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HOUSE BILL 408

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

W. Ken Martinez

AN ACT

**RELATING TO COMMERCIAL TRANSACTIONS; REVISING THE SECURED
TRANSACTIONS ARTICLE OF THE UNIFORM COMMERCIAL CODE; AMENDING
OTHER LAWS TO CONFORM TO THE REVISED PROVISIONS; AMENDING,
REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**Section 1. Section 55-9-101 NMSA 1978 (being Laws 1961,
Chapter 96, Section 9-101) is repealed and a new Section
55-9-101 NMSA 1978 is enacted to read:**

**"55-9-101. [NEW MATERIAL] SHORT TITLE. -- Chapter 55,
Article 9 NMSA 1978 may be cited as the "Uniform Commercial
Code-Secured Transactions". "**

**Section 2. Section 55-9-102 NMSA 1978 (being Laws 1961,
Chapter 96, Section 9-102, as amended) is repealed and a new
Section 55-9-102 NMSA 1978 is enacted to read:**

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"55-9-102. [NEW MATERIAL] DEFINITIONS AND INDEX OF
DEFINITIONS. --
(a) In Chapter 55, Article 9 NMSA 1978:
(1) "accession" means goods that are
physically united with other goods in such a manner that the
identity of the original goods is not lost;
(2) "account", except as used in "account
for":
(A) 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

1 with the card; or

2 (viii) as winnings in a lottery or
3 other game of chance operated or sponsored by a state,
4 governmental unit of a state or person licensed or authorized
5 to operate the game by a state or governmental unit of a
6 state; and

7 (B) includes health-care-insurance
8 receivables; but

9 (C) does not include:

10 (i) rights to payment evidenced by
11 chattel paper or an instrument;

12 (ii) commercial tort claims;

13 (iii) deposit accounts;

14 (iv) investment property;

15 (v) letter-of-credit rights or
16 letters of credit; or

17 (vi) rights to payment for money
18 or funds advanced or sold, other than rights arising out of
19 the use of a credit or charge card or information contained on
20 or for use with the card;

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

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- (4) "accounting", except as used in "accounting for", means a record:
 - (A) authenticated by a secured party;
 - (B) indicating the aggregate unpaid secured obligations as of a date not more than thirty-five days earlier or thirty-five days later than the date of the record; and
 - (C) identifying the components of the obligations in reasonable detail;
- (5) "agricultural lien" means an interest, other than a security interest, in farm products:
 - (A) that secures payment or performance of an obligation for:
 - (i) goods or services furnished in connection with a debtor's farming operation; or
 - (ii) rent on real property leased by a debtor in connection with its farming operation;
 - (B) that is created by statute in favor of a person that:
 - (i) in the ordinary course of its business furnished goods or services to a debtor in connection with a debtor's farming operation; or
 - (ii) leased real property to a debtor in connection with the debtor's farming operation; and
 - (C) whose effectiveness does not depend

1 on the person's possession of the personal property;

2 (6) "as-extracted collateral" means:

3 (A) oil, gas or other minerals that are
4 subject to a security interest that:

5 (i) is created by a debtor having
6 an interest in the minerals before extraction; and

7 (ii) attaches to the minerals as
8 extracted; or

9 (B) accounts arising out of the sale at
10 the wellhead or minehead of oil, gas or other minerals in
11 which the debtor had an interest before extraction;

12 (7) "authenticate" means to:

13 (A) sign; or

14 (B) execute or otherwise adopt a
15 symbol, or encrypt or similarly process a record in whole or
16 in part, with the present intent of the authenticating person
17 to identify the person and adopt or accept a record;

18 (8) "bank" means an organization that is
19 engaged in the business of banking and includes savings banks,
20 savings and loan associations, credit unions and trust
21 companies;

22 (9) "cash proceeds" means proceeds that are
23 money, checks, deposit accounts or the like;

24 (10) "certificate of title" means a
25 certificate of title with respect to which a statute provides

1 for the security interest in question to be indicated on the
2 certificate as a condition or result of the security
3 interest's obtaining priority over the rights of a lien
4 creditor with respect to the collateral;

5 (11) "chattel paper" means a record or
6 records that evidence both a monetary obligation and a
7 security interest in specific goods, a security interest in
8 specific goods and software used in the goods, a security
9 interest in specific goods and license of software used in the
10 goods, a lease of specific goods or a lease of specific goods
11 and license of software used in the goods. In this paragraph,
12 "monetary obligation" means a monetary obligation secured by
13 the goods or owed under a lease of the goods and includes a
14 monetary obligation with respect to software used in the
15 goods. The term does not include:

16 (A) charters or other contracts
17 involving the use or hire of a vessel; or

18 (B) records that evidence a right to
19 payment arising out of the use of a credit or charge card or
20 information contained on or for use with the card. If a
21 transaction is evidenced by records that include an instrument
22 or series of instruments, the group of records taken together
23 constitutes chattel paper;

24 (12) "collateral" means the property subject
25 to a security interest or agricultural lien and includes:

1 (A) proceeds to which a security
2 interest attaches;

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

5 (C) goods that are the subject of a
6 consignment;

7 (13) "commercial tort claim" means a claim
8 arising in tort with respect to which:

9 (A) the claimant is an organization; or

10 (B) the claimant is an individual and
11 the claim:

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

14 (ii) does not include damages
15 arising out of personal injury to or the death of an
16 individual;

17 (14) "commodity account" means an account
18 maintained by a commodity intermediary in which a commodity
19 contract is carried for a commodity customer;

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

24 (A) traded on or subject to the rules
25 of a board of trade that has been designated as a contract

1 market for such a contract pursuant to federal commodities
2 laws; or

3 (B) traded on a foreign commodity board
4 of trade, exchange or market, and is carried on the books of a
5 commodity intermediary for a commodity customer;

6 (16) "commodity customer" means a person for
7 which a commodity intermediary carries a commodity contract on
8 its books;

9 (17) "commodity intermediary" means a person
10 that:

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

13 (B) in the ordinary course of its
14 business provides clearance or settlement services for a board
15 of trade that has been designated as a contract market
16 pursuant to federal commodities law;

17 (18) "communicate" means:

18 (A) to send a written or other tangible
19 record;

20 (B) to transmit a record by any means
21 agreed upon by the persons sending and receiving the record;
22 or

23 (C) in the case of transmission of a
24 record to or by a filing office, to transmit a record by any
25 means prescribed by filing-office rule;

1 (19) "consignee" means a merchant to which
2 goods are delivered in a consignment;

3 (20) "consignment" means a transaction,
4 regardless of its form, in which a person delivers goods to a
5 merchant for the purpose of sale and:

6 (A) the merchant:

7 (i) deals in goods of that kind
8 under a name other than the name of the person making
9 delivery;

10 (ii) is not an auctioneer; and

11 (iii) is not generally known by
12 its creditors to be substantially engaged in selling the goods
13 of others;

14 (B) with respect to each delivery, the
15 aggregate value of the goods is one thousand dollars (\$1,000)
16 or more at the time of delivery;

17 (C) the goods are not consumer goods
18 immediately before delivery; and

19 (D) the transaction does not create a
20 security interest that secures an obligation;

21 (21) "consignor" means a person that delivers
22 goods to a consignee in a consignment;

23 (22) "consumer debtor" means a debtor in a
24 consumer transaction;

25 (23) "consumer goods" means goods that are

1 used or bought for use primarily for personal, family or
2 household purposes;

3 (24) "consumer-goods transaction" means a
4 consumer transaction in which:

5 (A) an individual incurs an obligation
6 primarily for personal, family or household purposes; and

7 (B) a security interest in consumer
8 goods secures the obligation;

9 (25) "consumer obligor" means an obligor who
10 is an individual and who incurred the obligation as part of a
11 transaction entered into primarily for personal, family or
12 household purposes;

13 (26) "consumer transaction" means a
14 transaction in which:

15 (i) an individual incurs an obligation
16 primarily for personal, family or household purposes;

17 (ii) a security interest secures the
18 obligation; and

19 (iii) the collateral is held or
20 acquired primarily for personal, family or household purposes.
21 The term includes consumer-goods transactions;

22 (27) "continuation statement" means an
23 amendment of a financing statement that:

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

1 (B) indicates that it is a continuation
2 statement for, or that it is filed to continue the
3 effectiveness of, the identified financing statement;

4 (28) "debtor" means:

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

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

10 (C) a consignee;

11 (29) "deposit account" means a demand, time,
12 savings, passbook or similar account maintained with a bank.
13 The term does not include investment property or accounts
14 evidenced by an instrument;

15 (30) "document" means a document of title or
16 a receipt of the type described in Subsection (2) of Section
17 55-7-201 NMSA 1978;

18 (31) "electronic chattel paper" means chattel
19 paper evidenced by a record or records consisting of
20 information stored in an electronic medium;

21 (32) "encumbrance" means a right, other than
22 an ownership interest, in real property. The term includes
23 mortgages and other liens on real property;

24 (33) "equipment" means goods other than
25 inventory, farm products or consumer goods;

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1 (34) "farm products" means goods, other than
2 standing timber, with respect to which the debtor is engaged
3 in a farming operation and that are:

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

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

8 (ii) aquatic goods produced in
9 aquacultural operations;

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

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

14 (D) products of crops or livestock in
15 their unmanufactured states;

16 (35) "farming operation" means raising,
17 cultivating, propagating, fattening, grazing or any other
18 farming, livestock or aquacultural operation;

19 (36) "file number" means the number assigned
20 to an initial financing statement pursuant to Subsection (a)
21 of Section 55-9-519 NMSA 1978;

22 (37) "filing office" means an office
23 designated in Section 55-9-501 NMSA 1978 as the place to file
24 a financing statement;

25 (38) "filing-office rule" means a rule

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1 adopted pursuant to Section 55-9-526 NMSA 1978;

2 (39) "financing statement" means a record or
3 records composed of an initial financing statement and any
4 filed record relating to the initial financing statement;

5 (40) "fixture filing" means the filing of a
6 financing statement covering goods that are or are to become
7 fixtures and satisfying Subsections (a) and (b) of Section
8 55-9-502 NMSA 1978. The term includes the filing of a
9 financing statement covering goods of a transmitting utility
10 that are or are to become fixtures;

11 (41) "fixtures" means goods that have become
12 so related to particular real property that an interest in
13 them arises under real property law;

14 (42) "general intangible" means any personal
15 property, including things in action, other than accounts,
16 chattel paper, commercial tort claims, deposit accounts,
17 documents, goods, instruments, investment property, letter-of-
18 credit rights, letters of credit, money and oil, gas or other
19 minerals before extraction. The term includes payment
20 intangibles and software;

21 (43) "good faith" means honesty in fact and
22 the observance of reasonable commercial standards of fair
23 dealing;

24 (44) "goods" means all things that are
25 movable when a security interest attaches and:

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- (A) includes:
- (i) fixtures;
 - (ii) standing timber that is to be cut and removed under a conveyance or contract for sale;
 - (iii) the unborn young of animals;
 - (iv) crops grown, growing or to be grown, even if the crops are produced on trees, vines or bushes;
 - (v) manufactured homes; and
 - (vi) a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if the program is associated with the goods in such a manner that it customarily is considered part of the goods, or by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods; but
- (B) does not include:
- (i) a computer program embedded in goods that consist solely of the medium in which the program is embedded; or
 - (ii) accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas or other minerals before extraction;

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1 (45) "governmental unit" means a subdivision,
2 agency, department, county, parish, municipality or other unit
3 of the government of the United States, a state or a foreign
4 country. The term includes an organization having a separate
5 corporate existence if the organization is eligible to issue
6 debt on which interest is exempt from income taxation under
7 the laws of the United States;

8 (46) "health-care-insurance receivable" means
9 an interest in or claim under a policy of insurance that is a
10 right to payment of a monetary obligation for health-care
11 goods or services provided;

12 (47) "instrument" means a negotiable
13 instrument or any other writing that evidences a right to the
14 payment of a monetary obligation, is not itself a security
15 agreement or lease and is of a type that in ordinary course of
16 business is transferred by delivery with any necessary
17 indorsement or assignment. The term does not include:

- 18 (A) investment property;
19 (B) letters of credit; or
20 (C) writings that evidence a right to
21 payment arising out of the use of a credit or charge card or
22 information contained on or for use with the card;

23 (48) "inventory" means goods, other than farm
24 products, that:

- 25 (A) are leased by a person as lessor;

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

3 (C) are furnished by a person under a
4 contract of service; or

5 (D) consist of raw materials, work in
6 process or materials used or consumed in a business;

7 (49) "investment property" means a security,
8 whether certificated or uncertificated, security entitlement,
9 securities account, commodity contract or commodity account;

10 (50) "jurisdiction of organization", with
11 respect to a registered organization, means the jurisdiction
12 under whose law the organization is organized;

13 (51) "letter-of-credit right" means a right
14 to payment or performance under a letter of credit, whether or
15 not the beneficiary has demanded or is at the time entitled to
16 demand payment or performance. The term does not include the
17 right of a beneficiary to demand payment or performance under
18 a letter of credit;

19 (52) "lien creditor" means:

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

22 (B) an assignee for benefit of
23 creditors from the time of assignment;

24 (C) a trustee in bankruptcy from the
25 date of the filing of the petition; or

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1 (D) a receiver in equity from the time
2 of appointment;

3 (53) "manufactured home" means a structure,
4 transportable in one or more sections, which, in the traveling
5 mode, is eight body feet or more in width or forty body feet
6 or more in length, or, when erected on site, is three hundred
7 twenty or more square feet, and which is built on a permanent
8 chassis and designed to be used as a dwelling with or without
9 a permanent foundation when connected to the required
10 utilities, and includes the plumbing, heating, air-
11 conditioning and electrical systems contained therein. The
12 term includes any structure that meets all of the requirements
13 of this subsection except the size requirements and with
14 respect to which the manufacturer voluntarily files a
15 certification required by the United States secretary of
16 housing and urban development and complies with the standards
17 established under 42 USCA;

18 (54) "manufactured-home transaction" means a
19 secured transaction:

20 (A) that creates a purchase-money
21 security interest in a manufactured home, other than a
22 manufactured home held as inventory; or

23 (B) in which a manufactured home, other
24 than a manufactured home held as inventory, is the primary
25 collateral;

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1 (55) "mortgage" means a consensual interest
2 in real property, including fixtures, that secures payment or
3 performance of an obligation;

4 (56) "new debtor" means a person that becomes
5 bound as debtor under Subsection (d) of Section 55-9-203 NMSA
6 1978 by a security agreement previously entered into by
7 another person;

8 (57) "new value" means:

9 (A) money;

10 (B) money's worth in property, services
11 or new credit; or

12 (C) release by a transferee of an
13 interest in property previously transferred to the transferee.
14 The term does not include an obligation substituted for
15 another obligation;

16 (58) "noncash proceeds" means proceeds other
17 than cash proceeds;

18 (59) "obligor" means a person that, with
19 respect to an obligation secured by a security interest in or
20 an agricultural lien on the collateral:

21 (A) owes payment or other performance
22 of the obligation;

23 (B) has provided property other than
24 the collateral to secure payment or other performance of the
25 obligation; or

1 (C) is otherwise accountable in whole
2 or in part for payment or other performance of the obligation.
3 The term does not include issuers or nominated persons under a
4 letter of credit;

5 (60) "original debtor", except as used in
6 Subsection (c) of Section 55-9-310 NMSA 1978, means a person
7 that, as debtor, entered into a security agreement to which a
8 new debtor has become bound under Subsection (d) of Section
9 55-9-203 NMSA 1978;

10 (61) "payment intangible" means a general
11 intangible under which the account debtor's principal
12 obligation is a monetary obligation;

13 (62) "person related to", with respect to an
14 individual, means:

15 (A) the spouse of the individual;

16 (B) a brother, brother-in-law, sister
17 or sister-in-law of the individual;

18 (C) an ancestor or lineal descendant of
19 the individual or the individual's spouse; or

20 (D) any other relative, by blood or
21 marriage, of the individual or the individual's spouse who
22 shares the same home with the individual;

23 (63) "person related to", with respect to an
24 organization, means:

25 (A) a person directly or indirectly

1 controlling, controlled by or under common control with the
2 organization;

3 (B) an officer or director of, or a
4 person performing similar functions with respect to, the
5 organization;

6 (C) an officer or director of, or a
7 person performing similar functions with respect to, a person
8 described in Subparagraph (A) of this paragraph;

9 (D) the spouse of an individual
10 described in Subparagraph (A), (B) or (C) of this paragraph;
11 or

12 (E) an individual who is related by
13 blood or marriage to an individual described in Subparagraph
14 (A), (B), (C) or (D) of this paragraph and shares the same
15 home with the individual;

16 (64) "proceeds", except as used in Subsection
17 (b) of Section 55-9-609 NMSA 1978, means:

18 (A) whatever is acquired upon the sale,
19 lease, license, exchange or other disposition of collateral;

20 (B) whatever is collected on, or
21 distributed on account of, collateral;

22 (C) rights arising out of collateral;

23 (D) to the extent of the value of
24 collateral, claims arising out of the loss, nonconformity or
25 interference with the use of, defects or infringement of

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1 rights in, or damage to, the collateral; or

2 (E) to the extent of the value of
3 collateral and to the extent payable to the debtor or the
4 secured party, insurance payable by reason of the loss or
5 nonconformity of, defects or infringement of rights in, or
6 damage to, the collateral;

7 (65) "promissory note" means an instrument
8 that evidences a promise to pay a monetary obligation, does
9 not evidence an order to pay and does not contain an
10 acknowledgment by a bank that the bank has received for
11 deposit a sum of money or funds;

12 (66) "proposal" means a record authenticated
13 by a secured party which includes the terms on which the
14 secured party is willing to accept collateral in full or
15 partial satisfaction of the obligation it secures pursuant to
16 Sections 55-9-620 through 55-9-622 NMSA 1978;

17 (67) "public-finance transaction" means a
18 secured transaction in connection with which:

19 (A) debt securities are issued;

20 (B) all or a portion of the securities
21 issued have an initial stated maturity of at least twenty
22 years; and

23 (C) the debtor, obligor, secured party,
24 account debtor or other person obligated on collateral,
25 assignor or assignee of a secured obligation, or assignor or

1 assignee of a security interest is a state or a governmental
2 unit of a state;

3 (68) "pursuant to commitment", with respect
4 to an advance made or other value given by a secured party,
5 means pursuant to the secured party's obligation, whether or
6 not a subsequent event of default or other event not within
7 the secured party's control has relieved or may relieve the
8 secured party from its obligation;

9 (69) "record", except as used in "for
10 record", "of record", "record or legal title" and "record
11 owner", means information that is inscribed on a tangible
12 medium or that is stored in an electronic or other medium and
13 is retrievable in perceivable form;

14 (70) "registered organization" means an
15 organization organized solely under the law of a single state
16 or the United States and as to which the state or the United
17 States must maintain a public record showing the organization
18 to have been organized;

19 (71) "secondary obligor" means an obligor to
20 the extent that:

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

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

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(72) "secured party" means:

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

(B) a person that holds an agricultural lien;

(C) a consignor;

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

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

(F) a person that holds a security interest arising under Section 55-2-401, Section 55-2-505, Subsection (3) of Section 55-2-711, Subsection (5) of Section 55-2A-508, Section 55-4-210 or Section 55-5-118 NMSA 1978;

(73) "security agreement" means an agreement that creates or provides for a security interest;

(74) "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

1 for, addressed to any address reasonable under the
2 circumstances; or

3 (B) to cause the record or notification
4 to be received within the time that it would have been
5 received if properly sent under Subparagraph (A) of this
6 paragraph;

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

12 (76) "state" means a state of the United
13 States, the District of Columbia, Puerto Rico, the United
14 States Virgin Islands or any territory or insular possession
15 subject to the jurisdiction of the United States;

16 (77) "supporting obligation" means a letter-
17 of-credit right or secondary obligation that supports the
18 payment or performance of an account, chattel paper, a
19 document, a general intangible, an instrument or investment
20 property;

21 (78) "tangible chattel paper" means chattel
22 paper evidenced by a record or records consisting of
23 information that is inscribed on a tangible medium;

24 (79) "termination statement" means an
25 amendment of a financing statement that:

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

(B) indicates either that it is a termination statement or that the identified financing statement is no longer effective; and

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

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

(B) transmitting communications electrically, electromagnetically or by light;

(C) transmitting goods by pipeline or sewer; or

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

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

"applicant" Section
55-5-102 NMSA 1978;

"beneficiary" Section
55-5-102 NMSA 1978;

"broker" Section
55-8-102 NMSA 1978;

"certificated security" Section
55-8-102 NMSA 1978;

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1	"check"	Section
2	55-3-104 NMSA 1978;	
3	"clearing corporation"	Section
4	55-8-102 NMSA 1978;	
5	"contract for sale"	Section
6	55-2-106 NMSA 1978;	
7	"customer"	Section
8	55-4-104 NMSA 1978;	
9	"entitlement holder"	Section
10	55-8-102 NMSA 1978;	
11	"financial asset"	Section
12	55-8-102 NMSA 1978;	
13	"holder in due course"	Section
14	55-3-302 NMSA 1978;	
15	"issuer" (with respect to a letter of credit or	
16	letter-of-credit right)	Section
17	55-5-102 NMSA 1978;	
18	"issuer" (with respect to a security)	Section
19	55-8-201 NMSA 1978;	
20	"lease"	Section
21	55-2A-103 NMSA 1978;	
22	"lease agreement"	Section
23	55-2A-103 NMSA 1978;	
24	"lease contract"	Section
25	55-2A-103 NMSA 1978;	

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1	"leasehold interest"	Section
2	55-2A-103 NMSA 1978;	
3	"lessee"	Section
4	55-2A-103 NMSA 1978;	
5	"lessee in ordinary course of business" .	Section
6	55-2A-103 NMSA 1978;	
7	"lessor"	Section
8	55-2A-103 NMSA 1978;	
9	"lessor's residual interest"	Section
10	55-2A-103 NMSA 1978;	
11	"letter of credit"	Section
12	55-5-102 NMSA 1978;	
13	"merchant"	Section
14	55-2-104 NMSA 1978;	
15	"negotiable instrument"	Section
16	55-3-104 NMSA 1978;	
17	"nominated person"	Section
18	55-5-102 NMSA 1978;	
19	"note"	Section
20	55-3-104 NMSA 1978;	
21	"proceeds of a letter of credit"	Section
22	55-5-114 NMSA 1978;	
23	"prove"	Section
24	55-3-103 NMSA 1978;	
25	"sale"	Section

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- 1 55-2-106 NMSA 1978;
- 2 "securities account" Section
- 3 55-8-501 NMSA 1978;
- 4 "securities intermediary" Section
- 5 55-8-102 NMSA 1978;
- 6 "security" Section
- 7 55-8-102 NMSA 1978;
- 8 "security certificate" Section
- 9 55-8-102 NMSA 1978;
- 10 "security entitlement" Section
- 11 55-8-102 NMSA 1978; and
- 12 "uncertificated security" Section
- 13 55-8-102 NMSA 1978.

14 (c) Chapter 12, Article 2A and Chapter 55, Article
 15 1 NMSA 1978 contain general definitions and principles of
 16 construction and interpretation applicable throughout Chapter
 17 55, Article 9 NMSA 1978. "

18 Section 3. Section 55-9-103 NMSA 1978 (being Laws 1961,
 19 Chapter 96, Section 9-103, as amended) is repealed and a new
 20 Section 55-9-103 NMSA 1978 is enacted to read:

21 "55-9-103. [NEW MATERIAL] PURCHASE-MONEY SECURITY
 22 INTEREST--APPLICATION OF PAYMENTS--BURDEN OF ESTABLISHING. --

23 (a) In this section:
 24 (1) "purchase-money collateral" means goods or
 25 software that secures a purchase-money obligation incurred

1 with respect to that collateral; and

2 (2) "purchase-money obligation" means an
3 obligation of an obligor incurred as all or part of the price
4 of the collateral or for value given to enable the debtor to
5 acquire rights in or the use of the collateral if the value is
6 in fact so used.

7 (b) A security interest in goods is a purchase-
8 money security interest:

9 (1) to the extent that the goods are
10 purchase-money collateral with respect to that security
11 interest;

12 (2) if the security interest is in inventory
13 that is or was purchase-money collateral, and to the extent
14 that the security interest secures a purchase-money obligation
15 incurred with respect to other inventory in which the secured
16 party holds or held a purchase-money security interest; and

17 (3) to the extent that the security interest
18 secures a purchase-money obligation incurred with respect to
19 software in which the secured party holds or held a purchase-
20 money security interest.

21 (c) A security interest in software is a purchase-
22 money security interest to the extent that the security
23 interest also secures a purchase-money obligation incurred
24 with respect to goods in which the secured party holds or held
25 a purchase-money security interest if:

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1 (1) the debtor acquired its interest in the
2 software in an integrated transaction in which it acquired an
3 interest in the goods; and

4 (2) the debtor acquired its interest in the
5 software for the principal purpose of using the software in
6 the goods.

7 (d) The security interest of a consignor in goods
8 that are the subject of a consignment is a purchase-money
9 security interest in inventory.

10 (e) In a transaction other than a consumer-goods
11 transaction, if the extent to which a security interest is a
12 purchase-money security interest depends on the application of
13 a payment to a particular obligation, the payment must be
14 applied:

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

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

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

23 (A) to obligations that are not
24 secured; and

25 (B) if more than one obligation is

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1 secured, to obligations secured by purchase-money security
2 interests in the order in which those obligations were
3 incurred.

4 (f) In a transaction other than a consumer-goods
5 transaction, a purchase-money security interest does not lose
6 its status as such, even if:

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

9 (2) collateral that is not purchase-money
10 collateral also secures the purchase-money obligation; or

11 (3) the purchase-money obligation has been
12 renewed, refinanced, consolidated or restructured.

13 (g) In a transaction other than a consumer-goods
14 transaction, a secured party claiming a purchase-money
15 security interest has the burden of establishing the extent to
16 which the security interest is a purchase-money security
17 interest.

18 (h) The limitation of the rules in Subsections
19 (e), (f) and (g) of this section to transactions other than
20 consumer-goods transactions is intended to leave to the court
21 the determination of the proper rules in consumer-goods
22 transactions. The court may not infer from that limitation
23 the nature of the proper rule in consumer-goods transactions
24 and may continue to apply established approaches. "

25 Section 4. Section 55-9-104 NMSA 1978 (being Laws 1961,

underscored material = new
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1 Chapter 96, Section 9-104, as amended) is repealed and a new
2 Section 55-9-104 NMSA 1978 is enacted to read:

3 "55-9-104. [NEW MATERIAL] CONTROL OF DEPOSIT ACCOUNT. --

4 (a) A secured party has control of a deposit
5 account if:

6 (1) the secured party is the bank with which
7 the deposit account is maintained;

8 (2) the debtor, secured party and bank have
9 agreed in an authenticated record that the bank will comply
10 with instructions originated by the secured party directing
11 disposition of the funds in the deposit account without
12 further consent by the debtor; or

13 (3) the secured party becomes the bank's
14 customer with respect to the deposit account.

15 (b) A secured party that has satisfied Subsection
16 (a) of this section has control, even if the debtor retains
17 the right to direct the disposition of funds from the deposit
18 account. "

19 Section 5. Section 55-9-105 NMSA 1978 (being Laws 1961,
20 Chapter 96, Section 9-105, as amended) is repealed and a new
21 Section 55-9-105 NMSA 1978 is enacted to read:

22 "55-9-105. [NEW MATERIAL] CONTROL OF ELECTRONIC CHATTEL
23 PAPER. --A secured party has control of electronic chattel
24 paper if the record or records comprising the chattel paper
25 are created, stored and assigned in such a manner that:

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1 (a) a single authoritative copy of the record or
2 records exists which is unique, identifiable and, except as
3 otherwise provided in Subsections (d) through (f) of this
4 section, unalterable;

5 (b) the authoritative copy identifies the secured
6 party as the assignee of the record or records;

7 (c) the authoritative copy is communicated to and
8 maintained by the secured party or its designated custodian;

9 (d) copies or revisions that add or change an
10 identified assignee of the authoritative copy can be made only
11 with the participation of the secured party;

12 (e) each copy of the authoritative copy and any
13 copy of a copy is readily identifiable as a copy that is not
14 the authoritative copy; and

15 (f) any revision of the authoritative copy is
16 readily identifiable as an authorized or unauthorized
17 revision. "

18 Section 6. Section 55-9-106 NMSA 1978 (being Laws 1961,
19 Chapter 96, Section 9-106, as amended) is repealed and a new
20 Section 55-9-106 NMSA 1978 is enacted to read:

21 "55-9-106. [NEW MATERIAL] CONTROL OF INVESTMENT
22 PROPERTY. --

23 (a) A person has control of a certificated
24 security, uncertificated security or security entitlement as
25 provided in Section 55-8-106 NMSA 1978.

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

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

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

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

14 Section 7. Section 55-9-107 NMSA 1978 (being Laws 1961,
15 Chapter 96, Section 9-107) is repealed and a new Section
16 55-9-107 NMSA 1978 is enacted to read:

17 "55-9-107. [NEW MATERIAL] CONTROL OF LETTER-OF-CREDIT
18 RIGHT. --A secured party has control of a letter-of-credit
19 right to the extent of any right to payment or performance by
20 the issuer or any nominated person if the issuer or nominated
21 person has consented to an assignment of proceeds of the
22 letter of credit under Subsection (c) of Section 55-5-114 NMSA
23 1978 or otherwise applicable law or practice. "

24 Section 8. Section 55-9-108 NMSA 1978 (being Laws 1961,
25 Chapter 96, Section 9-108) is repealed and a new Section

underscored material = new
[bracketed material] = delete

1 55-9-108 NMSA 1978 is enacted to read:

2 "55-9-108. [NEW MATERIAL] SUFFICIENCY OF DESCRIPTION. --

3 (a) Except as otherwise provided in Subsections
4 (c), (d) and (e) of this section, a description of personal or
5 real property is sufficient, whether or not it is specific, if
6 it reasonably identifies what is described.

7 (b) Except as otherwise provided in Subsection (d)
8 of this section, a description of collateral reasonably
9 identifies the collateral if it identifies the collateral by:

10 (1) specific listing;

11 (2) category;

12 (3) except as otherwise provided in
13 Subsection (e) of this section, a type of collateral defined
14 in the Uniform Commercial Code;

15 (4) quantity;

16 (5) computational or allocational formula or
17 procedure; or

18 (6) except as otherwise provided in
19 Subsection (c) of this section, any other method, if the
20 identity of the collateral is objectively determinable.

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

25 (d) Except as otherwise provided in Subsection (e)

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underscored material = new
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1 of this section, a description of a security entitlement,
2 securities account or commodity account is sufficient if it
3 describes:

4 (1) the collateral by those terms or as
5 investment property; or

6 (2) the underlying financial asset or
7 commodity contract.

8 (e) A description only by type of collateral
9 defined in the Uniform Commercial Code is an insufficient
10 description of:

11 (1) a commercial tort claim; or

12 (2) in a consumer transaction, consumer
13 goods, a security entitlement, a securities account or a
14 commodity account. "

15 Section 9. Section 55-9-109 NMSA 1978 (being Laws 1961,
16 Chapter 96, Section 9-109) is repealed and a new Section
17 55-9-109 NMSA 1978 is enacted to read:

18 "55-9-109. [NEW MATERIAL] SCOPE. --

19 (a) Except as otherwise provided in Subsections
20 (c) and (d) of this section, Chapter 55, Article 9 NMSA 1978
21 applies to:

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

25 (2) an agricultural lien;

underscored material = new
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1 (3) a sale of accounts, chattel paper,
2 payment intangibles or promissory notes;

3 (4) a consignment;

4 (5) a security interest arising under Section
5 55-2-401, 55-2-505, Subsection (3) of Section 55-2-711 or
6 Subsection (5) of Section 55-2A-508 NMSA 1978, as provided in
7 Section 55-9-110 NMSA 1978; and

8 (6) a security interest arising under Section
9 55-4-210 or 55-5-118 NMSA 1978.

10 (b) The application of Chapter 55, Article 9 NMSA
11 1978 to a security interest in a secured obligation is not
12 affected by the fact that the obligation is itself secured by
13 a transaction or interest to which this article does not
14 apply.

15 (c) Chapter 55, Article 9 NMSA 1978 does not apply
16 to the extent that:

17 (1) a statute, regulation or treaty of the
18 United States preempts the article;

19 (2) another statute of this state expressly
20 governs the creation, perfection, priority or enforcement of a
21 security interest created by this state or a governmental unit
22 of this state;

23 (3) a statute of another state, a foreign
24 country or a governmental unit of another state or a foreign
25 country, other than a statute generally applicable to security

1 interests, expressly governs creation, perfection, priority or
2 enforcement of a security interest created by the state,
3 country or governmental unit; or

4 (4) the rights of a transferee beneficiary or
5 nominated person under a letter of credit are independent and
6 superior under Section 55-5-114 NMSA 1978.

7 (d) Chapter 55, Article 9 NMSA 1978 does not apply
8 to:

9 (1) a landlord's lien, other than an
10 agricultural lien;

11 (2) a lien, other than an agricultural lien,
12 given by statute or other rule of law for services or
13 materials, but Section 55-9-333 NMSA 1978 applies with respect
14 to priority of the lien;

15 (3) an assignment of a claim for wages,
16 salary or other compensation of an employee;

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

20 (5) an assignment of accounts, chattel paper,
21 payment intangibles or promissory notes which is for the
22 purpose of collection only;

23 (6) an assignment of a right to payment under
24 a contract to an assignee that is also obligated to perform
25 under the contract;

underscored material = new
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1 (7) an assignment of a single account,
2 payment intangible or promissory note to an assignee in full
3 or partial satisfaction of a preexisting indebtedness;

4 (8) a transfer of an interest in or an
5 assignment of a claim under a policy of insurance, other than
6 an assignment by or to a health-care provider of a health-
7 care-insurance receivable and any subsequent assignment of the
8 right to payment, but Sections 55-9-315 and 55-9-322 NMSA 1978
9 apply with respect to proceeds and priorities in proceeds;

10 (9) an assignment of a right represented by a
11 judgment, other than a judgment taken on a right to payment
12 that was collateral;

13 (10) a right of recoupment or set-off, but:

14 (A) Section 55-9-340 NMSA 1978 applies
15 with respect to the effectiveness of rights of recoupment or
16 set-off against deposit accounts; and

17 (B) Section 55-9-404 NMSA 1978 applies
18 with respect to defenses or claims of an account debtor;

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

22 (A) liens on real property in Sections
23 55-9-203 and 55-9-308 NMSA 1978;

24 (B) fixtures in Section 55-9-334 NMSA
25 1978;

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(C) fixture filings in Sections
55-9-501, 55-9-502, 55-9-512, 55-9-516 and 55-9-519 NMSA 1978;
and

(D) security agreements covering
personal and real property in Section 55-9-604 NMSA 1978;

(12) an assignment of a claim arising in
tort, other than a commercial tort claim, but Sections
55-9-315 and 55-9-322 NMSA 1978 apply with respect to proceeds
and priorities in proceeds;

(13) an assignment of a deposit account in a
consumer transaction, but Sections 55-9-315 and 55-9-322 NMSA
1978 apply with respect to proceeds and priorities in
proceeds; or

(14) a transfer by this state or a
governmental unit of this state. "

Section 10. Section 55-9-110 NMSA 1978 (being Laws 1961,
Chapter 96, Section 9-110, as amended) is repealed and a new
Section 55-9-110 NMSA 1978 is enacted to read:

"55-9-110. [NEW MATERIAL] SECURITY INTERESTS ARISING
UNDER CHAPTER 55, ARTICLE 2 OR 2A NMSA 1978. -- A security
interest arising under Section 55-2-401, 55-2-505, Subsection
(3) of Section 55-2-711 or Subsection (5) of Section 55-2A-508
NMSA 1978 is subject to Chapter 55, Article 9 NMSA 1978.

However, until the debtor obtains possession of the goods:

(1) the security interest is enforceable,

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1 even if Paragraph (3) of Subsection (b) of Section 55-9-203
2 NMSA 1978 has not been satisfied;

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

5 (3) the rights of the secured party after
6 default by the debtor are governed by Chapter 55, Article 2 or
7 2A NMSA 1978; and

8 (4) the security interest has priority over a
9 conflicting security interest created by the debtor."

10 Section 11. Section 55-9-201 NMSA 1978 (being Laws 1961,
11 Chapter 96, Section 9-201) is repealed and a new Section
12 55-9-201 NMSA 1978 is enacted to read:

13 "55-9-201. [NEW MATERIAL] GENERAL EFFECTIVENESS OF
14 SECURITY AGREEMENT. --

15 (a) Except as otherwise provided in the Uniform
16 Commercial Code, a security agreement is effective according
17 to its terms between the parties, against purchasers of the
18 collateral and against creditors.

19 (b) A transaction subject to Chapter 55, Article 9
20 NMSA 1978 is subject to any applicable rule of law which
21 establishes a different rule for consumers, and to the
22 provisions of the Oil and Gas Products Lien Act; Chapter 56,
23 Article 1 NMSA 1978; the Artists' Consignment Act; the
24 Pawnbrokers Act; the New Mexico Bank Installment Loan Act of
25 1959; the New Mexico Small Loan Act of 1955; the Motor Vehicle

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1 Sales Finance Act; and to rules adopted under those statutes.

2 (c) In case of conflict between Chapter 55,
3 Article 9 NMSA 1978 and a rule of law, statute or rule
4 described in Subsection (b) of this section, the rule of law,
5 statute or rule controls. Failure to comply with a statute or
6 rule described in Subsection (b) of this section has only the
7 effect the statute or rule specifies.

8 (d) Chapter 55, Article 9 NMSA 1978 does not:

9 (1) validate any rate, charge, agreement or
10 practice that violates a rule of law, statute or rule
11 described in Subsection (b) of this section; or

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

14 (e) The filing provisions set forth in the Farm
15 Products Secured Interest Act and in the Public Utility Act
16 are in addition to the filing provisions set forth in Chapter
17 55, Article 9 NMSA 1978. Failure to comply with the filing
18 provisions in those acts has only the effect specified in
19 those acts. "

20 Section 12. Section 55-9-202 NMSA 1978 (being Laws 1961,
21 Chapter 96, Section 9-202) is repealed and a new Section
22 55-9-202 NMSA 1978 is enacted to read:

23 "55-9-202. [NEW MATERIAL] TITLE TO COLLATERAL
24 IMMATERIAL. -- Except as otherwise provided with respect to
25 consignments or sales of accounts, chattel paper, payment

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1 intangibles or promissory notes, the provisions of Chapter 55,
2 Article 9 NMSA 1978 with regard to rights and obligations
3 apply whether title to collateral is in the secured party or
4 the debtor. "

5 Section 13. Section 55-9-203 NMSA 1978 (being Laws 1961,
6 Chapter 96, Section 9-203, as amended) is repealed and a new
7 Section 55-9-203 NMSA 1978 is enacted to read:

8 "55-9-203. [NEW MATERIAL] ATTACHMENT AND ENFORCEABILITY
9 OF SECURITY INTEREST-- PROCEEDS-- SUPPORTING OBLIGATIONS-- FORMAL
10 REQUISITES. --

11 (a) A security interest attaches to collateral
12 when it becomes enforceable against the debtor with respect to
13 the collateral, unless an agreement expressly postpones the
14 time of attachment.

15 (b) Except as otherwise provided in Subsections
16 (c) through (i) of this section, a security interest is
17 enforceable against the debtor and third parties with respect
18 to the collateral only if:

19 (1) value has been given;
20 (2) the debtor has rights in the collateral
21 or the power to transfer rights in the collateral to a secured
22 party; and

23 (3) one of the following conditions is met:
24 (A) the debtor has authenticated a
25 security agreement that provides a description of the

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1 collateral and, if the security interest covers timber to be
2 cut, a description of the land concerned;

3 (B) the collateral is not a
4 certificated security and is in the possession of the secured
5 party under Section 55-9-313 NMSA 1978 pursuant to the
6 debtor's security agreement;

7 (C) the collateral is a certificated
8 security in registered form and the security certificate has
9 been delivered to the secured party under Section 55-8-301
10 NMSA 1978 pursuant to the debtor's security agreement; or

11 (D) the collateral is deposit accounts,
12 electronic chattel paper, investment property or letter-of-
13 credit rights, and the secured party has control under Section
14 55-9-104, 55-9-105, 55-9-106 or 55-9-107 NMSA 1978 pursuant to
15 the debtor's security agreement.

16 (c) Subsection (b) of this section is subject to
17 Section 55-4-210 NMSA 1978 on the security interest of a
18 collecting bank, Section 55-5-118 NMSA 1978 on the security
19 interest of a letter-of-credit issuer or nominated person,
20 Section 55-9-110 NMSA 1978 on a security interest arising
21 under Chapter 55, Article 2 or 2A NMSA 1978 and Section
22 55-9-206 NMSA 1978 on security interests in investment
23 property.

24 (d) A person becomes bound as debtor by a security
25 agreement entered into by another person if, by operation of

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1 law other than Chapter 55, Article 9 NMSA 1978 or by contract:

2 (1) the security agreement becomes effective
3 to create a security interest in the person's property; or

4 (2) the person becomes generally obligated
5 for the obligations of the other person, including the
6 obligation secured under the security agreement, and acquires
7 or succeeds to all or substantially all of the assets of the
8 other person.

9 (e) If a new debtor becomes bound as debtor by a
10 security agreement entered into by another person:

11 (1) the agreement satisfies Paragraph (3) of
12 Subsection (b) of this section with respect to existing or
13 after-acquired property of the new debtor to the extent the
14 property is described in the agreement; and

15 (2) another agreement is not necessary to
16 make a security interest in the property enforceable.

17 (f) The attachment of a security interest in
18 collateral gives the secured party the rights to proceeds
19 provided by Section 55-9-315 NMSA 1978 and is also attachment
20 of a security interest in a supporting obligation for the
21 collateral.

22 (g) The attachment of a security interest in a
23 right to payment or performance secured by a security interest
24 or other lien on personal or real property is also attachment
25 of a security interest in the security interest, mortgage or

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1 other lien.

2 (h) The attachment of a security interest in a
3 securities account is also attachment of a security interest
4 in the security entitlements carried in the securities
5 account.

6 (i) The attachment of a security interest in a
7 commodity account is also attachment of a security interest in
8 the commodity contracts carried in the commodity account. "

9 Section 14. Section 55-9-204 NMSA 1978 (being Laws 1961,
10 Chapter 96, Section 9-204, as amended) is repealed and a new
11 Section 55-9-204 NMSA 1978 is enacted to read:

12 "55-9-204. [NEW MATERIAL] AFTER-ACQUIRED PROPERTY--
13 FUTURE ADVANCES. --

14 (a) Except as otherwise provided in Subsection (b)
15 of this section, a security agreement may create or provide
16 for a security interest in after-acquired collateral.

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

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

23 (2) a commercial tort claim.

24 (c) A security agreement may provide that
25 collateral secures, or that accounts, chattel paper, payment

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1 intangibles or promissory notes are sold in connection with,
2 future advances or other value, whether or not the advances or
3 value are given pursuant to commitment. "

4 Section 15. Section 55-9-205 NMSA 1978 (being Laws 1961,
5 Chapter 96, Section 9-205, as amended) is repealed and a new
6 Section 55-9-205 NMSA 1978 is enacted to read:

7 "55-9-205. [NEW MATERIAL] USE OR DISPOSITION OF
8 COLLATERAL PERMISSIBLE. --

9 (a) A security interest is not invalid or
10 fraudulent against creditors solely because:

11 (1) the debtor has the right or ability to:

12 (A) use, commingle or dispose of all or
13 part of the collateral, including returned or repossessed
14 goods;

15 (B) collect, compromise, enforce or
16 otherwise deal with collateral;

17 (C) accept the return of collateral or
18 make repossessions; or

19 (D) use, commingle or dispose of
20 proceeds; or

21 (2) the secured party fails to require the
22 debtor to account for proceeds or replace collateral.

23 (b) This section does not relax the requirements
24 of possession if attachment, perfection or enforcement of a
25 security interest depends upon possession of the collateral by

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1 the secured party. "

2 Section 16. Section 55-9-206 NMSA 1978 (being Laws 1961,
3 Chapter 96, Section 9-206, as amended) is repealed and a new
4 Section 55-9-206 NMSA 1978 is enacted to read:

5 "55-9-206. [NEW MATERIAL] SECURITY INTEREST ARISING IN
6 PURCHASE OR DELIVERY OF FINANCIAL ASSET. --

7 (a) A security interest in favor of a securities
8 intermediary attaches to a person's security entitlement if:

9 (1) the person buys a financial asset through
10 the securities intermediary in a transaction in which the
11 person is obligated to pay the purchase price to the
12 securities intermediary at the time of the purchase; and

13 (2) the securities intermediary credits the
14 financial asset to the buyer's securities account before the
15 buyer pays the securities intermediary.

16 (b) The security interest described in Subsection
17 (a) of this section secures the person's obligation to pay for
18 the financial asset.

19 (c) A security interest in favor of a person that
20 delivers a certificated security or other financial asset
21 represented by a writing attaches to the security or other
22 financial asset if:

23 (1) the security or other financial asset:
24 (A) in the ordinary course of business
25 is transferred by delivery with any necessary indorsement or

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1 assignment; and

2 (B) is delivered under an agreement
3 between persons in the business of dealing with such
4 securities or financial assets; and

5 (2) the agreement calls for delivery against
6 payment.

7 (d) The security interest described in Subsection
8 (c) of this section secures the obligation to make payment for
9 the delivery. "

10 Section 17. Section 55-9-207 NMSA 1978 (being Laws 1961,
11 Chapter 96, Section 9-207) is repealed and a new Section
12 55-9-207 NMSA 1978 is enacted to read:

13 "55-9-207. [NEW MATERIAL] RIGHTS AND DUTIES OF SECURED
14 PARTY HAVING POSSESSION OR CONTROL OF COLLATERAL. --

15 (a) Except as otherwise provided in Subsection (d)
16 of this section, a secured party shall use reasonable care in
17 the custody and preservation of collateral in the secured
18 party's possession. In the case of chattel paper or an
19 instrument, reasonable care includes taking necessary steps to
20 preserve rights against prior parties unless otherwise agreed.

21 (b) Except as otherwise provided in Subsection (d)
22 of this section, if a secured party has possession of
23 collateral:

24 (1) reasonable expenses, including the cost of
25 insurance and payment of taxes or other charges, incurred in

1 the custody, preservation, use or operation of the collateral
2 are chargeable to the debtor and are secured by the collateral;

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

6 (3) the secured party shall keep the
7 collateral identifiable, but fungible collateral may be
8 commingled; and

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

11 (A) for the purpose of preserving the
12 collateral or its value;

13 (B) as permitted by an order of a court
14 having competent jurisdiction; or

15 (C) except in the case of consumer
16 goods, in the manner and to the extent agreed by the debtor.

17 (c) Except as otherwise provided in Subsection (d)
18 of this section, a secured party having possession of
19 collateral or control of collateral under Section 55-9-104,
20 55-9-105, 55-9-106 or 55-9-107 NMSA 1978:

21 (1) may hold as additional security any
22 proceeds, except money or funds, received from the collateral;

23 (2) shall apply money or funds received from
24 the collateral to reduce the secured obligation, unless
25 remitted to the debtor; and

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1 (3) may create a security interest in the
2 collateral.

3 (d) If the secured party is a buyer of accounts,
4 chattel paper, payment intangibles or promissory notes or is a
5 consignor:

6 (1) Subsection (a) of this section does not
7 apply unless the secured party is entitled under an agreement:

8 (A) to charge back uncollected
9 collateral; or

10 (B) otherwise to full or limited
11 recourse against the debtor or a secondary obligor based on the
12 nonpayment or other default of an account debtor or other
13 obligor on the collateral; and

14 (2) Subsections (b) and (c) of this section do
15 not apply. "

16 Section 18. Section 55-9-208 NMSA 1978 (being Laws 1961,
17 Chapter 96, Section 9-208) is repealed and a new Section
18 55-9-208 NMSA 1978 is enacted to read:

19 "55-9-208. [NEW MATERIAL] ADDITIONAL DUTIES OF SECURED
20 PARTY HAVING CONTROL OF COLLATERAL. --

21 (a) This section applies to cases in which there is
22 no outstanding secured obligation and the secured party is not
23 committed to make advances, incur obligations or otherwise give
24 value.

25 (b) Within ten days after receiving an

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1 authenticated demand by the debtor:

2 (1) a secured party having control of a
3 deposit account under Paragraph (2) of Subsection (a) of
4 Section 55-9-104 NMSA 1978 shall send to the bank with which
5 the deposit account is maintained an authenticated statement
6 that releases the bank from any further obligation to comply
7 with instructions originated by the secured party;

8 (2) a secured party having control of a
9 deposit account under Paragraph (3) of Subsection (a) of
10 Section 55-9-104 NMSA 1978 shall:

11 (A) pay the debtor the balance on
12 deposit in the deposit account; or

13 (B) transfer the balance on deposit into
14 a deposit account in the debtor's name;

15 (3) a secured party, other than a buyer,
16 having control of electronic chattel paper under Section
17 55-9-105 NMSA 1978 shall:

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

21 (B) if the debtor designates a custodian
22 that is the designated custodian with which the authoritative
23 copy of the electronic chattel paper is maintained for the
24 secured party, communicate to the custodian an authenticated
25 record releasing the designated custodian from any further

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1 obligation to comply with instructions originated by the
2 secured party and instructing the custodian to comply with
3 instructions originated by the debtor; and

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

9 (4) a secured party having control of
10 investment property under Paragraph (2) of Subsection (d) of
11 Section 55-8-106 NMSA 1978 or Subsection (b) of Section
12 55-9-106 NMSA 1978 shall send to the securities intermediary or
13 commodity intermediary with which the security entitlement or
14 commodity contract is maintained an authenticated record that
15 releases the securities intermediary or commodity intermediary
16 from any further obligation to comply with entitlement orders
17 or directions originated by the secured party; and

18 (5) a secured party having control of a
19 letter-of-credit right under Section 55-9-107 NMSA 1978 shall
20 send to each person having an unfulfilled obligation to pay or
21 deliver proceeds of the letter of credit to the secured party
22 an authenticated release from any further obligation to pay or
23 deliver proceeds of the letter of credit to the secured party."

24 Section 19. A new Section 55-9-209 NMSA 1978 is enacted
25 to read:

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1 "55-9-209. [NEW MATERIAL] DUTIES OF SECURED PARTY IF
2 ACCOUNT DEBTOR HAS BEEN NOTIFIED OF ASSIGNMENT. --

3 (a) Except as otherwise provided in Subsection (c)
4 of this section, this section applies if:

5 (1) there is no outstanding secured
6 obligation; and

7 (2) the secured party is not committed to make
8 advances, incur obligations or otherwise give value.

9 (b) Within ten days after receiving an
10 authenticated demand by the debtor, a secured party shall send
11 to an account debtor that has received notification of an
12 assignment to the secured party as assignee under Subsection
13 (a) of Section 55-9-406 NMSA 1978 an authenticated record that
14 releases the account debtor from any further obligation to the
15 secured party.

16 (c) This section does not apply to an assignment
17 constituting the sale of an account, chattel paper or payment
18 intangible. "

19 Section 20. A new Section 55-9-210 NMSA 1978 is enacted
20 to read:

21 "55-9-210. [NEW MATERIAL] REQUEST FOR ACCOUNTING-- REQUEST
22 REGARDING LIST OF COLLATERAL OR STATEMENT OF ACCOUNT. --

23 (a) In this section:

24 (1) "request" means a record of a type
25 described in Paragraph (2), (3) or (4) of this subsection;

1 (2) "request for an accounting" means a record
2 authenticated by a debtor requesting that the recipient provide
3 an accounting of the unpaid obligations secured by collateral
4 and reasonably identifying the transaction or relationship that
5 is the subject of the request;

6 (3) "request regarding a list of collateral"
7 means a record authenticated by a debtor requesting that the
8 recipient approve or correct a list of what the debtor believes
9 to be the collateral securing an obligation and reasonably
10 identifying the transaction or relationship that is the subject
11 of the request; and

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

19 (b) Subject to Subsections (c), (d), (e) and (f) of
20 this section, a secured party, other than a buyer of accounts,
21 chattel paper, payment intangibles or promissory notes or a
22 consignor, shall comply with a request within fourteen days
23 after receipt:

24 (1) in the case of a request for an
25 accounting, by authenticating and sending to the debtor an

1 accounting; and

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

6 (c) A secured party that claims a security interest
7 in all of a particular type of collateral owned by the debtor
8 may comply with a request regarding a list of collateral by
9 sending to the debtor an authenticated record including a
10 statement to that effect within fourteen days after receipt.

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

17 (1) disclaiming any interest in the
18 collateral; and

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

22 (e) A person that receives a request for an
23 accounting or a request regarding a statement of account,
24 claims no interest in the obligations when it receives the
25 request and claimed an interest in the obligations at an

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1 earlier time shall comply with the request within fourteen days
2 after receipt by sending to the debtor an authenticated record:

3 (1) disclaiming any interest in the
4 obligations; and

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

8 (f) A debtor is entitled without charge to one
9 response to a request under this section during any six-month
10 period. The secured party may require payment of a charge not
11 exceeding twenty-five dollars (\$25.00) for each additional
12 response. "

13 Section 21. Section 55-9-301 NMSA 1978 (being Laws 1961,
14 Chapter 96, Section 9-301, as amended) is repealed and a new
15 Section 55-9-301 NMSA 1978 is enacted to read:

16 "55-9-301. [NEW MATERIAL] LAW GOVERNING PERFECTION AND
17 PRIORITY OF SECURITY INTERESTS. -- Except as otherwise provided
18 in Sections 55-9-303 through 55-9-306 NMSA 1978, the following
19 rules determine the law governing perfection, the effect of
20 perfection or nonperfection and the priority of a security
21 interest in collateral:

22 (1) except as otherwise provided in this section,
23 while a debtor is located in a jurisdiction, the local law of
24 that jurisdiction governs perfection, the effect of perfection
25 or nonperfection and the priority of a security interest in

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1 collateral;

2 (2) while collateral is located in a jurisdiction,
3 the local law of that jurisdiction governs perfection, the
4 effect of perfection or nonperfection and the priority of a
5 possessory security interest in that collateral;

6 (3) except as otherwise provided in Subsection (4)
7 of this section, while negotiable documents, goods,
8 instruments, money or tangible chattel paper is located in a
9 jurisdiction, the local law of that jurisdiction governs:

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

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

14 (C) the effect of perfection or nonperfection
15 and the priority of a nonpossessory security interest in the
16 collateral; and

17 (4) the local law of the jurisdiction in which the
18 wellhead or minehead is located governs perfection, the effect
19 of perfection or nonperfection and the priority of a security
20 interest in as-extracted collateral. "

21 Section 22. Section 55-9-302 NMSA 1978 (being Laws 1961,
22 Chapter 96, Section 9-302, as amended) is repealed and a new
23 Section 55-9-302 NMSA 1978 is enacted to read:

24 "55-9-302. [NEW MATERIAL] LAW GOVERNING PERFECTION AND
25 PRIORITY OF AGRICULTURAL LIENS. -- While farm products are

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1 located in a jurisdiction, the local law of that jurisdiction
2 governs perfection, the effect of perfection or nonperfection
3 and the priority of an agricultural lien on the farm products."

4 Section 23. Section 55-9-303 NMSA 1978 (being Laws 1961,
5 Chapter 96, Section 9-303) is repealed and a new Section
6 55-9-303 NMSA 1978 is enacted to read:

7 "55-9-303. [NEW MATERIAL] LAW GOVERNING PERFECTION AND
8 PRIORITY OF SECURITY INTERESTS IN GOODS COVERED BY A
9 CERTIFICATE OF TITLE. --

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

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

22 (c) The local law of the jurisdiction under whose
23 certificate of title the goods are covered governs perfection,
24 the effect of perfection or nonperfection and the priority of a
25 security interest in goods covered by a certificate of title

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1 from the time the goods become covered by the certificate of
2 title until the goods cease to be covered by the certificate of
3 title."

4 Section 24. Section 55-9-304 NMSA 1978 (being Laws 1961,
5 Chapter 96, Section 9-304, as amended) is repealed and a new
6 Section 55-9-304 NMSA 1978 is enacted to read:

7 "55-9-304. [NEW MATERIAL] LAW GOVERNING PERFECTION AND
8 PRIORITY OF SECURITY INTERESTS IN DEPOSIT ACCOUNTS. --

9 (a) The local law of a bank's jurisdiction governs
10 perfection, the effect of perfection or nonperfection and the
11 priority of a security interest in a deposit account maintained
12 with that bank.

13 (b) The following rules determine a bank's
14 jurisdiction for purposes of Sections 55-9-301 through 55-9-342
15 NMSA 1978:

16 (1) if an agreement between the bank and the
17 debtor governing the deposit account expressly provides that a
18 particular jurisdiction is the bank's jurisdiction for purposes
19 of the Uniform Commercial Code, that jurisdiction is the bank's
20 jurisdiction;

21 (2) if Paragraph (1) of this subsection does
22 not apply and an agreement between the bank and its customer
23 governing the deposit account expressly provides that the
24 agreement is governed by the law of a particular jurisdiction,
25 that jurisdiction is the bank's jurisdiction;

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1 (3) if neither Paragraph (1) nor Paragraph (2)
2 of this subsection applies and an agreement between the bank
3 and its customer governing the deposit account expressly
4 provides that the deposit account is maintained at an office in
5 a particular jurisdiction, that jurisdiction is the bank's
6 jurisdiction;

7 (4) if none of the preceding paragraphs
8 applies, the bank's jurisdiction is the jurisdiction in which
9 the office identified in an account statement as the office
10 serving the customer's account is located; and

11 (5) if none of the preceding paragraphs
12 applies, the bank's jurisdiction is the jurisdiction in which
13 the chief executive office of the bank is located. "

14 Section 25. Section 55-9-305 NMSA 1978 (being Laws 1961,
15 Chapter 96, Section 9-305, as amended) is repealed and a new
16 Section 55-9-305 NMSA 1978 is enacted to read:

17 "55-9-305. [NEW MATERIAL] LAW GOVERNING PERFECTION AND
18 PRIORITY OF SECURITY INTERESTS IN INVESTMENT PROPERTY. --

19 (a) Except as otherwise provided in Subsection (c)
20 of this section, the following rules apply:

21 (1) while a security certificate is located in
22 a jurisdiction, the local law of that jurisdiction governs
23 perfection, the effect of perfection or nonperfection and the
24 priority of a security interest in the certificated security
25 represented thereby;

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1 (2) the local law of the issuer's jurisdiction
2 as specified in Subsection (d) of Section 55-8-110 NMSA 1978
3 governs perfection, the effect of perfection or nonperfection
4 and the priority of a security interest in an uncertificated
5 security;

6 (3) the local law of the securities
7 intermediary's jurisdiction as specified in Subsection (e) of
8 Section 55-8-110 NMSA 1978 governs perfection, the effect of
9 perfection or nonperfection and the priority of a security
10 interest in a security entitlement or securities account; and

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

15 (b) The following rules determine a commodity
16 intermediary's jurisdiction for purposes of Sections 55-9-301
17 through 55-9-342 NMSA 1978:

18 (1) if an agreement between the commodity
19 intermediary and commodity customer governing the commodity
20 account expressly provides that a particular jurisdiction is
21 the commodity intermediary's jurisdiction for purposes of the
22 Uniform Commercial Code, that jurisdiction is the commodity
23 intermediary's jurisdiction;

24 (2) if Paragraph (1) of this subsection does
25 not apply and an agreement between the commodity intermediary

1 and commodity customer governing the commodity account
2 expressly provides that the agreement is governed by the law of
3 a particular jurisdiction, that jurisdiction is the commodity
4 intermediary's jurisdiction;

5 (3) if neither Paragraph (1) nor Paragraph (2)
6 of this subsection applies and an agreement between the
7 commodity intermediary and commodity customer governing the
8 commodity account expressly provides that the commodity account
9 is maintained at an office in a particular jurisdiction, that
10 jurisdiction is the commodity intermediary's jurisdiction;

11 (4) if none of the preceding paragraphs
12 applies, the commodity intermediary's jurisdiction is the
13 jurisdiction in which the office identified in an account
14 statement as the office serving the commodity customer's
15 account is located; and

16 (5) if none of the preceding paragraphs
17 applies, the commodity intermediary's jurisdiction is the
18 jurisdiction in which the chief executive office of the
19 commodity intermediary is located.

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

22 (1) perfection of a security interest in
23 investment property by filing;

24 (2) automatic perfection of a security
25 interest in investment property created by a broker or

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1 securities intermediary; and

2 (3) automatic perfection of a security
3 interest in a commodity contract or commodity account created
4 by a commodity intermediary. "

5 Section 26. Section 55-9-306 NMSA 1978 (being Laws 1961,
6 Chapter 96, Section 9-306, as amended) is repealed and a new
7 Section 55-9-306 NMSA 1978 is enacted to read:

8 "55-9-306. [NEW MATERIAL] LAW GOVERNING PERFECTION AND
9 PRIORITY OF SECURITY INTERESTS IN LETTER-OF-CREDIT RIGHTS. --

10 (a) Subject to Subsection (c) of this section, the
11 local law of the issuer's jurisdiction or a nominated person's
12 jurisdiction governs perfection, the effect of perfection or
13 nonperfection and the priority of a security interest in a
14 letter-of-credit right if the issuer's jurisdiction or
15 nominated person's jurisdiction is a state.

16 (b) For purposes of Sections 55-9-301 through
17 55-9-342 NMSA 1978, an issuer's jurisdiction or nominated
18 person's jurisdiction is the jurisdiction whose law governs the
19 liability of the issuer or nominated person with respect to the
20 letter-of-credit right as provided in Section 55-5-116 NMSA
21 1978.

22 (c) This section does not apply to a security
23 interest that is perfected only under Subsection (d) of Section
24 55-9-308 NMSA 1978. "

25 Section 27. Section 55-9-307 NMSA 1978 (being Laws 1961,

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1 Chapter 96, Section 9-307, as amended) is repealed and a new
2 Section 55-9-307 NMSA 1978 is enacted to read:

3 "55-9-307. [NEW MATERIAL] LOCATION OF DEBTOR. --

4 (a) In this section, "place of business" means a
5 place where a debtor conducts its affairs.

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

8 (1) a debtor who is an individual is located
9 at the individual's principal residence;

10 (2) a debtor that is an organization and has
11 only one place of business is located at its place of business;
12 and

13 (3) a debtor that is an organization and has
14 more than one place of business is located at its chief
15 executive office.

16 (c) Subsection (b) of this section applies only if
17 a debtor's residence, place of business or chief executive
18 office, as applicable, is located in a jurisdiction whose law
19 generally requires information concerning the existence of a
20 nonpossessory security interest to be made generally available
21 in a filing, recording or registration system as a condition or
22 result of the security interest's obtaining priority over the
23 rights of a lien creditor with respect to the collateral. If
24 Subsection (b) of this section does not apply, the debtor is
25 located in the District of Columbia.

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1 (d) A person that ceases to exist, have a residence
2 or have a place of business continues to be located in the
3 jurisdiction specified by Subsections (b) and (c) of this
4 section.

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

7 (f) Except as otherwise provided in Subsection (i)
8 of this section, a registered organization that is organized
9 under the law of the United States and a branch or agency of a
10 bank that is not organized under the law of the United States
11 or a state are located:

12 (1) in the state that the law of the United
13 States designates if the law designates a state of location;

14 (2) in the state that the registered
15 organization, branch or agency designates if the law of the
16 United States authorizes the registered organization, branch or
17 agency to designate its state of location; or

18 (3) in the District of Columbia if neither
19 Paragraph (1) nor Paragraph (2) of this subsection applies.

20 (g) A registered organization continues to be
21 located in the jurisdiction specified by Subsection (e) or (f)
22 of this section notwithstanding:

23 (1) the suspension, revocation, forfeiture or
24 lapse of the registered organization's status as such in its
25 jurisdiction of organization; or

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

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

5 (i) A branch or agency of a bank that is not
6 organized under the law of the United States or a state is
7 located in the state in which the branch or agency is licensed
8 if all branches and agencies of the bank are licensed in only
9 one state.

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

14 (k) This section applies only for purposes of
15 Sections 55-9-301 through 55-9-342 NMSA 1978. "

16 Section 28. Section 55-9-308 NMSA 1978 (being Laws 1961,
17 Chapter 96, Section 9-308, as amended) is repealed and a new
18 Section 55-9-308 NMSA 1978 is enacted to read:

19 "55-9-308. [NEW MATERIAL] WHEN SECURITY INTEREST OR
20 AGRICULTURAL LIEN IS PERFECTED--CONTINUITY OF PERFECTION.--

21 (a) Except as otherwise provided in this section
22 and Section 55-9-309 NMSA 1978, a security interest is
23 perfected if it has attached and all of the applicable
24 requirements for perfection in Sections 55-9-310 through
25 55-9-316 NMSA 1978 have been satisfied. A security interest is

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1 perfected when it attaches if the applicable requirements are
2 satisfied before the security interest attaches.

3 (b) An agricultural lien is perfected if it has
4 become effective and all of the applicable requirements for
5 perfection in Section 55-9-310 NMSA 1978 have been satisfied.
6 An agricultural lien is perfected when it becomes effective if
7 the applicable requirements are satisfied before the
8 agricultural lien becomes effective.

9 (c) A security interest or agricultural lien is
10 perfected continuously if it is originally perfected by one
11 method under Chapter 55, Article 9 NMSA 1978 and is later
12 perfected by another method under that article, without an
13 intermediate period when it was unperfected.

14 (d) Perfection of a security interest in collateral
15 also perfects a security interest in a supporting obligation
16 for the collateral.

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

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

24 (g) Perfection of a security interest in a
25 commodity account also perfects a security interest in the

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1 commodity contracts carried in the commodity account. "

2 Section 29. Section 55-9-309 NMSA 1978 (being Laws 1961,
3 Chapter 96, Section 9-309, as amended) is repealed and a new
4 Section 55-9-309 NMSA 1978 is enacted to read:

5 "55-9-309. [NEW MATERIAL] SECURITY INTEREST PERFECTED
6 UPON ATTACHMENT. --The following security interests are
7 perfected when they attach:

8 (1) a purchase-money security interest in consumer
9 goods, except as otherwise provided in Subsection (b) of
10 Section 55-9-311 NMSA 1978 with respect to consumer goods that
11 are subject to a statute or treaty described in Subsection (a)
12 of Section 55-9-311 NMSA 1978;

13 (2) an assignment of accounts or payment
14 intangibles which does not by itself or in conjunction with
15 other assignments to the same assignee transfer a significant
16 part of the assignor's outstanding accounts or payment
17 intangibles;

18 (3) a sale of a payment intangible;

19 (4) a sale of a promissory note;

20 (5) a security interest created by the assignment
21 of a health-care-insurance receivable to the provider of the
22 health-care goods or services;

23 (6) a security interest arising under Section
24 55-2-401, 55-2-505, Subsection (3) of Section 55-2-711 or
25 Subsection (5) of Section 55-2A-508 NMSA 1978, until the debtor

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1 obtains possession of the collateral;

2 (7) a security interest of a collecting bank
3 arising under Section 55-4-210 NMSA 1978;

4 (8) a security interest of an issuer or nominated
5 person arising under Section 55-5-118 NMSA 1978;

6 (9) a security interest arising in the delivery of
7 a financial asset under Subsection (c) of Section 55-9-206 NMSA
8 1978;

9 (10) a security interest in investment property
10 created by a broker or securities intermediary;

11 (11) a security interest in a commodity contract or
12 a commodity account created by a commodity intermediary;

13 (12) an assignment for the benefit of all creditors
14 of the transferor and subsequent transfers by the assignee
15 thereunder; and

16 (13) a security interest created by an assignment
17 of a beneficial interest in a decedent's estate. "

18 Section 30. Section 55-9-310 NMSA 1978 (being Laws 1961,
19 Chapter 96, Section 9-310) is repealed and a new Section
20 55-9-310 NMSA 1978 is enacted to read:

21 "55-9-310. [NEW MATERIAL] WHEN FILING REQUIRED TO PERFECT
22 SECURITY INTEREST OR AGRICULTURAL LIEN--SECURITY INTERESTS AND
23 AGRICULTURAL LIENS TO WHICH FILING PROVISIONS DO NOT APPLY.--

24 (a) Except as otherwise provided in Subsection (b)
25 of this section and in Section 55-9-312 NMSA 1978, a financing

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1 statement must be filed to perfect all security interests and
2 agricultural liens.

3 (b) The filing of a financing statement is not
4 necessary to perfect a security interest:

5 (1) that is perfected under Subsection (d),
6 (e), (f) or (g) of Section 55-9-308 NMSA 1978;

7 (2) that is perfected under Section 55-9-309
8 NMSA 1978 when it attaches;

9 (3) in property subject to a statute,
10 regulation or treaty described in Subsection (a) of Section
11 55-9-311 NMSA 1978;

12 (4) in goods in possession of a bailee which
13 is perfected under Paragraph (1) or (2) of Subsection (d) of
14 Section 55-9-312 NMSA 1978;

15 (5) in certificated securities, documents,
16 goods or instruments which is perfected without filing or
17 possession under Subsection (e), (f) or (g) of Section 55-9-312
18 NMSA 1978;

19 (6) in collateral in the secured party's
20 possession under Section 55-9-313 NMSA 1978;

21 (7) in a certificated security which is
22 perfected by delivery of the security certificate to the
23 secured party under Section 55-9-313 NMSA 1978;

24 (8) in deposit accounts, electronic chattel
25 paper, investment property or letter-of-credit rights which is

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1 perfected by control under Section 55-9-314 NMSA 1978;

2 (9) in proceeds that is perfected under
3 Section 55-9-315 NMSA 1978; or

4 (10) that is perfected under Section 55-9-316
5 NMSA 1978.

6 (c) If a secured party assigns a perfected security
7 interest or agricultural lien, a filing under Chapter 55,
8 Article 9 NMSA 1978 is not required to continue the perfected
9 status of the security interest against creditors of and
10 transferees from the original debtor. "

11 Section 31. Section 55-9-311 NMSA 1978 (being Laws 1961,
12 Chapter 96, Section 9-311) is repealed and a new Section
13 55-9-311 NMSA 1978 is enacted to read:

14 "55-9-311. [NEW MATERIAL] PERFECTION OF SECURITY
15 INTERESTS IN PROPERTY SUBJECT TO CERTAIN STATUTES, REGULATIONS
16 AND TREATIES. --

17 (a) Except as otherwise provided in Subsection (d)
18 of this section, the filing of a financing statement is not
19 necessary or effective to perfect a security interest in
20 property subject to:

21 (1) a statute, regulation or treaty of the
22 United States whose requirements for a security interest's
23 obtaining priority over the rights of a lien creditor with
24 respect to the property preempt Subsection (a) of Section
25 55-9-310 NMSA 1978;

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1 (2) the provisions of Chapter 66 NMSA 1978; or

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

7 (b) Compliance with the requirements of a statute,
8 regulation or treaty described in Subsection (a) of this
9 section for obtaining priority over the rights of a lien
10 creditor is equivalent to the filing of a financing statement
11 under Chapter 55, Article 9 NMSA 1978. Except as otherwise
12 provided in Subsection (d) of this section and in Section
13 55-9-313 and Subsections (d) and (e) of Section 55-9-316 NMSA
14 1978 for goods covered by a certificate of title, a security
15 interest in property subject to a statute, regulation or treaty
16 described in Subsection (a) of this section may be perfected
17 only by compliance with those requirements, and a security
18 interest so perfected remains perfected notwithstanding a
19 change in the use or transfer of possession of the collateral.

20 (c) Except as otherwise provided in Subsection (d)
21 of this section and Subsections (d) and (e) of Section 55-9-316
22 NMSA 1978, duration and renewal of perfection of a security
23 interest perfected by compliance with the requirements
24 prescribed by a statute, regulation or treaty described in
25 Subsection (a) of this section are governed by the statute,

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1 regulation or treaty. In other respects, the security interest
2 is subject to Chapter 55, Article 9 NMSA 1978.

3 (d) During any period in which collateral subject
4 to a statute specified in Paragraph (2) of Subsection (a) of
5 this section is inventory held for sale or lease by a person or
6 leased by that person as lessor and that person is in the
7 business of selling goods of that kind, this section does not
8 apply to a security interest in that collateral created by that
9 person. "

10 Section 32. Section 55-9-312 NMSA 1978 (being Laws 1961,
11 Chapter 96, Section 9-312, as amended) is repealed and a new
12 Section 55-9-312 NMSA 1978 is enacted to read:

13 "55-9-312. [NEW MATERIAL] PERFECTION OF SECURITY
14 INTERESTS IN CHATTEL PAPER, DEPOSIT ACCOUNTS, DOCUMENTS, GOODS
15 COVERED BY DOCUMENTS, INSTRUMENTS, INVESTMENT PROPERTY, LETTER-
16 OF-CREDIT RIGHTS AND MONEY--PERFECTION BY PERMISSIVE FILING--
17 TEMPORARY PERFECTION WITHOUT FILING OR TRANSFER OF
18 POSSESSION. --

19 (a) A security interest in chattel paper,
20 negotiable documents, instruments or investment property may be
21 perfected by filing.

22 (b) Except as otherwise provided in Subsections (c)
23 and (d) of Section 55-9-315 NMSA 1978 for proceeds:

24 (1) a security interest in a deposit account
25 may be perfected only by control under Section 55-9-314 NMSA

1 1978;

2 (2) and except as otherwise provided in
3 Subsection (d) of Section 55-9-308 NMSA 1978, a security
4 interest in a letter-of-credit right may be perfected only by
5 control under Section 55-9-314 NMSA 1978; and

6 (3) a security interest in money may be
7 perfected only by the secured party's taking possession under
8 Section 55-9-313 NMSA 1978.

9 (c) While goods are in the possession of a bailee
10 that has issued a negotiable document covering the goods:

11 (1) a security interest in the goods may be
12 perfected by perfecting a security interest in the document;
13 and

14 (2) a security interest perfected in the
15 document has priority over any security interest that becomes
16 perfected in the goods by another method during that time.

17 (d) While goods are in the possession of a bailee
18 that has issued a nonnegotiable document covering the goods, a
19 security interest in the goods may be perfected by:

20 (1) issuance of a document in the name of the
21 secured party;

22 (2) the bailee's receipt of notification of
23 the secured party's interest; or

24 (3) filing as to the goods.

25 (e) A security interest in certificated securities,

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1 negotiable documents or instruments is perfected without filing
2 or the taking of possession for a period of twenty days from
3 the time it attaches to the extent that it arises for new value
4 given under an authenticated security agreement.

5 (f) A perfected security interest in a negotiable
6 document or goods in possession of a bailee, other than one
7 that has issued a negotiable document for the goods, remains
8 perfected for twenty days without filing if the secured party
9 makes available to the debtor the goods or documents
10 representing the goods for the purpose of:

11 (1) ultimate sale or exchange; or

12 (2) loading, unloading, storing, shipping,
13 transshipping, manufacturing, processing or otherwise dealing
14 with them in a manner preliminary to their sale or exchange.

15 (g) A perfected security interest in a certificated
16 security or instrument remains perfected for twenty days
17 without filing if the secured party delivers the security
18 certificate or instrument to the debtor for the purpose of:

19 (1) ultimate sale or exchange; or

20 (2) presentation, collection, enforcement,
21 renewal or registration of transfer.

22 (h) After the twenty-day period specified in
23 Subsection (e), (f) or (g) of this section expires, perfection
24 depends upon compliance with Chapter 55, Article 9 NMSA 1978. "

25 Section 33. Section 55-9-313 NMSA 1978 (being Laws 1961,

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1 Chapter 96, Section 9-313, as amended) is repealed and a new
2 Section 55-9-313 NMSA 1978 is enacted to read:

3 "55-9-313. [NEW MATERIAL] WHEN POSSESSION BY OR DELIVERY
4 TO SECURED PARTY PERFECTS SECURITY INTEREST WITHOUT FILING. --

5 (a) Except as otherwise provided in Subsection (b)
6 of this section, a secured party may perfect a security
7 interest in negotiable documents, goods, instruments, money or
8 tangible chattel paper by taking possession of the collateral.
9 A secured party may perfect a security interest in certificated
10 securities by taking delivery of the certificated securities
11 under Section 55-8-301 NMSA 1978.

12 (b) With respect to goods covered by a certificate
13 of title issued by this state, a secured party may perfect a
14 security interest in the goods by taking possession of the
15 goods only in the circumstances described in Subsection (d) of
16 Section 55-9-316 NMSA 1978.

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

23 (1) the person in possession authenticates a
24 record acknowledging that it holds possession of the collateral
25 for the secured party's benefit; or

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1 (2) the person takes possession of the
2 collateral after having authenticated a record acknowledging
3 that it will hold possession of collateral for the secured
4 party's benefit.

5 (d) If perfection of a security interest depends
6 upon possession of the collateral by a secured party,
7 perfection occurs no earlier than the time the secured party
8 takes possession and continues only while the secured party
9 retains possession.

10 (e) A security interest in a certificated security
11 in registered form is perfected by delivery when delivery of
12 the certificated security occurs under Section 55-8-301 NMSA
13 1978 and remains perfected by delivery until the debtor obtains
14 possession of the security certificate.

15 (f) A person in possession of collateral is not
16 required to acknowledge that it holds possession for a secured
17 party's benefit.

18 (g) If a person acknowledges that it holds
19 possession for the secured party's benefit:

20 (1) the acknowledgment is effective under
21 Subsection (c) of this section or Subsection (a) of Section
22 55-8-301 NMSA 1978, even if the acknowledgment violates the
23 rights of a debtor; and

24 (2) unless the person otherwise agrees or law
25 other than Chapter 55, Article 9 NMSA 1978 otherwise provides,

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1 the person does not owe any duty to the secured party and is
2 not required to confirm the acknowledgment to another person.

3 (h) A secured party having possession of collateral
4 does not relinquish possession by delivering the collateral to
5 a person other than the debtor or a lessee of the collateral
6 from the debtor in the ordinary course of the debtor's business
7 if the person was instructed before the delivery or is
8 instructed contemporaneously with the delivery:

9 (1) to hold possession of the collateral for
10 the secured party's benefit; or

11 (2) to redeliver the collateral to the secured
12 party.

13 (i) A secured party does not relinquish possession,
14 even if a delivery under Subsection (h) of this section
15 violates the rights of a debtor. A person to which collateral
16 is delivered under Subsection (h) of this section does not owe
17 any duty to the secured party and is not required to confirm
18 the delivery to another person unless the person otherwise
19 agrees or law other than this article otherwise provides. "

20 Section 34. Section 55-9-314 NMSA 1978 (being Laws 1961,
21 Chapter 96, Section 9-314) is repealed and a new Section
22 55-9-314 NMSA 1978 is enacted to read:

23 "55-9-314. [NEW MATERIAL] PERFECTION BY CONTROL. --

24 (a) A security interest in investment property,
25 deposit accounts, letter-of-credit rights or electronic chattel

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1 paper may be perfected by control of the collateral under
2 Section 55-9-104, 55-9-105, 55-9-106 or 55-9-107 NMSA 1978.

3 (b) A security interest in deposit accounts,
4 electronic chattel paper or letter-of-credit rights is
5 perfected by control under Section 55-9-104, 55-9-105 or
6 55-9-107 NMSA 1978 when the secured party obtains control and
7 remains perfected by control only while the secured party
8 retains control.

9 (c) A security interest in investment property is
10 perfected by control under Section 55-9-106 NMSA 1978 from the
11 time the secured party obtains control and remains perfected by
12 control until:

13 (1) the secured party does not have control;
14 and

15 (2) one of the following occurs:

16 (A) if the collateral is a certificated
17 security, the debtor has or acquires possession of the security
18 certificate;

19 (B) if the collateral is an
20 uncertificated security, the issuer has registered or registers
21 the debtor as the registered owner; or

22 (C) if the collateral is a security
23 entitlement, the debtor is or becomes the entitlement holder."

24 Section 35. Section 55-9-315 NMSA 1978 (being Laws 1961,
25 Chapter 96, Section 9-315) is repealed and a new Section

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1 55-9-315 NMSA 1978 is enacted to read:

2 "55-9-315. [NEW MATERIAL] SECURED PARTY'S RIGHTS ON
3 DISPOSITION OF COLLATERAL AND IN PROCEEDS. --

4 (a) Except as otherwise provided in Chapter 55,
5 Article 9 NMSA 1978, the Farm Products Secured Interest Act and
6 in Subsection (2) of Section 55-2-403 NMSA 1978:

7 (1) a security interest or agricultural lien
8 continues in collateral notwithstanding sale, lease, license,
9 exchange or other disposition thereof unless the secured party
10 authorized the disposition free of the security interest or
11 agricultural lien; and

12 (2) a security interest attaches to any
13 identifiable proceeds of collateral.

14 (b) Proceeds that are commingled with other
15 property are identifiable proceeds:

16 (1) if the proceeds are goods, to the extent
17 provided by Section 55-9-336 NMSA 1978; and

18 (2) if the proceeds are not goods, to the
19 extent that the secured party identifies the proceeds by a
20 method of tracing, including application of equitable
21 principles, that is permitted under law other than Chapter 55,
22 Article 9 NMSA 1978 with respect to commingled property of the
23 type involved.

24 (c) A security interest in proceeds is a perfected
25 security interest if the security interest in the original

1 collateral was perfected.

2 (d) A perfected security interest in proceeds
3 becomes unperfected on the twenty-first day after the security
4 interest attaches to the proceeds unless:

5 (1) the following conditions are satisfied:

6 (A) a filed financing statement covers
7 the original collateral;

8 (B) the proceeds are collateral in which
9 a security interest may be perfected by filing in the office in
10 which the financing statement has been filed; and

11 (C) the proceeds are not acquired with
12 cash proceeds;

13 (2) the proceeds are identifiable cash
14 proceeds; or

15 (3) the security interest in the proceeds is
16 perfected other than under Subsection (c) of this section when
17 the security interest attaches to the proceeds or within twenty
18 days thereafter.

19 (e) If a filed financing statement covers the
20 original collateral, a security interest in proceeds which
21 remains perfected under Paragraph (1) of Subsection (d) of this
22 section becomes unperfected at the later of:

23 (1) when the effectiveness of the filed
24 financing statement lapses under Section 55-9-515 NMSA 1978 or
25 is terminated under Section 55-9-513 NMSA 1978; or

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1 (2) the twenty-first day after the security
2 interest attaches to the proceeds. "

3 Section 36. Section 55-9-316 NMSA 1978 (being Laws 1961,
4 Chapter 96, Section 9-316) is repealed and a new Section
5 55-9-316 NMSA 1978 is enacted to read:

6 "55-9-316. [NEW MATERIAL] CONTINUED PERFECTION OF
7 SECURITY INTEREST FOLLOWING CHANGE IN GOVERNING LAW. --

8 (a) A security interest perfected pursuant to the
9 law of the jurisdiction designated in Subsection (1) of Section
10 55-9-301 or Subsection (c) of Section 55-9-305 NMSA 1978
11 remains perfected until the earliest of:

12 (1) the time perfection would have ceased
13 under the law of that jurisdiction;

14 (2) the expiration of four months after a
15 change of the debtor's location to another jurisdiction; or

16 (3) the expiration of one year after a
17 transfer of collateral to a person that thereby becomes a
18 debtor and is located in another jurisdiction.

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

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1 as against a purchaser of the collateral for value.

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

6 (1) the collateral is located in one
7 jurisdiction and subject to a security interest perfected under
8 the law of that jurisdiction;

9 (2) thereafter the collateral is brought into
10 another jurisdiction; and

11 (3) upon entry into the other jurisdiction,
12 the security interest is perfected under the law of the other
13 jurisdiction.

14 (d) Except as otherwise provided in Subsection (e)
15 of this section, a security interest in goods covered by a
16 certificate of title which is perfected by any method under the
17 law of another jurisdiction when the goods become covered by a
18 certificate of title from this state remains perfected until
19 the security interest would have become unperfected under the
20 law of the other jurisdiction had the goods not become so
21 covered.

22 (e) A security interest described in Subsection (d)
23 of this section becomes unperfected as against a purchaser of
24 the goods for value and is deemed never to have been perfected
25 as against a purchaser of the goods for value if the applicable

1 requirements for perfection under Subsection (b) of Section
2 55-9-311 or Section 55-9-313 NMSA 1978 are not satisfied before
3 the earlier of:

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

8 (2) the expiration of four months after the
9 goods had become so covered.

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

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

19 (2) the expiration of four months after a
20 change of the applicable jurisdiction to another jurisdiction.

21 (g) If a security interest described in Subsection
22 (f) of this section becomes perfected under the law of the
23 other jurisdiction before the earlier of the time or the end of
24 the period described in that subsection, it remains perfected
25 thereafter. If the security interest does not become perfected

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1 under the law of the other jurisdiction before the earlier of
2 that time or the end of that period, it becomes unperfected and
3 is deemed never to have been perfected as against a purchaser
4 of the collateral for value. "

5 Section 37. Section 55-9-317 NMSA 1978 (being Laws 1961,
6 Chapter 96, Section 9-317) is repealed and a new Section
7 55-9-317 NMSA 1978 is enacted to read:

8 "55-9-317. [NEW MATERIAL] INTERESTS THAT TAKE PRIORITY
9 OVER OR TAKE FREE OF SECURITY INTEREST OR AGRICULTURAL LIEN. --

10 (a) A security interest or agricultural lien is
11 subordinate to the rights of:

12 (1) a person entitled to priority under
13 Section 55-9-322 NMSA 1978; and

14 (2) except as otherwise provided in Subsection
15 (e) of this section, a person that becomes a lien creditor
16 before the earlier of the time:

17 (A) the security interest or
18 agricultural lien is perfected; or

19 (B) one of the conditions specified in
20 Paragraph (3) of Subsection (b) of Section 55-9-203 NMSA 1978
21 is met and a financing statement covering the collateral is
22 filed.

23 (b) Except as otherwise provided in Subsection (e)
24 of this section, a buyer, other than a secured party, of
25 tangible chattel paper, documents, goods, instruments or a

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1 security certificate takes free of a security interest or
2 agricultural lien if the buyer gives value and receives
3 delivery of the collateral without knowledge of the security
4 interest or agricultural lien and before it is perfected.

5 (c) Except as otherwise provided in Subsection (e)
6 of this section, a lessee of goods takes free of a security
7 interest or agricultural lien if the lessee gives value and
8 receives delivery of the collateral without knowledge of the
9 security interest or agricultural lien and before it is
10 perfected.

11 (d) A licensee of a general intangible or a buyer,
12 other than a secured party, of accounts, electronic chattel
13 paper, general intangibles or investment property other than a
14 certificated security takes free of a security interest if the
15 licensee or buyer gives value without knowledge of the security
16 interest and before it is perfected.

17 (e) Except as otherwise provided in Sections
18 55-9-320 and 55-9-321 NMSA 1978, if a person files a financing
19 statement with respect to a purchase-money security interest
20 before or within twenty days after the debtor receives delivery
21 of the collateral, the security interest takes priority over
22 the rights of a buyer, lessee or lien creditor which arise
23 between the time the security interest attaches and the time of
24 filing. "

25 Section 38. Section 55-9-318 NMSA 1978 (being Laws 1961,

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1 Chapter 96, Section 9-318, as amended) is repealed and a new
2 Section 55-9-318 NMSA 1978 is enacted to read:

3 "55-9-318. [NEW MATERIAL] NO INTEREST RETAINED IN RIGHT
4 TO PAYMENT THAT IS SOLD-- RIGHTS AND TITLE OF SELLER OF ACCOUNT
5 OR CHATTEL PAPER WITH RESPECT TO CREDITORS AND PURCHASERS. --

6 (a) A debtor that has sold an account, chattel
7 paper, payment intangible or promissory note does not retain a
8 legal or equitable interest in the collateral sold.

9 (b) For purposes of determining the rights of
10 creditors of, and purchasers for value of an account or chattel
11 paper from, a debtor that has sold an account or chattel paper,
12 while the buyer's security interest is unperfected, the debtor
13 is deemed to have rights and title to the account or chattel
14 paper identical to those the debtor sold. "

15 Section 39. A new Section 55-9-319 NMSA 1978 is enacted
16 to read:

17 "55-9-319. [NEW MATERIAL] RIGHTS AND TITLE OF CONSIGNEE
18 WITH RESPECT TO CREDITORS AND PURCHASERS. --

19 (a) Except as otherwise provided in Subsection (b)
20 of this section, for purposes of determining the rights of
21 creditors of, and purchasers for value of goods from, a
22 consignee, while the goods are in the possession of the
23 consignee, the consignee is deemed to have rights and title to
24 the goods identical to those the consignor had or had power to
25 transfer.

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1 (b) For purposes of determining the rights of a
2 creditor of a consignee, law other than Chapter 55, Article 9
3 NMSA 1978 determines the rights and title of a consignee while
4 goods are in the consignee's possession if, under Sections
5 55-9-301 through 55-9-342 NMSA 1978, a perfected security
6 interest held by the consignor would have priority over the
7 rights of the creditor. "

8 Section 40. A new Section 55-9-320 NMSA 1978 is enacted
9 to read:

10 "55-9-320. [NEW MATERIAL] BUYER OF GOODS. --

11 (a) Except as otherwise provided in Subsection (e)
12 of this section or in the Farm Products Secured Interest Act, a
13 buyer in ordinary course of business, other than a person
14 buying farm products from a person engaged in farming
15 operations, takes free of a security interest created by the
16 buyer's seller, even if the security interest is perfected and
17 the buyer knows of its existence.

18 (b) Except as otherwise provided in Subsection (e)
19 of this section, a buyer of goods from a person who used or
20 bought the goods for use primarily for personal, family or
21 household purposes takes free of a security interest, even if
22 perfected, if the buyer buys:

23 (1) without knowledge of the security
24 interest;

25 (2) for value;

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1 (3) primarily for the buyer's personal, family
2 or household purposes; and

3 (4) before the filing of a financing statement
4 covering the goods.

5 (c) To the extent that it affects the priority of a
6 security interest over a buyer of goods under Subsection (b) of
7 this section, the period of effectiveness of a filing made in
8 the jurisdiction in which the seller is located is governed by
9 Subsections (a) and (b) of Section 55-9-316 NMSA 1978.

10 (d) A buyer in ordinary course of business buying
11 oil, gas or other minerals at the wellhead or minehead or after
12 extraction takes free of an interest arising out of an
13 encumbrance.

14 (e) Subsections (a) and (b) of this section do not
15 affect a security interest in goods in the possession of the
16 secured party under Section 55-9-313 NMSA 1978. "

17 Section 41. A new Section 55-9-321 NMSA 1978 is enacted
18 to read:

19 "55-9-321. [NEW MATERIAL] LICENSEE OF GENERAL INTANGIBLE
20 AND LESSEE OF GOODS IN ORDINARY COURSE OF BUSINESS. --

21 (a) In this section, "licensee in ordinary course
22 of business" means a person that becomes a licensee of a
23 general intangible in good faith, without knowledge that the
24 license violates the rights of another person in the general
25 intangible, and in the ordinary course from a person in the

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1 business of licensing general intangibles of that kind. A
2 person becomes a licensee in the ordinary course if the license
3 to the person comports with the usual or customary practices in
4 the kind of business in which the licensor is engaged or with
5 the licensor's own usual or customary practices.

6 (b) A licensee in ordinary course of business takes
7 its rights under a nonexclusive license free of a security
8 interest in the general intangible created by the licensor,
9 even if the security interest is perfected and the licensee
10 knows of its existence.

11 (c) A lessee in ordinary course of business takes
12 its leasehold interest free of a security interest in the goods
13 created by the lessor, even if the security interest is
14 perfected and the lessee knows of its existence. "

15 Section 42. A new Section 55-9-322 NMSA 1978 is enacted
16 to read:

17 "55-9-322. [NEW MATERIAL] PRIORITIES AMONG CONFLICTING
18 SECURITY INTERESTS IN AND AGRICULTURAL LIENS ON SAME COLLATERAL. --

19 (a) Except as otherwise provided in this section,
20 priority among conflicting security interests and agricultural
21 liens in the same collateral is determined according to the
22 following rules:

23 (1) Conflicting perfected security interests
24 and agricultural liens rank according to priority in time of
25 filing or perfection. Priority dates from the earlier of the

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1 time a filing covering the collateral is first made or the
2 security interest or agricultural lien is first perfected, if
3 there is no period thereafter when there is neither filing nor
4 perfection.

5 (2) A perfected security interest or
6 agricultural lien has priority over a conflicting unperfected
7 security interest or agricultural lien.

8 (3) The first security interest or agricultural
9 lien to attach or become effective has priority if conflicting
10 security interests and agricultural liens are unperfected.

11 (b) For the purposes of Paragraph (1) of Subsection
12 (a) of this section:

13 (1) the time of filing or perfection as to a
14 security interest in collateral is also the time of filing or
15 perfection as to a security interest in proceeds; and

16 (2) the time of filing or perfection as to a
17 security interest in collateral supported by a supporting
18 obligation is also the time of filing or perfection as to a
19 security interest in the supporting obligation.

20 (c) Except as otherwise provided in Subsection (f) of
21 this section, a security interest in collateral which qualifies
22 for priority over a conflicting security interest under Section
23 55-9-327, 55-9-328, 55-9-329, 55-9-330 or 55-9-331 NMSA 1978 also
24 has priority over a conflicting security interest in:

25 (1) any supporting obligation for the

1 collateral; and

2 (2) proceeds of the collateral if:

3 (A) the security interest in proceeds is
4 perfected;

5 (B) the proceeds are cash proceeds or of
6 the same type as the collateral; and

7 (C) in the case of proceeds that are
8 proceeds of proceeds, all intervening proceeds are cash proceeds,
9 proceeds of the same type as the collateral or an account
10 relating to the collateral.

11 (d) Subject to Subsection (e) of this section and
12 except as otherwise provided in Subsection (f) of this section,
13 if a security interest in chattel paper, deposit accounts,
14 negotiable documents, instruments, investment property or letter-
15 of-credit rights is perfected by a method other than filing,
16 conflicting perfected security interests in proceeds of the
17 collateral rank according to priority in time of filing.

18 (e) Subsection (d) of this section applies only if
19 the proceeds of the collateral are not cash proceeds, chattel
20 paper, negotiable documents, instruments, investment property or
21 letter-of-credit rights.

22 (f) Subsections (a) through (e) of this section are
23 subject to:

24 (1) Subsection (g) of this section and the
25 other provisions of Sections 55-9-301 through 55-9-342 NMSA 1978;

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1 (2) Section 55-4-210 NMSA 1978 with respect to
2 a security interest of a collecting bank;

3 (3) Section 55-5-118 NMSA 1978 with respect to
4 a security interest of an issuer or nominated person; and

5 (4) Section 55-9-110 NMSA 1978 with respect to
6 a security interest arising under Chapter 55, Article 2 or 2A
7 NMSA 1978.

8 (g) A perfected agricultural lien on collateral has
9 priority over a conflicting security interest in or agricultural
10 lien on the same collateral if the statute creating the
11 agricultural lien so provides. If a statute other than Chapter
12 55, Article 9 NMSA 1978 creates an agricultural lien, and the
13 other statute does not specify the priority of the agricultural
14 lien relative to an agricultural lien or security interest in the
15 same collateral created pursuant to Chapter 55, Article 9 NMSA
16 1978, then Subsection (a)(1) of this section shall govern the
17 priority of the agricultural liens and security interests. "

18 Section 43. A new Section 55-9-323 NMSA 1978 is enacted to
19 read:

20 "55-9-323. [NEW MATERIAL] FUTURE ADVANCES. --

21 (a) Except as otherwise provided in Subsection (c) of
22 this section, for purposes of determining the priority of a
23 perfected security interest under Paragraph (1) of Subsection (a)
24 of Section 55-9-322 NMSA 1978, perfection of the security
25 interest dates from the time an advance is made to the extent

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1 that the security interest secures an advance that:

2 (1) is made while the security interest is
3 perfected only:

4 (A) under Section 55-9-309 NMSA 1978 when
5 it attaches; or

6 (B) temporarily under Subsection (e), (f)
7 or (g) of Section 55-9-312 NMSA 1978; and

8 (2) is not made pursuant to a commitment
9 entered into before or while the security interest is perfected
10 by a method other than under Section 55-9-309 or Subsection (e),
11 (f) or (g) of Section 55-9-312 NMSA 1978.

12 (b) Except as otherwise provided in Subsection (c) of
13 this section, a security interest is subordinate to the rights of
14 a person that becomes a lien creditor to the extent that the
15 security interest secures an advance made more than forty-five
16 days after the person becomes a lien creditor unless the advance
17 is made:

18 (1) without knowledge of the lien; or

19 (2) pursuant to a commitment entered into
20 without knowledge of the lien.

21 (c) Subsections (a) and (b) of this section do not
22 apply to a security interest held by a secured party that is a
23 buyer of accounts, chattel paper, payment intangibles or
24 promissory notes or a consignor.

25 (d) Except as otherwise provided in Subsection (e) of

1 this section, a buyer of goods other than a buyer in ordinary
2 course of business takes free of a security interest to the
3 extent that it secures advances made after the earlier of:

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

6 (2) forty-five days after the purchase.

7 (e) Subsection (d) of this section does not apply if
8 the advance is made pursuant to a commitment entered into without
9 knowledge of the buyer's purchase and before the expiration of
10 the forty-five-day period.

11 (f) Except as otherwise provided in Subsection (g) of
12 this section, a lessee of goods, other than a lessee in ordinary
13 course of business, takes the leasehold interest free of a
14 security interest to the extent that it secures advances made
15 after the earlier of:

16 (1) the time the secured party acquires
17 knowledge of the lease; or

18 (2) forty-five days after the lease contract
19 becomes enforceable.

20 (g) Subsection (f) of this section does not apply if
21 the advance is made pursuant to a commitment entered into without
22 knowledge of the lease and before the expiration of the forty-
23 five-day period. "

24 Section 44. A new Section 55-9-324 NMSA 1978 is enacted to
25 read:

1 "55-9-324. [NEW MATERIAL] PRIORITY OF PURCHASE-MONEY

2 SECURITY INTERESTS. --

3 (a) Except as otherwise provided in Subsection (g) of
4 this section, a perfected purchase-money security interest in
5 goods other than inventory or livestock has priority over a
6 conflicting security interest in the same goods, and, except as
7 otherwise provided in Section 55-9-327 NMSA 1978, a perfected
8 security interest in its identifiable proceeds also has priority
9 if the purchase-money security interest is perfected when the
10 debtor receives possession of the collateral or within twenty
11 days thereafter.

12 (b) Subject to Subsection (c) of this section and
13 except as otherwise provided in Subsection (g) of this section, a
14 perfected purchase-money security interest in inventory has
15 priority over a conflicting security interest in the same
16 inventory, has priority over a conflicting security interest in
17 chattel paper or an instrument constituting proceeds of the
18 inventory and in proceeds of the chattel paper, if so provided in
19 Section 55-9-330 NMSA 1978, and, except as otherwise provided in
20 Section 55-9-327 NMSA 1978, also has priority in identifiable
21 cash proceeds of the inventory to the extent the identifiable
22 cash proceeds are received on or before the delivery of the
23 inventory to a buyer, if:

24 (1) the purchase-money security interest is
25 perfected when the debtor receives possession of the inventory;

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1 (2) the purchase-money secured party sends an
2 authenticated notification to the holder of the conflicting
3 security interest;

4 (3) the holder of the conflicting security
5 interest receives the notification within five years before the
6 debtor receives possession of the inventory; and

7 (4) the notification states that the person
8 sending the notification has or expects to acquire a purchase-
9 money security interest in inventory of the debtor and describes
10 the inventory.

11 (c) Paragraphs (2) through (4) of Subsection (b) of
12 this section apply only if the holder of the conflicting security
13 interest had filed a financing statement covering the same types
14 of inventory:

15 (1) if the purchase-money security interest is
16 perfected by filing, before the date of the filing; or

17 (2) if the purchase-money security interest is
18 temporarily perfected without filing or possession under
19 Subsection (f) of Section 55-9-312 NMSA 1978, before the
20 beginning of the twenty-day period thereunder.

21 (d) Subject to Subsection (e) of this section and
22 except as otherwise provided in Subsection (g) of this section, a
23 perfected purchase-money security interest in livestock that are
24 farm products has priority over a conflicting security interest
25 in the same livestock, and, except as otherwise provided in

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1 Section 55-9-327 NMSA 1978, a perfected security interest in
2 their identifiable proceeds and identifiable products in their
3 unmanufactured states also has priority, if:

4 (1) the purchase-money security interest is
5 perfected when the debtor receives possession of the livestock;

6 (2) the purchase-money secured party sends an
7 authenticated notification to the holder of the conflicting
8 security interest;

9 (3) the holder of the conflicting security
10 interest receives the notification within six months before the
11 debtor receives possession of the livestock; and

12 (4) the notification states that the person
13 sending the notification has or expects to acquire a purchase-
14 money security interest in livestock of the debtor and describes
15 the livestock.

16 (e) Paragraphs (2) through (4) of Subsection (d) of
17 this section apply only if the holder of the conflicting security
18 interest had filed a financing statement covering the same types
19 of livestock:

20 (1) if the purchase-money security interest is
21 perfected by filing, before the date of the filing; or

22 (2) if the purchase-money security interest is
23 temporarily perfected without filing or possession under
24 Subsection (f) of Section 55-9-312 NMSA 1978, before the
25 beginning of the twenty-day period thereunder.

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1 (f) Except as otherwise provided in Subsection (g) of
2 this section, a perfected purchase-money security interest in
3 software has priority over a conflicting security interest in the
4 same collateral, and, except as otherwise provided in Section
5 55-9-327 NMSA 1978, a perfected security interest in its
6 identifiable proceeds also has priority, to the extent that the
7 purchase-money security interest in the goods in which the
8 software was acquired for use has priority in the goods and
9 proceeds of the goods under this section.

10 (g) If more than one security interest qualifies for
11 priority in the same collateral under Subsection (a), (b), (d) or
12 (f) of this section:

13 (1) a security interest securing an obligation
14 incurred as all or part of the price of the collateral has
15 priority over a security interest securing an obligation incurred
16 for value given to enable the debtor to acquire rights in or the
17 use of collateral; and

18 (2) in all other cases, Subsection (a) of
19 Section 55-9-322 NMSA 1978 applies to the qualifying security
20 interests. "

21 Section 45. A new Section 55-9-325 NMSA 1978 is enacted to
22 read:

23 "55-9-325. [NEW MATERIAL] PRIORITY OF SECURITY INTERESTS
24 IN TRANSFERRED COLLATERAL. --

25 (a) Except as otherwise provided in Subsection (b) of

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1 this section, a security interest created by a debtor is
2 subordinate to a security interest in the same collateral created
3 by another person if:

4 (1) the debtor acquired the collateral subject
5 to the security interest created by the other person;

6 (2) the security interest created by the other
7 person was perfected when the debtor acquired the collateral; and

8 (3) there is no period thereafter when the
9 security interest is unperfected.

10 (b) Subsection (a) of this section subordinates a
11 security interest only if the security interest:

12 (1) otherwise would have priority solely under
13 Subsection (a) of Section 55-9-322 NMSA 1978 or under Section
14 55-9-324 NMSA 1978; or

15 (2) arose solely under Subsection (3) of
16 Section 55-2-711 or Subsection (5) of Section 55-2A-508 NMSA
17 1978. "

18 Section 46. A new Section 55-9-326 NMSA 1978 is enacted to
19 read:

20 "55-9-326. [NEW MATERIAL] PRIORITY OF SECURITY INTERESTS
21 CREATED BY NEW DEBTOR. --

22 (a) Subject to Subsection (b) of this section, a
23 security interest created by a new debtor which is perfected by a
24 filed financing statement that is effective solely under Section
25 55-9-508 NMSA 1978 in collateral in which a new debtor has or

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1 acquires rights is subordinate to a security interest in the same
2 collateral which is perfected other than by a filed financing
3 statement that is effective solely under Section 55-9-508 NMSA
4 1978.

5 (b) The other provisions of Sections 55-9-301 through
6 55-9-342 NMSA 1978 determine the priority among conflicting
7 security interests in the same collateral perfected by filed
8 financing statements that are effective solely under Section
9 55-9-508 NMSA 1978. However, if the security agreements to which
10 a new debtor became bound as debtor were not entered into by the
11 same original debtor, the conflicting security interests rank
12 according to priority in time of the new debtor having become
13 bound. "

14 Section 47. A new Section 55-9-327 NMSA 1978 is enacted to
15 read:

16 "55-9-327. [NEW MATERIAL] PRIORITY OF SECURITY INTERESTS
17 IN DEPOSIT ACCOUNT. --The following rules govern priority among
18 conflicting security interests in the same deposit account:

19 (1) A security interest held by a secured party
20 having control of the deposit account under Section 55-9-104 NMSA
21 1978 has priority over a conflicting security interest held by a
22 secured party that does not have control.

23 (2) Except as otherwise provided in Subsections (3)
24 and (4) of this section, security interests perfected by control
25 under Section 55-9-314 NMSA 1978 rank according to priority in

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1 time of obtaining control.

2 (3) Except as otherwise provided in Subsection (4) of
3 this section, a security interest held by the bank with which the
4 deposit account is maintained has priority over a conflicting
5 security interest held by another secured party.

6 (4) A security interest perfected by control under
7 Paragraph (3) of Subsection (a) of Section 55-9-104 NMSA 1978 has
8 priority over a security interest held by the bank with which the
9 deposit account is maintained."

10 Section 48. A new Section 55-9-328 NMSA 1978 is enacted to
11 read:

12 "55-9-328. [NEW MATERIAL] PRIORITY OF SECURITY INTERESTS
13 IN INVESTMENT PROPERTY. --The following rules govern priority
14 among conflicting security interests in the same investment
15 property:

16 (1) A security interest held by a secured party
17 having control of investment property under Section 55-9-106 NMSA
18 1978 has priority over a security interest held by a secured
19 party that does not have control of the investment property.

20 (2) Except as otherwise provided in Subsections (3)
21 and (4) of this section, conflicting security interests held by
22 secured parties, each of which has control under Section 55-9-106
23 NMSA 1978, rank according to priority in time of:

24 (A) if the collateral is a security, obtaining
25 control;

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1 (B) if the collateral is a security entitlement
2 carried in a securities account and:

3 (i) if the secured party obtained control
4 under Paragraph (1) of Subsection (d) of Section 55-8-106 NMSA
5 1978, the secured party's becoming the person for which the
6 securities account is maintained;

7 (ii) if the secured party obtained control
8 under Paragraph (2) of Subsection (d) of Section 55-8-106 NMSA
9 1978, the securities intermediary's agreement to comply with the
10 secured party's entitlement orders with respect to security
11 entitlements carried or to be carried in the securities account;
12 or

13 (iii) if the secured party obtained
14 control through another person under Paragraph (3) of Subsection
15 (d) of Section 55-8-106 NMSA 1978, the time on which priority
16 would be based under this paragraph if the other person were the
17 secured party; or

18 (C) if the collateral is a commodity contract
19 carried with a commodity intermediary, the satisfaction of the
20 requirement for control specified in Paragraph (2) of Subsection
21 (b) of Section 55-9-106 NMSA 1978 with respect to commodity
22 contracts carried or to be carried with the commodity
23 intermediary.

24 (3) A security interest held by a securities
25 intermediary in a security entitlement or a securities account

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1 maintained with the securities intermediary has priority over a
2 conflicting security interest held by another secured party.

3 (4) A security interest held by a commodity
4 intermediary in a commodity contract or a commodity account
5 maintained with the commodity intermediary has priority over a
6 conflicting security interest held by another secured party.

7 (5) A security interest in a certificated security in
8 registered form which is perfected by taking delivery under
9 Subsection (a) of Section 55-9-313 NMSA 1978 and not by control
10 under Section 55-9-314 NMSA 1978 has priority over a conflicting
11 security interest perfected by a method other than control.

12 (6) Conflicting security interests created by a
13 broker, securities intermediary or commodity intermediary which
14 are perfected without control under Section 55-9-106 NMSA 1978
15 rank equally.

16 (7) In all other cases, priority among conflicting
17 security interests in investment property is governed by Sections
18 55-9-322 and 55-9-323 NMSA 1978. "

19 Section 49. A new Section 55-9-329 NMSA 1978 is enacted to
20 read:

21 "55-9-329. [NEW MATERIAL] PRIORITY OF SECURITY INTERESTS
22 IN LETTER-OF-CREDIT RIGHT. --The following rules govern priority
23 among conflicting security interests in the same letter-of-credit
24 right:

25 (1) A security interest held by a secured party

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1 having control of the letter-of-credit right under Section
2 55-9-107 NMSA 1978 has priority to the extent of its control over
3 a conflicting security interest held by a secured party that does
4 not have control.

5 (2) Security interests perfected by control under
6 Section 55-9-314 NMSA 1978 rank according to priority in time of
7 obtaining control. "

8 Section 50. A new Section 55-9-330 NMSA 1978 is enacted to
9 read:

10 "55-9-330. [NEW MATERIAL] PRIORITY OF PURCHASER OF CHATTEL
11 PAPER OR INSTRUMENT. --

12 (a) A purchaser of chattel paper has priority over a
13 security interest in the chattel paper which is claimed merely as
14 proceeds of inventory subject to a security interest if:

15 (1) in good faith and in the ordinary course of
16 the purchaser's business, the purchaser gives new value and takes
17 possession of the chattel paper or obtains control of the chattel
18 paper under Section 55-9-105 NMSA 1978; and

19 (2) the chattel paper does not indicate that it
20 has been assigned to an identified assignee other than the
21 purchaser.

22 (b) A purchaser of chattel paper has priority over a
23 security interest in the chattel paper which is claimed other
24 than merely as proceeds of inventory subject to a security
25 interest if the purchaser gives new value and takes possession of

1 the chattel paper or obtains control of the chattel paper under
2 Section 55-9-105 NMSA 1978 in good faith, in the ordinary course
3 of the purchaser's business and without knowledge that the
4 purchase violates the rights of the secured party.

5 (c) Except as otherwise provided in Section 55-9-327
6 NMSA 1978, a purchaser having priority in chattel paper under
7 Subsection (a) or (b) of this section also has priority in
8 proceeds of the chattel paper to the extent that:

9 (1) Section 55-9-322 NMSA 1978 provides for
10 priority in the proceeds; or

11 (2) the proceeds consist of the specific goods
12 covered by the chattel paper or cash proceeds of the specific
13 goods, even if the purchaser's security interest in the proceeds
14 is unperfected.

15 (d) Except as otherwise provided in Subsection (a) of
16 Section 55-9-331 NMSA 1978, a purchaser of an instrument has
17 priority over a security interest in the instrument perfected by
18 a method other than possession if the purchaser gives value and
19 takes possession of the instrument in good faith and without
20 knowledge that the purchase violates the rights of the secured
21 party.

22 (e) For purposes of Subsections (a) and (b) of this
23 section, the holder of a purchase-money security interest in
24 inventory gives new value for chattel paper constituting proceeds
25 of the inventory.

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1 (f) For purposes of Subsections (b) and (d) of this
2 section, if chattel paper or an instrument indicates that it has
3 been assigned to an identified secured party other than the
4 purchaser, a purchaser of the chattel paper or instrument has
5 knowledge that the purchase violates the rights of the secured
6 party. "

7 Section 51. A new Section 55-9-331 NMSA 1978 is enacted to
8 read:

9 "55-9-331. [NEW MATERIAL] PRIORITY OF RIGHTS OF PURCHASERS
10 OF INSTRUMENTS, DOCUMENTS AND SECURITIES UNDER OTHER ARTICLES--
11 PRIORITY OF INTERESTS IN FINANCIAL ASSETS AND SECURITY
12 ENTITLEMENTS UNDER CHAPTER 55, ARTICLE 8 NMSA 1978.--

13 (a) Chapter 55, Article 9 NMSA 1978 does not limit
14 the rights of a holder in due course of a negotiable instrument,
15 a holder to which a negotiable document of title has been duly
16 negotiated or a protected purchaser of a security. These holders
17 or purchasers take priority over an earlier security interest,
18 even if perfected, to the extent provided in Chapter 55, Articles
19 3, 7 and 8 NMSA 1978.

20 (b) Chapter 55, Article 9 NMSA 1978 does not limit
21 the rights of or impose liability on a person to the extent that
22 the person is protected against the assertion of an adverse claim
23 under Chapter 55, Article 8 NMSA 1978.

24 (c) Filing under Chapter 55, Article 9 NMSA 1978 does
25 not constitute notice of a claim or defense to the holders, or

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1 purchasers, or persons described in Subsections (a) and (b) of
2 this section. "

3 Section 52. A new Section 55-9-332 NMSA 1978 is enacted to
4 read:

5 "55-9-332. [NEW MATERIAL] TRANSFER OF MONEY--TRANSFER OF
6 FUNDS FROM DEPOSIT ACCOUNT.

7 (a) A transferee of money takes the money free of a
8 security interest unless the transferee acts in collusion with
9 the debtor in violating the rights of the secured party.

10 (b) A transferee of funds from a deposit account
11 takes the funds free of a security interest in the deposit
12 account unless the transferee acts in collusion with the debtor
13 in violating the rights of the secured party. "

14 Section 53. A new Section 55-9-333 NMSA 1978 is enacted to
15 read:

16 "55-9-333. [NEW MATERIAL] PRIORITY OF CERTAIN LIENS
17 ARISING BY OPERATION OF LAW. --

18 (a) In this section, "possessory lien" means an
19 interest, other than a security interest or an agricultural lien:

20 (1) that secures payment or performance of an
21 obligation for services or materials furnished with respect to
22 goods by a person in the ordinary course of the person's
23 business;

24 (2) that is created by statute or rule of law
25 in favor of the person; and

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1 (3) whose effectiveness depends on the person's
2 possession of the goods.

3 (b) A possessory lien on goods has priority over a
4 security interest in the goods unless the lien is created by a
5 statute that expressly provides otherwise. "

6 Section 54. A new Section 55-9-334 NMSA 1978 is enacted to
7 read:

8 "55-9-334. [NEW MATERIAL] PRIORITY OF SECURITY INTERESTS
9 IN FIXTURES. --

10 (a) A security interest under Chapter 55, Article 9
11 NMSA 1978 may be created in goods that are fixtures or may
12 continue in goods that become fixtures. A security interest does
13 not exist under this article in ordinary building materials
14 incorporated into an improvement on land.

15 (b) Chapter 55, Article 9 NMSA 1978 does not prevent
16 creation of an encumbrance upon fixtures under real property law.

17 (c) In cases not governed by Subsections (d) through
18 (h) of this section, a security interest in fixtures is
19 subordinate to a conflicting interest of an encumbrancer or owner
20 of the related real property other than the debtor.

21 (d) Except as otherwise provided in Subsection (h) of
22 this section, a perfected security interest in fixtures has
23 priority over a conflicting interest of an encumbrancer or owner
24 of the real property if the debtor has an interest of record in
25 or is in possession of the real property and:

1 (1) the security interest is a purchase-money
2 security interest;

3 (2) the interest of the encumbrancer or owner
4 arises before the goods become fixtures; and

5 (3) the security interest is perfected by a
6 fixture filing before the goods become fixtures or within twenty
7 days thereafter.

8 (e) A perfected security interest in fixtures has
9 priority over a conflicting interest of an encumbrancer or owner
10 of the real property if:

11 (1) the debtor has an interest of record in the
12 real property or is in possession of the real property and the
13 security interest:

14 (A) is perfected by a fixture filing
15 before the interest of the encumbrancer or owner is of record;
16 and

17 (B) has priority over any conflicting
18 interest of a predecessor in title of the encumbrancer or owner;

19 (2) before the goods become fixtures, the
20 security interest is perfected by any method permitted by Chapter
21 55, Article 9 NMSA 1978, and the fixtures are readily removable:

22 (A) factory or office machines;

23 (B) equipment that is not primarily used
24 or leased for use in the operation of the real property; or

25 (C) replacements of domestic appliances

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1 that are consumer goods;

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

6 (4) the security interest is:

7 (A) created in a manufactured home in a
8 manufactured-home transaction; and

9 (B) perfected pursuant to a statute
10 described in Paragraph (2) of Subsection (a) of Section 55-9-311
11 NMSA 1978.

12 (f) A security interest in fixtures, whether or not
13 perfected, has priority over a conflicting interest of an
14 encumbrancer or owner of the real property if:

15 (1) the encumbrancer or owner has, in an
16 authenticated record, consented to the security interest or
17 disclaimed an interest in the goods as fixtures; or

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

20 (g) The priority of the security interest under
21 Paragraph (2) of Subsection (f) of this section continues for a
22 reasonable time if the debtor's right to remove the goods as
23 against the encumbrancer or owner terminates.

24 (h) A mortgage is a construction mortgage to the
25 extent that it secures an obligation incurred for the

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1 construction of an improvement on land, including the acquisition
2 cost of the land, if a recorded record of the mortgage so
3 indicates. Except as otherwise provided in Subsections (e) and
4 (f) of this section, a security interest in fixtures is
5 subordinate to a construction mortgage if a record of the
6 mortgage is recorded before the goods become fixtures and the
7 goods become fixtures before the completion of the construction.
8 A mortgage has this priority to the same extent as a construction
9 mortgage to the extent that it is given to refinance a
10 construction mortgage. "

11 Section 55. A new Section 55-9-335 NMSA 1978 is enacted to
12 read:

13 "55-9-335. [NEW MATERIAL] ACCESSIONS. --

14 (a) A security interest may be created in an
15 accession and continues in collateral that becomes an accession.

16 (b) If a security interest is perfected when the
17 collateral becomes an accession, the security interest remains
18 perfected in the collateral.

19 (c) Except as otherwise provided in Subsection (d) of
20 this section, the other provisions of this part determine the
21 priority of a security interest in an accession.

22 (d) A security interest in an accession is
23 subordinate to a security interest in the whole which is
24 perfected by compliance with the requirements of a certificate-
25 of-title statute under Subsection (b) of Section 55-9-311 NMSA

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1 1978.

2 (e) After default, subject to Sections 55-9-601
3 through 55-9-628 NMSA 1978, a secured party may remove an
4 accession from other goods if the security interest in the
5 accession has priority over the claims of every person having an
6 interest in the whole.

7 (f) A secured party that removes an accession from
8 other goods under Subsection (e) of this section shall promptly
9 reimburse any holder of a security interest or other lien on, or
10 owner of, the whole or of the other goods, other than the debtor,
11 for the cost of repair of any physical injury to the whole or the
12 other goods. The secured party need not reimburse the holder or
13 owner for any diminution in value of the whole or the other goods
14 caused by the absence of the accession removed or by any
15 necessity for replacing it. A person entitled to reimbursement
16 may refuse permission to remove until the secured party gives
17 adequate assurance for the performance of the obligation to
18 reimburse. "

19 Section 56. A new Section 55-9-336 NMSA 1978 is enacted to
20 read:

21 "55-9-336. [NEW MATERIAL] COMMINGLED GOODS. --

22 (a) In this section, "commingled goods" means goods
23 that are physically united with other goods in such a manner that
24 their identity is lost in a product or mass.

25 (b) A security interest does not exist in commingled

1 goods as such. However, a security interest may attach to a
2 product or mass that results when goods become commingled goods.

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

5 (d) If a security interest in collateral is perfected
6 before the collateral becomes commingled goods, the security
7 interest that attaches to the product or mass under Subsection
8 (c) of this section is perfected.

9 (e) Except as otherwise provided in Subsection (f) of
10 this section, the other provisions of Sections 55-9-301 through
11 55-9-342 NMSA 1978 determine the priority of a security interest
12 that attaches to the product or mass under Subsection (c) of this
13 section.

14 (f) If more than one security interest attaches to
15 the product or mass under Subsection (c) of this section, the
16 following rules determine priority:

17 (1) a security interest that is perfected under
18 Subsection (d) of this section has priority over a security
19 interest that is unperfected at the time the collateral becomes
20 commingled goods; or

21 (2) if more than one security interest is
22 perfected under Subsection (d) of this section, the security
23 interests rank equally in proportion to the value of the
24 collateral at the time it became commingled goods. "

25 Section 57. A new Section 55-9-337 NMSA 1978 is enacted to

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1 read:

2 "55-9-337. [NEW MATERIAL] PRIORITY OF SECURITY INTERESTS
3 IN GOODS COVERED BY CERTIFICATE OF TITLE. --If, while a security
4 interest in goods is perfected by any method under the law of
5 another jurisdiction, this state issues a certificate of title
6 that does not show that the goods are subject to the security
7 interest or contain a statement that they may be subject to
8 security interests not shown on the certificate:

9 (1) a buyer of the goods, other than a person in the
10 business of selling goods of that kind, takes free of the
11 security interest if the buyer gives value and receives delivery
12 of the goods after issuance of the certificate and without
13 knowledge of the security interest; and

14 (2) the security interest is subordinate to a
15 conflicting security interest in the goods that attaches, and is
16 perfected under Subsection (b) of Section 55-9-311 NMSA 1978,
17 after issuance of the certificate and without the conflicting
18 secured party's knowledge of the security interest. "

19 Section 58. A new Section 55-9-338 NMSA 1978 is enacted to
20 read:

21 "55-9-338. [NEW MATERIAL] PRIORITY OF SECURITY INTEREST OR
22 AGRICULTURAL LIEN PERFECTED BY FILED FINANCING STATEMENT
23 PROVIDING CERTAIN INCORRECT INFORMATION. --If a security interest
24 or agricultural lien is perfected by a filed financing statement
25 providing information described in Paragraph (5) of Subsection

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1 (b) of Section 55-9-516 NMSA 1978 which is incorrect at the time
2 the financing statement is filed:

3 (1) the security interest or agricultural lien is
4 subordinate to a conflicting perfected security interest in the
5 collateral to the extent that the holder of the conflicting
6 security interest gives value in reasonable reliance upon the
7 incorrect information; and

8 (2) a purchaser, other than a secured party, of the
9 collateral takes free of the security interest or agricultural
10 lien to the extent that, in reasonable reliance upon the
11 incorrect information, the purchaser gives value and, in the case
12 of chattel paper, documents, goods, instruments or a security
13 certificate, receives delivery of the collateral. "

14 Section 59. A new Section 55-9-339 NMSA 1978 is enacted to
15 read:

16 "55-9-339. [NEW MATERIAL] PRIORITY SUBJECT TO
17 SUBORDINATION. --Chapter 55, Article 9 NMSA 1978 does not preclude
18 subordination by agreement by a person entitled to priority. "

19 Section 60. A new Section 55-9-340 NMSA 1978 is enacted to
20 read:

21 "55-9-340. [NEW MATERIAL] EFFECTIVENESS OF RIGHT OF
22 RECOUPMENT OR SET-OFF AGAINST DEPOSIT ACCOUNT. --

23 (a) Except as otherwise provided in Subsection (c) of
24 this section, a bank with which a deposit account is maintained
25 may exercise any right of recoupment or set-off against a secured

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1 party that holds a security interest in the deposit account.

2 (b) Except as otherwise provided in Subsection (c) of
3 this section, the application of Chapter 55, Article 9 NMSA 1978
4 to a security interest in a deposit account does not affect a
5 right of recoupment or set-off of the secured party as to a
6 deposit account maintained with the secured party.

7 (c) The exercise by a bank of a set-off against a
8 deposit account is ineffective against a secured party that holds
9 a security interest in the deposit account which is perfected by
10 control under Paragraph (3) of Subsection (a) of Section 55-9-104
11 NMSA 1978, if the set-off is based on a claim against the
12 debtor. "

13 Section 61. A new Section 55-9-341 NMSA 1978 is enacted to
14 read:

15 "55-9-341. [NEW MATERIAL] BANK'S RIGHTS AND DUTIES WITH
16 RESPECT TO DEPOSIT ACCOUNT. -- Except as otherwise provided in
17 Subsection (c) of Section 55-9-340 NMSA 1978, and unless the bank
18 otherwise agrees in an authenticated record, a bank's rights and
19 duties with respect to a deposit account maintained with the bank
20 are not terminated, suspended or modified by:

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

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

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

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1 Section 62. A new Section 55-9-342 NMSA 1978 is enacted to
2 read:

3 "55-9-342. [NEW MATERIAL] BANK'S RIGHT TO REFUSE TO ENTER
4 INTO OR DISCLOSE EXISTENCE OF CONTROL AGREEMENT. -- Chapter 55,
5 Article 9 NMSA 1978 does not require a bank to enter into an
6 agreement of the kind described in Paragraph (2) of Subsection
7 (a) of Section 55-9-104 NMSA 1978, even if its customer so
8 requests or directs. A bank that has entered into such an
9 agreement is not required to confirm the existence of the
10 agreement to another person unless requested to do so by its
11 customer. "

12 Section 63. Section 55-9-401 NMSA 1978 (being Laws 1961,
13 Chapter 96, Section 9-401, as amended) is repealed and a new
14 Section 55-9-401 NMSA 1978 is enacted to read:

15 "55-9-401. [NEW MATERIAL] ALIENABILITY OF DEBTOR'S
16 RIGHTS. --

17 (a) Except as otherwise provided in Subsection (b) of
18 this section and Sections 55-9-406 through 55-9-409 NMSA 1978,
19 whether a debtor's rights in collateral may be voluntarily or
20 involuntarily transferred is governed by law other than Chapter
21 55, Article 9 NMSA 1978.

22 (b) An agreement between the debtor and secured party
23 which prohibits a transfer of the debtor's rights in collateral
24 or makes the transfer a default does not prevent the transfer
25 from taking effect. "

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1 Section 64. Section 55-9-402 NMSA 1978 (being Laws 1961,
2 Chapter 96, Section 9-402, as amended) is repealed and a new
3 Section 55-9-402 NMSA 1978 is enacted to read:

4 "55-9-402. [NEW MATERIAL] SECURED PARTY NOT OBLIGATED ON
5 CONTRACT OF DEBTOR OR IN TORT. --The existence of a security
6 interest, agricultural lien or authority given to a debtor to
7 dispose of or use collateral, without more, does not subject a
8 secured party to liability in contract or tort for the debtor's
9 acts or omissions. "

10 Section 65. Section 55-9-403 NMSA 1978 (being Laws 1961,
11 Chapter 96, Section 9-403, as amended) is repealed and a new
12 Section 55-9-403 NMSA 1978 is enacted to read:

13 "55-9-403. [NEW MATERIAL] AGREEMENT NOT TO ASSERT DEFENSES
14 AGAINST ASSIGNEE. --

15 (a) In this section, "value" has the meaning provided
16 in Subsection (a) of Section 55-3-303 NMSA 1978.

17 (b) Except as otherwise provided in this section, an
18 agreement between an account debtor and an assignor not to assert
19 against an assignee any claim or defense that the account debtor
20 may have against the assignor is enforceable by an assignee that
21 takes an assignment:

22 (1) for value;

23 (2) in good faith;

24 (3) without notice of a claim of a property or
25 possessory right to the property assigned; and

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1 (4) without notice of a defense or claim in
2 recoupment of the type that may be asserted against a person
3 entitled to enforce a negotiable instrument under Subsection (a)
4 of Section 55-3-305 NMSA 1978.

5 (c) Subsection (b) of this section does not apply to
6 defenses of a type that may be asserted against a holder in due
7 course of a negotiable instrument under Subsection (b) of Section
8 55-3-305 NMSA 1978.

9 (d) In a consumer transaction, if a record evidences
10 the account debtor's obligation, law other than Chapter 55,
11 Article 9 NMSA 1978 requires that the record include a statement
12 to the effect that the rights of an assignee are subject to
13 claims or defenses that the account debtor could assert against
14 the original obligee, and if the record does not include such a
15 statement:

16 (1) the record has the same effect as if the
17 record included such a statement; and

18 (2) the account debtor may assert against an
19 assignee those claims and defenses that would have been available
20 if the record included such a statement.

21 (e) This section is subject to law other than Chapter
22 55, Article 9 NMSA 1978 which establishes a different rule for an
23 account debtor who is an individual and who incurred the
24 obligation primarily for personal, family or household purposes.

25 (f) Except as otherwise provided in Subsection (d) of

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1 this section, this section does not displace law other than
2 Chapter 55, Article 9 NMSA 1978 which gives effect to an
3 agreement by an account debtor not to assert a claim or defense
4 against an assignee. "

5 Section 66. Section 55-9-404 NMSA 1978 (being Laws 1961,
6 Chapter 96, Section 9-404, as amended) is repealed and a new
7 Section 55-9-404 NMSA 1978 is enacted to read:

8 "55-9-404. [NEW MATERIAL] RIGHTS ACQUIRED BY ASSIGNEE--
9 CLAIMS AND DEFENSES AGAINST ASSIGNEE. --

10 (a) Unless an account debtor has made an enforceable
11 agreement not to assert defenses or claims, and subject to
12 Subsections (b) through (e) of this section, the rights of an
13 assignee are subject to:

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

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

22 (b) Subject to Subsection (c) of this section and
23 except as otherwise provided in Subsection (d) of this section,
24 the claim of an account debtor against an assignor may be
25 asserted against an assignee under Subsection (a) of this section

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1 only to reduce the amount the account debtor owes.

2 (c) This section is subject to law other than Chapter
3 55, Article 9 NMSA 1978 which establishes a different rule for an
4 account debtor who is an individual and who incurred the
5 obligation primarily for personal, family or household purposes.

6 (d) In a consumer transaction, if a record evidences
7 the account debtor's obligation, law other than Chapter 55,
8 Article 9 NMSA 1978 requires that the record include a statement
9 to the effect that the account debtor's recovery against an
10 assignee with respect to claims and defenses against the assignor
11 may not exceed amounts paid by the account debtor under the
12 record, and if the record does not include such a statement, the
13 extent to which a claim of an account debtor against the assignor
14 may be asserted against an assignee is determined as if the
15 record included such a statement.

16 (e) This section does not apply to an assignment of a
17 health-care-insurance receivable. "

18 Section 67. Section 55-9-405 NMSA 1978 (being Laws 1961,
19 Chapter 96, Section 9-405, as amended) is repealed and a new
20 Section 55-9-405 NMSA 1978 is enacted to read:

21 "55-9-405. [NEW MATERIAL] MODIFICATION OF ASSIGNED
22 CONTRACT. --

23 (a) A modification of or substitution for an assigned
24 contract is effective against an assignee if made in good faith.
25 The assignee acquires corresponding rights under the modified or

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1 substituted contract. The assignment may provide that the
2 modification or substitution is a breach of contract by the
3 assignor. This subsection is subject to Subsections (b) through
4 (d) of this section.

5 (b) Subsection (a) of this section applies to the
6 extent that:

7 (1) the right to payment or a part thereof
8 under an assigned contract has not been fully earned by
9 performance; or

10 (2) the right to payment or a part thereof has
11 been fully earned by performance and the account debtor has not
12 received notification of the assignment under Subsection (a) of
13 Section 55-9-406 NMSA 1978.

14 (c) This section is subject to law other than Chapter
15 55, Article 9 NMSA 1978 which establishes a different rule for an
16 account debtor who is an individual and who incurred the
17 obligation primarily for personal, family or household purposes.

18 (d) This section does not apply to an assignment of a
19 health-care-insurance receivable. "

20 Section 68. Section 55-9-406 NMSA 1978 (being Laws 1961,
21 Chapter 96, Section 9-406, as amended) is repealed and a new
22 Section 55-9-406 NMSA 1978 is enacted to read:

23 "55-9-406. [NEW MATERIAL] DISCHARGE OF ACCOUNT DEBTOR--
24 NOTIFICATION OF ASSIGNMENT--IDENTIFICATION AND PROOF OF
25 ASSIGNMENT--RESTRICTIONS ON ASSIGNMENT OF ACCOUNTS, CHATTEL

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1 PAPER, PAYMENT INTANGIBLES AND PROMISSORY NOTES INEFFECTIVE. --

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

12 (b) Subject to Subsection (h) of this section,
13 notification is ineffective under Subsection (a) of this section:

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

16 (2) to the extent that an agreement between an
17 account debtor and a seller of a payment intangible limits the
18 account debtor's duty to pay a person other than the seller and
19 the limitation is effective under law other than Chapter 55,
20 Article 9 NMSA 1978; or

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

25 (A) only a portion of the account, chattel

1 paper or payment intangible has been assigned to that assignee;

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

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

6 (c) Subject to Subsection (h) of this section, if
7 requested by the account debtor, an assignee shall seasonably
8 furnish reasonable proof that the assignment has been made.

9 Unless the assignee complies, the account debtor may discharge
10 its obligation by paying the assignor, even if the account debtor
11 has received a notification under Subsection (a) of this section.

12 (d) Except as otherwise provided in Subsection (e) of
13 this section and Sections 55-2A-303 and 55-9-407 NMSA 1978, and
14 subject to Subsection (h) of this section, a term in an agreement
15 between an account debtor and an assignor or in a promissory note
16 is ineffective to the extent that it:

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

23 (2) provides that the assignment or transfer or
24 the creation, attachment, perfection or enforcement of the
25 security interest may give rise to a default, breach, right of

1 recoupment, claim, defense, termination, right of termination or
2 remedy under the account, chattel paper, payment intangible or
3 promissory note.

4 (e) Subsection (d) of this section does not apply to
5 the sale of a payment intangible or promissory note.

6 (f) Except as otherwise provided in Sections
7 55-2A-303 and 55-9-407 NMSA 1978 and subject to Subsections (h)
8 and (i) of this section, a rule of law, statute or regulation
9 that prohibits, restricts or requires the consent of a
10 government, governmental body or official, or account debtor to
11 the assignment or transfer of, or creation of a security interest
12 in, an account or chattel paper is ineffective to the extent that
13 the rule of law, statute or regulation:

14 (1) prohibits, restricts or requires the
15 consent of the government, governmental body or official, or
16 account debtor to the assignment or transfer of, or the creation,
17 attachment, perfection or enforcement of a security interest in
18 the account or chattel paper; or

19 (2) provides that the assignment or transfer or
20 the creation, attachment, perfection or enforcement of the
21 security interest may give rise to a default, breach, right of
22 recoupment, claim, defense, termination, right of termination or
23 remedy under the account or chattel paper.

24 (g) Subject to Subsection (h) of this section, an
25 account debtor may not waive or vary its option under Paragraph

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1 (3) of Subsection (b) of this section.

2 (h) This section is subject to law other than Chapter
3 55, Article 9 NMSA 1978 which establishes a different rule for an
4 account debtor who is an individual and who incurred the
5 obligation primarily for personal, family or household purposes.

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

8 (j) This section is subject to laws other than
9 Chapter 55, Article 9 NMSA 1978 to the extent that those laws
10 prohibit or restrict the assignment, transfer of or creation of a
11 security interest in benefits, compensation, any other account or
12 chattel paper. "

13 Section 69. Section 55-9-407 NMSA 1978 (being Laws 1961,
14 Chapter 96, Section 9-407, as amended) is repealed and a new
15 Section 55-9-407 NMSA 1978 is enacted to read:

16 "55-9-407. [NEW MATERIAL] RESTRICTIONS ON CREATION OR
17 ENFORCEMENT OF SECURITY INTEREST IN LEASEHOLD INTEREST OR IN
18 LESSOR'S RESIDUAL INTEREST. --

19 (a) Except as otherwise provided in Subsection (b) of
20 this section, a term in a lease agreement is ineffective to the
21 extent that it:

22 (1) prohibits, restricts or requires the
23 consent of a party to the lease to the assignment or transfer of,
24 or the creation, attachment, perfection or enforcement of a
25 security interest in an interest of a party under the lease

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1 contract or in the lessor's residual interest in the goods; or

2 (2) provides that the assignment or transfer or
3 the creation, attachment, perfection or enforcement of the
4 security interest may give rise to a default, breach, right of
5 recoupment, claim, defense, termination, right of termination or
6 remedy under the lease.

7 (b) Except as otherwise provided in Subsection (7) of
8 Section 55-2A-303 NMSA 1978, a term described in Paragraph (2) of
9 Subsection (a) of this section is effective to the extent that
10 there is:

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

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

16 (c) The creation, attachment, perfection or
17 enforcement of a security interest in the lessor's interest under
18 the lease contract or the lessor's residual interest in the goods
19 is not a transfer that materially impairs the lessee's prospect
20 of obtaining return performance or materially changes the duty of
21 or materially increases the burden or risk imposed on the lessee
22 within the purview of Subsection (4) of Section 55-2A-303 NMSA
23 1978 unless, and then only to the extent that, enforcement
24 actually results in a delegation of material performance of the
25 lessor. "

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1 Section 70. Section 55-9-408 NMSA 1978 (being Laws 1985,
2 Chapter 193, Section 33) is repealed and a new Section 55-9-408
3 NMSA 1978 is enacted to read:

4 "55-9-408. [NEW MATERIAL] RESTRICTIONS ON ASSIGNMENT OF
5 PROMISSORY NOTES, HEALTH-CARE-INSURANCE RECEIVABLES AND CERTAIN
6 GENERAL INTANGIBLES INEFFECTIVE. --

7 (a) Except as otherwise provided in Subsection (b) of
8 this section, a term in a promissory note or in an agreement
9 between an account debtor and a debtor which relates to a health-
10 care-insurance receivable or a general intangible, including a
11 contract, permit, license or franchise, and which term prohibits,
12 restricts or requires the consent of the person obligated on the
13 promissory note or the account debtor to, the assignment or
14 transfer of, or creation, attachment or perfection of a security
15 interest in, the promissory note, health-care-insurance
16 receivable or general intangible, is ineffective to the extent
17 that the term:

18 (1) would impair the creation, attachment or
19 perfection of a security interest; or

20 (2) provides that the assignment or transfer or
21 the creation, attachment or perfection of the security interest
22 may give rise to a default, breach, right of recoupment, claim,
23 defense, termination, right of termination or remedy under the
24 promissory note, health-care-insurance receivable or general
25 intangible.

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1 (b) Subsection (a) of this section applies to a
2 security interest in a payment intangible or promissory note only
3 if the security interest arises out of a sale of the payment
4 intangible or promissory note.

5 (c) A rule of law, statute or regulation that
6 prohibits, restricts or requires the consent of a government,
7 governmental body or official, person obligated on a promissory
8 note or account debtor to the assignment or transfer of, or
9 creation of a security interest in, a promissory note, health-
10 care-insurance receivable or general intangible, including a
11 contract, permit, license or franchise between an account debtor
12 and a debtor, is ineffective to the extent that the rule of law,
13 statute or regulation:

14 (1) would impair the creation, attachment or
15 perfection of a security interest; or

16 (2) provides that the assignment or transfer or
17 the creation, attachment or perfection of the security interest
18 may give rise to a default, breach, right of recoupment, claim,
19 defense, termination, right of termination or remedy under the
20 promissory note, health-care-insurance receivable or general
21 intangible.

22 (d) To the extent that a term in a promissory note or
23 in an agreement between an account debtor and a debtor which
24 relates to a health-care-insurance receivable or general
25 intangible or a rule of law, statute or regulation described in

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1 Subsection (c) of this section would be effective under law other
2 than Chapter 55, Article 9 NMSA 1978 but is ineffective under
3 Subsection (a) or (c) of this section, the creation, attachment
4 or perfection of a security interest in the promissory note,
5 health-care-insurance receivable or general intangible:

6 (1) is not enforceable against the person
7 obligated on the promissory note or the account debtor;

8 (2) does not impose a duty or obligation on the
9 person obligated on the promissory note or the account debtor;

10 (3) does not require the person obligated on
11 the promissory note or the account debtor to recognize the
12 security interest, pay or render performance to the secured party
13 or accept payment or performance from the secured party;

14 (4) does not entitle the secured party to use
15 or assign the debtor's rights under the promissory note, health-
16 care-insurance receivable or general intangible, including any
17 related information or materials furnished to the debtor in the
18 transaction giving rise to the promissory note, health-care-
19 insurance receivable or general intangible;

20 (5) does not entitle the secured party to use,
21 assign, possess or have access to any trade secrets or
22 confidential information of the person obligated on the
23 promissory note or the account debtor; and

24 (6) does not entitle the secured party to
25 enforce the security interest in the promissory note, health-

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1 care-insurance receivable or general intangible. The provisions
2 of this section shall prevail over an inconsistent provision of
3 an existing or future statute or rule of this state, unless the
4 inconsistent provision is set forth in a statute of this state
5 that refers expressly to this section and states that the
6 inconsistent provision shall prevail over the provisions of this
7 section. "

8 Section 71. A new Section 55-9-409 NMSA 1978 is enacted to
9 read:

10 "55-9-409. [NEW MATERIAL] RESTRICTIONS ON ASSIGNMENT OF
11 LETTER-OF-CREDIT RIGHTS INEFFECTIVE. --

12 (a) A term in a letter of credit or a rule of law,
13 statute, regulation, custom or practice applicable to the letter
14 of credit which prohibits, restricts or requires the consent of
15 an applicant, issuer or nominated person to a beneficiary's
16 assignment of or creation of a security interest in a letter-of-
17 credit right is ineffective to the extent that the term or rule
18 of law, statute, regulation, custom or practice:

19 (1) would impair the creation, attachment or
20 perfection of a security interest in the letter-of-credit right;
21 or

22 (2) provides that the assignment or the
23 creation, attachment or perfection of the security interest may
24 give rise to a default, breach, right of recoupment, claim,
25 defense, termination, right of termination or remedy under the

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1 letter-of-credit right.

2 (b) To the extent that a term in a letter of credit
3 is ineffective under Subsection (a) of this section but would be
4 effective under law other than Chapter 55, Article 9 NMSA 1978 or
5 a custom or practice applicable to the letter of credit, to the
6 transfer of a right to draw or otherwise demand performance under
7 the letter of credit or to the assignment of a right to proceeds
8 of the letter of credit, the creation, attachment or perfection
9 of a security interest in the letter-of-credit right:

10 (1) is not enforceable against the applicant,
11 issuer, nominated person or transferee beneficiary;

12 (2) imposes no duties or obligations on the
13 applicant, issuer, nominated person or transferee beneficiary;
14 and

15 (3) does not require the applicant, issuer,
16 nominated person or transferee beneficiary to recognize the
17 security interest, pay or render performance to the secured party
18 or accept payment or other performance from the secured party. "

19 Section 72. Section 55-9-501 NMSA 1978 (being Laws 1961,
20 Chapter 96, Section 9-501, as amended) is repealed and a new
21 Section 55-9-501 NMSA 1978 is enacted to read:

22 "55-9-501. [NEW MATERIAL] FILING OFFICE. --

23 (a) Except as otherwise provided in Subsection (b) of
24 this section, if the local law of this state governs perfection
25 of a security interest or agricultural lien, the office in which

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1 to file a financing statement to perfect the security interest or
2 agricultural lien is:

3 (1) the office of the county clerk where a
4 record of a mortgage on the related real property would be
5 recorded if:

6 (A) the collateral is as-extracted
7 collateral or timber to be cut; or

8 (B) the financing statement is filed as a
9 fixture filing and the collateral is goods that are or are to
10 become fixtures; or

11 (2) the office of the secretary of state in all
12 other cases, including a case in which the collateral is goods
13 that are or are to become fixtures and the financing statement is
14 not filed as a fixture filing.

15 (b) The office in which to file a financing statement
16 to perfect a security interest in collateral, including fixtures,
17 of a transmitting utility is the office of the secretary of
18 state. The financing statement also constitutes a fixture filing
19 as to the collateral indicated in the financing statement which
20 is or is to become fixtures. "

21 Section 73. Section 55-9-502 NMSA 1978 (being Laws 1961,
22 Chapter 96, Section 9-502, as amended) is repealed and a new
23 Section 55-9-502 NMSA 1978 is enacted to read:

24 "55-9-502. [NEW MATERIAL] CONTENTS OF FINANCING
25 STATEMENT--RECORD OF MORTGAGE AS FINANCING STATEMENT--TIME OF

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1 FILING FINANCING STATEMENT. --

2 (a) Subject to Subsection (b) of this section, a
3 financing statement is sufficient only if it:

- 4 (1) provides the name of the debtor;
5 (2) provides the name of the secured party or a
6 representative of the secured party; and
7 (3) indicates the collateral covered by the
8 financing statement.

9 (b) Except as otherwise provided in Subsection (b) of
10 Section 55-9-501 NMSA 1978, to be sufficient a financing
11 statement that covers as-extracted collateral or timber to be
12 cut, or which is filed as a fixture filing and covers goods that
13 are or are to become fixtures, must satisfy Subsection (a) of
14 this section and also:

- 15 (1) indicate that it covers this type of
16 collateral;
17 (2) indicate that it is to be filed for record
18 in the real property records;
19 (3) provide a description of the real property
20 to which the collateral is related sufficient to give
21 constructive notice of a mortgage pursuant to the laws of this
22 state if the description were contained in a record of the
23 mortgage of the real property; and
24 (4) if the debtor does not have an interest of
25 record in the real property, provide the name of a record owner.

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1 (c) A record of a mortgage is effective, from the
2 date it is filed for record, as a financing statement filed as a
3 fixture filing or as a financing statement covering as-extracted
4 collateral or timber to be cut only if:

5 (1) the record indicates the goods or accounts
6 that it covers;

7 (2) the goods are or are to become fixtures
8 related to the real property described in the record or the
9 collateral is related to the real property described in the
10 record and is as-extracted collateral or timber to be cut;

11 (3) the record satisfies the requirements for a
12 financing statement in this section other than an indication that
13 it is to be filed for record in the real property records; and

14 (4) the record is recorded.

15 (d) A financing statement may be filed before a
16 security agreement is made or a security interest otherwise
17 attaches. "

18 Section 74. Section 55-9-503 NMSA 1978 (being Laws 1961,
19 Chapter 96, Section 9-503) is repealed and a new Section 55-9-503
20 NMSA 1978 is enacted to read:

21 "55-9-503. [NEW MATERIAL] NAME OF DEBTOR AND SECURED
22 PARTY. --

23 (a) A financing statement sufficiently provides the
24 name of the debtor:

25 (1) if the debtor is a registered organization,

1 only if the financing statement provides the name of the debtor
2 indicated on the public record of the debtor's jurisdiction of
3 organization which shows the debtor to have been organized;

4 (2) if the debtor is a decedent's estate, only
5 if the financing statement provides the name of the decedent and
6 indicates that the debtor is an estate;

7 (3) if the debtor is a trust or a trustee
8 acting with respect to property held in trust, only if the
9 financing statement:

10 (A) provides the name specified for the
11 trust in its organic documents or, if no name is specified,
12 provides the name of the settlor and additional information
13 sufficient to distinguish the debtor from other trusts having one
14 or more of the same settlors; and

15 (B) indicates, in the debtor's name or
16 otherwise, that the debtor is a trust or is a trustee acting with
17 respect to property held in trust; and

18 (4) in other cases:

19 (A) if the debtor has a name, only if it
20 provides the individual or organizational name of the debtor; and

21 (B) if the debtor does not have a name,
22 only if it provides the names of the partners, members,
23 associates or other persons comprising the debtor.

24 (b) A financing statement that provides the name of
25 the debtor in accordance with Subsection (a) of this section is

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1 not rendered ineffective by the absence of:

2 (1) a trade name or other name of the debtor;

3 or

4 (2) unless required under Subparagraph (B) of
5 Paragraph (4) of Subsection (a) of this section, names of
6 partners, members, associates or other persons comprising the
7 debtor.

8 (c) A financing statement that provides only the
9 debtor's trade name does not sufficiently provide the name of the
10 debtor.

11 (d) Failure to indicate the representative capacity
12 of a secured party or representative of a secured party does not
13 affect the sufficiency of a financing statement.

14 (e) A financing statement may provide the name of
15 more than one debtor and the name of more than one secured
16 party. "

17 Section 75. Section 55-9-504 NMSA 1978 (being Laws 1961,
18 Chapter 96, Section 9-504, as amended) is repealed and a new
19 Section 55-9-504 NMSA 1978 is enacted to read:

20 "55-9-504. [NEW MATERIAL] INDICATION OF COLLATERAL. -- A
21 financing statement sufficiently indicates the collateral that it
22 covers if the financing statement provides:

23 (1) a description of the collateral pursuant to
24 Section 55-9-108 NMSA 1978; or

25 (2) an indication that the financing statement covers

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1 all assets or all personal property. "

2 Section 76. Section 55-9-505 NMSA 1978 (being Laws 1961,
3 Chapter 96, Section 9-505, as amended) is repealed and a new
4 Section 55-9-505 NMSA 1978 is enacted to read:

5 "55-9-505. [NEW MATERIAL] FILING AND COMPLIANCE WITH OTHER
6 STATUTES AND TREATIES FOR CONSIGNMENTS, LEASES, OTHER BAILMENTS
7 AND OTHER TRANSACTIONS. --

8 (a) A consignor, lessor, or other bailor of goods, a
9 licensor or a buyer of a payment intangible or promissory note
10 may file a financing statement, or may comply with a statute,
11 regulation or treaty described in Subsection (a) of Section
12 55-9-311 NMSA 1978, using the terms "consignor", "consignee",
13 "lessor", "lessee", "bailor", "bailee", "licensor", "licensee",
14 "owner", "registered owner", "buyer", "seller" or words of
15 similar import, instead of the terms "secured party" and
16 "debtor".

17 (b) Sections 55-9-501 through 55-9-526 NMSA 1978
18 apply to the filing of a financing statement under Subsection (a)
19 of this section and, as appropriate, to compliance that is
20 equivalent to filing a financing statement under Subsection (b)
21 of Section 55-9-311 NMSA 1978, but the filing or compliance is
22 not of itself a factor in determining whether the collateral
23 secures an obligation. If it is determined for another reason
24 that the collateral secures an obligation, a security interest
25 held by the consignor, lessor, bailor, licensor, owner or buyer

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1 which attaches to the collateral is perfected by the filing or
2 compliance. "

3 Section 77. Section 55-9-506 NMSA 1978 (being Laws 1961,
4 Chapter 96, Section 9-506) is repealed and a new Section 55-9-506
5 NMSA 1978 is enacted to read:

6 "55-9-506. [NEW MATERIAL] EFFECT OF ERRORS OR OMISSIONS. --

7 (a) A financing statement substantially satisfying
8 the requirements of Sections 55-9-501 through 55-9-526 NMSA 1978
9 is effective, even if it has minor errors or omissions, unless
10 the errors or omissions make the financing statement seriously
11 misleading.

12 (b) Except as otherwise provided in Subsection (c) of
13 this section, a financing statement that fails sufficiently to
14 provide the name of the debtor in accordance with Subsection (a)
15 of Section 55-9-503 NMSA 1978 is seriously misleading.

16 (c) If a search of the records of the filing office
17 under the debtor's correct name, using the filing office's
18 standard search logic, if any, would disclose a financing
19 statement that fails sufficiently to provide the name of the
20 debtor in accordance with Subsection (a) of Section 55-9-503 NMSA
21 1978, the name provided does not make the financing statement
22 seriously misleading.

23 (d) For purposes of Subsection (b) of Section
24 55-9-508 NMSA 1978, the "debtor's correct name" in Subsection (c)
25 of this section means the correct name of the new debtor. "

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1 Section 78. Section 55-9-507 NMSA 1978 (being Laws 1961,
2 Chapter 96, Section 9-507) is repealed and a new Section 55-9-507
3 NMSA 1978 is enacted to read:

4 "55-9-507. [NEW MATERIAL] EFFECT OF CERTAIN EVENTS ON
5 EFFECTIVENESS OF FINANCING STATEMENT. --

6 (a) A filed financing statement remains effective
7 with respect to collateral that is sold, exchanged, leased,
8 licensed or otherwise disposed of and in which a security
9 interest or agricultural lien continues, even if the secured
10 party knows of or consents to the disposition.

11 (b) Except as otherwise provided in Subsection (c) of
12 this section and Section 55-9-508 NMSA 1978, a financing
13 statement is not rendered ineffective if, after the financing
14 statement is filed, the information provided in the financing
15 statement becomes seriously misleading under Section 55-9-506
16 NMSA 1978.

17 (c) If a debtor so changes its name that a filed
18 financing statement becomes seriously misleading under Section
19 55-9-506 NMSA 1978:

20 (1) the financing statement is effective to
21 perfect a security interest in collateral acquired by the debtor
22 before, or within four months after, the change; and

23 (2) the financing statement is not effective to
24 perfect a security interest in collateral acquired by the debtor
25 more than four months after the change, unless an amendment to

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1 the financing statement which renders the financing statement not
2 seriously misleading is filed within four months after the
3 change. "

4 Section 79. A new Section 55-9-508 NMSA 1978 is enacted to
5 read:

6 "55-9-508. [NEW MATERIAL] EFFECTIVENESS OF FINANCING
7 STATEMENT IF NEW DEBTOR BECOMES BOUND BY SECURITY AGREEMENT. --

8 (a) Except as otherwise provided in this section, a
9 filed financing statement naming an original debtor is effective
10 to perfect a security interest in collateral in which a new
11 debtor has or acquires rights to the extent that the financing
12 statement would have been effective had the original debtor
13 acquired rights in the collateral.

14 (b) If the difference between the name of the
15 original debtor and that of the new debtor causes a filed
16 financing statement that is effective under Subsection (a) of
17 this section to be seriously misleading under Section 55-9-506
18 NMSA 1978:

19 (1) the financing statement is effective to
20 perfect a security interest in collateral acquired by the new
21 debtor before, and within four months after, the new debtor
22 becomes bound under Subsection (d) of Section 55-9-203 NMSA 1978;
23 and

24 (2) the financing statement is not effective to
25 perfect a security interest in collateral acquired by the new

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1 debtor more than four months after the new debtor becomes bound
2 under Subsection (d) of Section 55-9-203 NMSA 1978 unless an
3 initial financing statement providing the name of the new debtor
4 is filed before the expiration of that time.

5 (c) This section does not apply to collateral as to
6 which a filed financing statement remains effective against the
7 new debtor under Subsection (a) of Section 55-9-507 NMSA 1978."

8 Section 80. A new Section 55-9-509 NMSA 1978 is enacted to
9 read:

10 "55-9-509. [NEW MATERIAL] PERSONS ENTITLED TO FILE A
11 RECORD. --

12 (a) A person may file an initial financing statement,
13 amendment that adds collateral covered by a financing statement
14 or amendment that adds a debtor to a financing statement only if:

15 (1) the debtor authorizes the filing in an
16 authenticated record or pursuant to Subsection (b) or (c) of this
17 section; or

18 (2) the person holds an agricultural lien that
19 has become effective at the time of filing and the financing
20 statement covers only collateral in which the person holds an
21 agricultural lien.

22 (b) By authenticating or becoming bound as debtor by
23 a security agreement, a debtor or new debtor authorizes the
24 filing of an initial financing statement, and an amendment,
25 covering:

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1 (1) the collateral described in the security
2 agreement; and

3 (2) property that becomes collateral under
4 Paragraph (2) of Subsection (a) of Section 55-9-315 NMSA 1978,
5 whether or not the security agreement expressly covers proceeds.

6 (c) By acquiring collateral in which a security
7 interest or agricultural lien continues under Paragraph (1) of
8 Subsection (a) of Section 55-9-315 NMSA 1978, a debtor authorizes
9 the filing of an initial financing statement, and an amendment,
10 covering the collateral and property that becomes collateral
11 under Paragraph (2) of Subsection (a) of Section 55-9-315 NMSA
12 1978.

13 (d) A person may file an amendment other than an
14 amendment that adds collateral covered by a financing statement
15 or an amendment that adds a debtor to a financing statement only
16 if:

17 (1) the secured party of record authorizes the
18 filing; or

19 (2) the amendment is a termination statement
20 for a financing statement as to which the secured party of record
21 has failed to file or send a termination statement as required by
22 Subsection (a) or (c) of Section 55-9-513 NMSA 1978, the debtor
23 authorizes the filing and the termination statement indicates
24 that the debtor authorized it to be filed.

25 (e) If there is more than one secured party of record

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1 for a financing statement, each secured party of record may
2 authorize the filing of an amendment under Subsection (d) of this
3 section. "

4 Section 81. A new Section 55-9-510 NMSA 1978 is enacted to
5 read:

6 "55-9-510. [NEW MATERIAL] EFFECTIVENESS OF FILED RECORD. --

7 (a) A filed record is effective only to the extent
8 that it was filed by a person that may file it under Section
9 55-9-509 NMSA 1978.

10 (b) A record authorized by one secured party of
11 record does not affect the financing statement with respect to
12 another secured party of record.

13 (c) A continuation statement that is not filed within
14 the six-month period prescribed by Subsection (d) of Section
15 55-9-515 NMSA 1978 is ineffective. "

16 Section 82. A new Section 55-9-511 NMSA 1978 is enacted to
17 read:

18 "55-9-511. [NEW MATERIAL] SECURED PARTY OF RECORD. --

19 (a) A secured party of record with respect to a
20 financing statement is a person whose name is provided as the
21 name of the secured party or a representative of the secured
22 party in an initial financing statement that has been filed. If
23 an initial financing statement is filed under Subsection (a) of
24 Section 55-9-514 NMSA 1978, the assignee named in the initial
25 financing statement is the secured party of record with respect

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1 to the financing statement.

2 (b) If an amendment of a financing statement which
3 provides the name of a person as a secured party or a
4 representative of a secured party is filed, the person named in
5 the amendment is a secured party of record. If an amendment is
6 filed under Subsection (b) of Section 55-9-514 NMSA 1978, the
7 assignee named in the amendment is a secured party of record.

8 (c) A person remains a secured party of record until
9 the filing of an amendment of the financing statement which
10 deletes the person. "

11 Section 83. A new Section 55-9-512 NMSA 1978 is enacted to
12 read:

13 "55-9-512. [NEW MATERIAL] AMENDMENT OF FINANCING
14 STATEMENT. --

15 (a) Subject to Section 55-9-509 NMSA 1978, a person
16 may add or delete collateral covered by, continue or terminate
17 the effectiveness of, or, subject to Subsection (e) of this
18 section, otherwise amend the information provided in, a financing
19 statement by filing an amendment that:

20 (1) identifies, by its file number, the initial
21 financing statement to which the amendment relates; and

22 (2) if the amendment relates to an initial
23 financing statement filed in a county clerk's office, provides
24 the information specified in Subsection (b) of Section 55-9-502
25 NMSA 1978.

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1 (b) Except as otherwise provided in Section 55-9-515
2 NMSA 1978, the filing of an amendment does not extend the period
3 of effectiveness of the financing statement.

4 (c) A financing statement that is amended by an
5 amendment that adds collateral is effective as to the added
6 collateral only from the date of the filing of the amendment.

7 (d) A financing statement that is amended by an
8 amendment that adds a debtor is effective as to the added debtor
9 only from the date of the filing of the amendment.

10 (e) An amendment is ineffective to the extent it:

11 (1) purports to delete all debtors and fails to
12 provide the name of a debtor to be covered by the financing
13 statement; or

14 (2) purports to delete all secured parties of
15 record and fails to provide the name of a new secured party of
16 record. "

17 Section 84. A new Section 55-9-513 NMSA 1978 is enacted to
18 read:

19 "55-9-513. [NEW MATERIAL] TERMINATION STATEMENT. --

20 (a) A secured party shall cause the secured party of
21 record for a financing statement to file a termination statement
22 for the financing statement if the financing statement covers
23 consumer goods and:

24 (1) there is no obligation secured by the
25 collateral covered by the financing statement and no commitment

1 to make an advance, incur an obligation or otherwise give value;
2 or

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

5 (b) To comply with Subsection (a) of this section, a
6 secured party shall cause the secured party of record to file the
7 termination statement:

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

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

14 (c) In cases not governed by Subsection (a) of this
15 section, within twenty days after a secured party receives an
16 authenticated demand from a debtor, the secured party shall cause
17 the secured party of record for a financing statement to send to
18 the debtor a termination statement for the financing statement or
19 file the termination statement in the filing office if:

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

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

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

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

9 (d) Except as otherwise provided in Section 55-9-510
10 NMSA 1978, upon the filing of a termination statement with the
11 filing office, the financing statement to which the termination
12 statement relates ceases to be effective. Except as otherwise
13 provided in Section 55-9-510 NMSA 1978, for purposes of
14 Subsection (c) of Section 55-9-519, Subsection (a) of Section
15 55-9-522 and Subsection (b) of Section 55-9-523 NMSA 1978, the
16 filing with the filing office of a termination statement relating
17 to a financing statement that indicates that the debtor is a
18 transmitting utility also causes the effectiveness of the
19 financing statement to lapse."

20 Section 85. A new Section 55-9-514 NMSA 1978 is enacted to
21 read:

22 "55-9-514. [NEW MATERIAL] ASSIGNMENT OF POWERS OF SECURED
23 PARTY OF RECORD. --

24 (a) Except as otherwise provided in Subsection (c) of
25 this section, an initial financing statement may reflect an

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1 assignment of all of the secured party's power to authorize an
2 amendment to the financing statement by providing the name and
3 mailing address of the assignee as the name and address of the
4 secured party.

5 (b) Except as otherwise provided in Subsection (c) of
6 this section, a secured party of record may assign of record all
7 or part of its power to authorize an amendment to a financing
8 statement by filing in the filing office an amendment of the
9 financing statement which:

10 (1) identifies, by its file number, the initial
11 financing statement to which it relates;

12 (2) provides the name of the assignor; and

13 (3) provides the name and mailing address of
14 the assignee.

15 (c) An assignment of a record of a security interest
16 in a fixture covered by a record of a mortgage which is effective
17 as a financing statement filed as a fixture filing pursuant to
18 the provisions of Subsection (c) of Section 55-9-502 NMSA 1978
19 may be made only by an assignment of record of the mortgage in
20 the manner provided by law of this state other than the Uniform
21 Commercial Code. "

22 Section 86. A new Section 55-9-515 NMSA 1978 is enacted to
23 read:

24 "55-9-515. [NEW MATERIAL] DURATION AND EFFECTIVENESS OF
25 FINANCING STATEMENT-- EFFECT OF LAPSED FINANCING STATEMENT. --

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1 (a) Except as otherwise provided in Subsections (b),
2 (e), (f) and (g) of this section, a filed financing statement is
3 effective for a period of five years after the date of filing.

4 (b) Except as otherwise provided in Subsections (e),
5 (f) and (g) of this section, an initial financing statement filed
6 in connection with a public-finance transaction or manufactured-
7 home transaction is effective for a period of thirty years after
8 the date of filing if it indicates that it is filed in connection
9 with a public-finance transaction or manufactured-home
10 transaction.

11 (c) The effectiveness of a filed financing statement
12 lapses on the expiration of the period of its effectiveness
13 unless before the lapse a continuation statement is filed
14 pursuant to Subsection (d) of this section. Upon lapse, a
15 financing statement ceases to be effective and any security
16 interest or agricultural lien that was perfected by the financing
17 statement becomes unperfected unless the security interest is
18 perfected otherwise. If the security interest or agricultural
19 lien becomes unperfected upon lapse, it is deemed never to have
20 been perfected as against a purchaser of the collateral for
21 value.

22 (d) A continuation statement may be filed only within
23 six months before the expiration of the five-year period
24 specified in Subsection (a) of this section or the thirty-year
25 period specified in Subsection (b) of this section, whichever is

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1 applicable.

2 (e) Except as otherwise provided in Section 55-9-510
3 NMSA 1978, upon timely filing of a continuation statement, the
4 effectiveness of the initial financing statement continues for a
5 period of five years commencing on the day on which the financing
6 statement would have become ineffective in the absence of the
7 filing. Upon the expiration of the five-year period, the
8 financing statement lapses in the same manner as provided in
9 Subsection (c) of this section, unless, before the lapse, another
10 continuation statement is filed pursuant to Subsection (d) of
11 this section. Succeeding continuation statements may be filed in
12 the same manner to continue the effectiveness of the initial
13 financing statement.

14 (f) If a debtor is a transmitting utility and a filed
15 financing statement so indicates, the financing statement is
16 effective until a termination statement is filed. The filing
17 officer may require proof of the debtor's authority to operate as
18 a transmitting utility as a condition of filing the financing
19 statement.

20 (g) A record of a mortgage that is effective as a
21 financing statement filed as a fixture filing under Subsection
22 (c) of Section 55-9-502 NMSA 1978 remains effective as a
23 financing statement filed as a fixture filing until the mortgage
24 is released or satisfied of record or its effectiveness otherwise
25 terminates as to the real property. "

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1 Section 87. A new Section 55-9-516 NMSA 1978 is enacted to
2 read:

3 "55-9-516. [NEW MATERIAL] WHAT CONSTITUTES FILING--
4 EFFECTIVENESS OF FILING. --

5 (a) Except as otherwise provided in Subsection (b) of
6 this section, communication of a record to a filing office and
7 tender of the filing fee or acceptance of the record by the
8 filing office constitutes filing.

9 (b) Filing does not occur with respect to a record
10 that the secretary of state refuses to accept because:

11 (1) the record is not communicated by a method
12 or medium of communication authorized by the filing office;

13 (2) an amount equal to or greater than the
14 applicable filing fee is not tendered;

15 (3) the filing office is unable to index the
16 record because:

17 (A) in the case of an initial financing
18 statement, the record does not provide a name for the debtor; or

19 (B) in the case of an amendment or
20 correction statement, the record:

21 (i) does not identify the initial
22 financing statement as required by Section 55-9-512 or 55-9-518
23 NMSA 1978, as applicable; or

24 (ii) identifies an initial financing
25 statement whose effectiveness has lapsed under Section 55-9-515

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1 NMSA 1978;

2 (4) in the case of an initial financing
3 statement or an amendment that adds a secured party of record,
4 the record does not provide a name and mailing address for the
5 secured party of record;

6 (5) in the case of an initial financing
7 statement or an amendment that provides a name of a debtor which
8 was not previously provided in the financing statement to which
9 the amendment relates, the record does not:

10 (A) provide a mailing address for the
11 debtor;

12 (B) indicate whether the debtor is an
13 individual or an organization; or

14 (C) if the financing statement indicates
15 that the debtor is an organization, provide:

16 (i) a type of organization for the
17 debtor;

18 (ii) a jurisdiction of organization
19 for the debtor; and

20 (iii) an organizational
21 identification number for the debtor or indicate that the debtor
22 has none;

23 (6) in the case of an assignment reflected in
24 an initial financing statement under Subsection (a) of Section
25 55-9-514 NMSA 1978 or an amendment filed under Subsection (b) of

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1 Section 55-9-514 NMSA 1978, the record does not provide a name
2 and mailing address for the assignee; or

3 (7) in the case of a continuation statement,
4 the record is not filed within the six-month period prescribed by
5 Subsection (d) of Section 55-9-515 NMSA 1978.

6 (c) For purposes of Subsection (b) of this section:

7 (1) a record does not provide information if
8 the secretary of state is unable to read or decipher the
9 information; and

10 (2) a record that does not indicate that it is
11 an amendment or identify an initial financing statement to which
12 it relates, as required by Section 55-9-512, 55-9-514 or 55-9-518
13 NMSA 1978, is an initial financing statement.

14 (d) A record that is communicated to the filing
15 office with tender of the filing fee, but which the secretary of
16 state refuses to accept for a reason other than one set forth in
17 Subsection (b) of this section, is effective as a filed record
18 except as against a purchaser of the collateral which gives value
19 in reasonable reliance upon the absence of the record from the
20 files. "

21 Section 88. A new Section 55-9-517 NMSA 1978 is enacted to
22 read:

23 "55-9-517. [NEW MATERIAL] EFFECT OF INDEXING ERRORS. --

24 The failure of the filing office to index a record correctly does
25 not affect the effectiveness of the filed record. "

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1 Section 89. A new Section 55-9-518 NMSA 1978 is enacted to
2 read:

3 "55-9-518. [NEW MATERIAL] CLAIM CONCERNING INACCURATE OR
4 **WRONGFULLY FILED RECORD.** --

5 (a) A person may file in the filing office a
6 correction statement with respect to a record indexed there under
7 the person's name if the person believes that the record is
8 inaccurate or was wrongfully filed.

9 (b) A correction statement must:

10 (1) identify the record to which it relates by
11 the file number assigned to the initial financing statement to
12 which the record relates;

13 (2) indicate that it is a correction statement;
14 and

15 (3) provide the basis for the person's belief
16 that the record is inaccurate and indicate the manner in which
17 the person believes the record should be amended to cure any
18 inaccuracy or provide the basis for the person's belief that the
19 record was wrongfully filed.

20 (c) The filing of a correction statement does not
21 affect the effectiveness of an initial financing statement or
22 other filed record. "

23 Section 90. A new Section 55-9-519 NMSA 1978 is enacted to
24 read:

25 "55-9-519. [NEW MATERIAL] NUMBERING, MAINTAINING AND

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1 INDEXING RECORDS-- COMMUNICATING INFORMATION PROVIDED IN
2 RECORDS. --

3 (a) For each record filed in a filing office, the
4 filing office shall:

- 5 (1) assign a unique number to the filed record;
6 (2) create a record that bears the number
7 assigned to the filed record and the date and time of filing; and
8 (3) maintain the filed record for public
9 inspection.

10 (b) The filing office shall maintain a capability to
11 retrieve a record by the name of the debtor and by the file
12 number assigned to the initial financing statement to which the
13 record relates. The secretary of state shall also maintain a
14 capability to associate and retrieve with one another an initial
15 financing statement and each filed record relating to the initial
16 financing statement.

17 (c) The filing office may not remove a debtor's name
18 from the index until one year after the effectiveness of a
19 financing statement naming the debtor lapses under Section
20 55-9-515 NMSA 1978 with respect to all secured parties of record.

21 (d) The secretary of state shall perform the acts
22 required by Subsections (a) through (c) of this section at the
23 time and in the manner prescribed by filing-office rule, but not
24 later than three business days after the filing office receives
25 the record in question. "

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1 Section 91. A new Section 55-9-520 NMSA 1978 is enacted to
2 read:

3 "55-9-520. [NEW MATERIAL] ACCEPTANCE AND REFUSAL TO ACCEPT
4 RECORD. --

5 (a) The secretary of state shall refuse to accept a
6 record for filing for a reason set forth in Subsection (b) of
7 Section 55-9-516 NMSA 1978 and may refuse to accept a record for
8 filing only for a reason set forth in that subsection.

9 (b) If a filing office refuses to accept a record for
10 filing, it shall communicate to the person that presented the
11 record the fact of and reason for the refusal and the date and
12 time the record would have been filed had the filing office
13 accepted it. The communication must be made at the time and in
14 the manner prescribed by filing-office rule or by other law.

15 (c) A filed financing statement satisfying
16 Subsections (a) and (b) of Section 55-9-502 NMSA 1978 is
17 effective, even if the secretary of state is required to refuse
18 to accept it for filing under Subsection (a) of this section.
19 However, Section 55-9-338 NMSA 1978 applies to a filed financing
20 statement providing information described in Paragraph (5) of
21 Subsection (b) of Section 55-9-516 NMSA 1978 which is incorrect
22 at the time the financing statement is filed.

23 (d) If a record communicated to a filing office
24 provides information that relates to more than one debtor, this
25 part applies as to each debtor separately. "

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1 Section 92. A new Section 55-9-521 NMSA 1978 is enacted to
2 read:

3 "55-9-521. [NEW MATERIAL] FORM OF FINANCING STATEMENT AND
4 AMENDMENT--RECORDS. --

5 (a) A filing office that accepts written records may
6 not refuse to accept a financing statement or amendment that is
7 in the form and format prescribed by the secretary of state,
8 except for a reason set forth in Subsection (b) of Section
9 55-9-516 NMSA 1978.

10 (b) Prior to July 1, 2001, the secretary of state
11 shall prescribe by rule the form and format of a written
12 financing statement and amendment.

13 (c) A filing officer shall prescribe by rule the use
14 of one other medium, other than writing, for filing records under
15 Chapter 55, Article 9 NMSA 1978. The filing officer may also
16 prescribe by rule mandatory requirements for the medium to ensure
17 compatibility with the filing officer's system of transmission,
18 receipt, storage, indexing and retrieval of records.

19 (d) A rule prescribed pursuant to this section is
20 subject to the provisions of Section 55-9-526 NMSA 1978. "

21 Section 93. A new Section 55-9-522 NMSA 1978 is enacted to
22 read:

23 "55-9-522. [NEW MATERIAL] MAINTENANCE AND DESTRUCTION OF
24 RECORDS. --

25 (a) The filing office shall maintain a record of the

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1 information provided in a filed financing statement for at least
2 one year after the effectiveness of the financing statement has
3 lapsed under Section 55-9-515 NMSA 1978 with respect to all
4 secured parties of record. The record must be retrievable by
5 using the name of the debtor and by using the file number
6 assigned to the initial financing statement to which the record
7 relates.

8 (b) Except to the extent that a statute governing
9 disposition of public records provides otherwise, the filing
10 office immediately may destroy any written record evidencing a
11 financing statement. However, if the filing office destroys a
12 written record, it shall maintain another record of the financing
13 statement which complies with Subsection (a) of this section."

14 Section 94. A new Section 55-9-523 NMSA 1978 is enacted to
15 read:

16 "55-9-523. [NEW MATERIAL] INFORMATION FROM SECRETARY OF
17 STATE. --

18 (a) If a person that files a written record requests
19 an acknowledgment of the filing, the secretary of state shall
20 send to the person an image of the record showing the number
21 assigned to the record pursuant to Paragraph (1) of Subsection
22 (a) of Section 55-9-519 NMSA 1978 and the date and time of the
23 filing of the record. However, if the person furnishes a copy of
24 the record to the filing office, the filing office may instead:

25 (1) note upon the copy the number assigned to

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1 the record pursuant to Paragraph (1) of Subsection (a) of Section
2 55-9-519 NMSA 1978 and the date and time of the filing of the
3 record; and

4 (2) send the copy to the person.

5 (b) The secretary of state shall make available to
6 the general public records indexed both by the names of debtors
7 and by unique file numbers, based upon which copies may be
8 obtained.

9 (c) In complying with its duty under Subsection (b)
10 of this section, the secretary of state may communicate
11 information in any medium. However, if requested, the filing
12 office shall communicate information by issuing its written
13 certificate.

14 (d) If a person files a record other than a written
15 record that is communicated by a method or medium of
16 communication authorized by the filing office, the filing office
17 shall communicate to the person an acknowledgment that provides:

18 (1) the information in the record;

19 (2) the number assigned to the record pursuant
20 to Paragraph (1) of Subsection (a) of Section 55-9-519 NMSA 1978;
21 and

22 (3) the date and time of the filing of the
23 record.

24 (e) The secretary of state shall perform the action
25 required by Subsections (a) through (d) of this section at the

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1 time and in the manner prescribed by filing-office rule, but not
2 later than three business days after the filing office receives
3 the request. "

4 Section 95. A new Section 55-9-524 NMSA 1978 is enacted to
5 read:

6 "55-9-524 [NEW MATERIAL] DELAY BY SECRETARY OF STATE. --
7 Delay by the secretary of state beyond the time limits prescribed
8 in Section 55-9-519 NMSA 1978 and Section 55-9-523 NMSA 1978 is
9 excused if:

10 (1) the delay is caused by interruption of
11 communication or computer facilities, war, emergency conditions,
12 failure of equipment, lack of appropriations or other
13 circumstances beyond control of the secretary of state; and

14 (2) the secretary of state exercises reasonable
15 diligence under the circumstances. "

16 Section 96. A new Section 55-9-525 NMSA 1978 is enacted to
17 read:

18 "55-9-525. [NEW MATERIAL] FEES. --

19 (a) Except as provided in Subsections (b) and (d) of
20 this section, the fee for filing and indexing a record pursuant
21 to Section 55-9-501 through 55-9-526 NMSA 1978 is:

22 (1) if the record is communicated in writing in
23 a form prescribed by the secretary of state:

24 (i) twenty dollars (\$20.00) if the record
25 consists of one, two or three pages;

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1 (ii) forty dollars (\$40.00) if the record
2 consists of at least four pages, but no more than twenty-five
3 pages; and

4 (iii) one hundred dollars (\$100) if the
5 record consists of more than twenty-five pages, plus five dollars
6 (\$5.00) for each page;

7 (2) if the record is communicated in writing,
8 but not in a form prescribed by the secretary of state, double
9 the amount specified in Paragraph (1) of this subsection for a
10 record of the same length;

11 (3) if the record is communicated by facsimile
12 or a similar medium and the use of that medium is authorized by
13 filing-office rule, the amount specified in Paragraph (1) of
14 this subsection for a record of the same length; and

15 (4) if the record is communicated in any other
16 medium authorized by filing-office rule:

17 (i) ten dollars (\$10.00) if the record
18 consists of fifteen thousand or fewer bytes;

19 (ii) twenty dollars (\$20.00) if the record
20 consists of more than fifteen thousand bytes, but no more than
21 thirty thousand bytes; and

22 (iii) fifty dollars (\$50.00) if the record
23 consists of more than thirty thousand bytes, plus five dollars
24 (\$5.00) per each thousand bytes of the record.

25 (b) Except as otherwise provided in Subsection (d) of

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1 this section, the fee for filing and indexing an initial
2 financing statement of the following kind is the amount specified
3 in Subsection (a) of this section plus:

4 (1) one hundred dollars (\$100) if the financing
5 statement indicates that it is filed in connection with a public-
6 finance transaction;

7 (2) one hundred dollars (\$100) if the financing
8 statement states that a debtor is a transmitting utility; and

9 (3) one hundred dollars (\$100) if the financing
10 statement indicates that it is filed in connection with a
11 manufactured-home transaction.

12 (c) The number of names required to be indexed does
13 not affect the amount the fee set forth in Subsections (a) and
14 (b) of this section.

15 (d) This section does not require a fee with respect
16 to a record of a mortgage which is effective as a financing
17 statement filed as a fixture filing or as a financing statement
18 covering as-extracted collateral or timber to be cut under
19 Subsection (c) of Section 55-9-502 NMSA 1978. However, the
20 recording fees that otherwise would be applicable to the record
21 of the mortgage apply. "

22 Section 97. A new Section 55-9-526 NMSA 1978 is enacted to
23 read:

24 "55-9-526. [NEW MATERIAL] FILING-OFFICE RULES. -- The
25 secretary of state shall adopt and publish rules to implement

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1 Sections 55-9-501 through 55-9-526 NMSA 1978. The filing-office
2 rules must be:

3 (a) consistent with Chapter 55, Article 9 NMSA 1978;
4 and

5 (b) adopted and published in accordance with the
6 State Rules Act."

7 Section 98. A new Section 55-9-601 NMSA 1978 is enacted to
8 read:

9 "55-9-601. [NEW MATERIAL] RIGHTS AFTER DEFAULT-- JUDICIAL
10 ENFORCEMENT-- CONSIGNOR OR BUYER OF ACCOUNTS, CHATTEL PAPER,
11 PAYMENT INTANGIBLES OR PROMISSORY NOTES. --

12 (a) After default, a secured party has the rights
13 provided in Sections 55-9-601 through 55-9-628 NMSA 1978 and,
14 except as otherwise provided in Section 55-9-602 NMSA 1978, those
15 provided by agreement of the parties. A secured party:

16 (1) may reduce a claim to judgment, foreclose
17 or otherwise enforce the claim, security interest or agricultural
18 lien by any available judicial procedure; and

19 (2) if the collateral is documents, may proceed
20 either as to the documents or as to the goods they cover.

21 (b) A secured party in possession of collateral or
22 control of collateral under Section 55-9-104, 55-9-105, 55-9-106
23 or 55-9-107 NMSA 1978 has the rights and duties provided in
24 Section 55-9-207 NMSA 1978.

25 (c) The rights under Subsections (a) and (b) of this

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1 section are cumulative and may be exercised simultaneously.

2 (d) Except as otherwise provided in Subsection (g) of
3 this section and Section 55-9-605 NMSA 1978, after default, a
4 debtor and an obligor have the rights provided in Sections
5 55-9-601 through 55-9-628 NMSA 1978 and by agreement of the
6 parties.

7 (e) If a secured party has reduced its claim to
8 judgment, the lien of any levy that may be made upon the
9 collateral by virtue of an execution based upon the judgment
10 relates back to the earliest of:

11 (1) the date of perfection of the security
12 interest or agricultural lien in the collateral;

13 (2) the date of filing a financing statement
14 covering the collateral; or

15 (3) any date specified in a statute under which
16 the agricultural lien was created.

17 (f) A sale pursuant to an execution is a foreclosure
18 of the security interest or agricultural lien by judicial
19 procedure within the meaning of this section. A secured party
20 may purchase at the sale and thereafter hold the collateral free
21 of any other requirements of Chapter 55, Article 9 NMSA 1978.

22 (g) Except as otherwise provided in Subsection (c) of
23 Section 55-9-607 NMSA 1978 this part imposes no duties upon a
24 secured party that is a consignor or is a buyer of accounts,
25 chattel paper, payment intangibles or promissory notes. "

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1 Section 99. A new Section 55-9-602 NMSA 1978 is enacted to
2 read:

3 "55-9-602. [NEW MATERIAL] WAIVER AND VARIANCE OF RIGHTS
4 AND DUTIES. -- Except as otherwise provided in Section 55-9-624
5 NMSA 1978, to the extent that they give rights to a debtor or
6 obligor and impose duties on a secured party, the debtor or
7 obligor may not waive or vary the rules stated in the following
8 listed sections:

9 (1) Subparagraph (C) of Paragraph (4) of Subsection
10 (b) of Section 55-9-207 NMSA 1978, which deals with use and
11 operation of the collateral by the secured party;

12 (2) Section 55-9-210 NMSA 1978, which deals with
13 requests for an accounting and requests concerning a list of
14 collateral and statement of account;

15 (3) Subsection (c) of Section 55-9-607 NMSA 1978,
16 which deals with collection and enforcement of collateral;

17 (4) Subsection (a) of Section 55-9-608 and Subsection
18 (c) of Section 55-9-615 NMSA 1978 to the extent that they deal
19 with application or payment of noncash proceeds of collection,
20 enforcement or disposition;

21 (5) Subsection (a) of Section 55-9-608 and Subsection
22 (d) of Section 55-9-615 NMSA 1978 to the extent that they require
23 accounting for or payment of surplus proceeds of collateral;

24 (6) Section 55-9-609 NMSA 1978 to the extent that it
25 imposes upon a secured party that takes possession of collateral

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1 without judicial process the duty to do so without breach of the
2 peace;

3 (7) Subsection (b) of Section 55-9-610, Sections
4 55-9-611, 55-9-613 and 55-9-614 NMSA 1978, which deal with
5 disposition of collateral;

6 (8) Subsection (f) of Section 55-9-615 NMSA 1978,
7 which deals with calculation of a deficiency or surplus when a
8 disposition is made to the secured party, a person related to the
9 secured party or a secondary obligor;

10 (9) Section 55-9-616 NMSA 1978, which deals with
11 explanation of the calculation of a surplus or deficiency;

12 (10) Sections 55-9-620 through 55-9-622 NMSA 1978,
13 which deal with acceptance of collateral in satisfaction of
14 obligation;

15 (11) Section 55-9-623 NMSA 1978, which deals with
16 redemption of collateral;

17 (12) Section 55-9-624 NMSA 1978, which deals with
18 permissible waivers; and

19 (13) Sections 55-9-625 and 55-9-626 NMSA 1978, which
20 deal with the secured party's liability for failure to comply
21 with Chapter 55, Article 9 NMSA 1978. "

22 Section 100. A new Section 55-9-603 NMSA 1978 is enacted
23 to read:

24 "55-9-603. [NEW MATERIAL] AGREEMENT ON STANDARDS
25 CONCERNING RIGHTS AND DUTIES. --

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1 (a) The parties may determine by agreement the
2 standards measuring the fulfillment of the rights of a debtor or
3 obligor and the duties of a secured party under a rule stated in
4 Section 55-9-602 NMSA 1978 if the standards are not manifestly
5 unreasonable.

6 (b) Subsection (a) of this section does not apply to
7 the duty under Section 55-9-609 NMSA 1978 to refrain from
8 breaching the peace. "

9 Section 101. A new Section 55-9-604 NMSA 1978 is enacted
10 to read:

11 "55-9-604. [NEW MATERIAL] PROCEDURE IF SECURITY AGREEMENT
12 COVERS REAL PROPERTY OR FIXTURES. --

13 (a) If a security agreement covers both personal and
14 real property, a secured party may proceed:

15 (1) under Sections 55-9-601 through 55-9-628
16 NMSA 1978 as to the personal property without prejudicing any
17 rights with respect to the real property; or

18 (2) as to both the personal property and the
19 real property in accordance with the rights with respect to the
20 real property, in which case the other provisions of Sections
21 55-9-601 through 55-9-628 NMSA 1978 do not apply.

22 (b) Subject to Subsection (c) of this section, if a
23 security agreement covers goods that are or become fixtures, a
24 secured party may proceed:

25 (1) under Sections 55-9-601 through 55-9-628

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1 NMSA 1978; or

2 (2) in accordance with the rights with respect
3 to real property, in which case the other provisions of Sections
4 55-9-601 through 55-9-628 NMSA 1978 do not apply.

5 (c) Subject to the other provisions of Sections
6 55-9-601 through 55-9-628 NMSA 1978, if a secured party holding a
7 security interest in fixtures has priority over all owners and
8 encumbrancers of the real property, the secured party, after
9 default, may remove the collateral from the real property.

10 (d) A secured party that removes collateral shall
11 promptly reimburse any encumbrancer or owner of the real
12 property, other than the debtor, for the cost of repair of any
13 physical injury caused by the removal. The secured party need
14 not reimburse the encumbrancer or owner for any diminution in
15 value of the real property caused by the absence of the goods
16 removed or by any necessity of replacing them. A person entitled
17 to reimbursement may refuse permission to remove until the
18 secured party gives adequate assurance for the performance of the
19 obligation to reimburse. "

20 Section 102. A new Section 55-9-605 NMSA 1978 is enacted
21 to read:

22 "55-9-605. [NEW MATERIAL] UNKNOWN DEBTOR OR SECONDARY
23 OBLIGOR. --A secured party does not owe a duty based on its status
24 as secured party:

25 (1) to a person that is a debtor or obligor, unless

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1 the secured party knows:

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

3 (B) the identity of the person; and

4 (C) how to communicate with the person; or

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

8 (A) that the person is a debtor; and

9 (B) the identity of the person. "

10 Section 103. A new Section 55-9-606 NMSA 1978 is enacted
11 to read:

12 "55-9-606. [NEW MATERIAL] TIME OF DEFAULT FOR AGRICULTURAL
13 LIEN. --For purposes of Sections 55-9-601 through 55-9-628 NMSA
14 1978, a default occurs in connection with an agricultural lien at
15 the time the secured party becomes entitled to enforce the lien
16 in accordance with the statute under which it was created. "

17 Section 104. A new Section 55-9-607 NMSA 1978 is enacted
18 to read:

19 "55-9-607. [NEW MATERIAL] COLLECTION AND ENFORCEMENT BY
20 SECURED PARTY. --

21 (a) If so agreed, and in any event after default, a
22 secured party:

23 (1) may notify an account debtor or other
24 person obligated on collateral to make payment or otherwise
25 render performance to or for the benefit of the secured party;

1 (2) may take any proceeds to which the secured
2 party is entitled under Section 55-9-315 NMSA 1978;

3 (3) may enforce the obligations of an account
4 debtor or other person obligated on collateral and exercise the
5 rights of the debtor with respect to the obligation of the
6 account debtor or other person obligated on collateral to make
7 payment or otherwise render performance to the debtor, and with
8 respect to any property that secures the obligations of the
9 account debtor or other person obligated on the collateral;

10 (4) if it holds a security interest in a
11 deposit account perfected by control under Paragraph (1) of
12 Subsection (a) of Section 55-9-104 NMSA 1978, may apply the
13 balance of the deposit account to the obligation secured by the
14 deposit account; and

15 (5) if it holds a security interest in a
16 deposit account perfected by control under Paragraphs (2) or (3)
17 of Subsection (a) of Section 55-9-104 NMSA 1978, may instruct the
18 bank to pay the balance of the deposit account to or for the
19 benefit of the secured party.

20 (b) If necessary to enable a secured party to
21 exercise under Paragraph (3) of Subsection (a) of this section
22 the right of a debtor to enforce a mortgage nonjudicially, the
23 secured party may record in the office in which a record of the
24 mortgage is recorded:

25 (1) a copy of the security agreement that

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1 creates or provides for a security interest in the obligation
2 secured by the mortgage; and

3 (2) the secured party's sworn affidavit in
4 recordable form stating that:

5 (A) a default has occurred; and

6 (B) the secured party is entitled to
7 enforce the mortgage nonjudicially.

8 (c) A secured party shall proceed in a commercially
9 reasonable manner if the secured party:

10 (1) undertakes to collect from or enforce an
11 obligation of an account debtor or other person obligated on
12 collateral; and

13 (2) is entitled to charge back uncollected
14 collateral or otherwise to full or limited recourse against the
15 debtor or a secondary obligor.

16 (d) A secured party may deduct from the collections
17 made pursuant to Subsection (c) of this section reasonable
18 expenses of collection and enforcement, including reasonable
19 attorney fees and legal expenses incurred by the secured party.

20 (e) This section does not determine whether an
21 account debtor, bank or other person obligated on collateral owes
22 a duty to a secured party. "

23 Section 105. A new Section 55-9-608 NMSA 1978 is enacted
24 to read:

25 "55-9-608. [NEW MATERIAL] APPLICATION OF PROCEEDS OF

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1 COLLECTION OR ENFORCEMENT-- LIABILITY FOR DEFICIENCY AND RIGHT TO
2 SURPLUS. --

3 (a) If a security interest or agricultural lien
4 secures payment or performance of an obligation, the following
5 rules apply:

6 (1) A secured party shall apply or pay over for
7 application the cash proceeds of collection or enforcement under
8 Section 55-9-607 NMSA 1978 in the following order to:

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

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

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

22 (2) If requested by a secured party, a holder
23 of a subordinate security interest or other lien shall furnish
24 reasonable proof of the interest or lien within a reasonable
25 time. Unless the holder complies, the secured party need not

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1 comply with the holder's demand under Subparagraph (C) of
2 Paragraph (1) of Subsection (a) of this section.

3 (3) A secured party need not apply or pay over
4 for application noncash proceeds of collection and enforcement
5 under Section 55-9-607 NMSA 1978 unless the failure to do so
6 would be commercially unreasonable. A secured party that applies
7 or pays over for application noncash proceeds shall do so in a
8 commercially reasonable manner.

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

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

16 Section 106. A new Section 55-9-609 NMSA 1978 is enacted
17 to read:

18 "55-9-609. [NEW MATERIAL] SECURED PARTY'S RIGHT TO TAKE
19 POSSESSION AFTER DEFAULT. --

20 (a) After default, a secured party:

21 (1) may take possession of the collateral; and
22 (2) without removal, may render equipment
23 unusable and dispose of collateral on a debtor's premises under
24 Section 55-9-610 NMSA 1978.

25 (b) A secured party may proceed under Subsection (a)

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1 of this section:

2 (1) pursuant to judicial process; or

3 (2) without judicial process, if it proceeds
4 without breach of the peace.

5 (c) If so agreed, and in any event after default, a
6 secured party may require the debtor to assemble the collateral
7 and make it available to the secured party at a place to be
8 designated by the secured party which is reasonably convenient to
9 both parties. "

10 Section 107. A new Section 55-9-610 NMSA 1978 is enacted
11 to read:

12 "55-9-610. [NEW MATERIAL] DISPOSITION OF COLLATERAL AFTER
13 DEFAULT. --

14 (a) After default, a secured party may sell, lease,
15 license or otherwise dispose of any or all of the collateral in
16 its present condition or following any commercially reasonable
17 preparation or processing.

18 (b) Every aspect of a disposition of collateral,
19 including the method, manner, time, place and other terms, must
20 be commercially reasonable. If commercially reasonable, a
21 secured party may dispose of collateral by public or private
22 proceedings, by one or more contracts, as a unit or in parcels,
23 and at any time and place and on any terms.

24 (c) A secured party may purchase collateral:

25 (1) at a public disposition; or

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1 (2) at a private disposition only if the
2 collateral is of a kind that is customarily sold on a recognized
3 market or the subject of widely distributed standard price
4 quotations.

5 (d) A contract for sale, lease, license or other
6 disposition includes the warranties relating to title,
7 possession, quiet enjoyment and the like which by operation of
8 law accompany a voluntary disposition of property of the kind
9 subject to the contract.

10 (e) A secured party may disclaim or modify warranties
11 under Subsection (d) of this section:

12 (1) in a manner that would be effective to
13 disclaim or modify the warranties in a voluntary disposition of
14 property of the kind subject to the contract of disposition; or

15 (2) by communicating to the purchaser a record
16 evidencing the contract for disposition and including an express
17 disclaimer or modification of the warranties.

18 (f) A record is sufficient to disclaim warranties
19 under Subsection (e) of this section if it indicates "There is no
20 warranty relating to title, possession, quiet enjoyment or the
21 like in this disposition" or uses words of similar import. "

22 Section 108. A new Section 55-9-611 NMSA 1978 is enacted
23 to read:

24 "55-9-611. [NEW MATERIAL] NOTIFICATION BEFORE DISPOSITION
25 OF COLLATERAL. --

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1 (a) In this section, "notification date" means the
2 earlier of the date on which:

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

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

8 (b) Except as otherwise provided in Subsection (d) of
9 this section, a secured party that disposes of collateral under
10 Section 55-9-610 NMSA 1978 shall send to the persons specified in
11 Subsection (c) of this section a reasonable authenticated
12 notification of disposition.

13 (c) To comply with Subsection (b) of this section,
14 the secured party shall send an authenticated notification of
15 disposition to:

16 (1) the debtor;
17 (2) any secondary obligor; and
18 (3) if the collateral is other than consumer
19 goods:

20 (A) any other person from which the
21 secured party has received, before the notification date, an
22 authenticated notification of a claim of an interest in the
23 collateral;

24 (B) any other secured party or lienholder
25 that, ten days before the notification date, held a security

1 interest in or other lien on the collateral perfected by the
2 filing of a financing statement that:

3 (i) identified the collateral;

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

6 (iii) was filed in the office in
7 which to file a financing statement against the debtor covering
8 the collateral as of that date; and

9 (C) any other secured party that, ten days
10 before the notification date, held a security interest in the
11 collateral perfected by compliance with a statute, regulation or
12 treaty described in Subsection (a) of Section 55-9-311 NMSA 1978.

13 (d) Subsection (b) of this section does not apply if
14 the collateral is perishable or threatens to decline speedily in
15 value or is of a type customarily sold on a recognized market.

16 (e) A secured party complies with the requirement for
17 notification prescribed by Subparagraph (B) of Paragraph (3) of
18 Subsection (c) of this section if:

19 (1) not later than twenty days or earlier than
20 thirty days before the notification date, the secured party
21 requests, in a commercially reasonable manner, information
22 concerning financing statements indexed under the debtor's name
23 in the office indicated in Subparagraph (B) of Paragraph (3) of
24 Subsection (c) of this section; and

25 (2) before the notification date, the secured

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1 party:

2 (A) did not receive a response to the
3 request for information; or

4 (B) received a response to the request for
5 information and sent an authenticated notification of disposition
6 to each secured party or other lienholder named in that response
7 whose financing statement covered the collateral. "

8 Section 109. A new Section 55-9-612 NMSA 1978 is enacted
9 to read:

10 "55-9-612. [NEW MATERIAL] TIMELINESS OF NOTIFICATION
11 BEFORE DISPOSITION OF COLLATERAL. --

12 (a) Except as otherwise provided in Subsection (b) of
13 this section, whether a notification is sent within a reasonable
14 time is a question of fact.

15 (b) In a transaction other than a consumer
16 transaction, a notification of disposition sent after default and
17 ten days or more before the earliest time of disposition set
18 forth in the notification is sent within a reasonable time before
19 the disposition. "

20 Section 110. A new Section 55-9-613 NMSA 1978 is enacted
21 to read:

22 "55-9-613. [NEW MATERIAL] CONTENTS AND FORM OF
23 NOTIFICATION BEFORE DISPOSITION OF COLLATERAL--GENERAL. --Except
24 in a consumer-goods transaction, the following rules apply:

25 (1) The contents of a notification of disposition are

1 sufficient if the notification:

2 (A) describes the debtor and the secured party;

3 (B) describes the collateral that is the
4 subject of the intended disposition;

5 (C) states the method of intended disposition;

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

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

12 (2) Whether the contents of a notification that lacks
13 any of the information specified in Subsection (1) of this
14 section are nevertheless sufficient is a question of fact.

15 (3) The contents of a notification providing
16 substantially the information specified in Subsection (1) of this
17 section are sufficient, even if the notification includes:

18 (A) information not specified by that
19 subsection; or

20 (B) minor errors that are not seriously
21 misleading.

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

24 (5) The following form of notification and the form
25 appearing in Subsection (3) of Section 55-9-614 NMSA 1978, when

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1 completed, each provides sufficient information:

2 NOTIFICATION OF DISPOSITION OF COLLATERAL

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

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

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

9 (For a public disposition:)

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

13 Day and Date: _____
14 Time: _____
15 Place: _____

16 (For a private disposition:)

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

20 You are entitled to an accounting of the unpaid
21 indebtedness secured by the property that we intend to sell (or
22 lease or license, as applicable) (for a charge of \$ _____).
23 You may request an accounting by calling us at (telephone
24 number). "

25 Section 111. A new Section 55-9-614 NMSA 1978 is enacted

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1 to read:

2 "55-9-614. [NEW MATERIAL] CONTENTS AND FORM OF
3 NOTIFICATION BEFORE DISPOSITION OF COLLATERAL--CONSUMER-GOODS
4 TRANSACTION.--In a consumer-goods transaction, the following
5 rules apply:

6 (1) A notification of disposition must provide the
7 following information:

8 (A) the information specified in Subsection (1)
9 of Section 55-9-613 NMSA 1978;

10 (B) a description of any liability for a
11 deficiency of the person to which the notification is sent;

12 (C) a telephone number from which the amount
13 that must be paid to the secured party to redeem the collateral
14 under Section 55-9-623 NMSA 1978 is available; and

15 (D) a telephone number or mailing address from
16 which additional information concerning the disposition and the
17 obligation secured is available.

18 (2) A particular phrasing of the notification is not
19 required.

20 (3) The following form of notification, when
21 completed, provides sufficient information:

22 _____
(Name and address of secured party)

23 _____
(Date)

24 NOTICE OF OUR PLAN TO SELL PROPERTY

25 _____
(Name and address of any obligor who is also a debtor)

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1 Subject: _____ (*Identification of Transaction*) _____

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

4 (*For a public disposition:*)

5 We will sell _____ (*describe collateral*) _____ at public sale. A
6 sale could include a lease or license. The sale will be held as
7 follows:

8 Date: _____

9 Time: _____

10 Place: _____

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

12 (*For a private disposition:*)

13 We will sell _____ (*describe collateral*) _____ at private sale
14 sometime after _____ (*date*) _____. A sale could include a lease or
15 license.

16 The money that we get from the sale (after paying our costs) will
17 reduce the amount you owe. If we get less money than you owe,
18 you _____ (*will or will not, as applicable*) _____ still owe us the
19 difference. If we get more money than you owe, you will get the
20 extra money, unless we must pay it to someone else.

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

25 If you want us to explain to you in writing how we have figured

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1 the amount that you owe us, you may call us at _____ (*telephone*
2 *number*) _____ (or write us at _____ (*secured party's address*) _____)
3 and request a written explanation. (We will charge you
4 \$ _____ for the explanation if we sent you another written
5 explanation of the amount you owe us within the last six months.)
6 If you need more information about the sale call us at
7 _____ (*telephone number*) _____ (or write us at _____ (*secured*
8 *party's address*) _____).

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

12 _____ (*Names of all other debtors and obligors, if any*) _____.

13 (4) the form of notification provided in Subsection
14 (3) of this section is sufficient even if additional information
15 appears at the end of the form.

16 (5) The form of notification provided in Subsection
17 (3) of this section is sufficient even if it includes an error
18 regarding information that is not required pursuant to Subsection
19 (1) of this section, unless the error is misleading with respect
20 to rights that arise pursuant to Chapter 55, Article 9 NMSA 1978.

21 (6) If notification under this section is not in the
22 form provided in Subsection (3) of this section, law other than
23 Chapter 55, Article 9 NMSA 1978 shall determine the effect of
24 including information that is not required pursuant to Subsection
25 (1) of this section. "

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1 Section 112. A new Section 55-9-615 NMSA 1978 is enacted
2 to read:

3 "55-9-615. [NEW MATERIAL] APPLICATION OF PROCEEDS OF
4 DISPOSITION-- LIABILITY FOR DEFICIENCY AND RIGHT TO SURPLUS. --

5 (a) A secured party shall apply or pay over for
6 application the cash proceeds of disposition pursuant to Section
7 55-9-610 NMSA 1978 in the following order to:

8 (1) the reasonable expenses of retaking,
9 holding, preparing for disposition, processing and disposing,
10 and, to the extent provided for by agreement and not prohibited
11 by law, reasonable attorney fees and legal expenses incurred by
12 the secured party;

13 (2) the satisfaction of obligations secured by
14 the security interest or agricultural lien under which the
15 disposition is made;

16 (3) the satisfaction of obligations secured by
17 any subordinate security interest in or other subordinate lien on
18 the collateral if:

19 (A) the secured party receives from the
20 holder of the subordinate security interest or other lien an
21 authenticated demand for proceeds before distribution of the
22 proceeds is completed; and

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

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1 (4) a secured party that is a consignor of the
2 collateral if the secured party receives from the consignor an
3 authenticated demand for proceeds before distribution of the
4 proceeds is completed.

5 (b) If requested by a secured party, a holder of a
6 subordinate security interest or other lien shall furnish
7 reasonable proof of the interest or lien within a reasonable
8 time. Unless the holder does so, the secured party need not
9 comply with the holder's demand under Paragraph (3) of Subsection
10 (a) of this section.

11 (c) A secured party need not apply or pay over for
12 application noncash proceeds of disposition under Section
13 55-9-610 NMSA 1978 unless the failure to do so would be
14 commercially unreasonable. A secured party that applies or pays
15 over for application noncash proceeds shall do so in a
16 commercially reasonable manner.

17 (d) If the security interest under which a
18 disposition is made secures payment or performance of an
19 obligation, after making the payments and applications required
20 by Subsection (a) of this section and permitted by Subsection (c)
21 of this section:

22 (1) unless Paragraph (4) of Subsection (a) of
23 this section requires the secured party to apply or pay over cash
24 proceeds to a consignor, the secured party shall account to and
25 pay a debtor for any surplus; and

1 (2) the obligor is liable for any deficiency.

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

4 (1) the debtor is not entitled to any surplus;
5 and

6 (2) the obligor is not liable for any
7 deficiency.

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

13 (1) the transferee in the disposition is the
14 secured party, a person related to the secured party or a
15 secondary obligor; and

16 (2) the amount of proceeds of the disposition
17 is significantly below the range of proceeds that a complying
18 disposition to a person other than the secured party, a person
19 related to the secured party or a secondary obligor would have
20 brought.

21 (g) A secured party that receives cash proceeds of a
22 disposition in good faith and without knowledge that the receipt
23 violates the rights of the holder of a security interest or other
24 lien that is not subordinate to the security interest or
25 agricultural lien under which the disposition is made:

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1 (1) takes the cash proceeds free of the
2 security interest or other lien;

3 (2) is not obligated to apply the proceeds of
4 the disposition to the satisfaction of obligations secured by the
5 security interest or other lien; and

6 (3) is not obligated to account to or pay the
7 holder of the security interest or other lien for any surplus."

8 Section 113. A new Section 55-9-616 NMSA 1978 is enacted
9 to read:

10 "55-9-616. [NEW MATERIAL] EXPLANATION OF CALCULATION OF
11 SURPLUS OR DEFICIENCY. --

12 (a) In this section:

13 (1) "explanation" means a writing that:

14 (A) states the amount of the surplus or
15 deficiency;

16 (B) provides an explanation in accordance
17 with Subsection (c) of this section of how the secured party
18 calculated the surplus or deficiency;

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

23 (D) provides a telephone number or mailing
24 address from which additional information concerning the
25 transaction is available; and

- 1 (2) "request" means a record:
2 (A) authenticated by a debtor or consumer
3 obligor;
4 (B) requesting that the recipient provide
5 an explanation; and
6 (C) sent after disposition of the
7 collateral under Section 55-9-610 NMSA 1978.

8 (b) In a consumer-goods transaction in which the
9 debtor is entitled to a surplus or a consumer obligor is liable
10 for a deficiency under Section 55-9-615 NMSA 1978, the secured
11 party shall:

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

14 (A) before or when the secured party
15 accounts to the debtor and pays any surplus or first makes
16 written demand on the consumer obligor after the disposition for
17 payment of the deficiency; and

18 (B) within fourteen days after receipt of
19 a request; or

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

24 (c) To comply with Subparagraph (B) of Paragraph (1)
25 of Subsection (a) of this section, a writing must provide the

1 following information in the following order:

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

7 (A) if the secured party takes or receives
8 possession of the collateral after default, not more than thirty-
9 five days before the secured party takes or receives possession;
10 or

11 (B) if the secured party takes or receives
12 possession of the collateral before default or does not take
13 possession of the collateral, not more than thirty-five days
14 before the disposition;

15 (2) the amount of proceeds of the disposition;

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

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

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

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1 service charges, to which the obligor is known to be entitled and
2 which are not reflected in the amount in Paragraph (1) of this
3 subsection; and

4 (6) the amount of the surplus or deficiency.

5 (d) A particular phrasing of the explanation is not
6 required. An explanation complying substantially with the
7 requirements of Subsection (a) of this section is sufficient,
8 even if it includes minor errors that are not seriously
9 misleading.

10 (e) A debtor or consumer obligor is entitled without
11 charge to one response to a request under this section during any
12 six-month period in which the secured party did not send to the
13 debtor or consumer obligor an explanation pursuant to Paragraph
14 (1) of Subsection (b) of this section. The secured party may
15 require payment of a charge not exceeding twenty-five dollars
16 (\$25.00) for each additional response."

17 Section 114. A new Section 55-9-617 NMSA 1978 is enacted
18 to read:

19 "55-9-617. [NEW MATERIAL] RIGHTS OF TRANSFEREE OF
20 COLLATERAL. --

21 (a) A secured party's disposition of collateral after
22 default:

23 (1) transfers to a transferee for value all of
24 the debtor's rights in the collateral;

25 (2) discharges the security interest under

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1 which the disposition is made; and

2 (3) discharges any subordinate security
3 interest or other subordinate lien.

4 (b) A transferee that acts in good faith takes free
5 of the rights and interests described in Subsection (a) of this
6 section, even if the secured party fails to comply with this
7 article or the requirements of any judicial proceeding.

8 (c) If a transferee does not take free of the rights
9 and interests described in Subsection (a) of this section, the
10 transferee takes the collateral subject to:

11 (1) the debtor's rights in the collateral;

12 (2) the security interest or agricultural lien
13 under which the disposition is made; and

14 (3) any other security interest or other lien."

15 Section 115. A new Section 55-9-618 NMSA 1978 is enacted
16 to read:

17 "55-9-618. [NEW MATERIAL] RIGHTS AND DUTIES OF CERTAIN
18 SECONDARY OBLIGORS. --

19 (a) A secondary obligor acquires the rights and
20 becomes obligated to perform the duties of the secured party
21 after the secondary obligor:

22 (1) receives an assignment of a secured
23 obligation from the secured party;

24 (2) receives a transfer of collateral from the
25 secured party and agrees to accept the rights and assume the

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1 duties of the secured party; or

2 (3) is subrogated to the rights of a secured
3 party with respect to collateral.

4 (b) An assignment, transfer or subrogation described
5 in Subsection (a) of this section:

6 (1) is not a disposition of collateral under
7 Section 55-9-610 NMSA 1978; and

8 (2) relieves the secured party of further
9 duties under Chapter 55, Article 9 NMSA 1978. "

10 Section 116. A new Section 55-9-619 NMSA 1978 is enacted
11 to read:

12 "55-9-619. [NEW MATERIAL] TRANSFER OF RECORD OR LEGAL
13 TITLE. --

14 (a) In this section, "transfer statement" means a
15 record authenticated by a secured party stating:

16 (1) that the debtor has defaulted in connection
17 with an obligation secured by specified collateral;

18 (2) that the secured party has exercised its
19 post-default remedies with respect to the collateral;

20 (3) that, by reason of the exercise, a
21 transferee has acquired the rights of the debtor in the
22 collateral; and

23 (4) the name and mailing address of the secured
24 party, debtor and transferee.

25 (b) A transfer statement entitles the transferee to

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1 the transfer of record of all rights of the debtor in the
2 collateral specified in the statement in any official filing,
3 recording, registration or certificate-of-title system covering
4 the collateral. If a transfer statement is presented with the
5 applicable fee and request form to the official or office
6 responsible for maintaining the system, the official or office
7 shall:

8 (1) accept the transfer statement;

9 (2) promptly amend its records to reflect the
10 transfer; and

11 (3) if applicable, issue a new appropriate
12 certificate of title in the name of the transferee.

13 (c) A transfer of the record or legal title to
14 collateral to a secured party under Subsection (b) of this
15 section or otherwise is not of itself a disposition of collateral
16 under Chapter 55, Article 9 NMSA 1978 and does not of itself
17 relieve the secured party of its duties under that article."

18 Section 117. A new Section 55-9-620 NMSA 1978 is enacted
19 to read:

20 "55-9-620. [NEW MATERIAL] ACCEPTANCE OF COLLATERAL IN FULL
21 OR PARTIAL SATISFACTION OF OBLIGATION--COMPULSORY DISPOSITION OF
22 COLLATERAL. --

23 (a) Except as otherwise provided in Subsection (g) of
24 this section, a secured party may accept collateral in full or
25 partial satisfaction of the obligation it secures only if:

1 (1) the debtor consents to the acceptance under
2 Subsection (c) of this section;

3 (2) the secured party does not receive, within
4 the time set forth in Subsection (d) of this section, a
5 notification of objection to the proposal authenticated by:

6 (A) a person to which the secured party
7 was required to send a proposal under Section 55-9-621 NMSA 1978;
8 or

9 (B) any other person, other than the
10 debtor, holding an interest in the collateral subordinate to the
11 security interest that is the subject of the proposal;

12 (3) the collateral is consumer goods, the
13 collateral is not in the possession of the debtor when the debtor
14 consents to the acceptance; and

15 (4) Subsection (e) of this section does not
16 require the secured party to dispose of the collateral or the
17 debtor waives the requirement pursuant to Section 55-9-624 NMSA
18 1978.

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

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

24 (2) the conditions of Subsection (a) of this
25 section are met.

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(c) 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 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 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 by the debtor within twenty days after the proposal is sent.

(d) To be effective under Paragraph (2) of Subsection (a) of this section, a notification of objection must be received by the secured party:

(1) in the case of a person to which the proposal was sent pursuant to Section 55-9-621 NMSA 1978, within twenty days after notification was sent to that person; and

(2) in other cases:

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1 (A) within twenty days after the last
2 notification was sent pursuant to Section 55-9-621 NMSA 1978; or

3 (B) if a notification was not sent, before
4 the debtor consents to the acceptance under Subsection (c) of
5 this section.

6 (e) A secured party that has taken possession of
7 collateral shall dispose of the collateral pursuant to Section
8 55-9-610 NMSA 1978 within the time specified in Subsection (f) of
9 this section if:

10 (1) sixty percent of the cash price has been
11 paid in the case of a purchase-money security interest in
12 consumer goods; or

13 (2) sixty percent of the principal amount of
14 the obligation secured has been paid in the case of a non-
15 purchase-money security interest in consumer goods.

16 (f) To comply with Subsection (e) of this section,
17 the secured party shall dispose of the collateral:

18 (1) within ninety days after taking possession;
19 or

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

23 (g) In a consumer transaction, a secured party may
24 not accept collateral in partial satisfaction of the obligation
25 it secures. "

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1 Section 118. A new Section 55-9-621 NMSA 1978 is enacted
2 to read:

3 "55-9-621. [NEW MATERIAL] NOTIFICATION OF PROPOSAL TO
4 ACCEPT COLLATERAL. - -

5 (a) A secured party that desires to accept collateral
6 in full or partial satisfaction of the obligation it secures
7 shall send its proposal to:

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

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

16 (A) identified the collateral;

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

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

22 (3) any other secured party that, ten days
23 before the debtor consented to the acceptance, held a security
24 interest in the collateral perfected by compliance with a
25 statute, regulation or treaty described in Subsection (a) of

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1 Section 55-9-311 NMSA 1978.

2 (b) A secured party that desires to accept collateral
3 in partial satisfaction of the obligation it secures shall send
4 its proposal to any secondary obligor in addition to the persons
5 described in Subsection (a) of this section. "

6 Section 119. A new Section 55-9-622 NMSA 1978 is enacted
7 to read:

8 "55-9-622. [NEW MATERIAL] EFFECT OF ACCEPTANCE OF
9 COLLATERAL. --

10 (a) A secured party's acceptance of collateral in
11 full or partial satisfaction of the obligation it secures:

12 (1) discharges the obligation to the extent
13 consented to by the debtor;

14 (2) transfers to the secured party all of a
15 debtor's rights in the collateral;

16 (3) discharges the security interest or
17 agricultural lien that is the subject of the debtor's consent and
18 any subordinate security interest or other subordinate lien; and

19 (4) terminates any other subordinate interest.

20 (b) A subordinate interest is discharged or
21 terminated under Subsection (a) of this section, even if the
22 secured party fails to comply with Chapter 55, Article 9 NMSA
23 1978. "

24 Section 120. A new Section 55-9-623 NMSA 1978 is enacted
25 to read:

1 "55-9-623. [NEW MATERIAL] RIGHT TO REDEEM COLLATERAL. --

2 (a) A debtor, any secondary obligor or any other
3 secured party or lienholder may redeem collateral.

4 (b) To redeem collateral, a person shall tender:

5 (1) fulfillment of all obligations secured by
6 the collateral; and

7 (2) the reasonable expenses and attorney fees
8 described in Paragraph (1) of Subsection (a) of Section 55-9-615
9 NMSA 1978.

10 (c) A redemption may occur at any time before a
11 secured party:

12 (1) has collected collateral under Section
13 55-9-607 NMSA 1978;

14 (2) has disposed of collateral or entered into
15 a contract for its disposition under Section 55-9-610 NMSA 1978;
16 or

17 (3) has accepted collateral in full or partial
18 satisfaction of the obligation it secures under Section 55-9-622
19 NMSA 1978. "

20 Section 121. A new Section 55-9-624 NMSA 1978 is enacted
21 to read:

22 "55-9-624. [NEW MATERIAL] WAIVER. --

23 (a) A debtor or secondary obligor may waive the right
24 to notification of disposition of collateral under Section
25 55-9-611 NMSA 1978 only by an agreement to that effect entered

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1 into and authenticated after default.

2 (b) A debtor may waive the right to require
3 disposition of collateral under Subsection (e) of Section
4 55-9-620 NMSA 1978 only by an agreement to that effect entered
5 into and authenticated after default.

6 (c) Except in a consumer-goods transaction, a debtor
7 or secondary obligor may waive the right to redeem collateral
8 under Section 55-9-623 NMSA 1978 only by an agreement to that
9 effect entered into and authenticated after default. "

10 Section 122. A new Section 55-9-625 NMSA 1978 is enacted
11 to read:

12 "55-9-625. [NEW MATERIAL] REMEDIES FOR SECURED PARTY'S
13 FAILURE TO COMPLY WITH ARTICLE. --

14 (a) If it is established that a secured party is not
15 proceeding in accordance with Chapter 55, Article 9 NMSA 1978, a
16 court may order or restrain collection, enforcement or
17 disposition of collateral on appropriate terms and conditions.

18 (b) Subject to Subsections (c), (d) and (f) of this
19 section, a person is liable for damages in the amount of any loss
20 caused by a failure to comply with Chapter 55, Article 9 NMSA
21 1978. Loss caused by a failure to comply may include loss
22 resulting from the debtor's inability to obtain, or increased
23 costs of, alternative financing.

24 (c) Except as otherwise provided in Section 55-9-628
25 NMSA 1978:

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1 (1) a person that, at the time of the failure,
2 was a debtor, was an obligor or held a security interest in or
3 other lien on the collateral may recover damages under Subsection
4 (b) of this section for its loss; and

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

12 (d) A debtor whose deficiency is eliminated under
13 Section 55-9-626 NMSA 1978 may recover damages for the loss of
14 any surplus. However, a debtor or secondary obligor whose
15 deficiency is eliminated or reduced under Section 55-9-626 NMSA
16 1978 may not otherwise recover under Subsection (b) of this
17 section for noncompliance with the provisions of Sections
18 55-9-601 through 55-9-628 NMSA 1978 relating to collection,
19 enforcement, disposition or acceptance.

20 (e) In addition to any damages recoverable under
21 Subsection (b) of this section, the debtor, consumer obligor or
22 person named as a debtor in a filed record, as applicable, may
23 recover five hundred dollars (\$500) in each case from a person
24 that:

25 (1) fails to comply with Section 55-9-208 NMSA

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1 1978;

2 (2) fails to comply with Section 55-9-209 NMSA
3 1978;

4 (3) files a record that the person is not
5 entitled to file under Subsection (a) of Section 55-9-509 NMSA
6 1978;

7 (4) fails to cause the secured party of record
8 to file or send a termination statement as required by Subsection
9 (a) or (c) of Section 55-9-513 NMSA 1978;

10 (5) fails to comply with Paragraph (1) of
11 Subsection (b) of Section 55-9-616 NMSA 1978 and whose failure is
12 part of a pattern, or consistent with a practice, of
13 noncompliance; or

14 (6) fails to comply with Paragraph (2) of
15 Subsection (b) of Section 55-9-616 NMSA 1978.

16 (f) A debtor or consumer obligor may recover damages
17 under Subsection (b) of this section and, in addition, five
18 hundred dollars (\$500) in each case from a person that, without
19 reasonable cause, fails to comply with a request under Section
20 55-9-210 NMSA 1978. A recipient of a request under Section
21 55-9-210 NMSA 1978 that never claimed an interest in the
22 collateral or obligations that are the subject of a request under
23 that section has a reasonable excuse for failure to comply with
24 the request within the meaning of this subsection.

25 (g) If a secured party fails to comply with a request

1 regarding a list of collateral or a statement of account under
2 Section 55-9-210 NMSA 1978, the secured party may claim a
3 security interest only as shown in the list or statement included
4 in the request as against a person that is reasonably misled by
5 the failure. "

6 Section 123. A new Section 55-9-626 NMSA 1978 is enacted
7 to read:

8 "55-9-626. [NEW MATERIAL] ACTION IN WHICH DEFICIENCY OR
9 SURPLUS IS IN ISSUE. --

10 (a) In an action arising from a transaction, other
11 than a consumer transaction, in which the amount of a deficiency
12 or surplus is in issue, the following rules apply:

13 (1) A secured party need not prove compliance
14 with the provisions of this part relating to collection,
15 enforcement, disposition or acceptance unless the debtor or a
16 secondary obligor places the secured party's compliance in issue.

17 (2) If the secured party's compliance is placed
18 in issue, the secured party has the burden of establishing that
19 the collection, enforcement, disposition or acceptance was
20 conducted in accordance with Sections 55-9-601 through 55-9-628
21 NMSA 1978.

22 (3) Except as otherwise provided in Section
23 55-9-628 NMSA 1978, if a secured party fails to prove that the
24 collection, enforcement, disposition or acceptance was conducted
25 in accordance with the provisions of Sections 55-9-601 through

1 55-9-628 NMSA 1978 relating to collection, enforcement,
2 disposition or acceptance, the liability of a debtor or a
3 secondary obligor for a deficiency is limited to an amount by
4 which the sum of the secured obligation, expenses and attorney
5 fees exceeds the greater of:

6 (A) the proceeds of the collection,
7 enforcement, disposition or acceptance; or

8 (B) the amount of proceeds that would have
9 been realized had the noncomplying secured party proceeded in
10 accordance with the provisions of this part relating to
11 collection, enforcement, disposition or acceptance.

12 (4) For purposes of Subparagraph (B) of
13 Paragraph (3) of this subsection, the amount of proceeds that
14 would have been realized is equal to the sum of the secured
15 obligation, expenses and attorney's fees unless the secured party
16 proves that the amount is less than that sum.

17 (5) If a deficiency or surplus is calculated
18 under Subsection (f) of Section 55-9-615 NMSA 1978, the debtor or
19 obligor has the burden of establishing that the amount of
20 proceeds of the disposition is significantly below the range of
21 prices that a complying disposition to a person other than the
22 secured party, a person related to the secured party or a
23 secondary obligor would have brought.

24 (b) The limitation of the rules in Subsection (a) of
25 this section to transactions other than consumer transactions is

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1 intended to leave to the court the determination of the proper
2 rules in consumer transactions. The court may not infer from
3 that limitation the nature of the proper rule in consumer
4 transactions and may continue to apply established approaches."

5 Section 124. A new Section 55-9-627 NMSA 1978 is enacted
6 to read:

7 "55-9-627. [NEW MATERIAL] DETERMINATION OF WHETHER CONDUCT
8 WAS COMMERCIALY REASONABLE. --

9 (a) The fact that a greater amount could have been
10 obtained by a collection, enforcement, disposition or acceptance
11 at a different time or in a different method from that selected
12 by the secured party is not of itself sufficient to preclude the
13 secured party from establishing that the collection, enforcement,
14 disposition or acceptance was made in a commercially reasonable
15 manner.

16 (b) A disposition of collateral is made in a
17 commercially reasonable manner if the disposition is made:

18 (1) in the usual manner on any recognized
19 market;

20 (2) at the price current in any recognized
21 market at the time of the disposition; or

22 (3) otherwise in conformity with reasonable
23 commercial practices among dealers in the type of property that
24 was the subject of the disposition.

25 (c) A collection, enforcement, disposition or

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1 acceptance is commercially reasonable if it has been approved:

2 (1) in a judicial proceeding;

3 (2) by a bona fide creditors' committee;

4 (3) by a representative of creditors; or

5 (4) by an assignee for the benefit of

6 creditors.

7 (d) Approval under Subsection (c) of this section
8 need not be obtained, and lack of approval does not mean that the
9 collection, enforcement, disposition or acceptance is not
10 commercially reasonable. "

11 Section 125. A new Section 55-9-628 NMSA 1978 is enacted
12 to read:

13 "55-9-628. [NEW MATERIAL] NONLIABILITY AND LIMITATION ON
14 LIABILITY OF SECURED PARTY--LIABILITY OF SECONDARY OBLIGOR. --

15 (a) Unless a secured party knows that a person is a
16 debtor or obligor, knows the identity of the person and knows how
17 to communicate with the person:

18 (1) the secured party is not liable to the
19 person, or to a secured party or lienholder that has filed a
20 financing statement against the person, for failure to comply
21 with Chapter 55, Article 9 NMSA 1978; and

22 (2) the secured party's failure to comply with
23 Chapter 55, Article 9 NMSA 1978 does not affect the liability of
24 the person for a deficiency.

25 (b) A secured party is not liable because of its

1 status as secured party:

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

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

6 (B) the identity of the person; and

7 (C) how to communicate with the person; or

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

11 (A) that the person is a debtor; and

12 (B) the identity of the person.

13 (c) A secured party is not liable to any person, and
14 a person's liability for a deficiency is not affected, because of
15 any act or omission arising out of the secured party's reasonable
16 belief that a transaction is not a consumer-goods transaction or
17 a consumer transaction or that goods are not consumer goods, if
18 the secured party's belief is based on its reasonable reliance
19 on:

20 (1) a debtor's representation concerning the
21 purpose for which collateral was to be used, acquired or held; or

22 (2) an obligor's representation concerning the
23 purpose for which a secured obligation was incurred.

24 (d) A secured party is not liable to any person under
25 Paragraph (2) of Subsection (c) of Section 55-9-625 NMSA 1978 for

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1 its failure to comply with Section 55-9-616 NMSA 1978.

2 (e) A secured party is not liable under Paragraph (2)
3 of Subsection (c) of Section 55-9-625 NMSA 1978 more than once
4 with respect to any one secured obligation. "

5 Section 126. Section 55-1-105 NMSA 1978 (being Laws 1961,
6 Chapter 96, Section 1-105, as amended) is amended to read:

7 "55-1-105. TERRITORIAL APPLICATION OF THE ACT--PARTIES'
8 POWER TO CHOOSE APPLICABLE LAW.--

9 (1) Except as provided in this section, when a
10 transaction bears a reasonable relation to this state and also to
11 another state or nation, the parties may agree that the law
12 either of this state or such other state or nation shall govern
13 their rights and duties. Failing such agreement, the Uniform
14 Commercial Code applies to transactions bearing an appropriate
15 relation to this state.

16 (2) Where one of the following provisions of the
17 Uniform Commercial Code specifies the applicable law, that
18 provision governs and a contrary agreement is effective only to
19 the extent permitted by the law (including the conflict of laws
20 rules) so specified:

21 rights of creditors against sold goods. Section
22 55-2-402 NMSA 1978;

23 applicability of the article on leases. Sections
24 55-2A-105 and 55-2A-106 NMSA 1978;

25 applicability of the article on bank deposits and

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1 collections. Section 55-4-102 NMSA 1978;
2 governing law in the article on fund transfers.
3 Section 55-4A-507 NMSA 1978;
4 letters of credit. Section 55-5-116 NMSA 1978;
5 applicability of the article on investment securities.
6 Section 55-8-110 NMSA 1978; and
7 ~~[perfection provisions of the article on secured~~
8 ~~transactions. Section 55-9-103 NMSA 1978]~~
9 law governing perfection, the effect of perfection or
10 nonperfection, and the priority of security interests and
11 agricultural liens. Sections 55-9-301 through 55-9-307 NMSA
12 1978. "

13 Section 127. Section 55-1-201 NMSA 1978 (being Laws 1961,
14 Chapter 96, Section 1-201, as amended) is amended to read:

15 "55-1-201. GENERAL DEFINITIONS. -- Subject to additional
16 definitions contained in the subsequent articles of the Uniform
17 Commercial Code which are applicable to specific articles or
18 parts thereof and unless the context otherwise requires, in that
19 act:

20 (1) "action" in the sense of a judicial proceeding
21 includes recoupment, counterclaim, ~~[setoff]~~ set-off, suit in
22 equity and any other proceedings in which rights are determined;

23 (2) "aggrieved party" means a party entitled to
24 resort to a remedy;

25 (3) "agreement" means the bargain of the parties in

1 fact as found in their language or by implication from other
2 circumstances, including course of dealing or usage of trade or
3 course of performance as provided in Sections 55-1-205, 55-2-208
4 and 55-2A-207 NMSA 1978. Whether an agreement has legal
5 consequences is determined by the provisions of the Uniform
6 Commercial Code, if applicable; otherwise by the law of contracts
7 (Section 55-1-103 NMSA 1978). (Compare "contract".);

8 (4) "bank" means any person engaged in the business
9 of banking;

10 (5) "bearer" means the person in possession of an
11 instrument, document of title or certificated security payable to
12 bearer or indorsed in blank;

13 (6) "bill of lading" means a document evidencing the
14 receipt of goods for shipment issued by a person engaged in the
15 business of transporting or forwarding goods and includes an
16 airbill. "Airbill" means a document serving for air
17 transportation as a bill of lading does for marine or rail
18 transportation and includes an air consignment note or air
19 waybill;

20 (7) "branch" includes a separately incorporated
21 foreign branch of a bank;

22 (8) "burden of establishing" a fact means the burden
23 of persuading the triers of fact that the existence of the fact
24 is more probable than its nonexistence;

25 (9) "buyer in ordinary course of business" means a

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1 person ~~[who]~~ that buys goods in good faith, ~~[and]~~ without
2 knowledge that the sale ~~[to him is in violation of]~~ violates the
3 ~~[ownership]~~ rights ~~[or security interest]~~ of ~~[a third party]~~
4 another person in the goods ~~[buys]~~ and in ordinary course from a
5 person, other than a pawnbroker, in the business of selling goods
6 of that kind ~~[but does not include a pawnbroker. All persons who~~
7 ~~sell minerals or the like (including oil and gas) at wellhead or~~
8 ~~minehead shall be deemed to be persons]~~. A person buys goods in
9 the ordinary course if the sale to the person comports with the
10 usual or customary practices in the kind of business in which the
11 seller is engaged or with the seller's own usual or customary
12 practices. A person that sells oil, gas or other minerals at the
13 wellhead or minehead is a person in the business of selling goods
14 of that kind. ["Buying"] A buyer in the ordinary course of
15 business may ~~[be]~~ buy for cash ~~[or]~~, by exchange of other
16 property or on secured or unsecured credit and ~~[includes~~
17 ~~receiving]~~ may acquire goods or documents of title under a pre-
18 existing contract for sale ~~[but does not include a transfer in~~
19 ~~bulk or as security for or in total or partial satisfaction of a~~
20 ~~money debt]~~. Only a buyer that takes possession of the goods or
21 has a right to recover the goods from the seller under Chapter
22 55, Article 2 NMSA 1978 may be a buyer in ordinary course of
23 business. A person that acquires goods in a transfer in bulk or
24 as security for or in total or partial satisfaction of a money
25 debt is not a buyer in ordinary course of business;

1 (10) "conspicuous": A term or clause is conspicuous
2 when it is so written that a reasonable person against whom it is
3 to operate ought to have noticed it. A printed heading in
4 capitals (as: NON-NEGOTIABLE BILL OF LADING) is conspicuous.
5 Language in the body of a form is "conspicuous" if it is in
6 larger or other contrasting type or color. But in a telegram any
7 stated term is "conspicuous". Whether a term or clause is
8 "conspicuous" or not is for decision by the court;

9 (11) "contract" means the total legal obligation
10 which results from the parties' agreement as affected by this act
11 and any other applicable rules of law. (Compare "agreement".);

12 (12) "creditor" includes a general creditor, a
13 secured creditor, a lien creditor and any representative of
14 creditors, including an assignee for the benefit of creditors, a
15 trustee in bankruptcy, a receiver in equity and an executor or
16 administrator of an insolvent debtor's or assignor's estate;

17 (13) "defendant" includes a person in the position of
18 defendant in a cross-action or counterclaim;

19 (14) "delivery" with respect to instruments,
20 documents of title, chattel paper or certificated securities
21 means voluntary transfer of possession;

22 (15) "document of title" includes bill of lading,
23 dock warrant, dock receipt, warehouse receipt or order for the
24 delivery of goods and also any other document which in the
25 regular course of business or financing is treated as adequately

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

7 (16) "fault" means wrongful act, omission or breach;

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

14 (18) "genuine" means free of forgery or
15 counterfeiting;

16 (19) "good faith" means honesty in fact in the
17 conduct or transaction concerned;

18 (20) "holder", with respect to a negotiable
19 instrument, means the person in possession if the instrument is
20 payable to bearer or, in the case of an instrument payable to an
21 identified person, if the identified person is in possession.

22 "Holder", with respect to a document of title, means the person
23 in possession if the goods are deliverable to bearer or to the
24 order of the person in possession;

25 (21) to "honor" is to pay or to accept and pay, or

1 where a credit so engages, to purchase or discount a draft
2 complying with the terms of the credit;

3 (22) "insolvency proceedings" includes any assignment
4 for the benefit of creditors or other proceedings intended to
5 liquidate or rehabilitate the estate of the person involved;

6 (23) a person is "insolvent" who either has ceased to
7 pay his debts in the ordinary course of business or cannot pay
8 his debts as they become due or is insolvent within the meaning
9 of the federal bankruptcy law;

10 (24) "money" means a medium of exchange authorized or
11 adopted by a domestic or foreign government and includes a
12 monetary unit of account established by an intergovernmental
13 organization or by agreement between two or more nations;

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

15 (a) he has actual knowledge of it;

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

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

21 A person "knows" or has "knowledge" of a fact when he has
22 actual knowledge of it. "Discover" or "learn" or a word or
23 phrase of similar import refers to knowledge rather than to
24 reason to know. The time and circumstances under which a notice
25 or notification may cease to be effective are not determined by

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1 the Uniform Commercial Code;

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

7 (a) it comes to his attention; or

8 (b) it is duly delivered at the place of
9 business through which the contract was made or at any other
10 place held out by him as the place for receipt of such
11 communications;

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

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1 (28) "organization" includes a corporation,
2 government or governmental subdivision or agency, business trust,
3 estate, trust, partnership or association, two or more persons
4 having a joint or common interest or any other legal or
5 commercial entity;

6 (29) "party", as distinct from "third party", means a
7 person who has engaged in a transaction or made an agreement
8 within the Uniform Commercial Code;

9 (30) "person" includes an individual or an
10 organization (see Section 55-1-102 NMSA 1978);

11 (31) "presumption" or "presumed" means that the trier
12 of fact must find the existence of the fact presumed unless and
13 until evidence is introduced which would support a finding of its
14 nonexistence;

15 (32) "purchase" includes taking by sale, discount,
16 negotiation, mortgage, pledge, lien, security interest, issue or
17 reissue, gift or any other voluntary transaction creating an
18 interest in property;

19 (33) "purchaser" means a person who takes by
20 purchase;

21 (34) "remedy" means any remedial right to which an
22 aggrieved party is entitled with or without resort to a tribunal;

23 (35) "representative" includes an agent, an officer
24 of a corporation or association and a trustee, executor or
25 administrator of an estate or any other person empowered to act

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1 for another;

2 (36) "rights" includes remedies;

3 (37) "security interest" means an interest in
4 personal property or fixtures which secures payment or
5 performance of an obligation. [~~The retention or reservation of~~
6 ~~title by a seller of goods notwithstanding shipment or delivery~~
7 ~~to the buyer (Section 55-2-401 NMSA 1978) is limited in effect to~~
8 ~~a reservation of a "security interest".~~] The term also includes
9 any interest of a consignor and a buyer of accounts, [or] chattel
10 paper, [which] a payment intangible or a promissory note in a
11 transaction that is subject to Chapter 55, Article 9 NMSA 1978.

12 The special property interest of a buyer of goods on
13 identification of those goods to a contract for sale under
14 Section 55-2-401 NMSA 1978 is not a "security interest", but a
15 buyer may also acquire a "security interest" by complying with
16 Chapter 55, Article 9 NMSA 1978. [~~Unless a consignment is~~
17 ~~intended as security, reservation of title thereunder is not a~~
18 ~~"security interest", but a consignment in any event is subject to~~
19 ~~the provisions on consignment sales (Section 55-2-326 NMSA~~
20 ~~1978)]. Except as otherwise provided in Section 55-2-505 NMSA
21 1978, the right of a seller or lessor of goods under Chapter 55,
22 Article 2 or 2A NMSA 1978 to retain or acquire possession of the
23 goods is not a "security interest", but a seller or lessor may
24 also acquire a "security interest" by complying with Chapter 55,
25 Article 9 NMSA 1978. The retention or reservation of title by a~~

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1 seller of goods notwithstanding shipment or delivery to the buyer
2 (Section 55-2-401 NMSA 1978) is limited in effect to a
3 reservation of a "security interest".

4 Whether a transaction creates a lease or security interest
5 is determined by the facts of each case; however, a transaction
6 creates a security interest if the consideration the lessee is to
7 pay the lessor for the right to possession and use of the goods
8 is an obligation for the term of the lease not subject to
9 termination by the lessee, and:

10 (a) the original term of the lease is equal to
11 or greater than the remaining economic life of the goods;

12 (b) the lessee is bound to renew the lease for
13 the remaining economic life of the goods or is bound to become
14 the owner of the goods;

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

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

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

25 (a) the present value of the consideration the

1 lessee is obligated to pay the lessor for the right to possession
2 and use of the goods is substantially equal to or is greater than
3 the fair market value of the goods at the time the lease is
4 entered into;

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

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

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

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

19 For purposes of this Subsection (37):

20 (x) additional consideration is not nominal if:
21 (i) when the option to renew the lease is granted to the lessee,
22 the rent is stated to be the fair market rent for the use of the
23 goods for the term of the renewal determined at the time the
24 option is to be performed; or (ii) when the option to become the
25 owner of the goods is granted to the lessee, the price is stated

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1 to be the fair market value of the goods determined at the time
2 the option is to be performed. Additional consideration is
3 nominal if it is less than the lessee's reasonably predictable
4 cost of performing under the lease agreement if the option is not
5 exercised;

6 (y) "reasonably predictable" and "remaining
7 economic life of the goods" are to be determined with reference
8 to the facts and circumstances at the time the transaction is
9 entered into; and

10 (z) "present value" means the amount as of a
11 date certain of one or more sums payable in the future,
12 discounted to the date certain. The discount is determined by
13 the interest rate specified by the parties if the rate is not
14 manifestly unreasonable at the time the transaction is entered
15 into; otherwise, the discount is determined by a commercially
16 reasonable rate that takes into account the facts and
17 circumstances of each case at the time the transaction was
18 entered into;

19 (38) "send" in connection with any writing or notice
20 means to deposit in the mail or deliver for transmission by any
21 other usual means of communication with postage or cost of
22 transmission provided for and properly addressed and in the case
23 of an instrument to an address specified thereon or otherwise
24 agreed, or if there be none, to any address reasonable under the
25 circumstances. The receipt of any writing or notice within the

1 time at which it would have arrived if properly sent has the
2 effect of a proper sending;

3 (39) "signed" includes any symbol executed or adopted
4 by a party with present intention to authenticate a writing;

5 (40) "surety" includes guarantor;

6 (41) "telegram" includes a message transmitted by
7 radio, teletype, cable, any mechanical method of transmission or
8 the like;

9 (42) "term" means that portion of an agreement which
10 relates to a particular matter;

11 (43) "unauthorized" signature means one made without
12 actual, implied or apparent authority and includes a forgery;

13 (44) "value". Except as otherwise provided with
14 respect to negotiable instruments and bank collections (Sections
15 55-3-303, 55-4-210 and 55-4-211 NMSA 1978) a person gives "value"
16 for rights if he acquires them:

17 (a) in return for a binding commitment to
18 extend credit or for the extension of immediately available
19 credit whether or not drawn upon and whether or not a charge-back
20 is provided for in the event of difficulties in collection;

21 (b) as security for or in total or partial
22 satisfaction of a pre-existing claim;

23 (c) by accepting delivery pursuant to a
24 pre-existing contract for purchase; or

25 (d) generally, in return for any consideration

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1 sufficient to support a simple contract;

2 (45) "warehouse receipt" means a receipt issued by a
3 person engaged in the business of storing goods for hire; and

4 (46) "written" or "writing" includes printing,
5 typewriting or any other intentional reduction to tangible form "

6 Section 128. Section 55-2-103 NMSA 1978 (being Laws 1961,
7 Chapter 96, Section 2-103, as amended) is amended to read:

8 "55-2-103. DEFINITIONS AND INDEX OF DEFINITIONS. --

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

11 (a) "buyer" means a person who buys or
12 contracts to buy goods;

13 (b) "good faith" in the case of a merchant
14 means honesty in fact and the observance of reasonable commercial
15 standards of fair dealing in the trade;

16 (c) "receipt" of goods means taking physical
17 possession of them; and

18 (d) "seller" means a person who sells or
19 contracts to sell goods.

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

23 "Acceptance". Section
24 55-2-606 NMSA 1978;

25 "Banker's credit". Section

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1 55-2-325 NMSA 1978;
2 "Between merchants". Section
3 55-2-104 NMSA 1978;
4 "Cancellation". Section
5 55-2-106(4) NMSA 1978;
6 "Commercial unit". Section
7 55-2-105 NMSA 1978;
8 "Confirmed credit". Section
9 55-2-325 NMSA 1978;
10 "Conforming to contract". Section
11 55-2-106 NMSA 1978;
12 "Contract for sale". Section
13 55-2-106 NMSA 1978;
14 "Cover". Section
15 55-2-712 NMSA 1978;
16 "Entrusting". Section
17 55-2-403 NMSA 1978;
18 "Financing agency". Section
19 55-2-104 NMSA 1978;
20 "Future goods". Section
21 55-2-105 NMSA 1978;
22 "Goods". Section
23 55-2-105 NMSA 1978;
24 "Identification". Section
25 55-2-501 NMSA 1978;

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- 1 "Installment contract".Section
- 2 55-2-612 NMSA 1978;
- 3 "Letter of Credit".Section
- 4 55-2-325 NMSA 1978;
- 5 "Lot". Section
- 6 55-2-105 NMSA 1978;
- 7 "Merchant".Section
- 8 55-2-104 NMSA 1978;
- 9 "Overseas".Section
- 10 55-2-323 NMSA 1978;
- 11 "Person in the position of a
- 12 seller".Section
- 13 55-2-707 NMSA 1978;
- 14 "Present sale".Section
- 15 55-2-106 NMSA 1978;
- 16 "Sale".Section
- 17 55-2-106 NMSA 1978;
- 18 "Sale on approval".Section
- 19 55-2-326 NMSA 1978;
- 20 "Sale or return".Section
- 21 55-2-326 NMSA 1978;
- 22 "Termination". Section
- 23 55-2-106 NMSA 1978;

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

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1 "Check". Section
 2 55-3-104 NMSA 1978;
 3 "Consignee". Section
 4 55-7-102 NMSA 1978;
 5 "Consignor". Section
 6 55-7-102 NMSA 1978;
 7 "Consumer goods". Section
 8 [~~55-9-109~~] 55-9-102 NMSA 1978;
 9 "Dishonor". Section
 10 55-3-502 NMSA 1978; and
 11 "Draft". Section
 12 55-3-104 NMSA 1978.

13 (4) In addition, Chapter 55, Article 1 NMSA 1978
 14 contains general definitions and principles of construction and
 15 interpretation applicable throughout this article. "

16 Section 129. Section 55-2-210 NMSA 1978 (being Laws 1961,
 17 Chapter 96, Section 2-210) is amended to read:

18 "55-2-210. DELEGATION OF PERFORMANCE-- ASSIGNMENT OF
 19 RIGHTS. --

20 (1) A party may perform his duty through a delegate
 21 unless otherwise agreed or unless the other party has a
 22 substantial interest in having his original promisor perform or
 23 control the acts required by the contract. No delegation of
 24 performance relieves the party delegating of any duty to perform
 25 or any liability for breach.

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1 (2) ~~[Unless]~~ Except as otherwise provided in Section
2 55-9-406 NMSA 1978, unless otherwise agreed all rights of either
3 seller or buyer can be assigned except where the assignment would
4 materially change the duty of the other party or increase
5 materially the burden or risk imposed on him by his contract or
6 impair materially his chance of obtaining return performance. A
7 right to damages for breach of the whole contract or a right
8 arising out of the assignor's due performance of his entire
9 obligation can be assigned despite agreement otherwise.

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

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1 ~~[(3)]~~ (4) Unless the circumstances indicate the
2 contrary a prohibition of assignment of "the contract" is to be
3 construed as barring only the delegation to the assignee of the
4 assignor's performance.

5 ~~[(4)]~~ (5) An assignment of "the contract" or of "all
6 my rights under the contract" or an assignment in similar general
7 terms is an assignment of rights unless the language or the
8 circumstances (as in an assignment for security) indicate the
9 contrary, it is a delegation of performance of the duties of the
10 assignor and its acceptance by the assignee constitutes a promise
11 by him to perform those duties. This promise is enforceable by
12 either the assignor or the other party to the original contract.

13 ~~[(5)]~~ (6) The other party may treat any assignment
14 which delegates performance as creating reasonable grounds for
15 insecurity and may without prejudice to his rights against the
16 assignor demand assurances from the assignee (Section ~~[2-609]~~
17 55-2-609 NMSA 1978). "

18 Section 130. Section 55-2-326 NMSA 1978 (being Laws 1961,
19 Chapter 96, Section 2-326, as amended) is amended to read:

20 "55-2-326. SALE ON APPROVAL AND SALE OR RETURN--
21 ~~[CONSIGNMENT SALES AND]~~ RIGHTS OF CREDITORS.--

22 (1) Unless otherwise agreed, if delivered goods may
23 be returned by the buyer even though they conform to the
24 contract, the transaction is:

25 (a) a "sale on approval" if the goods are

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1 delivered primarily for use; and

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

4 (2) [~~Except as provided in Subsection (3) of this~~
5 ~~section~~] Goods held on approval are not subject to the claims of
6 the buyer's creditors until acceptance; goods held on sale or
7 return are subject to such claims while in the buyer's
8 possession.

9 [~~(3) Where goods are delivered to a person for sale~~
10 ~~and such person maintains a place of business at which he deals~~
11 ~~in goods of the kind involved, under a name other than the name~~
12 ~~of the person making delivery, then with respect to claims of~~
13 ~~creditors of the person conducting the business the goods are~~
14 ~~deemed to be on sale or return. The provisions of this~~
15 ~~subsection are applicable even though an agreement purports to~~
16 ~~reserve title to the person making delivery until payment or~~
17 ~~resale or uses such words as "on consignment" or "on memorandum".~~
18 ~~However, this subsection is not applicable if the person making~~
19 ~~delivery:~~

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

22 (b) ~~establishes that the person conducting the~~
23 ~~business is generally known by his creditors to be substantially~~
24 ~~engaged in selling the goods of others;~~

25 (c) ~~complies with the filing provisions of the~~

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1 ~~article on secured transactions (Article 9); or~~

2 ~~(d) is delivering a work of art pursuant to the~~
3 ~~Artists' Consignment Act.~~

4 (4)] (3) Any "or return" term of a contract for sale
5 is to be treated as a separate contract for sale within the
6 statute of frauds section of this article (Section [2-201]
7 55-2-201 NMSA 1978) and as contradicting the sale aspect of the
8 contract within the provisions of this article on parol or
9 extrinsic evidence (Section [2-202] 55-2-202 NMSA 1978). "

10 Section 131. Section 55-2-502 NMSA 1978 (being Laws 1961,
11 Chapter 96, Section 2-502) is amended to read:

12 "55-2-502. BUYER'S RIGHT TO GOODS ON SELLER'S REPUDIATION,
13 FAILURE TO DELIVER OR [INVOLVENCY] INSOLVENCY. --

14 (1) Subject to [~~Subsection~~] Subsections (2) and (3)
15 of this section and even though the goods have not been shipped,
16 a buyer who has paid a part or all of the price of goods in which
17 he has a special property under the provisions of the immediately
18 preceding section may on making and keeping good a tender of any
19 unpaid portion of their price recover them from the seller if:

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

23 (b) in all cases, the seller becomes insolvent
24 within ten days after receipt of the first installment on their
25 price.

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1 (2) The buyer's right to recover goods pursuant to
2 Paragraph (a) of Subsection (1) of this section vests upon
3 acquisition of a special property even if the seller has not then
4 repudiated or failed to deliver.

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

8 Section 132. Section 55-2-716 NMSA 1978 (being Laws 1961,
9 Chapter 96, Section 2-716) is amended to read:

10 "55-2-716. BUYER'S RIGHT TO SPECIFIC PERFORMANCE OR
11 REPLEVIN. --

12 (1) Specific performance may be decreed where the
13 goods are unique or in other proper circumstances.

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

17 (3) The buyer has a right of replevin for goods
18 identified to the contract if after reasonable effort he is
19 unable to effect cover for such goods or the circumstances
20 reasonably indicate that such effort will be unavailing or if the
21 goods have been shipped under reservation and satisfaction of the
22 security interest in them has been made or tendered. In the case
23 of goods bought for personal, family or household purposes, the
24 buyer's right of replevin vests upon acquisition of a special
25 property, even if the seller had not then repudiated or failed to

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1 deliver. "

2 Section 133. Section 55-2A-103 NMSA 1978 (being Laws 1992,
3 Chapter 114, Section 10, as amended) is amended to read:

4 "55-2A-103. DEFINITIONS AND INDEX OF DEFINITIONS. --

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

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

18 (b) "cancellation" occurs when either party
19 puts an end to the lease contract for default by the other party;

20 (c) "commercial unit" means such a unit of
21 goods as by commercial usage is a single whole for purposes of
22 lease and division of which materially impairs its character or
23 value on the market or in use. A commercial unit may be a single
24 article, as a machine, or a set of articles, as a suite of
25 furniture or a line of machinery, or a quantity, as a gross or

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1 carload, or any other unit treated in use or in the relevant
2 market as a single whole;

3 (d) "conforming" goods or performance under a
4 lease contract means goods or performance that are in accordance
5 with the obligations under the lease contract;

6 (e) "consumer lease" means a lease that a
7 lessor regularly engaged in the business of leasing or selling
8 makes to a lessee who is an individual and who takes under the
9 lease primarily for a personal, family or household purpose;

10 (f) "fault" means wrongful act, omission,
11 breach or default;

12 (g) "finance lease" means a lease with respect
13 to which:

14 (i) the lessor does not select,
15 manufacture or supply the goods;

16 (ii) the lessor acquires the goods or the
17 right to possession and use of the goods in connection with the
18 lease; and

19 (iii) one of the following occurs:

20 (A) the lessee receives a copy of the
21 contract by which the lessor acquired the goods or the right to
22 possession and use of the goods before signing the lease
23 contract;

24 (B) the lessee's approval of the
25 contract by which the lessor acquired the goods or the right to

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1 possession and use of the goods is a condition to effectiveness
2 of the lease contract;

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

12 (D) if the lease is not a consumer
13 lease, the lessor, before the lessee signs the lease contract,
14 informs the lessee in writing (a) of the identity of the person
15 supplying the goods to the lessor, unless the lessee has selected
16 that person and directed the lessor to acquire the goods or the
17 right to possession and use of the goods from that person, (b)
18 that the lessee is entitled under this article to the promises
19 and warranties, including those of any third party, provided to
20 the lessor by the person supplying the goods in connection with
21 or as part of the contract by which the lessor acquired the goods
22 or the right to possession and use of the goods, and (c) that the
23 lessee may communicate with the person supplying the goods to the
24 lessor and receive an accurate and complete statement of those
25 promises and warranties, including any disclaimers and

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1 limitations of them or of remedies;

2 (h) "goods" means all things that are movable
3 at the time of identification to the lease contract or are
4 fixtures (Section 55-2A-309 NMSA 1978), but the term does not
5 include money, documents, instruments, accounts, chattel paper,
6 general intangibles or minerals or the like, including oil and
7 gas, before extraction. The term also includes the unborn young
8 of animals;

9 (i) "installment lease contract" means a lease
10 contract that authorizes or requires the delivery of goods in
11 separate lots to be separately accepted, even though the lease
12 contract contains a clause "each delivery is a separate lease" or
13 its equivalent;

14 (j) "lease" means a transfer of the right to
15 possession and use of goods for a term in return for
16 consideration, but a sale, including a sale on approval or a sale
17 or return, or retention or creation of a security interest is not
18 a lease; unless the context clearly indicates otherwise, the term
19 includes a sublease;

20 (k) "lease agreement" means the bargain, with
21 respect to the lease, of the lessor and the lessee in fact as
22 found in their language or by implication from other
23 circumstances, including course of dealing or usage or trade or
24 course of performance as provided in this article; unless the
25 context clearly indicates otherwise, the term includes a sublease

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1 agreement;

2 (l) "lease contract" means the total legal
3 obligation that results from the lease agreement as affected by
4 this article and any other applicable rules of law; unless the
5 context clearly indicates otherwise, the term includes a sublease
6 contract;

7 (m) "leasehold interest" means the interest of
8 the lessor or the lessee under a lease contract;

9 (n) "lessee" means a person who acquires the
10 right to possession and use of goods under a lease; unless the
11 context clearly indicates otherwise, the term includes a
12 sublessee;

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

24 (p) "lessor" means a person who transfers the
25 right to possession and use of goods under a lease; unless the

1 context clearly indicates otherwise, the term includes a
2 sublessor;

3 (q) "lessor's residual interest" means the
4 lessor's interest in the goods after expiration, termination or
5 cancellation of the lease contract;

6 (r) "lien" means a charge against or interest
7 in goods to secure payment of a debt or performance of an
8 obligation, but the term does not include a security interest;

9 (s) "lot" means a parcel or a single article
10 that is the subject matter of a separate lease or delivery
11 whether or not it is sufficient to perform the lease contract;

12 (t) "merchant lessee" means a lessee that is a
13 merchant with respect to goods of the kind subject to the lease;

14 (u) "present value" means the amount as of a
15 date certain of one or more sums payable in the future,
16 discounted to the date certain; the discount is determined by the
17 interest rate specified by the parties if the rate was not
18 manifestly unreasonable at the time the transaction was entered
19 into; otherwise, the discount is determined by a commercially
20 reasonable rate that takes into account the facts and
21 circumstances of each case at the time the transaction was
22 entered into;

23 (v) "purchase" includes taking by sale, lease,
24 mortgage, security interest, pledge, gift or any other voluntary
25 transaction creating an interest in goods;

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1 (w) "sublease" means a lease of goods the right
2 to possession and use of which was acquired by the lessor as a
3 lessee under an existing lease;

4 (x) "supplier" means a person from whom a
5 lessor buys or leases goods to be leased under a finance lease;

6 (y) "supply contract" means a contract under
7 which a lessor buys or leases goods to be leased; and

8 (z) "termination" occurs when either party
9 pursuant to a power created by agreement or law puts an end to
10 the lease contract otherwise than for default.

11 (2) Other definitions applying to this article and
12 the sections in which they appear are:

13 "Accessions" Section
14 55- 2A- 310(1) NMSA 1978.

15 "Construction mortgage" Section
16 55- 2A- 309(1) (d) NMSA 1978.

17 "Encumbrance" Section
18 55- 2A- 309(1) (e) NMSA 1978.

19 "Fixtures". Section
20 55- 2A- 309(1) (a) NMSA 1978.

21 "Fixture filing". Section
22 55- 2A- 309(1) (b) NMSA 1978.

23 "Purchase money lease" Section
24 55- 2A- 309(1) (c) NMSA 1978.

25 (3) The following definitions in other articles apply

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to this article:

"Account" [Section
~~55-9-106~~] Paragraph (2) of Subsection (a) of Section 55-9-102
NMSA 1978.

"Between merchants" [Section
~~55-2-104(3)~~] Subsection (3) of Section 55-2-104 NMSA 1978.

"Buyer". [Section
~~55-2-103(1)(a)~~] Paragraph (a) of Subsection (1) of Section
55-2-103 NMSA 1978.

"Chattel paper" [Section
~~55-9-105(1)(b)~~] Paragraph (11) of Subsection (a) of Section
55-9-102 NMSA 1978.

"Consumer goods" [Section
~~55-9-109(1)~~] Paragraph (23) of Subsection (a) of Section 55-9-102
NMSA 1978.

"Document". [Section
~~55-9-105(1)(f)~~] Paragraph (30) of Subsection (a) of Section
55-9-102 NMSA 1978.

"Entrusting". [Section
~~55-2-403(3)~~] Subsection (3) of Section 55-2-403 NMSA 1978.

"General [~~intangibles~~] intangible". [Section
~~55-9-106~~] Paragraph (42) of Subsection (a) of Section 55-9-102
NMSA 1978.

"Good faith". [Section
~~55-2-103(1)(b)~~] Paragraph (b) of Subsection (1) of Section

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1 55-2-103 NMSA 1978.
2 "Instrument" [Section
3 ~~55-9-105(1)(i)~~] Paragraph (47) of Subsection (a) of Section
4 55-9-102 NMSA 1978.
5 "Merchant" [Section
6 ~~55-2-104(1)~~] Subsection (1) of Section 55-2-104 NMSA 1978.
7 "Mortgage" [Section
8 ~~55-9-105(1)(j)~~] Paragraph (55) of Subsection (a) of Section
9 55-9-102 NMSA 1978.
10 "Pursuant to commitment" [Section
11 ~~55-9-105(1)(k)~~] Paragraph (68) of Subsection (a) of Section
12 55-9-102 NMSA 1978.
13 "Receipt" [Section
14 ~~55-2-103(1)(e)~~] Paragraph (c) of Subsection (1) of Section
15 55-2-103 NMSA 1978.
16 "Sale" [Section
17 ~~55-2-106(1)~~] Subsection (1) of Section 55-2-106 NMSA 1978.
18 "Sale on approval" Section
19 55-2-326 NMSA 1978.
20 "Sale or return" Section
21 55-2-326 NMSA 1978.
22 "Seller" [Section
23 ~~55-2-103(1)(d)~~] Paragraph (d) of Subsection (1) of Section
24 55-2-103 NMSA 1978.

(4) In addition, Chapter 55, Article 1 NMSA 1978

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1 contains general definitions and principles of construction and
2 interpretation applicable throughout this article. "

3 Section 134. Section 55-2A-303 NMSA 1978 (being Laws 1992,
4 Chapter 114, Section 40) is amended to read:

5 "55-2A-303. ALIENABILITY OF PARTY'S INTEREST UNDER LEASE
6 CONTRACT OR OF LESSOR'S RESIDUAL INTEREST IN GOODS--DELEGATION OF
7 PERFORMANCE--TRANSFER OF RIGHTS.--

8 (1) As used in this section, "creation of a security
9 interest" includes the sale of a lease contract that is subject
10 to Chapter 55, Article 9 [Secured Transactions] NMSA 1978 by
11 reason of [~~Paragraph (b) of Subsection (1) of Section 55-9-102]~~
12 Paragraph (3) of Subsection (a) of Section 55-9-109 NMSA 1978.

13 (2) Except as provided in [~~Subsections (3) and (4)]~~
14 Subsection (3) of this section and Section 55-9-407 NMSA 1978, a
15 provision in a lease agreement which (i) prohibits the voluntary
16 or involuntary transfer, including a transfer by sale, sublease,
17 creation or enforcement of a security interest, or attachment,
18 levy or other judicial process, of an interest of a party under
19 the lease contract or of the lessor's residual interest in the
20 goods, or (ii) makes such a transfer an event of default, gives
21 rise to the rights and remedies provided in Subsection [~~(5)~~] (4)
22 of this section, but a transfer that is prohibited or is an event
23 of default under the lease agreement is otherwise effective.

24 [~~(3) A provision in a lease agreement which (i)~~
25 ~~prohibits the creation or enforcement of a security interest in~~

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1 ~~an interest of a party under the lease contract or in the~~
2 ~~lessor's residual interest in the goods, or (ii) makes such a~~
3 ~~transfer an event of default, is not enforceable unless, and then~~
4 ~~only to the extent that, there is an actual transfer by the~~
5 ~~lessee of the lessee's right of possession or use of the goods in~~
6 ~~violation of the provision or an actual delegation of a material~~
7 ~~performance of either party to the lease contract in violation of~~
8 ~~the provision. Neither the granting nor the enforcement of a~~
9 ~~security interest in (i) the lessor's interest under the lease~~
10 ~~contract, or (ii) the lessor's residual interest in the goods is~~
11 ~~a transfer that materially impairs the prospect of obtaining~~
12 ~~return performance by, materially changes the duty of or~~
13 ~~materially increases the burden or risk imposed on, the lessee~~
14 ~~within the purview of Subsection (5) unless, and then only to the~~
15 ~~extent that, there is an actual delegation of a material~~
16 ~~performance of the lessor.~~

17 (4)] (3) A provision in a lease agreement which (i)
18 prohibits a transfer of a right to damages for default with
19 respect to the whole lease contract or of a right to payment
20 arising out of the transferor's due performance of the
21 transferor's entire obligation, or (ii) makes such a transfer an
22 event of default, is not enforceable, and such a transfer is not
23 a transfer that materially impairs the prospect of obtaining
24 return performance by, materially changes the duty of, or
25 materially increases the burden or risk imposed on, the other

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1 party to the lease contract within the purview of Subsection
2 [~~(5)~~] (4) of this section.

3 [~~(5)~~] (4) Subject to [~~Subsections (3) and (4)~~]
4 Subsection (3) of this section and Section 55-9-407 NMSA 1978:

5 (a) if a transfer is made which is made an
6 event of default under a lease agreement, the party to the lease
7 contract not making the transfer, unless that party waives the
8 default or otherwise agrees, has the rights and remedies
9 described in [~~Section 55-2A-501(2)~~] Subsection (2) of Section
10 55-2A-501 NMSA 1978; and

11 (b) if Paragraph (a) of this subsection is not
12 applicable and if a transfer is made that (i) is prohibited under
13 a lease agreement, or (ii) materially impairs the prospect of
14 obtaining return performance by, materially changes the duty of
15 or materially increases the burden or risk imposed on the other
16 party to the lease contract, unless the party not making the
17 transfer agrees at any time to the transfer in the lease contract
18 or otherwise, then, except as limited by contract, (i) the
19 transferor is liable to the party not making the transfer for
20 damages caused by the transfer to the extent that the damages
21 could not reasonably be prevented by the party not making the
22 transfer, and (ii) a court having jurisdiction may grant other
23 appropriate relief, including cancellation of the lease contract
24 or an injunction against the transfer.

25 [~~(6)~~] (5) A transfer of "the lease" or of "all my

1 rights under the lease", or a transfer in similar general terms,
2 is a transfer of rights, and, unless the language or the
3 circumstances, as in a transfer for security, indicate the
4 contrary, the transfer is a delegation of duties by the
5 transferor to the transferee. Acceptance by the transferee
6 constitutes a promise by the transferee to perform those duties.
7 The promise is enforceable by either the transferor or the other
8 party to the lease contract.

9 [~~(7)~~] (6) Unless otherwise agreed by the lessor and
10 the lessee, a delegation of performance does not relieve the
11 transferor as against the other party of any duty to perform or
12 of any liability for default.

13 [~~(8)~~] (7) In a consumer lease, to prohibit the
14 transfer of an interest of a party under the lease contract or to
15 make a transfer an event of default, the language must be
16 specific, by a writing and conspicuous. "

17 Section 135. Section 55-2A-307 NMSA 1978 (being Laws 1992,
18 Chapter 114, Section 44) is amended to read:

19 "55-2A-307. PRIORITY OF LIENS ARISING BY ATTACHMENT OR
20 LEVY ON, SECURITY INTERESTS IN AND OTHER CLAIMS TO GOODS. --

21 (1) Except as otherwise provided in Section 55-2A-306
22 NMSA 1978, a creditor of a lessee takes subject to the lease
23 contract.

24 (2) Except as otherwise provided in [~~Subsections (3)~~
25 ~~and (4)~~] Subsection (3) of this section and in Sections 55-2A-306

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1 and 55-2A-308 NMSA 1978, a creditor of a lessor takes subject to
2 the lease contract unless

3 [~~(a)~~] the creditor holds a lien that attached
4 to the goods before the lease contract became enforceable.

5 [~~(b)~~] ~~the creditor holds a security interest in~~
6 ~~the goods and the lessee did not give value and receive delivery~~
7 ~~of the goods without knowledge of the security interest; or~~

8 [~~(c)~~] ~~the creditor holds a security interest in~~
9 ~~the goods which was perfected (Section 55-9-303 NMSA 1978) before~~
10 ~~the lease contract became enforceable.~~

11 ~~(3) A lessee in the ordinary course of business takes~~
12 ~~the leasehold interest free of a security interest in the goods~~
13 ~~created by the lessor even though the security interest is~~
14 ~~perfected (Section 55-9-303 NMSA 1978) and the lessee knows of~~
15 ~~its existence.~~

16 ~~(4) A lessee other than a lessee in the ordinary~~
17 ~~course of business takes the leasehold interest free of a~~
18 ~~security interest to the extent that it secures future advances~~
19 ~~made after the secured party acquires knowledge of the lease or~~
20 ~~more than forty-five days after the lease contract becomes~~
21 ~~enforceable, whichever first occurs, unless the future advances~~
22 ~~are made pursuant to a commitment entered into without knowledge~~
23 ~~of the lease and before the expiration of the forty-five day~~
24 ~~period.]~~

25 (3) Except as otherwise provided in Sections

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1 55-9-317, 55-9-321 and 55-9-323 NMSA 1978, a lessee takes a
2 leasehold interest subject to a security interest held by a
3 creditor of the lessor."

4 Section 136. Section 55-2A-309 NMSA 1978 (being Laws 1992,
5 Chapter 114, Section 46) is amended to read:

6 "55-2A-309. LESSOR'S AND LESSEE'S RIGHTS WHEN GOODS BECOME
7 FIXTURES. --

8 (1) In this section:

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

12 (b) a "fixture filing" is the filing, in the
13 office where a record of a mortgage on the real estate would be
14 filed or recorded, of a financing statement covering goods that
15 are or are to become fixtures and conforming to the requirements
16 of [~~Paragraph (5) of Section 55-9-402~~] Subsections (a) and (b) of
17 Section 55-9-502 NMSA 1978;

18 (c) a lease is a "purchase money lease" unless
19 the lessee has possession or use of the goods or the right to
20 possession or use of the goods before the lease agreement is
21 enforceable;

22 (d) a mortgage is a "construction mortgage" to
23 the extent it secures an obligation incurred for the construction
24 of an improvement on land, including the acquisition cost of the
25 land, if the recorded writing so indicates; and

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1 (e) "encumbrance" includes real estate
2 mortgages and other liens on real estate and all other rights in
3 real estate that are not ownership interests.

4 (2) Under this article a lease may be of goods that
5 are fixtures or may continue in goods that become fixtures, but
6 no lease exists under this article of ordinary building materials
7 incorporated into an improvement on land.

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

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

13 (a) the lease is a purchase money lease, the
14 conflicting interest of the encumbrancer or owner arises before
15 the goods become fixtures, the interest of the lessor is
16 perfected by a fixture filing before the goods become fixtures or
17 within ten days thereafter and the lessee has an interest of
18 record in the real estate or is in possession of the real estate;
19 or

20 (b) the interest of the lessor is perfected by
21 a fixture filing before the interest of the encumbrancer or owner
22 is of record, the lessor's interest has priority over any
23 conflicting interest of a predecessor in title of the
24 encumbrancer or owner, and the lessee has an interest of record
25 in the real estate or is in possession of the real estate.

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

4 (a) the fixtures are readily removable factory
5 or office machines, readily removable equipment that is not
6 primarily used or leased for use in the operation of the real
7 estate or readily removable replacements of domestic appliances
8 that are goods subject to a consumer lease, and before the goods
9 become fixtures the lease contract is enforceable; or

10 (b) the conflicting interest is a lien on the
11 real estate obtained by legal or equitable proceedings after the
12 lease contract is enforceable; or

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

16 (d) the lessee has a right to remove the goods
17 as against the encumbrancer or owner. If the lessee's right to
18 remove terminates, the priority of the interest of the lessor
19 continues for a reasonable time.

20 (6) Notwithstanding Paragraph (a) of Subsection (4)
21 of this section but otherwise subject to Subsections (4) and (5)
22 of this section, the interest of a lessor of fixtures, including
23 the lessor's residual interest, is subordinate to the conflicting
24 interest of an encumbrancer of the real estate under a
25 construction mortgage recorded before the goods become fixtures

1 if the goods become fixtures before the completion of the
2 construction. To the extent given to refinance a construction
3 mortgage, the conflicting interest of an encumbrancer of the real
4 estate under a mortgage has this priority to the same extent as
5 the encumbrancer of the real estate under the construction
6 mortgage.

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

13 (8) If the interest of a lessor of fixtures,
14 including the lessor's residual interest, has priority over all
15 conflicting interests of all owners and encumbrancers of the real
16 estate, the lessor or the lessee may (i) on default, expiration,
17 termination or cancellation of the lease agreement but subject to
18 the lease agreement and this article, or (ii) if necessary to
19 enforce other rights and remedies of the lessor or lessee under
20 this article, remove the goods from the real estate, free and
21 clear of all conflicting interests of all owners and
22 encumbrancers of the real estate, but the lessor or lessee must
23 reimburse any encumbrancer or owner of the real estate who is not
24 the lessee and who has not otherwise agreed for the cost of
25 repair of any physical injury, but not for any diminution in

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1 value of the real estate caused by the absence of the goods
2 removed or by any necessity of replacing them. A person entitled
3 to reimbursement may refuse permission to remove until the party
4 seeking removal gives adequate security for the performance of
5 this obligation.

6 (9) Even though the lease agreement does not create a
7 security interest, the interest of a lessor of fixtures,
8 including the lessor's residual interest, is perfected by filing
9 a financing statement as a fixture filing for leased goods that
10 are or are to become fixtures in accordance with the relevant
11 provisions of [~~the article on Secured Transactions (Article 9)~~]
12 Chapter 55, Article 9 NMSA 1978. "

13 Section 137. Section 55-4-210 NMSA 1978 (being Laws 1961,
14 Chapter 96, Section 4-208, as amended) is amended to read:

15 "55-4-210. SECURITY INTEREST OF COLLECTING BANK IN ITEMS,
16 ACCOMPANYING DOCUMENTS AND PROCEEDS. --

17 (a) A collecting bank has a security interest in an
18 item and any accompanying documents or the proceeds of either:

19 (1) in case of an item deposited in an account,
20 to the extent to which credit given for the item has been
21 withdrawn or applied;

22 (2) in case of an item for which it has given
23 credit available for withdrawal as of right, to the extent of the
24 credit given, whether or not the credit is drawn upon or there is
25 a right of charge-back; or

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1 (3) if it makes an advance on or against the
2 item.

3 (b) If credit given for several items received at one
4 time or pursuant to a single agreement is withdrawn or applied in
5 part, the security interest remains upon all the items, any
6 accompanying documents or the proceeds of either. For the
7 purpose of this section, credits first given are first withdrawn.

8 (c) Receipt by a collecting bank of a final
9 settlement for an item is a realization on its security interest
10 in the item, accompanying documents and proceeds. So long as the
11 bank does not receive final settlement for the item or give up
12 possession of the item or accompanying documents for purposes
13 other than collection, the security interest continues to that
14 extent and is subject to Chapter 55, Article 9 NMSA 1978, but:

15 (1) no security agreement is necessary to make
16 the security interest enforceable (~~[(1)(a) of Section 55-9-203]~~
17 Subparagraph (A) of Paragraph (3) of Subsection (b) of Section
18 55-9-203 NMSA 1978);

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

21 (3) the security interest has priority over
22 conflicting perfected security interests in the item,
23 accompanying documents or proceeds. "

24 Section 138. A new Section 55-5-118 NMSA 1978 is enacted
25 to read:

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1 "55-5-118. [NEW MATERIAL] SECURITY INTEREST OF ISSUER OR
2 NOMINATED PERSON. --

3 (a) An issuer or nominated person has a security
4 interest in a document presented under a letter of credit to the
5 extent that the issuer or nominated person honors or gives value
6 for the presentation.

7 (b) So long as and to the extent that an issuer or
8 nominated person has not been reimbursed or has not otherwise
9 recovered the value given with respect to a security interest in
10 a document under Subsection (a) of this section, the security
11 interest continues and is subject to Chapter 55, Article 9 NMSA
12 1978, but:

13 (1) a security agreement is not necessary to
14 make the security interest enforceable under Paragraph (3) of
15 Subsection (b) of Section 55-9-203 NMSA 1978;

16 (2) if the document is presented in a medium
17 other than a written or other tangible medium, the security
18 interest is perfected; and

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

25 Section 139. Section 55-7-503 NMSA 1978 (being Laws 1961,

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1 Chapter 96, Section 7-503) is amended to read:

2 "55-7-503. DOCUMENT OF TITLE TO GOODS DEFEATED IN CERTAIN
3 CASES. --

4 (1) A document of title confers no right in goods
5 against a person who before issuance of the document had a legal
6 interest or a perfected security interest in them and who
7 neither:

8 (a) delivered or entrusted them or any document
9 of title covering them to the bailor or his nominee with actual
10 or apparent authority to ship, store or sell or with power to
11 obtain delivery under this article (Section [~~7-403~~] 55-7-403 NMSA
12 1978) or with power of disposition under [~~this Act~~] Sections
13 [~~2-403 and 9-307~~] 55-2-403 and 55-9-320 NMSA 1978 or other
14 statute or rule of law; nor

15 (b) acquiesced in the procurement by the bailor
16 or his nominee of any document of title.

17 (2) Title to goods based upon an unaccepted delivery
18 order is subject to the rights of anyone to whom a negotiable
19 warehouse receipt or bill of lading covering the goods has been
20 duly negotiated. Such a title may be defeated under [~~the next~~]
21 Section 55-7-504 NMSA 1978 to the same extent as the rights of
22 the issuer or a transferee from the issuer.

23 (3) Title to goods based upon a bill of lading issued
24 to a freight forwarder is subject to the rights of anyone to whom
25 a bill issued by the freight forwarder is duly negotiated; but

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1 delivery by the carrier in accordance with [~~Part 4~~] Sections
2 55-7-401 through 55-7-404 NMSA 1978 pursuant to its own bill of
3 lading discharges the carrier's obligation to deliver."

4 Section 140. Section 55-8-103 NMSA 1978 (being Laws 1996,
5 Chapter 47, Section 7) is amended to read:

6 "55-8-103. RULES FOR DETERMINING WHETHER CERTAIN
7 OBLIGATIONS AND INTERESTS ARE SECURITIES OR FINANCIAL ASSETS. --

8 (a) A share or similar equity interest issued by a
9 corporation, business trust, joint stock company or similar
10 entity is a security.

11 (b) An "investment company security" is a security.
12 "Investment company security" means a share or similar equity
13 interest issued by an entity that is registered as an investment
14 company under the federal investment company laws, an interest in
15 a unit investment trust that is so registered or a face-amount
16 certificate issued by a face-amount certificate company that is
17 so registered. Investment company security does not include an
18 insurance policy or endowment policy or annuity contract issued
19 by an insurance company.

20 (c) An interest in a partnership or limited liability
21 company is not a security unless it is dealt in or traded on
22 securities exchanges or in securities markets, its terms
23 expressly provide that it is a security governed by this article
24 or it is an investment company security. However, an interest in
25 a partnership or limited liability company is a financial asset

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1 if it is held in a securities account.

2 (d) A writing that is a security certificate is
3 governed by this article and not by Chapter 55, Article 3 NMSA
4 1978, even though it also meets the requirements of that article.
5 However, a negotiable instrument governed by Chapter 55, Article
6 3 NMSA 1978 is a financial asset if it is held in a securities
7 account.

8 (e) An option or similar obligation issued by a
9 clearing corporation to its participants is not a security. It
10 is a financial asset.

11 (f) A commodity contract, as defined in [~~Section~~
12 ~~55-9-115~~] Paragraph (15) of Subsection (a) of Section 55-9-102
13 NMSA 1978, is not a security or a financial asset. "

14 Section 141. Section 55-8-106 NMSA 1978 (being Laws 1996,
15 Chapter 47, Section 10) is amended to read:

16 "55-8-106. CONTROL. --

17 (a) A purchaser has "control" of a certificated
18 security in bearer form if the certificated security is delivered
19 to the purchaser.

20 (b) A purchaser has "control" of a certificated
21 security in registered form if the certificated security is
22 delivered to the purchaser and:

23 (1) the certificate is indorsed to the
24 purchaser or in blank by an effective indorsement; or

25 (2) the certificate is registered in the name

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1 of the purchaser, upon original issue or registration of transfer
2 by the issuer.

3 (c) A purchaser has "control" of an uncertificated
4 security if:

5 (1) the uncertificated security is delivered to
6 the purchaser; or

7 (2) the issuer has agreed that it will comply
8 with instructions originated by the purchaser without further
9 consent by the registered owner.

10 (d) A purchaser has "control" of a security
11 entitlement if:

12 (1) the purchaser becomes the entitlement
13 holder; ~~[or]~~

14 (2) the securities intermediary has agreed that
15 it will comply with entitlement orders originated by the
16 purchaser without further consent by the entitlement holder; or

17 (3) another person has control of the security
18 entitlement on behalf of the purchaser or, having previously
19 acquired control of the security entitlement, acknowledges that
20 it has control on behalf of the purchaser.

21 (e) If an interest in a security entitlement is
22 granted by the entitlement holder to the entitlement holder's own
23 securities intermediary, the securities intermediary has control.

24 (f) A purchaser who has satisfied the requirements of
25 Subsection (c) ~~[(2)]~~ or (d) ~~[(2)]~~ of this section has control even

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1 if the registered owner in the case of Subsection (c) ~~[(2)]~~ of
2 this section or the entitlement holder in the case of Subsection
3 (d) ~~[(2)]~~ of this section retains the right to make substitutions
4 for the uncertificated security or security entitlement, to
5 originate instructions or entitlement orders to the issuer or
6 securities intermediary or otherwise to deal with the
7 uncertificated security or security entitlement.

8 (g) An issuer or a securities intermediary may not
9 enter into an agreement of the kind described in Paragraph (2) of
10 Subsection (c) ~~[(2)]~~ or Paragraph (2) of Subsection (d) ~~[(2)]~~ of
11 this section without the consent of the registered owner or
12 entitlement holder, but an issuer or a securities intermediary is
13 not required to enter into such an agreement even though the
14 registered owner or entitlement holder so directs. An issuer or
15 securities intermediary that has entered into such an agreement
16 is not required to confirm the existence of the agreement to
17 another party unless requested to do so by the registered owner
18 or entitlement holder. "

19 Section 142. Section 55-8-110 NMSA 1978 (being Laws 1996,
20 Chapter 47, Section 14) is amended to read:

21 "55-8-110. APPLICABILITY--CHOICE OF LAW.--

22 (a) The local law of the issuer's jurisdiction, as
23 specified in Subsection (d) of this section, governs:

24 (1) the validity of a security;

25 (2) the rights and duties of the issuer with

1 respect to registration of transfer;

2 (3) the effectiveness of registration of
3 transfer by the issuer;

4 (4) whether the issuer owes any duties to an
5 adverse claimant to a security; and

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

10 (b) The local law of the securities intermediary's
11 jurisdiction, as specified in Subsection (e) of this section,
12 governs:

13 (1) acquisition of a security entitlement from
14 the securities intermediary;

15 (2) the rights and duties of the securities
16 intermediary and entitlement holder arising out of a security
17 entitlement;

18 (3) whether the securities intermediary owes
19 any duties to an adverse claimant to a security entitlement; and

20 (4) whether an adverse claim can be asserted
21 against a person who acquires a security entitlement from the
22 securities intermediary or a person who purchases a security
23 entitlement or interest therein from an entitlement holder.

24 (c) The local law of the jurisdiction in which a
25 security certificate is located at the time of delivery governs

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1 whether an adverse claim can be asserted against a person to whom
2 the security certificate is delivered.

3 (d) "Issuer's jurisdiction" means the jurisdiction
4 under which the issuer of the security is organized or, if
5 permitted by the law of that jurisdiction, the law of another
6 jurisdiction specified by the issuer. An issuer organized under
7 the law of this state may specify the law of another jurisdiction
8 as the law governing the matters specified in Paragraphs (2)
9 through (5) of Subsection (a) [~~(2) through (5)~~] of this section.

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

12 (1) if an agreement between the securities
13 intermediary and its entitlement holder [~~specifies that it is~~
14 ~~governed by the law of a particular jurisdiction~~] governing the
15 securities account expressly provides that a particular
16 jurisdiction is the securities intermediary's jurisdiction for
17 purposes of Sections 55-8-101 through 55-8-116 NMSA 1978,
18 that jurisdiction is the securities intermediary's jurisdiction;

19 (2) if Paragraph (1) of this subsection does
20 not apply and an agreement between the securities intermediary
21 and its entitlement holder governing the securities account
22 expressly provides that the agreement is governed by the law of a
23 particular jurisdiction, that jurisdiction is the securities
24 intermediary's jurisdiction;

25 [~~(2)~~] (3) if neither Paragraph (1) nor

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1 Paragraph (2) of this subsection applies and an agreement between
2 the securities intermediary and its entitlement holder [~~does not~~
3 ~~specify the governing law as provided in Paragraph (1) but~~
4 governing the securities account expressly [~~specifies~~] provides
5 that the securities account is maintained at an office in a
6 particular jurisdiction, that jurisdiction is the securities
7 intermediary's jurisdiction;

8 [~~(3)~~] (4) if [~~an agreement between the~~
9 ~~securities intermediary and its entitlement holder does not~~
10 ~~specify a jurisdiction as provided in Paragraph (1) or (2)] none
11 of the preceding paragraphs applies, the securities
12 intermediary's jurisdiction is the jurisdiction in which [~~is~~
13 ~~located~~] the office identified in an account statement as the
14 office serving the entitlement holder's account is located; or~~

15 [~~(4)~~] (5) if [~~an agreement between the~~
16 ~~securities intermediary and its entitlement holder does not~~
17 ~~specify a jurisdiction as provided in Paragraph (1) or (2) and an~~
18 ~~account statement does not identify an office serving the~~
19 ~~entitlement holder's account as provided in Paragraph (3)] none
20 of the preceding paragraphs applies, the securities
21 intermediary's jurisdiction is the jurisdiction in which [~~is~~
22 ~~located~~] the chief executive office of the securities
23 intermediary is located.~~

24 (f) A securities intermediary's jurisdiction is not
25 determined by the physical location of certificates representing

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

6 Section 143. Section 55-8-301 NMSA 1978 (being Laws 1996,
7 Chapter 47, Section 31) is amended to read:

8 "55-8-301. DELIVERY. --

9 (a) Delivery of a certificated security to a
10 purchaser occurs when:

11 (1) the purchaser acquires possession of the
12 security certificate;

13 (2) another person, other than a securities
14 intermediary, either acquires possession of the security
15 certificate on behalf of the purchaser or, having previously
16 acquired possession of the certificate, acknowledges that it
17 holds for the purchaser; or

18 (3) a securities intermediary acting on behalf
19 of the purchaser acquires possession of the security certificate,
20 only if the certificate is in registered form and ~~[has been]~~ is
21 (i) registered in the name of the purchaser, (ii) payable to the
22 order of the purchaser or (iii) specially indorsed to the
23 purchaser by an effective indorsement and has not been indorsed
24 to the securities intermediary or in blank.

25 (b) Delivery of an uncertificated security to a

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1 purchaser occurs when:

2 (1) the issuer registers the purchaser as the
3 registered owner, upon original issue or registration of
4 transfer; or

5 (2) another person, other than a securities
6 intermediary, either becomes the registered owner of the
7 uncertificated security on behalf of the purchaser or, having
8 previously become the registered owner, acknowledges that it
9 holds for the purchaser. "

10 Section 144. Section 55-8-302 NMSA 1978 (being Laws 1996,
11 Chapter 47, Section 32) is amended to read:

12 "55-8-302. RIGHTS OF PURCHASER. --

13 (a) Except as otherwise provided in Subsections (b)
14 and (c) [~~upon delivery~~] of this section, a purchaser of a
15 certificated or uncertificated security [~~to a purchaser, the~~
16 ~~purchaser~~] acquires all rights in the security that the
17 transferor had or had power to transfer.

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

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

23 Section 145. Section 55-8-510 NMSA 1978 (being Laws 1996,
24 Chapter 47, Section 54) is amended to read:

25 "55-8-510. RIGHTS OF PURCHASER OF SECURITY ENTITLEMENT

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1 FROM ENTITLEMENT HOLDER. --

2 (a) ~~[An]~~ In a case not covered by the priority rules
3 in Chapter 55, Article 9 NMSA 1978 or the rules stated in
4 Subsection (c) of this section, an action based on an adverse
5 claim to a financial asset or security entitlement, whether
6 framed in conversion, replevin, constructive trust, equitable
7 lien or other theory, may not be asserted against a person who
8 purchases a security entitlement, or an interest therein, from an
9 entitlement holder if the purchaser gives value, does not have
10 notice of the adverse claim and obtains control.

11 (b) If an adverse claim could not have been asserted
12 against an entitlement holder under Section 55-8-502 NMSA 1978,
13 the adverse claim cannot be asserted against a person who
14 purchases a security entitlement, or an interest therein, from
15 the entitlement holder.

16 (c) In a case not covered by the priority rules in
17 Chapter 55, Article 9 NMSA 1978, a purchaser for value of a
18 security entitlement, or an interest therein, who obtains control
19 has priority over a purchaser of a security entitlement, or an
20 interest therein, who does not obtain control. Except as
21 otherwise provided in Subsection (d) of this section, purchasers
22 who have control rank [equally, ~~except that a~~] according to
23 priority in time of:

24 (1) the purchaser's becoming the person for
25 whom the securities account, in which the security entitlement is

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1 carried, is maintained, if the purchaser obtained control under
2 Paragraph (1) of Subsection (d) of Section 55-8-106 NMSA 1978;

3 (2) the securities intermediary's agreement to
4 comply with the purchaser's entitlement orders with respect to
5 security entitlements carried or to be carried in the securities
6 account in which the security entitlement is carried, if the
7 purchaser obtained control under Paragraph (2) of Subsection (d)
8 of Section 55-8-106 NMSA 1978; or

9 (3) if the purchaser obtained control through
10 another person under Paragraph (3) of Subsection (d) of Section
11 55-8-106 NMSA 1978, the time on which priority would be based
12 under this subsection if the other person were the secured party.

13 (d) A securities intermediary as purchaser has
14 priority over a conflicting purchaser who has control unless
15 otherwise agreed by the securities intermediary. "

16 Section 146. SAVING CLAUSE. --

17 (a) Except as otherwise provided in Sections 146
18 through 155 of this act, its provisions apply to a transaction or
19 lien within its scope, even if the transaction or lien was
20 entered into or created before July 1, 2001.

21 (b) Except as otherwise provided in Subsection (c) of
22 this section and Sections 147 through 153 of this act:

23 (1) transactions and liens that were not
24 governed by Chapter 55, Article 9 NMSA 1978, as it existed prior
25 to July 1, 2001, were validly entered into or created before that

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1 date and would be subject to this act if they had been entered
2 into or created after July 1, 2001, and the rights, duties and
3 interests flowing from those transactions and liens remain valid
4 after July 1, 2001; and

5 (2) the transactions and liens described in
6 Paragraph (1) of this subsection may be terminated, completed,
7 consummated and enforced as required or permitted by this act or
8 by the law that otherwise would apply if this act had not taken
9 effect.

10 (c) This act does not affect an action, case or
11 proceeding commenced before July 1, 2001.

12 Section 147. TEMPORARY TRANSITION PROVISION-- SECURITY
13 INTEREST PERFECTED BEFORE EFFECTIVE DATE. --

14 (a) A security interest that is enforceable
15 immediately before July 1, 2001 and would have priority over the
16 rights of a person that becomes a lien creditor at that time is a
17 perfected security interest under this act if, on July 1, 2001,
18 the applicable requirements for enforceability and perfection
19 under this act are satisfied without further action.

20 (b) Except as otherwise provided in Section 149 of
21 this act, if, immediately before July 1, 2001, a security
22 interest is enforceable and would have priority over the rights
23 of a person that becomes a lien creditor at that time, but the
24 applicable requirements for enforceability or perfection under
25 this act are not satisfied on July 1, 2001, the security

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1 interest:

2 (1) is a perfected security interest until
3 midnight on June 30, 2002;

4 (2) remains enforceable on and after July 1,
5 2002 only if the security interest becomes enforceable pursuant
6 to Section 55-9-203 NMSA 1978 before midnight on June 30, 2002;
7 and

8 (3) remains perfected on and after July 1, 2002
9 only if the applicable requirements for perfection under this act
10 are satisfied before midnight on June 30, 2002.

11 Section 148. TEMPORARY TRANSITION PROVISION-- SECURITY
12 INTEREST UNPERFECTED BEFORE EFFECTIVE DATE. --A security interest
13 that is enforceable immediately before July 1, 2001, but which
14 would be subordinate to the rights of a person that becomes a
15 lien creditor at that time:

16 (1) remains an enforceable security interest until
17 midnight June 30, 2002;

18 (2) remains enforceable on and after July 1, 2002 if
19 the security interest becomes enforceable pursuant to Section
20 55-9-203 NMSA 1978 before June 30, 2002; and

21 (3) becomes perfected:

22 (A) without further action on July 1, 2002 if
23 the applicable requirements for perfection under this act are
24 satisfied before or at that time; or

25 (B) when the applicable requirements for

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1 perfection are satisfied if the requirements are satisfied after
2 the time specified in Paragraph (A) of this subsection.

3 Section 149. TEMPORARY TRANSITION PROVISION--EFFECTIVENESS
4 OF ACTION TAKEN BEFORE EFFECTIVE DATE. --

5 (a) If action, other than the filing of a financing
6 statement, is taken before July 1, 2001, and if the action would
7 have resulted in priority of a security interest over the rights
8 of a person that becomes a lien creditor had the security
9 interest become enforceable before that date, the action is
10 effective to perfect a security interest that attaches under this
11 act before July 1, 2002. An attached security interest becomes
12 unperfected on July 1, 2002 unless the security interest becomes
13 a perfected security interest under this act before that date.

14 (b) The filing of a financing statement before July
15 1, 2001 is effective to perfect a security interest to the extent
16 the filing would satisfy the applicable requirements for
17 perfection under this act.

18 (c) This act does not render ineffective an effective
19 financing statement that, before July 1, 2001, is filed and
20 satisfies the applicable requirements for perfection under the
21 law of the jurisdiction governing perfection as provided in
22 Section 55-9-103 NMSA 1978 as it existed prior to July 1, 2001.
23 However, except as otherwise provided in Subsections (d) and (e)
24 of this section and Section 150 of this act, the financing
25 statement ceases to be effective at the earlier of:

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

4 (2) June 30, 2006.

5 (d) Filing of a continuation statement after July 1,
6 2001 does not continue the effectiveness of a financing statement
7 filed before that date. However, upon the timely filing of a
8 continuation statement on or after July 1, 2001 and in accordance
9 with the law of the jurisdiction governing perfection as provided
10 in Sections 55-9-301 through 55-9-342 NMSA 1978, the
11 effectiveness of a financing statement filed in the same office
12 in that jurisdiction before July 1, 2001 continues for the period
13 provided by the law of that jurisdiction.

14 (e) Paragraph (2) of Subsection (c) of this section
15 applies to a financing statement that, before July 1, 2001, is
16 filed against a transmitting utility and satisfies the applicable
17 requirements for perfection under the law of the jurisdiction
18 governing perfection as provided in Section 55-9-103 NMSA 1978 as
19 that section existed prior to July 1, 2001 only to the extent
20 that Sections 55-9-301 through 55-9-342 NMSA 1978 provide that
21 the law of a jurisdiction other than the jurisdiction in which
22 the financing statement is filed governs perfection of a security
23 interest in collateral covered by the financing statement.

24 (f) A financing statement that includes a financing
25 statement filed before July 1, 2001 and a continuation statement

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1 filed after that date is effective only to the extent that it
2 satisfies the requirements of Sections 55-9-501 through 55-9-518
3 NMSA 1978 for an initial financing statement.

4 Section 150. TEMPORARY TRANSITION PROVISION--WHEN INITIAL
5 FINANCING STATEMENT SUFFICES TO CONTINUE EFFECTIVENESS OF
6 FINANCING STATEMENT. --

7 (a) The filing of an initial financing statement in
8 the office specified in Section 55-9-501 NMSA 1978 continues the
9 effectiveness of a financing statement filed before July 1, 2001
10 if:

11 (1) the filing of an initial financing
12 statement in that office would be effective to perfect a security
13 interest under this act;

14 (2) the pre-effective-date financing statement
15 was filed in an office in another state or another office in this
16 state; and

17 (3) the initial financing statement satisfies
18 Subsection (c) of this section.

19 (b) The filing of an initial financing statement
20 under Subsection (a) of this section continues the effectiveness
21 of the pre-effective-date financing statement:

22 (1) if the initial financing statement is filed
23 before July 1, 2001, for the period provided in Section 55-9-403
24 NMSA 1978 as it existed prior to July 1, 2001, with respect to a
25 financing statement; and

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1 (2) if the initial financing statement is filed
2 after July 1, 2001, for the period provided in Section 55-9-515
3 NMSA 1978 with respect to an initial financing statement.

4 (c) To be effective for purposes of Subsection (a) of
5 this section, an initial financing statement must:

6 (1) satisfy the requirements of Sections
7 55-9-501 through 55-9-526 NMSA 1978 for an initial financing
8 statement;

9 (2) identify the pre-effective-date financing
10 statement by indicating the office in which the financing
11 statement was filed and providing the dates of filing and file
12 numbers, if any, of the financing statement and of the most
13 recent continuation statement filed with respect to the financing
14 statement; and

15 (3) indicate that the pre-effective-date
16 financing statement remains effective.

17 Section 151. TEMPORARY TRANSITION PROVISION--AMENDMENT OF
18 PRE-EFFECTIVE-DATE FINANCING STATEMENT.--

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

21 (b) After July 1, 2001, a person may add or delete
22 collateral covered by, continue or terminate the effectiveness
23 of, or otherwise amend the information provided in, a pre-
24 effective-date financing statement only in accordance with the
25 law of the jurisdiction governing perfection as provided in

1 Sections 55-9-301 through 55-9-338 NMSA 1978. However, the
2 effectiveness of a pre-effective-date financing statement also
3 may be terminated in accordance with the law of the jurisdiction
4 in which the financing statement is filed.

5 (c) Except as otherwise provided in Subsection (d) of
6 this section if the law of this state governs perfection of a
7 security interest, the information in a pre-effective-date
8 financing statement may be amended after July 1, 2001 only if:

9 (1) the pre-effective-date financing statement
10 and an amendment are filed in the office specified in Section
11 55-9-501 NMSA 1978;

12 (2) an amendment is filed in the office
13 specified in Section 55-9-501 NMSA 1978 concurrently with, or
14 after the filing in that office of, an initial financing
15 statement that satisfies Subsection (c) of Section 149 of this
16 act; or

17 (3) an initial financing statement that
18 provides the information as amended and satisfies Subsection (c)
19 of Section 149 of this act is filed in the office specified in
20 Section 55-9-501 NMSA 1978.

21 (d) If the law of this state governs perfection of a
22 security interest, the effectiveness of a pre-effective-date
23 financing statement may be continued only under Subsections (d)
24 and (f) of Section 148 of this act or Section 149 of this act.

25 (e) Whether or not the law of this state governs

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1 perfection of a security interest, the effectiveness of a pre-
2 effective-date financing statement filed in this state may be
3 terminated after July 1, 2001 by filing a termination statement
4 in the office in which the pre-effective-date financing statement
5 is filed, unless an initial financing statement that satisfies
6 Subsection (c) of Section 149 of this act has been filed in the
7 office specified by the law of the jurisdiction governing
8 perfection as provided in Sections 55-9-301 through 55-9-342 NMSA
9 1978 as the office in which to file a financing statement.

10 Section 152. TEMPORARY TRANSITION PROVISION-- PERSONS
11 ENTITLED TO FILE INITIAL FINANCING STATEMENT OR CONTINUATION
12 STATEMENT.--A person may file an initial financing statement or a
13 continuation statement under Sections 145 through 152 of this act
14 if:

15 (1) the secured party of record authorizes the
16 filing; and

17 (2) the filing is necessary under Sections 145
18 through 153 of this act:

19 (A) to continue the effectiveness of a
20 financing statement filed before July 1, 2001; or

21 (B) to perfect or continue the perfection of a
22 security interest.

23 Section 153. TEMPORARY TRANSITION PROVISION-- PRIORITY.--

24 (a) This act determines the priority of conflicting
25 claims to collateral. However, if the relative priorities of the

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1 claims were established before July 1, 2001, Chapter 55, Article
2 9 NMSA 1978 as it existed before that date determines priority.

3 (b) For purposes of Subsection (a) of Section
4 55-9-322 NMSA 1978, the priority of a security interest that
5 becomes enforceable under Section 55-9-203 NMSA 1978 dates from
6 July 1, 2001 if the security interest is perfected under this act
7 by the filing of a financing statement before that date which
8 would not have been effective to perfect the security interest
9 under Chapter 55, Article 9 NMSA 1978 as it existed before July
10 1, 2001. This subsection does not apply to conflicting security
11 interests, each of which is perfected by the filing of such a
12 financing statement.

13 Section 154. TEMPORARY TRANSITION PROVISION--CERTAIN
14 RECORDS OF COUNTY CLERKS. --

15 (a) As used in this section, "pre-effective-date
16 record" means a financing statement and related records filed in
17 a county clerk's office, pursuant to the provisions of Chapter
18 55, Article 9 NMSA 1978 as it existed prior to July 1, 2001, but
19 does not include real estate records filed in the county clerk's
20 office.

21 (b) Until July 1, 2008, a county clerk shall
22 maintain, index and make available to the public all pre-
23 effective-date records.

24 (c) On or after July 1, 2008, a county clerk may
25 remove and destroy pre-effective-date records, including related

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1 indexes, so long as the county clerk complies with other
2 applicable laws regarding retention of records.

3 Section 155. EFFECTIVE DATE. -- The effective date of the
4 provisions of this act is July 1, 2001.

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