so changes its name that a filed financing  
 32       statement becomes seriously misleading under IC 26-1-9.1-506:

33               **(1)** the financing statement is effective to perfect a security  
 34               interest in collateral acquired by the debtor before, or within  
 35               four (4) months after, the change; and

36               **(2)** the financing statement is not effective to perfect a security  
 37               interest in collateral acquired by the debtor more than four  
 38               (4) months after the change, unless an amendment to the  
 39               financing statement which renders the financing statement  
 40               not seriously misleading is filed within four months (4) after  
 41               the change.

42       **Sec. 508. (a)** Except as otherwise provided in this section, a filed

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1 financing statement naming an original debtor is effective to  
2 perfect a security interest in collateral in which a new debtor has  
3 or acquires rights to the extent that the financing statement would  
4 have been effective had the original debtor acquired rights in the  
5 collateral.

6 (b) If the difference between the name of the original debtor and  
7 that of the new debtor causes a filed financing statement that is  
8 effective under subsection (a) to be seriously misleading under  
9 IC 26-1-9.1-506:

10 (1) the financing statement is effective to perfect a security  
11 interest in collateral acquired by the new debtor before, and  
12 within four (4) months after, the new debtor becomes bound  
13 under IC 26-1-9.1-203(d); and

14 (2) the financing statement is not effective to perfect a security  
15 interest in collateral acquired by the new debtor more than  
16 four (4) months after the new debtor becomes bound under  
17 IC 26-1-9.1-203(d) unless an initial financing statement  
18 providing the name of the new debtor is filed before the  
19 expiration of that time.

20 (c) This section does not apply to collateral as to which a filed  
21 financing statement remains effective against the new debtor under  
22 IC 26-1-9.1-507(a).

23 Sec. 509. (a) A person may file an initial financing statement,  
24 amendment that adds collateral covered by a financing statement,  
25 or amendment that adds a debtor to a financing statement only if:

26 (1) the debtor authorizes the filing in an authenticated record;  
27 or

28 (2) the person holds an agricultural lien that has become  
29 effective at the time of filing and the financing statement  
30 covers only collateral in which the person holds an  
31 agricultural lien.

32 (b) By authenticating a security agreement, a debtor authorizes  
33 the filing of an initial financing statement, and an amendment,  
34 covering:

35 (1) the collateral described in the security agreement; and  
36 (2) property that becomes collateral under  
37 IC 26-1-9.1-315(a)(2), whether or not the security agreement  
38 expressly covers proceeds.

39 (c) By acquiring collateral in which a security interest or  
40 agricultural lien continues under IC 26-1-9.1-315(a)(1), a debtor  
41 authorizes the filing of an initial financing statement, and an  
42 amendment, covering the collateral and property that becomes

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1 collateral under IC 26-1-9.1-315(a)(1).

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

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

6 (2) the amendment is a termination statement for a financing  
7 statement as to which the secured party of record has failed  
8 to file or send a termination statement as required by  
9 IC 26-1-9.1-513(a) or IC 26-1-9.1-513(c), the debtor  
10 authorizes the filing, and the termination statement indicates  
11 that the debtor authorized it to be filed.

12 (e) If there is more than one (1) secured party of record for a  
13 financing statement, each secured party of record may authorize  
14 the filing of an amendment under subsection (d).

15 Sec. 510. (a) A filed record is effective only to the extent that it  
16 was filed by a person that may file it under IC 26-1-9.1-509.

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

20 (c) A continuation statement that is not filed within the six (6)  
21 month period prescribed by IC 26-1-9.1-515(d) is ineffective.

22 Sec. 511. (a) A secured party of record with respect to a  
23 financing statement is a person whose name is provided as the  
24 name of the secured party or a representative of the secured party  
25 in an initial financing statement that has been filed. If an initial  
26 financing statement is filed under IC 26-1-9.1-514(a), the assignee  
27 named in the initial financing statement is the secured party of  
28 record with respect to the financing statement.

29 (b) If an amendment of a financing statement that provides the  
30 name of a person as a secured party or a representative of a  
31 secured party is filed, the person named in the amendment is a  
32 secured party of record. If an amendment is filed under  
33 IC 26-1-9.1-514(b), the assignee named in the amendment is a  
34 secured party of record.

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

38 Sec. 512. (a) Subject to IC 26-1-9.1-509, a person may add or  
39 delete collateral covered by, continue or terminate the effectiveness  
40 of, or, subject to subsection (e), otherwise amend the information  
41 provided in, a financing statement by filing an amendment that:

42 (1) identifies, by its file number, the initial financing statement

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1 to which the amendment relates; and  
 2 (2) if the amendment relates to an initial financing statement  
 3 filed or recorded in a filing office described in  
 4 IC 26-1-9.1-501(a)(1), provides the information specified in  
 5 IC 26-1-9.1-502(b).  
 6 (b) Except as otherwise provided in IC 26-1-9.1-515, the filing  
 7 of an amendment does not extend the period of effectiveness of the  
 8 financing statement.  
 9 (c) A financing statement that is amended by an amendment  
 10 that adds collateral is effective as to the added collateral only from  
 11 the date of the filing of the amendment.  
 12 (d) A financing statement that is amended by an amendment  
 13 that adds a debtor is effective as to the added debtor only from the  
 14 date of the filing of the amendment.  
 15 (e) An amendment is ineffective to the extent it:  
 16 (1) purports to delete all debtors and fails to provide the name  
 17 of a debtor to be covered by the financing statement; or  
 18 (2) purports to delete all secured parties of record and fails to  
 19 provide the name of a new secured party of record.  
 20 Sec. 513. (a) A secured party shall cause the secured party of  
 21 record for a financing statement to file a termination statement for  
 22 the financing statement if the financing statement covers consumer  
 23 goods and:  
 24 (1) there is no obligation secured by the collateral covered by  
 25 the financing statement and no commitment to make an  
 26 advance, incur an obligation, or otherwise give value; or  
 27 (2) the debtor did not authorize the filing of the initial  
 28 financing statement.  
 29 (b) To comply with subsection (a), a secured party shall cause  
 30 the secured party of record to file the termination statement:  
 31 (1) within one (1) month after there is no obligation secured  
 32 by the collateral covered by the financing statement and no  
 33 commitment to make an advance, incur an obligation, or  
 34 otherwise give value; or  
 35 (2) if earlier, within twenty (20) days after the secured party  
 36 receives an authenticated demand from a debtor.  
 37 (c) In cases not governed by subsection (a), within twenty (20)  
 38 days after a secured party receives an authenticated demand from  
 39 a debtor, the secured party shall cause the secured party of record  
 40 for a financing statement to send to the debtor a termination  
 41 statement for the financing statement or file the termination  
 42 statement in the filing office if:

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1 (1) except in the case of a financing statement covering  
 2 accounts or chattel paper that has been sold or goods that are  
 3 the subject of a consignment, there is no obligation secured by  
 4 the collateral covered by the financing statement and no  
 5 commitment to make an advance, incur an obligation, or  
 6 otherwise give value;

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

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

13 (4) the debtor did not authorize the filing of the initial  
 14 financing statement.

15 (d) Except as otherwise provided in IC 26-1-9.1-510, upon the  
 16 filing of a termination statement with the filing office, the financing  
 17 statement to which the termination statement relates ceases to be  
 18 effective.

19 Sec. 514. (a) Except as otherwise provided in subsection (c), an  
 20 initial financing statement may reflect an assignment of all of the  
 21 secured party's power to authorize an amendment to the financing  
 22 statement by providing the name and mailing address of the  
 23 assignee as the name and address of the secured party.

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

28 (1) identifies, by its file number, the initial financing statement  
 29 to which it relates;

30 (2) provides the name of the assignor; and

31 (3) provides the name and mailing address of the assignee.

32 (c) An assignment of record of a security interest in a fixture  
 33 covered by a record of a mortgage which is effective as a financing  
 34 statement filed as a fixture filing under IC 26-1-9.1-502(c) may be  
 35 made only by an assignment of record of the mortgage in the  
 36 manner provided by law of this state other than IC 26-1.

37 Sec. 515. (a) Except as otherwise provided in subsections (b), (e),  
 38 (f), and (g), a filed financing statement is effective for a period of  
 39 five (5) years after the date of filing.

40 (b) Except as otherwise provided in subsections (e), (f), and (g),  
 41 an initial financing statement filed in connection with a  
 42 public-finance transaction or manufactured-home transaction is

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1 effective for a period of thirty (30) years after the date of filing if  
 2 it indicates that it is filed in connection with a public-finance  
 3 transaction or manufactured-home transaction.

4 (c) The effectiveness of a filed financing statement lapses on the  
 5 expiration of the period of its effectiveness unless, before the lapse,  
 6 a continuation statement is filed pursuant to subsection (d). Upon  
 7 lapse, a financing statement ceases to be effective and any security  
 8 interest or agricultural lien that was perfected by the financing  
 9 statement becomes unperfected, unless the security interest is  
 10 perfected without filing. If the security interest or agricultural lien  
 11 becomes unperfected upon lapse, it is considered never to have  
 12 been perfected as against a purchaser of the collateral for value.

13 (d) A continuation statement may be filed only within six (6)  
 14 months before the expiration of the five (5) year period specified in  
 15 subsection (a) or the thirty (30) year period specified in subsection  
 16 (b), whichever is applicable.

17 (e) Except as otherwise provided in IC 26-1-9.1-510, upon timely  
 18 filing of a continuation statement, the effectiveness of the initial  
 19 financing statement continues for a period of five (5) years  
 20 commencing on the day on which the financing statement would  
 21 have become ineffective in the absence of the filing. Upon the  
 22 expiration of the five (5) year period, the financing statement lapses  
 23 in the same manner as provided in subsection (c), unless, before the  
 24 lapse, another continuation statement is filed pursuant to  
 25 subsection (d). Succeeding continuation statements may be filed in  
 26 the same manner to continue the effectiveness of the initial  
 27 financing statement.

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

31 (g) A record of a mortgage that is effective as a financing  
 32 statement filed as a fixture filing under IC 26-1-9.1-502(c) remains  
 33 effective as a financing statement filed as a fixture filing until the  
 34 mortgage is released or satisfied of record or its effectiveness  
 35 otherwise terminates as to the real property.

36 Sec. 516. (a) Except as otherwise provided in subsection (b),  
 37 communication of a record to a filing office and tender of the filing  
 38 fee or acceptance of the record by the filing office constitutes filing.

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

- 41 (1) the record is not communicated by a method or medium of  
 42 communication authorized by the filing office;



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- 1 (2) an amount equal to or greater than the applicable filing fee
- 2 is not tendered;
- 3 (3) the filing office is unable to index the record because:
- 4 (A) in the case of an initial financing statement, the record
- 5 does not provide a name for the debtor;
- 6 (B) in the case of an amendment or correction statement,
- 7 the record:
- 8 (i) does not identify the initial financing statement as
- 9 required by IC 26-1-9.1-512 or IC 26-1-9.1-518, as
- 10 applicable; or
- 11 (ii) identifies an initial financing statement whose
- 12 effectiveness has lapsed under IC 26-1-9.1-515;
- 13 (C) in the case of an initial financing statement that
- 14 provides the name of a debtor identified as an individual or
- 15 an amendment that provides a name of a debtor identified
- 16 as an individual which was not previously provided in the
- 17 financing statement to which the record relates, the record
- 18 does not identify the debtor's last name; or
- 19 (D) in the case of a record recorded in the filing office
- 20 described in IC 26-1-9.1-501(a)(1), the record does not
- 21 provide a sufficient description of the real property to
- 22 which it relates;
- 23 (4) in the case of an initial financing statement or an
- 24 amendment that adds a secured party of record, the record
- 25 does not provide a name and mailing address for the secured
- 26 party of record;
- 27 (5) in the case of an initial financing statement or an
- 28 amendment that provides a name of a debtor that was not
- 29 previously provided in the financing statement to which the
- 30 amendment relates, the record does not:
- 31 (A) provide a mailing address for the debtor;
- 32 (B) indicate whether the debtor is an individual or an
- 33 organization; or
- 34 (C) if the financing statement indicates that the debtor is
- 35 an organization, provide:
- 36 (i) a type of organization for the debtor;
- 37 (ii) a jurisdiction of organization for the debtor; or
- 38 (iii) an organizational identification number for the
- 39 debtor or indicate that the debtor has none;
- 40 (6) in the case of an assignment reflected in an initial
- 41 financing statement under IC 26-1-9.1-514(a) or an
- 42 amendment filed under IC 26-1-9.1-514(b), the record does

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1 not provide a name and mailing address for the assignee; or  
2 (7) in the case of a continuation statement, the record is not  
3 filed within the six (6) month period prescribed by  
4 IC 26-1-9.1-515(d).

5 (c) For purposes of subsection (b):

- 6 (1) a record does not provide information if the filing office is
- 7 unable to read or decipher the information; and
- 8 (2) a record that does not indicate that it is an amendment or
- 9 identify an initial financing statement to which it relates, as
- 10 required by IC 26-1-9.1-512, IC 26-1-9.1-514, or
- 11 IC 26-1-9.1-518, is an initial financing statement.

12 (d) A record that is communicated to the filing office with  
13 tender of the filing fee, but which the filing office refuses to accept  
14 for a reason other than one (1) set forth in subsection (b), is  
15 effective as a filed record except as against a purchaser of the  
16 collateral which gives value in reasonable reliance upon the  
17 absence of the record from the files.

18 Sec. 517. The failure of the filing office to index a record  
19 correctly does not affect the effectiveness of the filed record.

20 Sec. 518. (a) A person may file in the filing office a correction  
21 statement with respect to a record indexed there under the person's  
22 name if the person believes that the record is inaccurate or was  
23 wrongfully filed.

24 (b) A correction statement must:

- 25 (1) identify the record to which it relates by the file number
- 26 assigned to the initial financing statement to which the record
- 27 relates;
- 28 (2) indicate that it is a correction statement; and
- 29 (3) provide the basis for the person's belief that the record is
- 30 inaccurate and indicate the manner in which the person
- 31 believes the record should be amended to cure any inaccuracy
- 32 or provide the basis for the person's belief that the record was
- 33 wrongfully filed.

34 (c) The filing of a correction statement does not affect the  
35 effectiveness of an initial financing statement or other filed record.

36 Sec. 519. (a) For each record filed in a filing office, the filing  
37 office shall:

- 38 (1) assign a unique number to the filed record;
- 39 (2) create a record that bears the number assigned to the filed
- 40 record and the date and time of filing;
- 41 (3) maintain the filed record for public inspection; and
- 42 (4) index the filed record in accordance with subsections (c),

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- 1 (d), and (e).
- 2 (b) A file number must include a digit that:
- 3 (1) is mathematically derived from or related to the other
- 4 digits of the file number; and
- 5 (2) enables the filing office to detect whether a number
- 6 communicated as the file number includes a single-digit or
- 7 transpositional error.
- 8 (c) Except as otherwise provided in subsections (d) and (e), the
- 9 filing office shall:
- 10 (1) index an initial financing statement according to the name
- 11 of the debtor and index all filed records relating to the initial
- 12 financing statement in a manner that associates with one
- 13 another an initial financing statement and all filed records
- 14 relating to the initial financing statement; and
- 15 (2) index a record that provides a name of a debtor that was
- 16 not previously provided in the financing statement to which
- 17 the record relates also according to the name that was not
- 18 previously provided.
- 19 (d) If a financing statement is filed as a fixture filing or covers
- 20 as-extracted collateral or timber to be cut, the filing office shall
- 21 index it:
- 22 (1) under the names of the debtor and of each owner of record
- 23 shown on the financing statement as if they were the
- 24 mortgagors under a mortgage of the real property described;
- 25 and
- 26 (2) to the extent that the law of this state provides for indexing
- 27 of records of mortgages under the name of the mortgagee,
- 28 under the name of the secured party as if the secured party
- 29 were the mortgagee thereunder, or, if indexing is by
- 30 description, as if the financing statement were a record of a
- 31 mortgage of the real property described.
- 32 (e) If a financing statement is filed as a fixture filing or covers
- 33 as-extracted collateral or timber to be cut, the filing office shall
- 34 index an assignment filed under IC 26-1-9.1-514(a) or an
- 35 amendment filed under IC 26-1-9.1-514(b):
- 36 (1) under the name of the assignor as grantor; and
- 37 (2) to the extent that the law of this state provides for indexing
- 38 a record of the assignment of a mortgage under the name of
- 39 the assignee, under the name of the assignee.
- 40 (f) The filing office shall maintain a capability:
- 41 (1) to retrieve a record by the name of the debtor and by the
- 42 file number assigned to the initial financing statement to

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1 which the record relates; and

2 (2) to associate and retrieve with one another an initial  
3 financing statement and each filed record relating to the  
4 initial financing statement.

5 (g) The filing office may not remove a debtor's name from the  
6 index until one (1) year after the effectiveness of a financing  
7 statement naming the debtor lapses under IC 26-1-9.1-515 with  
8 respect to all secured parties of record.

9 (h) The filing office shall perform the acts required by  
10 subsections (a) through (e) at the time and in the manner  
11 prescribed by filing-office rule, but not later than two (2) business  
12 days after the filing office receives the record in question.

13 (i) Subsections (b) and (h) do not apply to a filing office  
14 described in IC 26-1-9.1-501(a)(1).

15 **Sec. 520. (a)** A filing office shall refuse to accept a record for  
16 filing for a reason set forth in IC 26-1-9.1-516(b) and may refuse to  
17 accept a record for filing only for a reason set forth in  
18 IC 26-1-9.1-516(b).

19 (b) If a filing office refuses to accept a record for filing, it shall  
20 communicate to the person that presented the record the fact of  
21 and reason for the refusal and the date and time the record would  
22 have been filed had the filing office accepted it. The communication  
23 must be made at the time and in the manner prescribed by  
24 filing-office rule, but in the case of a filing office described in  
25 IC 26-1-9.1-501(a)(2), in no event more than two (2) business days  
26 after the filing office receives the record.

27 (c) A filed financing statement satisfying IC 26-1-9.1-502(a) and  
28 IC 26-1-9.1-502(b) is effective, even if the filing office is required to  
29 refuse to accept it for filing under subsection (a). However,  
30 IC 26-1-9.1-338 applies to a filed financing statement providing  
31 information described in IC 26-1-9.1-516(b)(5) that is incorrect at  
32 the time the financing statement is filed.

33 (d) If a record communicated to a filing office provides  
34 information that relates to more than one (1) debtor,  
35 IC 26-1-9.1-501 through IC 26-1-9.1-527 apply as to each debtor  
36 separately.

37 **Sec. 521. (a)** A filing office that accepts written records may not  
38 refuse to accept a written initial financing statement in the form  
39 specified in IC 26-1-1.5 and format except for a reason set forth in  
40 IC 26-1-9.1-516(b).

41 (b) A filing office that accepts written records may not refuse to  
42 accept a written record in the form specified in IC 26-1-1.5 and

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1 format except for a reason described in IC 26-9.1-516(b).

2 Sec. 522. (a) The filing office shall maintain a record of the  
3 information provided in a filed financing statement for at least one  
4 (1) year after the effectiveness of the financing statement has  
5 lapsed under IC 26-1-9.1-515 with respect to all secured parties of  
6 record. The record must be retrievable by using the name of the  
7 debtor and by using the file number assigned to the initial  
8 financing statement to which the record relates.

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

15 Sec. 523. (a) If a person that files a written record requests an  
16 acknowledgment of the filing, the filing office shall send to the  
17 person an image of the record showing the number assigned to the  
18 record pursuant to IC 26-1-9.1-519(a)(1) and the date and time of  
19 the filing of the record. However, if the person furnishes a copy of  
20 the record to the filing office, the filing office may instead:

- 21 (1) note upon the copy the number assigned to the record  
22 pursuant to IC 26-1-9.1-519(a)(1) and the date and time of the  
23 filing of the record; and  
24 (2) send the copy to the person.

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

- 28 (1) the information in the record;  
29 (2) the number assigned to the record pursuant to  
30 IC 26-1-9.1-519(a)(1); and  
31 (3) the date and time of the filing of the record.

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

- 35 (1) whether there is on file on a date and time specified by the  
36 filing office, but not a date earlier than three (3) business days  
37 before the filing office receives the request, any financing  
38 statement that:  
39 (A) designates a particular debtor or, if the request so  
40 states, designates a particular debtor at the address  
41 specified in the request;  
42 (B) has not lapsed under IC 26-1-9.1-515 with respect to all



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1           secured parties of record; and  
 2           (C) if the request so states, has lapsed under  
 3           IC 26-1-9.1-515 and a record of which is maintained by the  
 4           filing office under IC 26-1-9.1-522(a);  
 5           (2) the date and time of filing of each financing statement; and  
 6           (3) the information provided in each financing statement.  
 7           (d) In complying with its duty under subsection (c), the filing  
 8           office may communicate information in any medium. However, if  
 9           requested, the filing office shall communicate information by  
 10          issuing its written certificate.  
 11          (e) The filing office shall perform the acts required by  
 12          subsections (a) through (d) at the time and in the manner  
 13          prescribed by filing-office rule, but not later than two (2) business  
 14          days after the filing office receives the request.  
 15          (f) At least weekly, the secretary of state shall offer to sell or  
 16          license to the public on a nonexclusive basis, in bulk, copies of all  
 17          records filed in it under this part, in every medium from time to  
 18          time available to the filing office.  
 19          Sec. 524. Delay by the filing office beyond a time limit  
 20          prescribed in IC 26-1-9.1-501 through IC 26-1-9.1-527 is excused  
 21          if:  
 22               (1) the delay is caused by interruption of communication or  
 23               computer facilities, war, emergency conditions, failure of  
 24               equipment, or other circumstances beyond control of the  
 25               filing office; and  
 26               (2) the filing office exercises reasonable diligence under the  
 27               circumstances.  
 28          Sec. 525. (a) Except as otherwise provided in subsection (e), the  
 29          fee for filing and indexing a record under this part, other than an  
 30          initial financing statement of the kind described in  
 31          IC 26-1-9.1-502(c), is:  
 32               (1) four dollars (\$4) if the record is communicated in writing  
 33               and consists of one (1) or two (2) pages;  
 34               (2) eight dollars (\$8) if the record is communicated in writing  
 35               and consists of more than two (2) pages; and  
 36               (3) four dollars (\$4) if the record is communicated by another  
 37               medium authorized by filing-office rule.  
 38          (b) Except as otherwise provided in subsection (e), the fee for  
 39          filing and indexing an initial financing statement of the kind  
 40          described in IC 26-1-9.1-502(c) is the amount specified in  
 41          subsection (c), if applicable, plus:  
 42               (1) eight dollars (\$8) if the financing statement indicates that

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1 it is filed in connection with a public-finance transaction; and  
 2 (2) eight dollars (\$8) if the financing statement indicates that  
 3 it is filed in connection with a manufactured-home  
 4 transaction.

5 (c) Except as otherwise provided in subsection (e), if a record is  
 6 communicated in writing, the fee for each name more than two (2)  
 7 required to be indexed is one dollar (\$1).

8 (d) The fee for responding to a request for information from the  
 9 filing office, including for issuing a certificate showing whether  
 10 there is on file any financing statement naming a particular debtor,  
 11 is:

12 (1) one dollar (\$1) if the request is communicated in writing;  
 13 and

14 (2) one dollar (\$1) if the request is communicated by another  
 15 medium authorized by filing-office rule.

16 (e) This section does not require a fee with respect to a record  
 17 of a mortgage which is effective as a financing statement filed as a  
 18 fixture filing or as a financing statement covering as-extracted  
 19 collateral or timber to be cut under IC 26-1-9.1-502(c). However,  
 20 the recording and satisfaction fees that otherwise would be  
 21 applicable to the record of the mortgage apply.

22 Sec. 526. (a) The secretary of state shall adopt and publish rules  
 23 to implement this article. The filing-office rules must be consistent  
 24 with this chapter.

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

33 (1) consult with filing offices in other jurisdictions that enact  
 34 substantially this part;

35 (2) consult the most recent version of the Model Rules  
 36 promulgated by the International Association of Corporate  
 37 Administrators or any successor organization; and

38 (3) take into consideration the rules and practices of, and the  
 39 technology used by, filing offices in other jurisdictions that  
 40 enact substantially this part.

41 Sec. 527. The secretary of state shall report annually to the  
 42 general assembly on the operation of the filing office. The report

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must contain a statement of the extent to which:

- (1) the filing-office rules are not in harmony with the rules of filing offices in other jurisdictions that enact substantially IC 26-1-9.1-501 through IC 26-1-9.1-527 and the reasons for these variations; and
- (2) the filing-office rules are not in harmony with the most recent version of the Model Rules promulgated by the International Association of Corporate Administrators, or any successor organization, and the reasons for these variations.

Sec. 601. (a) After default, a secured party has the rights provided in this section through IC 26-1-9.1-628 and, except as otherwise provided in IC 26-1-9.1-602, those provided by agreement of the parties. A secured party:

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

(b) A secured party in possession of collateral or control of collateral under IC 26-1-9.1-104, IC 26-1-9.1-105, IC 26-1-9.1-106, or IC 26-1-9.1-107 has the rights and duties provided in IC 26-1-9.1-207.

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

(d) Except as otherwise provided in subsection (g) and IC 26-1-9.1-605, after default, a debtor and an obligor have the rights provided in IC 26-1-9.1-601 through IC 26-1-9.1-628 and by agreement of the parties.

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

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

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

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1 requirements of this article.

2 (g) Except as otherwise provided in IC 26-1-9.1-607(c),  
3 IC 26-1-9.1-601 through IC 26-1-9.1-628 impose no duties upon a  
4 secured party that is a consignor or is a buyer of accounts, chattel  
5 paper, payment intangibles, or promissory notes.

6 Sec. 602. Except as otherwise provided in IC 26-1-9.1-624, to the  
7 extent that they give rights to a debtor or obligor and impose duties  
8 on a secured party, the debtor or obligor may not waive or vary the  
9 rules stated in the following listed sections (except that a secondary  
10 obligor may waive or vary the rules listed in subdivisions (1), (2),  
11 (3), (4), and (7) below):

12 (1) IC 26-1-9.1-207(b)(4)(C), which deals with use and  
13 operation of the collateral by the secured party.

14 (2) IC 26-1-9.1-210, which deals with requests for an  
15 accounting and requests concerning a list of collateral and  
16 statement of account.

17 (3) IC 26-1-9.1-607(c), which deals with collection and  
18 enforcement of collateral.

19 (4) IC 26-1-9.1-608(a) and IC 26-1-9.1-615(c) to the extent that  
20 they deal with application or payment of noncash proceeds of  
21 collection, enforcement, or disposition.

22 (5) IC 26-1-9.1-608(a) and IC 26-1-9.1-615(d) to the extent  
23 that they require accounting for or payment of surplus  
24 proceeds of collateral.

25 (6) IC 26-1-9.1-609 to the extent that it imposes upon a  
26 secured party that takes possession of collateral without  
27 judicial process the duty to do so without breach of the peace.

28 (7) IC 26-1-9.1-610(b), IC 26-1-9.1-611, IC 26-1-9.1-613, and  
29 IC 26-1-9.1-614, which deal with disposition of collateral.

30 (8) IC 26-1-9.1-615(f), which deals with calculation of a  
31 deficiency or surplus when a disposition is made to the  
32 secured party, a person related to the secured party, or a  
33 secondary obligor.

34 (9) IC 26-1-9.1-616, which deals with explanation of the  
35 calculation of a surplus or deficiency.

36 (10) IC 26-1-9.1-620, IC 26-1-9.1-621, and IC 26-1-9.1-622,  
37 which deal with acceptance of collateral in satisfaction of  
38 obligation.

39 (11) IC 26-1-9.1-623, which deals with redemption of  
40 collateral.

41 (12) IC 26-1-9.1-624, which deals with permissible waivers.

42 (13) IC 26-1-9.1-625 and IC 26-1-9.1-626, which deal with the



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1           secured party's liability for failure to comply with this article.

2           **Sec. 603. (a)** The parties may determine by agreement the  
3 standards measuring the fulfillment of the rights of a debtor or  
4 obligor and the duties of a secured party under a rule stated in  
5 IC 26-1-9.1-602 if the standards are not manifestly unreasonable.

6           (b) Subsection (a) does not apply to the duty under  
7 IC 26-1-9.1-609 to refrain from breaching the peace.

8           **Sec. 604. (a)** If a security agreement covers both personal and  
9 real property, a secured party may proceed:

10           (1) under IC 26-1-9.1-601 through IC 26-1-9.1-628 as to the  
11 personal property without prejudicing any rights with respect  
12 to the real property; or

13           (2) as to both the personal property and the real property in  
14 accordance with the rights with respect to the real property,  
15 in which case the other provisions of IC 26-1-9.1-601 through  
16 IC 26-1-9.1-628 do not apply.

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

19           (1) under IC 26-1-9.1-601 through IC 26-1-9.1-628; or

20           (2) in accordance with the rights with respect to real property,  
21 in which case the other provisions of IC 26-1-9.1-601 through  
22 IC 26-1-9.1-628 do not apply.

23           (c) Subject to the other provisions of IC 26-1-9.1-601 through  
24 IC 26-1-9.1-628, if a secured party holding a security interest in  
25 fixtures has priority over all owners and encumbrancers of the real  
26 property, the secured party, after default, may remove the  
27 collateral from the real property.

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

38           **Sec. 605.** A secured party does not owe a duty based on its status  
39 as secured party:

40           (1) to a person that is a debtor or obligor, unless the secured  
41 party knows:

42           (A) that the person is a debtor or obligor;



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

Sec. 606. For purposes of IC 26-1-9.1-601 through IC 26-1-9.1-628, a default occurs in connection with an agricultural lien at the time the secured party becomes entitled to enforce the lien in accordance with the statute under which it was created.

Sec. 607. (a) If so agreed, and in any event after default, a secured party:

- (1) may notify an account debtor or other person obligated on collateral to make payment or otherwise render performance to or for the benefit of the secured party;
- (2) may take any proceeds to which the secured party is entitled under IC 26-1-9.1-315;
- (3) may enforce the obligations of an account debtor or other person obligated on collateral and exercise the rights of the debtor with respect to the obligation of the account debtor or other person obligated on collateral to make payment or otherwise render performance to the debtor, and with respect to any property that secures the obligations of the account debtor or other person obligated on the collateral;
- (4) if it holds a security interest in a deposit account perfected by control under IC 26-1-9.1-104(a)(1), may apply the balance of the deposit account to the obligation secured by the deposit account; and
- (5) if it holds a security interest in a deposit account perfected by control under IC 26-1-9.1-104(a)(2) or IC 26-1-9.1-104-(a)(3), may instruct the bank to pay the balance of the deposit account to or for the benefit of the secured party.

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

- (1) a copy of the security agreement that creates or provides for a security interest in the obligation secured by the mortgage; and
- (2) the secured party's sworn affidavit in recordable form stating that:

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- 1                   (A) a default has occurred; and
- 2                   (B) the secured party is entitled to enforce the mortgage
- 3                   nonjudicially.
- 4           (c) A secured party shall proceed in a commercially reasonable
- 5           manner if the secured party:
- 6               (1) undertakes to collect from or enforce an obligation of an
- 7               account debtor or other person obligated on collateral; and
- 8               (2) is entitled to charge back uncollected collateral or
- 9               otherwise to full or limited recourse against the debtor or a
- 10              secondary obligor.
- 11           (d) A secured party may deduct from the collections made
- 12           pursuant to subsection (c) reasonable expenses of collection and
- 13           enforcement, including reasonable attorney's fees and legal
- 14           expenses incurred by the secured party.
- 15           (e) This section does not determine whether an account debtor,
- 16           bank, or other person obligated on collateral owes a duty to a
- 17           secured party.
- 18           Sec. 608. (a) If a security interest or agricultural lien secures
- 19           payment or performance of an obligation, the following rules
- 20           apply:
- 21               (1) A secured party shall apply or pay over for application the
- 22               cash proceeds of collection or enforcement under this section
- 23               in the following order to:
- 24                   (A) the reasonable expenses of collection and enforcement
- 25                   and, to the extent provided for by agreement and not
- 26                   prohibited by law, reasonable attorney's fees and legal
- 27                   expenses incurred by the secured party;
- 28                   (B) the satisfaction of obligations secured by the security
- 29                   interest or agricultural lien under which the collection or
- 30                   enforcement is made; and
- 31                   (C) the satisfaction of obligations secured by any
- 32                   subordinate security interest in or other lien on the
- 33                   collateral subject to the security interest or agricultural
- 34                   lien under which the collection or enforcement is made if
- 35                   the secured party receives an authenticated demand for
- 36                   proceeds before distribution of the proceeds is completed.
- 37               (2) If requested by a secured party, a holder of a subordinate
- 38               security interest or other lien shall furnish reasonable proof
- 39               of the interest or lien within a reasonable time. Unless the
- 40               holder complies, the secured party need not comply with the
- 41               holder's demand under subdivision (1)(C).
- 42               (3) A secured party need not apply or pay over for application

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1 noncash proceeds of collection and enforcement under this  
2 section unless the failure to do so would be commercially  
3 unreasonable. A secured party that applies or pays over for  
4 application noncash proceeds shall do so in a commercially  
5 reasonable manner.

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

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

12 Sec. 609. (a) After default, a secured party:

- 13 (1) may take possession of the collateral; and
- 14 (2) without removal, may render equipment unusable and  
15 dispose of collateral on a debtor's premises under  
16 IC 26-1-9.1-610.

17 (b) A secured party may proceed under subsection (a):

- 18 (1) pursuant to judicial process; or
- 19 (2) without judicial process, if it proceeds without breach of  
20 the peace.

21 (c) If so agreed, and in any event after default, a secured party  
22 may require the debtor to assemble the collateral and make it  
23 available to the secured party at a place to be designated by the  
24 secured party which is reasonably convenient to both parties.

25 Sec. 610. (a) After default, a secured party may sell, lease,  
26 license, or otherwise dispose of any or all of the collateral in its  
27 present condition or following any commercially reasonable  
28 preparation or processing.

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

35 (c) A secured party may purchase collateral:

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

40 (d) A contract for sale, lease, license, or other disposition  
41 includes the warranty relating to title, but does not include, unless  
42 explicitly extended in writing, any warranty relating to possession,

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1 quiet enjoyment, merchantability, fitness for a specific purpose, or  
2 any other warranty which by operation of law would otherwise  
3 accompany a voluntary disposition of property of the kind subject  
4 to the contract.

5 Sec. 611. (a) As used in this section, "notification date" means  
6 the earlier of the date on which:

- 7 (1) a secured party sends to the debtor and any secondary
- 8 obligor an authenticated notification of disposition; or
- 9 (2) the debtor and any secondary obligor waive the right to  
10 notification.

11 (b) Except as otherwise provided in subsection (d), a secured  
12 party that disposes of collateral under IC 26-1-9.1-610 shall send  
13 to the persons specified in subsection (c) a reasonable authenticated  
14 notification of disposition.

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

- 17 (1) the debtor;
- 18 (2) any secondary obligor; and
- 19 (3) if the collateral is other than consumer goods:
  - 20 (A) any other person from which the secured party has
  - 21 received, before the notification date, an authenticated
  - 22 notification of a claim of an interest in the collateral;
  - 23 (B) any other secured party or lienholder that, ten (10)
  - 24 days before the notification date, held a security interest in
  - 25 or other lien on the collateral perfected by the filing of a
  - 26 financing statement that:
    - 27 (i) identified the collateral;
    - 28 (ii) was indexed under the debtor's name as of that date;
    - 29 and
    - 30 (iii) was filed in the office in which to file a financing
    - 31 statement against the debtor covering the collateral as of
    - 32 that date; and
    - 33 (C) any other secured party that, ten (10) days before the
    - 34 notification date, held a security interest in the collateral
    - 35 perfected by compliance with a statute, regulation, or
    - 36 treaty described in IC 26-1-9.1-311(a).

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

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

- 42 (1) not later than twenty (20) days or earlier than thirty (30)

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1 days before the notification date, the secured party requests,  
 2 in a commercially reasonable manner, information  
 3 concerning financing statements indexed under the debtor's  
 4 name in the office indicated in subsection (c)(3)(B); and  
 5 (2) before the notification date, the secured party:  
 6 (A) did not receive a response to the request for  
 7 information; or  
 8 (B) received a response to the request for information and  
 9 sent an authenticated notification of disposition to each  
 10 secured party or other lienholder named in that response  
 11 whose financing statement covered the collateral.

12 **Sec. 612. (a)** Except as otherwise provided in subsection (b),  
 13 whether a notification is sent within a reasonable time is a question  
 14 of fact.

15 (b) A notification of disposition sent after default and ten (10)  
 16 days or more before the earliest time of disposition set forth in the  
 17 notification is sent within a reasonable time before the disposition.

18 **Sec. 613.** Except in a consumer-goods transaction, the following  
 19 rules apply:  
 20 (1) The contents of a notification of disposition are sufficient  
 21 if the notification:  
 22 (A) describes the debtor and the secured party;  
 23 (B) describes the collateral that is the subject of the  
 24 intended disposition;  
 25 (C) states the method of intended disposition;  
 26 (D) states that the debtor is entitled to an accounting of the  
 27 unpaid indebtedness and states the charge, if any, for an  
 28 accounting; and  
 29 (E) states the time and place of a public sale or the time  
 30 after which any other disposition is to be made.

31 (2) Whether the contents of a notification that lacks any of the  
 32 information specified in subdivision (1) are nevertheless  
 33 sufficient is a question of fact.

34 (3) The contents of a notification providing substantially the  
 35 information specified in subdivision (1) are sufficient, even if  
 36 the notification includes:  
 37 (A) information not specified by that subdivision; or  
 38 (B) minor errors that are not seriously misleading.

39 (4) A particular phrasing of the notification is not required.

40 (5) The following form of notification and the form appearing  
 41 in IC 26-1-9.1-614(3), when completed, each provides  
 42 sufficient information:

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**NOTIFICATION OF DISPOSITION OF COLLATERAL**

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

**From:** Name, address, and telephone number of secured party

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

**(For a public disposition:)**

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

**Day and Date:** \_\_

**Time:** \_\_

**Place:** \_\_

**(For a private disposition:)**

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

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

(End of Form)

**Sec. 614.** In a consumer-goods transaction, the following rules apply:

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

(A) The information specified in IC 26-1-9.1-613(1).

(B) A description of any liability for a deficiency of the person to which the notification is sent.

(C) A telephone number from which the amount that must be paid to the secured party to redeem the collateral under IC 26-1-9.1-623 is available.

(D) A telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available.

(2) A particular phrasing of the notification is not required.

(3) The following form of notification, when completed, provides sufficient information:

Name and address of secured party

Date

**NOTICE OF OUR PLAN TO SELL PROPERTY**

Name and address of any obligor who is also a debtor

Subject: Identification of Transaction



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1 We have your describe collateral, because you broke promises in  
 2 our agreement.  
 3 (For a public disposition:)  
 4 We will sell describe collateral at public sale. A sale could include  
 5 a lease or license. The sale will be held as follows:  
 6 Date: \_\_  
 7 Time: \_\_  
 8 Place: \_\_  
 9 You may attend the sale and bring bidders if you want.  
 10 (For a private disposition:)  
 11 We will sell describe collateral at private sale sometime after date.  
 12 A sale could include a lease or license.  
 13 The money that we get from the sale (after paying our costs) will  
 14 reduce the amount you owe. If we get less money than you owe, you  
 15 will or will not, as applicable still owe us the difference. If we get  
 16 more money than you owe, you will get the extra money, unless we  
 17 must pay it to someone else.  
 18 You can get the property back at any time before we sell it by  
 19 paying us the full amount you owe (not just the past due payments),  
 20 including our expenses. To learn the exact amount you must pay,  
 21 call us at telephone number.  
 22 If you want us to explain to you in writing how we have figured the  
 23 amount that you owe us, you may call us at telephone number or  
 24 write us at secured party's address and request a written  
 25 explanation. We will charge you \$ for the explanation if we sent  
 26 you another written explanation of the amount you owe us within  
 27 the last six (6) months.  
 28 If you need more information about the sale call us at telephone  
 29 number or write us at secured party's address.  
 30 We are sending this notice to the following other people who have  
 31 an interest in describe collateral or who owe money under your  
 32 agreement:  
 33 Names of all other debtors and obligors, if any.  
 34 (End of Form)  
 35 (4) A notification in the form of subdivision (3) is sufficient,  
 36 even if additional information appears at the end of the form.  
 37 (5) A notification in the form of subdivision (3) is sufficient,  
 38 even if it includes errors in information not required by  
 39 subdivision (1), unless the error is misleading with respect to  
 40 rights arising under this article.  
 41 (6) If a notification under this section is not in the form of  
 42 subdivision (3), law other than this article determines the

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effect of including information not required by subdivision (1).

**Sec. 615. (a) A secured party shall apply or pay over for application the cash proceeds of disposition in the following order to:**

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

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

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

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

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

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

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

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

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

**(1) unless subsection (a)(4) requires the secured party to apply**

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- 1           or pay over cash proceeds to a consignor, the secured party
- 2           shall account to and pay a debtor for any surplus; and
- 3           (2) the obligor is liable for any deficiency.
- 4           (e) If the underlying transaction is a sale of accounts, chattel
- 5           paper, payment intangibles, or promissory notes:
- 6           (1) the debtor is not entitled to any surplus; and
- 7           (2) the obligor is not liable for any deficiency.
- 8           (f) The surplus or deficiency following a disposition is calculated
- 9           based on the amount of proceeds that would have been realized in
- 10          a disposition complying with IC 26-1-9.1-601 through
- 11          IC 26-1-9.1-628 to a transferee other than the secured party, a
- 12          person related to the secured party, or a secondary obligor if:
- 13          (1) the transferee in the disposition is the secured party, a
- 14          person related to the secured party, or a secondary obligor;
- 15          and
- 16          (2) the amount of proceeds of the disposition is significantly
- 17          below the range of proceeds that a complying disposition to a
- 18          person other than the secured party, a person related to the
- 19          secured party, or a secondary obligor would have brought.
- 20          (g) A secured party that receives cash proceeds of a disposition
- 21          in good faith and without knowledge that the receipt violates the
- 22          rights of the holder of a security interest or other lien that is not
- 23          subordinate to the security interest or agricultural lien under
- 24          which the disposition is made:
- 25          (1) takes the cash proceeds free of the security interest or
- 26          other lien;
- 27          (2) is not obligated to apply the proceeds of the disposition to
- 28          the satisfaction of obligations secured by the security interest
- 29          or other lien; and
- 30          (3) is not obligated to account to or pay the holder of the
- 31          security interest or other lien for any surplus.
- 32          Sec. 616. (a) As used in this section:
- 33          (1) "Explanation" means a writing that:
- 34                (A) states the amount of the surplus or deficiency;
- 35                (B) provides an explanation in accordance with subsection
- 36                (c) of how the secured party calculated the surplus or
- 37                deficiency;
- 38                (C) states, if applicable, that future debits, credits, charges,
- 39                including additional credit service charges or interest,
- 40                rebates, and expenses may affect the amount of the surplus
- 41                or deficiency; and
- 42                (D) provides a telephone number or mailing address from

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- 1           which additional information concerning the transaction  
2           is available.
- 3           (2) "Request" means a record:
- 4           (A) authenticated by a debtor or consumer obligor;
- 5           (B) requesting that the recipient provide an explanation;
- 6           and
- 7           (C) sent after disposition of the collateral under  
8           IC 26-1-9.1-610.
- 9           (b) In a consumer-goods transaction in which the debtor is  
10          entitled to a surplus or a consumer obligor is liable for a deficiency  
11          under IC 26-1-9.1-615, the secured party shall:
- 12          (1) send an explanation to the debtor or consumer obligor, as  
13          applicable, after the disposition and:
- 14           (A) before or when the secured party accounts to the  
15           debtor and pays any surplus or first makes written  
16           demand on the consumer obligor after the disposition for  
17           payment of the deficiency; and
- 18           (B) within fourteen (14) days after receipt of a request; or
- 19          (2) in the case of a consumer obligor who is liable for a  
20          deficiency, within fourteen (14) days after receipt of a request,  
21          send to the consumer obligor a record waiving the secured  
22          party's right to a deficiency.
- 23          (c) To comply with subsection (a)(1)(B), a writing must provide  
24          the following information in the following order:
- 25           (1) the aggregate amount of obligations secured by the  
26           security interest under which the disposition was made, and,  
27           if the amount reflects a rebate of unearned interest or credit  
28           service charge, an indication of that fact, calculated as of a  
29           specified date:
- 30           (A) if the secured party takes or receives possession of the  
31           collateral after default, not more than thirty-five (35) days  
32           before the secured party takes or receives possession; or
- 33           (B) if the secured party takes or receives possession of the  
34           collateral before default or does not take possession of the  
35           collateral, not more than thirty-five (35) days before the  
36           disposition;
- 37           (2) the amount of proceeds of the disposition;
- 38           (3) the aggregate amount of the obligations after deducting  
39           the amount of proceeds;
- 40           (4) the amount, in the aggregate or by type, and types of  
41           expenses, including expenses of retaking, holding, preparing  
42           for disposition, processing, and disposing of the collateral, and

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1 attorney's fees secured by the collateral that are known to the  
2 secured party and relate to the current disposition;

3 (5) the amount, in the aggregate or by type, and types of  
4 credits, including rebates of interest or credit service charges,  
5 to which the obligor is known to be entitled and that are not  
6 reflected in the amount in paragraph (1); and

7 (6) the amount of the surplus or deficiency.

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

12 (e) A debtor or consumer obligor is entitled without charge to  
13 one (1) response to a request under this section during any six (6)  
14 month period in which the secured party did not send to the debtor  
15 or consumer obligor an explanation pursuant to subsection (b)(1).  
16 The secured party may require payment of a charge not exceeding  
17 twenty-five dollars (\$25) for each additional response.

18 **Sec. 617. (a) A secured party's disposition of collateral after  
19 default:**

20 (1) transfers to a transferee for value all of the debtor's rights  
21 in the collateral;

22 (2) discharges the security interest under which the  
23 disposition is made; and

24 (3) discharges any subordinate security interest or other  
25 subordinate lien.

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

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

33 (1) the debtor's rights in the collateral;

34 (2) the security interest or agricultural lien under which the  
35 disposition is made; and

36 (3) any security interest or other lien.

37 **Sec. 618. (a) A secondary obligor acquires the rights and  
38 becomes obligated to perform the duties of the secured party after  
39 the secondary obligor:**

40 (1) receives an assignment of a secured obligation from the  
41 secured party;

42 (2) receives a transfer of collateral from the secured party and

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1 agrees to accept the rights and assume the duties of the  
2 secured party; or  
3 (3) is subrogated to the rights of a secured party with respect  
4 to collateral.

5 (b) An assignment, transfer, or subrogation described in  
6 subsection (a):

- 7 (1) is not a disposition of collateral under IC 26-1-9.1-610; and
- 8 (2) relieves the secured party of further duties under this  
9 article.

10 Sec. 619. (a) In this section, "transfer statement" means a  
11 record authenticated by a secured party stating:

- 12 (1) that the debtor has defaulted in connection with an  
13 obligation secured by specified collateral;
- 14 (2) that the secured party has exercised its post-default  
15 remedies with respect to the collateral;
- 16 (3) that, by reason of the exercise, a transferee has acquired  
17 the rights of the debtor in the collateral; and
- 18 (4) the name and mailing address of the secured party, debtor,  
19 and transferee.

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

- 27 (1) accept the transfer statement;
- 28 (2) promptly amend its records to reflect the transfer; and
- 29 (3) if applicable, issue a new appropriate certificate of title in  
30 the name of transferee.

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

35 Sec. 620. (a) Except as otherwise provided in subsection (g), a  
36 secured party may accept collateral in full or partial satisfaction of  
37 the obligation it secures only if:

- 38 (1) the debtor consents to the acceptance under subsection (c);
- 39 (2) the secured party does not receive, within the time set  
40 forth in subsection (d), a notification of objection to the  
41 proposal authenticated by:

42 (A) a person to which the secured party was required to

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- 1           send a proposal under IC 26-1-9.1-621; or
- 2           (B) any other person, other than the debtor, holding an
- 3           interest in the collateral subordinate to the security
- 4           interest that is the subject of the proposal;
- 5           (3) if the collateral is consumer goods, the collateral is not in
- 6           the possession of the debtor when the debtor consents to the
- 7           acceptance; and
- 8           (4) subsection (e) does not require the secured party to dispose
- 9           of the collateral or the debtor waives the requirement
- 10          pursuant to IC 26-1-9.1-624.
- 11          (b) A purported or apparent acceptance of collateral under this
- 12          section is ineffective unless:
- 13           (1) the secured party consents to the acceptance in an
- 14           authenticated record or sends a proposal to the debtor; and
- 15           (2) the conditions of subsection (a) are met.
- 16          (c) For purposes of this section:
- 17           (1) a debtor consents to an acceptance of collateral in partial
- 18           satisfaction of the obligation it secures only if the debtor
- 19           agrees to the terms of the acceptance in a record
- 20           authenticated after default; and
- 21           (2) a debtor consents to an acceptance of collateral in full
- 22           satisfaction of the obligation it secures only if the debtor
- 23           agrees to the terms of the acceptance in a record
- 24           authenticated after default or the secured party:
- 25           (A) sends to the debtor after default a proposal that is
- 26           unconditional or subject only to a condition that collateral
- 27           not in the possession of the secured party be preserved or
- 28           maintained;
- 29           (B) in the proposal, proposes to accept collateral in full
- 30           satisfaction of the obligation it secures; and
- 31           (C) does not receive a notification of objection
- 32           authenticated by the debtor within twenty (20) days after
- 33           the proposal is sent.
- 34          (d) To be effective under subsection (a)(2), a notification of
- 35          objection must be received by the secured party:
- 36           (1) in the case of a person to which the proposal was sent
- 37           pursuant to IC 26-1-9.1-621, within twenty (20) days after
- 38           notification was sent to that person; and
- 39           (2) in other cases:
- 40           (A) within twenty (20) days after the last notification was
- 41           sent pursuant to IC 26-1-9.1-621; or
- 42           (B) if a notification was not sent, before the debtor

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1 consents to the acceptance under subsection (c).  
 2 (e) A secured party that has taken possession of collateral shall  
 3 dispose of the collateral pursuant to IC 26-1-9.1-610 within the  
 4 time specified in subsection (f) if:  
 5 (1) sixty percent (60%) of the cash price has been paid in the  
 6 case of a purchase-money security interest in consumer goods;  
 7 or  
 8 (2) sixty percent (60%) of the principal amount of the  
 9 obligation secured has been paid in the case of a  
 10 non-purchase-money security interest in consumer goods.  
 11 (f) To comply with subsection (e), the secured party shall dispose  
 12 of the collateral:  
 13 (1) within ninety (90) days after taking possession; or  
 14 (2) within any longer period to which the debtor and all  
 15 secondary obligors have agreed in an agreement to that effect  
 16 entered into and authenticated after default.  
 17 (g) In a consumer transaction, a secured party may not accept  
 18 collateral in partial satisfaction of the obligation it secures.  
 19 Sec. 621. (a) A secured party that desires to accept collateral in  
 20 full or partial satisfaction of the obligation it secures shall send its  
 21 proposal to:  
 22 (1) any person from which the secured party has received,  
 23 before the debtor consented to the acceptance, an  
 24 authenticated notification of a claim of an interest in the  
 25 collateral;  
 26 (2) any other secured party or lienholder that, ten (10) days  
 27 before the debtor consented to the acceptance, held a security  
 28 interest in or other lien on the collateral perfected by the filing  
 29 of a financing statement that:  
 30 (A) identified the collateral;  
 31 (B) was indexed under the debtor's name as of that date;  
 32 and  
 33 (C) was filed in the office or offices in which to file a  
 34 financing statement against the debtor covering the  
 35 collateral as of that date; and  
 36 (3) any other secured party that, ten (10) days before the  
 37 debtor consented to the acceptance, held a security interest in  
 38 the collateral perfected by compliance with a statute,  
 39 regulation, or treaty described in IC 26-1-9.1-311(a).  
 40 (b) A secured party that desires to accept collateral in partial  
 41 satisfaction of the obligation it secures shall send its proposal to  
 42 any secondary obligor in addition to the persons described in

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subsection (a).

**Sec. 622. (a) A secured party's acceptance of collateral in full or partial satisfaction of the obligation it secures:**

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

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

**Sec. 623. (a) A debtor, any secondary obligor, or any other secured party or lienholder may redeem collateral.**

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

- (1) fulfillment of all obligations secured by the collateral; and**
- (2) the reasonable expenses and attorney's fees described in IC 26-1-9.1-615(a)(1).**

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

- (1) has collected collateral under IC 26-1-9.1-607;**
- (2) has disposed of collateral or entered into a contract for its disposition under IC 26-1-9.1-610; or**
- (3) has accepted collateral in full or partial satisfaction of the obligation it secures under IC 26-1-9.1-622.**

**Sec. 624. (a) A debtor may waive the right to notification of disposition of collateral under IC 26-1-9.1-611 only by an agreement to that effect entered into and authenticated after default.**

**(b) A debtor may waive the right to require disposition of collateral under IC 26-1-9.1-620(e) only by an agreement to that effect entered into and authenticated after default.**

**(c) Except in a consumer-goods transaction, a debtor may waive the right to redeem collateral under IC 26-1-9.1-623 only by an agreement to that effect entered into and authenticated after default.**

**(d) A secondary obligor may waive any right or defense, before or after default, unless the waiver is explicitly prohibited by this chapter.**

**Sec. 625. (a) If it is established that a secured party is not proceeding in accordance with this article, a court may order or**

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1       restrain collection, enforcement, or disposition of collateral on  
2       appropriate terms and conditions.

3       (b) Subject to subsections (c), and (d), a secured party is liable  
4       for damages in the amount of any loss caused by a failure to  
5       comply with this article. Loss caused by a failure to comply with a  
6       request under IC 26-1-9.1-210 may include loss resulting from the  
7       debtor's inability to obtain, or increased costs of, alternative  
8       financing.

9       (c) Except as otherwise provided in IC 26-1-9.1-628:

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

14       (2) if the collateral is consumer goods, a person that was a  
15       debtor or a secondary obligor at the time a secured party  
16       failed to comply with IC 26-1-9.1-601 through IC 26-1-9.1-628  
17       may recover for that failure in any event an amount not less  
18       than the credit service charge plus ten percent (10%) of the  
19       principal amount of the obligation or the time-price  
20       differential plus ten percent (10%) of the cash price.

21       (d) A debtor whose deficiency is eliminated under  
22       IC 26-1-9.1-626 may recover damages for the loss of any surplus.  
23       However, a debtor or secondary obligor whose deficiency is  
24       eliminated or reduced under IC 26-1-9.1-626 may not otherwise  
25       recover under subsection (b) for noncompliance with the provisions  
26       of IC 26-1-9.1-601 through IC 26-1-9.1-628 relating to collection,  
27       enforcement, disposition, or acceptance.

28       (e) If a secured party fails to comply with a request regarding  
29       a list of collateral or a statement of account under IC 26-1-9.1-210,  
30       the secured party may claim a security interest only as shown in  
31       the statement included in the request as against a person that is  
32       reasonably misled by the failure.

33       Sec. 626. In an action arising from a transaction in which the  
34       amount of a deficiency or surplus is in issue, the following rules  
35       apply:

36       (1) A secured party need not prove compliance with the  
37       provisions of IC 26-1-9.1-601 through IC 26-1-9.1-628 relating  
38       to collection, enforcement, disposition, or acceptance unless  
39       the debtor or a secondary obligor places the secured party's  
40       compliance in issue.

41       (2) If the secured party's compliance is placed in issue, the  
42       secured party has the burden of establishing that the

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collection, enforcement, disposition, or acceptance was conducted in accordance with this part.

(3) Except as otherwise provided in IC 26-1-9.1-628, if a secured party fails to prove that the collection, enforcement, disposition, or acceptance was conducted in accordance with the provisions of IC 26-1-9.1-601 through IC 26-1-9.1-628 relating to collection, enforcement, disposition, or acceptance, the liability of a debtor or a secondary obligor for a deficiency is limited to an amount by which the sum of the secured obligation, expenses, and attorney's fees exceeds the greater of:

(A) the proceeds of the collection, enforcement, disposition, or acceptance; or

(B) the amount of proceeds that would have been realized had the noncomplying secured party proceeded in accordance with the provisions of IC 26-1-9.1-601 through IC 26-1-9.1-628 relating to collection, enforcement, disposition, or acceptance.

(4) For purposes of subdivision (3)(B), the amount of proceeds that would have been realized is equal to the sum of the secured obligation, expenses, and attorney's fees unless the secured party proves that the amount is less than that sum.

(5) If a deficiency or surplus is calculated under IC 26-1-9.1-615(f), the debtor or obligor has the burden of establishing that the amount of proceeds of the disposition is significantly below the range of prices that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

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

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

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

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subject of the disposition.

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

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

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

Sec. 628. (a) Unless a secured party knows that a person is a debtor or obligor, knows the identity of the person, and knows how to communicate with the person:

- (1) the secured party is not liable to the person, or to a secured party or lienholder that has filed a financing statement against the person, for failure to comply with this article; and
- (2) the secured party's failure to comply with this article does not affect the liability of the person for a deficiency.

(b) A secured party is not liable because of its status as secured party:

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

(c) A secured party is not liable to any person, and a person's liability for a deficiency is not affected, because of any act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer-goods transaction or a consumer transaction or that goods are not consumer goods, if the secured party's belief is based on its reasonable reliance on:

- (1) a debtor's representation concerning the purpose for which collateral was to be used, acquired, or held; or
- (2) an obligor's representation concerning the purpose for which a secured obligation was incurred.

(d) A secured party is not liable to any person under IC 26-1-9.1-625(c)(2) for its failure to comply with IC 26-1-9.1-616.

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1 (e) A secured party is not liable under IC 26-1-9.1-625(c)(2)  
2 more than once with respect to any one secured obligation.

3 Sec. 701. IC 26-1-9.1 takes effect on July 1, 2001.

4 Sec. 702. (a) Except as otherwise provided in this section  
5 through section 708 of this chapter, IC 26-1-9.1 applies to a  
6 transaction or lien within its scope, even if the transaction or lien  
7 was entered into or created before IC 26-1-9.1 takes effect.

8 (b) Except as otherwise provided in subsection (c) and  
9 IC 26-1-9.1-703 through IC 26-1-9.1-708:

10 (1) transactions and liens that were not governed by  
11 IC 26-1-9, before its repeal, were validly entered into or  
12 created before IC 26-1-9.1 takes effect, and would be subject  
13 to IC 26-1-9.1 if they had been entered into or created after  
14 IC 26-1-9.1 takes effect, and the rights, duties, and interests  
15 flowing from those transactions and liens remain valid after  
16 IC 26-1-9.1 takes effect; and

17 (2) the transactions and liens may be terminated, completed,  
18 consummated, and enforced as required or permitted by  
19 IC 26-1-9.1 or by the law that otherwise would apply if  
20 IC 26-1-9.1 had not taken effect.

21 (c) IC 26-1-9.1 does not affect an action, case, or proceeding  
22 commenced before IC 26-1-9.1 takes effect.

23 Sec. 703. (a) A security interest that is enforceable immediately  
24 before IC 26-1-9.1 takes effect and would have priority over the  
25 rights of a person that becomes a lien creditor at that time is a  
26 perfected security interest under IC 26-1-9.1 if, when IC 26-1-9.1  
27 takes effect, the applicable requirements for enforceability and  
28 perfection under IC 26-1-9.1 are satisfied without further action.

29 (b) Except as otherwise provided in IC 26-1-9.1-705, if,  
30 immediately before IC 26-1-9.1 takes effect, a security interest is  
31 enforceable and would have priority over the rights of a person  
32 that becomes a lien creditor at that time, but the applicable  
33 requirements for enforceability or perfection under IC 26-1-9.1 are  
34 not satisfied when IC 26-1-9.1 takes effect, the security interest:

35 (1) is a perfected security interest for one (1) year after  
36 IC 26-1-9.1 takes effect;

37 (2) remains enforceable thereafter only if the security interest  
38 becomes enforceable under IC 26-1-9.1-203 before the year  
39 expires; and

40 (3) remains perfected thereafter only if the applicable  
41 requirements for perfection under IC 26-1-9.1 are satisfied  
42 before the year expires.

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1           **Sec. 704.** A security interest that is enforceable immediately  
 2 before IC 26-1-9.1 takes effect but which would be subordinate to  
 3 the rights of a person that becomes a lien creditor at that time:

4           (1) remains an enforceable security interest for one (1) year  
 5 after IC 26-1-9.1 takes effect;

6           (2) remains enforceable thereafter if the security interest  
 7 becomes enforceable under IC 26-1-9.1-203 when IC 26-1-9.1  
 8 takes effect or within one (1) year thereafter; and

9           (3) becomes perfected:

10           (A) without further action, when IC 26-1-9.1 takes effect if  
 11 the applicable requirements for perfection under  
 12 IC 26-1-9.1 are satisfied before or at that time; or

13           (B) when the applicable requirements for perfection are  
 14 satisfied if the requirements are satisfied after that time.

15           **Sec. 705.** (a) If action, other than the filing of a financing  
 16 statement, is taken before IC 26-1-9.1 takes effect and the action  
 17 would have resulted in priority of a security interest over the rights  
 18 of a person that becomes a lien creditor had the security interest  
 19 become enforceable before IC 26-1-9.1 takes effect, the action is  
 20 effective to perfect a security interest that attaches under  
 21 IC 26-1-9.1 within one (1) year after IC 26-1-9.1 takes effect. An  
 22 attached security interest becomes unperfected one (1) year after  
 23 IC 26-1-9.1 takes effect unless the security interest becomes a  
 24 perfected security interest under IC 26-1-9.1 before the expiration  
 25 of that period.

26           (b) The filing of a financing statement before IC 26-1-9.1 takes  
 27 effect is effective to perfect a security interest to the extent the  
 28 filing would satisfy the applicable requirements for perfection  
 29 under IC 26-1-9.1.

30           (c) IC 26-1-9.1 does not render ineffective an effective financing  
 31 statement that is filed before IC 26-1-9.1 takes effect and satisfied  
 32 the applicable requirements for perfection under the law of the  
 33 jurisdiction governing perfection as provided in IC 26-1-9-103,  
 34 before its repeal. However, except as otherwise provided in  
 35 subsections (d) and (e) and IC 26-1-9.1-706, the financing statement  
 36 ceases to be effective at the earlier of:

37           (1) the time the financing statement would have ceased to be  
 38 effective under the law of the jurisdiction in which it is filed;  
 39 or

40           (2) June 30, 2006.

41           (d) The filing of a continuation statement after IC 26-1-9.1 takes  
 42 effect does not continue the effectiveness of the financing statement

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1 filed before IC 26-1-9.1 takes effect. However, upon the timely  
 2 filing of a continuation statement after IC 26-1-9.1 takes effect and  
 3 in accordance with the law of the jurisdiction governing perfection  
 4 as provided in subsection (c), the effectiveness of a financing  
 5 statement filed in the same office in that jurisdiction before  
 6 IC 26-1-9.1 takes effect continues for the period provided by the  
 7 law of that jurisdiction.

8 (e) Subsection (c)(2) applies to a financing statement that is filed  
 9 against a transmitting utility before IC 26-1-9.1 takes effect and  
 10 satisfied the applicable requirements for perfection under the law  
 11 of the jurisdiction governing perfection as provided in  
 12 IC 26-1-9-103, before its repeal, only to the extent that subsection  
 13 (c) provides that the law of a jurisdiction other than jurisdiction in  
 14 which the financing statement is filed governs perfection of a  
 15 security interest in collateral covered by the financing statement.

16 (f) A financing statement that includes a financing statement  
 17 filed before IC 26-1-9.1 takes effect and a continuation statement  
 18 filed after IC 26-1-9.1 takes effect is effective only to the extent that  
 19 it satisfies the requirements of subsection (e) for an initial financing  
 20 statement.

21 Sec. 706. (a) The filing of an initial financing statement in the  
 22 office specified in IC 26-1-9.1-501 continues the effectiveness of a  
 23 financing statement filed before IC 26-1-9.1 takes effect for the  
 24 period provided in IC 26-1-9.1-515 with respect to an initial  
 25 financing statement if:

- 26 (1) the filing of an initial financing statement in that office  
 27 would be effective to perfect a security interest under  
 28 IC 26-1-9.1;
- 29 (2) the pre-effective-date financing statement was filed in an  
 30 office in another state or another office in this state; and
- 31 (3) the initial financing statement satisfies subsection (c).

32 (b) The filing of an initial financing statement under subsection  
 33 (a) continues the effectiveness of the pre-effective date financing  
 34 statement if the initial financing statement is filed before  
 35 IC 26-1-9.1 takes effect, for the period provided in:

- 36 (1) IC 26-1-9-403 (before its repeal) for a financing statement;  
 37 and
- 38 (2) IC 26-1-9-115 (before its repeal) for an initial financing  
 39 statement.

40 (c) To be effective for purposes of subsection (a), an initial  
 41 financing statement must:

- 42 (1) satisfy the requirements of IC 26-1-9.1-705(e) for an initial



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financing statement;  
(2) identify the pre-effective-date financing statement by indicating the office in which the financing statement was filed and providing the dates of filing and file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement; and  
(3) indicate that the pre-effective-date financing statement remains effective.

**Sec. 707.** A person may file an initial financing statement or a continuation statement under IC 26-1-9.1-701 through IC 26-1-9.1-708 if:

- (1) the secured party of record authorizes the filing; and
- (2) the filing is necessary under IC 26-1-9.1-701 through IC 26-1-9.1-708:
  - (A) to continue the effectiveness of a financing statement filed before IC 26-1-9.1 takes effect; or
  - (B) to perfect or continue the perfection of a security interest.

**Sec. 708.** (a) IC 26-1-9, before its repeal, determines the priority of conflicting claims to collateral if the relative priorities of the parties were fixed before IC 26-1-9.1 takes effect. In other cases, IC 26-1-9.1 determines priority.

(b) For purposes of IC 26-1-9.1-322(a), the priority of a security interest that becomes a perfected security interest under IC 26-1-9.1-704 dates from the time the applicable requirements for perfection are satisfied. This subsection does not apply to conflicting security interests each of which becomes a perfected security interest under IC 26-1-9.1-704.

(c) For purposes of IC 26-1-9.1-322(a), the priority of a security interest that becomes enforceable under IC 26-1-9.1-203 dates from the time IC 26-1-9.1 takes effect if the security interest is perfected under IC 26-1-9.1 by the filing of a financing statement before IC 26-1-9.1 takes effect which would not have been effective to perfect the security interest under IC 26-1-9, before its repeal. This subsection does not apply to conflicting security interests each of which is perfected by the filing of such a financing statement.

SECTION 46. IC 32-1-2-16.3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 16.3. (a) This section applies to an instrument regardless of when the instrument was recorded, except that this section does not divest rights that vested before May 1, 1993.

(b) An assignment, a mortgage, or a pledge of rents and profits

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1 arising from real estate that is intended as security, whether contained  
2 in a separate instrument or otherwise, shall be recorded under section  
3 16 of this chapter.

4 (c) When an assignment, a mortgage, or a pledge of rents and profits  
5 is recorded under subsection (b), the security interest of the assignee,  
6 mortgagee, or pledgee is immediately perfected as to the assignor,  
7 mortgagor, pledgor, and any third parties:

8 (1) regardless of whether the assignment, mortgage, or pledge is  
9 operative:

10 (A) immediately;

11 (B) upon the occurrence of a default; or

12 (C) under any other circumstances; and

13 (2) without the holder of the security interest taking any further  
14 action.

15 (d) This section does not apply to security interests in:

16 (1) farm products;

17 (2) accounts or general intangibles arising from or relating to the  
18 sale of farm products by a farmer;

19 (3) timber to be cut; **or**

20 (4) minerals or the like (including oil and gas); **or**

21 (5) ~~accounts subject to IC 26-1-9-103(5);~~

22 that may be perfected under ~~IC 26-1-9~~: **IC 26-1-9.1.**

23 SECTION 47. IC 32-8-24-2 IS AMENDED TO READ AS  
24 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2. (a) Any employee  
25 wishing to acquire such lien upon the corporate property of any  
26 corporation, or the earnings thereof, whether the employee's claim be  
27 due or not, shall file in the recorder's office of the county where such  
28 corporation is located or doing business, notice of the employee's  
29 intention to hold a lien upon such property and earnings aforesaid, for  
30 the amount of the employee's claim, setting forth the date of such  
31 employment, the name of the corporation and the amount of such  
32 claim, and it shall be the duty of the recorder of any county, when such  
33 notice is presented for record, to record the same in the record required  
34 by law for notice of mechanics' liens, for which the recorder shall  
35 charge a fee in an amount specified in IC 36-2-7-10(b)(1) and  
36 IC 36-2-7-10(b)(2). The lien so created shall relate to the time when  
37 such employee was employed by such corporation, or to any  
38 subsequent date during such employment, at the election of such  
39 employee, and shall have priority over all liens suffered or created  
40 thereafter, except other employees' liens, over which there shall be no  
41 such priority.

42 (b) Where:

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1 (1) any person, other than an employee, shall acquire a lien upon  
 2 the corporate property of any corporation located or doing  
 3 business in this state;  
 4 (2) such lien for a period of sixty (60) days either:  
 5 (A) remains a matter of record in the proper place specified in  
 6 ~~IC 26-1-9-40+~~; **IC 26-1-9.1-501**; or  
 7 (B) remains otherwise perfected under applicable law; and  
 8 (3) no notice of an employee's intention to hold a lien shall have  
 9 been filed by any employee of such corporation during that  
 10 period;  
 11 then and in that case such lien so created shall have priority over the  
 12 lien of such employee in the county where such corporation is located  
 13 or doing business, and not otherwise.  
 14 (c) This section shall not apply to any lien acquired by any person  
 15 for purchase money.  
 16 SECTION 48. IC 26-1-9 IS REPEALED [EFFECTIVE JULY 1,  
 17 2001].

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1326, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Delete the title and insert the following:

A BILL FOR AN ACT concerning commercial law.

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to HB 1326 as introduced.)

DVORAK, Chair

Committee Vote: yeas 9, nays 0.

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