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AN ACT

RELATING TO BUSINESS; MAKING TECHNICAL AMENDMENTS TO THE
UNIFORM COMMERCIAL CODE; AMENDING AND REPEALING SECTIONS OF
THE NMSA 1978.

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

Section 1. Section 55-1-303 NMSA 1978 (being Laws 2005,
Chapter 144, Section 17) is amended to read:

"55-1-303. COURSE OF PERFORMANCE, COURSE OF DEALING AND
USAGE OF TRADE.--

(a) A "course of performance" is a sequence of
conduct between the parties to a particular transaction that
exists if:

(1) the agreement of the parties with
respect to the transaction involves repeated occasions for
performance by a party; and

(2) the other party, with knowledge of the
nature of the performance and opportunity for objection to
it, accepts the performance or acquiesces in it without
objection.

(b) A "course of dealing" is a sequence of conduct
concerning previous transactions between the parties to a
particular transaction that is fairly to be regarded as
establishing a common basis of understanding for interpreting
their expressions and other conduct.

1 (c) A "usage of trade" is any practice or method
2 of dealing having such regularity of observance in a place,
3 vocation or trade as to justify an expectation that it will
4 be observed with respect to the transaction in question. The
5 existence and scope of such a usage must be proved as facts.
6 If it is established that such a usage is embodied in a trade
7 code or similar record, the interpretation of the record is a
8 question of law.

9 (d) A course of performance or course of dealing
10 between the parties or usage of trade in the vocation or
11 trade in which they are engaged or of which they are or
12 should be aware is relevant in ascertaining the meaning of
13 the parties' agreement, may give particular meaning to
14 specific terms of the agreement and may supplement or qualify
15 the terms of the agreement. A usage of trade applicable in
16 the place in which part of the performance under the
17 agreement is to occur may be so utilized as to that part of
18 the performance.

19 (e) Except as otherwise provided in Subsection (f)
20 of this section, the express terms of an agreement and any
21 applicable course of performance, course of dealing or usage
22 of trade must be construed whenever reasonable as consistent
23 with each other. If such a construction is unreasonable:

24 (1) express terms prevail over course of
25 performance, course of dealing and usage of trade;

1 (2) course of performance prevails over
2 course of dealing and usage of trade; and

3 (3) course of dealing prevails over usage of
4 trade.

5 (f) Subject to Sections 55-2-209 and 55-2A-208
6 NMSA 1978, a course of performance is relevant to show a
7 waiver or modification of any term inconsistent with the
8 course of performance.

9 (g) Evidence of a relevant usage of trade offered
10 by one party is not admissible unless that party has given
11 the other party notice that the court finds sufficient to
12 prevent unfair surprise to the other party."

13 Section 2. Section 55-3-103 NMSA 1978 (being Laws 1992,
14 Chapter 114, Section 90, as amended) is amended to read:

15 "55-3-103. DEFINITIONS.--

16 (a) In this article:

17 (1) "acceptor" means a drawee who has
18 accepted a draft;

19 (2) "consumer account" means an account
20 established by an individual primarily for personal, family
21 or household purposes;

22 (3) "consumer transaction" means a
23 transaction in which an individual incurs an obligation
24 primarily for personal, family or household purposes;

25 (4) "drawee" means a person ordered in a

1 draft to make payment;

2 (5) "drawer" means a person who signs or is
3 identified in a draft as a person ordering payment;

4 (6) [Reserved];

5 (7) "maker" means a person who signs or is
6 identified in a note as a person undertaking to pay;

7 (8) "order" means a written instruction to
8 pay money signed by the person giving the instruction. The
9 instruction may be addressed to any person, including the
10 person giving the instruction, or to one or more persons
11 jointly or in the alternative but not in succession. An
12 authorization to pay is not an order unless the person
13 authorized to pay is also instructed to pay;

14 (9) "ordinary care" in the case of a person
15 engaged in business means observance of reasonable commercial
16 standards, prevailing in the area in which the person is
17 located, with respect to the business in which the person is
18 engaged. In the case of a bank that takes an instrument for
19 processing for collection or payment by automated means,
20 reasonable commercial standards do not require the bank to
21 examine the instrument if the failure to examine does not
22 violate the bank's prescribed procedures and the bank's
23 procedures do not vary unreasonably from general banking
24 usage not disapproved by this article or Chapter 55, Article
25 4 NMSA 1978;

1 (10) "party" means a party to an instrument;

2 (11) "principal obligor" with respect to an
3 instrument means the accommodated party or any other party to
4 the instrument against whom a secondary obligor has recourse
5 pursuant to this article;

6 (12) "promise" means a written undertaking
7 to pay money signed by the person undertaking to pay. An
8 acknowledgment of an obligation by the obligor is not a
9 promise unless the obligor also undertakes to pay the
10 obligation;

11 (13) "prove" with respect to a fact means to
12 meet the burden of establishing the fact (Paragraph (8) of
13 Subsection (b) of Section 55-1-201 NMSA 1978);

14 (14) [Reserved];

15 (15) "remitter" means a person who purchases
16 an instrument from its issuer if the instrument is payable to
17 an identified person other than the purchaser;

18 (16) [Reserved]; and

19 (17) "secondary obligor" with respect to an
20 instrument means: (i) an indorser or an accommodation party;
21 (ii) a drawer having the obligation described in Subsection
22 (d) of Section 55-3-414 NMSA 1978; or (iii) any other party
23 to the instrument that has recourse against another party to
24 the instrument pursuant to Subsection (b) of Section 55-3-116
25 NMSA 1978.

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

3 "acceptance" Section 55-3-409 NMSA
4 1978;

5 "accommodated party" Section 55-3-419 NMSA
6 1978;

7 "accommodation party" Section 55-3-419 NMSA
8 1978;

9 "alteration" Section 55-3-407 NMSA
10 1978;

11 "anomalous indorsement" Section 55-3-205 NMSA
12 1978;

13 "blank indorsement" Section 55-3-205 NMSA
14 1978;

15 "cashier's check" Section 55-3-104 NMSA
16 1978;

17 "certificate of deposit" Section 55-3-104 NMSA
18 1978;

19 "certified check" Section 55-3-409 NMSA
20 1978;

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

23 "consideration" Section 55-3-303 NMSA
24 1978;

25 "draft" Section 55-3-104 NMSA

1 1978;
2 "holder in due course" Section 55-3-302 NMSA
3 1978;
4 "incomplete instrument" Section 55-3-115 NMSA
5 1978;
6 "indorsement" Section 55-3-204 NMSA
7 1978;
8 "indorser" Section 55-3-204 NMSA
9 1978;
10 "instrument" Section 55-3-104 NMSA
11 1978;
12 "issue" Section 55-3-105 NMSA
13 1978;
14 "issuer" Section 55-3-105 NMSA
15 1978;
16 "negotiable instrument" Section 55-3-104 NMSA
17 1978;
18 "negotiation" Section 55-3-201 NMSA
19 1978;
20 "note" Section 55-3-104 NMSA
21 1978;
22 "payable at a definite
23 time" Section 55-3-108 NMSA
24 1978;
25 "payable on demand" Section 55-3-108 NMSA

1 1978;
2 "payable to bearer" Section 55-3-109 NMSA
3 1978;
4 "payable to order" Section 55-3-109 NMSA
5 1978;
6 "payment" Section 55-3-602 NMSA
7 1978;
8 "person entitled to
9 enforce" Section 55-3-301 NMSA
10 1978;
11 "presentment" Section 55-3-501 NMSA
12 1978;
13 "reacquisition" Section 55-3-207 NMSA
14 1978;
15 "special indorsement" Section 55-3-205 NMSA
16 1978;
17 "teller's check" Section 55-3-104 NMSA
18 1978;
19 "transfer of instrument" Section 55-3-203 NMSA
20 1978;
21 "traveler's check" Section 55-3-104 NMSA
22 1978; and
23 "value" Section 55-3-303 NMSA
24 1978.

25 (c) The following definitions in other articles

1 apply to this article:

2 "account" Section 55-4-104 NMSA 1978;
3 "banking day" Section 55-4-104 NMSA 1978;
4 "clearing house" Section 55-4-104 NMSA 1978;
5 "collecting bank" Section 55-4-105 NMSA 1978;
6 "depository bank" Section 55-4-105 NMSA 1978;
7 "documentary draft" Section 55-4-104 NMSA 1978;
8 "intermediary bank" Section 55-4-105 NMSA 1978;
9 "item" Section 55-4-104 NMSA 1978;
10 "payor bank" Section 55-4-105 NMSA 1978;

11 and

12 "suspends payments" Section 55-4-104 NMSA 1978.

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

16 Section 3. Section 55-3-106 NMSA 1978 (being Laws 1992,
17 Chapter 114, Section 93) is amended to read:

18 "55-3-106. UNCONDITIONAL PROMISE OR ORDER.--

19 (a) Except as provided in this section, for the
20 purposes of Section 55-3-104(a) NMSA 1978, a promise or order
21 is unconditional unless it states: (i) an express condition to
22 payment; (ii) that the promise or order is subject to or
23 governed by another record; or (iii) that rights or obligations
24 with respect to the promise or order are stated in another
25 record. A reference to another record does not of itself make

1 the promise or order conditional.

2 (b) A promise or order is not made conditional:

3 (i) by a reference to another record for a statement of rights
4 with respect to collateral, prepayment or acceleration; or (ii)
5 because payment is limited to resort to a particular fund or
6 source.

7 (c) If a promise or order requires, as a condition
8 to payment, a countersignature by a person whose specimen
9 signature appears on the promise or order, the condition does
10 not make the promise or order conditional for the purposes of
11 Section 55-3-104(a) NMSA 1978. If the person whose specimen
12 signature appears on an instrument fails to countersign the
13 instrument, the failure to countersign is a defense to the
14 obligation of the issuer, but the failure does not prevent a
15 transferee of the instrument from becoming a holder of the
16 instrument.

17 (d) If a promise or order at the time it is issued
18 or first comes into possession of a holder contains a
19 statement, required by applicable statutory or administrative
20 law, to the effect that the rights of a holder or transferee
21 are subject to claims or defenses that the issuer could assert
22 against the original payee, the promise or order is not thereby
23 made conditional for the purposes of Section 55-3-104(a) NMSA
24 1978; but if the promise or order is an instrument, there
25 cannot be a holder in due course of the instrument."

1 Section 4. Section 55-3-116 NMSA 1978 (being Laws 1992,
2 Chapter 114, Section 103) is amended to read:

3 "55-3-116. JOINT AND SEVERAL LIABILITY--CONTRIBUTION.--

4 (a) Except as otherwise provided in the instrument,
5 two or more persons who have the same liability on an
6 instrument as makers, drawers, acceptors, indorsers who indorse
7 as joint payees or anomalous indorsers are jointly and
8 severally liable in the capacity in which they sign.

9 (b) Except as provided in Section 55-3-419(e) NMSA
10 1978 or by agreement of the affected parties, a party having
11 joint and several liability who pays the instrument is entitled
12 to receive from any party having the same joint and several
13 liability contribution in accordance with applicable law."

14 Section 5. Section 55-3-119 NMSA 1978 (being Laws 1992,
15 Chapter 114, Section 106) is amended to read:

16 "55-3-119. NOTICE OF RIGHT TO DEFEND ACTION.--In an
17 action for breach of an obligation for which a third person is
18 answerable over pursuant to Chapter 55, Article 3 or 4 NMSA
19 1978, the defendant may give the third person notice of the
20 litigation in a record, and the person notified may then give
21 similar notice to any other person who is answerable over. If
22 the notice states: (i) that the person notified may come in
23 and defend; and (ii) that failure to do so will bind the person
24 notified in an action later brought by the person giving the
25 notice as to any determination of fact common to the two

1 litigations, the person notified is so bound unless after
2 seasonable receipt of the notice the person notified does come
3 in and defend."

4 Section 6. Section 55-3-305 NMSA 1978 (being Laws 1992,
5 Chapter 114, Section 118) is amended to read:

6 "55-3-305. DEFENSES AND CLAIMS IN RECOUPMENT.--

7 (a) Except as otherwise provided in this section,
8 the right to enforce the obligation of a party to pay an
9 instrument is subject to the following:

10 (1) a defense of the obligor based on: (i)
11 infancy of the obligor to the extent it is a defense to a
12 simple contract; (ii) duress, lack of legal capacity or
13 illegality of the transaction that, under other law, nullifies
14 the obligation of the obligor; (iii) fraud that induced the
15 obligor to sign the instrument with neither knowledge nor
16 reasonable opportunity to learn of its character or its
17 essential terms; or (iv) discharge of the obligor in insolvency
18 proceedings;

19 (2) a defense of the obligor stated in
20 another section of Chapter 55, Article 3 NMSA 1978 or a defense
21 of the obligor that would be available if the person entitled
22 to enforce the instrument were enforcing a right to payment
23 under a simple contract; and

24 (3) a claim in recoupment of the obligor
25 against the original payee of the instrument if the claim arose SB 74

1 from the transaction that gave rise to the instrument; but the
2 claim of the obligor may be asserted against a transferee of
3 the instrument only to reduce the amount owing on the
4 instrument at the time the action is brought.

5 (b) The right of a holder in due course to enforce
6 the obligation of a party to pay the instrument is subject to
7 defenses of the obligor stated in Subsection (a)(1) of this
8 section, but is not subject to defenses of the obligor stated
9 in Subsection (a)(2) of this section or claims in recoupment
10 stated in Subsection (a)(3) of this section against a person
11 other than the holder.

12 (c) Except as stated in Subsection (d) of this
13 section, in an action to enforce the obligation of a party to
14 pay the instrument, the obligor shall not assert against the
15 person entitled to enforce the instrument a defense, claim in
16 recoupment or claim to the instrument (Section 55-3-306 NMSA
17 1978) of another person, but the other person's claim to the
18 instrument may be asserted by the obligor if the other person
19 is joined in the action and personally asserts the claim
20 against the person entitled to enforce the instrument. An
21 obligor is not obliged to pay the instrument if the person
22 seeking enforcement of the instrument does not have rights of a
23 holder in due course and the obligor proves that the instrument
24 is a lost or stolen instrument.

25 (d) In an action to enforce the obligation of an

1 accommodation party to pay an instrument, the accommodation
2 party may assert against the person entitled to enforce the
3 instrument any defense or claim in recoupment under Subsection
4 (a) of this section that the accommodated party could assert
5 against the person entitled to enforce the instrument, except
6 the defenses of discharge in insolvency proceedings, infancy
7 and lack of legal capacity.

8 (e) In a consumer transaction, if law other than
9 this chapter requires that an instrument include a statement to
10 the effect that the rights of a holder or transferee are
11 subject to a claim or a defense that the issuer could assert
12 against the original payee and the instrument does not include
13 such a statement:

14 (1) the instrument has the same effect as if
15 the instrument included such a statement;

16 (2) the issuer may assert against the holder
17 or transferee all claims and defenses that would have been
18 available if the instrument had included such a statement; and

19 (3) the extent to which claims may be
20 asserted against the holder or transferee is determined as if
21 the instrument included such a statement.

22 If an instrument includes or is deemed to include a
23 statement under this subsection, a holder or transferee who is
24 liable under the statement to the issuer, but who is not the
25 seller of the goods or services, shall be entitled to full

1 indemnity from the seller for any liability under the statement
2 incurred by the holder or transferee that results from the
3 issuer's claims or defenses against the seller, plus reasonable
4 attorney fees. The provision in this section for express
5 indemnity does not affect any right of indemnity, subrogation
6 or recovery to which a holder or transferee may be entitled
7 under a contract or other law. This section is not intended to
8 provide a holder or transferee indemnity from the seller with
9 respect to the holder or transferee's direct liability to the
10 issuer for the holder or transferee's own actionable misconduct
11 unrelated to derivative liability under the statement.

12 (f) This section is subject to law other than this
13 article that establishes a different rule for consumer
14 transactions."

15 Section 7. Section 55-3-312 NMSA 1978 (being Laws 1992,
16 Chapter 114, Section 125) is amended to read:

17 "55-3-312. LOST, DESTROYED OR STOLEN CASHIER'S CHECK,
18 TELLER'S CHECK OR CERTIFIED CHECK.--

19 (a) In this section:

20 (1) "check" means a cashier's check, teller's
21 check or certified check;

22 (2) "claimant" means a person who claims the
23 right to receive the amount of a cashier's check, teller's
24 check or certified check that was lost, destroyed or stolen;

25 (3) "declaration of loss" means a statement, SB 74

1 made in a record under penalty of perjury, to the effect that:
2 (i) the declarer lost possession of a check; (ii) the declarer
3 is the drawer or payee of the check, in the case of a certified
4 check, or the remitter or payee of the check, in the case of a
5 cashier's check or teller's check; (iii) the loss of possession
6 was not the result of a transfer by the declarer or a lawful
7 seizure; and (iv) the declarer cannot reasonably obtain
8 possession of the check because the check was destroyed, its
9 whereabouts cannot be determined or it is in the wrongful
10 possession of an unknown person or a person that cannot be
11 found or is not amenable to service of process; and

12 (4) "obligated bank" means the issuer of a
13 cashier's check or teller's check or the acceptor of a
14 certified check.

15 (b) A claimant may assert a claim to the amount of
16 a check by a communication to the obligated bank describing the
17 check with reasonable certainty and requesting payment of the
18 amount of the check, if: (i) the claimant is the drawer or
19 payee of a certified check or the remitter or payee of a
20 cashier's check or teller's check; (ii) the communication
21 contains or is accompanied by a declaration of loss of the
22 claimant with respect to the check; (iii) the communication is
23 received at a time and in a manner affording the bank a
24 reasonable time to act on it before the check is paid; and (iv)
25 the claimant provides reasonable identification if requested by SB 74

1 the obligated bank. Delivery of a declaration of loss is a
2 warranty of the truth of the statements made in the
3 declaration. If a claim is asserted in compliance with this
4 subsection, the following rules apply:

5 (1) the claim becomes enforceable at the
6 later of: (i) the time the claim is asserted; or (ii) the
7 ninetieth day following the date of the check, in the case of a
8 cashier's check or teller's check, or the ninetieth day
9 following the date of the acceptance in the case of a certified
10 check;

11 (2) until the claim becomes enforceable, it
12 has no legal effect and the obligated bank may pay the check
13 or, in the case of a teller's check, may permit the drawee to
14 pay the check. Payment to a person entitled to enforce the
15 check discharges all liability of the obligated bank with
16 respect to the check;

17 (3) if the claim becomes enforceable before
18 the check is presented for payment, the obligated bank is not
19 obliged to pay the check; and

20 (4) when the claim becomes enforceable, the
21 obligated bank becomes obliged to pay the amount of the check
22 to the claimant if payment of the check has not been made to a
23 person entitled to enforce the check. Subject to Section
24 55-4-302 NMSA 1978, payment to the claimant discharges all
25 liability of the obligated bank with respect to the check.

1 (c) If the obligated bank pays the amount of a
2 check to a claimant under Subsection (b)(4) of this section and
3 the check is presented for payment by a person having rights of
4 a holder in due course, the claimant is obliged to: (i) refund
5 the payment to the obligated bank if the check is paid; or (ii)
6 pay the amount of the check to the person having rights of a
7 holder in due course if the check is dishonored.

8 (d) If a claimant has the right to assert a claim
9 under Subsection (b) of this section and is also a person
10 entitled to enforce a cashier's check, teller's check or
11 certified check that is lost, destroyed or stolen, the claimant
12 may assert rights with respect to the check either under this
13 section or Section 55-3-309 NMSA 1978."

14 Section 8. Section 55-3-419 NMSA 1978 (being Laws 1992,
15 Chapter 114, Section 144) is amended to read:

16 "55-3-419. INSTRUMENTS SIGNED FOR ACCOMMODATION.--

17 (a) If an instrument is issued for value given for
18 the benefit of a party to the instrument ("accommodated party")
19 and another party to the instrument ("accommodation party")
20 signs the instrument for the purpose of incurring liability on
21 the instrument without being a direct beneficiary of the value
22 given for the instrument, the instrument is signed by the
23 accommodation party "for accommodation".

24 (b) An accommodation party may sign the instrument
25 as maker, drawer, acceptor or indorser and, subject to

1 Subsection (d) of this section, is obliged to pay the
2 instrument in the capacity in which the accommodation party
3 signs. The obligation of an accommodation party may be
4 enforced notwithstanding any statute of frauds and whether or
5 not the accommodation party receives consideration for the
6 accommodation.

7 (c) A person signing an instrument is presumed to
8 be an accommodation party and there is notice that the
9 instrument is signed for accommodation if the signature is an
10 anomalous indorsement or is accompanied by words indicating
11 that the signer is acting as surety or guarantor with respect
12 to the obligation of another party to the instrument. Except
13 as provided in Section 55-3-605 NMSA 1978, the obligation of an
14 accommodation party to pay the instrument is not affected by
15 the fact that the person enforcing the obligation had notice
16 when the instrument was taken by that person that the
17 accommodation party signed the instrument for accommodation.

18 (d) If the signature of a party to an instrument is
19 accompanied by words indicating unambiguously that the party is
20 guaranteeing collection rather than payment of the obligation
21 of another party to the instrument, the signer is obliged to
22 pay the amount due on the instrument to a person entitled to
23 enforce the instrument only if: (i) execution of judgment
24 against the other party has been returned unsatisfied; (ii) the
25 other party is insolvent or in an insolvency proceeding; (iii) SB 74

1 the other party cannot be served with process; or (iv) it is
2 otherwise apparent that payment cannot be obtained from the
3 other party.

4 (e) If the signature of a party to an instrument is
5 accompanied by words indicating that the party guarantees
6 payment or the signer signs the instrument as an accommodation
7 party in some other manner that does not unambiguously indicate
8 an intention to guarantee collection rather than payment, the
9 signer is obliged to pay the amount due on the instrument to a
10 person entitled to enforce the instrument in the same
11 circumstances as the accommodated party would be obliged,
12 without prior resort to the accommodated party by the person
13 entitled to enforce the instrument.

14 (f) An accommodation party that pays the instrument
15 is entitled to reimbursement from the accommodated party and is
16 entitled to enforce the instrument against the accommodated
17 party. In proper circumstances, an accommodation party may
18 obtain relief that requires the accommodated party to perform
19 its obligations on the instrument. An accommodated party that
20 pays the instrument has no right of recourse against, and is
21 not entitled to contribution from, an accommodation party."

22 Section 9. Section 55-3-602 NMSA 1978 (being Laws 1992,
23 Chapter 114, Section 152) is amended to read:

24 "55-3-602. PAYMENT.--

25 (a) Subject to Subsection (e) of this section, an

1 instrument is paid to the extent payment is made by or on
2 behalf of a party obliged to pay the instrument and to a person
3 entitled to enforce the instrument. To the extent of the
4 payment, the obligation of the party obliged to pay the
5 instrument is discharged, even though payment is made with
6 knowledge of a claim to the instrument under Section 55-3-306
7 NMSA 1978 by another person.

8 (b) Subject to Subsection (e) of this section, a
9 note is paid to the extent payment is made by or on behalf of a
10 party obliged to pay the note to a person that formerly was
11 entitled to enforce the note only if at the time of the payment
12 the party obliged to pay has not received adequate notification
13 that the note has been transferred and that payment is to be
14 made to the transferee. A notification is adequate only if it
15 is signed by the transferor or the transferee, reasonably
16 identifies the transferred note and provides an address at
17 which payments subsequently are to be made. Upon request, a
18 transferee shall seasonably furnish reasonable proof that the
19 note has been transferred. Unless the transferee complies with
20 the request, a payment to the person that formerly was entitled
21 to enforce the note is effective for purposes of Subsection (c)
22 of this section even if the party obliged to pay the note has
23 received a notification pursuant to this subsection.

24 (c) Subject to Subsection (e) of this section, to
25 the extent of a payment pursuant to Subsections (a) and (b) of

1 this section, the obligation of the party obliged to pay the
2 instrument is discharged, even though payment is made with
3 knowledge of a claim to the instrument pursuant to Section
4 55-3-306 NMSA 1978 by another person.

5 (d) Subject to Subsection (e) of this section, a
6 transferee, or any party that has acquired rights in the
7 instrument directly or indirectly from a transferee, including
8 any such party that has rights as a holder in due course, is
9 deemed to have notice of any payment that is made pursuant to
10 Subsection (b) of this section after the date that the note is
11 transferred to the transferee, but before the party obliged to
12 pay the note receives adequate notification of the transfer.

13 (e) The obligation of a party to pay the instrument
14 is not discharged pursuant to Subsections (a) through (d) of
15 this section if:

16 (1) a claim to the instrument under Section
17 55-3-306 NMSA 1978 is enforceable against the party receiving
18 payment and: (i) payment is made with knowledge by the payor
19 that payment is prohibited by injunction or similar process of
20 a court of competent jurisdiction; or (ii) in the case of an
21 instrument other than a cashier's check, teller's check or
22 certified check, the party making payment accepted, from the
23 person having a claim to the instrument, indemnity against loss
24 resulting from refusal to pay the person entitled to enforce
25 the instrument; or

1 (2) the person making payment knows that the
2 instrument is a stolen instrument and pays a person it knows is
3 in wrongful possession of the instrument.

4 (f) As used in this section, "signed" with respect
5 to a record that is not a writing includes the attachment to or
6 logical association with the record of an electronic symbol,
7 sound or process with the present intent to adopt or accept the
8 record."

9 Section 10. Section 55-3-604 NMSA 1978 (being Laws 1992,
10 Chapter 114, Section 154) is amended to read:

11 "55-3-604. DISCHARGE BY CANCELLATION OR RENUNCIATION.--

12 (a) A person entitled to enforce an instrument,
13 with or without consideration, may discharge the obligation of
14 a party to pay the instrument: (i) by an intentional voluntary
15 act, such as surrender of the instrument to the party;
16 destruction, mutilation or cancellation of the instrument;
17 cancellation or striking out of the party's signature; or the
18 addition of words to the instrument indicating discharge; or
19 (ii) by agreeing not to sue or otherwise renouncing rights
20 against the party by a signed record.

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

24 (c) As used in this section, "signed" with respect
25 to a record that is not a writing includes the attachment to or

1 logical association with the record of an electronic symbol,
2 sound or process with the present intent to adopt or accept the
3 record."

4 Section 11. Section 55-3-605 NMSA 1978 (being Laws 1992,
5 Chapter 114, Section 155) is amended to read:

6 "55-3-605. DISCHARGE OF SECONDARY OBLIGORS.--

7 (a) If a person entitled to enforce an instrument
8 releases the obligation of a principal obligor in whole or in
9 part and another party to the instrument is a secondary obligor
10 with respect to the obligation of that principal obligor, the
11 following rules apply:

12 (1) any obligations of the principal obligor
13 to the secondary obligor with respect to any previous payment
14 by the secondary obligor are not affected. Unless the terms of
15 the release preserve the secondary obligor's recourse, the
16 principal obligor is discharged, to the extent of the release,
17 from any other duties to the secondary obligor pursuant to this
18 article;

19 (2) unless the terms of the release provide
20 that the person entitled to enforce the instrument retains the
21 right to enforce the instrument against the secondary obligor,
22 the secondary obligor is discharged to the same extent as the
23 principal obligor from any unperformed portion of its
24 obligation on the instrument. If the instrument is a check and
25 the obligation of the secondary obligor is based on an

1 indorsement of the check, the secondary obligor is discharged
2 without regard to the language or circumstances of the
3 discharge or other release; and

4 (3) if the secondary obligor is not
5 discharged pursuant to Paragraph (2) of this subsection, the
6 secondary obligor is discharged to the extent of the value of
7 the consideration for the release and to the extent that the
8 release would otherwise cause the secondary obligor a loss.

9 (b) If a person entitled to enforce an instrument
10 grants a principal obligor an extension of the time at which
11 one or more payments are due on the instrument and another
12 party to the instrument is a secondary obligor with respect to
13 the obligation of that principal obligor, the following rules
14 apply:

15 (1) any obligations of the principal obligor
16 to the secondary obligor with respect to any previous payment
17 by the secondary obligor are not affected. Unless the terms of
18 the extension preserve the secondary obligor's recourse, the
19 extension correspondingly extends the time for performance of
20 any other duties owed to the secondary obligor by the principal
21 obligor pursuant to this article;

22 (2) the secondary obligor is discharged to
23 the extent that the extension would otherwise cause the
24 secondary obligor a loss; and

25 (3) to the extent that the secondary obligor

1 is not discharged pursuant to Paragraph (2) of this subsection,
2 the secondary obligor either may perform its obligations to a
3 person entitled to enforce the instrument as if the time for
4 payment had not been extended or, unless the terms of the
5 extension provide that the person entitled to enforce the
6 instrument retains the right to enforce the instrument against
7 the secondary obligor as if the time for payment had not been
8 extended, may treat the time for performance of its obligations
9 as having been extended correspondingly.

10 (c) If a person entitled to enforce an instrument
11 agrees, with or without consideration, to a modification of the
12 obligation of a principal obligor, other than a complete or a
13 partial release or an extension of the due date, and another
14 party to the instrument is a secondary obligor with respect to
15 the obligation of that principal obligor, the following rules
16 apply:

17 (1) any obligations of the principal obligor
18 to the secondary obligor with respect to any previous payment
19 by the secondary obligor are not affected. The modification
20 correspondingly modifies any other duties owed to the secondary
21 obligor by the principal obligor pursuant to this article;

22 (2) the secondary obligor is discharged from
23 any unperformed portion of its obligation to the extent that
24 the modification would otherwise cause the secondary obligor a
25 loss; and

1 (3) to the extent that the secondary obligor
2 is not discharged pursuant to Paragraph (2) of this subsection,
3 the secondary obligor may satisfy its obligation on the
4 instrument as if the modification had not occurred or treat its
5 obligation on the instrument as having been modified
6 correspondingly.

7 (d) If the obligation of a principal obligor is
8 secured by an interest in collateral, if another party to the
9 instrument is a secondary obligor with respect to that
10 obligation, and if a person entitled to enforce the instrument
11 impairs the value of the interest in collateral, the obligation
12 of the secondary obligor is discharged to the extent of the
13 impairment. The value of an interest in collateral is impaired
14 to the extent the value of the interest is reduced to an amount
15 less than the amount of the recourse of the secondary obligor
16 or the reduction in value of the interest causes an increase in
17 the amount by which the amount of the recourse exceeds the
18 value of the interest. For purposes of this subsection,
19 "impairing the value of an interest in collateral" includes
20 failure to obtain or maintain perfection or recordation of the
21 interest in collateral; release of collateral without
22 substitution of collateral of equal value or equivalent
23 reduction of the underlying obligation; failure to perform a
24 duty to preserve the value of collateral owed, pursuant to
25 Article 9 of the Uniform Commercial Code or other law, to a

1 debtor or other person secondarily liable; and failure to
2 comply with applicable law in disposing of or otherwise
3 enforcing the interest in collateral.

4 (e) A secondary obligor is not discharged pursuant
5 to Paragraph (3) of Subsection (a) of this section or
6 Subsection (b), (c) or (d) of this section unless the person
7 entitled to enforce the instrument knows that the person is a
8 secondary obligor or has notice pursuant to Subsection (c) of
9 Section 55-3-419 NMSA 1978 that the instrument was signed for
10 accommodation.

11 (f) A secondary obligor is not discharged pursuant
12 to this section if the secondary obligor consents to the event
13 or conduct that is the basis of the discharge or if the
14 instrument or a separate agreement of the party provides for
15 waiver of discharge pursuant to this section specifically or by
16 general language indicating that parties waive defenses based
17 on suretyship or impairment of collateral. Unless the
18 circumstances indicate otherwise, consent by the principal
19 obligor to an act that would lead to a discharge pursuant to
20 this section constitutes consent to that act by the secondary
21 obligor if the secondary obligor controls the principal obligor
22 or deals with the person entitled to enforce the instrument on
23 behalf of the principal obligor.

24 (g) A release or extension preserves a secondary
25 obligor's recourse if the terms of the release or extension

1 provide that:

2 (1) the person entitled to enforce the
3 instrument retains the right to enforce the instrument against
4 the secondary obligor; and

5 (2) the recourse of the secondary obligor
6 continues as if the release or extension had not been granted.

7 (h) Except as otherwise provided in Subsection (i)
8 of this section, a secondary obligor asserting discharge
9 pursuant to this section has the burden of persuasion both with
10 respect to the occurrence of the acts alleged to harm the
11 secondary obligor and loss or prejudice caused by those acts.

12 (i) If the secondary obligor demonstrates prejudice
13 caused by an impairment of its recourse and the circumstances
14 of the case indicate that the amount of loss is not reasonably
15 susceptible of calculation or requires proof of facts that are
16 not ascertainable, it is presumed that the act impairing
17 recourse caused a loss or impairment equal to the liability of
18 the secondary obligor on the instrument. In that event, the
19 burden of persuasion as to any lesser amount of the loss is on
20 the person entitled to enforce the instrument."

21 Section 12. Section 55-4-104 NMSA 1978 (being Laws 1961,
22 Chapter 96, Section 4-104, as amended) is amended to read:

23 "55-4-104. DEFINITIONS AND INDEX OF DEFINITIONS.--

24 (a) In Chapter 55, Article 4 NMSA 1978, unless the
25 context otherwise requires:

1 (1) "account" means any deposit or credit
2 account with a bank, including a demand, time, savings,
3 passbook, share draft or like account, other than an account
4 evidenced by a certificate of deposit;

5 (2) "afternoon" means the period of a day
6 between noon and midnight;

7 (3) "banking day" means the part of a day on
8 which a bank is open to the public for carrying on
9 substantially all of its banking functions;

10 (4) "clearing house" means an association of
11 banks or other payors regularly clearing items;

12 (5) "customer" means a person having an
13 account with a bank or for whom a bank has agreed to collect
14 items, including a bank that maintains an account at another
15 bank;

16 (6) "documentary draft" means a draft to be
17 presented for acceptance or payment if specified documents,
18 certificated securities pursuant to Section 55-8-102 NMSA 1978
19 or instructions for uncertificated securities pursuant to
20 Section 55-8-102 NMSA 1978 or other certificates, statements or
21 the like are to be received by the drawee or other payor before
22 acceptance or payment of the drafts;

23 (7) "draft" means a draft as defined in
24 Section 55-3-104 NMSA 1978 or an item, other than an
25 instrument, that is an order;

1 (8) "drawee" means a person ordered in a
2 draft to make payment;

3 (9) "item" means an instrument or a promise
4 or order to pay money handled by a bank for collection or
5 payment. The term does not include a payment order governed by
6 Chapter 55, Article 4A NMSA 1978 or a credit or debit card
7 slip;

8 (10) "midnight deadline" with respect to a
9 bank is midnight on its next banking day following the banking
10 day on which it receives the relevant item or notice or from
11 which the time for taking action commences to run, whichever is
12 later;

13 (11) "settle" means to pay in cash, by
14 "clearing-house" settlement, in a charge or credit or by
15 remittance or otherwise as agreed. A settlement may be either
16 provisional or final; and

17 (12) "suspends payments" with respect to a
18 bank means that it has been closed by order of the supervisory
19 authorities, that a public officer has been appointed to take
20 it over or that it ceases or refuses to make payments in the
21 ordinary course of business.

22 (b) Other definitions applying to Chapter 55,
23 Article 4 NMSA 1978 and the sections in which they appear are:

24 "agreement for

25 electronic presentment" Section 55-4-110 NMSA 1978;

1 "collecting bank" Section 55-4-105 NMSA 1978;
2 "depository bank" Section 55-4-105 NMSA 1978;
3 "intermediary bank" Section 55-4-105 NMSA 1978;
4 "payor bank" Section 55-4-105 NMSA 1978;
5 "presenting bank" Section 55-4-105 NMSA 1978;

6 and

7 "presentment notice" Section 55-4-110 NMSA 1978.

8 (c) "Control", as provided in Section 55-7-106 NMSA
9 1978, and the following definitions in other articles apply to
10 Chapter 55, Article 4 NMSA 1978:

11 "acceptance" Section 55-3-409 NMSA 1978;
12 "alteration" Section 55-3-407 NMSA 1978;
13 "cashier's check" Section 55-3-104 NMSA 1978;
14 "certificate of
15 deposit" Section 55-3-104 NMSA 1978;
16 "certified check" Section 55-3-409 NMSA 1978;
17 "check" Section 55-3-104 NMSA 1978;
18 "holder in due
19 course" Section 55-3-302 NMSA 1978;
20 "instrument" Section 55-3-104 NMSA 1978;
21 "notice of dishonor" Section 55-3-503 NMSA 1978;
22 "order" Section 55-3-103 NMSA 1978;
23 "ordinary care" Section 55-3-103 NMSA 1978;
24 "person entitled
25 to enforce" Section 55-3-301 NMSA 1978;

1 "presentment" Section 55-3-501 NMSA 1978;
2 "promise" Section 55-3-103 NMSA 1978;
3 "prove" Section 55-3-103 NMSA 1978;
4 "teller's check" Section 55-3-104 NMSA 1978;
5 and
6 "unauthorized
7 signature" Section 55-3-403 NMSA 1978.

8 (d) In addition, Chapter 55, Article 1 NMSA 1978
9 contains general definitions and principles of construction and
10 interpretation applicable throughout this article."

11 Section 13. Section 55-4-105 NMSA 1978 (being Laws 1961,
12 Chapter 96, Section 4-105, as amended) is amended to read:

13 "55-4-105. DEFINITIONS OF TYPES OF BANKS.--In this
14 article:

15 (1) [Reserved];

16 (2) "depository bank" means the first bank to take
17 an item even though it is also the payor bank, unless the item
18 is presented for immediate payment over the counter;

19 (3) "payor bank" means a bank that is the drawee of
20 a draft;

21 (4) "intermediary bank" means a bank to which an
22 item is transferred in course of collection, except the
23 depository or payor bank;

24 (5) "collecting bank" means a bank handling an item
25 for collection except the payor bank; and

1 (6) "presenting bank" means a bank presenting an
2 item, except a payor bank."

3 Section 14. Section 55-4-212 NMSA 1978 (being Laws 1961,
4 Chapter 96, Section 4-210, as amended) is amended to read:

5 "55-4-212. PRESENTMENT BY NOTICE OF ITEM NOT PAYABLE BY,
6 THROUGH OR AT A BANK--LIABILITY OF DRAWER OR INDORSER.--

7 (a) Unless otherwise instructed, a collecting bank
8 may present an item not payable by, through or at a bank by
9 sending to the party to accept or pay a record providing notice
10 that the bank holds the item for acceptance or payment. The
11 notice must be sent in time to be received on or before the day
12 when presentment is due, and the bank must meet any requirement
13 of the party to accept or pay under Section 55-3-501 NMSA 1978
14 by the close of the bank's next banking day after it knows of
15 the requirement.

16 (b) If presentment is made by notice and payment,
17 acceptance or request for compliance with a requirement under
18 Section 55-3-501 NMSA 1978 is not received by the close of
19 business on the day after maturity, or, in the case of demand
20 items, by the close of business on the third banking day after
21 notice was sent, the presenting bank may treat the item as
22 dishonored and charge any drawer or indorser by sending it
23 notice of the facts."

24 Section 15. Section 55-4-301 NMSA 1978 (being Laws 1961,
25 Chapter 96, Section 4-301, as amended) is amended to read:

1 "55-4-301. DEFERRED POSTING--RECOVERY OF PAYMENT BY
2 RETURN OF ITEMS--TIME OF DISHONOR--RETURN OF ITEMS BY PAYOR
3 BANK.--

4 (a) If a payor bank settles for a demand item other
5 than a documentary draft presented otherwise than for immediate
6 payment over the counter before midnight of the banking day of
7 receipt, the payor bank may revoke the settlement and recover
8 the settlement if, before it has made final payment and before
9 its midnight deadline, it:

10 (1) returns the item;

11 (2) returns an image of the item, if the party
12 to which the return is made has entered into an agreement to
13 accept an image as a return of the item and the image is
14 returned in accordance with that agreement; or

15 (3) sends a record providing notice of
16 dishonor or nonpayment if the item is unavailable for return.

17 (b) If a demand item is received by a payor bank for
18 credit on its books, it may return the item or send notice of
19 dishonor and may revoke any credit given or recover the amount
20 thereof withdrawn by its customer if it acts within the time
21 limit and in the manner specified in Subsection (a) of this
22 section.

23 (c) Unless previous notice of dishonor has been
24 sent, an item is dishonored at the time when, for purposes of
25 dishonor, it is returned or notice is sent in accordance with

1 this section.

2 (d) An item is returned:

3 (1) as to an item presented through a clearing
4 house, when it is delivered to the presenting or last collecting
5 bank or to the clearing house or is sent or delivered in
6 accordance with clearing-house rules; or

7 (2) in all other cases, when it is sent or
8 delivered to the bank's customer or transferor or pursuant to
9 the customer's instructions."

10 Section 16. Section 55-4-403 NMSA 1978 (being Laws 1961,
11 Chapter 96, Section 4-403, as amended) is amended to read:

12 "55-4-403. CUSTOMER'S RIGHT TO STOP PAYMENT--BURDEN OF
13 PROOF OF LOSS.--

14 (a) A customer or any person authorized to draw on
15 an account if there is more than one person may stop payment of
16 any item drawn on the customer's account or close the account by
17 an order to the bank describing the item or account with
18 reasonable certainty received at a time and in a manner that
19 affords the bank a reasonable opportunity to act on it before
20 any action by the bank with respect to the item described in
21 Section 55-4-303 NMSA 1978. If the signature of more than one
22 person is required to draw on an account, any of these persons
23 may stop payment or close the account.

24 (b) A stop-payment order is effective for six
25 months, but it lapses after fourteen calendar days if the

1 original order was oral and was not confirmed in a record within
2 that period. A stop-payment order may be renewed for additional
3 six-month periods by a record given to the bank within a period
4 during which the stop-payment order is effective.

5 (c) The burden of establishing the fact and amount
6 of loss resulting from the payment of an item contrary to a
7 stop-payment order or order to close an account is on the
8 customer. The loss from payment of an item contrary to a
9 stop-payment order may include damages for dishonor of
10 subsequent items under Section 55-4-402 NMSA 1978."

11 Section 17. Section 55-4A-105 NMSA 1978 (being Laws 1992,
12 Chapter 114, Section 201, as amended) is amended to read:

13 "55-4A-105. OTHER DEFINITIONS.--

14 (a) In this article:

15 (1) "authorized account" means a deposit
16 account of a customer in a bank designated by the customer as a
17 source of payment of payment orders issued by the customer to
18 the bank; if a customer does not so designate an account, any
19 account of the customer is an authorized account if payment of a
20 payment order from that account is not inconsistent with a
21 restriction on the use of that account;

22 (2) "bank" means a person engaged in the
23 business of banking and includes a savings bank, savings and
24 loan association, credit union and trust company; a branch or
25 separate office of a bank is a separate bank for purposes of

1 this article;

2 (3) "customer" means a person, including a
3 bank, having an account with a bank or from whom a bank has
4 agreed to receive payment orders;

5 (4) "funds-transfer business day" of a
6 receiving bank means the part of a day during which the
7 receiving bank is open for the receipt, processing and
8 transmittal of payment orders and cancellations and amendments
9 of payment orders;

10 (5) "funds-transfer system" means a wire
11 transfer network, automated clearing house or other
12 communication system of a clearing house or other association of
13 banks through which a payment order by a bank may be transmitted
14 to the bank to which the order is addressed;

15 (6) [Reserved]; and

16 (7) "prove" with respect to a fact means to
17 meet the burden of establishing the fact (Paragraph (8) of
18 Subsection (b) of Section 55-1-201 NMSA 1978).

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

21 "acceptance" Section 55-4A-209 NMSA 1978;

22 "beneficiary" Section 55-4A-103 NMSA 1978;

23 "beneficiary's bank" Section 55-4A-103 NMSA 1978;

24 "executed" Section 55-4A-301 NMSA 1978;

25 "execution date" Section 55-4A-301 NMSA 1978;

1 "funds transfer" Section 55-4A-104 NMSA 1978;
2 "funds-transfer system
3 rule" Section 55-4A-501 NMSA 1978;
4 "intermediary bank" Section 55-4A-104 NMSA 1978;
5 "originator" Section 55-4A-104 NMSA 1978;
6 "originator's bank" Section 55-4A-104 NMSA 1978;
7 "payment by beneficiary's
8 bank to beneficiary" Section 55-4A-405 NMSA 1978;
9 "payment by originator to
10 beneficiary" Section 55-4A-406 NMSA 1978;
11 "payment by sender to
12 receiving bank" Section 55-4A-403 NMSA 1978;
13 "payment date" Section 55-4A-401 NMSA 1978;
14 "payment order" Section 55-4A-103 NMSA 1978;
15 "receiving bank" Section 55-4A-103 NMSA 1978;
16 "security procedure" Section 55-4A-201 NMSA 1978;
17 and
18 "sender" Section 55-4A-103 NMSA 1978.

19 (c) The following definitions in Chapter 55, Article
20 4 NMSA 1978 apply to this article:

21 "clearing house" Section 55-4-104 NMSA 1978;
22 "item" Section 55-4-104 NMSA 1978;
23 and
24 "suspends payments" Section 55-4-104 NMSA 1978.

25 (d) In addition, Chapter 55, Article 1 NMSA 1978

1 contains general definitions and principles of construction
2 and interpretation applicable throughout this article."

3 Section 18. REPEAL.--Sections 48-7-2 and 48-7-3 NMSA
4 1978 (being Laws 1927, Chapter 43, Sections 1 and 2) are
5 repealed.

6 Section 19. EFFECTIVE DATE.--The effective date of the
7 provisions of this act is January 1, 2010. _____

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