

**ALABAMA UNIFORM COMMERCIAL CODE AMENDMENTS (2022)**

**ACT #2023-492 (enacted 6/14/23, but effective 7/1/24)  
inserted within Existing Code (with Alabama Comments)**

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## **Enrolled, An Act**

Relating to the Uniform Commercial Code; to add Article 12 to the Uniform Commercial Code to govern the property rights of certain intangible digital assets (controllable electronic records), including electronic rights to payment, to provide for a manner to establish the transfer and control of those assets, to provide a mechanism for evidencing certain rights of payment, and to adopt special rules with regard to the payment obligations and conditions of discharge of account debtors on controllable accounts and controllable payment intangibles; to amend Sections 7-1-201, 7-1-204, 7-1-301, 7-1-306, 7-2-102, 7-2-106, 7-2-201, 7-2-202, 7-2-203, 7-2-205, 7-2-209, 7-2A-102, 7-2A-103, 7-2A-107, 7-2A-201, 7-2A-202, 7-2A-203, 7-2A-205, 7-2A-208, 7-3-104, 7-3-105, 7-3-401, 7-3-604, 7-4A-103, 7-4A-201, 7-4A-202, 7-4A-203, 7-4A-207, 7-4A-208, 7-4A-210, 7-4A-211, 7-4A-305, 7-5-104, 7-5-116, 7-7-102, 7-7-106, 7-8-102, 7-8-103, 7-8-106, 7-8-110, 7-8-303, 7-9A-102, 7-9A-104, 7-9A-105, 7-9A-203, 7-9A-204, 7-9A-207, 7-9A-208, 7-9A-209, 7-9A-210, 7-9A-301, 7-9A-304, 7-9A-305, 7-9A-310, 7-9A-312, 7-9A-313, 7-9A-314, 7-9A-316, 7-9A-317, 7-9A-323, 7-9A-324, 7-9A-330, 7-9A-331, 7-9A-332, 7-9A-334, 7-9A-341, 7-9A-404, 7-9A-406, 7-9A-408, 7-9A-509, 7-9A-513, 7-9A-601, 7-9A-605, 7-9A-608, 7-9A-611, 7-9A-613, 7-9A-614, 7-9A-615, 7-9A-616, 7-9A-619, 7-9A-621, 7-9A-624, *and* 7-9A-628, Code of Alabama 1975, and to add Sections 7-9A-107A, 7-9A-107B, 7-9A-306A, 7-9A-306B, 7-9A-314A, and 7-9A-326A to the Code of Alabama 1975, to provide a substantial revision to the Uniform Commercial Code in conformity with a substantial portion of the Uniform Commercial Code Amendments (2022) , to clarify the meaning of the term chattel paper and other definitions, to define and provide for hybrid transactions, and to provide extensive amendments to the Uniform Commercial Code providing for the perfection of security interests in controllable electronic records, documents of title, chattel paper, and other assets; and to add Article 12A to the Uniform Commercial Code to provide transitional provisions for the Uniform Commercial Code Amendments (2022) .

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

The Alabama Comments are in addition to the Official Comments as amended promulgated by the Uniform Laws Commission and the American Law Institute and discuss Alabama variations to the Uniform Commercial Code Amendments (2022) promulgated by those institutions.

## ARTICLE I - GENERAL PROVISIONS

### § 7-1-201. General Definitions.

\* \* \*

(b) Subject to additional definitions contained in the subsequent other articles of this title the Uniform Commercial Code which are applicable that apply to specific particular articles or parts thereof, and unless the context otherwise requires, in this title:

\* \* \*

(5) "Bearer" means a person in control of a negotiable electronic document of title or a person in possession of a negotiable instrument, negotiable tangible document of title, or certificated security that is payable to bearer or indorsed in blank.

(6) "Bill of lading" means a document of title evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods. The term does not include a warehouse receipt.

\* \* \*

(10) "Conspicuous;" with reference to a term, means so written, displayed, or presented that, based on the totality of the circumstances, a reasonable person against which it is to operate ought to have noticed it. Whether a term is "conspicuous" or not is a decision for the court as a matter of law. ~~Conspicuous terms include the following:~~

~~(A) A heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and~~

~~(B) Language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the language.~~

\* \* \*

(15) "Delivery;" with respect to an instrument, electronic document of title, ~~or chattel paper~~, means voluntary transfer of ~~possession~~ control and, with respect to an instrument, a tangible document of title, or an authoritative tangible copy of a record evidencing chattel paper, means voluntary transfer of possession.

(16) "Document of title" means a record (i) that in the regular course of business or financing is treated as adequately evidencing that the person in possession or control of the record is entitled to receive, control, hold, and dispose of the record and the goods the record covers and (ii) that purports to be issued by or addressed to a bailee and to cover goods in the bailee's possession which are either identified or are fungible portions of an identifiable mass. The term includes bill of lading, transport documents, dock warrant, dock receipt, warehouse receipt ~~or, and~~ order for the delivery of goods, ~~and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold, and dispose of the document and the goods it~~

~~covers. To be a document of title, a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.~~ An electronic document of title means a document of title evidenced by a record consisting of information stored in an electronic medium. A tangible document of title means a document of title evidenced by a record consisting of information that is inscribed on a tangible medium.

(16A) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

\* \* \*

(21) "Holder" means:

(A) ~~The~~ person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession; or

(B) ~~The~~ person in possession of a negotiable tangible document of title if the goods are deliverable either to bearer or to the order of the person in possession; or

(C) the person in control, other than pursuant to Section 7-7-106(g), of a negotiable electronic document of title.

\* \* \*

(24) "Money" means a medium of exchange that is currently authorized or adopted by a domestic or foreign government and is not in an electronic form. The term includes a monetary unit of account established by an intergovernmental organization or by pursuant to an agreement between two or more countries.

\* \* \*

(27) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, ~~public corporation,~~ government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity. The term includes a series or a protected series, however denominated, of any entity if the series or protected series is established under law other than the Uniform Commercial Code that limits, or limits if conditions specified under the law are satisfied, the ability of a creditor of the entity or of any other series or protected series of the entity to satisfy a claim from assets of the series or protected series.

\* \* \*

(36) "Send", in connection with a ~~writing,~~ record, or ~~notice~~ notification means:

(A) ~~To deposit in the mail,~~ or deliver for transmission, or transmit 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~~ addressed to any address reasonable under the circumstances; or

(B) ~~In any other way to cause to be received any record or notice within the time it would have arrived if properly sent.~~ to cause the record or notification to be received within the time it would have been received if properly sent under subparagraph (A).

(37) ~~“Signed” includes using any symbol executed or adopted with present intention to adopt or accept a writing.~~ “Sign” means, with present intent to authenticate or adopt a record:

(A) execute or adopt a tangible symbol; or

(B) attach to or logically associate with the record an electronic symbol, sound, or process.

“Signed”, “signing”, and “signature” have corresponding meanings.

\* \* \*

#### **2004 ALABAMA COMMENT**

The language of former Section 7-1-201 has been retained in lieu of subsections (a) and (b) of the Official Text of this section because the Alabama language was believed to be clearer and more concise.

Alabama retained the definition of "good faith" under form Section 7-1-201. Official Comment 20 to this section should be read in light of Alabama's non-uniform definition.

In order to avoid uncertainty regarding whether "minehead" includes both open mines and surface mines, and to remain consistent with other Alabama law, the term "minehead" used in the Official Text has been changed to "mine" throughout this article.

The cite contained in Official Comment 4, "Bank.", should be Section 7-4A-105.

#### **2023 ALABAMA COMMENT**

1. As part of its enactment of the Uniform Commercial Code Amendments (2022), Alabama adopted a non-uniform amendment that excludes money “in an electronic form” from the definition of “money” in Subsection 7-1-204(24). Also, to be consistent with this change, Alabama has i) eliminated the defined terms “electronic money” and “tangible money” from Article 9 (through the elimination of proposed uniform Subsections 9-102(31A) and 9-102(79A) defining these terms and the deletion of any reference to these terms from Alabama’s enactment), and ii) deleted proposed uniform Section 9-105A on control of electronic money (and any references to that section) from Alabama’s enactment.
2. Conspicuousness is to be determined as a matter of law. When Alabama dealt with this issue in Subsection 7-2A-103(1)(u) the terms “the court as a matter of law as” were used to make sure the determination is a legal as opposed to factual one. That phrase is thus repeated in Subsection 7-1-201(10) for consistency in both form and substance.
3. Alabama continues to retain its non-uniform definition of "good faith" in Subsection 7-1-201(20). All of the Official Comment to this section should be read in light of Alabama's non-uniform definition.
4. The uniform definition of “person” was amended to include a “protected series,” but Alabama has not adopted the 2017 Uniform Protected Series Act and does not use that term. Accordingly, the definition of “person” as amended in Alabama refers to a “series or protected series.” “Series” are dealt with in Ala. Code Sections 10A-5A-11.01 *et seq.*
5. Alabama’s adoption of the Uniform Commercial Code Amendments (2022) revisions to “delivery” [Subsection 7-1-201(15)] and “holder” [Subsection 7-1-201(21)] necessitated the long overdue revision of Alabama’s non-uniform definitions of “bearer” [Subsection 7-1-201(5)], “bill of lading” [Subsection 7-1-201(6)], and “document of title” [Subsection 7-1-201(16)].

#### **§ 7-1-204. Value.**

Except as otherwise provided in Articles 3, 4, ~~and 5,~~ and 12, a person gives value for rights if the person acquires them:

\* \* \*

## § 7-1-301. Territorial Applicability; Parties' Power to Choose Applicable Law.

(a) Except as otherwise provided in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties.

(b) In the absence of an agreement effective under subsection (a), and except as provided in subsection (c), ~~this title~~ the Uniform Commercial Code applies to transactions bearing an appropriate relation to this state.

(c) If one of the following provisions of ~~this title~~ the Uniform Commercial Code specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law so specified:

(1) Section 7-2-402;

(2) Sections 7-2A-105 and 7-2A-106;

(3) Section 7-4-102;

(4) Section 7-4A-507;

(5) Section 7-5-116;

(6) [Reserved.]

~~(6)~~(7) Section 7-8-110;

~~(7)~~(8) Sections 7-9A-301 through 7-9A-307.;

(9) Section 7-12-107.

### 2004 ALABAMA COMMENT

This section is substantively identical to former Section 1-105, thus the Official Comments to that section are an appropriate source to consult as legislative history. Those Comments are appended at the end of this 2004 Alabama Comment.

This section is subject to Section 1-102, which states the scope of Article 1 as follows: "This article applies to a transaction to the extent that it is governed by another article of this title." As that section indicates, Article 1, and the rules contained therein, apply to transactions to the extent that they are governed by one of the other Articles of Alabama's version of the Uniform Commercial Code. Thus, this section does not apply to matters outside the scope of this title, such as a services contract, a credit card agreement, or a contract for the sale of real estate.

Example 1: A, a resident of Alabama, enters into an agreement with Credit Card Company, a Delaware corporation with its chief executive office located in New York, pursuant to which A agrees to pay Credit Card Company for purchases charged to A's credit card. The agreement contains a provision stating that it is governed by the law of South Dakota. The choice of law rules in Section 1-301 do not apply to this agreement because the agreement is not governed by any of the other Articles of this title.

As under prior Section 1-105, a choice of law contrary to certain provisions of this title is ineffective except as provided in those sections, and the list in subsection (c) is substantively identical to the list under former Section 1-105(c) except that some of the sections have been renumbered as this title has been revised and Article 6 has been repealed.

Example 2: A, a resident of Alabama, maintains a checking account with Bank B, an Ohio banking corporation located



in Ohio. At the time that the account was established, Bank B and A entered into a "Bank-Customer Agreement" governing their relationship with respect to the account. The Bank-Customer Agreement contains some provisions that purport to limit the liability of Bank B with respect to its decisions whether to honor or dishonor checks purporting to be drawn on A's account. The Bank-Customer Agreement also contains a provision stating that it is governed by the law of Ohio. The provisions purporting to limit the liability of Bank B deal with issues governed by Article 4. Therefore, determination of the law applicable to those issues (including determination of the effectiveness of the choice of law clause as it applies to those issues) is within the scope of Section 1-301 as provided in subsection (b). Nonetheless, the rules of Section 1-301 would not apply to that determination because of subsection (c), which states that the choice of law rules in Section 4-102 govern instead.

#### Appendix

##### Official Comment to Former Section 1-105 (as amended in 1999)

1. Subsection (1) states affirmatively the right of the parties to a multi-state transaction or a transaction involving foreign trade to choose their own law. That right is subject to the firm rules stated in the five sections listed in subsection (2), and is limited to jurisdictions to which the transaction bears a reasonable relation." In general, the test of "reasonable relation" is similar to that laid down by the Supreme Court in *Seeman v. Philadelphia Warehouse Co.*, 274 U.S. 403, 47 S.Ct. 626, 71 L. Ed. 1123 (1927). Ordinarily the law chosen must be that of a jurisdiction where a significant enough portion of the making or performance of the contract is to occur or occurs. But an agreement as to choice of law may sometimes take effect as a shorthand expression of the intent of the parties as to matters governed by their agreement, even though the transaction has no significant contact with the jurisdiction chosen.
2. Where there is no agreement as to the governing law, the Act is applicable to any transaction having an "appropriate" relation to any state which enacts it. Of course, the Act applies to any transaction which takes place in its entirety in a state which has enacted the Act. But the mere fact that suit is brought in a state does not make it appropriate to apply the substantive law of that state. Cases where a relation to the enacting state is not "appropriate" include, for example, those where the parties have clearly contracted on the basis of some other law, as where the law of the place of contracting and the law of the place of contemplated performance are the same and are contrary to the law under the Code.
3. Where a transaction has significant contacts with a state which has enacted the Act and also with other jurisdictions, the question what relation is "appropriate" is left to judicial decision. In deciding that question, the court is not strictly bound by precedents established in other contexts. Thus a conflict-of-laws decision refusing to apply a purely local statute or rule of law to a particular multi-state transaction may not be valid precedent for refusal to apply the Code in an analogous situation. Application of the Code in such circumstances may be justified by its comprehensiveness, by the policy of uniformity, and by the fact that it is in large part a reformulation and restatement of the law merchant and of the understanding of a business community which transcends state and even national boundaries. Compare *Global Commerce Corp. v. Clark-Babbitt Industries, Inc.*, 239 F.2d 716, 719 (2d Cir.1956). In particular, where a transaction is governed in large part by the Code, application of another law to some detail of performance because of an accident of geography may violate the commercial understanding of the parties.
4. The Act does not attempt to prescribe choice-of-law rules for states which do not enact it, but this section does not prevent application of the Act in a court of such a state. Common-law choice of law often rests on policies of giving effect to agreements and of uniformity of result regardless of where suit is brought. To the extent that such policies prevail, the relevant considerations are similar in such a court to those outlined above.
5. Subsection (2) spells out essential limitations on the parties' right to choose the applicable law. Especially in Article 9 parties taking a security interest or asked to extend credit which may be subject to a security interest must have sure ways to find out whether and where to file and where to look for possible existing filings.
6. Sections 9-301 through 9-307 should be consulted as to the rules for perfection of security interests and agricultural liens, the effect of perfection and nonperfection, and priority.

#### **2023 ALABAMA COMMENT**

[Alabama's adoption of the Uniform Commercial Code Amendments \(2022\) dealing with hybrid transactions for both sales \(see Sections 7-2-102 and 7-2-106\) and leases \(see Sections 7-2A-102 and 7-2A-103\) expands the scope of the coverage of Alabama's Uniform Commercial Code, and may in certain circumstances make the 2004 Alabama Comment misleading.](#)

**§ 7-1-306. Waiver or Renunciation of Claim or Right After Breach.**

A claim or right arising out of an alleged breach may be discharged in whole or in part without consideration by agreement of the aggrieved party in ~~an authenticated~~ a signed record.

## ARTICLE 2 - SALES

### § 7-2-102. Scope; certain security and other transactions excluded from this article.

~~Unless the context otherwise requires, this article applies to transactions in goods; it does not apply to any transaction which although in the form of an unconditional contract to sell or present sale is intended to operate only as a security transaction nor does this article impair or repeal any statute regulating sales to consumers, farmers or other specified classes of buyers.~~

(1) Unless the context otherwise requires, and except as provided in subsection (3), this Article applies to transactions in goods and, in the case of a hybrid transaction, it applies to the extent provided in subsection (2).

(2) In a hybrid transaction:

(a) If the sale-of-goods aspects do not predominate, only the provisions of this Article which relate primarily to the sale-of-goods aspects of the transaction apply, and the provisions that relate primarily to the transaction as a whole do not apply.

(b) If the sale-of-goods aspects predominate, this Article applies to the transaction but does not preclude application in appropriate circumstances of other law to aspects of the transaction which do not relate to the sale of goods.

(3) This Article does not:

(a) apply to a transaction that, even though in the form of an unconditional contract to sell or present sale, operates only to create a security interest; or

(b) impair or repeal any statute regulating sales to consumers, farmers, or other specified classes of buyers.

§ 7-2-106. Definitions: “Contract”; “Agreement”; “Contract for Sale”; “Sale”; “Present Sale”; “Conforming” to Contract; “Termination”; “Cancellation.”; “Hybrid Transaction”.

\* \* \*

(5) “Hybrid transaction” means a single transaction involving a sale of goods and:

(a) the provision of services;

(b) a lease of other goods; or

(c) a sale, lease, or license of property other than goods.

### § 7-2-201. Formal Requirements; Statute of Frauds.

(1) Except as otherwise provided in this section a contract for the sale of goods for the price of \$500 or more is not enforceable by way of action or defense unless there is ~~some writing~~ a record sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by ~~his~~ the party’s authorized agent or broker. A ~~writing~~ record is not insufficient because it omits or incorrectly states a term agreed upon; but the contract is not enforceable under this

paragraph subsection beyond the quantity of goods shown in ~~such writing~~ the record.

(2) Between merchants if within a reasonable time a writing record in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subsection (1) against ~~such~~ the party unless notice in a record of objection to its contents is given within 10 days after it is received.

(3) A contract which does not satisfy the requirements of subsection (1) but which is valid in other respects is enforceable:

(a) If the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances which reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement; or

(b) If the party against whom enforcement is sought admits in ~~his~~ the party's pleading, testimony, or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond the quantity of goods admitted; or

(c) With respect to goods for which payment has been made and accepted or which have been received and accepted (Section 7-2-606).

#### **§ 7-2-202. Final ~~written~~ Expression: Parol or Extrinsic Evidence.**

Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing record intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

(a) ~~B~~by course of performance, course of dealing, or usage of trade (Section 7-1-303); and

(b) ~~B~~by evidence of consistent additional terms unless the court finds the writing record to have been intended also as a complete and exclusive statement of the terms of the agreement.

#### **§ 7-2-203. Seals Inoperative.**

The affixing of a seal to a writing record evidencing a contract for sale or an offer to buy or sell goods does not constitute the writing record a sealed instrument, and the law with respect to sealed instruments does not apply to such a contract or offer.

#### **§ 7-2-205. Firm Offers.**

An offer by a merchant to buy or sell goods in a signed writing record which by its terms gives assurance that it will be held open is not revocable, for lack of consideration, during the time stated or if no time is stated for a reasonable time, but in no event may such period of irrevocability exceed three months; but any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

#### **§ 7-2-209. Modification, Rescission, and Waiver.**

\* \* \*

(2) A signed agreement which excludes modification or rescission except by a signed writing or other signed record cannot be otherwise modified or rescinded, but except as between merchants such a requirement on a form supplied by the merchant must be separately signed by the other party.

\* \* \*

## ARTICLE 2A - LEASES

### § 7-2A-102. Scope.

~~This article applies to any transaction, regardless of form, that creates a lease, as defined in Section 7-2A-103(1)(j).~~

(1) This Article applies to any transaction, regardless of form, that creates a lease and, in the case of a hybrid lease, it applies to the extent provided in subsection (2).

(2) In a hybrid lease:

(a) if the lease-of-goods aspects do not predominate:

(i) only the provisions of this Article which relate primarily to the lease-of-goods aspect of the transaction apply, and the provisions that relate primarily to the transaction as a whole do not apply;

(ii) Section 7-2A-209 applies if the lease is a finance lease; and

(iii) Section 7-2A-407 applies to the promise of the lessee in a finance lease to the extent the promises are consideration for the right to possession and use of the leased goods; and

(b) if the lease-of-goods aspects predominate, this Article applies to the transaction, but does not preclude application in appropriate circumstances of other law to aspects of the lease which do not relate to the lease of goods.

### 1992 ALABAMA COMMENT

This section is substantially identical to Section 2A-102 of the uniform act. While it is clear that Article 2A is intended to apply to all leases of goods, it may not be so clear how a so-called hybrid (goods and services) transaction is to be treated. A similar issue arises under Article 2 of the UCC. The Alabama Supreme Court, in *Skelton v. Druid City Hospital Board*, 459 So.2d 818 (Ala. 1984), considered the sale of goods/rendition of services tension in a context that the Court found looked very much like a lease transaction.

The Court determined that a hospital's use of a defective suturing needle amounted to a lease of the needle. Therefore, the Court reasoned, it would be reasonable to apply the Article 2 warranty provisions by analogy to the transaction.

While the decision provided some authority for the application of Article 2 to lease transactions in the State, a holding mooted by the promulgation of Article 2A, it also affects the analysis of hybrid transactions and stands for the proposition that a "lease" transaction in which the rendition of services is also involved may be subject to the pervasive lease law, now Article 2A. The strong concurrence of Chief Justice Torbert in the Shelton case offers a sensible approach to the hybrid transaction issues that will remain under both Articles 2 and 2A. He suggested that it is appropriate in hybrid transactions for a court to focus on the predominant element of a transaction in order to determine whether the case involves primarily a transaction in goods. See also *Coakley & Williams, Inc. v. Shatterproof Glass Corp.*, 706 F.2d 456 (4th Cir. 1983); *Bonebrake v. Cox*, 499 F.2d 951 (8th Cir. 1974)

An issue that may now arise is whether a particular transaction in goods involves a sale (Article 2) or a lease (Article 2A) of goods. Because there are some differences between the two articles' treatment of similar issues (compare, e.g., UCC Section 2-201 with UCC Section 2A-201) it may matter whether the sales or lease article is found to apply to the facts of a case. The court resolving this scope issue should focus on the revised definition of "security interest" in Section 7-1-201(37) [now 7-1-201(35)] and apply Article 2 principles to the sales aspects of a secured transaction and Article 2A to true leases.

### 2023 ALABAMA COMMENT

Alabama's adoption of the Uniform Commercial Code Amendments (2022) dealing with hybrid transactions for both sales (see Sections 7-2-102 and 7-2-106) and leases (see Sections 7-2A-102 and 7-2A-103) continues to follow Chief Justice Torbert's approach in the Shelton case.

### **§ 7-2A-103. Definitions and Index of Definitions.**

(1) In this article, unless the context otherwise requires:

\* \* \*

(h.1) "Hybrid lease" means a single transaction involving a lease of goods and:

(i) the provision of services;

(ii) a sale of other goods; or

(iii) a sale, lease, or license of property other than goods.

\* \* \*

#### **1992 ALABAMA COMMENT**

The Alabama definition of "consumer lease" has been completed to provide that only those lease transaction primarily for personal, family or household purpose and involving total payments of \$100,000 or less may qualify for the special protections afforded consumer leases.

The Alabama definition of "finance lease" has been amended with respect to the options concerning timing and information that must be furnished to the lessee in order for the lease to qualify for statutory finance lease treatment. The first two options (the lessee receives a copy of the supply contract or approves it before signing the lease) are unamended. The fourth option (the lessee is directed to the supplier to obtain the information) is amended so as not to prevent the use of this option in a consumer lease situation. This option also was rewritten for style with no change in substance intended. The major amendment is to the third option (a statement of those portions of the supply contract relevant to the lessee to be provided to the lessee, rather than a copy of the supply contract or approval of the contract itself). The amendments to this option include: (1) removing the requirement this information be supplied before the lessee signs the lease (of course, a lessee could still demand the information before entering into the lease, or it can be provided in the lease itself); (2) limiting the duty to notify the lessee of any waiver, disclaimer or other negation of warranty and any limitation or modification of remedy or liquidation of damages, except in connection with a consumer lease (of course, to the extent these are matters of contract, notification may arise from the contract language, and otherwise may need to be given to estop a person not a party to the contract or to avoid the possibility of misrepresentation); and (3) adding a requirement to affirmatively disclose that, other than as disclosed, no other express warranties or rights are provided. Certain style changes also were made with no intention to change substance.

The uniform definition of "present value" has been amended to provide that the determination of a commercially reasonable discount rate be made by the court as a matter of law. That condition assures that the rate will be fixed in the most expedient, reliable manner. (Cf. Section 7-2A-108.)

The use of the masculine and feminine gender includes the neuter and does not abrogate Section 1-1-2 and Section 1-1-1 of the Code of Alabama 1975 as amended.

### **§ 7-2A-107. Waiver or Renunciation of Claim or Right After Default.**

Any claim or right arising out of an alleged default or breach of warranty may be discharged in whole or in part without consideration by a ~~written~~ waiver or renunciation in a signed and record delivered by the aggrieved party.

**§ 7-2A-201. Statute of Frauds.**

(1) A lease contract is not enforceable by way of action or defense unless:

(a) the total payments to be made under the lease contract, excluding payments for options to renew or buy, are less than \$1,000; or

(b) there is a writing record, signed by the party against whom enforcement is sought or by that party's authorized agent, sufficient to indicate that a lease contract has been made between the parties and to describe the goods leased and the lease term.

\* \* \*

(3) A writing record is not insufficient because it omits or incorrectly states a term agreed upon, but the lease contract is not enforceable under subsection (1)(b) beyond the lease term and the quantity of goods shown in the writing record.

\* \* \*

(5) The lease term under a lease contract referred to in subsection (4) is:

(a) if there is a writing record signed by the party against whom enforcement is sought or by that party's authorized agent specifying the lease term, the term so specified;

(b) if the party against whom enforcement is sought admits in that party's pleading, testimony, or otherwise in court a lease term, the term so admitted; or

(c) a reasonable lease term.

\* \* \*

**1992 ALABAMA COMMENT**

This section is identical to Section 2A-201 of the uniform act.

Note that, in contrast with Alabama Code Section 7-2-201(3)(c), this Article 2A Statute of Frauds does not provide an exception to the writing requirement where payment for the goods has been made and accepted. As the Official Comment explains, that departure from the partial performance rule was deemed justified by the fact "the lessee does not tender payment in full for goods delivered, but only payment of rent for one or more months." And, the drafters concluded, that type of partial payment should not be sufficient to abrogate the writing requirement. Though partial payment will not remove the lease from the Article 2A Statute of Frauds, Section 7-2A-201(4)(c) makes clear that the Statute does not pertain "with respect to goods that have been received and accepted by the lessee." So the result in Article 2 cases such as *Hilburn v. Fletcher Oil Co.*, 495 So.2d 613 (Ala. 1986), would still obtain under the uniform lease law.

**§ 7-2A-202. Final ~~written~~ Expression: Parol or Extrinsic Evidence.**

Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing record intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

(a) by course of dealing or usage of trade or by course of performance; and



(b) by evidence of consistent additional terms unless the court finds the writing record to have been intended also as a complete and exclusive statement of the terms of the agreement.

**1992 ALABAMA COMMENT**

This section is identical to Section 2A-202 of the uniform act.

The provision continues the rule recognized in the State under both Article 2 and the common law. See *Port City Construction Co. v. Henderson*, 48 Ala App: 639, 266 So 2d 886 (Ala.Civ. App.1972) (“when construing a written contract which is ambiguous, incomplete or uncertain as to all of the intentions of the parties, the court may consider extrinsic parol evidence as to surrounding matters and circumstances, including additional terms not included in the writing, in order to determine the actual intent of the parties to the agreement.”).

Further, it is established in Alabama, in cases such as *American Carpet Sales, Inc. v. World Carpets, Inc.*, 477 So.2d 974 (Ala. Civ. App. 1985), that in sales transactions (and, by inference, now in personal property lease transactions) usage of trade, i.e. industry custom, may be used to explain or supplement the parties' agreement contained in confirmatory memoranda.

**§ 7-2A-203. Seals Inoperative.**

The affixing of a seal to a writing record evidencing a lease contract or an offer to enter into a lease contract does not render the writing record a sealed instrument and the law with respect to sealed instruments does not apply to the lease contract or offer.

**§ 7-2A-205. Firm Offers.**

An offer by a merchant to lease goods to or from another person in a signed writing record that by its terms gives assurance it will be held open is not revocable, for lack of consideration, during the time stated or, if no time is stated, for a reasonable time, but in no event may the period of irrevocability exceed 3 months. Any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

**§ 7-2A-208. Modification, Rescission, and Waiver.**

\* \* \*

(2) A signed lease agreement that excludes modification or rescission except by a signed writing record may not be otherwise modified or rescinded, but, except as between merchants, such a requirement on a form supplied by a merchant must be separately signed by the other party.

\* \* \*

**1992 ALABAMA COMMENT**

The Statute of Frauds proviso of the Article 2 analogue in Subsection 7-2-209(3) was incorporated into Subsection 7-2A-208(3) of the Alabama act because the reasons posited in the Official Comment for excluding the proviso were not deemed convincing. The commercial community's interest in certainty would better be served by clearly providing that a modification would have to satisfy the Statute of Frauds of Section 7-2A-201 than by leaving this potentially difficult issue to resolution by the courts on an ad hoc basis as suggested by the drafters of the uniform act.

## ARTICLE 3 - NEGOTIABLE INSTRUMENTS

### § 7-3-104. Negotiable Instrument.

(a) Except as provided in subsections (c) and (d), “negotiable instrument” means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:

- (1) ~~I~~is payable to bearer or to order at the time it is issued or first comes into possession of a holder;
- (2) ~~I~~is payable on demand or at a definite time; and
- (3) ~~D~~oes not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain (i) an undertaking or power to give, maintain, or protect collateral to secure payment, (ii) an authorization or power to the holder to confess judgment or realize on or dispose of collateral, ~~or~~ (iii) a waiver of the benefit of any law intended for the advantage or protection of an obligor, (iv) a term that specifies the law that governs the promise or order, or (v) an undertaking to resolve in a specified forum a dispute concerning the promise or order.

\* \* \*

#### 1995 ALABAMA COMMENT

The three [now five] exceptions stated in Subsection 3-104(a)(3) represent no Change in existing law. While negotiability is not affected by the inclusion of these agreements, existing Alabama law on the enforceability of such agreements is not changed.

Subsection (a)(3)(iii) applies not only to waiver of the benefits of this Article, such as presentment and notice of dishonor, but also to a waiver of the benefits of any other law intended for the advantage and protection of the obligor, such as the waiver of exemptions.

#### 2023 ALABAMA COMMENT

The additional two exceptions added by the Uniform Commercial Code Amendments (2022) to Subsection 7-3-104(a)(3) also represent no change to existing law.

### § 7-3-105. Issue of Instrument.

(a) “Issue” means:

- (1) the first delivery of an instrument by the maker or drawer, whether to a holder or nonholder, for the purpose of giving rights on the instrument to any person; or
- (2) if agreed by the payee, the first transmission by the drawer to the payee of an image of an item and information derived from the item that enables the depository bank to collect the item by transferring or presenting under federal law an electronic check.

\* \* \*

### § 7-3-401. Signature Necessary for Liability on Instrument.

~~(a)~~A person is not liable on an instrument unless (i) the person signed the instrument, or (ii) the person is

represented by an agent or representative who signed the instrument and the signature is binding on the represented person under Section 7-3-402.

~~(b) A signature may be made (i) manually or by means of a device or machine, and (ii) by the use of any name, including a trade or assumed name, or by a word, mark, or symbol executed or adopted by a person with present intention to authenticate a writing.~~

**§ 7-3-604. Discharge by Cancellation or Renunciation.**

(a) A person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument (i) by an intentional voluntary act, such as surrender of the instrument to the party, destruction, mutilation, or cancellation of the instrument, cancellation or striking out of the party's signature, or the addition of words to the instrument indicating discharge, or (ii) by agreeing not to sue or otherwise renouncing rights against the party by a signed ~~writing~~ record. The obligation of a party to pay a check is not discharged solely by destruction of the check in connection with a process in which information is extracted from the check and an image of the check is made and, subsequently, the information and image are transmitted for payment.

\* \* \*

## ARTICLE 4A - FUNDS TRANSFER

### § 7-4A-103. Payment Order -- Definitions.

(a) In this article:

(1) “Payment order” means an instruction of a sender to a receiving bank, transmitted orally, ~~electronically, or in writing~~ or in a record, to pay, or to cause another bank to pay, a fixed or determinable amount of money to a beneficiary if:

(i) the instruction does not state a condition to payment to the beneficiary other than time of payment,

(ii) the receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender, and

(iii) the instruction is transmitted by the sender directly to the receiving bank or to an agent, funds-transfer system, or communication system for transmittal to the receiving bank.

\* \* \*

### § 7-4A-201. Security Procedure.

“Security procedure” means a procedure established by agreement of a customer and a receiving bank for the purpose of (i) verifying that a payment order or communication amending or cancelling a payment order is that of the customer, or (ii) detecting error in the transmission or the content of the payment order or communication. A security procedure may impose an obligation on the receiving bank or the customer and may require the use of algorithms or other codes, identifying words, ~~or~~ numbers, symbols, sounds, biometrics, encryption, callback procedures, or similar security devices. Comparison of a signature on a payment order or communication with an authorized specimen signature of the customer or requiring a payment order to be sent from a known email address, IP address, or telephone number is not by itself a security procedure.

### § 7-4A-202. Authorized and Verified Payment Orders.

\* \* \*

(b) If a bank and its customer have agreed that the authenticity of payment orders issued to the bank in the name of the customer as sender will be verified pursuant to a security procedure, a payment order received by the receiving bank is effective as the order of the customer, whether or not authorized, if (i) the security procedure is a commercially reasonable method of providing security against unauthorized payment orders, and (ii) the bank proves that it accepted the payment order in good faith and in compliance with the bank’s obligations under the security procedure and any ~~written~~ agreement or instruction of the customer, evidenced by a record, restricting acceptance of payment orders issued in the name of the customer. The bank is not required to follow an instruction that violates ~~a written~~ an agreement with the customer, evidenced by a record, ~~with the customer~~ or notice of which is not received at a time and in a manner affording the bank a reasonable opportunity to act on it before the payment order is accepted.

(c) Commercial reasonableness of a security procedure is a question of law to be determined by considering the wishes of the customer expressed to the bank, the circumstances of the customer known to the bank, including the size, type, and frequency of payment orders normally issued by the customer to the bank, alternative security procedures offered to the customer, and security procedures in general use

by customers and receiving banks similarly situated. A security procedure is deemed to be commercially reasonable if (i) the security procedure was chosen by the customer after the bank offered, and the customer refused, a security procedure that was commercially reasonable for that customer, and (ii) the customer expressly agreed in ~~writing~~ a record to be bound by any payment order, whether or not authorized, issued in its name, and accepted by the bank in compliance with the bank's obligations under the security procedure chosen by the customer.

**§ 7-4A-203. Unenforceability of Certain Verified Payment Orders.**

(a) If an accepted payment order is not, under Section 7-4A-202(a), an authorized order of a customer identified as sender, but is effective as an order of the customer pursuant to Section 7-4A-202(b), the following rules apply:

(1) By express ~~written~~ agreement evidenced by a record, the receiving bank may limit the extent to which it is entitled to enforce or retain payment of the payment order.

\* \* \*

**§ 7-4A-207. Misdescription of Beneficiary.**

\* \* \*

(c) If (i) a payment order described in subsection (b) is accepted, (ii) the originator's payment order described the beneficiary inconsistently by name and number, and (iii) the beneficiary's bank pays the person identified by number as permitted by subsection (b)(1), the following rules apply:

(1) If the originator is a bank, the originator is obliged to pay its order.

(2) If the originator is not a bank and proves that the person identified by number was not entitled to receive payment from the originator, the originator is not obliged to pay its order unless the originator's bank proves that the originator, before acceptance of the originator's order, had notice that payment of a payment order issued by the originator might be made by the beneficiary's bank on the basis of an identifying or bank account number even if it identifies a person different from the named beneficiary. Proof of notice may be made by any admissible evidence. The originator's bank satisfies the burden of proof if it proves that the originator, before the payment order was accepted, signed a ~~writing~~ record stating the information to which the notice relates.

\* \* \*

**§ 7-4A-208. Misdescription of Intermediary Bank or Beneficiary's Bank.**

\* \* \*

(b) This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank both by name and an identifying number if the name and number identify different persons.

\* \* \*

(2) If the sender is not a bank and the receiving bank proves that the sender, before the payment order was accepted, had notice that the receiving bank might rely on the number as the proper identification of the intermediary or beneficiary's bank even if it identifies a person different from the bank identified

by name, the rights and obligations of the sender and the receiving bank are governed by subsection (b)(1), as though the sender were a bank. Proof of notice may be made by any admissible evidence. The receiving bank satisfies the burden of proof if it proves that the sender, before the payment order was accepted, signed a ~~writing~~ record stating the information to which the notice relates.

\* \* \*

**§ 7-4A-210. Rejection of Payment Order.**

(a) A payment order is rejected by the receiving bank by a notice of rejection transmitted to the sender orally, ~~electronically~~, or in ~~writing~~ a record. A notice of rejection need not use any particular words and is sufficient if it indicates that the receiving bank is rejecting the order or will not execute or pay the order. Rejection is effective when the notice is given if transmission is by a means that is reasonable in the circumstances. If notice of rejection is given by a means that is not reasonable, rejection is effective when the notice is received. If an agreement of the sender and receiving bank establishes the means to be used to reject a payment order, (i) any means complying with the agreement is reasonable, and (ii) any means not complying is not reasonable unless no significant delay in receipt of the notice resulted from the use of the noncomplying means.

\* \* \*

**§ 7-4A-211. Cancellation and Amendment of Payment Order.**

(a) A communication of the sender of a payment order cancelling or amending the order may be transmitted to the receiving bank orally, ~~electronically~~, or in ~~writing~~ a record. If a security procedure is in effect between the sender and the receiving bank, the communication is not effective to cancel or amend the order unless the communication is verified pursuant to the security procedure or the bank agrees to the cancellation or amendment.

\* \* \*

**§ 7-4A-305. Liability for Late or Improper Execution or Failure to Execute Payment Order.**

\* \* \*

(c) In addition to the amounts payable under subsections (a) and (b), damages, including consequential damages, are recoverable to the extent provided in an express ~~written~~ agreement of the receiving bank, evidenced by a record.

(d) If a receiving bank fails to execute a payment order it was obliged by express agreement to execute, the receiving bank is liable to the sender for its expenses in the transaction and for incidental expenses and interest losses resulting from the failure to execute. Additional damages, including consequential damages, are recoverable to the extent provided in an express ~~written~~ agreement of the receiving bank, evidenced by a record, but are not otherwise recoverable.

\* \* \*

## ARTICLE 5 - LETTERS OF CREDIT

### § 7-5-104. Formal Requirements.

A letter of credit, confirmation, advice, transfer, amendment, or cancellation may be issued in any form that is a signed record. ~~and is authenticated (i) by a signature or (ii) in accordance with the agreement of the parties or the standard practice referred to in Section 7-5-108(e)~~

### § 7-5-116. Choice of Law and Forum.

(a) The liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction chosen by an agreement in the form of a record signed ~~or otherwise authenticated~~ by the affected parties ~~in the manner provided in Section 7-5-104~~ or by a provision in the person's letter of credit, confirmation, or other undertaking. The jurisdiction whose law is chosen need not bear any relation to the transaction.

(b) Unless subsection (a) applies, the liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction in which the person is located. The person is considered to be located at the address indicated in the person's undertaking. If more than one address is indicated, the person is considered to be located at the address from which the person's undertaking was issued.

(c) For the purpose of jurisdiction, choice of law, and recognition of interbranch letters of credit, but not enforcement of a judgment, all branches of a bank are considered separate juridical entities and a bank is considered to be located at the place where its relevant branch is considered to be located under ~~this~~ subsection (d).

(d) A branch of a bank is considered to be located at the address indicated in the branch's undertaking. If more than one address is indicated, the branch is considered to be located at the address from which the undertaking was issued.

~~(e)~~ (e) Except as otherwise provided in this subsection, the liability of an issuer, nominated person, or adviser is governed by any rules of custom or practice, such as the Uniform Customs and Practice for Documentary Credits, to which the letter of credit, confirmation, or other undertaking is expressly made subject. If (i) this article would govern the liability of an issuer, nominated person, or adviser under subsection (a) or (b), (ii) the relevant undertaking incorporates rules of custom or practice, and (iii) there is conflict between this article and those rules as applied to that undertaking, those rules govern except to the extent of any conflict with the nonvariable provisions specified in Section 7-5-103(c).

~~(d)~~ (f) If there is conflict between this article and Article 3, 4, 4A, or 9A, this article governs.

~~(e)~~ (g) The forum for settling disputes arising out of an undertaking within this article may be chosen in the manner and with the binding effect that governing law may be chosen in accordance with subsection (a).

### 1997 ALABAMA COMMENT

Subsection (e) [now Subsection (g)] of Section 7-5-116 provides considerable latitude in choice of forum. This represents a change in the law of Alabama, which has historically resisted choice of forum clauses. See *Keelean v. Central Bank of the South*, 544 So.2d 153 (Ala. 1989).

## ARTICLE 7 - DOCUMENTS OF TITLE

### § 7-7-102. Definitions and Index of Definitions.

(a) In this article, unless the context otherwise requires:

\* \* \*

(10) ~~“Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.~~ [Reserved.]

(11) ~~“Sign” means, with present intent to authenticate or adopt a record:~~

~~(A) To execute or adopt a tangible symbol; or~~

~~(B) To attach to or logically associate with the record an electronic sound, symbol, or process.~~  
[Reserved.]

\* \* \*

#### 2004 ALABAMA COMMENT

Alabama's adoption of revised Article 7 retains the definition of "good faith" previously found in revised Subsection 7-1-201(19) [now Subsection 7-1-201(20)]. This definition also appears in revised Subsections 7-3-103(a)(4), 7-4-104(c), and generally applies throughout the existing Articles of the Uniform Commercial Code. Further guidance on Alabama's definition of good faith can be found in the Alabama Comment to Section 7-3-103.

### § 7-7-106. Control of Electronic Document of Title.

\* \* \*

(b) A system satisfies subsection (a), and a person is ~~deemed to have~~ has control of an electronic document of title, if the document is created, stored, and ~~assigned~~ transferred in such a manner that:

(1) ~~A~~ a single authoritative copy of the document exists which is unique, identifiable, and, except as otherwise provided in subdivisions (4), (5), and (6), unalterable;

(2) ~~T~~ he authoritative copy identifies the person asserting control as:

a. ~~T~~ he person to which the document was issued; or

b. ~~I~~ f the authoritative copy indicates that the document has been transferred, the person to which the document was most recently transferred;

(3) ~~T~~ he authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(4) ~~C~~ opies or amendments that add or change an identified ~~assignee~~ transferee of the authoritative copy can be made only with the consent of the person asserting control;

(5) ~~E~~ ach copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is



not the authoritative copy; and

(6) ~~A~~any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

(c) A system satisfies subsection (a), and a person has control of an electronic document of title, if an authoritative electronic copy of the document, a record attached to or logically associated with the electronic copy, or a system in which the electronic copy is recorded:

(1) enables the person readily to identify each electronic copy as either an authoritative copy or a nonauthoritative copy;

(2) enables the person readily to identify itself in any way, including by name, identifying number, cryptographic key, office, or account number, as the person to which each authoritative electronic copy was issued or transferred; and

(3) gives the person exclusive power, subject to subsection (d), to:

(A) prevent others from adding or changing the person to which each authoritative electronic copy has been issued or transferred; and

(B) transfer control of each authoritative electronic copy.

(d) Subject to subsection (e), a power is exclusive under subsection (c)(3)(A) and (B), even if:

(1) the authoritative electronic copy, a record attached to or logically associated with the authoritative electronic copy, or a system in which the authoritative electronic copy is recorded limits the use of the document of title or has a protocol that is programmed to cause a change, including a transfer or loss of control; or

(2) the power is shared with another person.

(e) A power of a person is not shared with another person under subsection (d)(2) and the person's power is not exclusive if:

(1) the person can exercise the power only if the power also is exercised by the other person; and

(2) the other person:

(A) can exercise the power without exercise of the power by the person; or

(B) is the transferor to the person of an interest in the document of title.

(f) If a person has the powers specified in subsection (c)(3)(A) and (B), the powers are presumed to be exclusive.

(g) A person has control of an electronic document of title if another person, other than the transferor to the person of an interest in the document:

(1) has control of the document and acknowledges that it has control on behalf of the person; or

(2) obtains control of the document after having acknowledged that it will obtain control of the document on behalf of the person.

(h) A person that has control under this section is not required to acknowledge that it has control on behalf of another person.

(i) If a person acknowledges that it has or will obtain control on behalf of another person, unless the person otherwise agrees or law other than this article or Article 9A otherwise provides, the person does not owe any duty to the other person and is not required to confirm the acknowledgement to any other person.

## ARTICLE 8 - INVESTMENT SECURITIES

### § 7-8-102. Definitions and Index of Definitions.

(a) In this article:

\* \* \*

(6) "Communicate" means to:

(i) send a signed ~~writing~~ record; or

(ii) transmit information by any mechanism agreed upon by the persons transmitting and receiving the information.

\* \* \*

(b.1) The following definitions in this Article and other Articles apply to this Article:

"Controllable account." Section 7-9A-102.

"Controllable electronic record." Section 7-12-102.

"Controllable payment intangible." Section 7-9A-102.

\* \* \*

### 1996 ALABAMA COMMENT

This Article applies to Article 8 transactions a definition of good faith that includes both "honesty in fact," already contained in the general definition of "good faith" in Subsection 7-1-209(19) [now Subsection 7-1-201(20)] of the Alabama Code, as well as the concept of "observance of reasonable commercial standards of fair dealing." This is a change made in the Revised Article 8 as promulgated by the Uniform Commercial Code sponsoring bodies, the American Law Institute and the Conference of Commissioners on Uniform State Laws. The change has been described by commentators as providing a more "objective" standard of good faith. This version of Revised Article 8 follows the national version of Article 8 in approving this change. It should be noted that the Alabama version of Revised Articles 3 and 4 of the Uniform Commercial Code (dealing with negotiable instruments and bank deposits and collections) retains the definition of "good faith" in the present Alabama Code Subsection 7-1-209 (19) [now Subsection 7-1-201(20)]. However, Alabama courts have interpreted the present general definition of good faith to include an "objective" element. See, *In re Morgan, Inc.*, 985 F.2d 1554, 1560-6 (11th Cir 1993) (applying Alabama law); *Strickland v. Kafko Manufacturing, Inc.*, 512 So.2d 714 (Ala. 1987); and *Farmers & Merchants Bank of Centre v. Hancock*, 506 So.2d 305 (Ala. 1987).

### § 7-8-103. Rules for Determining Whether Certain Obligations and Interests are Securities or Financial Assets.

\* \* \*

(h) A controllable account, controllable electronic record, or controllable payment intangible is not a financial asset unless Section 7-8-102(a)(9)(iii) applies.

\* \* \*

**§ 7-8-106. Control.**

\* \* \*

(d) A purchaser has “control” of a security entitlement if:

\* \* \*

(3) ~~another person has control of the security entitlement on behalf of the purchaser or, having previously acquired control of the security entitlement, acknowledges that it has control on behalf of the purchaser.~~ person, other than the transferor to the purchaser of an interest in the security entitlement:

(A) has control of the security entitlement and acknowledges that it has control on behalf of the purchaser; or

(B) obtains control of the security entitlement after having acknowledged that it will obtain control of the security entitlement on behalf of the purchaser.

\* \* \*

(h) A person that has control under this section is not required to acknowledge that it has control on behalf of a purchaser.

(i) If a person acknowledges that it has or will obtain control on behalf of a purchaser, unless the person otherwise agrees or law other than this Article or Article 9A otherwise provides, the person does not owe any duty to the purchaser and is not required to confirm the acknowledgement to any other person.

\* \* \*

**§ 7-8-110. Applicability; Choice of Law.**

\* \* \*

(g) The local law of the issuer’s jurisdiction or the securities intermediary’s jurisdiction governs a matter or transaction specified in subsection (a) or (b) even if the matter or transaction does not bear any relation to that jurisdiction.

\* \* \*

**§ 7-8-303. Protected Purchaser.**

(a) “Protected purchaser” means a purchaser of a certificated or uncertificated security, or of an interest therein, who:

- (1) gives value;
- (2) does not have notice of any adverse claim to the security; and
- (3) obtains control of the certificated or uncertificated security.

(b) ~~In addition to acquiring the rights of a purchaser,~~ a A protected purchaser ~~also~~ acquires its interest in the security free of any adverse claim.

## ARTICLE 9A - SECURED TRANSACTIONS

### § 7-9A-102. Definitions and Index of Definitions.

(a) *Article 9A definitions.* In this article:

\* \* \*

(2) “Account,” except as used in “account for,” “account statement,” “account to,” “commodity account” in paragraph (14), “customer’s account,” “deposit account” in paragraph (29), “on account of,” and “statement of account”, means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) as winnings in a lottery or other game of chance operated or sponsored by a State, governmental unit of a State, or person licensed or authorized to operate the game by a State or governmental unit of a State. The term includes controllable accounts and health-care-insurance receivables. The term does not include (i) ~~rights to payment evidenced by chattel paper or an instrument~~ chattel paper, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, ~~or~~ (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card, or (vii) rights to payment evidenced by an instrument.

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

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

(A) ~~authenticated~~ signed by a secured party;

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

(C) identifying the components of the obligations in reasonable detail.

\* \* \*

(7) ~~“Authenticate” means:~~

~~(A) to sign; or~~

~~(B) with present intent to adopt or accept a record, to attach to or logically associate with the record an electronic sound, symbol, or process. [Reserved.]~~

(7A) “Assignee,” except as used in “assignee for benefit of creditors,” means a person (i) in whose favor a security interest that secures an obligation is created or provided for under a security agreement, whether or not the obligation is outstanding or (ii) to which an account, chattel paper, payment intangible, or promissory note has been sold. The term includes a person to which a security interest has

been transferred by a secured party.

(7B) “Assignor” means a person that (i) under a security agreement creates or provides for a security interest that secures an obligation or (ii) sells an account, chattel paper, payment intangible, or promissory note. The term includes a secured party that has transferred a security interest to another person.

\* \* \*

(9A) "Central bank digital currency" means a digital currency, a digital medium of exchange, or a digital monetary unit of account issued by the United States Federal Reserve System, a federal agency, a foreign government, a foreign central bank, or a foreign reserve system, that is made directly available to a consumer by such entities. The term includes a digital currency, a digital medium of exchange, or a digital monetary unit of account issued by the United States Federal Reserve System, a federal agency, a foreign government, a foreign central bank, or a foreign reserve system, that is processed or validated directly by such entities.

\* \* \*

~~(11) “Chattel paper” means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this paragraph, “monetary obligation” means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term does not include (i) charters or other contracts involving the use or hire of a vessel or (ii) records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.~~

(11) “Chattel paper” means:

(A) a right to payment of a monetary obligation secured by specific goods, if the right to payment and security agreement are evidenced by a record; or

(B) a right to payment of a monetary obligation owed by a lessee under a lease agreement with respect to specific goods and a monetary obligation owed by the lessee in connection with the transaction giving rise to the lease, if:

(i) the right to payment and lease agreement are evidenced by a record; and

(ii) the predominant purpose of the transaction giving rise to the lease was to give the lessee the right to possession and use of the goods.

The term does not include a right to payment arising out of a charter or other contract involving the use or hire of a vessel or a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

\* \* \*

(27A) “Controllable account” means an account evidenced by a controllable electronic record that

provides that the account debtor undertakes to pay the person that has control under Section 7-12-105 of the controllable electronic record.

(27B) “Controllable payment intangible” means a payment intangible evidenced by a controllable electronic record that provides that the account debtor undertakes to pay the person that has control under Section 7-12-105 of the controllable electronic record.

\* \* \*

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

\* \* \*

~~(31) “Electronic chattel paper” means chattel paper evidenced by a record or records consisting of information stored in an electronic medium. [Reserved.]~~

\* \* \*

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

\* \* \*

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

\* \* \*

(54A) “Money” has the meaning in Section 7-1-201(b)(24), but does not include a deposit account.

\* \* \*

(61) “Payment intangible” means a general intangible under which the account debtor’s principal obligation is a monetary obligation. The term includes a controllable payment intangible.

\* \* \*

(66) “Proposal” means a record ~~authenticated~~ signed by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to Sections 7-9A-620, 7-9A-621, and 7-9A-622.

\* \* \*

(75) ~~“Send,” in connection with a record or notification, means:~~

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

~~(B) to cause the record or notification to be received within the time that it would have been received if properly sent under subparagraph (A). [Reserved.]~~

\* \* \*

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

\* \* \*

(b) *Definitions in other articles.* “Control” as provided in Section 7-7-106 and the following definitions in other articles of this title apply to this article:

\* \* \*

“Controllable electronic record.” Section 7-12-102.

\* \* \*

“Protected Purchaser.” Section 7-8-303.

\* \* \*

“Qualifying purchaser.” Section 7-12-102.

\* \* \*

#### **2001 ALABAMA COMMENT**

In order to avoid uncertainty as to whether "minehead" includes open mines and surface mines, and to remain consistent with former Alabama law, the official text has been changed in this state to use the term "mine" in lieu of "minehead" throughout this article. Subsection 4(c) of the official comments to this section should be interpreted consistent with this change.

#### **2023 ALABAMA COMMENT**

1. As referenced in the 2023 Alabama Comments to Section 7-1-201, Alabama chose to exclude money “in an electronic form” from its definition of “money” in Subsection 7-1-201(24). Also, to be consistent with this change, Alabama has i) eliminated the defined terms “electronic money” and “tangible money” from Article 9 (through the elimination of proposed uniform Subsections 9-102(31A) and 9-102(79A) defining these terms and the deletion of any reference to these terms from Alabama’s enactment), and ii) deleted proposed Section 9-105A on control of electronic money (and any references to that section) from Alabama’s enactment.
2. The non-uniform term “central bank digital currency” (defined in Subsection 7-9A-102(9A)) is specifically excluded from the definition of a “deposit account” in Subsection 7-9A-102(29).



**§ 7-9A-104. Control of Deposit Account.**

(a) *Requirements for control.* A secured party has control of a deposit account if:

- (1) the secured party is the bank with which the deposit account is maintained;
- (2) the debtor, secured party, and bank have agreed in ~~an authenticated~~ a signed record that the bank will comply with instructions originated by the secured party directing disposition of the funds in the deposit account without further consent by the debtor; ~~or~~
- (3) the secured party becomes the bank's customer with respect to the deposit account; ~~or~~
- (4) another person, other than the debtor:

(A) has control of the deposit account and acknowledges that it has control on behalf of the secured party; or

(B) obtains control of the deposit account after having acknowledged that it will obtain control of the deposit account on behalf of the secured party.

\* \* \*

**§ 7-9A-105. Control of ~~electronic chattel paper~~ Electronic Copy of Record Evidencing Chattel Paper.**

~~(a) *General rule: control of electronic chattel paper.* A secured party has control of electronic chattel paper if a system employed for evidencing the transfer of interests in the chattel paper reliably establishes the secured party as the person to which the chattel paper was assigned.~~

~~(b) *Specific facts giving control.* A system satisfies subsection (a) and a secured party has control of electronic chattel paper if the record or records comprising the chattel paper are created, stored, and assigned in such a manner that:~~

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

(a) *General Rule: control of electronic copy of record evidencing chattel paper.* A purchaser has control of an authoritative electronic copy of a record evidencing chattel paper if a system employed for

evidencing the assignment of interests in the chattel paper reliably establishes the purchaser as the person to which the authoritative electronic copy was assigned.

(b) **Single authoritative copy.** A system satisfies subsection (a) if the record or records evidencing chattel paper are created, stored, and assigned in a manner that:

(1) a single authoritative copy of the record or records exists which is unique, identifiable, and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;

(2) the authoritative copy identifies the purchaser as the assignee of the record or records;

(3) the authoritative copy is communicated to and maintained by the purchaser or its designated custodian;

(4) copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the purchaser;

(5) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

(c) **One or more authoritative copies.** A system satisfies subsection (a), and a purchaser has control of an authoritative electronic copy of a record evidencing chattel paper, if the electronic copy, a record attached to or logically associated with the electronic copy, or a system in which the electronic copy is recorded:

(1) enables the purchaser readily to identify each electronic copy as either an authoritative copy or a nonauthoritative copy;

(2) enables the purchaser readily to identify itself in any way, including by name, identifying number, cryptographic key, office, or account number, as the assignee of the authoritative electronic copy; and

(3) gives the purchaser exclusive power, subject to subsection (d), to:

(A) prevent others from adding or changing an identified assignee of the authoritative electronic copy; and

(B) transfer control of the authoritative electronic copy.

(d) **Meaning of exclusive.** Subject to subsection (e), a power is exclusive under subsection (c)(3)(A) and (B) even if:

(1) the authoritative electronic copy, a record attached to or logically associated with the authoritative electronic copy, or a system in which the authoritative electronic copy is recorded limits the use of the authoritative electronic copy or has a protocol programmed to cause a change, including a transfer or loss of control; or

(2) the power is shared with another person.

(e) **When power not shared with another person.** A power of a purchaser is not shared with another person under subsection (d)(2) and the purchaser's power is not exclusive if:

(1) the purchaser can exercise the power only if the power also is exercised by the other person; and

(2) the other person:

(A) can exercise the power without exercise of the power by the purchaser; or

(B) is the transferor to the purchaser of an interest in the chattel paper.

(f) **Presumption of exclusivity of certain powers.** If a purchaser has the powers specified in subsection (c)(3)(A) and (B), the powers are presumed to be exclusive.

(g) **Obtaining control through another person.** A purchaser has control of an authoritative electronic copy of a record evidencing chattel paper if another person, other than the transferor to the purchaser of an interest in the chattel paper:

(1) has control of the authoritative electronic copy and acknowledges that it has control on behalf of the purchaser; or

(2) obtains control of the authoritative electronic copy after having acknowledged that it will obtain control of the electronic copy on behalf of the purchaser.

**§ 7-9A-107A. Control of Controllable Electronic Record, Controllable Account, or Controllable Payment Intangible.**

(a) **Control under Section 7-12-105.** A secured party has control of a controllable electronic record as provided in Section 7-12-105.

(b) **Control of controllable account and controllable payment intangible.** A secured party has control of a controllable account or controllable payment intangible if the secured party has control of the controllable electronic record that evidences the controllable account or controllable payment intangible.

**§ 7-9A-107B. No Requirement to Acknowledge or Confirm; No Duties.**

(a) **No requirement to acknowledge.** A person that has control under Section 7-9A-104, or 7-9A-105 is not required to acknowledge that it has control on behalf of another person.

(b) **No duties or confirmation.** If a person acknowledges that it has or will obtain control on behalf of another person, unless the person otherwise agrees or law other than this article otherwise provides, the person does not owe any duty to the other person and is not required to confirm the acknowledgement to any other person.

**§ 7-9A-203. Attachment and Enforceability of Security Interest; Proceeds; Supporting Obligations; Formal Requisites.**

\* \* \*

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

(1) value has been given;

(2) the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and

(3) one of the following conditions is met:

(A) the debtor has ~~authenticated~~ signed a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;

\* \* \*

(C) the collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under Section 7-8-301 pursuant to the debtor's security agreement; ~~or~~

(D) the collateral is controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, ~~electronic chattel paper~~, electronic documents, investment property, or letter-of-credit rights, and the secured party has control under Section 7-7-106, 7-9A-104, ~~7-9A-105, 7-9A-106, or 7-9A-107~~, or 7-9A-107A pursuant to the debtor's security agreement; or

(E) the collateral is chattel paper and the secured party has possession and control under Section 7-9A-314A pursuant to the debtor's security agreement.

\* \* \*

#### **§ 7-9A-204. After-Acquired Property; Future Advances.**

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

(b) *When after-acquired property clause not effective.* ~~A~~ Subject to subsection (b.1), a security interest does not attach under a term constituting an after-acquired property clause to:

(1) consumer goods, other than an accession when given as additional security, unless the debtor acquires rights in them within 10 days after the secured party gives value; or

(2) a commercial tort claim.

(b.1) Limitation on subsection (b). Subsection (b) does not prevent a security interest from attaching:

(1) to consumer goods as proceeds under Section 7-9A-315(a) or commingled goods under Section 7-9A-336(c);

(2) to a commercial tort claim as proceeds under Section 7-9A-315(a); or

(3) under an after-acquired property clause to property that is proceeds of consumer goods or a commercial tort claim.

\* \* \*

**§ 7-9A-207. Rights and Duties of Secured Party Having Possession or Control of Collateral.**

\* \* \*

(c) *Duties and rights when secured party in possession or control.* Except as otherwise provided in subsection (d), a secured party having possession of collateral or control of collateral under Section 7-7-106, 7-9A-104, 7-9A-105, 7-9A-106, ~~or 7-9A-107,~~ or 7-9A-107A:

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

\* \* \*

**§ 7-9A-208. Additional Duties of Secured Party Having Control of Collateral.**

\* \* \*

(b) *Duties of secured party after receiving demand from debtor.* Within 10 days after receiving an ~~authenticated~~ a signed demand by the debtor:

(1) a secured party having control of a deposit account under Section 7-9A-104(a)(2) shall send to the bank with which the deposit account is maintained ~~an authenticated~~ a signed record statement that releases the bank from any further obligation to comply with instructions originated by the secured party;

(2) a secured party having control of a deposit account under Section 7-9A-104(a)(3) shall:

- (A) pay the debtor the balance on deposit in the deposit account; or
- (B) transfer the balance on deposit into a deposit account in the debtor's name;

~~(3) a secured party, other than a buyer, having control of electronic chattel paper under Section 7-9A-105 shall:~~

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

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

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

(3) a secured party, other than a buyer, having control under Section 7-9A-105 of an authoritative electronic copy of a record evidencing chattel paper shall transfer control of the electronic copy to the debtor or a person designated by the debtor;

(4) a secured party having control of investment property under Section 7-8-106(d)(2) or 7-9A-106(b) shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained ~~an authenticated~~ a signed 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;

(5) a secured party having control of a letter-of-credit right under Section 7-9A-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~~ a signed release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party-;

~~(6) a secured party having control of an electronic document shall:~~

~~a. Give control of the electronic document 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 document 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~~

~~e. Take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party.~~

(6) a secured party having control under Section 7-7-106 of an authoritative electronic copy of an electronic document shall transfer control of the electronic copy to the debtor or a person designated by the debtor; and

(7) a secured party having control under Section 7-12-105 of a controllable electronic record, other than a buyer of a controllable account or controllable payment intangible evidenced by the controllable electronic record, shall transfer control of the controllable electronic record to the debtor or a person designated by the debtor.

(c) Authenticated Signed demand. In this section, "authenticated signed demand" means a record authenticated signed by the debtor demanding that the secured party take one or more of the specific actions described in subsection (b) and reasonably identifying the collateral that is the subject of the demand. The secured party may designate in a record sent to the debtor or as to which the debtor has notice an address to which such demands must be sent. A demand sent to another address of the secured party will be effective, but the 10-day period for action by the secured party does not begin until the person or department at the address specified by the secured party has notice of the demand.

#### **2001 ALABAMA COMMENT**

Subsection (c) was added to define "authenticated demand" in this section.

**2023 ALABAMA COMMENT**

Subsection (c) was further modified to be consistent with the current terminology.

**§ 7-9A-209. Duties of Secured Party if Account Debtor Has Been Notified of Assignment.**

\* \* \*

(b) *Duties of secured party after receiving demand from debtor.* Within 10 days after receiving ~~an authenticated~~ a signed demand by the debtor, a secured party shall send to an account debtor that has received notification, under Section 7-9A-406(a) or 7-12-106(b), of an assignment to the secured party as assignee ~~under Section 7-9A-406(a) an authenticated~~ a signed record that releases the account debtor from any further obligation to the secured party.

\* \* \*

(d) *Signed ~~Authenticated~~ demand.* In this section, “~~signed authenticated~~ demand” means a record signed authenticated by the debtor demanding that the secured party take the action described in subsection (b). The secured party may designate in a record sent to the debtor or as to which the debtor has notice an address to which such demand must be sent. A demand sent to another address of the secured party will be effective, but the 10-day period for action by the secured party does not begin until the person or department at the address specified by the secured party has notice of the demand.

**2001 ALABAMA COMMENT**

Subsection (d) was added to define "authenticated demand" in this section.

**2023 ALABAMA COMMENT**

Subsection (d) was further modified to be consistent with the current terminology.

**§ 7-9A-210. Request for Accounting; Request Regarding List of Collateral or Statement of Account.**

(a) *Definitions.* In this section:

\* \* \*

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

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

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

(b) *Duty to respond to requests.* Subject to subsections (c), (d), (e), and (f), a secured party, other than a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor, shall comply

with a request within 14 days after receipt:

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

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

(c) *Request regarding list of collateral; statement concerning type of collateral.* A secured party that claims a security interest in all of a particular type of collateral owned by the debtor may comply with a request regarding a list of collateral by sending to the debtor ~~an authenticated~~ a signed record including a statement to that effect within 14 days after receipt.

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

(1) disclaiming any interest in the collateral; and

(2) if known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the collateral.

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

(1) disclaiming any interest in the obligations; and

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

\* \* \*

(g) *Designation of address for request.* The secured party may designate in a record sent to the debtor, ~~signed authenticated~~ by the debtor, or, as to which the debtor has notice, an address to which a request under this section must be sent. A request sent to another address of the secured party will be effective, but the 14-day period for action by the secured party does not begin until the person or department at the address specified by the secured party has notice of the request.

### **§ 7-9A-301. Law Governing Perfection and Priority of Security Interests.**

Except as otherwise provided in Sections 7-9A-303 through ~~7-9A-306~~ 7-9A-306B, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

(1) Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.



(2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral.

(3) Except as otherwise provided in paragraph (4), while ~~tangible~~ negotiable **tangible** documents, goods, instruments, **or money**, ~~or tangible chattel paper~~ is located in a jurisdiction, the local law of that jurisdiction governs:

(A) perfection of a security interest in the goods by filing a fixture filing;

(B) perfection of a security interest in timber to be cut; and

(C) the effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.

(4) The local law of the jurisdiction in which the wellhead or mine is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.

#### **§ 7-9A-304. Law Governing Perfection and Priority of Security Interests in Deposit Accounts.**

(a) *Law of bank's jurisdiction governs.* The local law of a bank's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a deposit account maintained with that bank **even if the transaction does not bear any relation to the bank's jurisdiction.**

\* \* \*

#### **§ 7-9A-305. Law Governing Perfection and Priority of Security Interests in Investment Property.**

(a) *Governing law: General rules.* Except as otherwise provided in subsection (c), the following rules apply:

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

(2) The local law of the issuer's jurisdiction as specified in Section 7-8-110(d) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in an uncertificated security.

(3) The local law of the securities intermediary's jurisdiction as specified in Section 7-8-110(e) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a security entitlement or securities account.

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

**(5) Paragraphs (2), (3), and (4) apply even if the transaction does not bear any relation to the jurisdiction.**

\* \* \*

**§ 7-9A-306A. Law Governing Perfection and Priority of Security Interests in Chattel Paper.**

(a) *Chattel paper evidenced by authoritative electronic copy.* Except as provided in subsection (d), if chattel paper is evidenced only by an authoritative electronic copy of the chattel paper or is evidenced by an authoritative electronic copy and an authoritative tangible copy, the local law of the chattel paper's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in the chattel paper, even if the transaction does not bear any relation to the chattel paper's jurisdiction.

(b) *Chattel paper's jurisdiction.* The following rules determine the chattel paper's jurisdiction under this section:

(1) If the authoritative electronic copy of the record evidencing chattel paper, or a record attached to or logically associated with the electronic copy and readily available for review, expressly provides that a particular jurisdiction is the chattel paper's jurisdiction for purposes of this part, this article, or the Uniform Commercial Code, that jurisdiction is the chattel paper's jurisdiction.

(2) If paragraph (1) does not apply and the rules of the system in which the authoritative electronic copy is recorded are readily available for review and expressly provide that a particular jurisdiction is the chattel paper's jurisdiction for purposes of this part, this article, or the Uniform Commercial Code, that jurisdiction is the chattel paper's jurisdiction.

(3) If paragraphs (1) and (2) do not apply and the authoritative electronic copy, or a record attached to or logically associated with the electronic copy and readily available for review, expressly provides that the chattel paper is governed by the law of a particular jurisdiction, that jurisdiction is the chattel paper's jurisdiction.

(4) If paragraphs (1), (2), and (3) do not apply and the rules of the system in which the authoritative electronic copy is recorded are readily available for review and expressly provide that the chattel paper or the system is governed by the law of a particular jurisdiction, that jurisdiction is the chattel paper's jurisdiction.

(5) If paragraphs (1) through (4) do not apply, the chattel paper's jurisdiction is the jurisdiction in which the debtor is located.

(c) *Chattel paper evidenced by authoritative tangible copy.* If an authoritative tangible copy of a record evidences chattel paper and the chattel paper is not evidenced by an authoritative electronic copy, while the authoritative tangible copy of the record evidencing chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

(1) perfection of a security interest in the chattel paper by possession under Section 7-9A-314A; and

(2) the effect of perfection or nonperfection and the priority of a security interest in the chattel paper.

(d) *When perfection governed by law of jurisdiction where debtor located.* The local law of the jurisdiction in which the debtor is located governs perfection of a security interest in chattel paper by filing.

**§ 7-9A-306B. Law Governing Perfection and Priority of Security Interests in Controllable**

## Accounts, Controllable Electronic Records, and Controllable Payment Intangibles

(a) Governing law: general rules. Except as provided in subsection (b), the local law of the controllable electronic record's jurisdiction specified in Section 7-12-107(c) and (d) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a controllable electronic record and a security interest in a controllable account or controllable payment intangible evidenced by the controllable electronic record.

(b) When perfection governed by law of jurisdiction where debtor located. The local law of the jurisdiction in which the debtor is located governs:

(1) perfection of a security interest in a controllable account, controllable electronic record, or controllable payment intangible by filing; and

(2) automatic perfection of a security interest in a controllable payment intangible created by a sale of the controllable payment intangible.

### **§ 7-9A-310. When Filing Required to Perfect Security Interest or Agricultural Lien; Security Interests and Agricultural Liens to Which Filing Provisions Do Not Apply.**

\* \* \*

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

\* \* \*

(8) in controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, electronic documents, ~~electronic chattel paper~~, investment property, or letter-of-credit rights which is perfected by control under Section 7-9A-314;

(8.1) in chattel paper which is perfected by possession and control under Section 7-9A-314A;

(9) in proceeds which is perfected under Section 7-9A-315; or

(10) that is perfected under Section 7-9A-316.

\* \* \*

### **§ 7-9A-312. ~~Perfection of certain security interests by filing; temporary perfection.~~ Perfection of Security Interests in Chattel Paper, Controllable Accounts, Controllable Electronic Records, Controllable Payment Intangibles, Deposit Accounts, Negotiable Documents, Goods Covered by Documents, Instruments, Investment Property, Letter-of-Credit Rights, and Money; Perfection by Permissive Filing; Temporary Perfection Without Filing or Transfer of Possession.**

(a) *Perfection by filing permitted.* A security interest in chattel paper, controllable accounts, controllable electronic records, controllable payment intangibles, ~~negotiable documents~~, instruments, ~~or~~ investment property, or negotiable documents may be perfected by filing.

(b) *Control or possession of certain collateral.* Except as otherwise provided in Section 7-9A-315(c) and (d) for proceeds:

- (1) a security interest in a deposit account may be perfected only by control under Section 7-9A-314;
- (2) ~~and~~ except as otherwise provided in Section 7-9A-308(d), a security interest in a letter-of-credit right may be perfected only by control under Section 7-9A-314; and
- (3) a security interest in money may be perfected only by the secured party's taking possession under Section 7-9A-313.

\* \* \*

(e) *Temporary perfection: New value.* A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession or control for a period of 20 days from the time it attaches to the extent that it arises for new value given under ~~an authenticated~~ a signed security agreement.

\* \* \*

### **§ 7-9A-313. When Possession by or Delivery to Secured Party Perfects Security Interest Without Filing.**

(a) *Perfection by possession or delivery.* Except as otherwise provided in subsection (b), a secured party may perfect a security interest in ~~tangible negotiable documents, goods, instruments,~~ negotiable tangible documents, or money, ~~or tangible chattel paper~~ by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under Section 7-8-301.

\* \* \*

(c) *Collateral in possession of person other than debtor.* With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when:

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

(d) *Time of perfection by possession; continuation of perfection.* If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs ~~no-not~~ earlier than the time the secured party takes possession and continues only while the secured party retains possession.

\* \* \*

### **§ 7-9A-314. Perfection by Control.**

(a) *Perfection by control.* A security interest in ~~investment property, deposit accounts, letter-of-credit rights, electronic chattel paper, or electronic documents~~ controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, electronic documents, investment property, or letter-of-credit rights may be perfected by control of the collateral under Section 7-7-106, 7-9A-104, 7-

~~9A-105~~ 7-9A-106, ~~or~~ 7-9A-107, or 7-9A-107A.

(b) *Specified collateral: Time of perfection by control; continuation of perfection.* A security interest in ~~deposit accounts, electronic chattel paper, letter-of-credit rights, or electronic documents~~ controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, electronic documents, or letter-of-credit rights is perfected by control under Section 7-7-106, 7-9A-104, ~~7-9A-105, or 7-9A-107, or 7-9A-107A~~ when not earlier than the time the secured party obtains control and remains perfected by control only while the secured party retains control.

(c) *Investment property: time of perfection by control; continuation of perfection.* A security interest in investment property is perfected by control under Section 7-9A-106 ~~from~~ not earlier than the time the secured party obtains control and remains perfected by control until:

\* \* \*

### **§ 7-9A-314A. Perfection by Possession and Control of Chattel Paper.**

(a) Perfection by possession and control. A secured party may perfect a security interest in chattel paper by taking possession of each authoritative tangible copy of the record evidencing the chattel paper and obtaining control of each authoritative electronic copy of the electronic record evidencing the chattel paper.

(b) Time of perfection; continuation of perfection. A security interest is perfected under subsection (a) not earlier than the time the secured party takes possession and obtains control and remains perfected under subsection (a) only while the secured party retains possession and control.

(c) Application of Section 7-9A-313 to perfection by possession of chattel paper. Subsections (c) and (f) through (i) of Section 7-9A-313 apply to perfection by possession of an authoritative tangible copy of a record evidencing chattel paper.

### **§ 7-9A-316. ~~Effect of change in governing law.~~ Continued Perfection of Security Interest Following Change in Governing Law.**

(a) *General rule: Effect on perfection of change in governing law.* A security interest perfected pursuant to the law of the jurisdiction designated in Section 7-9A-301(1), ~~or 7-9A-305(c),~~ 7-9A-306A(d), or 7-9A-306B(b) remains perfected until the earliest of:

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

\* \* \*

~~(f) Change in jurisdiction of bank, issuer, nominated person, securities intermediary, or commodity intermediary.~~ Change in jurisdiction of chattel paper, controllable electronic record, bank, issuer, nominated person, securities intermediary, or commodity intermediary. A security interest in chattel paper, controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, letter-of-credit rights, or investment property which is perfected under the law of the the chattel

paper's jurisdiction, the controllable electronic record's jurisdiction, the bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's jurisdiction, as applicable, remains perfected until the earlier of:

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

\* \* \*

**§ 7-9A-317. Interests That Take Priority Over or Take Free of Security Interest or Agricultural Lien.**

\* \* \*

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

\* \* \*

(d) *Licensees and buyers of certain collateral.* ~~A~~ Subject to subsections (f) through (i), a licensee of a general intangible or a buyer, other than a secured party, of collateral other than ~~tangible chattel paper, tangible documents,~~ goods, instruments, tangible documents, or a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

\* \* \*

(f) *Buyers of chattel paper.* A buyer, other than a secured party, of chattel paper takes free of a security interest if, without knowledge of the security interest and before it is perfected, the buyer gives value and:

- (1) receives delivery of each authoritative tangible copy of the record evidencing the chattel paper; and
- (2) if each authoritative electronic copy of the record evidencing the chattel paper can be subjected to control under Section 7-9A-105, obtains control of each authoritative electronic copy.

(g) *Buyers of electronic documents.* A buyer of an electronic document takes free of a security interest if, without knowledge of the security interest and before it is perfected, the buyer gives value and, if each authoritative electronic copy of the document can be subjected to control under Section 7-7-106, obtains control of each authoritative electronic copy.

(h) *Buyers of controllable electronic records.* A buyer of a controllable electronic record takes free of a security interest if, without knowledge of the security interest and before it is perfected, the buyer gives value and obtains control of the controllable electronic record.

(i) *Buyers of controllable accounts and controllable payment intangibles.* A buyer, other than a secured party, of a controllable account or a controllable payment intangible takes free of a security interest if, without knowledge of the security interest and before it is perfected, the buyer gives value and obtains

control of the controllable account or controllable payment intangible.

**§ 7-9A-323. Future Advances.**

\* \* \*

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

- (1) the time the secured party acquires knowledge of the buyer's purchase; or
- (2) 45 days after the purchase.

\* \* \*

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

- (1) the time the secured party acquires knowledge of the lease; or
- (2) 45 days after the lease contract becomes enforceable.

\* \* \*

**§ 7-9A-324. Priority of Purchase-Money Security Interests.**

\* \* \*

(b) *Inventory purchase-money priority.* Subject to subsection (c) and except as otherwise provided in subsection (g), a perfected purchase-money security interest in inventory has priority over a conflicting security interest in the same inventory, has priority over a conflicting security interest in chattel paper or an instrument constituting proceeds of the inventory and in proceeds of the chattel paper, if so provided in Section 7-9A-330, and, except as otherwise provided in Section 7-9A-327, also has priority in identifiable cash proceeds of the inventory to the extent the identifiable cash proceeds are received on or before the delivery of the inventory to a buyer, if:

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

\* \* \*

(d) *Livestock purchase-money priority.* Subject to subsection (e) and except as otherwise provided in subsection (g), a perfected purchase-money security interest in livestock that are farm products has priority over a conflicting security interest in the same livestock, and, except as otherwise provided in Section 7-9A-327, a perfected security interest in their identifiable proceeds and identifiable products in their unmanufactured states also has priority, if:

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

\* \* \*

**§ 7-9A-326A. Priority of Security Interest in Controllable Account, Controllable Electronic Record, and Controllable Payment Intangible.**

A security interest in a controllable account, controllable electronic record, or controllable payment intangible held by a secured party having control of the account, electronic record, or payment intangible has priority over a conflicting security interest held by a secured party that does not have control.

**§ 7-9A-330. Priority of Purchaser of Chattel Paper or Instrument.**

(a) *Purchaser's priority: Security interest claimed merely as proceeds.* 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 each authoritative tangible copy of the record evidencing the chattel paper, ~~or~~ and obtains control ~~of~~ under Section 7-9A-105 of each authoritative electronic copy of the record evidencing the chattel paper ~~under Section 7-9A-105~~; and
- (2) the ~~chattel paper does~~ authoritative copies of the record evidencing the chattel paper do not indicate that ~~it~~ the chattel paper has been assigned to an identified assignee other than the purchaser.

(b) *Purchaser's priority: Other security interests.* 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 each authoritative tangible copy of the record evidencing the chattel paper, ~~or~~ and obtains control ~~of~~ under Section 7-9A-105 of each authoritative electronic copy of the record evidencing the chattel paper ~~under Section 7-9A-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.

\* \* \*



(f) *Indication of assignment gives knowledge.* For purposes of subsections (b) and (d), if the authoritative copies of the record evidencing chattel paper or an instrument ~~indicates~~ indicate that ~~the chattel paper or instrument~~ has been assigned to an identified secured party other than the purchaser, a purchaser of the chattel paper or instrument has knowledge that the purchase violates the rights of the secured party.

#### **2001 ALABAMA COMMENT**

Alabama has retained the prior definition of "good faith" from Section 7-1-201(19) [now Subsection 7-1-201(20)]. See definition 9-102(43) [Subsection 7-9A-102(43)].

#### **§ 7-9A-331. Priority of Rights of Purchasers of Controllable Accounts, Controllable Electronic Records, Controllable Payment Intangibles, instruments, Documents, Instruments, and Securities Under Other Articles; Priority of Interests in Financial Assets and Security Entitlements and Protection Against Assertion of Claim Under Article 8 Articles 8 and 12.**

(a) ~~*Rights under Articles 3, 7, and 8 not limited.*~~ *Rights under Articles 3, 7, 8, and 12 not limited.* This article does not limit the rights of a holder in due course of a negotiable instrument, a holder to which a negotiable document of title has been duly negotiated, ~~or~~ a protected purchaser of a security, or a qualifying purchaser of a controllable account, controllable electronic record, or controllable payment intangible. These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided in Articles 3, 7, ~~and 8,~~ and 12.

(b) ~~*Protection under Article 8.*~~ *Protection under Articles 8 and 12.* This article does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of a claim under Article 8 or 12.

\* \* \*

#### **2001 ALABAMA COMMENT**

It should be noted that with respect to Official Comment 5 Alabama has retained the original definition of "good faith" as set forth in 7-1-201(19) [now Subsection 7-1-201(20)].

#### **§ 7-9A-332. Transfer of Money; Transfer of Funds from Deposit Account.**

(a) ~~*Transferee of money.*~~ *Transferee of money.* A transferee of money takes the money free of a security interest ~~unless the transferee acts~~ if the transferee receives possession of the money without acting in collusion with the debtor in violating the rights of the secured party.

(b) ~~*Transferee of funds from deposit account.*~~ A transferee of funds from a deposit account takes the funds free of a security interest in the deposit account ~~unless the transferee acts~~ if the transferee receives possession of the money without acting in collusion with the debtor in violating the rights of the secured party.

#### **§ 7-9A-334. Priority of Security Interests in Fixtures and Crops.**

\* \* \*

(f) *Priority based on consent, disclaimer, or right to remove.* A security interest in fixtures, whether or not perfected, has priority over a conflicting interest of an encumbrancer or owner of the real property if:

- (1) the encumbrancer or owner has, in ~~an authenticated~~ a signed record, consented to the security interest

or disclaimed an interest in the goods as fixtures; or

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

\* \* \*

### **§ 7-9A-341. Bank's Rights and Duties with Respect to Deposit Account.**

Except as otherwise provided in Section 7-9A-340(c), and unless the bank otherwise agrees in an ~~an~~ authenticated a signed record, a bank's rights and duties with respect to a deposit account maintained with the bank are not terminated, suspended, or modified by:

(1) the creation, attachment, or perfection of a security interest in the deposit account;

(2) the bank's knowledge of the security interest; or

(3) the bank's receipt of instructions from the secured party.

### **§ 7-9A-404. Rights Acquired by Assignee; Claims and Defenses Against Assignee.**

(a) *Assignee's rights subject to terms, claims, and defenses; exceptions.* Unless an account debtor has made an enforceable agreement not to assert defenses or claims, and subject to subsections (b) through (e), the rights of an assignee are subject to:

(1) all terms of the agreement between the account debtor and assignor and any defense or claim in recoupment arising from the transaction that gave rise to the contract; and

(2) any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives a notification of the assignment ~~authenticated~~ signed by the assignor or the assignee.

\* \* \*

### **§ 7-9A-406. Discharge of Account Debtor; Notification of Assignment; Identification and Proof of Assignment; Restrictions on Assignment of Accounts, Chattel Paper, Payment Intangibles, and Promissory Notes Ineffective.**

(a) *Discharge of account debtor; effect of notification.* Subject to subsections (b) through (i) and subsection (l), an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, ~~authenticated~~ signed by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(b) *When notification ineffective.* Subject to ~~subsection~~ subsections (h) and (l), notification is ineffective under subsection (a):

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

(2) to the extent that an agreement between an account debtor and a seller of a payment intangible limits

the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this article; or

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

(A) only a portion of the account, chattel paper, or payment intangible has been assigned to that assignee;

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

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

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

(d) *Term restricting assignment generally ineffective.* In this subsection, "promissory note" includes a negotiable instrument that evidences chattel paper. Except as otherwise provided in subsection (e) and Sections 7-2A-303 and 7-9A-407, and subject to subsection (h), a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

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

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

\* \* \*

(g) *Subsection (b)(3) not waivable.* Subject to ~~subsection~~ subsections (h) and (l), an account debtor may not waive or vary its option under subsection (b)(3).

\* \* \*

(k) [Reserved.]

(l) Inapplicability of certain subsections. Subsections (a), (b), (c) and (g) do not apply to a controllable account or controllable payment intangible.

#### **2023 ALABAMA COMMENT**

Subsection 7-9A-406(k) is reserved due to Subsection 10A-5A-1.06(e) for limited liability companies, Subsection 10A-8A-1.07(f) for partnerships, and Subsection 10A-9A-1.07(f) for limited partnerships, which provide "Sections 7-9A-406 and 7-9A-408 of the Uniform Commercial Code, and all successor statutes thereto, do not apply to any interest in a [limited liability company] [partnership], including all rights, powers, and interests arising under a [limited liability company] [partnership] agreement or this chapter. This provision prevails over Sections 7-9A-406 and 7-9A-408 of the Uniform Commercial Code, and all successor statutes thereto, and is expressly intended to permit the enforcement of the provisions of a [limited liability company] [partnership] agreement that would otherwise be ineffective under Sections 7-9A-406 and 7-9A-408 of the Uniform Commercial Code, and all successor statutes thereto."

**§7-9A-408. Restrictions on Assignment of Promissory Notes, Health-Care-Insurance Receivables, and Certain General Intangibles Ineffective.**

\* \* \*

(f) [Reserved.]

(g) “Promissory note.” In this section, “promissory note” includes a negotiable instrument that evidences chattel paper.

**2023 ALABAMA COMMENT**

Subsection 7-9A-408(f) is reserved due to Subsection 10A-5A-1.06(e) for limited liability companies, Subsection 10A-8A-1.07(f) for partnerships, and Subsection 10A-9A-1.07(f) for limited partnerships, which provide “Sections 7-9A-406 and 7-9A-408 of the Uniform Commercial Code, and all successor statutes thereto, do not apply to any interest in a [limited liability company] [partnership], including all rights, powers, and interests arising under a [limited liability company] [partnership] agreement or this chapter. This provision prevails over Sections 7-9A-406 and 7-9A-408 of the Uniform Commercial Code, and all successor statutes thereto, and is expressly intended to permit the enforcement of the provisions of a [limited liability company] [partnership] agreement that would otherwise be ineffective under Sections 7-9A-406 and 7-9A-408 of the Uniform Commercial Code, and all successor statutes thereto.”

**§ 7-9A-509. Persons Entitled to File a Record.**

(a) *Person entitled to file record.* A person may file an initial financing statement, amendment that adds collateral covered by a financing statement, or amendment that adds a debtor to a financing statement only if:

- (1) the debtor authorizes the filing in ~~an authenticated~~ **a signed** record or pursuant to subsection (b) or (c); or
- (2) the person holds an agricultural lien that has become effective at the time of filing and the financing statement covers only collateral in which the person holds an agricultural lien.

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

- (1) the collateral described in the security agreement; and
- (2) property that becomes collateral under Section 7-9A-315(a)(2), whether or not the security agreement expressly covers proceeds.

\* \* \*

**§ 7-9A-513. Termination Statement.**

\* \* \*

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

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

(2) if earlier, within 20 days after the secured party receives ~~an authenticated~~ a signed demand from a debtor.

(c) *Other collateral.* In cases not governed by subsection (a), within 20 days after a secured party receives ~~an authenticated~~ a signed demand from a debtor, the secured party shall cause the secured party of record for a financing statement to send to the debtor a termination statement for the financing statement or file the termination statement in the filing office if:

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

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

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

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

\* \* \*

**§ 7-9A-601. Rights After Default; Judicial Enforcement; Consignor or Buyer of Accounts, Chattel Paper, Payment Intangibles, or Promissory Notes.**

\* \* \*

(b) *Rights and duties of secured party in possession or control.* A secured party in possession of collateral or control of collateral under Section 7-7-106, 7-9A-104, 7-9A-105, 7-9A-106, ~~or~~ 7-9A-107, or 7-9A-107A has the rights and duties provided in Section 7-9A-207.

\* \* \*

**§ 7-9A-605. Unknown Debtor or Secondary Obligor.**

~~A~~ (a) In general: No duty owed by secured party. Except as provided in subsection (b), a secured party does not owe a duty based on its status as secured party:

(1) to a person that is a debtor or obligor, unless the secured party knows:

(A) that the person is a debtor or obligor;

(B) the identity of the person; and

(C) how to communicate with the person; or

(2) to a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

(A) that the person is a debtor; and

(B) the identity of the person.

(b) Exception: Secured party owes duty to debtor or obligor. A secured party owes a duty based on its status as a secured party to a person if, at the time the secured party obtains control of collateral that is a controllable account, controllable electronic record, or controllable payment intangible or at the time the security interest attaches to the collateral, whichever is later:

(1) the person is a debtor or obligor; and

(2) the secured party knows that the information in subsection (a)(1)(A), (B), or (C) relating to the person is not provided by the collateral, a record attached to or logically associated with the collateral, or the system in which the collateral is recorded.

**§ 7-9A-608. Application of Proceeds of Collection or Enforcement; Liability for Deficiency and Right to Surplus.**

(a) *Application of proceeds, surplus, and deficiency if obligation secured.* If a security interest or agricultural lien secures payment or performance of an obligation, the following rules apply:

(1) A secured party shall apply or pay over for application the cash proceeds of collection or enforcement under Section 7-9A-607 in the following order to:

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

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

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

\* \* \*

**§ 7-9A-611. Notification Before Disposition of Collateral.**

(a) “*Notification date.*” In this section, “notification date” means the earlier of the date on which:

(1) a secured party sends to the debtor and any secondary obligor ~~an authenticated~~ a signed notification of disposition; or

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

(b) *Notification of disposition required.* Except as otherwise provided in subsection (d), a secured party that disposes of collateral under Section 7-9A-610 shall send to the persons specified in subsection (c) a reasonable ~~authenticated~~ signed notification of disposition.

(c) *Persons to be notified.* To comply with subsection (b), the secured party shall send ~~an authenticated~~ a signed notification of disposition to:

- (1) the debtor;
- (2) any secondary obligor; and
- (3) if the collateral is other than consumer goods:
  - (A) any other person from which the secured party has received, before the notification date, ~~an authenticated~~ **a signed** notification of a claim of an interest in the collateral;
  - (B) any other secured party or lienholder that, 10 days before the notification date, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:
    - (i) identified the collateral;
    - (ii) was indexed under the debtor's name as of that date; and
    - (iii) was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date; and
  - (C) any other secured party that, 10 days before the notification date, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in Section 7-9A-311(a).

\* \* \*

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

- (1) not later than 20 days or earlier than 30 days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor's name in the office indicated in subsection (c)(3)(B); and
- (2) before the notification date, the secured party:
  - (A) did not receive a response to the request for information; or
  - (B) received a response to the request for information and sent ~~an authenticated~~ **a signed** notification of disposition to each secured party or other lienholder named in that response whose financing statement covered the collateral.

**§ 7-9A-613. Contents and Form of Notification Before Disposition of Collateral: General.**

**(a) Content and form of notification.** Except in a consumer-goods transaction, the following rules apply:

- (1) The contents of a notification of disposition are sufficient if the notification:
  - (A) describes the debtor and the secured party;
  - (B) describes the collateral that is the subject of the intended disposition;
  - (C) states the method of intended disposition;

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

(E) states the time and place of a public disposition or the time after which any other disposition is to be made.

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

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

(A) information not specified by that paragraph; or

(B) minor errors that are not seriously misleading.

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

(5) The following form of notification and the form appearing in Section 7-9A-614(a)(3), when completed in accordance with the instructions in subsection (b) and Section 7-9A-614(b), each provides sufficient information:

#### NOTIFICATION OF DISPOSITION OF COLLATERAL

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

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

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

For a public disposition:

We will sell or lease or license, as applicable, the \_\_\_\_\_ (describe collateral) to the highest qualified bidder in public as follows:

Day and Date:

Time:

Place:

For a private disposition:

We will sell or lease or license, as applicable, the \_\_\_\_\_ (describe collateral) privately some time 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]



## 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)

{1} Name of any debtor that is not an addressee: (name of each debtor)

{2} We will sell (describe collateral) (to the highest qualified bidder) at public sale. A sale could include a lease or license. The sale will be held as follows:

(Date)

(Time)

(Place)

{3} We will sell (describe collateral) at private sale sometime after (date). A sale could include a lease or license.

{4} You are entitled to an accounting of the unpaid indebtedness secured by the property that we intend to sell or, as applicable, lease or license.

{5} If you request an accounting you must pay a charge of \$ (amount).

{6} You may request an accounting by calling us at (telephone number).

### **[End of Form]**

(b) Instructions for form of notification. The following instructions apply to the form of notification in subsection (a)(5):

(1) The instructions in this subsection refer to the numbers in braces before items in the form of notification in subsection (a)(5). Do not include the numbers or braces in the notification. The numbers and braces are used only for the purpose of these instructions.

(2) Include and complete item {1} only if there is a debtor that is not an addressee of the notification and list the name or names.

(3) Include and complete either item {2}, if the notification relates to a public disposition of the collateral, or item {3}, if the notification relates to a private disposition of the collateral. If item {2} is included, include the words "to the highest qualified bidder" only if applicable.

(4) Include and complete items {4} and {6}.

(5) Include and complete item {5} only if the sender will charge the recipient for an accounting.

**§ 7-9A-614. Contents and Form of Notification Before Disposition of Collateral: Consumer-Goods**

**Transaction.**

(a) Content and form of notification. In a consumer-goods transaction, the following rules apply:

- (1) A notification of disposition must provide the following information:
  - (A) the information specified in Section 7-9A-613(a)(1);
  - (B) a description of any liability for a deficiency of the person to which the notification is sent;
  - (C) a telephone number from which the amount that must be paid to the secured party to redeem the collateral under Section 7-9A-623 is available; and
  - (D) a telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available.
- (2) A particular phrasing of the notification is not required.
- (3) The following form of notification, when completed in accordance with instructions in subsection (b), provides sufficient information:

~~Name and address of secured party~~

~~Date~~

~~NOTICE OF OUR PLAN TO SELL PROPERTY~~

~~Name and address of any obligor who is also a debtor~~

~~Subject: \_\_\_\_\_ (Identification of Transaction)~~

~~We have your \_\_\_\_\_ (describe collateral), because you broke promises in our agreement.~~

~~For a public disposition:~~

~~We will sell \_\_\_\_\_ (describe collateral) at public sale. A sale could include a lease or license. The sale will be held as follows:~~

~~Date:~~

~~Time:~~

~~Place:~~

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

~~For a private disposition:~~

~~We will sell \_\_\_\_\_ (describe collateral) at private sale some time after \_\_\_\_\_ (date). A sale could include a lease or license.~~

~~The money that we get from the sale (after paying our costs) will reduce the amount you owe. If we get~~

less money than you owe, you \_\_\_\_\_ (will or will not, as applicable) still owe us the difference. If we get more money than you owe, you will get the extra money, unless we must pay it to someone else.

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

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

If you need more information about the sale call us at \_\_\_\_\_ (telephone number) or write us at \_\_\_\_\_ (secured party's address).

We are sending this notice to the following other people who have an interest in \_\_\_\_\_ (describe collateral) or who owe money under your agreement:

\_\_\_\_\_ (Names of all other debtors and obligors, if any)

{End of Form}

(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: (Identify transaction)

We have your (describe collateral), because you broke promises in our agreement.

{1} We will sell (describe collateral) at public sale. A sale could include a lease or license. The sale will be held as follows:

(Date)

(Time)

(Place)

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

{2} We will sell (describe collateral) at private sale sometime after (date). A sale could include a lease or license.

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

someone else.

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

{5} If you want us to explain to you in (writing) (writing or in (description of electronic record)) (description of electronic record) how we have figured the amount that you owe us, {6} call us at (telephone number) (or) (write us at (secured party's address)) (or contact us by (description of electronic communication method)) {7} and request (a written explanation) (a written explanation or an explanation in (description of electronic record)) (an explanation in (description of electronic record)).

{8} We will charge you \$ (amount) for the explanation if we sent you another written explanation of the amount you owe us within the last six months.

{9} If you need more information about the sale (call us at (telephone number)) (or) (write us at (secured party's address)) (or contact us by (description of electronic communication method)).

{10} We are sending this notice to the following other people who have an interest in (describe collateral) or who owe money under your agreement:

(Names of all other debtors and obligors, if any)

**[End of Form]**

(4) A notification in the form of paragraph (3) is sufficient, even if additional information appears at the end of the form.

(5) A notification in the form of paragraph (3) is sufficient, even if it includes errors in information not required by paragraph (1), unless the error is misleading with respect to rights arising under this article.

(6) If a notification under this section is not in the form of paragraph (3), law other than this article determines the effect of including information not required by paragraph (1).

(b) Instructions for form of notification. The following instructions apply to the form of notification in subsection (a)(3):

(1) The instructions in this subsection refer to the numbers in braces before items in the form of notification in subsection (a)(3). Do not include the numbers or braces in the notification. The numbers and braces are used only for the purpose of these instructions.

(2) Include and complete either item {1}, if the notification relates to a public disposition of the collateral, or item {2}, if the notification relates to a private disposition of the collateral.

(3) Include and complete items {3}, {4}, {5}, {6}, and {7}.

(4) In item {5}, include and complete any one of the three alternative methods for the explanation: writing, writing or electronic record, or electronic record.

(5) In item {6}, include the telephone number. In addition, the sender may include and complete either or both of the two additional alternative methods of communication, writing or

electronic communication, for the recipient of the notification to communicate with the sender. Neither of the two additional methods of communication is required to be included.

(6) In item {7}, include and complete the method or methods for the explanation—writing, writing or electronic record, or electronic record, which are included in item {5}.

(7) Include and complete item {8} only if a written explanation is included in item {5} as a method for communicating the explanation and the sender will charge the recipient for another written explanation.

(8) In item {9}, include either the telephone number or the address or both the telephone number and the address. In addition, the sender may include and complete the additional method of communication—electronic communication—for the recipient of the notification to communicate with the sender. The additional method of electronic communication is not required to be included.

(9) If item {10} does not apply, insert “None” after “agreement:”.

**§ 7-9A-615. Application of Proceeds of Disposition; Liability for Deficiency and Right to Surplus.**

(a) *Application of proceeds.* A secured party shall apply or pay over for application the cash proceeds of disposition under Section 7-9A-610 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~~ a signed 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~~ a signed demand for proceeds before distribution of the proceeds is completed.

\* \* \*

**§ 7-9A-616. Explanation of Calculation of Surplus or Deficiency.**

(a) *Definitions.* In this section:

- (1) “Explanation” means a ~~writing~~ record that:
  - (A) states the amount of the surplus or deficiency;

(B) provides an explanation in accordance with subsection (c) of how the secured party calculated the surplus or deficiency;

(C) states, if applicable, that future debits, credits, charges, including additional credit service charges or interest, rebates, and expenses may affect the amount of the surplus or deficiency; and

(D) provides a telephone number or mailing address from which additional information concerning the transaction is available.

(2) "Request" means a record:

(A) ~~authenticated~~ signed by a debtor or consumer obligor;

(B) requesting that the recipient provide an explanation; and

(C) sent after disposition of the collateral under Section 7-9A-610.

(b) *Explanation of calculation.* In a consumer-goods transaction in which the debtor is entitled to a surplus or a consumer obligor is liable for a deficiency under Section 7-9A-615, the secured party shall:

(1) send an explanation to the debtor or consumer obligor, as applicable, after the disposition and:

(A) before or when the secured party accounts to the debtor and pays any surplus or first makes ~~written~~ demand in a record on the consumer obligor after the disposition for payment of the deficiency; and

(B) within 14 days after receipt of a request; or

(2) in the case of a consumer obligor who is liable for a deficiency, within 14 days after receipt of a request, send to the consumer obligor a record waiving the secured party's right to a deficiency.

(c) *Required information.* To comply with subsection (a)(1)(B), a ~~writing~~ an explanation must provide the following information in the following order:

(1) the aggregate amount of obligations secured by the security interest under which the disposition was made, and, if the amount reflects a rebate of unearned interest or credit service charge, an indication of that fact, calculated as of a specified date:

(A) if the secured party takes or receives possession of the collateral after default, not more than 35 days before the secured party takes or receives possession; or

(B) if the secured party takes or receives possession of the collateral before default or does not take possession of the collateral, not more than 35 days before the disposition;

(2) the amount of proceeds of the disposition;

(3) the aggregate amount of the obligations after deducting the amount of proceeds;

(4) the amount, in the aggregate or by type, and types of expenses, including expenses of retaking, holding, preparing for disposition, processing, and disposing of the collateral, and attorney's fees secured by the collateral which are known to the secured party and relate to the current disposition;

(5) the amount, in the aggregate or by type, and types of credits, including rebates of interest or credit

service charges, to which the obligor is known to be entitled and which are not reflected in the amount in paragraph (1); and

(6) the amount of the surplus or deficiency.

\* \* \*

### **2001 ALABAMA COMMENT**

The last sentence of the first paragraph of comment 2 of this Section could be interpreted to say that a secured party in a consumer transaction does not have to send an explanation of deficiency (and cannot then be held liable for noncompliance) if the secured party does not attempt in writing to collect the deficiency. Unless this act specifically provides to the contrary, the surplus in a consumer transaction must be returned to the debtor along with the explanation provided in this Section.

### **§ 7-9A-619. Transfer of Record or Legal Title.**

(a) “*Transfer statement.*” In this section, “transfer statement” means a record ~~authenticated~~ **signed** by a secured party stating:

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

\* \* \*

### **§ 7-9A-620. Acceptance of Collateral in Full or Partial Satisfaction of Obligation; Compulsory Disposition of Collateral.**

(a) *Conditions to acceptance in satisfaction.* Except as otherwise provided in subsection (g), a secured party may accept collateral in full or partial satisfaction of the obligation it secures only if:

- (1) the debtor consents to the acceptance under subsection (c);
- (2) the secured party does not receive, within the time set forth in subsection (d), a notification of objection to the proposal ~~authenticated~~ **signed** by:
  - (A) a person to which the secured party was required to send a proposal under Section 7-9A-621; or
  - (B) any other person, other than the debtor, holding an interest in the collateral subordinate to the security interest that is the subject of the proposal;
- (3) if the collateral is consumer goods, the collateral is not in the possession of the debtor when the debtor consents to the acceptance; and
- (4) subsection (e) does not require the secured party to dispose of the collateral or the debtor waives the requirement pursuant to Section 7-9A-624.

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

(1) the secured party consents to the acceptance in ~~an authenticated~~ a signed record or sends a proposal to the debtor; and

(2) the conditions of subsection (a) are met.

(c) *Debtor's consent.* For purposes of this section:

(1) a debtor consents to an acceptance of collateral in partial satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record ~~authenticated~~ signed after default; and

(2) a debtor consents to an acceptance of collateral in full satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record ~~authenticated~~ signed after default or the secured party:

(A) sends to the debtor after default a proposal that is unconditional or subject only to a condition that collateral not in the possession of the secured party be preserved or maintained;

(B) in the proposal, proposes to accept collateral in full satisfaction of the obligation it secures; and

(C) does not receive a notification of objection ~~authenticated~~ signed by the debtor within 20 days after the proposal is sent.

\* \* \*

(f) *Compliance with mandatory disposition requirement.* To comply with subsection (e), the secured party shall dispose of the collateral:

(1) within 90 days after taking possession; or

(2) within any longer period to which the debtor and all secondary obligors have agreed in an agreement to that effect entered into and ~~authenticated~~ signed after default.

\* \* \*

### **§ 7-9A-621. Notification of Proposal to Accept Collateral.**

(a) *Persons to which proposal to be sent.* A secured party that desires to accept collateral in full or partial satisfaction of the obligation it secures shall send its proposal to:

(1) any person from which the secured party has received, before the debtor consented to the acceptance, ~~an authenticated~~ a signed notification of a claim of an interest in the collateral;

(2) any other secured party or lienholder that, 10 days before the debtor consented to the acceptance, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

(A) identified the collateral;

(B) was indexed under the debtor's name as of that date; and

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



(3) any other secured party that, 10 days before the debtor consented to the acceptance, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in Section 7-9A-311(a).

\* \* \*

**§ 7-9A-624. Waiver.**

(a) *Waiver of disposition notification.* A debtor or secondary obligor may waive the right to notification of disposition of collateral under Section 7-9A-611 only by an agreement to that effect entered into and ~~authenticated~~ signed after default.

(b) *Waiver of mandatory disposition.* A debtor may waive the right to require disposition of collateral under Section 7-9A-620(e) only by an agreement to that effect entered into and ~~authenticated~~ signed after default.

(c) *Waiver of redemption right.* Except in a consumer-goods transaction, a debtor or secondary obligor may waive the right to redeem collateral under Section 7-9A-623 only by an agreement to that effect entered into and ~~authenticated~~ signed after default.

**§ 7-9A-628. Nonliability and Limitation on Liability of Secured Party; Liability of Secondary Obligor.**

(a) *Limitation of liability of secured party for noncompliance with article.* ~~Unless~~ Subject to subsection (f), 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) *Limitation of liability based on status as secured party.* Subject to subsection (f), ~~A~~ 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.

\* \* \*

(f) **Exception: Limitation of liability under subsections (a) and (b) does not apply.** Subsections (a) and (b) do not apply to limit the liability of a secured party to a person if, at the time the secured party obtains control of collateral that is a controllable account, controllable electronic record, or controllable payment intangible or at the time the security interest attaches to the collateral, whichever is later:

(1) the person is a debtor or obligor; and

(2) the secured party knows that the information in subsection (b)(1)(A), (B), or (C) relating to the person is not provided by the collateral, a record attached to or logically associated with the collateral, or the system in which the collateral is recorded.

## ARTICLE 12 - CONTROLLABLE ELECTRONIC RECORDS

### § 7-12-101. Title.

This article may be cited as Uniform Commercial Code—Controllable Electronic Records.

### § 7-12-102. Definitions.

#### (a) Article 12 definitions.

In this article:

(1) “Controllable electronic record” means a record stored in an electronic medium that can be subjected to control under Section 7-12-105. The term does not include a controllable account, a controllable payment intangible, a deposit account, an electronic copy of a record evidencing chattel paper, an electronic document of title, investment property, a transferable record, or an electronic record that is currently authorized or adopted by a domestic or foreign government and is not a medium of exchange that was recorded and transferable in a system that existed and operated for the medium of exchange before the medium of exchange was authorized or adopted by a government.

(2) “Qualifying purchaser” means a purchaser of a controllable electronic record or an interest in a controllable electronic record that obtains control of the controllable electronic record for value, in good faith, and without notice of a claim of a property right in the controllable electronic record.

(3) “Transferable record” has the meaning provided for that term in:

(A) Section 201(a)(1) of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7021(a)(1), as amended; or

(B) Section 8-1A-16(a).

(4) “Value” has the meaning provided in Section 7-3-303(a), as if references in that subsection to an “instrument” were references to a controllable account, controllable electronic record, or controllable payment intangible.

(b) *Definitions in Article 9A.* The definitions in Article 9A of “account debtor”, “controllable account”, “controllable payment intangible”, “chattel paper”, “deposit account”, and “investment property” apply to this article.

(c) *Article 1 definitions and principles.* Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

### 2023 ALABAMA COMMENT

Alabama’s deletion of money “in an electronic form” from the Uniform Commercial Code Amendments (2022) definition of “money” in Section 1-201(24) (see 2023 Alabama Comment to Section 7-1-201) and its deletion of “electronic money” from Article 9 (see 2023 Alabama Comment to Section 7-9A-102) necessitated that “an electronic record that is currently authorized or adopted by a domestic or foreign government and is not a medium of exchange that was recorded and transferable in a system that existed and operated for the medium of exchange before the medium of exchange was authorized or adopted by a government” be excluded from the definition of a “controllable electronic record” in Subsection 7-12-102(a)(1). See Official Comment 24 to Section 1-201 of the Uniform Commercial Code Amendments (2022) for a description of what is “an electronic record that is currently authorized or adopted by a domestic or foreign government and is not a

medium of exchange that was recorded and transferable in a system that existed and operated for the medium of exchange before the medium of exchange was authorized or adopted by a government.”

### **§ 7-12-103. Relation to Article 9A and Consumer Laws.**

(a) *Article 9A governs in case of conflict.* If there is conflict between this article and Article 9A, Article 9A governs.

(b) *Applicable consumer law and other laws.* A transaction subject to this article is subject to any applicable rule of law that establishes a different rule for consumers and to (i) any other statute or regulation that regulates the rates, charges, agreements, and practices for loans, credit sales, or other extensions of credit and (ii) any consumer-protection statute or regulation.

### **§ 7-12-104. Rights in Controllable Account, Controllable Electronic Record, and Controllable Payment Intangible.**

(a) *Applicability of section to controllable account and controllable payment intangible.* This section applies to the acquisition and purchase of rights in a controllable account or controllable payment intangible, including the rights and benefits under subsections (c), (d), (e), (g), and (h) of a purchaser and qualifying purchaser, in the same manner this section applies to a controllable electronic record.

(b) *Control of controllable account and controllable payment intangible.* To determine whether a purchaser of a controllable account or a controllable payment intangible is a qualifying purchaser, the purchaser obtains control of the account or payment intangible if it obtains control of the controllable electronic record that evidences the account or payment intangible.

(c) *Applicability of other law to acquisition of rights.* Except as provided in this section, law other than this article determines whether a person acquires a right in a controllable electronic record and the right the person acquires.

(d) *Shelter principle and purchase of limited interest.* A purchaser of a controllable electronic record acquires all rights in the controllable electronic record that the transferor had or had power to transfer, except that a purchaser of a limited interest in a controllable electronic record acquires rights only to the extent of the interest purchased.

(e) *Rights of qualifying purchaser.* A qualifying purchaser acquires its rights in the controllable electronic record free of a claim of a property right in the controllable electronic record.

(f) *Limitation of rights of qualifying purchaser in other property.* Except as provided in subsections (a) and (e) for a controllable account and a controllable payment intangible or law other than this article, a qualifying purchaser takes a right to payment, right to performance, or other interest in property evidenced by the controllable electronic record subject to a claim of a property right in the right to payment, right to performance, or other interest in property.

(g) *No-action protection for qualifying purchaser.* An action may not be asserted against a qualifying purchaser based on both a purchase by the qualifying purchaser of a controllable electronic record and a claim of a property right in another controllable electronic record, whether the action is framed in conversion, replevin, constructive trust, equitable lien, or other theory.

(h) *Filing not notice.* Filing of a financing statement under Article 9A is not notice of a claim of

a property right in a controllable electronic record.

**§ 7-12-105. Control of Controllable Electronic Record.**

(a) **General rule: control of controllable electronic record.** A person has control of a controllable electronic record if the electronic record, a record attached to or logically associated with the electronic record, or a system in which the electronic record is recorded:

(1) gives the person:

(A) power to avail itself of substantially all the benefit from the electronic record;

and

(B) exclusive power, subject to subsection (b), to:

(i) prevent others from availing themselves of substantially all the benefit from the electronic record; and

(ii) transfer control of the electronic record to another person or cause another person to obtain control of another controllable electronic record as a result of the transfer of the electronic record; and

(2) enables the person readily to identify itself in any way, including by name, identifying number, cryptographic key, office, or account number, as having the powers specified in paragraph (1).

(b) **Meaning of exclusive.** Subject to subsection (c), a power is exclusive under subsection (a)(1)(B)(i) and (ii) even if:

(1) the controllable electronic record, a record attached to or logically associated with the electronic record, or a system in which the electronic record is recorded limits the use of the electronic record or has a protocol programmed to cause a change, including a transfer or loss of control or a modification of benefits afforded by the electronic record; or

(2) the power is shared with another person.

(c) **When power not shared with another person.** A power of a person is not shared with another person under subsection (b)(2) and the person's power is not exclusive if:

(1) the person can exercise the power only if the power also is exercised by the other person; and

(2) the other person:

(A) can exercise the power without exercise of the power by the person; or

(B) is the transferor to the person of an interest in the controllable electronic record or a controllable account or controllable payment intangible evidenced by the controllable electronic record.

(d) **Presumption of exclusivity of certain powers.** If a person has the powers specified in subsection (a)(1)(B)(i) and (ii), the powers are presumed to be exclusive.

(e) **Control through another person.** A person has control of a controllable electronic record if another person, other than the transferor to the person of an interest in the controllable electronic record or a controllable account or controllable payment intangible evidenced by the controllable electronic record:

(1) has control of the electronic record and acknowledges that it has control on behalf of the person; or

(2) obtains control of the electronic record after having acknowledged that it will obtain control of the electronic record on behalf of the person.

(f) **No requirement to acknowledge.** A person that has control under this section is not required to acknowledge that it has control on behalf of another person.

(g) **No duties or confirmation.** If a person acknowledges that it has or will obtain control on behalf of another person, unless the person otherwise agrees or law other than this article or Article 9A otherwise provides, the person does not owe any duty to the other person and is not required to confirm the acknowledgment to any other person.

#### **§ 7-12-106. Discharge of Account Debtor on Controllable Account or Controllable Payment Intangible.**

(a) **Discharge of account debtor.** An account debtor on a controllable account or controllable payment intangible may discharge its obligation by paying:

(1) the person having control of the controllable electronic record that evidences the controllable account or controllable payment intangible; or

(2) except as provided in subsection (b), a person that formerly had control of the controllable electronic record.

(b) **Content and effect of notification.** Subject to subsection (d), the account debtor may not discharge its obligation by paying a person that formerly had control of the controllable electronic record if the account debtor receives a notification that:

(1) is signed by a person that formerly had control or the person to which control was transferred;

(2) reasonably identifies the controllable account or controllable payment intangible;

(3) notifies the account debtor that control of the controllable electronic record that evidences the controllable account or controllable payment intangible was transferred;

(4) identifies the transferee, in any reasonable way, including by name, identifying number, cryptographic key, office, or account number; and

(5) provides a commercially reasonable method by which the account debtor is to pay the transferee.

(c) **Discharge following effective notification.** After receipt of a notification that complies with subsection (b), the account debtor may discharge its obligation by paying in accordance with the

notification and may not discharge the obligation by paying a person that formerly had control.

(d) *When notification ineffective.* Subject to subsection (h), notification is ineffective under subsection (b):

(1) unless, before the notification is sent, the account debtor and the person that, at that time, had control of the controllable electronic record that evidences the controllable account or controllable payment intangible agree in a signed record to a commercially reasonable method by which a person may furnish reasonable proof that control has been transferred;

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

(3) at the option of the account debtor, if the notification notifies the account debtor to:

(A) divide a payment;

(B) make less than the full amount of an installment or other periodic payment; or

(C) pay any part of a payment by more than one method or to more than one person.

(e) *Proof of transfer of control.* Subject to subsection (h), if requested by the account debtor, the person giving the notification under subsection (b) seasonably shall furnish reasonable proof, using the method in the agreement referred to in subsection (d)(1), that control of the controllable electronic record has been transferred. Unless the person complies with the request, the account debtor may discharge its obligation by paying a person that formerly had control, even if the account debtor has received a notification under subsection (b).

(f) *What constitutes reasonable proof.* A person furnishes reasonable proof under subsection (e) that control has been transferred if the person demonstrates, using the method in the agreement referred to in subsection (d)(1), that the transferee has the power to:

(1) avail itself of substantially all the benefit from the controllable electronic record;

(2) prevent others from availing themselves of substantially all the benefit from the controllable electronic record; and

(3) transfer the powers specified in paragraphs (1) and (2) to another person.

(g) *Rights not waivable.* Subject to subsection (h), an account debtor may not waive or vary its rights under subsections (d)(1) and (e) or its option under subsection (d)(3).

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

### § 7-12-107. Governing Law.

(a) *Governing law: general rule.* Except as provided in subsection (b), the local law of a

controllable electronic record's jurisdiction governs a matter covered by this article.

(b) **Governing law: Section 7-12-106.** For a controllable electronic record that evidences a controllable account or controllable payment intangible, the local law of the controllable electronic record's jurisdiction governs a matter covered by Section 7-12-106 unless an effective agreement determines that the local law of another jurisdiction governs.

(c) **Controllable electronic record's jurisdiction.** The following rules determine a controllable electronic record's jurisdiction under this section:

(1) If the controllable electronic record, or a record attached to or logically associated with the controllable electronic record and readily available for review, expressly provides that a particular jurisdiction is the controllable electronic record's jurisdiction for purposes of this article or the Uniform Commercial Code, that jurisdiction is the controllable electronic record's jurisdiction.

(2) If paragraph (1) does not apply and the rules of the system in which the controllable electronic record is recorded are readily available for review and expressly provide that a particular jurisdiction is the controllable electronic record's jurisdiction for purposes of this article or the Uniform Commercial Code, that jurisdiction is the controllable electronic record's jurisdiction.

(3) If paragraphs (1) and (2) do not apply and the controllable electronic record, or a record attached to or logically associated with the controllable electronic record and readily available for review, expressly provides that the controllable electronic record is governed by the law of a particular jurisdiction, that jurisdiction is the controllable electronic record's jurisdiction.

(4) If paragraphs (1), (2), and (3) do not apply and the rules of the system in which the controllable electronic record is recorded are readily available for review and expressly provide that the controllable electronic record or the system is governed by the law of a particular jurisdiction, that jurisdiction is the controllable electronic record's jurisdiction.

(5) If paragraphs (1) through (4) do not apply, the controllable electronic record's jurisdiction is the District of Columbia.

(d) **Applicability of Article 12.** If subsection (c)(5) applies and Article 12 is not in effect in the District of Columbia without material modification, the governing law for a matter covered by this article is the law of the District of Columbia as though Article 12 were in effect in the District of Columbia without material modification. In this subsection, "Article 12" means Article 12 of Uniform Commercial Code Amendments (2022).

(e) **Relation of matter or transaction to controllable electronic record's jurisdiction not necessary.** To the extent subsections (a) and (b) provide that the local law of the controllable electronic record's jurisdiction governs a matter covered by this article, that law governs even if the matter or a transaction to which the matter relates does not bear any relation to the controllable electronic record's jurisdiction.

(f) **Rights of purchasers determined at time of purchase.** The rights acquired under Section 7-12-104 by a purchaser or qualifying purchaser are governed by the law applicable under this section at the time of purchase.



**ARTICLE 12A - TRANSITIONAL PROVISIONS FOR  
UNIFORM COMMERCIAL CODE AMENDMENTS (2022)**

*PART 1*

**GENERAL PROVISIONS AND DEFINITIONS**

**§ 7-12A-101. Short Title.**

This article may be cited as Transitional Provisions for Uniform Commercial Code Amendments (2022).

**§ 7-12A-102. Definitions.**

(a) Article A Definitions. In this article:

(1) “Adjustment date” means July 1, 2025, or the date that is one year after the effective date of this act, whichever is later.

(2) “Article 12” means Article 12 of the Uniform Commercial Code.

(3) “Article 12 property” means a controllable account, controllable electronic record, or controllable payment intangible.

(4) “Article 9A” means Article 9A of the Uniform Commercial Code.

(b) Definitions in other articles. The following definitions in other articles of the Uniform Commercial Code apply to this article.

“Controllable account.” Section 7-9A-102.

“Controllable electronic record.” Section 7-12-102.

“Controllable payment intangible.” Section 7-9A-102.

“Financing statement.” Section 7-9A-102.

(c) Article 1 definitions and principles. Article 1 of the Uniform Commercial Code contains general definitions and principles of construction and interpretation applicable throughout this article.

*PART 2*

**GENERAL TRANSITIONAL PROVISION**

**§ 7-12A-201. Saving Clause.**

Except as provided in Part 3, a transaction validly entered into before the effective date of this act and the rights, duties, and interests flowing from the transaction remain valid thereafter and may be terminated, completed, consummated, or enforced as required or permitted by law other than the Uniform Commercial Code or, if applicable, the Uniform Commercial Code, as though this act had not

taken effect.

PART 3

**TRANSITIONAL PROVISIONS FOR ARTICLES 9A AND 12**

**§ 7-12A-301. Saving Clause.**

(a) Pre-effective-date transaction, lien, or interest. Except as provided in this part, Article 9A as amended by this act and Article 12 apply to a transaction, lien, or other interest in property, even if the transaction, lien, or interest was entered into, created, or acquired before the effective date of this act.

(b) Continuing validity. Except as provided in subsection (c) and Sections 7-12A-302 through 7-12A-306:

(1) a transaction, lien, or interest in property that was validly entered into, created, or transferred before the effective date of this act and was not governed by the Uniform Commercial Code, but would be subject to Article 9A as amended by this act or Article 12 if it had been entered into, created, or transferred on or after the effective date of this act, including the rights, duties, and interests flowing from the transaction, lien, or interest, remains valid on and after the effective date of this act; and

(2) the transaction, lien, or interest may be terminated, completed, consummated, and enforced as required or permitted by this act or by the law that would apply if this act had not taken effect.

(c) Pre-effective-date proceeding. This act does not affect an action, case, or proceeding commenced before the effective date of this act.

**§ 7-12A-302. Security Interest Perfected Before Effective Date.**

(a) Continuing perfection: perfection requirements satisfied. A security interest that is enforceable and perfected immediately before the effective date of this act is a perfected security interest under this act if, on the effective date of this act, the requirements for enforceability and perfection under this act are satisfied without further action.

(b) Continuing perfection: enforceability or perfection requirements not satisfied. If a security interest is enforceable and perfected immediately before the effective date of this act, but the requirements for enforceability or perfection under this act are not satisfied on the effective date of this act, the security interest:

(1) is a perfected security interest until the earlier of the time perfection would have ceased under the law in effect immediately before the effective date of this act or the adjustment date;

(2) remains enforceable thereafter only if the security interest satisfies the requirements for enforceability under Section 7-9A-203, as amended by this act, before the adjustment date; and

(3) remains perfected thereafter only if the requirements for perfection under this act are satisfied before the time specified in paragraph (1).

**§ 7-12A-303. Security Interest Unperfected Before Effective Date.**

A security interest that is enforceable immediately before the effective date of this act but is unperfected at that time:

(1) remains an enforceable security interest until the adjustment date;

(2) remains enforceable thereafter if the security interest becomes enforceable under Section 7-9A-203, as amended by this act, on the effective date of this act or before the adjustment date; and

(3) becomes perfected:

(A) without further action, on the effective date of this act if the requirements for perfection under this act are satisfied before or at that time; or

(B) when the requirements for perfection are satisfied if the requirements are satisfied after that time.

**§ 7-12A-304. Effectiveness of Actions Taken Before Effective Date.**

(a) *Pre-effective-date action; attachment and perfection before adjustment date.* If action, other than the filing of a financing statement, is taken before the effective date of this act and the action would have resulted in perfection of the security interest had the security interest become enforceable before the effective date of this act, the action is effective to perfect a security interest that attaches under this act before the adjustment date. An attached security interest becomes unperfected on the adjustment date unless the security interest becomes a perfected security interest under this act before the adjustment date.

(b) *Pre-effective-date filing.* The filing of a financing statement before the effective date of this act is effective to perfect a security interest on the effective date of this act to the extent the filing would satisfy the requirements for perfection under this act.

(c) *Pre-effective-date enforceability action.* The taking of an action before the effective date of this act is sufficient for the enforceability of a security interest on the effective date of this act if the action would satisfy the requirements for enforceability under this act.

**§ 7-12A-305. Priority.**

(a) *Determination of priority.* Subject to subsections (b) and (c), this act determines the priority of conflicting claims to collateral.

(b) *Established priorities.* Subject to subsection (c), if the priorities of claims to collateral were established before the effective date of this act, Article 9A as in effect before the effective date of this act determines priority.

(c) *Determination of certain priorities on adjustment date.* On the adjustment date, to the extent the priorities determined by Article 9A as amended by this act modify the priorities established before the effective date of this act, the priorities of claims to Article 12 property established before the effective date of this act cease to apply.

**§ 7-12A-306. Priority of Claims When Priority Rules of Article 9A Do Not Apply.**

(a) *Determination of priority.* Subject to subsections (b) and (c), Article 12 determines the priority of conflicting claims to Article 12 property when the priority rules of Article 9A as amended by this act do not apply.

(b) *Established priorities.* Subject to subsection (c), when the priority rules of Article 9A as amended by this act do not apply and the priorities of claims to Article 12 property were established before the effective date of this act, law other than Article 12 determines priority.

(c) *Determination of certain priorities on adjustment date.* When the priority rules of Article 9A as amended by this act do not apply, to the extent the priorities determined by this act modify the priorities established before the effective date of this act, the priorities of claims to Article 12 property established before the effective date of this act cease to apply on the adjustment date.

*PART 4*

***GENERAL PROVISIONS***

**Effective Date.**

This act takes effect on July 1, 2024.