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HOUSE BILL 344

**44TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION,
2000**

INTRODUCED BY

W. Ken Martinez

FOR THE COURTS, CORRECTIONS AND CRIMINAL JUSTICE COMMITTEE

AN ACT

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

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

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Chapter 96, Section 9-101) is repealed and a new Section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

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

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Chapter 96, Section 9-102, as amended) is repealed and a new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

"55-9-102. [NEW MATERIAL] DEFINITIONS AND INDEX OF

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DEFINITIONS.--

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

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

(2) "account", except as used in "account for":

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

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

(ii) for services rendered or to be rendered;

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

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

(v) for energy provided or to be provided;

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

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

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

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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 health-care-insurance
5 receivables; but

6 (C) does not include:

7 (i) rights to payment evidenced by
8 chattel paper or an instrument;

9 (ii) commercial tort claims;

10 (iii) deposit accounts;

11 (iv) investment property;

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

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

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

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

25 (A) authenticated by a secured party;

(B) indicating the aggregate unpaid
secured obligations as of a date not more than thirty-five

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1 days earlier or thirty-five days later than the date of the
2 record; and

3 (C) identifying the components of the
4 obligations in reasonable detail;

5 (5) "agricultural lien" means an interest,
6 other than a security interest, in farm products:

7 (A) that secures payment or performance
8 of an obligation for:

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

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

13 (B) that is created by statute in favor
14 of a person that:

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

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

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

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

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

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

(ii) attaches to the minerals as

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1 extracted; or

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

5 (7) "authenticate" means to:

6 (A) sign; or

7 (B) execute or otherwise adopt a
8 symbol, or encrypt or similarly process a record in whole or
9 in part, with the present intent of the authenticating person
10 to identify the person and adopt or accept a record;

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

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

17 (10) "certificate of title" means a
18 certificate of title with respect to which a statute provides
19 for the security interest in question to be indicated on the
20 certificate as a condition or result of the security
21 interest's obtaining priority over the rights of a lien
22 creditor with respect to the collateral;

23 (11) "chattel paper" means a record or
24 records that evidence both a monetary obligation and a
25 security interest in specific goods, a security interest in
specific goods and software used in the goods, a security
interest in specific goods and license of software used in

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1 the goods, a lease of specific goods or a lease of specific
2 goods and license of software used in the goods. In this
3 paragraph, "monetary obligation" means a monetary obligation
4 secured by the goods or owed under a lease of the goods and
5 includes a monetary obligation with respect to software used
6 in the goods. The term does not include:

7 (A) charters or other contracts
8 involving the use or hire of a vessel; or

9 (B) records that evidence a right to
10 payment arising out of the use of a credit or charge card or
11 information contained on or for use with the card. If a
12 transaction is evidenced by records that include an
13 instrument or series of instruments, the group of records
14 taken together constitutes chattel paper;

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

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

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

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

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

25 (A) the claimant is an organization; or

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

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

3 (ii) does not include damages
4 arising out of personal injury to or the death of an
5 individual;

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

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

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

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

20 (16) "commodity customer" means a person for
21 which a commodity intermediary carries a commodity contract
22 on its books;

23 (17) "commodity intermediary" means a person
24 that:

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

(B) in the ordinary course of its

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1 business provides clearance or settlement services for a
2 board of trade that has been designated as a contract market
3 pursuant to federal commodities law;

4 (18) "communicate" means:

5 (A) to send a written or other tangible
6 record;

7 (B) to transmit a record by any means
8 agreed upon by the persons sending and receiving the record;
9 or

10 (C) in the case of transmission of a
11 record to or by a filing office, to transmit a record by any
12 means prescribed by filing-office rule;

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

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

18 (A) the merchant:

19 (i) deals in goods of that kind
20 under a name other than the name of the person making
21 delivery;

22 (ii) is not an auctioneer; and

23 (iii) is not generally known by
24 its creditors to be substantially engaged in selling the
25 goods of others;

(B) with respect to each delivery, the
aggregate value of the goods is one thousand dollars (\$1,000)

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1 or more at the time of delivery;

2 (C) the goods are not consumer goods
3 immediately before delivery; and

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

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

8 (22) "consumer debtor" means a debtor in a
9 consumer transaction;

10 (23) "consumer goods" means goods that are
11 used or bought for use primarily for personal, family or
12 household purposes;

13 (24) "consumer-goods transaction" means a
14 consumer transaction in which:

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

17 (B) a security interest in consumer
18 goods secures the obligation;

19 (25) "consumer obligor" means an obligor who
20 is an individual and who incurred the obligation as part of a
21 transaction entered into primarily for personal, family or
22 household purposes;

23 (26) "consumer transaction" means a
24 transaction in which:

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

(ii) a security interest secures the

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1 obligation; and

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

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

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

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

12 (28) "debtor" means:

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

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

18 (C) a consignee;

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

23 (30) "document" means a document of title or
24 a receipt of the type described in Subsection (2) of Section
25 55-7-201 NMSA 1978;

(31) "electronic chattel paper" means
chattel paper evidenced by a record or records consisting of

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1 information stored in an electronic medium;

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

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

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

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

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

14 (ii) aquatic goods produced in
15 aquacultural operations;

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

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

20 (D) products of crops or livestock in
21 their unmanufactured states;

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

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

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

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

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

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

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

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

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

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

3 (A) includes:

4 (i) fixtures;

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

7 (iii) the unborn young of animals;

8 (iv) crops grown, growing or to be
9 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 in
21 goods that consist solely of the medium in which the program
22 is embedded; or

23 (ii) accounts, chattel paper,
24 commercial tort claims, deposit accounts, documents, general
25 intangibles, instruments, investment property, letter-of-
credit rights, letters of credit, money, or oil, gas or other
minerals before extraction;

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

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

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

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

23 (48) "inventory" means goods, other than
24 farm products, that:
25 (A) are leased by a person as lessor;
(B) are held by a person for sale or
lease or to be furnished under a contract of service;

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1 (C) are furnished by a person under a
2 contract of service; or

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

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

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

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

17 (52) "lien creditor" means:

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

20 (B) an assignee for benefit of
21 creditors from the time of assignment;

22 (C) a trustee in bankruptcy from the
23 date of the filing of the petition; or

24 (D) a receiver in equity from the time
25 of appointment;

(53) "manufactured home" means a structure,
transportable in one or more sections, which, in the

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

14 (54) "manufactured-home transaction" means a
15 secured transaction:

16 (A) that creates a purchase-money
17 security interest in a manufactured home, other than a
18 manufactured home held as inventory; or

19 (B) in which a manufactured home, other
20 than a manufactured home held as inventory, is the primary
21 collateral;

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

25 (56) "new debtor" means a person that
becomes bound as debtor under Subsection (d) of Section 55-
9-203 NMSA 1978 by a security agreement previously entered

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1 into by another person;

2 (57) "new value" means:

3 (A) money;

4 (B) money's worth in property, services
5 or new credit; or

6 (C) release by a transferee of an
7 interest in property previously transferred to the
8 transferee. The term does not include an obligation
9 substituted for another obligation;

10 (58) "noncash proceeds" means proceeds other
11 than cash proceeds;

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

15 (A) owes payment or other performance
16 of the obligation;

17 (B) has provided property other than
18 the collateral to secure payment or other performance of the
19 obligation; or

20 (C) is otherwise accountable in whole
21 or in part for payment or other performance of the
22 obligation. The term does not include issuers or nominated
23 persons under a letter of credit;

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

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1 55-9-203 NMSA 1978;

2 (61) "payment intangible" means a general
3 intangible under which the account debtor's principal
4 obligation is a monetary obligation;

5 (62) "person related to", with respect to an
6 individual, means:

7 (A) the spouse of the individual;

8 (B) a brother, brother-in-law, sister
9 or sister-in-law of the individual;

10 (C) an ancestor or lineal descendant of
11 the individual or the individual's spouse; or

12 (D) any other relative, by blood or
13 marriage, of the individual or the individual's spouse who
14 shares the same home with the individual;

15 (63) "person related to", with respect to an
16 organization, means:

17 (A) a person directly or indirectly
18 controlling, controlled by or under common control with the
19 organization;

20 (B) an officer or director of, or a
21 person performing similar functions with respect to, the
22 organization;

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

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

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1 or

2 (E) an individual who is related by
3 blood or marriage to an individual described in Subparagraph
4 (A), (B), (C) or (D) of this paragraph and shares the same
5 home with the individual;

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

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

10 (B) whatever is collected on, or
11 distributed on account of, collateral;

12 (C) rights arising out of collateral;

13 (D) to the extent of the value of
14 collateral, claims arising out of the loss, nonconformity or
15 interference with the use of, defects or infringement of
16 rights in, or damage to, the collateral; or

17 (E) to the extent of the value of
18 collateral and to the extent payable to the debtor or the
19 secured party, insurance payable by reason of the loss or
20 nonconformity of, defects or infringement of rights in, or
21 damage to, the collateral;

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

(66) "proposal" means a record authenticated

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1 by a secured party which includes the terms on which the
2 secured party is willing to accept collateral in full or
3 partial satisfaction of the obligation it secures pursuant to
4 Sections 55-9-620 through 55-9-622 NMSA 1978;

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

7 (A) debt securities are issued;

8 (B) all or a portion of the securities
9 issued have an initial stated maturity of at least twenty
10 years; and

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

16 (68) "pursuant to commitment", with respect
17 to an advance made or other value given by a secured party,
18 means pursuant to the secured party's obligation, whether or
19 not a subsequent event of default or other event not within
20 the secured party's control has relieved or may relieve the
21 secured party from its obligation;

22 (69) "record", except as used in "for
23 record", "of record", "record or legal title" and "record
24 owner", means information that is inscribed on a tangible
25 medium or that is stored in an electronic or other medium and
is retrievable in perceivable form;

(70) "registered organization" means an

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1 organization organized solely under the law of a single state
2 or the United States and as to which the state or the United
3 States must maintain a public record showing the organization
4 to have been organized;

5 (71) "secondary obligor" means an obligor to
6 the extent that:

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

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

12 (72) "secured party" means:

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

17 (B) a person that holds an agricultural
18 lien;

19 (C) a consignor;

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

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

(F) a person that holds a security

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1 interest arising under Section 55-2-401, Section 55-2-505,
2 Subsection (3) of Section 55-2-711, Subsection (5) of Section
3 55-2A-508, Section 55-4-210 or Section 55-5-118 NMSA 1978;

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

6 (74) "send", in connection with a record or
7 notification, means:

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

13 (B) to cause the record or notification
14 to be received within the time that it would have been
15 received if properly sent under Subparagraph (A) of this
16 paragraph;

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

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

(77) "supporting obligation" means a letter-
of-credit right or secondary obligation that supports the

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1 payment or performance of an account, chattel paper, a
2 document, a general intangible, an instrument or investment
3 property;

4 (78) "tangible chattel paper" means chattel
5 paper evidenced by a record or records consisting of
6 information that is inscribed on a tangible medium;

7 (79) "termination statement" means an
8 amendment of a financing statement that:

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

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

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

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

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

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

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

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

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

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

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

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1 55-3-103 NMSA 1978;
2 "sale" Section
3 55-2-106 NMSA 1978;
4 "securities account" Section
5 55-8-501 NMSA 1978;
6 "securities intermediary" Section
7 55-8-102 NMSA 1978;
8 "security" Section
9 55-8-102 NMSA 1978;
10 "security certificate" Section
11 55-8-102 NMSA 1978;
12 "security entitlement" Section
13 55-8-102 NMSA 1978; and
14 "uncertificated security" Section
15 55-8-102 NMSA 1978.

16 (c) Chapter 12, Article 2A and Chapter 55, Article
17 1 NMSA 1978 contain general definitions and principles of
18 construction and interpretation applicable throughout Chapter
19 55, Article 9 NMSA 1978."

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

23 "55-9-103. [NEW MATERIAL] PURCHASE-MONEY SECURITY
24 INTEREST--APPLICATION OF PAYMENTS--BURDEN OF ESTABLISHING.--
25

(a) In this section:

(1) "purchase-money collateral" means goods
or software that secures a purchase-money obligation incurred

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1 with respect to that collateral; and

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

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

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

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

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

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

(1) the debtor acquired its interest in the

underscored material = new
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1 software in an integrated transaction in which it acquired an
2 interest in the goods; and

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

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

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

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

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

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

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

24 (B) if more than one obligation is
25 secured, to obligations secured by purchase-money security
interests in the order in which those obligations were
incurred.

underscoring material = new
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1 (f) In a transaction other than a consumer-goods
2 transaction, a purchase-money security interest does not lose
3 its status as such, even if:

4 (1) the purchase-money collateral also
5 secures an obligation that is not a purchase-money
6 obligation;

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

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

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

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

23 Section 4. Section 55-9-104 NMSA 1978 (being Laws 1961,
24 Chapter 96, Section 9-104, as amended) is repealed and a new
25 Section 55-9-104 NMSA 1978 is enacted to read:

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

(a) A secured party has control of a deposit

underscored material = new
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1 account if:

2 (1) the secured party is the bank with which
3 the deposit account is maintained;

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

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

11 (b) A secured party that has satisfied Subsection
12 (a) of this section has control, even if the debtor retains
13 the right to direct the disposition of funds from the deposit
14 account."

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

18 "55-9-105. [NEW MATERIAL] CONTROL OF ELECTRONIC CHATTEL
19 PAPER.--A secured party has control of electronic chattel
20 paper if the record or records comprising the chattel paper
21 are created, stored and assigned in such a manner that:

22 (a) a single authoritative copy of the record or
23 records exists which is unique, identifiable and, except as
24 otherwise provided in Subsections (d) through (f) of this
25 section, unalterable;

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

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

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

6 (e) each copy of the authoritative copy and any
7 copy of a copy is readily identifiable as a copy that is not
8 the authoritative copy; and

9 (f) any revision of the authoritative copy is
10 readily identifiable as an authorized or unauthorized
11 revision."

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

15 "55-9-106. [NEW MATERIAL] CONTROL OF INVESTMENT
16 PROPERTY.--

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

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

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

24 (2) the commodity customer, secured party
25 and commodity intermediary have agreed that the commodity
intermediary will apply any value distributed on account of
the commodity contract as directed by the secured party

underscored material = new
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1 without further consent by the commodity customer.

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

6 Section 7. Section 55-9-107 NMSA 1978 (being Laws 1961,
7 Chapter 96, Section 9-107) is repealed and a new Section
8 55-9-107 NMSA 1978 is enacted to read:

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

16 Section 8. Section 55-9-108 NMSA 1978 (being Laws 1961,
17 Chapter 96, Section 9-108) is repealed and a new Section
18 55-9-108 NMSA 1978 is enacted to read:

19 "55-9-108. [NEW MATERIAL] SUFFICIENCY OF DESCRIPTION.--

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

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

- (1) specific listing;

underscored material = new
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- 1 (2) category;
- 2 (3) except as otherwise provided in
- 3 Subsection (e) of this section, a type of collateral defined
- 4 in the Uniform Commercial Code;
- 5 (4) quantity;
- 6 (5) computational or allocational formula or
- 7 procedure; or
- 8 (6) except as otherwise provided in
- 9 Subsection (c) of this section, any other method, if the
- 10 identity of the collateral is objectively determinable.
- 11 (c) A description of collateral as "all the
- 12 debtor's assets" or "all the debtor's personal property" or
- 13 using words of similar import does not reasonably identify
- 14 the collateral.
- 15 (d) Except as otherwise provided in Subsection (e)
- 16 of this section, a description of a security entitlement,
- 17 securities account or commodity account is sufficient if it
- 18 describes:
- 19 (1) the collateral by those terms or as
- 20 investment property; or
- 21 (2) the underlying financial asset or
- 22 commodity contract.
- 23 (e) A description only by type of collateral
- 24 defined in the Uniform Commercial Code is an insufficient
- 25 description of:
- (1) a commercial tort claim; or
- (2) in a consumer transaction, consumer

underscoring material = new
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1 goods, a security entitlement, a securities account or a
2 commodity account."

3 Section 9. Section 55-9-109 NMSA 1978 (being Laws 1961,
4 Chapter 96, Section 9-109) is repealed and a new Section
5 55-9-109 NMSA 1978 is enacted to read:

6 "55-9-109. [NEW MATERIAL] SCOPE.--

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

10 (1) a transaction, regardless of its form,
11 that creates a security interest in personal property or
12 fixtures by contract;

13 (2) an agricultural lien;

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

16 (4) a consignment;

17 (5) a security interest arising under
18 Section 55-2-401, 55-2-505, Subsection (3) of Section 55-
19 2-711 or Subsection (5) of Section 55-2A-508 NMSA 1978, as
20 provided in Section 55-9-110 NMSA 1978; and

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

23 (b) The application of Chapter 55, Article 9 NMSA
24 1978 to a security interest in a secured obligation is not
25 affected by the fact that the obligation is itself secured by
a transaction or interest to which this article does not
apply.

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

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

5 (2) another statute of this state expressly
6 governs the creation, perfection, priority or enforcement of
7 a security interest created by this state or a governmental
8 unit of this state;

9 (3) a statute of another state, a foreign
10 country or a governmental unit of another state or a foreign
11 country, other than a statute generally applicable to
12 security interests, expressly governs creation, perfection,
13 priority or enforcement of a security interest created by the
14 state, country or governmental unit; or

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

18 (d) Chapter 55, Article 9 NMSA 1978 does not apply
19 to:

20 (1) a landlord's lien, other than an
21 agricultural lien;

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

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

underscored material = new
~~[bracketed material] = delete~~

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

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

7 (6) an assignment of a right to payment
8 under a contract to an assignee that is also obligated to
9 perform under the contract;

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

13 (8) a transfer of an interest in or an
14 assignment of a claim under a policy of insurance, other than
15 an assignment by or to a health-care provider of a health-
16 care-insurance receivable and any subsequent assignment of
17 the right to payment, but Sections 55-9-315 and 55-9-322 NMSA
18 1978 apply with respect to proceeds and priorities in
19 proceeds;

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

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

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

(B) Section 55-9-404 NMSA 1978 applies

underscoring material = new
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1 with respect to defenses or claims of an account debtor;

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

5 (A) liens on real property in Sections
6 55-9-203 and 55-9-308 NMSA 1978;

7 (B) fixtures in Section 55-9-334 NMSA
8 1978;

9 (C) fixture filings in Sections
10 55-9-501, 55-9-502, 55-9-512, 55-9-516 and 55-9-519 NMSA
11 1978; and

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

14 (12) an assignment of a claim arising in
15 tort, other than a commercial tort claim, but Sections
16 55-9-315 and 55-9-322 NMSA 1978 apply with respect to
17 proceeds and priorities in proceeds; or

18 (13) an assignment of a deposit account in a
19 consumer transaction, but Sections 55-9-315 and 55-9-322 NMSA
20 1978 apply with respect to proceeds and priorities in
21 proceeds."

22 Section 10. Section 55-9-110 NMSA 1978 (being Laws
23 1961, Chapter 96, Section 9-110, as amended) is repealed and
24 a new Section 55-9-110 NMSA 1978 is enacted to read:

25 "55-9-110. [NEW MATERIAL] SECURITY INTERESTS ARISING
UNDER CHAPTER 55, ARTICLE 2 OR 2A NMSA 1978.--A security
interest arising under Section 55-2-401, 55-2-505, Subsection

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underscored material = new
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1 (3) of Section 55-2-711 or Subsection (5) of Section 55-
2 2A-508 NMSA 1978 is subject to Chapter 55, Article 9 NMSA
3 1978. However, until the debtor obtains possession of the
4 goods:

5 (1) the security interest is enforceable,
6 even if Paragraph (3) of Subsection (b) of Section 55-9-203
7 NMSA 1978 has not been satisfied;

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

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

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

15 Section 11. Section 55-9-201 NMSA 1978 (being Laws
16 1961, Chapter 96, Section 9-201) is repealed and a new
17 Section 55-9-201 NMSA 1978 is enacted to read:

18 "55-9-201. [NEW MATERIAL] GENERAL EFFECTIVENESS OF
19 SECURITY AGREEMENT.--

20 (a) Except as otherwise provided in the Uniform
21 Commercial Code, a security agreement is effective according
22 to its terms between the parties, against purchasers of the
23 collateral and against creditors.

24 (b) A transaction subject to Chapter 55, Article 9
25 NMSA 1978 is subject to any applicable rule of law which
establishes a different rule for consumers and to the
provisions of the Oil and Gas Products Lien Act; Sections

underscored material = new
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1 56-1-1 through 56-1-15 NMSA 1978; the Artists' Consignment
2 Act; the Pawnbrokers Act; the New Mexico Bank Installment
3 Loan Act of 1959; the New Mexico Small Loan Act of 1955; and
4 the Motor Vehicle Sales Finance Act and to rules adopted
5 under those provisions.

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

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

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

16 (2) extend the application of the rule of
17 law, statute or rule to a transaction not otherwise subject
18 to it."

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

22 "55-9-202. [NEW MATERIAL] TITLE TO COLLATERAL
23 IMMATERIAL.--Except as otherwise provided with respect to
24 consignments or sales of accounts, chattel paper, payment
25 intangibles or promissory notes, the provisions of Chapter
55, Article 9 NMSA 1978 with regard to rights and obligations
apply whether title to collateral is in the secured party or

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the debtor."

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

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

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

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

- (1) value has been given;
- (2) the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and
- (3) one of the following conditions is met:
 - (A) the debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;
 - (B) the collateral is not a

certificated security and is in the possession of the secured party under Section 55-9-313 NMSA 1978 pursuant to the

underscored material = new
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1 debtor's security agreement;

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

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

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

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

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

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

underscored material = new
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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
commodity account is also attachment of a security interest
in the commodity contracts carried in the commodity account."

underscored material = new
~~[bracketed material] = delete~~

1 Section 14. Section 55-9-204 NMSA 1978 (being Laws
2 1961, Chapter 96, Section 9-204, as amended) is repealed and
3 a new Section 55-9-204 NMSA 1978 is enacted to read:

4 "55-9-204. [NEW MATERIAL] AFTER-ACQUIRED PROPERTY--
5 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) A security interest does not attach under a
10 term constituting an after-acquired property clause to:

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

15 (2) a commercial tort claim.

16 (c) A security agreement may provide that
17 collateral secures, or that accounts, chattel paper, payment
18 intangibles or promissory notes are sold in connection with,
19 future advances or other value, whether or not the advances
20 or value are given pursuant to commitment."

21 Section 15. Section 55-9-205 NMSA 1978 (being Laws
22 1961, Chapter 96, Section 9-205, as amended) is repealed and
23 a new Section 55-9-205 NMSA 1978 is enacted to read:

24 "55-9-205. [NEW MATERIAL] USE OR DISPOSITION OF
25 COLLATERAL PERMISSIBLE.--

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

underscored material = new
[bracketed material] = delete

- 1 (1) the debtor has the right or ability to:
2 (A) use, commingle or dispose of all or
3 part of the collateral, including returned or repossessed
4 goods;
5 (B) collect, compromise, enforce or
6 otherwise deal with collateral;
7 (C) accept the return of collateral or
8 make repossessions; or
9 (D) use, commingle or dispose of
10 proceeds; or

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

13 (b) This section does not relax the requirements
14 of possession if attachment, perfection or enforcement of a
15 security interest depends upon possession of the collateral
16 by the secured party."

17 Section 16. Section 55-9-206 NMSA 1978 (being Laws
18 1961, Chapter 96, Section 9-206, as amended) is repealed and
19 a new Section 55-9-206 NMSA 1978 is enacted to read:

20 "55-9-206. [NEW MATERIAL] SECURITY INTEREST ARISING IN
21 PURCHASE OR DELIVERY OF FINANCIAL ASSET.--

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

- 24 (1) the person buys a financial asset
25 through the securities intermediary in a transaction in which
the person is obligated to pay the purchase price to the
securities intermediary at the time of the purchase; and

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1 (2) the securities intermediary credits the
2 financial asset to the buyer's securities account before the
3 buyer pays the securities intermediary.

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

7 (c) A security interest in favor of a person that
8 delivers a certificated security or other financial asset
9 represented by a writing attaches to the security or other
10 financial asset if:

11 (1) the security or other financial asset:

12 (A) in the ordinary course of business
13 is transferred by delivery with any necessary indorsement or
14 assignment; and

15 (B) is delivered under an agreement
16 between persons in the business of dealing with such
17 securities or financial assets; and

18 (2) the agreement calls for delivery against
19 payment.

20 (d) The security interest described in Subsection
21 (c) of this section secures the obligation to make payment
22 for the delivery."

23 Section 17. Section 55-9-207 NMSA 1978 (being Laws
24 1961, Chapter 96, Section 9-207) is repealed and a new
25 Section 55-9-207 NMSA 1978 is enacted to read:

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

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

7 (b) Except as otherwise provided in Subsection (d)
8 of this section, if a secured party has possession of
9 collateral:

10 (1) reasonable expenses, including the cost
11 of insurance and payment of taxes or other charges, incurred
12 in the custody, preservation, use or operation of the
13 collateral are chargeable to the debtor and are secured by the
14 collateral;

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

18 (3) the secured party shall keep the
19 collateral identifiable, but fungible collateral may be
20 commingled; and

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

23 (A) for the purpose of preserving the
24 collateral or its value;

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

(C) except in the case of consumer

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1 goods, in the manner and to the extent agreed by the debtor.

2 (c) Except as otherwise provided in Subsection (d)
3 of this section, a secured party having possession of
4 collateral or control of collateral under Section 55-9-104,
5 55-9-105, 55-9-106 or 55-9-107 NMSA 1978:

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

8 (2) shall apply money or funds received from
9 the collateral to reduce the secured obligation, unless
10 remitted to the debtor; and

11 (3) may create a security interest in the
12 collateral.

13 (d) If the secured party is a buyer of accounts,
14 chattel paper, payment intangibles or promissory notes or is a
15 consignor:

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

18 (A) to charge back uncollected
19 collateral; or

20 (B) otherwise to full or limited
21 recourse against the debtor or a secondary obligor based on
22 the nonpayment or other default of an account debtor or other
23 obligor on the collateral; and

24 (2) Subsections (b) and (c) of this section
25 do not apply."

Section 18. Section 55-9-208 NMSA 1978 (being Laws 1961,
Chapter 96, Section 9-208) is repealed and a new Section

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1 55-9-208 NMSA 1978 is enacted to read:

2 "55-9-208. [NEW MATERIAL] ADDITIONAL DUTIES OF SECURED
3 PARTY HAVING CONTROL OF COLLATERAL.--

4 (a) This section applies to cases in which there is
5 no outstanding secured obligation and the secured party is not
6 committed to make advances, incur obligations or otherwise
7 give value.

8 (b) Within ten days after receiving an
9 authenticated demand by the debtor:

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

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

19 (A) pay the debtor the balance on
20 deposit in the deposit account; or

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

23 (3) a secured party, other than a buyer,
24 having control of electronic chattel paper under Section
25 55-9-105 NMSA 1978 shall:

(A) communicate the authoritative copy
of the electronic chattel paper to the debtor or its

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1 designated custodian;

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

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

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

24 (5) a secured party having control of a
25 letter-of-credit right under Section 55-9-107 shall send to
each person having an unfulfilled obligation to pay or deliver
proceeds of the letter of credit to the secured party an

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1 authenticated release from any further obligation to pay or
2 deliver proceeds of the letter of credit to the secured
3 party."

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

6 "55-9-209. [NEW MATERIAL] DUTIES OF SECURED PARTY IF
7 ACCOUNT DEBTOR HAS BEEN NOTIFIED OF ASSIGNMENT.--

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

10 (1) there is no outstanding secured
11 obligation; and

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

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

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

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

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

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(a) In this section:

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

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

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

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

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

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

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

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

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

19 (1) disclaiming any interest in the
20 collateral; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 "55-9-302. [NEW MATERIAL] LAW GOVERNING PERFECTION AND
24 PRIORITY OF AGRICULTURAL LIENS.--While farm products are
25 located in a jurisdiction, the local law of that jurisdiction
governs perfection, the effect of perfection or nonperfection
and the priority of an agricultural lien on the farm

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1 products."

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

5 "55-9-303. [NEW MATERIAL] LAW GOVERNING PERFECTION AND
6 PRIORITY OF SECURITY INTERESTS IN GOODS COVERED BY A
7 CERTIFICATE OF TITLE.--

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

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

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

Section 24. Section 55-9-304 NMSA 1978 (being Laws 1961,

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1 Chapter 96, Section 9-304, as amended) is repealed and a new
2 Section 55-9-304 NMSA 1978 is enacted to read:

3 "55-9-304. [NEW MATERIAL] LAW GOVERNING PERFECTION AND
4 PRIORITY OF SECURITY INTERESTS IN DEPOSIT ACCOUNTS.--

5 (a) The local law of a bank's jurisdiction governs
6 perfection, the effect of perfection or nonperfection and the
7 priority of a security interest in a deposit account
8 maintained with that bank.

9 (b) The following rules determine a bank's
10 jurisdiction for purposes of Sections 55-9-301 through 55-9-
11 342 NMSA 1978:

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

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

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

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

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

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

11 "55-9-305. [NEW MATERIAL] LAW GOVERNING PERFECTION AND
12 PRIORITY OF SECURITY INTERESTS IN INVESTMENT PROPERTY.--

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

15 (1) while a security certificate is located
16 in a jurisdiction, the local law of that jurisdiction governs
17 perfection, the effect of perfection or nonperfection and the
18 priority of a security interest in the certificated security
19 represented thereby;

20 (2) the local law of the issuer's
21 jurisdiction as specified in Subsection (d) of Section
22 55-8-110 NMSA 1978 governs perfection, the effect of
23 perfection or nonperfection and the priority of a security
24 interest in an uncertificated security;

25 (3) the local law of the securities
intermediary's jurisdiction as specified in Subsection (e) of
Section 55-8-110 NMSA 1978 governs perfection, the effect of

1 perfection or nonperfection and the priority of a security
2 interest in a security entitlement or securities account; and

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

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

10 (1) if an agreement between the commodity
11 intermediary and commodity customer governing the commodity
12 account expressly provides that a particular jurisdiction is
13 the commodity intermediary's jurisdiction for purposes of the
14 Uniform Commercial Code, that jurisdiction is the commodity
15 intermediary's jurisdiction;

16 (2) if Paragraph (1) of this subsection does
17 not apply and an agreement between the commodity intermediary
18 and commodity customer governing the commodity account
19 expressly provides that the agreement is governed by the law
20 of a particular jurisdiction, that jurisdiction is the
21 commodity intermediary's jurisdiction;

22 (3) if neither Paragraph (1) nor Paragraph
23 (2) of this subsection applies and an agreement between the
24 commodity intermediary and commodity customer governing the
25 commodity account expressly provides that the commodity
account is maintained at an office in a particular
jurisdiction, that jurisdiction is the commodity

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1 intermediary's jurisdiction;

2 (4) if none of the preceding paragraphs
3 applies, the commodity intermediary's jurisdiction is the
4 jurisdiction in which the office identified in an account
5 statement as the office serving the commodity customer's
6 account is located; and

7 (5) if none of the preceding paragraphs
8 applies, the commodity intermediary's jurisdiction is the
9 jurisdiction in which the chief executive office of the
10 commodity intermediary is located.

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

13 (1) perfection of a security interest in
14 investment property by filing;

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

18 (3) automatic perfection of a security
19 interest in a commodity contract or commodity account created
20 by a commodity intermediary."

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

24 "55-9-306. [NEW MATERIAL] LAW GOVERNING PERFECTION AND
25 PRIORITY OF SECURITY INTERESTS IN LETTER-OF-CREDIT RIGHTS.--

(a) Subject to Subsection (c) of this section, the
local law of the issuer's jurisdiction or a nominated person's

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1 jurisdiction governs perfection, the effect of perfection or
2 nonperfection and the priority of a security interest in a
3 letter-of-credit right if the issuer's jurisdiction or
4 nominated person's jurisdiction is a state.

5 (b) For purposes of Sections 55-9-301 through
6 55-9-342 NMSA 1978, an issuer's jurisdiction or nominated
7 person's jurisdiction is the jurisdiction whose law governs
8 the liability of the issuer or nominated person with respect
9 to the letter-of-credit right as provided in Section 55-5-116
10 NMSA 1978.

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

14 Section 27. Section 55-9-307 NMSA 1978 (being Laws 1961,
15 Chapter 96, Section 9-307, as amended) is repealed and a new
16 Section 55-9-307 NMSA 1978 is enacted to read:

17 "55-9-307. [NEW MATERIAL] LOCATION OF DEBTOR.--

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

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

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

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

(3) a debtor that is an organization and has

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1 more than one place of business is located at its chief
2 executive office.

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

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

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

19 (f) Except as otherwise provided in Subsection (i)
20 of this section, a registered organization that is organized
21 under the law of the United States and a branch or agency of a
22 bank that is not organized under the law of the United States
23 or a state are located:

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

(2) in the state that the registered
organization, branch or agency designates if the law of the

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1 United States authorizes the registered organization, branch
2 or agency to designate its state of location; or

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

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

8 (1) the suspension, revocation, forfeiture or
9 lapse of the registered organization's status as such in its
10 jurisdiction of organization; or

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

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

15 (i) A branch or agency of a bank that is not
16 organized under the law of the United States or a state is
17 located in the state in which the branch or agency is licensed
18 if all branches and agencies of the bank are licensed in only
19 one state.

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

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

Section 28. Section 55-9-308 NMSA 1978 (being Laws 1961,
Chapter 96, Section 9-308, as amended) is repealed and a new

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1 Section 55-9-308 NMSA 1978 is enacted to read:

2 "55-9-308. [NEW MATERIAL] WHEN SECURITY INTEREST OR
3 AGRICULTURAL LIEN IS PERFECTED--CONTINUITY OF PERFECTION.--

4 (a) Except as otherwise provided in this section
5 and Section 55-9-309 NMSA 1978, a security interest is
6 perfected if it has attached and all of the applicable
7 requirements for perfection in Sections 55-9-310 through
8 55-9-316 have been satisfied. A security interest is
9 perfected when it attaches if the applicable requirements are
10 satisfied before the security interest attaches.

11 (b) An agricultural lien is perfected if it has
12 become effective and all of the applicable requirements for
13 perfection in Section 55-9-310 NMSA 1978 have been satisfied.
14 An agricultural lien is perfected when it becomes effective if
15 the applicable requirements are satisfied before the
16 agricultural lien becomes effective.

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

22 (d) Perfection of a security interest in collateral
23 also perfects a security interest in a supporting obligation
24 for the collateral.

25 (e) Perfection of a security interest in a right to
payment or performance also perfects a security interest in a
security interest, mortgage or other lien on personal or real

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1 property securing the right.

2 (f) Perfection of a security interest in a
3 securities account also perfects a security interest in the
4 security entitlements carried in the securities account.

5 (g) Perfection of a security interest in a
6 commodity account also perfects a security interest in the
7 commodity contracts carried in the commodity account."

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

11 "55-9-309. [NEW MATERIAL] SECURITY INTEREST PERFECTED
12 UPON ATTACHMENT.--The following security interests are
13 perfected when they attach:

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

19 (2) an assignment of accounts or payment
20 intangibles which does not by itself or in conjunction with
21 other assignments to the same assignee transfer a significant
22 part of the assignor's outstanding accounts or payment
23 intangibles;

24 (3) a sale of a payment intangible;

25 (4) a sale of a promissory note;

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

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- 1 health-care goods or services;
- 2 (6) a security interest arising under Section
- 3 55-2-401, 55-2-505, Subsection (3) of Section 55-2-711 or
- 4 Subsection (5) of Section 55-2A-508 NMSA 1978, until the
- 5 debtor obtains possession of the collateral;
- 6 (7) a security interest of a collecting bank
- 7 arising under Section 55-4-210 NMSA 1978;
- 8 (8) a security interest of an issuer or nominated
- 9 person arising under Section 55-5-118 NMSA 1978;
- 10 (9) a security interest arising in the delivery of
- 11 a financial asset under Subsection (c) of Section 55-9-206
- 12 NMSA 1978;
- 13 (10) a security interest in investment property
- 14 created by a broker or securities intermediary;
- 15 (11) a security interest in a commodity contract or
- 16 a commodity account created by a commodity intermediary;
- 17 (12) an assignment for the benefit of all creditors
- 18 of the transferor and subsequent transfers by the assignee
- 19 thereunder; and
- 20 (13) a security interest created by an assignment
- 21 of a beneficial interest in a decedent's estate."

22 Section 30. Section 55-9-310 NMSA 1978 (being Laws 1961,
23 Chapter 96, Section 9-310) is repealed and a new Section
24 55-9-310 NMSA 1978 is enacted to read:

25 "55-9-310. [NEW MATERIAL] WHEN FILING REQUIRED TO
PERFECT SECURITY INTEREST OR AGRICULTURAL LIEN--SECURITY
INTERESTS AND AGRICULTURAL LIENS TO WHICH FILING PROVISIONS DO

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1 NOT APPLY.--

2 (a) Except as otherwise provided in Subsection (b)
3 of this section and in Section 55-9-312 NMSA 1978, a financing
4 statement must be filed to perfect all security interests and
5 agricultural liens.

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

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

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

12 (3) in property subject to a statute,
13 regulation or treaty described in Subsection (a) of Section
14 55-9-311 NMSA 1978;

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

18 (5) in certificated securities, documents,
19 goods or instruments which is perfected without filing or
20 possession under Subsection (e), (f) or (g) of Section
21 55-9-312 NMSA 1978;

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

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

(8) in deposit accounts, electronic chattel

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1 paper, investment property or letter-of-credit rights which is
2 perfected by control under Section 55-9-314 NMSA 1978;

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

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

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

12 Section 31. Section 55-9-311 NMSA 1978 (being Laws 1961,
13 Chapter 96, Section 9-311) is repealed and a new Section
14 55-9-311 NMSA 1978 is enacted to read:

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

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

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

(2) the provisions of Chapter 56, Article 13

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1 or Chapter 66 NMSA 1978; or

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

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

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

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1 security interest is subject to Chapter 55, Article 9 NMSA
2 1978.

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

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

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

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

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

24 (1) a security interest in a deposit account
25 may be perfected only by control under Section 55-9-314 NMSA
1978;

(2) and except as otherwise provided in

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

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

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

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

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

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

18 (1) issuance of a document in the name of the
19 secured party;

20 (2) the bailee's receipt of notification of
21 the secured party's interest; or

22 (3) filing as to the goods.

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

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

- 7 (1) ultimate sale or exchange; or
- 8 (2) loading, unloading, storing, shipping,
9 transshipping, manufacturing, processing or otherwise dealing
10 with them in a manner preliminary to their sale or exchange.

11 (g) A perfected security interest in a certificated
12 security or instrument remains perfected for twenty days
13 without filing if the secured party delivers the security
14 certificate or instrument to the debtor for the purpose of:

- 15 (1) ultimate sale or exchange; or
- 16 (2) presentation, collection, enforcement,
17 renewal or registration of transfer.

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

21 Section 33. Section 55-9-313 NMSA 1978 (being Laws 1961,
22 Chapter 96, Section 9-313, as amended) is repealed and a new
23 Section 55-9-313 NMSA 1978 is enacted to read:

24 "55-9-313. [NEW MATERIAL] WHEN POSSESSION BY OR DELIVERY
25 TO SECURED PARTY PERFECTS SECURITY INTEREST WITHOUT FILING.--

(a) Except as otherwise provided in Subsection (b)
of this section, a secured party may perfect a security

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1 interest in negotiable documents, goods, instruments, money or
2 tangible chattel paper by taking possession of the collateral.
3 A secured party may perfect a security interest in
4 certificated securities by taking delivery of the certificated
5 securities under Section 55-8-301 NMSA 1978.

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

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

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

20 (2) the person takes possession of the
21 collateral after having authenticated a record acknowledging
22 that it will hold possession of collateral for the secured
23 party's benefit.

24 (d) If perfection of a security interest depends
25 upon possession of the collateral by a secured party,
perfection occurs no earlier than the time the secured party
takes possession and continues only while the secured party

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1 retains possession.

2 (e) A security interest in a certificated security
3 in registered form is perfected by delivery when delivery of
4 the certificated security occurs under Section 55-8-301 NMSA
5 1978 and remains perfected by delivery until the debtor
6 obtains possession of the security certificate.

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

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

12 (1) the acknowledgment is effective under
13 Subsection (c) of this section or Subsection (a) of Section
14 55-8-301 NMSA 1978, even if the acknowledgment violates the
15 rights of a debtor; and

16 (2) unless the person otherwise agrees or law
17 other than Chapter 55, Article 9 NMSA 1978 otherwise provides,
18 the person does not owe any duty to the secured party and is
19 not required to confirm the acknowledgment to another person.

20 (h) A secured party having possession of collateral
21 does not relinquish possession by delivering the collateral to
22 a person other than the debtor or a lessee of the collateral
23 from the debtor in the ordinary course of the debtor's
24 business if the person was instructed before the delivery or
25 is instructed contemporaneously with the delivery:

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

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

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

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

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

(a) A security interest in investment property, deposit accounts, letter-of-credit rights or electronic chattel paper may be perfected by control of the collateral under Section 55-9-104, 55-9-105, 55-9-106 or 55-9-107 NMSA 1978.

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

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

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1 by control until:

2 (1) the secured party does not have control;

3 and

4 (2) one of the following occurs:

5 (A) if the collateral is a certificated
6 security, the debtor has or acquires possession of the
7 security certificate;

8 (B) if the collateral is an
9 uncertificated security, the issuer has registered or
10 registers the debtor as the registered owner; or

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

13 Section 35. Section 55-9-315 NMSA 1978 (being Laws 1961,
14 Chapter 96, Section 9-315) is repealed and a new Section
15 55-9-315 NMSA 1978 is enacted to read:

16 "55-9-315. [NEW MATERIAL] SECURED PARTY'S RIGHTS ON
17 DISPOSITION OF COLLATERAL AND IN PROCEEDS.--

18 (a) Except as otherwise provided in Chapter 55,
19 Article 9 NMSA 1978 and in Subsection (2) of Section 55-2-403
20 NMSA 1978:

21 (1) a security interest or agricultural lien
22 continues in collateral notwithstanding sale, lease, license,
23 exchange or other disposition thereof unless the secured party
24 authorized the disposition free of the security interest or
25 agricultural lien; and

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

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1 (b) Proceeds that are commingled with other
2 property are identifiable proceeds:

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

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

11 (c) A security interest in proceeds is a perfected
12 security interest if the security interest in the original
13 collateral was perfected.

14 (d) A perfected security interest in proceeds
15 becomes unperfected on the twenty-first day after the security
16 interest attaches to the proceeds unless:

17 (1) the following conditions are satisfied:

18 (A) a filed financing statement covers
19 the original collateral;

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

23 (C) the proceeds are not acquired with
24 cash proceeds;

25 (2) the proceeds are identifiable cash
proceeds; or

(3) the security interest in the proceeds is

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1 perfected other than under Subsection (c) of this section when
2 the security interest attaches to the proceeds or within
3 twenty days thereafter.

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

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

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

13 Section 36. Section 55-9-316 NMSA 1978 (being Laws 1961,
14 Chapter 96, Section 9-316) is repealed and a new Section
15 55-9-316 NMSA 1978 is enacted to read:

16 "55-9-316. [NEW MATERIAL] CONTINUED PERFECTION OF
17 SECURITY INTEREST FOLLOWING CHANGE IN GOVERNING LAW.--

18 (a) A security interest perfected pursuant to the
19 law of the jurisdiction designated in Subsection (1) of
20 Section 55-9-301 or Subsection (c) of Section 55-9-305 NMSA
21 1978 remains perfected until the earliest of:

22 (1) the time perfection would have ceased
23 under the law of that jurisdiction;

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

(3) the expiration of one year after a
transfer of collateral to a person that thereby becomes a

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1 debtor and is located in another jurisdiction.

2 (b) If a security interest described in Subsection
3 (a) of this section becomes perfected under the law of the
4 other jurisdiction before the earliest time or event described
5 in that subsection, it remains perfected thereafter. If the
6 security interest does not become perfected under the law of
7 the other jurisdiction before the earliest time or event, it
8 becomes unperfected and is deemed never to have been perfected
9 as against a purchaser of the collateral for value.

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

14 (1) the collateral is located in one
15 jurisdiction and subject to a security interest perfected
16 under the law of that jurisdiction;

17 (2) thereafter the collateral is brought into
18 another jurisdiction; and

19 (3) upon entry into the other jurisdiction,
20 the security interest is perfected under the law of the other
21 jurisdiction.

22 (d) Except as otherwise provided in Subsection (e)
23 of this section, a security interest in goods covered by a
24 certificate of title which is perfected by any method under
25 the law of another jurisdiction when the goods become covered
by a certificate of title from this state remains perfected
until the security interest would have become unperfected

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1 under the law of the other jurisdiction had the goods not
2 become so covered.

3 (e) A security interest described in Subsection (d)
4 of this section becomes unperfected as against a purchaser of
5 the goods for value and is deemed never to have been perfected
6 as against a purchaser of the goods for value if the
7 applicable requirements for perfection under Subsection (b) of
8 Section 55-9-311 or Section 55-9-313 NMSA 1978 are not
9 satisfied before the earlier of:

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

14 (2) the expiration of four months after the
15 goods had become so covered.

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

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

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

(g) If a security interest described in Subsection

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1 (f) of this section becomes perfected under the law of the
2 other jurisdiction before the earlier of the time or the end
3 of the period described in that subsection, it remains
4 perfected thereafter. If the security interest does not
5 become perfected under the law of the other jurisdiction
6 before the earlier of that time or the end of that period, it
7 becomes unperfected and is deemed never to have been perfected
8 as against a purchaser of the collateral for value."

9 Section 37. Section 55-9-317 NMSA 1978 (being Laws 1961,
10 Chapter 96, Section 9-317) is repealed and a new Section
11 55-9-317 NMSA 1978 is enacted to read:

12 "55-9-317. [NEW MATERIAL] INTERESTS THAT TAKE PRIORITY
13 OVER OR TAKE FREE OF SECURITY INTEREST OR AGRICULTURAL LIEN.--

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

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

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

21 (A) the security interest or
22 agricultural lien is perfected; or

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

(b) Except as otherwise provided in Subsection (e)

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1 of this section, a buyer, other than a secured party, of
2 tangible chattel paper, documents, goods, instruments or a
3 security certificate takes free of a security interest or
4 agricultural lien if the buyer gives value and receives
5 delivery of the collateral without knowledge of the security
6 interest or agricultural lien and before it is perfected.

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

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

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

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

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

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

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

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

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

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

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

(b) For purposes of determining the rights of a

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

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

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

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

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

21 (1) without knowledge of the security
22 interest;

23 (2) for value;

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

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

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

6 (d) A buyer in ordinary course of business buying
7 oil, gas or other minerals at the wellhead or minehead or
8 after extraction takes free of an interest arising out of an
9 encumbrance.

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

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

15 "55-9-321. [NEW MATERIAL] LICENSEE OF GENERAL INTANGIBLE
16 AND LESSEE OF GOODS IN ORDINARY COURSE OF BUSINESS.--

17 (a) In this section, "licensee in ordinary course
18 of business" means a person that becomes a licensee of a
19 general intangible in good faith, without knowledge that the
20 license violates the rights of another person in the general
21 intangible, and in the ordinary course from a person in the
22 business of licensing general intangibles of that kind. A
23 person becomes a licensee in the ordinary course if the
24 license to the person comports with the usual or customary
25 practices in the kind of business in which the licensor is
engaged or with the licensor's own usual or customary
practices.

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1 (b) A licensee in ordinary course of business takes
2 its rights under a nonexclusive license free of a security
3 interest in the general intangible created by the licensor,
4 even if the security interest is perfected and the licensee
5 knows of its existence.

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

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

12 "55-9-322. [NEW MATERIAL] PRIORITIES AMONG CONFLICTING
13 SECURITY INTERESTS IN AND AGRICULTURAL LIENS ON SAME COLLATERAL.--

14 (a) Except as otherwise provided in this section,
15 priority among conflicting security interests and agricultural
16 liens in the same collateral is determined according to the
17 following rules:

18 (1) Conflicting perfected security interests
19 and agricultural liens rank according to priority in time of
20 filing or perfection. Priority dates from the earlier of the
21 time a filing covering the collateral is first made or the
22 security interest or agricultural lien is first perfected, if
23 there is no period thereafter when there is neither filing nor
24 perfection.

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

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

4 (b) For the purposes of Paragraph (1) of Subsection
5 (a) of this section:

6 (1) the time of filing or perfection as to a
7 security interest in collateral is also the time of filing or
8 perfection as to a security interest in proceeds; and

9 (2) the time of filing or perfection as to a
10 security interest in collateral supported by a supporting
11 obligation is also the time of filing or perfection as to a
12 security interest in the supporting obligation.

13 (c) Except as otherwise provided in Subsection (f)
14 of this section, a security interest in collateral which
15 qualifies for priority over a conflicting security interest
16 under Section 55-9-327, 55-9-328, 55-9-329, 55-9-330 or 55-9-331
17 NMSA 1978 also has priority over a conflicting security interest
18 in:

19 (1) any supporting obligation for the
20 collateral; and

21 (2) proceeds of the collateral if:

22 (A) the security interest in proceeds is
23 perfected;

24 (B) the proceeds are cash proceeds or of
25 the same type as the collateral; and

 (C) in the case of proceeds that are
proceeds of proceeds, all intervening proceeds are cash

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1 proceeds, proceeds of the same type as the collateral or an
2 account relating to the collateral.

3 (d) Subject to Subsection (e) of this section and
4 except as otherwise provided in Subsection (f) of this section,
5 if a security interest in chattel paper, deposit accounts,
6 negotiable documents, instruments, investment property or
7 letter-of-credit rights is perfected by a method other than
8 filing, conflicting perfected security interests in proceeds of
9 the collateral rank according to priority in time of filing.

10 (e) Subsection (d) of this section applies only if
11 the proceeds of the collateral are not cash proceeds, chattel
12 paper, negotiable documents, instruments, investment property or
13 letter-of-credit rights.

14 (f) Subsections (a) through (e) of this section are
15 subject to:

16 (1) Subsection (g) of this section and the
17 other provisions of Sections 55-9-301 through 55-9-342 NMSA
18 1978;

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

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

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

(g) A perfected agricultural lien on collateral has
priority over a conflicting security interest in or agricultural

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1 lien on the same collateral if the statute creating the
2 agricultural lien so provides."

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

5 "55-9-323. [NEW MATERIAL] FUTURE ADVANCES.--

6 (a) Except as otherwise provided in Subsection (c)
7 of this section, for purposes of determining the priority of a
8 perfected security interest under Paragraph (1) of Subsection
9 (a) of Section 55-9-322, perfection of the security interest
10 dates from the time an advance is made to the extent that the
11 security interest secures an advance that:

12 (1) is made while the security interest is
13 perfected only:

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

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

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

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

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(1) without knowledge of the lien; or

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

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

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

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

(2) forty-five days after the purchase.

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

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

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

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

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

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

7 "55-9-324. [NEW MATERIAL] PRIORITY OF PURCHASE-MONEY
8 SECURITY INTERESTS.--

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

18 (b) Subject to Subsection (c) of this section and
19 except as otherwise provided in Subsection (g) of this section,
20 a perfected purchase-money security interest in inventory has
21 priority over a conflicting security interest in the same
22 inventory, has priority over a conflicting security interest in
23 chattel paper or an instrument constituting proceeds of the
24 inventory and in proceeds of the chattel paper, if so provided
25 in Section 55-9-330 NMSA 1978, and, except as otherwise provided
in Section 55-9-327 NMSA 1978, also has priority in identifiable
cash proceeds of the inventory to the extent the identifiable

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1 cash proceeds are received on or before the delivery of the
2 inventory to a buyer, if:

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

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

8 (3) the holder of the conflicting security
9 interest receives the notification within five years before the
10 debtor receives possession of the inventory; and

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

15 (c) Paragraphs (2) through (4) of Subsection (b) of
16 this section apply only if the holder of the conflicting
17 security interest had filed a financing statement covering the
18 same types of inventory:

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

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

25 (d) Subject to Subsection (e) of this section and
except as otherwise provided in Subsection (g) of this section,
a perfected purchase-money security interest in livestock that

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1 are farm products has priority over a conflicting security
2 interest in the same livestock, and, except as otherwise
3 provided in Section 55-9-327 NMSA 1978, a perfected security
4 interest in their identifiable proceeds and identifiable
5 products in their unmanufactured states also has priority, if:

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (a) Except as otherwise provided in Subsection (b)
of this section, a security interest created by a debtor is
subordinate to a security interest in the same collateral

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1 created by another person if:

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

4 (2) the security interest created by the other
5 person was perfected when the debtor acquired the collateral;

6 and

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

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

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

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

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

19 "55-9-326. [NEW MATERIAL] PRIORITY OF SECURITY INTERESTS
20 CREATED BY NEW DEBTOR.--

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

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1 508 NMSA 1978.

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

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

13 "55-9-327. [NEW MATERIAL] PRIORITY OF SECURITY INTERESTS
14 IN DEPOSIT ACCOUNT.--The following rules govern priority among
15 conflicting security interests in the same deposit account:

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

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

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

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

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

7 "55-9-328. [NEW MATERIAL] PRIORITY OF SECURITY INTERESTS
8 IN INVESTMENT PROPERTY.--The following rules govern priority
9 among conflicting security interests in the same investment
10 property:

11 (1) A security interest held by a secured party
12 having control of investment property under Section 55-9-106
13 NMSA 1978 has priority over a security interest held by a
14 secured party that does not have control of the investment
15 property.

16 (2) Except as otherwise provided in Subsections (3)
17 and (4) of this section, conflicting security interests held by
18 secured parties, each of which has control under Section 55-
19 9-106 NMSA 1978, rank according to priority in time of:

20 (A) if the collateral is a security, obtaining
21 control;

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

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

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1 (ii) if the secured party obtained control
2 under Paragraph (2) of Subsection (d) of Section 55-8-106 NMSA
3 1978, the securities intermediary's agreement to comply with the
4 secured party's entitlement orders with respect to security
5 entitlements carried or to be carried in the securities account;
6 or

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

12 (C) if the collateral is a commodity contract
13 carried with a commodity intermediary, the satisfaction of the
14 requirement for control specified in Paragraph (2) of Subsection
15 (b) of Section 55-9-106 NMSA 1978 with respect to commodity
16 contracts carried or to be carried with the commodity
17 intermediary.

18 (3) A security interest held by a securities
19 intermediary in a security entitlement or a securities account
20 maintained with the securities intermediary has priority over a
21 conflicting security interest held by another secured party.

22 (4) A security interest held by a commodity
23 intermediary in a commodity contract or a commodity account
24 maintained with the commodity intermediary has priority over a
25 conflicting security interest held by another secured party.

(5) A security interest in a certificated security
in registered form which is perfected by taking delivery under

underscored material = new
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1 Subsection (a) of Section 55-9-313 NMSA 1978 and not by control
2 under Section 55-9-314 NMSA 1978 has priority over a conflicting
3 security interest perfected by a method other than control.

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

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

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

13 "55-9-329. [NEW MATERIAL] PRIORITY OF SECURITY INTERESTS
14 IN LETTER-OF-CREDIT RIGHT.--The following rules govern priority
15 among conflicting security interests in the same letter-of-
16 credit right:

17 (1) A security interest held by a secured party
18 having control of the letter-of-credit right under Section
19 55-9-107 NMSA 1978 has priority to the extent of its control
20 over a conflicting security interest held by a secured party
21 that does not have control.

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

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

"55-9-330. [NEW MATERIAL] PRIORITY OF PURCHASER OF CHATTEL

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1 PAPER OR INSTRUMENT.--

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

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

9 (2) the chattel paper does not indicate that it
10 has been assigned to an identified assignee other than the
11 purchaser.

12 (b) A purchaser of chattel paper has priority over a
13 security interest in the chattel paper which is claimed other
14 than merely as proceeds of inventory subject to a security
15 interest if the purchaser gives new value and takes possession
16 of the chattel paper or obtains control of the chattel paper
17 under Section 55-9-105 NMSA 1978 in good faith, in the ordinary
18 course of the purchaser's business and without knowledge that
19 the purchase violates the rights of the secured party.

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

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

(2) the proceeds consist of the specific goods
covered by the chattel paper or cash proceeds of the specific

underscored material = new
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1 goods, even if the purchaser's security interest in the proceeds
2 is unperfected.

3 (d) Except as otherwise provided in Subsection (a)
4 of Section 55-9-331 NMSA 1978, a purchaser of an instrument has
5 priority over a security interest in the instrument perfected by
6 a method other than possession if the purchaser gives value and
7 takes possession of the instrument in good faith and without
8 knowledge that the purchase violates the rights of the secured
9 party.

10 (e) For purposes of Subsections (a) and (b) of this
11 section, the holder of a purchase-money security interest in
12 inventory gives new value for chattel paper constituting
13 proceeds of the inventory.

14 (f) For purposes of Subsections (b) and (d) of this
15 section, if chattel paper or an instrument indicates that it has
16 been assigned to an identified secured party other than the
17 purchaser, a purchaser of the chattel paper or instrument has
18 knowledge that the purchase violates the rights of the secured
19 party."

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

22 "55-9-331. [NEW MATERIAL] PRIORITY OF RIGHTS OF PURCHASERS
23 OF INSTRUMENTS, DOCUMENTS AND SECURITIES UNDER OTHER ARTICLES--
24 PRIORITY OF INTERESTS IN FINANCIAL ASSETS AND SECURITY
25 ENTITLEMENTS UNDER CHAPTER 55, ARTICLE 8 NMSA 1978.--

(a) Chapter 55, Article 9 NMSA 1978 does not limit
the rights of a holder in due course of a negotiable instrument,

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1 a holder to which a negotiable document of title has been duly
2 negotiated or a protected purchaser of a security. These
3 holders or purchasers take priority over an earlier security
4 interest, even if perfected, to the extent provided in Chapter
5 55, Articles 3, 7 and 8 NMSA 1978.

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

10 (c) Filing under Chapter 55, Article 9 NMSA 1978
11 does not constitute notice of a claim or defense to the holders,
12 or purchasers, or persons described in Subsections (a) and (b)
13 of this section."

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

16 "55-9-332. [NEW MATERIAL] TRANSFER OF MONEY; TRANSFER OF
17 FUNDS FROM DEPOSIT ACCOUNT.

18 (a) A transferee of money takes the money free of a
19 security interest unless the transferee acts in collusion with
20 the debtor in violating the rights of the secured party.

21 (b) A transferee of funds from a deposit account
22 takes the funds free of a security interest in the deposit
23 account unless the transferee acts in collusion with the debtor
24 in violating the rights of the secured party."

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

"55-9-333. [NEW MATERIAL] PRIORITY OF CERTAIN LIENS

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1 ARISING BY OPERATION OF LAW.--

2 (a) In this section, "possessory lien" means an
3 interest, other than a security interest or an agricultural
4 lien:

5 (1) that secures payment or performance of an
6 obligation for services or materials furnished with respect to
7 goods by a person in the ordinary course of the person's
8 business;

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

11 (3) whose effectiveness depends on the person's
12 possession of the goods.

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

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

18 "55-9-334. [NEW MATERIAL] PRIORITY OF SECURITY INTERESTS
19 IN FIXTURES AND CROPS.--

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

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

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

5 (d) Except as otherwise provided in Subsection (h)
6 of this section, a perfected security interest in fixtures has
7 priority over a conflicting interest of an encumbrancer or owner
8 of the real property if the debtor has an interest of record in
9 or is in possession of the real property and:

10 (1) the security interest is a purchase-money
11 security interest;

12 (2) the interest of the encumbrancer or owner
13 arises before the goods become fixtures; and

14 (3) the security interest is perfected by a
15 fixture filing before the goods become fixtures or within twenty
16 days thereafter.

17 (e) A perfected security interest in fixtures has
18 priority over a conflicting interest of an encumbrancer or owner
19 of the real property if:

20 (1) the debtor has an interest of record in the
21 real property or is in possession of the real property and the
22 security interest:

23 (A) is perfected by a fixture filing
24 before the interest of the encumbrancer or owner is of record;
25 and

(B) has priority over any conflicting
interest of a predecessor in title of the encumbrancer or owner;

underscored material = new
~~[bracketed material] = delete~~

1 (2) before the goods become fixtures, the
2 security interest is perfected by any method permitted by
3 Chapter 55, Article 9 NMSA 1978, and the fixtures are readily
4 removable:

- 5 (A) factory or office machines;
- 6 (B) equipment that is not primarily used
7 or leased for use in the operation of the real property; or
- 8 (C) replacements of domestic appliances
9 that are consumer goods;

10 (3) the conflicting interest is a lien on the
11 real property obtained by legal or equitable proceedings after
12 the security interest was perfected by any method permitted by
13 this article; or

- 14 (4) the security interest is:
 - 15 (A) created in a manufactured home in a
16 manufactured-home transaction; and
 - 17 (B) perfected pursuant to a statute
18 described in Paragraph (2) of Subsection (a) of Section 55-9-311
19 NMSA 1978.

20 (f) A security interest in fixtures, whether or not
21 perfected, has priority over a conflicting interest of an
22 encumbrancer or owner of the real property if:

- 23 (1) the encumbrancer or owner has, in an
24 authenticated record, consented to the security interest or
25 disclaimed an interest in the goods as fixtures; or

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

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1 (g) The priority of the security interest under
2 Paragraph (2) of Subsection (f) of this section continues for a
3 reasonable time if the debtor's right to remove the goods as
4 against the encumbrancer or owner terminates.

5 (h) A mortgage is a construction mortgage to the
6 extent that it secures an obligation incurred for the
7 construction of an improvement on land, including the
8 acquisition cost of the land, if a recorded record of the
9 mortgage so indicates. Except as otherwise provided in
10 Subsections (e) and (f) of this section, a security interest in
11 fixtures is subordinate to a construction mortgage if a record
12 of the mortgage is recorded before the goods become fixtures and
13 the goods become fixtures before the completion of the
14 construction. A mortgage has this priority to the same extent
15 as a construction mortgage to the extent that it is given to
16 refinance a construction mortgage.

17 (i) A perfected security interest in crops growing
18 on real property has priority over a conflicting interest of an
19 encumbrancer or owner of the real property if the debtor has an
20 interest of record in or is in possession of the real property."

21 Section 55. A new Section 55-9-335 NMSA 1978 is enacted to
22 read:

23 "55-9-335. [NEW MATERIAL] ACCESSIONS.--

24 (a) A security interest may be created in an
25 accession and continues in collateral that becomes an accession.

(b) If a security interest is perfected when the
collateral becomes an accession, the security interest remains

underscored material = new
~~[bracketed material] = delete~~

1 perfected in the collateral.

2 (c) Except as otherwise provided in Subsection (d)
3 of this section, the other provisions of this part determine the
4 priority of a security interest in an accession.

5 (d) A security interest in an accession is
6 subordinate to a security interest in the whole which is
7 perfected by compliance with the requirements of a certificate-
8 of-title statute under Subsection (b) of Section 55-9-311 NMSA
9 1978.

10 (e) After default, subject to Sections 55-9-601
11 through 55-9-628 NMSA 1978, a secured party may remove an
12 accession from other goods if the security interest in the
13 accession has priority over the claims of every person having an
14 interest in the whole.

15 (f) A secured party that removes an accession from
16 other goods under Subsection (e) of this section shall promptly
17 reimburse any holder of a security interest or other lien on, or
18 owner of, the whole or of the other goods, other than the
19 debtor, for the cost of repair of any physical injury to the
20 whole or the other goods. The secured party need not reimburse
21 the holder or owner for any diminution in value of the whole or
22 the other goods caused by the absence of the accession removed
23 or by any necessity for replacing it. A person entitled to
24 reimbursement may refuse permission to remove until the secured
25 party gives adequate assurance for the performance of the
obligation to reimburse."

Section 56. A new Section 55-9-336 NMSA 1978 is enacted to

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1 read:

2 "55-9-336. [NEW MATERIAL] COMMINGLED GOODS.--

3 (a) In this section, "commingled goods" means goods
4 that are physically united with other goods in such a manner
5 that their identity is lost in a product or mass.

6 (b) A security interest does not exist in commingled
7 goods as such. However, a security interest may attach to a
8 product or mass that results when goods become commingled goods.

9 (c) If collateral becomes commingled goods, a
10 security interest attaches to the product or mass.

11 (d) If a security interest in collateral is
12 perfected before the collateral becomes commingled goods, the
13 security interest that attaches to the product or mass under
14 Subsection (c) of this section is perfected.

15 (e) Except as otherwise provided in Subsection (f)
16 of this section, the other provisions of Sections 55-9-301
17 through 55-9-342 NMSA 1978 determine the priority of a security
18 interest that attaches to the product or mass under Subsection
19 (c) of this section.

20 (f) If more than one security interest attaches to
21 the product or mass under Subsection (c) of this section, the
22 following rules determine priority:

23 (1) a security interest that is perfected under
24 Subsection (d) of this section has priority over a security
25 interest that is unperfected at the time the collateral becomes
commingled goods; or

(2) if more than one security interest is

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1 perfected under Subsection (d) of this section, the security
2 interests rank equally in proportion to value of the collateral
3 at the time it became commingled goods."

4 Section 57. A new Section 55-9-337 NMSA 1978 is enacted to
5 read:

6 "55-9-337. [NEW MATERIAL] PRIORITY OF SECURITY INTERESTS
7 IN GOODS COVERED BY CERTIFICATE OF TITLE.--If, while a security
8 interest in goods is perfected by any method under the law of
9 another jurisdiction, this state issues a certificate of title
10 that does not show that the goods are subject to the security
11 interest or contain a statement that they may be subject to
12 security interests not shown on the certificate:

13 (1) a buyer of the goods, other than a person in the
14 business of selling goods of that kind, takes free of the
15 security interest if the buyer gives value and receives delivery
16 of the goods after issuance of the certificate and without
17 knowledge of the security interest; and

18 (2) the security interest is subordinate to a
19 conflicting security interest in the goods that attaches, and is
20 perfected under Subsection (b) of Section 55-9-311 NMSA 1978,
21 after issuance of the certificate and without the conflicting
22 secured party's knowledge of the security interest."

23 Section 58. A new Section 55-9-338 NMSA 1978 is enacted to
24 read:

25 "55-9-338. [NEW MATERIAL] PRIORITY OF SECURITY INTEREST OR
AGRICULTURAL LIEN PERFECTED BY FILED FINANCING STATEMENT
PROVIDING CERTAIN INCORRECT INFORMATION.--If a security interest

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1 or agricultural lien is perfected by a filed financing statement
2 providing information described in Paragraph (5) of Subsection
3 (b) of Section 55-9-516 NMSA 1978 which is incorrect at the time
4 the financing statement is filed:

5 (1) the security interest or agricultural lien is
6 subordinate to a conflicting perfected security interest in the
7 collateral to the extent that the holder of the conflicting
8 security interest gives value in reasonable reliance upon the
9 incorrect information; and

10 (2) a purchaser, other than a secured party, of the
11 collateral takes free of the security interest or agricultural
12 lien to the extent that, in reasonable reliance upon the
13 incorrect information, the purchaser gives value and, in the
14 case of chattel paper, documents, goods, instruments or a
15 security certificate, receives delivery of the collateral."

16 Section 59. A new Section 55-9-339 NMSA 1978 is enacted to
17 read:

18 "55-9-339. [NEW MATERIAL] PRIORITY SUBJECT TO
19 SUBORDINATION.--Chapter 55, Article 9 NMSA 1978 does not
20 preclude subordination by agreement by a person entitled to
21 priority."

22 Section 60. A new Section 55-9-340 NMSA 1978 is enacted to
23 read:

24 "55-9-340. [NEW MATERIAL] EFFECTIVENESS OF RIGHT OF
25 RECOUPMENT OR SET-OFF AGAINST DEPOSIT ACCOUNT.--

(a) Except as otherwise provided in Subsection (c)
of this section, a bank with which a deposit account is

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1 maintained may exercise any right of recoupment or set-off
2 against a secured party that holds a security interest in the
3 deposit account.

4 (b) Except as otherwise provided in Subsection (c)
5 of this section, the application of Chapter 55, Article 9 NMSA
6 1978 to a security interest in a deposit account does not affect
7 a right of recoupment or set-off of the secured party as to a
8 deposit account maintained with the secured party.

9 (c) The exercise by a bank of a set-off against a
10 deposit account is ineffective against a secured party that
11 holds a security interest in the deposit account which is
12 perfected by control under Paragraph (3) of Subsection (a) of
13 Section 55-9-104 NMSA 1978, if the set-off is based on a claim
14 against the debtor."

15 Section 61. A new Section 55-9-341 NMSA 1978 is enacted to
16 read:

17 "55-9-341. [NEW MATERIAL] BANK'S RIGHTS AND DUTIES WITH
18 RESPECT TO DEPOSIT ACCOUNT.--Except as otherwise provided in
19 Subsection (c) of Section 55-9-340 NMSA 1978, and unless the
20 bank otherwise agrees in an authenticated record, a bank's
21 rights and duties with respect to a deposit account maintained
22 with the bank are not terminated, suspended or modified by:

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

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

or

(3) the bank's receipt of instructions from the

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1 secured party."

2 Section 62. A new Section 55-9-342 NMSA 1978 is enacted to
3 read:

4 "55-9-342. [NEW MATERIAL] BANK'S RIGHT TO REFUSE TO ENTER
5 INTO OR DISCLOSE EXISTENCE OF CONTROL AGREEMENT.--Chapter 55,
6 Article 9 NMSA 1978 does not require a bank to enter into an
7 agreement of the kind described in Paragraph (2) of Subsection
8 (a) of Section 55-9-104 NMSA 1978, even if its customer so
9 requests or directs. A bank that has entered into such an
10 agreement is not required to confirm the existence of the
11 agreement to another person unless requested to do so by its
12 customer."

13 Section 63. Section 55-9-401 NMSA 1978 (being Laws 1961,
14 Chapter 96, Section 9-401, as amended) is repealed and a new
15 Section 55-9-401 NMSA 1978 is enacted to read:

16 "55-9-401. [NEW MATERIAL] ALIENABILITY OF DEBTOR'S
17 RIGHTS.--

18 (a) Except as otherwise provided in Subsection (b)
19 of this section and Sections 55-9-406 through 55-9-409 NMSA
20 1978, whether a debtor's rights in collateral may be voluntarily
21 or involuntarily transferred is governed by law other than
22 Chapter 55, Article 9 NMSA 1978.

23 (b) An agreement between the debtor and secured
24 party which prohibits a transfer of the debtor's rights in
25 collateral or makes the transfer a default does not prevent the
transfer from taking effect."

Section 64. Section 55-9-402 NMSA 1978 (being Laws 1961,

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1 Chapter 96, Section 9-402, as amended) is repealed and a new
2 Section 55-9-402 NMSA 1978 is enacted to read:

3 "55-9-402. [NEW MATERIAL] SECURED PARTY NOT OBLIGATED ON
4 CONTRACT OF DEBTOR OR IN TORT.--The existence of a security
5 interest, agricultural lien or authority given to a debtor to
6 dispose of or use collateral, without more, does not subject a
7 secured party to liability in contract or tort for the debtor's
8 acts or omissions."

9 Section 65. Section 55-9-403 NMSA 1978 (being Laws 1961,
10 Chapter 96, Section 9-403, as amended) is repealed and a new
11 Section 55-9-403 NMSA 1978 is enacted to read:

12 "55-9-403. [NEW MATERIAL] AGREEMENT NOT TO ASSERT DEFENSES
13 AGAINST ASSIGNEE.--

14 (a) In this section, "value" has the meaning
15 provided in Subsection (a) of Section 55-3-303 NMSA 1978.

16 (b) Except as otherwise provided in this section, an
17 agreement between an account debtor and an assignor not to
18 assert against an assignee any claim or defense that the account
19 debtor may have against the assignor is enforceable by an
20 assignee that takes an assignment:

21 (1) for value;

22 (2) in good faith;

23 (3) without notice of a claim of a property or
24 possessory right to the property assigned; and

25 (4) without notice of a defense or claim in
recoupment of the type that may be asserted against a person
entitled to enforce a negotiable instrument under Subsection (a)

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1 of Section 55-3-305 NMSA 1978.

2 (c) Subsection (b) of this section does not apply to
3 defenses of a type that may be asserted against a holder in due
4 course of a negotiable instrument under Subsection (b) of
5 Section 55-3-305 NMSA 1978.

6 (d) In a consumer transaction, if a record evidences
7 the account debtor's obligation, law other than Chapter 55,
8 Article 9 NMSA 1978 requires that the record include a statement
9 to the effect that the rights of an assignee are subject to
10 claims or defenses that the account debtor could assert against
11 the original obligee, and if the record does not include such a
12 statement:

13 (1) the record has the same effect as if the
14 record included such a statement; and

15 (2) the account debtor may assert against an
16 assignee those claims and defenses that would have been
17 available if the record included such a statement.

18 (e) This section is subject to law other than
19 Chapter 55, Article 9 NMSA 1978 which establishes a different
20 rule for an account debtor who is an individual and who incurred
21 the obligation primarily for personal, family or household
22 purposes.

23 (f) Except as otherwise provided in Subsection (d)
24 of this section, this section does not displace law other than
25 Chapter 55, Article 9 NMSA 1978 which gives effect to an
agreement by an account debtor not to assert a claim or defense
against an assignee."

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1 Section 66. Section 55-9-404 NMSA 1978 (being Laws 1961,
2 Chapter 96, Section 9-404, as amended) is repealed and a new
3 Section 55-9-404 NMSA 1978 is enacted to read:

4 "55-9-404. [NEW MATERIAL] RIGHTS ACQUIRED BY ASSIGNEE--
5 CLAIMS AND DEFENSES AGAINST ASSIGNEE.--

6 (a) Unless an account debtor has made an enforceable
7 agreement not to assert defenses or claims, and subject to
8 Subsections (b) through (e) of this section, the rights of an
9 assignee are subject to:

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

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

18 (b) Subject to Subsection (c) of this section and
19 except as otherwise provided in Subsection (d) of this section,
20 the claim of an account debtor against an assignor may be
21 asserted against an assignee under Subsection (a) of this
22 section only to reduce the amount the account debtor owes.

23 (c) This section is subject to law other than
24 Chapter 55, Article 9 NMSA 1978 which establishes a different
25 rule for an account debtor who is an individual and who incurred
the obligation primarily for personal, family or household
purposes.

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1 (d) In a consumer transaction, if a record evidences
2 the account debtor's obligation, law other than Chapter 55,
3 Article 9 NMSA 1978 requires that the record include a statement
4 to the effect that the account debtor's recovery against an
5 assignee with respect to claims and defenses against the
6 assignor may not exceed amounts paid by the account debtor under
7 the record, and if the record does not include such a statement,
8 the extent to which a claim of an account debtor against the
9 assignor may be asserted against an assignee is determined as if
10 the record included such a statement.

11 (e) This section does not apply to an assignment of
12 a health-care-insurance receivable."

13 Section 67. Section 55-9-405 NMSA 1978 (being Laws 1961,
14 Chapter 96, Section 9-405, as amended) is repealed and a new
15 Section 55-9-405 NMSA 1978 is enacted to read:

16 "55-9-405. [NEW MATERIAL] MODIFICATION OF ASSIGNED
17 CONTRACT.--

18 (a) A modification of or substitution for an
19 assigned contract is effective against an assignee if made in
20 good faith. The assignee acquires corresponding rights under
21 the modified or substituted contract. The assignment may
22 provide that the modification or substitution is a breach of
23 contract by the assignor. This subsection is subject to
24 Subsections (b) through (d) of this section.

25 (b) Subsection (a) of this section applies to the
extent that:

(1) the right to payment or a part thereof

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1 under an assigned contract has not been fully earned by
2 performance; or

3 (2) the right to payment or a part thereof has
4 been fully earned by performance and the account debtor has not
5 received notification of the assignment under Subsection (a) of
6 Section 55-9-406 NMSA 1978.

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 incurred
10 the obligation primarily for personal, family or household
11 purposes.

12 (d) This section does not apply to an assignment of
13 a health-care-insurance receivable."

14 Section 68. Section 55-9-406 NMSA 1978 (being Laws 1961,
15 Chapter 96, Section 9-406, as amended) is repealed and a new
16 Section 55-9-406 NMSA 1978 is enacted to read:

17 "55-9-406. [NEW MATERIAL] DISCHARGE OF ACCOUNT DEBTOR--
18 NOTIFICATION OF ASSIGNMENT--IDENTIFICATION AND PROOF OF
19 ASSIGNMENT--RESTRICTIONS ON ASSIGNMENT OF ACCOUNTS, CHATTEL
20 PAPER, PAYMENT INTANGIBLES AND PROMISSORY NOTES INEFFECTIVE.--

21 (a) Subject to Subsections (b) through (i) of this
22 section, an account debtor on an account, chattel paper or a
23 payment intangible may discharge its obligation by paying the
24 assignor until, but not after, the account debtor receives a
25 notification, authenticated by the assignor or the assignee,
that the amount due or to become due has been assigned and that
payment is to be made to the assignee. After receipt of the

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1 notification, the account debtor may discharge its obligation by
2 paying the assignee and may not discharge the obligation by
3 paying the assignor.

4 (b) Subject to Subsection (h) of this section,
5 notification is ineffective under Subsection (a) of this
6 section:

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

9 (2) to the extent that an agreement between an
10 account debtor and a seller of a payment intangible limits the
11 account debtor's duty to pay a person other than the seller and
12 the limitation is effective under law other than Chapter 55,
13 Article 9 NMSA 1978; or

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

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

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

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

24 (c) Subject to Subsection (h) of this section, if
25 requested by the account debtor, an assignee shall seasonably
furnish reasonable proof that the assignment has been made.

Unless the assignee complies, the account debtor may discharge

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1 its obligation by paying the assignor, even if the account
2 debtor has received a notification under Subsection (a) of this
3 section.

4 (d) Except as otherwise provided in Subsection (e)
5 of this section and Sections 55-2A-303 and 55-9-407 NMSA 1978,
6 and subject to Subsection (h) of this section, a term in an
7 agreement between an account debtor and an assignor or in a
8 promissory note is ineffective to the extent that it:

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

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

21 (e) Subsection (d) of this section does not apply to
22 the sale of a payment intangible or promissory note.

23 (f) Except as otherwise provided in Sections
24 55-2A-303 and 55-9-407 NMSA 1978 and subject to Subsections (h)
25 and (i) of this section, a rule of law, statute or regulation
that prohibits, restricts or requires the consent of a
government, governmental body or official, or account debtor to

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1 the assignment or transfer of, or creation of a security
2 interest in, an account or chattel paper is ineffective to the
3 extent that the rule of law, statute or regulation:

4 (1) prohibits, restricts or requires the
5 consent of the government, governmental body or official, or
6 account debtor to the assignment or transfer of, or the
7 creation, attachment, perfection or enforcement of a security
8 interest in the account or chattel paper; or

9 (2) provides that the assignment or transfer or
10 the creation, attachment, perfection or enforcement of the
11 security interest may give rise to a default, breach, right of
12 recoupment, claim, defense, termination, right of termination or
13 remedy under the account or chattel paper.

14 (g) Subject to Subsection (h) of this section, an
15 account debtor may not waive or vary its option under Paragraph
16 (3) of Subsection (b) of this section.

17 (h) This section is subject to law other than
18 Chapter 55, Article 9 NMSA 1978 which establishes a different
19 rule for an account debtor who is an individual and who incurred
20 the obligation primarily for personal, family or household
21 purposes.

22 (i) This section does not apply to an assignment of
23 a health-care-insurance receivable."

24 Section 69. Section 55-9-407 NMSA 1978 (being Laws 1961,
25 Chapter 96, Section 9-407, as amended) is repealed and a new
Section 55-9-407 NMSA 1978 is enacted to read:

"55-9-407. [NEW MATERIAL] RESTRICTIONS ON CREATION OR

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1 ENFORCEMENT OF SECURITY INTEREST IN LEASEHOLD INTEREST OR IN
2 LESSOR'S RESIDUAL INTEREST.--

3 (a) Except as otherwise provided in Subsection (b)
4 of this section, a term in a lease agreement is ineffective to
5 the extent that it:

6 (1) prohibits, restricts or requires the
7 consent of a party to the lease to the assignment or transfer
8 of, or the creation, attachment, perfection or enforcement of a
9 security interest in an interest of a party under the lease
10 contract or in the lessor's residual interest in the goods; or

11 (2) provides that the assignment or transfer or
12 the creation, attachment, perfection or enforcement of the
13 security interest may give rise to a default, breach, right of
14 recoupment, claim, defense, termination, right of termination or
15 remedy under the lease.

16 (b) Except as otherwise provided in Subsection (7)
17 of Section 55-2A-303 NMSA 1978, a term described in Paragraph
18 (2) of Subsection (a) of this section is effective to the extent
19 that there is:

20 (1) a transfer by the lessee of the lessee's
21 right of possession or use of the goods in violation of the
22 term; or

23 (2) a delegation of a material performance of
24 either party to the lease contract in violation of the term.

25 (c) The creation, attachment, perfection or
enforcement of a security interest in the lessor's interest
under the lease contract or the lessor's residual interest in

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1 the goods is not a transfer that materially impairs the lessee's
2 prospect of obtaining return performance or materially changes
3 the duty of or materially increases the burden or risk imposed
4 on the lessee within the purview of Subsection (4) of Section
5 55-2A-303 NMSA 1978 unless, and then only to the extent that,
6 enforcement actually results in a delegation of material
7 performance of the lessor."

8 Section 70. Section 55-9-408 NMSA 1978 (being Laws 1985,
9 Chapter 193, Section 33) is repealed and a new Section 55-9-408
10 NMSA 1978 is enacted to read:

11 "55-9-408. [NEW MATERIAL] RESTRICTIONS ON ASSIGNMENT OF
12 PROMISSORY NOTES, HEALTH-CARE-INSURANCE RECEIVABLES AND CERTAIN
13 GENERAL INTANGIBLES INEFFECTIVE.--

14 (a) Except as otherwise provided in Subsection (b)
15 of this section, a term in a promissory note or in an agreement
16 between an account debtor and a debtor which relates to a
17 health-care-insurance receivable or a general intangible,
18 including a contract, permit, license or franchise, and which
19 term prohibits, restricts or requires the consent of the person
20 obligated on the promissory note or the account debtor to, the
21 assignment or transfer of, or creation, attachment or perfection
22 of a security interest in, the promissory note, health-care-
23 insurance receivable or general intangible, is ineffective to
24 the extent that the term:
25

- (1) would impair the creation, attachment or
perfection of a security interest; or
- (2) provides that the assignment or transfer or

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1 the creation, attachment or perfection of the security interest
2 may give rise to a default, breach, right of recoupment, claim,
3 defense, termination, right of termination or remedy under the
4 promissory note, health-care-insurance receivable or general
5 intangible.

6 (b) Subsection (a) of this section applies to a
7 security interest in a payment intangible or promissory note
8 only if the security interest arises out of a sale of the
9 payment intangible or promissory note.

10 (c) A rule of law, statute or regulation that
11 prohibits, restricts or requires the consent of a government,
12 governmental body or official, person obligated on a promissory
13 note or account debtor to the assignment or transfer of, or
14 creation of a security interest in, a promissory note, health-
15 care-insurance receivable or general intangible, including a
16 contract, permit, license or franchise between an account debtor
17 and a debtor, is ineffective to the extent that the rule of law,
18 statute or regulation:

19 (1) would impair the creation, attachment or
20 perfection of a security interest; or

21 (2) provides that the assignment or transfer or
22 the creation, attachment or perfection of the security interest
23 may give rise to a default, breach, right of recoupment, claim,
24 defense, termination, right of termination or remedy under the
25 promissory note, health-care-insurance receivable or general
intangible.

(d) To the extent that a term in a promissory note

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1 or in an agreement between an account debtor and a debtor which
2 relates to a health-care-insurance receivable or general
3 intangible or a rule of law, statute or regulation described in
4 Subsection (c) of this section would be effective under law
5 other than Chapter 55, Article 9 NMSA 1978 but is ineffective
6 under Subsection (a) or (c) of this section, the creation,
7 attachment or perfection of a security interest in the
8 promissory note, health-care-insurance receivable or general
9 intangible:

10 (1) is not enforceable against the person
11 obligated on the promissory note or the account debtor;

12 (2) does not impose a duty or obligation on the
13 person obligated on the promissory note or the account debtor;

14 (3) does not require the person obligated on
15 the promissory note or the account debtor to recognize the
16 security interest, pay or render performance to the secured
17 party or accept payment or performance from the secured party;

18 (4) does not entitle the secured party to use
19 or assign the debtor's rights under the promissory note, health-
20 care-insurance receivable or general intangible, including any
21 related information or materials furnished to the debtor in the
22 transaction giving rise to the promissory note, health-care-
23 insurance receivable or general intangible;

24 (5) does not entitle the secured party to use,
25 assign, possess or have access to any trade secrets or
confidential information of the person obligated on the
promissory note or the account debtor; and

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1 (6) does not entitle the secured party to
2 enforce the security interest in the promissory note, health-
3 care-insurance receivable or general intangible."

4 Section 71. A new Section 55-9-409 NMSA 1978 is enacted to
5 read:

6 "55-9-409. [NEW MATERIAL] RESTRICTIONS ON ASSIGNMENT OF
7 LETTER-OF-CREDIT RIGHTS INEFFECTIVE.--

8 (a) A term in a letter of credit or a rule of law,
9 statute, regulation, custom or practice applicable to the letter
10 of credit which prohibits, restricts or requires the consent of
11 an applicant, issuer or nominated person to a beneficiary's
12 assignment of or creation of a security interest in a letter-of-
13 credit right is ineffective to the extent that the term or rule
14 of law, statute, regulation, custom or practice:

15 (1) would impair the creation, attachment or
16 perfection of a security interest in the letter-of-credit right;
17 or

18 (2) provides that the assignment or the
19 creation, attachment or perfection of the security interest may
20 give rise to a default, breach, right of recoupment, claim,
21 defense, termination, right of termination or remedy under the
22 letter-of-credit right.

23 (b) To the extent that a term in a letter of credit
24 is ineffective under Subsection (a) of this section but would be
25 effective under law other than Chapter 55, Article 9 NMSA 1978
or a custom or practice applicable to the letter of credit, to
the transfer of a right to draw or otherwise demand performance

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1 under the letter of credit or to the assignment of a right to
2 proceeds of the letter of credit, the creation, attachment or
3 perfection of a security interest in the letter-of-credit right:

4 (1) is not enforceable against the applicant,
5 issuer, nominated person or transferee beneficiary;

6 (2) imposes no duties or obligations on the
7 applicant, issuer, nominated person or transferee beneficiary;
8 and

9 (3) does not require the applicant, issuer,
10 nominated person or transferee beneficiary to recognize the
11 security interest, pay or render performance to the secured
12 party or accept payment or other performance from the secured
13 party."

14 Section 72. Section 55-9-501 NMSA 1978 (being Laws 1961,
15 Chapter 96, Section 9-501, as amended) is repealed and a new
16 Section 55-9-501 NMSA 1978 is enacted to read:

17 "55-9-501. [NEW MATERIAL] FILING OFFICE.--

18 (a) Except as otherwise provided in Subsection (b)
19 of this section, if the local law of this state governs
20 perfection of a security interest or agricultural lien, the
21 office in which to file a financing statement to perfect the
22 security interest or agricultural lien is:

23 (1) the office of the county clerk where a
24 record of a mortgage on the related real property would be
25 recorded if:

(A) the collateral is as-extracted
collateral or timber to be cut; or

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(B) the financing statement is filed as a fixture filing and the collateral is goods that are or are to become fixtures; or

(2) the office of the secretary of state in all other cases, including a case in which the collateral is goods that are or are to become fixtures and the financing statement is not filed as a fixture filing.

(b) The office in which to file a financing statement to perfect a security interest in collateral, including fixtures, of a transmitting utility is the office of the secretary of state. The financing statement also constitutes a fixture filing as to the collateral indicated in the financing statement which is or is to become fixtures."

Section 73. Section 55-9-502 NMSA 1978 (being Laws 1961, Chapter 96, Section 9-502, as amended) is repealed and a new Section 55-9-502 NMSA 1978 is enacted to read:

"55-9-502. [NEW MATERIAL] CONTENTS OF FINANCING STATEMENT--RECORD OF MORTGAGE AS FINANCING STATEMENT--TIME OF FILING FINANCING STATEMENT.--

(a) Subject to Subsection (b) of this section, a financing statement is sufficient only if it:

- (1) provides the name of the debtor;
- (2) provides the name of the secured party or a representative of the secured party; and
- (3) indicates the collateral covered by the financing statement.

(b) Except as otherwise provided in Subsection (b)

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1 of Section 55-9-501 NMSA 1978, to be sufficient a financing
2 statement that covers as-extracted collateral or timber to be
3 cut, or which is filed as a fixture filing and covers goods that
4 are or are to become fixtures, must satisfy Subsection (a) of
5 this section and also:

6 (1) indicate that it covers this type of
7 collateral;

8 (2) indicate that it is to be filed for record
9 in the real property records;

10 (3) provide a description of the real property
11 to which the collateral is related sufficient to give
12 constructive notice of a mortgage pursuant to the laws of this
13 state if the description were combined in a record of the
14 mortgage of the real property; and

15 (4) if the debtor does not have an interest of
16 record in the real property, provide the name of a record owner.

17 (c) A record of a mortgage is effective, from the
18 date it is filed for record, as a financing statement filed as a
19 fixture filing or as a financing statement covering as-extracted
20 collateral or timber to be cut only if:

21 (1) the record indicates the goods or accounts
22 that it covers;

23 (2) the goods are or are to become fixtures
24 related to the real property described in the record or the
25 collateral is related to the real property described in the
record and is as-extracted collateral or timber to be cut;

(3) the record satisfies the requirements for a

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1 financing statement in this section other than an indication
2 that it is to be filed for record in the real property records;
3 and

4 (4) the record is recorded.

5 (d) A financing statement may be filed before a
6 security agreement is made or a security interest otherwise
7 attaches."

8 Section 74. Section 55-9-503 NMSA 1978 (being Laws 1961,
9 Chapter 96, Section 9-503) is repealed and a new Section 55-9-
10 503 NMSA 1978 is enacted to read:

11 "55-9-503. [NEW MATERIAL] NAME OF DEBTOR AND SECURED
12 PARTY.--

13 (a) A financing statement sufficiently provides the
14 name of the debtor:

15 (1) if the debtor is a registered organization,
16 only if the financing statement provides the name of the debtor
17 indicated on the public record of the debtor's jurisdiction of
18 organization which shows the debtor to have been organized;

19 (2) if the debtor is a decedent's estate, only
20 if the financing statement provides the name of the decedent and
21 indicates that the debtor is an estate;

22 (3) if the debtor is a trust or a trustee
23 acting with respect to property held in trust, only if the
24 financing statement:

25 (A) provides the name specified for the
trust in its organic documents or, if no name is specified,
provides the name of the settlor and additional information

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1 sufficient to distinguish the debtor from other trusts having
2 one or more of the same settlors; and

3 (B) indicates, in the debtor's name or
4 otherwise, that the debtor is a trust or is a trustee acting
5 with respect to property held in trust; and

6 (4) in other cases:

7 (A) if the debtor has a name, only if it
8 provides the individual or organizational name of the debtor;
9 and

10 (B) if the debtor does not have a name,
11 only if it provides the names of the partners, members,
12 associates or other persons comprising the debtor.

13 (b) A financing statement that provides the name of
14 the debtor in accordance with Subsection (a) of this section is
15 not rendered ineffective by the absence of:

16 (1) a trade name or other name of the debtor;
17 or

18 (2) unless required under Subparagraph (B) of
19 Paragraph (4) of Subsection (a) of this section, names of
20 partners, members, associates or other persons comprising the
21 debtor.

22 (c) A financing statement that provides only the
23 debtor's trade name does not sufficiently provide the name of
24 the debtor.

25 (d) Failure to indicate the representative capacity
of a secured party or representative of a secured party does not
affect the sufficiency of a financing statement.

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1 (e) A financing statement may provide the name of
2 more than one debtor and the name of more than one secured
3 party."

4 Section 75. Section 55-9-504 NMSA 1978 (being Laws 1961,
5 Chapter 96, Section 9-504, as amended) is repealed and a new
6 Section 55-9-504 NMSA 1978 is enacted to read:

7 "55-9-504. [NEW MATERIAL] INDICATION OF COLLATERAL.--A
8 financing statement sufficiently indicates the collateral that
9 it covers if the financing statement provides:

10 (1) a description of the collateral pursuant to
11 Section 55-9-108 NMSA 1978; or

12 (2) an indication that the financing statement
13 covers all assets or all personal property."

14 Section 76. Section 55-9-505 NMSA 1978 (being Laws 1961,
15 Chapter 96, Section 9-505, as amended) is repealed and a new
16 Section 55-9-505 NMSA 1978 is enacted to read:

17 "55-9-505. [NEW MATERIAL] FILING AND COMPLIANCE WITH OTHER
18 STATUTES AND TREATIES FOR CONSIGNMENTS, LEASES, OTHER BAILMENTS
19 AND OTHER TRANSACTIONS.--

20 (a) A consignor, lessor, or other bailor of goods, a
21 licensor or a buyer of a payment intangible or promissory note
22 may file a financing statement, or may comply with a statute,
23 regulation or treaty described in Subsection (a) of Section
24 55-9-311 NMSA 1978, using the terms "consignor", "consignee",
25 "lessor", "lessee", "bailor", "bailee", "licensor", "licensee",
"owner", "registered owner", "buyer", "seller" or words of
similar import, instead of the terms "secured party" and

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1 "debtor".

2 (b) Sections 55-9-501 through 55-9-526 NMSA 1978
3 apply to the filing of a financing statement under Subsection
4 (a) of this section and, as appropriate, to compliance that is
5 equivalent to filing a financing statement under Subsection (b)
6 of Section 55-9-311 NMSA 1978, but the filing or compliance is
7 not of itself a factor in determining whether the collateral
8 secures an obligation. If it is determined for another reason
9 that the collateral secures an obligation, a security interest
10 held by the consignor, lessor, bailor, licensor, owner or buyer
11 which attaches to the collateral is perfected by the filing or
12 compliance."

13 Section 77. Section 55-9-506 NMSA 1978 (being Laws 1961,
14 Chapter 96, Section 9-506) is repealed and a new Section 55-9-
15 506 NMSA 1978 is enacted to read:

16 "55-9-506. [NEW MATERIAL] EFFECT OF ERRORS OR OMISSIONS.--

17 (a) A financing statement substantially satisfying
18 the requirements of Sections 55-9-501 through 55-9-526 NMSA 1978
19 is effective, even if it has minor errors or omissions, unless
20 the errors or omissions make the financing statement seriously
21 misleading.

22 (b) Except as otherwise provided in Subsection (c)
23 of this section, a financing statement that fails sufficiently
24 to provide the name of the debtor in accordance with Subsection
25 (a) of Section 55-9-503 NMSA 1978 is seriously misleading.

(c) If a search of the records of the filing office
under the debtor's correct name, using the filing office's

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1 standard search logic, if any, would disclose a financing
2 statement that fails sufficiently to provide the name of the
3 debtor in accordance with Subsection (a) of Section 55-9-503
4 NMSA 1978, the name provided does not make the financing
5 statement seriously misleading.

6 (d) For purposes of Subsection (b) of Section
7 55-9-508 NMSA 1978, the "debtor's correct name" in Subsection
8 (c) of this section means the correct name of the new debtor."

9 Section 78. Section 55-9-507 NMSA 1978 (being Laws 1961,
10 Chapter 96, Section 9-507) is repealed and a new Section 55-9-
11 507 NMSA 1978 is enacted to read:

12 "55-9-507. [NEW MATERIAL] EFFECT OF CERTAIN EVENTS ON
13 EFFECTIVENESS OF FINANCING STATEMENT.--

14 (a) A filed financing statement remains effective
15 with respect to collateral that is sold, exchanged, leased,
16 licensed or otherwise disposed of and in which a security
17 interest or agricultural lien continues, even if the secured
18 party knows of or consents to the disposition.

19 (b) Except as otherwise provided in Subsection (c)
20 of this section and Section 55-9-508 NMSA 1978, a financing
21 statement is not rendered ineffective if, after the financing
22 statement is filed, the information provided in the financing
23 statement becomes seriously misleading under Section 55-9-506
24 NMSA 1978.

25 (c) If a debtor so changes its name that a filed
financing statement becomes seriously misleading under Section
55-9-506 NMSA 1978:

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1 (1) the financing statement is effective to
2 perfect a security interest in collateral acquired by the debtor
3 before, or within four months after, the change; and

4 (2) the financing statement is not effective to
5 perfect a security interest in collateral acquired by the debtor
6 more than four months after the change, unless an amendment to
7 the financing statement which renders the financing statement
8 not seriously misleading is filed within four months after the
9 change."

10 Section 79. A new Section 55-9-508 NMSA 1978 is enacted to
11 read:

12 "55-9-508. [NEW MATERIAL] EFFECTIVENESS OF FINANCING
13 STATEMENT IF NEW DEBTOR BECOMES BOUND BY SECURITY AGREEMENT.--

14 (a) Except as otherwise provided in this section, a
15 filed financing statement naming an original debtor is effective
16 to perfect a security interest in collateral in which a new
17 debtor has or acquires rights to the extent that the financing
18 statement would have been effective had the original debtor
19 acquired rights in the collateral.

20 (b) If the difference between the name of the
21 original debtor and that of the new debtor causes a filed
22 financing statement that is effective under Subsection (a) of
23 this section to be seriously misleading under Section 55-9-506
24 NMSA 1978:

25 (1) the financing statement is effective to
perfect a security interest in collateral acquired by the new
debtor before, and within four months after, the new debtor

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1 becomes bound under Subsection (d) of Section 55-9-203 NMSA
2 1978; and

3 (2) the financing statement is not effective to
4 perfect a security interest in collateral acquired by the new
5 debtor more than four months after the new debtor becomes bound
6 under Subsection (d) of Section 55-9-203 NMSA 1978 unless an
7 initial financing statement providing the name of the new debtor
8 is filed before the expiration of that time.

9 (c) This section does not apply to collateral as to
10 which a filed financing statement remains effective against the
11 new debtor under Subsection (a) of Section 55-9-507 NMSA 1978."

12 Section 80. A new Section 55-9-509 NMSA 1978 is enacted to
13 read:

14 "55-9-509. [NEW MATERIAL] PERSONS ENTITLED TO FILE A
15 RECORD.--

16 (a) A person may file an initial financing
17 statement, amendment that adds collateral covered by a financing
18 statement or amendment that adds a debtor to a financing
19 statement only if:

20 (1) the debtor authorizes the filing in an
21 authenticated record or pursuant to Subsection (b) or (c) of
22 this section; or

23 (2) the person holds an agricultural lien that
24 has become effective at the time of filing and the financing
25 statement covers only collateral in which the person holds an
agricultural lien.

(b) By authenticating or becoming bound as debtor by

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1 a security agreement, a debtor or new debtor authorizes the
2 filing of an initial financing statement, and an amendment,
3 covering:

4 (1) the collateral described in the security
5 agreement; and

6 (2) property that becomes collateral under
7 Paragraph (2) of Subsection (a) of Section 55-9-315 NMSA 1978,
8 whether or not the security agreement expressly covers proceeds.

9 (c) By acquiring collateral in which a security
10 interest or agricultural lien continues under Paragraph (1) of
11 Subsection (a) of Section 55-9-315 NMSA 1978, a debtor
12 authorizes the filing of an initial financing statement, and an
13 amendment, covering the collateral and property that becomes
14 collateral under Paragraph (2) of Subsection (a) of Section 55-
15 9-315 NMSA 1978.

16 (d) A person may file an amendment other than an
17 amendment that adds collateral covered by a financing statement
18 or an amendment that adds a debtor to a financing statement only
19 if:

20 (1) the secured party of record authorizes the
21 filing; or

22 (2) the amendment is a termination statement
23 for a financing statement as to which the secured party of
24 record has failed to file or send a termination statement as
25 required by Subsection (a) or (c) of Section 55-9-513 NMSA 1978,
the debtor authorizes the filing and the termination statement
indicates that the debtor authorized it to be filed.

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1 (e) If there is more than one secured party of
2 record for a financing statement, each secured party of record
3 may authorize the filing of an amendment under Subsection (d) of
4 this section."

5 Section 81. A new Section 55-9-510 NMSA 1978 is enacted to
6 read:

7 "55-9-510. [NEW MATERIAL] EFFECTIVENESS OF FILED RECORD.--

8 (a) A filed record is effective only to the extent
9 that it was filed by a person that may file it under Section
10 55-9-509 NMSA 1978.

11 (b) A record authorized by one secured party of
12 record does not affect the financing statement with respect to
13 another secured party of record.

14 (c) A continuation statement that is not filed
15 within the six-month period prescribed by Subsection (d) of
16 Section 55-9-515 NMSA 1978 is ineffective."

17 Section 82. A new Section 55-9-511 NMSA 1978 is enacted to
18 read:

19 "55-9-511. [NEW MATERIAL] SECURED PARTY OF RECORD.--

20 (a) A secured party of record with respect to a
21 financing statement is a person whose name is provided as the
22 name of the secured party or a representative of the secured
23 party in an initial financing statement that has been filed. If
24 an initial financing statement is filed under Subsection (a) of
25 Section 55-9-514 NMSA 1978, the assignee named in the initial
financing statement is the secured party of record with respect
to the financing statement.

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1 (b) If an amendment of a financing statement which
2 provides the name of a person as a secured party or a
3 representative of a secured party is filed, the person named in
4 the amendment is a secured party of record. If an amendment is
5 filed under Subsection (b) of Section 55-9-514 NMSA 1978, the
6 assignee named in the amendment is a secured party of record.

7 (c) A person remains a secured party of record until
8 the filing of an amendment of the financing statement which
9 deletes the person."

10 Section 83. A new Section 55-9-512 NMSA 1978 is enacted to
11 read:

12 "55-9-512. [NEW MATERIAL] AMENDMENT OF FINANCING
13 STATEMENT.--

14 (a) Subject to Section 55-9-509 NMSA 1978, a person
15 may add or delete collateral covered by, continue or terminate
16 the effectiveness of, or, subject to Subsection (e) of this
17 section, otherwise amend the information provided in, a
18 financing statement by filing an amendment that:

19 (1) identifies, by its file number, the initial
20 financing statement to which the amendment relates; and

21 (2) if the amendment relates to an initial
22 financing statement filed in a county clerk's office, provides
23 the information specified in Subsection (b) of Section 55-9-502
24 NMSA 1978.

25 (b) Except as otherwise provided in Section 55-9-515
NMSA 1978, the filing of an amendment does not extend the period
of effectiveness of the financing statement.

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1 (c) A financing statement that is amended by an
2 amendment that adds collateral is effective as to the added
3 collateral only from the date of the filing of the amendment.

4 (d) A financing statement that is amended by an
5 amendment that adds a debtor is effective as to the added debtor
6 only from the date of the filing of the amendment.

7 (e) An amendment is ineffective to the extent it:

8 (1) purports to delete all debtors and fails to
9 provide the name of a debtor to be covered by the financing
10 statement; or

11 (2) purports to delete all secured parties of
12 record and fails to provide the name of a new secured party of
13 record."

14 Section 84. A new Section 55-9-513 NMSA 1978 is enacted to
15 read:

16 "55-9-513. [NEW MATERIAL] TERMINATION STATEMENT.--

17 (a) A secured party shall cause the secured party of
18 record for a financing statement to file a termination statement
19 for the financing statement if the financing statement covers
20 consumer goods and:

21 (1) there is no obligation secured by the
22 collateral covered by the financing statement and no commitment
23 to make an advance, incur an obligation or otherwise give value;
24 or

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

(b) To comply with Subsection (a) of this section, a

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1 secured party shall cause the secured party of record to file
2 the termination statement:

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

7 (2) if earlier, within twenty days after the
8 secured party receives an authenticated demand from a debtor.

9 (c) In cases not governed by Subsection (a) of this
10 section, within twenty days after a secured party receives an
11 authenticated demand from a debtor, the secured party shall
12 cause the secured party of record for a financing statement to
13 send to the debtor a termination statement for the financing
14 statement or file the termination statement in the filing office
15 if:

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

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

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

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

3 (d) Except as otherwise provided in Section 55-9-510
4 NMSA 1978, upon the filing of a termination statement with the
5 filing office, the financing statement to which the termination
6 statement relates ceases to be effective. Except as otherwise
7 provided in Section 55-9-510 NMSA 1978, for purposes of
8 Subsection (c) of Section 55-9-519, Subsection (a) of Section
9 55-9-522 and Subsection (b) of Section 55-9-523 NMSA 1978, the
10 filing with the filing office of a termination statement
11 relating to a financing statement that indicates that the debtor
12 is a transmitting utility also causes the effectiveness of the
13 financing statement to lapse."

14 Section 85. A new Section 55-9-514 NMSA 1978 is enacted to
15 read:

16 "55-9-514. [NEW MATERIAL] ASSIGNMENT OF POWERS OF SECURED
17 PARTY OF RECORD.--

18 (a) Except as otherwise provided in Subsection (c)
19 of this section, an initial financing statement may reflect an
20 assignment of all of the secured party's power to authorize an
21 amendment to the financing statement by providing the name and
22 mailing address of the assignee as the name and address of the
23 secured party.

24 (b) Except as otherwise provided in Subsection (c)
25 of this section, a secured party of record may assign of record
all or part of its power to authorize an amendment to a
financing statement by filing in the filing office an amendment

underscored material = new
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1 of the financing statement which:

2 (1) identifies, by its file number, the initial
3 financing statement to which it relates;

4 (2) provides the name of the assignor; and

5 (3) provides the name and mailing address of
6 the assignee.

7 (c) An assignment of a record of a mortgage may be
8 made only by an assignment of record of the mortgage in the
9 manner provided by law of this state other than the Uniform
10 Commercial Code."

11 Section 86. A new Section 55-9-515 NMSA 1978 is enacted to
12 read:

13 "55-9-515. [NEW MATERIAL] DURATION AND EFFECTIVENESS OF
14 FINANCING STATEMENT--EFFECT OF LAPSED FINANCING STATEMENT.--

15 (a) Except as otherwise provided in Subsections (b),
16 (e), (f) and (g) of this section, a filed financing statement is
17 effective for a period of five years after the date of filing.

18 (b) Except as otherwise provided in Subsections (e),
19 (f) and (g) of this section, an initial financing statement
20 filed in connection with a public-finance transaction or
21 manufactured-home transaction is effective for a period of
22 thirty years after the date of filing if it indicates that it is
23 filed in connection with a public-finance transaction or
24 manufactured-home transaction.

25 (c) The effectiveness of a filed financing statement
lapses on the expiration of the period of its effectiveness
unless before the lapse a continuation statement is filed

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1 pursuant to Subsection (d) of this section. Upon lapse, a
2 financing statement ceases to be effective and any security
3 interest or agricultural lien that was perfected by the
4 financing statement becomes unperfected unless the security
5 interest is perfected otherwise. If the security interest or
6 agricultural lien becomes unperfected upon lapse, it is deemed
7 never to have been perfected as against a purchaser of the
8 collateral for value.

9 (d) A continuation statement may be filed only
10 within six months before the expiration of the five-year period
11 specified in Subsection (a) of this section or the thirty-year
12 period specified in Subsection (b) of this section, whichever is
13 applicable.

14 (e) Except as otherwise provided in Section 55-9-510
15 NMSA 1978, upon timely filing of a continuation statement, the
16 effectiveness of the initial financing statement continues for a
17 period of five years commencing on the day on which the
18 financing statement would have become ineffective in the absence
19 of the filing. Upon the expiration of the five-year period, the
20 financing statement lapses in the same manner as provided in
21 Subsection (c) of this section, unless, before the lapse,
22 another continuation statement is filed pursuant to Subsection
23 (d) of this section. Succeeding continuation statements may be
24 filed in the same manner to continue the effectiveness of the
25 initial financing statement.

(f) If a debtor is a transmitting utility and a
filed financing statement so indicates, the financing statement

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1 is effective until a termination statement is filed. The filing
2 officer may require proof of the debtor's authority to operate
3 as a transmitting utility as a condition of filing the financing
4 statement.

5 (g) A record of a mortgage that is effective as a
6 financing statement filed as a fixture filing under Subsection
7 (c) of Section 55-9-502 NMSA 1978 remains effective as a
8 financing statement filed as a fixture filing until the mortgage
9 is released or satisfied of record or its effectiveness
10 otherwise terminates as to the real property."

11 Section 87. A new Section 55-9-516 NMSA 1978 is enacted to
12 read:

13 "55-9-516. [NEW MATERIAL] WHAT CONSTITUTES FILING--
14 EFFECTIVENESS OF FILING.--

15 (a) Except as otherwise provided in Subsection (b)
16 of this section, communication of a record to a filing office
17 and tender of the filing fee or acceptance of the record by the
18 filing office constitutes filing.

19 (b) Filing does not occur with respect to a record
20 that the secretary of state refuses to accept because:

21 (1) the record is not communicated by a method
22 or medium of communication authorized by the filing office;

23 (2) an amount equal to or greater than the
24 applicable filing fee is not tendered;

25 (3) the filing office is unable to index the
record because:

(A) in the case of an initial financing

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1 statement, the record does not provide a name for the debtor; or

2 (B) in the case of an amendment or

3 correction statement, the record:

4 (i) does not identify the initial
5 financing statement as required by Section 55-9-512 or 55-9-518
6 NMSA 1978, as applicable; or

7 (ii) identifies an initial financing
8 statement whose effectiveness has lapsed under Section 55-9-515
9 NMSA 1978;

10 (4) in the case of an initial financing
11 statement or an amendment that adds a secured party of record,
12 the record does not provide a name and mailing address for the
13 secured party of record;

14 (5) in the case of an initial financing
15 statement or an amendment that provides a name of a debtor which
16 was not previously provided in the financing statement to which
17 the amendment relates, the record does not:

18 (A) provide a mailing address for the
19 debtor;

20 (B) indicate whether the debtor is an
21 individual or an organization; or

22 (C) if the financing statement indicates
23 that the debtor is an organization, provide:

24 (i) a type of organization for the
25 debtor;

(ii) a jurisdiction of organization
for the debtor; and

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(iii) an organizational identification number for the debtor or indicate that the debtor has none;

(6) in the case of an assignment reflected in an initial financing statement under Subsection (a) of Section 55-9-514 NMSA 1978 or an amendment filed under Subsection (b) of Section 55-9-514 NMSA 1978, the record does not provide a name and mailing address for the assignee; or

(7) in the case of a continuation statement, the record is not filed within the six-month period prescribed by Subsection (d) of Section 55-9-515 NMSA 1978.

(c) For purposes of Subsection (b) of this section:

(1) a record does not provide information if the secretary of state is unable to read or decipher the information; and

(2) a record that does not indicate that it is an amendment or identify an initial financing statement to which it relates, as required by Section 55-9-512, 55-9-514 or 55-9-518 NMSA 1978, is an initial financing statement.

(d) A record that is communicated to the filing office with tender of the filing fee, but which the secretary of state refuses to accept for a reason other than one set forth in Subsection (b) of this section, is effective as a filed record except as against a purchaser of the collateral which gives value in reasonable reliance upon the absence of the record from the files."

Section 88. A new Section 55-9-517 NMSA 1978 is enacted to

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1 read:

2 "55-9-517. [NEW MATERIAL] EFFECT OF INDEXING ERRORS.--

3 The failure of the filing office to index a record correctly
4 does not affect the effectiveness of the filed record."

5 Section 89. A new Section 55-9-518 NMSA 1978 is enacted to
6 read:

7 "55-9-518. [NEW MATERIAL] CLAIM CONCERNING INACCURATE OR
8 WRONGFULLY FILED RECORD.--

9 (a) A person may file in the filing office a
10 correction statement with respect to a record indexed there
11 under the person's name if the person believes that the record
12 is inaccurate or was wrongfully filed.

13 (b) A correction statement must:

14 (1) identify the record to which it relates by
15 the file number assigned to the initial financing statement to
16 which the record relates;

17 (2) indicate that it is a correction statement;
18 and

19 (3) provide the basis for the person's belief
20 that the record is inaccurate and indicate the manner in which
21 the person believes the record should be amended to cure any
22 inaccuracy or provide the basis for the person's belief that the
23 record was wrongfully filed.

24 (c) The filing of a correction statement does not
25 affect the effectiveness of an initial financing statement or
other filed record."

Section 90. A new Section 55-9-519 NMSA 1978 is enacted to

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read:

"55-9-519. [NEW MATERIAL] NUMBERING, MAINTAINING AND INDEXING RECORDS--COMMUNICATING INFORMATION PROVIDED IN RECORDS.--

(a) For each record filed in a filing office, the filing office shall:

- (1) assign a unique number to the filed record;
 - (2) create a record that bears the number assigned to the filed record and the date and time of filing;
- and
- (3) maintain the filed record for public inspection.

(b) The filing office shall maintain a capability to retrieve a record by the name of the debtor and by the file number assigned to the initial financing statement to which the record relates. The secretary of state shall also maintain a capability to associate and retrieve with one another an initial financing statement and each filed record relating to the initial financing statement.

(c) The filing office may not remove a debtor's name from the index until one year after the effectiveness of a financing statement naming the debtor lapses under Section 55-9-515 NMSA 1978 with respect to all secured parties of record.

The secretary of state shall perform the acts required by Subsections (a) through (c) of this section at the time and in the manner prescribed by filing-office rule."

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1 Section 91. A new Section 55-9-520 NMSA 1978 is enacted to
2 read:

3 "55-9-520. [NEW MATERIAL] ACCEPTANCE AND REFUSAL TO ACCEPT
4 RECORD.--

5 (a) The secretary of state shall refuse to accept a
6 record for filing for a reason set forth in Subsection (b) of
7 Section 55-9-516 NMSA 1978 and may refuse to accept a record for
8 filing only for a reason set forth in that subsection.

9 (b) If a filing office refuses to accept a record
10 for filing, it shall communicate to the person that presented
11 the record the fact of and reason for the refusal and the date
12 and time the record would have been filed had the filing office
13 accepted it. The communication must be made at the time and in
14 the manner prescribed by filing-office rule or by other law.

15 (c) A filed financing statement satisfying
16 Subsections (a) and (b) of Section 55-9-502 NMSA 1978 is
17 effective, even if the secretary of state required to refuse to
18 accept it for filing under Subsection (a) of this section.
19 However, Section 55-9-338 NMSA 1978 applies to a filed financing
20 statement providing information described in Paragraph (5) of
21 Subsection (b) of Section 55-9-516 NMSA 1978 which is incorrect
22 at the time the financing statement is filed.

23 (d) If a record communicated to a filing office
24 provides information that relates to more than one debtor, this
25 part applies as to each debtor separately."

 Section 92. A new Section 55-9-521 NMSA 1978 is enacted to
read:

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1 "55-9-521. [NEW MATERIAL] UNIFORM FORM OF WRITTEN
2 FINANCING STATEMENT AND AMENDMENT.--

3 (a) A filing office may not refuse to accept a
4 written initial financing statement in the form and format
5 prescribed by the filing officer except for a reason set forth
6 in Subsection (b) of Section 55-9-516 NMSA 1978.

7 (b) A filing office that accepts written records may
8 not refuse to accept a written record in the form and format
9 prescribed by the filing officer except for a reason set forth
10 in Subsection (b) of Section 55-9-516 NMSA 1978."

11 Section 93. A new Section 55-9-522 NMSA 1978 is enacted to
12 read:

13 "55-9-522. [NEW MATERIAL] MAINTENANCE AND DESTRUCTION OF
14 RECORDS.--

15 (a) The filing office shall maintain a record of the
16 information provided in a filed financing statement for at least
17 one year after the effectiveness of the financing statement has
18 lapsed under Section 55-9-515 NMSA 1978 with respect to all
19 secured parties of record. The record must be retrievable by
20 using the name of the debtor and by using the file number
21 assigned to the initial financing statement to which the record
22 relates.

23 (b) Except to the extent that a statute governing
24 disposition of public records provides otherwise, the filing
25 office immediately may destroy any written record evidencing a
financing statement. However, if the filing office destroys a
written record, it shall maintain another record of the

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1 financing statement which complies with Subsection (a) of this
2 section."

3 Section 94. A new Section 55-9-523 NMSA 1978 is enacted to
4 read:

5 "55-9-523. [NEW MATERIAL] INFORMATION FROM SECRETARY OF
6 STATE.--

7 (a) If a person that files a written record requests
8 an acknowledgment of the filing, the secretary of state shall
9 send to the person an image of the record showing the number
10 assigned to the record pursuant to Paragraph (1) of Subsection
11 (a) of Section 55-9-519 NMSA 1978 and the date and time of the
12 filing of the record. The fee for each page of the record is
13 one dollar (\$1.00). However, if the person furnishes a copy of
14 the record to the filing office, the filing office may instead:

15 (1) note upon the copy the number assigned to
16 the record pursuant to Paragraph (1) of Subsection (a) of
17 Section 55-9-519 NMSA 1978 and the date and time of the filing
18 of the record; and

19 (2) send the copy to the person.

20 (b) The secretary of state shall make available to
21 the general public records indexed both by the names of debtors
22 and by unique file numbers, based upon which copies may be
23 obtained.

24 (c) In complying with its duty under Subsection (b)
25 of this section, the secretary of state may communicate
information in any medium. However, if requested, the filing
office shall communicate information by issuing its written

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1 certificate."

2 Section 95. A new Section 55-9-525 NMSA 1978 is enacted to
3 read:

4 "55-9-525. [NEW MATERIAL] FEES.--

5 (a) Except as provided in Subsections (c) and (d) of
6 this section, the fee for filing and indexing a record pursuant
7 to Section 55-9-501 through 55-9-526 NMSA 1978 is:

8 (1) eleven dollars fifty cents (\$11.50) if the
9 record is communicated in writing and consists of one page;

10 (2) fifteen dollars (\$15.00) if the record is
11 communicated in writing and consists of more than one page;

12 (3) fifty-four dollars (\$54.00) if the record
13 is communicated in writing and consists of more than twenty-five
14 pages; and

15 (4) twenty-five dollars (\$25.00) if the record
16 is communicated by a medium other than writing authorized by
17 filing office rule.

18 (b) The fee for a copy of a record filed pursuant to
19 Sections 55-9-501 through 55-9-526 NMSA 1978 is one dollar
20 (\$1.00) a page.

21 (c) The fee for filing and indexing an initial
22 financing statement of the kind described in Subsection (c) of
23 Section 55-9-502 NMSA 1978 is:

24 (1) one hundred dollars (\$100) if the financing
25 statement indicates that it is filed in connection with a
public-finance transaction; and

(2) one hundred dollars (\$100) if the financing

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1 statement indicates that it is filed in connection with a
2 manufactured-home transaction.

3 (d) This section does not require a fee with respect
4 to a record of a mortgage which is effective as a financing
5 statement filed as a fixture filing or as a financing statement
6 covering as-extracted collateral or timber to be cut under
7 Subsection (c) of Section 55-9-502 NMSA 1978. However, the
8 recording and satisfaction fees that otherwise would be
9 applicable to the record of the mortgage apply."

10 Section 96. A new Section 55-9-526 NMSA 1978 is enacted to
11 read:

12 "55-9-526. [NEW MATERIAL] FILING-OFFICE RULES.--The
13 secretary of state shall adopt and publish rules to implement
14 Sections 55-9-501 through 55-9-526 NMSA 1978. The filing-office
15 rules must be:

16 (a) consistent with Chapter 55, Article 9 NMSA 1978;
17 and

18 (b) adopted and published in accordance with the
19 State Rules Act."

20 Section 97. A new Section 55-9-601 NMSA 1978 is enacted to
21 read:

22 "55-9-601. [NEW MATERIAL] RIGHTS AFTER DEFAULT--JUDICIAL
23 ENFORCEMENT--CONSIGNOR OR BUYER OF ACCOUNTS, CHATTEL PAPER,
24 PAYMENT INTANGIBLES OR PROMISSORY NOTES.--

25 (a) After default, a secured party has the rights
provided in Sections 55-9-601 through 55-9-628 NMSA 1978 and,
except as otherwise provided in Section 55-9-602 NMSA 1978,

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1 those provided by agreement of the parties. A secured party:

2 (1) may reduce a claim to judgment, foreclose
3 or otherwise enforce the claim, security interest or
4 agricultural lien by any available judicial procedure; and

5 (2) if the collateral is documents, may proceed
6 either as to the documents or as to the goods they cover.

7 (b) A secured party in possession of collateral or
8 control of collateral under Section 55-9-104, 55-9-105, 55-9-106
9 or 55-9-107 NMSA 1978 has the rights and duties provided in
10 Section 55-9-207 NMSA 1978.

11 (c) The rights under Subsections (a) and (b) of this
12 section are cumulative and may be exercised simultaneously.

13 (d) Except as otherwise provided in Subsection (g)
14 of this section and Section 55-9-605 NMSA 1978, after default, a
15 debtor and an obligor have the rights provided in Sections
16 55-9-601 through 55-9-628 NMSA 1978 and by agreement of the
17 parties.

18 (e) If a secured party has reduced its claim to
19 judgment, the lien of any levy that may be made upon the
20 collateral by virtue of an execution based upon the judgment
21 relates back to the earliest of:

22 (1) the date of perfection of the security
23 interest or agricultural lien in the collateral;

24 (2) the date of filing a financing statement
25 covering the collateral; or

(3) any date specified in a statute under which
the agricultural lien was created.

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1 (f) A sale pursuant to an execution is a foreclosure
2 of the security interest or agricultural lien by judicial
3 procedure within the meaning of this section. A secured party
4 may purchase at the sale and thereafter hold the collateral free
5 of any other requirements of Chapter 55, Article 9 NMSA 1978.

6 (g) Except as otherwise provided in Subsection (c)
7 of Section 55-9-607 NMSA 1978 and Sections 55-9-601 through 55-
8 9-628 NMSA 1978 impose no duties upon a secured party that is a
9 consignor or is a buyer of accounts, chattel paper, payment
10 intangibles or promissory notes."

11 Section 98. A new Section 55-9-602 NMSA 1978 is enacted to
12 read:

13 "55-9-602. [NEW MATERIAL] WAIVER AND VARIANCE OF RIGHTS
14 AND DUTIES.--Except as otherwise provided in Section 55-9-624
15 NMSA 1978, to the extent that they give rights to a debtor or
16 obligor and impose duties on a secured party, the debtor or
17 obligor may not waive or vary the rules stated in the following
18 listed sections:

19 (1) Subparagraph (C) of Paragraph (4) of Subsection
20 (b) of Section 55-9-207 NMSA 1978, which deals with use and
21 operation of the collateral by the secured party;

22 (2) Section 55-9-210 NMSA 1978, which deals with
23 requests for an accounting and requests concerning a list of
24 collateral and statement of account;

25 (3) Subsection (c) of Section 55-9-607 NMSA 1978,
which deals with collection and enforcement of collateral;

(4) Subsection (a) of Section 55-9-608 and

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1 Subsection (c) of Section 55-9-615 NMSA 1978 to the extent that
2 they deal with application or payment of noncash proceeds of
3 collection, enforcement or disposition;

4 (5) Subsection (a) of Section 55-9-608 and
5 Subsection (d) of Section 55-9-615 NMSA 1978 to the extent that
6 they require accounting for or payment of surplus proceeds of
7 collateral;

8 (6) Section 55-9-609 NMSA 1978 to the extent that it
9 imposes upon a secured party that takes possession of collateral
10 without judicial process the duty to do so without breach of the
11 peace;

12 (7) Subsection (b) of Section 55-9-610, Sections
13 55-9-611, 55-9-613 and 55-9-614 NMSA 1978, which deal with
14 disposition of collateral;

15 (8) Subsection (f) of Section 55-9-615 NMSA 1978,
16 which deals with calculation of a deficiency or surplus when a
17 disposition is made to the secured party, a person related to
18 the secured party or a secondary obligor;

19 (9) Section 55-9-616 NMSA 1978, which deals with
20 explanation of the calculation of a surplus or deficiency;

21 (10) Sections 55-9-620 through 55-9-622 NMSA 1978,
22 which deal with acceptance of collateral in satisfaction of
23 obligation;

24 (11) Section 55-9-623 NMSA 1978, which deals with
25 redemption of collateral;

(12) Section 55-9-624 NMSA 1978, which deals with
permissible waivers; and

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1 (13) Sections 55-9-625 and 55-9-626 NMSA 1978, which
2 deal with the secured party's liability for failure to comply
3 with Chapter 55, Article 9 NMSA 1978."

4 Section 99. A new Section 55-9-603 NMSA 1978 is enacted to
5 read:

6 "55-9-603. [NEW MATERIAL] AGREEMENT ON STANDARDS
7 CONCERNING RIGHTS AND DUTIES.--

8 (a) The parties may determine by agreement the
9 standards measuring the fulfillment of the rights of a debtor or
10 obligor and the duties of a secured party under a rule stated in
11 Section 55-9-602 NMSA 1978 if the standards are not manifestly
12 unreasonable.

13 (b) Subsection (a) of this section does not apply to
14 the duty under Section 55-9-609 NMSA 1978 to refrain from
15 breaching the peace."

16 Section 100. A new Section 55-9-604 NMSA 1978 is enacted
17 to read:

18 "55-9-604. [NEW MATERIAL] PROCEDURE IF SECURITY AGREEMENT
19 COVERS REAL PROPERTY OR FIXTURES.--

20 (a) If a security agreement covers both personal and
21 real property, a secured party may proceed:

22 (1) under Sections 55-9-601 through 55-9-628
23 NMSA 1978 as to the personal property without prejudicing any
24 rights with respect to the real property; or

25 (2) as to both the personal property and the
real property in accordance with the rights with respect to the
real property, in which case the other provisions of Sections

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1 55-9-601 through 55-9-628 NMSA 1978 do not apply.

2 (b) Subject to Subsection (c) of this section, if a
3 security agreement covers goods that are or become fixtures, a
4 secured party may proceed:

5 (1) under Sections 55-9-601 through 55-9-628
6 NMSA 1978; or

7 (2) in accordance with the rights with respect
8 to real property, in which case the other provisions of Sections
9 55-9-601 through 55-9-628 NMSA 1978 do not apply.

10 (c) Subject to the other provisions of Sections
11 55-9-601 through 55-9-628 NMSA 1978, if a secured party holding
12 a security interest in fixtures has priority over all owners and
13 encumbrancers of the real property, the secured party, after
14 default, may remove the collateral from the real property.

15 (d) A secured party that removes collateral shall
16 promptly reimburse any encumbrancer or owner of the real
17 property, other than the debtor, for the cost of repair of any
18 physical injury caused by the removal. The secured party need
19 not reimburse the encumbrancer or owner for any diminution in
20 value of the real property caused by the absence of the goods
21 removed or by any necessity of replacing them. A person
22 entitled to reimbursement may refuse permission to remove until
23 the secured party gives adequate assurance for the performance
24 of the obligation to reimburse."

25 Section 101. A new Section 55-9-605 NMSA 1978 is enacted
to read:

"55-9-605. [NEW MATERIAL] UNKNOWN DEBTOR OR SECONDARY

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1 OBLIGOR.--A secured party does not owe a duty based on its
2 status as secured party:

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

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

6 (B) the identity of the person; and

7 (C) how to communicate with the person; or

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

11 (A) that the person is a debtor; and

12 (B) the identity of the person."

13 Section 102. A new Section 55-9-606 NMSA 1978 is enacted
14 to read:

15 "55-9-606. [NEW MATERIAL] TIME OF DEFAULT FOR AGRICULTURAL
16 LIEN.--For purposes of Sections 55-9-601 through 55-9-628 NMSA
17 1978, a default occurs in connection with an agricultural lien
18 at the time the secured party becomes entitled to enforce the
19 lien in accordance with the statute under which it was created."

20 Section 103. A new Section 55-9-607 NMSA 1978 is enacted
21 to read:

22 "55-9-607. [NEW MATERIAL] COLLECTION AND ENFORCEMENT BY
23 SECURED PARTY.--

24 (a) If so agreed, and in any event after default, a
25 secured party:

(1) may notify an account debtor or other
person obligated on collateral to make payment or otherwise

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1 render performance to or for the benefit of the secured party;

2 (2) may take any proceeds to which the secured
3 party is entitled under Section 55-9-315 NMSA 1978;

4 (3) may enforce the obligations of an account
5 debtor or other person obligated on collateral and exercise the
6 rights of the debtor with respect to the obligation of the
7 account debtor or other person obligated on collateral to make
8 payment or otherwise render performance to the debtor, and with
9 respect to any property that secures the obligations of the
10 account debtor or other person obligated on the collateral;

11 (4) if it holds a security interest in a
12 deposit account perfected by control under Paragraph (1) of
13 Subsection (a) of Section 55-9-104 NMSA 1978, may apply the
14 balance of the deposit account to the obligation secured by the
15 deposit account; and

16 (5) if it holds a security interest in a
17 deposit account perfected by control under Paragraphs (2) or (3)
18 of Subsection (a) of Section 55-9-104 NMSA 1978, may instruct
19 the bank to pay the balance of the deposit account to or for the
20 benefit of the secured party.

21 (b) If necessary to enable a secured party to
22 exercise under Paragraph (3) of Subsection (a) of this section
23 the right of a debtor to enforce a mortgage nonjudicially, the
24 secured party may record in the office in which a record of the
25 mortgage is recorded:

(1) a copy of the security agreement that
creates or provides for a security interest in the obligation

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1 secured by the mortgage; and
2 (2) the secured party's sworn affidavit in
3 recordable form stating that:
4 (A) a default has occurred; and
5 (B) the secured party is entitled to
6 enforce the mortgage nonjudicially.
7 (c) A secured party shall proceed in a commercially
8 reasonable manner if the secured party:
9 (1) undertakes to collect from or enforce an
10 obligation of an account debtor or other person obligated on
11 collateral; and
12 (2) is entitled to charge back uncollected
13 collateral or otherwise to full or limited recourse against the
14 debtor or a secondary obligor.
15 (d) A secured party may deduct from the collections
16 made pursuant to Subsection (c) of this section reasonable
17 expenses of collection and enforcement, including reasonable
18 attorney fees and legal expenses incurred by the secured party.
19 (e) This section does not determine whether an
20 account debtor, bank or other person obligated on collateral
21 owes a duty to a secured party."

22 Section 104. A new Section 55-9-608 NMSA 1978 is enacted
23 to read:

24 "55-9-608. [NEW MATERIAL] APPLICATION OF PROCEEDS OF
25 COLLECTION OR ENFORCEMENT--LIABILITY FOR DEFICIENCY AND RIGHT TO
SURPLUS.--

(a) If a security interest or agricultural lien

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1 secures payment or performance of an obligation, the following
2 rules apply:

3 (1) A secured party shall apply or pay over for
4 application the cash proceeds of collection or enforcement under
5 Section 55-9-607 NMSA 1978 in the following order to:

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

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

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

19 (2) If requested by a secured party, a holder
20 of a subordinate security interest or other lien shall furnish
21 reasonable proof of the interest or lien within a reasonable
22 time. Unless the holder complies, the secured party need not
23 comply with the holder's demand under Subparagraph (C) of
24 Paragraph (1) of Subsection (a) of this section.

25 (3) A secured party need not apply or pay over
for application noncash proceeds of collection and enforcement
under Section 55-9-607 NMSA 1978 unless the failure to do so

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1 would be commercially unreasonable. A secured party that
2 applies or pays over for application noncash proceeds shall do
3 so in a commercially reasonable manner.

4 (4) A secured party shall account to and pay a
5 debtor for any surplus, and the obligor is liable for any
6 deficiency.

7 (b) If the underlying transaction is a sale of
8 accounts, chattel paper, payment intangibles or promissory
9 notes, the debtor is not entitled to any surplus, and the
10 obligor is not liable for any deficiency."

11 Section 105. A new Section 55-9-609 NMSA 1978 is enacted
12 to read:

13 "55-9-609. [NEW MATERIAL] SECURED PARTY'S RIGHT TO TAKE
14 POSSESSION AFTER DEFAULT.--

15 (a) After default, a secured party:

16 (1) may take possession of the collateral; and

17 (2) without removal, may render equipment
18 unusable and dispose of collateral on a debtor's premises under
19 Section 55-9-610 NMSA 1978.

20 (b) A secured party may proceed under Subsection (a)
21 of this section:

22 (1) pursuant to judicial process; or

23 (2) without judicial process, if it proceeds
24 without breach of the peace.

25 (c) If so agreed, and in any event after default, a
secured party may require the debtor to assemble the collateral
and make it available to the secured party at a place to be

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1 designated by the secured party which is reasonably convenient
2 to both parties."

3 Section 106. A new Section 55-9-610 NMSA 1978 is enacted
4 to read:

5 "55-9-610. [NEW MATERIAL] DISPOSITION OF COLLATERAL AFTER
6 DEFAULT.--

7 (a) After default, a secured party may sell, lease,
8 license or otherwise dispose of any or all of the collateral in
9 its present condition or following any commercially reasonable
10 preparation or processing.

11 (b) Every aspect of a disposition of collateral,
12 including the method, manner, time, place and other terms, must
13 be commercially reasonable. If commercially reasonable, a
14 secured party may dispose of collateral by public or private
15 proceedings, by one or more contracts, as a unit or in parcels,
16 and at any time and place and on any terms.

17 (c) A secured party may purchase collateral:
18 (1) at a public disposition; or
19 (2) at a private disposition only if the
20 collateral is of a kind that is customarily sold on a recognized
21 market or the subject of widely distributed standard price
22 quotations.

23 (d) A contract for sale, lease, license or other
24 disposition includes the warranties relating to title,
25 possession, quiet enjoyment and the like which by operation of
law accompany a voluntary disposition of property of the kind
subject to the contract.

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1 (e) A secured party may disclaim or modify
2 warranties under Subsection (d) of this section:

3 (1) in a manner that would be effective to
4 disclaim or modify the warranties in a voluntary disposition of
5 property of the kind subject to the contract of disposition; or

6 (2) by communicating to the purchaser a record
7 evidencing the contract for disposition and including an express
8 disclaimer or modification of the warranties.

9 (f) A record is sufficient to disclaim warranties
10 under Subsection (e) of this section if it indicates "There is
11 no warranty relating to title, possession, quiet enjoyment or
12 the like in this disposition" or uses words of similar import."

13 Section 107. A new Section 55-9-611 NMSA 1978 is enacted
14 to read:

15 "55-9-611. [NEW MATERIAL] NOTIFICATION BEFORE DISPOSITION
16 OF COLLATERAL.--

17 (a) In this section, "notification date" means the
18 earlier of the date on which:

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

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

24 (b) Except as otherwise provided in Subsection (d)
25 of this section, a secured party that disposes of collateral
under Section 55-9-610 NMSA 1978 shall send to the persons
specified in Subsection (c) of this section a reasonable

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1 authenticated notification of disposition.

2 (c) To comply with Subsection (b) of this section,
3 the secured party shall send an authenticated notification of
4 disposition to:

- 5 (1) the debtor;
- 6 (2) any secondary obligor; and
- 7 (3) if the collateral is other than consumer
8 goods:

9 (A) any other person from which the
10 secured party has received, before the notification date, an
11 authenticated notification of a claim of an interest in the
12 collateral;

13 (B) any other secured party or lienholder
14 that, ten days before the notification date, held a security
15 interest in or other lien on the collateral perfected by the
16 filing of a financing statement that:

- 17 (i) identified the collateral;
- 18 (ii) was indexed under the debtor's
19 name as of that date; and
- 20 (iii) was filed in the office in
21 which to file a financing statement against the debtor covering
22 the collateral as of that date; and

23 (C) any other secured party that, ten days
24 before the notification date, held a security interest in the
25 collateral perfected by compliance with a statute, regulation or
treaty described in Subsection (a) of Section 55-9-311 NMSA
1978.

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1 (d) Subsection (b) of this section does not apply if
2 the collateral is perishable or threatens to decline speedily in
3 value or is of a type customarily sold on a recognized market.

4 (e) A secured party complies with the requirement
5 for notification prescribed by Subparagraph (B) of Paragraph (3)
6 of Subsection (c) of this section if:

7 (1) not later than twenty days or earlier than
8 thirty days before the notification date, the secured party
9 requests, in a commercially reasonable manner, information
10 concerning financing statements indexed under the debtor's name
11 in the office indicated in Subparagraph (B) of Paragraph (3) of
12 Subsection (c) of this section; and

13 (2) before the notification date, the secured
14 party:

15 (A) did not receive a response to the
16 request for information; or

17 (B) received a response to the request for
18 information and sent an authenticated notification of
19 disposition to each secured party or other lienholder named in
20 that response whose financing statement covered the collateral."

21 Section 108. A new Section 55-9-612 NMSA 1978 is enacted
22 to read:

23 "55-9-612. [NEW MATERIAL] TIMELINESS OF NOTIFICATION
24 BEFORE DISPOSITION OF COLLATERAL.--

25 (a) Except as otherwise provided in Subsection (b)
of this section, whether a notification is sent within a
reasonable time is a question of fact.

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1 (b) In a transaction other than a consumer
2 transaction, a notification of disposition sent after default
3 and ten days or more before the earliest time of disposition set
4 forth in the notification is sent within a reasonable time
5 before the disposition."

6 Section 109. A new Section 55-9-613 NMSA 1978 is enacted
7 to read:

8 "55-9-613. [NEW MATERIAL] CONTENTS AND FORM OF
9 NOTIFICATION BEFORE DISPOSITION OF COLLATERAL--GENERAL.--Except
10 in a consumer-goods transaction, the following rules apply:

11 (1) The contents of a notification of disposition
12 are sufficient if the notification:

13 (A) describes the debtor and the secured party;

14 (B) describes the collateral that is the
15 subject of the intended disposition;

16 (C) states the method of intended disposition;

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

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

23 (2) Whether the contents of a notification that
24 lacks any of the information specified in Subsection (1) of this
25 section are nevertheless sufficient is a question of fact.

(3) The contents of a notification providing
substantially the information specified in Subsection (1) of

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1 this section are sufficient, even if the notification includes:

2 (A) information not specified by that
3 subsection; or

4 (B) minor errors that are not seriously
5 misleading.

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

8 (5) The following form of notification and the form
9 appearing in Subsection (3) of Section 55-9-614 NMSA 1978, when
10 completed, each provides sufficient information:

11 NOTIFICATION OF DISPOSITION OF COLLATERAL

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

14 From: (Name, address and telephone number of
15 secured party)

16 Name of Debtor(s): (Include only if debtor(s) are not an
17 addressee)

18 (For a public disposition:)

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

22 Day and Date: _____

23 Time: _____

24 Place: _____

25 (For a private disposition:)

We will sell (or lease or license, as applicable) the

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1 (describe collateral) privately sometime after _____ (day and
2 date)_____.

3 You are entitled to an accounting of the unpaid
4 indebtedness secured by the property that we intend to sell (or
5 lease or license, *as applicable*) (for a charge of \$ _____).
6 You may request an accounting by calling us at _____ (telephone
7 number)_____."

8 Section 110. A new Section 55-9-614 NMSA 1978 is enacted
9 to read:

10 "55-9-614. [NEW MATERIAL] CONTENTS AND FORM OF
11 NOTIFICATION BEFORE DISPOSITION OF COLLATERAL--CONSUMER-GOODS
12 TRANSACTION.--In a consumer-goods transaction, the following
13 rules apply:

14 (1) A notification of disposition must provide the
15 following information:

16 (A) the information specified in Subsection (1)
17 of Section 55-9-613 NMSA 1978;

18 (B) a description of any liability for a
19 deficiency of the person to which the notification is sent;

20 (C) a telephone number from which the amount
21 that must be paid to the secured party to redeem the collateral
22 under Section 55-9-623 NMSA 1978 is available; and

23 (D) a telephone number or mailing address from
24 which additional information concerning the disposition and the
25 obligation secured is available.

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

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(3) The following form of notification, when completed, provides sufficient information:
(Name and address of secured party)
(Date)

NOTICE OF OUR PLAN TO SELL PROPERTY

(Name and address of any obligor who is also a debtor)
Subject: (Identification of Transaction)

We have your (describe collateral), because you broke promises in our agreement.
(For a public disposition:)

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

Date: _____
Time: _____
Place: _____

You may attend the sale and bring bidders if you want.
(For a private disposition:)

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

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

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

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

12 If you need more information about the sale call us at
13 _____ (telephone number) _____ (or write us at _____ (secured
14 party's address) _____).

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

18 _____ (Names of all other debtors and obligors, if any) _____."

19 Section 111. A new Section 55-9-615 NMSA 1978 is enacted
20 to read:

21 "55-9-615. [NEW MATERIAL] APPLICATION OF PROCEEDS OF
22 DISPOSITION--LIABILITY FOR DEFICIENCY AND RIGHT TO SURPLUS.--

23 (a) A secured party shall apply or pay over for
24 application the cash proceeds of disposition pursuant to Section
25 55-9-610 NMSA 1978 in the following order to:

(1) the reasonable expenses of retaking,
holding, preparing for disposition, processing and disposing,

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1 and, to the extent provided for by agreement and not prohibited
2 by law, reasonable attorney fees and legal expenses incurred by
3 the secured party;

4 (2) the satisfaction of obligations secured by
5 the security interest or agricultural lien under which the
6 disposition is made;

7 (3) the satisfaction of obligations secured by
8 any subordinate security interest in or other subordinate lien
9 on the collateral if:

10 (A) the secured party receives from the
11 holder of the subordinate security interest or other lien an
12 authenticated demand for proceeds before distribution of the
13 proceeds is completed; and

14 (B) in a case in which a consignor has an
15 interest in the collateral, the subordinate security interest or
16 other lien is senior to the interest of the consignor; and

17 (4) a secured party that is a consignor of the
18 collateral if the secured party receives from the consignor an
19 authenticated demand for proceeds before distribution of the
20 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
Subsection (a) of this section.

(c) A secured party need not apply or pay over for

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1 application noncash proceeds of disposition under Section
2 55-9-610 NMSA 1978 unless the failure to do so would be
3 commercially unreasonable. A secured party that applies or pays
4 over for application noncash proceeds shall do so in a
5 commercially reasonable manner.

6 (d) If the security interest under which a
7 disposition is made secures payment or performance of an
8 obligation, after making the payments and applications required
9 by Subsection (a) of this section and permitted by Subsection
10 (c) of this section:

11 (1) unless Paragraph (4) of Subsection (a) of
12 this section requires the secured party to apply or pay over
13 cash proceeds to a consignor, the secured party shall account to
14 and pay a debtor for any surplus; and

15 (2) the obligor is liable for any deficiency.

16 (e) If the underlying transaction is a sale of
17 accounts, chattel paper, payment intangibles or promissory
18 notes:

19 (1) the debtor is not entitled to any surplus;
20 and

21 (2) the obligor is not liable for any
22 deficiency.

23 (f) The surplus or deficiency following a
24 disposition is calculated based on the amount of proceeds that
25 would have been realized in a disposition complying with this
part to a transferee other than the secured party, a person
related to the secured party or a secondary obligor if:

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1 (1) the transferee in the disposition is the
2 secured party, a person related to the secured party or a
3 secondary obligor; and

4 (2) the amount of proceeds of the disposition
5 is significantly below the range of proceeds that a complying
6 disposition to a person other than the secured party, a person
7 related to the secured party or a secondary obligor would have
8 brought.

9 (g) A secured party that receives cash proceeds of a
10 disposition in good faith and without knowledge that the receipt
11 violates the rights of the holder of a security interest or
12 other lien that is not subordinate to the security interest or
13 agricultural lien under which the disposition is made:

14 (1) takes the cash proceeds free of the
15 security interest or other lien;

16 (2) is not obligated to apply the proceeds of
17 the disposition to the satisfaction of obligations secured by
18 the security interest or other lien; and

19 (3) is not obligated to account to or pay the
20 holder of the security interest or other lien for any surplus."

21 Section 112. A new Section 55-9-616 NMSA 1978 is enacted
22 to read:

23 "55-9-616. [NEW MATERIAL] EXPLANATION OF CALCULATION OF
24 SURPLUS OR DEFICIENCY.--

25 (a) In this section:

(1) "explanation" means a writing that:

(A) states the amount of the surplus or

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1 deficiency;

2 (B) provides an explanation in accordance
3 with Subsection (c) of this section of how the secured party
4 calculated the surplus or deficiency;

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

9 (D) provides a telephone number or mailing
10 address from which additional information concerning the
11 transaction is available; and

12 (2) "request" means a record:

13 (A) authenticated by a debtor or consumer
14 obligor;

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

17 (C) sent after disposition of the
18 collateral under Section 55-9-610 NMSA 1978.

19 (b) In a consumer-goods transaction in which the
20 debtor is entitled to a surplus or a consumer obligor is liable
21 for a deficiency under Section 55-9-615 NMSA 1978, the secured
22 party shall:

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

25 (A) before or when the secured party
accounts to the debtor and pays any surplus or first makes
written demand on the consumer obligor after the disposition for

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1 payment of the deficiency; and

2 (B) within fourteen days after receipt of
3 a request; or

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

8 (c) To comply with Subparagraph (B) of Paragraph (1)
9 of Subsection (a) of this section, a writing must provide the
10 following information in the following order:

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

16 (A) if the secured party takes or receives
17 possession of the collateral after default, not more than
18 thirty-five days before the secured party takes or receives
19 possession; or

20 (B) if the secured party takes or receives
21 possession of the collateral before default or does not take
22 possession of the collateral, not more than thirty-five days
23 before the disposition;

24 (2) the amount of proceeds of the disposition;

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

(4) the amount, in the aggregate or by type,

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1 and types of expenses, including expenses of retaking, holding,
2 preparing for disposition, processing and disposing of the
3 collateral, and attorney's fees secured by the collateral which
4 are known to the secured party and relate to the current
5 disposition;

6 (5) the amount, in the aggregate or by type,
7 and types of credits, including rebates of interest or credit
8 service charges, to which the obligor is known to be entitled
9 and which are not reflected in the amount in Paragraph (1) of
10 this subsection; and

11 (6) the amount of the surplus or deficiency.

12 (d) A particular phrasing of the explanation is not
13 required. An explanation complying substantially with the
14 requirements of Subsection (a) of this section is sufficient,
15 even if it includes minor errors that are not seriously
16 misleading.

17 (e) A debtor or consumer obligor is entitled without
18 charge to one response to a request under this section during
19 any six-month period in which the secured party did not send to
20 the debtor or consumer obligor an explanation pursuant to
21 Paragraph (1) of Subsection (b) of this section. The secured
22 party may require payment of a charge not exceeding twenty-five
23 dollars (\$25.00) for each additional response."

24 Section 113. A new Section 55-9-617 NMSA 1978 is enacted
25 to read:

"55-9-617. [NEW MATERIAL] RIGHTS OF TRANSFEREE OF
COLLATERAL.--

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1 (a) A secured party's disposition of collateral
2 after default:

3 (1) transfers to a transferee for value all of
4 the debtor's rights in the collateral;

5 (2) discharges the security interest under
6 which the disposition is made; and

7 (3) discharges any subordinate security
8 interest or other subordinate lien.

9 (b) A transferee that acts in good faith takes free
10 of the rights and interests described in Subsection (a) of this
11 section, even if the secured party fails to comply with this
12 article or the requirements of any judicial proceeding.

13 (c) If a transferee does not take free of the rights
14 and interests described in Subsection (a) of this section, the
15 transferee takes the collateral subject to:

16 (1) the debtor's rights in the collateral;

17 (2) the security interest or agricultural lien
18 under which the disposition is made; and

19 (3) any other security interest or other lien."

20 Section 114. A new Section 55-9-618 NMSA 1978 is enacted
21 to read:

22 "55-9-618. [NEW MATERIAL] RIGHTS AND DUTIES OF CERTAIN
23 SECONDARY OBLIGORS.--

24 (a) A secondary obligor acquires the rights and
25 becomes obligated to perform the duties of the secured party
after the secondary obligor:

(1) receives an assignment of a secured

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1 obligation from the secured party;

2 (2) receives a transfer of collateral from the
3 secured party and agrees to accept the rights and assume the
4 duties of the secured party; or

5 (3) is subrogated to the rights of a secured
6 party with respect to collateral.

7 (b) An assignment, transfer or subrogation described
8 in Subsection (a) of this section:

9 (1) is not a disposition of collateral under
10 Section 55-9-610 NMSA 1978; and

11 (2) relieves the secured party of further
12 duties under Chapter 55, Article 9 NMSA 1978."

13 Section 115. A new Section 55-9-619 NMSA 1978 is enacted
14 to read:

15 "55-9-619. [NEW MATERIAL] TRANSFER OF RECORD OR LEGAL
16 TITLE.--

17 (a) In this section, "transfer statement" means a
18 record authenticated by a secured party stating:

19 (1) that the debtor has defaulted in connection
20 with an obligation secured by specified collateral;

21 (2) that the secured party has exercised its
22 post-default remedies with respect to the collateral;

23 (3) that, by reason of the exercise, a
24 transferee has acquired the rights of the debtor in the
25 collateral; and

(4) the name and mailing address of the secured
party, debtor and transferee.

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1 (b) A transfer statement entitles the transferee to
2 the transfer of record of all rights of the debtor in the
3 collateral specified in the statement in any official filing,
4 recording, registration or certificate-of-title system covering
5 the collateral. If a transfer statement is presented with the
6 applicable fee and request form to the official or office
7 responsible for maintaining the system, the official or office
8 shall:

- 9 (1) accept the transfer statement;
- 10 (2) promptly amend its records to reflect the
- 11 transfer; and
- 12 (3) if applicable, issue a new appropriate
- 13 certificate of title in the name of the transferee.

14 (c) A transfer of the record or legal title to
15 collateral to a secured party under Subsection (b) of this
16 section or otherwise is not of itself a disposition of
17 collateral under Chapter 55, Article 9 NMSA 1978 and does not of
18 itself relieve the secured party of its duties under that
19 article."

20 Section 116. A new Section 55-9-620 NMSA 1978 is enacted
21 to read:

22 "55-9-620. [NEW MATERIAL] ACCEPTANCE OF COLLATERAL IN FULL
23 OR PARTIAL SATISFACTION OF OBLIGATION--COMPULSORY DISPOSITION OF
24 COLLATERAL.--

25 (a) Except as otherwise provided in Subsection (g)
of this section, a secured party may accept collateral in full
or partial satisfaction of the obligation it secures only if:

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1 (1) the debtor consents to the acceptance under
2 Subsection (c) of this section;

3 (2) the secured party does not receive, within
4 the time set forth in Subsection (d) of this section, a
5 notification of objection to the proposal authenticated by:

6 (A) a person to which the secured party
7 was required to send a proposal under Section 55-9-621 NMSA
8 1978; or

9 (B) any other person, other than the
10 debtor, holding an interest in the collateral subordinate to the
11 security interest that is the subject of the proposal;

12 (3) if the collateral is consumer goods, the
13 collateral is not in the possession of the debtor when the
14 debtor consents to the acceptance; and

15 (4) Subsection (e) of this section does not
16 require the secured party to dispose of the collateral or the
17 debtor waives the requirement pursuant to Section 55-9-624 NMSA
18 1978.

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

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

24 (2) the conditions of Subsection (a) of this
25 section are met.

(c) For purposes of this section:

(1) a debtor consents to an acceptance of

1 collateral in partial satisfaction of the obligation it secures
2 only if the debtor agrees to the terms of the acceptance in a
3 record authenticated after default; and

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

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

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

15 (C) does not receive a notification of
16 objection authenticated by the debtor within twenty days after
17 the proposal is sent.

18 (d) To be effective under Paragraph (2) of
19 Subsection (a) of this section, a notification of objection must
20 be received by the secured party:

21 (1) in the case of a person to which the
22 proposal was sent pursuant to Section 55-9-621 NMSA 1978, within
23 twenty days after notification was sent to that person; and

24 (2) in other cases:

25 (A) within twenty days after the last
notification was sent pursuant to Section 55-9-621 NMSA 1978; or

(B) if a notification was not sent, before

underscored material = new
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1 the debtor consents to the acceptance under Subsection (c) of
2 this section.

3 (e) A secured party that has taken possession of
4 collateral shall dispose of the collateral pursuant to Section
5 55-9-610 NMSA 1978 within the time specified in Subsection (f)
6 of this section if:

7 (1) sixty percent of the cash price has been
8 paid in the case of a purchase-money security interest in
9 consumer goods; or

10 (2) sixty percent of the principal amount of
11 the obligation secured has been paid in the case of a non-
12 purchase-money security interest in consumer goods.

13 (f) To comply with Subsection (e) of this section,
14 the secured party shall dispose of the collateral:

15 (1) within ninety days after taking possession;
16 or

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

20 (g) In a consumer transaction, a secured party may
21 not accept collateral in partial satisfaction of the obligation
22 it secures."

23 Section 117. A new Section 55-9-621 NMSA 1978 is enacted
24 to read:

25 "55-9-621. [NEW MATERIAL] NOTIFICATION OF PROPOSAL TO
ACCEPT COLLATERAL.--

(a) A secured party that desires to accept

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1 collateral in full or partial satisfaction of the obligation it
2 secures shall send its proposal to:

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

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

11 (A) identified the collateral;

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

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

17 (3) any other secured party that, ten days
18 before the debtor consented to the acceptance, held a security
19 interest in the collateral perfected by compliance with a
20 statute, regulation or treaty described in Subsection (a) of
21 Section 55-9-311 NMSA 1978.

22 (b) A secured party that desires to accept
23 collateral in partial satisfaction of the obligation it secures
24 shall send its proposal to any secondary obligor in addition to
25 the persons described in Subsection (a) of this section."

Section 118. A new Section 55-9-622 NMSA 1978 is enacted
to read:

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1 "55-9-622. [NEW MATERIAL] EFFECT OF ACCEPTANCE OF
2 COLLATERAL.--

3 (a) A secured party's acceptance of collateral in
4 full or partial satisfaction of the obligation it secures:

5 (1) discharges the obligation to the extent
6 consented to by the debtor;

7 (2) transfers to the secured party all of a
8 debtor's rights in the collateral;

9 (3) discharges the security interest or
10 agricultural lien that is the subject of the debtor's consent
11 and any subordinate security interest or other subordinate lien;
12 and

13 (4) terminates any other subordinate interest.

14 (b) A subordinate interest is discharged or
15 terminated under Subsection (a) of this section, even if the
16 secured party fails to comply with Chapter 55, Article 9 NMSA
17 1978."

18 Section 119. A new Section 55-9-623 NMSA 1978 is enacted
19 to read:

20 "55-9-623. [NEW MATERIAL] RIGHT TO REDEEM COLLATERAL.--

21 (a) A debtor, any secondary obligor or any other
22 secured party or lienholder may redeem collateral.

23 (b) To redeem collateral, a person shall tender:

24 (1) fulfillment of all obligations secured by
25 the collateral; and

(2) the reasonable expenses and attorney fees
described in Paragraph (1) of Subsection (a) of Section 55-9-615

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1 NMSA 1978.

2 (c) A redemption may occur at any time before a
3 secured party:

4 (1) has collected collateral under Section
5 55-9-607 NMSA 1978;

6 (2) has disposed of collateral or entered into
7 a contract for its disposition under Section 55-9-610 NMSA 1978;
8 or

9 (3) has accepted collateral in full or partial
10 satisfaction of the obligation it secures under Section 55-9-622
11 NMSA 1978."

12 Section 120. A new Section 55-9-624 NMSA 1978 is enacted
13 to read:

14 "55-9-624. [NEW MATERIAL] WAIVER.--

15 (a) A debtor or secondary obligor may waive the
16 right to notification of disposition of collateral under Section
17 55-9-611 NMSA 1978 only by an agreement to that effect entered
18 into and authenticated after default.

19 (b) A debtor may waive the right to require
20 disposition of collateral under Subsection (e) of Section
21 55-9-620 NMSA 1978 only by an agreement to that effect entered
22 into and authenticated after default.

23 (c) Except in a consumer-goods transaction, a debtor
24 or secondary obligor may waive the right to redeem collateral
25 under Section 55-9-623 NMSA 1978 only by an agreement to that
effect entered into and authenticated after default."

Section 121. A new Section 55-9-625 NMSA 1978 is enacted

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1 to read:

2 "55-9-625. [NEW MATERIAL] REMEDIES FOR SECURED PARTY'S
3 FAILURE TO COMPLY WITH ARTICLE.--

4 (a) If it is established that a secured party is not
5 proceeding in accordance with Chapter 55, Article 9 NMSA 1978, a
6 court may order or restrain collection, enforcement or
7 disposition of collateral on appropriate terms and conditions.

8 (b) Subject to Subsections (c), (d) and (f) of this
9 section, a person is liable for damages in the amount of any
10 loss caused by a failure to comply with Chapter 55, Article 9
11 NMSA 1978. Loss caused by a failure to comply may include loss
12 resulting from the debtor's inability to obtain, or increased
13 costs of, alternative financing.

14 (c) Except as otherwise provided in Section 55-9-628
15 NMSA 1978:

16 (1) a person that, at the time of the failure,
17 was a debtor, was an obligor or held a security interest in or
18 other lien on the collateral may recover damages under
19 Subsection (b) of this section for its loss; and

20 (2) if the collateral is consumer goods, a
21 person that was a debtor or a secondary obligor at the time a
22 secured party failed to comply with this part may recover for
23 that failure in any event an amount not less than the credit
24 service charge plus ten percent of the principal amount of the
25 obligation or the time-price differential plus ten percent of
the cash price.

(d) A debtor whose deficiency is eliminated under

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1 Section 55-9-626 NMSA 1978 may recover damages for the loss of
2 any surplus. However, a debtor or secondary obligor whose
3 deficiency is eliminated or reduced under Section 55-9-626 NMSA
4 1978 may not otherwise recover under Subsection (b) of this
5 section for noncompliance with the provisions of Sections
6 55-9-601 through 55-9-628 NMSA 1978 relating to collection,
7 enforcement, disposition or acceptance.

8 (e) In addition to any damages recoverable under
9 Subsection (b) of this section, the debtor, consumer obligor or
10 person named as a debtor in a filed record, as applicable, may
11 recover five hundred dollars (\$500) in each case from a person
12 that:

13 (1) fails to comply with Section 55-9-208 NMSA
14 1978;

15 (2) fails to comply with Section 55-9-209 NMSA
16 1978;

17 (3) files a record that the person is not
18 entitled to file under Subsection (a) of Section 55-9-509 NMSA
19 1978;

20 (4) fails to cause the secured party of record
21 to file or send a termination statement as required by
22 Subsection (a) or (c) of Section 55-9-513 NMSA 1978;

23 (5) fails to comply with Paragraph (1) of
24 Subsection (b) of Section 55-9-616 NMSA 1978 and whose failure
25 is part of a pattern, or consistent with a practice, of
noncompliance; or

(6) fails to comply with Paragraph (2) of

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1 Subsection (b) of Section 55-9-616 NMSA 1978.

2 (f) A debtor or consumer obligor may recover damages
3 under Subsection (b) of this section and, in addition, five
4 hundred dollars (\$500) in each case from a person that, without
5 reasonable cause, fails to comply with a request under Section
6 55-9-210 NMSA 1978. A recipient of a request under Section
7 55-9-210 NMSA 1978 that never claimed an interest in the
8 collateral or obligations that are the subject of a request
9 under that section has a reasonable excuse for failure to comply
10 with the request within the meaning of this subsection.

11 (g) If a secured party fails to comply with a
12 request regarding a list of collateral or a statement of account
13 under Section 55-9-210 NMSA 1978, the secured party may claim a
14 security interest only as shown in the list or statement
15 included in the request as against a person that is reasonably
16 misled by the failure."

17 Section 122. A new Section 55-9-626 NMSA 1978 is enacted
18 to read:

19 "55-9-626. [NEW MATERIAL] ACTION IN WHICH DEFICIENCY OR
20 SURPLUS IS IN ISSUE.--

21 (a) In an action arising from a transaction, other
22 than a consumer transaction, in which the amount of a deficiency
23 or surplus is in issue, the following rules apply:

24 (1) A secured party need not prove compliance
25 with the provisions of this part relating to collection,
enforcement, disposition or acceptance unless the debtor or a
secondary obligor places the secured party's compliance in

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1 issue.

2 (2) If the secured party's compliance is placed
3 in issue, the secured party has the burden of establishing that
4 the collection, enforcement, disposition or acceptance was
5 conducted in accordance with Sections 55-9-601 through 55-9-628
6 NMSA 1978.

7 (3) Except as otherwise provided in Section
8 55-9-628 NMSA 1978, if a secured party fails to prove that the
9 collection, enforcement, disposition or acceptance was conducted
10 in accordance with the provisions of Sections 55-9-601 through
11 55-9-628 NMSA 1978 relating to collection, enforcement,
12 disposition or acceptance, the liability of a debtor or a
13 secondary obligor for a deficiency is limited to an amount by
14 which the sum of the secured obligation, expenses and attorney
15 fees exceeds the greater of:

16 (A) the proceeds of the collection,
17 enforcement, disposition or acceptance; or

18 (B) the amount of proceeds that would have
19 been realized had the noncomplying secured party proceeded in
20 accordance with the provisions of this part relating to
21 collection, enforcement, disposition or acceptance.

22 (4) For purposes of Subparagraph (B) of
23 Paragraph (3) of this subsection, the amount of proceeds that
24 would have been realized is equal to the sum of the secured
25 obligation, expenses and attorney's fees unless the secured
party proves that the amount is less than that sum.

(5) If a deficiency or surplus is calculated

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1 under Subsection (f) of Section 55-9-615 NMSA 1978, the debtor
2 or obligor has the burden of establishing that the amount of
3 proceeds of the disposition is significantly below the range of
4 prices that a complying disposition to a person other than the
5 secured party, a person related to the secured party or a
6 secondary obligor would have brought.

7 (b) The limitation of the rules in Subsection (a) of
8 this section to transactions other than consumer transactions is
9 intended to leave to the court the determination of the proper
10 rules in consumer transactions. The court may not infer from
11 that limitation the nature of the proper rule in consumer
12 transactions and may continue to apply established approaches."

13 Section 123. A new Section 55-9-627 NMSA 1978 is enacted
14 to read:

15 "55-9-627. [NEW MATERIAL] DETERMINATION OF WHETHER CONDUCT
16 WAS COMMERCIALY REASONABLE.--

17 (a) The fact that a greater amount could have been
18 obtained by a collection, enforcement, disposition or acceptance
19 at a different time or in a different method from that selected
20 by the secured party is not of itself sufficient to preclude the
21 secured party from establishing that the collection,
22 enforcement, disposition or acceptance was made in a
23 commercially reasonable manner.

24 (b) A disposition of collateral is made in a
25 commercially reasonable manner if the disposition is made:

(1) in the usual manner on any recognized
market;

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1 (2) at the price current in any recognized
2 market at the time of the disposition; or

3 (3) otherwise in conformity with reasonable
4 commercial practices among dealers in the type of property that
5 was the subject of the disposition.

6 (c) A collection, enforcement, disposition or
7 acceptance is commercially reasonable if it has been approved:

- 8 (1) in a judicial proceeding;
- 9 (2) by a bona fide creditors' committee;
- 10 (3) by a representative of creditors; or
- 11 (4) by an assignee for the benefit of

12 creditors.

13 (d) Approval under Subsection (c) of this section
14 need not be obtained, and lack of approval does not mean that
15 the collection, enforcement, disposition or acceptance is not
16 commercially reasonable."

17 Section 124. A new Section 55-9-628 NMSA 1978 is enacted
18 to read:

19 "55-9-628. [NEW MATERIAL] NONLIABILITY AND LIMITATION ON
20 LIABILITY OF SECURED PARTY--LIABILITY OF SECONDARY OBLIGOR.

21 (a) Unless a secured party knows that a person is a
22 debtor or obligor, knows the identity of the person and knows
23 how to communicate with the person:

- 24 (1) the secured party is not liable to the
- 25 person, or to a secured party or lienholder that has filed a
financing statement against the person, for failure to comply
with Chapter 55, Article 9 NMSA 1978; and

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(2) the secured party's failure to comply with Chapter 55, Article 9 NMSA 1978 does not affect the liability of the person for a deficiency.

(b) A secured party is not liable because of its status as secured party:

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

- (A) that the person is a debtor or obligor;
- (B) the identity of the person; and
- (C) how to communicate with the person; or

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

- (A) that the person is a debtor; and
- (B) the identity of the person.

(c) A secured party is not liable to any person, and a person's liability for a deficiency is not affected, because of any act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer-goods transaction or a consumer transaction or that goods are not consumer goods, if the secured party's belief is based on its reasonable reliance on:

(1) a debtor's representation concerning the purpose for which collateral was to be used, acquired, or held; or

(2) an obligor's representation concerning the

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1 purpose for which a secured obligation was incurred.

2 (d) A secured party is not liable to any person
3 under Paragraph (2) of Subsection (c) of Section 55-9-625 NMSA
4 1978 for its failure to comply with Section 55-9-616 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 Section 125. Section 55-1-105 NMSA 1978 (being Laws 1961,
9 Chapter 96, Section 1-105, as amended) is amended to read:

10 "55-1-105. TERRITORIAL APPLICATION OF THE ACT--PARTIES'
11 POWER TO CHOOSE APPLICABLE LAW.--

12 (1) Except as provided in this section, when a
13 transaction bears a reasonable relation to this state and also
14 to another state or nation, the parties may agree that the law
15 either of this state or such other state or nation shall govern
16 their rights and duties. Failing such agreement, the Uniform
17 Commercial Code applies to transactions bearing an appropriate
18 relation to this state.

19 (2) Where one of the following provisions of the
20 Uniform Commercial Code specifies the applicable law, that
21 provision governs and a contrary agreement is effective only to
22 the extent permitted by the law (including the conflict of laws
23 rules) so specified:

24 rights of creditors against sold goods. Section
25 55-2-402 NMSA 1978;

applicability of the article on leases. Sections
55-2A-105 and 55-2A-106 NMSA 1978;

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1 applicability of the article on bank deposits and
2 collections. Section 55-4-102 NMSA 1978;

3 governing law in the article on fund transfers.
4 Section 55-4A-507 NMSA 1978;

5 letters of credit. Section 55-5-116 NMSA 1978;

6 applicability of the article on investment
7 securities. Section 55-8-110 NMSA 1978; and

8 ~~[perfection provisions of the article on secured
9 transactions. Section 55-9-103 NMSA 1978]~~

10 law governing perfection, the effect of perfection or
11 nonperfection, and the priority of security interests and
12 agricultural liens. Sections 55-9-301 through 55-9-307 NMSA
13 1978."

14 Section 126. Section 55-1-201 NMSA 1978 (being Laws 1961,
15 Chapter 96, Section 1-201, as amended) is amended to read:

16 "55-1-201. GENERAL DEFINITIONS.--Subject to additional
17 definitions contained in the subsequent articles of the Uniform
18 Commercial Code which are applicable to specific articles or
19 parts thereof and unless the context otherwise requires, in that
20 act:

21 (1) "action" in the sense of a judicial proceeding
22 includes recoupment, counterclaim, setoff, suit in equity and
23 any other proceedings in which rights are determined;

24 (2) "aggrieved party" means a party entitled to
25 resort to a remedy;

(3) "agreement" means the bargain of the parties in
fact as found in their language or by implication from other

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1 circumstances, including course of dealing or usage of trade or
2 course of performance as provided in Sections 55-1-205, 55-2-208
3 and 55-2A-207 NMSA 1978. Whether an agreement has legal
4 consequences is determined by the provisions of the Uniform
5 Commercial Code, if applicable; otherwise by the law of
6 contracts (Section 55-1-103 NMSA 1978). (Compare "contract".);

7 (4) "bank" means any person engaged in the business
8 of banking;

9 (5) "bearer" means the person in possession of an
10 instrument, document of title or certificated security payable
11 to bearer or indorsed in blank;

12 (6) "bill of lading" means a document evidencing the
13 receipt of goods for shipment issued by a person engaged in the
14 business of transporting or forwarding goods and includes an
15 airbill. "Airbill" means a document serving for air
16 transportation as a bill of lading does for marine or rail
17 transportation and includes an air consignment note or air
18 waybill;

19 (7) "branch" includes a separately incorporated
20 foreign branch of a bank;

21 (8) "burden of establishing" a fact means the burden
22 of persuading the triers of fact that the existence of the fact
23 is more probable than its nonexistence;

24 (9) "buyer in ordinary course of business" means a
25 person ~~[who]~~ that buys goods in good faith, ~~[and]~~ without
knowledge that the sale ~~[to him is in violation of]~~ violates the
~~[ownership]~~ rights ~~[or security interest]~~ of ~~[a third party]~~

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1 another person in the goods [~~buys~~] and in ordinary course from a
2 person, other than a pawnbroker, in the business of selling
3 goods of that kind [~~but does not include a pawnbroker. All~~
4 ~~persons who sell minerals or the like (including oil and gas) at~~
5 ~~wellhead or minehead shall be deemed to be persons~~]. A person
6 buys goods in the ordinary course if the sale to the person
7 comports with the usual or customary practices in the kind of
8 business in which the seller is engaged or with the seller's own
9 usual or customary practices. A person that sells oil, gas or
10 other minerals at the wellhead or minehead is a person in the
11 business of selling goods of that kind. [~~"Buying"~~] A buyer in
12 the ordinary course of business may [~~be~~] buy for cash [~~or~~], by
13 exchange of other property or on secured or unsecured credit and
14 [~~includes receiving~~] may acquire goods or documents of title
15 under a pre-existing contract for sale [~~but does not include a~~
16 ~~transfer in bulk or as security for or in total or partial~~
17 ~~satisfaction of a money debt~~]. Only a buyer that takes
18 possession of the goods or has a right to recover the goods from
19 the seller under Chapter 55, Article 2 NMSA 1978 may be a buyer
20 in ordinary course of business. A person that acquires goods in
21 a transfer in bulk or as security for or in total or partial
22 satisfaction of a money debt is not a buyer in ordinary course
23 of business;

24 (10) "conspicuous": A term or clause is conspicuous
25 when it is so written that a reasonable person against whom it
is to operate ought to have noticed it. A printed heading in
capitals (as: NON-NEGOTIABLE BILL OF LADING) is conspicuous.

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1 Language in the body of a form is "conspicuous" if it is in
2 larger or other contrasting type or color. But in a telegram
3 any stated term is "conspicuous". Whether a term or clause is
4 "conspicuous" or not is for decision by the court;

5 (11) "contract" means the total legal obligation
6 which results from the parties' agreement as affected by this
7 act and any other applicable rules of law. (Compare
8 "agreement".);

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

14 (13) "defendant" includes a person in the position
15 of defendant in a cross-action or counterclaim;

16 (14) "delivery" with respect to instruments,
17 documents of title, chattel paper or certificated securities
18 means voluntary transfer of possession;

19 (15) "document of title" includes bill of lading,
20 dock warrant, dock receipt, warehouse receipt or order for the
21 delivery of goods and also any other document which in the
22 regular course of business or financing is treated as adequately
23 evidencing that the person in possession of it is entitled to
24 receive, hold and dispose of the document and the goods it
25 covers. To be a document of title a document must purport to be
issued by or addressed to a bailee and purport to cover goods in
the bailee's possession which are either identified or are

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fungible portions of an identified mass;

(16) "fault" means wrongful act, omission or breach;

(17) "fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of this act to the extent that under a particular agreement or document unlike units are treated as equivalents;

(18) "genuine" means free of forgery or counterfeiting;

(19) "good faith" means honesty in fact in the conduct or transaction concerned;

(20) "holder", with respect to a negotiable instrument, means the person in possession if the instrument is payable to bearer or, in the case of an instrument payable to an identified person, if the identified person is in possession.

"Holder", with respect to a document of title, means the person in possession if the goods are deliverable to bearer or to the order of the person in possession;

(21) to "honor" is to pay or to accept and pay, or where a credit so engages, to purchase or discount a draft complying with the terms of the credit;

(22) "insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved;

(23) a person is "insolvent" who either has ceased

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1 to pay his debts in the ordinary course of business or cannot
2 pay his debts as they become due or is insolvent within the
3 meaning of the federal bankruptcy law;

4 (24) "money" means a medium of exchange authorized
5 or adopted by a domestic or foreign government and includes a
6 monetary unit of account established by an intergovernmental
7 organization or by agreement between two or more nations;

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

9 (a) he has actual knowledge of it;

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

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

15 A person "knows" or has "knowledge" of a fact when he has
16 actual knowledge of it. "Discover" or "learn" or a word or
17 phrase of similar import refers to knowledge rather than to
18 reason to know. The time and circumstances under which a notice
19 or notification may cease to be effective are not determined by
20 the Uniform Commercial Code;

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

(a) it comes to his attention; or

(b) it is duly delivered at the place of

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1 business through which the contract was made or at any other
2 place held out by him as the place for receipt of such
3 communications;

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

18 (28) "organization" includes a corporation,
19 government or governmental subdivision or agency, business
20 trust, estate, trust, partnership or association, two or more
21 persons having a joint or common interest or any other legal or
22 commercial entity;

23 (29) "party", as distinct from "third party", means
24 a person who has engaged in a transaction or made an agreement
25 within the Uniform Commercial Code;

(30) "person" includes an individual or an
organization (see Section 55-1-102 NMSA 1978);

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1 (31) "presumption" or "presumed" means that the
2 trier of fact must find the existence of the fact presumed
3 unless and until evidence is introduced which would support a
4 finding of its nonexistence;

5 (32) "purchase" includes taking by sale, discount,
6 negotiation, mortgage, pledge, lien, security interest, issue or
7 reissue, gift or any other voluntary transaction creating an
8 interest in property;

9 (33) "purchaser" means a person who takes by
10 purchase;

11 (34) "remedy" means any remedial right to which an
12 aggrieved party is entitled with or without resort to a
13 tribunal;

14 (35) "representative" includes an agent, an officer
15 of a corporation or association and a trustee, executor or
16 administrator of an estate or any other person empowered to act
17 for another;

18 (36) "rights" includes remedies;

19 (37) "security interest" means an interest in
20 personal property or fixtures which secures payment or
21 performance of an obligation. [~~The retention or reservation of~~
22 ~~title by a seller of goods notwithstanding shipment or delivery~~
23 ~~to the buyer (Section 55-2-401 NMSA 1978) is limited in effect~~
24 ~~to a reservation of a "security interest".]~~ The term also
25 includes any interest of a consignor and a buyer of accounts,
[~~or~~] chattel paper, [which] a payment intangible or a promissory
note in a transaction that is subject to Chapter 55, Article 9

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1 NMSA 1978. The special property interest of a buyer of goods on
2 identification of those goods to a contract for sale under
3 Section 55-2-401 NMSA 1978 is not a "security interest", but a
4 buyer may also acquire a "security interest" by complying with
5 Chapter 55, Article 9 NMSA 1978. [~~Unless a consignment is~~
6 ~~intended as security, reservation of title thereunder is not a~~
7 ~~"security interest", but a consignment in any event is subject~~
8 ~~to the provisions on consignment sales (Section 55-2-326 NMSA~~
9 ~~1978)]]. Except as otherwise provided in Section 55-2-505 NMSA
10 1978, the right of a seller or lessor of goods under Chapter 55,
11 Article 2 or 2A NMSA 1978 to retain or acquire possession of the
12 goods is not a "security interest", but a seller or lessor may
13 also acquire a "security interest" by complying with Chapter 55,
14 Article 9 NMSA 1978. The retention or reservation of title by a
15 seller of goods notwithstanding shipment or delivery to the
16 buyer (Section 55-2-401 NMSA 1978) is limited in effect to a
17 reservation of a "security interest".~~

18 Whether a transaction creates a lease or security interest
19 is determined by the facts of each case; however, a transaction
20 creates a security interest if the consideration the lessee is
21 to pay the lessor for the right to possession and use of the
22 goods is an obligation for the term of the lease not subject to
23 termination by the lessee, and:

24 (a) the original term of the lease is equal to
25 or greater than the remaining economic life of the goods;

(b) the lessee is bound to renew the lease for
the remaining economic life of the goods or is bound to become

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1 the owner of the goods;

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

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

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

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

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

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

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

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

5 For purposes of this Subsection (37):

6 (x) additional consideration is not nominal if:
7 (i) when the option to renew the lease is granted to the lessee
8 the rent is stated to be the fair market rent for the use of the
9 goods for the term of the renewal determined at the time the
10 option is to be performed; or (ii) when the option to become the
11 owner of the goods is granted to the lessee the price is stated
12 to be the fair market value of the goods determined at the time
13 the option is to be performed. Additional consideration is
14 nominal if it is less than the lessee's reasonably predictable
15 cost of performing under the lease agreement if the option is
16 not exercised;

17 (y) "reasonably predictable" and "remaining
18 economic life of the goods" are to be determined with reference
19 to the facts and circumstances at the time the transaction is
20 entered into; and

21 (z) "present value" means the amount as of a
22 date certain of one or more sums payable in the future,
23 discounted to the date certain. The discount is determined by
24 the interest rate specified by the parties if the rate is not
25 manifestly unreasonable at the time the transaction is entered
into; otherwise, the discount is determined by a commercially
reasonable rate that takes into account the facts and

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1 circumstances of each case at the time the transaction was
2 entered into;

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

12 (39) "signed" includes any symbol executed or
13 adopted by a party with present intention to authenticate a
14 writing;

15 (40) "surety" includes guarantor;

16 (41) "telegram" includes a message transmitted by
17 radio, teletype, cable, any mechanical method of transmission or
18 the like;

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

21 (43) "unauthorized" signature means one made without
22 actual, implied or apparent authority and includes a forgery;

23 (44) "value". Except as otherwise provided with
24 respect to negotiable instruments and bank collections (Sections
25 55-3-303, 55-4-210 and 55-4-211 NMSA 1978) a person gives
"value" for rights if he acquires them:

(a) in return for a binding commitment to

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1 extend credit or for the extension of immediately available
2 credit whether or not drawn upon and whether or not a charge-
3 back is provided for in the event of difficulties in collection;

4 (b) as security for or in total or partial
5 satisfaction of a pre-existing claim;

6 (c) by accepting delivery pursuant to a
7 pre-existing contract for purchase; or

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

10 (45) "warehouse receipt" means a receipt issued by a
11 person engaged in the business of storing goods for hire; and

12 (46) "written" or "writing" includes printing,
13 typewriting or any other intentional reduction to tangible
14 form."

15 Section 127. Section 55-2-103 NMSA 1978 (being Laws 1961,
16 Chapter 96, Section 2-103, as amended) is amended to read:

17 "55-2-103. DEFINITIONS AND INDEX OF DEFINITIONS.--

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

20 (a) "buyer" means a person who buys or
21 contracts to buy goods;

22 (b) "good faith" in the case of a merchant
23 means honesty in fact and the observance of reasonable
24 commercial standards of fair dealing in the trade;

25 (c) "receipt" of goods means taking physical
possession of them; and

(d) "seller" means a person who sells or

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1 contracts to sell goods.

2 (2) Other definitions applying to this article or to
3 specified parts thereof, and the sections in which they appear
4 are:

5 "Acceptance".Section

6 55-2-606 NMSA 1978;

7 "Banker's credit".Section

8 55-2-325 NMSA 1978;

9 "Between merchants".Section

10 55-2-104 NMSA 1978;

11 "Cancellation".Section

12 55-2-106(4) NMSA 1978;

13 "Commercial unit".Section

14 55-2-105 NMSA 1978;

15 "Confirmed credit".Section

16 55-2-325 NMSA 1978;

17 "Conforming to contract".Section

18 55-2-106 NMSA 1978;

19 "Contract for sale".Section

20 55-2-106 NMSA 1978;

21 "Cover".Section

22 55-2-712 NMSA 1978;

23 "Entrusting".Section

24 55-2-403 NMSA 1978;

25 "Financing agency".Section

55-2-104 NMSA 1978;

"Future goods".Section

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1 55-2-105 NMSA 1978;
2 "Goods". Section
3 55-2-105 NMSA 1978;
4 "Identification".Section
5 55-2-501 NMSA 1978;
6 "Installment contract".Section
7 55-2-612 NMSA 1978;
8 "Letter of Credit".Section
9 55-2-325 NMSA 1978;
10 "Lot". Section
11 55-2-105 NMSA 1978;
12 "Merchant".Section
13 55-2-104 NMSA 1978;
14 "Overseas".Section
15 55-2-323 NMSA 1978;
16 "Person in the position of a
17 seller".Section
18 55-2-707 NMSA 1978;
19 "Present sale".Section
20 55-2-106 NMSA 1978;
21 "Sale".Section
22 55-2-106 NMSA 1978;
23 "Sale on approval".Section
24 55-2-326 NMSA 1978;
25 "Sale or return".Section
55-2-326 NMSA 1978;
"Termination". Section

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55-2-106 NMSA 1978;

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

"Check". Section
55-3-104 NMSA 1978;

"Consignee". Section
55-7-102 NMSA 1978;

"Consignor". Section
55-7-102 NMSA 1978;

"Consumer goods". Section
~~[55-9-109]~~ 55-9-102 NMSA 1978;

"Dishonor".Section
55-3-502 NMSA 1978;

"Draft". Section
55-3-104 NMSA 1978.

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

Section 128. Section 55-2-210 NMSA 1978 (being Laws 1961, Chapter 96, Section 2-210) is amended to read:

"55-2-210. DELEGATION OF PERFORMANCE--ASSIGNMENT OF RIGHTS.--

(1) A party may perform his duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having his original promisor perform or control the acts required by the contract. No delegation of performance relieves the party delegating of any duty to perform

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1 or any liability for breach.

2 (2) ~~[Unless]~~ Except as otherwise provided in Section
3 55-9-406 NMSA 1978, unless otherwise agreed all rights of either
4 seller or buyer can be assigned except where the assignment
5 would materially change the duty of the other party or increase
6 materially the burden or risk imposed on him by his contract or
7 impair materially his chance of obtaining return performance. A
8 right to damages for breach of the whole contract or a right
9 arising out of the assignor's due performance of his entire
10 obligation can be assigned despite agreement otherwise.

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

~~[+3]~~ (4) Unless the circumstances indicate the

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1 contrary a prohibition of assignment of "the contract" is to be
2 construed as barring only the delegation to the assignee of the
3 assignor's performance.

4 ~~[(4)]~~ (5) An assignment of "the contract" or of "all
5 my rights under the contract" or an assignment in similar
6 general terms is an assignment of rights unless the language or
7 the circumstances (as in an assignment for security) indicate
8 the contrary, it is a delegation of performance of the duties of
9 the assignor and its acceptance by the assignee constitutes a
10 promise by him to perform those duties. This promise is
11 enforceable by either the assignor or the other party to the
12 original contract.

13 ~~[(5)]~~ (6) The other party may treat any assignment
14 which delegates performance as creating reasonable grounds for
15 insecurity and may without prejudice to his rights against the
16 assignor demand assurances from the assignee (Section ~~[2-609]~~
17 55-2-609 NMSA 1978)."

18 Section 129. Section 55-2-326 NMSA 1978 (being Laws 1961,
19 Chapter 96, Section 2-326, as amended) is amended to read:

20 "55-2-326. SALE ON APPROVAL AND SALE OR RETURN--
21 [~~CONSIGNMENT SALES AND~~] RIGHTS OF CREDITORS.--

22 (1) Unless otherwise agreed, if delivered goods may
23 be returned by the buyer even though they conform to the
24 contract, the transaction is:

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

(b) a "sale or return" if the goods are

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1 delivered primarily for resale.

2 (2) [~~Except as provided in Subsection (3) of this~~
3 ~~section]~~ Goods held on approval are not subject to the claims of
4 the buyer's creditors until acceptance; goods held on sale or
5 return are subject to such claims while in the buyer's
6 possession.

7 [~~(3) Where goods are delivered to a person for sale~~
8 ~~and such person maintains a place of business at which he deals~~
9 ~~in goods of the kind involved, under a name other than the name~~
10 ~~of the person making delivery, then with respect to claims of~~
11 ~~creditors of the person conducting the business the goods are~~
12 ~~deemed to be on sale or return. The provisions of this~~
13 ~~subsection are applicable even though an agreement purports to~~
14 ~~reserve title to the person making delivery until payment or~~
15 ~~resale or uses such words as "on consignment" or "on~~
16 ~~memorandum". However, this subsection is not applicable if the~~
17 ~~person making delivery:~~

18 (a) ~~complies with an applicable law providing~~
19 ~~for a consignor's interest or the like to be evidenced by a~~
20 ~~sign;~~

21 (b) ~~establishes that the person conducting the~~
22 ~~business is generally known by his creditors to be substantially~~
23 ~~engaged in selling the goods of others;~~

24 (c) ~~complies with the filing provisions of the~~
25 ~~article on secured transactions (Article 9); or~~

(d) ~~is delivering a work of art pursuant to the~~
~~Artists' Consignment Act.~~

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1 property has been made by the buyer he acquires the right to
2 recover the goods only if they conform to the contract for
3 sale."

4 Section 131. Section 55-2-716 NMSA 1978 (being Laws 1961,
5 Chapter 96, Section 2-716) is amended to read:

6 "55-2-716. BUYER'S RIGHT TO SPECIFIC PERFORMANCE OR
7 REPLEVIN.--

8 (1) Specific performance may be decreed where the
9 goods are unique or in other proper circumstances.

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

13 (3) The buyer has a right of replevin for goods
14 identified to the contract if after reasonable effort he is
15 unable to effect cover for such goods or the circumstances
16 reasonably indicate that such effort will be unavailing or if
17 the goods have been shipped under reservation and satisfaction
18 of the security interest in them has been made or tendered. In
19 the case of goods bought for personal, family or household
20 purposes, the buyer's right of replevin vests upon acquisition
21 of a special property, even if the seller had not then
22 repudiated or failed to deliver."

23 Section 132. Section 55-2A-103 NMSA 1978 (being Laws 1992,
24 Chapter 114, Section 10, as amended) is amended to read:

25 "55-2A-103. DEFINITIONS AND INDEX OF DEFINITIONS.--

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

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

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

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

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

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

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

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

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

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

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

12 (iii) one of the following occurs:

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

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

21 (C) the lessee, before signing the
22 lease contract, receives an accurate and complete statement
23 designating the promises and warranties, and any disclaimers of
24 warranties, limitations or modifications of remedies, or
25 liquidated damages, including those of a third party, such as
the manufacturer of the goods, provided to the lessor by the
person supplying the goods in connection with or as part of the

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1 contract by which the lessor acquired the goods or the right to
2 possession and use of the goods; or

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

18 (h) "goods" means all things that are movable
19 at the time of identification to the lease contract or are
20 fixtures (Section 55-2A-309 NMSA 1978), but the term does not
21 include money, documents, instruments, accounts, chattel paper,
22 general intangibles or minerals or the like, including oil and
23 gas, before extraction. The term also includes the unborn young
24 of animals;

25 (i) "installment lease contract" means a lease
contract that authorizes or requires the delivery of goods in
separate lots to be separately accepted, even though the lease

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1 contract contains a clause "each delivery is a separate lease"
2 or its equivalent;

3 (j) "lease" means a transfer of the right to
4 possession and use of goods for a term in return for
5 consideration, but a sale, including a sale on approval or a
6 sale or return, or retention or creation of a security interest
7 is not a lease; unless the context clearly indicates otherwise,
8 the term includes a sublease;

9 (k) "lease agreement" means the bargain, with
10 respect to the lease, of the lessor and the lessee in fact as
11 found in their language or by implication from other
12 circumstances, including course of dealing or usage or trade or
13 course of performance as provided in this article; unless the
14 context clearly indicates otherwise, the term includes a
15 sublease agreement;

16 (l) "lease contract" means the total legal
17 obligation that results from the lease agreement as affected by
18 this article and any other applicable rules of law; unless the
19 context clearly indicates otherwise, the term includes a
20 sublease contract;

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

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

(o) "lessee in ordinary course of business"

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

11 (p) "lessor" means a person who transfers the
12 right to possession and use of goods under a lease; unless the
13 context clearly indicates otherwise, the term includes a
14 sublessor;

15 (q) "lessor's residual interest" means the
16 lessor's interest in the goods after expiration, termination or
17 cancellation of the lease contract;

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

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

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

(u) "present value" means the amount as of a
date certain of one or more sums payable in the future,

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1 discounted to the date certain; the discount is determined by
2 the interest rate specified by the parties if the rate was not
3 manifestly unreasonable at the time the transaction was entered
4 into; otherwise, the discount is determined by a commercially
5 reasonable rate that takes into account the facts and
6 circumstances of each case at the time the transaction was
7 entered into;

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

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

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

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

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

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

- 23 "Accessions" Section
24 55-2A-310(1) NMSA 1978.
25 "Construction mortgage" Section
55-2A-309(1)(d) NMSA 1978.
"Encumbrance" Section

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1 55-2A-309(1)(e) NMSA 1978.
2 "Fixtures". Section
3 55-2A-309(1)(a) NMSA 1978.
4 "Fixture filing". Section
5 55-2A-309(1)(b) NMSA 1978.
6 "Purchase money lease" Section
7 55-2A-309(1)(c) NMSA 1978.
8 (3) The following definitions in other articles
9 apply to this article:
10 "Account" [Section
11 ~~55-9-106~~] Paragraph (2) of Subsection (a) of Section 55-9-102
12 NMSA 1978.
13 "Between merchants" [Section
14 ~~55-2-104(3)~~] Subsection (3) of Section 55-2-104 NMSA 1978.
15 "Buyer". [Section
16 ~~55-2-103(1)(a)~~] Paragraph (a) of Subsection (1) of Section
17 55-2-103 NMSA 1978.
18 "Chattel paper" [Section
19 ~~55-9-105(1)(b)~~] Paragraph (11) of Subsection (a) of Section
20 55-9-102 NMSA 1978.
21 "Consumer goods" [Section
22 ~~55-9-109(1)~~] Paragraph (23) of Subsection (a) of Section 55-9-
23 102 NMSA 1978.
24 "Document". [Section
25 ~~55-9-105(1)(f)~~] Paragraph (30) of Subsection (a) of Section
55-9-102 NMSA 1978.
"Entrusting". [Section

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1 ~~55-2-403(3)~~] Subsection (3) of Section 55-2-403 NMSA 1978.
2 "General [~~intangibles~~] intangible". [~~Section~~
3 ~~55-9-106~~] Paragraph (42) of Subsection (a) of Section 55-9-102
4 NMSA 1978.
5 "Good faith". [~~Section~~
6 ~~55-2-103(1)(b)~~] Paragraph (b) of Subsection (1) of Section
7 55-2-103 NMSA 1978.
8 "Instrument". [~~Section~~
9 ~~55-9-105(1)(i)~~] Paragraph (47) of Subsection (a) of Section
10 55-9-102 NMSA 1978.
11 "Merchant" [~~Section~~
12 ~~55-2-104(1)~~] Subsection (1) of Section 55-2-104 NMSA 1978.
13 "Mortgage" [~~Section~~
14 ~~55-9-105(1)(j)~~] Paragraph (55) of Subsection (a) of Section
15 55-9-102 NMSA 1978.
16 "Pursuant to commitment" [~~Section~~
17 ~~55-9-105(1)(k)~~] Paragraph (68) of Subsection (a) of Section
18 55-9-102 NMSA 1978.
19 "Receipt" [~~Section~~
20 ~~55-2-103(1)(e)~~] Paragraph (c) of Subsection (1) of Section
21 55-2-103 NMSA 1978.
22 "Sale" [~~Section~~
23 ~~55-2-106(1)~~] Subsection (1) of Section 55-2-106 NMSA 1978.
24 "Sale on approval" Section
25 55-2-326 NMSA 1978.
"Sale or return" Section
55-2-326 NMSA 1978.

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1 "Seller" [Section
2 ~~55-2-103(1)(d)] Paragraph (d) of Subsection (1) of Section~~
3 55-2-103 NMSA 1978.

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

7 Section 133. Section 55-2A-303 NMSA 1978 (being Laws 1992,
8 Chapter 114, Section 40) is amended to read:

9 "55-2A-303. ALIENABILITY OF PARTY'S INTEREST UNDER LEASE
10 CONTRACT OR OF LESSOR'S RESIDUAL INTEREST IN GOODS--DELEGATION
11 OF PERFORMANCE--TRANSFER OF RIGHTS.--

12 (1) As used in this section, "creation of a security
13 interest" includes the sale of a lease contract that is subject
14 to Chapter 55, Article 9 [~~Secured Transactions~~] NMSA 1978 by
15 reason of [~~Paragraph (b) of Subsection (1) of Section 55-9-102]~~
16 Paragraph (3) of Subsection (a) of Section 55-9-109 NMSA 1978.

17 (2) Except as provided in [~~Subsections (3) and (4)]~~
18 Subsection (3) of this section and Section 55-9-407 NMSA 1978, a
19 provision in a lease agreement which (i) prohibits the voluntary
20 or involuntary transfer, including a transfer by sale, sublease,
21 creation or enforcement of a security interest, or attachment,
22 levy or other judicial process, of an interest of a party under
23 the lease contract or of the lessor's residual interest in the
24 goods, or (ii) makes such a transfer an event of default, gives
25 rise to the rights and remedies provided in Subsection [~~(5)] (4)~~
of this section, but a transfer that is prohibited or is an
event of default under the lease agreement is otherwise

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1 effective.

2 ~~[(3) A provision in a lease agreement which (i)~~
3 ~~prohibits the creation or enforcement of a security interest in~~
4 ~~an interest of a party under the lease contract or in the~~
5 ~~lessor's residual interest in the goods, or (ii) makes such a~~
6 ~~transfer an event of default, is not enforceable unless, and~~
7 ~~then only to the extent that, there is an actual transfer by the~~
8 ~~lessee of the lessee's right of possession or use of the goods~~
9 ~~in violation of the provision or an actual delegation of a~~
10 ~~material performance of either party to the lease contract in~~
11 ~~violation of the provision. Neither the granting nor the~~
12 ~~enforcement of a security interest in (i) the lessor's interest~~
13 ~~under the lease contract, or (ii) the lessor's residual interest~~
14 ~~in the goods is a transfer that materially impairs the prospect~~
15 ~~of obtaining return performance by, materially changes the duty~~
16 ~~of or materially increases the burden or risk imposed on, the~~
17 ~~lessee within the purview of Subsection (5) unless, and then~~
18 ~~only to the extent that, there is an actual delegation of a~~
19 ~~material performance of the lessor.~~

20 (4)] (3) A provision in a lease agreement which (i)
21 prohibits a transfer of a right to damages for default with
22 respect to the whole lease contract or of a right to payment
23 arising out of the transferor's due performance of the
24 transferor's entire obligation, or (ii) makes such a transfer an
25 event of default, is not enforceable, and such a transfer is not
a transfer that materially impairs the prospect of obtaining
return performance by, materially changes the duty of, or

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1 materially increases the burden or risk imposed on, the other
2 party to the lease contract within the purview of Subsection
3 ~~[+5]~~ (4) of this section.

4 ~~[+5]~~ (4) Subject to [Subsections (3) and (4)]
5 Subsection (3) of this section and Section 55-9-407 NMSA 1978:

6 (a) if a transfer is made which is made an
7 event of default under a lease agreement, the party to the lease
8 contract not making the transfer, unless that party waives the
9 default or otherwise agrees, has the rights and remedies
10 described in ~~[Section 55-2A-501(2)]~~ Subsection (2) of Section
11 55-2A-501 NMSA 1978; and

12 (b) if Paragraph (a) of this subsection is not
13 applicable and if a transfer is made that (i) is prohibited
14 under a lease agreement, or (ii) materially impairs the prospect
15 of obtaining return performance by, materially changes the duty
16 of or materially increases the burden or risk imposed on the
17 other party to the lease contract, unless the party not making
18 the transfer agrees at any time to the transfer in the lease
19 contract or otherwise, then, except as limited by contract, (i)
20 the transferor is liable to the party not making the transfer
21 for damages caused by the transfer to the extent that the
22 damages could not reasonably be prevented by the party not
23 making the transfer, and (ii) a court having jurisdiction may
24 grant other appropriate relief, including cancellation of the
25 lease contract or an injunction against the transfer.

~~[+6]~~ (5) A transfer of "the lease" or of "all my
rights under the lease", or a transfer in similar general terms,

underscored material = new
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1 is a transfer of rights, and, unless the language or the
2 circumstances, as in a transfer for security, indicate the
3 contrary, the transfer is a delegation of duties by the
4 transferor to the transferee. Acceptance by the transferee
5 constitutes a promise by the transferee to perform those duties.
6 The promise is enforceable by either the transferor or the other
7 party to the lease contract.

8 [+7] (6) Unless otherwise agreed by the lessor and
9 the lessee, a delegation of performance does not relieve the
10 transferor as against the other party of any duty to perform or
11 of any liability for default.

12 [+8] (7) In a consumer lease, to prohibit the
13 transfer of an interest of a party under the lease contract or
14 to make a transfer an event of default, the language must be
15 specific, by a writing and conspicuous."

16 Section 134. Section 55-2A-307 NMSA 1978 (being Laws 1992,
17 Chapter 114, Section 44) is amended to read:

18 "55-2A-307. PRIORITY OF LIENS ARISING BY ATTACHMENT OR
19 LEVY ON, SECURITY INTERESTS IN AND OTHER CLAIMS TO GOODS.--

20 (1) Except as otherwise provided in Section
21 55-2A-306 NMSA 1978, a creditor of a lessee takes subject to the
22 lease contract.

23 (2) Except as otherwise provided in [~~Subsections (3)~~
24 ~~and (4)~~] Subsection (3) of this section and in Sections
25 55-2A-306 and 55-2A-308 NMSA 1978, a creditor of a lessor takes
subject to the lease contract unless

[+a] the creditor holds a lien that attached

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1 to the goods before the lease contract became enforceable.

2 [~~(b) the creditor holds a security interest in~~
3 ~~the goods and the lessee did not give value and receive delivery~~
4 ~~of the goods without knowledge of the security interest; or~~

5 ~~(c) the creditor holds a security interest in~~
6 ~~the goods which was perfected (Section 55-9-303 NMSA 1978)~~
7 ~~before the lease contract became enforceable.~~

8 ~~(3) A lessee in the ordinary course of business~~
9 ~~takes the leasehold interest free of a security interest in the~~
10 ~~goods created by the lessor even though the security interest is~~
11 ~~perfected (Section 55-9-303 NMSA 1978) and the lessee knows of~~
12 ~~its existence.~~

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

22 (3) Except as otherwise provided in Sections
23 55-9-317, 55-9-321 and 55-9-323 NMSA 1978, a lessee takes a
24 leasehold interest subject to a security interest held by a
25 creditor of the lessor."

Section 135. Section 55-2A-309 NMSA 1978 (being Laws 1992,
Chapter 114, Section 46) is amended to read:

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1 "55-2A-309. LESSOR'S AND LESSEE'S RIGHTS WHEN GOODS BECOME
2 FIXTURES.--

3 (1) In this section:

4 (a) goods are "fixtures" when they become so
5 related to particular real estate that an interest in them
6 arises under real estate law;

7 (b) a "fixture filing" is the filing, in the
8 office where a record of a mortgage on the real estate would be
9 filed or recorded, of a financing statement covering goods that
10 are or are to become fixtures and conforming to the requirements
11 of [~~Paragraph (5) of Section 55-9-402~~] Subsections (a) and (b)
12 of Section 55-9-502 NMSA 1978;

13 (c) a lease is a "purchase money lease" unless
14 the lessee has possession or use of the goods or the right to
15 possession or use of the goods before the lease agreement is
16 enforceable;

17 (d) a mortgage is a "construction mortgage" to
18 the extent it secures an obligation incurred for the
19 construction of an improvement on land including the acquisition
20 cost of the land, if the recorded writing so indicates; and

21 (e) "encumbrance" includes real estate
22 mortgages and other liens on real estate and all other rights in
23 real estate that are not ownership interests.

24 (2) Under this article a lease may be of goods that
25 are fixtures or may continue in goods that become fixtures, but
no lease exists under this article of ordinary building
materials incorporated into an improvement on land.

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1 (3) This article does not prevent creation of a
2 lease of fixtures pursuant to real estate law.

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

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

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

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

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

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

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

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

(6) Notwithstanding Paragraph (a) of Subsection (4) of this section but otherwise subject to Subsections (4) and (5) of this section, the interest of a lessor of fixtures, including the lessor's residual interest, is subordinate to the conflicting interest of an encumbrancer of the real estate under a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent given to refinance a construction mortgage, the conflicting interest of an encumbrancer of the real estate under a mortgage has this priority to the same extent as the encumbrancer of the real estate under the construction mortgage.

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

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1 interests in real estate.

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

20 (9) Even though the lease agreement does not create
21 a security interest, the interest of a lessor of fixtures,
22 including the lessor's residual interest, is perfected by filing
23 a financing statement as a fixture filing for leased goods that
24 are or are to become fixtures in accordance with the relevant
25 provisions of [~~the article on Secured Transactions (Article 9)]
Chapter 55, Article 9 NMSA 1978."~~

Section 136. Section 55-4-210 NMSA 1978 (being Laws 1961,

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1 Chapter 96, Section 4-208, as amended) is amended to read:

2 "55-4-210. SECURITY INTEREST OF COLLECTING BANK IN ITEMS,
3 ACCOMPANYING DOCUMENTS AND PROCEEDS.--

4 (a) A collecting bank has a security interest in an
5 item and any accompanying documents or the proceeds of either:

6 (1) in case of an item deposited in an account,
7 to the extent to which credit given for the item has been
8 withdrawn or applied;

9 (2) in case of an item for which it has given
10 credit available for withdrawal as of right, to the extent of
11 the credit given, whether or not the credit is drawn upon or
12 there is a right of charge-back; or

13 (3) if it makes an advance on or against the
14 item.

15 (b) If credit given for several items received at
16 one time or pursuant to a single agreement is withdrawn or
17 applied in part, the security interest remains upon all the
18 items, any accompanying documents or the proceeds of either.
19 For the purpose of this section, credits first given are first
20 withdrawn.

21 (c) Receipt by a collecting bank of a final
22 settlement for an item is a realization on its security interest
23 in the item, accompanying documents and proceeds. So long as
24 the bank does not receive final settlement for the item or give
25 up possession of the item or accompanying documents for purposes
other than collection, the security interest continues to that
extent and is subject to Chapter 55, Article 9 NMSA 1978, but:

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1 (1) no security agreement is necessary to make
2 the security interest enforceable (~~[(1)(a) of Section 55-9-203]~~
3 Subparagraph (A) of Paragraph (3) of Subsection (b) of Section
4 55-9-203 NMSA 1978);

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

7 (3) the security interest has priority over
8 conflicting perfected security interests in the item,
9 accompanying documents or proceeds."

10 Section 137. A new Section 55-5-118 NMSA 1978 is enacted
11 to read:

12 "55-5-118. [NEW MATERIAL] SECURITY INTEREST OF ISSUER OR
13 NOMINATED PERSON.--

14 (a) An issuer or nominated person has a security
15 interest in a document presented under a letter of credit to the
16 extent that the issuer or nominated person honors or gives value
17 for the presentation.

18 (b) So long as and to the extent that an issuer or
19 nominated person has not been reimbursed or has not otherwise
20 recovered the value given with respect to a security interest in
21 a document under Subsection (a) of this section, the security
22 interest continues and is subject to Chapter 55, Article 9 NMSA
23 1978, but:

24 (1) a security agreement is not necessary to
25 make the security interest enforceable under Paragraph (3) of
Subsection (b) of Section 55-9-203 NMSA 1978;

(2) if the document is presented in a medium

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1 other than a written or other tangible medium, the security
2 interest is perfected; and

3 (3) if the document is presented in a written
4 or other tangible medium and is not a certificated security,
5 chattel paper, a document of title, an instrument or a letter of
6 credit, the security interest is perfected and has priority over
7 a conflicting security interest in the document so long as the
8 debtor does not have possession of the document."

9 Section 138. Section 55-7-503 NMSA 1978 (being Laws 1961,
10 Chapter 96, Section 7-503) is amended to read:

11 "55-7-503. DOCUMENT OF TITLE TO GOODS DEFEATED IN CERTAIN
12 CASES.--

13 (1) A document of title confers no right in goods
14 against a person who before issuance of the document had a legal
15 interest or a perfected security interest in them and who
16 neither:

17 (a) delivered or entrusted them or any document
18 of title covering them to the bailor or his nominee with actual
19 or apparent authority to ship, store or sell or with power to
20 obtain delivery under this article (Section [~~7-403~~] 55-7-403
21 NMSA 1978) or with power of disposition under [~~this Act~~]
22 Sections [~~2-403 and 9-307~~] 55-2-403 and 55-9-320 NMSA 1978 or
23 other statute or rule of law; nor

24 (b) acquiesced in the procurement by the bailor
25 or his nominee of any document of title.

(2) Title to goods based upon an unaccepted delivery
order is subject to the rights of anyone to whom a negotiable

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1 warehouse receipt or bill of lading covering the goods has been
2 duly negotiated. Such a title may be defeated under [~~the next~~]
3 Section 55-7-504 NMSA 1978 to the same extent as the rights of
4 the issuer or a transferee from the issuer.

5 (3) Title to goods based upon a bill of lading
6 issued to a freight forwarder is subject to the rights of anyone
7 to whom a bill issued by the freight forwarder is duly
8 negotiated; but delivery by the carrier in accordance with [~~Part~~
9 ~~4~~] Sections 55-7-401 through 55-7-404 NMSA 1978 pursuant to its
10 own bill of lading discharges the carrier's obligation to
11 deliver."

12 Section 139. Section 55-8-103 NMSA 1978 (being Laws 1996,
13 Chapter 47, Section 7) is amended to read:

14 "55-8-103. RULES FOR DETERMINING WHETHER CERTAIN
15 OBLIGATIONS AND INTERESTS ARE SECURITIES OR FINANCIAL ASSETS.--

16 (a) A share or similar equity interest issued by a
17 corporation, business trust, joint stock company or similar
18 entity is a security.

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

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

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

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

17 (f) A commodity contract, as defined in ~~[Section~~
18 ~~55-9-115]~~ Paragraph (15) of Subsection (a) of Section 55-9-102
19 NMSA 1978, is not a security or a financial asset."

20 Section 140. Section 55-8-106 NMSA 1978 (being Laws 1996,
21 Chapter 47, Section 10) is amended to read:

22 "55-8-106. CONTROL.--

23 (a) A purchaser has "control" of a certificated
24 security in bearer form if the certificated security is
25 delivered to the purchaser.

(b) A purchaser has "control" of a certificated
security in registered form if the certificated security is

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1 delivered to the purchaser and:

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

4 (2) the certificate is registered in the name
5 of the purchaser, upon original issue or registration of
6 transfer by the issuer.

7 (c) A purchaser has "control" of an uncertificated
8 security if:

9 (1) the uncertificated security is delivered to
10 the purchaser; or

11 (2) the issuer has agreed that it will comply
12 with instructions originated by the purchaser without further
13 consent by the registered owner.

14 (d) A purchaser has "control" of a security
15 entitlement if:

16 (1) the purchaser becomes the entitlement
17 holder; ~~[or]~~

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

21 (3) another person has control of the security
22 entitlement on behalf of the purchaser or, having previously
23 acquired control of the security entitlement, acknowledges that
24 it has control on behalf of the purchaser.

25 (e) If an interest in a security entitlement is
granted by the entitlement holder to the entitlement holder's
own securities intermediary, the securities intermediary has

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1 control.

2 (f) A purchaser who has satisfied the requirements
3 of Subsection (c)~~[(2)]~~ or (d)~~[(2)]~~ of this section has control
4 even if the registered owner in the case of Subsection (c)~~[(2)]~~
5 of this section or the entitlement holder in the case of
6 Subsection (d)~~[(2)]~~ of this section retains the right to make
7 substitutions for the uncertificated security or security
8 entitlement, to originate instructions or entitlement orders to
9 the issuer or securities intermediary or otherwise to deal with
10 the uncertificated security or security entitlement.

11 (g) An issuer or a securities intermediary may not
12 enter into an agreement of the kind described in Paragraph (2)
13 of Subsection (c)~~[(2)]~~ or Paragraph (2) of Subsection (d)~~[(2)]~~
14 of this section without the consent of the registered owner or
15 entitlement holder, but an issuer or a securities intermediary
16 is not required to enter into such an agreement even though the
17 registered owner or entitlement holder so directs. An issuer or
18 securities intermediary that has entered into such an agreement
19 is not required to confirm the existence of the agreement to
20 another party unless requested to do so by the registered owner
21 or entitlement holder."

22 Section 141. Section 55-8-110 NMSA 1978 (being Laws 1996,
23 Chapter 47, Section 14) is amended to read:

24 "55-8-110. APPLICABILITY--CHOICE OF LAW.--

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

- (1) the validity of a security;

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

3 (3) the effectiveness of registration of
4 transfer by the issuer;

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

7 (5) whether an adverse claim can be asserted
8 against a person to whom transfer of a certificated or
9 uncertificated security is registered or a person who obtains
10 control of an uncertificated security.

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

14 (1) acquisition of a security entitlement from
15 the securities intermediary;

16 (2) the rights and duties of the securities
17 intermediary and entitlement holder arising out of a security
18 entitlement;

19 (3) whether the securities intermediary owes
20 any duties to an adverse claimant to a security entitlement; and

21 (4) whether an adverse claim can be asserted
22 against a person who acquires a security entitlement from the
23 securities intermediary or a person who purchases a security
24 entitlement or interest therein from an entitlement holder.

25 (c) The local law of the jurisdiction in which a
security certificate is located at the time of delivery governs
whether an adverse claim can be asserted against a person to

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1 whom the security certificate is delivered.

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

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

12 (1) if an agreement between the securities
13 intermediary and its entitlement holder [~~specifies that it is~~
14 ~~governed by the law of a particular jurisdiction]~~ governing the
15 securities account expressly provides that a particular
16 jurisdiction is the securities intermediary's jurisdiction for
17 purposes of Sections 55-8-101 through 55-8-116 NMSA 1978,
18 that jurisdiction is the securities intermediary's jurisdiction;

19 (2) if Paragraph (1) of this subsection does
20 not apply and an agreement between the securities intermediary
21 and its entitlement holder governing the securities account
22 expressly provides that the agreement is governed by the law of
23 a particular jurisdiction, that jurisdiction is the securities
24 intermediary's jurisdiction;

25 [+2] (3) if neither Paragraph (1) nor
Paragraph (2) of this subsection applies and an agreement
between the securities intermediary and its entitlement holder

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1 ~~[does not specify the governing law as provided in Paragraph (1)~~
2 ~~but] governing the securities account expressly [specifies]~~
3 provides that the securities account is maintained at an office
4 in a particular jurisdiction, that jurisdiction is the
5 securities intermediary's jurisdiction;

6 ~~[(3)] (4) if [an agreement between the~~
7 ~~securities intermediary and its entitlement holder does not~~
8 ~~specify a jurisdiction as provided in Paragraph (1) or (2)] none~~
9 ~~of the preceding paragraphs applies,~~ the securities
10 intermediary's jurisdiction is the jurisdiction in which [~~is~~
11 ~~located]~~ the office identified in an account statement as the
12 office serving the entitlement holder's account is located; or

13 ~~[(4)] (5) if [an agreement between the~~
14 ~~securities intermediary and its entitlement holder does not~~
15 ~~specify a jurisdiction as provided in Paragraph (1) or (2) and~~
16 ~~an account statement does not identify an office serving the~~
17 ~~entitlement holder's account as provided in Paragraph (3)] none~~
18 ~~of the preceding paragraphs applies,~~ the securities
19 intermediary's jurisdiction is the jurisdiction in which [~~is~~
20 ~~located]~~ the chief executive office of the securities
21 intermediary is located.

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

underscored material = new
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1 concerning the account."

2 Section 142. Section 55-8-301 NMSA 1978 (being Laws 1996,
3 Chapter 47, Section 31) is amended to read:

4 "55-8-301. DELIVERY.--

5 (a) Delivery of a certificated security to a
6 purchaser occurs when:

7 (1) the purchaser acquires possession of the
8 security certificate;

9 (2) another person, other than a securities
10 intermediary, either acquires possession of the security
11 certificate on behalf of the purchaser or, having previously
12 acquired possession of the certificate, acknowledges that it
13 holds for the purchaser; or

14 (3) a securities intermediary acting on behalf
15 of the purchaser acquires possession of the security
16 certificate, only if the certificate is in registered form and
17 ~~[has been]~~ is (i) registered in the name of the purchaser, (ii)
18 payable to the order of the purchaser or (iii) specially
19 indorsed to the purchaser by an effective indorsement and has
20 not been indorsed to the securities intermediary or in blank.

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

23 (1) the issuer registers the purchaser as the
24 registered owner, upon original issue or registration of
25 transfer; or

(2) another person, other than a securities
intermediary, either becomes the registered owner of the

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1 uncertificated security on behalf of the purchaser or, having
2 previously become the registered owner, acknowledges that it
3 holds for the purchaser."

4 Section 143. Section 55-8-302 NMSA 1978 (being Laws 1996,
5 Chapter 47, Section 32) is amended to read:

6 "55-8-302. RIGHTS OF PURCHASER.--

7 (a) Except as otherwise provided in Subsections (b)
8 and (c) [~~upon delivery~~] of this section, a purchaser of a
9 certificated or uncertificated security [~~to a purchaser, the~~
10 ~~purchaser~~] acquires all rights in the security that the
11 transferor had or had power to transfer.

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

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

17 Section 144. Section 55-8-510 NMSA 1978 (being Laws 1996,
18 Chapter 47, Section 54) is amended to read:

19 "55-8-510. RIGHTS OF PURCHASER OF SECURITY ENTITLEMENT
20 FROM ENTITLEMENT HOLDER.--

21 (a) [~~An~~] In a case not covered by the priority rules
22 in Chapter 55, Article 9 NMSA 1978 or the rules stated in
23 Subsection (c) of this section, an action based on an adverse
24 claim to a financial asset or security entitlement, whether
25 framed in conversion, replevin, constructive trust, equitable
lien or other theory, may not be asserted against a person who
purchases a security entitlement, or an interest therein, from

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1 an entitlement holder if the purchaser gives value, does not
2 have notice of the adverse claim and obtains control.

3 (b) If an adverse claim could not have been asserted
4 against an entitlement holder under Section 55-8-502 NMSA 1978,
5 the adverse claim cannot be asserted against a person who
6 purchases a security entitlement, or an interest therein, from
7 the entitlement holder.

8 (c) In a case not covered by the priority rules in
9 Chapter 55, Article 9 NMSA 1978, a purchaser for value of a
10 security entitlement, or an interest therein, who obtains
11 control has priority over a purchaser of a security entitlement,
12 or an interest therein, who does not obtain control. Except as
13 otherwise provided in Subsection (d) of this section, purchasers
14 who have control rank ~~[equally, except that a]~~ according to
15 priority in time of:

16 (1) the purchaser's becoming the person for
17 whom the securities account, in which the security entitlement
18 is carried, is maintained, if the purchaser obtained control
19 under Paragraph (1) of Subsection (d) of Section 55-8-106 NMSA
20 1978;

21 (2) the securities intermediary's agreement to
22 comply with the purchaser's entitlement orders with respect to
23 security entitlements carried or to be carried in the securities
24 account in which the security entitlement is carried, if the
25 purchaser obtained control under Paragraph (2) of Subsection (d)
of Section 55-8-106 NMSA 1978; or

(3) if the purchaser obtained control through

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1 another person under Paragraph (3) of Subsection (d) of Section
2 55-8-106 NMSA 1978, the time on which priority would be based
3 under this subsection if the other person were the secured
4 party.

5 (d) A securities intermediary as purchaser has
6 priority over a conflicting purchaser who has control unless
7 otherwise agreed by the securities intermediary."

8 Section 145. SAVING CLAUSE.--

9 (a) Except as otherwise provided in Sections 146
10 through 152 of this act, its provisions apply to a transaction
11 or lien within its scope, even if the transaction or lien was
12 entered into or created before July 1, 2001.

13 (b) Except as otherwise provided in Subsection (c)
14 of this section and Sections 146 through 152 of this act:

15 (1) transactions and liens that were not
16 governed by Chapter 55, Article 9 NMSA 1978, as it existed prior
17 to July 1, 2001, were validly entered into or created before
18 that date and would be subject to this act if they had been
19 entered into or created after July 1, 2001, and the rights,
20 duties and interests flowing from those transactions and liens
21 remain valid after July 1, 2001; and

22 (2) the transactions and liens described in
23 Paragraph (1) of this subsection may be terminated, completed,
24 consummated and enforced as required or permitted by this act or
25 by the law that otherwise would apply if this act had not taken
effect.

(c) This act does not affect an action, case or

underscored material = new
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1 proceeding commenced before July 1, 2001.

2 Section 146. TEMPORARY TRANSITION PROVISION--SECURITY
3 INTEREST PERFECTED BEFORE EFFECTIVE DATE.--

4 (a) A security interest that is enforceable
5 immediately before July 1, 2001 and would have priority over the
6 rights of a person that becomes a lien creditor at that time is
7 a perfected security interest under this act if, on July 1,
8 2001, the applicable requirements for enforceability and
9 perfection under this act are satisfied without further action.

10 (b) Except as otherwise provided in Section 151 of
11 this act, if, immediately before July 1, 2001, a security
12 interest is enforceable and would have priority over the rights
13 of a person that becomes a lien creditor at that time, but the
14 applicable requirements for enforceability or perfection under
15 this act are not satisfied on July 1, 2001, the security
16 interest:

17 (1) is a perfected security interest until
18 midnight on June 30, 2002;

19 (2) remains enforceable on and after July 1,
20 2002 only if the security interest becomes enforceable pursuant
21 to Section 55-9-203 NMSA 1978 before midnight on June 30, 2002;
22 and

23 (3) remains perfected on and after July 1, 2002
24 only if the applicable requirements for perfection under this
25 act are satisfied before midnight on June 30, 2002.

Section 147. TEMPORARY TRANSITION PROVISION--SECURITY
INTEREST UNPERFECTED BEFORE EFFECTIVE DATE.--A security interest

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1 that is enforceable immediately before July 1, 2001, but which
2 would be subordinate to the rights of a person that becomes a
3 lien creditor at that time:

4 (1) remains an enforceable security interest until
5 midnight June 30, 2002;

6 (2) remains enforceable on and after July 1, 2002 if
7 the security interest becomes enforceable pursuant to Section
8 55-9-203 NMSA 1978 before June 30, 2002; and

9 (3) becomes perfected:

10 (A) without further action on July 1, 2002 if
11 the applicable requirements for perfection under this act are
12 satisfied before or at that time; or

13 (B) when the applicable requirements for
14 perfection are satisfied if the requirements are satisfied after
15 the time specified in Paragraph (A) of this subsection.

16 Section 148. TEMPORARY TRANSITION PROVISION--EFFECTIVENESS
17 OF ACTION TAKEN BEFORE EFFECTIVE DATE.--

18 (a) If action, other than the filing of a financing
19 statement, is taken before this July 1, 2001, and if the action
20 would have resulted in priority of a security interest over the
21 rights of a person that becomes a lien creditor had the security
22 interest become enforceable before that date, the action is
23 effective to perfect a security interest that attaches under
24 this act before July 1, 2002. An attached security interest
25 becomes unperfected on July 1, 2002 unless the security interest
becomes a perfected security interest under this act before that
date.

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1 (b) The filing of a financing statement before July
2 1, 2001 is effective to perfect a security interest to the
3 extent the filing would satisfy the applicable requirements for
4 perfection under this act.

5 (c) This act does not render ineffective an
6 effective financing statement that, before July 1, 2001, is
7 filed and satisfies the applicable requirements for perfection
8 under the law of the jurisdiction governing perfection as
9 provided in Section 55-9-103 NMSA 1978 as it existed prior to
10 July 1, 2001. However, except as otherwise provided in
11 Subsections (d) and (e) of this section and Section 152 of this
12 act, the financing statement ceases to be effective at the
13 earlier of:

14 (1) the time the financing statement would have
15 ceased to be effective under the law of the jurisdiction in
16 which it is filed; or

17 (2) June 30, 2006.

18 (d) Filing of a continuation statement after July 1,
19 2001 does not continue the effectiveness of a financing
20 statement filed before that date. However, upon the timely
21 filing of a continuation statement on or after July 1, 2001 and
22 in accordance with the law of the jurisdiction governing
23 perfection as provided in Sections 55-9-301 through 55-9-342
24 NMSA 1978, the effectiveness of a financing statement filed in
25 the same office in that jurisdiction before July 1, 2001
continues for the period provided by the law of that
jurisdiction.

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1 (e) Paragraph (2) of Subsection (c) of this section
2 applies to a financing statement that, before July 1, 2001, is
3 filed against a transmitting utility and satisfies the
4 applicable requirements for perfection under the law of the
5 jurisdiction governing perfection as provided in Section 55-
6 9-103 NMSA 1978 as that section existed prior to July 1, 2001
7 only to the extent that Sections 55-9-301 through 55-9-342 NMSA
8 1978 provide that the law of a jurisdiction other than the
9 jurisdiction in which the financing statement is filed governs
10 perfection of a security interest in collateral covered by the
11 financing statement.

12 (f) A financing statement that includes a financing
13 statement filed before July 1, 2001 and a continuation statement
14 filed after that date is effective only to the extent that it
15 satisfies the requirements of Sections 55-9-501 through 55-9-518
16 NMSA 1978 for an initial financing statement.

17 Section 149. TEMPORARY TRANSITION PROVISION--WHEN INITIAL
18 FINANCING STATEMENT SUFFICES TO CONTINUE EFFECTIVENESS OF
19 FINANCING STATEMENT.--

20 (a) The filing of an initial financing statement in
21 the office specified in Section 55-9-501 NMSA 1978 continues the
22 effectiveness of a financing statement filed before July 1, 2001
23 if:

24 (1) the filing of an initial financing
25 statement in that office would be effective to perfect a
security interest under this act;

(2) the pre-effective-date financing statement

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1 was filed in an office in another state or another office in
2 this state; and

3 (3) the initial financing statement satisfies
4 Subsection (c) of this section.

5 (b) The filing of an initial financing statement
6 under Subsection (a) of this section continues the effectiveness
7 of the pre-effective-date financing statement:

8 (1) if the initial financing statement is filed
9 before July 1, 2001, for the period provided in Section 55-9-403
10 NMSA 1978 as it existed prior to July 1, 2001, with respect to a
11 financing statement; and

12 (2) if the initial financing statement is filed
13 after July 1, 2001, for the period provided in Section 55-9-515
14 NMSA 1978 with respect to an initial financing statement.

15 (c) To be effective for purposes of Subsection (a)
16 of this section, an initial financing statement must:

17 (1) satisfy the requirements of Sections
18 55-9-501 through 55-9-527 NMSA 1978 for an initial financing
19 statement;

20 (2) identify the pre-effective-date financing
21 statement by indicating the office in which the financing
22 statement was filed and providing the dates of filing and file
23 numbers, if any, of the financing statement and of the most
24 recent continuation statement filed with respect to the
25 financing statement; and

(3) indicate that the pre-effective-date
financing statement remains effective.

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1 Section 150. TEMPORARY TRANSITION PROVISION--AMENDMENT OF
2 PRE-EFFECTIVE-DATE FINANCING STATEMENT.--

3 (a) In this section, "pre-effective-date financing
4 statement" means a financing statement filed before July 1,
5 2001.

6 (b) After July 1, 2001, a person may add or delete
7 collateral covered by, continue or terminate the effectiveness
8 of, or otherwise amend the information provided in, a pre-
9 effective-date financing statement only in accordance with the
10 law of the jurisdiction governing perfection as provided in
11 Sections 55-9-301 through 55-9-338 NMSA 1978. However, the
12 effectiveness of a pre-effective-date financing statement also
13 may be terminated in accordance with the law of the jurisdiction
14 in which the financing statement is filed.

15 (c) Except as otherwise provided in Subsection (d)
16 of this section if the law of this state governs perfection of a
17 security interest, the information in a pre-effective-date
18 financing statement may be amended after July 1, 2001 only if:

19 (1) the pre-effective-date financing statement
20 and an amendment are filed in the office specified in Section
21 55-9-501 NMSA 1978;

22 (2) an amendment is filed in the office
23 specified in Section 55-9-501 NMSA 1978 concurrently with, or
24 after the filing in that office of, an initial financing
25 statement that satisfies Subsection (c) of Section 55-9-706 NMSA
1978; or

 (3) an initial financing statement that

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1 provides the information as amended and satisfies Subsection (c)
2 of Section 55-9-706 NMSA 1978 is filed in the office specified
3 in Section 55-9-501 NMSA 1978.

4 (d) If the law of this state governs perfection of a
5 security interest, the effectiveness of a pre-effective-date
6 financing statement may be continued only under Subsections (d)
7 and (f) of Section 55-9-705 or Section 55-9-706 NMSA 1978.

8 (e) Whether or not the law of this state governs
9 perfection of a security interest, the effectiveness of a pre-
10 effective-date financing statement filed in this state may be
11 terminated after July 1, 2001 by filing a termination statement
12 in the office in which the pre-effective-date financing
13 statement is filed, unless an initial financing statement that
14 satisfies Subsection (c) of Section 55-9-706 NMSA 1978 has been
15 filed in the office specified by the law of the jurisdiction
16 governing perfection as provided in Sections 55-9-301 through
17 55-9-342 NMSA 1978 as the office in which a file a financing
18 statement.

19 Section 151. TEMPORARY TRANSITION PROVISION--PERSONS
20 ENTITLED TO FILE INITIAL FINANCING STATEMENT OR CONTINUATION
21 STATEMENT.--A person may file an initial financing statement or
22 a continuation statement under Sections 145 through 152 of this
23 act if:

- 24 (1) the secured party of record authorizes the
25 filing; and
(2) the filing is necessary under Sections 145
through 153 of this act:

.129839.5

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(A) to continue the effectiveness of a financing statement filed before July 1, 2001; or

(B) to perfect or continue the perfection of a security interest.

Section 152. TEMPORARY TRANSITION PROVISION--PRIORITY.--

(a) This act determines the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before July 1, 2001, Chapter 55, Article 9 NMSA 1978 as it existed before that date determines priority.

(b) For purposes of Subsection (a) of Section 55-9-322 NMSA 1978, the priority of a security interest that becomes enforceable under Section 55-9-203 NMSA 1978 dates from July 1, 2001 if the security interest is perfected under this act by the filing of a financing statement before that date which would not have been effective to perfect the security interest under Chapter 55, Article 9 NMSA 1978 as it existed before July 1, 2001. This subsection does not apply to conflicting security interests, each of which is perfected by the filing of such a financing statement.

Section 153. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2001.