

Underscored material = new  
[bracketed material] = delete

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

HOUSE BILL 104

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

RICHARD T. KNOWLES

FOR THE COURTS, CORRECTIONS AND CRIMINAL JUSTICE COMMITTEE

AN ACT

RELATING TO COMMERCIAL TRANSACTIONS; REVISING PROVISIONS OF THE  
UNIFORM COMMERCIAL CODE REGARDING LETTERS OF CREDIT; AMENDING,  
REPEALING AND ENACTING SECTIONS OF THE UNIFORM COMMERCIAL CODE.

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

Section 1. Section 55-1-105 NMSA 1978 (being Laws 1961,  
Chapter 96, Section 1-105, as amended) is amended to read:

"55-1-105. TERRITORIAL APPLICATION OF THE ACT--PARTIES'  
POWER TO CHOOSE APPLICABLE LAW. --

(1) Except as 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 such other state or nation shall govern  
their rights and duties. Failing such agreement, the Uniform  
Commercial Code applies to transactions bearing an appropriate

Underscored material = new  
[bracketed material] = delete

1 relation to this state.

2 (2) Where one of the following provisions of the  
3 Uniform Commercial Code specifies the applicable law, that  
4 provision governs and a contrary agreement is effective only to  
5 the extent permitted by the law (including the conflict of laws  
6 rules) so specified:

7 rights of creditors against sold goods. Section  
8 55-2-402 NMSA 1978;

9 applicability of the article on leases. Sections  
10 55-2A-105 and 55-2A-106 NMSA 1978;

11 applicability of the article on bank deposits and  
12 collections. Section 55-4-102 NMSA 1978;

13 governing law in the article on fund transfers.  
14 Section 55-4A-507 NMSA 1978;

15 letters of credit. Section 55-5-116 NMSA 1978;  
16 applicability of the article on investment

17 securities. Section 55-8-110 NMSA 1978; and

18 perfection provisions of the article on secured  
19 transactions. Section 55-9-103 NMSA 1978. "

20 Section 2. Section 55-2-512 NMSA 1978 (being Laws 1961,  
21 Chapter 96, Section 2-512) is amended to read:

22 "55-2-512. PAYMENT BY BUYER BEFORE INSPECTION. --

23 (1) Where the contract requires payment before  
24 inspection non-conformity of the goods does not excuse the buyer  
25 from so making payment unless:

Underscored material = new  
[bracketed material] = delete

1 (a) the non-conformity appears without  
2 inspection; or

3 (b) despite tender of the required documents  
4 the circumstances would justify injunction against honor under  
5 the provisions of [~~this Act~~] the Uniform Commercial Code  
6 (Section [~~5-114~~] 55-5-109 NMSA 1978).

7 (2) Payment pursuant to Subsection (1) of this  
8 section does not constitute an acceptance of goods or impair the  
9 [~~buyers~~] buyer's right to inspect or any of his remedies."

10 Section 3. Section 55-5-101 NMSA 1978 (being Laws 1961,  
11 Chapter 96, Section 5-101) is repealed and a new section of the  
12 Uniform Commercial Code, Section 55-5-101 NMSA 1978, is enacted  
13 to read:

14 "55-5-101. [NEW MATERIAL] SHORT TITLE. -- Chapter 55,  
15 Article 5 NMSA 1978 may be cited as "Uniform Commercial  
16 Code--Letters of Credit". "

17 Section 4. Section 55-5-102 NMSA 1978 (being Laws 1961,  
18 Chapter 96, Section 5-102) is repealed and a new section of the  
19 Uniform Commercial Code, Section 55-5-102 NMSA 1978, is enacted  
20 to read:

21 "55-5-102. [NEW MATERIAL] DEFINITIONS. --

22 (a) In this article:

23 (1) "adviser" means a person who, at the  
24 request of the issuer, a confirmer or another adviser, notifies  
25 or requests another adviser to notify the beneficiary that a

1 letter of credit has been issued, confirmed or amended;

2 (2) "applicant" means a person at whose request  
3 or for whose account a letter of credit is issued. The term  
4 includes a person who requests an issuer to issue a letter of  
5 credit on behalf of another if the person making the request  
6 undertakes an obligation to reimburse the issuer;

7 (3) "beneficiary" means a person who under the  
8 terms of a letter of credit is entitled to have its complying  
9 presentation honored. The term includes a person to whom  
10 drawing rights have been transferred under a transferable letter  
11 of credit;

12 (4) "confirmer" means a nominated person who  
13 undertakes, at the request or with the consent of the issuer, to  
14 honor a presentation under a letter of credit issued by another;

15 (5) "dishonor" of a letter of credit means  
16 failure timely to honor or to take an interim action, such as  
17 acceptance of a draft, that may be required by the letter of  
18 credit;

19 (6) "document" means a draft or other demand,  
20 document of title, investment security, certificate, invoice, or  
21 other record, statement, or representation of fact, law, right  
22 or opinion (i) which is presented in a written or other medium  
23 permitted by the letter of credit or, unless prohibited by the  
24 letter of credit, by the standard practice referred to in  
25 Section 55-5-108(e) NMSA 1978 and (ii) which is capable of being

1 examined for compliance with the terms and conditions of the  
2 letter of credit. A document may not be oral;

3 (7) "good faith" means honesty in fact in the  
4 conduct or transaction concerned;

5 (8) "honor" of a letter of credit means  
6 performance of the issuer's undertaking in the letter of credit  
7 to pay or deliver an item of value. Unless the letter of credit  
8 otherwise provides, "honor" occurs:

9 (i) upon payment;

10 (ii) if the letter of credit provides for  
11 acceptance, upon acceptance of a draft and, at maturity, its  
12 payment, or;

13 (iii) if the letter of credit provides  
14 for incurring a deferred obligation, upon incurring the  
15 obligation and, at maturity, its performance;

16 (9) "issuer" means a bank or other person that  
17 issues a letter of credit, but does not include an individual  
18 who makes an engagement for personal, family or household  
19 purposes;

20 (10) "letter of credit" means a definite  
21 undertaking that satisfies the requirements of Section 55-5-104  
22 NMSA 1978 by an issuer to a beneficiary at the request or for  
23 the account of an applicant or, in the case of a financial  
24 institution, to itself or for its own account, to honor a  
25 documentary presentation by payment or delivery of an item of

Underscored material = new  
[bracketed material] = delete

1 value;

2 (11) "nominated person" means a person whom the  
3 issuer (i) designates or authorizes to pay, accept, negotiate or  
4 otherwise give value under a letter of credit and (ii)  
5 undertakes by agreement or custom and practice to reimburse;

6 (12) "presentation" means delivery of a  
7 document to an issuer or nominated person for honor or giving of  
8 value under a letter of credit;

9 (13) "presenter" means a person making a  
10 presentation as or on behalf of a beneficiary or nominated  
11 person;

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

16 (15) "successor of a beneficiary" means a  
17 person who succeeds to substantially all of the rights of a  
18 beneficiary by operation of law, including a corporation with or  
19 into which the beneficiary has been merged or consolidated, an  
20 administrator, executor, personal representative, trustee in  
21 bankruptcy, debtor in possession, liquidator and receiver.

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

24 "accept" or "acceptance" Section 55-3-409 NMSA 1978

25 "value" Sections 55-3-303 and 55-4-211

Underscored material = new  
[bracketed material] = delete

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

NMSA 1978.

(c) Article 1 contains certain additional general definitions and principles of construction and interpretation applicable throughout this article."

Section 5. Section 55-5-103 NMSA 1978 (being Laws 1961, Chapter 96, Section 5-103, as amended) is repealed and a new section of the Uniform Commercial Code, Section 55-5-103 NMSA 1978, is enacted to read:

"55-5-103. [NEW MATERIAL] SCOPE. --

(a) This article applies to letters of credit and to certain rights and obligations arising out of transactions involving letters of credit.

(b) The statement of a rule in this article does not by itself require, imply or negate application of the same or a different rule to a situation not provided for, or to a person not specified, in this article.

(c) With the exception of this subsection, Subsections (a) and (d) of this section, Sections 55-5-102(a)(9) and (10) NMSA 1978, Section 55-5-106(d) NMSA 1978 and Section 55-5-114(d) NMSA 1978, and except to the extent prohibited in Section 55-1-102(3) NMSA 1978 and Section 55-5-117(d) NMSA 1978, the effect of this article may be varied by agreement or by a provision stated or incorporated by reference in an undertaking. A term in an agreement or undertaking generally excusing liability or generally limiting remedies for failure to perform

Underscored material = new  
[bracketed material] = delete

1 obligations is not sufficient to vary obligations prescribed by  
2 this article.

3 (d) Rights and obligations of an issuer to a  
4 beneficiary or a nominated person under a letter of credit are  
5 independent of the existence, performance or nonperformance of a  
6 contract or arrangement out of which the letter of credit arises  
7 or which underlies it, including contracts or arrangements  
8 between the issuer and the applicant and between the applicant  
9 and the beneficiary. "

10 Section 6. Section 55-5-104 NMSA 1978 (being Laws 1961,  
11 Chapter 96, Section 5-104) is repealed and a new section of the  
12 Uniform Commercial Code, Section 55-5-104 NMSA 1978, is enacted  
13 to read:

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

20 Section 7. Section 55-5-105 NMSA 1978 (being Laws 1961,  
21 Chapter 96, Section 5-105) is repealed and a new section of the  
22 Uniform Commercial Code, Section 55-5-105 NMSA 1978, is enacted  
23 to read:

24 "55-5-105. [NEW MATERIAL] CONSIDERATION. -- Consideration  
25 is not required to issue, amend, transfer or cancel a letter of



Underscored material = new  
[bracketed material] = delete

1 credit, advice or confirmation."

2 Section 8. Section 55-5-106 NMSA 1978 (being Laws 1961,  
3 Chapter 96, Section 5-106) is repealed and a new section of the  
4 Uniform Commercial Code, Section 55-5-106 NMSA 1978, is enacted  
5 to read:

6 "55-5-106. [NEW MATERIAL] ISSUANCE, AMENDMENT,  
7 CANCELLATION AND DURATION. --

8 (a) A letter of credit is issued and becomes  
9 enforceable according to its terms against the issuer when the  
10 issuer sends or otherwise transmits it to the person requested  
11 to advise or to the beneficiary. A letter of credit is  
12 revocable only if it so provides.

13 (b) After a letter of credit is issued, rights and  
14 obligations of a beneficiary, applicant, confirmer and issuer  
15 are not affected by an amendment or cancellation to which that  
16 person has not consented except to the extent the letter of  
17 credit provides that it is revocable or that the issuer may  
18 amend or cancel the letter of credit without that consent.

19 (c) If there is no stated expiration date or other  
20 provision that determines its duration, a letter of credit  
21 expires one year after its stated date of issuance or, if none  
22 is stated, after the date on which it is issued.

23 (d) A letter of credit that states that it is  
24 perpetual expires five years after its stated date of issuance,  
25 or if none is stated, after the date on which it is issued."

Underscored material = new  
[bracketed material] = delete

1           Section 9.   Section 55-5-107 NMSA 1978 (being Laws 1961,  
2 Chapter 96, Section 5-107) is repealed and a new section of the  
3 Uniform Commercial Code, Section 55-5-107 NMSA 1978, is enacted  
4 to read:

5           "55-5-107.   [NEW MATERIAL]   CONFIRMER, NOMINATED PERSON AND  
6 ADVISER. --

7           (a) A confirmer is directly obligated on a letter of  
8 credit and has the rights and obligations of an issuer to the  
9 extent of its confirmation. The confirmer also has rights  
10 against and obligations to the issuer as if the issuer were an  
11 applicant and the confirmer had issued the letter of credit at  
12 the request and for the account of the issuer.

13           (b) A nominated person who is not a confirmer is not  
14 obligated to honor or otherwise give value for a presentation.

15           (c) A person requested to advise may decline to act  
16 as an adviser. An adviser that is not a confirmer is not  
17 obligated to honor or give value for a presentation. An adviser  
18 undertakes to the issuer and to the beneficiary accurately to  
19 advise the terms of the letter of credit, confirmation,  
20 amendment or advice received by that person and undertakes to  
21 the beneficiary to check the apparent authenticity of the  
22 request to advise. Even if the advice is inaccurate, the letter  
23 of credit, confirmation or amendment is enforceable as issued.

24           (d) A person who notifies a transferee beneficiary  
25 of the terms of a letter of credit, confirmation, amendment or

Underscored material = new  
[bracketed material] = delete

1 advice has the rights and obligations of an adviser under  
2 Subsection (c) of this section. The terms in the notice to the  
3 transferee beneficiary may differ from the terms in any notice  
4 to the transferor beneficiary to the extent permitted by the  
5 letter of credit, confirmation, amendment or advice received by  
6 the person who so notifies."

7 Section 10. Section 55-5-108 NMSA 1978 (being Laws 1961,  
8 Chapter 96, Section 5-108) is repealed and a new section of the  
9 Uniform Commercial Code, Section 55-5-108 NMSA 1978, is enacted  
10 to read:

11 "55-5-108. [NEW MATERIAL] ISSUER'S RIGHTS AND  
12 OBLIGATIONS. --

13 (a) Except as otherwise provided in Section 55-5-109  
14 NMSA 1978, an issuer shall honor a presentation that, as  
15 determined by the standard practice referred to in Subsection  
16 (e) of this section, appears on its face strictly to comply with  
17 the terms and conditions of the letter of credit. Except as  
18 otherwise provided in Section 55-5-113 NMSA 1978 and unless  
19 otherwise agreed with the applicant, an issuer shall dishonor a  
20 presentation that does not appear so to comply.

21 (b) An issuer has a reasonable time after  
22 presentation, but not beyond the end of the seventh business day  
23 of the issuer after the day of its receipt of documents:

24 (1) to honor;

25 (2) if the letter of credit provides for honor

1 to be completed more than seven business days after  
2 presentation, to accept a draft or incur a deferred obligation;  
3 or

4 (3) to give notice to the presenter of  
5 discrepancies in the presentation.

6 (c) Except as otherwise provided in Subsection (d)  
7 of this section, an issuer is precluded from asserting as a  
8 basis for dishonor any discrepancy if timely notice is not given  
9 or any discrepancy not stated in the notice if timely notice is  
10 given.

11 (d) Failure to give the notice specified in  
12 Subsection (b) of this section or to mention fraud, forgery or  
13 expiration in the notice does not preclude the issuer from  
14 asserting as a basis for dishonor, fraud or forgery as described  
15 in Section 55-5-109(a) NMSA 1978, or expiration of the letter of  
16 credit before presentation.

17 (e) An issuer shall observe standard practice of  
18 financial institutions that regularly issue letters of credit.  
19 Determination of the issuer's observance of the standard  
20 practice is a matter of interpretation for the court. The court  
21 shall offer the parties a reasonable opportunity to present  
22 evidence of the standard practice.

23 (f) An issuer is not responsible for:

24 (1) the performance or nonperformance of the  
25 underlying contract, arrangement or transaction;

1 (2) an act or omission of others; or  
2 (3) observance or knowledge of the usage of a  
3 particular trade other than the standard practice referred to in  
4 Subsection (e) of this section.

5 (g) If an undertaking constituting a letter of  
6 credit under Section 55-5-102(a)(10) NMSA 1978 contains  
7 nondocumentary conditions, an issuer shall disregard the  
8 nondocumentary conditions and treat them as if they were not  
9 stated.

10 (h) An issuer that has dishonored a presentation  
11 shall return the documents or hold them at the disposal of, and  
12 send advice to that effect to, the presenter.

13 (i) An issuer that has honored a presentation as  
14 permitted or required by this article:

15 (1) is entitled to be reimbursed by the  
16 applicant in immediately available funds not later than the date  
17 of its payment of funds;

18 (2) takes the documents free of claims of the  
19 beneficiary or presenter;

20 (3) is precluded from asserting a right of  
21 recourse on a draft under Sections 55-3-414 and 55-3-415 NMSA  
22 1978;

23 (4) except as otherwise provided in Sections  
24 55-5-110 and 55-5-117 NMSA 1978, is precluded from restitution  
25 of money paid or other value given by mistake to the extent the

Underscored material = new  
[bracketed material] = delete

1 mistake concerns discrepancies in the documents or tender which  
2 are apparent on the face of the presentation; and

3 (5) is discharged to the extent of its  
4 performance under the letter of credit unless the issuer honored  
5 a presentation in which a required signature of a beneficiary  
6 was forged."

7 Section 11. Section 55-5-109 NMSA 1978 (being Laws 1961,  
8 Chapter 96, Section 5-109) is repealed and a new section of the  
9 Uniform Commercial Code, Section 55-5-109 NMSA 1978, is enacted  
10 to read:

11 "55-5-109. [NEW MATERIAL] FRAUD AND FORGERY. --

12 (a) If a presentation is made that appears on its  
13 face strictly to comply with the terms and conditions of the  
14 letter of credit, but a required document is forged or  
15 materially fraudulent, or honor of the presentation would  
16 facilitate a material fraud by the beneficiary on the issuer or  
17 applicant:

18 (1) the issuer shall honor the presentation, if  
19 honor is demanded by (i) a nominated person who has given value  
20 in good faith and without notice of forgery or material fraud,  
21 (ii) a confirmer who has honored its confirmation in good faith,  
22 (iii) a holder in due course of a draft drawn under the letter  
23 of credit which was taken after acceptance by the issuer or  
24 nominated person, or (iv) an assignee of the issuer's or  
25 nominated person's deferred obligation that was taken for value

1 and without notice of forgery or material fraud after the  
2 obligation was incurred by the issuer or nominated person; and

3 (2) the issuer, acting in good faith, may honor  
4 or dishonor the presentation in any other case.

5 (b) If an applicant claims that a required document  
6 is forged or materially fraudulent or that honor of the  
7 presentation would facilitate a material fraud by the  
8 beneficiary on the issuer or applicant, a court of competent  
9 jurisdiction may temporarily or permanently enjoin the issuer  
10 from honoring a presentation or grant similar relief against the  
11 issuer or other persons only if the court finds that:

12 (1) the relief is not prohibited under the law  
13 applicable to an accepted draft or deferred obligation incurred  
14 by the issuer;

15 (2) a beneficiary, issuer or nominated person  
16 who may be adversely affected is adequately protected against  
17 loss that it may suffer because the relief is granted;

18 (3) all of the conditions to entitle a person  
19 to the relief under the law of this state have been met; and

20 (4) on the basis of the information submitted  
21 to the court, the applicant is more likely than not to succeed  
22 under its claim of forgery or material fraud and the person  
23 demanding honor does not qualify for protection under Subsection  
24 (a)(1) of this section."

25 Section 12. Section 55-5-110 NMSA 1978 (being Laws 1961,

Underscored material = new  
[bracketed material] = delete

1 Chapter 96, Section 5-110) is repealed and a new section of the  
2 Uniform Commercial Code, Section 55-5-110 NMSA 1978, is enacted  
3 to read:

4 "55-5-110. [NEW MATERIAL] WARRANTIES. --

5 (a) If its presentation is honored, the beneficiary  
6 warrants:

7 (1) to the issuer, any other person to whom  
8 presentation is made and the applicant that there is no fraud or  
9 forgery of the kind described in Section 55-5-109(a) NMSA 1978;  
10 and

11 (2) to the applicant that the drawing does not  
12 violate any agreement between the applicant and beneficiary or  
13 any other agreement intended by them to be augmented by the  
14 letter of credit.

15 (b) The warranties in Subsection (a) of this section  
16 are in addition to warranties arising under Articles 3, 4, 7 and  
17 8 because of the presentation or transfer of documents covered  
18 by any of those articles. "

19 Section 13. Section 55-5-111 NMSA 1978 (being Laws 1961,  
20 Chapter 96, Section 5-111) is repealed and a new section of the  
21 Uniform Commercial Code, Section 55-5-111 NMSA 1978, is enacted  
22 to read:

23 "55-5-111. [NEW MATERIAL] REMEDIES. --

24 (a) If an issuer wrongfully dishonors or repudiates  
25 its obligation to pay money under a letter of credit before



1 presentation, the beneficiary, successor or nominated person  
2 presenting on its own behalf may recover from the issuer the  
3 amount that is the subject of the dishonor or repudiation. If  
4 the issuer's obligation under the letter of credit is not for  
5 the payment of money, the claimant may obtain specific  
6 performance or, at the claimant's election, recover an amount  
7 equal to the value of performance from the issuer. In either  
8 case, the claimant may also recover incidental but not  
9 consequential damages. The claimant is not obligated to take  
10 action to avoid damages that might be due from the issuer under  
11 this subsection. If, although not obligated to do so, the  
12 claimant avoids damages, the claimant's recovery from the issuer  
13 must be reduced by the amount of damages avoided. The issuer  
14 has the burden of proving the amount of damages avoided. In the  
15 case of repudiation, the claimant need not present any document.

16 (b) If an issuer wrongfully dishonors a draft or  
17 demand presented under a letter of credit or honors a draft or  
18 demand in breach of its obligation to the applicant, the  
19 applicant may recover damages resulting from the breach,  
20 including incidental but not consequential damages, less any  
21 amount saved as a result of the breach.

22 (c) If an adviser or nominated person other than a  
23 confirmer breaches an obligation under this article or an issuer  
24 breaches an obligation not covered in Subsection (a) or (b) of  
25 this section, a person to whom the obligation is owed may

1 recover damages resulting from the breach, including incidental  
2 but not consequential damages, less any amount saved as a result  
3 of the breach. To the extent of the confirmation, a confirmer  
4 has the liability of an issuer specified in this subsection and  
5 Subsections (a) and (b) of this section.

6 (d) An issuer, nominated person or adviser who is  
7 found liable under Subsection (a), (b) or (c) of this section  
8 shall pay interest on the amount owed thereunder from the date  
9 of wrongful dishonor or other appropriate date.

10 (e) Reasonable attorney's fees and other expenses of  
11 litigation must be awarded to the prevailing party in an action  
12 in which a remedy is sought under this article.

13 (f) Damages that would otherwise be payable by a  
14 party for breach of an obligation under this article may be  
15 liquidated by agreement or undertaking, but only in an amount or  
16 by a formula that is reasonable in light of the harm  
17 anticipated. "

18 Section 14. Section 55-5-112 NMSA 1978 (being Laws 1961,  
19 Chapter 96, Section 5-112) is repealed and a new section of the  
20 Uniform Commercial Code, Section 55-5-112 NMSA 1978, is enacted  
21 to read:

22 "55-5-112. [NEW MATERIAL] TRANSFER OF LETTER OF CREDIT. --

23 (a) Except as otherwise provided in Section 55-5-113  
24 NMSA 1978, unless a letter of credit provides that it is  
25 transferable, the right of a beneficiary to draw or otherwise

Underscored material = new  
[bracketed material] = delete

1 demand performance under a letter of credit may not be  
2 transferred.

3 (b) Even if a letter of credit provides that it is  
4 transferable, the issuer may refuse to recognize or carry out a  
5 transfer if:

6 (1) the transfer would violate applicable law;  
7 or

8 (2) the transferor or transferee has failed to  
9 comply with any requirement stated in the letter of credit or  
10 any other requirement relating to transfer imposed by the issuer  
11 which is within the standard practice referred to in Section  
12 55-5-108(e) NMSA 1978 or is otherwise reasonable under the  
13 circumstances. "

14 Section 15. Section 55-5-113 NMSA 1978 (being Laws 1961,  
15 Chapter 96, Section 5-113) is repealed and a new section of the  
16 Uniform Commercial Code, Section 55-5-113 NMSA 1978, is enacted  
17 to read:

18 "55-5-113. [NEW MATERIAL] TRANSFER BY OPERATION OF LAW. --

19 (a) A successor of a beneficiary may consent to  
20 amendments, sign and present documents, and receive payment or  
21 other items of value in the name of the beneficiary without  
22 disclosing its status as a successor.

23 (b) A successor of a beneficiary may consent to  
24 amendments, sign and present documents, and receive payment or  
25 other items of value in its own name as the disclosed successor

Underscored material = new  
[bracketed material] = delete

1 of the beneficiary. Except as otherwise provided in Subsection  
2 (e) of this section, an issuer shall recognize a disclosed  
3 successor of a beneficiary as beneficiary in full substitution  
4 for its predecessor upon compliance with the requirements for  
5 recognition by the issuer of a transfer of drawing rights by  
6 operation of law under the standard practice referred to in  
7 Section 55-5-108(e) NMSA 1978 or, in the absence of such a  
8 practice, compliance with other reasonable procedures sufficient  
9 to protect the issuer.

10 (c) An issuer is not obliged to determine whether a  
11 purported successor is a successor of a beneficiary or whether  
12 the signature of a purported successor is genuine or authorized.

13 (d) Honor of a purported successor's apparently  
14 complying presentation under Subsection (a) or (b) of this  
15 section has the consequences specified in Section 55-5-108(i)  
16 NMSA 1978 even if the purported successor is not the successor  
17 of a beneficiary. Documents signed in the name of the  
18 beneficiary or of a disclosed successor by a person who is  
19 neither the beneficiary nor the successor of the beneficiary are  
20 forged documents for the purposes of Section 55-5-109 NMSA 1978.

21 (e) An issuer whose rights of reimbursement are not  
22 covered by Subsection (d) of this section or substantially  
23 similar law and any confirmer or nominated person may decline to  
24 recognize a presentation under Subsection (b) of this section.

25 (f) A beneficiary whose name is changed after the

Underscored material = new  
[bracketed material] = delete

1 issuance of a letter of credit has the same rights and  
2 obligations as a successor of a beneficiary under this section."

3 Section 16. Section 55-5-114 NMSA 1978 (being Laws 1961,  
4 Chapter 96, Section 5-114, as amended) is repealed and a new  
5 section of the Uniform Commercial Code, Section 55-5-114 NMSA  
6 1978, is enacted to read:

7 "55-5-114. [NEW MATERIAL] ASSIGNMENT OF PROCEEDS. --

8 (a) In this section, "proceeds of a letter of  
9 credit" means the cash, check, accepted draft or other item of  
10 value paid or delivered upon honor or giving of value by the  
11 issuer or any nominated person under the letter of credit. The  
12 term does not include a beneficiary's drawing rights or  
13 documents presented by the beneficiary.

14 (b) A beneficiary may assign its right to part or  
15 all of the proceeds of a letter of credit. The beneficiary may  
16 do so before presentation as a present assignment of its right  
17 to receive proceeds contingent upon its compliance with the  
18 terms and conditions of the letter of credit.

19 (c) An issuer or nominated person need not recognize  
20 an assignment of proceeds of a letter of credit until it  
21 consents to the assignment.

22 (d) An issuer or nominated person has no obligation  
23 to give or withhold its consent to an assignment of proceeds of  
24 a letter of credit, but consent may not be unreasonably withheld  
25 if the assignee possesses and exhibits the letter of credit and

Underscored material = new  
[bracketed material] = delete

1 presentation of the letter of credit is a condition to honor.

2 (e) Rights of a transferee beneficiary or nominated  
3 person are independent of the beneficiary's assignment of the  
4 proceeds of a letter of credit and are superior to the  
5 assignee's right to the proceeds.

6 (f) Neither the rights recognized by this section  
7 between an assignee and an issuer, transferee beneficiary or  
8 nominated person nor the issuer's or nominated person's payment  
9 of proceeds to an assignee or a third person affect the rights  
10 between the assignee and any person other than the issuer,  
11 transferee beneficiary or nominated person. The mode of  
12 creating and perfecting a security interest in or granting an  
13 assignment of a beneficiary's rights to proceeds is governed by  
14 Article 9 or other law. Against persons other than the issuer,  
15 transferee beneficiary or nominated person, the rights and  
16 obligations arising upon the creation of a security interest or  
17 other assignment of a beneficiary's right to proceeds and its  
18 perfection are governed by Article 9 or other law. "

19 Section 17. Section 55-5-115 NMSA 1978 (being Laws 1961,  
20 Chapter 96, Section 5-115) is repealed and a new section of the  
21 Uniform Commercial Code, Section 55-5-115 NMSA 1978, is enacted  
22 to read:

23 "55-5-115. [NEW MATERIAL] STATUTE OF LIMITATIONS. -- An  
24 action to enforce a right or obligation arising under this  
25 article must be commenced within one year after the expiration

1 date of the relevant letter of credit or one year after the  
2 cause of action accrues, whichever occurs later. A cause of  
3 action accrues when the breach occurs, regardless of the  
4 aggrieved party's lack of knowledge of the breach. "

5 Section 18. Section 55-5-116 NMSA 1978 (being Laws 1961,  
6 Chapter 96, Section 5-116, as amended) is repealed and a new  
7 section of the Uniform Commercial Code, Section 55-5-116 NMSA  
8 1978, is enacted to read:

9 "55-5-116. [NEW MATERIAL] CHOICE OF LAW AND FORUM --

10 (a) The liability of an issuer, nominated person or  
11 adviser for action or omission is governed by the law of the  
12 jurisdiction chosen by an agreement in the form of a record  
13 signed or otherwise authenticated by the affected parties in the  
14 manner provided in Section 55-5-104 NMSA 1978 or by a provision  
15 in the person's letter of credit, confirmation or other  
16 undertaking. The jurisdiction whose law is chosen need not bear  
17 any relation to the transaction.

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

1 recognition of interbranch letters of credit, but not  
2 enforcement of a judgment, all branches of a bank are considered  
3 separate juridical entities, and a bank is considered to be  
4 located at the place where its relevant branch is considered to  
5 be located under this subsection.

6 (c) Except as otherwise provided in this subsection,  
7 the liability of an issuer, nominated person or adviser is  
8 governed by any rules of custom or practice, such as the Uniform  
9 Customs and Practice for Documentary Credits, to which the  
10 letter of credit, confirmation or other undertaking is expressly  
11 made subject. If (i) this article would govern the liability of  
12 an issuer, nominated person, or adviser under Subsection (a) or  
13 (b) of this section, (ii) the relevant undertaking incorporates  
14 rules of custom or practice, and (iii) there is conflict between  
15 this article and those rules as applied to that undertaking,  
16 those rules govern except to the extent of any conflict with the  
17 nonvariable provisions specified in Section 55-5-103(c) NMSA  
18 1978.

19 (d) If there is conflict between this article and  
20 Article 3, 4, 4A or 9, this article governs.

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

25 Section 19. Section 55-5-117 NMSA 1978 (being Laws 1961,



Underscored material = new  
[bracketed material] = delete

1 Chapter 96, Section 5-117) is repealed and a new section of the  
2 Uniform Commercial Code, Section 55-5-117 NMSA 1978, is enacted  
3 to read:

4 "55-5-117. [NEW MATERIAL] SUBROGATION OF ISSUER,  
5 APPLICANT AND NOMINATED PERSON. --

6 (a) An issuer that honors a beneficiary's  
7 presentation is subrogated to the rights of the beneficiary to  
8 the same extent as if the issuer were a secondary obligor of the  
9 underlying obligation owed to the beneficiary and of the  
10 applicant to the same extent as if the issuer were the secondary  
11 obligor of the underlying obligation owed to the applicant.

12 (b) An applicant that reimburses an issuer is  
13 subrogated to the rights of the issuer against any beneficiary,  
14 presenter or nominated person to the same extent as if the  
15 applicant were the secondary obligor of the obligations owed to  
16 the issuer and has the rights of subrogation of the issuer to  
17 the rights of the beneficiary stated in Subsection (a) of this  
18 section.

19 (c) A nominated person who pays or gives value  
20 against a draft or demand presented under a letter of credit is  
21 subrogated to the rights of:

22 (1) the issuer against the applicant to the  
23 same extent as if the nominated person were a secondary obligor  
24 of the obligation owed to the issuer by the applicant;

25 (2) the beneficiary to the same extent as if

Underscored material = new  
[bracketed material] = delete

1 the nominated person were a secondary obligor of the underlying  
2 obligation owed to the beneficiary; and

3 (3) the applicant to the same extent as if the  
4 nominated person were a secondary obligor of the underlying  
5 obligation owed to the applicant.

6 (d) Notwithstanding any agreement or term to the  
7 contrary, the rights of subrogation stated in Subsections (a)  
8 and (b) of this section do not arise until the issuer honors the  
9 letter of credit or otherwise pays, and the rights in Subsection  
10 (c) of this section do not arise until the nominated person pays  
11 or otherwise gives value. Until then, the issuer, nominated  
12 person and the applicant do not derive under this section  
13 present or prospective rights forming the basis of a claim,  
14 defense or excuse. "

15 Section 20. Section 55-9-103 NMSA 1978 (being Laws 1961,  
16 Chapter 96, Section 9-103, as amended) is amended to read:

17 "55-9-103. PERFECTION OF SECURITY INTERESTS IN MULTIPLE  
18 STATE TRANSACTIONS. --

19 (1) Documents, instruments and ordinary goods.

20 (a) This subsection applies to documents, [~~and~~]  
21 instruments, rights to proceeds of written letters of credit and  
22 [~~to~~] goods other than those covered by a certificate of title  
23 described in Subsection (2) of this section, mobile goods  
24 described in Subsection (3) of this section and minerals  
25 described in Subsection (5) of this section.

Underscored material = new  
[bracketed material] = delete

1 (b) Except as otherwise provided in this  
2 subsection, perfection and the effect of perfection or non-  
3 perfection of a security interest in collateral are governed by  
4 the law of the jurisdiction where the collateral is when the  
5 last event occurs on which is based the assertion that the  
6 security interest is perfected or unperfected.

7 (c) If the parties to a transaction creating a  
8 purchase money security interest in goods in one jurisdiction  
9 understand at the time that the security interest attaches that  
10 the goods will be kept in another jurisdiction, then the law of  
11 the other jurisdiction governs the perfection and the effect of  
12 perfection or non-perfection of the security interest from the  
13 time it attaches until thirty days after the debtor receives  
14 possession of the goods and thereafter if the goods are taken to  
15 the other jurisdiction before the end of the thirty-day period.

16 (d) When collateral is brought into and kept in  
17 this state while subject to a security interest perfected under  
18 the law of the jurisdiction from which the collateral was  
19 removed, the security interest remains perfected, but if action  
20 is required by Sections 55-9-301 through 55-9-318 NMSA 1978 to  
21 perfect the security interest:

22 (i) if the action is not taken before the  
23 expiration of the period of perfection in the other jurisdiction  
24 or the end of four months after the collateral is brought into  
25 this state, whichever period first expires, the security

1 interest becomes unperfected at the end of that period and is  
2 thereafter deemed to have been unperfected as against a person  
3 who became a purchaser after removal;

4 (ii) if the action is taken before the  
5 expiration of the period specified in Subparagraph (i) of this  
6 paragraph, the security interest continues perfected thereafter;  
7 or

8 (iii) for the purpose of priority over a  
9 buyer of consumer goods (Subsection (2) of Section 55-9-307 NMSA  
10 1978), the period of the effectiveness of a filing in the  
11 jurisdiction from which the collateral is removed is governed by  
12 the rules with respect to perfection in Subparagraphs (i) and  
13 (ii) of this paragraph.

14 (2) Certificate of title.

15 (a) This subsection applies to goods covered by  
16 a certificate of title issued under a statute of this state or  
17 of another jurisdiction under the law of which indication of a  
18 security interest on the certificate is required as a condition  
19 of perfection.

20 (b) Except as otherwise provided in this  
21 subsection, perfection and the effect of perfection or non-  
22 perfection of the security interest are governed by the law  
23 (including the conflict of laws rules) of the jurisdiction  
24 issuing the certificate until four months after the goods are  
25 removed from that jurisdiction and thereafter until the goods

1 are registered in another jurisdiction, but in any event not  
2 beyond surrender of the certificate. After the expiration of  
3 that period, the goods are not covered by the certificate of  
4 title within the meaning of this section.

5 (c) Except with respect to the rights of a  
6 buyer described in the next paragraph, a security interest,  
7 perfected in another jurisdiction otherwise than by notation on  
8 a certificate of title, in goods brought into this state and  
9 thereafter covered by a certificate of title issued by this  
10 state is subject to the rules stated in Paragraph (d) of  
11 Subsection (1) of this section.

12 (d) If goods are brought into this state while  
13 a security interest therein is perfected in any manner under the  
14 law of the jurisdiction from which the goods are removed and a  
15 certificate of title is issued by this state and the certificate  
16 does not show that the goods are subject to the security  
17 interest or that they may be subject to security interests not  
18 shown on the certificate, the security interest is subordinate  
19 to the rights of a buyer of the goods who is not in the business  
20 of selling goods of that kind to the extent that he gives value  
21 and receives delivery of the goods after issuance of the  
22 certificate and without knowledge of the security interest.

23 (3) Accounts, general intangibles and mobile goods.

24 (a) This subsection applies to accounts (other  
25 than an account described in Subsection (5) of this section on

1 minerals) and general intangibles (other than uncertificated  
2 securities) and to goods which are mobile and which are of a  
3 type normally used in more than one jurisdiction, such as motor  
4 vehicles, trailers, rolling stock, airplanes, shipping  
5 containers, road building and construction machinery and  
6 commercial harvesting machinery and the like, if the goods are  
7 equipment or are inventory leased or held for lease by the  
8 debtor to others, and are not covered by a certificate of title  
9 described in Subsection (2) of this section.

10 (b) The law (including the conflict of laws  
11 rules) of the jurisdiction in which the debtor is located  
12 governs the perfection and the effect of perfection or non-  
13 perfection of the security interest.

14 (c) If, however, the debtor is located in a  
15 jurisdiction which is not a part of the United States and which  
16 does not provide for perfection of the security interest by  
17 filing or recording in that jurisdiction, the law of the  
18 jurisdiction in the United States in which the debtor has its  
19 major executive office in the United States governs the  
20 perfection and the effect of perfection or non-perfection of the  
21 security interest through filing. In the alternative, if the  
22 debtor is located in a jurisdiction which is not a part of the  
23 United States or Canada and the collateral is accounts or  
24 general intangibles for money due or to become due, the security  
25 interest may be perfected by notification to the accounts

Underscored material = new  
[bracketed material] = delete

1 debtor. As used in this paragraph, "United States" includes its  
2 territories and possessions and the Commonwealth of Puerto Rico.

3 (d) A debtor shall be deemed located at his  
4 place of business if he has one, at his chief executive office  
5 if he has more than one place of business, otherwise at his  
6 residence. If, however, the debtor is a foreign air carrier  
7 under the Federal Aviation Act of 1958, as amended, it shall be  
8 deemed located at the designated office of the agent upon whom  
9 service of process may be made on behalf of the foreign air  
10 carrier.

11 (e) A security interest perfected under the law  
12 of the jurisdiction of the location of the debtor is perfected  
13 until the expiration of four months after a change of the  
14 debtor's location to another jurisdiction or until perfection  
15 would have ceased by the law of the first jurisdiction,  
16 whichever period first expires. Unless perfected in the new  
17 jurisdiction before the end of that period, it becomes  
18 unperfected thereafter and is deemed to have been unperfected as  
19 against a person who became a purchaser after the change.

20 (4) Chattel paper.

21 The rules stated for goods in Subsection (1) of this  
22 section apply to a possessory security interest in chattel  
23 paper. The rules stated for accounts in Subsection (3) of this  
24 section apply to a nonpossessory security interest in chattel  
25 paper, but the security interest may not be perfected by

Underscored material = new  
[bracketed material] = delete

1 notification to the account debtor.

2 (5) Minerals.

3 Perfection and the effect of perfection or non-  
4 perfection of a security interest which is created by a debtor  
5 who has an interest in minerals or the like (including oil and  
6 gas) before extraction and which attaches thereto as extracted  
7 or which attaches to an account resulting from the sale thereof  
8 at the wellhead or minehead are governed by the law (including  
9 the conflict of laws rules) of the jurisdiction wherein the  
10 wellhead or minehead is located.

11 (6) Investment property.

12 (a) This subsection applies to investment  
13 property.

14 (b) Except as otherwise provided in Paragraph  
15 (f) of this subsection, during the time that a security  
16 certificate is located in a jurisdiction, perfection of a  
17 security interest, the effect of perfection or non-perfection  
18 and the priority of a security interest in the certified  
19 security represented thereby are governed by the local law of  
20 that jurisdiction.

21 (c) Except as otherwise provided in Paragraph  
22 (f) of this subsection, perfection of a security interest, the  
23 effect of perfection or non-perfection and the priority of a  
24 security interest in an uncertificated security are governed by  
25 the local law of the issuer's jurisdiction as specified in



Underscored material = new  
[bracketed material] = delete

1 Section ~~[8-110(d)]~~ 55-8-110(d) NMSA 1978.

2 (d) Except as otherwise provided in Paragraph  
3 (f) of this subsection, perfection of a security interest, the  
4 effect of perfection or non-perfection and the priority of a  
5 security interest in a security entitlement or securities  
6 account are governed by the local law of the securities  
7 intermediary's jurisdiction as specified in Section ~~[8-110(e)]~~  
8 55-8-110(e) NMSA 1978.

9 (e) Except as otherwise provided in Paragraph  
10 (f) of this subsection, perfection of a security interest, the  
11 effect of perfection or non-perfection and the priority of a  
12 security interest in a commodity contract or commodity account  
13 are governed by the local law of the commodity intermediary's  
14 jurisdiction. The following rules determine a "commodity  
15 intermediary's jurisdiction" for purposes of this paragraph:

16 (i) if an agreement between the commodity  
17 intermediary and commodity customer specifies that it is  
18 governed by the law of a particular jurisdiction, that  
19 jurisdiction is the commodity intermediary's jurisdiction;

20 (ii) if an agreement between the  
21 commodity intermediary and commodity customer does not specify  
22 the governing law as provided in Subparagraph (i) of this  
23 paragraph, but expressly specifies that the commodity account is  
24 maintained at an office in a particular jurisdiction, that  
25 jurisdiction is the commodity intermediary's jurisdiction;

Underscored material = new  
[bracketed material] = delete

1 (iii) if an agreement between the  
2 commodity intermediary and commodity customer does not specify a  
3 jurisdiction as provided in [~~Subparagraphs~~] Subparagraph (i) or  
4 (ii) of this paragraph, the commodity intermediary's  
5 jurisdiction is the jurisdiction in which is located the office  
6 identified in an account statement as the office serving the  
7 commodity customer's account; and

8 (iv) if an agreement between the  
9 commodity intermediary and commodity customer does not specify a  
10 jurisdiction as provided in [~~Subparagraphs~~] Subparagraph (i) or  
11 (ii) of this paragraph and an account statement does not  
12 identify an office serving the commodity customer's account as  
13 provided in Subparagraph (iii) of this paragraph, the commodity  
14 intermediary's jurisdiction is the jurisdiction in which is  
15 located the chief executive office of the commodity  
16 intermediary.

17 (f) Perfection of a security interest by  
18 filing, automatic perfection of a security interest in  
19 investment property granted by a broker or securities  
20 intermediary and automatic perfection of a security interest in  
21 a commodity contract or commodity account granted by a commodity  
22 intermediary are governed by the local law of the jurisdiction  
23 in which the debtor is located. The rules in Paragraphs (c),  
24 (d) and (e) of Subsection (3) of this section apply to security  
25 interests to which this paragraph applies. "

Underscored material = new  
[bracketed material] = delete

1           Section 21. Section 55-9-104 NMSA 1978 (being Laws 1961,  
2 Chapter 96, Section 9-104, as amended) is amended to read:

3           "55-9-104. TRANSACTIONS EXCLUDED FROM ARTICLE. -- Chapter  
4 55, Article 9 NMSA 1978 does not apply:

5                   (a) to a security interest subject to any statute of  
6 the United States to the extent that such statute governs the  
7 rights of parties to and third parties affected by transactions  
8 in particular types of property; or

9                   (b) to a landlord's lien; or

10                   (c) to a lien given by statute or other rule of law  
11 for services or materials except as provided in Section 55-9-310  
12 NMSA 1978 on priority of such liens; or

13                   (d) to a transfer of a claim for wages, salary or  
14 other compensation of an employee; or

15                   (e) to a transfer by government or a governmental  
16 subdivision or agency; or

17                   (f) to a sale of accounts or chattel paper as part  
18 of a sale of the business out of which they arose, or an  
19 assignment of accounts or chattel paper that is for the purpose  
20 of collection only, or a transfer of a right to payment under a  
21 contract to an assignee who is also to do the performance under  
22 the contract or a transfer of a single account to an assignee in  
23 whole or partial satisfaction of a preexisting indebtedness; or

24                   (g) to a transfer of an interest in or claim in or  
25 under any policy of insurance, except as provided with respect

Underscored material = new  
[bracketed material] = delete

1 to proceeds (Section 55-9-306 NMSA 1978) and priorities in  
2 proceeds (Section 55-9-312 NMSA 1978); or

3 (h) to a right represented by a judgment (other than  
4 a judgment taken on a right to payment that was collateral); or

5 (i) to any right of set-off; or

6 (j) except to the extent that provision is made for  
7 fixtures in Section 55-9-313 NMSA 1978, to the creation or  
8 transfer of an interest in or lien on real estate, including a  
9 lease or rents thereunder; or

10 (k) to a transfer in whole or in part of any claim  
11 arising out of tort; or

12 (l) to a transfer of an interest in any deposit  
13 account (Subsection (1) of Section 55-9-105 NMSA 1978), except  
14 as provided with respect to proceeds (Section 55-9-306 NMSA  
15 1978) and priorities in proceeds (Section 55-9-312 NMSA 1978);

16 or

17 (m) to a transfer of an interest in a letter of  
18 credit other than the rights to proceeds of written letters of  
19 credit."

20 Section 22. Section 55-9-105 NMSA 1978 (being Laws 1961,  
21 Chapter 96, Section 9-105, as amended) is amended to read:

22 "55-9-105. DEFINITIONS AND INDEX OF DEFINITIONS. --

23 (1) In Chapter 55, Article 9 NMSA 1978, unless the  
24 context otherwise requires:

25 (a) "account debtor" means the person who is

1 obligated on an account, chattel paper or general intangible;

2 (b) "chattel paper" means a writing or writings  
3 which evidence both a monetary obligation and a security  
4 interest in or a lease of specific goods, but a charter or other  
5 contract involving the use or hire of a vessel is not chattel  
6 paper. When a transaction is evidenced both by such a security  
7 agreement or a lease and by an instrument or a series of  
8 instruments, the group of writings taken together constitutes  
9 chattel paper;

10 (c) "collateral" means the property subject to  
11 a security interest and includes accounts and chattel paper  
12 which have been sold;

13 (d) "debtor" means the person who owes payment  
14 or other performance of the obligation secured, whether or not  
15 he owns or has rights in the collateral, and includes the seller  
16 of accounts or chattel paper. Where the debtor and the owner of  
17 the collateral are not the same person, the term "debtor" means  
18 the owner of the collateral in any provision of the article  
19 dealing with the collateral, the obligor in any provision  
20 dealing with the obligation and may include both where the  
21 context so requires;

22 (e) "deposit account" means a demand, time,  
23 savings, passbook or like account maintained with a bank,  
24 savings and loan association, credit union or like organization,  
25 other than an account evidenced by a certificate of deposit;

Underscored material = new  
[bracketed material] = delete

1 (f) "document" means document of title as  
2 defined in the general definitions of Article 1 (Section  
3 55-1-201 NMSA 1978) and a receipt of the kind described in  
4 Subsection (2) of Section 55-7-201 NMSA 1978;

5 (g) "encumbrance" includes real estate  
6 mortgages and other liens on real estate and all other rights in  
7 real estate that are not ownership interests;

8 (h) "goods" includes all things which are  
9 movable at the time the security interest attaches or which are  
10 fixtures (Section 55-9-313 NMSA 1978), but does not include  
11 money, documents, instruments, investment property, commodity  
12 contracts, accounts, chattel paper, general intangibles or  
13 minerals or the like (including oil and gas) before extraction.  
14 "Goods" also includes standing timber which is to be cut and  
15 removed under a conveyance or contract for sale, the unborn  
16 young of animals and growing crops;

17 (i) "instrument" means a negotiable instrument  
18 (defined in Section 55-3-104 NMSA 1978) or any other writing  
19 which evidences a right to the payment of money and is not  
20 itself a security agreement or lease and is of a type which is  
21 in ordinary course of business transferred by delivery with any  
22 necessary indorsement or assignment. The term does not include  
23 investment property;

24 (j) "mortgage" means a consensual interest  
25 created by a real estate mortgage, a trust deed on real estate

1 or the like;

2 (k) an advance is made "pursuant to commitment"  
3 if the secured party has bound himself to make it, whether or  
4 not a subsequent event of default or other event not within his  
5 control has relieved or may relieve him from his obligation;

6 (l) "security agreement" means an agreement  
7 which creates or provides for a security interest;

8 (m) "secured party" means a lender, seller or  
9 other person in whose favor there is a security interest,  
10 including a person to whom accounts or chattel paper have been  
11 sold. When the holders of obligations issued under an indenture  
12 of trust, equipment trust agreement or the like are represented  
13 by a trustee or other person, the representative is the secured  
14 party; and

15 (n) "transmitting utility" means any person  
16 primarily engaged in the railroad, street railway or trolley bus  
17 business, the electric or electronics communications  
18 transmission business, the transmission of goods by pipeline or  
19 the transmission or the production and transmission of  
20 electricity, steam, gas or water or the provision of sewer  
21 service.

22 (2) Other definitions applying to Chapter 55,  
23 Article 9 NMSA 1978 and the sections in which they appear are:

24 "account". Section 55-9-106 NMSA 1978;

25 "attach". Section 55-9-203 NMSA 1978;

1 "commodity contract". Section 55-9-115 NMSA 1978;  
2 "commodity customer". Section 55-9-115 NMSA 1978;  
3 "commodity intermediary". Section 55-9-115 NMSA  
4 1978;  
5 "construction mortgage". Subsection (1) of Section  
6 55-9-313 NMSA 1978;  
7 "consumer goods". Subsection (1) of Section  
8 55-9-109 NMSA 1978;  
9 "control". Section 55-9-115 NMSA 1978;  
10 "equipment". Subsection (2) of Section 55-9-109 NMSA  
11 1978;  
12 "farm products". Subsection (3) of Section 55-9-109  
13 NMSA 1978;  
14 "fixture". Section 55-9-313 NMSA 1978;  
15 "fixture filing". Section 55-9-313 NMSA 1978;  
16 "general intangibles". Section 55-9-106 NMSA 1978;  
17 "inventory". Subsection (4) of Section 55-9-109 NMSA  
18 1978;  
19 "investment property". Section 55-9-115 NMSA 1978;  
20 "lien creditor". Subsection (3) of Section 55-9-301  
21 NMSA 1978;  
22 "proceeds". Subsection (1) of Section 55-9-306 NMSA  
23 1978;  
24 "purchase money security interest". Section  
25 55-9-107 NMSA 1978; and



Underscored material = new  
[bracketed material] = delete

1 "United States". Section 55-9-103 NMSA 1978.  
2 (3) The following definitions in other articles  
3 apply to Chapter 55, Article 9 NMSA 1978:  
4 "broker". Section 55-8-102 NMSA 1978;  
5 "certificated security". Section 55-8-102 NMSA 1978;  
6 "check". Section 55-3-104 NMSA 1978;  
7 "clearing corporation". Section 55-8-102 NMSA 1978;  
8 "contract for sale". Section 55-2-106 NMSA 1978;  
9 "control". Section 55-8-106 NMSA 1978;  
10 "delivery". Section 55-8-301 NMSA 1978;  
11 "entitlement holder". Section 55-8-102 NMSA 1978;  
12 "financial asset". Section 55-8-102 NMSA 1978;  
13 "holder in due course". Section 55-3-302 NMSA 1978;  
14 "letter of credit". Section 55-5-102 NMSA 1978;  
15 "note". Section 55-3-104 NMSA 1978;  
16 "proceeds of a letter of credit". Section 55-5-114  
17 NMSA 1978;  
18 "sale". Section 55-2-106 NMSA 1978;  
19 "securities intermediary". Section 55-8-102 NMSA  
20 1978;  
21 "security". Section 55-8-102 NMSA 1978;  
22 "security certificate". Section 55-8-102 NMSA 1978;  
23 and  
24 "security entitlement". Section 55-8-102 NMSA 1978.  
25 (4) In addition, Chapter 55, Article 1 NMSA 1978

Underscored material = new  
[bracketed material] = delete

1 contains general definitions and principles of construction and  
2 interpretation applicable throughout Chapter 55, Article 9 NMSA  
3 1978. "

4 Section 23. Section 55-9-106 NMSA 1978 (being Laws 1961,  
5 Chapter 96, Section 9-106, as amended) is amended to read:

6 "55-9-106. DEFINITIONS-- "ACCOUNT"-- "GENERAL  
7 INTANGIBLES".-- "Account" means any right to payment for goods  
8 sold or leased or for services rendered which is not evidenced  
9 by an instrument or chattel paper, whether or not it has been  
10 earned by performance. "General intangibles" means any personal  
11 property (including things in action) other than goods,  
12 accounts, chattel paper, documents, instruments, investment  
13 property, rights to proceeds of written letters of credit and  
14 money. All rights to payment earned or unearned under a charter  
15 or other contract involving the use or hire of a vessel and all  
16 rights incident to the charter or contract are accounts. "

17 Section 24. Section 55-9-304 NMSA 1978 (being Laws 1961,  
18 Chapter 96, Section 9-304, as amended) is amended to read:

19 "55-9-304. PERFECTION OF SECURITY INTEREST IN INSTRUMENTS,  
20 DOCUMENTS, PROCEEDS OF A WRITTEN LETTER OF CREDIT AND GOODS  
21 COVERED BY DOCUMENTS-- PERFECTION BY PERMISSIVE FILING-- TEMPORARY  
22 PERFECTION WITHOUT FILING OR TRANSFER OF POSSESSION. --

23 (1) A security interest in chattel paper or  
24 negotiable documents may be perfected by filing. A security  
25 interest in the rights to proceeds of a written letter of credit

Underscored material = new  
[bracketed material] = delete

1 may be perfected by the secured party's taking possession of the  
2 letter of credit. A security interest in money or instruments  
3 (other than instruments which constitute part of chattel paper)  
4 can be perfected only by the secured party's taking possession,  
5 except as provided in Subsections (4) and (5) of this section  
6 and Subsections (2) and (3) of Section 55-9-306 NMSA 1978 on  
7 proceeds.

8 (2) During the period that goods are in the  
9 possession of the issuer of a negotiable document therefor, a  
10 security interest in the goods is perfected by perfecting a  
11 security interest in the document, and any security interest in  
12 the goods otherwise perfected during such period is subject  
13 thereto.

14 (3) A security interest in goods in the possession  
15 of a bailee other than one who has issued a negotiable document  
16 therefor is perfected by issuance of a document in the name of  
17 the secured party or by the bailee's receipt of notification of  
18 the secured party's interest or by filing as to the goods.

19 (4) A security interest in instruments, certificated  
20 securities or negotiable documents is perfected without filing  
21 or the taking of possession for a period of twenty-one days from  
22 the time it attaches to the extent that it arises for new value  
23 given under a written security agreement.

24 (5) A security interest remains perfected for a  
25 period of twenty-one days without filing where a secured party

Underscored material = new  
[bracketed material] = delete

1 having a perfected security interest in an instrument, a  
2 certificated security, a negotiable document or goods in  
3 possession of a bailee other than one who has issued a  
4 negotiable document therefor:

5 (a) makes available to the debtor the goods or  
6 documents representing the goods for the purpose of ultimate  
7 sale or exchange or for the purpose of loading, unloading,  
8 storing, shipping, transshipping, manufacturing, processing or  
9 otherwise dealing with them in a manner preliminary to their  
10 sale or exchange, but priority between conflicting security  
11 interests in the goods is subject to Subsection (3) of Section  
12 55-9-312 NMSA 1978; or

13 (b) delivers the instrument or certificated  
14 security to the debtor for the purpose of ultimate sale or  
15 exchange or of presentation, collection, renewal or registration  
16 of transfer.

17 (6) After the twenty-one-day period in Subsections  
18 (4) and (5) of this section, perfection depends upon compliance  
19 with applicable provisions of Chapter 55, Article 9 NMSA 1978. "

20 Section 25. Section 55-9-305 NMSA 1978 (being Laws 1961,  
21 Chapter 96, Section 9-305, as amended) is amended to read:

22 "55-9-305. WHEN POSSESSION BY SECURED PARTY PERFECTS  
23 SECURITY INTEREST WITHOUT FILING. -- A security interest in  
24 [~~letters of credit and advices of credit (Paragraph (a) of~~  
25 ~~Subsection (2) of Section 55-5-116 NMSA 1978)~~] goods,

Underscored material = new  
[bracketed material] = delete

1 instruments, money, negotiable documents or chattel paper may be  
2 perfected by the secured party's taking possession of the  
3 collateral. A security interest in the rights to proceeds of a  
4 written letter of credit may be perfected by the secured party's  
5 taking possession of the letter of credit. If such collateral  
6 other than goods covered by a negotiable document is held by a  
7 bailee, the secured party is deemed to have possession from the  
8 time the bailee receives notification of the secured party's  
9 interest. A security interest is perfected by possession from  
10 the time possession is taken without relation back and continues  
11 only so long as possession is retained, unless otherwise  
12 specified in Chapter 55, Article 9 NMSA 1978. The security  
13 interest may be otherwise perfected as provided in that article  
14 before or after the period of possession by the secured party. "

15 Section 26. SAVING CLAUSE. -- A transaction arising out of  
16 or associated with a letter of credit that was issued before the  
17 effective date of this act and the rights, obligations and  
18 interests flowing from that transaction are governed by any  
19 statute or other law amended or repealed by this act as if  
20 repeal or amendment had not occurred and may be terminated,  
21 completed, consummated or enforced under that statute or other  
22 law.

23 Section 27. APPLICABILITY. -- This act applies to a letter  
24 of credit that is issued on or after the effective date of this  
25 act. This act does not apply to a transaction, event,

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

1 obligation or duty arising out of or associated with a letter of  
2 credit that was issued before the effective date of this act.

3 Section 28. EFFECTIVE DATE. --The effective date of the  
4 provisions of this act is July 1, 1997.

5 - 46 -  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**State of New Mexico**  
**House of Representatives**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**FORTY-THIRD LEGISLATURE**  
**FIRST SESSION, 1997**

February 6, 1997

Mr. Speaker:

Your BUSINESS AND INDUSTRY COMMITTEE, to whom has  
been referred

HOUSE BILL 104

has had it under consideration and reports same with  
recommendation that it DO PASS, and thence referred to the  
JUDICIARY COMMITTEE.

Underscored material = new  
[bracketed material] = delete

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

HBIC/HB 104

Page 48

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Respectfully submitted,

\_\_\_\_\_  
Fred Luna, Chairman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 11 For 0 Against

Yes: 11

Excused: Luna, Varela

Absent: None

M \ H0104



# **State of New Mexico House of Representatives**

**FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997**

February 17, 1997

Mr. Speaker:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 104

has had it under consideration and reports same with  
recommendation that it DO PASS.

Respectfully submitted,

---

Thomas P. Foy, Chairman

Underscored material = new  
[bracketed material] = delete

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 8 For 0 Against

Yes: 8

Excused: Luna, Mallory, Rios, Sanchez, Stewart

Absent: None

M \H0104

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

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

Page 51

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

March 8, 1997

Mr. President:

Your CORPORATIONS & TRANSPORTATION COMMITTEE, to  
whom has been referred

HOUSE BILL 104

has had it under consideration and reports same with  
recommendation that it DO PASS, and thence referred to the  
JUDICIARY COMMITTEE.

Respectfully submitted,

---

Roman M. Maes, III, Chairman

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 8 For 0 Against  
Yes: 8  
No: 0  
Excused: Kidd, McKibben  
Absent: None

H0104CT1

Underscored material = new  
[bracketed material] = delete