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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(16) "document of title" means a record:

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

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

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

(18) "fungible goods" means:

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

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

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

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

(21) "holder" means:

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

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

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

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

(23) "insolvent" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

(34) "right" includes remedy;

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

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

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

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

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

(A) execute or adopt a tangible symbol;

or

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

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

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

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

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

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

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

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

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

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

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

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

(3) by accepting delivery under a preexisting contract for purchase; or
(4) in return for any consideration sufficient to support a simple contract."

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

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

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

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

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

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

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

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

(4) Section 55-4A-507 NMSA 1978;
(5) Section 55-5-116 NMSA 1978;
(6) Section 55-8-110 NMSA 1978;
(7) Sections 55-9-301 through 55-9-307 NMSA 1978; and
(8) Section 55-12-107 NMSA 1978."

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

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

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

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

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

(2) In a hybrid transaction:

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

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

(3) This article does not:

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

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

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

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

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

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

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

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

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

(a) the provision of services;

(b) a lease of other goods; or

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

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

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

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

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

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

(a) if the goods are to be specially manufactured for the buyer and are not suitable for sale to
others in the ordinary course of the seller's business and
the seller, before notice of repudiation is received and
under circumstances that reasonably indicate that the goods
are for the buyer, has made either a substantial beginning of
their manufacture or commitments for their procurement; or

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

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

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

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

    (a) by course of performance, course of dealing or
usage of trade (Section 55-1-303 NMSA 1978); and
(b) by evidence of consistent additional terms unless the court finds the record to have been intended also as a complete and exclusive statement of the terms of the agreement."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) In a hybrid lease:

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

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

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

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

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

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

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

(1) In this article unless the context otherwise requires:
(a) "buyer in ordinary course of business" means a person who, in good faith and without knowledge that the sale to that person is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind, but does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes acquiring goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt;

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

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

(d) "conforming" goods or performance under a lease contract means goods or performance that are in
accordance 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 makes to a lessee who is an individual and who takes under the lease primarily for a personal, family or household purpose;

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

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

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

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

(iii) one of the following occurs:

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

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

(C) the lessee, before signing
the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or 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 contract by which the lessor acquired the goods or the right to possession and use of the goods; or

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

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

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

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

(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 contract contains a clause "each delivery is a
separate lease" or its equivalent;

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

(k) "lease agreement" means the bargain,
with respect to the lease, of the lessor and the lessee in
fact as found in their language or by implication from other circumstances, including course of dealing or usage or trade or course of performance as provided in this article; unless the context clearly indicates otherwise, the term includes a sublease agreement;

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

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

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

(o) "lessee in ordinary course of business" means a person who in good faith and without knowledge that the lease to that person is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, leases in ordinary course from a person in the business of selling or leasing goods of that kind, but does not include a pawnbroker; "leasing" may be for cash or by exchange of other property or on secured or unsecured credit and includes acquiring goods or documents of title
under a preexisting lease contract but does not include a
transfer in bulk or as security for or in total or partial
satisfaction of a money debt;

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

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

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

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

(t) "merchant lessee" means a lessee that is
a 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,
discounted to the date certain. The discount is determined
by the interest rate specified by the parties if the rate was
not manifestly unreasonable at the time the transaction was 
entered into; otherwise, the discount is determined by a 
commercially reasonable rate that takes into account the 
facts and circumstances of each case at the time the 
transaction was entered into;

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

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

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

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

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

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

"accessions" .................. Section 
55-2A-310 NMSA 1978;

"construction mortgage"................. Section 
55-2A-309 NMSA 1978;
"encumbrance". . . . . . . . . . Section 55-2A-309 NMSA 1978;
"fixtures". . . . . . . . . . . . Section 55-2A-309 NMSA 1978;
"fixture filing". . . . . . . . . Section 55-2A-309 NMSA 1978; and

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

"account". . . . . . . . . . . Paragraph (2) of Subsection (a) of Section 55-9-102 NMSA 1978;
"between merchants". . . . . Subsection (3) of Section 55-2-104 NMSA 1978;
"buyer". . . . . . . . . . . Paragraph (a) of Subsection (1) of Section 55-2-103 NMSA 1978;
"chattel paper". . . . . . . . . Paragraph (11) of Subsection (a) of Section 55-9-102 NMSA 1978;
"consumer goods". . . . . . . . Paragraph (23) of Subsection (a) of Section 55-9-102 NMSA 1978;
"document". . . . . . . . . . Paragraph (30) of Subsection (a) of Section 55-9-102 NMSA 1978;
"entrusting". . . . . . . . . . Subsection (3) of Section 55-2-403 NMSA 1978;
"general intangible". . . . . Paragraph (42)
of Subsection (a) of Section 55-9-102 NMSA 1978;

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

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

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

"pursuant to commitment". . . . . . . . . . . . . . . . . . . . Paragraph (69)
of Subsection (a) of Section 55-9-102 NMSA 1978;

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

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

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

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

"seller". . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . Paragraph (d)
of Subsection (1) of Section 55-2-103 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 14. Section 55-2A-107 NMSA 1978 (being Laws 1992, Chapter 114, Section 14) is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

   (a) if there is a record signed by the party against whom enforcement is sought or by that party's authorized agent specifying the lease term, the term so specified;
(b) if the party against whom enforcement is sought admits in that party's pleading, testimony, or otherwise in court a lease term, the term so admitted; or
(c) a reasonable lease term."

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

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

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

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

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

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

SECTION 18. Section 55-2A-205 NMSA 1978 (being Laws
1992, Chapter 114, Section 21) is amended to read:
"55-2A-205. FIRM OFFERS.--An offer by a merchant to
lease goods to or from another person in a signed record that
by its terms gives assurance it will be held open is not
revocable, for lack of consideration, during the time stated
or, if no time is stated, for a reasonable time, but in no
event may the period of irrevocability exceed three months.
Any such term of assurance on a form supplied by the offeree
must be separately signed by the offeror."

SECTION 19. Section 55-2A-208 NMSA 1978 (being Laws
1992, Chapter 114, Section 24) is amended to read:
"55-2A-208. MODIFICATION, RESCISSION AND WAIVER.--
(1) An agreement modifying a lease contract needs
no consideration to be binding.
(2) A signed lease agreement that excludes
modification or rescission except by a signed record may not
be otherwise modified or rescinded, but, except as between
merchants, such a requirement on a form supplied by a
merchant must be separately signed by the other party.
(3) Although an attempt at modification or
rescission does not satisfy the requirements of Subsection
(2) of this section, it may operate as a waiver.
(4) A party who has made a waiver affecting an 
executory portion of a lease contract may retract the waiver 
by reasonable notification received by the other party that 
strict performance will be required of any term waived, 
unless the retraction would be unjust in view of a material 
change of position in reliance on the waiver."

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

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

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

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

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

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

(b) "Instrument" means a negotiable instrument.

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

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

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

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

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

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

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

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

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

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

(a) "Issue" means:

(1) the first delivery of an instrument by the maker or drawer, whether to a holder or nonholder, for the purpose of giving rights on the instrument to any person; or
(2) if agreed by the payee, the first
transmission by the drawer to the payee of an image of an
item and information derived from the item that enables the
depository bank to collect the item by transferring or
presenting under federal law an electronic check.

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

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

SECTION 22. Section 55-3-309 NMSA 1978 (being Laws
1992, Chapter 114, Section 122) is amended to read:
"55-3-309. ENFORCEMENT OF LOST, DESTROYED OR STOLEN
INSTRUMENT.--

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

(1) the person seeking to enforce the
instrument:

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

(B) has directly or indirectly acquired
ownership of the instrument from a person who was entitled to
enforce the instrument when loss of possession occurred;
    (2) the loss of possession was not the result of a transfer by the person or a lawful seizure; and
    (3) the person cannot reasonably obtain possession of the instrument because the instrument was destroyed, its whereabouts cannot be determined or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

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

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

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

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

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

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

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

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

(a) In this article:

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

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

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

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

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

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

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

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

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

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

"55-4A-201. SECURITY PROCEDURE.--"Security procedure" means a procedure established by agreement of a customer and a receiving bank for the purpose of (i) verifying that a payment order or communication amending or canceling a payment order is that of the customer or (ii) detecting error in the transmission or the content of the payment order or communication. A security procedure may impose an obligation on the receiving bank or the customer and may require the use of algorithms or other codes, identifying words, numbers, symbols, sounds, biometrics, encryption, callback procedures or similar security devices. Comparison of a signature on a payment order or communication with an authorized specimen signature of the customer or requiring a payment order to be sent from a known email address, internet protocol address or telephone number is not by itself a security procedure."
SECTION 27. Section 55-4A-202 NMSA 1978 (being Laws 1992, Chapter 114, Section 206) is amended to read:

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

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

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

(c) Commercial reasonableness of a security
procedure is a question of law to be determined by considering the wishes of the customer expressed to the bank, the circumstances of the customer known to the bank, including the size, type and frequency of payment orders normally issued by the customer to the bank, alternative security procedures offered to the customer and security procedures in general use by customers and receiving banks similarly situated. A security procedure is deemed to be commercially reasonable if (i) the security procedure was chosen by the customer after the bank offered, and the customer refused, a security procedure that was commercially reasonable for that customer and (ii) the customer expressly agreed in a record to be bound by any payment order, whether or not authorized, issued in its name and accepted by the bank in compliance with the bank's obligations under the security procedure chosen by the customer.

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Except as otherwise provided in
Subsection (c) of this section, if the beneficiary's bank
does not know that the name and number refer to different
persons, it may rely on the number as the proper
identification of the beneficiary of the order. The
beneficiary's bank need not determine whether the name and
number refer to the same person.
(2) If the beneficiary's bank pays the person identified by name or knows that the name and number identify different persons, no person has rights as beneficiary except the person paid by the beneficiary's bank if that person was entitled to receive payment from the originator of the funds transfer. If no person has rights as beneficiary, acceptance of the order cannot occur.

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

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

(2) If the originator is not a bank and proves that the person identified by number was not entitled to receive payment from the originator, the originator is not obliged to pay its order unless the originator's bank proves that the originator, before acceptance of the originator's order, had notice that payment of a payment order issued by the originator might be made by the beneficiary's bank on the basis of an identifying or bank account number even if it identifies a person different from the named beneficiary. Proof of notice may be made by any admissible evidence. The
originator's bank satisfies the burden of proof if it proves that the originator, before the payment order was accepted, signed a record stating the information to which the notice relates.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) This subsection applies if a receiving bank other than the beneficiary's bank fails to execute a payment order despite the existence on the execution date of a withdrawable credit balance in an authorized account of the sender sufficient to cover the order. If the sender does not receive notice of rejection of the order on the execution date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order for the number of days elapsing
after the execution date to the earlier of the day the order is canceled pursuant to Subsection (d) of Section 55-4A-211 NMSA 1978 or the day the sender receives notice or learns that the order was not executed, counting the final day of the period as an elapsed day. If the withdrawable credit balance during that period falls below the amount of the order, the amount of interest is reduced accordingly.

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

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

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

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

(a) A communication of the sender of a payment order canceling or amending the order may be transmitted to the receiving bank orally or in a record. If a security procedure is in effect between the sender and the receiving bank, the communication is not effective to cancel or amend the order unless the communication is verified pursuant to the security procedure or the bank agrees to the cancellation or amendment.
(b) Subject to Subsection (a) of this section, a communication by the sender canceling or amending a payment order is effective to cancel or amend the order if notice of the communication is received at a time and in a manner affording the receiving bank a reasonable opportunity to act on the communication before the bank accepts the payment order.

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

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

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

HB 90
Page 52
originator or (iii) that orders payment in an amount greater than the amount the beneficiary was entitled to receive from the originator. If the payment order is canceled or amended, the beneficiary's bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

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

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

(f) Unless otherwise provided in an agreement of the parties or in a funds-transfer system rule, if the receiving bank, after accepting a payment order, agrees to cancellation or amendment of the order by the sender or is bound by a funds-transfer system rule allowing cancellation or amendment without the bank's agreement, the sender, whether or not cancellation or amendment is effective, is liable to the bank for any loss and expenses, including
reasonable attorney fees, incurred by the bank as a result of
the cancellation or amendment or attempted cancellation or
amendment.

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

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

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

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

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

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

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

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

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

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

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

"55-5-104. FORMAL REQUIREMENTS.--A letter of credit, confirmation, advice, transfer, amendment or cancellation may be issued in any form that is a signed record."

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

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

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

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

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

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

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

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

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

SECTION 36. Section 55-7-102 NMSA 1978 (being Laws
2005, Chapter 144, Section 52) is amended to read:
"55-7-102. DEFINITIONS AND INDEX OF DEFINITIONS.--

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

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

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

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

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

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

(6) Reserved;

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

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

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

   (10) Reserved;

   (11) Reserved;

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

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

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

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

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

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

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

SECTION 37. Section 55-7-106 NMSA 1978 (being Laws
2005, Chapter 144, Section 56) is amended to read:
"55-7-106. CONTROL OF ELECTRONIC DOCUMENT OF TITLE.--

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

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

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

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

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

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

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

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

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

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

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

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

(2) enables the person readily to identify itself in any way, including by name, identifying number, cryptographic key, office or account number, as the person to which each authoritative electronic copy was issued or transferred; and

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

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

(B) transfer control of each

authoritative electronic copy.

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

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

(2) the power is shared with another person.

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

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

(2) the other person:

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

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

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

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

(1) has control of the document and

acknowledges that it has control on behalf of the person; or

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

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

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

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

"55-8-102. DEFINITIONS.--

(a) In this article:

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

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

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

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

(5) "clearing corporation" means:
   (i) a person that is registered as a "clearing agency" under the federal securities laws;
   (ii) a federal reserve bank; or
   (iii) any other person that provides clearance or settlement services with respect to financial assets that would require it to register as a clearing agency under the federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including promulgation of rules, are subject to regulation by a federal or state governmental authority;

(6) "communicate" means to:
   (i) send a signed record; or
(ii) transmit information by any mechanism agreed upon by the persons transmitting and receiving the information;

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

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

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

(i) a security;

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

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

(10) [Reserved];

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

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

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

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

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

(14) "securities intermediary" means:
(i) a clearing corporation; or
(ii) a person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity;

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

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

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

(iii) that:

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

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

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

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

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

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

- appropriate person: Section 55-8-107 NMSA 1978;
- control: Section 55-8-106 NMSA 1978;
- controllable account: Section 55-9-102 NMSA 1978;
- controllable electronic record: Section 55-12-102 NMSA 1978;
- controllable payment intangible: Section 55-9-102 NMSA 1978;
- delivery: Section 55-8-301 NMSA 1978;
- investment company security: Section 55-8-103 NMSA 1978;
- issuer: Section 55-8-201 NMSA 1978;
- overissue: Section 55-8-210 NMSA 1978;
- protected Purchaser: Section 55-8-303 NMSA 1978;

and

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

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

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

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

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

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

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

(c) An interest in a partnership or limited
liability company is not a security unless it is dealt in or
traded on securities exchanges or in securities markets, its
terms expressly provide that it is a security governed by
this article or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.

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

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

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

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

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

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

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

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

1. the certificate is indorsed to the purchaser or in blank by an effective indorsement; or
2. the certificate is registered in the name of the purchaser, upon original issue or registration of transfer by the issuer.

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

1. the uncertificated security is delivered to the purchaser; or
2. the issuer has agreed that it will comply with instructions originated by the purchaser without further consent by the registered owner.

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

1. the purchaser becomes the entitlement holder;
2. the securities intermediary has agreed that it will comply with entitlement orders originated by the purchaser.
purchaser without further consent by the entitlement holder;

or

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

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

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

(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 control.

(f) A purchaser who has satisfied the requirements of Subsection (c) or (d) of this section has control even if the registered owner in the case of Subsection (c) of this section or the entitlement holder in the case of Subsection (d) of this section retains the right to make substitutions for the uncertificated security or security entitlement, to originate instructions or entitlement orders to the issuer or securities intermediary or otherwise to deal with the uncertificated security or security entitlement.
(g) An issuer or a securities intermediary may not enter into an agreement of the kind described in Paragraph (2) of Subsection (c) or Paragraph (2) of Subsection (d) of this section without the consent of the registered owner or entitlement holder, but an issuer or a securities intermediary is not required to enter into such an agreement even though the registered owner or entitlement holder so directs. An issuer or securities intermediary that has entered into such an agreement is not required to confirm the existence of the agreement to another party unless requested to do so by the registered owner or entitlement holder.

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

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

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

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

(a) The local law of the issuer's jurisdiction, as specified in Subsection (d) of this section, governs:
(1) the validity of a security;
(2) the rights and duties of the issuer with respect to registration of transfer;
(3) the effectiveness of registration of transfer by the issuer;
(4) whether the issuer owes any duties to an adverse claimant to a security; and
(5) whether an adverse claim can be asserted against a person to whom transfer of a certificated or uncertificated security is registered or a person who obtains control of an uncertificated security.

(b) The local law of the securities intermediary's jurisdiction, as specified in Subsection (e) of this section, governs:
(1) acquisition of a security entitlement from the securities intermediary;
(2) the rights and duties of the securities intermediary and entitlement holder arising out of a security entitlement;
(3) whether the securities intermediary owes any duties to an adverse claimant to a security entitlement; and
(4) whether an adverse claim can be asserted against a person who acquires a security entitlement from the securities intermediary or a person who purchases a security
entitlement or interest therein from an entitlement holder.

(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 whom the security certificate is delivered.

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

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

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

(2) if Paragraph (1) of this subsection does not apply and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the agreement is
governed by the law of a particular jurisdiction, that
jurisdiction is the securities intermediary's jurisdiction;

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

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

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

   (f) A securities intermediary's jurisdiction is
not determined by the physical location of certificates
representing financial assets or by the jurisdiction in which
is organized 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 concerning the account.
(g) The local law of the issuer's jurisdiction or the securities intermediary's jurisdiction governs a matter or transaction specified in Subsection (a) or (b) of this section even if the matter or transaction does not bear any relation to the jurisdiction."

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

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

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

(1) gives value;
(2) does not have notice of any adverse claim to the security; and
(3) obtains control of the certificated or uncertificated security.

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

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

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

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

(1) "accession" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost;
(2) "account", except as used in "account for", "account statement", "account to", "commodity account" in Paragraph (14) of this subsection, "customer's account", "deposit account" in Paragraph (29) of this subsection, "on account of" and "statement of account":

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

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

(ii) for services rendered or to be rendered;

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

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

(v) for energy provided or to be provided;

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

(vii) arising out of the use of a 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,
governmental unit of a state or person licensed or authorized
to operate the game by a state or governmental unit of a
state; and

   (B) includes controllable accounts and

health-care-insurance receivables; but

   (C) does not include:

(i) chattel paper;

(ii) commercial tort claims;

(iii) deposit accounts;

(iv) investment property;

(v) letter-of-credit rights or

letters of credit;

   (vi) rights to payment for money

or funds advanced or sold, other than rights arising out of
the use of a credit or charge card or information contained
on or for use with the card; or

   (vii) rights to payment evidenced

by an instrument;

(3) "account debtor" means a person

obligated on an account, chattel paper or general intangible.
The term does not include persons obligated to pay a

negotiable instrument, even if the negotiable instrument

evidences chattel paper;

(4) "accounting", except as used in

"accounting for", means a record:
(A) signed by a secured party;
(B) indicating the aggregate unpaid
secured obligations as of a date not more than thirty-five
days earlier or thirty-five days later than the date of the
record; and
(C) identifying the components of the
obligations in reasonable detail;

(5) "agricultural lien" means an interest in
farm products:
   (A) that secures payment or performance
of an obligation for:
      (i) goods or services furnished
in connection with a debtor's farming operation; or
      (ii) rent on real property leased
by a debtor in connection with its farming operation;
   (B) that is created by statute in favor
of a person that:
      (i) in the ordinary course of its
business furnished goods or services to a debtor in
connection with a debtor's farming operation; or
      (ii) leased real property to a
debtor in connection with the debtor's farming operation; and
   (C) whose effectiveness does not depend
on the person's possession of the personal property;

(6) "as-extracted collateral" means:
(A) oil, gas or other minerals that are subject to a security interest that:

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

(ii) attaches to the minerals as extracted; or

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

(7) [Reserved];

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

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

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

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

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

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

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

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

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

(11) "chattel paper" means:

(A) a right to payment of a monetary obligation secured by specific goods if the right to payment and security agreement are evidenced by a record; or
(B) a right to payment of a monetary obligation owed by a lessee under a lease agreement with respect to specific goods and a monetary obligation owed by the lessee in connection with the transaction giving rise to the lease, if:

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

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

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

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

(A) proceeds to which a security interest attaches;

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

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

(13) "commercial tort claim" means a claim arising in tort with respect to which:
(A) the claimant is an organization; or

(B) the claimant is an individual and

the claim:

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

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

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

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

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

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

(16) "commodity customer" means a person for which a commodity intermediary carries a commodity contract on its books;
(17) "commodity intermediary" means a person that:

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

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

(18) "communicate" means:

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

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

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

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

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

(A) the merchant:

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

(ii) is not an auctioneer; and

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

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

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

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

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

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

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

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

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

(B) a security interest in consumer goods secures the obligation;
(25) "consumer obligor" means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family or household purposes;

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

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

(B) a security interest secures the obligation; and

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

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

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

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

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

(28) "debtor" means:

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

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

(C) a consignee;

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

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

(31) [Reserved];

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

(32) "encumbrance" means a right, other than
an ownership interest, in real property. The term includes
mortgages and other liens on real property;
(33) "equipment" means goods other than inventory, farm products or consumer goods;

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

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

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

   (ii) aquatic goods produced in aquacultural operations;

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

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

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

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

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

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

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

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

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

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

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

(43) [Reserved];

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

(A) includes:

(i) fixtures;

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

(iii) the unborn young of animals;

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

(v) manufactured homes; and

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

(B) does not include:

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

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

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

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

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

(A) investment property;

(B) letters of credit;

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

(D) writings that evidence chattel
paper;

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

(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;
(C) are furnished by a person under a contract of service; or
(D) consist of raw materials, work in process or materials used or consumed in a business;

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

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

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

(52) "lien creditor" means:

(A) a creditor that has acquired a lien on the property involved by attachment, levy or the like;
(B) an assignee for benefit of creditors from the time of assignment;

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

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

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

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

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

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

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

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

(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
into by another person;

(57) "new value" means:

(A) money;

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

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

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

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

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

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

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

(60) "original debtor", except as used in 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 55-9-203 NMSA 1978;

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

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

(A) the spouse of the individual;
(B) a brother, brother-in-law, sister or sister-in-law of the individual;

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

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

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

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

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

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

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

(E) an individual who is related by blood or marriage to an individual described in Subparagraph (A), (B), (C) or (D) of this paragraph and shares the same home with the individual;
"proceeds", except as used in Subsection (b) of Section 55-9-609 NMSA 1978, means:

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

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

(C) rights arising out of collateral;

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

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

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

"proposal" means a record signed by a secured party, which record includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to
Sections 55-9-620 through 55-9-622 NMSA 1978;

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

(A) debt securities are issued;

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

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

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

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

(B) an organic record of a business trust consisting of the record initially filed with a state and any record filed with the state that amends or restates the initial record if a statute of the state governing business trusts requires that the record be filed with the state; or
(C) a record consisting of legislation enacted by the legislature of a state or the congress of the United States that forms or organizes an organization; any record amending the legislation; and any record filed with or issued by the state or the United States that amends or restates the name of the organization;

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

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

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

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

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

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

(73) "secured party" means:

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

(B) a person that holds an agricultural lien;

(C) a consignor;

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

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

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

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

(75) [Reserved];

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

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

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

(79) [Reserved];

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

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

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

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

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

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

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

(C) transmitting goods by pipeline or
sewer; or

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

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

"applicant"... Section 55-5-102 NMSA 1978;
"beneficiary"... Section 55-5-102 NMSA 1978;
"broker"... Section 55-8-102 NMSA 1978;
"certificated security" Section 55-8-102 NMSA 1978;
"check"... Section 55-3-104 NMSA 1978;
"clearing corporation". Section 55-8-102 NMSA 1978;
"contract for sale". Section 55-2-106 NMSA 1978;
"controllable electronic record"... Section
55-12-102 NMSA 1978;
"customer" . . . . . . Section 55-4-104 NMSA 1978;
"entitlement holder" . Section 55-8-102 NMSA 1978;
"financial asset" . . . Section 55-8-102 NMSA 1978;
"holder in due course". Section 55-3-302 NMSA 1978;
"issuer" (with respect to a letter of credit or letter-of-credit right) . . . . Section 55-5-102 NMSA 1978;
"issuer" (with respect to a security). . . Section 55-8-201 NMSA 1978;
"issuer" (with respect to documents of title). . . . . . . . . . . Section 55-7-102 NMSA 1978;
"lease" . . . . . . . Section 55-2A-103 NMSA 1978;
"lease agreement" . . Section 55-2A-103 NMSA 1978;
"lease contract" . . Section 55-2A-103 NMSA 1978;
"leasehold interest" Section 55-2A-103 NMSA 1978;
"lessee" . . . . . . Section 55-2A-103 NMSA 1978;
"lessee in ordinary course of business". . Section 55-2A-103 NMSA 1978;
"lessor" . . . . . . Section 55-2A-103 NMSA 1978;
"lessor's residual interest" . . . . . . . Section 55-2A-103 NMSA 1978;
"letter of credit" . . Section 55-5-102 NMSA 1978;
"merchant" . . . . . . Section 55-2-104 NMSA 1978;
"negotiable instrument" Section 55-3-104 NMSA 1978;
"nominated person" . . Section 55-5-102 NMSA 1978;
"note" . . . . . . . Section 55-3-104 NMSA 1978;
"proceeds of a letter of credit" . . . . . Section
55-5-114 NMSA 1978;
"protected purchaser" . . Section 55-8-303 NMSA 1978;
"prove" . . . . . . . . . . . Section 55-3-103 NMSA 1978;
"qualifying purchaser" . Section 55-12-102 NMSA 1978;
"sale" . . . . . . . . . . . . Section 55-2-106 NMSA 1978;
"securities account" . . Section 55-8-501 NMSA 1978;
"securities intermediary" Section 55-8-102 NMSA 1978;
"security" . . . . . . . . . . . Section 55-8-102 NMSA 1978;
"security certificate" . . Section 55-8-102 NMSA 1978;
"security entitlement" . . Section 55-8-102 NMSA 1978;
and
"uncertificated security" . . . . . . . . . Section
55-8-102 NMSA 1978.

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

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

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

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

(1) the secured party is the bank with which

HB 90
Page 106
the deposit account is maintained;

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

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

(4) another person, other than the debtor:

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

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

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

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

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

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

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

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

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

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

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

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

(6) any amendment of the authoritative copy
is readily identifiable as authorized or unauthorized.
(c) A system satisfies Subsection (a) of this section, and a purchaser has control of an authoritative electronic copy of a record evidencing chattel paper, if the electronic copy, a record attached to or logically associated with the electronic copy or a system in which the electronic copy is recorded:

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

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

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

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

(B) transfer control of the authoritative electronic copy.

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

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

(2) the power is shared with another person.

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

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

(2) the other person:

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

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

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

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

(1) has control of the authoritative
electronic copy and acknowledges that it has control on
behalfof the purchaser; or

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

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

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

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

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

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

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

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

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

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

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

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

(2) the power is shared with another person.

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

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

(2) the other person:

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

(B) is the transferor to the person of an interest in the electronic money.
(d) If a person has the powers specified in Items (i) and (ii) of Subparagraph (B) of Paragraph (1) of Subsection (a) of this section, the powers are presumed to be exclusive.

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

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

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

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

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

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

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

SECTION 48. A new section of the Uniform Commercial Code, Section 55-9-107B NMSA 1978, is enacted to read:
"55-9-107B. NO REQUIREMENT TO ACKNOWLEDGE OR CONFIRM--
NO DUTIES.--

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

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

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

"55-9-109. SCOPE.--

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

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

(2) an agricultural lien;

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

(4) a consignment;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) fixture filings in Sections 55-9-501, 55-9-502, 55-9-512, 55-9-516 and 55-9-519 NMSA 1978; and
(D) security agreements covering personal and real property in Section 55-9-604 NMSA 1978;

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

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

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

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

"55-9-203. 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 signed 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 debtor's security agreement;

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

(D) the collateral is controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, electronic documents,
electronic money, investment property or letter-of-credit rights, and the secured party has control under Section 55-7-106, 55-9-104, 55-9-105A, 55-9-106, 55-9-107 or 55-9-107A NMSA 1978 pursuant to the debtor's security agreement; or

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

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

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

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

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

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

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

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

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

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

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

(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."

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

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

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

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

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

(2) a commercial tort claim.

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

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

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

(3) under an after-acquired property clause
to property that is proceeds of consumer goods or a
commercial tort claim.

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

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

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

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

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

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

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

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

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

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

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

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

(c) Except as otherwise provided in Subsection (d) of this section, a secured party having possession of collateral or control of collateral under Section 55-7-106, 55-9-104, 55-9-105, 55-9-105A, 55-9-106, 55-9-107 or 55-9-107A NMSA 1978:

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

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

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

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

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

(A) to charge back uncollected collateral; or

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

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

SECTION 53. Section 55-9-208 NMSA 1978 (being Laws 2001, Chapter 139, Section 18, as amended) is amended to read:

"55-9-208. ADDITIONAL DUTIES OF SECURED PARTY HAVING CONTROL OF COLLATERAL.--

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

(b) Within ten days after receiving a signed demand by the debtor:

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

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

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

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

(3) a secured party, other than a buyer, having control under Section 55-9-105 NMSA 1978 of an authoritative electronic copy of a record evidencing chattel paper shall transfer control of the electronic copy to the debtor or a person designated by the debtor;

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

(5) a secured party having control of a letter-of-credit right under Section 55-9-107 NMSA 1978 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party a signed release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party;

(6) a secured party having control under Section 55-7-106 NMSA 1978 of an authoritative electronic copy of an electronic document of title shall transfer control of the electronic copy to the debtor or a person designated by the debtor;

(7) a secured party having control under Section 55-9-105A NMSA 1978 of electronic money shall transfer control of the electronic money to the debtor or a person designated by the debtor; and

(8) a secured party having control under Section 55-12-105 NMSA 1978 of a controllable electronic record, other than a buyer of a controllable account or
controllable payment intangible evidenced by the controllable
electronic record, shall transfer control of the controllable
electronic record to the debtor or a person designated by the
debtor."

SECTION 54. Section 55-9-209 NMSA 1978 (being Laws
2001, Chapter 139, Section 19) is amended to read:

"55-9-209. DUTIES OF SECURED PARTY IF ACCOUNT DEBTOR
HAS BEEN NOTIFIED OF ASSIGNMENT.--

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

(1) there is no outstanding secured
obligation; and

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

(b) Within ten days after receiving a signed
demand by the debtor, a secured party shall send to an
account debtor that has received notification under
Subsection (a) of Section 55-9-406 NMSA 1978 or Subsection
(b) of Section 55-12-106 NMSA 1978 of an assignment to the
secured party as assignee a signed record that releases the
account debtor from any further obligation to the secured
party.

(c) This section does not apply to an assignment
constituting the sale of an account, chattel paper or payment
intangible."
SECTION 55. Section 55-9-210 NMSA 1978 (being Laws 2001, Chapter 139, Section 20) is amended to read:

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

(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 signed 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 signed 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 signed 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:

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

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

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

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

   (1) disclaiming any interest in the
collateral; and

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

(e) A person that receives a request for an 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 earlier time shall comply with the request within fourteen days after receipt by sending to the debtor a signed record:

(1) disclaiming any interest in the obligations; and

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

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

SECTION 56. Section 55-9-301 NMSA 1978 (being Laws 2001, Chapter 139, Section 21, as amended) is amended to read:

"55-9-301. LAW GOVERNING PERFECTION AND PRIORITY OF SECURITY INTERESTS.—Except as otherwise provided in Sections
55-9-303 through 55-9-306B NMSA 1978, the following rules
determine the law governing perfection, the effect of
perfection or nonperfection and the priority of a security
interest in collateral:

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

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

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

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

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

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

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

SECTION 57. Section 55-9-304 NMSA 1978 (being Laws
2001, Chapter 139, Section 24, as amended) is amended to
read:

"55-9-304. LAW GOVERNING PERFECTION AND PRIORITY OF
SECURITY INTERESTS IN DEPOSIT ACCOUNTS.--

(a) The local law of a bank's jurisdiction governs
perfection, the effect of perfection or nonperfection and the
priority of a security interest in a deposit account
maintained with that bank even if the transaction does not
bear any relation to the bank's jurisdiction.

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

(1) if an agreement between the bank and its
customer governing the deposit account expressly provides
that a particular jurisdiction is the bank's jurisdiction for
purposes of the Uniform Commercial Code, that jurisdiction is
the bank's jurisdiction;

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

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

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

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

SECTION 58. Section 55-9-305 NMSA 1978 (being Laws 2001, Chapter 139, Section 25) is amended to read:

"55-9-305. LAW GOVERNING PERFECTION AND PRIORITY OF SECURITY INTERESTS IN INVESTMENT PROPERTY.--

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

(1) while a security certificate is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection and the priority of a security interest in the certificated security represented thereby;
(2) the local law of the issuer's jurisdiction as specified in Subsection (d) of Section 55-8-110 NMSA 1978 governs perfection, the effect of perfection or nonperfection and the priority of a security interest in an uncertificated security;

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

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

(5) Paragraphs (2), (3) and (4) of this subsection apply even if the transaction does not bear any relation to the jurisdiction.

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

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

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

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

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

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

(c) The local law of the jurisdiction in which the debtor is located governs:
(1) perfection of a security interest in investment property by filing;

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

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

SECTION 59. A new section of the Uniform Commercial Code, Section 55-9-306A NMSA 1978, is enacted to read:

"55-9-306A. LAW GOVERNING PERFECTION AND PRIORITY OF SECURITY INTERESTS IN CHATTEL PAPER.--

(a) Except as provided in Subsection (d) of this section, if chattel paper is evidenced only by an authoritative electronic copy of the chattel paper or is evidenced by an authoritative electronic copy and an authoritative tangible copy, the local law of the chattel paper's jurisdiction governs perfection, the effect of perfection or nonperfection and the priority of a security interest in the chattel paper, even if the transaction does not bear any relation to the chattel paper's jurisdiction.

(b) The following rules determine the chattel paper's jurisdiction under this section:

(1) if the authoritative electronic copy of the record evidencing chattel paper, or a record attached to
or logically associated with the electronic copy and readily available for review, expressly provides that a particular jurisdiction is the chattel paper's jurisdiction for purposes of this part or the Uniform Commercial Code, that jurisdiction is the chattel paper's jurisdiction;

(2) if Paragraph (1) of this subsection does not apply and the rules of the system in which the authoritative electronic copy is recorded are readily available for review and expressly provide that a particular jurisdiction is the chattel paper's jurisdiction for purposes of this part or the Uniform Commercial Code, that jurisdiction is the chattel paper's jurisdiction;

(3) if Paragraphs (1) and (2) of this section do not apply and the authoritative electronic copy, or a record attached to or logically associated with the electronic copy and readily available for review, expressly provides that the chattel paper is governed by the law of a particular jurisdiction, that jurisdiction is the chattel paper's jurisdiction;

(4) if Paragraphs (1), (2) and (3) of this subsection do not apply and the rules of the system in which the authoritative electronic copy is recorded are readily available for review and expressly provide that the chattel paper or the system is governed by the law of a particular jurisdiction, that jurisdiction is the chattel paper's jurisdiction;
jurisdiction; and

(5) if Paragraphs (1) through (4) of this subsection do not apply, the chattel paper's jurisdiction is the jurisdiction in which the debtor is located.

(c) If an authoritative tangible copy of a record evidences chattel paper and the chattel paper is not evidenced by an authoritative electronic copy, while the authoritative tangible copy of the record evidencing chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

(1) perfection of a security interest in the chattel paper by possession under Section 55-9-314A NMSA 1978; and

(2) the effect of perfection or nonperfection and the priority of a security interest in the chattel paper.

(d) The local law of the jurisdiction in which the debtor is located governs perfection of a security interest in chattel paper by filing."

SECTION 60. A new section of the Uniform Commercial Code, Section 55-9-306B NMSA 1978, is enacted to read:

"55-9-306B. LAW GOVERNING PERFECTION AND PRIORITY OF SECURITY INTERESTS IN CONTROLLABLE ACCOUNTS, CONTROLLABLE ELECTRONIC RECORDS AND CONTROLLABLE PAYMENT INTANGIBLES.--

(a) Except as provided in Subsection (b) of this
section, the local law of the controllable electronic record's jurisdiction specified in Subsections (c) and (d) of Section 55-12-107 NMSA 1978 governs perfection, the effect of perfection or nonperfection and the priority of a security interest in a controllable electronic record and a security interest in a controllable account or controllable payment intangible evidenced by the controllable electronic record.

(b) The local law of the jurisdiction in which the debtor is located governs:

(1) perfection of a security interest in a controllable account, controllable electronic record or controllable payment intangible by filing; and

(2) automatic perfection of a security interest in a controllable payment intangible created by a sale of the controllable payment intangible."

SECTION 61. Section 55-9-310 NMSA 1978 (being Laws 2001, Chapter 139, Section 30, as amended) is amended to read:

"55-9-310. WHEN FILING REQUIRED TO PERFECT SECURITY INTEREST OR AGRICULTURAL LIEN--SECURITY INTERESTS AND AGRICULTURAL LIENS TO WHICH FILING PROVISIONS DO NOT APPLY.--

(a) Except as otherwise provided in Subsection (b) of this section and in Section 55-9-312 NMSA 1978, a financing statement must be filed to perfect all security interests and agricultural liens.
(b) The filing of a financing statement is not necessary to perfect a security interest:

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

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

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

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

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

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

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

   (8) in controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, electronic documents, investment property or letter-of-credit rights that is perfected by control under...
Section 55-9-314 NMSA 1978;
   (9) in proceeds that is perfected under
Section 55-9-315 NMSA 1978; or
   (10) that is perfected under Section
   (c) If a secured party assigns a perfected
security interest or agricultural lien, a filing under
Chapter 55, Article 9 NMSA 1978 is not required to continue
the perfected status of the security interest against
creditors of and transferees from the original debtor."

SECTION 62. Section 55-9-312 NMSA 1978 (being Laws
2001, Chapter 139, Section 32, as amended) is amended to
read:

"55-9-312. PERFECTION OF SECURITY INTERESTS IN CHATTEL
PAPER, CONTROLLABLE ACCOUNTS, CONTROLLABLE ELECTRONIC
RECORDS, CONTROLLABLE PAYMENT INTANGIBLES, DEPOSIT ACCOUNTS,
DOCUMENTS, GOODS COVERED BY DOCUMENTS, INSTRUMENTS,
INVESTMENT PROPERTY, LETTER-OF-CREDIT RIGHTS AND MONEY--
PERFECTION BY PERMISSIVE FILING--TEMPORARY PERFECTION WITHOUT
FILING OR TRANSFER OF POSSESSION.--
   (a) A security interest in chattel paper,
controllable accounts, controllable electronic records,
controllable payment intangibles, instruments, investment
property or negotiable documents may be perfected by filing.
   (b) Except as otherwise provided in Subsections
(c) and (d) of Section 55-9-315 NMSA 1978 for proceeds:

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

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

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

(4) a security interest in electronic money may be perfected only by control under Section 55-9-314 NMSA 1978.

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

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

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

(d) While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:
(1) issuance of a document in the name of the secured party;
(2) the bailee's receipt of notification of the secured party's interest; or
(3) filing as to the goods.

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

(f) A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for twenty days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:
(1) ultimate sale or exchange; or
(2) loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with them in a manner preliminary to their sale or exchange.

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

(1) ultimate sale or exchange; or

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

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

SECTION 63. Section 55-9-313 NMSA 1978 (being Laws 2001, Chapter 139, Section 33, as amended) is amended to read:

"55-9-313. WHEN POSSESSION BY OR DELIVERY 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 interest in goods, instruments, negotiable tangible documents or tangible money by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under Section 55-8-301 NMSA 1978.

(b) With respect to goods covered by a certificate of title issued by this state, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in Subsection (d) of Section 55-9-316 NMSA 1978."
(c) With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party or a lessee of the collateral from the debtor in the ordinary course of the debtor's business when:

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

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

(d) If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs not earlier than the time the secured party takes possession and continues only while the secured party retains possession.

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

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

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

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

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

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

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

        (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 Chapter 55, Article 9 NMSA 1978 otherwise provides."

SECTION 64. Section 55-9-314 NMSA 1978 (being Laws 2001, Chapter 139, Section 34, as amended) is amended to read:

"55-9-314. PERFECTION BY CONTROL.--

(a) A security interest in controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, electronic documents, electronic money, investment property or letter-of-credit rights may be perfected by control of the collateral under Section 55-7-106, 55-9-104, 55-9-105A, 55-9-106, 55-9-107 or 55-9-107A NMSA 1978.

(b) A security interest in controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, electronic documents, electronic money or letter-of-credit rights is perfected by control under Section 55-7-106, 55-9-104, 55-9-105A, 55-9-107 or 55-9-107A NMSA 1978 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 not earlier than the time the secured party obtains control and remains perfected by control until:

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

(2) one of the following occurs:

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

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

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

SECTION 65. A new section of the Uniform Commercial Code, Section 55-9-314A NMSA 1978, is enacted to read:

"55-9-314A. PERFECTION BY POSSESSION AND CONTROL OF CHATTEL PAPER.--

(a) A secured party may perfect a security interest in chattel paper by taking possession of each authoritative tangible copy of the record evidencing the chattel paper and obtaining control of each authoritative electronic copy of the electronic record evidencing the
chattel paper.

(b) A security interest is perfected under Subsection (a) of this section not earlier than the time the secured party takes possession and obtains control and remains perfected under that subsection only while the secured party retains possession and control.

(c) Subsections (c) and (f) through (i) of Section 55-9-313 NMSA 1978 apply to perfection by possession of an authoritative tangible copy of a record evidencing chattel paper."

SECTION 66. Section 55-9-316 NMSA 1978 (being Laws 2001, Chapter 139, Section 36, as amended) is amended to read:

"55-9-316. EFFECT OF CHANGE IN GOVERNING LAW.--

(a) A security interest perfected pursuant to the law of the jurisdiction designated in Subsection (1) of Section 55-9-301, Subsection (c) of Section 55-9-305, Subsection (d) of Section 55-9-306A or Subsection (b) of Section 55-9-306B NMSA 1978 remains perfected until the earliest of:

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

(2) the expiration of four months after a 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
declaration and is located in another jurisdiction.

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

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

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

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

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

(d) Except as otherwise provided in Subsection (e)
of this section, a security interest in goods covered by a
certificate of title that is perfected by any method under 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 under the law of the other jurisdiction had the goods not become so covered.

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

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

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

(f) A security interest in chattel paper, controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, letter-of-credit rights or investment property that is perfected under the law of the chattel paper's jurisdiction, the controllable electronic record's jurisdiction, the bank's
jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction or the commodity intermediary's jurisdiction, as applicable, remains perfected until the earlier of:

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

or

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

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

(h) The following rules apply to collateral to which a security interest attaches within four months after the debtor changes its location to another jurisdiction:

(1) a financing statement filed before the change pursuant to the law of the jurisdiction designated in Paragraph (1) of Section 55-9-301 or Subsection (c) of
Section 55-9-305 NMSA 1978 is effective to perfect a security interest in the collateral if the financing statement would have been effective to perfect a security interest in the collateral had the debtor not changed its location; and

(2) if a security interest perfected by a financing statement that is effective under Paragraph (1) of this subsection becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in Subsection (1) of Section 55-9-301 or Subsection (c) of Section 55-9-305 NMSA 1978 or the expiration of the four-month period, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(i) If a financing statement naming an original debtor is filed pursuant to the law of the jurisdiction designated in Subsection (1) of Section 55-9-301 or Subsection (c) of Section 55-9-305 NMSA 1978 and the new debtor is located in another jurisdiction, the following rules apply:

(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 becomes bound under Subsection (d) of Section 55-9-203 NMSA 1978 if the financing statement would have been effective to perfect a security interest in the collateral had the collateral been acquired by the original debtor; and

(2) a security interest perfected by the financing statement that becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in Subsection (1) of Section 55-9-301 or Subsection (c) of Section 55-9-305 NMSA 1978 or the expiration of the four-month period remains perfected thereafter. A security interest that is perfected by the financing statement but that does not become perfected under the law of the other jurisdiction before the earlier time or event becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value."

SECTION 67. Section 55-9-317 NMSA 1978 (being Laws 2001, Chapter 139, Section 37, as amended) is amended to read:

"55-9-317. INTERESTS THAT TAKE PRIORITY OVER OR TAKE FREE OF SECURITY INTEREST OR AGRICULTURAL LIEN.--

(a) A security interest or agricultural lien is subordinate to the rights of:
(1) a person entitled to priority under Section 55-9-322 NMSA 1978; and

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

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

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

(b) Except as otherwise provided in Subsection (e) of this section, a buyer, other than a secured party, of goods, instruments, tangible documents or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

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

(d) Subject to Subsections (f) through (i) of this...
section, a licensee of a general intangible or a buyer, other than a secured party, of collateral other than electronic money, goods, instruments, tangible documents or a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

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

(f) A buyer, other than a secured party, of chattel paper takes free of a security interest if, without knowledge of the security interest and before it is perfected, the buyer gives value and:

   (1) receives delivery of each authoritative tangible copy of the record evidencing the chattel paper; and

   (2) if each authoritative electronic copy of the record evidencing the chattel paper can be subjected to control under Section 55-9-105 NMSA 1978, obtains control of each authoritative electronic copy.

(g) A buyer of an electronic document takes free
of a security interest if, without knowledge of the security interest and before it is perfected, the buyer gives value and, if each authoritative electronic copy of the document can be subjected to control under Section 55-7-106 NMSA 1978, obtains control of each authoritative electronic copy.

(h) A buyer of a controllable electronic record takes free of a security interest if, without knowledge of the security interest and before it is perfected, the buyer gives value and obtains control of the controllable electronic record.

(i) A buyer, other than a secured party, of a controllable account or a controllable payment intangible takes free of a security interest if, without knowledge of the security interest and before it is perfected, the buyer gives value and obtains control of the controllable account or controllable payment intangible."

SECTION 68. Section 55-9-323 NMSA 1978 (being Laws 2001, Chapter 139, Section 43) is amended to read:

"55-9-323. FUTURE ADVANCES.--

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

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

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

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

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

(b) Except as otherwise provided in Subsection (c) of this section, a security interest is subordinate to the rights of a person that becomes a lien creditor to the extent 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:

(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 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.

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

SECTION 69. Section 55-9-324 NMSA 1978 (being Laws 2001, Chapter 139, Section 44) is amended to read:
"55-9-324. PRIORITY OF PURCHASE-MONEY SECURITY INTERESTS.--

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

(b) Subject to Subsection (c) of this section and except as otherwise provided in Subsection (g) of this section, a perfected purchase-money security interest in inventory has priority over a conflicting security interest in the same inventory, has priority over a conflicting security interest in chattel paper or an instrument constituting proceeds of the inventory and in proceeds of the chattel paper, if so provided 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 cash proceeds are received on or before the delivery of the inventory to a buyer, if:

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

(2) the purchase-money secured party sends a signed notification to the holder of the conflicting security interest;

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

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

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

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

(2) if the purchase-money security interest is 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.

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

1. the purchase-money security interest is perfected when the debtor receives possession of the livestock;
2. the purchase-money secured party sends a signed notification to the holder of the conflicting security interest;
3. the holder of the conflicting security interest receives the notification within six months before the debtor receives possession of the livestock; and
4. the notification states that the person sending the notification has or expects to acquire a purchase-money security interest in livestock of the debtor and describes the livestock.

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

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

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

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

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

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

SECTION 70. A new section of the Uniform Commercial
Code, Section 55-9-326A NMSA 1978, is enacted to read:

"55-9-326A. PRIORITY OF SECURITY INTEREST IN CONTROLLABLE ACCOUNT, CONTROLLABLE ELECTRONIC RECORD AND CONTROLLABLE PAYMENT INTANGIBLE.--A security interest in a controllable account, controllable electronic record or controllable payment intangible held by a secured party having control of the account, electronic record or payment intangible has priority over a conflicting security interest held by a secured party that does not have control."

SECTION 71. Section 55-9-330 NMSA 1978 (being Laws 2001, Chapter 139, Section 50) is amended to read:

"55-9-330. PRIORITY OF PURCHASER OF CHATTEL PAPER OR INSTRUMENT.--

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

(1) in good faith and in the ordinary course of the purchaser's business, the purchaser gives new value, takes possession of each authoritative tangible copy of the record evidencing the chattel paper and obtains control under Section 55-9-105 NMSA 1978 of each authoritative electronic copy of the record evidencing the chattel paper; and

(2) the authoritative copies of the record evidencing the chattel paper do not indicate that the chattel
paper has been assigned to an identified assignee other than the purchaser.

(b) A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed other than merely as proceeds of inventory subject to a security interest if the purchaser gives new value, takes possession of each authoritative tangible copy of the record evidencing the chattel paper and obtains control under Section 55-9-105 NMSA 1978 of each authoritative electronic copy of the record evidencing the chattel paper in good faith, in the ordinary course of the purchaser's business and without knowledge that the purchase violates the rights of the secured party.

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

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

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

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

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

(f) For purposes of Subsections (b) and (d) of
this section, if the authoritative copies of the record
evidencing chattel paper or an instrument indicate that the
chattel paper or instrument has been assigned to an
identified secured party other than the purchaser, a
purchaser of the chattel paper or instrument has knowledge
that the purchase violates the rights of the secured party."

SECTION 72. Section 55-9-331 NMSA 1978 (being Laws
2001, Chapter 139, Section 51, as amended) is amended to
read:

"55-9-331. PRIORITY OF RIGHTS OF PURCHASERS OF
CONTROLLABLE ACCOUNTS, CONTROLLABLE ELECTRONIC RECORDS,
CONTROLLABLE PAYMENT INTANGIBLES, DOCUMENTS, INSTRUMENTS AND
SECURITIES UNDER OTHER ARTICLES--PRIORITY OF INTERESTS IN
FINANCIAL ASSETS AND SECURITY ENTITLEMENTS AND PROTECTION
AGAINST ASSERTION OF CLAIM UNDER CHAPTER 55, ARTICLES 8 AND 9
NMSA 1978.--

(a) Chapter 55, Article 9 NMSA 1978 does not limit
the rights of a holder in due course of a negotiable
instrument, a holder to which a negotiable document of title
has been duly negotiated or a protected purchaser of a
security or a qualifying purchaser of a controllable account,
controllable electronic record or controllable payment
intangible. These holders or purchasers take priority over
an earlier security interest, even if perfected, to the
extent provided in Chapter 55, Articles 3, 7, 8 and 12 NMSA
1978.

(b) Chapter 55, Article 9 NMSA 1978 does not limit
the rights of or impose liability on a person to the extent
that the person is protected against the assertion of a claim
under Chapter 55, Articles 8 and 12 NMSA 1978.

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

SECTION 73. Section 55-9-332 NMSA 1978 (being Laws
2001, Chapter 139, Section 52) is amended to read:

"55-9-332. TRANSFER OF MONEY--TRANSFER OF FUNDS FROM
DEPOSIT ACCOUNT.--

(a) A transferee of tangible money takes the money
free of a security interest if the transferee receives
possession of the money without acting in collusion with the
debtor in violating the rights of the secured party.

(b) A transferee of funds from a deposit account
takes the funds free of a security interest in the deposit
account if the transferee receives the funds without acting
in collusion with the debtor in violating the rights of the
secured party.

(c) A transferee of electronic money takes the
money free of a security interest if the transferee obtains
control of the money without acting in collusion with the
debtor in violating the rights of the secured party."

SECTION 74. Section 55-9-334 NMSA 1978 (being Laws
2001, Chapter 139, Section 54) is amended to read:

"55-9-334. PRIORITY OF SECURITY INTERESTS IN
FIXTURES.--

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

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

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

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

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

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

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

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

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

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

(B) has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner of the related real property other than the debtor.
owner;

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

(A) factory or office machines;

(B) equipment that is not primarily used or leased for use in the operation of the real property; or

(C) replacements of domestic appliances that are consumer goods;

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

(4) the security interest is:

(A) created in a manufactured home in a manufactured-home transaction; and

(B) perfected pursuant to a statute described in Paragraph (2) of Subsection (a) of Section 55-9-311 NMSA 1978.

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

(1) the encumbrancer or owner has, in a
signed record, consented to the security interest or
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.

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

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

SECTION 75. Section 55-9-341 NMSA 1978 (being Laws
2001, Chapter 139, Section 61) is amended to read:

"55-9-341. BANK'S RIGHTS AND DUTIES WITH RESPECT TO
DEPOSIT ACCOUNT.--Except as otherwise provided in Subsection
(c) of Section 55-9-340 NMSA 1978, and unless the bank
otherwise agrees in a signed record, a bank's rights and
duties with respect to a deposit account maintained with the
bank are not terminated, suspended or modified by:

   (1) the creation, attachment or perfection of a
security interest in the deposit account;

   (2) the bank's knowledge of the security interest;
or

   (3) the bank's receipt of instructions from the
secured party."

SECTION 76. Section 55-9-404 NMSA 1978 (being Laws
2001, Chapter 139, Section 66) is amended to read:

"55-9-404. RIGHTS ACQUIRED BY ASSIGNEE--CLAIMS AND
DEFENSES AGAINST ASSIGNEE.--

   (a) Unless an account debtor has made an
enforceable agreement not to assert defenses or claims, and
subject to Subsections (b) through (e) of this section, the
rights of an assignee are subject to:

   (1) all terms of the agreement between the
account debtor and assignor and any defense or claim in
recoupment arising from the transaction that gave rise to the
contract; and

   (2) any other defense or claim of the
account debtor against the assignor which accrues before the
account debtor receives a notification of the assignment
signed by the assignor or the assignee.
(b) Subject to Subsection (c) of this section and except as otherwise provided in Subsection (d) of this section, the claim of an account debtor against an assignor may be asserted against an assignee under Subsection (a) of this section only to reduce the amount the account debtor owes.

(c) This section is subject to law other than Chapter 55, Article 9 NMSA 1978 which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family or household purposes.

(d) In a consumer transaction, if a record evidences the account debtor's obligation, law other than Chapter 55, Article 9 NMSA 1978 requires that the record include a statement to the effect that the account debtor's recovery against an assignee with respect to claims and defenses against the assignor may not exceed amounts paid by the account debtor under the record, and if the record does not include such a statement, the extent to which a claim of an account debtor against the assignor may be asserted against an assignee is determined as if the record included such a statement.

(e) This section does not apply to an assignment of a health-care-insurance receivable."

SECTION 77. Section 55-9-406 NMSA 1978 (being Laws
(a) Subject to Subsections (b) through (i) and (l) of this section, an account debtor on an account, chattel paper or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, signed 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 notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(b) Subject to Subsections (h) and (l) of this section, notification is ineffective under Subsection (a) of this section:

(1) if it does not reasonably identify the rights assigned;

(2) to the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than
Chapter 55, Article 9 NMSA 1978; or

(3) at the option of an account debtor, if

the notification notifies the account debtor to make less

than the full amount of any installment or other periodic

payment to the assignee, even if:

(A) only a portion of the account,

chattel paper or payment intangible has been assigned to that

assignee;

(B) a portion has been assigned to

another assignee; or

(C) the account debtor knows that the

assignment to that assignee is limited.

(c) Subject to Subsections (h) and (l) of this

section, if 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 its obligation by paying the assignor,
even if the account debtor has received a notification under

Subsection (a) of this section.

(d) In this subsection, "promissory note" includes

a negotiable instrument that evidences chattel paper. Except

as otherwise provided in Subsections (e) and (k) of this

section and Sections 55-2A-303 and 55-9-407 NMSA 1978, and

subject to Subsection (h) of this section, a term in an

agreement between an account debtor and an assignor or in a
promissory note is ineffective to the extent that it:

(1) prohibits, restricts or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection or enforcement of a security interest in, the account, chattel paper, payment intangible or promissory note; or

(2) provides that the assignment or transfer or the creation, attachment, perfection or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination or remedy under the account, chattel paper, payment intangible or promissory note.

(e) Subsection (d) of this section does not apply to the sale of a payment intangible or promissory note, other than a sale pursuant to a disposition under Section 55-9-610 NMSA 1978 or an acceptance of collateral under Section 55-9-620 NMSA 1978.

(f) Except as otherwise provided in Subsection (k) of this section and Sections 55-2A-303 and 55-9-407 NMSA 1978 and subject to Subsections (h) 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 the assignment or transfer of, or creation of a security interest in, an account or chattel
paper is ineffective to the extent that the rule of law, statute or regulation:

(1) prohibits, restricts or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection or enforcement of a security interest in the account or chattel paper; or

(2) provides that the assignment or transfer or the creation, attachment, perfection or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination or remedy under the account or chattel paper.

(g) Subject to Subsections (h) and (l) of this section, an account debtor may not waive or vary its option under Paragraph (3) of Subsection (b) of this section.

(h) This section is subject to law other than Chapter 55, Article 9 NMSA 1978 that establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family or household purposes.

(i) This section does not apply to an assignment of a health-care-insurance receivable.

(j) This section is subject to laws other than Chapter 55, Article 9 NMSA 1978 to the extent that those laws prohibit or restrict the assignment, transfer of or creation
of a security interest in benefits, compensation, any other
account or chattel paper.

(k) Subsections (d), (f) and (j) of this section
do not apply to a security interest in an ownership interest
in a general partnership, limited liability partnership,
limited partnership, limited liability limited partnership or
limited liability company.

(l) Subsections (a), (b), (c) and (g) of this
section do not apply to a controllable account or
controllable payment intangible."

SECTION 78. Section 55-9-408 NMSA 1978 (being Laws
2001, Chapter 139, Section 70, as amended) is amended to
read:

"55-9-408. RESTRICTIONS ON ASSIGNMENT OF PROMISSORY
NOTES, HEALTH-CARE-INSURANCE RECEIVABLES AND CERTAIN GENERAL
INTANGIBLES INEFFECTIVE. --

(a) Except as otherwise provided in Subsections
(b) and (e) of this section, a term in a promissory note or
in an agreement between an account debtor and a debtor that
relates to a health-care-insurance receivable or a general
intangible, including a contract, permit, license or
franchise, and that prohibits, restricts or requires the
consent of the person obligated on the promissory note or the
account debtor to the assignment or transfer of, or creation,
attachment or perfection of a security interest in, the
promissory note, health-care-insurance receivable or general intangible is ineffective to the extent that the term:

(1) would impair the creation, attachment or perfection of a security interest; or

(2) provides that the assignment or transfer or the creation, attachment or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination or remedy under the promissory note, health-care-insurance receivable or general intangible.

(b) Subsection (a) of this section applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note other than a sale pursuant to a disposition under Section 55-9-610 NMSA 1978 or an acceptance of collateral under Section 55-9-620 NMSA 1978.

(c) Except as otherwise provided in Subsection (e) of this section, a rule of law, statute or regulation that prohibits, restricts or requires the consent of a government, governmental body or official, person obligated on a promissory note or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health-care-insurance receivable or general intangible, including a contract, permit, license or franchise between an account debtor and a debtor, is
ineffective to the extent that the rule of law, statute or
regulation:

   (1) would impair the creation, attachment or
   perfection of a security interest; or
   (2) provides that the assignment or transfer
   or the creation, attachment or perfection of the security
   interest may give rise to a default, breach, right of
   recoupment, claim, defense, termination, right of termination
   or remedy under the promissory note, health-care-insurance
   receivable or general intangible.

(d) To the extent that a term in a promissory note
or in an agreement between an account debtor and a debtor
that relates to a health-care-insurance receivable or general
intangible or a rule of law, statute or regulation described
in Subsection (c) of this section would be effective under
law other than Chapter 55, Article 9 NMSA 1978 but is
ineffective under Subsection (a) or (c) of this section, the
creation, attachment or perfection of a security interest in
the promissory note, health-care-insurance receivable or
general intangible:

   (1) is not enforceable against the person
   obligated on the promissory note or the account debtor;
   (2) does not impose a duty or obligation on
   the person obligated on the promissory note or the account
debtor;
(3) does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party or accept payment or performance from the secured party;

(4) does not entitle the secured party to use or assign the debtor's rights under the promissory note, health-care-insurance receivable or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health-care-insurance receivable or general intangible;

(5) does not entitle the secured party to use, 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

(6) does not entitle the secured party to enforce the security interest in the promissory note, health-care-insurance receivable or general intangible. The provisions of this section shall prevail over an inconsistent provision of an existing or future statute or rule of this state, unless the inconsistent provision is set forth in a statute of this state that refers expressly to this section and states that the inconsistent provision shall prevail over the provisions of this section.

(e) This section does not apply to a security
interest in an ownership interest in a general partnership,
limited liability partnership, limited partnership, limited
liability limited partnership or limited liability company.

(f) In this section, "promissory note" includes a
negotiable instrument that evidences chattel paper."

SECTION 79. Section 55-9-509 NMSA 1978 (being Laws
2001, Chapter 139, Section 80) is amended to read:

"55-9-509. PERSONS ENTITLED TO FILE A RECORD.--

(a) A person may file an initial financing
statement, amendment that adds collateral covered by a
financing statement or amendment that adds a debtor to a
financing statement only if:

(1) the debtor authorizes the filing in a
signed record or pursuant to Subsection (b) or (c) of this
section; or

(2) the person holds an agricultural lien
that has become effective at the time of filing and the
financing statement covers only collateral in which the
person holds an agricultural lien.

(b) By signing or becoming bound as debtor by a
security agreement, a debtor or new debtor authorizes the
filing of an initial financing statement, and an amendment,
covering:

(1) the collateral described in the security
agreement; and
(2) property that becomes collateral under Paragraph (2) of Subsection (a) of Section 55-9-315 NMSA 1978, whether or not the security agreement expressly covers proceeds.

(c) By acquiring collateral in which a security interest or agricultural lien continues under Paragraph (1) of Subsection (a) of Section 55-9-315 NMSA 1978, a debtor authorizes the filing of an initial financing statement, and an amendment, covering the collateral and property that becomes collateral under Paragraph (2) of Subsection (a) of Section 55-9-315 NMSA 1978.

(d) A person may file an amendment other than an amendment that adds collateral covered by a financing statement or an amendment that adds a debtor to a financing statement only if:

   (1) the secured party of record authorizes the filing; or

   (2) the amendment is a termination statement for a financing statement as to which the secured party of record has failed to file or send a termination statement as 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.

(e) If there is more than one secured party of
record for a financing statement, each secured party of
record may authorize the filing of an amendment under
Subsection (d) of this section."

SECTION 80. Section 55-9-513 NMSA 1978 (being Laws
2001, Chapter 139, Section 84) is amended to read:

"55-9-513. TERMINATION STATEMENT.--

(a) A secured party shall cause the secured party
of record for a financing statement to file a termination
statement for the financing statement if the financing
statement covers consumer goods and:

(1) there is no obligation secured by the
collateral covered by the financing statement and no
commitment to make an advance, incur an obligation or
otherwise give value; or

(2) the debtor did not authorize the filing
of the initial financing statement.

(b) To comply with Subsection (a) of this section,
a secured party shall cause the secured party of record to
file the termination statement:

(1) within one month after there is no
obligation secured by the collateral covered by the financing
statement and no commitment to make an advance, incur an
obligation or otherwise give value; or

(2) if earlier, within twenty days after the
secured party receives a signed demand from a debtor.
(c) In cases not governed by Subsection (a) of this section, within twenty days after a secured party receives a signed demand from a debtor, the secured party shall cause the secured party of record for a financing statement to send to the debtor a termination statement for the financing statement or file the termination statement in the filing office if:

(1) except in the case of a financing statement covering accounts or chattel paper that has been sold or goods that are the subject of a consignment, there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation or otherwise give value;

(2) the financing statement covers accounts or chattel paper that has been sold but as to which the account debtor or other person obligated has discharged its obligation;

(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

(4) the debtor did not authorize the filing of the initial financing statement.

(d) Except as otherwise provided in Section 55-9-510 NMSA 1978, upon the filing of a termination statement with the filing office, the financing statement to
which the termination statement relates ceases to be
effective. Except as otherwise provided in Section 55-9-510
NMSA 1978, for purposes of Subsection (c) of Section 55-9-
519, Subsection (a) of Section 55-9-522 and Subsection (b) of
Section 55-9-523 NMSA 1978, the filing with the filing office
of a termination statement relating to a financing statement
that indicates that the debtor is a transmitting utility also
causes the effectiveness of the financing statement to
lapse."

SECTION 81. Section 55-9-515 NMSA 1978 (being Laws
2001, Chapter 139, Section 86, as amended) is amended to
read:

"55-9-515. DURATION AND EFFECTIVENESS OF FINANCING
STATEMENT--EFFECT OF LAPSED FINANCING STATEMENT.--

(a) Except as otherwise provided in Subsections
(b), (e), (f) and (g) of this section, a filed financing
statement is effective for a period of five years after the
date of filing.

(b) Except as otherwise provided in Subsections
(e), (f) and (g) of this section, an initial financing
statement filed in connection with a public-finance
transaction or manufactured-home transaction is effective for
a period of thirty years after the date of filing if it
indicates that it is filed in connection with a public-
finance transaction or manufactured-home transaction."
(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 pursuant to Subsection (d) of this section. Upon lapse, a financing statement ceases to be effective and any security interest or agricultural lien that was perfected by the financing statement becomes unperfected unless the security interest is perfected otherwise. If the security interest or agricultural lien becomes unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the collateral for value.

(d) A continuation statement may be filed only within six months before the expiration of the five-year period specified in Subsection (a) of this section or the thirty-year period specified in Subsection (b) of this section, whichever is applicable.

(e) Except as otherwise provided in Section 55-9-510 NMSA 1978, upon timely filing of a continuation statement, the effectiveness of the initial financing statement continues for a period of five years commencing on the day on which the financing statement would have become ineffective in the absence of the filing. Upon the expiration of the five-year period, the financing statement lapses in the same manner as provided in Subsection (c) of this section, unless, before the lapse, another continuation
statement is filed pursuant to Subsection (d) of this section. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the initial financing statement.

(f) If a debtor is a transmitting utility and a filed initial financing statement so indicates, the financing statement is effective until a termination statement is filed. The filing officer may require proof of the debtor's authority to operate as a transmitting utility as a condition of filing the financing statement or an amendment.

(g) A record of a mortgage that is effective as a financing statement filed as a fixture filing under Subsection (c) of Section 55-9-502 NMSA 1978 remains effective as a financing statement filed as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real property."

SECTION 82. Section 55-9-601 NMSA 1978 (being Laws 2001, Chapter 139, Section 98, as amended) is amended to read:

"55-9-601. RIGHTS AFTER DEFAULT--JUDICIAL ENFORCEMENT--CONSIGNOR OR BUYER OF ACCOUNTS, CHATTEL PAPER, PAYMENT INTANGIBLES OR PROMISSORY NOTES.--

(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,
those provided by agreement of the parties. A secured party:

   (1) may reduce a claim to judgment,
foreclose or otherwise enforce the claim, security interest
or agricultural lien by any available judicial procedure; and

   (2) if the collateral is documents, may
proceed either as to the documents or as to the goods they
cover.

(b) A secured party in possession of collateral or
control of collateral under Section 55-7-106, 55-9-104,
1978 has the rights and duties provided in Section 55-9-207
NMSA 1978.

(c) The rights under Subsections (a) and (b) of
this section are cumulative and may be exercised
simultaneously.

(d) Except as otherwise provided in Subsection (g)
of this section and Section 55-9-605 NMSA 1978, after
default, a debtor and an obligor have the rights provided in
Sections 55-9-601 through 55-9-628 NMSA 1978 and by agreement
of the parties.

(e) If a secured party has reduced its claim to
judgment, the lien of any levy that may be made upon the
collateral by virtue of an execution based upon the judgment
relates back to the earliest of:

   (1) the date of perfection of the security
interest or agricultural lien in the collateral;

(2) the date of filing a financing statement covering the collateral; or

(3) any date specified in a statute under which the agricultural lien was created.

(f) A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of Chapter 55, Article 9 NMSA 1978.

(g) Except as otherwise provided in Subsection (c) of Section 55-9-607 NMSA 1978, this part imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles or promissory notes."

SECTION 83. Section 55-9-605 NMSA 1978 (being Laws 2001, Chapter 139, Section 102) is amended to read:

"55-9-605. UNKNOWN DEBTOR OR SECONDARY OBLIGOR.--

(a) Except as provided in Subsection (b) of this section, a secured party does not owe a duty based on 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

HB 90
Page 191
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.

(b) A secured party owes a duty based on its status as a secured party to a person if, at the time the secured party obtains control of collateral that is a controllable account, controllable electronic record or controllable payment intangible or at the time the security interest attaches to the collateral, whichever is later:

(1) the person is a debtor or obligor; and

(2) the secured party knows that the information in Subparagraph (A), (B) or (C) of Paragraph (1) of Subsection (a) of this section relating to the person is not provided by the collateral, a record attached to or logically associated with the collateral or the system in which the collateral is recorded."

SECTION 84. Section 55-9-608 NMSA 1978 (being Laws 2001, Chapter 139, Section 105) is amended to read:

"55-9-608. APPLICATION OF PROCEEDS OF COLLECTION OR
ENFORCEMENT--LIABILITY FOR DEFICIENCY AND RIGHT TO SURPLUS.--

(a) If a security interest or agricultural lien secures payment or performance of an obligation, the following rules apply:

(1) A secured party shall apply or pay over for application the cash proceeds of collection or enforcement under Section 55-9-607 NMSA 1978 in the following order to:

(A) the reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorney fees and legal expenses incurred by the secured party;

(B) the satisfaction of obligations secured by the security interest or agricultural lien under which the collection or enforcement is made; and

(C) the satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest or agricultural lien under which the collection or enforcement is made if the secured party receives a signed demand for proceeds before distribution of the proceeds is completed.

(2) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder complies, the secured
party need not comply with the holder's demand under Subparagraph (C) of Paragraph (1) of Subsection (a) of this section.

(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 would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(4) A secured party shall account to and pay a debtor for any surplus, and the obligor is liable for any deficiency.

(b) If the underlying transaction is a sale of accounts, chattel paper, payment intangibles or promissory notes, the debtor is not entitled to any surplus, and the obligor is not liable for any deficiency."

SECTION 85. Section 55-9-611 NMSA 1978 (being Laws 2001, Chapter 139, Section 108) is amended to read:

"55-9-611. NOTIFICATION BEFORE DISPOSITION OF COLLATERAL.--

(a) In this section, "notification date" means the earlier of the date on which:

(1) a secured party sends to the debtor and any secondary obligor a signed notification of disposition;
or

(2) the debtor and any secondary obligor

waive the right to notification.

(b) Except as otherwise provided in Subsection (d) 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 signed notification of disposition.

(c) To comply with Subsection (b) of this section, the secured party shall send a signed notification of disposition to:

(1) the debtor;
(2) any secondary obligor; and
(3) if the collateral is other than consumer goods:

(A) any other person from which the secured party has received, before the notification date, a signed notification of a claim of an interest in the collateral;
(B) any other secured party or lienholder that, ten days before the notification date, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

(i) identified the collateral;
(ii) was indexed under the
debtor's name as of that date; and

(iii) was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date; and

(C) any other secured party that, ten days before the notification date, held a security interest in the collateral perfected by compliance with a statute, regulation or treaty described in Subsection (a) of Section 55-9-311 NMSA 1978.

(d) Subsection (b) of this section does not apply if the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market.

(e) A secured party complies with the requirement for notification prescribed by Subparagraph (B) of Paragraph (3) of Subsection (c) of this section if:

(1) not later than twenty days or earlier than thirty days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor's name in the office indicated in Subparagraph (B) of Paragraph (3) of Subsection (c) of this section; and

(2) before the notification date, the secured party:

(A) did not receive a response to the
request for information; or

(B) received a response to the request for information and sent a signed notification of disposition to each secured party or other lienholder named in that response whose financing statement covered the collateral."

SECTION 86. Section 55-9-613 NMSA 1978 (being Laws 2001, Chapter 139, Section 110) is amended to read:

"55-9-613. CONTENTS AND FORM OF NOTIFICATION BEFORE DISPOSITION OF COLLATERAL--GENERAL.--

(a) Except in a consumer-goods transaction, the following rules apply:

(1) The contents of a notification of disposition are sufficient if the notification:

(A) describes the debtor and the secured party;

(B) describes the collateral that is the subject of the intended disposition;

(C) states the method of intended disposition;

(D) states that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting; and

(E) states the time and place of a public disposition or the time after which any other disposition is to be made.
(2) Whether the contents of a notification that lacks any of the information specified in Paragraph (1) of this subsection are nevertheless sufficient is a question of fact.

(3) The contents of a notification providing substantially the information specified in Paragraph (1) of this subsection are sufficient, even if the notification includes:

(A) information not specified by that subsection; or

(B) minor errors that are not seriously misleading.

(4) A particular phrasing of the notification is not required.

(5) The following form of notification and the form appearing in Paragraph (3) of Subsection (a) of Section 55-9-614 NMSA 1978, when completed, each provides sufficient information:

"NOTIFICATION OF DISPOSITION OF COLLATERAL
To: (Name of debtor, obligor or other person to which the notification is sent)
From: (Name, address and telephone number of secured)

{1} Name of any debtor that is not an addressee:

(Name of each debtor)
{2} We will sell (describe collateral) (to the highest qualified bidder) at public sale. A sale could include a lease or license. The sale will be held as follows:

(Date)
(Time)
(Place)

{3} We will sell (describe collateral) at private sale sometime after (date). A sale could include a lease or license.

{4} You are entitled to an accounting of the unpaid indebtedness secured by the property that we intend to sell or, as applicable, lease or license.

{5} If you request an accounting, you must pay a charge of $ (amount).

{6} You may request an accounting by calling us at (telephone number)."

(b) The following instructions apply to the form of notification in Paragraph (5) of Subsection (a) of this section:

(1) the instructions in this subsection refer to the numbers in braces before items in the form of notification in Paragraph (5) of Subsection (a) of this section. Do not include the numbers or braces in the notification. The numbers and braces are used only for the
purpose of these instructions;

(2) include and complete Item {1} only if there is a debtor that is not an addressee of the notification and list the name or names;

(3) include and complete either Item {2}, if the notification relates to a public disposition of the collateral, or Item {3}, if the notification relates to a private disposition of the collateral. If Item {2} is included, include the words "to the highest qualified bidder" only if applicable;

(4) include and complete Items {4} and {6}; and

(5) include and complete Item {5} only if the sender will charge the recipient for an accounting."

SECTION 87. Section 55-9-614 NMSA 1978 (being Laws 2001, Chapter 139, Section 111) is amended to read:

"55-9-614. CONTENTS AND FORM OF NOTIFICATION BEFORE DISPOSITION OF COLLATERAL--CONSUMER-GOODS TRANSACTION.--

(a) In a consumer-goods transaction, the following rules apply:

(1) A notification of disposition must provide the following information:

(A) the information specified in Paragraph (1) of Subsection (a) of Section 55-9-613 NMSA 1978;
(B) a description of any liability for a deficiency of the person to which the notification is sent;
(C) a telephone number from which the amount that must be paid to the secured party to redeem the collateral under Section 55-9-623 NMSA 1978 is available; and
(D) a telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available.
(2) A particular phrasing of the notification is not required.
(3) The following form of notification, when completed in accordance with the instructions in Subsection (b) of this section, 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: (Identify transaction) We have your (describe collateral) because you broke promises in our agreement.
 {1} 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)
You may attend the sale and bring bidders if you want.

\{2\} We will sell \((\text{describe collateral})\) at private sale sometime after \((\text{date})\). A sale could include a lease or license.

\{3\} 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 \((\text{will or will not, as applicable})\) 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.

\{4\} You can get the property back at any time before we sell it by paying us the full amount you owe, not just the past due payments, including our expenses. To learn the exact amount you must pay, call us at \((\text{telephone number})\).

\{5\} If you want us to explain to you in \((\text{writing})\) \((\text{writing or in (description of electronic record)})\) how we have figured the amount that you owe us, \{6\} call us at \((\text{telephone number})\) \((\text{or})\) \((\text{write us at (secured party's address)})\) \((\text{or contact us by (description of electronic communication method)})\) \{7\} and request \((\text{a written explanation})\) \((\text{a written explanation or an explanation in (description of electronic record)})\) \((\text{an explanation in (description of electronic record)})\).

\{8\} We will charge you \$ \((\text{amount})\) for the explanation
if we sent you another written explanation of the amount you
owe us within the last six months.

(9) If you need more information about the sale, (call us at (telephone number)) (or) (write us at (secured party's address)) (or contact us by (description of electronic communication method)).

(10) We are sending this notice to the following other people who have an interest in (describe collateral) or who owe money under your agreement:
(Names of all other debtors and obligors, if any)."

(4) The form of notification provided in Paragraph (3) of this subsection is sufficient even if additional information appears at the end of the form.

(5) The form of notification provided in Paragraph (3) of this subsection is sufficient even if it includes an error regarding information that is not required pursuant to Paragraph (1) of this subsection, unless the error is misleading with respect to rights that arise pursuant to Chapter 55, Article 9 NMSA 1978.

(6) If notification under this section is not in the form provided in Paragraph (3) of this subsection, law other than Chapter 55, Article 9 NMSA 1978 shall determine the effect of including information that is not required pursuant to Paragraph (1) of this subsection.

(b) The following instructions apply to the form
of notification in Paragraph (3) of Subsection (a) of this section:

(1) the instructions in this subsection refer to the numbers in braces before items in the form of notification in Paragraph (3) of Subsection (a) of this section. Do not include the numbers or braces in the notification. The numbers and braces are used only for the purpose of these instructions;

(2) include and complete either Item {1}, if the notification relates to a public disposition of the collateral, or Item {2}, if the notification relates to a private disposition of the collateral;

(3) include and complete Items {3}, {4}, {5}, {6} and {7};

(4) in Item {5}, include and complete any one of the three alternative methods for the explanation: writing, writing or electronic record or electronic record;

(5) in Item {6}, include the telephone number. In addition, the sender may include and complete either or both of the two additional alternative methods of communication, those being writing or electronic communication, for the recipient of the notification to communicate with the sender. Neither of the two additional methods of communication is required to be included;

(6) in Item {7}, include and complete the
method or methods for the explanation included in Item {5}:
writing, writing or electronic record or electronic record;

(7) include and complete Item {8} only if a
written explanation is included in Item {5} as a method for
communicating the explanation and the sender will charge the
recipient for another written explanation;

(8) in Item {9}, include either the
telephone number or the address or both the telephone number
and the address. In addition, the sender may include and
complete the additional electronic method of communication
for the recipient of the notification to communicate with the
sender. The additional method of electronic communication is
not required to be included; and

(9) if Item {10} does not apply, insert
"None" after "agreement:"

SECTION 88. Section 55-9-615 NMSA 1978 (being Laws
2001, Chapter 139, Section 112) is amended to read:

"55-9-615. APPLICATION OF PROCEEDS OF DISPOSITION--
LIABILITY FOR DEFICIENCY AND RIGHT TO SURPLUS.--

(a) A secured party shall apply or pay over for
application the cash proceeds of disposition pursuant to
Section 55-9-610 NMSA 1978 in the following order to:

(1) the reasonable expenses of retaking,
holding, preparing for disposition, processing and disposing,
and, to the extent provided for by agreement and not
prohibited by law, reasonable attorney fees and legal expenses incurred by the secured party;

(2) the satisfaction of obligations secured by the security interest or agricultural lien under which the disposition is made;

(3) the satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral if:

(A) the secured party receives from the holder of the subordinate security interest or other lien a signed demand for proceeds before distribution of the proceeds is completed; and

(B) in a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor; and

(4) a secured party that is a consignor of the collateral if the secured party receives from the consignor a signed demand for proceeds before distribution of the proceeds is completed.

(b) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder does so, the secured party need not 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 application noncash proceeds of disposition under Section 55-9-610 NMSA 1978 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(d) If the security interest under which a disposition is made secures payment or performance of an obligation, after making the payments and applications required by Subsection (a) of this section and permitted by Subsection (c) of this section:

(1) unless Paragraph (4) of Subsection (a) of this section requires the secured party to apply or pay over cash proceeds to a consignor, the secured party shall account to and pay a debtor for any surplus; and

(2) the obligor is liable for any deficiency.

(e) If the underlying transaction is a sale of accounts, chattel paper, payment intangibles or promissory notes:

(1) the debtor is not entitled to any surplus; and

(2) the obligor is not liable for any deficiency.
(f) The surplus or deficiency following a disposition is calculated based on the amount of proceeds that 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:

(1) the transferee in the disposition is the secured party, a person related to the secured party or a secondary obligor; and

(2) the amount of proceeds of the disposition is significantly below the range of proceeds that a complying disposition to a person other than the secured party, a person related to the secured party or a secondary obligor would have brought.

(g) A secured party that receives cash proceeds of a disposition in good faith and without knowledge that the receipt violates the rights of the holder of a security interest or other lien that is not subordinate to the security interest or agricultural lien under which the disposition is made:

(1) takes the cash proceeds free of the security interest or other lien;

(2) is not obligated to apply the proceeds of the disposition to the satisfaction of obligations secured by the security interest or other lien; and
(3) is not obligated to account to or pay the holder of the security interest or other lien for any surplus."

SECTION 89. Section 55-9-616 NMSA 1978 (being Laws 2001, Chapter 139, Section 113) is amended to read:

"55-9-616. EXPLANATION OF CALCULATION OF SURPLUS OR DEFICIENCY.--

(a) In this section:

(1) "explanation" means a record that:

(A) states the amount of the surplus or deficiency;

(B) provides an explanation in accordance with Subsection (c) of this section of how the secured party calculated the surplus or deficiency;

(C) states, if applicable, that future debits, credits, charges, including additional credit service charges or interest, rebates and expenses may affect the amount of the surplus or deficiency; and

(D) provides a telephone number or mailing address from which additional information concerning the transaction is available; and

(2) "request" means a record:

(A) signed by a debtor or consumer obligor;

(B) requesting that the recipient
provide an explanation; and

(C) sent after disposition of the collateral under Section 55-9-610 NMSA 1978.

(b) In a consumer-goods transaction in which the debtor is entitled to a surplus or a consumer obligor is liable for a deficiency under Section 55-9-615 NMSA 1978, the secured party shall:

(1) send an explanation to the debtor or consumer obligor, as applicable, after the disposition and:

(A) before or when the secured party accounts to the debtor and pays any surplus or first makes demand in a record on the consumer obligor after the disposition for payment of the deficiency; and

(B) within fourteen days after receipt of a request; or

(2) in the case of a consumer obligor who is liable for a deficiency, within fourteen days after receipt of a request, send to the consumer obligor a record waiving the secured party's right to a deficiency.

(c) To comply with Subparagraph (B) of Paragraph (1) of Subsection (a) of this section, an explanation must provide the following information in the following order:

(1) the aggregate amount of obligations secured by the security interest under which the disposition was made and, if the amount reflects a rebate of unearned
interest or credit service charge, an indication of that fact, calculated as of a specified date:

   (A) if the secured party takes or receives possession of the collateral after default, not more than thirty-five days before the secured party takes or receives possession; or

   (B) if the secured party takes or receives possession of the collateral before default or does not take possession of the collateral, not more than thirty-five days before the disposition;

(2) the amount of proceeds of the disposition;

(3) the aggregate amount of the obligations after deducting the amount of proceeds;

(4) the amount, in the aggregate or by type, and types of expenses, including expenses of retaking, holding, preparing for disposition, processing and disposing of the collateral, and attorney fees secured by the collateral which are known to the secured party and relate to the current disposition;

(5) the amount, in the aggregate or by type, and types of credits, including rebates of interest or credit service charges, to which the obligor is known to be entitled and which are not reflected in the amount in Paragraph (1) of this subsection; and
(6) the amount of the surplus or deficiency.

(d) A particular phrasing of the explanation is not required. An explanation complying substantially with the requirements of Subsection (a) of this section is sufficient, even if it includes minor errors that are not seriously misleading.

(e) A debtor or consumer obligor is entitled without charge to one response to a request under this section during any six-month period in which the secured party did not send to the debtor or consumer obligor an explanation pursuant to Paragraph (1) of Subsection (b) of this section. The secured party may require payment of a charge not exceeding twenty-five dollars ($25.00) for each additional response."

SECTION 90. Section 55-9-619 NMSA 1978 (being Laws 2001, Chapter 139, Section 116) is amended to read:

"55-9-619. TRANSFER OF RECORD OR LEGAL TITLE.--
(a) In this section, "transfer statement" means a record signed by a secured party stating:

(1) that the debtor has defaulted in connection with an obligation secured by specified collateral;

(2) that the secured party has exercised its post-default remedies with respect to the collateral;

(3) that, by reason of the exercise, a
transferee has acquired the rights of the debtor in the

collateral; and

(4) the name and mailing address of the

secured party, debtor and transferee.

(b) A transfer statement entitles the transferee
to the transfer of record of all rights of the debtor in the
collateral specified in the statement in any official filing,
recording, registration or certificate-of-title system
covering the collateral. If a transfer statement is
presented with the applicable fee and request form to the
official or office responsible for maintaining the system,
the official or office shall:

(1) accept the transfer statement;

(2) promptly amend its records to reflect

the transfer; and

(3) if applicable, issue a new appropriate
certificate of title in the name of the transferee.

(c) A transfer of the record or legal title to
collateral to a secured party under Subsection (b) of this
section or otherwise is not of itself a disposition of
collateral under Chapter 55, Article 9 NMSA 1978 and does not
of itself relieve the secured party of its duties under that
article."

SECTION 91. Section 55-9-620 NMSA 1978 (being Laws
2001, Chapter 139, Section 117, as amended) is amended to
"55-9-620. ACCEPTANCE OF COLLATERAL IN FULL OR PARTIAL SATISFACTION OF OBLIGATION--COMPULSORY DISPOSITION OF COLLATERAL.--

(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:

1. the debtor consents to the acceptance under Subsection (c) of this section;

2. the secured party does not receive, within the time set forth in Subsection (d) of this section, a notification of objection to the proposal signed by:
   (A) a person to which the secured party was required to send a proposal under Section 55-9-621 NMSA 1978; or
   (B) any other person, other than the debtor, holding an interest in the collateral subordinate to the security interest that is the subject of the proposal;

3. if the collateral is consumer goods, the collateral is not in the possession of the debtor when the debtor consents to the acceptance; and

4. Subsection (e) of this section does not require the secured party to dispose of the collateral or the debtor waives the requirement pursuant to Section 55-9-624
NMSA 1978.

(b) A purported or apparent acceptance of collateral under this section is ineffective unless:

(1) the secured party consents to the acceptance in a signed record or sends a proposal to the debtor; and

(2) the conditions of Subsection (a) of this section are met.

(c) For purposes of this section:

(1) a debtor consents to an acceptance of collateral in partial satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record signed after default; and

(2) a debtor consents to an acceptance of collateral in full satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record signed after default or the secured party:

(A) sends to the debtor after default a proposal that is unconditional or subject only to a condition that collateral not in the possession of the secured party be preserved or maintained;

(B) in the proposal, proposes to accept collateral in full satisfaction of the obligation it secures; and

(C) does not receive a notification of
objection signed by the debtor within twenty days after the proposal is sent.

(d) To be effective under Paragraph (2) of Subsection (a) of this section, a notification of objection must be received by the secured party:

(1) in the case of a person to which the proposal was sent pursuant to Section 55-9-621 NMSA 1978, within twenty days after notification was sent to that person; and

(2) in other cases:

(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 the debtor consents to the acceptance under Subsection (c) of this section.

(e) A secured party that has taken possession of collateral shall dispose of the collateral pursuant to Section 55-9-610 NMSA 1978 within the time specified in Subsection (f) of this section if:

(1) sixty percent of the cash price has been paid in the case of a purchase-money security interest in consumer goods; or

(2) sixty percent of the principal amount of the obligation secured has been paid in the case of a non-
purchase-money security interest in consumer goods.

(f) To comply with Subsection (e) of this section, the secured party shall dispose of the collateral:

(1) within ninety days after taking possession; or

(2) within any longer period to which the debtor and all secondary obligors have agreed in an agreement to that effect entered into and signed after default.

(g) In a consumer transaction, a secured party may not accept collateral in partial satisfaction of the obligation it secures."

SECTION 92. Section 55-9-621 NMSA 1978 (being Laws 2001, Chapter 139, Section 118) is amended to read:

"55-9-621. NOTIFICATION OF PROPOSAL TO ACCEPT COLLATERAL.--

(a) A secured party that desires to accept collateral in full or partial satisfaction of the obligation it secures shall send its proposal to:

(1) any person from which the secured party has received, before the debtor consented to the acceptance, a signed notification of a claim of an interest in the collateral;

(2) any other secured party or lienholder that, ten days before the debtor consented to the acceptance, held a security interest in or other lien on the collateral
perfected by the filing of a financing statement that:

(A) identified the collateral;

(B) was indexed under the debtor's name as of that date; and

(C) was filed in the office or offices in which to file a financing statement against the debtor covering the collateral as of that date; and

(3) any other secured party that, ten days before the debtor consented to the acceptance, held a security interest in the collateral perfected by compliance with a statute, regulation or treaty described in Subsection (a) of Section 55-9-311 NMSA 1978.

(b) A secured party that desires to accept collateral in partial satisfaction of the obligation it secures shall send its proposal to any secondary obligor in addition to the persons described in Subsection (a) of this section."

SECTION 93. Section 55-9-624 NMSA 1978 (being Laws 2001, Chapter 139, Section 121) is amended to read:

"55-9-624. WAIVER.--

(a) A debtor or secondary obligor may waive the right to notification of disposition of collateral under Section 55-9-611 NMSA 1978 only by an agreement to that effect entered into and signed after default.

(b) A debtor may waive the right to require
disposition of collateral under Subsection (e) of Section 55-9-620 NMSA 1978 only by an agreement to that effect entered into and signed after default.

(c) Except in a consumer-goods transaction, a debtor or secondary obligor may waive the right to redeem collateral under Section 55-9-623 NMSA 1978 only by an agreement to that effect entered into and signed after default."

SECTION 94. Section 55-9-628 NMSA 1978 (being Laws 2001, Chapter 139, Section 125) is amended to read:

"55-9-628. NONLIABILITY AND LIMITATION ON LIABILITY OF SECURED PARTY--LIABILITY OF SECONDARY OBLIGOR.--

(a) Subject to Subsection (f) of this section, unless a secured party knows that a person is a debtor or obligor, knows the identity of the person and knows how to communicate with the person:

(1) the secured party is not liable to the 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

(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) Subject to Subsection (f) of this section, 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 purpose for which a secured obligation was incurred.
(d) A secured party is not liable to any person under Paragraph (2) of Subsection (c) of Section 55-9-625 NMSA 1978 for its failure to comply with Section 55-9-616 NMSA 1978.

(e) A secured party is not liable under Paragraph (2) of Subsection (c) of Section 55-9-625 NMSA 1978 more than once with respect to any one secured obligation.

(f) Subsections (a) and (b) of this section do not apply to limit the liability of a secured party to a person if, at the time the secured party obtains control of collateral that is a controllable account, controllable electronic record or controllable payment intangible or at the time the security interest attaches to the collateral, whichever is later:

(1) the person is a debtor or obligor; and
(2) the secured party knows that the information in Subparagraph (A), (B) or (C) of Paragraph (1) of Subsection (b) of this section relating to the person is not provided by the collateral, a record attached to or logically associated with the collateral or the system in which the collateral is recorded."

SECTION 95. RECOMPILATION.--Sections 55-12-101 through 55-12-111 NMSA 1978 (being Laws 1985, Chapter 193, Section 39 through 46, Laws 1996, Chapter 47, Section 69 and Laws 2005, Chapter 144, Sections 110 and 111, as amended) are recompiled

ARTICLE 12

CONTROLLABLE ELECTRONIC RECORDS

SECTION 96. A new section of the Uniform Commercial Code, Section 55-12-101 NMSA 1978, is enacted to read:

"55-12-101. SHORT TITLE.--Chapter 55, Article 12 NMSA 1978 may be cited as "Uniform Commercial Code - Controllable Electronic Records"."

SECTION 97. A new section of the Uniform Commercial Code, Section 55-12-102 NMSA 1978, is enacted to read:

"55-12-102. DEFINITIONS.--

(a) As used in Chapter 55, Article 12 NMSA 1978:

(1) "controllable electronic record" means a record stored in an electronic medium that can be subjected to control pursuant to Section 55-12-105 NMSA 1978. The term does not include a controllable account, a controllable payment intangible, a deposit account, an electronic copy of a record evidencing chattel paper, an electronic document of title, electronic money, investment property or a transferable record;

(2) "qualifying purchaser" means a purchaser of a controllable electronic record or an interest in a controllable electronic record that obtains control of the controllable electronic record for value, in good faith, and without notice of a claim of a property right in the
controllable electronic record;

(3) "transferable record" has the meaning provided for that term in:

(A) Section 201(a)(1) of the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7021(a)(1), as amended; or

(B) Subsection (a) of Section 14-16-16 NMSA 1978; and

(4) "value" has the meaning provided in Subsection (a) of Section 55-3-303 NMSA 1978 as if references in that subsection to an "instrument" were references to a controllable account, controllable electronic record or controllable payment intangible.

(b) The definitions in Article 9 of the Uniform Commercial Code of "account debtor", "controllable account", "controllable payment intangible", "chattel paper", "deposit account", "electronic money" and "investment property" apply to Sections 55-12-101 through 55-12-106 NMSA 1978.

(c) Article 1 of the Uniform Commercial Code contains general definitions and principles of construction and interpretation applicable throughout Sections 55-12-101 through 55-12-106 NMSA 1978."

SECTION 98. A new section of the Uniform Commercial Code, Section 55-12-103 NMSA 1978, is enacted to read:

"55-12-103. RELATION TO ARTICLE 9 OF THE UNIFORM
COMMERCIAL CODE AND CONSUMER LAWS.--

(a) If there is conflict between Sections 55-12-101 through 55-12-106 NMSA 1978 and Article 9 of the Uniform Commercial Code, Article 9 governs.

(b) A transaction subject to Sections 55-12-101 through 55-12-106 NMSA 1978 is subject to any applicable rule of law that establishes a different rule for consumers and any other statute or regulation that regulates the rates, charges, agreements and practices for loans, credit sales or other extensions of credit, the Unfair Practices Act and any consumer-protection statute or regulation."

SECTION 99. A new section of the Uniform Commercial Code, Section 55-12-104 NMSA 1978, is enacted to read:

"55-12-104. RIGHTS IN CONTROLLABLE ACCOUNT, CONTROLLABLE ELECTRONIC RECORD AND CONTROLLABLE PAYMENT INTANGIBLE.--

(a) Sections 55-12-101 through 55-12-106 NMSA 1978 apply to the acquisition and purchase of rights in a controllable account or controllable payment intangible, including the rights and benefits pursuant to Subsections (c), (d), (e), (g) and (h) of this section of a purchaser and qualifying purchaser, in the same manner this section applies to a controllable electronic record.

(b) To determine whether a purchaser of a controllable account or a controllable payment intangible is
a qualifying purchaser, the purchaser obtains control of the
account or payment intangible if it obtains control of the
controllable electronic record that evidences the account or
payment intangible.

(c) Except as provided in this section, law other
than Sections 55-12-101 through 55-12-106 NMSA 1978
determines whether a person acquires a right in a
controllable electronic record and the right the person
acquires.

(d) A purchaser of a controllable electronic
record acquires all rights in the controllable electronic
record that the transferor had or had power to transfer,
except that a purchaser of a limited interest in a
controllable electronic record acquires rights only to the
extent of the interest purchased.

(e) A qualifying purchaser acquires its rights in
the controllable electronic record free of a claim of a
property right in the controllable electronic record.

(f) Except as provided in Subsections (a) and (e)
of this section for a controllable account and a controllable
payment intangible or law other than Sections 55-12-101
through 55-12-106 NMSA 1978, a qualifying purchaser takes a
right to payment, right to performance or other interest in
property evidenced by the controllable electronic record
subject to a claim of a property right in the right to
payment, right to performance or other interest in property.

(g) An action may not be asserted against a qualifying purchaser based on both a purchase by the qualifying purchaser of a controllable electronic record and a claim of a property right in another controllable electronic record, whether the action is framed in conversion, replevin, constructive trust, equitable lien or other theory.

(h) Filing of a financing statement pursuant to Article 9 of the Uniform Commercial Code is not notice of a claim of a property right in a controllable electronic record."

SECTION 100. A new section of the Uniform Commercial Code, Section 55-12-105 NMSA 1978, is enacted to read:

"55-12-105. CONTROL OF CONTROLLABLE ELECTRONIC RECORD.--

(a) A person has control of a controllable electronic record if the electronic record, a record attached to or logically associated with the electronic record or a system in which the electronic record is recorded:

(1) gives the person:

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

(B) exclusive power, subject to Subsection (b) of this section, to:
(i) prevent others from availing themselves of substantially all the benefit from the electronic record; and

(ii) transfer control of the electronic record to another person or cause another person to obtain control of another controllable electronic record as a result of the transfer of the electronic record; and

(2) enables the person readily to identify itself in any way, including by name, identifying number, cryptographic key, office or account number, as having the powers specified in Paragraph (1) of this subsection.

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

(1) the controllable electronic record, a record attached to or logically associated with the electronic record or a system in which the electronic record is recorded limits the use of the electronic record or has a protocol programmed to cause a change, including a transfer or loss of control or a modification of benefits afforded by the electronic record; or

(2) the power is shared with another person.

(c) A power of a person is not shared with another person pursuant to Paragraph (2) of Subsection (b) of this section even if:
section and the person's power is not exclusive if:

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

(2) the other person:

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

(B) is the transferor to the person of an interest in the controllable electronic record or a controllable account or controllable payment intangible evidenced by the controllable electronic record.

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

(e) A person has control of a controllable electronic record if another person, other than the transferor to the person of an interest in the controllable electronic record or a controllable account or controllable payment intangible evidenced by the controllable electronic record:

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

(2) obtains control of the electronic record after having acknowledged that it will obtain control of the electronic record on behalf of the person.
(f) A person that has control pursuant to this section is not required to acknowledge that it has control on behalf of another person.

(g) If a person acknowledges that it has or will obtain control on behalf of another person, unless the person otherwise agrees or law other than Sections 55-12-101 through 55-12-106 NMSA 1978 or Article 9 of the Uniform Commercial Code otherwise provides, the person does not owe any duty to the other person and is not required to confirm the acknowledgment to any other person."

SECTION 101. A new section of the Uniform Commercial Code, Section 55-12-106 NMSA 1978, is enacted to read:

"55-12-106. DISCHARGE OF ACCOUNT DEBTOR ON CONTROLLABLE ACCOUNT OR CONTROLLABLE PAYMENT INTANGIBLE.--

(a) An account debtor on a controllable account or controllable payment intangible may discharge its obligation by paying:

(1) the person having control of the controllable electronic record that evidences the controllable account or controllable payment intangible; or

(2) except as provided in Subsection (b) of this section, a person that formerly had control of the controllable electronic record.

(b) Subject to Subsection (d) of this section, the account debtor may not discharge its obligation by paying a
person that formerly had control of the controllable electronic record if the account debtor receives a notification that:

(1) is signed by a person that formerly had control or the person to which control was transferred;

(2) reasonably identifies the controllable account or controllable payment intangible;

(3) notifies the account debtor that control of the controllable electronic record that evidences the controllable account or controllable payment intangible was transferred;

(4) identifies the transferee, in any reasonable way, including by name, identifying number, cryptographic key, office or account number; and

(5) provides a commercially reasonable method by which the account debtor is to pay the transferee.

(c) After receipt of a notification that complies with Subsection (b) of this section, the account debtor may discharge its obligation by paying in accordance with the notification and may not discharge the obligation by paying a person that formerly had control.

(d) Subject to Subsection (h) of this section, notification is ineffective pursuant to Subsection (b) of this section:

(1) unless, before the notification is sent,
the account debtor and the person that, at that time, had control of the controllable electronic record that evidences the controllable account or controllable payment intangible agree in a signed record to a commercially reasonable method by which a person may furnish reasonable proof that control has been transferred;

(2) to the extent an agreement between the account debtor and seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than Sections 55-12-101 through 55-12-106 NMSA 1978; or

(3) at the option of the account debtor, if the notification notifies the account debtor to:

(A) divide a payment;

(B) make less than the full amount of an installment or other periodic payment; or

(C) pay any part of a payment by more than one method or to more than one person.

(e) Subject to Subsection (h) of this section, if requested by the account debtor, the person giving the notification pursuant to Subsection (b) of this section seasonably shall furnish reasonable proof, using the method in the agreement referred to in Paragraph (1) of Subsection (d) of this section, that control of the controllable electronic record has been transferred. Unless the person
complies with the request, the account debtor may discharge its obligation by paying a person that formerly had control, even if the account debtor has received a notification pursuant to Subsection (b) of this section.

(f) A person furnishes reasonable proof pursuant to Subsection (e) of this section that control has been transferred if the person demonstrates, using the method in the agreement referred to in Paragraph (1) of Subsection (d) of this section, that the transferee has the power to:

1. avail itself of substantially all the benefit from the controllable electronic record;
2. prevent others from availing themselves of substantially all the benefit from the controllable electronic record; and
3. transfer the powers specified in Paragraphs (1) and (2) of this subsection to another person.

(g) Subject to Subsection (h) of this section, an account debtor may not waive or vary its rights pursuant to Paragraph (1) of Subsection (d) and Subsection (e) of this section or its option pursuant to Paragraph (3) of Subsection (d) of this section.

(h) This section is subject to law other than Sections 55-12-101 through 55-12-106 NMSA 1978 that establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for
personal, family or household purposes."

SECTION 102. A new section of the Uniform Commercial Code, Section 55-12-107 NMSA 1978, is enacted to read:

"55-12-107. GOVERNING LAW.--

(a) Except as provided in Subsection (b) of this section, the local law of a controllable electronic record's jurisdiction governs a matter covered by Sections 55-12-101 through 55-12-106 NMSA 1978.

(b) For a controllable electronic record that evidences a controllable account or controllable payment intangible, the local law of the controllable electronic record's jurisdiction governs a matter covered by Section 55-12-106 NMSA 1978 unless an effective agreement determines that the local law of another jurisdiction governs.

(c) The following rules determine a controllable electronic record's jurisdiction pursuant to this section:

(1) if the controllable electronic record, or a record attached to or logically associated with the controllable electronic record and readily available for review, expressly provides that a particular jurisdiction is the controllable electronic record's jurisdiction for purposes of Sections 55-12-101 through 55-12-106 NMSA 1978 or the Uniform Commercial Code, that jurisdiction is the controllable electronic record's jurisdiction;

(2) if Paragraph (1) of this subsection does
not apply and the rules of the system in which the
controllable electronic record is recorded are readily
available for review and expressly provide that a particular
jurisdiction is the controllable electronic record's
jurisdiction for purposes of Sections 55-12-101 through 55-
12-106 NMSA 1978 or the Uniform Commercial Code, that
jurisdiction is the controllable electronic record's
jurisdiction;

(3) if Paragraphs (1) and (2) of this
subsection do not apply and the controllable electronic
record, or a record attached to or logically associated with
the controllable electronic record and readily available for
review, expressly provides that the controllable electronic
record is governed by the law of a particular jurisdiction,
that jurisdiction is the controllable electronic record's
jurisdiction;

(4) if Paragraphs (1), (2) and (3) of this
subsection do not apply and the rules of the system in which
the controllable electronic record is recorded are readily
available for review and expressly provide that the
controllable electronic record or the system is governed by
the law of a particular jurisdiction, that jurisdiction is
the controllable electronic record's jurisdiction; and

(5) if Paragraphs (1) through (4) of this
subsection do not apply, the controllable electronic record's
jurisdiction is the District of Columbia.

(d) If Paragraph (5) of Subsection (c) of this section applies and Article 12 is not in effect in the District of Columbia without material modification, the governing law for a matter covered by Sections 55-12-101 through 55-12-106 NMSA 1978 is the law of the District of Columbia as though those sections were in effect in the District of Columbia without material modification. In this subsection, "Article 12" means Article 12 of Uniform Commercial Code Amendments (2022).

(e) To the extent Subsections (a) and (b) of this section provide that the local law of the controllable electronic record's jurisdiction governs a matter covered by Sections 55-12-101 through 55-12-106 NMSA 1978, that law governs even if the matter or a transaction to which the matter relates does not bear any relation to the controllable electronic record's jurisdiction.

(f) The rights acquired pursuant to Section 55-12-104 NMSA 1978 by a purchaser or qualifying purchaser are governed by the law applicable pursuant to this section at the time of purchase."

ARTICLE 12A

TRANSITIONAL PROVISIONS FOR UNIFORM COMMERCIAL CODE AMENDMENTS (2022)

PART 1
GENERAL PROVISIONS AND DEFINITIONS

SECTION 103. A new section of the Uniform Commercial Code, Section 55-12A-101 NMSA 1978, is enacted to read:


SECTION 104. A new section of the Uniform Commercial Code, Section 55-12A-102 NMSA 1978, is enacted to read:

"55-12A-102. DEFINITIONS.--

(a) As used in Chapter 55, Article 12A NMSA 1978:

(1) "adjustment date" means July 1, 2025;

(2) "Article 12" means Article 12 of the Uniform Commercial Code; and

(3) "Article 12 property" means a controllable account, controllable electronic record or controllable payment intangible.

(b) The following definitions in other articles of the Uniform Commercial Code apply to this article:

(1) "controllable account", as provided in Section 55-9-102 NMSA 1978;

(2) "controllable electronic record", as provided in Section 55-12-102 NMSA 1978;

(3) "controllable payment intangible", as provided in Section 55-9-102 NMSA 1978;

(4) "electronic money", as provided in
Section 55-9-102 NMSA 1978; and

(5) "financing statement", as provided in Section 55-9-102 NMSA 1978.

(c) Article 1 of the Uniform Commercial Code contains general definitions and principles of construction and interpretation applicable throughout this article."

PART 2

GENERAL TRANSITIONAL PROVISION

SECTION 105. A new section of the Uniform Commercial Code, Section 55-12A-201 NMSA 1978, is enacted to read:

"55-12A-201. SAVING CLAUSE.--Except as provided in Sections 55-12A-301 through 55-12A-306 NMSA 1978, a transaction validly entered into before January 1, 2024 and the rights, duties and interests flowing from the transaction remain valid thereafter and may be terminated, completed, consummated or enforced as required or permitted by law other than the Uniform Commercial Code or, if applicable, the Uniform Commercial Code as though this 2023 act had not taken effect."

PART 3

TRANSITIONAL PROVISOIONS FOR ARTICLES 9 AND 12

SECTION 106. A new section of the Uniform Commercial Code, Section 55-12A-301 NMSA 1978, is enacted to read:

"55-12A-301. SAVING CLAUSE.--

(a) Except as provided in Sections 55-12A-301
through 55-12A-306 NMSA 1978, Article 9 of the Uniform Commercial Code as amended by this 2023 act and Article 12 of the Uniform Commercial Code apply to a transaction, lien or other interest in property, even if the transaction, lien or interest was entered into, created or acquired before January 1, 2024.

(b) Except as provided in Subsection (c) of this section and Sections 55-12A-302 through 55-12A-306 NMSA 1978:

(1) a transaction, lien or interest in property that was validly entered into, created or transferred before January 1, 2024 and was not governed by the Uniform Commercial Code, but would be subject to Article 9 of the Uniform Commercial Code as amended by this 2023 act or Article 12 of the Uniform Commercial Code if it had been entered into, created or transferred on or after January 1, 2024, including the rights, duties and interests flowing from the transaction, lien or interest, remains valid on and after January 1, 2024; and

(2) the transaction, lien or interest may be terminated, completed, consummated and enforced as required or permitted by this 2023 act or by the law that would apply if this 2023 act had not taken effect.

(c) This 2023 act does not affect an action, case or proceeding commenced before January 1, 2024."

SECTION 107. A new section of the Uniform Commercial
Code, Section 55-12A-302 NMSA 1978, is enacted to read:

"55-12A-302. SECURITY INTEREST PERFECTED BEFORE JANUARY 1, 2024.--

(a) A security interest that is enforceable and perfected immediately before January 1, 2024 is a perfected security interest pursuant to this 2023 act if, on January 1, 2024, the requirements for enforceability and perfection pursuant to this 2023 act are satisfied without further action.

(b) If a security interest is enforceable and perfected immediately before January 1, 2024, but the requirements for enforceability or perfection pursuant to this 2023 act are not satisfied on January 1, 2024, the security interest:

(1) is a perfected security interest until the earlier of the time perfection would have ceased under the law in effect immediately before January 1, 2024 or the adjustment date;

(2) remains enforceable thereafter only if the security interest satisfies the requirements for enforceability pursuant to Section 55-9-203 NMSA 1978, as amended by this 2023 act, before the adjustment date; and

(3) remains perfected thereafter only if the requirements for perfection pursuant to this 2023 act are satisfied before the time specified in Paragraph (1) of this
SECTION 108. A new section of the Uniform Commercial Code, Section 55-12A-303 NMSA 1978, is enacted to read:

"55-12A-303. SECURITY INTEREST UNPERFECTED BEFORE JANUARY 1, 2024.--A security interest that is enforceable immediately before January 1, 2024 but is unperfected at that time:

(1) remains an enforceable security interest until the adjustment date;

(2) remains enforceable thereafter if the security interest becomes enforceable pursuant to Section 55-9-203 NMSA 1978, as amended by this 2023 act, on January 1, 2024 or before the adjustment date; and

(3) becomes perfected:

(A) without further action on January 1, 2024 if the requirements for perfection pursuant to this 2023 act are satisfied before or at that time; or

(B) when the requirements for perfection are satisfied if the requirements are satisfied after that time."

SECTION 109. A new section of the Uniform Commercial Code, Section 55-12A-304 NMSA 1978, is enacted to read:

"55-12A-304. EFFECTIVENESS OF ACTIONS TAKEN BEFORE JANUARY 1, 2024.--

(a) If action, other than the filing of a financing statement, is taken before January 1, 2024 and the
action would have resulted in perfection of the security interest had the security interest become enforceable before January 1, 2024, the action is effective to perfect a security interest that attaches pursuant to this 2023 act before the adjustment date. An attached security interest becomes unperfected on the adjustment date unless the security interest becomes a perfected security interest pursuant to this 2023 act before the adjustment date.

(b) The filing of a financing statement before January 1, 2024 is effective to perfect a security interest on January 1, 2024 to the extent the filing would satisfy the requirements for perfection pursuant to this 2023 act.

(c) The taking of an action before January 1, 2024 is sufficient for the enforceability of a security interest on January 1, 2024 if the action would satisfy the requirements for enforceability pursuant to this 2023 act."

SECTION 110. A new section of the Uniform Commercial Code, Section 55-12A-305 NMSA 1978, is enacted to read:

"55-12A-305. PRIORITY.--

(a) Subject to Subsections (b) and (c) of this section, this 2023 act determines the priority of conflicting claims to collateral.

(b) Subject to Subsection (c) of this section, if the priorities of claims to collateral were established before January 1, 2024, Article 9 of the Uniform Commercial
Code as in effect before January 1, 2024 determines priority.

   (c) On the adjustment date, to the extent the priorities determined by Article 9 of the Uniform Commercial Code as amended by this 2023 act modify the priorities established before January 1, 2024, the priorities of claims to Article 12 property and electronic money established before January 1, 2024 cease to apply."

SECTION 111. A new section of the Uniform Commercial Code, Section 55-12A-306 NMSA 1978, is enacted to read:

"55-12A-306. PRIORITY OF CLAIMS WHEN PRIORITY RULES OF ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE DO NOT APPLY.--

   (a) Subject to Subsections (b) and (c) of this section, Article 12 of the Uniform Commercial Code determines the priority of conflicting claims to Article 12 property when the priority rules of Article 9 of the Uniform Commercial Code as amended by this 2023 act do not apply.

   (b) Subject to Subsection (c) of this section, when the priority rules of Article 9 of the Uniform Commercial Code as amended by this 2023 act do not apply and the priorities of claims to Article 12 property were established before January 1, 2024, law other than Article 12 of the Uniform Commercial Code determines priority.

   (c) When the priority rules of Article 9 of the Uniform Commercial Code as amended by this 2023 act do not apply, to the extent the priorities determined by this 2023
act modify the priorities established before January 1, 2024,
the priorities of claims to Article 12 property established
before January 1, 2024 cease to apply on the adjustment
date."

SECTION 112. EFFECTIVE DATE.--The effective date of the
provisions of this act is January 1, 2024.