

1 HOUSE BILL 90
2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**
3 INTRODUCED BY
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10 AN ACT

11 RELATING TO COMMERCIAL TRANSACTIONS; AMENDING, REPEALING AND
12 ENACTING SECTIONS OF THE UNIFORM COMMERCIAL CODE; PROVIDING FOR
13 CONTROLLABLE ELECTRONIC RECORDS.
14

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

16 SECTION 1. Section 55-1-201 NMSA 1978 (being Laws 2005,
17 Chapter 144, Section 9) is amended to read:

18 "55-1-201. GENERAL DEFINITIONS.--

19 (a) Unless the context otherwise requires, words or
20 phrases defined in this section, or in the additional
21 definitions contained in other articles of the Uniform
22 Commercial Code that apply to particular articles or parts
23 thereof, have the meanings stated.

24 (b) Subject to definitions contained in other
25 articles of the Uniform Commercial Code that apply to

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1 particular articles or parts thereof:

2 (1) "action", in the sense of a judicial
3 proceeding, includes recoupment, counterclaim, set-off, suit in
4 equity and any other proceeding in which rights are determined;

5 (2) "aggrieved party" means a party entitled
6 to pursue a remedy;

7 (3) "agreement", as distinguished from
8 "contract", means the bargain of the parties in fact, as found
9 in their language or inferred from other circumstances,
10 including course of performance, course of dealing or usage of
11 trade as provided in Section 55-1-303 NMSA 1978;

12 (4) "bank" means a person engaged in the
13 business of banking and includes a savings bank, savings and
14 loan association, credit union and trust company;

15 (5) "bearer" means a person in control of a
16 negotiable electronic document of title or a person in
17 possession of a negotiable instrument, negotiable tangible
18 document of title or certificated security that is payable to
19 bearer or indorsed in blank;

20 (6) "bill of lading" means a document of title
21 evidencing the receipt of goods for shipment issued by a person
22 engaged in the business of directly or indirectly transporting
23 or forwarding goods. The term does not include a warehouse
24 receipt;

25 (7) "branch" includes a separately

1 incorporated foreign branch of a bank;

2 (8) "burden of establishing" a fact means the
3 burden of persuading the trier of fact that the existence of
4 the fact is more probable than its nonexistence;

5 (9) "buyer in ordinary course of business"
6 means a person that buys goods in good faith, without knowledge
7 that the sale violates the rights of another person in the
8 goods, and in the ordinary course from a person, other than a
9 pawnbroker, in the business of selling goods of that kind. A
10 person buys goods in the ordinary course if the sale to the
11 person comports with the usual or customary practices in the
12 kind of business in which the seller is engaged or with the
13 seller's own usual or customary practices. A person that sells
14 oil, gas or other minerals at the wellhead or minehead is a
15 person in the business of selling goods of that kind. A buyer
16 in ordinary course of business may buy for cash, by exchange of
17 other property or on secured or unsecured credit and may
18 acquire goods or documents of title under a preexisting
19 contract for sale. Only a buyer that takes possession of the
20 goods or has a right to recover the goods from the seller under
21 Chapter 55, Article 2 NMSA 1978 may be a buyer in ordinary
22 course of business. "Buyer in ordinary course of business"
23 does not include a person that acquires goods in a transfer in
24 bulk or as security for or in total or partial satisfaction of
25 a money debt;

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1 (10) "conspicuous", with reference to a term,
2 means so written, displayed or presented that, based upon the
3 totality of the circumstances, a reasonable person against
4 which it is to operate ought to have noticed it. Whether a
5 term is "conspicuous" or not is a decision for the court;

6 [~~Conspicuous terms include the following:~~

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

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

16 (11) "consumer" means an individual who enters
17 into a transaction primarily for personal, family or household
18 purposes;

19 (12) "contract", as distinguished from
20 "agreement", means the total legal obligation that results from
21 the parties' agreement as determined by the Uniform Commercial
22 Code as supplemented by any other applicable laws;

23 (13) "creditor" includes a general creditor, a
24 secured creditor, a lien creditor and any representative of
25 creditors, including an assignee for the benefit of creditors,

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1 a trustee in bankruptcy, a receiver in equity and an executor
2 or administrator of an insolvent debtor's or assignor's estate;

3 (14) "defendant" includes a person in the
4 position of defendant in a counterclaim, cross-claim or third-
5 party claim;

6 (15) "delivery", with respect to an electronic
7 document of title, means voluntary transfer of control, and
8 with respect to an instrument, a tangible document of title or
9 an authoritative tangible copy of a record evidencing chattel
10 paper, means voluntary transfer of possession;

11 (16) "document of title" means a record: (i)
12 that in the regular course of business or financing is treated
13 as adequately evidencing that the person in possession or
14 control of the record is entitled to receive, control, hold and
15 dispose of the record and the goods the record covers; and (ii)
16 that purports to be issued by or addressed to a bailee and to
17 cover goods in the bailee's possession that are either
18 identified or are fungible portions of an identified mass. The
19 term includes a bill of lading, transport document, dock
20 warrant, dock receipt, warehouse receipt and order for delivery
21 of goods. An electronic document of title means a document of
22 title evidenced by a record consisting of information stored in
23 an electronic medium. A tangible document of title means a
24 document of title evidenced by a record consisting of
25 information that is inscribed on a tangible medium;

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1 (16A) "electronic" means relating to
2 technology having electrical, digital, magnetic, wireless,
3 optical, electromagnetic or similar capabilities;

4 (17) "fault" means a default, breach or
5 wrongful act or omission;

6 (18) "fungible goods" means:

7 (A) goods of which any unit, by nature
8 or usage of trade, is the equivalent of any other like unit; or

9 (B) goods that by agreement are treated
10 as equivalent;

11 (19) "genuine" means free of forgery or
12 counterfeiting;

13 (20) "good faith", except as otherwise
14 provided in Chapter 55, Article 5 NMSA 1978, means honesty in
15 fact and the observance of reasonable commercial standards of
16 fair dealing;

17 (21) "holder" means:

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

21 (B) the person in possession of a
22 negotiable tangible document of title if the goods are
23 deliverable either to bearer or to the order of the person in
24 possession; or

25 (C) the person in control, other than

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1 pursuant to Subsection (g) of Section 55-7-106 NMSA 1978, of a
2 negotiable electronic document of title;

3 (22) "insolvency proceeding" includes an
4 assignment for the benefit of creditors or other proceeding
5 intended to liquidate or rehabilitate the estate of the person
6 involved;

7 (23) "insolvent" means:

8 (A) having generally ceased to pay debts
9 in the ordinary course of business other than as a result of
10 bona fide dispute;

11 (B) being unable to pay debts as they
12 become due; or

13 (C) being insolvent within the meaning
14 of federal bankruptcy law;

15 (24) "money" means a medium of exchange
16 currently authorized or adopted by a domestic or foreign
17 government. The term includes a monetary unit of account
18 established by an intergovernmental organization or by
19 agreement between two or more countries. The term does not
20 include an electronic record that is a medium of exchange
21 recorded and transferable in a system that existed and operated
22 for the medium of exchange before the medium of exchange was
23 authorized or adopted by the government;

24 (25) "organization" means a person other than
25 an individual;

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1 (26) "party", as distinguished from "third
2 party", means a person that has engaged in a transaction or
3 made an agreement subject to the Uniform Commercial Code;

4 (27) "person" means an individual,
5 corporation, business trust, estate, trust, partnership,
6 limited liability company, association, joint venture,
7 government, governmental subdivision, agency or
8 instrumentality; ~~[public corporation]~~ or any other legal or
9 commercial entity. The term includes a protected series,
10 however denominated, of an entity if the protected series is
11 established under law other than the Uniform Commercial Code
12 that limits, or limits if conditions specified under the law
13 are satisfied, the ability of a creditor of the entity or of
14 any other protected series of the entity to satisfy a claim
15 from assets of the protected series;

16 (28) "present value" means the amount as of a
17 date certain of one or more sums payable in the future,
18 discounted to the date certain by use of either an interest
19 rate specified by the parties if that rate is not manifestly
20 unreasonable at the time the transaction is entered into or, if
21 an interest rate is not so specified, a commercially reasonable
22 rate that takes into account the facts and circumstances at the
23 time the transaction is entered into;

24 (29) "purchase" means taking by sale, lease,
25 discount, negotiation, mortgage, pledge, lien, security

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1 interest, issue or reissue, gift or any other voluntary
2 transaction creating an interest in property;

3 (30) "purchaser" means a person that takes by
4 purchase;

5 (31) "record" means information that is
6 inscribed on a tangible medium or that is stored in an
7 electronic or other medium and is retrievable in perceivable
8 form;

9 (32) "remedy" means any remedial right to
10 which an aggrieved party is entitled with or without resort to
11 a tribunal;

12 (33) "representative" means a person empowered
13 to act for another, including an agent, an officer of a
14 corporation or association and a trustee, executor or
15 administrator of an estate;

16 (34) "right" includes remedy;

17 (35) "security interest" means an interest in
18 personal property or fixtures that secures payment or
19 performance of an obligation. "Security interest" includes any
20 interest of a consignor and a buyer of accounts, chattel paper,
21 a payment intangible or a promissory note in a transaction that
22 is subject to Chapter 55, Article 9 NMSA 1978. "Security
23 interest" does not include the special property interest of a
24 buyer of goods on identification of those goods to a contract
25 for sale under Section 55-2-401 NMSA 1978, but a buyer may also

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1 acquire a "security interest" by complying with Chapter 55,
2 Article 9 NMSA 1978. Except as otherwise provided in Section
3 55-2-505 NMSA 1978, the right of a seller or lessor of goods
4 under Chapter 55, Article 2 or 2A NMSA 1978 to retain or
5 acquire possession of the goods is not a "security interest",
6 but a seller or lessor may also acquire a "security interest"
7 by complying with Chapter 55, Article 9 NMSA 1978. The
8 retention or reservation of title by a seller of goods
9 notwithstanding shipment or delivery to the buyer under Section
10 55-2-401 NMSA 1978 is limited in effect to a reservation of a
11 "security interest". Whether a transaction in the form of a
12 lease creates a "security interest" is determined pursuant to
13 Section 55-1-203 NMSA 1978;

14 (36) "send" in connection with a [~~writing~~]
15 record or [~~notice~~] notification means:

16 (A) to deposit in the mail, [~~or~~] deliver
17 or transmit for transmission by any other usual means of
18 communication, with postage or cost of transmission provided
19 for, [~~and properly addressed and, in the case of an instrument,~~
20 ~~to an~~] addressed to any address specified thereon or otherwise
21 agreed or, if there be none, to any address reasonable under
22 the circumstances; or

23 (B) [~~in any other way to cause to be~~
24 ~~received any record or notice within the time it would have~~
25 ~~arrived if properly sent~~] to cause the record or notification

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1 to be received within the time it would have been received if
2 properly sent under Subparagraph (A) of this paragraph;

3 (37) [~~"signed" includes using any symbol~~
4 ~~executed or adopted with present intention to adopt or accept a~~
5 ~~writing] "sign" means, with present intent to authenticate or
6 adopt a record:~~

7 (A) execute or adopt a tangible symbol;
8 or

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

11 "Signed", "signing" and "signature" have corresponding
12 meanings;

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

17 (39) "surety" includes a guarantor or other
18 secondary obligor;

19 (40) "term" means a portion of an agreement
20 that relates to a particular matter;

21 (41) "unauthorized signature" means a
22 signature made without actual, implied or apparent authority.
23 The term includes a forgery;

24 (42) "warehouse receipt" means a document of
25 title issued by a person engaged in the business of storing

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1 goods for hire; and

2 (43) "writing" includes printing, typewriting
3 or any other intentional reduction to tangible form. "Written"
4 has a corresponding meaning."

5 SECTION 2. Section 55-1-204 NMSA 1978 (being Laws 2005,
6 Chapter 144, Section 12) is amended to read:

7 "55-1-204. VALUE.--Except as otherwise provided in
8 Chapter 55, Articles 3, 4, [~~and~~] 5 and 12 NMSA 1978, a person
9 gives value for rights if the person acquires them:

10 (1) in return for a binding commitment to extend
11 credit or for the extension of immediately available credit,
12 whether or not drawn upon and whether or not a charge-back is
13 provided for in the event of difficulties in collection;

14 (2) as security for, or in total or partial
15 satisfaction of, a preexisting claim;

16 (3) by accepting delivery under a preexisting
17 contract for purchase; or

18 (4) in return for any consideration sufficient to
19 support a simple contract."

20 SECTION 3. Section 55-1-301 NMSA 1978 (being Laws 2005,
21 Chapter 144, Section 15) is amended to read:

22 "55-1-301. TERRITORIAL APPLICABILITY; PARTIES' POWER TO
23 CHOOSE APPLICABLE LAW.--

24 A. Except as otherwise provided in this section,
25 when a transaction bears a reasonable relation to this state

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1 and also to another state or nation the parties may agree that
2 the law either of this state or of such other state or nation
3 shall govern their rights and duties.

4 B. In the absence of an agreement effective under
5 Subsection A of this section, and except as provided in
6 Subsection C of this section, the Uniform Commercial Code
7 applies to transactions bearing an appropriate relation to this
8 state.

9 C. If one of the following provisions of the
10 Uniform Commercial Code specifies the applicable law, that
11 provision governs and a contrary agreement is effective only to
12 the extent permitted by the law so specified:

- 13 (1) Section 55-2-402 NMSA 1978;
- 14 (2) Sections 55-2A-105 and 55-2A-106 NMSA
15 1978;
- 16 (3) Section 55-4-102 NMSA 1978;
- 17 (4) Section 55-4A-507 NMSA 1978;
- 18 (5) Section 55-5-116 NMSA 1978;
- 19 (6) Section 55-8-110 NMSA 1978; ~~and~~
- 20 (7) Sections 55-9-301 through 55-9-307 NMSA
21 1978; and
- 22 (8) Section 55-12-107 NMSA 1978."

23 SECTION 4. Section 55-1-306 NMSA 1978 (being Laws 2005,
24 Chapter 144, Section 20) is amended to read:

25 "55-1-306. WAIVER OR RENUNCIATION OF CLAIM OR RIGHT AFTER
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1 BREACH.--A claim or right arising out of an alleged breach may
2 be discharged in whole or in part without consideration by
3 agreement of the aggrieved party in [~~an authenticated~~] a signed
4 record."

5 SECTION 5. Section 55-2-102 NMSA 1978 (being Laws 1961,
6 Chapter 96, Section 2-102) is amended to read:

7 "55-2-102. SCOPE--CERTAIN SECURITY AND OTHER TRANSACTIONS
8 EXCLUDED FROM THIS ARTICLE.--~~[Unless the context otherwise~~
9 ~~requires, this article applies to transactions in goods; it~~
10 ~~does not apply to any transaction which, although in the form~~
11 ~~of an unconditional contract to sell or present sale, is~~
12 ~~intended to operate only as a security transaction, nor does~~
13 ~~this article impair or repeal any statute regulating sales to~~
14 ~~consumers, farmers or other specified classes of buyers.]~~

15 (1) Unless the context otherwise requires, and
16 except as provided in Subsection (3) of this section, this
17 article applies to transactions in goods and, in the case of a
18 hybrid transaction, it applies to the extent provided in
19 Subsection (2) of this section.

20 (2) In a hybrid transaction:

21 (a) if the sale-of-goods aspects do not
22 predominate, only the provisions of this article that relate
23 primarily to the sale-of-goods aspects of the transaction
24 apply, and the provisions that relate primarily to the
25 transaction as a whole do not apply; and

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1 **(b) if the sale-of-goods aspects predominate,**
2 **this article applies to the transaction but does not preclude**
3 **application in appropriate circumstances of other law to**
4 **aspects of the transaction that do not relate to the sale of**
5 **goods.**

6 **(3) This article does not:**
7 **(a) apply to a transaction that, even though**
8 **in the form of an unconditional contract to sell or present**
9 **sale, operates only to create a security interest; or**

10 **(b) impair or repeal a statute regulating**
11 **sales to consumers, farmers or other specified classes of**
12 **buyers."**

13 SECTION 6. Section 55-2-106 NMSA 1978 (being Laws 1961,
14 Chapter 96, Section 2-106) is amended to read:

15 "55-2-106. DEFINITIONS--"CONTRACT"--"AGREEMENT"--
16 "CONTRACT FOR SALE"--"SALE"--"PRESENT SALE"--"CONFORMING" TO
17 CONTRACT--"TERMINATION"--"CANCELLATION"--HYBRID TRANSACTION---

18 (1) In this article, unless the context otherwise
19 requires, "contract" and "agreement" are limited to those
20 relating to the present or future sale of goods. "Contract for
21 sale" includes both a present sale of goods and a contract to
22 sell goods at a future time. A "sale" consists in the passing
23 of title from the seller to the buyer for a price (Section
24 [2-401] 55-2-401 NMSA 1978). A "present sale" means a sale
25 [which] that is accomplished by the making of the contract.

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1 (2) Goods or conduct, including any part of a
2 performance, are "conforming" or conform to the contract when
3 they are in accordance with the obligations under the contract.

4 (3) "Termination" occurs when either party pursuant
5 to a power created by agreement or law puts an end to the
6 contract otherwise than for its breach. On "termination", all
7 obligations [~~which~~] that are still executory on both sides are
8 discharged, but any right based on prior breach or performance
9 survives.

10 (4) "Cancellation" occurs when either party puts an
11 end to the contract for breach by the other and its effect is
12 the same as that of "termination", except that the cancelling
13 party also retains any remedy for breach of the whole contract
14 or any unperformed balance.

15 (5) "Hybrid transaction" means a single transaction
16 involving a sale of goods and:

17 (a) the provision of services;

18 (b) a lease of other goods; or

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

21 SECTION 7. Section 55-2-201 NMSA 1978 (being Laws 1961,
22 Chapter 96, Section 2-201) is amended to read:

23 "55-2-201. FORMAL REQUIREMENTS--STATUTE OF FRAUDS.--

24 (1) Except as otherwise provided in this section, a
25 contract for the sale of goods for the price of five hundred

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1 dollars (\$500) or more is not enforceable by way of action or
2 defense unless there is [~~some writing~~] a record sufficient to
3 indicate that a contract for sale has been made between the
4 parties and signed by the party against whom enforcement is
5 sought or by [~~his authorized~~] the party's authorized agent or
6 broker. A [~~writing~~] record is not insufficient because it
7 omits or incorrectly states a term agreed upon, but the
8 contract is not enforceable under this [~~paragraph~~] subsection
9 beyond the quantity of goods shown in [~~such writing~~] the
10 record.

11 (2) Between merchants if within a reasonable time a
12 [~~writing~~] record in confirmation of the contract and sufficient
13 against the sender is received and the party receiving it has
14 reason to know its contents, it satisfies the requirements of
15 Subsection (1) of this section against [~~such~~] the party unless
16 [~~written~~] in a record notice of objection to its contents is
17 given within ten days after it is received.

18 (3) A contract [~~which~~] that does not satisfy the
19 requirements of Subsection (1) of this section but [~~which~~] that
20 is valid in other respects is enforceable:

21 (a) if the goods are to be specially
22 manufactured for the buyer and are not suitable for sale to
23 others in the ordinary course of the seller's business and the
24 seller, before notice of repudiation is received and under
25 circumstances [~~which~~] that reasonably indicate that the goods

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1 are for the buyer, has made either a substantial beginning of
2 their manufacture or commitments for their procurement; or

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

8 (c) with respect to goods for which payment
9 has been made and accepted or [~~which~~] that have been received
10 and accepted [~~(Sec. 2-606)~~] (Section 55-2-606 NMSA 1978)."

11 SECTION 8. Section 55-2-202 NMSA 1978 (being Laws 1961,
12 Chapter 96, Section 2-202, as amended) is amended to read:

13 "55-2-202. FINAL WRITTEN EXPRESSION--PAROL OR EXTRINSIC
14 EVIDENCE.--Terms with respect to which the confirmatory
15 memoranda of the parties agree or that are otherwise set forth
16 in a [~~writing~~] record intended by the parties as a final
17 expression of their agreement with respect to such terms as are
18 included therein may not be contradicted by evidence of any
19 prior agreement or of a contemporaneous oral agreement but may
20 be explained or supplemented:

21 (a) by course of performance, course of dealing or
22 usage of trade (Section 55-1-303 NMSA 1978); and

23 (b) by evidence of consistent additional terms
24 unless the court finds the [~~writing~~] record to have been
25 intended also as a complete and exclusive statement of the

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1 terms of the agreement."

2 SECTION 9. Section 55-2-203 NMSA 1978 (being Laws 1961,
3 Chapter 96, Section 2-203) is amended to read:

4 "55-2-203. SEALS INOPERATIVE.--The affixing of a seal to
5 a [~~writing~~] record evidencing a contract for sale or an offer
6 to buy or sell goods does not constitute the [~~writing~~] record a
7 sealed instrument, and the law with respect to sealed
8 instruments does not apply to such a contract or offer."

9 SECTION 10. Section 55-2-205 NMSA 1978 (being Laws 1961,
10 Chapter 96, Section 2-205) is amended to read:

11 "55-2-205. FIRM OFFERS.--An offer by a merchant to buy or
12 sell goods in a signed [~~writing which~~] record that by its terms
13 gives assurance that it will be held open is not revocable, for
14 lack of consideration, during the time stated or if no time is
15 stated for a reasonable time, but in no event may such period
16 of irrevocability exceed three months; but any such term of
17 assurance on a form supplied by the offeree must be separately
18 signed by the offeror."

19 SECTION 11. Section 55-2-209 NMSA 1978 (being Laws 1961,
20 Chapter 96, Section 2-209) is amended to read:

21 "55-2-209. MODIFICATION, RESCISSION AND WAIVER.--

22 (1) An agreement modifying a contract within this
23 article needs no consideration to be binding.

24 (2) A signed agreement [~~which~~] that excludes
25 modification or rescission except by a signed writing or other

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1 signed record cannot be otherwise modified or rescinded, but
2 except as between merchants such a requirement on a form
3 supplied by the merchant must be separately signed by the other
4 party.

5 (3) The requirements of the statute of frauds
6 section of this article (Section [~~2-201~~] 55-2-201 NMSA 1978)
7 must be satisfied if the contract as modified is within its
8 provisions.

9 (4) Although an attempt at modification or
10 rescission does not satisfy the requirements of Subsection (2)
11 or (3) of this section, it can operate as a waiver.

12 (5) A party who has made a waiver affecting an
13 executory portion of the contract may retract the waiver by
14 reasonable notification received by the other party that strict
15 performance will be required of any term waived, unless the
16 retraction would be unjust in view of a material change of
17 position in reliance on the waiver."

18 SECTION 12. Section 55-2A-102 NMSA 1978 (being Laws 1992,
19 Chapter 114, Section 9) is amended to read:

20 "55-2A-102. SCOPE.--~~[This article applies to any~~
21 ~~transaction, regardless of form, that creates a lease.]~~

22 (1) This article applies to any transaction,
23 regardless of form, that creates a lease and, in the case of a
24 hybrid lease, it applies to the extent provided in Subsection
25 (2) of this section.

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- 1 (2) In a hybrid lease:
- 2 (a) if the lease-of-goods aspects do not
- 3 predominate:
- 4 (i) only the provisions of this article
- 5 that relate primarily to the lease-of-goods aspects of the
- 6 transaction apply, and the provisions that relate primarily to
- 7 the transaction as a whole do not apply;
- 8 (ii) Section 55-2A-209 NMSA 1978 applies
- 9 if the lease is a finance lease; and
- 10 (iii) Section 55-2A-407 NMSA 1978
- 11 applies to the promises of the lessee in a finance lease to the
- 12 extent that the promises are consideration for the right to
- 13 possession and use of the leased goods; and
- 14 (b) if the lease-of-goods aspects predominate,
- 15 this article applies to the transaction, but does not preclude
- 16 application in appropriate circumstances of other law to
- 17 aspects of the lease that do not relate to the lease of goods."

18 SECTION 13. Section 55-2A-103 NMSA 1978 (being Laws 1992,
19 Chapter 114, Section 10, as amended) is amended to read:

20 "55-2A-103. DEFINITIONS AND INDEX OF DEFINITIONS.--

- 21 (1) In this article unless the context otherwise
- 22 requires:
- 23 (a) "buyer in ordinary course of business"
- 24 means a person who, in good faith and without knowledge that
- 25 the sale to that person is in violation of the ownership rights

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1 or security interest or leasehold interest of a third party in
2 the goods, buys in ordinary course from a person in the
3 business of selling goods of that kind, but does not include a
4 pawnbroker. "Buying" may be for cash or by exchange of other
5 property or on secured or unsecured credit and includes
6 acquiring goods or documents of title under a preexisting
7 contract for sale but does not include a transfer in bulk or as
8 security for or in total or partial satisfaction of a money
9 debt;

10 (b) "cancellation" occurs when either party
11 puts an end to the lease contract for default by the other
12 party;

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

21 (d) "conforming" goods or performance under a
22 lease contract means goods or performance that are in
23 accordance with the obligations under the lease contract;

24 (e) "consumer lease" means a lease that a
25 lessor regularly engaged in the business of leasing or selling

1 makes to a lessee who is an individual and who takes under the
2 lease primarily for a personal, family or household purpose;

3 (f) "fault" means wrongful act, omission,
4 breach or default;

5 (g) "finance lease" means a lease with respect
6 to which:

7 (i) the lessor does not select,
8 manufacture or supply the goods;

9 (ii) the lessor acquires the goods or
10 the right to possession and use of the goods in connection with
11 the lease; and

12 (iii) one of the following occurs:

13 (A) the lessee receives a copy of
14 the contract by which the lessor acquired the goods or the
15 right to possession and use of the goods before signing the
16 lease contract;

17 (B) the lessee's approval of the
18 contract by which the lessor acquired the goods or the right to
19 possession and use of the goods is a condition to effectiveness
20 of the lease contract;

21 (C) the lessee, before signing the
22 lease contract, receives an accurate and complete statement
23 designating the promises and warranties, and any disclaimers of
24 warranties, limitations or modifications of remedies, or
25 liquidated damages, including those of a third party, such as

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1 the manufacturer of the goods, provided to the lessor by the
2 person supplying the goods in connection with or as part of the
3 contract by which the lessor acquired the goods or the right to
4 possession and use of the goods; or

5 (D) if the lease is not a consumer
6 lease, the lessor, before the lessee signs the lease contract,
7 informs the lessee in writing (a) of the identity of the person
8 supplying the goods to the lessor, unless the lessee has
9 selected that person and directed the lessor to acquire the
10 goods or the right to possession and use of the goods from that
11 person; (b) that the lessee is entitled under this article to
12 the promises and warranties, including those of any third
13 party, provided to the lessor by the person supplying the goods
14 in connection with or as part of the contract by which the
15 lessor acquired the goods or the right to possession and use of
16 the goods; and (c) that the lessee may communicate with the
17 person supplying the goods to the lessor and receive an
18 accurate and complete statement of those promises and
19 warranties, including any disclaimers and limitations of them
20 or of remedies;

21 (h) "goods" means all things that are movable
22 at the time of identification to the lease contract or are
23 fixtures (Section 55-2A-309 NMSA 1978), but the term does not
24 include money, documents, instruments, accounts, chattel paper,
25 general intangibles or minerals or the like, including oil and

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1 gas, before extraction. The term also includes the unborn
2 young of animals;

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

5 (i) the provision of services;

6 (ii) a sale of other goods; or

7 (iii) a sale, lease or license of
8 property other than goods;

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"
13 or 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
17 sale or return, or retention or creation of a security interest
18 is not a lease; unless the context clearly indicates otherwise,
19 the term 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

1 sublease 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
6 sublease 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 that person is in violation of the ownership rights or
16 security interest or leasehold interest of a third party in the
17 goods, leases in ordinary course from a person in the business
18 of selling or leasing goods of that kind, but does not include
19 a pawnbroker; "leasing" may be for cash or by exchange of other
20 property or on secured or unsecured credit and includes
21 acquiring goods or documents of title under a preexisting lease
22 contract but does not include a transfer in bulk or as security
23 for or in 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

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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
14 lease;

15 (u) "present value" means the amount as of a
16 date certain of one or more sums payable in the future,
17 discounted to the date certain. The discount is determined by
18 the interest rate specified by the parties if the rate was not
19 manifestly unreasonable at the time the transaction was entered
20 into; otherwise, the discount is determined by a commercially
21 reasonable rate that takes into account the facts and
22 circumstances of each case at the time the transaction was
23 entered into;

24 (v) "purchase" includes taking by sale, lease,
25 mortgage, security interest, pledge, gift or any other

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1 voluntary transaction creating an interest in goods;

2 (w) "sublease" means a lease of goods the
3 right to possession and use of which was acquired by the lessor
4 as a lessee under an existing lease;

5 (x) "supplier" means a person from whom a
6 lessor buys or leases goods to be leased under a finance lease;

7 (y) "supply contract" means a contract under
8 which a lessor buys or leases goods to be leased; and

9 (z) "termination" occurs when either party
10 pursuant to a power created by agreement or law puts an end to
11 the lease contract otherwise than for default.

12 (2) Other definitions applying to this article and
13 the sections in which they appear are:

14 "accessions" Section
15 55-2A-310 NMSA 1978;

16 "construction mortgage" Section
17 55-2A-309 NMSA 1978;

18 "encumbrance" Section
19 55-2A-309 NMSA 1978;

20 "fixtures" Section
21 55-2A-309 NMSA 1978;

22 "fixture filing" Section
23 55-2A-309 NMSA 1978; and

24 "purchase money lease" Section
25 55-2A-309 NMSA 1978.

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1 (3) The following definitions in other articles
2 apply to this article:

3 "account" Paragraph (2)
4 of Subsection (a) of Section 55-9-102 NMSA 1978;

5 "between merchants" Subsection (3)
6 of Section 55-2-104 NMSA 1978;

7 "buyer" Paragraph (a)
8 of Subsection (1) of Section 55-2-103 NMSA 1978;

9 "chattel paper" Paragraph (11)
10 of Subsection (a) of Section 55-9-102 NMSA 1978;

11 "consumer goods". Paragraph (23)
12 of Subsection (a) of Section 55-9-102 NMSA 1978;

13 "document". Paragraph (30)
14 of Subsection (a) of Section 55-9-102 NMSA 1978;

15 "entrusting". Subsection (3)
16 of Section 55-2-403 NMSA 1978;

17 "general intangible". Paragraph (42)
18 of Subsection (a) of Section 55-9-102 NMSA 1978;

19 "instrument". Paragraph (47)
20 of Subsection (a) of Section 55-9-102 NMSA 1978;

21 "merchant". Subsection (1)
22 of Section 55-2-104 NMSA 1978;

23 "mortgage". Paragraph (55)
24 of Subsection (a) of Section 55-9-102 NMSA 1978;

25 "pursuant to commitment". Paragraph

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1 [~~68~~] (69) of Subsection (a) of Section 55-9-102 NMSA 1978;

2 "receipt"Paragraph (c)
3 of Subsection (1) of Section 55-2-103 NMSA 1978;

4 "sale".Subsection (1)
5 of Section 55-2-106 NMSA 1978;

6 "sale on approval".Section
7 55-2-326 NMSA 1978;

8 "sale or return".Section
9 55-2-326 NMSA 1978; and

10 "seller".Paragraph (d)
11 of Subsection (1) of Section 55-2-103 NMSA 1978.

12 (4) In addition, Chapter 55, Article 1 NMSA 1978
13 contains general definitions and principles of construction and
14 interpretation applicable throughout this article."

15 SECTION 14. Section 55-2A-107 NMSA 1978 (being Laws 1992,
16 Chapter 114, Section 14) is amended to read:

17 "55-2A-107. WAIVER OR RENUNCIATION OF CLAIM OR RIGHT
18 AFTER DEFAULT.--Any claim or right arising out of an alleged
19 default or breach of warranty may be discharged in whole or in
20 part without consideration by a [~~written~~] waiver or
21 renunciation in a signed [~~and~~] record delivered by the
22 aggrieved party."

23 SECTION 15. Section 55-2A-201 NMSA 1978 (being Laws 1992,
24 Chapter 114, Section 17) is amended to read:

25 "55-2A-201. STATUTE OF FRAUDS.--

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

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

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

11 (2) Any description of leased goods or of the lease
12 term is sufficient and satisfies ~~[Subsection (1)(b)]~~ Paragraph
13 (b) of Subsection (1) of this section, whether or not it is
14 specific, if it reasonably identifies what is described.

15 (3) A ~~[writing]~~ record is not insufficient because
16 it omits or incorrectly states a term agreed upon, but the
17 lease contract is not enforceable under ~~[Subsection (1)(b)]~~
18 Paragraph (b) of Subsection (1) of this section beyond the
19 lease term and the quantity of goods shown in the ~~[writing]~~
20 record.

21 (4) A lease contract that does not satisfy the
22 requirements of Subsection (1) of this section, but ~~[which]~~
23 that is valid in other respects, is enforceable:

24 (a) if the goods are to be specially
25 manufactured or obtained for the lessee and are not suitable

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1 for lease or sale to others in the ordinary course of the
2 lessor's business, and the lessor, before notice of repudiation
3 is received and under circumstances that reasonably indicate
4 that the goods are for the lessee, has made either a
5 substantial beginning of their manufacture or commitments for
6 their procurement;

7 (b) if the party against whom enforcement is
8 sought admits in that party's pleading, testimony or otherwise
9 in court that a lease contract was made, but the lease contract
10 is not enforceable under this provision beyond the quantity of
11 goods admitted; or

12 (c) with respect to goods that have been
13 received and accepted by the lessee.

14 (5) The lease term under a lease contract referred
15 to in Subsection (4) of this section is:

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

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

23 (c) a reasonable lease term."

24 SECTION 16. Section 55-2A-202 NMSA 1978 (being Laws 1992,
25 Chapter 114, Section 18) is amended to read:

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1 "55-2A-202. FINAL ~~WRITTEN~~ EXPRESSION--PAROL OR
2 EXTRINSIC EVIDENCE.--Terms with respect to which the
3 confirmatory memoranda of the parties agree or ~~which~~ that are
4 otherwise set forth in a ~~writing~~ record intended by the
5 parties as a final expression of their agreement with respect
6 to such terms as are included therein may not be contradicted
7 by evidence of any prior agreement or of a contemporaneous oral
8 agreement but may be explained or supplemented:

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

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

15 SECTION 17. Section 55-2A-203 NMSA 1978 (being Laws 1992,
16 Chapter 114, Section 19) is amended to read:

17 "55-2A-203. SEALS INOPERATIVE.--The affixing of a seal to
18 a ~~writing~~ record evidencing a lease contract or an offer to
19 enter into a lease contract does not render the ~~writing~~
20 record a sealed instrument, and the law with respect to sealed
21 instruments does not apply to the lease contract or offer."

22 SECTION 18. Section 55-2A-205 NMSA 1978 (being Laws 1992,
23 Chapter 114, Section 21) is amended to read:

24 "55-2A-205. FIRM OFFERS.--An offer by a merchant to lease
25 goods to or from another person in a signed ~~writing~~ record

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1 that by its terms gives assurance it will be held open is not
2 revocable, for lack of consideration, during the time stated
3 or, if no time is stated, for a reasonable time, but in no
4 event may the period of irrevocability exceed three months.
5 Any such term of assurance on a form supplied by the offeree
6 must be separately signed by the offeror."

7 SECTION 19. Section 55-2A-208 NMSA 1978 (being Laws 1992,
8 Chapter 114, Section 24) is amended to read:

9 "55-2A-208. MODIFICATION, RESCISSION AND WAIVER.--

10 (1) An agreement modifying a lease contract needs
11 no consideration to be binding.

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

17 (3) Although an attempt at modification or
18 rescission does not satisfy the requirements of Subsection (2)
19 of this section, it may operate as a waiver.

20 (4) A party who has made a waiver affecting an
21 executory portion of a lease contract may retract the waiver by
22 reasonable notification received by the other party that strict
23 performance will be required of any term waived, unless the
24 retraction would be unjust in view of a material change of
25 position in reliance on the waiver."

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1 SECTION 20. Section 55-3-104 NMSA 1978 (being Laws 1992,
2 Chapter 114, Section 91) is amended to read:

3 "55-3-104. NEGOTIABLE INSTRUMENT.--

4 (a) Except as provided in Subsections (c) and (d)
5 of this section, "negotiable instrument" means an unconditional
6 promise or order to pay a fixed amount of money, with or
7 without interest or other charges described in the promise or
8 order, if it:

9 (1) is payable to bearer or to order at the
10 time it is issued or first comes into possession of a holder;

11 (2) is payable on demand or at a definite
12 time; and

13 (3) does not state any other undertaking or
14 instruction by the person promising or ordering payment to do
15 any act in addition to the payment of money, but the promise or
16 order may contain (i) an undertaking or power to give, maintain
17 or protect collateral to secure payment; (ii) an authorization
18 or power to the holder to confess judgment or realize on or
19 dispose of collateral; ~~[or]~~ (iii) a waiver of the benefit of
20 any law intended for the advantage or protection of an obligor;
21 (iv) a term that specifies the law that governs the promise or
22 order; or (v) an undertaking to resolve in a specified forum a
23 dispute concerning the promise or order.

24 (b) "Instrument" means a negotiable instrument.

25 (c) An order that meets all of the requirements of

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1 Subsection (a) of this section, except Paragraph (1) of that
2 subsection, and otherwise falls within the definition of
3 "check" in Subsection (f) of this section is a negotiable
4 instrument and a check.

5 (d) A promise or order other than a check is not an
6 instrument if, at the time it is issued or first comes into
7 possession of a holder, it contains a conspicuous statement,
8 however expressed, to the effect that the promise or order is
9 not negotiable or is not an instrument governed by this
10 article.

11 (e) An instrument is a "note" if it is a promise
12 and is a "draft" if it is an order. If an instrument falls
13 within the definition of both "note" and "draft", a person
14 entitled to enforce the instrument may treat it as either.

15 (f) "Check" means (i) a draft, other than a
16 documentary draft, payable on demand and drawn on a bank or
17 (ii) a cashier's check or teller's check. An instrument may be
18 a check even though it is described on its face by another
19 term, such as "money order".

20 (g) "Cashier's check" means a draft with respect to
21 which the drawer and drawee are the same bank or branches of
22 the same bank.

23 (h) "Teller's check" means a draft drawn by a bank
24 (i) on another bank or (ii) payable at or through a bank.

25 (i) "Traveler's check" means an instrument that (i)

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1 is payable on demand, (ii) is drawn on or payable at or through
2 a bank, (iii) is designated by the term "traveler's check" or
3 by a substantially similar term and (iv) requires, as a
4 condition to payment, a countersignature by a person whose
5 specimen signature appears on the instrument.

6 (j) "Certificate of deposit" means an instrument
7 containing an acknowledgment by a bank that a sum of money has
8 been received by the bank and a promise by the bank to repay
9 the sum of money. A certificate of deposit is a note of the
10 bank."

11 SECTION 21. Section 55-3-105 NMSA 1978 (being Laws 1992,
12 Chapter 114, Section 92) is amended to read:

13 "55-3-105. ISSUE OF INSTRUMENT.--

14 (a) "Issue" means:

15 (1) the first delivery of an instrument by the
16 maker or drawer, whether to a holder or nonholder, for the
17 purpose of giving rights on the instrument to any person; or

18 (2) if agreed by the payee, the first
19 transmission by the drawer to the payee of an image of an item
20 and information derived from the item that enables the
21 depository bank to collect the item by transferring or
22 presenting under federal law an electronic check.

23 (b) An unissued instrument, or an unissued
24 incomplete instrument that is completed, is binding on the
25 maker or drawer, but nonissuance is a defense. An instrument

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1 that is conditionally issued or is issued for a special purpose
2 is binding on the maker or drawer, but failure of the condition
3 or special purpose to be fulfilled is a defense.

4 (c) "Issuer" applies to issued and unissued
5 instruments and means a maker or drawer of an instrument."

6 SECTION 22. Section 55-3-309 NMSA 1978 (being Laws 1992,
7 Chapter 114, Section 122) is amended to read:

8 "55-3-309. ENFORCEMENT OF LOST, DESTROYED OR STOLEN
9 INSTRUMENT.--

10 (a) A person not in possession of an instrument is
11 entitled to enforce the instrument if: [~~(i) the person was in~~
12 ~~possession of the instrument and entitled to enforce it when~~
13 ~~loss of possession occurred, (ii) the loss of possession was~~
14 ~~not the result of a transfer by the person or a lawful seizure~~
15 ~~and (iii)]~~

16 (1) the person seeking to enforce the
17 instrument:

18 (A) was entitled to enforce the
19 instrument when loss of possession occurred; or

20 (B) has directly or indirectly acquired
21 ownership of the instrument from a person who was entitled to
22 enforce the instrument when loss of possession occurred;

23 (2) the loss of possession was not the result
24 of a transfer by the person or a lawful seizure; and

25 (3) the person cannot reasonably obtain

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1 possession of the instrument because the instrument was
2 destroyed, its whereabouts cannot be determined or it is in the
3 wrongful possession of an unknown person or a person that
4 cannot be found or is not amenable to service of process.

5 (b) A person seeking enforcement of an instrument
6 under Subsection (a) of this section must prove the terms of
7 the instrument and the person's right to enforce the
8 instrument. If that proof is made, Section 55-3-308 NMSA 1978
9 applies to the case as if the person seeking enforcement had
10 produced the instrument. The court may not enter judgment in
11 favor of the person seeking enforcement unless it finds that
12 the person required to pay the instrument is adequately
13 protected against loss that might occur by reason of a claim by
14 another person to enforce the instrument. Adequate protection
15 may be provided by any reasonable means."

16 SECTION 23. Section 55-3-401 NMSA 1978 (being Laws 1992,
17 Chapter 114, Section 126) is amended to read:

18 "55-3-401. SIGNATURE.--~~[(a)]~~ A person is not liable on an
19 instrument unless (i) the person signed the instrument or (ii)
20 the person is represented by an agent or representative who
21 signed the instrument and the signature is binding on the
22 represented person under Section 55-3-402 NMSA 1978.

23 ~~[(b) A signature may be made (i) manually or by~~
24 ~~means of a device or machine and (ii) by the use of any name,~~
25 ~~including a trade or assumed name, or by a word, mark or symbol~~

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1 ~~executed or adopted by a person with present intention to~~
2 ~~authenticate a writing.]"~~

3 SECTION 24. Section 55-3-604 NMSA 1978 (being Laws 1992,
4 Chapter 114, Section 154, as amended) is amended to read:

5 "55-3-604. DISCHARGE BY CANCELLATION OR RENUNCIATION.--

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

20 (b) Cancellation or striking out of an indorsement
21 pursuant to Subsection (a) of this section does not affect the
22 status and rights of a party derived from the indorsement.

23 [~~(c) As used in this section, "signed" with respect~~
24 ~~to a record that is not a writing includes the attachment to or~~
25 ~~logical association with the record of an electronic symbol,~~

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1 ~~sound or process with the present intent to adopt or accept the~~
2 ~~record.]"~~

3 SECTION 25. Section 55-4A-103 NMSA 1978 (being Laws 1992,
4 Chapter 114, Section 199) is amended to read:

5 "55-4A-103. PAYMENT ORDER--DEFINITIONS.--

6 (a) In this article:

7 (1) "payment order" means an instruction of a
8 sender to a receiving bank, transmitted orally [~~electronically~~
9 ~~or in writing~~] or in a record, to pay, or to cause another bank
10 to pay, a fixed or determinable amount of money to a
11 beneficiary if:

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

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

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

22 (2) "beneficiary" means the person to be paid
23 by the beneficiary's bank;

24 (3) "beneficiary's bank" means the bank
25 identified in a payment order in which an account of the

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1 beneficiary is to be credited pursuant to the order or ~~[which]~~
2 that otherwise is to make payment to the beneficiary if the
3 order does not provide for payment to an account;

4 (4) "receiving bank" means the bank to which
5 the sender's instruction is addressed; and

6 (5) "sender" means the person giving the
7 instruction to the receiving bank.

8 (b) If an instruction complying with ~~[Subsection~~
9 ~~(a)(1)]~~ Paragraph (1) of Subsection (a) of this section is to
10 make more than one payment to a beneficiary, the instruction is
11 a separate payment order with respect to each payment.

12 (c) A payment order is issued when it is sent to
13 the receiving bank."

14 SECTION 26. Section 55-4A-201 NMSA 1978 (being Laws 1992,
15 Chapter 114, Section 205) is amended to read:

16 "55-4A-201. SECURITY PROCEDURE.--"Security procedure"
17 means a procedure established by agreement of a customer and a
18 receiving bank for the purpose of (i) verifying that a payment
19 order or communication amending or canceling a payment order is
20 that of the customer or (ii) detecting error in the
21 transmission or the content of the payment order or
22 communication. A security procedure may impose an obligation
23 on the receiving bank or the customer and may require the use
24 of algorithms or other codes, identifying words, ~~[or]~~ numbers,
25 symbols, sounds, biometrics, encryption, callback procedures or

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1 similar security devices. Comparison of a signature on a
2 payment order or communication with an authorized specimen
3 signature of the customer or requiring a payment order to be
4 sent from a known email address, internet protocol address or
5 telephone number is not by itself a security procedure."

6 SECTION 27. Section 55-4A-202 NMSA 1978 (being Laws 1992,
7 Chapter 114, Section 206) is amended to read:

8 "55-4A-202. AUTHORIZED AND VERIFIED PAYMENT ORDERS.--

9 (a) A payment order received by the receiving bank
10 is the authorized order of the person identified as sender if
11 that person authorized the order or is otherwise bound by it
12 under the law of agency.

13 (b) If a bank and its customer have agreed that the
14 authenticity of payment orders issued to the bank in the name
15 of the customer as sender will be verified pursuant to a
16 security procedure, a payment order received by the receiving
17 bank is effective as the order of the customer, whether or not
18 authorized, if (i) the security procedure is a commercially
19 reasonable method of providing security against unauthorized
20 payment orders and (ii) the bank proves that it accepted the
21 payment order in good faith and in compliance with the bank's
22 obligations under the security procedure and any [~~written~~]
23 agreement or instruction of the customer, evidenced by a
24 record, restricting acceptance of payment orders issued in the
25 name of the customer. The bank is not required to follow an

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1 instruction that violates a written agreement with the customer
2 or notice of which is not received at a time and in a manner
3 affording the bank a reasonable opportunity to act on it before
4 the payment order is accepted.

5 (c) Commercial reasonableness of a security
6 procedure is a question of law to be determined by considering
7 the wishes of the customer expressed to the bank, the
8 circumstances of the customer known to the bank, including the
9 size, type and frequency of payment orders normally issued by
10 the customer to the bank, alternative security procedures
11 offered to the customer and security procedures in general use
12 by customers and receiving banks similarly situated. A
13 security procedure is deemed to be commercially reasonable if
14 (i) the security procedure was chosen by the customer after the
15 bank offered, and the customer refused, a security procedure
16 that was commercially reasonable for that customer and (ii) the
17 customer expressly agreed in ~~[writing]~~ a record to be bound by
18 any payment order, whether or not authorized, issued in its
19 name and accepted by the bank in compliance with the bank's
20 obligations under the security procedure chosen by the
21 customer.

22 (d) The term "sender" in this article includes the
23 customer in whose name a payment order is issued if the order
24 is the authorized order of the customer under Subsection (a) of
25 this section, or it is effective as the orders of the customer

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1 under Subsection (b) of this section.

2 (e) This section applies to amendments and
3 cancellations of payment orders to the same extent it applies
4 to payment orders.

5 (f) Except as provided in this section and in
6 [~~Section 55-4A-203(a)(1)~~] Paragraph (1) of Subsection (a) of
7 Section 55-4A-203 NMSA 1978, rights and obligations arising
8 under this section or Section 55-4A-203 NMSA 1978 may not be
9 varied by agreement."

10 SECTION 28. Section 55-4A-203 NMSA 1978 (being Laws 1992,
11 Chapter 114, Section 207) is amended to read:

12 "55-4A-203. UNENFORCEABILITY OF CERTAIN VERIFIED PAYMENT
13 ORDERS.--

14 (a) If an accepted payment order is not, under
15 [~~Section 55-4A-202(a)~~] Subsection (a) of Section 55-4A-202 NMSA
16 1978, an authorized order of a customer identified as sender,
17 but is effective as an order of the customer pursuant to
18 [~~Section 55-4A-202(b)~~] Subsection (b) of Section 55-4A-202 NMSA
19 1978, the following rules apply:

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

24 (2) The receiving bank is not entitled to
25 enforce or retain payment of the payment order if the customer

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1 proves that the order was not caused, directly or indirectly,
2 by a person (i) entrusted at any time with duties to act for
3 the customer with respect to payment orders or the security
4 procedure or (ii) who obtained access to transmitting
5 facilities of the customer or who obtained, from a source
6 controlled by the customer and without authority of the
7 receiving bank, information facilitating breach of the security
8 procedure, regardless of how the information was obtained or
9 whether the customer was at fault. Information includes any
10 access device, computer software or the like.

11 (b) This section applies to amendments of payment
12 orders to the same extent it applies to payment orders."

13 SECTION 29. Section 55-4A-207 NMSA 1978 (being Laws 1992,
14 Chapter 114, Section 211) is amended to read:

15 "55-4A-207. MISDESCRIPTION OF BENEFICIARY.--

16 (a) Subject to Subsection (b) of this section, if,
17 in a payment order received by the beneficiary's bank, the
18 name, bank account number or other identification of the
19 beneficiary refers to a nonexistent or unidentifiable person or
20 account, no person has rights as a beneficiary of the order and
21 acceptance of the order cannot occur.

22 (b) If a payment order received by the
23 beneficiary's bank identifies the beneficiary both by name and
24 by an identifying or bank account number and the name and
25 number identify different persons, the following rules apply:

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1 (1) Except as otherwise provided in Subsection
2 (c) of this section, if the beneficiary's bank does not know
3 that the name and number refer to different persons, it may
4 rely on the number as the proper identification of the
5 beneficiary of the order. The beneficiary's bank need not
6 determine whether the name and number refer to the same person.

7 (2) If the beneficiary's bank pays the person
8 identified by name or knows that the name and number identify
9 different persons, no person has rights as beneficiary except
10 the person paid by the beneficiary's bank if that person was
11 entitled to receive payment from the originator of the funds
12 transfer. If no person has rights as beneficiary, acceptance
13 of the order cannot occur.

14 (c) If (i) a payment order described in Subsection
15 (b) of this section is accepted, (ii) the originator's payment
16 order described the beneficiary inconsistently by name and
17 number and (iii) the beneficiary's bank pays the person
18 identified by number as permitted by Paragraph (1) of
19 Subsection (b) of this section, the following rules apply:

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

22 (2) If the originator is not a bank and proves
23 that the person identified by number was not entitled to
24 receive payment from the originator, the originator is not
25 obliged to pay its order unless the originator's bank proves

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1 that the originator, before acceptance of the originator's
2 order, had notice that payment of a payment order issued by the
3 originator might be made by the beneficiary's bank on the basis
4 of an identifying or bank account number even if it identifies
5 a person different from the named beneficiary. Proof of notice
6 may be made by any admissible evidence. The originator's bank
7 satisfies the burden of proof if it proves that the originator,
8 before the payment order was accepted, signed a ~~[writing]~~
9 record stating the information to which the notice relates.

10 (d) In a case governed by Paragraph (1) of
11 Subsection (b) of this section, if the beneficiary's bank
12 rightfully pays the person identified by number and that person
13 was not entitled to receive payment from the originator, the
14 amount paid may be recovered from that person to the extent
15 allowed by the law governing mistake and restitution as
16 follows:

17 (1) if the originator is obliged to pay its
18 payment order as stated in Subsection (c) of this section, the
19 originator has the right to recover; or

20 (2) if the originator is not a bank and is not
21 obliged to pay its payment order, the originator's bank has the
22 right to recover."

23 SECTION 30. Section 55-4A-208 NMSA 1978 (being Laws 1992,
24 Chapter 114, Section 212) is amended to read:

25 "55-4A-208. MISDESCRIPTION OF INTERMEDIARY BANK OR
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1 BENEFICIARY'S BANK.--

2 (a) This subsection applies to a payment order
3 identifying an intermediary bank or the beneficiary's bank only
4 by an identifying number.

5 (1) The receiving bank may rely on the number
6 as the proper identification of the intermediary or
7 beneficiary's bank and need not determine whether the number
8 identifies a bank.

9 (2) The sender is obliged to compensate the
10 receiving bank for any loss and expenses incurred by the
11 receiving bank as a result of its reliance on the number in
12 executing or attempting to execute the order.

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

17 (1) If the sender is a bank, the receiving
18 bank may rely on the number as the proper identification of the
19 intermediary or beneficiary's bank if the receiving bank, when
20 it executes the sender's order, does not know that the name and
21 number identify different persons. The receiving bank need not
22 determine whether the name and number refer to the same person
23 or whether the number refers to a bank. The sender is obliged
24 to compensate the receiving bank for any loss and expenses
25 incurred by the receiving bank as a result of its reliance on

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1 the number in executing or attempting to execute the order.

2 (2) If the sender is not a bank and the
3 receiving bank proves that the sender, before the payment order
4 was accepted, had notice that the receiving bank might rely on
5 the number as the proper identification of the intermediary or
6 beneficiary's bank even if it identifies a person different
7 from the bank identified by name, the rights and obligations of
8 the sender and the receiving bank are governed by Paragraph (1)
9 of this subsection [~~(b)~~] as though the sender were a bank.
10 Proof of notice may be made by any admissible evidence. The
11 receiving bank satisfies the burden of proof if it proves that
12 the sender, before the payment order was accepted, signed a
13 [~~writing~~] record stating the information to which the notice
14 relates.

15 (3) Regardless of whether the sender is a
16 bank, the receiving bank may rely on the name as the proper
17 identification of the intermediary or beneficiary's bank if the
18 receiving bank, at the time it executes the sender's order,
19 does not know that the name and number identify different
20 persons. The receiving bank need not determine whether the
21 name and number refer to the same person.

22 (4) If the receiving bank knows that the name
23 and number identify different persons, reliance on either the
24 name or the number in executing the sender's payment order is a
25 breach of the obligation stated in [~~Section 55-4A-302(a)(1)~~]

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1 Paragraph (1) of Subsection (a) of Section 55-4A-302 NMSA
2 1978."

3 SECTION 31. Section 55-4A-210 NMSA 1978 (being Laws 1992,
4 Chapter 114, Section 214) is amended to read:

5 "55-4A-210. REJECTION OF PAYMENT ORDER.--

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

21 (b) This subsection applies if a receiving bank
22 other than the beneficiary's bank fails to execute a payment
23 order despite the existence on the execution date of a
24 withdrawable credit balance in an authorized account of the
25 sender sufficient to cover the order. If the sender does not

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1 receive notice of rejection of the order on the execution date
2 and the authorized account of the sender does not bear
3 interest, the bank is obliged to pay interest to the sender on
4 the amount of the order for the number of days elapsing after
5 the execution date to the earlier of the day the order is
6 canceled pursuant to [~~Section 55-4A-211(d)~~] Subsection (d) of
7 Section 55-4A-211 NMSA 1978 or the day the sender receives
8 notice or learns that the order was not executed, counting the
9 final day of the period as an elapsed day. If the withdrawable
10 credit balance during that period falls below the amount of the
11 order, the amount of interest is reduced accordingly.

12 (c) If a receiving bank suspends payments, all
13 unaccepted payment orders issued to it are deemed rejected at
14 the time the bank suspends payments.

15 (d) Acceptance of a payment order precludes a later
16 rejection of the order. Rejection of a payment order precludes
17 a later acceptance of the order."

18 SECTION 32. Section 55-4A-211 NMSA 1978 (being Laws 1992,
19 Chapter 114, Section 215) is amended to read:

20 "55-4A-211. CANCELLATION AND AMENDMENT OF PAYMENT
21 ORDER.--

22 (a) A communication of the sender of a payment
23 order canceling or amending the order may be transmitted to the
24 receiving bank orally [~~electronically~~] or in [~~writing~~] a
25 record. If a security procedure is in effect between the

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1 sender and the receiving bank, the communication is not
2 effective to cancel or amend the order unless the communication
3 is verified pursuant to the security procedure or the bank
4 agrees to the cancellation or amendment.

5 (b) Subject to Subsection (a) of this section, a
6 communication by the sender canceling or amending a payment
7 order is effective to cancel or amend the order if notice of
8 the communication is received at a time and in a manner
9 affording the receiving bank a reasonable opportunity to act on
10 the communication before the bank accepts the payment order.

11 (c) After a payment order has been accepted,
12 cancellation or amendment of the order is not effective unless
13 the receiving bank agrees or a funds-transfer system rule
14 allows cancellation or amendment without agreement of the bank.

15 (1) With respect to a payment order accepted
16 by a receiving bank other than the beneficiary's bank,
17 cancellation or amendment is not effective unless a conforming
18 cancellation or amendment of the payment order issued by the
19 receiving bank is also made.

20 (2) With respect to a payment order accepted
21 by the beneficiary's bank, cancellation or amendment is not
22 effective unless the order was issued in execution of an
23 unauthorized payment order or because of a mistake by a sender
24 in the funds transfer ~~[which]~~ that resulted in the issuance of
25 a payment order (i) that is a duplicate of a payment order

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1 previously issued by the sender, (ii) that orders payment to a
2 beneficiary not entitled to receive payment from the originator
3 or (iii) that orders payment in an amount greater than the
4 amount the beneficiary was entitled to receive from the
5 originator. If the payment order is canceled or amended, the
6 beneficiary's bank is entitled to recover from the beneficiary
7 any amount paid to the beneficiary to the extent allowed by the
8 law governing mistake and restitution.

9 (d) An unaccepted payment order is canceled by
10 operation of law at the close of the fifth funds-transfer
11 business day of the receiving bank after the execution date or
12 payment date of the order.

13 (e) A canceled payment order cannot be accepted.
14 If an accepted payment order is canceled, the acceptance is
15 nullified and no person has any right or obligation based on
16 the acceptance. Amendment of a payment order is deemed to be
17 cancellation of the original order at the time of amendment and
18 issue of a new payment order in the amended form at the same
19 time.

20 (f) Unless otherwise provided in an agreement of
21 the parties or in a funds-transfer system rule, if the
22 receiving bank, after accepting a payment order, agrees to
23 cancellation or amendment of the order by the sender or is
24 bound by a funds-transfer system rule allowing cancellation or
25 amendment without the bank's agreement, the sender, whether or

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1 not cancellation or amendment is effective, is liable to the
2 bank for any loss and expenses, including reasonable
3 ~~[attorney's]~~ attorney fees, incurred by the bank as a result of
4 the cancellation or amendment or attempted cancellation or
5 amendment.

6 (g) A payment order is not revoked by the death or
7 legal incapacity of the sender unless the receiving bank knows
8 of the death or of an adjudication of incapacity by a court of
9 competent jurisdiction and has reasonable opportunity to act
10 before acceptance of the order.

11 (h) A funds-transfer system rule is not effective
12 to the extent it conflicts with Paragraph (2) of Subsection (c)
13 of this section."

14 **SECTION 33.** Section 55-4A-305 NMSA 1978 (being Laws 1992,
15 Chapter 114, Section 221) is amended to read:

16 "55-4A-305. LIABILITY FOR LATE OR IMPROPER EXECUTION OR
17 FAILURE TO EXECUTE PAYMENT ORDER.--

18 (a) If a funds transfer is completed but the
19 execution of a payment order by the receiving bank in breach of
20 Section 55-4A-302 NMSA 1978 results in delay in payment to the
21 beneficiary, the bank is obliged to pay interest to either the
22 originator or the beneficiary of the funds transfer for the
23 period of delay caused by the improper execution. Except as
24 provided in Subsection (c) of this section, additional damages
25 are not recoverable.

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1 (b) If execution of a payment order by a receiving
2 bank in breach of Section 55-4A-302 NMSA 1978 results in (i)
3 noncompletion of the funds transfer, (ii) failure to use an
4 intermediary bank designated by the originator or (iii)
5 issuance of a payment order that does not comply with the terms
6 of the payment order of the originator, the bank is liable to
7 the originator for its expenses in the funds transfer and for
8 incidental expenses and interest losses, to the extent not
9 covered by Subsection (a) of this section, resulting from the
10 improper execution. Except as provided in Subsection (c) of
11 this section, additional damages are not recoverable.

12 (c) In addition to the amounts payable under
13 Subsections (a) and (b) of this section, damages, including
14 consequential damages, are recoverable to the extent provided
15 in an express ~~written~~ agreement of the receiving bank,
16 evidenced by a record.

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

25 (e) Reasonable ~~attorney's~~ attorney fees are

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1 recoverable if demand for compensation under Subsection (a) or
2 (b) of this section is made and refused before an action is
3 brought on the claim. If a claim is made for breach of an
4 agreement under Subsection (d) of this section and the
5 agreement does not provide for damages, reasonable ~~[attorney's]~~
6 attorney fees are recoverable if demand for compensation under
7 Subsection (d) of this section is made and refused before an
8 action is brought on the claim.

9 (f) Except as stated in this section, the liability
10 of a receiving bank under Subsections (a) and (b) of this
11 section may not be varied by agreement."

12 SECTION 34. Section 55-5-104 NMSA 1978 (being Laws 1997,
13 Chapter 75, Section 6) is amended to read:

14 "55-5-104. FORMAL REQUIREMENTS.--A letter of credit,
15 confirmation, advice, transfer, amendment or cancellation may
16 be issued in any form that is a signed record ~~[and is~~
17 ~~authenticated (i) by a signature or (ii) in accordance with the~~
18 ~~agreement of the parties or the standard practice referred to~~
19 ~~in Section 55-5-108(e) NMSA 1978]."~~

20 SECTION 35. Section 55-5-116 NMSA 1978 (being Laws 1997,
21 Chapter 75, Section 18) is amended to read:

22 "55-5-116. CHOICE OF LAW AND FORUM.--

23 (a) The liability of an issuer, nominated person or
24 adviser for action or omission is governed by the law of the
25 jurisdiction chosen by an agreement in the form of a record

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1 signed [~~or otherwise authenticated by the affected parties in~~
2 ~~the manner provided in Section 55-5-104 NMSA 1978]~~ or by a
3 provision in the person's letter of credit, confirmation or
4 other undertaking. The jurisdiction whose law is chosen need
5 not bear any relation to the transaction.

6 (b) Unless Subsection (a) of this section applies,
7 the liability of an issuer, nominated person or adviser for
8 action or omission is governed by the law of the jurisdiction
9 in which the person is located. The person is considered to be
10 located at the address indicated in the person's undertaking.
11 If more than one address is indicated, the person is considered
12 to be located at the address from which the person's
13 undertaking was issued.

14 (c) For the purpose of jurisdiction, choice of law
15 and recognition of interbranch letters of credit, but not
16 enforcement of a judgment, all branches of a bank are
17 considered separate juridical entities, and a bank is
18 considered to be located at the place where its relevant branch
19 is considered to be located under [~~this~~] Subsection (d) of this
20 section.

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

25 [~~(e)~~] (e) Except as otherwise provided in this

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1 subsection, the liability of an issuer, nominated person or
2 adviser is governed by any rules of custom or practice, such as
3 the Uniform Customs and Practice for Documentary Credits, to
4 which the letter of credit, confirmation or other undertaking
5 is expressly made subject. If (i) this article would govern
6 the liability of an issuer, nominated person or adviser under
7 Subsection (a) or (b) of this section; (ii) the relevant
8 undertaking incorporates rules of custom or practice; and (iii)
9 there is conflict between this article and those rules as
10 applied to that undertaking, those rules govern except to the
11 extent of any conflict with the nonvariable provisions
12 specified in [~~Section 55-5-103(e)~~] Subsection (c) of Section
13 55-5-103 NMSA 1978.

14 [~~(d)~~] (f) If there is conflict between this article
15 and Chapter 55, Article 3, 4, 4A or 9 NMSA 1978, this article
16 governs.

17 [~~(e)~~] (g) The forum for settling disputes arising
18 out of an undertaking within this article may be chosen in the
19 manner and with the binding effect that governing law may be
20 chosen in accordance with Subsection (a) of this section."

21 SECTION 36. Section 55-7-102 NMSA 1978 (being Laws 2005,
22 Chapter 144, Section 52) is amended to read:

23 "55-7-102. DEFINITIONS AND INDEX OF DEFINITIONS.--

24 (a) In Chapter 55, Article 7 NMSA 1978, unless the
25 context otherwise requires:

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1 (1) "bailee" means a person that by a
2 warehouse receipt, bill of lading or other document of title
3 acknowledges possession of goods and contracts to deliver them;

4 (2) "carrier" means a person that issues a
5 bill of lading;

6 (3) "consignee" means a person named in a bill
7 of lading to which or to whose order the bill promises
8 delivery;

9 (4) "consignor" means a person named in a bill
10 of lading as the person from which the goods have been received
11 for shipment;

12 (5) "delivery order" means a record that
13 contains an order to deliver goods directed to a warehouse,
14 carrier or other person that in the ordinary course of business
15 issues warehouse receipts or bills of lading;

16 (6) Reserved;

17 (7) "goods" means all things that are treated
18 as movable for the purposes of a contract for storage or
19 transportation;

20 (8) "issuer" means a bailee that issues a
21 document of title or, in the case of an unaccepted delivery
22 order, the person that orders the possessor of goods to
23 deliver. The term includes a person for which an agent or
24 employee purports to act in issuing a document if the agent or
25 employee has real or apparent authority to issue documents,

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1 even if the issuer did not receive any goods, the goods were
2 misdescribed or in any other respect the agent or employee
3 violated the issuer's instructions;

4 (9) "person entitled under the document" means
5 the holder, in the case of a negotiable document of title, or
6 the person to which delivery of the goods is to be made by the
7 terms of, or pursuant to instructions in a record under, a
8 nonnegotiable document of title;

9 (10) Reserved;

10 (11) [~~"sign" means, with present intent to~~
11 ~~authenticate or adopt a record:~~

12 ~~(A) to execute or adopt a tangible~~
13 ~~symbol; or~~

14 ~~(B) to attach to or logically associate~~
15 ~~with the record an electronic sound, symbol or process]~~

16 Reserved;

17 (12) "shipper" means a person that enters into
18 a contract of transportation with a carrier; and

19 (13) "warehouse" means a person engaged in the
20 business of storing goods for hire.

21 (b) Definitions in other articles applying to this
22 article and the sections in which they appear are:

23 (1) "contract for sale", Section 55-2-106 NMSA
24 1978;

25 (2) "lessee in the ordinary course of

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1 business", Section 55-2A-103 NMSA 1978; and

2 (3) "receipt" of goods, Section 55-2-103 NMSA
3 1978.

4 (c) In addition, Chapter 55, Article 1 NMSA 1978
5 contains general definitions and principles of construction and
6 interpretation applicable throughout this article."

7 SECTION 37. Section 55-7-106 NMSA 1978 (being Laws 2005,
8 Chapter 144, Section 56) is amended to read:

9 "55-7-106. CONTROL OF ELECTRONIC DOCUMENT OF TITLE.--

10 (a) A person has control of an electronic document
11 of title if a system employed for evidencing the transfer of
12 interests in the electronic document reliably establishes that
13 person as the person to which the electronic document was
14 issued or transferred.

15 (b) A system satisfies Subsection (a) of this
16 section, and a person [~~is deemed to have~~] has control of an
17 electronic document of title, if the document is created,
18 stored and [~~assigned~~] transferred in [~~such~~] a manner that:

19 (1) a single authoritative copy of the
20 document exists that is unique, identifiable and, except as
21 otherwise provided in Paragraphs (4), (5) and (6) of this
22 subsection, unalterable;

23 (2) the authoritative copy identifies the
24 person asserting control as:

25 (A) the person to which the document was

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1 issued; or

2 (B) if the authoritative copy indicates
3 that the document has been transferred, the person to which the
4 document was most recently transferred;

5 (3) the authoritative copy is communicated to
6 and maintained by the person asserting control or its
7 designated custodian;

8 (4) copies or amendments that add or change an
9 identified assignee of the authoritative copy can be made only
10 with the consent of the person asserting control;

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

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

16 (c) A system satisfies Subsection (a) of this
17 section, and a person has control of an electronic document of
18 title, if an authoritative electronic copy of the document, a
19 record attached to or logically associated with the electronic
20 copy or a system in which the electronic copy is recorded:

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

24 (2) enables the person readily to identify
25 itself in any way, including by name, identifying number,

1 cryptographic key, office or account number, as the person to
2 which each authoritative electronic copy was issued or
3 transferred; and

4 (3) gives the person exclusive power, subject
5 to Subsection (d) of this section, to:

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

9 (B) transfer control of each
10 authoritative electronic copy.

11 (d) Subject to Subsection (e) of this section, a
12 power is exclusive under Subparagraphs (A) and (B) of Paragraph
13 (3) of Subsection (c) of this section even if:

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

20 (2) the power is shared with another person.

21 (e) A power of a person is not shared with another
22 person under Paragraph (2) of Subsection (d) of this section,
23 and the person's power is not exclusive if:

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

1 (2) the other person:

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

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

6 (f) If a person has the powers specified in
7 Subparagraphs (A) and (B) of Paragraph (3) of Subsection (c) of
8 this section, the powers are presumed to be exclusive.

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

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

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

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

20 (i) If a person acknowledges that it has or will
21 obtain control on behalf of another person, unless the person
22 otherwise agrees or law other than this article or Chapter 55,
23 Article 9 NMSA 1978 otherwise provides, the person does not owe
24 any duty to the other person and is not required to confirm the
25 acknowledgment to any other person."

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1 SECTION 38. Section 55-8-102 NMSA 1978 (being Laws 1996,
2 Chapter 47, Section 6, as amended) is amended to read:

3 "55-8-102. DEFINITIONS.--

4 (a) In this article:

5 (1) "adverse claim" means a claim that a
6 claimant has a property interest in a financial asset and that
7 it is a violation of the rights of the claimant for another
8 person to hold, transfer or deal with the financial asset;

9 (2) "bearer form", as applied to a
10 certificated security, means a form in which the security is
11 payable to the bearer of the security certificate according to
12 its terms but not by reason of an indorsement;

13 (3) "broker" means a person defined as a
14 broker or dealer under the federal securities laws, but without
15 excluding a bank acting in that capacity;

16 (4) "certificated security" means a security
17 that is represented by a certificate;

18 (5) "clearing corporation" means:

19 (i) a person that is registered as a
20 "clearing agency" under the federal securities laws;

21 (ii) a federal reserve bank; or

22 (iii) any other person that provides
23 clearance or settlement services with respect to financial
24 assets that would require it to register as a clearing agency
25 under the federal securities laws but for an exclusion or

1 exemption from the registration requirement, if its activities
2 as a clearing corporation, including promulgation of rules, are
3 subject to regulation by a federal or state governmental
4 authority;

5 (6) "communicate" means to:

6 (i) send a signed ~~writing~~ record; or
7 (ii) transmit information by any
8 mechanism agreed upon by the persons transmitting and receiving
9 the information;

10 (7) "entitlement holder" means a person
11 identified in the records of a securities intermediary as the
12 person having a security entitlement against the securities
13 intermediary. If a person acquires a security entitlement by
14 virtue of Paragraph (2) or (3) of Subsection (b) of Section
15 55-8-501 NMSA 1978, that person is the entitlement holder;

16 (8) "entitlement order" means a notification
17 communicated to a securities intermediary directing transfer or
18 redemption of a financial asset to which the entitlement holder
19 has a security entitlement;

20 (9) "financial asset", except as otherwise
21 provided in Section 55-8-103 NMSA 1978, means:

22 (i) a security;
23 (ii) an obligation of a person or a
24 share, participation or other interest in a person or in
25 property or an enterprise of a person, which is, or is of a

1 type, dealt in or traded on financial markets, or which is
2 recognized in any area in which it is issued or dealt in as a
3 medium for investment; or

4 (iii) any property that is held by a
5 securities intermediary for another person in a securities
6 account if the securities intermediary has expressly agreed
7 with the other person that the property is to be treated as a
8 financial asset under this article. As context requires, the
9 term means either the interest itself or the means by which a
10 person's claim to it is evidenced, including a certificated or
11 uncertificated security, a security certificate or a security
12 entitlement;

13 (10) [Reserved];

14 (11) "indorsement" means a signature that
15 alone or accompanied by other words is made on a security
16 certificate in registered form or on a separate document for
17 the purpose of assigning, transferring or redeeming the
18 security or granting a power to assign, transfer or redeem it;

19 (12) "instruction" means a notification
20 communicated to the issuer of an uncertificated security that
21 directs that the transfer of the security be registered or that
22 the security be redeemed;

23 (13) "registered form", as applied to a
24 certificated security, means a form in which:

25 (i) the security certificate specifies a

1 person entitled to the security; and

2 (ii) a transfer of the security may be
3 registered upon books maintained for that purpose by or on
4 behalf of the issuer or the security certificate so states;

5 (14) "securities intermediary" means:

6 (i) a clearing corporation; or
7 (ii) a person, including a bank or
8 broker, that in the ordinary course of its business maintains
9 securities accounts for others and is acting in that capacity;

10 (15) "security", except as otherwise provided
11 in Section 55-8-103 NMSA 1978, means an obligation of an issuer
12 or a share, participation or other interest in an issuer or in
13 property or an enterprise of an issuer:

14 (i) that is represented by a security
15 certificate in bearer or registered form or the transfer of
16 which may be registered upon books maintained for that purpose
17 by or on behalf of the issuer;

18 (ii) that is one of a class or series or
19 by its terms is divisible into a class or series of shares,
20 participations, interests or obligations; and

21 (iii) that:

22 (A) is, or is of a type, dealt in
23 or traded on securities exchanges or securities markets; or

24 (B) is a medium for investment and
25 by its terms expressly provides that it is a security governed

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1 by this article;

2 (16) "security certificate" means a
3 certificate representing a security;

4 (17) "security entitlement" means the rights
5 and property interest of an entitlement holder with respect to
6 a financial asset specified in Part 5 of this article; and

7 (18) "uncertificated security" means a
8 security that is not represented by a certificate.

9 (b) ~~[Other]~~ The following definitions ~~[applying to]~~
10 in this article and [the sections in which they appear are]
11 other articles apply to this article:

12 appropriate person Section 55-8-107 NMSA 1978;

13 control Section 55-8-106 NMSA 1978;

14 controllable account Section 55-9-102 NMSA 1978;

15 controllable electronic

16 record Section 55-12-102 NMSA 1978;

17 controllable payment

18 intangible Section 55-9-102 NMSA 1978;

19 delivery Section 55-8-301 NMSA 1978;

20 investment company

21 security Section 55-8-103 NMSA 1978;

22 issuer Section 55-8-201 NMSA 1978;

23 overissue Section 55-8-210 NMSA 1978;

24 protected purchaser Section 55-8-303 NMSA 1978;

25 and

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1 securities account Section 55-8-501 NMSA 1978.

2 (c) In addition, Chapter 55, Article 1 NMSA 1978
3 contains general definitions and principles of construction and
4 interpretation applicable throughout this article.

5 (d) The characterization of a person, business or
6 transaction for purposes of this article does not determine the
7 characterization of the person, business or transaction for
8 purposes of any other law, regulation or rule."

9 SECTION 39. Section 55-8-103 NMSA 1978 (being Laws 1996,
10 Chapter 47, Section 7, as amended) is amended to read:

11 "55-8-103. RULES FOR DETERMINING WHETHER CERTAIN
12 OBLIGATIONS AND INTERESTS ARE SECURITIES OR FINANCIAL ASSETS.--

13 (a) A share or similar equity interest issued by a
14 corporation, business trust, joint stock company or similar
15 entity is a security.

16 (b) An "investment company security" is a security.
17 "Investment company security" means a share or similar equity
18 interest issued by an entity that is registered as an
19 investment company under the federal investment company laws,
20 an interest in a unit investment trust that is so registered or
21 a face-amount certificate issued by a face-amount certificate
22 company that is so registered. Investment company security
23 does not include an insurance policy or endowment policy or
24 annuity contract issued by an insurance company.

25 (c) An interest in a partnership or limited

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1 liability company is not a security unless it is dealt in or
2 traded on securities exchanges or in securities markets, its
3 terms expressly provide that it is a security governed by this
4 article or it is an investment company security. However, an
5 interest in a partnership or limited liability company is a
6 financial asset if it is held in a securities account.

7 (d) A writing that is a security certificate is
8 governed by Chapter 55, Article 8 NMSA 1978 and not by Chapter
9 55, Article 3 NMSA 1978, even though it also meets the
10 requirements of that article. However, a negotiable instrument
11 governed by Chapter 55, Article 3 NMSA 1978 is a financial
12 asset if it is held in a securities account.

13 (e) An option or similar obligation issued by a
14 clearing corporation to its participants is not a security. It
15 is a financial asset.

16 (f) A commodity contract, as defined in Paragraph
17 (15) of Subsection (a) of Section 55-9-102 NMSA 1978, is not a
18 security or a financial asset.

19 (g) A document of title is not a financial asset
20 unless Subparagraph (iii) of Paragraph (9) of Subsection (a) of
21 Section 55-8-102 NMSA 1978 applies.

22 (h) A controllable account, controllable electronic
23 record or controllable payment intangible is not a financial
24 asset unless Subparagraph (iii) of Paragraph (9) of Subsection
25 (a) of Section 55-8-102 NMSA 1978 applies."

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1 SECTION 40. Section 55-8-106 NMSA 1978 (being Laws 1996,
2 Chapter 47, Section 10, as amended) is amended to read:

3 "55-8-106. CONTROL.--

4 (a) A purchaser has "control" of a certificated
5 security in bearer form if the certificated security is
6 delivered to the purchaser.

7 (b) A purchaser has "control" of a certificated
8 security in registered form if the certificated security is
9 delivered to the purchaser and:

10 (1) the certificate is indorsed to the
11 purchaser or in blank by an effective indorsement; or

12 (2) the certificate is registered in the name
13 of the purchaser, upon original issue or registration of
14 transfer by the issuer.

15 (c) A purchaser has "control" of an uncertificated
16 security if:

17 (1) the uncertificated security is delivered
18 to the purchaser; or

19 (2) the issuer has agreed that it will comply
20 with instructions originated by the purchaser without further
21 consent by the registered owner.

22 (d) A purchaser has "control" of a security
23 entitlement if:

24 (1) the purchaser becomes the entitlement
25 holder;

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1 (2) the securities intermediary has agreed
2 that it will comply with entitlement orders originated by the
3 purchaser without further consent by the entitlement holder; or

4 (3) ~~[another person has control of the~~
5 ~~security entitlement on behalf of the purchaser or, having~~
6 ~~previously acquired control of the security entitlement,~~
7 ~~acknowledges that it has control on behalf of the purchaser]~~
8 another person, other than the transferor to the purchaser of
9 an interest in the security entitlement:

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

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

16 (e) If an interest in a security entitlement is
17 granted by the entitlement holder to the entitlement holder's
18 own securities intermediary, the securities intermediary has
19 control.

20 (f) A purchaser who has satisfied the requirements
21 of Subsection (c) or (d) of this section has control even if
22 the registered owner in the case of Subsection (c) of this
23 section or the entitlement holder in the case of Subsection (d)
24 of this section retains the right to make substitutions for the
25 uncertificated security or security entitlement, to originate

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

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

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

18 (i) If a person acknowledges that it has or will
19 obtain control on behalf of a purchaser, unless the person
20 otherwise agrees or law other than this article or Chapter 55,
21 Article 9 NMSA 1978 otherwise provides, the person does not owe
22 any duty to the purchaser and is not required to confirm the
23 acknowledgment to any other person."

24 SECTION 41. Section 55-8-110 NMSA 1978 (being Laws 1996,
25 Chapter 47, Section 14, as amended) is amended to read:

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1 "55-8-110. APPLICABILITY--CHOICE OF LAW.--

2 (a) The local law of the issuer's jurisdiction, as
3 specified in Subsection (d) of this section, governs:

4 (1) the validity of a security;

5 (2) the rights and duties of the issuer with
6 respect to registration of transfer;

7 (3) the effectiveness of registration of
8 transfer by the issuer;

9 (4) whether the issuer owes any duties to an
10 adverse claimant to a security; and

11 (5) whether an adverse claim can be asserted
12 against a person to whom transfer of a certificated or
13 uncertificated security is registered or a person who obtains
14 control of an uncertificated security.

15 (b) The local law of the securities intermediary's
16 jurisdiction, as specified in Subsection (e) of this section,
17 governs:

18 (1) acquisition of a security entitlement from
19 the securities intermediary;

20 (2) the rights and duties of the securities
21 intermediary and entitlement holder arising out of a security
22 entitlement;

23 (3) whether the securities intermediary owes
24 any duties to an adverse claimant to a security entitlement;
25 and

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1 (4) whether an adverse claim can be asserted
2 against a person who acquires a security entitlement from the
3 securities intermediary or a person who purchases a security
4 entitlement or interest therein from an entitlement holder.

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

9 (d) "Issuer's jurisdiction" means the jurisdiction
10 under which the issuer of the security is organized or, if
11 permitted by the law of that jurisdiction, the law of another
12 jurisdiction specified by the issuer. An issuer organized
13 under the law of this state may specify the law of another
14 jurisdiction as the law governing the matters specified in
15 Paragraphs (2) through (5) of Subsection (a) of this section.

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

18 (1) if an agreement between the securities
19 intermediary and its entitlement holder governing the
20 securities account expressly provides that a particular
21 jurisdiction is the securities intermediary's jurisdiction for
22 purposes of Sections 55-8-101 through 55-8-116 NMSA 1978,
23 that jurisdiction is the securities intermediary's
24 jurisdiction;

25 (2) if Paragraph (1) of this subsection does

1 not apply and an agreement between the securities intermediary
2 and its entitlement holder governing the securities account
3 expressly provides that the agreement is governed by the law of
4 a particular jurisdiction, that jurisdiction is the securities
5 intermediary's jurisdiction;

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

13 (4) if none of the preceding paragraphs
14 applies, the securities intermediary's jurisdiction is the
15 jurisdiction in which the office identified in an account
16 statement as the office serving the entitlement holder's
17 account is located; or

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

22 (f) A securities intermediary's jurisdiction is not
23 determined by the physical location of certificates
24 representing financial assets or by the jurisdiction in which
25 is organized the issuer of the financial asset with respect to

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1 which an entitlement holder has a security entitlement or by
2 the location of facilities for data processing or other record
3 keeping concerning the account.

4 (g) The local law of the issuer's jurisdiction or
5 the securities intermediary's jurisdiction governs a matter or
6 transaction specified in Subsection (a) or (b) of this section
7 even if the matter or transaction does not bear any relation to
8 the jurisdiction."

9 SECTION 42. Section 55-8-303 NMSA 1978 (being Laws 1996,
10 Chapter 47, Section 33) is amended to read:

11 "55-8-303. PROTECTED PURCHASER.--

12 (a) "Protected purchaser" means a purchaser of a
13 certificated or uncertificated security, or of an interest
14 therein, who:

15 (1) gives value;

16 (2) does not have notice of any adverse claim
17 to the security; and

18 (3) obtains control of the certificated or
19 uncertificated security.

20 (b) ~~[In addition to acquiring the rights of a~~
21 ~~purchaser]~~ A protected purchaser also acquires its interest in
22 the security free of any adverse claim."

23 SECTION 43. Section 55-9-102 NMSA 1978 (being Laws 2001,
24 Chapter 139, Section 2, as amended) is amended to read:

25 "55-9-102. DEFINITIONS AND INDEX OF DEFINITIONS.--

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(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", "account statement", "account to", "commodity account" in Paragraph (14) of this subsection, "customer's account", "deposit account" in Paragraph (29) of this subsection, "on account of" and "statement of account":

(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

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1 credit or charge card or information contained on or for use
2 with the card; or

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

8 (B) includes controllable accounts and
9 health-care-insurance receivables; but

10 (C) does not include:

11 (i) ~~[rights to payment evidenced~~
12 ~~by]~~ chattel paper ~~[or an instrument];~~

13 (ii) commercial tort claims;

14 (iii) deposit accounts;

15 (iv) investment property;

16 (v) letter-of-credit rights or
17 letters of credit; ~~[or]~~

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

22 (vii) rights to payment evidenced
23 by an instrument;

24 (3) "account debtor" means a person obligated
25 on an account, chattel paper or general intangible. The term

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1 does not include persons obligated to pay a negotiable
2 instrument, even if the negotiable instrument [~~constitutes part~~
3 ~~of~~] evidences chattel paper;

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

6 (A) [~~authenticated~~] signed by a secured
7 party;

8 (B) indicating the aggregate unpaid
9 secured obligations as of a date not more than thirty-five days
10 earlier or thirty-five days later than the date of the record;
11 and

12 (C) identifying the components of the
13 obligations in reasonable detail;

14 (5) "agricultural lien" means an interest in
15 farm products:

16 (A) that secures payment or performance
17 of an obligation for:

18 (i) goods or services furnished in
19 connection with a debtor's farming operation; or

20 (ii) rent on real property leased
21 by a debtor in connection with its farming operation;

22 (B) that is created by statute in favor
23 of a person that:

24 (i) in the ordinary course of its
25 business furnished goods or services to a debtor in connection

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1 with a debtor's farming operation; or

2 (ii) leased real property to a
3 debtor in connection with the debtor's farming operation; and

4 (C) whose effectiveness does not depend
5 on the person's possession of the personal property;

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

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

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

11 (ii) attaches to the minerals as
12 extracted; or

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

16 (7) ~~["authenticate" means to:~~

17 ~~(A) sign; or~~

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

21 (7A) "assignee", except as used in "assignee
22 for benefit of creditors", means a person:

23 (i) in whose favor a security interest
24 that secures an obligation is created or provided for under a
25 security agreement, whether or not the obligation is

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1 outstanding; or

2 (ii) to which an account, chattel paper,
3 payment intangible or promissory note has been sold. The term
4 includes a person to which a security interest has been
5 transferred by a secured party;

6 (7B) "assignor" means a person that:

7 (i) under a security agreement, creates
8 or provides for a security interest that secures an obligation;
9 or

10 (ii) sells an account, chattel paper,
11 payment intangible or promissory note. The term includes a
12 secured party that has transferred a security interest to
13 another person;

14 (8) "bank" means an organization that is
15 engaged in the business of banking and includes savings banks,
16 savings and loan associations, credit unions and trust
17 companies;

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

20 (10) "certificate of title" means a
21 certificate of title with respect to which a statute provides
22 for the security interest in question to be indicated on the
23 certificate as a condition or result of the security interest's
24 obtaining priority over the rights of a lien creditor with
25 respect to the collateral. The term includes another record

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1 maintained as an alternative to a certificate of title by the
2 governmental unit that issues certificates of title if a
3 statute permits the security interest in question to be
4 indicated on the record 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 collateral;

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

18 (A) ~~charters or other contracts~~
19 ~~involving the use or hire of a vessel; or~~

20 (B) ~~records 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. If a~~
23 ~~transaction is evidenced by records that include an instrument~~
24 ~~or series of instruments, the group of records taken together~~
25 ~~constitutes chattel paper;]~~

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

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

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

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

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

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

21 (A) proceeds to which a security
22 interest attaches;

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

25 (C) goods that are the subject of a

1 consignment;

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

4 (A) the claimant is an organization; or

5 (B) the claimant is an individual and
6 the claim:

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

9 (ii) does not include damages
10 arising out of personal injury to or the death of an
11 individual;

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

15 (15) "commodity contract" means a commodity
16 futures contract, an option on a commodity futures contract, a
17 commodity option or another contract if the contract or option
18 is:

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

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

25 (16) "commodity customer" means a person for

1 which a commodity intermediary carries a commodity contract on
2 its books;

3 (17) "commodity intermediary" means a person
4 that:

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

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

11 (18) "communicate" means:

12 (A) to send a written or other tangible
13 record;

14 (B) to transmit a record by any means
15 agreed upon by the persons sending and receiving the record; or

16 (C) in the case of transmission of a
17 record to or by a filing office, to transmit a record by any
18 means prescribed by filing-office rule;

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

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

24 (A) the merchant:

25 (i) deals in goods of that kind

1 under a name other than the name of the person making delivery;
2 (ii) is not an auctioneer; and
3 (iii) is not generally known by its
4 creditors to be substantially engaged in selling the goods of
5 others;

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

9 (C) the goods are not consumer goods
10 immediately before delivery; and

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

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

15 (22) "consumer debtor" means a debtor in a
16 consumer transaction;

17 (23) "consumer goods" means goods that are
18 used or bought for use primarily for personal, family or
19 household purposes;

20 (24) "consumer-goods transaction" means a
21 consumer transaction in which:

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

24 (B) a security interest in consumer
25 goods secures the obligation;

1 (25) "consumer obligor" means an obligor who
2 is an individual and who incurred the obligation as part of a
3 transaction entered into primarily for personal, family or
4 household purposes;

5 (26) "consumer transaction" means a
6 transaction in which:

7 (A) an individual incurs an obligation
8 primarily for personal, family or household purposes;

9 (B) a security interest secures the
10 obligation; and

11 (C) the collateral is held or acquired
12 primarily for personal, family or household purposes. The term
13 includes consumer-goods transactions;

14 (27) "continuation statement" means an
15 amendment of a financing statement that:

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

18 (B) indicates that it is a continuation
19 statement for, or that it is filed to continue the
20 effectiveness of, the identified financing statement;

21 (27A) "controllable account" means an account
22 evidenced by a controllable electronic record that provides
23 that the account debtor undertakes to pay the person that has
24 control under Section 55-12-105 NMSA 1978 of the controllable
25 electronic record;

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1 (27B) "controllable payment intangible" means
2 a payment intangible evidenced by a controllable electronic
3 record that provides that the account debtor undertakes to pay
4 the person that has control under Section 55-12-105 NMSA 1978
5 of the controllable electronic record;

6 (28) "debtor" means:

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

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

12 (C) a consignee;

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

17 (30) "document" means a document of title or a
18 receipt of the type described in Subsection (b) of Section
19 55-7-201 NMSA 1978;

20 (31) [~~"electronic chattel paper" means chattel~~
21 ~~paper evidenced by a record or records consisting of~~
22 ~~information stored in an electronic medium~~] [Reserved];

23 (31A) "electronic money" means money in an
24 electronic form;

25 (32) "encumbrance" means a right, other than

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1 an ownership interest, in real property. The term includes
2 mortgages and other liens on real property;

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

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

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

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

12 (ii) aquatic goods produced in
13 aquacultural operations;

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

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

18 (D) products of crops or livestock in
19 their unmanufactured states;

20 (35) "farming operation" means raising,
21 cultivating, propagating, fattening, grazing or any other
22 farming, livestock or aquacultural operation;

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

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

4 (38) "filing-office rule" means a rule adopted
5 pursuant to Section 55-9-526 NMSA 1978;

6 (39) "financing statement" means a record or
7 records composed of an initial financing statement and any
8 filed record relating to the initial financing statement;

9 (40) "fixture filing" means the filing of a
10 financing statement covering goods that are or are to become
11 fixtures and satisfying Subsections (a) and (b) of Section
12 55-9-502 NMSA 1978. The term includes the filing of a
13 financing statement covering goods of a transmitting utility
14 that are or are to become fixtures;

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

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

25 (43) [~~"good faith" means honesty in fact and~~

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1 ~~the observance of reasonable commercial standards of fair~~
2 ~~dealing~~] [Reserved];

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

5 (A) includes:

6 (i) fixtures;

7 (ii) standing timber that is to be
8 cut and removed under a conveyance or contract for sale;

9 (iii) the unborn young of animals;

10 (iv) crops grown, growing or to be
11 grown, even if the crops are produced on trees, vines or
12 bushes;

13 (v) manufactured homes; and

14 (vi) a computer program embedded in
15 goods and any supporting information provided in connection
16 with a transaction relating to the program if the program is
17 associated with the goods in such a manner that it customarily
18 is considered part of the goods, or by becoming the owner of
19 the goods, a person acquires a right to use the program in
20 connection with the goods; but

21 (B) does not include:

22 (i) a computer program embedded in
23 goods that consist solely of the medium in which the program is
24 embedded; or

25 (ii) accounts, chattel paper,

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1 commercial tort claims, deposit accounts, documents, general
2 intangibles, instruments, investment property, letter-of-credit
3 rights, letters of credit, money or oil, gas or other minerals
4 before extraction;

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

12 (46) "health-care-insurance receivable" means
13 an interest in or claim under a policy of insurance that is a
14 right to payment of a monetary obligation for health care goods
15 or services provided or to be provided;

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

- 22 (A) investment property;
- 23 (B) letters of credit; ~~[or]~~
- 24 (C) writings that evidence a right to
25 payment arising out of the use of a credit or charge card or

1 information contained on or for use with the card; or
2 (D) writings that evidence chattel
3 paper;

4 (48) "inventory" means goods, other than farm
5 products, that:

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

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

9 (C) are furnished by a person under a
10 contract of service; or

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

13 (49) "investment property" means a security,
14 whether certificated or uncertificated, security entitlement,
15 securities account, commodity contract or commodity account;

16 (50) "jurisdiction of organization", with
17 respect to a registered organization, means the jurisdiction
18 under whose law the organization is formed or organized;

19 (51) "letter-of-credit right" means a right to
20 payment or performance under a letter of credit, whether or not
21 the beneficiary has demanded or is at the time entitled to
22 demand payment or performance. The term does not include the
23 right of a beneficiary to demand payment or performance under a
24 letter of credit;

25 (52) "lien creditor" means:

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

3 (B) an assignee for benefit of creditors
4 from the time of assignment;

5 (C) a trustee in bankruptcy from the
6 date of the filing of the petition; or

7 (D) a receiver in equity from the time
8 of appointment;

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

23 (54) "manufactured-home transaction" means a
24 secured transaction:

25 (A) that creates a purchase-money

1 security interest in a manufactured home, other than a
2 manufactured home held as inventory; or

3 (B) in which a manufactured home, other
4 than a manufactured home held as inventory, is the primary
5 collateral;

6 (54A) "money" has the meaning in Paragraph
7 (24) of Subsection (b) of Section 55-1-201 NMSA 1978, but does
8 not include: (i) a deposit account; or (ii) money in an
9 electronic form that cannot be subjected to control under
10 Section 55-9-105A NMSA 1978.

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

14 (56) "new debtor" means a person that becomes
15 bound as debtor under Subsection (d) of Section 55-9-203 NMSA
16 1978 by a security agreement previously entered into by another
17 person;

18 (57) "new value" means:

19 (A) money;
20 (B) money's worth in property, services
21 or new credit; or

22 (C) release by a transferee of an
23 interest in property previously transferred to the transferee.
24 The term does not include an obligation substituted for another
25 obligation;

1 (58) "noncash proceeds" means proceeds other
2 than cash proceeds;

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

6 (A) owes payment or other performance of
7 the obligation;

8 (B) has provided property other than the
9 collateral to secure payment or other performance of the
10 obligation; or

11 (C) is otherwise accountable in whole or
12 in part for payment or other performance of the obligation.
13 The term does not include issuers or nominated persons under a
14 letter of credit;

15 (60) "original debtor", except as used in
16 Subsection (c) of Section 55-9-310 NMSA 1978, means a person
17 that, as debtor, entered into a security agreement to which a
18 new debtor has become bound under Subsection (d) of Section
19 55-9-203 NMSA 1978;

20 (61) "payment intangible" means a general
21 intangible under which the account debtor's principal
22 obligation is a monetary obligation. The term includes a
23 controllable payment intangible;

24 (62) "person related to", with respect to an
25 individual, means:

- 1 (A) the spouse of the individual;
- 2 (B) a brother, brother-in-law, sister or
3 sister-in-law of the individual;
- 4 (C) an ancestor or lineal descendant of
5 the individual or the individual's spouse; or
- 6 (D) any other relative, by blood or
7 marriage, of the individual or the individual's spouse who
8 shares the same home with the individual;
- 9 (63) "person related to", with respect to an
10 organization, means:
- 11 (A) a person directly or indirectly
12 controlling, controlled by or under common control with the
13 organization;
- 14 (B) an officer or director of, or a
15 person performing similar functions with respect to, the
16 organization;
- 17 (C) an officer or director of, or a
18 person performing similar functions with respect to, a person
19 described in Subparagraph (A) of this paragraph;
- 20 (D) the spouse of an individual
21 described in Subparagraph (A), (B) or (C) of this paragraph; or
- 22 (E) an individual who is related by
23 blood or marriage to an individual described in Subparagraph
24 (A), (B), (C) or (D) of this paragraph and shares the same home
25 with the individual;

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

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

5 (B) whatever is collected on, or
6 distributed on account of, collateral;

7 (C) rights arising out of collateral;

8 (D) to the extent of the value of
9 collateral, claims arising out of the loss, nonconformity or
10 interference with the use of, defects or infringement of rights
11 in, or damage to, the collateral; or

12 (E) to the extent of the value of
13 collateral and to the extent payable to the debtor or the
14 secured party, insurance payable by reason of the loss or
15 nonconformity of, defects or infringement of rights in, or
16 damage to, the collateral;

17 (65) "promissory note" means an instrument
18 that evidences a promise to pay a monetary obligation, does not
19 evidence an order to pay and does not contain an acknowledgment
20 by a bank that the bank has received for deposit a sum of money
21 or funds;

22 (66) "proposal" means a record [~~authenticated~~]
23 signed by a secured party, which record includes the terms on
24 which the secured party is willing to accept collateral in full
25 or partial satisfaction of the obligation it secures pursuant

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1 to Sections 55-9-620 through 55-9-622 NMSA 1978;

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

4 (A) debt securities are issued;

5 (B) all or a portion of the securities
6 issued have an initial stated maturity of at least twenty
7 years; and

8 (C) the debtor, obligor, secured party,
9 account debtor or other person obligated on collateral,
10 assignor or assignee of a secured obligation or assignor or
11 assignee of a security interest is a state or a governmental
12 unit of a state;

13 (68) "public organic record" means a record
14 that is available to the public for inspection and is:

15 (A) a record consisting of the record
16 initially filed with or issued by a state or the United States
17 to form or organize an organization and any record filed with
18 or issued by the state or the United States that amends or
19 restates the initial record;

20 (B) an organic record of a business
21 trust consisting of the record initially filed with a state and
22 any record filed with the state that amends or restates the
23 initial record if a statute of the state governing business
24 trusts requires that the record be filed with the state; or

25 (C) a record consisting of legislation

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1 enacted by the legislature of a state or the congress of the
2 United States that forms or organizes an organization; any
3 record amending the legislation; and any record filed with or
4 issued by the state or the United States that amends or
5 restates the name of the organization;

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

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

17 (71) "registered organization" means an
18 organization formed or organized solely under the law of a
19 single state or the United States by the filing of a public
20 organic record with, the issuance of a public organic record by
21 or the enactment of legislation by the state or the United
22 States. The term includes a business trust that is formed or
23 organized under the law of a single state if a statute of the
24 state governing business trusts requires that the business
25 trust's organic record be filed with the state;

1 (72) "secondary obligor" means an obligor to
2 the extent that:

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

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

8 (73) "secured party" means:

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

12 (B) a person that holds an agricultural
13 lien;

14 (C) a consignor;

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

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

21 (F) a person that holds a security
22 interest arising under Section 55-2-401, Section 55-2-505,
23 Subsection (3) of Section 55-2-711, Subsection (5) of Section
24 55-2A-508, Section 55-4-210 or Section 55-5-118 NMSA 1978;

25 (74) "security agreement" means an agreement

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1 that creates or provides for a security interest;

2 (75) [~~"send", in connection with a record or~~
3 ~~notification, means:~~

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

9 (B) ~~to cause the record or notification~~
10 ~~to be received within the time that it would have been received~~
11 ~~if properly sent under Subparagraph (A) of this paragraph]~~

12 [Reserved];

13 (76) "software" means a computer program and
14 any supporting information provided in connection with a
15 transaction relating to the program. The term does not include
16 a computer program that is included in the definition of goods;

17 (77) "state" means a state of the United
18 States, the District of Columbia, Puerto Rico, the United
19 States Virgin Islands or any territory or insular possession
20 subject to the jurisdiction of the United States;

21 (78) "supporting obligation" means a letter-
22 of-credit right or secondary obligation that supports the
23 payment or performance of an account, chattel paper, a
24 document, a general intangible, an instrument or investment
25 property;

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1 (79) [~~"tangible chattel paper" means chattel~~
2 ~~paper evidenced by a record or records consisting of~~
3 ~~information that is inscribed on a tangible medium~~] [Reserved];

4 (79A) "tangible money" means money in a
5 tangible form;

6 (80) "termination statement" means an
7 amendment of a financing statement that:

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

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

13 (81) "transmitting utility" means an
14 organization primarily engaged in the business of:

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

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

19 (C) transmitting goods by pipeline or
20 sewer; or

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

23 (b) "Control", as provided in Section 55-7-106 NMSA
24 1978, and the following definitions in other articles apply to
25 this article:

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

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1 55-2A-103 NMSA 1978;
2 "lessor" Section 55-2A-103 NMSA 1978;
3 "lessor's residual interest" Section
4 55-2A-103 NMSA 1978;
5 "letter of credit" . . . Section 55-5-102 NMSA 1978;
6 "merchant" Section 55-2-104 NMSA 1978;
7 "negotiable instrument". Section 55-3-104 NMSA 1978;
8 "nominated person" . . . Section 55-5-102 NMSA 1978;
9 "note" Section 55-3-104 NMSA 1978;
10 "proceeds of a letter of credit" Section
11 55-5-114 NMSA 1978;
12 "protected purchaser". . Section 55-8-303 NMSA 1978;
13 "prove". Section 55-3-103 NMSA 1978;
14 "qualifying purchaser" Section 55-12-102 NMSA 1978;
15 "sale" Section 55-2-106 NMSA 1978;
16 "securities account" . . Section 55-8-501 NMSA 1978;
17 "securities intermediary" Section 55-8-102 NMSA 1978;
18 "security" Section 55-8-102 NMSA 1978;
19 "security certificate" . Section 55-8-102 NMSA 1978;
20 "security entitlement" . Section 55-8-102 NMSA 1978;
21 and
22 "uncertificated security". Section
23 55-8-102 NMSA 1978.
24 (c) Chapter 55, Article 1 NMSA 1978 contains
25 general definitions and principles of construction and

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1 interpretation applicable throughout Chapter 55, Article 9 NMSA
2 1978."

3 SECTION 44. Section 55-9-104 NMSA 1978 (being Laws 2001,
4 Chapter 139, Section 4) is amended to read:

5 "55-9-104. CONTROL OF DEPOSIT ACCOUNT.--

6 (a) A secured party has control of a deposit
7 account if:

8 (1) the secured party is the bank with which
9 the deposit account is maintained;

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

15 (3) the secured party becomes the bank's
16 customer with respect to the deposit account; or

17 (4) another person, other than the debtor:

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

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

24 (b) A secured party that has satisfied Subsection
25 (a) of this section has control, even if the debtor retains the

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1 right to direct the disposition of funds from the deposit
2 account."

3 SECTION 45. Section 55-9-105 NMSA 1978 (being Laws 2001,
4 Chapter 139, Section 5, as amended) is repealed and a new
5 Section 55-9-105 NMSA 1978 is enacted to read:

6 "55-9-105. [NEW MATERIAL] CONTROL OF ELECTRONIC COPY OF
7 RECORD EVIDENCING CHATTEL PAPER.--

8 (a) A purchaser has control of an authoritative
9 electronic copy of a record evidencing chattel paper if a
10 system employed for evidencing the assignment of interests in
11 the chattel paper reliably establishes the purchaser as the
12 person to which the authoritative electronic copy was assigned.

13 (b) A system satisfies Subsection (a) of this
14 section if the record or records evidencing the chattel paper
15 are created, stored and assigned in a manner that:

16 (1) a single authoritative copy of the record
17 or records exists that is unique, identifiable and, except as
18 otherwise provided in Paragraphs (4), (5) and (6) of this
19 subsection, unalterable;

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

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

24 (4) copies or amendments that add or change an
25 identified assignee of the authoritative copy can be made only

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1 with the consent of the purchaser;

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

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

7 (c) A system satisfies Subsection (a) of this
8 section, and a purchaser has control of an authoritative
9 electronic copy of a record evidencing chattel paper, if the
10 electronic copy, a record attached to or logically associated
11 with the electronic copy or a system in which the electronic
12 copy is recorded:

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

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

20 (3) gives the purchaser exclusive power,
21 subject to Subsection (d) of this section, to:

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

25 (B) transfer control of the

1 authoritative electronic copy.

2 (d) Subject to Subsection (e) of this section, a
3 power is exclusive under Subparagraphs (A) and (B) of Paragraph
4 (3) of Subsection (c) of this section even if:

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

11 (2) the power is shared with another person.

12 (e) A power of a purchaser is not shared with
13 another person under Paragraph (2) of Subsection (d) of this
14 section and the purchaser's power is not exclusive if:

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

17 (2) the other person:

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

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

22 (f) If a purchaser has the powers specified in
23 Subparagraphs (A) and (B) of Paragraph (3) of Subsection (c) of
24 this section, the powers are presumed to be exclusive.

25 (g) A purchaser has control of an authoritative

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1 electronic copy of a record evidencing chattel paper if another
2 person, other than the transferor to the purchaser of an
3 interest in the chattel paper:

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

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

10 SECTION 46. A new section of the Uniform Commercial Code,
11 Section 55-9-105A NMSA 1978, is enacted to read:

12 "55-9-105A. [NEW MATERIAL] CONTROL OF ELECTRONIC MONEY.--

13 (a) A person has control of electronic money if:

14 (1) the electronic money, a record attached to
15 or logically associated with the electronic money or a system
16 in which the electronic money is recorded gives the person:

17 (A) power to avail itself of
18 substantially all the benefit from the electronic money; and

19 (B) exclusive power, subject to
20 Subsection (b) of this section, to:

21 (i) prevent others from availing
22 themselves of substantially all the benefit from the electronic
23 money; and

24 (ii) transfer control of the
25 electronic money to another person or cause another person to

1 obtain control of other electronic money as a result of the
2 transfer of the electronic money; and

3 (2) the electronic money, a record attached to
4 or logically associated with the electronic money or a system
5 in which the electronic money is recorded enables the person
6 readily to identify itself in any way, including by name,
7 identifying number, cryptographic key, office or account
8 number, as having the powers under Paragraph (1) of this
9 subsection.

10 (b) Subject to Subsection (c) of this section, a
11 power is exclusive under Items (i) and (ii) of Subparagraph (B)
12 of Paragraph (1) of Subsection (a) of this section even if:

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

18 (2) the power is shared with another person.

19 (c) A power of a person is not shared with another
20 person under Paragraph (2) of Subsection (b) of this section
21 and the person's power is not exclusive if:

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

24 (2) the other person:

25 (A) can exercise the power without

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1 exercise of the power by the person; or

2 (B) is the transferor to the person of
3 an interest in the electronic money.

4 (d) If a person has the powers specified in Items
5 (i) and (ii) of Subparagraph (B) of Paragraph (1) of Subsection
6 (a) of this section, the powers are presumed to be exclusive.

7 (e) A person has control of electronic money if
8 another person, other than the transferor to the person of an
9 interest in the electronic money:

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

12 (2) obtains control of the electronic money
13 after having acknowledged that it will obtain control of the
14 electronic money on behalf of the person."

15 SECTION 47. A new section of the Uniform Commercial Code,
16 Section 55-9-107A NMSA 1978, is enacted to read:

17 "55-9-107A. [NEW MATERIAL] CONTROL OF CONTROLLABLE
18 ELECTRONIC RECORD, ACCOUNT OR CONTROLLABLE PAYMENT
19 INTANGIBLE.--

20 (a) A secured party has control of a controllable
21 electronic record as provided in Section 55-12-105 NMSA 1978.

22 (b) A secured party has control of a controllable
23 account or controllable payment intangible if the secured party
24 has control of the controllable electronic record that
25 evidences the controllable account or controllable payment

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1 intangible."

2 SECTION 48. A new section of the Uniform Commercial Code,
3 Section 55-9-107B NMSA 1978, is enacted to read:

4 "55-9-107B. [NEW MATERIAL] NO REQUIREMENT TO ACKNOWLEDGE
5 OR CONFIRM--NO DUTIES.--

6 (a) A person that has control under Section
7 55-9-104, 55-9-105 or 55-9-105A NMSA 1978 is not required to
8 acknowledge that it has control on behalf of another person.

9 (b) If a person acknowledges that it has or will
10 obtain control on behalf of another person, unless the person
11 otherwise agrees or law other than this article otherwise
12 provides, the person does not owe any duty to the other person
13 and is not required to confirm the acknowledgment to any other
14 person."

15 SECTION 49. Section 55-9-109 NMSA 1978 (being Laws 2001,
16 Chapter 139, Section 9, as amended) is amended to read:

17 "55-9-109. SCOPE.--

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

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

24 (2) an agricultural lien;

25 (3) a sale of accounts, chattel paper, payment

1 intangibles or promissory notes;

2 (4) a consignment;

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

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

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

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

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

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

21 (3) a statute of another state, a foreign
22 country or a governmental unit of another state or a foreign
23 country, other than a statute generally applicable to security
24 interests, expressly governs creation, perfection, priority or
25 enforcement of a security interest created by the state,

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1 country or governmental unit; or

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

5 (d) Chapter 55, Article 9 NMSA 1978 does not apply
6 to:

7 (1) a landlord's lien, other than an
8 agricultural lien;

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

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

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

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

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

24 (7) an assignment of a single account, payment
25 intangible or promissory note to an assignee in full or partial

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1 satisfaction of a preexisting indebtedness;

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

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

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

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

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

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

20 (A) liens on real property in Sections
21 55-9-203 and 55-9-308 NMSA 1978;

22 (B) fixtures in Section 55-9-334 NMSA
23 1978;

24 (C) fixture filings in Sections
25 55-9-501, 55-9-502, 55-9-512, 55-9-516 and 55-9-519 NMSA 1978;

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1 and

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

4 (12) an assignment of a claim arising in tort,
5 other than a commercial tort claim, but Sections 55-9-315 and
6 55-9-322 NMSA 1978 apply with respect to proceeds and
7 priorities in proceeds;

8 (13) an assignment of a deposit account in a
9 consumer transaction, but Sections 55-9-315 and 55-9-322 NMSA
10 1978 apply with respect to proceeds and priorities in proceeds;
11 or

12 (14) a [~~public-finance transaction or other~~
13 ~~transfer by a state or a governmental unit of a state~~] transfer
14 by this state or a governmental unit of this state other than a
15 security interest created pursuant to the Industrial Revenue
16 Bond Act, County Industrial Revenue Bond Act, Redevelopment
17 Bonding Law, Pollution Control Revenue Bond Act, County
18 Pollution Control Revenue Bond Act or Hospital Equipment Loan
19 Act."

20 SECTION 50. Section 55-9-203 NMSA 1978 (being Laws 2001,
21 Chapter 139, Section 13, as amended) is amended to read:

22 "55-9-203. ATTACHMENT AND ENFORCEABILITY OF SECURITY
23 INTEREST--PROCEEDS--SUPPORTING OBLIGATIONS--FORMAL
24 REQUISITES.--

25 (a) A security interest attaches to collateral when
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1 it becomes enforceable against the debtor with respect to the
2 collateral, unless an agreement expressly postpones the time of
3 attachment.

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

8 (1) value has been given;

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

12 (3) one of the following conditions is met:

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

17 (B) the collateral is not a certificated
18 security and is in the possession of the secured party under
19 Section 55-9-313 NMSA 1978 pursuant to the debtor's security
20 agreement;

21 (C) the collateral is a certificated
22 security in registered form and the security certificate has
23 been delivered to the secured party under Section 55-8-301 NMSA
24 1978 pursuant to the debtor's security agreement; ~~[or]~~

25 (D) the collateral is controllable

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1 accounts, controllable electronic records, controllable payment
2 intangibles, deposit accounts, [~~electronic chattel paper~~]
3 electronic documents, electronic money, investment property or
4 letter-of-credit rights [~~or electronic documents~~], and the
5 secured party has control under Section 55-7-106, 55-9-104,
6 [~~55-9-105~~] 55-9-105A, 55-9-106, [~~or~~] 55-9-107 or 55-9-107A NMSA
7 1978 pursuant to the debtor's security agreement; or
8 (E) the collateral is chattel paper and
9 the secured party has possession and control under Section
10 55-9-314A NMSA 1978 pursuant to the debtor's security
11 agreement.

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

19 (d) A person becomes bound as debtor by a security
20 agreement entered into by another person if, by operation of
21 law other than Chapter 55, Article 9 NMSA 1978 or by contract:

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

24 (2) the person becomes generally obligated for
25 the obligations of the other person, including the obligation

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1 secured under the security agreement, and acquires or succeeds
2 to all or substantially all of the assets of the other person.

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

5 (1) the agreement satisfies Paragraph (3) of
6 Subsection (b) of this section with respect to existing or
7 after-acquired property of the new debtor to the extent the
8 property is described in the agreement; and

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

11 (f) The attachment of a security interest in
12 collateral gives the secured party the rights to proceeds
13 provided by Section 55-9-315 NMSA 1978 and is also attachment
14 of a security interest in a supporting obligation for the
15 collateral.

16 (g) The attachment of a security interest in a
17 right to payment or performance secured by a security interest
18 or other lien on personal or real property is also attachment
19 of a security interest in the security interest, mortgage or
20 other lien.

21 (h) The attachment of a security interest in a
22 securities account is also attachment of a security interest in
23 the security entitlements carried in the securities account.

24 (i) The attachment of a security interest in a
25 commodity account is also attachment of a security interest in

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1 the commodity contracts carried in the commodity account."

2 SECTION 51. Section 55-9-204 NMSA 1978 (being Laws 2001,
3 Chapter 139, Section 14) is amended to read:

4 "55-9-204. AFTER-ACQUIRED PROPERTY--FUTURE ADVANCES.--

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

8 (b) [A] Subject to Subsection (b.1) of this
9 section, security interest does not attach under a term
10 constituting an after-acquired property clause to:

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

15 (2) a commercial tort claim.

16 (b.1) Subsection (b) of this section does not
17 prevent a security interest from attaching:

18 (1) to consumer goods as proceeds under
19 Subsection (a) of Section 55-9-315 NMSA 1978 or commingled
20 goods under Subsection (c) of Section 55-9-336 NMSA 1978;

21 (2) to a commercial tort claim as proceeds
22 under Subsection (a) of Section 55-9-315 NMSA 1978; or

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

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1 (c) A security agreement may provide that
2 collateral secures, or that accounts, chattel paper, payment
3 intangibles or promissory notes are sold in connection with,
4 future advances or other value, whether or not the advances or
5 value are given pursuant to commitment."

6 SECTION 52. Section 55-9-207 NMSA 1978 (being Laws 2001,
7 Chapter 139, Section 17, as amended) is amended to read:

8 "55-9-207. RIGHTS AND DUTIES OF SECURED PARTY HAVING
9 POSSESSION OR CONTROL OF COLLATERAL.--

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

16 (b) Except as otherwise provided in Subsection (d)
17 of this section, if a secured party has possession of
18 collateral:

19 (1) reasonable expenses, including the cost of
20 insurance and payment of taxes or other charges, incurred in
21 the custody, preservation, use or operation of the collateral
22 are chargeable to the debtor and are secured by the collateral;

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

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

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

6 (A) for the purpose of preserving the
7 collateral or its value;

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

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

12 (c) Except as otherwise provided in Subsection (d)
13 of this section, a secured party having possession of
14 collateral or control of collateral under Section 55-7-106,
15 55-9-104, 55-9-105, 55-9-105A, 55-9-106, [~~or~~] 55-9-107 or
16 55-9-107A NMSA 1978:

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

19 (2) shall apply money or funds received from
20 the collateral to reduce the secured obligation, unless
21 remitted to the debtor; and

22 (3) may create a security interest in the
23 collateral.

24 (d) If the secured party is a buyer of accounts,
25 chattel paper, payment intangibles or promissory notes or is a

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1 consignor:

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

4 (A) to charge back uncollected
5 collateral; or

6 (B) otherwise to full or limited
7 recourse against the debtor or a secondary obligor based on the
8 nonpayment or other default of an account debtor or other
9 obligor on the collateral; and

10 (2) Subsections (b) and (c) of this section do
11 not apply."

12 SECTION 53. Section 55-9-208 NMSA 1978 (being Laws 2001,
13 Chapter 139, Section 18, as amended) is amended to read:

14 "55-9-208. ADDITIONAL DUTIES OF SECURED PARTY HAVING
15 CONTROL OF COLLATERAL.--

16 (a) This section applies to cases in which there is
17 no outstanding secured obligation and the secured party is not
18 committed to make advances, incur obligations or otherwise give
19 value.

20 (b) Within ten days after receiving [~~an~~
21 ~~authenticated~~] a signed demand by the debtor:

22 (1) a secured party having control of a
23 deposit account under Paragraph (2) of Subsection (a) of
24 Section 55-9-104 NMSA 1978 shall send to the bank with which
25 the deposit account is maintained [~~an authenticated statement~~]

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1 a signed document that releases the bank from any further
2 obligation to comply with instructions originated by the
3 secured party;

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

7 (A) pay the debtor the balance on
8 deposit in the deposit account; or

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

11 ~~[(3) a secured party, other than a buyer,~~
12 ~~having control of electronic chattel paper under Section~~
13 ~~55-9-105 NMSA 1978 shall:~~

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

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

25 ~~(C) take appropriate action to enable~~

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1 ~~the debtor or its designated custodian to make copies of or~~
2 ~~revisions to the authoritative copy that add or change an~~
3 ~~identified assignee of the authoritative copy without the~~
4 ~~consent of the secured party;]~~

5 (3) a secured party, other than a buyer,
6 having control under Section 55-9-105 NMSA 1978 of an
7 authoritative electronic copy of a record evidencing chattel
8 paper shall transfer control of the electronic copy to the
9 debtor or a person designated by the debtor;

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

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

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1 secured party; [and

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

4 ~~(A) give control of the electronic~~
5 ~~document to the debtor or its designated custodian;~~

6 ~~(B) if the debtor designates a custodian~~
7 ~~that is the designated custodian with which the authoritative~~
8 ~~copy of the electronic document is maintained for the secured~~
9 ~~party, communicate to the custodian an authenticated record~~
10 ~~releasing the designated custodian from any further obligation~~
11 ~~to comply with instructions originated by the secured party and~~
12 ~~instructing the custodian to comply with instructions~~
13 ~~originated by the debtor; and~~

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

19 (6) a secured party having control under
20 Section 55-7-106 NMSA 1978 of an authoritative electronic copy
21 of an electronic document of title shall transfer control of
22 the electronic copy to the debtor or a person designated by the
23 debtor;

24 (7) a secured party having control under
25 Section 55-9-105A NMSA 1978 of electronic money shall transfer

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1 control of the electronic money to the debtor or a person
2 designated by the debtor; and

3 (8) a secured party having control under
4 Section 55-12-105 NMSA 1978 of a controllable electronic
5 record, other than a buyer of a controllable account or
6 controllable payment intangible evidenced by the controllable
7 electronic record, shall transfer control of the controllable
8 electronic record to the debtor or a person designated by the
9 debtor."

10 SECTION 54. Section 55-9-209 NMSA 1978 (being Laws 2001,
11 Chapter 139, Section 19) is amended to read:

12 "55-9-209. DUTIES OF SECURED PARTY IF ACCOUNT DEBTOR HAS
13 BEEN NOTIFIED OF ASSIGNMENT.--

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

16 (1) there is no outstanding secured
17 obligation; and

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

20 (b) Within ten days after receiving [~~an~~
21 ~~authenticated~~] a signed demand by the debtor, a secured party
22 shall send to an account debtor that has received notification
23 under Subsection (a) of Section 55-9-406 NMSA 1978 or
24 Subsection (b) of Section 55-12-106 NMSA 1978 of an assignment
25 to the secured party as assignee [~~under Subsection (a) of~~

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1 ~~Section 55-9-406 NMSA 1978 an authenticated~~ a signed record
2 that releases the account debtor from any further obligation to
3 the secured party.

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

7 SECTION 55. Section 55-9-210 NMSA 1978 (being Laws 2001,
8 Chapter 139, Section 20) is amended to read:

9 "55-9-210. REQUEST FOR ACCOUNTING--REQUEST REGARDING LIST
10 OF COLLATERAL OR STATEMENT OF ACCOUNT.--

11 (a) In this section:

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

14 (2) "request for an accounting" means a record
15 [~~authenticated~~] signed by a debtor requesting that the
16 recipient provide an accounting of the unpaid obligations
17 secured by collateral and reasonably identifying the
18 transaction or relationship that is the subject of the request;

19 (3) "request regarding a list of collateral"
20 means a record [~~authenticated~~] signed by a debtor requesting
21 that the recipient approve or correct a list of what the debtor
22 believes to be the collateral securing an obligation and
23 reasonably identifying the transaction or relationship that is
24 the subject of the request; and

25 (4) "request regarding a statement of account"

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1 means a record [~~authenticated~~] signed by a debtor requesting
2 that the recipient approve or correct a statement indicating
3 what the debtor believes to be the aggregate amount of unpaid
4 obligations secured by collateral as of a specified date and
5 reasonably identifying the transaction or relationship that is
6 the subject of the request.

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

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

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

19 (c) A secured party that claims a security interest
20 in all of a particular type of collateral owned by the debtor
21 may comply with a request regarding a list of collateral by
22 sending to the debtor [~~an authenticated~~] a signed record,
23 including a statement to that effect, within fourteen days
24 after receipt.

25 (d) A person that receives a request regarding a

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1 list of collateral, claims no interest in the collateral when
2 it receives the request and claimed an interest in the
3 collateral at an earlier time shall comply with the request
4 within fourteen days after receipt by sending to the debtor [~~an~~
5 ~~authenticated~~] a signed record:

6 (1) disclaiming any interest in the
7 collateral; and

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

11 (e) A person that receives a request for an
12 accounting or a request regarding a statement of account,
13 claims no interest in the obligations when it receives the
14 request and claimed an interest in the obligations at an
15 earlier time shall comply with the request within fourteen days
16 after receipt by sending to the debtor [~~an authenticated~~] a
17 signed record:

18 (1) disclaiming any interest in the
19 obligations; and

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

23 (f) A debtor is entitled without charge to one
24 response to a request under this section during any six-month
25 period. The secured party may require payment of a charge not

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1 exceeding twenty-five dollars (\$25.00) for each additional
2 response."

3 SECTION 56. Section 55-9-301 NMSA 1978 (being Laws 2001,
4 Chapter 139, Section 21, as amended) is amended to read:

5 "55-9-301. LAW GOVERNING PERFECTION AND PRIORITY OF
6 SECURITY INTERESTS.--Except as otherwise provided in Sections
7 55-9-303 through ~~[55-9-306]~~ 55-9-306B NMSA 1978, the following
8 rules determine the law governing perfection, the effect of
9 perfection or nonperfection and the priority of a security
10 interest in collateral:

11 (1) except as otherwise provided in this section,
12 while a debtor is located in a jurisdiction, the local law of
13 that jurisdiction governs perfection, the effect of perfection
14 or nonperfection and the priority of a security interest in
15 collateral;

16 (2) while collateral is located in a jurisdiction,
17 the local law of that jurisdiction governs perfection, the
18 effect of perfection or nonperfection and the priority of a
19 possessory security interest in that collateral;

20 (3) except as otherwise provided in Subsection (4)
21 of this section, while tangible negotiable tangible documents,
22 goods, instruments or tangible money [~~or tangible chattel~~
23 ~~paper~~] is located in a jurisdiction, the local law of that
24 jurisdiction governs:

25 (A) perfection of a security interest in the

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1 goods by filing a fixture filing;

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

4 (C) the effect of perfection or nonperfection
5 and the priority of a nonpossessory security interest in the
6 collateral; and

7 (4) the local law of the jurisdiction in which the
8 wellhead or minehead is located governs perfection, the effect
9 of perfection or nonperfection and the priority of a security
10 interest in as-extracted collateral."

11 SECTION 57. Section 55-9-304 NMSA 1978 (being Laws 2001,
12 Chapter 139, Section 24, as amended) is amended to read:

13 "55-9-304. LAW GOVERNING PERFECTION AND PRIORITY OF
14 SECURITY INTERESTS IN DEPOSIT ACCOUNTS.--

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

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

23 (1) if an agreement between the bank and its
24 customer governing the deposit account expressly provides that
25 a particular jurisdiction is the bank's jurisdiction for

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1 purposes of the Uniform Commercial Code, that jurisdiction is
2 the bank's jurisdiction;

3 (2) if Paragraph (1) of this subsection does
4 not apply and an agreement between the bank and its customer
5 governing the deposit account expressly provides that the
6 agreement is governed by the law of a particular jurisdiction,
7 that jurisdiction is the bank's jurisdiction;

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

14 (4) if none of the preceding paragraphs
15 applies, the bank's jurisdiction is the jurisdiction in which
16 the office identified in an account statement as the office
17 serving the customer's account is located; and

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

21 SECTION 58. Section 55-9-305 NMSA 1978 (being Laws 2001,
22 Chapter 139, Section 25) is amended to read:

23 "55-9-305. LAW GOVERNING PERFECTION AND PRIORITY OF
24 SECURITY INTERESTS IN INVESTMENT PROPERTY.--

25 (a) Except as otherwise provided in Subsection (c)

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1 of this section, the following rules apply:

2 (1) while a security certificate is located in
3 a jurisdiction, the local law of that jurisdiction governs
4 perfection, the effect of perfection or nonperfection and the
5 priority of a security interest in the certificated security
6 represented thereby;

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

12 (3) the local law of the securities
13 intermediary's jurisdiction as specified in Subsection (e) of
14 Section 55-8-110 NMSA 1978 governs perfection, the effect of
15 perfection or nonperfection and the priority of a security
16 interest in a security entitlement or securities account; ~~[and]~~

17 (4) the local law of the commodity
18 intermediary's jurisdiction governs perfection, the effect of
19 perfection or nonperfection and the priority of a security
20 interest in a commodity contract or commodity account; and

21 (5) Paragraphs (2), (3) and (4) of this
22 subsection apply even if the transaction does not bear any
23 relation to the jurisdiction.

24 (b) The following rules determine a commodity
25 intermediary's jurisdiction for purposes of Sections 55-9-301

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1 through 55-9-342 NMSA 1978:

2 (1) if an agreement between the commodity
3 intermediary and commodity customer governing the commodity
4 account expressly provides that a particular jurisdiction is
5 the commodity intermediary's jurisdiction for purposes of the
6 Uniform Commercial Code, that jurisdiction is the commodity
7 intermediary's jurisdiction;

8 (2) if Paragraph (1) of this subsection does
9 not apply and an agreement between the commodity intermediary
10 and commodity customer governing the commodity account
11 expressly provides that the agreement is governed by the law of
12 a particular jurisdiction, that jurisdiction is the commodity
13 intermediary's jurisdiction;

14 (3) if neither Paragraph (1) nor Paragraph (2)
15 of this subsection applies and an agreement between the
16 commodity intermediary and commodity customer governing the
17 commodity account expressly provides that the commodity account
18 is maintained at an office in a particular jurisdiction, that
19 jurisdiction is the commodity intermediary's jurisdiction;

20 (4) if none of the preceding paragraphs
21 applies, the commodity intermediary's jurisdiction is the
22 jurisdiction in which the office identified in an account
23 statement as the office serving the commodity customer's
24 account is located; and

25 (5) if none of the preceding paragraphs

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1 applies, the commodity intermediary's jurisdiction is the
2 jurisdiction in which the chief executive office of the
3 commodity intermediary is located.

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

6 (1) perfection of a security interest in
7 investment property by filing;

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

11 (3) automatic perfection of a security
12 interest in a commodity contract or commodity account created
13 by a commodity intermediary."

14 SECTION 59. A new section of the Uniform Commercial Code,
15 Section 55-9-306A NMSA 1978, is enacted to read:

16 "55-9-306A. [NEW MATERIAL] LAW GOVERNING PERFECTION AND
17 PRIORITY OF SECURITY INTERESTS IN CHATTEL PAPER.--

18 (a) Except as provided in Subsection (d) of this
19 section, if chattel paper is evidenced only by an authoritative
20 electronic copy of the chattel paper or is evidenced by an
21 authoritative electronic copy and an authoritative tangible
22 copy, the local law of the chattel paper's jurisdiction governs
23 perfection, the effect of perfection or nonperfection and the
24 priority of a security interest in the chattel paper, even if
25 the transaction does not bear any relation to the chattel

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1 paper's jurisdiction.

2 (b) The following rules determine the chattel
3 paper's jurisdiction under this section:

4 (1) if the authoritative electronic copy of
5 the record evidencing chattel paper, or a record attached to or
6 logically associated with the electronic copy and readily
7 available for review, expressly provides that a particular
8 jurisdiction is the chattel paper's jurisdiction for purposes
9 of this part or the Uniform Commercial Code, that jurisdiction
10 is the chattel paper's jurisdiction;

11 (2) If Paragraph (1) of this subsection does
12 not apply and the rules of the system in which the
13 authoritative electronic copy is recorded are readily available
14 for review and expressly provide that a particular jurisdiction
15 is the chattel paper's jurisdiction for purposes of this part
16 or the Uniform Commercial Code, that jurisdiction is the
17 chattel paper's jurisdiction;

18 (3) If Paragraphs (1) and (2) of this section
19 do not apply and the authoritative electronic copy, or a record
20 attached to or logically associated with the electronic copy
21 and readily available for review, expressly provides that the
22 chattel paper is governed by the law of a particular
23 jurisdiction, that jurisdiction is the chattel paper's
24 jurisdiction;

25 (4) If Paragraphs (1), (2) and (3) of this

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

7 (5) If Paragraphs (1) through (4) of this
8 subsection do not apply, the chattel paper's jurisdiction is
9 the jurisdiction in which the debtor is located.

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

15 (1) perfection of a security interest in the
16 chattel paper by possession under Section 55-9-314A NMSA 1978;
17 and

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

20 (d) The local law of the jurisdiction in which the
21 debtor is located governs perfection of a security interest in
22 chattel paper by filing."

23 SECTION 60. A new section of the Uniform Commercial Code,
24 Section 55-9-306B NMSA 1978, is enacted to read:

25 "55-9-306B. [NEW MATERIAL] LAW GOVERNING PERFECTION AND
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1 PRIORITY OF SECURITY INTERESTS IN CONTROLLABLE ACCOUNTS,
2 CONTROLLABLE ELECTRONIC RECORDS AND CONTROLLABLE PAYMENT
3 INTANGIBLES.--

4 (a) Except as provided in Subsection (b) of this
5 section, the local law of the controllable electronic record's
6 jurisdiction specified in Subsections (c) and (d) of Section
7 55-12-107 NMSA 1978 governs perfection, the effect of
8 perfection or nonperfection and the priority of a security
9 interest in a controllable electronic record and a security
10 interest in a controllable account or controllable payment
11 intangible evidenced by the controllable electronic record.

12 (b) The local law of the jurisdiction in which the
13 debtor is located governs:

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

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

20 SECTION 61. Section 55-9-310 NMSA 1978 (being Laws 2001,
21 Chapter 139, Section 30, as amended) is amended to read:

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

25 (a) Except as otherwise provided in Subsection (b)
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1 of this section and in Section 55-9-312 NMSA 1978, a financing
2 statement must be filed to perfect all security interests and
3 agricultural liens.

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

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

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

10 (3) in property subject to a statute,
11 regulation or treaty described in Subsection (a) of Section
12 55-9-311 NMSA 1978;

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

16 (5) in certificated securities, documents,
17 goods or instruments that is perfected without filing, control
18 or possession under Subsection (e), (f) or (g) of Section
19 55-9-312 NMSA 1978;

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

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

25 (8) in controllable accounts, controllable

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1 electronic records, controllable payment intangibles, deposit
2 accounts, [~~electronic chattel paper~~] electronic documents,
3 investment property or letter-of-credit rights that is
4 perfected by control under Section 55-9-314 NMSA 1978;

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

7 (10) that is perfected under Section 55-9-316
8 NMSA 1978.

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

14 SECTION 62. Section 55-9-312 NMSA 1978 (being Laws 2001,
15 Chapter 139, Section 32, as amended) is amended to read:

16 "55-9-312. PERFECTION OF SECURITY INTERESTS IN CHATTEL
17 PAPER, CONTROLLABLE ACCOUNTS, CONTROLLABLE ELECTRONIC RECORDS,
18 CONTROLLABLE PAYMENT INTANGIBLES, DEPOSIT ACCOUNTS, DOCUMENTS,
19 GOODS COVERED BY DOCUMENTS, INSTRUMENTS, INVESTMENT PROPERTY,
20 LETTER-OF-CREDIT RIGHTS AND MONEY--PERFECTION BY PERMISSIVE
21 FILING--TEMPORARY PERFECTION WITHOUT FILING OR TRANSFER OF
22 POSSESSION.--

23 (a) A security interest in chattel paper,
24 [~~negotiable documents~~] controllable accounts, controllable
25 electronic records, controllable payment intangibles,

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1 instruments, ~~[or]~~ investment property or negotiable documents
2 may be perfected by filing.

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

5 (1) a security interest in a deposit account
6 may be perfected only by control under Section 55-9-314 NMSA
7 1978;

8 (2) and except as otherwise provided in
9 Subsection (d) of Section 55-9-308 NMSA 1978, a security
10 interest in a letter-of-credit right may be perfected only by
11 control under Section 55-9-314 NMSA 1978; ~~[and]~~

12 (3) a security interest in tangible money may
13 be perfected only by the secured party's taking possession
14 under Section 55-9-313 NMSA 1978; and

15 (4) a security interest in electronic money
16 may be perfected only by control under Section 55-9-314 NMSA
17 1978.

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

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

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

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

4 (1) issuance of a document in the name of the
5 secured party;

6 (2) the bailee's receipt of notification of
7 the secured party's interest; or

8 (3) filing as to the goods.

9 (e) A security interest in certificated securities,
10 negotiable documents or instruments is perfected without filing
11 or the taking of possession or control for a period of twenty
12 days from the time it attaches to the extent that it arises for
13 new value given under ~~[an authenticated]~~ a signed security
14 agreement.

15 (f) A perfected security interest in a negotiable
16 document or goods in possession of a bailee, other than one
17 that has issued a negotiable document for the goods, remains
18 perfected for twenty days without filing if the secured party
19 makes available to the debtor the goods or documents
20 representing the goods for the purpose of:

21 (1) ultimate sale or exchange; or

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

25 (g) A perfected security interest in a certificated

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1 security or instrument remains perfected for twenty days
2 without filing if the secured party delivers the security
3 certificate or instrument to the debtor for the purpose of:

4 (1) ultimate sale or exchange; or
5 (2) presentation, collection, enforcement,
6 renewal or registration of transfer.

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

10 **SECTION 63.** Section 55-9-313 NMSA 1978 (being Laws 2001,
11 Chapter 139, Section 33, as amended) is amended to read:

12 "55-9-313. WHEN POSSESSION BY OR DELIVERY TO SECURED
13 PARTY PERFECTS SECURITY INTEREST WITHOUT FILING.--

14 (a) Except as otherwise provided in Subsection (b)
15 of this section, a secured party may perfect a security
16 interest in [~~tangible negotiable documents~~] goods, instruments,
17 negotiable tangible documents or tangible money [~~or tangible~~
18 ~~chattel paper~~] by taking possession of the collateral. A
19 secured party may perfect a security interest in certificated
20 securities by taking delivery of the certificated securities
21 under Section 55-8-301 NMSA 1978.

22 (b) With respect to goods covered by a certificate
23 of title issued by this state, a secured party may perfect a
24 security interest in the goods by taking possession of the
25 goods only in the circumstances described in Subsection (d) of

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1 Section 55-9-316 NMSA 1978.

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

8 (1) the person in possession [~~authenticates~~]
9 signs a record acknowledging that it holds possession of the
10 collateral for the secured party's benefit; or

11 (2) the person takes possession of the
12 collateral after having [~~authenticated~~] signed a record
13 acknowledging that it will hold possession of the collateral
14 for the secured party's benefit.

15 (d) If perfection of a security interest depends
16 upon possession of the collateral by a secured party,
17 perfection occurs [~~no~~] not earlier than the time the secured
18 party takes possession and continues only while the secured
19 party retains possession.

20 (e) A security interest in a certificated security
21 in registered form is perfected by delivery when delivery of
22 the certificated security occurs under Section 55-8-301 NMSA
23 1978 and remains perfected by delivery until the debtor obtains
24 possession of the security certificate.

25 (f) A person in possession of collateral is not

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1 required to acknowledge that it holds possession for a secured
2 party's benefit.

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

5 (1) the acknowledgment is effective under
6 Subsection (c) of this section or Subsection (a) of Section
7 55-8-301 NMSA 1978, even if the acknowledgment violates the
8 rights of a debtor; and

9 (2) unless the person otherwise agrees or law
10 other than Chapter 55, Article 9 NMSA 1978 otherwise provides,
11 the person does not owe any duty to the secured party and is
12 not required to confirm the acknowledgment to another person.

13 (h) A secured party having possession of collateral
14 does not relinquish possession by delivering the collateral to
15 a person other than the debtor or a lessee of the collateral
16 from the debtor in the ordinary course of the debtor's business
17 if the person was instructed before the delivery or is
18 instructed contemporaneously with the delivery:

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

21 (2) to redeliver the collateral to the secured
22 party.

23 (i) A secured party does not relinquish possession,
24 even if a delivery under Subsection (h) of this section
25 violates the rights of a debtor. A person to which collateral

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1 is delivered under Subsection (h) of this section does not owe
2 any duty to the secured party and is not required to confirm
3 the delivery to another person unless the person otherwise
4 agrees or law other than Chapter 55, Article 9 NMSA 1978
5 otherwise provides."

6 SECTION 64. Section 55-9-314 NMSA 1978 (being Laws 2001,
7 Chapter 139, Section 34, as amended) is amended to read:

8 "55-9-314. PERFECTION BY CONTROL.--

9 (a) A security interest in [~~investment property,~~
10 ~~deposit accounts, letter-of-credit rights, electronic chattel~~
11 ~~paper or electronic documents~~] controllable accounts,
12 controllable electronic records, controllable payment
13 intangibles, deposit accounts, electronic documents, electronic
14 money, investment property or letter-of-credit rights may be
15 perfected by control of the collateral under Section 55-7-106,
16 55-9-104, [~~55-9-105~~] 55-9-105A, 55-9-106, [~~or~~] 55-9-107 or
17 55-9-107A NMSA 1978.

18 (b) A security interest in [~~deposit accounts,~~
19 ~~electronic chattel paper, letter-of-credit rights or electronic~~
20 ~~documents~~] controllable accounts, controllable electronic
21 records, controllable payment intangibles, deposit accounts,
22 electronic documents, electronic money or letter-of-credit
23 rights is perfected by control under Section 55-7-106,
24 55-9-104, [~~55-9-105~~] 55-9-105A, [~~or~~] 55-9-107 or 55-9-107A NMSA
25 1978 when the secured party obtains control and remains

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1 perfected by control only while the secured party retains
2 control.

3 (c) A security interest in investment property is
4 perfected by control under Section 55-9-106 NMSA 1978 ~~[from]~~
5 not earlier than the time the secured party obtains control and
6 remains perfected by control until:

7 (1) the secured party does not have control;
8 and

9 (2) one of the following occurs:

10 (A) if the collateral is a certificated
11 security, the debtor has or acquires possession of the security
12 certificate;

13 (B) if the collateral is an
14 uncertificated security, the issuer has registered or registers
15 the debtor as the registered owner; or

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

18 SECTION 65. A new section of the Uniform Commercial Code,
19 Section 55-9-314A NMSA 1978, is enacted to read:

20 "55-9-314A. [NEW MATERIAL] PERFECTION BY POSSESSION AND
21 CONTROL OF CHATTEL PAPER.--

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

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1 electronic record evidencing the chattel paper.

2 (b) A security interest is perfected under
3 Subsection (a) of this section not earlier than the time the
4 secured party takes possession and obtains control and remains
5 perfected under that subsection only while the secured party
6 retains possession and control.

7 (c) Subsections (c) and (f) through (i) of Section
8 55-9-313 NMSA 1978 apply to perfection by possession of an
9 authoritative tangible copy of a record evidencing chattel
10 paper."

11 SECTION 66. Section 55-9-316 NMSA 1978 (being Laws 2001,
12 Chapter 139, Section 36, as amended) is amended to read:

13 "55-9-316. EFFECT OF CHANGE IN GOVERNING LAW.--

14 (a) A security interest perfected pursuant to the
15 law of the jurisdiction designated in Subsection (1) of Section
16 55-9-301, ~~[or]~~ Subsection (c) of Section 55-9-305, Subsection
17 (d) of Section 55-9-306A or Subsection (b) of Section 55-9-306B
18 NMSA 1978 remains perfected until the earliest of:

19 (1) the time perfection would have ceased
20 under the law of that jurisdiction;

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

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

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1 (b) If a security interest described in Subsection
2 (a) of this section becomes perfected under the law of the
3 other jurisdiction before the earliest time or event described
4 in that subsection, it remains perfected thereafter. If the
5 security interest does not become perfected under the law of
6 the other jurisdiction before the earliest time or event, it
7 becomes unperfected and is deemed never to have been perfected
8 as against a purchaser of the collateral for value.

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

13 (1) the collateral is located in one
14 jurisdiction and subject to a security interest perfected under
15 the law of that jurisdiction;

16 (2) thereafter the collateral is brought into
17 another jurisdiction; and

18 (3) upon entry into the other jurisdiction,
19 the security interest is perfected under the law of the other
20 jurisdiction.

21 (d) Except as otherwise provided in Subsection (e)
22 of this section, a security interest in goods covered by a
23 certificate of title that is perfected by any method under the
24 law of another jurisdiction when the goods become covered by a
25 certificate of title from this state remains perfected until

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1 the security interest would have become unperfected under the
2 law of the other jurisdiction had the goods not become so
3 covered.

4 (e) A security interest described in Subsection (d)
5 of this section becomes unperfected as against a purchaser of
6 the goods for value and is deemed never to have been perfected
7 as against a purchaser of the goods for value if the applicable
8 requirements for perfection under Subsection (b) of Section
9 55-9-311 or Section 55-9-313 NMSA 1978 are not satisfied before
10 the earlier of:

11 (1) the time the security interest would have
12 become unperfected under the law of the other jurisdiction had
13 the goods not become covered by a certificate of title from
14 this state; or

15 (2) the expiration of four months after the
16 goods had become so covered.

17 (f) A security interest in chattel paper,
18 controllable accounts, controllable electronic records,
19 controllable payment intangibles, deposit accounts, letter-of-
20 credit rights or investment property that is perfected under
21 the law of the chattel paper's jurisdiction, the controllable
22 electronic record's jurisdiction, the bank's jurisdiction, the
23 issuer's jurisdiction, a nominated person's jurisdiction, the
24 securities intermediary's jurisdiction or the commodity
25 intermediary's jurisdiction, as applicable, remains perfected

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1 until the earlier of:

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

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

6 (g) If a security interest described in Subsection
7 (f) of this section becomes perfected under the law of the
8 other jurisdiction before the earlier of the time or the end of
9 the period described in that subsection, it remains perfected
10 thereafter. If the security interest does not become perfected
11 under the law of the other jurisdiction before the earlier of
12 that time or the end of that period, it becomes unperfected and
13 is deemed never to have been perfected as against a purchaser
14 of the collateral for value.

15 (h) The following rules apply to collateral to
16 which a security interest attaches within four months after the
17 debtor changes its location to another jurisdiction:

18 (1) a financing statement filed before the
19 change pursuant to the law of the jurisdiction designated in
20 Paragraph (1) of Section 55-9-301 or Subsection (c) of Section
21 55-9-305 NMSA 1978 is effective to perfect a security interest
22 in the collateral if the financing statement would have been
23 effective to perfect a security interest in the collateral had
24 the debtor not changed its location; and

25 (2) if a security interest perfected by a

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1 financing statement that is effective under Paragraph (1) of
2 this subsection becomes perfected under the law of the other
3 jurisdiction before the earlier of the time the financing
4 statement would have become ineffective under the law of the
5 jurisdiction designated in ~~[Paragraph]~~ Subsection (1) of
6 Section 55-9-301 or Subsection (c) of Section 55-9-305 NMSA
7 1978 or the expiration of the four-month period, it remains
8 perfected thereafter. If the security interest does not become
9 perfected under the law of the other jurisdiction before the
10 earlier time or event, it becomes unperfected and is deemed
11 never to have been perfected as against a purchaser of the
12 collateral for value.

13 (i) If a financing statement naming an original
14 debtor is filed pursuant to the law of the jurisdiction
15 designated in ~~[Paragraph]~~ Subsection (1) of Section 55-9-301 or
16 Subsection (c) of Section 55-9-305 NMSA 1978 and the new debtor
17 is located in another jurisdiction, the following rules apply:

18 (1) the financing statement is effective to
19 perfect a security interest in collateral acquired by the new
20 debtor before, and within four months after, the new debtor
21 becomes bound under Subsection (d) of Section 55-9-203 NMSA
22 1978 if the financing statement would have been effective to
23 perfect a security interest in the collateral had the
24 collateral been acquired by the original debtor; and

25 (2) a security interest perfected by the

1 financing statement that becomes perfected under the law of the
2 other jurisdiction before the earlier of the time the financing
3 statement would have become ineffective under the law of the
4 jurisdiction designated in ~~Paragraph~~ Subsection (1) of
5 Section 55-9-301 or Subsection (c) of Section 55-9-305 NMSA
6 1978 or the expiration of the four-month period remains
7 perfected thereafter. A security interest that is perfected by
8 the financing statement but that does not become perfected
9 under the law of the other jurisdiction before the earlier time
10 or event becomes unperfected and is deemed never to have been
11 perfected as against a purchaser of the collateral for value."

12 SECTION 67. Section 55-9-317 NMSA 1978 (being Laws 2001,
13 Chapter 139, Section 37, as amended) is amended to read:

14 "55-9-317. INTERESTS THAT TAKE PRIORITY OVER OR TAKE FREE
15 OF SECURITY INTEREST OR AGRICULTURAL LIEN.--

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

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

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

23 (A) the security interest or
24 agricultural lien is perfected; or

25 (B) one of the conditions specified in

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1 Paragraph (3) of Subsection (b) of Section 55-9-203 NMSA 1978
2 is met and a financing statement covering the collateral is
3 filed.

4 (b) Except as otherwise provided in Subsection (e)
5 of this section, a buyer, other than a secured party, of
6 [~~tangible chattel paper, tangible documents~~] goods,
7 instruments, tangible documents or a security certificate takes
8 free of a security interest or agricultural lien if the buyer
9 gives value and receives delivery of the collateral without
10 knowledge of the security interest or agricultural lien and
11 before it is perfected.

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

18 (d) Subject to Subsections (f) through (i) of this
19 section, a licensee of a general intangible or a buyer, other
20 than a secured party, of collateral other than [~~tangible~~
21 ~~chattel paper, tangible documents~~] electronic money, goods,
22 instruments, tangible documents or a certificated security
23 takes free of a security interest if the licensee or buyer
24 gives value without knowledge of the security interest and
25 before it is perfected.

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1 (e) Except as otherwise provided in Sections
2 55-9-320 and 55-9-321 NMSA 1978, if a person files a financing
3 statement with respect to a purchase-money security interest
4 before or within twenty days after the debtor receives delivery
5 of the collateral, the security interest takes priority over
6 the rights of a buyer, lessee or lien creditor that arise
7 between the time the security interest attaches and the time of
8 filing.

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

13 (1) receives delivery of each authoritative
14 tangible copy of the record evidencing the chattel paper; and

15 (2) if each authoritative electronic copy of
16 the record evidencing the chattel paper can be subjected to
17 control under Section 55-9-105 NMSA 1978, obtains control of
18 each authoritative electronic copy.

19 (g) A buyer of an electronic document takes free of
20 a security interest if, without knowledge of the security
21 interest and before it is perfected, the buyer gives value and,
22 if each authoritative electronic copy of the document can be
23 subjected to control under Section 55-7-106 NMSA 1978, obtains
24 control of each authoritative electronic copy.

25 (h) A buyer of a controllable electronic record

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1 takes free of a security interest if, without knowledge of the
2 security interest and before it is perfected, the buyer gives
3 value and obtains control of the controllable electronic
4 record.

5 (i) A buyer, other than a secured party, of a
6 controllable account or a controllable payment intangible takes
7 free of a security interest if, without knowledge of the
8 security interest and before it is perfected, the buyer gives
9 value and obtains control of the controllable account or
10 controllable payment intangible."

11 SECTION 68. Section 55-9-323 NMSA 1978 (being Laws 2001,
12 Chapter 139, Section 43) is amended to read:

13 "55-9-323. FUTURE ADVANCES.--

14 (a) Except as otherwise provided in Subsection (c)
15 of this section, for purposes of determining the priority of a
16 perfected security interest under Paragraph (1) of Subsection
17 (a) of Section 55-9-322 NMSA 1978, perfection of the security
18 interest dates from the time an advance is made to the extent
19 that the security interest secures an advance that:

20 (1) is made while the security interest is
21 perfected only:

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

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

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

5 (b) Except as otherwise provided in Subsection (c)
6 of this section, a security interest is subordinate to the
7 rights of a person that becomes a lien creditor to the extent
8 that the security interest secures an advance made more than
9 forty-five days after the person becomes a lien creditor unless
10 the advance is made:

11 (1) without knowledge of the lien; or

12 (2) pursuant to a commitment entered into
13 without knowledge of the lien.

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

18 (d) Except as otherwise provided in Subsection (e)
19 of this section, a buyer of goods [~~other than a buyer in~~
20 ~~ordinary course of business~~] takes free of a security interest
21 to the extent that it secures advances made after the earlier
22 of:

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

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

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

5 (f) Except as otherwise provided in Subsection (g)
6 of this section, a lessee of goods, other than a lessee in
7 ordinary course of business, takes the leasehold interest free
8 of a security interest to the extent that it secures advances
9 made after the earlier of:

10 (1) the time the secured party acquires
11 knowledge of the lease; or

12 (2) forty-five days after the lease contract
13 becomes enforceable.

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

18 SECTION 69. Section 55-9-324 NMSA 1978 (being Laws 2001,
19 Chapter 139, Section 44) is amended to read:

20 "55-9-324. PRIORITY OF PURCHASE-MONEY SECURITY
21 INTERESTS.--

22 (a) Except as otherwise provided in Subsection (g)
23 of this section, a perfected purchase-money security interest
24 in goods other than inventory or livestock has priority over a
25 conflicting security interest in the same goods, and, except as

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1 otherwise provided in Section 55-9-327 NMSA 1978, a perfected
2 security interest in its identifiable proceeds also has
3 priority if the purchase-money security interest is perfected
4 when the debtor receives possession of the collateral or within
5 twenty days thereafter.

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

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

20 (2) the purchase-money secured party sends [~~an~~
21 ~~authenticated~~] a signed notification to the holder of the
22 conflicting security interest;

23 (3) the holder of the conflicting security
24 interest receives the notification within five years before the
25 debtor receives possession of the inventory; and

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1 (4) the notification states that the person
2 sending the notification has or expects to acquire a purchase-
3 money security interest in inventory of the debtor and
4 describes the inventory.

5 (c) Paragraphs (2) through (4) of Subsection (b) of
6 this section apply only if the holder of the conflicting
7 security interest had filed a financing statement covering the
8 same types of inventory:

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

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

15 (d) Subject to Subsection (e) of this section and
16 except as otherwise provided in Subsection (g) of this section,
17 a perfected purchase-money security interest in livestock that
18 are farm products has priority over a conflicting security
19 interest in the same livestock, and, except as otherwise
20 provided in Section 55-9-327 NMSA 1978, a perfected security
21 interest in their identifiable proceeds and identifiable
22 products in their unmanufactured states also has priority, if:

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

25 (2) the purchase-money secured party sends [an

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1 ~~authenticated]~~ a signed notification to the holder of the
2 conflicting security interest;

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

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

10 (e) Paragraphs (2) through (4) of Subsection (d) of
11 this section apply only if the holder of the conflicting
12 security interest had filed a financing statement covering the
13 same types of livestock:

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

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

20 (f) Except as otherwise provided in Subsection (g)
21 of this section, a perfected purchase-money security interest
22 in software has priority over a conflicting security interest
23 in the same collateral, and, except as otherwise provided in
24 Section 55-9-327 NMSA 1978, a perfected security interest in
25 its identifiable proceeds also has priority, to the extent that

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1 the purchase-money security interest in the goods in which the
2 software was acquired for use has priority in the goods and
3 proceeds of the goods under this section.

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

7 (1) a security interest securing an obligation
8 incurred as all or part of the price of the collateral has
9 priority over a security interest securing an obligation
10 incurred for value given to enable the debtor to acquire rights
11 in or the use of collateral; and

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

15 SECTION 70. A new section of the Uniform Commercial Code,
16 Section 55-9-326A NMSA 1978, is enacted to read:

17 "55-9-326A. [NEW MATERIAL] PRIORITY OF SECURITY INTEREST
18 IN CONTROLLABLE ACCOUNT, CONTROLLABLE ELECTRONIC RECORD AND
19 CONTROLLABLE PAYMENT INTANGIBLE.--A security interest in a
20 controllable account, controllable electronic record or
21 controllable payment intangible held by a secured party having
22 control of the account, electronic record or payment intangible
23 has priority over a conflicting security interest held by a
24 secured party that does not have control."

25 SECTION 71. Section 55-9-330 NMSA 1978 (being Laws 2001,
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1 Chapter 139, Section 50) is amended to read:

2 "55-9-330. PRIORITY OF PURCHASER OF CHATTEL PAPER OR
3 INSTRUMENT.--

4 (a) A purchaser of chattel paper has priority over
5 a security interest in the chattel paper which is claimed
6 merely as proceeds of inventory subject to a security interest
7 if:

8 (1) in good faith and in the ordinary course
9 of the purchaser's business, the purchaser gives new value,
10 [~~and~~] takes possession of each authoritative tangible copy of
11 the record evidencing the chattel paper [~~or~~] and obtains
12 control [~~of~~] under Section 55-9-105 NMSA 1978 of each
13 authoritative electronic copy of the record evidencing the
14 chattel paper [~~under Section 55-9-105 NMSA 1978~~]; and

15 (2) the [~~chattel paper does~~] authoritative
16 copies of the record evidencing the chattel paper do not
17 indicate that [~~it~~] the chattel paper has been assigned to an
18 identified assignee other than the purchaser.

19 (b) A purchaser of chattel paper has priority over
20 a security interest in the chattel paper which is claimed other
21 than merely as proceeds of inventory subject to a security
22 interest if the purchaser gives new value, [~~and~~] takes
23 possession of each authoritative tangible copy of the record
24 evidencing the chattel paper [~~or~~] and obtains control [~~of~~]
25 under Section 55-9-105 NMSA 1978 of each authoritative

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1 electronic copy of the record evidencing the chattel paper
2 [~~under Section 55-9-105 NMSA 1978~~] in good faith, in the
3 ordinary course of the purchaser's business and without
4 knowledge that the purchase violates the rights of the secured
5 party.

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

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

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

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

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

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1 proceeds of the inventory.

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

9 SECTION 72. Section 55-9-331 NMSA 1978 (being Laws 2001,
10 Chapter 139, Section 51, as amended) is amended to read:

11 "55-9-331. PRIORITY OF RIGHTS OF PURCHASERS OF
12 [~~INSTRUMENTS~~] CONTROLLABLE ACCOUNTS, CONTROLLABLE ELECTRONIC
13 RECORDS, CONTROLLABLE PAYMENT INTANGIBLES, DOCUMENTS,
14 INSTRUMENTS AND SECURITIES UNDER OTHER ARTICLES--PRIORITY OF
15 INTERESTS IN FINANCIAL ASSETS AND SECURITY ENTITLEMENTS AND
16 PROTECTION AGAINST ASSERTION OF CLAIM UNDER CHAPTER 55,
17 [~~ARTICLE 8~~] ARTICLES 8 AND 9 NMSA 1978.--

18 (a) Chapter 55, Article 9 NMSA 1978 does not limit
19 the rights of a holder in due course of a negotiable
20 instrument, a holder to which a negotiable document of title
21 has been duly negotiated or a protected purchaser of a security
22 or a qualifying purchaser of a controllable account,
23 controllable electronic record or controllable payment
24 intangible. These holders or purchasers take priority over an
25 earlier security interest, even if perfected, to the extent

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1 provided in Chapter 55, Articles 3, 7, [~~and~~] 8 and 12 NMSA
2 1978.

3 (b) Chapter 55, Article 9 NMSA 1978 does not limit
4 the rights of or impose liability on a person to the extent
5 that the person is protected against the assertion of a claim
6 under Chapter 55, [~~Article 8~~] Articles 8 and 12 NMSA 1978.

7 (c) Filing under Chapter 55, Article 9 NMSA 1978
8 does not constitute notice of a claim or defense to the
9 holders, or purchasers, or persons described in Subsections (a)
10 and (b) of this section."

11 SECTION 73. Section 55-9-332 NMSA 1978 (being Laws 2001,
12 Chapter 139, Section 52) is amended to read:

13 "55-9-332. TRANSFER OF MONEY--TRANSFER OF FUNDS FROM
14 DEPOSIT ACCOUNT.--

15 (a) A transferee of tangible money takes the money
16 free of a security interest [~~unless the transferee acts~~] if the
17 transferee receives possession of the money without acting in
18 collusion with the debtor in violating the rights of the
19 secured party.

20 (b) A transferee of funds from a deposit account
21 takes the funds free of a security interest in the deposit
22 account [~~unless the transferee acts~~] if the transferee receives
23 the funds without acting in collusion with the debtor in
24 violating the rights of the secured party.

25 (c) A transferee of electronic money takes the

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1 money free of a security interest if the transferee obtains
2 control of the money without acting in collusion with the
3 debtor in violating the rights of the secured party."

4 SECTION 74. Section 55-9-334 NMSA 1978 (being Laws 2001,
5 Chapter 139, Section 54) is amended to read:

6 "55-9-334. PRIORITY OF SECURITY INTERESTS IN FIXTURES.--

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

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

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

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

24 (1) the security interest is a purchase-money
25 security interest;

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1 (2) the interest of the encumbrancer or owner
2 arises before the goods become fixtures; and

3 (3) the security interest is perfected by a
4 fixture filing before the goods become fixtures or within
5 twenty days thereafter.

6 (e) A perfected security interest in fixtures has
7 priority over a conflicting interest of an encumbrancer or
8 owner of the real property if:

9 (1) the debtor has an interest of record in
10 the real property or is in possession of the real property and
11 the security interest:

12 (A) is perfected by a fixture filing
13 before the interest of the encumbrancer or owner is of record;
14 and

15 (B) has priority over any conflicting
16 interest of a predecessor in title of the encumbrancer or
17 owner;

18 (2) before the goods become fixtures, the
19 security interest is perfected by any method permitted by
20 Chapter 55, Article 9 NMSA 1978, and the fixtures are readily
21 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
11 55-9-311 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~~] a signed record, consented to the security
17 interest or 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
2 acquisition cost of the land, if a recorded record of the
3 mortgage so indicates. Except as otherwise provided in
4 Subsections (e) and (f) of this section, a security interest in
5 fixtures is subordinate to a construction mortgage if a record
6 of the mortgage is recorded before the goods become fixtures
7 and the goods become fixtures before the completion of the
8 construction. A mortgage has this priority to the same extent
9 as a construction mortgage to the extent that it is given to
10 refinance a construction mortgage."

11 SECTION 75. Section 55-9-341 NMSA 1978 (being Laws 2001,
12 Chapter 139, Section 61) is amended to read:

13 "55-9-341. BANK'S RIGHTS AND DUTIES WITH RESPECT TO
14 DEPOSIT ACCOUNT.--Except as otherwise provided in Subsection
15 (c) of Section 55-9-340 NMSA 1978, and unless the bank
16 otherwise agrees in [~~an authenticated~~] a signed record, a
17 bank's rights and duties with respect to a deposit account
18 maintained with the bank are not terminated, suspended or
19 modified by:

- 20 (1) the creation, attachment or perfection of a
21 security interest in the deposit account;
22 (2) the bank's knowledge of the security interest;
23 or
24 (3) the bank's receipt of instructions from the
25 secured party."

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1 SECTION 76. Section 55-9-404 NMSA 1978 (being Laws 2001,
2 Chapter 139, Section 66) is amended to read:

3 "55-9-404. RIGHTS ACQUIRED BY ASSIGNEE--CLAIMS AND
4 DEFENSES AGAINST ASSIGNEE.--

5 (a) Unless an account debtor has made an
6 enforceable agreement not to assert defenses or claims, and
7 subject to Subsections (b) through (e) of this section, the
8 rights of an assignee are subject to:

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

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

17 (b) Subject to Subsection (c) of this section and
18 except as otherwise provided in Subsection (d) of this section,
19 the claim of an account debtor against an assignor may be
20 asserted against an assignee under Subsection (a) of this
21 section only to reduce the amount the account debtor owes.

22 (c) This section is subject to law other than
23 Chapter 55, Article 9 NMSA 1978 which establishes a different
24 rule for an account debtor who is an individual and who
25 incurred the obligation primarily for personal, family or

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1 household purposes.

2 (d) In a consumer transaction, if a record
3 evidences the account debtor's obligation, law other than
4 Chapter 55, Article 9 NMSA 1978 requires that the record
5 include a statement to the effect that the account debtor's
6 recovery against an assignee with respect to claims and
7 defenses against the assignor may not exceed amounts paid by
8 the account debtor under the record, and if the record does not
9 include such a statement, the extent to which a claim of an
10 account debtor against the assignor may be asserted against an
11 assignee is determined as if the record included such a
12 statement.

13 (e) This section does not apply to an assignment of
14 a health-care-insurance receivable."

15 SECTION 77. Section 55-9-406 NMSA 1978 (being Laws 2001,
16 Chapter 139, Section 68, as amended) is amended to read:

17 "55-9-406. DISCHARGE OF ACCOUNT DEBTOR--NOTIFICATION OF
18 ASSIGNMENT--IDENTIFICATION AND PROOF OF ASSIGNMENT--
19 RESTRICTIONS ON ASSIGNMENT OF ACCOUNTS, CHATTEL PAPER, PAYMENT
20 INTANGIBLES AND PROMISSORY NOTES INEFFECTIVE.--

21 (a) Subject to Subsections (b) through (i) and (l)
22 of this section, an account debtor on an account, chattel paper
23 or a payment intangible may discharge its obligation by paying
24 the assignor until, but not after, the account debtor receives
25 a notification, [~~authenticated~~] signed by the assignor or the

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1 assignee, that the amount due or to become due has been
2 assigned and that payment is to be made to the assignee. After
3 receipt of the notification, the account debtor may discharge
4 its obligation by paying the assignee and may not discharge the
5 obligation by paying the assignor.

6 (b) Subject to [~~Subsection (h)~~] Subsections (h) and
7 (1) of this section, notification is ineffective under
8 Subsection (a) of this section:

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

11 (2) to the extent that an agreement between an
12 account debtor and a seller of a payment intangible limits the
13 account debtor's duty to pay a person other than the seller and
14 the limitation is effective under law other than Chapter 55,
15 Article 9 NMSA 1978; or

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

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

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

25 (C) the account debtor knows that the

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1 assignment to that assignee is limited.

2 (c) Subject to ~~[Subsection (h)]~~ Subsections (h) and
3 (1) of this section, if requested by the account debtor, an
4 assignee shall seasonably furnish reasonable proof that the
5 assignment has been made. Unless the assignee complies, the
6 account debtor may discharge its obligation by paying the
7 assignor, even if the account debtor has received a
8 notification under Subsection (a) of this section.

9 (d) In this subsection, "promissory note" includes
10 a negotiable instrument that evidences chattel paper. Except
11 as otherwise provided in ~~[Subsection]~~ Subsections (e) and (k)
12 of this section and Sections 55-2A-303 and 55-9-407 NMSA 1978,
13 and subject to Subsection (h) of this section, a term in an
14 agreement between an account debtor and an assignor or in a
15 promissory note is ineffective to the extent that it:

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

22 (2) provides that the assignment or transfer
23 or the creation, attachment, perfection or enforcement of the
24 security interest may give rise to a default, breach, right of
25 recoupment, claim, defense, termination, right of termination

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1 or remedy under the account, chattel paper, payment intangible
2 or promissory note.

3 (e) Subsection (d) of this section does not apply
4 to the sale of a payment intangible or promissory note, other
5 than a sale pursuant to a disposition under Section 55-9-610
6 NMSA 1978 or an acceptance of collateral under Section 55-9-620
7 NMSA 1978.

8 (f) Except as otherwise provided in Subsection (k)
9 of this section and Sections 55-2A-303 and 55-9-407 NMSA 1978
10 and subject to Subsections (h) and (i) of this section, a rule
11 of law, statute or regulation that prohibits, restricts or
12 requires the consent of a government, governmental body or
13 official, or account debtor to the assignment or transfer of,
14 or creation of a security interest in, an account or chattel
15 paper is ineffective to the extent that the rule of law,
16 statute or regulation:

17 (1) prohibits, restricts or requires the
18 consent of the government, governmental body or official, or
19 account debtor to the assignment or transfer of, or the
20 creation, attachment, perfection or enforcement of a security
21 interest in the account or chattel paper; or

22 (2) provides that the assignment or transfer
23 or the creation, attachment, perfection or enforcement of the
24 security interest may give rise to a default, breach, right of
25 recoupment, claim, defense, termination, right of termination

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1 or remedy under the account or chattel paper.

2 (g) Subject to [~~Subsection (h)~~] Subsections (h) and
3 (1) of this section, an account debtor may not waive or vary
4 its option under Paragraph (3) of Subsection (b) of this
5 section.

6 (h) This section is subject to law other than
7 Chapter 55, Article 9 NMSA 1978 that establishes a different
8 rule for an account debtor who is an individual and who
9 incurred the obligation primarily for personal, family or
10 household purposes.

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

13 (j) This section is subject to laws other than
14 Chapter 55, Article 9 NMSA 1978 to the extent that those laws
15 prohibit or restrict the assignment, transfer of or creation of
16 a security interest in benefits, compensation, any other
17 account or chattel paper.

18 (k) Subsections (d), (f) and (j) of this section do
19 not apply to a security interest in an ownership interest in a
20 general partnership, limited liability partnership, limited
21 partnership, limited liability limited partnership or limited
22 liability company.

23 (l) Subsections (a), (b), (c) and (g) of this
24 section do not apply to a controllable account or controllable
25 payment intangible."

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1 SECTION 78. Section 55-9-408 NMSA 1978 (being Laws 2001,
2 Chapter 139, Section 70, as amended) is amended to read:

3 "55-9-408. RESTRICTIONS ON ASSIGNMENT OF PROMISSORY
4 NOTES, HEALTH-CARE-INSURANCE RECEIVABLES AND CERTAIN GENERAL
5 INTANGIBLES INEFFECTIVE.--

6 (a) Except as otherwise provided in [~~Subsection~~
7 Subsections (b) and (e) of this section, a term in a promissory
8 note or in an agreement between an account debtor and a debtor
9 that relates to a health-care-insurance receivable or a general
10 intangible, including a contract, permit, license or franchise,
11 and that prohibits, restricts or requires the consent of the
12 person obligated on the promissory note or the account debtor
13 to the assignment or transfer of, or creation, attachment or
14 perfection of a security interest in, the promissory note,
15 health-care-insurance receivable or general intangible is
16 ineffective to the extent that the term:

17 (1) would impair the creation, attachment or
18 perfection of a security interest; or

19 (2) provides that the assignment or transfer
20 or the creation, attachment or perfection of the security
21 interest may give rise to a default, breach, right of
22 recoupment, claim, defense, termination, right of termination
23 or remedy under the promissory note, health-care-insurance
24 receivable or general intangible.

25 (b) Subsection (a) of this section applies to a

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1 security interest in a payment intangible or promissory note
2 only if the security interest arises out of a sale of the
3 payment intangible or promissory note other than a sale
4 pursuant to a disposition under Section 55-9-610 NMSA 1978 or
5 an acceptance of collateral under Section 55-9-620 NMSA 1978.

6 (c) Except as otherwise provided in Subsection (e)
7 of this section, a rule of law, statute or regulation that
8 prohibits, restricts or requires the consent of a government,
9 governmental body or official, person obligated on a promissory
10 note or account debtor to the assignment or transfer of, or
11 creation of a security interest in, a promissory note, health-
12 care-insurance receivable or general intangible, including a
13 contract, permit, license or franchise between an account
14 debtor and a debtor, is ineffective to the extent that the rule
15 of law, statute or regulation:

16 (1) would impair the creation, attachment or
17 perfection of a security interest; or

18 (2) provides that the assignment or transfer
19 or the creation, attachment or perfection of the security
20 interest may give rise to a default, breach, right of
21 recoupment, claim, defense, termination, right of termination
22 or remedy under the promissory note, health-care-insurance
23 receivable or general intangible.

24 (d) To the extent that a term in a promissory note
25 or in an agreement between an account debtor and a debtor that

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1 relates to a health-care-insurance receivable or general
2 intangible or a rule of law, statute or regulation described in
3 Subsection (c) of this section would be effective under law
4 other than Chapter 55, Article 9 NMSA 1978 but is ineffective
5 under Subsection (a) or (c) of this section, the creation,
6 attachment or perfection of a security interest in the
7 promissory note, health-care-insurance receivable or general
8 intangible:

9 (1) is not enforceable against the person
10 obligated on the promissory note or the account debtor;

11 (2) does not impose a duty or obligation on
12 the person obligated on the promissory note or the account
13 debtor;

14 (3) does not require the person obligated on
15 the promissory note or the account debtor to recognize the
16 security interest, pay or render performance to the secured
17 party or accept payment or performance from the secured party;

18 (4) does not entitle the secured party to use
19 or assign the debtor's rights under the promissory note,
20 health-care-insurance receivable or general intangible,
21 including any related information or materials furnished to the
22 debtor in the transaction giving rise to the promissory note,
23 health-care-insurance receivable or general intangible;

24 (5) does not entitle the secured party to use,
25 assign, possess or have access to any trade secrets or

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1 confidential information of the person obligated on the
2 promissory note or the account debtor; and

3 (6) does not entitle the secured party to
4 enforce the security interest in the promissory note, health-
5 care-insurance receivable or general intangible. The
6 provisions of this section shall prevail over an inconsistent
7 provision of an existing or future statute or rule of this
8 state, unless the inconsistent provision is set forth in a
9 statute of this state that refers expressly to this section and
10 states that the inconsistent provision shall prevail over the
11 provisions of this section.

12 (e) This section does not apply to a security
13 interest in an ownership interest in a general partnership,
14 limited liability partnership, limited partnership, limited
15 liability limited partnership or limited liability company.

16 (f) In this section, "promissory note" includes a
17 negotiable instrument that evidences chattel paper."

18 SECTION 79. Section 55-9-509 NMSA 1978 (being Laws 2001,
19 Chapter 139, Section 80) is amended to read:

20 "55-9-509. PERSONS ENTITLED TO FILE A RECORD.--

21 (a) A person may file an initial financing
22 statement, amendment that adds collateral covered by a
23 financing statement or amendment that adds a debtor to a
24 financing statement only if:

25 (1) the debtor authorizes the filing in [an

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1 ~~authenticated]~~ a signed record or pursuant to Subsection (b) or
2 (c) of this section; or

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

7 (b) By [~~authenticating]~~ signing or becoming bound
8 as debtor by a security agreement, a debtor or new debtor
9 authorizes the filing of an initial financing statement, and an
10 amendment, covering:

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

13 (2) property that becomes collateral under
14 Paragraph (2) of Subsection (a) of Section 55-9-315 NMSA 1978,
15 whether or not the security agreement expressly covers
16 proceeds.

17 (c) By acquiring collateral in which a security
18 interest or agricultural lien continues under Paragraph (1) of
19 Subsection (a) of Section 55-9-315 NMSA 1978, a debtor
20 authorizes the filing of an initial financing statement, and an
21 amendment, covering the collateral and property that becomes
22 collateral under Paragraph (2) of Subsection (a) of Section
23 55-9-315 NMSA 1978.

24 (d) A person may file an amendment other than an
25 amendment that adds collateral covered by a financing statement

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1 or an amendment that adds a debtor to a financing statement
2 only if:

3 (1) the secured party of record authorizes the
4 filing; or

5 (2) the amendment is a termination statement
6 for a financing statement as to which the secured party of
7 record has failed to file or send a termination statement as
8 required by Subsection (a) or (c) of Section 55-9-513 NMSA
9 1978, the debtor authorizes the filing and the termination
10 statement indicates that the debtor authorized it to be filed.

11 (e) If there is more than one secured party of
12 record for a financing statement, each secured party of record
13 may authorize the filing of an amendment under Subsection (d)
14 of this section."

15 SECTION 80. Section 55-9-513 NMSA 1978 (being Laws 2001,
16 Chapter 139, Section 84) is amended to read:

17 "55-9-513. TERMINATION STATEMENT.--

18 (a) A secured party shall cause the secured party
19 of record for a financing statement to file a termination
20 statement for the financing statement if the financing
21 statement covers consumer goods and:

22 (1) there is no obligation secured by the
23 collateral covered by the financing statement and no commitment
24 to make an advance, incur an obligation or otherwise give
25 value; or

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

3 (b) To comply with Subsection (a) of this section,
4 a secured party shall cause the secured party of record to file
5 the termination statement:

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

10 (2) if earlier, within twenty days after the
11 secured party receives ~~[an authenticated]~~ a signed demand from
12 a debtor.

13 (c) In cases not governed by Subsection (a) of this
14 section, within twenty days after a secured party receives ~~[an~~
15 ~~authenticated]~~ a signed demand from a debtor, the secured party
16 shall cause the secured party of record for a financing
17 statement to send to the debtor a termination statement for the
18 financing statement or file the termination statement in the
19 filing office if:

20 (1) except in the case of a financing
21 statement covering accounts or chattel paper that has been sold
22 or goods that are the subject of a consignment, there is no
23 obligation secured by the collateral covered by the financing
24 statement and no commitment to make an advance, incur an
25 obligation or 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
10 55-9-510 NMSA 1978, upon the filing of a termination statement
11 with the filing office, the financing statement to which the
12 termination statement relates ceases to be effective. Except
13 as otherwise provided in Section 55-9-510 NMSA 1978, for
14 purposes of Subsection (c) of Section 55-9-519, Subsection (a)
15 of Section 55-9-522 and Subsection (b) of Section 55-9-523 NMSA
16 1978, the filing with the filing office of a termination
17 statement relating to a financing statement that indicates that
18 the debtor is a transmitting utility also causes the
19 effectiveness of the financing statement to lapse."

20 SECTION 81. Section 55-9-515 NMSA 1978 (being Laws 2001,
21 Chapter 139, Section 86, as amended) is amended to read:

22 "55-9-515. DURATION AND EFFECTIVENESS OF FINANCING
23 STATEMENT--EFFECT OF LAPSED FINANCING STATEMENT.--

24 (a) Except as otherwise provided in Subsections
25 (b), (e), (f) and (g) of this section, a filed financing

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1 statement is effective for a period of five years after the
2 date of filing.

3 (b) Except as otherwise provided in Subsections
4 (e), (f) and (g) of this section, an initial financing
5 statement filed in connection with a public-finance transaction
6 or manufactured-home transaction is effective for a period of
7 thirty years after the date of filing if it indicates that it
8 is filed in connection with a public-finance transaction or
9 manufactured-home transaction.

10 (c) The effectiveness of a filed financing
11 statement lapses on the expiration of the period of its
12 effectiveness unless before the lapse a continuation statement
13 is filed pursuant to Subsection (d) of this section. Upon
14 lapse, a financing statement ceases to be effective and any
15 security interest or agricultural lien that was perfected by
16 the financing statement becomes unperfected unless the security
17 interest is perfected otherwise. If the security interest or
18 agricultural lien becomes unperfected upon lapse, it is deemed
19 never to have been perfected as against a purchaser of the
20 collateral for value.

21 (d) A continuation statement may be filed only
22 within six months before the expiration of the five-year period
23 specified in Subsection (a) of this section or the thirty-year
24 period specified in Subsection (b) of this section, whichever
25 is applicable.

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1 (e) Except as otherwise provided in Section
2 55-9-510 NMSA 1978, upon timely filing of a continuation
3 statement, the effectiveness of the initial financing statement
4 continues for a period of five years commencing on the day on
5 which the financing statement would have become ineffective in
6 the absence of the filing. Upon the expiration of the five-
7 year period, the financing statement lapses in the same manner
8 as provided in Subsection (c) of this section, unless, before
9 the lapse, another continuation statement is filed pursuant to
10 Subsection (d) of this section. Succeeding continuation
11 statements may be filed in the same manner to continue the
12 effectiveness of the initial financing statement.

13 (f) If a debtor is a transmitting utility and a
14 filed initial financing statement so indicates, the financing
15 statement is effective until a termination statement is filed.
16 The filing officer may require proof of the debtor's authority
17 to operate as a transmitting utility as a condition of filing
18 the financing statement or an amendment.

19 (g) A record of a mortgage that is effective as a
20 financing statement filed as a fixture filing under Subsection
21 (c) of Section 55-9-502 NMSA 1978 remains effective as a
22 financing statement filed as a fixture filing until the
23 mortgage is released or satisfied of record or its
24 effectiveness otherwise terminates as to the real property."

25 **SECTION 82.** Section 55-9-601 NMSA 1978 (being Laws 2001,

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1 Chapter 139, Section 98, as amended) is amended to read:

2 "55-9-601. RIGHTS AFTER DEFAULT--JUDICIAL ENFORCEMENT--
3 CONSIGNOR OR BUYER OF ACCOUNTS, CHATTEL PAPER, PAYMENT
4 INTANGIBLES OR PROMISSORY NOTES.--

5 (a) After default, a secured party has the rights
6 provided in Sections 55-9-601 through 55-9-628 NMSA 1978 and,
7 except as otherwise provided in Section 55-9-602 NMSA 1978,
8 those provided by agreement of the parties. A secured party:

9 (1) may reduce a claim to judgment, foreclose
10 or otherwise enforce the claim, security interest or
11 agricultural lien by any available judicial procedure; and

12 (2) if the collateral is documents, may
13 proceed either as to the documents or as to the goods they
14 cover.

15 (b) A secured party in possession of collateral or
16 control of collateral under Section 55-7-106, 55-9-104,
17 55-9-105, 55-9-105A, 55-9-106, [~~or~~] 55-9-107 or 55-9-107A NMSA
18 1978 has the rights and duties provided in Section 55-9-207
19 NMSA 1978.

20 (c) The rights under Subsections (a) and (b) of
21 this section are cumulative and may be exercised
22 simultaneously.

23 (d) Except as otherwise provided in Subsection (g)
24 of this section and Section 55-9-605 NMSA 1978, after default,
25 a debtor and an obligor have the rights provided in Sections

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1 55-9-601 through 55-9-628 NMSA 1978 and by agreement of the
2 parties.

3 (e) If a secured party has reduced its claim to
4 judgment, the lien of any levy that may be made upon the
5 collateral by virtue of an execution based upon the judgment
6 relates back to the earliest of:

7 (1) the date of perfection of the security
8 interest or agricultural lien in the collateral;

9 (2) the date of filing a financing statement
10 covering the collateral; or

11 (3) any date specified in a statute under
12 which the agricultural lien was created.

13 (f) A sale pursuant to an execution is a
14 foreclosure of the security interest or agricultural lien by
15 judicial procedure within the meaning of this section. A
16 secured party may purchase at the sale and thereafter hold the
17 collateral free of any other requirements of Chapter 55,
18 Article 9 NMSA 1978.

19 (g) Except as otherwise provided in Subsection (c)
20 of Section 55-9-607 NMSA 1978, this part imposes no duties upon
21 a secured party that is a consignor or is a buyer of accounts,
22 chattel paper, payment intangibles or promissory notes."

23 **SECTION 83.** Section 55-9-605 NMSA 1978 (being Laws 2001,
24 Chapter 139, Section 102) is amended to read:

25 "55-9-605. UNKNOWN DEBTOR OR SECONDARY OBLIGOR.--

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1 (a) Except as provided in Subsection (b) of this
2 section, a secured party does not owe a duty based on its
3 status as secured party:

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

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

8 (B) the identity of the person; and

9 (C) how to communicate with the person;

10 or

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

14 (A) that the person is a debtor; and

15 (B) the identity of the person.

16 (b) A secured party owes a duty based on its status
17 as a secured party to a person if, at the time the secured
18 party obtains control of collateral that is a controllable
19 account, controllable electronic record or controllable payment
20 intangible or at the time the security interest attaches to the
21 collateral, whichever is later:

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

23 (2) the secured party knows that the
24 information in Subparagraph (A), (B) or (C) of Paragraph (1) of
25 Subsection (a) of this section relating to the person is not

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1 provided by the collateral, a record attached to or logically
2 associated with the collateral or the system in which the
3 collateral is recorded."

4 SECTION 84. Section 55-9-608 NMSA 1978 (being Laws 2001,
5 Chapter 139, Section 105) is amended to read:

6 "55-9-608. APPLICATION OF PROCEEDS OF COLLECTION OR
7 ENFORCEMENT--LIABILITY FOR DEFICIENCY AND RIGHT TO SURPLUS.--

8 (a) If a security interest or agricultural lien
9 secures payment or performance of an obligation, the following
10 rules apply:

11 (1) A secured party shall apply or pay over
12 for application the cash proceeds of collection or enforcement
13 under Section 55-9-607 NMSA 1978 in the following order to:

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

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

21 (C) the satisfaction of obligations
22 secured by any subordinate security interest in or other lien
23 on the collateral subject to the security interest or
24 agricultural lien under which the collection or enforcement is
25 made if the secured party receives [~~an authenticated~~] a signed

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1 demand for proceeds before distribution of the proceeds is
2 completed.

3 (2) If requested by a secured party, a holder
4 of a subordinate security interest or other lien shall furnish
5 reasonable proof of the interest or lien within a reasonable
6 time. Unless the holder complies, the secured party need not
7 comply with the holder's demand under Subparagraph (C) of
8 Paragraph (1) of Subsection (a) of this section.

9 (3) A secured party need not apply or pay over
10 for application noncash proceeds of collection and enforcement
11 under Section 55-9-607 NMSA 1978 unless the failure to do so
12 would be commercially unreasonable. A secured party that
13 applies or pays over for application noncash proceeds shall do
14 so in a commercially reasonable manner.

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

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

22 SECTION 85. Section 55-9-611 NMSA 1978 (being Laws 2001,
23 Chapter 139, Section 108) is amended to read:

24 "55-9-611. NOTIFICATION BEFORE DISPOSITION OF
25 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
4 any secondary obligor [~~an authenticated~~] a signed notification
5 of disposition; or

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

8 (b) Except as otherwise provided in Subsection (d)
9 of this section, a secured party that disposes of collateral
10 under Section 55-9-610 NMSA 1978 shall send to the persons
11 specified in Subsection (c) of this section a reasonable
12 [~~authenticated~~] signed notification of disposition.

13 (c) To comply with Subsection (b) of this section,
14 the secured party shall send [~~an authenticated~~] a signed
15 notification of 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~~] a signed notification of a claim of an interest
23 in the collateral;

24 (B) any other secured party or
25 lienholder that, ten days before the notification date, held a

1 security interest in or other lien on the collateral perfected
2 by the 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
10 days before the notification date, held a security interest in
11 the collateral perfected by compliance with a statute,
12 regulation or treaty described in Subsection (a) of Section
13 55-9-311 NMSA 1978.

14 (d) Subsection (b) of this section does not apply
15 if the collateral is perishable or threatens to decline
16 speedily in value or is of a type customarily sold on a
17 recognized market.

18 (e) A secured party complies with the requirement
19 for notification prescribed by Subparagraph (B) of Paragraph
20 (3) of Subsection (c) of this section if:

21 (1) not later than twenty days or earlier than
22 thirty days before the notification date, the secured party
23 requests, in a commercially reasonable manner, information
24 concerning financing statements indexed under the debtor's name
25 in the office indicated in Subparagraph (B) of Paragraph (3) of
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1 Subsection (c) of this section; and

2 (2) before the notification date, the secured
3 party:

4 (A) did not receive a response to the
5 request for information; or

6 (B) received a response to the request
7 for information and sent [~~an authenticated~~] a signed
8 notification of disposition to each secured party or other
9 lienholder named in that response whose financing statement
10 covered the collateral."

11 **SECTION 86.** Section 55-9-613 NMSA 1978 (being Laws 2001,
12 Chapter 139, Section 110) is amended to read:

13 "55-9-613. CONTENTS AND FORM OF NOTIFICATION BEFORE
14 DISPOSITION OF COLLATERAL--GENERAL.--

15 (a) Except in a consumer-goods transaction, the
16 following rules apply:

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

19 (A) describes the debtor and the secured
20 party;

21 (B) describes the collateral that is the
22 subject of the intended disposition;

23 (C) states the method of intended
24 disposition;

25 (D) states that the debtor is entitled

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1 to an accounting of the unpaid indebtedness and states the
2 charge, if any, for an accounting; and

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

6 (2) Whether the contents of a notification
7 that lacks any of the information specified in [~~Subsection (1)~~
8 ~~of this section~~] Paragraph (1) of this subsection are
9 nevertheless sufficient is a question of fact.

10 (3) The contents of a notification providing
11 substantially the information specified in [~~Subsection (1) of~~
12 ~~this section~~] Paragraph (1) of this subsection are sufficient,
13 even if the notification includes:

14 (A) information not specified by that
15 subsection; or

16 (B) minor errors that are not seriously
17 misleading.

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

20 (5) The following form of notification and the
21 form appearing in [~~Subsection (3)~~] Paragraph (3) of Subsection
22 (a) of Section 55-9-614 NMSA 1978, when completed, each
23 provides sufficient information:

24 [~~NOTIFICATION OF DISPOSITION OF COLLATERAL~~

25 To: ~~(Name of debtor, obligor or other person to~~

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1 ~~which the notification is sent)~~

2 From: ~~(Name, address and telephone number of~~
3 ~~secured party)~~

4 Name of Debtor(s): ~~(Include only if debtor(s) are not~~
5 ~~an addressee)~~

6 ~~(For a public disposition:)~~

7 We will sell (or lease or license, as applicable) the
8 ~~(describe collateral) to the highest qualified bidder in public~~
9 ~~as follows:~~

10 Day and Date:

11 Time:

12 Place:

13 ~~(For a private disposition:)~~

14 We will sell (or lease or license, as applicable) the
15 ~~(describe collateral) privately sometime after (day and~~
16 ~~date)_____.~~

17 You are entitled to an accounting of the unpaid
18 ~~indebtedness secured by the property that we intend to sell (or~~
19 ~~lease or license, as applicable) (for a charge of \$~~
20 ~~_____). You may request an accounting by calling us at~~
21 ~~(telephone number)]~~

22 "NOTIFICATION OF DISPOSITION OF COLLATERAL

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

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

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1 {1} Name of any debtor that is not an addressee:

2 (Name of each debtor)

3 {2} We will sell (describe collateral) (to the
4 highest qualified bidder) at public sale. A sale could include
5 a lease or license. The sale will be held as follows:

6 (Date)

7 (Time)

8 (Place)

9 {3} We will sell (describe collateral) at private
10 sale sometime after (date). A sale could include a lease or
11 license.

12 {4} You are entitled to an accounting of the unpaid
13 indebtedness secured by the property that we intend to sell or,
14 as applicable, lease or license.

15 {5} If you request an accounting, you must pay a
16 charge of \$ (amount).

17 {6} You may request an accounting by calling us at
18 (telephone number)."

19 (b) The following instructions apply to the form of
20 notification in Paragraph (5) of Subsection (a) of this
21 section:

22 (1) the instructions in this subsection refer
23 to the numbers in braces before items in the form of
24 notification in Paragraph (5) of Subsection (a) of this
25 section. Do not include the numbers or braces in the

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1 notification. The numbers and braces are used only for the
2 purpose of these instructions;

3 (2) include and complete Item {1} only if
4 there is a debtor that is not an addressee of the notification
5 and list the name or names;

6 (3) include and complete either Item {2}, if
7 the notification relates to a public disposition of the
8 collateral, or Item {3}, if the notification relates to a
9 private disposition of the collateral. If Item {2} is
10 included, include the words "to the highest qualified bidder"
11 only if applicable;

12 (4) include and complete Items {4} and {6};
13 and

14 (5) include and complete Item {5} only if the
15 sender will charge the recipient for an accounting."

16 SECTION 87. Section 55-9-614 NMSA 1978 (being Laws 2001,
17 Chapter 139, Section 111) is amended to read:

18 "55-9-614. CONTENTS AND FORM OF NOTIFICATION BEFORE
19 DISPOSITION OF COLLATERAL--CONSUMER-GOODS TRANSACTION.--

20 (a) In a consumer-goods transaction, the following
21 rules apply:

22 (1) A notification of disposition must provide
23 the following information:

24 (A) the information specified in
25 [~~Subsection (1)~~] Paragraph (1) of Subsection (a) of Section

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1 55-9-613 NMSA 1978;

2 (B) a description of any liability for a
3 deficiency of the person to which the notification is sent;

4 (C) a telephone number from which the
5 amount that must be paid to the secured party to redeem the
6 collateral under Section 55-9-623 NMSA 1978 is available; and

7 (D) a telephone number or mailing
8 address from which additional information concerning the
9 disposition and the obligation secured is available.

10 (2) A particular phrasing of the notification
11 is not required.

12 (3) The following form of notification, when
13 completed in accordance with the instructions in Subsection (b)
14 of this section, provides sufficient information:

15 ~~["(Name and address of secured party)~~

16 ~~(Date)~~

17 ~~NOTICE OF OUR PLAN TO SELL PROPERTY~~

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

19 ~~{Subject: _____ (Identification of Transaction)~~

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

22 ~~(For a public disposition:)~~

23 ~~We will sell _____ (describe collateral) _____ at public sale.~~

24 ~~A sale could include a lease or license. The sale will be held~~
25 ~~as follows:~~

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1 Date: _____

2 Time: _____

3 Place: _____

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

5 ~~(For a private disposition:)~~

6 ~~We will sell _____ (describe collateral) _____ at private sale~~
7 ~~sometime after _____ (date) _____. A sale could include a lease~~
8 ~~or license.~~

9 ~~The money that we get from the sale (after paying our costs)~~
10 ~~will reduce the amount you owe. If we get less money than you~~
11 ~~owe, you _____ (will or will not, as applicable) _____ still owe~~
12 ~~us the difference. If we get more money than you owe, you will~~
13 ~~get the extra money, unless we must pay it to someone else.~~

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

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

24 ~~If you need more information about the sale call us at~~
25 ~~(telephone number) _____ (or write us at _____ (secured party's~~

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1 ~~address)——).~~

2 ~~We are sending this notice to the following other people who~~
3 ~~have an interest in—— (describe collateral)—— or who owe~~
4 ~~money under your agreement:~~

5 ~~(Names of all other debtors and obligors, if any)"]~~

6 "(Name and address of secured party)

7 (Date)

8 NOTICE OF OUR PLAN TO SELL PROPERTY

9 (Name and address of any obligor who is also a debtor)

10 Subject: (Identify transaction)

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

13 {1} We will sell (describe collateral) at public sale. A
14 sale could include a lease or license. The sale will be held
15 as follows:

16 (Date)

17 (Time)

18 (Place)

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

20 {2} We will sell (describe collateral) at private sale
21 sometime after (date). A sale could include a lease or
22 license.

23 {3} The money that we get from the sale, after paying our
24 costs, will reduce the amount you owe. If we get less money
25 than you owe, you (will or will not, as applicable) still owe

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1 us the difference. If we get more money than you owe, you will
2 get the extra money, unless we must pay it to someone else.

3 {4} You can get the property back at any time before we
4 sell it by paying us the full amount you owe, not just the past
5 due payments, including our expenses. To learn the exact
6 amount you must pay, call us at (telephone number).

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

16 {8} We will charge you \$ (amount) for the explanation if
17 we sent you another written explanation of the amount you owe
18 us within the last six months.

19 {9} If you need more information about the sale, (call us
20 at (telephone number)) (or) (write us at (secured party's
21 address)) (or contact us by (description of electronic
22 communication method)).

23 {10} We are sending this notice to the following other
24 people who have an interest in (describe collateral) or who owe
25 money under your agreement:

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

2 (4) The form of notification provided in
3 ~~[Subsection (3)]~~ Paragraph (3) of this ~~[section]~~ subsection is
4 sufficient even if additional information appears at the end of
5 the form.

6 (5) The form of notification provided in
7 ~~[Subsection (3)]~~ Paragraph (3) of this ~~[section]~~ subsection is
8 sufficient even if it includes an error regarding information
9 that is not required pursuant to ~~[Subsection (1)]~~ Paragraph (1)
10 of this ~~[section]~~ subsection, unless the error is misleading
11 with respect to rights that arise pursuant to Chapter 55,
12 Article 9 NMSA 1978.

13 (6) If notification under this section is not
14 in the form provided in ~~[Subsection (3)]~~ Paragraph (3) of this
15 ~~[section]~~ subsection, law other than Chapter 55, Article 9 NMSA
16 1978 shall determine the effect of including information that
17 is not required pursuant to ~~[Subsection (1)]~~ Paragraph (1) of
18 this ~~[section]~~ subsection.

19 (b) The following instructions apply to the form of
20 notification in Paragraph (3) of Subsection (a) of this
21 section:

22 (1) the instructions in this subsection refer
23 to the numbers in braces before items in the form of
24 notification in Paragraph (3) of Subsection (a) of this
25 section. Do not include the numbers or braces in the

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1 notification. The numbers and braces are used only for the
2 purpose of these instructions;

3 (2) include and complete either Item {1}, if
4 the notification relates to a public disposition of the
5 collateral, or Item {2}, if the notification relates to a
6 private disposition of the collateral;

7 (3) include and complete Items {3}, {4}, {5},
8 {6} and {7};

9 (4) in Item {5}, include and complete any one
10 of the three alternative methods for the explanation: writing,
11 writing or electronic record or electronic record;

12 (5) in Item {6}, include the telephone number.
13 In addition, the sender may include and complete either or both
14 of the two additional alternative methods of communication,
15 those being writing or electronic communication, for the
16 recipient of the notification to communicate with the sender.
17 Neither of the two additional methods of communication is
18 required to be included;

19 (6) in Item {7}, include and complete the
20 method or methods for the explanation included in Item {5}:
21 writing, writing or electronic record or electronic record;

22 (7) include and complete Item {8} only if a
23 written explanation is included in Item {5} as a method for
24 communicating the explanation and the sender will charge the
25 recipient for another written explanation;

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1 (8) in Item {9}, include either the telephone
2 number or the address or both the telephone number and the
3 address. In addition, the sender may include and complete the
4 additional electronic method of communication for the recipient
5 of the notification to communicate with the sender. The
6 additional method of electronic communication is not required
7 to be included; and

8 (9) if Item {10} does not apply, insert "None"
9 after "agreement:."

10 **SECTION 88.** Section 55-9-615 NMSA 1978 (being Laws 2001,
11 Chapter 139, Section 112) is amended to read:

12 "55-9-615. APPLICATION OF PROCEEDS OF DISPOSITION--
13 LIABILITY FOR DEFICIENCY AND RIGHT TO SURPLUS.--

14 (a) A secured party shall apply or pay over for
15 application the cash proceeds of disposition pursuant to
16 Section 55-9-610 NMSA 1978 in the following order to:

17 (1) the reasonable expenses of retaking,
18 holding, preparing for disposition, processing and disposing,
19 and, to the extent provided for by agreement and not prohibited
20 by law, reasonable attorney fees and legal expenses incurred by
21 the secured party;

22 (2) the satisfaction of obligations secured by
23 the security interest or agricultural lien under which the
24 disposition is made;

25 (3) the satisfaction of obligations secured by

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1 any subordinate security interest in or other subordinate lien
2 on the collateral if:

3 (A) the secured party receives from the
4 holder of the subordinate security interest or other lien [~~an~~
5 ~~authenticated~~] a signed demand for proceeds before distribution
6 of the proceeds is completed; and

7 (B) in a case in which a consignor has
8 an interest in the collateral, the subordinate security
9 interest or other lien is senior to the interest of the
10 consignor; and

11 (4) a secured party that is a consignor of the
12 collateral if the secured party receives from the consignor [~~an~~
13 ~~authenticated~~] a signed demand for proceeds before distribution
14 of the proceeds is completed.

15 (b) If requested by a secured party, a holder of a
16 subordinate security interest or other lien shall furnish
17 reasonable proof of the interest or lien within a reasonable
18 time. Unless the holder does so, the secured party need not
19 comply with the holder's demand under Paragraph (3) of
20 Subsection (a) of this section.

21 (c) A secured party need not apply or pay over for
22 application noncash proceeds of disposition under Section
23 55-9-610 NMSA 1978 unless the failure to do so would be
24 commercially unreasonable. A secured party that applies or
25 pays over for application noncash proceeds shall do so in a

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1 commercially reasonable manner.

2 (d) If the security interest under which a
3 disposition is made secures payment or performance of an
4 obligation, after making the payments and applications required
5 by Subsection (a) of this section and permitted by Subsection
6 (c) of this section:

7 (1) unless Paragraph (4) of Subsection (a) of
8 this section requires the secured party to apply or pay over
9 cash proceeds to a consignor, the secured party shall account
10 to and pay a debtor for any surplus; and

11 (2) the obligor is liable for any deficiency.

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

15 (1) the debtor is not entitled to any surplus;
16 and

17 (2) the obligor is not liable for any
18 deficiency.

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

24 (1) the transferee in the disposition is the
25 secured party, a person related to the secured party or a

1 secondary obligor; and

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

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

13 (1) takes the cash proceeds free of the
14 security interest or other lien;

15 (2) is not obligated to apply the proceeds of
16 the disposition to the satisfaction of obligations secured by
17 the security interest or other lien; and

18 (3) is not obligated to account to or pay the
19 holder of the security interest or other lien for any surplus."

20 SECTION 89. Section 55-9-616 NMSA 1978 (being Laws 2001,
21 Chapter 139, Section 113) is amended to read:

22 "55-9-616. EXPLANATION OF CALCULATION OF SURPLUS OR
23 DEFICIENCY.--

24 (a) In this section:

25 (1) "explanation" means a [~~writing~~] record

1 that:

2 (A) states the amount of the surplus or
3 deficiency;

4 (B) provides an explanation in
5 accordance with Subsection (c) of this section of how the
6 secured party calculated the surplus or deficiency;

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

11 (D) provides a telephone number or
12 mailing address from which additional information concerning
13 the transaction is available; and

14 (2) "request" means a record:

15 (A) [~~authenticated~~] signed by a debtor
16 or consumer obligor;

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

19 (C) sent after disposition of the
20 collateral under Section 55-9-610 NMSA 1978.

21 (b) In a consumer-goods transaction in which the
22 debtor is entitled to a surplus or a consumer obligor is liable
23 for a deficiency under Section 55-9-615 NMSA 1978, the secured
24 party shall:

25 (1) send an explanation to the debtor or

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1 consumer obligor, as applicable, after the disposition and:

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

6 (B) within fourteen days after receipt
7 of a request; or

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

12 (c) To comply with Subparagraph (B) of Paragraph
13 (1) of Subsection (a) of this section, [~~a writing~~] an
14 explanation must provide the following information in the
15 following order:

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

21 (A) if the secured party takes or
22 receives possession of the collateral after default, not more
23 than thirty-five days before the secured party takes or
24 receives possession; or

25 (B) if the secured party takes or

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1 receives possession of the collateral before default or does
2 not take possession of the collateral, not more than thirty-
3 five days before the disposition;

4 (2) the amount of proceeds of the disposition;

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

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

13 (5) the amount, in the aggregate or by type,
14 and types of credits, including rebates of interest or credit
15 service charges, to which the obligor is known to be entitled
16 and which are not reflected in the amount in Paragraph (1) of
17 this subsection; and

18 (6) the amount of the surplus or deficiency.

19 (d) A particular phrasing of the explanation is not
20 required. An explanation complying substantially with the
21 requirements of Subsection (a) of this section is sufficient,
22 even if it includes minor errors that are not seriously
23 misleading.

24 (e) A debtor or consumer obligor is entitled
25 without charge to one response to a request under this section

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1 during any six-month period in which the secured party did not
2 send to the debtor or consumer obligor an explanation pursuant
3 to Paragraph (1) of Subsection (b) of this section. The
4 secured party may require payment of a charge not exceeding
5 twenty-five dollars (\$25.00) for each additional response."

6 SECTION 90. Section 55-9-619 NMSA 1978 (being Laws 2001,
7 Chapter 139, Section 116) is amended to read:

8 "55-9-619. TRANSFER OF RECORD OR LEGAL TITLE.--

9 (a) In this section, "transfer statement" means a
10 record [~~authenticated~~] signed by a secured party stating:

11 (1) that the debtor has defaulted in
12 connection with an obligation secured by specified collateral;

13 (2) that the secured party has exercised its
14 post-default remedies with respect to the collateral;

15 (3) that, by reason of the exercise, a
16 transferee has acquired the rights of the debtor in the
17 collateral; and

18 (4) the name and mailing address of the
19 secured party, debtor and transferee.

20 (b) A transfer statement entitles the transferee to
21 the transfer of record of all rights of the debtor in the
22 collateral specified in the statement in any official filing,
23 recording, registration or certificate-of-title system covering
24 the collateral. If a transfer statement is presented with the
25 applicable fee and request form to the official or office

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1 responsible for maintaining the system, the official or office
2 shall:

- 3 (1) accept the transfer statement;
- 4 (2) promptly amend its records to reflect the
5 transfer; and
- 6 (3) if applicable, issue a new appropriate
7 certificate of title in the name of the transferee.

8 (c) A transfer of the record or legal title to
9 collateral to a secured party under Subsection (b) of this
10 section or otherwise is not of itself a disposition of
11 collateral under Chapter 55, Article 9 NMSA 1978 and does not
12 of itself relieve the secured party of its duties under that
13 article."

14 **SECTION 91.** Section 55-9-620 NMSA 1978 (being Laws 2001,
15 Chapter 139, Section 117, as amended) is amended to read:

16 "55-9-620. ACCEPTANCE OF COLLATERAL IN FULL OR PARTIAL
17 SATISFACTION OF OBLIGATION--COMPULSORY DISPOSITION OF
18 COLLATERAL.--

19 (a) Except as otherwise provided in Subsection (g)
20 of this section, a secured party may accept collateral in full
21 or partial satisfaction of the obligation it secures only if:

- 22 (1) the debtor consents to the acceptance
23 under Subsection (c) of this section;
- 24 (2) the secured party does not receive, within
25 the time set forth in Subsection (d) of this section, a

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1 notification of objection to the proposal [~~authenticated~~]
2 signed by:

3 (A) a person to which the secured party
4 was required to send a proposal under Section 55-9-621 NMSA
5 1978; or

6 (B) any other person, other than the
7 debtor, holding an interest in the collateral subordinate to
8 the security interest that is the subject of the proposal;

9 (3) if the collateral is consumer goods, the
10 collateral is not in the possession of the debtor when the
11 debtor consents to the acceptance; and

12 (4) Subsection (e) of this section does not
13 require the secured party to dispose of the collateral or the
14 debtor waives the requirement pursuant to Section 55-9-624 NMSA
15 1978.

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

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

21 (2) the conditions of Subsection (a) of this
22 section are met.

23 (c) For purposes of this section:

24 (1) a debtor consents to an acceptance of
25 collateral in partial satisfaction of the obligation it secures

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1 only if the debtor agrees to the terms of the acceptance in a
2 record [~~authenticated~~] signed after default; and

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

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

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

15 (C) does not receive a notification of
16 objection [~~authenticated~~] signed by the debtor within twenty
17 days after the proposal is sent.

18 (d) To be effective under Paragraph (2) of
19 Subsection (a) of this section, a notification of objection
20 must be received by the secured party:

21 (1) in the case of a person to which the
22 proposal was sent pursuant to Section 55-9-621 NMSA 1978,
23 within twenty days after notification was sent to that person;
24 and

25 (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;
3 or

4 (B) if a notification was not sent,
5 before the debtor consents to the acceptance under Subsection
6 (c) of this section.

7 (e) A secured party that has taken possession of
8 collateral shall dispose of the collateral pursuant to Section
9 55-9-610 NMSA 1978 within the time specified in Subsection (f)
10 of this section if:

11 (1) sixty percent of the cash price has been
12 paid in the case of a purchase-money security interest in
13 consumer goods; or

14 (2) sixty percent of the principal amount of
15 the obligation secured has been paid in the case of a non-
16 purchase-money security interest in consumer goods.

17 (f) To comply with Subsection (e) of this section,
18 the secured party shall dispose of the collateral:

19 (1) within ninety days after taking
20 possession; or

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

25 (g) In a consumer transaction, a secured party may

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1 not accept collateral in partial satisfaction of the obligation
2 it secures."

3 SECTION 92. Section 55-9-621 NMSA 1978 (being Laws 2001,
4 Chapter 139, Section 118) is amended to read:

5 "55-9-621. NOTIFICATION OF PROPOSAL TO ACCEPT
6 COLLATERAL.--

7 (a) A secured party that desires to accept
8 collateral in full or partial satisfaction of the obligation it
9 secures shall send its proposal to:

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

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

18 (A) identified the collateral;

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

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

24 (3) any other secured party that, ten days
25 before the debtor consented to the acceptance, held a security

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1 interest in the collateral perfected by compliance with a
2 statute, regulation or treaty described in Subsection (a) of
3 Section 55-9-311 NMSA 1978.

4 (b) A secured party that desires to accept
5 collateral in partial satisfaction of the obligation it secures
6 shall send its proposal to any secondary obligor in addition to
7 the persons described in Subsection (a) of this section."

8 SECTION 93. Section 55-9-624 NMSA 1978 (being Laws 2001,
9 Chapter 139, Section 121) is amended to read:

10 "55-9-624. WAIVER.--

11 (a) A debtor or secondary obligor may waive the
12 right to notification of disposition of collateral under
13 Section 55-9-611 NMSA 1978 only by an agreement to that effect
14 entered into and [~~authenticated~~] signed after default.

15 (b) A debtor may waive the right to require
16 disposition of collateral under Subsection (e) of Section
17 55-9-620 NMSA 1978 only by an agreement to that effect entered
18 into and [~~authenticated~~] signed after default.

19 (c) Except in a consumer-goods transaction, a
20 debtor or secondary obligor may waive the right to redeem
21 collateral under Section 55-9-623 NMSA 1978 only by an
22 agreement to that effect entered into and [~~authenticated~~]
23 signed after default."

24 SECTION 94. Section 55-9-628 NMSA 1978 (being Laws 2001,
25 Chapter 139, Section 125) is amended to read:

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1 "55-9-628. NONLIABILITY AND LIMITATION ON LIABILITY OF
2 SECURED PARTY--LIABILITY OF SECONDARY OBLIGOR.--

3 (a) Subject to Subsection (f) of this section,
4 unless a secured party knows that a person is a debtor or
5 obligor, knows the identity of the person and knows how to
6 communicate with the person:

7 (1) the secured party is not liable to the
8 person, or to a secured party or lienholder that has filed a
9 financing statement against the person, for failure to comply
10 with Chapter 55, Article 9 NMSA 1978; and

11 (2) the secured party's failure to comply with
12 Chapter 55, Article 9 NMSA 1978 does not affect the liability
13 of the person for a deficiency.

14 (b) Subject to Subsection (f) of this section, a
15 secured party is not liable because of its status as secured
16 party:

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

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

21 (B) the identity of the person; and

22 (C) how to communicate with the person;

23 or

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

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1 secured party knows:

2 (A) that the person is a debtor; and

3 (B) the identity of the person.

4 (c) A secured party is not liable to any person,
5 and a person's liability for a deficiency is not affected,
6 because of any act or omission arising out of the secured
7 party's reasonable belief that a transaction is not a consumer-
8 goods transaction or a consumer transaction or that goods are
9 not consumer goods, if the secured party's belief is based on
10 its reasonable reliance on:

11 (1) a debtor's representation concerning the
12 purpose for which collateral was to be used, acquired or held;
13 or

14 (2) an obligor's representation concerning the
15 purpose for which a secured obligation was incurred.

16 (d) A secured party is not liable to any person
17 under Paragraph (2) of Subsection (c) of Section 55-9-625 NMSA
18 1978 for its failure to comply with Section 55-9-616 NMSA 1978.

19 (e) A secured party is not liable under Paragraph
20 (2) of Subsection (c) of Section 55-9-625 NMSA 1978 more than
21 once with respect to any one secured obligation.

22 (f) Subsections (a) and (b) of this section do not
23 apply to limit the liability of a secured party to a person if,
24 at the time the secured party obtains control of collateral
25 that is a controllable account, controllable electronic record

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1 or controllable payment intangible or at the time the security
2 interest attaches to the collateral, whichever is later:

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

4 (2) the secured party knows that the
5 information in Subparagraph (A), (B) or (C) of Paragraph (1) of
6 Subsection (b) of this section relating to the person is not
7 provided by the collateral, a record attached to or logically
8 associated with the collateral or the system in which the
9 collateral is recorded."

10 SECTION 95. RECOMPILATION.--Sections 55-12-101 through
11 55-12-111 NMSA 1978 (being Laws 1985, Chapter 193, Section 39
12 through 46, Laws 1996, Chapter 47, Section 69 and Laws 2005,
13 Chapter 144, Sections 110 and 111, as amended) are recompiled
14 as Sections 55-11A-101 through 55-11A-111 NMSA 1978.

15 ARTICLE 12

16 CONTROLLABLE ELECTRONIC RECORDS

17 SECTION 96. A new section of the Uniform Commercial Code,
18 Section 55-12-101 NMSA 1978, is enacted to read:

19 "55-12-101. [NEW MATERIAL] SHORT TITLE.--Chapter 55,
20 Article 12 NMSA 1978 may be cited as "Uniform Commercial Code -
21 Controllable Electronic Records"."

22 SECTION 97. A new section of the Uniform Commercial Code,
23 Section 55-12-102 NMSA 1978, is enacted to read:

24 "55-12-102. [NEW MATERIAL] DEFINITIONS.--

25 (a) As used in Chapter 55, Article 12 NMSA 1978:

1 (1) "controllable electronic record" means a
2 record stored in an electronic medium that can be subjected to
3 control pursuant to Section 55-12-105 NMSA 1978. The term does
4 not include a controllable account, a controllable payment
5 intangible, a deposit account, an electronic copy of a record
6 evidencing chattel paper, an electronic document of title,
7 electronic money, investment property or a transferable record;

8 (2) "qualifying purchaser" means a purchaser
9 of a controllable electronic record or an interest in a
10 controllable electronic record that obtains control of the
11 controllable electronic record for value, in good faith, and
12 without notice of a claim of a property right in the
13 controllable electronic record;

14 (3) "transferable record" has the meaning
15 provided for that term in:

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

19 (B) Subsection (a) of Section 14-16-16
20 NMSA 1978; and

21 (4) "value" has the meaning provided in
22 Subsection (a) of Section 55-3-303 NMSA 1978 as if references
23 in that subsection to an "instrument" were references to a
24 controllable account, controllable electronic record or
25 controllable payment intangible.

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1 (b) The definitions in Article 9 of the Uniform
2 Commercial Code of "account debtor", "controllable account",
3 "controllable payment intangible", "chattel paper", "deposit
4 account", "electronic money" and "investment property" apply to
5 Sections 55-12-101 through 55-12-106 NMSA 1978.

6 (c) Article 1 of the Uniform Commercial Code
7 contains general definitions and principles of construction and
8 interpretation applicable throughout Sections 55-12-101 through
9 55-12-106 NMSA 1978."

10 SECTION 98. A new section of the Uniform Commercial Code,
11 Section 55-12-103 NMSA 1978, is enacted to read:

12 "55-12-103. [NEW MATERIAL] RELATION TO ARTICLE 9 OF THE
13 UNIFORM COMMERCIAL CODE AND CONSUMER LAWS.--

14 (a) If there is conflict between Sections 55-12-101
15 through 55-12-106 NMSA 1978 and Article 9 of the Uniform
16 Commercial Code, Article 9 governs.

17 (b) A transaction subject to Sections 55-12-101
18 through 55-12-106 NMSA 1978 is subject to any applicable rule
19 of law that establishes a different rule for consumers and any
20 other statute or regulation that regulates the rates, charges,
21 agreements and practices for loans, credit sales or other
22 extensions of credit, the Unfair Practices Act and any
23 consumer-protection statute or regulation."

24 SECTION 99. A new section of the Uniform Commercial Code,
25 Section 55-12-104 NMSA 1978, is enacted to read:

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1 "55-12-104. [NEW MATERIAL] RIGHTS IN CONTROLLABLE
2 ACCOUNT, CONTROLLABLE ELECTRONIC RECORD AND CONTROLLABLE
3 PAYMENT INTANGIBLE.--

4 (a) Sections 55-12-101 through 55-12-106 NMSA 1978
5 apply to the acquisition and purchase of rights in a
6 controllable account or controllable payment intangible,
7 including the rights and benefits pursuant to Subsections (c),
8 (d), (e), (g) and (h) of this section of a purchaser and
9 qualifying purchaser, in the same manner this section applies
10 to a controllable electronic record.

11 (b) To determine whether a purchaser of a
12 controllable account or a controllable payment intangible is a
13 qualifying purchaser, the purchaser obtains control of the
14 account or payment intangible if it obtains control of the
15 controllable electronic record that evidences the account or
16 payment intangible.

17 (c) Except as provided in this section, law other
18 than Sections 55-12-101 through 55-12-106 NMSA 1978 determines
19 whether a person acquires a right in a controllable electronic
20 record and the right the person acquires.

21 (d) A purchaser of a controllable electronic record
22 acquires all rights in the controllable electronic record that
23 the transferor had or had power to transfer, except that a
24 purchaser of a limited interest in a controllable electronic
25 record acquires rights only to the extent of the interest

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1 purchased.

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

5 (f) Except as provided in Subsections (a) and (e)
6 of this section for a controllable account and a controllable
7 payment intangible or law other than Sections 55-12-101 through
8 55-12-106 NMSA 1978, a qualifying purchaser takes a right to
9 payment, right to performance or other interest in property
10 evidenced by the controllable electronic record subject to a
11 claim of a property right in the right to payment, right to
12 performance or other interest in property.

13 (g) An action may not be asserted against a
14 qualifying purchaser based on both a purchase by the qualifying
15 purchaser of a controllable electronic record and a claim of a
16 property right in another controllable electronic record,
17 whether the action is framed in conversion, replevin,
18 constructive trust, equitable lien or other theory.

19 (h) Filing of a financing statement pursuant to
20 Article 9 of the Uniform Commercial Code is not notice of a
21 claim of a property right in a controllable electronic record."

22 SECTION 100. A new section of the Uniform Commercial
23 Code, Section 55-12-105 NMSA 1978, is enacted to read:

24 "55-12-105. [NEW MATERIAL] CONTROL OF CONTROLLABLE
25 ELECTRONIC RECORD.--

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1 (a) A person has control of a controllable
2 electronic record if the electronic record, a record attached
3 to or logically associated with the electronic record or a
4 system in which the electronic record is recorded:

5 (1) gives the person:

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

8 (B) exclusive power, subject to
9 Subsection (b) of this section, to:

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

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

17 (2) enables the person readily to identify
18 itself in any way, including by name, identifying number,
19 cryptographic key, office or account number, as having the
20 powers specified in Paragraph (1) of this subsection.

21 (b) Subject to Subsection (c) of this section, a
22 power is exclusive pursuant to Items (i) and (ii) of
23 Subparagraph (B) of Paragraph (1) of Subsection (a) of this
24 section even if:

25 (1) the controllable electronic record, a

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

7 (2) the power is shared with another person.

8 (c) A power of a person is not shared with another
9 person pursuant to Paragraph (2) of Subsection (b) of this
10 section and the person's power is not exclusive if:

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

13 (2) the other person:

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

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

20 (d) If a person has the powers specified in Items
21 (i) and (ii) of Subparagraph (B) of Paragraph (1) of Subsection
22 (a) of this section, the powers are presumed to be exclusive.

23 (e) A person has control of a controllable
24 electronic record if another person, other than the transferor
25 to the person of an interest in the controllable electronic

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1 record or a controllable account or controllable payment
2 intangible evidenced by the controllable electronic record:

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

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

8 (f) A person that has control pursuant to this
9 section is not required to acknowledge that it has control on
10 behalf of another person.

11 (g) If a person acknowledges that it has or will
12 obtain control on behalf of another person, unless the person
13 otherwise agrees or law other than Sections 55-12-101 through
14 55-12-106 NMSA 1978 or Article 9 of the Uniform Commercial Code
15 otherwise provides, the person does not owe any duty to the
16 other person and is not required to confirm the acknowledgment
17 to any other person."

18 SECTION 101. A new section of the Uniform Commercial
19 Code, Section 55-12-106 NMSA 1978, is enacted to read:

20 "55-12-106. [NEW MATERIAL] DISCHARGE OF ACCOUNT DEBTOR ON
21 CONTROLLABLE ACCOUNT OR CONTROLLABLE PAYMENT INTANGIBLE.--

22 (a) An account debtor on a controllable account or
23 controllable payment intangible may discharge its obligation by
24 paying:

25 (1) the person having control of the

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1 controllable electronic record that evidences the controllable
2 account or controllable payment intangible; or

3 (2) except as provided in Subsection (b) of
4 this section, a person that formerly had control of the
5 controllable electronic record.

6 (b) Subject to Subsection (d) of this section, the
7 account debtor may not discharge its obligation by paying a
8 person that formerly had control of the controllable electronic
9 record if the account debtor receives a notification that:

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

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

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

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

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

23 (c) After receipt of a notification that complies
24 with Subsection (b) of this section, the account debtor may
25 discharge its obligation by paying in accordance with the

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

3 (d) Subject to Subsection (h) of this section,
4 notification is ineffective pursuant to Subsection (b) of this
5 section:

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

13 (2) to the extent an agreement between the
14 account debtor and seller of a payment intangible limits the
15 account debtor's duty to pay a person other than the seller and
16 the limitation is effective under law other than Sections
17 55-12-101 through 55-12-106 NMSA 1978; or

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

20 (A) divide a payment;

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

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

25 (e) Subject to Subsection (h) of this section, if

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1 requested by the account debtor, the person giving the
2 notification pursuant to Subsection (b) of this section
3 seasonably shall furnish reasonable proof, using the method in
4 the agreement referred to in Paragraph (1) of Subsection (d) of
5 this section, that control of the controllable electronic
6 record has been transferred. Unless the person complies with
7 the request, the account debtor may discharge its obligation by
8 paying a person that formerly had control, even if the account
9 debtor has received a notification pursuant to Subsection (b)
10 of this section.

11 (f) A person furnishes reasonable proof pursuant to
12 Subsection (e) of this section that control has been
13 transferred if the person demonstrates, using the method in the
14 agreement referred to in Paragraph (1) of Subsection (d) of
15 this section, that the transferee has the power to:

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

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

21 (3) transfer the powers specified in
22 Paragraphs (1) and (2) of this subsection to another person.

23 (g) Subject to Subsection (h) of this section, an
24 account debtor may not waive or vary its rights pursuant to
25 Paragraph (1) of Subsection (d) and Subsection (e) of this

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1 section or its option pursuant to Paragraph (3) of Subsection
2 (d) of this section.

3 (h) This section is subject to law other than
4 Sections 55-12-101 through 55-12-106 NMSA 1978 that establishes
5 a different rule for an account debtor who is an individual and
6 who incurred the obligation primarily for personal, family or
7 household purposes."

8 **SECTION 102.** A new section of the Uniform Commercial
9 Code, Section 55-12-107 NMSA 1978, is enacted to read:

10 "55-12-107. [NEW MATERIAL] GOVERNING LAW.--

11 (a) Except as provided in Subsection (b) of this
12 section, the local law of a controllable electronic record's
13 jurisdiction governs a matter covered by Sections 55-12-101
14 through 55-12-106 NMSA 1978.

15 (b) For a controllable electronic record that
16 evidences a controllable account or controllable payment
17 intangible, the local law of the controllable electronic
18 record's jurisdiction governs a matter covered by Section
19 55-12-106 NMSA 1978 unless an effective agreement determines
20 that the local law of another jurisdiction governs.

21 (c) The following rules determine a controllable
22 electronic record's jurisdiction pursuant to this section:

23 (1) if the controllable electronic record, or
24 a record attached to or logically associated with the
25 controllable electronic record and readily available for

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1 review, expressly provides that a particular jurisdiction is
2 the controllable electronic record's jurisdiction for purposes
3 of Sections 55-12-101 through 55-12-106 NMSA 1978 or the
4 Uniform Commercial Code, that jurisdiction is the controllable
5 electronic record's jurisdiction;

6 (2) if Paragraph (1) of this subsection does
7 not apply and the rules of the system in which the controllable
8 electronic record is recorded are readily available for review
9 and expressly provide that a particular jurisdiction is the
10 controllable electronic record's jurisdiction for purposes of
11 Sections 55-12-101 through 55-12-106 NMSA 1978 or the Uniform
12 Commercial Code, that jurisdiction is the controllable
13 electronic record's jurisdiction;

14 (3) if Paragraphs (1) and (2) of this
15 subsection do not apply and the controllable electronic record,
16 or a record attached to or logically associated with the
17 controllable electronic record and readily available for
18 review, expressly provides that the controllable electronic
19 record is governed by the law of a particular jurisdiction,
20 that jurisdiction is the controllable electronic record's
21 jurisdiction;

22 (4) if Paragraphs (1), (2) and (3) of this
23 subsection do not apply and the rules of the system in which
24 the controllable electronic record is recorded are readily
25 available for review and expressly provide that the

1 controllable electronic record or the system is governed by the
2 law of a particular jurisdiction, that jurisdiction is the
3 controllable electronic record's jurisdiction; and

4 (5) if Paragraphs (1) through (4) of this
5 subsection do not apply, the controllable electronic record's
6 jurisdiction is the District of Columbia.

7 (d) If Paragraph (5) of Subsection (c) of this
8 section applies and Article 12 is not in effect in the District
9 of Columbia without material modification, the governing law
10 for a matter covered by Sections 55-12-101 through 55-12-106
11 NMSA 1978 is the law of the District of Columbia as though
12 those sections were in effect in the District of Columbia
13 without material modification. In this subsection, "Article
14 12" means Article 12 of Uniform Commercial Code Amendments
15 (2022).

16 (e) To the extent Subsections (a) and (b) of this
17 section provide that the local law of the controllable
18 electronic record's jurisdiction governs a matter covered by
19 Sections 55-12-101 through 55-12-106 NMSA 1978, that law
20 governs even if the matter or a transaction to which the matter
21 relates does not bear any relation to the controllable
22 electronic record's jurisdiction.

23 (f) The rights acquired pursuant to Section
24 55-12-104 NMSA 1978 by a purchaser or qualifying purchaser are
25 governed by the law applicable pursuant to this section at the

1 time of purchase."

2 ARTICLE 12A

3 TRANSITIONAL PROVISIONS FOR UNIFORM COMMERCIAL CODE AMENDMENTS

4 (2022)

5 PART 1

6 GENERAL PROVISIONS AND DEFINITIONS

7 SECTION 103. A new section of the Uniform Commercial
8 Code, Section 55-12A-101 NMSA 1978, is enacted to read:

9 "55-12A-101. [NEW MATERIAL] SHORT TITLE.--Chapter 55,
10 Article 12A NMSA 1978 may be cited as "Transitional Provisions
11 for Uniform Commercial Code Amendments (2022)"."

12 SECTION 104. A new section of the Uniform Commercial
13 Code, Section 55-12A-102 NMSA 1978, is enacted to read:

14 "55-12A-102. [NEW MATERIAL] DEFINITIONS.--

15 (a) As used in Chapter 55, Article 12A NMSA 1978:

16 (1) "adjustment date" means July 1, 2025;

17 (2) "Article 12" means Article 12 of the
18 Uniform Commercial Code; and

19 (3) "Article 12 property" means a controllable
20 account, controllable electronic record or controllable payment
21 intangible.

22 (b) The following definitions in other articles of
23 the Uniform Commercial Code apply to this article:

24 (1) "controllable account", as provided in
25 Section 55-9-102 NMSA 1978;

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- 1 (2) "controllable electronic record", as
- 2 provided in Section 55-12-102 NMSA 1978;
- 3 (3) "controllable payment intangible", as
- 4 provided in Section 55-9-102 NMSA 1978;
- 5 (4) "electronic money", as provided in Section
- 6 55-9-102 NMSA 1978; and
- 7 (5) "financing statement", as provided in
- 8 Section 55-9-102 NMSA 1978.

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

12 PART 2

13 GENERAL TRANSITIONAL PROVISION

14 SECTION 105. A new section of the Uniform Commercial
15 Code, Section 55-12A-201 NMSA 1978, is enacted to read:

16 "55-12A-201. [NEW MATERIAL] SAVING CLAUSE.--Except as
17 provided in Sections 55-12A-301 through 55-12A-306 NMSA 1978, a
18 transaction validly entered into before January 1, 2024 and the
19 rights, duties and interests flowing from the transaction
20 remain valid thereafter and may be terminated, completed,
21 consummated or enforced as required or permitted by law other
22 than the Uniform Commercial Code or, if applicable, the Uniform
23 Commercial Code as though this 2023 act had not taken effect."

24 PART 3

25 TRANSITIONAL PROVISIONS FOR ARTICLES 9 AND 12

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1 SECTION 106. A new section of the Uniform Commercial
2 Code, Section 55-12A-301 NMSA 1978, is enacted to read:

3 "55-12A-301. [NEW MATERIAL] SAVING CLAUSE.--

4 (a) Except as provided in Sections 55-12A-301
5 through 55-12A-306 NMSA 1978, Article 9 of the Uniform
6 Commercial Code as amended by this 2023 act and Article 12 of
7 the Uniform Commercial Code apply to a transaction, lien or
8 other interest in property, even if the transaction, lien or
9 interest was entered into, created or acquired before January
10 1, 2024.

11 (b) Except as provided in Subsection (c) of this
12 section and Sections 55-12A-302 through 55-12A-306 NMSA 1978:

13 (1) a transaction, lien or interest in
14 property that was validly entered into, created or transferred
15 before January 1, 2024 and was not governed by the Uniform
16 Commercial Code, but would be subject to Article 9 of the
17 Uniform Commercial Code as amended by this 2023 act or Article
18 12 of the Uniform Commercial Code if it had been entered into,
19 created or transferred on or after January 1, 2024, including
20 the rights, duties and interests flowing from the transaction,
21 lien or interest, remains valid on and after January 1, 2024;
22 and

23 (2) the transaction, lien or interest may be
24 terminated, completed, consummated and enforced as required or
25 permitted by this 2023 act or by the law that would apply if

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1 this 2023 act had not taken effect.

2 (c) This 2023 act does not affect an action, case
3 or proceeding commenced before January 1, 2024."

4 SECTION 107. A new section of the Uniform Commercial
5 Code, Section 55-12A-302 NMSA 1978, is enacted to read:

6 "55-12A-302. [NEW MATERIAL] SECURITY INTEREST PERFECTED
7 BEFORE JANUARY 1, 2024.--

8 (a) A security interest that is enforceable and
9 perfected immediately before January 1, 2024 is a perfected
10 security interest pursuant to this 2023 act if, on January 1,
11 2024, the requirements for enforceability and perfection
12 pursuant to this 2023 act are satisfied without further action.

13 (b) If a security interest is enforceable and
14 perfected immediately before January 1, 2024, but the
15 requirements for enforceability or perfection pursuant to this
16 2023 act are not satisfied on January 1, 2024, the security
17 interest:

18 (1) is a perfected security interest until the
19 earlier of the time perfection would have ceased under the law
20 in effect immediately before January 1, 2024 or the adjustment
21 date;

22 (2) remains enforceable thereafter only if the
23 security interest satisfies the requirements for enforceability
24 pursuant to Section 55-9-203 NMSA 1978, as amended by this 2023
25 act, before the adjustment date; and

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1 (3) remains perfected thereafter only if the
2 requirements for perfection pursuant to this 2023 act are
3 satisfied before the time specified in Paragraph (1) of this
4 subsection."

5 SECTION 108. A new section of the Uniform Commercial
6 Code, Section 55-12A-303 NMSA 1978, is enacted to read:

7 "55-12A-303. [NEW MATERIAL] SECURITY INTEREST UNPERFECTED
8 BEFORE JANUARY 1, 2024.--A security interest that is
9 enforceable immediately before January 1, 2024 but is
10 unperfected at that time:

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

13 (2) remains enforceable thereafter if the security
14 interest becomes enforceable pursuant to Section 55-9-203 NMSA
15 1978, as amended by this 2023 act, on January 1, 2024 or before
16 the adjustment date; and

17 (3) becomes perfected:

18 (A) without further action on January 1, 2024
19 if the requirements for perfection pursuant to this 2023 act
20 are satisfied before or at that time; or

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

23 SECTION 109. A new section of the Uniform Commercial
24 Code, Section 55-12A-304 NMSA 1978, is enacted to read:

25 "55-12A-304. [NEW MATERIAL] EFFECTIVENESS OF ACTIONS

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1 TAKEN BEFORE JANUARY 1, 2024.--

2 (a) If action, other than the filing of a financing
3 statement, is taken before January 1, 2024 and the action would
4 have resulted in perfection of the security interest had the
5 security interest become enforceable before January 1, 2024,
6 the action is effective to perfect a security interest that
7 attaches pursuant to this 2023 act before the adjustment date.
8 An attached security interest becomes unperfected on the
9 adjustment date unless the security interest becomes a
10 perfected security interest pursuant to this 2023 act before
11 the adjustment date.

12 (b) The filing of a financing statement before
13 January 1, 2024 is effective to perfect a security interest on
14 January 1, 2024 to the extent the filing would satisfy the
15 requirements for perfection pursuant to this 2023 act.

16 (c) The taking of an action before January 1, 2024
17 is sufficient for the enforceability of a security interest on
18 January 1, 2024 if the action would satisfy the requirements
19 for enforceability pursuant to this 2023 act."

20 SECTION 110. A new section of the Uniform Commercial
21 Code, Section 55-12A-305 NMSA 1978, is enacted to read:

22 "55-12A-305. [NEW MATERIAL] PRIORITY.--

23 (a) Subject to Subsections (b) and (c) of this
24 section, this 2023 act determines the priority of conflicting
25 claims to collateral.

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1 (b) Subject to Subsection (c) of this section, if
2 the priorities of claims to collateral were established before
3 January 1, 2024, Article 9 of the Uniform Commercial Code as in
4 effect before January 1, 2024 determines priority.

5 (c) On the adjustment date, to the extent the
6 priorities determined by Article 9 of the Uniform Commercial
7 Code as amended by this 2023 act modify the priorities
8 established before January 1, 2024, the priorities of claims to
9 Article 12 property and electronic money established before
10 January 1, 2024 cease to apply."

11 **SECTION 111.** A new section of the Uniform Commercial
12 Code, Section 55-12A-306 NMSA 1978, is enacted to read:

13 "55-12A-306. [NEW MATERIAL] PRIORITY OF CLAIMS WHEN
14 PRIORITY RULES OF ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE DO
15 NOT APPLY.--

16 (a) Subject to Subsections (b) and (c) of this
17 section, Article 12 of the Uniform Commercial Code determines
18 the priority of conflicting claims to Article 12 property when
19 the priority rules of Article 9 of the Uniform Commercial Code
20 as amended by this 2023 act do not apply.

21 (b) Subject to Subsection (c) of this section, when
22 the priority rules of Article 9 of the Uniform Commercial Code
23 as amended by this 2023 act do not apply and the priorities of
24 claims to Article 12 property were established before January
25 1, 2024, law other than Article 12 of the Uniform Commercial

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1 Code determines priority.

2 (c) When the priority rules of Article 9 of the
3 Uniform Commercial Code as amended by this 2023 act do not
4 apply, to the extent the priorities determined by this 2023 act
5 modify the priorities established before January 1, 2024, the
6 priorities of claims to Article 12 property established before
7 January 1, 2024 cease to apply on the adjustment date."

8 SECTION 112. EFFECTIVE DATE.--The effective date of the
9 provisions of this act is January 1, 2024.