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AN ACT

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

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

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

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

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

(b) Subject to definitions contained in other articles of the Uniform Commercial Code that apply to particular articles or parts thereof:

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

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

(3) "agreement", as distinguished from "contract", means the bargain of the parties in fact, as

1 found in their language or inferred from other circumstances,
2 including course of performance, course of dealing or usage
3 of trade as provided in Section 55-1-303 NMSA 1978;

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

7 (5) "bearer" means a person in control of a
8 negotiable electronic document of title or a person in
9 possession of a negotiable instrument, negotiable tangible
10 document of title or certificated security that is payable to
11 bearer or indorsed in blank;

12 (6) "bill of lading" means a document of
13 title evidencing the receipt of goods for shipment issued by
14 a person engaged in the business of directly or indirectly
15 transporting or forwarding goods. The term does not include
16 a warehouse receipt;

17 (7) "branch" includes a separately
18 incorporated foreign branch of a bank;

19 (8) "burden of establishing" a fact means
20 the burden of persuading the trier of fact that the existence
21 of the fact is more probable than its nonexistence;

22 (9) "buyer in ordinary course of business"
23 means a person that buys goods in good faith, without
24 knowledge that the sale violates the rights of another person
25 in the goods, and in the ordinary course from a person, other

1 than a pawnbroker, in the business of selling goods of that
2 kind. A person buys goods in the ordinary course if the sale
3 to the person comports with the usual or customary practices
4 in the kind of business in which the seller is engaged or
5 with the seller's own usual or customary practices. A person
6 that sells oil, gas or other minerals at the wellhead or
7 minehead is a person in the business of selling goods of that
8 kind. A buyer in ordinary course of business may buy for
9 cash, by exchange of other property or on secured or
10 unsecured credit and may acquire goods or documents of title
11 under a preexisting contract for sale. Only a buyer that
12 takes possession of the goods or has a right to recover the
13 goods from the seller under Chapter 55, Article 2 NMSA 1978
14 may be a buyer in ordinary course of business. "Buyer in
15 ordinary course of business" does not include a person that
16 acquires goods in a transfer in bulk or as security for or in
17 total or partial satisfaction of a money debt;

18 (10) "conspicuous", with reference to a
19 term, means so written, displayed or presented that, based
20 upon the totality of the circumstances, a reasonable person
21 against which it is to operate ought to have noticed it.
22 Whether a term is "conspicuous" or not is a decision for the
23 court;

24 (11) "consumer" means an individual who
25 enters into a transaction primarily for personal, family or

1 household purposes;

2 (12) "contract", as distinguished from
3 "agreement", means the total legal obligation that results
4 from the parties' agreement as determined by the Uniform
5 Commercial Code as supplemented by any other applicable laws;

6 (13) "creditor" includes a general creditor,
7 a secured creditor, a lien creditor and any representative of
8 creditors, including an assignee for the benefit of
9 creditors, a trustee in bankruptcy, a receiver in equity and
10 an executor or administrator of an insolvent debtor's or
11 assignor's estate;

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

15 (15) "delivery", with respect to an
16 electronic document of title, means voluntary transfer of
17 control, and with respect to an instrument, a tangible
18 document of title or an authoritative tangible copy of a
19 record evidencing chattel paper, means voluntary transfer of
20 possession;

21 (16) "document of title" means a record:
22 (i) that in the regular course of business or financing is
23 treated as adequately evidencing that the person in
24 possession or control of the record is entitled to receive,
25 control, hold and dispose of the record and the goods the

1 record covers; and (ii) that purports to be issued by or
2 addressed to a bailee and to cover goods in the bailee's
3 possession that are either identified or are fungible
4 portions of an identified mass. The term includes a bill of
5 lading, transport document, dock warrant, dock receipt,
6 warehouse receipt and order for delivery of goods. An
7 electronic document of title means a document of title
8 evidenced by a record consisting of information stored in an
9 electronic medium. A tangible document of title means a
10 document of title evidenced by a record consisting of
11 information that is inscribed on a tangible medium;

12 (16A) "electronic" means relating to
13 technology having electrical, digital, magnetic, wireless,
14 optical, electromagnetic or similar capabilities;

15 (17) "fault" means a default, breach or
16 wrongful act or omission;

17 (18) "fungible goods" means:

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

20 or

21 (B) goods that by agreement are treated
22 as equivalent;

23 (19) "genuine" means free of forgery or
24 counterfeiting;

25 (20) "good faith", except as otherwise

1 provided in Chapter 55, Article 5 NMSA 1978, means honesty in
2 fact and the observance of reasonable commercial standards of
3 fair dealing;

4 (21) "holder" means:

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

8 (B) the person in possession of a
9 negotiable tangible document of title if the goods are
10 deliverable either to bearer or to the order of the person in
11 possession; or

12 (C) the person in control, other than
13 pursuant to Subsection (g) of Section 55-7-106 NMSA 1978, of
14 a negotiable electronic document of title;

15 (22) "insolvency proceeding" includes an
16 assignment for the benefit of creditors or other proceeding
17 intended to liquidate or rehabilitate the estate of the
18 person involved;

19 (23) "insolvent" means:

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

23 (B) being unable to pay debts as they
24 become due; or

25 (C) being insolvent within the meaning

1 of federal bankruptcy law;

2 (24) "money" means a medium of exchange
3 currently authorized or adopted by a domestic or foreign
4 government. The term includes a monetary unit of account
5 established by an intergovernmental organization or by
6 agreement between two or more countries. The term does not
7 include an electronic record that is a medium of exchange
8 recorded and transferable in a system that existed and
9 operated for the medium of exchange before the medium of
10 exchange was authorized or adopted by the government;

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

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

16 (27) "person" means an individual,
17 corporation, business trust, estate, trust, partnership,
18 limited liability company, association, joint venture,
19 government, governmental subdivision, agency or
20 instrumentality; or any other legal or commercial entity.
21 The term includes a protected series, however denominated, of
22 an entity if the protected series is established under law
23 other than the Uniform Commercial Code that limits, or limits
24 if conditions specified under the law are satisfied, the
25 ability of a creditor of the entity or of any other protected

1 series of the entity to satisfy a claim from assets of the
2 protected series;

3 (28) "present value" means the amount as of
4 a date certain of one or more sums payable in the future,
5 discounted to the date certain by use of either an interest
6 rate specified by the parties if that rate is not manifestly
7 unreasonable at the time the transaction is entered into or,
8 if an interest rate is not so specified, a commercially
9 reasonable rate that takes into account the facts and
10 circumstances at the time the transaction is entered into;

11 (29) "purchase" means taking by sale, lease,
12 discount, negotiation, mortgage, pledge, lien, security
13 interest, issue or reissue, gift or any other voluntary
14 transaction creating an interest in property;

15 (30) "purchaser" means a person that takes
16 by purchase;

17 (31) "record" means information that is
18 inscribed on a tangible medium or that is stored in an
19 electronic or other medium and is retrievable in perceivable
20 form;

21 (32) "remedy" means any remedial right to
22 which an aggrieved party is entitled with or without resort
23 to a tribunal;

24 (33) "representative" means a person
25 empowered to act for another, including an agent, an officer

1 of a corporation or association and a trustee, executor or
2 administrator of an estate;

3 (34) "right" includes remedy;

4 (35) "security interest" means an interest
5 in personal property or fixtures that secures payment or
6 performance of an obligation. "Security interest" includes
7 any interest of a consignor and a buyer of accounts, chattel
8 paper, a payment intangible or a promissory note in a
9 transaction that is subject to Chapter 55, Article 9 NMSA
10 1978. "Security interest" does not include the special
11 property interest of a buyer of goods on identification of
12 those goods to a contract for sale under Section 55-2-401
13 NMSA 1978, but a buyer may also acquire a "security interest"
14 by complying with Chapter 55, Article 9 NMSA 1978. Except as
15 otherwise provided in Section 55-2-505 NMSA 1978, the right
16 of a seller or lessor of goods under Chapter 55, Article 2 or
17 2A NMSA 1978 to retain or acquire possession of the goods is
18 not a "security interest", but a seller or lessor may also
19 acquire a "security interest" by complying with Chapter 55,
20 Article 9 NMSA 1978. The retention or reservation of title
21 by a seller of goods notwithstanding shipment or delivery to
22 the buyer under Section 55-2-401 NMSA 1978 is limited in
23 effect to a reservation of a "security interest". Whether a
24 transaction in the form of a lease creates a "security
25 interest" is determined pursuant to Section 55-1-203 NMSA

1 1978;

2 (36) "send" in connection with a record or
3 notification means:

4 (A) to deposit in the mail, deliver or
5 transmit for transmission by any other usual means of
6 communication, with postage or cost of transmission provided
7 for, addressed to any address specified thereon or otherwise
8 agreed or, if there be none, to any address reasonable under
9 the circumstances; or

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

13 (37) "sign" means, with present intent to
14 authenticate or adopt a record:

15 (A) execute or adopt a tangible symbol;
16 or

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

19 "Signed", "signing" and "signature" have corresponding
20 meanings;

21 (38) "state" means a state of the United
22 States, the District of Columbia, Puerto Rico, the United
23 States Virgin Islands or any territory or insular possession
24 subject to the jurisdiction of the United States;

25 (39) "surety" includes a guarantor or other

1 secondary obligor;

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

4 (41) "unauthorized signature" means a
5 signature made without actual, implied or apparent authority.
6 The term includes a forgery;

7 (42) "warehouse receipt" means a document of
8 title issued by a person engaged in the business of storing
9 goods for hire; and

10 (43) "writing" includes printing,
11 typewriting or any other intentional reduction to tangible
12 form. "Written" has a corresponding meaning."

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

15 "55-1-204. VALUE.--Except as otherwise provided in
16 Chapter 55, Articles 3, 4, 5 and 12 NMSA 1978, a person gives
17 value for rights if the person acquires them:

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

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

24 (3) by accepting delivery under a preexisting
25 contract for purchase; or

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

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

5 "55-1-301. TERRITORIAL APPLICABILITY; PARTIES' POWER TO
6 CHOOSE APPLICABLE LAW.--

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

12 B. In the absence of an agreement effective under
13 Subsection A of this section, and except as provided in
14 Subsection C of this section, the Uniform Commercial Code
15 applies to transactions bearing an appropriate relation to
16 this state.

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

21 (1) Section 55-2-402 NMSA 1978;

22 (2) Sections 55-2A-105 and 55-2A-106 NMSA
23 1978;

24 (3) Section 55-4-102 NMSA 1978;

25 (4) Section 55-4A-507 NMSA 1978;

- 1 (5) Section 55-5-116 NMSA 1978;
- 2 (6) Section 55-8-110 NMSA 1978;
- 3 (7) Sections 55-9-301 through 55-9-307 NMSA
- 4 1978; and
- 5 (8) Section 55-12-107 NMSA 1978."

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

8 "55-1-306. WAIVER OR RENUNCIATION OF CLAIM OR RIGHT
9 AFTER BREACH.--A claim or right arising out of an alleged
10 breach may be discharged in whole or in part without
11 consideration by agreement of the aggrieved party in a signed
12 record."

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

15 "55-2-102. SCOPE--CERTAIN SECURITY AND OTHER
16 TRANSACTIONS EXCLUDED FROM THIS ARTICLE.--

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

22 (2) In a hybrid transaction:

23 (a) if the sale-of-goods aspects do not
24 predominate, only the provisions of this article that relate
25 primarily to the sale-of-goods aspects of the transaction

1 apply, and the provisions that relate primarily to the
2 transaction as a whole do not apply; and

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

8 (3) This article does not:

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

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

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

17 "55-2-106. DEFINITIONS--"CONTRACT"--"AGREEMENT"--
18 "CONTRACT FOR SALE"--"SALE"--"PRESENT SALE"--"CONFORMING" TO
19 CONTRACT--"TERMINATION"--"CANCELLATION"--HYBRID
20 TRANSACTION.--

21 (1) In this article, unless the context otherwise
22 requires, "contract" and "agreement" are limited to those
23 relating to the present or future sale of goods. "Contract
24 for sale" includes both a present sale of goods and a
25 contract to sell goods at a future time. A "sale" consists

1 in the passing of title from the seller to the buyer for a
2 price (Section 55-2-401 NMSA 1978). A "present sale" means a
3 sale that is accomplished by the making of the contract.

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

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

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

19 (5) "Hybrid transaction" means a single
20 transaction involving a sale of goods and:

- 21 (a) the provision of services;
 - 22 (b) a lease of other goods; or
 - 23 (c) a sale, lease or license of property
- 24 other than goods."

25 SECTION 7. Section 55-2-201 NMSA 1978 (being Laws 1961,

1 Chapter 96, Section 2-201) is amended to read:

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

3 (1) Except as otherwise provided in this section,
4 a contract for the sale of goods for the price of five
5 hundred dollars (\$500) or more is not enforceable by way of
6 action or defense unless there is a record sufficient to
7 indicate that a contract for sale has been made between the
8 parties and signed by the party against whom enforcement is
9 sought or by the party's authorized agent or broker. A
10 record is not insufficient because it omits or incorrectly
11 states a term agreed upon, but the contract is not
12 enforceable under this subsection beyond the quantity of
13 goods shown in the record.

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

21 (3) A contract that does not satisfy the
22 requirements of Subsection (1) of this section but that is
23 valid in other respects is enforceable:

24 (a) if the goods are to be specially
25 manufactured for the buyer and are not suitable for sale to

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

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

11 (c) with respect to goods for which payment
12 has been made and accepted or that have been received and
13 accepted (Section 55-2-606 NMSA 1978)."

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

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

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

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

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

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

12 SECTION 10. Section 55-2-205 NMSA 1978 (being Laws
13 1961, Chapter 96, Section 2-205) is amended to read:

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

22 SECTION 11. Section 55-2-209 NMSA 1978 (being Laws
23 1961, Chapter 96, Section 2-209) is amended to read:

24 "55-2-209. MODIFICATION, RESCISSION AND WAIVER.--

25 (1) An agreement modifying a contract within this

1 article needs no consideration to be binding.

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

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

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

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

20 **SECTION 12.** Section 55-2A-102 NMSA 1978 (being Laws
21 1992, Chapter 114, Section 9) is amended to read:

22 "55-2A-102. SCOPE.--

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

1 Subsection (2) of this section.

2 (2) In a hybrid lease:

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

5 (i) only the provisions of this article
6 that relate primarily to the lease-of-goods aspects of the
7 transaction apply, and the provisions that relate primarily
8 to the transaction as a whole do not apply;

9 (ii) Section 55-2A-209 NMSA 1978
10 applies if the lease is a finance lease; and

11 (iii) Section 55-2A-407 NMSA 1978
12 applies to the promises of the lessee in a finance lease to
13 the extent that the promises are consideration for the right
14 to possession and use of the leased goods; and

15 (b) if the lease-of-goods aspects
16 predominate, this article applies to the transaction, but
17 does not preclude application in appropriate circumstances of
18 other law to aspects of the lease that do not relate to the
19 lease of goods."

20 SECTION 13. Section 55-2A-103 NMSA 1978 (being Laws
21 1992, Chapter 114, Section 10, as amended) is amended to
22 read:

23 "55-2A-103. DEFINITIONS AND INDEX OF DEFINITIONS.--

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

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

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

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

24 (d) "conforming" goods or performance under
25 a lease contract means goods or performance that are in

1 accordance with the obligations under the lease contract;

2 (e) "consumer lease" means a lease that a
3 lessor regularly engaged in the business of leasing or
4 selling makes to a lessee who is an individual and who takes
5 under the lease primarily for a personal, family or household
6 purpose;

7 (f) "fault" means wrongful act, omission,
8 breach or default;

9 (g) "finance lease" means a lease with
10 respect to which:

11 (i) the lessor does not select,
12 manufacture or supply the goods;

13 (ii) the lessor acquires the goods or
14 the right to possession and use of the goods in connection
15 with the lease; and

16 (iii) one of the following occurs:

17 (A) the lessee receives a copy of
18 the contract by which the lessor acquired the goods or the
19 right to possession and use of the goods before signing the
20 lease contract;

21 (B) the lessee's approval of the
22 contract by which the lessor acquired the goods or the right
23 to possession and use of the goods is a condition to
24 effectiveness of the lease contract;

25 (C) the lessee, before signing

1 the lease contract, receives an accurate and complete
2 statement designating the promises and warranties, and any
3 disclaimers of warranties, limitations or modifications of
4 remedies, or liquidated damages, including those of a third
5 party, such as the manufacturer of the goods, provided to the
6 lessor by the person supplying the goods in connection with
7 or as part of the contract by which the lessor acquired the
8 goods or the right to possession and use of the goods; or

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

25 (h) "goods" means all things that are

1 movable at the time of identification to the lease contract
2 or are fixtures (Section 55-2A-309 NMSA 1978), but the term
3 does not include money, documents, instruments, accounts,
4 chattel paper, general intangibles or minerals or the like,
5 including oil and gas, before extraction. The term also
6 includes the unborn young of animals;

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

9 (i) the provision of services;
10 (ii) a sale of other goods; or
11 (iii) a sale, lease or license of
12 property other than goods;

13 (i) "installment lease contract" means a
14 lease contract that authorizes or requires the delivery of
15 goods in separate lots to be separately accepted, even though
16 the lease contract contains a clause "each delivery is a
17 separate lease" or its equivalent;

18 (j) "lease" means a transfer of the right to
19 possession and use of goods for a term in return for
20 consideration, but a sale, including a sale on approval or a
21 sale or return, or retention or creation of a security
22 interest is not a lease; unless the context clearly indicates
23 otherwise, the term includes a sublease;

24 (k) "lease agreement" means the bargain,
25 with respect to the lease, of the lessor and the lessee in

1 fact as found in their language or by implication from other
2 circumstances, including course of dealing or usage or trade
3 or course of performance as provided in this article; unless
4 the context clearly indicates otherwise, the term includes a
5 sublease agreement;

6 (l) "lease contract" means the total legal
7 obligation that results from the lease agreement as affected
8 by this article and any other applicable rules of law; unless
9 the context clearly indicates otherwise, the term includes a
10 sublease contract;

11 (m) "leasehold interest" means the interest
12 of the lessor or the lessee under a lease contract;

13 (n) "lessee" means a person who acquires the
14 right to possession and use of goods under a lease; unless
15 the context clearly indicates otherwise, the term includes a
16 sublessee;

17 (o) "lessee in ordinary course of business"
18 means a person who in good faith and without knowledge that
19 the lease to that person is in violation of the ownership
20 rights or security interest or leasehold interest of a third
21 party in the goods, leases in ordinary course from a person
22 in the business of selling or leasing goods of that kind, but
23 does not include a pawnbroker; "leasing" may be for cash or
24 by exchange of other property or on secured or unsecured
25 credit and includes acquiring goods or documents of title

1 under a preexisting lease contract but does not include a
2 transfer in bulk or as security for or in total or partial
3 satisfaction of a money debt;

4 (p) "lessor" means a person who transfers
5 the right to possession and use of goods under a lease;
6 unless the context clearly indicates otherwise, the term
7 includes a sublessor;

8 (q) "lessor's residual interest" means the
9 lessor's interest in the goods after expiration, termination
10 or cancellation of the lease contract;

11 (r) "lien" means a charge against or
12 interest in goods to secure payment of a debt or performance
13 of an obligation, but the term does not include a security
14 interest;

15 (s) "lot" means a parcel or a single article
16 that is the subject matter of a separate lease or delivery
17 whether or not it is sufficient to perform the lease
18 contract;

19 (t) "merchant lessee" means a lessee that is
20 a merchant with respect to goods of the kind subject to the
21 lease;

22 (u) "present value" means the amount as of a
23 date certain of one or more sums payable in the future,
24 discounted to the date certain. The discount is determined
25 by the interest rate specified by the parties if the rate was

1 not manifestly unreasonable at the time the transaction was
2 entered into; otherwise, the discount is determined by a
3 commercially reasonable rate that takes into account the
4 facts and circumstances of each case at the time the
5 transaction was entered into;

6 (v) "purchase" includes taking by sale,
7 lease, mortgage, security interest, pledge, gift or any other
8 voluntary transaction creating an interest in goods;

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

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

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

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

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

22 "accessions" Section
23 55-2A-310 NMSA 1978;

24 "construction mortgage". Section
25 55-2A-309 NMSA 1978;

1 "encumbrance" Section
2 55-2A-309 NMSA 1978;
3 "fixtures" Section
4 55-2A-309 NMSA 1978;
5 "fixture filing" Section
6 55-2A-309 NMSA 1978; and
7 "purchase money lease" Section
8 55-2A-309 NMSA 1978.

9 (3) The following definitions in other articles
10 apply to this article:

11 "account"Paragraph (2)
12 of Subsection (a) of Section 55-9-102 NMSA 1978;
13 "between merchants"Subsection (3)
14 of Section 55-2-104 NMSA 1978;
15 "buyer"Paragraph (a)
16 of Subsection (1) of Section 55-2-103 NMSA 1978;
17 "chattel paper"Paragraph (11)
18 of Subsection (a) of Section 55-9-102 NMSA 1978;
19 "consumer goods"Paragraph (23)
20 of Subsection (a) of Section 55-9-102 NMSA 1978;
21 "document"Paragraph (30)
22 of Subsection (a) of Section 55-9-102 NMSA 1978;
23 "entrusting"Subsection (3)
24 of Section 55-2-403 NMSA 1978;
25 "general intangible"Paragraph (42)

1 of Subsection (a) of Section 55-9-102 NMSA 1978;
2 "instrument".Paragraph (47)
3 of Subsection (a) of Section 55-9-102 NMSA 1978;
4 "merchant".Subsection (1)
5 of Section 55-2-104 NMSA 1978;
6 "mortgage".Paragraph (55)
7 of Subsection (a) of Section 55-9-102 NMSA 1978;
8 "pursuant to commitment".Paragraph (69)
9 of Subsection (a) of Section 55-9-102 NMSA 1978;
10 "receipt"Paragraph (c)
11 of Subsection (1) of Section 55-2-103 NMSA 1978;
12 "sale".Subsection (1)
13 of Section 55-2-106 NMSA 1978;
14 "sale on approval".Section
15 55-2-326 NMSA 1978;
16 "sale or return".Section
17 55-2-326 NMSA 1978; and
18 "seller".Paragraph (d)
19 of Subsection (1) of Section 55-2-103 NMSA 1978.

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

23 SECTION 14. Section 55-2A-107 NMSA 1978 (being Laws
24 1992, Chapter 114, Section 14) is amended to read:

25 "55-2A-107. WAIVER OR RENUNCIATION OF CLAIM OR RIGHT

1 AFTER DEFAULT.--Any claim or right arising out of an alleged
2 default or breach of warranty may be discharged in whole or
3 in part without consideration by a waiver or renunciation in
4 a signed record delivered by the aggrieved party."

5 SECTION 15. Section 55-2A-201 NMSA 1978 (being Laws
6 1992, Chapter 114, Section 17) is amended to read:

7 "55-2A-201. STATUTE OF FRAUDS.--

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

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

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

18 (2) Any description of leased goods or of the
19 lease term is sufficient and satisfies Paragraph (b) of
20 Subsection (1) of this section, whether or not it is
21 specific, if it reasonably identifies what is described.

22 (3) A record is not insufficient because it omits
23 or incorrectly states a term agreed upon, but the lease
24 contract is not enforceable under Paragraph (b) of Subsection
25 (1) of this section beyond the lease term and the quantity of

1 goods shown in the record.

2 (4) A lease contract that does not satisfy the
3 requirements of Subsection (1) of this section, but that is
4 valid in other respects, is enforceable:

5 (a) if the goods are to be specially
6 manufactured or obtained for the lessee and are not suitable
7 for lease or sale to others in the ordinary course of the
8 lessor's business, and the lessor, before notice of
9 repudiation is received and under circumstances that
10 reasonably indicate that the goods are for the lessee, has
11 made either a substantial beginning of their manufacture or
12 commitments for their procurement;

13 (b) if the party against whom enforcement is
14 sought admits in that party's pleading, testimony or
15 otherwise in court that a lease contract was made, but the
16 lease contract is not enforceable under this provision beyond
17 the quantity of goods admitted; or

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

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

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

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

4 (c) a reasonable lease term."

5 SECTION 16. Section 55-2A-202 NMSA 1978 (being Laws
6 1992, Chapter 114, Section 18) is amended to read:

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

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

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

21 SECTION 17. Section 55-2A-203 NMSA 1978 (being Laws
22 1992, Chapter 114, Section 19) is amended to read:

23 "55-2A-203. SEALS INOPERATIVE.--The affixing of a seal
24 to a record evidencing a lease contract or an offer to enter
25 into a lease contract does not render the record a sealed

1 instrument, and the law with respect to sealed instruments
2 does not apply to the lease contract or offer."

3 SECTION 18. Section 55-2A-205 NMSA 1978 (being Laws
4 1992, Chapter 114, Section 21) is amended to read:

5 "55-2A-205. FIRM OFFERS.--An offer by a merchant to
6 lease goods to or from another person in a signed record that
7 by its terms gives assurance it will be held open is not
8 revocable, for lack of consideration, during the time stated
9 or, if no time is stated, for a reasonable time, but in no
10 event may the period of irrevocability exceed three months.
11 Any such term of assurance on a form supplied by the offeree
12 must be separately signed by the offeror."

13 SECTION 19. Section 55-2A-208 NMSA 1978 (being Laws
14 1992, Chapter 114, Section 24) is amended to read:

15 "55-2A-208. MODIFICATION, RESCISSION AND WAIVER.--

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

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

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

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

7 **SECTION 20.** Section 55-3-104 NMSA 1978 (being Laws
8 1992, Chapter 114, Section 91) is amended to read:

9 "55-3-104. NEGOTIABLE INSTRUMENT.--

10 (a) Except as provided in Subsections (c) and (d)
11 of this section, "negotiable instrument" means an
12 unconditional promise or order to pay a fixed amount of
13 money, with or without interest or other charges described in
14 the promise or order, if it:

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

17 (2) is payable on demand or at a definite
18 time; and

19 (3) does not state any other undertaking or
20 instruction by the person promising or ordering payment to do
21 any act in addition to the payment of money, but the promise
22 or order may contain (i) an undertaking or power to give,
23 maintain or protect collateral to secure payment; (ii) an
24 authorization or power to the holder to confess judgment or
25 realize on or dispose of collateral; (iii) a waiver of the

1 benefit of any law intended for the advantage or protection
2 of an obligor; (iv) a term that specifies the law that
3 governs the promise or order; or (v) an undertaking to
4 resolve in a specified forum a dispute concerning the promise
5 or order.

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

7 (c) An order that meets all of the requirements of
8 Subsection (a) of this section, except Paragraph (1) of that
9 subsection, and otherwise falls within the definition of
10 "check" in Subsection (f) of this section is a negotiable
11 instrument and a check.

12 (d) A promise or order other than a check is not
13 an instrument if, at the time it is issued or first comes
14 into possession of a holder, it contains a conspicuous
15 statement, however expressed, to the effect that the promise
16 or order is not negotiable or is not an instrument governed
17 by this article.

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

22 (f) "Check" means (i) a draft, other than a
23 documentary draft, payable on demand and drawn on a bank or
24 (ii) a cashier's check or teller's check. An instrument may
25 be a check even though it is described on its face by another

1 term, such as "money order".

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

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

7 (i) "Traveler's check" means an instrument that
8 (i) is payable on demand, (ii) is drawn on or payable at or
9 through a bank, (iii) is designated by the term "traveler's
10 check" or by a substantially similar term and (iv) requires,
11 as a condition to payment, a countersignature by a person
12 whose specimen signature appears on the instrument.

13 (j) "Certificate of deposit" means an instrument
14 containing an acknowledgment by a bank that a sum of money
15 has been received by the bank and a promise by the bank to
16 repay the sum of money. A certificate of deposit is a note
17 of the bank."

18 SECTION 21. Section 55-3-105 NMSA 1978 (being Laws
19 1992, Chapter 114, Section 92) is amended to read:

20 "55-3-105. ISSUE OF INSTRUMENT.--

21 (a) "Issue" means:

22 (1) the first delivery of an instrument by
23 the maker or drawer, whether to a holder or nonholder, for
24 the purpose of giving rights on the instrument to any person;
25 or

1 (2) if agreed by the payee, the first
2 transmission by the drawer to the payee of an image of an
3 item and information derived from the item that enables the
4 depository bank to collect the item by transferring or
5 presenting under federal law an electronic check.

6 (b) An unissued instrument, or an unissued
7 incomplete instrument that is completed, is binding on the
8 maker or drawer, but nonissuance is a defense. An instrument
9 that is conditionally issued or is issued for a special
10 purpose is binding on the maker or drawer, but failure of the
11 condition or special purpose to be fulfilled is a defense.

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

14 SECTION 22. Section 55-3-309 NMSA 1978 (being Laws
15 1992, Chapter 114, Section 122) is amended to read:

16 "55-3-309. ENFORCEMENT OF LOST, DESTROYED OR STOLEN
17 INSTRUMENT.--

18 (a) A person not in possession of an instrument is
19 entitled to enforce the instrument if:

20 (1) the person seeking to enforce the
21 instrument:

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

24 (B) has directly or indirectly acquired
25 ownership of the instrument from a person who was entitled to

1 enforce the instrument when loss of possession occurred;

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

4 (3) the person cannot reasonably obtain
5 possession of the instrument because the instrument was
6 destroyed, its whereabouts cannot be determined or it is in
7 the wrongful possession of an unknown person or a person that
8 cannot be found or is not amenable to service of process.

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

20 **SECTION 23.** Section 55-3-401 NMSA 1978 (being Laws
21 1992, Chapter 114, Section 126) is amended to read:

22 "55-3-401. SIGNATURE.--A person is not liable on an
23 instrument unless (i) the person signed the instrument or
24 (ii) the person is represented by an agent or representative
25 who signed the instrument and the signature is binding on the

1 represented person under Section 55-3-402 NMSA 1978."

2 **SECTION 24.** Section 55-3-604 NMSA 1978 (being Laws
3 1992, Chapter 114, Section 154, as amended) is amended to
4 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
8 of a party to pay the instrument: (i) by an intentional
9 voluntary act, such as surrender of the instrument to the
10 party; destruction, mutilation or cancellation of the
11 instrument; cancellation or striking out of the party's
12 signature; or the addition of words to the instrument
13 indicating discharge; or (ii) by agreeing not to sue or
14 otherwise renouncing rights against the party by a signed
15 record. The obligation of a party to pay a check is not
16 discharged solely by destruction of the check in connection
17 with a process in which information is extracted from the
18 check and an image of the check is made and, subsequently,
19 the information and image are transmitted for payment.

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

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

1 "55-4A-103. PAYMENT ORDER--DEFINITIONS.--

2 (a) In this article:

3 (1) "payment order" means an instruction of
4 a sender to a receiving bank, transmitted orally or in a
5 record, to pay, or to cause another bank to pay, a fixed or
6 determinable amount of money to a beneficiary if:

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

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

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

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

19 (3) "beneficiary's bank" means the bank
20 identified in a payment order in which an account of the
21 beneficiary is to be credited pursuant to the order or that
22 otherwise is to make payment to the beneficiary if the order
23 does not provide for payment to an account;

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

1 (5) "sender" means the person giving the
2 instruction to the receiving bank.

3 (b) If an instruction complying with Paragraph (1)
4 of Subsection (a) of this section is to make more than one
5 payment to a beneficiary, the instruction is a separate
6 payment order with respect to each payment.

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

9 SECTION 26. Section 55-4A-201 NMSA 1978 (being Laws
10 1992, Chapter 114, Section 205) is amended to read:

11 "55-4A-201. SECURITY PROCEDURE.--"Security procedure"
12 means a procedure established by agreement of a customer and
13 a receiving bank for the purpose of (i) verifying that a
14 payment order or communication amending or canceling a
15 payment order is that of the customer or (ii) detecting error
16 in the transmission or the content of the payment order or
17 communication. A security procedure may impose an obligation
18 on the receiving bank or the customer and may require the use
19 of algorithms or other codes, identifying words, numbers,
20 symbols, sounds, biometrics, encryption, callback procedures
21 or similar security devices. Comparison of a signature on a
22 payment order or communication with an authorized specimen
23 signature of the customer or requiring a payment order to be
24 sent from a known email address, internet protocol address or
25 telephone number is not by itself a security procedure."

1 SECTION 27. Section 55-4A-202 NMSA 1978 (being Laws
2 1992, Chapter 114, Section 206) is amended to read:

3 "55-4A-202. AUTHORIZED AND VERIFIED PAYMENT ORDERS.--

4 (a) A payment order received by the receiving bank
5 is the authorized order of the person identified as sender if
6 that person authorized the order or is otherwise bound by it
7 under the law of agency.

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

25 (c) Commercial reasonableness of a security

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

17 (d) The term "sender" in this article includes the
18 customer in whose name a payment order is issued if the order
19 is the authorized order of the customer under Subsection (a)
20 of this section, or it is effective as the orders of the
21 customer under Subsection (b) of this section.

22 (e) This section applies to amendments and
23 cancellations of payment orders to the same extent it applies
24 to payment orders.

25 (f) Except as provided in this section and in

1 Paragraph (1) of Subsection (a) of Section 55-4A-203 NMSA
2 1978, rights and obligations arising under this section or
3 Section 55-4A-203 NMSA 1978 may not be varied by agreement."

4 SECTION 28. Section 55-4A-203 NMSA 1978 (being Laws
5 1992, Chapter 114, Section 207) is amended to read:

6 "55-4A-203. UNENFORCEABILITY OF CERTAIN VERIFIED
7 PAYMENT ORDERS.--

8 (a) If an accepted payment order is not, under
9 Subsection (a) of Section 55-4A-202 NMSA 1978, an authorized
10 order of a customer identified as sender, but is effective as
11 an order of the customer pursuant to Subsection (b) of
12 Section 55-4A-202 NMSA 1978, the following rules apply:

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

17 (2) The receiving bank is not entitled to
18 enforce or retain payment of the payment order if the
19 customer proves that the order was not caused, directly or
20 indirectly, by a person (i) entrusted at any time with duties
21 to act for the customer with respect to payment orders or the
22 security procedure or (ii) who obtained access to
23 transmitting facilities of the customer or who obtained, from
24 a source controlled by the customer and without authority of
25 the receiving bank, information facilitating breach of the

1 security procedure, regardless of how the information was
2 obtained or whether the customer was at fault. Information
3 includes any access device, computer software or the like.

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

6 SECTION 29. Section 55-4A-207 NMSA 1978 (being Laws
7 1992, Chapter 114, Section 211) is amended to read:

8 "55-4A-207. MISDESCRIPTION OF BENEFICIARY.--

9 (a) Subject to Subsection (b) of this section, if,
10 in a payment order received by the beneficiary's bank, the
11 name, bank account number or other identification of the
12 beneficiary refers to a nonexistent or unidentifiable person
13 or account, no person has rights as a beneficiary of the
14 order and acceptance of the order cannot occur.

15 (b) If a payment order received by the
16 beneficiary's bank identifies the beneficiary both by name
17 and by an identifying or bank account number and the name and
18 number identify different persons, the following rules apply:

19 (1) Except as otherwise provided in
20 Subsection (c) of this section, if the beneficiary's bank
21 does not know that the name and number refer to different
22 persons, it may rely on the number as the proper
23 identification of the beneficiary of the order. The
24 beneficiary's bank need not determine whether the name and
25 number refer to the same person.

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

8 (c) If (i) a payment order described in Subsection
9 (b) of this section is accepted, (ii) the originator's
10 payment order described the beneficiary inconsistently by
11 name and number and (iii) the beneficiary's bank pays the
12 person identified by number as permitted by Paragraph (1) of
13 Subsection (b) of this section, the following rules apply:

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

16 (2) If the originator is not a bank and
17 proves that the person identified by number was not entitled
18 to receive payment from the originator, the originator is not
19 obliged to pay its order unless the originator's bank proves
20 that the originator, before acceptance of the originator's
21 order, had notice that payment of a payment order issued by
22 the originator might be made by the beneficiary's bank on the
23 basis of an identifying or bank account number even if it
24 identifies a person different from the named beneficiary.
25 Proof of notice may be made by any admissible evidence. The

1 originator's bank satisfies the burden of proof if it proves
2 that the originator, before the payment order was accepted,
3 signed a record stating the information to which the notice
4 relates.

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

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

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

18 **SECTION 30.** Section 55-4A-208 NMSA 1978 (being Laws
19 1992, Chapter 114, Section 212) is amended to read:

20 "55-4A-208. MISDESCRIPTION OF INTERMEDIARY BANK OR
21 BENEFICIARY'S BANK.--

22 (a) This subsection applies to a payment order
23 identifying an intermediary bank or the beneficiary's bank
24 only by an identifying number.

25 (1) The receiving bank may rely on the

1 number as the proper identification of the intermediary or
2 beneficiary's bank and need not determine whether the number
3 identifies a bank.

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

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

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

23 (2) If the sender is not a bank and the
24 receiving bank proves that the sender, before the payment
25 order was accepted, had notice that the receiving bank might

1 rely on the number as the proper identification of the
2 intermediary or beneficiary's bank even if it identifies a
3 person different from the bank identified by name, the rights
4 and obligations of the sender and the receiving bank are
5 governed by Paragraph (1) of this subsection as though the
6 sender were a bank. Proof of notice may be made by any
7 admissible evidence. The receiving bank satisfies the burden
8 of proof if it proves that the sender, before the payment
9 order was accepted, signed a record stating the information
10 to which the notice relates.

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

18 (4) If the receiving bank knows that the
19 name and number identify different persons, reliance on
20 either the name or the number in executing the sender's
21 payment order is a breach of the obligation stated in
22 Paragraph (1) of Subsection (a) of Section 55-4A-302 NMSA
23 1978."

24 **SECTION 31.** Section 55-4A-210 NMSA 1978 (being Laws
25 1992, Chapter 114, Section 214) is amended to read:

1 "55-4A-210. REJECTION OF PAYMENT ORDER.--

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

17 (b) This subsection applies if a receiving bank
18 other than the beneficiary's bank fails to execute a payment
19 order despite the existence on the execution date of a
20 withdrawable credit balance in an authorized account of the
21 sender sufficient to cover the order. If the sender does not
22 receive notice of rejection of the order on the execution
23 date and the authorized account of the sender does not bear
24 interest, the bank is obliged to pay interest to the sender
25 on the amount of the order for the number of days elapsing

1 after the execution date to the earlier of the day the order
2 is canceled pursuant to Subsection (d) of Section 55-4A-211
3 NMSA 1978 or the day the sender receives notice or learns
4 that the order was not executed, counting the final day of
5 the period as an elapsed day. If the withdrawable credit
6 balance during that period falls below the amount of the
7 order, the amount of interest is reduced accordingly.

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

11 (d) Acceptance of a payment order precludes a
12 later rejection of the order. Rejection of a payment order
13 precludes a later acceptance of the order."

14 **SECTION 32.** Section 55-4A-211 NMSA 1978 (being Laws
15 1992, Chapter 114, Section 215) is amended to read:

16 "55-4A-211. CANCELLATION AND AMENDMENT OF PAYMENT
17 ORDER.--

18 (a) A communication of the sender of a payment
19 order canceling or amending the order may be transmitted to
20 the receiving bank orally or in a record. If a security
21 procedure is in effect between the sender and the receiving
22 bank, the communication is not effective to cancel or amend
23 the order unless the communication is verified pursuant to
24 the security procedure or the bank agrees to the cancellation
25 or amendment.

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

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

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

18 (2) With respect to a payment order accepted
19 by the beneficiary's bank, cancellation or amendment is not
20 effective unless the order was issued in execution of an
21 unauthorized payment order or because of a mistake by a
22 sender in the funds transfer that resulted in the issuance of
23 a payment order (i) that is a duplicate of a payment order
24 previously issued by the sender, (ii) that orders payment to
25 a beneficiary not entitled to receive payment from the

1 originator or (iii) that orders payment in an amount greater
2 than the amount the beneficiary was entitled to receive from
3 the originator. If the payment order is canceled or amended,
4 the beneficiary's bank is entitled to recover from the
5 beneficiary any amount paid to the beneficiary to the extent
6 allowed by the law governing mistake and restitution.

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

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

18 (f) Unless otherwise provided in an agreement of
19 the parties or in a funds-transfer system rule, if the
20 receiving bank, after accepting a payment order, agrees to
21 cancellation or amendment of the order by the sender or is
22 bound by a funds-transfer system rule allowing cancellation
23 or amendment without the bank's agreement, the sender,
24 whether or not cancellation or amendment is effective, is
25 liable to the bank for any loss and expenses, including

1 reasonable attorney fees, incurred by the bank as a result of
2 the cancellation or amendment or attempted cancellation or
3 amendment.

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

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

12 **SECTION 33.** Section 55-4A-305 NMSA 1978 (being Laws
13 1992, Chapter 114, Section 221) is amended to read:

14 "55-4A-305. LIABILITY FOR LATE OR IMPROPER EXECUTION OR
15 FAILURE TO EXECUTE PAYMENT ORDER.--

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

24 (b) If execution of a payment order by a receiving
25 bank in breach of Section 55-4A-302 NMSA 1978 results in (i)

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

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

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

25 (e) Reasonable attorney fees are recoverable if

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

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

12 SECTION 34. Section 55-5-104 NMSA 1978 (being Laws
13 1997, 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."

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

19 "55-5-116. CHOICE OF LAW AND FORUM.--

20 (a) The liability of an issuer, nominated person
21 or adviser for action or omission is governed by the law of
22 the jurisdiction chosen by an agreement in the form of a
23 record signed or by a provision in the person's letter of
24 credit, confirmation or other undertaking. The jurisdiction
25 whose law is chosen need not bear any relation to the

1 transaction.

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

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

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

22 (e) Except as otherwise provided in this
23 subsection, the liability of an issuer, nominated person or
24 adviser is governed by any rules of custom or practice, such
25 as the Uniform Customs and Practice for Documentary Credits,

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

11 (f) If there is conflict between this article and
12 Chapter 55, Article 3, 4, 4A or 9 NMSA 1978, this article
13 governs.

14 (g) The forum for settling disputes arising out of
15 an undertaking within this article may be chosen in the
16 manner and with the binding effect that governing law may be
17 chosen in accordance with Subsection (a) of this section."

18 **SECTION 36.** Section 55-7-102 NMSA 1978 (being Laws
19 2005, Chapter 144, Section 52) is amended to read:

20 "55-7-102. DEFINITIONS AND INDEX OF DEFINITIONS.--

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

23 (1) "bailee" means a person that by a
24 warehouse receipt, bill of lading or other document of title
25 acknowledges possession of goods and contracts to deliver

1 them;

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

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

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

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

14 (6) Reserved;

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

18 (8) "issuer" means a bailee that issues a
19 document of title or, in the case of an unaccepted delivery
20 order, the person that orders the possessor of goods to
21 deliver. The term includes a person for which an agent or
22 employee purports to act in issuing a document if the agent
23 or employee has real or apparent authority to issue
24 documents, even if the issuer did not receive any goods, the
25 goods were misdescribed or in any other respect the agent or

1 employee violated the issuer's instructions;

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

7 (10) Reserved;

8 (11) Reserved;

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

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

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

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

17 (2) "lessee in the ordinary course of
18 business", Section 55-2A-103 NMSA 1978; and

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

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

24 **SECTION 37.** Section 55-7-106 NMSA 1978 (being Laws
25 2005, Chapter 144, Section 56) is amended to read:

1 "55-7-106. CONTROL OF ELECTRONIC DOCUMENT OF TITLE.--

2 (a) A person has control of an electronic document
3 of title if a system employed for evidencing the transfer of
4 interests in the electronic document reliably establishes
5 that person as the person to which the electronic document
6 was issued or transferred.

7 (b) A system satisfies Subsection (a) of this
8 section, and a person has control of an electronic document
9 of title, if the document is created, stored and transferred
10 in a manner that:

11 (1) a single authoritative copy of the
12 document exists that is unique, identifiable and, except as
13 otherwise provided in Paragraphs (4), (5) and (6) of this
14 subsection, unalterable;

15 (2) the authoritative copy identifies the
16 person asserting control as:

17 (A) the person to which the document
18 was issued; or

19 (B) if the authoritative copy indicates
20 that the document has been transferred, the person to which
21 the document was most recently transferred;

22 (3) the authoritative copy is communicated
23 to and maintained by the person asserting control or its
24 designated custodian;

25 (4) copies or amendments that add or change

1 an identified assignee of the authoritative copy can be made
2 only with the consent of the person asserting control;

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

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

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

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

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 the person to
20 which each authoritative electronic copy was issued or
21 transferred; and

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

24 (A) prevent others from adding or
25 changing the person to which each authoritative electronic

1 copy has been issued or transferred; and

2 (B) transfer control of each
3 authoritative electronic copy.

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

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

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

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

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

19 (2) the other person:

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

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

24 (f) If a person has the powers specified in
25 Subparagraphs (A) and (B) of Paragraph (3) of Subsection (c)

1 of this section, the powers are presumed to be exclusive.

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

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

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

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

13 (i) If a person acknowledges that it has or will
14 obtain control on behalf of another person, unless the person
15 otherwise agrees or law other than this article or Chapter
16 55, Article 9 NMSA 1978 otherwise provides, the person does
17 not owe any duty to the other person and is not required to
18 confirm the acknowledgment to any other person."

19 **SECTION 38.** Section 55-8-102 NMSA 1978 (being Laws
20 1996, Chapter 47, Section 6, as amended) is amended to read:

21 "55-8-102. DEFINITIONS.--

22 (a) In this article:

23 (1) "adverse claim" means a claim that a
24 claimant has a property interest in a financial asset and
25 that it is a violation of the rights of the claimant for

1 another person to hold, transfer or deal with the financial
2 asset;

3 (2) "bearer form", as applied to a
4 certificated security, means a form in which the security is
5 payable to the bearer of the security certificate according
6 to its terms but not by reason of an indorsement;

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

10 (4) "certificated security" means a security
11 that is represented by a certificate;

12 (5) "clearing corporation" means:

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

15 (ii) a federal reserve bank; or

16 (iii) any other person that provides
17 clearance or settlement services with respect to financial
18 assets that would require it to register as a clearing agency
19 under the federal securities laws but for an exclusion or
20 exemption from the registration requirement, if its
21 activities as a clearing corporation, including promulgation
22 of rules, are subject to regulation by a federal or state
23 governmental authority;

24 (6) "communicate" means to:

25 (i) send a signed record; or

1 (ii) transmit information by any
2 mechanism agreed upon by the persons transmitting and
3 receiving the information;

4 (7) "entitlement holder" means a person
5 identified in the records of a securities intermediary as the
6 person having a security entitlement against the securities
7 intermediary. If a person acquires a security entitlement by
8 virtue of Paragraph (2) or (3) of Subsection (b) of Section
9 55-8-501 NMSA 1978, that person is the entitlement holder;

10 (8) "entitlement order" means a notification
11 communicated to a securities intermediary directing transfer
12 or redemption of a financial asset to which the entitlement
13 holder has a security entitlement;

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

16 (i) a security;

17 (ii) an obligation of a person or a
18 share, participation or other interest in a person or in
19 property or an enterprise of a person, which is, or is of a
20 type, dealt in or traded on financial markets, or which is
21 recognized in any area in which it is issued or dealt in as a
22 medium for investment; or

23 (iii) any property that is held by a
24 securities intermediary for another person in a securities
25 account if the securities intermediary has expressly agreed

1 with the other person that the property is to be treated as a
2 financial asset under this article. As context requires, the
3 term means either the interest itself or the means by which a
4 person's claim to it is evidenced, including a certificated
5 or uncertificated security, a security certificate or a
6 security entitlement;

7 (10) [Reserved];

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

14 (12) "instruction" means a notification
15 communicated to the issuer of an uncertificated security that
16 directs that the transfer of the security be registered or
17 that the security be redeemed;

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

20 (i) the security certificate specifies
21 a person entitled to the security; and

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

25 (14) "securities intermediary" means:

1 (i) a clearing corporation; or
2 (ii) a person, including a bank or
3 broker, that in the ordinary course of its business maintains
4 securities accounts for others and is acting in that
5 capacity;

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

10 (i) that is represented by a security
11 certificate in bearer or registered form or the transfer of
12 which may be registered upon books maintained for that
13 purpose by or on behalf of the issuer;

14 (ii) that is one of a class or series
15 or by its terms is divisible into a class or series of
16 shares, participations, interests or obligations; and

17 (iii) that:

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

20 (B) is a medium for investment
21 and by its terms expressly provides that it is a security
22 governed by this article;

23 (16) "security certificate" means a
24 certificate representing a security;

25 (17) "security entitlement" means the rights

1 and property interest of an entitlement holder with respect
2 to a financial asset specified in Part 5 of this article; and

3 (18) "uncertificated security" means a
4 security that is not represented by a certificate.

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

- 7 appropriate person Section 55-8-107 NMSA 1978;
- 8 control Section 55-8-106 NMSA 1978;
- 9 controllable account Section 55-9-102 NMSA 1978;
- 10 controllable electronic
- 11 record Section 55-12-102 NMSA 1978;
- 12 controllable payment
- 13 intangible Section 55-9-102 NMSA 1978;
- 14 delivery Section 55-8-301 NMSA 1978;
- 15 investment company
- 16 security Section 55-8-103 NMSA 1978;
- 17 issuer Section 55-8-201 NMSA 1978;
- 18 overissue Section 55-8-210 NMSA 1978;
- 19 protected purchaser Section 55-8-303 NMSA 1978;
- 20 and
- 21 securities account Section 55-8-501 NMSA 1978.

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

25 (d) The characterization of a person, business or

1 transaction for purposes of this article does not determine
2 the characterization of the person, business or transaction
3 for purposes of any other law, regulation or rule."

4 SECTION 39. Section 55-8-103 NMSA 1978 (being Laws
5 1996, Chapter 47, Section 7, as amended) is amended to read:

6 "55-8-103. RULES FOR DETERMINING WHETHER CERTAIN
7 OBLIGATIONS AND INTERESTS ARE SECURITIES OR FINANCIAL
8 ASSETS.--

9 (a) A share or similar equity interest issued by a
10 corporation, business trust, joint stock company or similar
11 entity is a security.

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

22 (c) An interest in a partnership or limited
23 liability company is not a security unless it is dealt in or
24 traded on securities exchanges or in securities markets, its
25 terms expressly provide that it is a security governed by

1 this article or it is an investment company security.

2 However, an interest in a partnership or limited liability
3 company is a financial asset if it is held in a securities
4 account.

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

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

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

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

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

24 **SECTION 40.** Section 55-8-106 NMSA 1978 (being Laws
25 1996, Chapter 47, Section 10, as amended) is amended to read:

1 "55-8-106. CONTROL.--

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

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

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

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

13 (c) A purchaser has "control" of an uncertificated
14 security if:

15 (1) the uncertificated security is delivered
16 to the purchaser; or

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

20 (d) A purchaser has "control" of a security
21 entitlement if:

22 (1) the purchaser becomes the entitlement
23 holder;

24 (2) the securities intermediary has agreed
25 that it will comply with entitlement orders originated by the

1 purchaser without further consent by the entitlement holder;
2 or

3 (3) another person, other than the
4 transferor to the purchaser of an interest in the security
5 entitlement:

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

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

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

17 (f) A purchaser who has satisfied the requirements
18 of Subsection (c) or (d) of this section has control even if
19 the registered owner in the case of Subsection (c) of this
20 section or the entitlement holder in the case of Subsection
21 (d) of this section retains the right to make substitutions
22 for the uncertificated security or security entitlement, to
23 originate instructions or entitlement orders to the issuer or
24 securities intermediary or otherwise to deal with the
25 uncertificated security or security entitlement.

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

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

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

21 **SECTION 41.** Section 55-8-110 NMSA 1978 (being Laws
22 1996, Chapter 47, Section 14, as amended) is amended to read:

23 "55-8-110. APPLICABILITY--CHOICE OF LAW.--

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

- 1 (1) the validity of a security;
- 2 (2) the rights and duties of the issuer with
3 respect to registration of transfer;
- 4 (3) the effectiveness of registration of
5 transfer by the issuer;
- 6 (4) whether the issuer owes any duties to an
7 adverse claimant to a security; and
- 8 (5) whether an adverse claim can be asserted
9 against a person to whom transfer of a certificated or
10 uncertificated security is registered or a person who obtains
11 control of an uncertificated security.

12 (b) The local law of the securities intermediary's
13 jurisdiction, as specified in Subsection (e) of this section,
14 governs:

- 15 (1) acquisition of a security entitlement
16 from the securities intermediary;
- 17 (2) the rights and duties of the securities
18 intermediary and entitlement holder arising out of a security
19 entitlement;
- 20 (3) whether the securities intermediary owes
21 any duties to an adverse claimant to a security entitlement;
22 and
- 23 (4) whether an adverse claim can be asserted
24 against a person who acquires a security entitlement from the
25 securities intermediary or a person who purchases a security

1 entitlement or interest therein from an entitlement holder.

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

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

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

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

22 (2) if Paragraph (1) of this subsection does
23 not apply and an agreement between the securities
24 intermediary and its entitlement holder governing the
25 securities account expressly provides that the agreement is

1 governed by the law of a particular jurisdiction, that
2 jurisdiction is the securities intermediary's jurisdiction;

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

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

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

19 (f) A securities intermediary's jurisdiction is
20 not determined by the physical location of certificates
21 representing financial assets or by the jurisdiction in which
22 is organized the issuer of the financial asset with respect
23 to which an entitlement holder has a security entitlement or
24 by the location of facilities for data processing or other
25 record keeping concerning the account.

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

6 SECTION 42. Section 55-8-303 NMSA 1978 (being Laws
7 1996, Chapter 47, Section 33) is amended to read:

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

9 (a) "Protected purchaser" means a purchaser of a
10 certificated or uncertificated security, or of an interest
11 therein, who:

12 (1) gives value;

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

15 (3) obtains control of the certificated or
16 uncertificated security.

17 (b) A protected purchaser also acquires its
18 interest in the security free of any adverse claim."

19 SECTION 43. Section 55-9-102 NMSA 1978 (being Laws
20 2001, Chapter 139, Section 2, as amended) is amended to read:

21 "55-9-102. DEFINITIONS AND INDEX OF DEFINITIONS.--

22 (a) In Chapter 55, Article 9 NMSA 1978:

23 (1) "accession" means goods that are
24 physically united with other goods in such a manner that the
25 identity of the original goods is not lost;

1 (2) "account", except as used in "account
2 for", "account statement", "account to", "commodity account"
3 in Paragraph (14) of this subsection, "customer's account",
4 "deposit account" in Paragraph (29) of this subsection, "on
5 account of" and "statement of account":

6 (A) means a right to payment of a
7 monetary obligation, whether or not earned by performance:

8 (i) for property that has been or
9 is to be sold, leased, licensed, assigned or otherwise
10 disposed of;

11 (ii) for services rendered or to
12 be rendered;

13 (iii) for a policy of insurance
14 issued or to be issued;

15 (iv) for a secondary obligation
16 incurred or to be incurred;

17 (v) for energy provided or to be
18 provided;

19 (vi) for the use or hire of a
20 vessel under a charter or other contract;

21 (vii) arising out of the use of a
22 credit or charge card or information contained on or for use
23 with the card; or

24 (viii) as winnings in a lottery
25 or other game of chance operated or sponsored by a state,

1 governmental unit of a state or person licensed or authorized
2 to operate the game by a state or governmental unit of a
3 state; and

4 (B) includes controllable accounts and
5 health-care-insurance receivables; but

6 (C) does not include:

7 (i) chattel paper;

8 (ii) commercial tort claims;

9 (iii) deposit accounts;

10 (iv) investment property;

11 (v) letter-of-credit rights or
12 letters of credit;

13 (vi) rights to payment for money
14 or funds advanced or sold, other than rights arising out of
15 the use of a credit or charge card or information contained
16 on or for use with the card; or

17 (vii) rights to payment evidenced
18 by an instrument;

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

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

1 (A) signed by a secured party;

2 (B) indicating the aggregate unpaid
3 secured obligations as of a date not more than thirty-five
4 days earlier or thirty-five days later than the date of the
5 record; and

6 (C) identifying the components of the
7 obligations in reasonable detail;

8 (5) "agricultural lien" means an interest in
9 farm products:

10 (A) that secures payment or performance
11 of an obligation for:

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

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

16 (B) that is created by statute in favor
17 of a person that:

18 (i) in the ordinary course of its
19 business furnished goods or services to a debtor in
20 connection with a debtor's farming operation; or

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

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

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

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

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

5 (ii) attaches to the minerals as
6 extracted; or

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

10 (7) [Reserved];

11 (7A) "assignee", except as used in "assignee
12 for benefit of creditors", means a person:

13 (i) in whose favor a security interest
14 that secures an obligation is created or provided for under a
15 security agreement, whether or not the obligation is
16 outstanding; or

17 (ii) to which an account, chattel
18 paper, payment intangible or promissory note has been sold.
19 The term includes a person to which a security interest has
20 been transferred by a secured party;

21 (7B) "assignor" means a person that:

22 (i) under a security agreement, creates
23 or provides for a security interest that secures an
24 obligation; or

25 (ii) sells an account, chattel paper,

1 payment intangible or promissory note. The term includes a
2 secured party that has transferred a security interest to
3 another person;

4 (8) "bank" means an organization that is
5 engaged in the business of banking and includes savings
6 banks, savings and loan associations, credit unions and trust
7 companies;

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

10 (10) "certificate of title" means a
11 certificate of title with respect to which a statute provides
12 for the security interest in question to be indicated on the
13 certificate as a condition or result of the security
14 interest's obtaining priority over the rights of a lien
15 creditor with respect to the collateral. The term includes
16 another record maintained as an alternative to a certificate
17 of title by the governmental unit that issues certificates of
18 title if a statute permits the security interest in question
19 to be indicated on the record as a condition or result of the
20 security interest's obtaining priority over the rights of a
21 lien creditor with respect to the collateral;

22 (11) "chattel paper" means:

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

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

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

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

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

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

18 (A) proceeds to which a security
19 interest attaches;

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

22 (C) goods that are the subject of a
23 consignment;

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

1 (A) the claimant is an organization; or

2 (B) the claimant is an individual and

3 the claim:

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

6 (ii) does not include damages
7 arising out of personal injury to or the death of an
8 individual;

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

12 (15) "commodity contract" means a commodity
13 futures contract, an option on a commodity futures contract,
14 a commodity option or another contract if the contract or
15 option is:

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

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

23 (16) "commodity customer" means a person for
24 which a commodity intermediary carries a commodity contract
25 on its books;

1 (17) "commodity intermediary" means a person
2 that:

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

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

9 (18) "communicate" means:

10 (A) to send a written or other tangible
11 record;

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

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

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

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

23 (A) the merchant:

24 (i) deals in goods of that kind
25 under a name other than the name of the person making

1 delivery;

2 (ii) is not an auctioneer; and

3 (iii) is not generally known by
4 its creditors to be substantially engaged in selling the
5 goods of 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
14 delivers 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
13 term 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
22 account evidenced by a controllable electronic record that
23 provides that the account debtor undertakes to pay the person
24 that has control under Section 55-12-105 NMSA 1978 of the
25 controllable electronic record;

1 (27B) "controllable payment intangible"
2 means a payment intangible evidenced by a controllable
3 electronic record that provides that the account debtor
4 undertakes to pay the person that has control under Section
5 55-12-105 NMSA 1978 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
11 paper, 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
18 a receipt of the type described in Subsection (b) of Section
19 55-7-201 NMSA 1978;

20 (31) [Reserved];

21 (31A) "electronic money" means money in an
22 electronic form;

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

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

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

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

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

10 (ii) aquatic goods produced in
11 aquacultural operations;

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

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

16 (D) products of crops or livestock in
17 their unmanufactured states;

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

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

24 (37) "filing office" means an office
25 designated in Section 55-9-501 NMSA 1978 as the place to file

1 a financing statement;

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

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

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

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

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

24 (43) [Reserved];

25 (44) "goods" means all things that are

1 movable when a security interest attaches and:

2 (A) includes:

3 (i) fixtures;

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

6 (iii) the unborn young of
7 animals;

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

11 (v) manufactured homes; and

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

19 (B) does not include:

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

23 (ii) accounts, chattel paper,
24 commercial tort claims, deposit accounts, documents, general
25 intangibles, instruments, investment property, letter-of-

1 credit rights, letters of credit, money or oil, gas or other
2 minerals before extraction;

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

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

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

20 (A) investment property;

21 (B) letters of credit;

22 (C) writings that evidence a right to
23 payment arising out of the use of a credit or charge card or
24 information contained on or for use with the card; or

25 (D) writings that evidence chattel

1 paper;

2 (48) "inventory" means goods, other than
3 farm products, that:

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

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

7 (C) are furnished by a person under a
8 contract of service; or

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

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

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

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

23 (52) "lien creditor" means:

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

1 (B) an assignee for benefit of
2 creditors from the time of assignment;

3 (C) a trustee in bankruptcy from the
4 date of the filing of the petition; or

5 (D) a receiver in equity from the time
6 of appointment;

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

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

24 (A) that creates a purchase-money
25 security interest in a manufactured home, other than a

1 manufactured home held as inventory; or

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

5 (54A) "money" has the meaning in Paragraph
6 (24) of Subsection (b) of Section 55-1-201 NMSA 1978, but
7 does not include: (i) a deposit account; or (ii) money in an
8 electronic form that cannot be subjected to control under
9 Section 55-9-105A NMSA 1978.

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

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

17 (57) "new value" means:

18 (A) money;

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

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

25 (58) "noncash proceeds" means proceeds other

1 than cash proceeds;

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

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

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

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

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

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

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

25 (A) the spouse of the individual;

1 (B) a brother, brother-in-law, sister
2 or sister-in-law of the individual;

3 (C) an ancestor or lineal descendant of
4 the individual or the individual's spouse; or

5 (D) any other relative, by blood or
6 marriage, of the individual or the individual's spouse who
7 shares the same home with the individual;

8 (63) "person related to", with respect to an
9 organization, means:

10 (A) a person directly or indirectly
11 controlling, controlled by or under common control with the
12 organization;

13 (B) an officer or director of, or a
14 person performing similar functions with respect to, the
15 organization;

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

19 (D) the spouse of an individual
20 described in Subparagraph (A), (B) or (C) of this paragraph;
21 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
25 home with the individual;

1 (64) "proceeds", except as used in
2 Subsection (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
11 rights 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
19 not evidence an order to pay and does not contain an
20 acknowledgment by a bank that the bank has received for
21 deposit a sum of money or funds;

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

1 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
17 States to form or organize an organization and any record
18 filed with or issued by the state or the United States that
19 amends or restates the initial record;

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

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

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

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

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

1 trust's organic record be filed with the state;

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

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

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

9 (73) "secured party" means:

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

14 (B) a person that holds an agricultural
15 lien;

16 (C) a consignor;

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

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

24 (F) a person that holds a security
25 interest arising under Section 55-2-401, Section 55-2-505,

1 Subsection (3) of Section 55-2-711, Subsection (5) of Section
2 55-2A-508, Section 55-4-210 or Section 55-5-118 NMSA 1978;

3 (74) "security agreement" means an agreement
4 that creates or provides for a security interest;

5 (75) [Reserved];

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

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

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

20 (79) [Reserved];

21 (79A) "tangible money" means money in a
22 tangible form;

23 (80) "termination statement" means an
24 amendment of a financing statement that:

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

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

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

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

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

11 (C) transmitting goods by pipeline or
12 sewer; or

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

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

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

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

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

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

22 "check" Section 55-3-104 NMSA 1978;

23 "clearing corporation". Section 55-8-102 NMSA 1978;

24 "contract for sale". . Section 55-2-106 NMSA 1978;

25 "controllable electronic record" Section

1 55-12-102 NMSA 1978;
2 "customer" Section 55-4-104 NMSA 1978;
3 "entitlement holder" . Section 55-8-102 NMSA 1978;
4 "financial asset". . . Section 55-8-102 NMSA 1978;
5 "holder in due course". Section 55-3-302 NMSA 1978;
6 "issuer" (with respect to a letter of credit or
7 letter-of-credit right) Section 55-5-102 NMSA 1978;
8 "issuer" (with respect to a security). . . Section
9 55-8-201 NMSA 1978;
10 "issuer" (with respect to documents of
11 title). Section 55-7-102 NMSA 1978;
12 "lease". Section 55-2A-103 NMSA 1978;
13 "lease agreement". . Section 55-2A-103 NMSA 1978;
14 "lease contract" . . Section 55-2A-103 NMSA 1978;
15 "leasehold interest" Section 55-2A-103 NMSA 1978;
16 "lessee" Section 55-2A-103 NMSA 1978;
17 "lessee in ordinary course of business". . Section
18 55-2A-103 NMSA 1978;
19 "lessor" Section 55-2A-103 NMSA 1978;
20 "lessor's residual interest" Section
21 55-2A-103 NMSA 1978;
22 "letter of credit" . . Section 55-5-102 NMSA 1978;
23 "merchant" Section 55-2-104 NMSA 1978;
24 "negotiable instrument" Section 55-3-104 NMSA 1978;
25 "nominated person" . . Section 55-5-102 NMSA 1978;

1 "note" Section 55-3-104 NMSA 1978;
2 "proceeds of a letter of credit" Section
3 55-5-114 NMSA 1978;
4 "protected purchaser" Section 55-8-303 NMSA 1978;
5 "prove" Section 55-3-103 NMSA 1978;
6 "qualifying purchaser" Section 55-12-102 NMSA 1978;
7 "sale" Section 55-2-106 NMSA 1978;
8 "securities account" Section 55-8-501 NMSA 1978;
9 "securities intermediary" Section 55-8-102 NMSA 1978;
10 "security" Section 55-8-102 NMSA 1978;
11 "security certificate" Section 55-8-102 NMSA 1978;
12 "security entitlement" Section 55-8-102 NMSA 1978;

13 and

14 "uncertificated security" Section
15 55-8-102 NMSA 1978.

16 (c) Chapter 55, Article 1 NMSA 1978 contains
17 general definitions and principles of construction and
18 interpretation applicable throughout Chapter 55, Article 9
19 NMSA 1978."

20 SECTION 44. Section 55-9-104 NMSA 1978 (being Laws
21 2001, Chapter 139, Section 4) is amended to read:

22 "55-9-104. CONTROL OF DEPOSIT ACCOUNT.--

23 (a) A secured party has control of a deposit
24 account if:

25 (1) the secured party is the bank with which

1 the deposit account is maintained;

2 (2) the debtor, secured party and bank have
3 agreed in a signed record that the bank will comply with
4 instructions originated by the secured party directing
5 disposition of the funds in the deposit account without
6 further consent by the debtor;

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

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

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

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

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

20 SECTION 45. Section 55-9-105 NMSA 1978 (being Laws
21 2001, Chapter 139, Section 5, as amended) is repealed and a
22 new Section 55-9-105 NMSA 1978 is enacted to read:

23 "55-9-105. CONTROL OF ELECTRONIC COPY OF RECORD
24 EVIDENCING CHATTEL PAPER.--

25 (a) A purchaser has control of an authoritative

1 electronic copy of a record evidencing chattel paper if a
2 system employed for evidencing the assignment of interests in
3 the chattel paper reliably establishes the purchaser as the
4 person to which the authoritative electronic copy was
5 assigned.

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

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

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

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

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

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

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

1 (c) A system satisfies Subsection (a) of this
2 section, and a purchaser has control of an authoritative
3 electronic copy of a record evidencing chattel paper, if the
4 electronic copy, a record attached to or logically associated
5 with the electronic copy or a system in which the electronic
6 copy is recorded:

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

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

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

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

19 (B) transfer control of the
20 authoritative electronic copy.

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

24 (1) the authoritative electronic copy, a
25 record attached to or logically associated with the

1 authoritative electronic copy or a system in which the
2 authoritative electronic copy is recorded limits the use of
3 the authoritative electronic copy or has a protocol
4 programmed to cause a change, including a transfer or loss of
5 control; or

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

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

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

12 (2) the other person:

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

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

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

20 (g) A purchaser has control of an authoritative
21 electronic copy of a record evidencing chattel paper if
22 another person, other than the transferor to the purchaser of
23 an interest in the chattel paper:

24 (1) has control of the authoritative
25 electronic copy and acknowledges that it has control on

1 behalf of the purchaser; or

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

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

7 "55-9-105A. CONTROL OF ELECTRONIC MONEY.--

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

9 (1) the electronic money, a record attached
10 to or logically associated with the electronic money or a
11 system in which the electronic money is recorded gives the
12 person:

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

15 (B) exclusive power, subject to
16 Subsection (b) of this section, to:

17 (i) prevent others from availing
18 themselves of substantially all the benefit from the
19 electronic money; and

20 (ii) transfer control of the
21 electronic money to another person or cause another person to
22 obtain control of other electronic money as a result of the
23 transfer of the electronic money; and

24 (2) the electronic money, a record attached
25 to or logically associated with the electronic money or a

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

6 (b) Subject to Subsection (c) of this section, a
7 power is exclusive under Items (i) and (ii) of Subparagraph
8 (B) of Paragraph (1) of Subsection (a) of this section even
9 if:

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

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

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

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

21 (2) the other person:

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

24 (B) is the transferor to the person of
25 an interest in the electronic money.

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

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

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

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

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

15 "55-9-107A. CONTROL OF CONTROLLABLE ELECTRONIC RECORD,
16 ACCOUNT OR CONTROLLABLE PAYMENT INTANGIBLE.--

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

19 (b) A secured party has control of a controllable
20 account or controllable payment intangible if the secured
21 party has control of the controllable electronic record that
22 evidences the controllable account or controllable payment
23 intangible."

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

1 "55-9-107B. NO REQUIREMENT TO ACKNOWLEDGE OR CONFIRM--
2 NO DUTIES.--

3 (a) A person that has control under Section
4 55-9-104, 55-9-105 or 55-9-105A NMSA 1978 is not required to
5 acknowledge that it has control on behalf of another person.

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

12 SECTION 49. Section 55-9-109 NMSA 1978 (being Laws
13 2001, Chapter 139, Section 9, as amended) is amended to read:

14 "55-9-109. SCOPE.--

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

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

21 (2) an agricultural lien;

22 (3) a sale of accounts, chattel paper,
23 payment intangibles or promissory notes;

24 (4) a consignment;

25 (5) a security interest arising under

1 Section 55-2-401, 55-2-505, Subsection (3) of Section
2 55-2-711 or Subsection (5) of Section 55-2A-508 NMSA 1978, as
3 provided in Section 55-9-110 NMSA 1978; and

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

6 (b) The application of Chapter 55, Article 9 NMSA
7 1978 to a security interest in a secured obligation is not
8 affected by the fact that the obligation is itself secured by
9 a transaction or interest to which this article does not
10 apply.

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

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

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

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

25 (4) the rights of a transferee beneficiary

1 or nominated person under a letter of credit are independent
2 and superior under Section 55-5-114 NMSA 1978.

3 (d) Chapter 55, Article 9 NMSA 1978 does not apply
4 to:

5 (1) a landlord's lien, other than an
6 agricultural lien;

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

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

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

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

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

22 (7) an assignment of a single account,
23 payment intangible or promissory note to an assignee in full
24 or partial satisfaction of a preexisting indebtedness;

25 (8) a transfer of an interest in or an

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

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

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

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

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

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

19 (A) liens on real property in Sections
20 55-9-203 and 55-9-308 NMSA 1978;

21 (B) fixtures in Section 55-9-334 NMSA
22 1978;

23 (C) fixture filings in Sections
24 55-9-501, 55-9-502, 55-9-512, 55-9-516 and 55-9-519 NMSA
25 1978; and

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

3 (12) an assignment of a claim arising in
4 tort, other than a commercial tort claim, but Sections
5 55-9-315 and 55-9-322 NMSA 1978 apply with respect to
6 proceeds and priorities in proceeds;

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

11 (14) a transfer by this state or a
12 governmental unit of this state other than a security
13 interest created pursuant to the Industrial Revenue Bond Act,
14 County Industrial Revenue Bond Act, Redevelopment Bonding
15 Law, Pollution Control Revenue Bond Act, County Pollution
16 Control Revenue Bond Act or Hospital Equipment Loan Act."

17 SECTION 50. Section 55-9-203 NMSA 1978 (being Laws
18 2001, Chapter 139, Section 13, as amended) is amended to
19 read:

20 "55-9-203. ATTACHMENT AND ENFORCEABILITY OF SECURITY
21 INTEREST--PROCEEDS--SUPPORTING OBLIGATIONS--FORMAL
22 REQUISITES.--

23 (a) A security interest attaches to collateral
24 when it becomes enforceable against the debtor with respect
25 to the collateral, unless an agreement expressly postpones

1 the time of attachment.

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

6 (1) value has been given;

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

10 (3) one of the following conditions is met:

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

15 (B) the collateral is not a
16 certificated security and is in the possession of the secured
17 party under Section 55-9-313 NMSA 1978 pursuant to the
18 debtor's security agreement;

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

23 (D) the collateral is controllable
24 accounts, controllable electronic records, controllable
25 payment intangibles, deposit accounts, electronic documents,

1 electronic money, investment property or letter-of-credit
2 rights, and the secured party has control under Section 55-7-
3 106, 55-9-104, 55-9-105A, 55-9-106, 55-9-107 or 55-9-107A
4 NMSA 1978 pursuant to the debtor's security agreement; or

5 (E) the collateral is chattel paper and
6 the secured party has possession and control under Section
7 55-9-314A NMSA 1978 pursuant to the debtor's security
8 agreement.

9 (c) Subsection (b) of this section is subject to
10 Section 55-4-210 NMSA 1978 on the security interest of a
11 collecting bank, Section 55-5-118 NMSA 1978 on the security
12 interest of a letter-of-credit issuer or nominated person,
13 Section 55-9-110 NMSA 1978 on a security interest arising
14 under Chapter 55, Article 2 or 2A NMSA 1978 and Section
15 55-9-206 NMSA 1978 on security interests in investment
16 property.

17 (d) A person becomes bound as debtor by a security
18 agreement entered into by another person if, by operation of
19 law other than Chapter 55, Article 9 NMSA 1978 or by
20 contract:

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

23 (2) the person becomes generally obligated
24 for the obligations of the other person, including the
25 obligation secured under the security agreement, and acquires

1 or succeeds to all or substantially all of the assets of the
2 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
10 make 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
18 interest or other lien on personal or real property is also
19 attachment of a security interest in the security interest,
20 mortgage or other lien.

21 (h) The attachment of a security interest in a
22 securities account is also attachment of a security interest
23 in the security entitlements carried in the securities
24 account.

25 (i) The attachment of a security interest in a

1 commodity account is also attachment of a security interest
2 in the commodity contracts carried in the commodity account."

3 SECTION 51. Section 55-9-204 NMSA 1978 (being Laws
4 2001, Chapter 139, Section 14) is amended to read:

5 "55-9-204. AFTER-ACQUIRED PROPERTY--FUTURE ADVANCES.--

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

9 (b) Subject to Subsection (b.1) of this section,
10 security interest does not attach under a term constituting
11 an after-acquired property clause to:

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

16 (2) a commercial tort claim.

17 (b.1) Subsection (b) of this section does not
18 prevent a security interest from attaching:

19 (1) to consumer goods as proceeds under
20 Subsection (a) of Section 55-9-315 NMSA 1978 or commingled
21 goods under Subsection (c) of Section 55-9-336 NMSA 1978;

22 (2) to a commercial tort claim as proceeds
23 under Subsection (a) of Section 55-9-315 NMSA 1978; or

24 (3) under an after-acquired property clause
25 to property that is proceeds of consumer goods or a

1 commercial tort claim.

2 (c) A security agreement may provide that
3 collateral secures, or that accounts, chattel paper, payment
4 intangibles or promissory notes are sold in connection with,
5 future advances or other value, whether or not the advances
6 or value are given pursuant to commitment."

7 SECTION 52. Section 55-9-207 NMSA 1978 (being Laws
8 2001, Chapter 139, Section 17, as amended) is amended to
9 read:

10 "55-9-207. RIGHTS AND DUTIES OF SECURED PARTY HAVING
11 POSSESSION OR CONTROL OF COLLATERAL.--

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

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

22 (1) reasonable expenses, including the cost
23 of insurance and payment of taxes or other charges, incurred
24 in the custody, preservation, use or operation of the
25 collateral are chargeable to the debtor and are secured by

1 the collateral;

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

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

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

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

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

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

16 (c) Except as otherwise provided in Subsection (d)
17 of this section, a secured party having possession of
18 collateral or control of collateral under Section 55-7-106,
19 55-9-104, 55-9-105, 55-9-105A, 55-9-106, 55-9-107 or
20 55-9-107A NMSA 1978:

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

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

1 remitted to the debtor; and

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

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

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

10 (A) to charge back uncollected
11 collateral; or

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

16 (2) Subsections (b) and (c) of this section
17 do not apply."

18 SECTION 53. Section 55-9-208 NMSA 1978 (being Laws
19 2001, Chapter 139, Section 18, as amended) is amended to
20 read:

21 "55-9-208. ADDITIONAL DUTIES OF SECURED PARTY HAVING
22 CONTROL OF COLLATERAL.--

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

1 otherwise give value.

2 (b) Within ten days after receiving a signed
3 demand by the debtor:

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

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

13 (A) pay the debtor the balance on
14 deposit in the deposit account; or

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

17 (3) a secured party, other than a buyer,
18 having control under Section 55-9-105 NMSA 1978 of an
19 authoritative electronic copy of a record evidencing chattel
20 paper shall transfer control of the electronic copy to the
21 debtor or a person designated by the debtor;

22 (4) a secured party having control of
23 investment property under Paragraph (2) of Subsection (d) of
24 Section 55-8-106 NMSA 1978 or Subsection (b) of Section
25 55-9-106 NMSA 1978 shall send to the securities intermediary

1 or commodity intermediary with which the security entitlement
2 or commodity contract is maintained a signed record that
3 releases the securities intermediary or commodity
4 intermediary from any further obligation to comply with
5 entitlement orders or directions originated by the secured
6 party;

7 (5) a secured party having control of a
8 letter-of-credit right under Section 55-9-107 NMSA 1978 shall
9 send to each person having an unfulfilled obligation to pay
10 or deliver proceeds of the letter of credit to the secured
11 party a signed release from any further obligation to pay or
12 deliver proceeds of the letter of credit to the secured
13 party;

14 (6) a secured party having control under
15 Section 55-7-106 NMSA 1978 of an authoritative electronic
16 copy of an electronic document of title shall transfer
17 control of the electronic copy to the debtor or a person
18 designated by the debtor;

19 (7) a secured party having control under
20 Section 55-9-105A NMSA 1978 of electronic money shall
21 transfer control of the electronic money to the debtor or a
22 person designated by the debtor; and

23 (8) a secured party having control under
24 Section 55-12-105 NMSA 1978 of a controllable electronic
25 record, other than a buyer of a controllable account or

1 controllable payment intangible evidenced by the controllable
2 electronic record, shall transfer control of the controllable
3 electronic record to the debtor or a person designated by the
4 debtor."

5 SECTION 54. Section 55-9-209 NMSA 1978 (being Laws
6 2001, Chapter 139, Section 19) is amended to read:

7 "55-9-209. DUTIES OF SECURED PARTY IF ACCOUNT DEBTOR
8 HAS BEEN NOTIFIED OF ASSIGNMENT.--

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

11 (1) there is no outstanding secured
12 obligation; and

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

15 (b) Within ten days after receiving a signed
16 demand by the debtor, a secured party shall send to an
17 account debtor that has received notification under
18 Subsection (a) of Section 55-9-406 NMSA 1978 or Subsection
19 (b) of Section 55-12-106 NMSA 1978 of an assignment to the
20 secured party as assignee a signed record that releases the
21 account debtor from any further obligation to the secured
22 party.

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

1 SECTION 55. Section 55-9-210 NMSA 1978 (being Laws
2 2001, Chapter 139, Section 20) is amended to read:

3 "55-9-210. REQUEST FOR ACCOUNTING--REQUEST REGARDING
4 LIST OF COLLATERAL OR STATEMENT OF ACCOUNT.--

5 (a) In this section:

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

8 (2) "request for an accounting" means a
9 record signed by a debtor requesting that the recipient
10 provide an accounting of the unpaid obligations secured by
11 collateral and reasonably identifying the transaction or
12 relationship that is the subject of the request;

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

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

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

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

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

13 (c) A secured party that claims a security
14 interest in all of a particular type of collateral owned by
15 the debtor may comply with a request regarding a list of
16 collateral by sending to the debtor a signed record,
17 including a statement to that effect, within fourteen days
18 after receipt.

19 (d) A person that receives a request regarding a
20 list of collateral, claims no interest in the collateral when
21 it receives the request and claimed an interest in the
22 collateral at an earlier time shall comply with the request
23 within fourteen days after receipt by sending to the debtor a
24 signed record:

25 (1) disclaiming any interest in the

1 collateral; and

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

5 (e) A person that receives a request for an
6 accounting or a request regarding a statement of account,
7 claims no interest in the obligations when it receives the
8 request and claimed an interest in the obligations at an
9 earlier time shall comply with the request within fourteen
10 days after receipt by sending to the debtor a signed record:

11 (1) disclaiming any interest in the
12 obligations; and

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

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

21 **SECTION 56.** Section 55-9-301 NMSA 1978 (being Laws
22 2001, Chapter 139, Section 21, as amended) is amended to
23 read:

24 "55-9-301. LAW GOVERNING PERFECTION AND PRIORITY OF
25 SECURITY INTERESTS.--Except as otherwise provided in Sections

1 55-9-303 through 55-9-306B NMSA 1978, the following rules
2 determine the law governing perfection, the effect of
3 perfection or nonperfection and the priority of a security
4 interest in collateral:

5 (1) except as otherwise provided in this section,
6 while a debtor is located in a jurisdiction, the local law of
7 that jurisdiction governs perfection, the effect of
8 perfection or nonperfection and the priority of a security
9 interest in collateral;

10 (2) while collateral is located in a jurisdiction,
11 the local law of that jurisdiction governs perfection, the
12 effect of perfection or nonperfection and the priority of a
13 possessory security interest in that collateral;

14 (3) except as otherwise provided in Subsection (4)
15 of this section, while tangible negotiable tangible
16 documents, goods, instruments or tangible money is located in
17 a jurisdiction, the local law of that jurisdiction governs:

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

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

22 (C) the effect of perfection or
23 nonperfection and the priority of a nonpossessory security
24 interest in the collateral; and

25 (4) the local law of the jurisdiction in which the

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

4 SECTION 57. Section 55-9-304 NMSA 1978 (being Laws
5 2001, Chapter 139, Section 24, as amended) is amended to
6 read:

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

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

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

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

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

1 jurisdiction, that jurisdiction is the bank's jurisdiction;

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

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

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

15 **SECTION 58.** Section 55-9-305 NMSA 1978 (being Laws
16 2001, Chapter 139, Section 25) is amended to read:

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

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

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

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

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

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

15 (5) Paragraphs (2), (3) and (4) of this
16 subsection apply even if the transaction does not bear any
17 relation to the jurisdiction.

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

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

1 intermediary's jurisdiction;

2 (2) if Paragraph (1) of this subsection does
3 not apply and an agreement between the commodity intermediary
4 and commodity customer governing the commodity account
5 expressly provides that the agreement is governed by the law
6 of a particular jurisdiction, that jurisdiction is the
7 commodity intermediary's jurisdiction;

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

15 (4) if none of the preceding paragraphs
16 applies, the commodity intermediary's jurisdiction is the
17 jurisdiction in which the office identified in an account
18 statement as the office serving the commodity customer's
19 account is located; and

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

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

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

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

6 (3) automatic perfection of a security
7 interest in a commodity contract or commodity account created
8 by a commodity intermediary."

9 **SECTION 59.** A new section of the Uniform Commercial
10 Code, Section 55-9-306A NMSA 1978, is enacted to read:

11 "55-9-306A. LAW GOVERNING PERFECTION AND PRIORITY OF
12 SECURITY INTERESTS IN CHATTEL PAPER.--

13 (a) Except as provided in Subsection (d) of this
14 section, if chattel paper is evidenced only by an
15 authoritative electronic copy of the chattel paper or is
16 evidenced by an authoritative electronic copy and an
17 authoritative tangible copy, the local law of the chattel
18 paper's jurisdiction governs perfection, the effect of
19 perfection or nonperfection and the priority of a security
20 interest in the chattel paper, even if the transaction does
21 not bear any relation to the chattel paper's jurisdiction.

22 (b) The following rules determine the chattel
23 paper's jurisdiction under this section:

24 (1) if the authoritative electronic copy of
25 the record evidencing chattel paper, or a record attached to

1 or logically associated with the electronic copy and readily
2 available for review, expressly provides that a particular
3 jurisdiction is the chattel paper's jurisdiction for purposes
4 of this part or the Uniform Commercial Code, that
5 jurisdiction is the chattel paper's jurisdiction;

6 (2) if Paragraph (1) of this subsection does
7 not apply and the rules of the system in which the
8 authoritative electronic copy is recorded are readily
9 available for review and expressly provide that a particular
10 jurisdiction is the chattel paper's jurisdiction for purposes
11 of this part or the Uniform Commercial Code, that
12 jurisdiction is the chattel paper's jurisdiction;

13 (3) if Paragraphs (1) and (2) of this
14 section do not apply and the authoritative electronic copy,
15 or a record attached to or logically associated with the
16 electronic copy and readily available for review, expressly
17 provides that the chattel paper is governed by the law of a
18 particular jurisdiction, that jurisdiction is the chattel
19 paper's jurisdiction;

20 (4) if Paragraphs (1), (2) and (3) of this
21 subsection do not apply and the rules of the system in which
22 the authoritative electronic copy is recorded are readily
23 available for review and expressly provide that the chattel
24 paper or the system is governed by the law of a particular
25 jurisdiction, that jurisdiction is the chattel paper's

1 jurisdiction; and

2 (5) if Paragraphs (1) through (4) of this
3 subsection do not apply, the chattel paper's jurisdiction is
4 the jurisdiction in which the debtor is located.

5 (c) If an authoritative tangible copy of a record
6 evidences chattel paper and the chattel paper is not
7 evidenced by an authoritative electronic copy, while the
8 authoritative tangible copy of the record evidencing chattel
9 paper is located in a jurisdiction, the local law of that
10 jurisdiction governs:

11 (1) perfection of a security interest in the
12 chattel paper by possession under Section 55-9-314A NMSA
13 1978; and

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

17 (d) The local law of the jurisdiction in which the
18 debtor is located governs perfection of a security interest
19 in chattel paper by filing."

20 **SECTION 60.** A new section of the Uniform Commercial
21 Code, Section 55-9-306B NMSA 1978, is enacted to read:

22 "55-9-306B. LAW GOVERNING PERFECTION AND PRIORITY OF
23 SECURITY INTERESTS IN CONTROLLABLE ACCOUNTS, CONTROLLABLE
24 ELECTRONIC RECORDS AND CONTROLLABLE PAYMENT INTANGIBLES.--

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

1 section, the local law of the controllable electronic
2 record's jurisdiction specified in Subsections (c) and (d) of
3 Section 55-12-107 NMSA 1978 governs perfection, the effect of
4 perfection or nonperfection and the priority of a security
5 interest in a controllable electronic record and a security
6 interest in a controllable account or controllable payment
7 intangible evidenced by the controllable electronic record.

8 (b) The local law of the jurisdiction in which the
9 debtor is located governs:

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

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

16 **SECTION 61.** Section 55-9-310 NMSA 1978 (being Laws
17 2001, Chapter 139, Section 30, as amended) is amended to
18 read:

19 "55-9-310. WHEN FILING REQUIRED TO PERFECT SECURITY
20 INTEREST OR AGRICULTURAL LIEN--SECURITY INTERESTS AND
21 AGRICULTURAL LIENS TO WHICH FILING PROVISIONS DO NOT APPLY.--

22 (a) Except as otherwise provided in Subsection (b)
23 of this section and in Section 55-9-312 NMSA 1978, a
24 financing statement must be filed to perfect all security
25 interests and agricultural liens.

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

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

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

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

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

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

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

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

22 (8) in controllable accounts, controllable
23 electronic records, controllable payment intangibles, deposit
24 accounts, electronic documents, investment property or
25 letter-of-credit rights that is perfected by control under

1 Section 55-9-314 NMSA 1978;

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

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

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

11 SECTION 62. Section 55-9-312 NMSA 1978 (being Laws
12 2001, Chapter 139, Section 32, as amended) is amended to
13 read:

14 "55-9-312. PERFECTION OF SECURITY INTERESTS IN CHATTEL
15 PAPER, CONTROLLABLE ACCOUNTS, CONTROLLABLE ELECTRONIC
16 RECORDS, CONTROLLABLE PAYMENT INTANGIBLES, DEPOSIT ACCOUNTS,
17 DOCUMENTS, GOODS COVERED BY DOCUMENTS, INSTRUMENTS,
18 INVESTMENT PROPERTY, LETTER-OF-CREDIT RIGHTS AND MONEY--
19 PERFECTION BY PERMISSIVE FILING--TEMPORARY PERFECTION WITHOUT
20 FILING OR TRANSFER OF POSSESSION.--

21 (a) A security interest in chattel paper,
22 controllable accounts, controllable electronic records,
23 controllable payment intangibles, instruments, investment
24 property or negotiable documents may be perfected by filing.

25 (b) Except as otherwise provided in Subsections

1 (c) and (d) of Section 55-9-315 NMSA 1978 for proceeds:

2 (1) a security interest in a deposit account
3 may be perfected only by control under Section 55-9-314 NMSA
4 1978;

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

9 (3) a security interest in tangible money
10 may be perfected only by the secured party's taking
11 possession under Section 55-9-313 NMSA 1978; and

12 (4) a security interest in electronic money
13 may be perfected only by control under Section 55-9-314 NMSA
14 1978.

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

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

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

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

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

3 (2) the bailee's receipt of notification of
4 the secured party's interest; or

5 (3) filing as to the goods.

6 (e) A security interest in certificated
7 securities, negotiable documents or instruments is perfected
8 without filing or the taking of possession or control for a
9 period of twenty days from the time it attaches to the extent
10 that it arises for new value given under a signed security
11 agreement.

12 (f) A perfected security interest in a negotiable
13 document or goods in possession of a bailee, other than one
14 that has issued a negotiable document for the goods, remains
15 perfected for twenty days without filing if the secured party
16 makes available to the debtor the goods or documents
17 representing the goods for the purpose of:

18 (1) ultimate sale or exchange; or

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

22 (g) A perfected security interest in a
23 certificated security or instrument remains perfected for
24 twenty days without filing if the secured party delivers the
25 security certificate or instrument to the debtor for the

1 purpose of:

2 (1) ultimate sale or exchange; or

3 (2) presentation, collection, enforcement,
4 renewal or registration of transfer.

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

9 SECTION 63. Section 55-9-313 NMSA 1978 (being Laws
10 2001, Chapter 139, Section 33, as amended) is amended to
11 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 goods, instruments, negotiable tangible documents
17 or tangible money by taking possession of the collateral. A
18 secured party may perfect a security interest in certificated
19 securities by taking delivery of the certificated securities
20 under Section 55-8-301 NMSA 1978.

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

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

7 (1) the person in possession signs a record
8 acknowledging that it holds possession of the collateral for
9 the secured party's benefit; or

10 (2) the person takes possession of the
11 collateral after having signed a record acknowledging that it
12 will hold possession of the collateral for the secured
13 party's benefit.

14 (d) If perfection of a security interest depends
15 upon possession of the collateral by a secured party,
16 perfection occurs not earlier than the time the secured party
17 takes possession and continues only while the secured party
18 retains possession.

19 (e) A security interest in a certificated security
20 in registered form is perfected by delivery when delivery of
21 the certificated security occurs under Section 55-8-301 NMSA
22 1978 and remains perfected by delivery until the debtor
23 obtains possession of the security certificate.

24 (f) A person in possession of collateral is not
25 required to acknowledge that it holds possession for a

1 secured party's benefit.

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

4 (1) the acknowledgment is effective under
5 Subsection (c) of this section or Subsection (a) of Section
6 55-8-301 NMSA 1978, even if the acknowledgment violates the
7 rights of a debtor; and

8 (2) unless the person otherwise agrees or
9 law other than Chapter 55, Article 9 NMSA 1978 otherwise
10 provides, the person does not owe any duty to the secured
11 party and is not required to confirm the acknowledgment to
12 another person.

13 (h) A secured party having possession of
14 collateral does not relinquish possession by delivering the
15 collateral to a person other than the debtor or a lessee of
16 the collateral from the debtor in the ordinary course of the
17 debtor's business if the person was instructed before the
18 delivery or is instructed contemporaneously with the
19 delivery:

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

22 (2) to redeliver the collateral to the
23 secured party.

24 (i) A secured party does not relinquish
25 possession, even if a delivery under Subsection (h) of this

1 section violates the rights of a debtor. A person to which
2 collateral is delivered under Subsection (h) of this section
3 does not owe any duty to the secured party and is not
4 required to confirm the delivery to another person unless the
5 person otherwise agrees or law other than Chapter 55, Article
6 9 NMSA 1978 otherwise provides."

7 SECTION 64. Section 55-9-314 NMSA 1978 (being Laws
8 2001, Chapter 139, Section 34, as amended) is amended to
9 read:

10 "55-9-314. PERFECTION BY CONTROL.--

11 (a) A security interest in controllable accounts,
12 controllable electronic records, controllable payment
13 intangibles, deposit accounts, electronic documents,
14 electronic money, investment property or letter-of-credit
15 rights may be perfected by control of the collateral under
16 Section 55-7-106, 55-9-104, 55-9-105A, 55-9-106, 55-9-107 or
17 55-9-107A NMSA 1978.

18 (b) A security interest in controllable accounts,
19 controllable electronic records, controllable payment
20 intangibles, deposit accounts, electronic documents,
21 electronic money or letter-of-credit rights is perfected by
22 control under Section 55-7-106, 55-9-104, 55-9-105A, 55-9-107
23 or 55-9-107A NMSA 1978 when the secured party obtains control
24 and remains perfected by control only while the secured party
25 retains control.

1 (c) A security interest in investment property is
2 perfected by control under Section 55-9-106 NMSA 1978 not
3 earlier than the time the secured party obtains control and
4 remains perfected by control until:

5 (1) the secured party does not have control;

6 and

7 (2) one of the following occurs:

8 (A) if the collateral is a certificated
9 security, the debtor has or acquires possession of the
10 security certificate;

11 (B) if the collateral is an
12 uncertificated security, the issuer has registered or
13 registers the debtor as the registered owner; or

14 (C) if the collateral is a security
15 entitlement, the debtor is or becomes the entitlement
16 holder."

17 SECTION 65. A new section of the Uniform Commercial
18 Code, Section 55-9-314A NMSA 1978, is enacted to read:

19 "55-9-314A. PERFECTION BY POSSESSION AND CONTROL OF
20 CHATTEL PAPER.--

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

1 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
5 remains perfected under that subsection only while the
6 secured party 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
12 2001, Chapter 139, Section 36, as amended) is amended to
13 read:

14 "55-9-316. EFFECT OF CHANGE IN GOVERNING LAW.--

15 (a) A security interest perfected pursuant to the
16 law of the jurisdiction designated in Subsection (1) of
17 Section 55-9-301, Subsection (c) of Section 55-9-305,
18 Subsection (d) of Section 55-9-306A or Subsection (b) of
19 Section 55-9-306B NMSA 1978 remains perfected until the
20 earliest of:

21 (1) the time perfection would have ceased
22 under the law of that jurisdiction;

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

25 (3) the expiration of one year after a

1 transfer of collateral to a person that thereby becomes a
2 debtor and is located in another jurisdiction.

3 (b) If a security interest described in Subsection
4 (a) of this section becomes perfected under the law of the
5 other jurisdiction before the earliest time or event
6 described in that subsection, it remains perfected
7 thereafter. If the security interest does not become
8 perfected under the law of the other jurisdiction before the
9 earliest time or event, it becomes unperfected and is deemed
10 never to have been perfected as against a purchaser of the
11 collateral for value.

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

16 (1) the collateral is located in one
17 jurisdiction and subject to a security interest perfected
18 under the law of that jurisdiction;

19 (2) thereafter the collateral is brought
20 into another jurisdiction; and

21 (3) upon entry into the other jurisdiction,
22 the security interest is perfected under the law of the other
23 jurisdiction.

24 (d) Except as otherwise provided in Subsection (e)
25 of this section, a security interest in goods covered by a

1 certificate of title that is perfected by any method under
2 the law of another jurisdiction when the goods become covered
3 by a certificate of title from this state remains perfected
4 until the security interest would have become unperfected
5 under the law of the other jurisdiction had the goods not
6 become so covered.

7 (e) A security interest described in Subsection
8 (d) of this section becomes unperfected as against a
9 purchaser of the goods for value and is deemed never to have
10 been perfected as against a purchaser of the goods for value
11 if the applicable requirements for perfection under
12 Subsection (b) of Section 55-9-311 or Section 55-9-313 NMSA
13 1978 are not satisfied before the earlier of:

14 (1) the time the security interest would
15 have become unperfected under the law of the other
16 jurisdiction had the goods not become covered by a
17 certificate of title from this state; or

18 (2) the expiration of four months after the
19 goods had become so covered.

20 (f) A security interest in chattel paper,
21 controllable accounts, controllable electronic records,
22 controllable payment intangibles, deposit accounts, letter-
23 of-credit rights or investment property that is perfected
24 under the law of the chattel paper's jurisdiction, the
25 controllable electronic record's jurisdiction, the bank's

1 jurisdiction, the issuer's jurisdiction, a nominated person's
2 jurisdiction, the securities intermediary's jurisdiction or
3 the commodity intermediary's jurisdiction, as applicable,
4 remains perfected until the earlier of:

5 (1) the time the security interest would
6 have become unperfected under the law of that jurisdiction;
7 or

8 (2) the expiration of four months after a
9 change of the applicable jurisdiction to another
10 jurisdiction.

11 (g) If a security interest described in Subsection
12 (f) of this section becomes perfected under the law of the
13 other jurisdiction before the earlier of the time or the end
14 of the period described in that subsection, it remains
15 perfected thereafter. If the security interest does not
16 become perfected under the law of the other jurisdiction
17 before the earlier of that time or the end of that period, it
18 becomes unperfected and is deemed never to have been
19 perfected as against a purchaser of the collateral for value.

20 (h) The following rules apply to collateral to
21 which a security interest attaches within four months after
22 the debtor changes its location to another jurisdiction:

23 (1) a financing statement filed before the
24 change pursuant to the law of the jurisdiction designated in
25 Paragraph (1) of Section 55-9-301 or Subsection (c) of

1 Section 55-9-305 NMSA 1978 is effective to perfect a security
2 interest in the collateral if the financing statement would
3 have been effective to perfect a security interest in the
4 collateral had the debtor not changed its location; and

5 (2) if a security interest perfected by a
6 financing statement that is effective under Paragraph (1) of
7 this subsection becomes perfected under the law of the other
8 jurisdiction before the earlier of the time the financing
9 statement would have become ineffective under the law of the
10 jurisdiction designated in Subsection (1) of Section 55-9-301
11 or Subsection (c) of Section 55-9-305 NMSA 1978 or the
12 expiration of the four-month period, it remains perfected
13 thereafter. If the security interest does not become
14 perfected under the law of the other jurisdiction before the
15 earlier time or event, it becomes unperfected and is deemed
16 never to have been perfected as against a purchaser of the
17 collateral for value.

18 (i) If a financing statement naming an original
19 debtor is filed pursuant to the law of the jurisdiction
20 designated in Subsection (1) of Section 55-9-301 or
21 Subsection (c) of Section 55-9-305 NMSA 1978 and the new
22 debtor is located in another jurisdiction, the following
23 rules apply:

24 (1) the financing statement is effective to
25 perfect a security interest in collateral acquired by the new

1 debtor before, and within four months after, the new debtor
2 becomes bound under Subsection (d) of Section 55-9-203 NMSA
3 1978 if the financing statement would have been effective to
4 perfect a security interest in the collateral had the
5 collateral been acquired by the original debtor; and

6 (2) a security interest perfected by the
7 financing statement that becomes perfected under the law of
8 the other jurisdiction before the earlier of the time the
9 financing statement would have become ineffective under the
10 law of the jurisdiction designated in Subsection (1) of
11 Section 55-9-301 or Subsection (c) of Section 55-9-305 NMSA
12 1978 or the expiration of the four-month period remains
13 perfected thereafter. A security interest that is perfected
14 by the financing statement but that does not become perfected
15 under the law of the other jurisdiction before the earlier
16 time or event becomes unperfected and is deemed never to have
17 been perfected as against a purchaser of the collateral for
18 value."

19 SECTION 67. Section 55-9-317 NMSA 1978 (being Laws
20 2001, Chapter 139, Section 37, as amended) is amended to
21 read:

22 "55-9-317. INTERESTS THAT TAKE PRIORITY OVER OR TAKE
23 FREE OF SECURITY INTEREST OR AGRICULTURAL LIEN.--

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

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

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

6 (A) the security interest or
7 agricultural lien is perfected; or

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

12 (b) Except as otherwise provided in Subsection (e)
13 of this section, a buyer, other than a secured party, of
14 goods, instruments, tangible documents or a security
15 certificate takes free of a security interest or agricultural
16 lien if the buyer gives value and receives delivery of the
17 collateral without knowledge of the security interest or
18 agricultural lien and before it is perfected.

19 (c) Except as otherwise provided in Subsection (e)
20 of this section, a lessee of goods takes free of a security
21 interest or agricultural lien if the lessee gives value and
22 receives delivery of the collateral without knowledge of the
23 security interest or agricultural lien and before it is
24 perfected.

25 (d) Subject to Subsections (f) through (i) of this

1 section, a licensee of a general intangible or a buyer, other
2 than a secured party, of collateral other than electronic
3 money, goods, instruments, tangible documents or a
4 certificated security takes free of a security interest if
5 the licensee or buyer gives value without knowledge of the
6 security interest and before it is perfected.

7 (e) Except as otherwise provided in Sections
8 55-9-320 and 55-9-321 NMSA 1978, if a person files a
9 financing statement with respect to a purchase-money security
10 interest before or within twenty days after the debtor
11 receives delivery of the collateral, the security interest
12 takes priority over the rights of a buyer, lessee or lien
13 creditor that arise between the time the security interest
14 attaches and the time of filing.

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

19 (1) receives delivery of each authoritative
20 tangible copy of the record evidencing the chattel paper; and

21 (2) if each authoritative electronic copy of
22 the record evidencing the chattel paper can be subjected to
23 control under Section 55-9-105 NMSA 1978, obtains control of
24 each authoritative electronic copy.

25 (g) A buyer of an electronic document takes free

1 of a security interest if, without knowledge of the security
2 interest and before it is perfected, the buyer gives value
3 and, if each authoritative electronic copy of the document
4 can be subjected to control under Section 55-7-106 NMSA 1978,
5 obtains control of each authoritative electronic copy.

6 (h) A buyer of a controllable electronic record
7 takes free of a security interest if, without knowledge of
8 the security interest and before it is perfected, the buyer
9 gives value and obtains control of the controllable
10 electronic record.

11 (i) A buyer, other than a secured party, of a
12 controllable account or a controllable payment intangible
13 takes free of a security interest if, without knowledge of
14 the security interest and before it is perfected, the buyer
15 gives value and obtains control of the controllable account
16 or controllable payment intangible."

17 **SECTION 68.** Section 55-9-323 NMSA 1978 (being Laws
18 2001, Chapter 139, Section 43) is amended to read:

19 "55-9-323. FUTURE ADVANCES.--

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

1 that:

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

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

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

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

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

18 (1) without knowledge of the lien; or

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

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

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

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

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

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

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

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

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

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

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

24 **SECTION 69.** Section 55-9-324 NMSA 1978 (being Laws
25 2001, Chapter 139, Section 44) is amended to read:

1 "55-9-324. PRIORITY OF PURCHASE-MONEY SECURITY

2 INTERESTS.--

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

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

25 (1) the purchase-money security interest is

1 perfected when the debtor receives possession of the
2 inventory;

3 (2) the purchase-money secured party sends a
4 signed notification to the holder of the conflicting security
5 interest;

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

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

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

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

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

23 (d) Subject to Subsection (e) of this section and
24 except as otherwise provided in Subsection (g) of this
25 section, a perfected purchase-money security interest in

1 livestock that are farm products has priority over a
2 conflicting security interest in the same livestock, and,
3 except as otherwise provided in Section 55-9-327 NMSA 1978, a
4 perfected security interest in their identifiable proceeds
5 and identifiable products in their unmanufactured states also
6 has priority, if:

7 (1) the purchase-money security interest is
8 perfected when the debtor receives possession of the
9 livestock;

10 (2) the purchase-money secured party sends a
11 signed notification to the holder of the conflicting security
12 interest;

13 (3) the holder of the conflicting security
14 interest receives the notification within six months before
15 the debtor receives possession of the livestock; and

16 (4) the notification states that the person
17 sending the notification has or expects to acquire a
18 purchase-money security interest in livestock of the debtor
19 and describes the livestock.

20 (e) Paragraphs (2) through (4) of Subsection (d)
21 of this section apply only if the holder of the conflicting
22 security interest had filed a financing statement covering
23 the same types of livestock:

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

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

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

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

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

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

25 **SECTION 70.** A new section of the Uniform Commercial

1 Code, Section 55-9-326A NMSA 1978, is enacted to read:

2 "55-9-326A. PRIORITY OF SECURITY INTEREST IN
3 CONTROLLABLE ACCOUNT, CONTROLLABLE ELECTRONIC RECORD AND
4 CONTROLLABLE PAYMENT INTANGIBLE.--A security interest in a
5 controllable account, controllable electronic record or
6 controllable payment intangible held by a secured party
7 having control of the account, electronic record or payment
8 intangible has priority over a conflicting security interest
9 held by a secured party that does not have control."

10 SECTION 71. Section 55-9-330 NMSA 1978 (being Laws
11 2001, Chapter 139, Section 50) is amended to read:

12 "55-9-330. PRIORITY OF PURCHASER OF CHATTEL PAPER OR
13 INSTRUMENT.--

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

18 (1) in good faith and in the ordinary course
19 of the purchaser's business, the purchaser gives new value,
20 takes possession of each authoritative tangible copy of the
21 record evidencing the chattel paper and obtains control under
22 Section 55-9-105 NMSA 1978 of each authoritative electronic
23 copy of the record evidencing the chattel paper; and

24 (2) the authoritative copies of the record
25 evidencing the chattel paper do not indicate that the chattel

1 paper has been assigned to an identified assignee other than
2 the purchaser.

3 (b) A purchaser of chattel paper has priority over
4 a security interest in the chattel paper which is claimed
5 other than merely as proceeds of inventory subject to a
6 security interest if the purchaser gives new value, takes
7 possession of each authoritative tangible copy of the record
8 evidencing the chattel paper and obtains control under
9 Section 55-9-105 NMSA 1978 of each authoritative electronic
10 copy of the record evidencing the chattel paper in good
11 faith, in the ordinary course of the purchaser's business and
12 without knowledge that the purchase violates the rights of
13 the secured party.

14 (c) Except as otherwise provided in Section
15 55-9-327 NMSA 1978, a purchaser having priority in chattel
16 paper under Subsection (a) or (b) of this section also has
17 priority in proceeds of the chattel paper to the extent that:

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

20 (2) the proceeds consist of the specific
21 goods covered by the chattel paper or cash proceeds of the
22 specific goods, even if the purchaser's security interest in
23 the proceeds is unperfected.

24 (d) Except as otherwise provided in Subsection (a)
25 of Section 55-9-331 NMSA 1978, a purchaser of an instrument

1 has priority over a security interest in the instrument
2 perfected by a method other than possession if the purchaser
3 gives value and takes possession of the instrument in good
4 faith and without knowledge that the purchase violates the
5 rights of the secured party.

6 (e) For purposes of Subsections (a) and (b) of
7 this section, the holder of a purchase-money security
8 interest in inventory gives new value for chattel paper
9 constituting proceeds of the inventory.

10 (f) For purposes of Subsections (b) and (d) of
11 this section, if the authoritative copies of the record
12 evidencing chattel paper or an instrument indicate that the
13 chattel paper or instrument has been assigned to an
14 identified secured party other than the purchaser, a
15 purchaser of the chattel paper or instrument has knowledge
16 that the purchase violates the rights of the secured party."

17 **SECTION 72.** Section 55-9-331 NMSA 1978 (being Laws
18 2001, Chapter 139, Section 51, as amended) is amended to
19 read:

20 "55-9-331. PRIORITY OF RIGHTS OF PURCHASERS OF
21 CONTROLLABLE ACCOUNTS, CONTROLLABLE ELECTRONIC RECORDS,
22 CONTROLLABLE PAYMENT INTANGIBLES, DOCUMENTS, INSTRUMENTS AND
23 SECURITIES UNDER OTHER ARTICLES--PRIORITY OF INTERESTS IN
24 FINANCIAL ASSETS AND SECURITY ENTITLEMENTS AND PROTECTION
25 AGAINST ASSERTION OF CLAIM UNDER CHAPTER 55, ARTICLES 8 AND 9

1 NMSA 1978.--

2 (a) Chapter 55, Article 9 NMSA 1978 does not limit
3 the rights of a holder in due course of a negotiable
4 instrument, a holder to which a negotiable document of title
5 has been duly negotiated or a protected purchaser of a
6 security or a qualifying purchaser of a controllable account,
7 controllable electronic record or controllable payment
8 intangible. These holders or purchasers take priority over
9 an earlier security interest, even if perfected, to the
10 extent provided in Chapter 55, Articles 3, 7, 8 and 12 NMSA
11 1978.

12 (b) Chapter 55, Article 9 NMSA 1978 does not limit
13 the rights of or impose liability on a person to the extent
14 that the person is protected against the assertion of a claim
15 under Chapter 55, Articles 8 and 12 NMSA 1978.

16 (c) Filing under Chapter 55, Article 9 NMSA 1978
17 does not constitute notice of a claim or defense to the
18 holders, or purchasers, or persons described in Subsections
19 (a) and (b) of this section."

20 **SECTION 73.** Section 55-9-332 NMSA 1978 (being Laws
21 2001, Chapter 139, Section 52) is amended to read:

22 "55-9-332. TRANSFER OF MONEY--TRANSFER OF FUNDS FROM
23 DEPOSIT ACCOUNT.--

24 (a) A transferee of tangible money takes the money
25 free of a security interest if the transferee receives

1 possession of the money without acting in collusion with the
2 debtor in violating the rights of the secured party.

3 (b) A transferee of funds from a deposit account
4 takes the funds free of a security interest in the deposit
5 account if the transferee receives the funds without acting
6 in collusion with the debtor in violating the rights of the
7 secured party.

8 (c) A transferee of electronic money takes the
9 money free of a security interest if the transferee obtains
10 control of the money without acting in collusion with the
11 debtor in violating the rights of the secured party."

12 SECTION 74. Section 55-9-334 NMSA 1978 (being Laws
13 2001, Chapter 139, Section 54) is amended to read:

14 "55-9-334. PRIORITY OF SECURITY INTERESTS IN
15 FIXTURES.--

16 (a) A security interest under Chapter 55, Article
17 9 NMSA 1978 may be created in goods that are fixtures or may
18 continue in goods that become fixtures. A security interest
19 does not exist under this article in ordinary building
20 materials incorporated into an improvement on land.

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

24 (c) In cases not governed by Subsections (d)
25 through (h) of this section, a security interest in fixtures

1 is subordinate to a conflicting interest of an encumbrancer
2 or owner of the related real property other than the debtor.

3 (d) Except as otherwise provided in Subsection (h)
4 of this section, a perfected security interest in fixtures
5 has priority over a conflicting interest of an encumbrancer
6 or owner of the real property if the debtor has an interest
7 of record in or is in possession of the real property and:

8 (1) the security interest is a purchase-
9 money security interest;

10 (2) the interest of the encumbrancer or
11 owner arises before the goods become fixtures; and

12 (3) the security interest is perfected by a
13 fixture filing before the goods become fixtures or within
14 twenty days thereafter.

15 (e) A perfected security interest in fixtures has
16 priority over a conflicting interest of an encumbrancer or
17 owner of the real property if:

18 (1) the debtor has an interest of record in
19 the real property or is in possession of the real property
20 and the security interest:

21 (A) is perfected by a fixture filing
22 before the interest of the encumbrancer or owner is of
23 record; and

24 (B) has priority over any conflicting
25 interest of a predecessor in title of the encumbrancer or

1 owner;

2 (2) before the goods become fixtures, the
3 security interest is perfected by any method permitted by
4 Chapter 55, Article 9 NMSA 1978, and the fixtures are readily
5 removable:

6 (A) factory or office machines;

7 (B) equipment that is not primarily
8 used or leased for use in the operation of the real property;
9 or

10 (C) replacements of domestic appliances
11 that are consumer goods;

12 (3) the conflicting interest is a lien on
13 the real property obtained by legal or equitable proceedings
14 after the security interest was perfected by any method
15 permitted by this article; or

16 (4) the security interest is:

17 (A) created in a manufactured home in a
18 manufactured-home transaction; and

19 (B) perfected pursuant to a statute
20 described in Paragraph (2) of Subsection (a) of Section
21 55-9-311 NMSA 1978.

22 (f) A security interest in fixtures, whether or
23 not perfected, has priority over a conflicting interest of an
24 encumbrancer or owner of the real property if:

25 (1) the encumbrancer or owner has, in a

1 signed record, consented to the security interest or
2 disclaimed an interest in the goods as fixtures; or

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

5 (g) The priority of the security interest under
6 Paragraph (2) of Subsection (f) of this section continues for
7 a reasonable time if the debtor's right to remove the goods
8 as against the encumbrancer or owner terminates.

9 (h) A mortgage is a construction mortgage to the
10 extent that it secures an obligation incurred for the
11 construction of an improvement on land, including the
12 acquisition cost of the land, if a recorded record of the
13 mortgage so indicates. Except as otherwise provided in
14 Subsections (e) and (f) of this section, a security interest
15 in fixtures is subordinate to a construction mortgage if a
16 record of the mortgage is recorded before the goods become
17 fixtures and the goods become fixtures before the completion
18 of the construction. A mortgage has this priority to the
19 same extent as a construction mortgage to the extent that it
20 is given to refinance a construction mortgage."

21 **SECTION 75.** Section 55-9-341 NMSA 1978 (being Laws
22 2001, Chapter 139, Section 61) is amended to read:

23 "55-9-341. BANK'S RIGHTS AND DUTIES WITH RESPECT TO
24 DEPOSIT ACCOUNT.--Except as otherwise provided in Subsection
25 (c) of Section 55-9-340 NMSA 1978, and unless the bank

1 otherwise agrees in a signed record, a bank's rights and
2 duties with respect to a deposit account maintained with the
3 bank are not terminated, suspended or modified by:

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

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

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

10 SECTION 76. Section 55-9-404 NMSA 1978 (being Laws
11 2001, Chapter 139, Section 66) is amended to read:

12 "55-9-404. RIGHTS ACQUIRED BY ASSIGNEE--CLAIMS AND
13 DEFENSES AGAINST ASSIGNEE.--

14 (a) Unless an account debtor has made an
15 enforceable agreement not to assert defenses or claims, and
16 subject to Subsections (b) through (e) of this section, the
17 rights of an assignee are subject to:

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

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

1 (b) Subject to Subsection (c) of this section and
2 except as otherwise provided in Subsection (d) of this
3 section, the claim of an account debtor against an assignor
4 may be asserted against an assignee under Subsection (a) of
5 this section only to reduce the amount the account debtor
6 owes.

7 (c) This section is subject to law other than
8 Chapter 55, Article 9 NMSA 1978 which establishes a different
9 rule for an account debtor who is an individual and who
10 incurred the obligation primarily for personal, family or
11 household purposes.

12 (d) In a consumer transaction, if a record
13 evidences the account debtor's obligation, law other than
14 Chapter 55, Article 9 NMSA 1978 requires that the record
15 include a statement to the effect that the account debtor's
16 recovery against an assignee with respect to claims and
17 defenses against the assignor may not exceed amounts paid by
18 the account debtor under the record, and if the record does
19 not include such a statement, the extent to which a claim of
20 an account debtor against the assignor may be asserted
21 against an assignee is determined as if the record included
22 such a statement.

23 (e) This section does not apply to an assignment
24 of a health-care-insurance receivable."

25 **SECTION 77.** Section 55-9-406 NMSA 1978 (being Laws

1 2001, Chapter 139, Section 68, as amended) is amended to
2 read:

3 "55-9-406. DISCHARGE OF ACCOUNT DEBTOR--NOTIFICATION OF
4 ASSIGNMENT--IDENTIFICATION AND PROOF OF ASSIGNMENT--
5 RESTRICTIONS ON ASSIGNMENT OF ACCOUNTS, CHATTEL PAPER,
6 PAYMENT INTANGIBLES AND PROMISSORY NOTES INEFFECTIVE.--

7 (a) Subject to Subsections (b) through (i) and (l)
8 of this section, an account debtor on an account, chattel
9 paper or a payment intangible may discharge its obligation by
10 paying the assignor until, but not after, the account debtor
11 receives a notification, signed by the assignor or the
12 assignee, that the amount due or to become due has been
13 assigned and that payment is to be made to the assignee.
14 After receipt of the notification, the account debtor may
15 discharge its obligation by paying the assignee and may not
16 discharge the obligation by paying the assignor.

17 (b) Subject to Subsections (h) and (l) of this
18 section, notification is ineffective under Subsection (a) of
19 this section:

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

22 (2) to the extent that an agreement between
23 an account debtor and a seller of a payment intangible limits
24 the account debtor's duty to pay a person other than the
25 seller and the limitation is effective under law other than

1 Chapter 55, Article 9 NMSA 1978; or

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

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

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

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

13 (c) Subject to Subsections (h) and (l) of this
14 section, if requested by the account debtor, an assignee
15 shall seasonably furnish reasonable proof that the assignment
16 has been made. Unless the assignee complies, the account
17 debtor may discharge its obligation by paying the assignor,
18 even if the account debtor has received a notification under
19 Subsection (a) of this section.

20 (d) In this subsection, "promissory note" includes
21 a negotiable instrument that evidences chattel paper. Except
22 as otherwise provided in Subsections (e) and (k) of this
23 section and Sections 55-2A-303 and 55-9-407 NMSA 1978, and
24 subject to Subsection (h) of this section, a term in an
25 agreement between an account debtor and an assignor or in a

1 promissory note is ineffective to the extent that it:

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

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

14 (e) Subsection (d) of this section does not apply
15 to the sale of a payment intangible or promissory note, other
16 than a sale pursuant to a disposition under Section 55-9-610
17 NMSA 1978 or an acceptance of collateral under Section 55-9-
18 620 NMSA 1978.

19 (f) Except as otherwise provided in Subsection (k)
20 of this section and Sections 55-2A-303 and 55-9-407 NMSA 1978
21 and subject to Subsections (h) and (i) of this section, a
22 rule of law, statute or regulation that prohibits, restricts
23 or requires the consent of a government, governmental body or
24 official, or account debtor to the assignment or transfer of,
25 or creation of a security interest in, an account or chattel

1 paper is ineffective to the extent that the rule of law,
2 statute or regulation:

3 (1) prohibits, restricts or requires the
4 consent of the government, governmental body or official, or
5 account debtor to the assignment or transfer of, or the
6 creation, attachment, perfection or enforcement of a security
7 interest in the account or chattel paper; or

8 (2) provides that the assignment or transfer
9 or the creation, attachment, perfection or enforcement of the
10 security interest may give rise to a default, breach, right
11 of recoupment, claim, defense, termination, right of
12 termination or remedy under the account or chattel paper.

13 (g) Subject to Subsections (h) and (1) of this
14 section, an account debtor may not waive or vary its option
15 under Paragraph (3) of Subsection (b) of this section.

16 (h) This section is subject to law other than
17 Chapter 55, Article 9 NMSA 1978 that establishes a different
18 rule for an account debtor who is an individual and who
19 incurred the obligation primarily for personal, family or
20 household purposes.

21 (i) This section does not apply to an assignment
22 of a health-care-insurance receivable.

23 (j) This section is subject to laws other than
24 Chapter 55, Article 9 NMSA 1978 to the extent that those laws
25 prohibit or restrict the assignment, transfer of or creation

1 of a security interest in benefits, compensation, any other
2 account or chattel paper.

3 (k) Subsections (d), (f) and (j) of this section
4 do not apply to a security interest in an ownership interest
5 in a general partnership, limited liability partnership,
6 limited partnership, limited liability limited partnership or
7 limited liability company.

8 (l) Subsections (a), (b), (c) and (g) of this
9 section do not apply to a controllable account or
10 controllable payment intangible."

11 SECTION 78. Section 55-9-408 NMSA 1978 (being Laws
12 2001, Chapter 139, Section 70, as amended) is amended to
13 read:

14 "55-9-408. RESTRICTIONS ON ASSIGNMENT OF PROMISSORY
15 NOTES, HEALTH-CARE-INSURANCE RECEIVABLES AND CERTAIN GENERAL
16 INTANGIBLES INEFFECTIVE.--

17 (a) Except as otherwise provided in Subsections
18 (b) and (e) of this section, a term in a promissory note or
19 in an agreement between an account debtor and a debtor that
20 relates to a health-care-insurance receivable or a general
21 intangible, including a contract, permit, license or
22 franchise, and that prohibits, restricts or requires the
23 consent of the person obligated on the promissory note or the
24 account debtor to the assignment or transfer of, or creation,
25 attachment or perfection of a security interest in, the

1 promissory note, health-care-insurance receivable or general
2 intangible is ineffective to the extent that the term:

3 (1) would impair the creation, attachment or
4 perfection of a security interest; or

5 (2) provides that the assignment or transfer
6 or the creation, attachment or perfection of the security
7 interest may give rise to a default, breach, right of
8 recoupment, claim, defense, termination, right of termination
9 or remedy under the promissory note, health-care-insurance
10 receivable or general intangible.

11 (b) Subsection (a) of this section applies to a
12 security interest in a payment intangible or promissory note
13 only if the security interest arises out of a sale of the
14 payment intangible or promissory note other than a sale
15 pursuant to a disposition under Section 55-9-610 NMSA 1978 or
16 an acceptance of collateral under Section 55-9-620 NMSA 1978.

17 (c) Except as otherwise provided in Subsection (e)
18 of this section, a rule of law, statute or regulation that
19 prohibits, restricts or requires the consent of a government,
20 governmental body or official, person obligated on a
21 promissory note or account debtor to the assignment or
22 transfer of, or creation of a security interest in, a
23 promissory note, health-care-insurance receivable or general
24 intangible, including a contract, permit, license or
25 franchise between an account debtor and a debtor, is

1 ineffective to the extent that the rule of law, statute or
2 regulation:

3 (1) would impair the creation, attachment or
4 perfection of a security interest; or

5 (2) provides that the assignment or transfer
6 or the creation, attachment or perfection of the security
7 interest may give rise to a default, breach, right of
8 recoupment, claim, defense, termination, right of termination
9 or remedy under the promissory note, health-care-insurance
10 receivable or general intangible.

11 (d) To the extent that a term in a promissory note
12 or in an agreement between an account debtor and a debtor
13 that relates to a health-care-insurance receivable or general
14 intangible or a rule of law, statute or regulation described
15 in Subsection (c) of this section would be effective under
16 law other than Chapter 55, Article 9 NMSA 1978 but is
17 ineffective under Subsection (a) or (c) of this section, the
18 creation, attachment or perfection of a security interest in
19 the promissory note, health-care-insurance receivable or
20 general intangible:

21 (1) is not enforceable against the person
22 obligated on the promissory note or the account debtor;

23 (2) does not impose a duty or obligation on
24 the person obligated on the promissory note or the account
25 debtor;

1 (3) does not require the person obligated on
2 the promissory note or the account debtor to recognize the
3 security interest, pay or render performance to the secured
4 party or accept payment or performance from the secured
5 party;

6 (4) does not entitle the secured party to
7 use or assign the debtor's rights under the promissory note,
8 health-care-insurance receivable or general intangible,
9 including any related information or materials furnished to
10 the debtor in the transaction giving rise to the promissory
11 note, health-care-insurance receivable or general intangible;

12 (5) does not entitle the secured party to
13 use, assign, possess or have access to any trade secrets or
14 confidential information of the person obligated on the
15 promissory note or the account debtor; and

16 (6) does not entitle the secured party to
17 enforce the security interest in the promissory note, health-
18 care-insurance receivable or general intangible. The
19 provisions of this section shall prevail over an inconsistent
20 provision of an existing or future statute or rule of this
21 state, unless the inconsistent provision is set forth in a
22 statute of this state that refers expressly to this section
23 and states that the inconsistent provision shall prevail over
24 the provisions of this section.

25 (e) This section does not apply to a security

1 interest in an ownership interest in a general partnership,
2 limited liability partnership, limited partnership, limited
3 liability limited partnership or limited liability company.

4 (f) In this section, "promissory note" includes a
5 negotiable instrument that evidences chattel paper."

6 SECTION 79. Section 55-9-509 NMSA 1978 (being Laws
7 2001, Chapter 139, Section 80) is amended to read:

8 "55-9-509. PERSONS ENTITLED TO FILE A RECORD.--

9 (a) A person may file an initial financing
10 statement, amendment that adds collateral covered by a
11 financing statement or amendment that adds a debtor to a
12 financing statement only if:

13 (1) the debtor authorizes the filing in a
14 signed record or pursuant to Subsection (b) or (c) of this
15 section; or

16 (2) the person holds an agricultural lien
17 that has become effective at the time of filing and the
18 financing statement covers only collateral in which the
19 person holds an agricultural lien.

20 (b) By signing or becoming bound as debtor by a
21 security agreement, a debtor or new debtor authorizes the
22 filing of an initial financing statement, and an amendment,
23 covering:

24 (1) the collateral described in the security
25 agreement; and

1 (2) property that becomes collateral under
2 Paragraph (2) of Subsection (a) of Section 55-9-315 NMSA
3 1978, whether or not the security agreement expressly covers
4 proceeds.

5 (c) By acquiring collateral in which a security
6 interest or agricultural lien continues under Paragraph (1)
7 of Subsection (a) of Section 55-9-315 NMSA 1978, a debtor
8 authorizes the filing of an initial financing statement, and
9 an amendment, covering the collateral and property that
10 becomes collateral under Paragraph (2) of Subsection (a) of
11 Section 55-9-315 NMSA 1978.

12 (d) A person may file an amendment other than an
13 amendment that adds collateral covered by a financing
14 statement or an amendment that adds a debtor to a financing
15 statement only if:

16 (1) the secured party of record authorizes
17 the filing; or

18 (2) the amendment is a termination statement
19 for a financing statement as to which the secured party of
20 record has failed to file or send a termination statement as
21 required by Subsection (a) or (c) of Section 55-9-513 NMSA
22 1978, the debtor authorizes the filing and the termination
23 statement indicates that the debtor authorized it to be
24 filed.

25 (e) If there is more than one secured party of

1 record for a financing statement, each secured party of
2 record may authorize the filing of an amendment under
3 Subsection (d) of this section."

4 SECTION 80. Section 55-9-513 NMSA 1978 (being Laws
5 2001, Chapter 139, Section 84) is amended to read:

6 "55-9-513. TERMINATION STATEMENT.--

7 (a) A secured party shall cause the secured party
8 of record for a financing statement to file a termination
9 statement for the financing statement if the financing
10 statement covers consumer goods and:

11 (1) there is no obligation secured by the
12 collateral covered by the financing statement and no
13 commitment to make an advance, incur an obligation or
14 otherwise give value; or

15 (2) the debtor did not authorize the filing
16 of the initial financing statement.

17 (b) To comply with Subsection (a) of this section,
18 a secured party shall cause the secured party of record to
19 file the termination statement:

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

24 (2) if earlier, within twenty days after the
25 secured party receives a signed demand from a debtor.

1 (c) In cases not governed by Subsection (a) of
2 this section, within twenty days after a secured party
3 receives a signed demand from a debtor, the secured party
4 shall cause the secured party of record for a financing
5 statement to send to the debtor a termination statement for
6 the financing statement or file the termination statement in
7 the filing office if:

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

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

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

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

23 (d) Except as otherwise provided in Section
24 55-9-510 NMSA 1978, upon the filing of a termination
25 statement with the filing office, the financing statement to

1 which the termination statement relates ceases to be
2 effective. Except as otherwise provided in Section 55-9-510
3 NMSA 1978, for purposes of Subsection (c) of Section 55-9-
4 519, Subsection (a) of Section 55-9-522 and Subsection (b) of
5 Section 55-9-523 NMSA 1978, the filing with the filing office
6 of a termination statement relating to a financing statement
7 that indicates that the debtor is a transmitting utility also
8 causes the effectiveness of the financing statement to
9 lapse."

10 SECTION 81. Section 55-9-515 NMSA 1978 (being Laws
11 2001, Chapter 139, Section 86, as amended) is amended to
12 read:

13 "55-9-515. DURATION AND EFFECTIVENESS OF FINANCING
14 STATEMENT--EFFECT OF LAPSED FINANCING STATEMENT.--

15 (a) Except as otherwise provided in Subsections
16 (b), (e), (f) and (g) of this section, a filed financing
17 statement is effective for a period of five years after the
18 date of filing.

19 (b) Except as otherwise provided in Subsections
20 (e), (f) and (g) of this section, an initial financing
21 statement filed in connection with a public-finance
22 transaction or manufactured-home transaction is effective for
23 a period of thirty years after the date of filing if it
24 indicates that it is filed in connection with a public-
25 finance transaction or manufactured-home transaction.

1 (c) The effectiveness of a filed financing
2 statement lapses on the expiration of the period of its
3 effectiveness unless before the lapse a continuation
4 statement is filed pursuant to Subsection (d) of this
5 section. Upon lapse, a financing statement ceases to be
6 effective and any security interest or agricultural lien that
7 was perfected by the financing statement becomes unperfected
8 unless the security interest is perfected otherwise. If the
9 security interest or agricultural lien becomes unperfected
10 upon lapse, it is deemed never to have been perfected as
11 against a purchaser of the collateral for value.

12 (d) A continuation statement may be filed only
13 within six months before the expiration of the five-year
14 period specified in Subsection (a) of this section or the
15 thirty-year period specified in Subsection (b) of this
16 section, whichever is applicable.

17 (e) Except as otherwise provided in Section
18 55-9-510 NMSA 1978, upon timely filing of a continuation
19 statement, the effectiveness of the initial financing
20 statement continues for a period of five years commencing on
21 the day on which the financing statement would have become
22 ineffective in the absence of the filing. Upon the
23 expiration of the five-year period, the financing statement
24 lapses in the same manner as provided in Subsection (c) of
25 this section, unless, before the lapse, another continuation

1 statement is filed pursuant to Subsection (d) of this
2 section. Succeeding continuation statements may be filed in
3 the same manner to continue the effectiveness of the initial
4 financing statement.

5 (f) If a debtor is a transmitting utility and a
6 filed initial financing statement so indicates, the financing
7 statement is effective until a termination statement is
8 filed. The filing officer may require proof of the debtor's
9 authority to operate as a transmitting utility as a condition
10 of filing the financing statement or an amendment.

11 (g) A record of a mortgage that is effective as a
12 financing statement filed as a fixture filing under
13 Subsection (c) of Section 55-9-502 NMSA 1978 remains
14 effective as a financing statement filed as a fixture filing
15 until the mortgage is released or satisfied of record or its
16 effectiveness otherwise terminates as to the real property."

17 **SECTION 82.** Section 55-9-601 NMSA 1978 (being Laws
18 2001, Chapter 139, Section 98, as amended) is amended to
19 read:

20 "55-9-601. RIGHTS AFTER DEFAULT--JUDICIAL ENFORCEMENT--
21 CONSIGNOR OR BUYER OF ACCOUNTS, CHATTEL PAPER, PAYMENT
22 INTANGIBLES OR PROMISSORY NOTES.--

23 (a) After default, a secured party has the rights
24 provided in Sections 55-9-601 through 55-9-628 NMSA 1978 and,
25 except as otherwise provided in Section 55-9-602 NMSA 1978,

1 those provided by agreement of the parties. A secured party:

2 (1) may reduce a claim to judgment,
3 foreclose or otherwise enforce the claim, security interest
4 or agricultural lien by any available judicial procedure; and

5 (2) if the collateral is documents, may
6 proceed either as to the documents or as to the goods they
7 cover.

8 (b) A secured party in possession of collateral or
9 control of collateral under Section 55-7-106, 55-9-104,
10 55-9-105, 55-9-105A, 55-9-106, 55-9-107 or 55-9-107A NMSA
11 1978 has the rights and duties provided in Section 55-9-207
12 NMSA 1978.

13 (c) The rights under Subsections (a) and (b) of
14 this section are cumulative and may be exercised
15 simultaneously.

16 (d) Except as otherwise provided in Subsection (g)
17 of this section and Section 55-9-605 NMSA 1978, after
18 default, a debtor and an obligor have the rights provided in
19 Sections 55-9-601 through 55-9-628 NMSA 1978 and by agreement
20 of the parties.

21 (e) If a secured party has reduced its claim to
22 judgment, the lien of any levy that may be made upon the
23 collateral by virtue of an execution based upon the judgment
24 relates back to the earliest of:

25 (1) the date of perfection of the security

1 interest or agricultural lien in the collateral;

2 (2) the date of filing a financing statement
3 covering the collateral; or

4 (3) any date specified in a statute under
5 which the agricultural lien was created.

6 (f) A sale pursuant to an execution is a
7 foreclosure of the security interest or agricultural lien by
8 judicial procedure within the meaning of this section. A
9 secured party may purchase at the sale and thereafter hold
10 the collateral free of any other requirements of Chapter 55,
11 Article 9 NMSA 1978.

12 (g) Except as otherwise provided in Subsection (c)
13 of Section 55-9-607 NMSA 1978, this part imposes no duties
14 upon a secured party that is a consignor or is a buyer of
15 accounts, chattel paper, payment intangibles or promissory
16 notes."

17 **SECTION 83.** Section 55-9-605 NMSA 1978 (being Laws
18 2001, Chapter 139, Section 102) is amended to read:

19 "55-9-605. UNKNOWN DEBTOR OR SECONDARY OBLIGOR.--

20 (a) Except as provided in Subsection (b) of this
21 section, a secured party does not owe a duty based on its
22 status as secured party:

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

25 (A) that the person is a debtor or

1 obligor;

2 (B) the identity of the person; and

3 (C) how to communicate with the person;

4 or

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

8 (A) that the person is a debtor; and

9 (B) the identity of the person.

10 (b) A secured party owes a duty based on its
11 status as a secured party to a person if, at the time the
12 secured party obtains control of collateral that is a
13 controllable account, controllable electronic record or
14 controllable payment intangible or at the time the security
15 interest attaches to the collateral, whichever is later:

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

17 (2) the secured party knows that the
18 information in Subparagraph (A), (B) or (C) of Paragraph (1)
19 of Subsection (a) of this section relating to the person is
20 not provided by the collateral, a record attached to or
21 logically associated with the collateral or the system in
22 which the collateral is recorded."

23 **SECTION 84.** Section 55-9-608 NMSA 1978 (being Laws
24 2001, Chapter 139, Section 105) is amended to read:

25 "55-9-608. APPLICATION OF PROCEEDS OF COLLECTION OR

1 ENFORCEMENT--LIABILITY FOR DEFICIENCY AND RIGHT TO SURPLUS.--

2 (a) If a security interest or agricultural lien
3 secures payment or performance of an obligation, the
4 following rules apply:

5 (1) A secured party shall apply or pay over
6 for application the cash proceeds of collection or
7 enforcement under Section 55-9-607 NMSA 1978 in the following
8 order to:

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

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

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

22 (2) If requested by a secured party, a
23 holder of a subordinate security interest or other lien shall
24 furnish reasonable proof of the interest or lien within a
25 reasonable time. Unless the holder complies, the secured

1 party need not comply with the holder's demand under
2 Subparagraph (C) of Paragraph (1) of Subsection (a) of this
3 section.

4 (3) A secured party need not apply or pay
5 over for application noncash proceeds of collection and
6 enforcement under Section 55-9-607 NMSA 1978 unless the
7 failure to do so would be commercially unreasonable. A
8 secured party that applies or pays over for application
9 noncash proceeds shall do so in a commercially reasonable
10 manner.

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

14 (b) If the underlying transaction is a sale of
15 accounts, chattel paper, payment intangibles or promissory
16 notes, the debtor is not entitled to any surplus, and the
17 obligor is not liable for any deficiency."

18 SECTION 85. Section 55-9-611 NMSA 1978 (being Laws
19 2001, Chapter 139, Section 108) is amended to read:

20 "55-9-611. NOTIFICATION BEFORE DISPOSITION OF
21 COLLATERAL.--

22 (a) In this section, "notification date" means the
23 earlier of the date on which:

24 (1) a secured party sends to the debtor and
25 any secondary obligor a signed notification of disposition;

1 or

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

4 (b) Except as otherwise provided in Subsection (d)
5 of this section, a secured party that disposes of collateral
6 under Section 55-9-610 NMSA 1978 shall send to the persons
7 specified in Subsection (c) of this section a reasonable
8 signed notification of disposition.

9 (c) To comply with Subsection (b) of this section,
10 the secured party shall send a signed notification of
11 disposition to:

12 (1) the debtor;

13 (2) any secondary obligor; and

14 (3) if the collateral is other than consumer
15 goods:

16 (A) any other person from which the
17 secured party has received, before the notification date, a
18 signed notification of a claim of an interest in the
19 collateral;

20 (B) any other secured party or
21 lienholder that, ten days before the notification date, held
22 a security interest in or other lien on the collateral
23 perfected by the filing of a financing statement that:

24 (i) identified the collateral;

25 (ii) was indexed under the

1 debtor's name as of that date; and

2 (iii) was filed in the office in
3 which to file a financing statement against the debtor
4 covering the collateral as of that date; and

5 (C) any other secured party that, ten
6 days before the notification date, held a security interest
7 in the collateral perfected by compliance with a statute,
8 regulation or treaty described in Subsection (a) of Section
9 55-9-311 NMSA 1978.

10 (d) Subsection (b) of this section does not apply
11 if the collateral is perishable or threatens to decline
12 speedily in value or is of a type customarily sold on a
13 recognized market.

14 (e) A secured party complies with the requirement
15 for notification prescribed by Subparagraph (B) of Paragraph
16 (3) of Subsection (c) of this section if:

17 (1) not later than twenty days or earlier
18 than thirty days before the notification date, the secured
19 party requests, in a commercially reasonable manner,
20 information concerning financing statements indexed under the
21 debtor's name in the office indicated in Subparagraph (B) of
22 Paragraph (3) of Subsection (c) of this section; and

23 (2) before the notification date, the
24 secured party:

25 (A) did not receive a response to the

1 request for information; or

2 (B) received a response to the request
3 for information and sent a signed notification of disposition
4 to each secured party or other lienholder named in that
5 response whose financing statement covered the collateral."

6 SECTION 86. Section 55-9-613 NMSA 1978 (being Laws
7 2001, Chapter 139, Section 110) is amended to read:

8 "55-9-613. CONTENTS AND FORM OF NOTIFICATION BEFORE
9 DISPOSITION OF COLLATERAL--GENERAL.--

10 (a) Except in a consumer-goods transaction, the
11 following rules apply:

12 (1) The contents of a notification of
13 disposition are sufficient if the notification:

14 (A) describes the debtor and the
15 secured party;

16 (B) describes the collateral that is
17 the subject of the intended disposition;

18 (C) states the method of intended
19 disposition;

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

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

1 (2) Whether the contents of a notification
2 that lacks any of the information specified in Paragraph (1)
3 of this subsection are nevertheless sufficient is a question
4 of fact.

5 (3) The contents of a notification providing
6 substantially the information specified in Paragraph (1) of
7 this subsection are sufficient, even if the notification
8 includes:

9 (A) information not specified by that
10 subsection; or

11 (B) minor errors that are not seriously
12 misleading.

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

15 (5) The following form of notification and
16 the form appearing in Paragraph (3) of Subsection (a) of
17 Section 55-9-614 NMSA 1978, when completed, each provides
18 sufficient information:

19 "NOTIFICATION OF DISPOSITION OF COLLATERAL

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

22 From: (Name, address and telephone number of
23 secured)

24 {1} Name of any debtor that is not an addressee:

25 (*Name of each debtor*)

1 {2} We will sell (*describe collateral*) (to the
2 highest qualified bidder) at public sale. A sale could
3 include a lease or license. The sale will be held as
4 follows:

5 (*Date*)

6 (*Time*)

7 (*Place*)

8 {3} We will sell (*describe collateral*) at private
9 sale sometime after (*date*). A sale could include a lease or
10 license.

11 {4} You are entitled to an accounting of the
12 unpaid indebtedness secured by the property that we intend to
13 sell or, as applicable, lease or license.

14 {5} If you request an accounting, you must pay a
15 charge of \$ (*amount*).

16 {6} You may request an accounting by calling us at
17 (*telephone number*)."

18 (b) The following instructions apply to the form
19 of notification in Paragraph (5) of Subsection (a) of this
20 section:

21 (1) the instructions in this subsection
22 refer to the numbers in braces before items in the form of
23 notification in Paragraph (5) of Subsection (a) of this
24 section. Do not include the numbers or braces in the
25 notification. The numbers and braces are used only for the

1 purpose of these instructions;

2 (2) include and complete Item {1} only if
3 there is a debtor that is not an addressee of the
4 notification and list the name or names;

5 (3) include and complete either Item {2}, if
6 the notification relates to a public disposition of the
7 collateral, or Item {3}, if the notification relates to a
8 private disposition of the collateral. If Item {2} is
9 included, include the words "to the highest qualified bidder"
10 only if applicable;

11 (4) include and complete Items {4} and {6};
12 and

13 (5) include and complete Item {5} only if
14 the sender will charge the recipient for an accounting."

15 SECTION 87. Section 55-9-614 NMSA 1978 (being Laws
16 2001, Chapter 139, Section 111) is amended to read:

17 "55-9-614. CONTENTS AND FORM OF NOTIFICATION BEFORE
18 DISPOSITION OF COLLATERAL--CONSUMER-GOODS TRANSACTION.--

19 (a) In a consumer-goods transaction, the following
20 rules apply:

21 (1) A notification of disposition must
22 provide the following information:

23 (A) the information specified in
24 Paragraph (1) of Subsection (a) of Section 55-9-613 NMSA
25 1978;

1 (B) a description of any liability for
2 a deficiency of the person to which the notification is sent;

3 (C) a telephone number from which the
4 amount that must be paid to the secured party to redeem the
5 collateral under Section 55-9-623 NMSA 1978 is available; and

6 (D) a telephone number or mailing
7 address from which additional information concerning the
8 disposition and the obligation secured is available.

9 (2) A particular phrasing of the
10 notification is not required.

11 (3) The following form of notification, when
12 completed in accordance with the instructions in Subsection
13 (b) of this section, provides sufficient information:

14 "*(Name and address of secured party)*

15 *(Date)*

16 NOTICE OF OUR PLAN TO SELL PROPERTY

17 *(Name and address of any obligor who is also a debtor)*

18 Subject: *(Identify transaction)*

19 We have your *(describe collateral)* because you broke promises
20 in our agreement.

21 {1} We will sell *(describe collateral)* at public sale.

22 A sale could include a lease or license. The sale will be
23 held as follows:

24 *(Date)*

25 *(Time)*

1 (Place)

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

3 {2} We will sell (*describe collateral*) at private sale
4 sometime after (*date*). A sale could include a lease or
5 license.

6 {3} The money that we get from the sale, after paying
7 our costs, will reduce the amount you owe. If we get less
8 money than you owe, you (*will or will not, as applicable*)
9 still owe us the difference. If we get more money than you
10 owe, you will get the extra money, unless we must pay it to
11 someone else.

12 {4} You can get the property back at any time before we
13 sell it by paying us the full amount you owe, not just the
14 past due payments, including our expenses. To learn the
15 exact amount you must pay, call us at (*telephone number*).

16 {5} If you want us to explain to you in (*writing*)
17 (*writing or in (description of electronic record)*)
18 (*description of electronic record*) how we have figured the
19 amount that you owe us, {6} call us at (*telephone number*)
20 (or) (write us at (*secured party's address*)) (or contact us
21 by (*description of electronic communication method*)) {7} and
22 request (a written explanation) (a written explanation or an
23 explanation in (*description of electronic record*)) (an
24 explanation in (*description of electronic record*)).

25 {8} We will charge you \$ (*amount*) for the explanation

1 if we sent you another written explanation of the amount you
2 owe us within the last six months.

3 {9} If you need more information about the sale, (call
4 us at *(telephone number)*) (or) (write us at *(secured party's*
5 *address)*) (or contact us by *(description of electronic*
6 *communication method)*).

7 {10} We are sending this notice to the following other
8 people who have an interest in *(describe collateral)* or who
9 owe money under your agreement:

10 *(Names of all other debtors and obligors, if any)."*

11 (4) The form of notification provided in
12 Paragraph (3) of this subsection is sufficient even if
13 additional information appears at the end of the form.

14 (5) The form of notification provided in
15 Paragraph (3) of this subsection is sufficient even if it
16 includes an error regarding information that is not required
17 pursuant to Paragraph (1) of this subsection, unless the
18 error is misleading with respect to rights that arise
19 pursuant to Chapter 55, Article 9 NMSA 1978.

20 (6) If notification under this section is
21 not in the form provided in Paragraph (3) of this subsection,
22 law other than Chapter 55, Article 9 NMSA 1978 shall
23 determine the effect of including information that is not
24 required pursuant to Paragraph (1) of this subsection.

25 (b) The following instructions apply to the form

1 of notification in Paragraph (3) of Subsection (a) of this
2 section:

3 (1) the instructions in this subsection
4 refer to the numbers in braces before items in the form of
5 notification in Paragraph (3) of Subsection (a) of this
6 section. Do not include the numbers or braces in the
7 notification. The numbers and braces are used only for the
8 purpose of these instructions;

9 (2) include and complete either Item {1}, if
10 the notification relates to a public disposition of the
11 collateral, or Item {2}, if the notification relates to a
12 private disposition of the collateral;

13 (3) include and complete Items {3}, {4},
14 {5}, {6} and {7};

15 (4) in Item {5}, include and complete any
16 one of the three alternative methods for the explanation:
17 writing, writing or electronic record or electronic record;

18 (5) in Item {6}, include the telephone
19 number. In addition, the sender may include and complete
20 either or both of the two additional alternative methods of
21 communication, those being writing or electronic
22 communication, for the recipient of the notification to
23 communicate with the sender. Neither of the two additional
24 methods of communication is required to be included;

25 (6) in Item {7}, include and complete the

1 method or methods for the explanation included in Item {5}:
2 writing, writing or electronic record or electronic record;

3 (7) include and complete Item {8} only if a
4 written explanation is included in Item {5} as a method for
5 communicating the explanation and the sender will charge the
6 recipient for another written explanation;

7 (8) in Item {9}, include either the
8 telephone number or the address or both the telephone number
9 and the address. In addition, the sender may include and
10 complete the additional electronic method of communication
11 for the recipient of the notification to communicate with the
12 sender. The additional method of electronic communication is
13 not required to be included; and

14 (9) if Item {10} does not apply, insert
15 "None" after "agreement:."

16 **SECTION 88.** Section 55-9-615 NMSA 1978 (being Laws
17 2001, Chapter 139, Section 112) is amended to read:

18 "55-9-615. APPLICATION OF PROCEEDS OF DISPOSITION--
19 LIABILITY FOR DEFICIENCY AND RIGHT TO SURPLUS.--

20 (a) A secured party shall apply or pay over for
21 application the cash proceeds of disposition pursuant to
22 Section 55-9-610 NMSA 1978 in the following order to:

23 (1) the reasonable expenses of retaking,
24 holding, preparing for disposition, processing and disposing,
25 and, to the extent provided for by agreement and not

1 prohibited by law, reasonable attorney fees and legal
2 expenses incurred by the secured party;

3 (2) the satisfaction of obligations secured
4 by the security interest or agricultural lien under which the
5 disposition is made;

6 (3) the satisfaction of obligations secured
7 by any subordinate security interest in or other subordinate
8 lien on the collateral if:

9 (A) the secured party receives from the
10 holder of the subordinate security interest or other lien a
11 signed demand for proceeds before distribution of the
12 proceeds is completed; and

13 (B) in a case in which a consignor has
14 an interest in the collateral, the subordinate security
15 interest or other lien is senior to the interest of the
16 consignor; and

17 (4) a secured party that is a consignor of
18 the collateral if the secured party receives from the
19 consignor a signed demand for proceeds before distribution of
20 the proceeds is completed.

21 (b) If requested by a secured party, a holder of a
22 subordinate security interest or other lien shall furnish
23 reasonable proof of the interest or lien within a reasonable
24 time. Unless the holder does so, the secured party need not
25 comply with the holder's demand under Paragraph (3) of

1 Subsection (a) of this section.

2 (c) A secured party need not apply or pay over for
3 application noncash proceeds of disposition under Section
4 55-9-610 NMSA 1978 unless the failure to do so would be
5 commercially unreasonable. A secured party that applies or
6 pays over for application noncash proceeds shall do so in a
7 commercially reasonable manner.

8 (d) If the security interest under which a
9 disposition is made secures payment or performance of an
10 obligation, after making the payments and applications
11 required by Subsection (a) of this section and permitted by
12 Subsection (c) of this section:

13 (1) unless Paragraph (4) of Subsection (a)
14 of this section requires the secured party to apply or pay
15 over cash proceeds to a consignor, the secured party shall
16 account to and pay a debtor for any surplus; and

17 (2) the obligor is liable for any
18 deficiency.

19 (e) If the underlying transaction is a sale of
20 accounts, chattel paper, payment intangibles or promissory
21 notes:

22 (1) the debtor is not entitled to any
23 surplus; and

24 (2) the obligor is not liable for any
25 deficiency.

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

7 (1) the transferee in the disposition is the
8 secured party, a person related to the secured party or a
9 secondary obligor; and

10 (2) the amount of proceeds of the
11 disposition is significantly below the range of proceeds that
12 a complying disposition to a person other than the secured
13 party, a person related to the secured party or a secondary
14 obligor would have brought.

15 (g) A secured party that receives cash proceeds of
16 a disposition in good faith and without knowledge that the
17 receipt violates the rights of the holder of a security
18 interest or other lien that is not subordinate to the
19 security interest or agricultural lien under which the
20 disposition is made:

21 (1) takes the cash proceeds free of the
22 security interest or other lien;

23 (2) is not obligated to apply the proceeds
24 of the disposition to the satisfaction of obligations secured
25 by the security interest or other lien; and

1 (3) is not obligated to account to or pay
2 the holder of the security interest or other lien for any
3 surplus."

4 **SECTION 89.** Section 55-9-616 NMSA 1978 (being Laws
5 2001, Chapter 139, Section 113) is amended to read:

6 "55-9-616. EXPLANATION OF CALCULATION OF SURPLUS OR
7 DEFICIENCY.--

8 (a) In this section:

9 (1) "explanation" means a record that:

10 (A) states the amount of the surplus or
11 deficiency;

12 (B) provides an explanation in
13 accordance with Subsection (c) of this section of how the
14 secured party calculated the surplus or deficiency;

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

19 (D) provides a telephone number or
20 mailing address from which additional information concerning
21 the transaction is available; and

22 (2) "request" means a record:

23 (A) signed by a debtor or consumer
24 obligor;

25 (B) requesting that the recipient

1 provide an explanation; and

2 (C) sent after disposition of the
3 collateral under Section 55-9-610 NMSA 1978.

4 (b) In a consumer-goods transaction in which the
5 debtor is entitled to a surplus or a consumer obligor is
6 liable for a deficiency under Section 55-9-615 NMSA 1978, the
7 secured party shall:

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

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

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

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

20 (c) To comply with Subparagraph (B) of Paragraph
21 (1) of Subsection (a) of this section, an explanation must
22 provide the following information in the following order:

23 (1) the aggregate amount of obligations
24 secured by the security interest under which the disposition
25 was made and, if the amount reflects a rebate of unearned

1 interest or credit service charge, an indication of that
2 fact, calculated as of a specified date:

3 (A) if the secured party takes or
4 receives possession of the collateral after default, not more
5 than thirty-five days before the secured party takes or
6 receives possession; or

7 (B) if the secured party takes or
8 receives possession of the collateral before default or does
9 not take possession of the collateral, not more than thirty-
10 five days before the disposition;

11 (2) the amount of proceeds of the
12 disposition;

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

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

21 (5) the amount, in the aggregate or by type,
22 and types of credits, including rebates of interest or credit
23 service charges, to which the obligor is known to be entitled
24 and which are not reflected in the amount in Paragraph (1) of
25 this subsection; and

1 (6) the amount of the surplus or deficiency.

2 (d) A particular phrasing of the explanation is
3 not required. An explanation complying substantially with
4 the requirements of Subsection (a) of this section is
5 sufficient, even if it includes minor errors that are not
6 seriously misleading.

7 (e) A debtor or consumer obligor is entitled
8 without charge to one response to a request under this
9 section during any six-month period in which the secured
10 party did not send to the debtor or consumer obligor an
11 explanation pursuant to Paragraph (1) of Subsection (b) of
12 this section. The secured party may require payment of a
13 charge not exceeding twenty-five dollars (\$25.00) for each
14 additional response."

15 SECTION 90. Section 55-9-619 NMSA 1978 (being Laws
16 2001, Chapter 139, Section 116) is amended to read:

17 "55-9-619. TRANSFER OF RECORD OR LEGAL TITLE.--

18 (a) In this section, "transfer statement" means a
19 record signed by a secured party stating:

20 (1) that the debtor has defaulted in
21 connection with an obligation secured by specified
22 collateral;

23 (2) that the secured party has exercised its
24 post-default remedies with respect to the collateral;

25 (3) that, by reason of the exercise, a

1 transferee has acquired the rights of the debtor in the
2 collateral; and

3 (4) the name and mailing address of the
4 secured party, debtor and transferee.

5 (b) A transfer statement entitles the transferee
6 to the transfer of record of all rights of the debtor in the
7 collateral specified in the statement in any official filing,
8 recording, registration or certificate-of-title system
9 covering the collateral. If a transfer statement is
10 presented with the applicable fee and request form to the
11 official or office responsible for maintaining the system,
12 the official or office shall:

13 (1) accept the transfer statement;

14 (2) promptly amend its records to reflect
15 the transfer; and

16 (3) if applicable, issue a new appropriate
17 certificate of title in the name of the transferee.

18 (c) A transfer of the record or legal title to
19 collateral to a secured party under Subsection (b) of this
20 section or otherwise is not of itself a disposition of
21 collateral under Chapter 55, Article 9 NMSA 1978 and does not
22 of itself relieve the secured party of its duties under that
23 article."

24 **SECTION 91.** Section 55-9-620 NMSA 1978 (being Laws
25 2001, Chapter 139, Section 117, as amended) is amended to

1 read:

2 "55-9-620. ACCEPTANCE OF COLLATERAL IN FULL OR PARTIAL
3 SATISFACTION OF OBLIGATION--COMPULSORY DISPOSITION OF
4 COLLATERAL.--

5 (a) Except as otherwise provided in Subsection (g)
6 of this section, a secured party may accept collateral in
7 full or partial satisfaction of the obligation it secures
8 only if:

9 (1) the debtor consents to the acceptance
10 under Subsection (c) of this section;

11 (2) the secured party does not receive,
12 within the time set forth in Subsection (d) of this section,
13 a notification of objection to the proposal signed by:

14 (A) a person to which the secured party
15 was required to send a proposal under Section 55-9-621 NMSA
16 1978; or

17 (B) any other person, other than the
18 debtor, holding an interest in the collateral subordinate to
19 the security interest that is the subject of the proposal;

20 (3) if the collateral is consumer goods, the
21 collateral is not in the possession of the debtor when the
22 debtor consents to the acceptance; and

23 (4) Subsection (e) of this section does not
24 require the secured party to dispose of the collateral or the
25 debtor waives the requirement pursuant to Section 55-9-624

1 NMSA 1978.

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

4 (1) the secured party consents to the
5 acceptance in a signed record or sends a proposal to the
6 debtor; and

7 (2) the conditions of Subsection (a) of this
8 section are met.

9 (c) For purposes of this section:

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

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

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

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

25 (C) does not receive a notification of

1 objection signed by the debtor within twenty days after the
2 proposal is sent.

3 (d) To be effective under Paragraph (2) of
4 Subsection (a) of this section, a notification of objection
5 must be received by the secured party:

6 (1) in the case of a person to which the
7 proposal was sent pursuant to Section 55-9-621 NMSA 1978,
8 within twenty days after notification was sent to that
9 person; and

10 (2) in other cases:

11 (A) within twenty days after the last
12 notification was sent pursuant to Section 55-9-621 NMSA 1978;
13 or

14 (B) if a notification was not sent,
15 before the debtor consents to the acceptance under Subsection
16 (c) of this section.

17 (e) A secured party that has taken possession of
18 collateral shall dispose of the collateral pursuant to
19 Section 55-9-610 NMSA 1978 within the time specified in
20 Subsection (f) of this section if:

21 (1) sixty percent of the cash price has been
22 paid in the case of a purchase-money security interest in
23 consumer goods; or

24 (2) sixty percent of the principal amount of
25 the obligation secured has been paid in the case of a non-

1 purchase-money security interest in consumer goods.

2 (f) To comply with Subsection (e) of this section,
3 the secured party shall dispose of the collateral:

4 (1) within ninety days after taking
5 possession; or

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

9 (g) In a consumer transaction, a secured party may
10 not accept collateral in partial satisfaction of the
11 obligation it secures."

12 SECTION 92. Section 55-9-621 NMSA 1978 (being Laws
13 2001, Chapter 139, Section 118) is amended to read:

14 "55-9-621. NOTIFICATION OF PROPOSAL TO ACCEPT
15 COLLATERAL.--

16 (a) A secured party that desires to accept
17 collateral in full or partial satisfaction of the obligation
18 it secures shall send its proposal to:

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

23 (2) any other secured party or lienholder
24 that, ten days before the debtor consented to the acceptance,
25 held a security interest in or other lien on the collateral

1 perfected by the filing of a financing statement that:

2 (A) identified the collateral;

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

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

8 (3) any other secured party that, ten days
9 before the debtor consented to the acceptance, held a
10 security interest in the collateral perfected by compliance
11 with a statute, regulation or treaty described in Subsection
12 (a) of Section 55-9-311 NMSA 1978.

13 (b) A secured party that desires to accept
14 collateral in partial satisfaction of the obligation it
15 secures shall send its proposal to any secondary obligor in
16 addition to the persons described in Subsection (a) of this
17 section."

18 **SECTION 93.** Section 55-9-624 NMSA 1978 (being Laws
19 2001, Chapter 139, Section 121) is amended to read:

20 "55-9-624. WAIVER.--

21 (a) A debtor or secondary obligor may waive the
22 right to notification of disposition of collateral under
23 Section 55-9-611 NMSA 1978 only by an agreement to that
24 effect entered into and signed after default.

25 (b) A debtor may waive the right to require

1 disposition of collateral under Subsection (e) of Section
2 55-9-620 NMSA 1978 only by an agreement to that effect
3 entered into and signed after default.

4 (c) Except in a consumer-goods transaction, a
5 debtor or secondary obligor may waive the right to redeem
6 collateral under Section 55-9-623 NMSA 1978 only by an
7 agreement to that effect entered into and signed after
8 default."

9 SECTION 94. Section 55-9-628 NMSA 1978 (being Laws
10 2001, Chapter 139, Section 125) is amended to read:

11 "55-9-628. NONLIABILITY AND LIMITATION ON LIABILITY OF
12 SECURED PARTY--LIABILITY OF SECONDARY OBLIGOR.--

13 (a) Subject to Subsection (f) of this section,
14 unless a secured party knows that a person is a debtor or
15 obligor, knows the identity of the person and knows how to
16 communicate with the person:

17 (1) the secured party is not liable to the
18 person, or to a secured party or lienholder that has filed a
19 financing statement against the person, for failure to comply
20 with Chapter 55, Article 9 NMSA 1978; and

21 (2) the secured party's failure to comply
22 with Chapter 55, Article 9 NMSA 1978 does not affect the
23 liability of the person for a deficiency.

24 (b) Subject to Subsection (f) of this section, a
25 secured party is not liable because of its status as secured

1 party:

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

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

6 (B) the identity of the person; and

7 (C) how to communicate with the person;

8 or

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

12 (A) that the person is a debtor; and

13 (B) the identity of the person.

14 (c) A secured party is not liable to any person,
15 and a person's liability for a deficiency is not affected,
16 because of any act or omission arising out of the secured
17 party's reasonable belief that a transaction is not a
18 consumer-goods transaction or a consumer transaction or that
19 goods are not consumer goods, if the secured party's belief
20 is based on its reasonable reliance on:

21 (1) a debtor's representation concerning the
22 purpose for which collateral was to be used, acquired or
23 held; or

24 (2) an obligor's representation concerning
25 the purpose for which a secured obligation was incurred.

1 (d) A secured party is not liable to any person
2 under Paragraph (2) of Subsection (c) of Section 55-9-625
3 NMSA 1978 for its failure to comply with Section 55-9-616
4 NMSA 1978.

5 (e) A secured party is not liable under Paragraph
6 (2) of Subsection (c) of Section 55-9-625 NMSA 1978 more than
7 once with respect to any one secured obligation.

8 (f) Subsections (a) and (b) of this section do not
9 apply to limit the liability of a secured party to a person
10 if, at the time the secured party obtains control of
11 collateral that is a controllable account, controllable
12 electronic record or controllable payment intangible or at
13 the time the security interest attaches to the collateral,
14 whichever is later:

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

16 (2) the secured party knows that the
17 information in Subparagraph (A), (B) or (C) of Paragraph (1)
18 of Subsection (b) of this section relating to the person is
19 not provided by the collateral, a record attached to or
20 logically associated with the collateral or the system in
21 which the collateral is recorded."

22 **SECTION 95. RECOMPILATION.**--Sections 55-12-101 through
23 55-12-111 NMSA 1978 (being Laws 1985, Chapter 193, Section 39
24 through 46, Laws 1996, Chapter 47, Section 69 and Laws 2005,
25 Chapter 144, Sections 110 and 111, as amended) are recompiled

1 as Sections 55-11A-101 through 55-11A-111 NMSA 1978.

2 ARTICLE 12

3 CONTROLLABLE ELECTRONIC RECORDS

4 SECTION 96. A new section of the Uniform Commercial
5 Code, Section 55-12-101 NMSA 1978, is enacted to read:

6 "55-12-101. SHORT TITLE.--Chapter 55, Article 12 NMSA
7 1978 may be cited as "Uniform Commercial Code - Controllable
8 Electronic Records"."

9 SECTION 97. A new section of the Uniform Commercial
10 Code, Section 55-12-102 NMSA 1978, is enacted to read:

11 "55-12-102. DEFINITIONS.--

12 (a) As used in Chapter 55, Article 12 NMSA 1978:

13 (1) "controllable electronic record" means a
14 record stored in an electronic medium that can be subjected
15 to control pursuant to Section 55-12-105 NMSA 1978. The term
16 does not include a controllable account, a controllable
17 payment intangible, a deposit account, an electronic copy of
18 a record evidencing chattel paper, an electronic document of
19 title, electronic money, investment property or a
20 transferable record;

21 (2) "qualifying purchaser" means a purchaser
22 of a controllable electronic record or an interest in a
23 controllable electronic record that obtains control of the
24 controllable electronic record for value, in good faith, and
25 without notice of a claim of a property right in the

1 controllable electronic record;

2 (3) "transferable record" has the meaning
3 provided for that term in:

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

7 (B) Subsection (a) of Section 14-16-16
8 NMSA 1978; and

9 (4) "value" has the meaning provided in
10 Subsection (a) of Section 55-3-303 NMSA 1978 as if references
11 in that subsection to an "instrument" were references to a
12 controllable account, controllable electronic record or
13 controllable payment intangible.

14 (b) The definitions in Article 9 of the Uniform
15 Commercial Code of "account debtor", "controllable account",
16 "controllable payment intangible", "chattel paper", "deposit
17 account", "electronic money" and "investment property" apply
18 to Sections 55-12-101 through 55-12-106 NMSA 1978.

19 (c) Article 1 of the Uniform Commercial Code
20 contains general definitions and principles of construction
21 and interpretation applicable throughout Sections 55-12-101
22 through 55-12-106 NMSA 1978."

23 **SECTION 98.** A new section of the Uniform Commercial
24 Code, Section 55-12-103 NMSA 1978, is enacted to read:

25 "55-12-103. RELATION TO ARTICLE 9 OF THE UNIFORM

1 COMMERCIAL CODE AND CONSUMER LAWS.--

2 (a) If there is conflict between Sections 55-12-
3 101 through 55-12-106 NMSA 1978 and Article 9 of the Uniform
4 Commercial Code, Article 9 governs.

5 (b) A transaction subject to Sections 55-12-101
6 through 55-12-106 NMSA 1978 is subject to any applicable rule
7 of law that establishes a different rule for consumers and
8 any other statute or regulation that regulates the rates,
9 charges, agreements and practices for loans, credit sales or
10 other extensions of credit, the Unfair Practices Act and any
11 consumer-protection statute or regulation."

12 SECTION 99. A new section of the Uniform Commercial
13 Code, Section 55-12-104 NMSA 1978, is enacted to read:

14 "55-12-104. RIGHTS IN CONTROLLABLE ACCOUNT,
15 CONTROLLABLE ELECTRONIC RECORD AND CONTROLLABLE PAYMENT
16 INTANGIBLE.--

17 (a) Sections 55-12-101 through 55-12-106 NMSA 1978
18 apply to the acquisition and purchase of rights in a
19 controllable account or controllable payment intangible,
20 including the rights and benefits pursuant to Subsections
21 (c), (d), (e), (g) and (h) of this section of a purchaser and
22 qualifying purchaser, in the same manner this section applies
23 to a controllable electronic record.

24 (b) To determine whether a purchaser of a
25 controllable account or a controllable payment intangible is

1 a qualifying purchaser, the purchaser obtains control of the
2 account or payment intangible if it obtains control of the
3 controllable electronic record that evidences the account or
4 payment intangible.

5 (c) Except as provided in this section, law other
6 than Sections 55-12-101 through 55-12-106 NMSA 1978
7 determines whether a person acquires a right in a
8 controllable electronic record and the right the person
9 acquires.

10 (d) A purchaser of a controllable electronic
11 record acquires all rights in the controllable electronic
12 record that the transferor had or had power to transfer,
13 except that a purchaser of a limited interest in a
14 controllable electronic record acquires rights only to the
15 extent of the interest purchased.

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

19 (f) Except as provided in Subsections (a) and (e)
20 of this section for a controllable account and a controllable
21 payment intangible or law other than Sections 55-12-101
22 through 55-12-106 NMSA 1978, a qualifying purchaser takes a
23 right to payment, right to performance or other interest in
24 property evidenced by the controllable electronic record
25 subject to a claim of a property right in the right to

1 payment, right to performance or other interest in property.

2 (g) An action may not be asserted against a
3 qualifying purchaser based on both a purchase by the
4 qualifying purchaser of a controllable electronic record and
5 a claim of a property right in another controllable
6 electronic record, whether the action is framed in
7 conversion, replevin, constructive trust, equitable lien or
8 other theory.

9 (h) Filing of a financing statement pursuant to
10 Article 9 of the Uniform Commercial Code is not notice of a
11 claim of a property right in a controllable electronic
12 record."

13 SECTION 100. A new section of the Uniform Commercial
14 Code, Section 55-12-105 NMSA 1978, is enacted to read:

15 "55-12-105. CONTROL OF CONTROLLABLE ELECTRONIC
16 RECORD.--

17 (a) A person has control of a controllable
18 electronic record if the electronic record, a record attached
19 to or logically associated with the electronic record or a
20 system in which the electronic record is recorded:

21 (1) gives the person:

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

24 (B) exclusive power, subject to
25 Subsection (b) of this section, to:

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

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

8 (2) enables the person readily to identify
9 itself in any way, including by name, identifying number,
10 cryptographic key, office or account number, as having the
11 powers specified in Paragraph (1) of this subsection.

12 (b) Subject to Subsection (c) of this section, a
13 power is exclusive pursuant to Items (i) and (ii) of
14 Subparagraph (B) of Paragraph (1) of Subsection (a) of this
15 section even if:

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

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

24 (c) A power of a person is not shared with another
25 person pursuant to Paragraph (2) of Subsection (b) of this

1 section and the person's power is not exclusive if:

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

4 (2) the other person:

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

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

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

15 (e) A person has control of a controllable
16 electronic record if another person, other than the
17 transferor to the person of an interest in the controllable
18 electronic record or a controllable account or controllable
19 payment intangible evidenced by the controllable electronic
20 record:

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

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

1 (f) A person that has control pursuant to this
2 section is not required to acknowledge that it has control on
3 behalf of another person.

4 (g) If a person acknowledges that it has or will
5 obtain control on behalf of another person, unless the person
6 otherwise agrees or law other than Sections 55-12-101 through
7 55-12-106 NMSA 1978 or Article 9 of the Uniform Commercial
8 Code otherwise provides, the person does not owe any duty to
9 the other person and is not required to confirm the
10 acknowledgment to any other person."

11 SECTION 101. A new section of the Uniform Commercial
12 Code, Section 55-12-106 NMSA 1978, is enacted to read:

13 "55-12-106. DISCHARGE OF ACCOUNT DEBTOR ON CONTROLLABLE
14 ACCOUNT OR CONTROLLABLE PAYMENT INTANGIBLE.--

15 (a) An account debtor on a controllable account or
16 controllable payment intangible may discharge its obligation
17 by paying:

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

21 (2) except as provided in Subsection (b) of
22 this section, a person that formerly had control of the
23 controllable electronic record.

24 (b) Subject to Subsection (d) of this section, the
25 account debtor may not discharge its obligation by paying a

1 person that formerly had control of the controllable
2 electronic record if the account debtor receives a
3 notification that:

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

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

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

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

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

17 (c) After receipt of a notification that complies
18 with Subsection (b) of this section, the account debtor may
19 discharge its obligation by paying in accordance with the
20 notification and may not discharge the obligation by paying a
21 person that formerly had control.

22 (d) Subject to Subsection (h) of this section,
23 notification is ineffective pursuant to Subsection (b) of
24 this section:

25 (1) unless, before the notification is sent,

1 the account debtor and the person that, at that time, had
2 control of the controllable electronic record that evidences
3 the controllable account or controllable payment intangible
4 agree in a signed record to a commercially reasonable method
5 by which a person may furnish reasonable proof that control
6 has been transferred;

7 (2) to the extent an agreement between the
8 account debtor and seller of a payment intangible limits the
9 account debtor's duty to pay a person other than the seller
10 and the limitation is effective under law other than Sections
11 55-12-101 through 55-12-106 NMSA 1978; or

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

14 (A) divide a payment;

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

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

19 (e) Subject to Subsection (h) of this section, if
20 requested by the account debtor, the person giving the
21 notification pursuant to Subsection (b) of this section
22 seasonably shall furnish reasonable proof, using the method
23 in the agreement referred to in Paragraph (1) of Subsection
24 (d) of this section, that control of the controllable
25 electronic record has been transferred. Unless the person

1 complies with the request, the account debtor may discharge
2 its obligation by paying a person that formerly had control,
3 even if the account debtor has received a notification
4 pursuant to Subsection (b) of this section.

5 (f) A person furnishes reasonable proof pursuant
6 to Subsection (e) of this section that control has been
7 transferred if the person demonstrates, using the method in
8 the agreement referred to in Paragraph (1) of Subsection (d)
9 of this section, that the transferee has the power to:

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

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

15 (3) transfer the powers specified in
16 Paragraphs (1) and (2) of this subsection to another person.

17 (g) Subject to Subsection (h) of this section, an
18 account debtor may not waive or vary its rights pursuant to
19 Paragraph (1) of Subsection (d) and Subsection (e) of this
20 section or its option pursuant to Paragraph (3) of Subsection
21 (d) of this section.

22 (h) This section is subject to law other than
23 Sections 55-12-101 through 55-12-106 NMSA 1978 that
24 establishes a different rule for an account debtor who is an
25 individual and who incurred the obligation primarily for

1 personal, family or household purposes."

2 SECTION 102. A new section of the Uniform Commercial
3 Code, Section 55-12-107 NMSA 1978, is enacted to read:

4 "55-12-107. GOVERNING LAW.--

5 (a) Except as provided in Subsection (b) of this
6 section, the local law of a controllable electronic record's
7 jurisdiction governs a matter covered by Sections 55-12-101
8 through 55-12-106 NMSA 1978.

9 (b) For a controllable electronic record that
10 evidences a controllable account or controllable payment
11 intangible, the local law of the controllable electronic
12 record's jurisdiction governs a matter covered by Section
13 55-12-106 NMSA 1978 unless an effective agreement determines
14 that the local law of another jurisdiction governs.

15 (c) The following rules determine a controllable
16 electronic record's jurisdiction pursuant to this section:

17 (1) if the controllable electronic record,
18 or a record attached to or logically associated with the
19 controllable electronic record and readily available for
20 review, expressly provides that a particular jurisdiction is
21 the controllable electronic record's jurisdiction for
22 purposes of Sections 55-12-101 through 55-12-106 NMSA 1978 or
23 the Uniform Commercial Code, that jurisdiction is the
24 controllable electronic record's jurisdiction;

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

1 not apply and the rules of the system in which the
2 controllable electronic record is recorded are readily
3 available for review and expressly provide that a particular
4 jurisdiction is the controllable electronic record's
5 jurisdiction for purposes of Sections 55-12-101 through 55-
6 12-106 NMSA 1978 or the Uniform Commercial Code, that
7 jurisdiction is the controllable electronic record's
8 jurisdiction;

9 (3) if Paragraphs (1) and (2) of this
10 subsection do not apply and the controllable electronic
11 record, or a record attached to or logically associated with
12 the controllable electronic record and readily available for
13 review, expressly provides that the controllable electronic
14 record is governed by the law of a particular jurisdiction,
15 that jurisdiction is the controllable electronic record's
16 jurisdiction;

17 (4) if Paragraphs (1), (2) and (3) of this
18 subsection do not apply and the rules of the system in which
19 the controllable electronic record is recorded are readily
20 available for review and expressly provide that the
21 controllable electronic record or the system is governed by
22 the law of a particular jurisdiction, that jurisdiction is
23 the controllable electronic record's jurisdiction; and

24 (5) if Paragraphs (1) through (4) of this
25 subsection do not apply, the controllable electronic record's

1 jurisdiction is the District of Columbia.

2 (d) If Paragraph (5) of Subsection (c) of this
3 section applies and Article 12 is not in effect in the
4 District of Columbia without material modification, the
5 governing law for a matter covered by Sections 55-12-101
6 through 55-12-106 NMSA 1978 is the law of the District of
7 Columbia as though those sections were in effect in the
8 District of Columbia without material modification. In this
9 subsection, "Article 12" means Article 12 of Uniform
10 Commercial Code Amendments (2022).

11 (e) To the extent Subsections (a) and (b) of this
12 section provide that the local law of the controllable
13 electronic record's jurisdiction governs a matter covered by
14 Sections 55-12-101 through 55-12-106 NMSA 1978, that law
15 governs even if the matter or a transaction to which the
16 matter relates does not bear any relation to the controllable
17 electronic record's jurisdiction.

18 (f) The rights acquired pursuant to Section
19 55-12-104 NMSA 1978 by a purchaser or qualifying purchaser
20 are governed by the law applicable pursuant to this section
21 at the time of purchase."

22 ARTICLE 12A

23 TRANSITIONAL PROVISIONS FOR UNIFORM COMMERCIAL CODE

24 AMENDMENTS (2022)

25 PART 1

1 GENERAL PROVISIONS AND DEFINITIONS

2 SECTION 103. A new section of the Uniform Commercial
3 Code, Section 55-12A-101 NMSA 1978, is enacted to read:

4 "55-12A-101. SHORT TITLE.--Chapter 55, Article 12A NMSA
5 1978 may be cited as "Transitional Provisions for Uniform
6 Commercial Code Amendments (2022)"."

7 SECTION 104. A new section of the Uniform Commercial
8 Code, Section 55-12A-102 NMSA 1978, is enacted to read:

9 "55-12A-102. DEFINITIONS.--

10 (a) As used in Chapter 55, Article 12A NMSA 1978:

11 (1) "adjustment date" means July 1, 2025;

12 (2) "Article 12" means Article 12 of the
13 Uniform Commercial Code; and

14 (3) "Article 12 property" means a
15 controllable account, controllable electronic record or
16 controllable payment intangible.

17 (b) The following definitions in other articles of
18 the Uniform Commercial Code apply to this article:

19 (1) "controllable account", as provided in
20 Section 55-9-102 NMSA 1978;

21 (2) "controllable electronic record", as
22 provided in Section 55-12-102 NMSA 1978;

23 (3) "controllable payment intangible", as
24 provided in Section 55-9-102 NMSA 1978;

25 (4) "electronic money", as provided in

1 Section 55-9-102 NMSA 1978; and

2 (5) "financing statement", as provided in
3 Section 55-9-102 NMSA 1978.

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

7 PART 2

8 GENERAL TRANSITIONAL PROVISION

9 SECTION 105. A new section of the Uniform Commercial
10 Code, Section 55-12A-201 NMSA 1978, is enacted to read:

11 "55-12A-201. SAVING CLAUSE.--Except as provided in
12 Sections 55-12A-301 through 55-12A-306 NMSA 1978, a
13 transaction validly entered into before January 1, 2024 and
14 the rights, duties and interests flowing from the transaction
15 remain valid thereafter and may be terminated, completed,
16 consummated or enforced as required or permitted by law other
17 than the Uniform Commercial Code or, if applicable, the
18 Uniform Commercial Code as though this 2023 act had not taken
19 effect."

20 PART 3

21 TRANSITIONAL PROVISIONS FOR ARTICLES 9 AND 12

22 SECTION 106. A new section of the Uniform Commercial
23 Code, Section 55-12A-301 NMSA 1978, is enacted to read:

24 "55-12A-301. SAVING CLAUSE.--

25 (a) Except as provided in Sections 55-12A-301

1 through 55-12A-306 NMSA 1978, Article 9 of the Uniform
2 Commercial Code as amended by this 2023 act and Article 12 of
3 the Uniform Commercial Code apply to a transaction, lien or
4 other interest in property, even if the transaction, lien or
5 interest was entered into, created or acquired before January
6 1, 2024.

7 (b) Except as provided in Subsection (c) of this
8 section and Sections 55-12A-302 through 55-12A-306 NMSA 1978:

9 (1) a transaction, lien or interest in
10 property that was validly entered into, created or
11 transferred before January 1, 2024 and was not governed by
12 the Uniform Commercial Code, but would be subject to Article
13 9 of the Uniform Commercial Code as amended by this 2023 act
14 or Article 12 of the Uniform Commercial Code if it had been
15 entered into, created or transferred on or after January 1,
16 2024, including the rights, duties and interests flowing from
17 the transaction, lien or interest, remains valid on and after
18 January 1, 2024; and

19 (2) the transaction, lien or interest may be
20 terminated, completed, consummated and enforced as required
21 or permitted by this 2023 act or by the law that would apply
22 if this 2023 act had not taken effect.

23 (c) This 2023 act does not affect an action, case
24 or proceeding commenced before January 1, 2024."

25 **SECTION 107.** A new section of the Uniform Commercial

1 Code, Section 55-12A-302 NMSA 1978, is enacted to read:

2 "55-12A-302. SECURITY INTEREST PERFECTED BEFORE JANUARY
3 1, 2024.--

4 (a) A security interest that is enforceable and
5 perfected immediately before January 1, 2024 is a perfected
6 security interest pursuant to this 2023 act if, on January 1,
7 2024, the requirements for enforceability and perfection
8 pursuant to this 2023 act are satisfied without further
9 action.

10 (b) If a security interest is enforceable and
11 perfected immediately before January 1, 2024, but the
12 requirements for enforceability or perfection pursuant to
13 this 2023 act are not satisfied on January 1, 2024, the
14 security interest:

15 (1) is a perfected security interest until
16 the earlier of the time perfection would have ceased under
17 the law in effect immediately before January 1, 2024 or the
18 adjustment date;

19 (2) remains enforceable thereafter only if
20 the security interest satisfies the requirements for
21 enforceability pursuant to Section 55-9-203 NMSA 1978, as
22 amended by this 2023 act, before the adjustment date; and

23 (3) remains perfected thereafter only if the
24 requirements for perfection pursuant to this 2023 act are
25 satisfied before the time specified in Paragraph (1) of this

1 subsection."

2 SECTION 108. A new section of the Uniform Commercial
3 Code, Section 55-12A-303 NMSA 1978, is enacted to read:

4 "55-12A-303. SECURITY INTEREST UNPERFECTED BEFORE
5 JANUARY 1, 2024.--A security interest that is enforceable
6 immediately before January 1, 2024 but is unperfected at that
7 time:

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

10 (2) remains enforceable thereafter if the security
11 interest becomes enforceable pursuant to Section 55-9-203
12 NMSA 1978, as amended by this 2023 act, on January 1, 2024 or
13 before the adjustment date; and

14 (3) becomes perfected:

15 (A) without further action on January 1,
16 2024 if the requirements for perfection pursuant to this 2023
17 act are satisfied before or at that time; or

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

20 SECTION 109. A new section of the Uniform Commercial
21 Code, Section 55-12A-304 NMSA 1978, is enacted to read:

22 "55-12A-304. EFFECTIVENESS OF ACTIONS TAKEN BEFORE
23 JANUARY 1, 2024.--

24 (a) If action, other than the filing of a
25 financing statement, is taken before January 1, 2024 and the

1 action would have resulted in perfection of the security
2 interest had the security interest become enforceable before
3 January 1, 2024, the action is effective to perfect a
4 security interest that attaches pursuant to this 2023 act
5 before the adjustment date. An attached security interest
6 becomes unperfected on the adjustment date unless the
7 security interest becomes a perfected security interest
8 pursuant to this 2023 act before the adjustment date.

9 (b) The filing of a financing statement before
10 January 1, 2024 is effective to perfect a security interest
11 on January 1, 2024 to the extent the filing would satisfy the
12 requirements for perfection pursuant to this 2023 act.

13 (c) The taking of an action before January 1, 2024
14 is sufficient for the enforceability of a security interest
15 on January 1, 2024 if the action would satisfy the
16 requirements for enforceability pursuant to this 2023 act."

17 **SECTION 110.** A new section of the Uniform Commercial
18 Code, Section 55-12A-305 NMSA 1978, is enacted to read:

19 "55-12A-305. PRIORITY.--

20 (a) Subject to Subsections (b) and (c) of this
21 section, this 2023 act determines the priority of conflicting
22 claims to collateral.

23 (b) Subject to Subsection (c) of this section, if
24 the priorities of claims to collateral were established
25 before January 1, 2024, Article 9 of the Uniform Commercial

1 Code as in effect before January 1, 2024 determines priority.

2 (c) On the adjustment date, to the extent the
3 priorities determined by Article 9 of the Uniform Commercial
4 Code as amended by this 2023 act modify the priorities
5 established before January 1, 2024, the priorities of claims
6 to Article 12 property and electronic money established
7 before January 1, 2024 cease to apply."

8 SECTION 111. A new section of the Uniform Commercial
9 Code, Section 55-12A-306 NMSA 1978, is enacted to read:

10 "55-12A-306. PRIORITY OF CLAIMS WHEN PRIORITY RULES OF
11 ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE DO NOT APPLY.--

12 (a) Subject to Subsections (b) and (c) of this
13 section, Article 12 of the Uniform Commercial Code determines
14 the priority of conflicting claims to Article 12 property
15 when the priority rules of Article 9 of the Uniform
16 Commercial Code as amended by this 2023 act do not apply.

17 (b) Subject to Subsection (c) of this section,
18 when the priority rules of Article 9 of the Uniform
19 Commercial Code as amended by this 2023 act do not apply and
20 the priorities of claims to Article 12 property were
21 established before January 1, 2024, law other than Article 12
22 of the Uniform Commercial Code determines priority.

23 (c) When the priority rules of Article 9 of the
24 Uniform Commercial Code as amended by this 2023 act do not
25 apply, to the extent the priorities determined by this 2023

1 act modify the priorities established before January 1, 2024,
2 the priorities of claims to Article 12 property established
3 before January 1, 2024 cease to apply on the adjustment
4 date."

5 SECTION 112. EFFECTIVE DATE.--The effective date of the
6 provisions of this act is January 1, 2024. _____

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