

AN ACT

RELATING TO COMMERCIAL TRANSACTIONS; REVISING ARTICLES 1, 7 AND 9 OF THE UNIFORM COMMERCIAL CODE; AMENDING, REPEALING AND ENACTING CERTAIN SECTIONS OF THE NMSA 1978 TO ACCOMPLISH THE ADDITIONS TO, DELETIONS FROM AND CLARIFICATIONS OF THE UNIFORM COMMERCIAL CODE.

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

Section 1. Section 55-1-101 NMSA 1978 (being Laws 1961, Chapter 96, Section 1-101, as amended) is amended to read:

"55-1-101. SHORT TITLES.--

(a) Chapter 55 NMSA 1978 shall be known and may be cited as the "Uniform Commercial Code"; and

(b) Chapter 55, Article 1 NMSA 1978 shall be known and may be cited as the "Uniform Commercial Code-General Provisions."

Section 2. Section 55-1-102 NMSA 1978 (being Laws 1961, Chapter 96, Section 1-102) is repealed and a new Section 55-1-102 NMSA 1978 is enacted to read:

"55-1-102. SCOPE OF ARTICLE.--Chapter 55, Article 1 NMSA 1978 applies to a transaction to the extent that it is governed by another article of the Uniform Commercial Code."

Section 3. Section 55-1-103 NMSA 1978 (being Laws 1961, Chapter 96, Section 1-103) is repealed and a new Section 55-1-103 NMSA 1978 is enacted to read:

"55-1-103. CONSTRUCTION OF UNIFORM COMMERCIAL CODE TO PROMOTE ITS PURPOSES AND POLICIES--APPLICABILITY OF SUPPLEMENTAL PRINCIPLES OF LAW.--

(a) The Uniform Commercial Code must be liberally construed and applied to promote its underlying purposes and policies, which are:

(1) to simplify, clarify and modernize the law governing commercial transactions;

(2) to permit the continued expansion of commercial practices through custom, usage and agreement of the parties; and

(3) to make uniform the law among the various jurisdictions.

(b) Unless displaced by the particular provisions of the Uniform Commercial Code, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy and other validating or invalidating cause, supplement its provisions."

Section 4. Section 55-1-104 NMSA 1978 (being Laws 1961, Chapter 96, Section 1-104) is amended to read:

"55-1-104. CONSTRUCTION AGAINST IMPLICIT REPEAL.--The Uniform Commercial Code being a general act intended as a unified coverage of its subject matter, no part of it shall be

deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided."

Section 5. Section 55-1-105 NMSA 1978 (being Laws 1961, Chapter 96, Section 1-105, as amended) is repealed and a new Section 55-1-105 NMSA 1978 is enacted to read:

"55-1-105. SEVERABILITY.--If any provision or clause of the Uniform Commercial Code or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Uniform Commercial Code which can be given effect without the invalid provision or application, and to this end the provisions of the Uniform Commercial Code are severable."

Section 6. Section 55-1-106 NMSA 1978 (being Laws 1961, Chapter 96, Section 1-106) is repealed and a new Section 55-1-106 NMSA 1978 is enacted to read:

"55-1-106. USE OF SINGULAR AND PLURAL--GENDER.--In the Uniform Commercial Code, unless the statutory context otherwise requires:

(1) words in the singular number include the plural, and those in the plural include the singular; and

(2) words of any gender also refer to any other gender."

Section 7. Section 55-1-107 NMSA 1978 (being Laws 1961, Chapter 96, Section 1-107) is repealed and a new Section 55-1-107 NMSA 1978 is enacted to read:

"55-1-107. SECTION CAPTIONS.--Section captions are part of the Uniform Commercial Code."

Section 8. Section 55-1-108 NMSA 1978 (being Laws 1961, Chapter 96, Section 1-108) is repealed and a new Section 55-1-108 NMSA 1978 is enacted to read:

"55-1-108. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.--Chapter 55, Article 1 NMSA 1978 modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 *et seq.*, except that nothing in this article modifies, limits or supersedes Section 7001(c) of that act or authorizes electronic delivery of any of the notices described in Section 7003(b) of that act."

Section 9. Section 55-1-201 NMSA 1978 (being Laws 1961, Chapter 96, Section 1-201, as amended) is repealed and a new Section 55-1-201 NMSA 1978 is enacted 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 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. Conspicuous terms include the following:

(A) a heading in capitals equal to or greater in size than the surrounding text or in contrasting type, font or color to the surrounding text of the same or lesser size; and

(B) language in the body of a record or display in larger type than the surrounding text or in contrasting type, font or color to the surrounding text of the same size or set off from surrounding text of the same size by symbols or other marks that call attention to the language;

(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 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;

(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 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;

(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; public corporation; or any other legal or commercial entity;

(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 writing, record or notice means:

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

(B) in any other way to cause to be received any record or notice within the time it would have arrived if properly sent;

(37) "signed" includes using any symbol executed or adopted with present intention to adopt or accept a writing;

(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 10. Section 55-1-202 NMSA 1978 (being Laws 1961, Chapter 96, Section 1-202) is repealed and a new Section 55-1-202 NMSA 1978 is enacted to read:

"55-1-202. NOTICE--KNOWLEDGE.--

(a) Subject to Subsection (f) of this section, a person has "notice" of a fact if the person:

(1) has actual knowledge of it;

(2) has received a notice or notification of it; or

(3) from all the facts and circumstances known to the person at the time in question, has reason to know that it exists.

(b) "Knowledge" means actual knowledge. "Knows" has a corresponding meaning.

(c) "Discover", "learn" or words of similar import refer to knowledge rather than to reason to know.

(d) A person "notifies" or "gives" a notice or

notification to another person by taking such steps as may be reasonably required to inform the other person in ordinary course, whether or not the other person actually comes to know of it.

(e) Subject to Subsection (f) of this section, a person "receives" a notice or notification when:

(1) it comes to that person's attention; or

(2) it is duly delivered in a form

reasonable under the circumstances at the place of business through which the contract was made or at another location held out by that person as the place for receipt of such communications.

(f) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and, in any event, from the time it would have been brought to the individual's attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless the communication is part of the individual's regular duties or the individual has reason

to know of the transaction and that the transaction would be materially affected by the information."

Section 11. Section 55-1-203 NMSA 1978 (being Laws 1961, Chapter 96, Section 1-203) is repealed and a new Section 55-1-203 NMSA 1978 is enacted to read:

"55-1-203. LEASE DISTINGUISHED FROM SECURITY INTEREST.--

(a) Whether a transaction in the form of a lease creates a lease or security interest is determined by the facts of each case.

(b) A transaction in the form of a lease creates a security interest if the consideration that the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease and is not subject to termination by the lessee, and:

(1) the original term of the lease is equal to or greater than the remaining economic life of the goods;

(2) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

(3) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement; or

(4) the lessee has an option to become the

owner of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement.

(c) A transaction in the form of a lease does not create a security interest merely because:

(1) the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;

(2) the lessee assumes risk of loss of the goods;

(3) the lessee agrees to pay, with respect to the goods, taxes, insurance, filing, recording or registration fees, or service or maintenance costs;

(4) the lessee has an option to renew the lease or to become the owner of the goods;

(5) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed; or

(6) the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of

the goods at the time the option is to be performed.

(d) Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised. Additional consideration is not nominal if:

(1) when the option to renew the lease is granted to the lessee, the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed; or

(2) when the option to become the owner of the goods is granted to the lessee, the price is stated to be the fair market value of the goods determined at the time the option is to be performed.

(e) The "remaining economic life of the goods" and "reasonably predictable" fair market rent, fair market value or cost of performing under the lease agreement must be determined with reference to the facts and circumstances at the time the transaction is entered into."

Section 12. Section 55-1-204 NMSA 1978 (being Laws 1961, Chapter 96, Section 1-204) is repealed and a new Section 55-1-204 NMSA 1978 is enacted to read:

"55-1-204. VALUE.--Except as otherwise provided in Chapter 55, Articles 3, 4 and 5, 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 13. Section 55-1-205 NMSA 1978 (being Laws 1961, Chapter 96, Section 1-205) is repealed and a new Section 55-1-205 NMSA 1978 is enacted to read:

"55-1-205. REASONABLE TIME--SEASONABLENESS.--

(a) Whether a time for taking an action required by the Uniform Commercial Code is reasonable depends on the nature, purpose and circumstances of the action.

(b) An action is taken seasonably if it is taken at or within the time agreed or, if no time is agreed, at or within a reasonable time."

Section 14. Section 55-1-206 NMSA 1978 (being Laws 1961, Chapter 96, Section 1-206, as amended) is repealed and a new Section 55-1-206 NMSA 1978 is enacted to read:

"55-1-206. PRESUMPTIONS.--Whenever the Uniform Commercial Code creates a "presumption" with respect to a

fact, or provides that a fact is "presumed", the trier of fact must find the existence of the fact unless and until evidence is introduced that supports a finding of its nonexistence."

PART 3

TERRITORIAL APPLICABILITY AND GENERAL RULES

Section 15. A new section of the Uniform Commercial Code, Section 55-1-301 NMSA 1978, is enacted 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; and
- (7) Sections 55-9-301 through 55-9-307 NMSA

1978."

Section 16. A new section of the Uniform Commercial Code, Section 55-1-302 NMSA 1978, is enacted to read:

"55-1-302. VARIATION BY AGREEMENT.--

(a) Except as otherwise provided in Subsection (b) of this section or elsewhere in the Uniform Commercial Code, the effect of provisions of the Uniform Commercial Code may be varied by agreement.

(b) The obligations of good faith, diligence, reasonableness and care prescribed by the Uniform Commercial Code may not be disclaimed by agreement. The parties, by agreement, may determine the standards by which the performance of those obligations is to be measured if those standards are not manifestly unreasonable. Whenever the Uniform Commercial Code requires an action to be taken within a reasonable time, a time that is not manifestly unreasonable may be fixed by agreement.

(c) The presence in certain provisions of the Uniform Commercial Code of the phrase "unless otherwise

agreed", or words of similar import, does not imply that the effect of other provisions may not be varied by agreement under this section."

Section 17. A new section of the Uniform Commercial Code, Section 55-1-303 NMSA 1978, is enacted to read:

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

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

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

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

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

(c) A "usage of trade" is any practice or method of dealing having such regularity of observance in a place, vocation or trade as to justify an expectation that it will be observed with respect to the transaction in question. The

existence and scope of such a usage must be proved as facts. If it is established that such a usage is embodied in a trade code or similar record, the interpretation of the record is a question of law.

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

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

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

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

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

(f) Subject to Section 55-2-209 NMSA 1978, a

course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.

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

Section 18. A new section of the Uniform Commercial Code, Section 55-1-304 NMSA 1978, is enacted to read:

"55-1-304. OBLIGATION OF GOOD FAITH.--Every contract or duty within the Uniform Commercial Code imposes an obligation of good faith in its performance and enforcement."

Section 19. A new section of the Uniform Commercial Code, Section 55-1-305 NMSA 1978, is enacted to read:

"55-1-305. REMEDIES TO BE LIBERALLY ADMINISTERED.--

(a) The remedies provided by the Uniform Commercial Code must be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special damages nor penal damages may be had except as specifically provided in the Uniform Commercial Code or by other rule of law.

(b) Any right or obligation declared by the Uniform Commercial Code is enforceable by action unless the provision declaring it specifies a different and limited

effect."

Section 20. A new section of the Uniform Commercial Code, Section 55-1-306 NMSA 1978, is enacted 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 an authenticated record."

Section 21. A new section of the Uniform Commercial Code, Section 55-1-307 NMSA 1978, is enacted to read:

"55-1-307. PRIMA FACIE EVIDENCE BY THIRD-PARTY DOCUMENTS.--A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice or any other document authorized or required by the contract to be issued by a third party is prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party."

Section 22. A new section of the Uniform Commercial Code, Section 55-1-308 NMSA 1978, is enacted to read:

"55-1-308. PERFORMANCE OR ACCEPTANCE UNDER RESERVATION OF RIGHTS.--

(a) A party that with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party

does not thereby prejudice the rights reserved. Such words as "without prejudice", "under protest" or the like are sufficient.

(b) Subsection (a) of this section does not apply to an accord and satisfaction."

Section 23. A new section of the Uniform Commercial Code, Section 55-1-309 NMSA 1978, is enacted to read:

"55-1-309. OPTION TO ACCELERATE AT WILL.--A term providing that one party or that party's successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or when the party "deems itself insecure" or words of similar import means that the party has power to do so only if that party in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against which the power has been exercised."

Section 24. A new section of the Uniform Commercial Code, Section 55-1-310 NMSA 1978, is enacted to read:

"55-1-310. SUBORDINATED OBLIGATIONS.--An obligation may be issued as subordinated to performance of another obligation of the person obligated, or a creditor may subordinate its right to performance of an obligation by agreement with either the person obligated or another creditor of the person obligated. Subordination does not create a security interest as against either the common debtor or a subordinated

creditor."

Section 25. Section 55-2-103 NMSA 1978 (being Laws 1961, Chapter 96, Section 2-103, as amended) is amended to read:

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

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

(a) "buyer" means a person who buys or contracts to buy goods;

(b) [reserved];

(c) "receipt" of goods means taking physical possession of them; and

(d) "seller" means a person who sells or contracts to sell goods.

(2) Other definitions applying to this article, or to specified parts thereof, and the sections in which they appear are:

"acceptance".Section
55-2-606 NMSA 1978;

"banker's credit".Section
55-2-325 NMSA 1978;

"between merchants".Section
55-2-104 NMSA 1978;

"cancellation".Section
55-2-106 NMSA 1978;

"commercial unit". Section
55-2-105 NMSA 1978;

"confirmed credit".Section
55-2-325 NMSA 1978;

"conforming to contract".Section
55-2-106 NMSA 1978;

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

"cover". Section
55-2-712 NMSA 1978;

"entrusting".Section
55-2-403 NMSA 1978;

"financing agency".Section
55-2-104 NMSA 1978;

"future goods".Section
55-2-105 NMSA 1978;

"goods". Section
55-2-105 NMSA 1978;

"identification".Section
55-2-501 NMSA 1978;

"installment contract".Section
55-2-612 NMSA 1978;

"letter of credit".Section
55-2-325 NMSA 1978;

"lot". Section

55-2-105 NMSA 1978;
"merchant".Section

55-2-104 NMSA 1978;
"overseas".Section

55-2-323 NMSA 1978;
"person in the position of a
seller".Section

55-2-707 NMSA 1978;
"present sale".Section

55-2-106 NMSA 1978;
"sale".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
"termination".Section

55-2-106 NMSA 1978.

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

"check".Section

55-3-104 NMSA 1978;
"consignee".Section

55-7-102 NMSA 1978;

"consignor". Section
55-7-102 NMSA 1978;

"consumer goods". Section
55-9-102 NMSA 1978;

"dishonor".Section
55-3-502 NMSA 1978; and

"draft". Section
55-3-104 NMSA 1978.

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

Section 26. Section 55-2-104 NMSA 1978 (being Laws 1961, Chapter 96, Section 2-104) is amended to read:

"55-2-104. DEFINITIONS--"MERCHANT"--"BETWEEN MERCHANTS"--"FINANCING AGENCY".--

(1) "Merchant" means a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill.

(2) "Financing agency" means a bank, finance company or other person who in the ordinary course of business makes advances against goods or documents of title or who by

arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller's draft or making advances against it or by merely taking it for collection whether or not documents of title accompany or are associated with the draft. "Financing agency" includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (Section 55-2-707 NMSA 1978).

(3) "Between merchants" means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants."

Section 27. Section 55-2-202 NMSA 1978 (being Laws 1961, Chapter 96, Section 2-202) 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 writing 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 writing to have been intended also as a complete and exclusive statement of the terms of the agreement."

Section 28. Section 55-2-310 NMSA 1978 (being Laws 1961, Chapter 96, Section 2-310) is amended to read:

"55-2-310. OPEN TIME FOR PAYMENT OR RUNNING OF CREDIT-- AUTHORITY TO SHIP UNDER RESERVATION.--Unless otherwise agreed:

(a) payment is due at the time and place at which the buyer is to receive the goods even though the place of shipment is the place of delivery; and

(b) if the seller is authorized to send the goods, the seller may ship them under reservation, and may tender the documents of title, but the buyer may inspect the goods after their arrival before payment is due unless such inspection is inconsistent with the terms of the contract (Section 55-2-513 NMSA 1978); and

(c) if delivery is authorized and made by way of documents of title otherwise than by Subsection (b) of this section then payment is due regardless of where the goods are to be received: (i) at the time and place at which the buyer is to receive delivery of the tangible documents or (ii) at the time the buyer is to receive delivery of the electronic documents and at the seller's place of business or, if none, the seller's residence; and

(d) where the seller is required or authorized to ship the goods on credit the credit period runs from the time of shipment but post-dating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period."

Section 29. Section 55-2-323 NMSA 1978 (being Laws 1961, Chapter 96, Section 2-323) is amended to read:

"55-2-323. FORM OF BILL OF LADING REQUIRED ON OVERSEAS SHIPMENT--"OVERSEAS".--

(1) Where the contract contemplates overseas shipment and contains a term C.I.F. or C.&F. or F.O.B. vessel, the seller unless otherwise agreed must obtain a negotiable bill of lading stating that the goods have been loaded on board or, in the case of a term C.I.F. or C.&F., received for shipment.

(2) Where in a case within Subsection (1) of this section a tangible bill of lading has been issued in a set of parts, unless otherwise agreed if the documents are not to be sent from abroad the buyer may demand tender of the full set; otherwise only one part of the bill of lading need be tendered. Even if the agreement expressly requires a full set:

(a) due tender of a single part is acceptable within the provisions of this article on cure of improper delivery (Subsection (1) of Section 55-2-508 NMSA

1978); and

(b) even though the full set is demanded, if the documents are sent from abroad the person tendering an incomplete set may nevertheless require payment upon furnishing an indemnity that the buyer in good faith deems adequate.

(3) A shipment by water or by air or a contract contemplating such shipment is "overseas" insofar as, by usage of trade or agreement, it is subject to the commercial, financing or shipping practices characteristic of international deep water commerce."

Section 30. Section 55-2-401 NMSA 1978 (being Laws 1961, Chapter 96, Section 2-401) is amended to read:

"55-2-401. PASSING OF TITLE--RESERVATION FOR SECURITY--LIMITED APPLICATION OF THIS SECTION.--Each provision of this article with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this article and matters concerning title become material, the following rules apply:

(1) title to goods cannot pass under a contract for sale prior to their identification to the contract (Section 55-2-501 NMSA 1978), and unless otherwise explicitly agreed, the buyer acquires by their identification a special

property as limited by the Uniform Commercial Code. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of Chapter 55, Article 9 NMSA 1978, title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties;

(2) unless otherwise explicitly agreed, title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place and in particular and despite any reservation of a security interest by the bill of lading:

(a) if the contract requires or authorizes the seller to send the goods to the buyer but does not require the seller to deliver them at destination, title passes to the buyer at the time and place of shipment; but

(b) if the contract requires delivery at destination, title passes on tender there;

(3) unless otherwise explicitly agreed where delivery is to be made without moving the goods:

(a) if the seller is to deliver a tangible

document of title, title passes at the time when and the place where the seller delivers such documents and if the seller is to deliver an electronic document of title, title passes when the seller delivers the document; or

(b) if the goods are at the time of contracting already identified and no documents are to be delivered, title passes at the time and place of contracting; and

(4) a rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance revests title to the goods in the seller. Such revesting occurs by operation of law and is not a "sale".

Section 31. Section 55-2-503 NMSA 1978 (being Laws 1961, Chapter 96, Section 2-503) is amended to read:

"55-2-503. MANNER OF SELLER'S TENDER OF DELIVERY.--

(1) Tender of delivery requires that the seller put and hold conforming goods at the buyer's disposition and give the buyer any notification reasonably necessary to enable the buyer to take delivery. The manner, time and place for tender are determined by the agreement and this article, and in particular:

(a) tender must be at a reasonable hour, and if it is of goods they must be kept available for the period reasonably necessary to enable the buyer to take possession;

but

(b) unless otherwise agreed the buyer must furnish facilities reasonably suited to the receipt of the goods.

(2) Where the case is within Section 55-2-504 NMSA 1978 respecting shipment tender requires that the seller comply with its provisions.

(3) Where the seller is required to deliver at a particular destination tender requires that the seller comply with Subsection (1) of this section and also in any appropriate case tender documents as described in Subsections (4) and (5) of this section.

(4) Where goods are in the possession of the bailee and are to be delivered without being moved:

(a) tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgement of the bailee of the buyer's right to possession of the goods; but

(b) tender to the buyer of a nonnegotiable document of title or of a record directing the bailee to deliver is sufficient tender unless the buyer seasonably objects, and except as otherwise provided in Chapter 55, Article 9 NMSA 1978, receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of

any failure by the bailee to honor the nonnegotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

(5) Where the contract requires the seller to deliver documents:

(a) the seller must tender all such documents in correct form, except as provided in this article with respect to bills of lading in a set (Subsection (2) of Section 55-2-323 NMSA 1978); and

(b) tender through customary banking channels is sufficient and dishonor of a draft accompanying or associated with the documents constitutes nonacceptance or rejection."

Section 32. Section 55-2-505 NMSA 1978 (being Laws 1961, Chapter 96, Section 2-505) is amended to read:

"55-2-505. SELLER'S SHIPMENT UNDER RESERVATION.--

(1) Where the seller has identified goods to the contract by or before shipment:

(a) his procurement of a negotiable bill of lading to his own order or otherwise reserves in him a security interest in the goods. His procurement of the bill to the order of a financing agency or of the buyer indicates in addition only the seller's expectation of transferring that

interest to the person named; and

(b) a nonnegotiable bill of lading to himself or his nominee reserves possession of the goods as security but except in a case of conditional delivery (Subsection (2) of Section 55-2-507 NMSA 1978) a nonnegotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession or control of the bill of lading.

(2) When shipment by the seller with reservation of a security interest is in violation of the contract for sale, it constitutes an improper contract for transportation within the preceding section but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the seller's powers as a holder of a negotiable document of title."

Section 33. Section 55-2-506 NMSA 1978 (being Laws 1961, Chapter 96, Section 2-506) is amended to read:

"55-2-506. RIGHTS OF FINANCING AGENCY.--

(1) A financing agency by paying or purchasing for value a draft that relates to a shipment of goods acquires to the extent of the payment or purchase and in addition to its own rights under the draft and any document of title securing it any rights of the shipper in the goods, including the right to stop delivery and the shipper's right to have the draft honored by the buyer.

(2) The right to reimbursement of a financing agency that has in good faith honored or purchased the draft under commitment to or authority from the buyer is not impaired by subsequent discovery of defects with reference to any relevant document that was apparently regular."

Section 34. Section 55-2-509 NMSA 1978 (being Laws 1961, Chapter 96, Section 2-509) is amended to read:

"55-2-509. RISK OF LOSS IN THE ABSENCE OF BREACH.--

(1) Where the contract requires or authorizes the seller to ship the goods by carrier:

(a) if it does not require the seller to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier even though the shipment is under reservation (Section 55-2-505 NMSA 1978); but

(b) if it does require the seller to deliver them at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the buyer when the goods are there duly so tendered as to enable the buyer to take delivery.

(2) Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer:

(a) on the buyer's receipt of possession or control of a negotiable document of title covering the goods;

or

(b) on acknowledgement by the bailee of the buyer's right to possession of the goods; or

(c) after the buyer's receipt of possession or control of a nonnegotiable document of title or other direction to deliver in a record, as provided in Paragraph (b) of Subsection (4) of Section 55-2-503 NMSA 1978.

(3) In any case not within Subsection (1) or (2) of this section, the risk of loss passes to the buyer on the buyer's receipt of the goods if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery.

(4) The provisions of this section are subject to contrary agreement of the parties and to the provisions of this article on sale on approval (Section 55-2-327 NMSA 1978) and on effect of breach on risk of loss (Section 55-2-510 NMSA 1978)."

Section 35. Section 55-2-605 NMSA 1978 (being Laws 1961, Chapter 96, Section 2-605) is amended to read:

"55-2-605. WAIVER OF BUYER'S OBJECTIONS BY FAILURE TO PARTICULARIZE.--

(1) The buyer's failure to state in connection with rejection a particular defect that is ascertainable by reasonable inspection precludes the buyer from relying on the unstated defect to justify rejection or to establish breach:

(a) where the seller could have cured it if

stated seasonably; or

(b) between merchants when the seller has after rejection made a request in writing for a full and final written statement of all defects on which the buyer proposes to rely.

(2) Payment against documents made without reservation of rights precludes recovery of the payment for defects apparent in the documents."

Section 36. Section 55-2-705 NMSA 1978 (being Laws 1961, Chapter 96, Section 2-705) is amended to read:

"55-2-705. SELLER'S STOPPAGE OF DELIVERY IN TRANSIT OR OTHERWISE.--

(1) The seller may stop delivery of goods in the possession of a carrier or other bailee when the seller discovers the buyer to be insolvent (Section 55-2-702 NMSA 1978) and may stop delivery of carload, truckload, planeload or larger shipments of express or freight when the buyer repudiates or fails to make a payment due before delivery or if for any other reason the seller has a right to withhold or reclaim the goods.

(2) As against such buyer, the seller may stop delivery until:

(a) receipt of the goods by the buyer; or

(b) acknowledgment to the buyer by any

bailee of the goods except a carrier that the bailee holds the

goods for the buyer; or

(c) such acknowledgment to the buyer by a carrier by reshipment or as a warehouse; or

(d) negotiation to the buyer of any negotiable document of title covering the goods.

(3) (a) To stop delivery the seller must so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After such notification the bailee must hold and deliver the goods according to the directions of the seller but the seller is liable to the bailee for any ensuing charges or damages.

(c) If a negotiable document of title has been issued for goods the bailee is not obliged to obey a notification to stop until surrender of possession or control of the document.

(d) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor."

Section 37. 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;

(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;

(l) "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

lessor'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

"purchase money lease" Section 55-2A-309 NMSA 1978.

(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 (68)
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 38. Section 55-2A-501 NMSA 1978 (being Laws 1992, Chapter 114, Section 56) is amended to read:

"55-2A-501. DEFAULT--PROCEDURE.--

(1) Whether the lessor or the lessee is in default under a lease contract is determined by the lease agreement and this article.

(2) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement has rights and remedies as provided in this article and, except as limited by this article, as provided in the lease agreement.

(3) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement may

reduce the party's claim to judgment, or otherwise enforce the lease contract by self-help or any available judicial procedure or nonjudicial procedure, including administrative proceeding, arbitration or the like, in accordance with this article.

(4) Except as otherwise provided in Subsection (a) of Section 55-1-305 NMSA 1978 or this article or the lease agreement, the rights and remedies referred to in Subsections (2) and (3) of this section are cumulative.

(5) If the lease agreement covers both real property and goods, the party seeking enforcement may proceed under this part as to the goods, or under other applicable law as to both the real property and the goods in accordance with that party's rights and remedies in respect of the real property, in which case this part does not apply."

Section 39. Section 55-2A-514 NMSA 1978 (being Laws 1992, Chapter 114, Section 69) is amended to read:

"55-2A-514. WAIVER OF LESSEE'S OBJECTIONS.--

(1) In rejecting goods, a lessee's failure to state a particular defect that is ascertainable by reasonable inspection precludes the lessee from relying on the defect to justify rejection or to establish default:

(a) if, stated seasonably, the lessor or the supplier could have cured it (Section 55-2A-513 NMSA 1978); or

(b) between merchants if the lessor or the

supplier after rejection has made a request in writing for a full and final written statement of all defects on which the lessee proposes to rely.

(2) A lessee's failure to reserve rights when paying rent or other consideration against documents precludes recovery of the payment for defects apparent in the documents."

Section 40. Section 55-2A-518 NMSA 1978 (being Laws 1992, Chapter 114, Section 73) is amended to read:

"55-2A-518. COVER--SUBSTITUTE GOODS.--

(1) After a default by a lessor under the lease contract of the type described in Subsection (1) of Section 55-2A-508 NMSA 1978, or, if agreed, after other default by the lessor, the lessee may cover by making any purchase or lease of or contract to purchase or lease goods in substitution for those due from the lessor.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (Section 55-2A-504 NMSA 1978) or otherwise determined pursuant to agreement of the parties (Section 55-1-302 NMSA 1978 and Section 55-2A-503 NMSA 1978), if a lessee's cover is by a lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages: (i) the present value, as of the date

of the commencement of the term of the new lease agreement, of the rent under the new lease agreement applicable to that period of the new lease term that is comparable to the then remaining term of the original lease agreement minus the present value as of the same date of the total rent for the then remaining lease term of the original lease agreement; and (ii) any incidental or consequential damages, less expenses saved in consequence of the lessor's default.

(3) If a lessee's cover is by lease agreement that for any reason does not qualify for treatment under Subsection (2) of this section, or is by purchase or otherwise, the lessee may recover from the lessor as if the lessee had elected not to cover and Section 55-2A-519 NMSA 1978 governs."

Section 41. Section 55-2A-519 NMSA 1978 (being Laws 1992, Chapter 114, Section 74) is amended to read:

"55-2A-519. LESSEE'S DAMAGES FOR NON-DELIVERY, REPUDIATION, DEFAULT AND BREACH OF WARRANTY IN REGARD TO ACCEPTED GOODS.--

(1) Except as otherwise provided with respect to damages liquidated in the lease agreement (Section 55-2A-504 NMSA 1978) or otherwise determined pursuant to agreement of the parties (Sections 55-1-302 and 55-2A-503 NMSA 1978), if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement that for any reason does not qualify for treatment under Subsection (2) of Section

55-2A-518 NMSA 1978, or is by purchase or otherwise, the measure of damages for non-delivery or repudiation by the lessor or for rejection or revocation of acceptance by the lessee is the present value, as of the date of the default, of the then market rent minus the present value as of the same date of the original rent, computed for the remaining lease term of the original lease agreement, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(2) Market rent is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

(3) Except as otherwise agreed, if the lessee has accepted goods and given notification (Subsection (3) of Section 55-2A-516 NMSA 1978), the measure of damages for nonconforming tender or delivery or other default by a lessor is the loss resulting in the ordinary course of events from the lessor's default as determined in any manner that is reasonable together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(4) Except as otherwise agreed, the measure of damages for breach of warranty is the present value at the time and place of acceptance of the difference between the value of the use of the goods accepted and the value if they had been as warranted for the lease term, unless special

circumstances show proximate damages of a different amount, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default or breach of warranty."

Section 42. Section 55-2A-526 NMSA 1978 (being Laws 1992, Chapter 114, Section 81) is amended to read:

"55-2A-526. LESSOR'S STOPPAGE OF DELIVERY IN TRANSIT OR OTHERWISE.--

(1) A lessor may stop delivery of goods in the possession of a carrier or other bailee if the lessor discovers the lessee to be insolvent and may stop delivery of carload, truckload, planeload or larger shipments of express or freight if the lessee repudiates or fails to make a payment due before delivery, whether for rent, security or otherwise under the lease contract, or for any other reason the lessor has a right to withhold or take possession of the goods.

(2) In pursuing its remedies under Subsection (1) of this section, the lessor may stop delivery until:

(a) receipt of the goods by the lessee;

(b) acknowledgment to the lessee by any bailee of the goods, except a carrier, that the bailee holds the goods for the lessee; or

(c) such an acknowledgment to the lessee by a carrier via reshipment or as a warehouse.

(3) To stop delivery, a lessor shall so notify as

to enable the bailee by reasonable diligence to prevent delivery of the goods.

(4) After notification, the bailee shall hold and deliver the goods according to the directions of the lessor, but the lessor is liable to the bailee for any ensuing charges or damages.

(5) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor."

Section 43. Section 55-2A-527 NMSA 1978 (being Laws 1992, Chapter 114, Section 82) is amended to read:

"55-2A-527. LESSOR'S RIGHTS TO DISPOSE OF GOODS.--

(1) After a default by a lessee under the lease contract of the type described in Subsection (1) or Paragraph (a) of Subsection (3) of Section 55-2A-523 NMSA 1978 or after the lessor refuses to deliver or takes possession of goods (Section 55-2A-525 or 55-2A-526 NMSA 1978), or, if agreed, after other default by a lessee, the lessor may dispose of the goods concerned or the undelivered balance thereof by lease, sale or otherwise.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (Section 55-2A-504 NMSA 1978) or otherwise determined pursuant to agreement of the parties (Sections 55-1-302 and 55-2A-503 NMSA 1978), if the disposition is by lease agreement substantially similar to

the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessor may recover from the lessee as damages: (i) accrued and unpaid rent as of the date of the commencement of the term of the new lease agreement; (ii) the present value, as of the same date, of the total rent for the then remaining lease term of the original lease agreement minus the present value, as of the same date, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement; and (iii) any incidental damages allowed under Section 55-2A-530 NMSA 1978, less expenses saved in consequence of the lessee's default.

(3) If the lessor's disposition is by lease agreement that for any reason does not qualify for treatment under Subsection (2) of this section, or is by sale or otherwise, the lessor may recover from the lessee as if the lessor had elected not to dispose of the goods and Section 55-2A-528 NMSA 1978 governs.

(4) A subsequent buyer or lessee who buys or leases from the lessor in good faith for value as a result of a disposition under this section takes the goods free of the original lease contract and any rights of the original lessee even though the lessor fails to comply with one or more of the requirements of this article.

(5) The lessor is not accountable to the lessee for any profit made on any disposition. A lessee who has rightfully rejected or justifiably revoked acceptance shall account to the lessor for any excess over the amount of the lessee's security interest (Subsection (5) of Section 55-2A-508 NMSA 1978)."

Section 44. Section 55-2A-528 NMSA 1978 (being Laws 1992, Chapter 114, Section 83) is amended to read:

"55-2A-528. LESSOR'S DAMAGES FOR NONACCEPTANCE, FAILURE TO PAY, REPUDIATION OR OTHER DEFAULT.--

(1) Except as otherwise provided with respect to damages liquidated in the lease agreement (NMSA 1978) or otherwise determined pursuant to agreement of the parties (Sections 55-1-302 and 55-2A-503 NMSA 1978), if a lessor elects to retain the goods or a lessor elects to dispose of the goods and the disposition is by lease agreement that for any reason does not qualify for treatment under Subsection (2) of Section 55-2A-527 NMSA 1978, or is by sale or otherwise, the lessor may recover from the lessee as damages for a default of the type described in Subsection (1) or Paragraph (a) of Subsection (3) of Section 55-2A-523 NMSA 1978, or, if agreed, for other default of the lessee: (i) accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods, or, if the lessee has taken possession of the goods, as of the date the lessor repossesses

the goods or an earlier date on which the lessee makes a tender of the goods to the lessor; (ii) the present value as of the date determined under clause (i) of the total rent for the then remaining lease term of the original lease agreement minus the present value as of the same date of the market rent at the place where the goods are located computed for the same lease term; and (iii) any incidental damages allowed under Section 55-2A-530 NMSA 1978, less expenses saved in consequence of the lessee's default.

(2) If the measure of damages provided in Subsection (1) of this section is inadequate to put a lessor in as good a position as performance would have, the measure of damages is the present value of the profit, including reasonable overhead, the lessor would have made from full performance by the lessee, together with any incidental damages allowed under Section 55-2A-530 NMSA 1978, due allowance for costs reasonably incurred and due credit for payments or proceeds of disposition."

Section 45. Section 55-3-103 NMSA 1978 (being Laws 1992, Chapter 114, Section 90) is amended to read:

"55-3-103. DEFINITIONS.--

(a) In this article:

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

(2) "drawee" means a person ordered in a

draft to make payment;

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

(4) [Reserved];

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

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

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

(8) "party" means a party to an instrument;

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

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

(11) "remitter" means a person who purchases an instrument from its issuer if the instrument is payable to an identified person other than the purchaser.

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

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

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

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

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

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

"blank indorsement" Section 55-3-205 NMSA

1978;
"cashier's check" Section 55-3-104 NMSA
1978;
"certificate of deposit" Section 55-3-104 NMSA
1978;
"certified check" Section 55-3-409 NMSA
1978;
"check" Section 55-3-104 NMSA
1978;
"consideration" Section 55-3-303 NMSA
1978;
"draft" Section 55-3-104 NMSA
1978;
"holder in due course" Section 55-3-302 NMSA
1978;
"incomplete instrument" Section 55-3-115 NMSA
1978;
"indorsement" Section 55-3-204 NMSA
1978;
"indorser" Section 55-3-204 NMSA
1978;
"instrument" Section 55-3-104 NMSA
1978;
"issue" Section 55-3-105 NMSA

	"issuer"	Section 55-3-105 NMSA
1978;		
	"negotiable instrument"	Section 55-3-104 NMSA
1978;		
	"negotiation"	Section 55-3-201 NMSA
1978;		
	"note"	Section 55-3-104 NMSA
1978;		
	"payable at a definite time"	Section 55-3-108 NMSA
1978;		
	"payable on demand"	Section 55-3-108 NMSA
1978;		
	"payable to bearer"	Section 55-3-109 NMSA
1978;		
	"payable to order"	Section 55-3-109 NMSA
1978;		
	"payment"	Section 55-3-602 NMSA
1978;		
	"person entitled to enforce"	Section 55-3-301 NMSA
1978;		
	"presentment"	Section 55-3-501 NMSA
1978;		
	"reacquisition"	Section 55-3-207 NMSA

1978;
"special indorsement" Section 55-3-205 NMSA
1978;
"teller's check" Section 55-3-104 NMSA
1978;
"transfer of instrument" Section 55-3-203 NMSA
1978;
"traveler's check" Section 55-3-104 NMSA
1978; and
"value" Section 55-3-303 NMSA
1978.

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

"bank" Section 55-4-105 NMSA
1978;
"banking day" Section 55-4-104 NMSA
1978;
"clearing house" Section 55-4-104 NMSA
1978;
"collecting bank" Section 55-4-105 NMSA
1978;
"depository bank" Section 55-4-105 NMSA
1978;
"documentary draft" Section 55-4-104 NMSA
1978;

"intermediary bank" Section 55-4-105 NMSA
1978;
"item" Section 55-4-104 NMSA
1978;
"payor bank" Section 55-4-105 NMSA
1978;
and
"suspends payments" Section 55-4-104 NMSA
1978.

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

Section 46. Section 55-4-104 NMSA 1978 (being Laws 1961, Chapter 96, Section 4-104, as amended) is amended to read:

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

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

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

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

(3) "banking day" means the part of a day on

which a bank is open to the public for carrying on substantially all of its banking functions;

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

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

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

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

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

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

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

(11) "settle" means to pay in cash, by clearinghouse settlement, in a charge or credit or by remittance or otherwise as agreed. A settlement may be either provisional or final; and

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

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

"agreement for electronic presentment"	Section 55-4-110
NMSA 1978;	
"bank"	Section 55-4-105 NMSA
1978;	
"collecting bank"	Section 55-4-105 NMSA
1978;	
"depository bank"	Section 55-4-105 NMSA
1978;	

"intermediary bank" Section 55-4-105 NMSA
1978;
"payor bank" Section 55-4-105 NMSA
1978;
"presenting bank" Section 55-4-105 NMSA
1978;
and
"presentment notice" Section 55-4-110 NMSA
1978.

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

"acceptance" Section 55-3-409 NMSA
1978;
"alteration" Section 55-3-407 NMSA
1978;
"cashier's check" Section 55-3-104 NMSA
1978;
"certificate of
deposit" Section 55-3-104 NMSA
1978;
"certified check" Section 55-3-409 NMSA
1978;
"check" Section 55-3-104 NMSA
1978;

"holder in due
course" Section 55-3-302 NMSA
1978;
"instrument" Section 55-3-104 NMSA
1978;
"notice of dishonor" Section 55-3-503 NMSA
1978;
"order" Section 55-3-103 NMSA
1978;
"ordinary care" Section 55-3-103 NMSA
1978;
"person entitled
to enforce" Section 55-3-301 NMSA
1978;
"presentment" Section 55-3-501 NMSA
1978;
"promise" Section 55-3-103 NMSA
1978;
"prove" Section 55-3-103 NMSA
1978;
"teller's check" Section 55-3-104 NMSA
1978;
and
"unauthorized
signature" Section 55-3-403 NMSA

1978.

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

Section 47. Section 55-4-210 NMSA 1978 (being Laws 1961, Chapter 96, Section 4-208, as amended) is amended to read:

"55-4-210. SECURITY INTEREST OF COLLECTING BANK IN ITEMS, ACCOMPANYING DOCUMENTS AND PROCEEDS.--

(a) A collecting bank has a security interest in an item and any accompanying documents or the proceeds of either:

(1) in the case of an item deposited in an account, to the extent to which credit given for the item has been withdrawn or applied;

(2) in the case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given, whether or not the credit is drawn upon or there is a right of charge-back; or

(3) if it makes an advance on or against the item.

(b) If credit given for several items received at one time or pursuant to a single agreement is withdrawn or applied in part, the security interest remains upon all the items, any accompanying documents or the proceeds of either.

For the purpose of this section, credits first given are first withdrawn.

(c) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents and proceeds. So long as the bank does not receive final settlement for the item or give up possession of the item or possession or control of the accompanying documents for purposes other than collection, the security interest continues to that extent and is subject to Chapter 55, Article 9 NMSA 1978, but:

(1) no security agreement is necessary to make the security interest enforceable (Subparagraph (A) of Paragraph (3) of Subsection (b) of Section 55-9-203 NMSA 1978);

(2) no filing is required to perfect the security interest; and

(3) the security interest has priority over conflicting perfected security interests in the item, accompanying documents or proceeds."

Section 48. Section 55-4A-105 NMSA 1978 (being Laws 1992, Chapter 114, Section 201) is amended to read:

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

(a) In this article:

(1) "authorized account" means a deposit account of a customer in a bank designated by the customer as

a source of payment of payment orders issued by the customer to the bank; if a customer does not so designate an account, any account of the customer is an authorized account if payment of a payment order from that account is not inconsistent with a restriction on the use of that account;

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

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

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

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

(6) [Reserved]; and

(7) "prove" with respect to a fact means to

meet the burden of establishing the fact (Paragraph (8) of Subsection (b) of Section 55-1-201 NMSA 1978).

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

"acceptance"	Section 55-4A-209 NMSA 1978;
"beneficiary"	Section 55-4A-103 NMSA 1978;
"beneficiary's bank"	Section 55-4A-103 NMSA 1978;
"executed"	Section 55-4A-301 NMSA 1978;
"execution date"	Section 55-4A-301 NMSA 1978;
"funds transfer"	Section 55-4A-104 NMSA 1978;
"funds-transfer system rule"	Section 55-4A-501 NMSA 1978;
"intermediary bank"	Section 55-4A-104 NMSA 1978;
"originator"	Section 55-4A-104 NMSA 1978;
"originator's bank"	Section 55-4A-104 NMSA 1978;
"payment by beneficiary's bank to beneficiary"	Section 55-4A-405 NMSA 1978;
"payment by originator to beneficiary"	Section 55-4A-406 NMSA 1978;
"payment by sender to receiving bank"	Section 55-4A-403 NMSA 1978;
"payment date"	Section 55-4A-401 NMSA 1978;
"payment order"	Section 55-4A-103 NMSA 1978;
"receiving bank"	Section 55-4A-103 NMSA 1978;
"security procedure"	Section 55-4A-201 NMSA 1978;

and

"sender" Section 55-4A-103 NMSA 1978.

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

"clearinghouse" Section 55-4-104 NMSA 1978;

"item" Section 55-4-104 NMSA 1978;

and

"Suspends payments" Section 55-4-104 NMSA 1978.

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

Section 49. Section 55-4A-106 NMSA 1978 (being Laws 1992, Chapter 114, Section 202) is amended to read:

"55-4A-106. TIME PAYMENT ORDER IS RECEIVED.--

(a) The time of receipt of a payment order or communication canceling or amending a payment order is determined by the rules applicable to receipt of a notice stated in Section 55-1-202 NMSA 1978. A receiving bank may fix a cut-off time or times on a funds-transfer business day for the receipt and processing of payment orders and communications canceling or amending payment orders. Different cut-off times may apply to payment orders, cancellations or amendments. A cut-off time may apply to senders generally or different cut-off times may apply to different senders or categories of payment orders. If a

payment order or communication canceling or amending a payment order is received after the close of a funds-transfer business day or after the appropriate cut-off time on a funds-transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds-transfer business day.

(b) If this article refers to an execution date or payment date or states a day on which a receiving bank is required to take action, and the date or day does not fall on a funds-transfer business day, the next day that is a funds-transfer business day is treated as the date or day stated, unless the contrary is stated in this article."

Section 50. Section 55-4A-204 NMSA 1978 (being Laws 1992, Chapter 114, Section 208) is amended to read:

"55-4A-204. REFUND OF PAYMENT AND DUTY OF CUSTOMER TO REPORT WITH RESPECT TO UNAUTHORIZED PAYMENT ORDER.--

(a) If a receiving bank accepts a payment order issued in the name of its customer as sender that is: (i) not authorized and not effective as the order of the customer under Section 55-4A-202 NMSA 1978; or (ii) not enforceable, in whole or in part, against the customer under Section 55-4A-203 NMSA 1978, the bank shall refund any payment of the payment order received from the customer to the extent the bank is not entitled to enforce payment and shall pay interest on the refundable amount calculated from the date the bank received

payment to the date of the refund. However, the customer is not entitled to interest from the bank on the amount to be refunded if the customer fails to exercise ordinary care to determine that the order was not authorized by the customer and to notify the bank of the relevant facts within a reasonable time not exceeding ninety days after the date the customer received notification from the bank that the order was accepted or that the customer's account was debited with respect to the order. The bank is not entitled to any recovery from the customer on account of a failure by the customer to give notification as stated in this section.

(b) Reasonable time under Subsection (a) of this section may be fixed by agreement as stated in Subsection (b) of Section 55-1-302 NMSA 1978, but the obligation of a receiving bank to refund payment as stated in Subsection (a) of this section may not otherwise be varied by agreement."

Section 51. Section 55-5-103 NMSA 1978 (being Laws 1997, Chapter 75, Section 5) is amended to read:

"55-5-103. 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, Paragraphs (9) and (10) of Subsection (a) of Section 55-5-102 NMSA 1978, Subsection (d) of Section 55-5-106 NMSA 1978 and Subsection (d) of Section 55-5-114 NMSA 1978, and except to the extent prohibited in Section 55-1-302 NMSA 1978 and Subsection (d) of Section 55-5-117 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 obligations is not sufficient to vary obligations prescribed by this article.

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

ARTICLE 7

DOCUMENTS OF TITLE

Section 52. Section 55-7-102 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-102) is repealed and a new Section 55-7-102 NMSA 1978 is enacted 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) "sign" means, with present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

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

(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 53. Section 55-7-103 NMSA 1978 (being Laws
1961, Chapter 96, Section 7-103) is repealed and a new Section
55-7-103 NMSA 1978 is enacted to read:

"55-7-103. RELATION OF ARTICLE TO TREATY OR STATUTE.--

(a) Chapter 55, Article 7 NMSA 1978 is subject to
any treaty or statute of the United States or regulatory
statute of this state to the extent the treaty, statute or
regulatory statute is applicable.

(b) Chapter 55, Article 7 NMSA 1978 does not
modify or repeal any law prescribing the form or content of a
document of title or the services or facilities to be afforded
by a bailee, or otherwise regulating a bailee's business in
respects not specifically treated in this article. However,
violation of such a law does not affect the status of a
document of title that otherwise is within the definition of a
document of title.

(c) This Uniform Commercial Code modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001, et. seq.) but does not modify, limit or supersede Section 101(c) of that act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. Section 7003(b)).

(d) To the extent there is a conflict between the Uniform Electronic Transactions Act and Chapter 55, Article 7 NMSA 1978, Chapter 55, Article 7 NMSA 1978 governs."

Section 54. Section 55-7-104 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-104) is repealed and a new Section 55-7-104 NMSA 1978 is enacted to read:

"55-7-104. NEGOTIABLE AND NONNEGOTIABLE DOCUMENT OF TITLE.--

(a) Except as otherwise provided in Subsection (c) of this section, a document of title is negotiable if by its terms the goods are to be delivered to bearer or to the order of a named person.

(b) A document of title other than one described in Subsection (a) of this section is nonnegotiable. A bill of lading that states that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against an order in a record signed by the same or another named person.

(c) A document of title is nonnegotiable if, at the time it is issued, the document has a conspicuous legend, however expressed, that it is nonnegotiable."

Section 55. Section 55-7-105 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-105) is repealed and a new Section 55-7-105 NMSA 1978 is enacted to read:

"55-7-105. REISSUANCE IN ALTERNATIVE MEDIUM.--

(a) Upon request of a person entitled under an electronic document of title, the issuer of the electronic document may issue a tangible document of title as a substitute for the electronic document if:

(1) the person entitled under the electronic document surrenders control of the document to the issuer; and

(2) the tangible document when issued contains a statement that it is issued in substitution for the electronic document.

(b) Upon issuance of a tangible document of title in substitution for an electronic document of title in accordance with Subsection (a) of this section:

(1) the electronic document ceases to have any effect or validity; and

(2) the person that procured issuance of the tangible document warrants to all subsequent persons entitled under the tangible document that the warrantor was a person entitled under the electronic document when the warrantor

surrendered control of the electronic document to the issuer.

(c) Upon request of a person entitled under a tangible document of title, the issuer of the tangible document may issue an electronic document of title as a substitute for the tangible document if:

(1) the person entitled under the tangible document surrenders possession of the document to the issuer; and

(2) the electronic document when issued contains a statement that it is issued in substitution for the tangible document.

(d) Upon issuance of an electronic document of title in substitution for a tangible document of title in accordance with Subsection (c) of this section:

(1) the tangible document ceases to have any effect or validity; and

(2) the person that procured issuance of the electronic document warrants to all subsequent persons entitled under the electronic document that the warrantor was a person entitled under the tangible document when the warrantor surrendered possession of the tangible document to the issuer."

Section 56. A new Section 55-7-106 NMSA 1978 is enacted 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 is deemed to have control of an electronic document of title, if the document is created, stored and assigned in such 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."

PART 2

WAREHOUSE RECEIPTS: SPECIAL PROVISIONS

Section 57. Section 55-7-201 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-201) is repealed and a new Section 55-7-201 NMSA 1978 is enacted to read:

"55-7-201. PERSON THAT MAY ISSUE A WAREHOUSE RECEIPT--
STORAGE UNDER BOND.--

(a) A warehouse receipt may be issued by any warehouse.

(b) If goods, including distilled spirits and agricultural commodities, are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods is deemed to be a warehouse receipt even if issued by a person that is the owner of the goods and is not a warehouse."

Section 58. Section 55-7-202 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-202) is repealed and a new Section 55-7-202 NMSA 1978 is enacted to read:

"55-7-202. FORM OF WAREHOUSE RECEIPT--EFFECT OF
OMISSION.--

(a) A warehouse receipt need not be in any particular form.

(b) Unless a warehouse receipt provides for each of the following, the warehouse is liable for damages caused to a person injured by its omission:

(1) a statement of the location of the warehouse facility where the goods are stored;

(2) the date of issue of the receipt;

(3) the unique identification code of the receipt;

(4) a statement whether the goods received will be delivered to the bearer, to a named person or to a named person or its order;

(5) the rate of storage and handling charges, unless goods are stored under a field warehousing arrangement, in which case a statement of that fact is sufficient on a nonnegotiable receipt;

(6) a description of the goods or the packages containing them;

(7) the signature of the warehouse or its agent;

(8) if the receipt is issued for goods that the warehouse owns, either solely, jointly or in common with

others, a statement of the fact of that ownership; and

(9) a statement of the amount of advances made and of liabilities incurred for which the warehouse claims a lien or security interest, unless the precise amount of advances made or liabilities incurred, at the time of the issue of the receipt, is unknown to the warehouse or to its agent that issued the receipt, in which case a statement of the fact that advances have been made or liabilities incurred and the purpose of the advances or liabilities is sufficient.

(c) A warehouse may insert in its receipt any terms that are not contrary to the Uniform Commercial Code and do not impair its obligation of delivery under Section 55-7-403 NMSA 1978 or its duty of care under Section 55-7-204 NMSA 1978. Any contrary provision is ineffective."

Section 59. Section 55-7-203 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-203) is repealed and a new Section 55-7-203 NMSA 1978 is enacted to read:

"55-7-203. LIABILITY FOR NONRECEIPT OR MISDESCRIPTION.--A party to or purchaser for value in good faith of a document of title, other than a bill of lading, that relies upon the description of the goods in the document may recover from the issuer damages caused by the nonreceipt or misdescription of the goods, except to the extent that:

(1) the document conspicuously indicates that the issuer does not know whether all or part of the goods in fact

were received or conform to the description, such as a case in which the description is in terms of marks or labels or kind, quantity or condition or the receipt or description is qualified by "contents, condition, and quality unknown", "said to contain" or words of similar import, if the indication is true; or

(2) the party or purchaser otherwise has notice of the nonreceipt or misdescription."

Section 60. Section 55-7-204 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-204) is repealed and a new Section 55-7-204 NMSA 1978 is enacted to read:

"55-7-204. DUTY OF CARE--CONTRACTUAL LIMITATION OF WAREHOUSE'S LIABILITY.--

(a) A warehouse is liable for damages for loss of or injury to the goods caused by its failure to exercise care with regard to the goods that a reasonably careful person would exercise under similar circumstances. Unless otherwise agreed, the warehouse is not liable for damages that could not have been avoided by the exercise of that care.

(b) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage beyond which the warehouse is not liable. Such a limitation is not effective with respect to the warehouse's liability for conversion to its own use. On request of the bailor in a record at the time of

signing the storage agreement or within a reasonable time after receipt of the warehouse receipt, the warehouse's liability may be increased on part or all of the goods covered by the storage agreement or the warehouse receipt. In this event, increased rates may be charged based on an increased valuation of the goods.

(c) Reasonable provisions as to the time and manner of presenting claims and commencing actions based on the bailment may be included in the warehouse receipt or storage agreement."

Section 61. Section 55-7-205 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-205) is repealed and a new Section 55-7-205 NMSA 1978 is enacted to read:

"55-7-205. TITLE UNDER WAREHOUSE RECEIPT DEFEATED IN CERTAIN CASES.--A buyer in ordinary course of business of fungible goods sold and delivered by a warehouse that is also in the business of buying and selling such goods takes the goods free of any claim under a warehouse receipt even if the receipt is negotiable and has been duly negotiated."

Section 62. Section 55-7-206 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-206) is repealed and a new Section 55-7-206 NMSA 1978 is enacted to read:

"55-7-206. TERMINATION OF STORAGE AT WAREHOUSE'S OPTION.--

(a) A warehouse, by giving notice to the person on

whose account the goods are held and any other person known to claim an interest in the goods, may require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document of title or, if a period is not fixed, within a stated period not less than thirty days after the warehouse gives notice. If the goods are not removed before the date specified in the notice, the warehouse may sell them pursuant to Section 55-7-210 NMSA 1978.

(b) If a warehouse in good faith believes that goods are about to deteriorate or decline in value to less than the amount of its lien within the time provided in Subsection (a) of this section and Section 55-7-210 NMSA 1978, the warehouse may specify in the notice given under Subsection (a) of this section any reasonable shorter time for removal of the goods and, if the goods are not removed, may sell them at public sale held not less than one week after a single advertisement or posting.

(c) If, as a result of a quality or condition of the goods of which the warehouse did not have notice at the time of deposit, the goods are a hazard to other property, the warehouse facilities or other persons, the warehouse may sell the goods at public or private sale without advertisement or posting on reasonable notification to all persons known to claim an interest in the goods. If the warehouse, after a

reasonable effort, is unable to sell the goods, it may dispose of them in any lawful manner and does not incur liability by reason of that disposition.

(d) A warehouse shall deliver the goods to any person entitled to them under Chapter 55, Article 7 NMSA 1978 upon due demand made at any time before sale or other disposition under this section.

(e) A warehouse may satisfy its lien from the proceeds of any sale or disposition under this section but shall hold the balance for delivery on the demand of any person to which the warehouse would have been bound to deliver the goods."

Section 63. Section 55-7-207 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-207) is repealed and a new Section 55-7-207 NMSA 1978 is enacted to read:

"55-7-207. GOODS MUST BE KEPT SEPARATE--FUNGIBLE GOODS.--

(a) Unless the warehouse receipt provides otherwise, a warehouse shall keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods. However, different lots of fungible goods may be commingled.

(b) If different lots of fungible goods are commingled, the goods are owned in common by the persons entitled thereto and the warehouse is severally liable to each

owner for that owner's share. If, because of overissue, a mass of fungible goods is insufficient to meet all the receipts the warehouse has issued against it, the persons entitled include all holders to which overissued receipts have been duly negotiated."

Section 64. Section 55-7-208 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-208) is repealed and a new Section 55-7-208 NMSA 1978 is enacted to read:

"55-7-208. ALTERED WAREHOUSE RECEIPTS.--If a blank in a negotiable tangible warehouse receipt has been filled in without authority, a good-faith purchaser for value and without notice of the lack of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any tangible or electronic warehouse receipt enforceable against the issuer according to its original tenor."

Section 65. Section 55-7-209 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-209) is repealed and a new Section 55-7-209 NMSA 1978 is enacted to read:

"55-7-209. LIEN OF WAREHOUSE.--

(a) A warehouse has a lien against the bailor on the goods covered by a warehouse receipt or storage agreement or on the proceeds thereof in its possession for charges for storage or transportation, including demurrage and terminal charges, insurance, labor or other charges, present or future,

in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for similar charges or expenses in relation to other goods whenever deposited and it is stated in the warehouse receipt or storage agreement that a lien is claimed for charges and expenses in relation to other goods, the warehouse also has a lien against the goods covered by the warehouse receipt or storage agreement or on the proceeds thereof in its possession for those charges and expenses, whether or not the other goods have been delivered by the warehouse. However, as against a person to which a negotiable warehouse receipt is duly negotiated, a warehouse's lien is limited to charges in an amount or at a rate specified in the warehouse receipt or, if no charges are so specified, to a reasonable charge for storage of the specific goods covered by the receipt subsequent to the date of the receipt.

(b) A warehouse may also reserve a security interest against the bailor for the maximum amount specified on the receipt for charges other than those specified in Subsection (a) of this section, such as for money advanced and interest. The security interest is governed by Chapter 55, Article 9 NMSA 1978.

(c) A warehouse's lien for charges and expenses under Subsection (a) of this section or a security interest

under Subsection (b) of this section is also effective against any person that so entrusted the bailor with possession of the goods that a pledge of them by the bailor to a good-faith purchaser for value would have been valid. However, the lien or security interest is not effective against a person that before issuance of a document of title had a legal interest or a perfected security interest in the goods and that did not:

(1) deliver or entrust the goods or any document of title covering the goods to the bailor or the bailor's nominee with:

(A) actual or apparent authority to ship, store or sell;

(B) power to obtain delivery under Section 55-7-403 NMSA 1978; or

(C) power of disposition under Section 55-2-403, Subsection (2) of Section 55-2A-304, Subsection (2) of Section 55-2A-305, Section 55-9-320 or Subsection (c) of Section 55-9-321 NMSA 1978, or other statute or rule of law; or

(2) acquiesce in the procurement by the bailor or its nominee of any document.

(d) A warehouse's lien on household goods for charges and expenses in relation to the goods under Subsection (a) of this section is also effective against all persons if the depositor was the legal possessor of the goods at the time

of deposit. In this subsection, "household goods" means furniture, furnishings or personal effects used by the depositor in a dwelling.

(e) A warehouse loses its lien on any goods that it voluntarily delivers or unjustifiably refuses to deliver."

Section 66. Section 55-7-210 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-210, as amended) is repealed and a new Section 55-7-210 NMSA 1978 is enacted to read:

"55-7-210. ENFORCEMENT OF WAREHOUSE'S LIEN.--

(a) Except as otherwise provided in Subsection (b) of this section, a warehouse's lien may be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a method different from that selected by the warehouse is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The warehouse sells in a commercially reasonable manner if the warehouse sells the goods in the usual manner in any recognized market therefor, sells at the price current in that market at the time of the sale or otherwise sells in

conformity with commercially reasonable practices among dealers in the type of goods sold. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.

(b) A warehouse may enforce its lien on goods, other than goods stored by a merchant in the course of its business, only if the following requirements are satisfied:

(1) all persons known to claim an interest in the goods must be notified;

(2) the notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than ten days after receipt of the notification and a conspicuous statement that, unless the claim is paid within that time, the goods will be advertised for sale and sold by auction at a specified time and place;

(3) the sale must conform to the terms of the notification;

(4) the sale must be held at the nearest suitable place to where the goods are held or stored; and

(5) after the expiration of the time given in the notification, an advertisement of the sale must be published once a week for two weeks consecutively in a newspaper of general circulation where the sale is to be held.

The advertisement must include a description of the goods, the name of the person on whose account the goods are being held and the time and place of the sale. The sale must take place at least fifteen days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least ten days before the sale in not fewer than six conspicuous places in the neighborhood of the proposed sale.

(c) Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying with this section. In that event, the goods may not be sold but must be retained by the warehouse subject to the terms of the receipt and Chapter 55, Article 7 NMSA 1978.

(d) A warehouse may buy at any public sale held pursuant to this section.

(e) A purchaser in good faith of goods sold to enforce a warehouse's lien takes the goods free of any rights of persons against which the lien was valid, despite the warehouse's noncompliance with this section.

(f) A warehouse may satisfy its lien from the proceeds of any sale pursuant to this section but shall hold the balance, if any, for delivery on demand to any person to which the warehouse would have been bound to deliver the

goods.

(g) The rights provided by this section are in addition to all other rights allowed by law to a creditor against a debtor.

(h) If a lien is on goods stored by a merchant in the course of its business, the lien may be enforced in accordance with Subsection (a) or (b) of this section.

(i) A warehouse is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of willful violation, is liable for conversion."

PART 3

BILLS OF LADING: SPECIAL PROVISIONS

Section 67. Section 55-7-301 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-301) is repealed and a new Section 55-7-301 NMSA 1978 is enacted to read:

"55-7-301. LIABILITY FOR NONRECEIPT OR MISDESCRIPTION--
"SAID TO CONTAIN"--"SHIPPER'S WEIGHT, LOAD AND COUNT"--
IMPROPER HANDLING.--

(a) A consignee of a nonnegotiable bill of lading that has given value in good faith, or a holder to which a negotiable bill has been duly negotiated, relying upon the description of the goods in the bill or upon the date shown in the bill, may recover from the issuer damages caused by the misdating of the bill or the nonreceipt or misdescription of

the goods, except to the extent that the bill indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, such as in a case in which the description is in terms of marks or labels or kind, quantity or condition or the receipt or description is qualified by "contents or condition of contents of packages unknown", "said to contain", "shipper's weight, load and count" or words of similar import, if that indication is true.

(b) If goods are loaded by the issuer of a bill of lading:

(1) the issuer shall count the packages of goods if shipped in packages and shall ascertain the kind and quantity if shipped in bulk; and

(2) words such as "shipper's weight, load and count" or words of similar import indicating that the description was made by the shipper are ineffective except as to goods concealed in packages.

(c) If bulk goods are loaded by a shipper that makes available to the issuer of a bill of lading adequate facilities for weighing those goods, the issuer shall ascertain the kind and quantity within a reasonable time after receiving the shipper's request in a record to do so. In that case, "shipper's weight" or words of similar import are ineffective.

(d) The issuer of a bill of lading, by including in the bill the words "shipper's weight, load and count", or words of similar import, may indicate that the goods were loaded by the shipper, and, if that statement is true, the issuer is not liable for damages caused by the improper loading. However, omission of such words does not imply liability for damages caused by improper loading.

(e) A shipper guarantees to an issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition and weight, as furnished by the shipper, and the shipper shall indemnify the issuer against damage caused by inaccuracies in those particulars. This right of indemnity does not limit the issuer's responsibility or liability under the contract of carriage to any person other than the shipper."

Section 68. Section 55-7-302 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-302) is repealed and a new Section 55-7-302 NMSA 1978 is enacted to read:

"55-7-302. THROUGH BILLS OF LADING AND SIMILAR DOCUMENTS OF TITLE.--

(a) The issuer of a through bill of lading, or other document of title embodying an undertaking to be performed in part by a person acting as its agent or by a performing carrier, is liable to any person entitled to recover on the bill or other document for any breach by the

other person or the performing carrier of its obligation under the bill or other document. However, to the extent that the bill or other document covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation, this liability for breach by the other person or the performing carrier may be varied by agreement of the parties.

(b) If goods covered by a through bill of lading or other document of title embodying an undertaking to be performed in part by a person other than the issuer are received by that person, the person is subject, with respect to its own performance while the goods are in its possession, to the obligation of the issuer. The person's obligation is discharged by delivery of the goods to another person pursuant to the bill or other document and does not include liability for breach by any other person or by the issuer.

(c) The issuer of a through bill of lading or other document of title described in Subsection (a) of this section is entitled to recover from the performing carrier, or other person in possession of the goods when the breach of the obligation under the bill or other document occurred:

(1) the amount it may be required to pay to any person entitled to recover on the bill or other document for the breach, as may be evidenced by any receipt, judgment

or transcript of judgment; and

(2) the amount of any expense reasonably incurred by the issuer in defending any action commenced by any person entitled to recover on the bill or other document for the breach."

Section 69. Section 55-7-303 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-303) is repealed and a new Section 55-7-303 NMSA 1978 is enacted to read:

"55-7-303. DIVERSION--RECONSIGNMENT--CHANGE OF INSTRUCTIONS.--

(a) Unless the bill of lading otherwise provides, a carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods, without liability for misdelivery, on instructions from:

(1) the holder of a negotiable bill;

(2) the consignor on a nonnegotiable bill, even if the consignee has given contrary instructions;

(3) the consignee on a nonnegotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the tangible bill or in control of the electronic bill; or

(4) the consignee on a nonnegotiable bill, if the consignee is entitled as against the consignor to

dispose of the goods.

(b) Unless instructions described in Subsection (a) of this section are included in a negotiable bill of lading, a person to which the bill is duly negotiated may hold the bailee according to the original terms."

Section 70. Section 55-7-304 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-304) is repealed and a new Section 55-7-304 NMSA 1978 is enacted to read:

"55-7-304. TANGIBLE BILLS OF LADING IN A SET.--

(a) Except as customary in international transportation, a tangible bill of lading may not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.

(b) If a tangible bill of lading is lawfully issued in a set of parts, each of which contains an identification code and is expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts constitutes one bill.

(c) If a tangible negotiable bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to which the first due negotiation is made prevails as to both the document of title and the goods even if any later holder may have received the goods from the carrier in good faith and discharged the carrier's obligation by surrendering its part.

(d) A person that negotiates or transfers a single part of a tangible bill of lading issued in a set is liable to holders of that part as if it were the whole set.

(e) The bailee shall deliver in accordance with Part 4 of this article against the first presented part of a tangible bill of lading lawfully issued in a set. Delivery in this manner discharges the bailee's obligation on the whole bill."

Section 71. Section 55-7-305 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-305) is repealed and a new Section 55-7-305 NMSA 1978 is enacted to read:

"55-7-305. DESTINATION BILLS.--

(a) Instead of issuing a bill of lading to the consignor at the place of shipment, a carrier, at the request of the consignor, may procure the bill to be issued at destination or at any other place designated in the request.

(b) Upon request of any person entitled as against a carrier to control the goods while in transit and on surrender of possession or control of any outstanding bill of lading or other receipt covering the goods, the issuer, subject to Section 55-7-105 NMSA 1978, may procure a substitute bill to be issued at any place designated in the request."

Section 72. Section 55-7-306 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-306) is repealed and a new Section

55-7-306 NMSA 1978 is enacted to read:

"55-7-306. ALTERED BILLS OF LADING.--An unauthorized alteration or filling in of a blank in a bill of lading leaves the bill enforceable according to its original tenor."

Section 73. Section 55-7-307 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-307) is repealed and a new Section 55-7-307 NMSA 1978 is enacted to read:

"55-7-307. LIEN OF CARRIER.--

(a) A carrier has a lien on the goods covered by a bill of lading or on the proceeds thereof in its possession for charges after the date of the carrier's receipt of the goods for storage or transportation, including demurrage and terminal charges, and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. However, against a purchaser for value of a negotiable bill of lading, a carrier's lien is limited to charges stated in the bill or the applicable tariffs or, if no charges are stated, a reasonable charge.

(b) A lien for charges and expenses under Subsection (a) of this section on goods that the carrier was required by law to receive for transportation is effective against the consignor or any person entitled to the goods unless the carrier had notice that the consignor lacked authority to subject the goods to those charges and expenses.

Any other lien under Subsection (a) of this section is effective against the consignor and any person that permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked authority.

(c) A carrier loses its lien on any goods that it voluntarily delivers or unjustifiably refuses to deliver."

Section 74. Section 55-7-308 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-308) is repealed and a new Section 55-7-308 NMSA 1978 is enacted to read:

"55-7-308. ENFORCEMENT OF CARRIER'S LIEN.--

(a) A carrier's lien on goods may be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a method different from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The carrier sells goods in a commercially reasonable manner if the carrier sells the goods in the usual manner in any recognized market therefor, sells at the price current in that market at the time of the sale or otherwise sells in conformity with

commercially reasonable practices among dealers in the type of goods sold. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.

(b) Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying with this section. In that event, the goods may not be sold but must be retained by the carrier, subject to the terms of the bill of lading and this article.

(c) A carrier may buy at any public sale pursuant to this section.

(d) A purchaser in good faith of goods sold to enforce a carrier's lien takes the goods free of any rights of persons against which the lien was valid, despite the carrier's noncompliance with this section.

(e) A carrier may satisfy its lien from the proceeds of any sale pursuant to this section but shall hold the balance, if any, for delivery on demand to any person to which the carrier would have been bound to deliver the goods.

(f) The rights provided by this section are in addition to all other rights allowed by law to a creditor against a debtor.

(g) A carrier's lien may be enforced pursuant to

either Subsection (a) of this section or the procedure set forth in Subsection (b) of Section 55-7-210 NMSA 1978.

(h) A carrier is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of willful violation, is liable for conversion."

Section 75. Section 55-7-309 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-309) is repealed and a new Section 55-7-309 NMSA 1978 is enacted to read:

"55-7-309. DUTY OF CARE--CONTRACTUAL LIMITATION OF CARRIER'S LIABILITY.--

(a) A carrier that issues a bill of lading, whether negotiable or nonnegotiable, shall exercise the degree of care in relation to the goods that a reasonably careful person would exercise under similar circumstances. This subsection does not affect any statute, regulation or rule of law that imposes liability upon a common carrier for damages not caused by its negligence.

(b) Damages may be limited by a term in the bill of lading or in a transportation agreement that the carrier's liability may not exceed a value stated in the bill or transportation agreement if the carrier's rates are dependent upon value and the consignor is afforded an opportunity to declare a higher value and the consignor is advised of the opportunity. However, such a limitation is not effective with

respect to the carrier's liability for conversion to its own use.

(c) Reasonable provisions as to the time and manner of presenting claims and commencing actions based on the shipment may be included in a bill of lading or a transportation agreement."

PART 4

WAREHOUSE RECEIPTS AND BILLS OF LADING: GENERAL OBLIGATIONS

Section 76. Section 55-7-401 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-401) is repealed and a new Section 55-7-401 NMSA 1978 is enacted to read:

"55-7-401. IRREGULARITIES IN ISSUE OF RECEIPT OR BILL OR CONDUCT OF ISSUER.--The obligations imposed by Chapter 55, Article 7 NMSA 1978 on an issuer apply to a document of title even if:

(1) the document does not comply with the requirements of Chapter 55, Article 7 NMSA 1978 or of any other statute, rule or regulation regarding its issuance, form or content;

(2) the issuer violated laws regulating the conduct of its business;

(3) the goods covered by the document were owned by the bailee when the document was issued; or

(4) the person issuing the document is not a warehouse, but the document purports to be a warehouse

receipt."

Section 77. Section 55-7-402 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-402) is repealed and a new Section 55-7-402 NMSA 1978 is enacted to read:

"55-7-402. DUPLICATE DOCUMENT OF TITLE; OVERISSUE.--A duplicate or any other document of title purporting to cover goods already represented by an outstanding document of the same issuer does not confer any right in the goods, except as provided in the case of tangible bills of lading in a set of parts; overissue of documents for fungible goods; substitutes for lost, stolen or destroyed documents; or substitute documents issued pursuant to Section 55-7-105 NMSA 1978. The issuer is liable for damages caused by its overissue or failure to identify a duplicate document by a conspicuous notation."

Section 78. Section 55-7-403 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-403) is repealed and a new Section 55-7-403 NMSA 1978 is enacted to read:

"55-7-403. OBLIGATION OF BAILEE TO DELIVER--EXCUSE.--

(a) A bailee shall deliver the goods to a person entitled under a document of title if the person complies with Subsections (b) and (c) of this section, unless and to the extent that the bailee establishes any of the following:

(1) delivery of the goods to a person whose receipt was rightful as against the claimant;

(2) damage to or delay, loss or destruction of the goods for which the bailee is not liable;

(3) previous sale or other disposition of the goods in lawful enforcement of a lien or on a warehouse's lawful termination of storage;

(4) the exercise by a seller of its right to stop delivery pursuant to Section 55-2-705 NMSA 1978 or by a lessor of its right to stop delivery pursuant to Section 55-2A-526 NMSA 1978;

(5) a diversion, reconsignment or other disposition pursuant to Section 55-7-303 NMSA 1978;

(6) release, satisfaction or any other personal defense against the claimant; or

(7) any other lawful excuse.

(b) A person claiming goods covered by a document of title shall satisfy the bailee's lien if the bailee so requests or if the bailee is prohibited by law from delivering the goods until the charges are paid.

(c) Unless a person claiming the goods is a person against which the document of title does not confer a right under Subsection (a) of Section 55-7-503 NMSA 1978:

(1) the person claiming under a document shall surrender possession or control of any outstanding negotiable document covering the goods for cancellation or indication of partial deliveries; and

(2) the bailee shall cancel the document or conspicuously indicate in the document the partial delivery or the bailee is liable to any person to which the document is duly negotiated."

Section 79. Section 55-7-404 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-404) is repealed and a new Section 55-7-404 NMSA 1978 is enacted to read:

"55-7-404. NO LIABILITY FOR GOOD-FAITH DELIVERY PURSUANT TO DOCUMENT OF TITLE.--A bailee that in good faith has received goods and delivered or otherwise disposed of the goods according to the terms of a document of title or pursuant to Chapter 55, Article 7 NMSA 1978 is not liable for the goods even if:

(1) the person from which the bailee received the goods did not have authority to procure the document or to dispose of the goods; or

(2) the person to which the bailee delivered the goods did not have authority to receive the goods."

PART 5

WAREHOUSE RECEIPTS AND BILLS OF LADING:

NEGOTIATION AND TRANSFER

Section 80. Section 55-7-501 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-501) is repealed and a new Section 55-7-501 NMSA 1978 is enacted to read:

"55-7-501. FORM OF NEGOTIATION AND REQUIREMENTS OF DUE

NEGOTIATION.--

(a) The following rules apply to a negotiable tangible document of title:

(1) if the document's original terms run to the order of a named person, the document is negotiated by the named person's indorsement and delivery. After the named person's indorsement in blank or to bearer, any person may negotiate the document by delivery alone;

(2) if the document's original terms run to bearer, it is negotiated by delivery alone;

(3) if the document's original terms run to the order of a named person and it is delivered to the named person, the effect is the same as if the document had been negotiated;

(4) negotiation of the document after it has been indorsed to a named person requires indorsement by the named person and delivery; and

(5) a document is duly negotiated if it is negotiated in the manner stated in this subsection to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves receiving the document in settlement or payment of a monetary obligation.

(b) The following rules apply to a negotiable electronic document of title:

(1) if the document's original terms run to the order of a named person or to bearer, the document is negotiated by delivery of the document to another person. Indorsement by the named person is not required to negotiate the document;

(2) if the document's original terms run to the order of a named person and the named person has control of the document, the effect is the same as if the document had been negotiated; and

(3) a document is duly negotiated if it is negotiated in the manner stated in this subsection to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves taking delivery of the document in settlement or payment of a monetary obligation;

(c) Indorsement of a nonnegotiable document of title neither makes it negotiable nor adds to the transferee's rights.

(d) The naming in a negotiable bill of lading of a person to be notified of the arrival of the goods does not limit the negotiability of the bill or constitute notice to a

purchaser of the bill of any interest of that person in the goods."

Section 81. Section 55-7-502 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-502) is repealed and a new Section 55-7-502 NMSA 1978 is enacted to read:

"55-7-502. RIGHTS ACQUIRED BY DUE NEGOTIATION.--

(a) Subject to Sections 55-7-205 and 55-7-503 NMSA 1978, a holder to which a negotiable document of title has been duly negotiated acquires thereby:

(1) title to the document;

(2) title to the goods;

(3) all rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and

(4) the direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by the issuer except those arising under the terms of the document or under Chapter 55, Article 7 NMSA 1978, but in the case of a delivery order, the bailee's obligation accrues only upon the bailee's acceptance of the delivery order and the obligation acquired by the holder is that the issuer and any indorser will procure the acceptance of the bailee.

(b) Subject to Section 55-7-503 NMSA 1978, title and rights acquired by due negotiation are not defeated by any

stoppage of the goods represented by the document of title or by surrender of the goods by the bailee and are not impaired even if:

(1) the due negotiation or any prior due negotiation constituted a breach of duty;

(2) any person has been deprived of possession of a negotiable tangible document or control of a negotiable electronic document by misrepresentation, fraud, accident, mistake, duress, loss, theft or conversion; or

(3) a previous sale or other transfer of the goods or document has been made to a third person."

Section 82. Section 55-7-503 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-503, as amended) is repealed and a new Section 55-7-503 NMSA 1978 is enacted to read:

"55-7-503. DOCUMENT OF TITLE TO GOODS DEFEATED IN CERTAIN CASES.--

(a) A document of title confers no right in goods against a person that before issuance of the document had a legal interest or a perfected security interest in the goods and that did not:

(1) deliver or entrust the goods or any document of title covering the goods to the bailor or the bailor's nominee with:

(A) actual or apparent authority to ship, store or sell;

(B) power to obtain delivery under Section 55-7-403 NMSA 1978; or

(C) power of disposition under Section 55-2-403, Subsection (2) of Section 55-2A-304, Subsection (2) of Section 55-2A-305, Section 55-9-320 or Subsection (c) of Section 55-9-321 NMSA 1978 or other statute or rule of law; or

(2) acquiesce in the procurement by the bailor or its nominee of any document.

(b) Title to goods based upon an unaccepted delivery order is subject to the rights of any person to which a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. That title may be defeated under Section 55-7-504 NMSA 1978 to the same extent as the rights of the issuer or a transferee from the issuer.

(c) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of any person to which a bill issued by the freight forwarder is duly negotiated. However, delivery by the carrier in accordance with Part 4 of this article pursuant to its own bill of lading discharges the carrier's obligation to deliver."

Section 83. Section 55-7-504 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-504) is repealed and a new Section 55-7-504 NMSA 1978 is enacted to read:

"55-7-504. RIGHTS ACQUIRED IN ABSENCE OF DUE NEGOTIATION--EFFECT OF DIVERSION; STOPPAGE OF DELIVERY.--

(a) A transferee of a document of title, whether negotiable or nonnegotiable, to which the document has been delivered but not duly negotiated, acquires the title and rights that its transferor had or had actual authority to convey.

(b) In the case of a transfer of a nonnegotiable document of title, until but not after the bailee receives notice of the transfer, the rights of the transferee may be defeated:

(1) by those creditors of the transferor that could treat the transfer as void under Section 55-2-402 or 55-2A-308 NMSA 1978;

(2) by a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of the buyer's rights;

(3) by a lessee from the transferor in ordinary course of business if the bailee has delivered the goods to the lessee or received notification of the lessee's rights; or

(4) as against the bailee, by good-faith dealings of the bailee with the transferor.

(c) A diversion or other change of shipping instructions by the consignor in a nonnegotiable bill of lading that causes the bailee not to deliver the goods to the

consignee defeats the consignee's title to the goods if the goods have been delivered to a buyer in ordinary course of business or a lessee in ordinary course of business and, in any event, defeats the consignee's rights against the bailee.

(d) Delivery of the goods pursuant to a nonnegotiable document of title may be stopped by a seller under Section 55-2-705 NMSA 1978 or a lessor under Section 55-2A-526 NMSA 1978, subject to the requirements of due notification in those sections. A bailee that honors the seller's or lessor's instructions is entitled to be indemnified by the seller or lessor against any resulting loss or expense."

Section 84. Section 55-7-505 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-505) is repealed and a new Section 55-7-505 NMSA 1978 is enacted to read:

"55-7-505. INDORSER NOT GUARANTOR FOR OTHER PARTIES.-- The indorsement of a tangible document of title issued by a bailee does not make the indorser liable for any default by the bailee or previous indorsers."

Section 85. Section 55-7-506 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-506) is repealed and a new Section 55-7-506 NMSA 1978 is enacted to read:

"55-7-506. DELIVERY WITHOUT INDORSEMENT--RIGHT TO COMPEL INDORSEMENT.--The transferee of a negotiable tangible document of title has a specifically enforceable right to have

its transferor supply any necessary indorsement, but the transfer becomes a negotiation only as of the time the indorsement is supplied."

Section 86. Section 55-7-507 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-507) is repealed and a new Section 55-7-507 NMSA 1978 is enacted to read:

"55-7-507. WARRANTIES ON NEGOTIATION OR DELIVERY OF DOCUMENT OF TITLE.--If a person negotiates or delivers a document of title for value, otherwise than as a mere intermediary under Section 55-7-508 NMSA 1978, unless otherwise agreed, the transferor, in addition to any warranty made in selling or leasing the goods, warrants to its immediate purchaser only that:

- (1) the document is genuine;
- (2) the transferor does not have knowledge of any fact that would impair the document's validity or worth; and
- (3) the negotiation or delivery is rightful and fully effective with respect to the title to the document and the goods it represents."

Section 87. Section 55-7-508 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-508) is repealed and a new Section 55-7-508 NMSA 1978 is enacted to read:

"55-7-508. WARRANTIES OF COLLECTING BANK AS TO DOCUMENTS OF TITLE.--A collecting bank or other intermediary known to be entrusted with documents of title on behalf of

another or with collection of a draft or other claim against delivery of documents warrants by the delivery of the documents only its own good faith and authority even if the collecting bank or other intermediary has purchased or made advances against the claim or draft to be collected."

Section 88. Section 55-7-509 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-509) is repealed and a new Section 55-7-509 NMSA 1978 is enacted to read:

"55-7-509. ADEQUATE COMPLIANCE WITH COMMERCIAL CONTRACT.--Whether a document of title is adequate to fulfill the obligations of a contract for sale, a contract for lease or the conditions of a letter of credit is determined by Article 2, 2A or 5 of the Uniform Commercial Code."

PART 6

WAREHOUSE RECEIPTS AND BILLS OF LADING:

MISCELLANEOUS PROVISIONS

Section 89. Section 55-7-601 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-601) is repealed and a new Section 55-7-601 NMSA 1978 is enacted to read:

"55-7-601. LOST, STOLEN OR DESTROYED DOCUMENTS OF TITLE.--

(a) If a document of title is lost, stolen or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with the order. If the document was

negotiable, a court may not order delivery of the goods or issuance of a substitute document without the claimant's posting security unless it finds that any person that may suffer loss as a result of nonsurrender of possession or control of the document is adequately protected against the loss. If the document was nonnegotiable, the court may require security. The court may also order payment of the bailee's reasonable costs and attorney fees in any action under this subsection.

(b) A bailee that, without a court order, delivers goods to a person claiming under a missing negotiable document of title is liable to any person injured thereby. If the delivery is not in good faith, the bailee is liable for conversion. Delivery in good faith is not conversion if the claimant posts security with the bailee in an amount at least double the value of the goods at the time of posting to indemnify any person injured by the delivery that files a notice of claim within one year after the delivery."

Section 90. Section 55-7-602 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-602) is repealed and a new Section 55-7-602 NMSA 1978 is enacted to read:

"55-7-602. JUDICIAL PROCESS AGAINST GOODS COVERED BY NEGOTIABLE DOCUMENT OF TITLE.--Unless a document of title was originally issued upon delivery of the goods by a person that did not have power to dispose of them, a lien does not attach

by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless possession or control of the document is first surrendered to the bailee or the document's negotiation is enjoined. The bailee may not be compelled to deliver the goods pursuant to process until possession or control of the document is surrendered to the bailee or to the court. A purchaser of the document for value without notice of the process or injunction takes free of the lien imposed by judicial process."

Section 91. Section 55-7-603 NMSA 1978 (being Laws 1961, Chapter 96, Section 7-603) is repealed and a new Section 55-7-603 NMSA 1978 is enacted to read:

"55-7-603. CONFLICTING CLAIMS--INTERPLEADER.--If more than one person claims title to or possession of the goods, the bailee is excused from delivery until the bailee has a reasonable time to ascertain the validity of the adverse claims or to commence an action for interpleader. The bailee may assert an interpleader either in defending an action for nondelivery of the goods or by original action."

Section 92. Section 55-8-102 NMSA 1978 (being Laws 1996, Chapter 47, Section 6) 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 writing; 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) Other definitions applying to this article and the sections in which they appear are:

appropriate person	Section 55-8-107 NMSA 1978;
control	Section 55-8-106 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.
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(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 93. 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."

Section 94. Section 55-9-102 NMSA 1978 (being Laws 2001, Chapter 139, Section 2) 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":

(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 health-care-insurance receivables; but

(C) does not include:

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

(ii) commercial tort claims;

- (iii) deposit accounts;
- (iv) investment property;
- (v) letter-of-credit rights or letters of credit; or
- (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;

(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 instrument constitutes part of chattel paper;

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

- (A) authenticated 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) "authenticate" means to:

(A) sign; or

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

(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;

(11) "chattel paper" means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods or a lease of specific goods and license of software used in the goods. In this paragraph, "monetary obligation" means a monetary obligation secured by

the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term does not include:

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

(B) records 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. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper;

(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;

(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) "electronic chattel paper" means chattel paper evidenced by a record or records consisting of information stored in an electronic medium;

(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 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; or
- (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;

(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 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;

(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;

(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;

(64) "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;

(65) "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;

(66) "proposal" means a record authenticated 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) "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;

(68) "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;

(69) "registered organization" means an organization organized solely under the law of a single state or the United States and as to which the state or the United States must maintain a public record showing the organization to have been organized;

(70) "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;

(71) "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;

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

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

(A) to deposit in the mail, deliver for transmission or transmit by any other usual means of

communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or

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

(74) "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;

(75) "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;

(76) "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;

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

(78) "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

(79) "transmitting utility" means a person 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;

"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;
 "prove" Section
 55-3-103 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 12, Article 2A and Chapter 55, Article 1 NMSA 1978 contain general definitions and principles of construction and interpretation applicable throughout Chapter 55, Article 9 NMSA 1978."

Section 95. Section 55-9-203 NMSA 1978 (being Laws 2001, Chapter 139, Section 13) 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 authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;

(B) the collateral is not a certificated security and is in the possession of the secured party under Section 55-9-313 NMSA 1978 pursuant to the 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; or

(D) the collateral is deposit accounts, electronic chattel paper, investment property, letter-of-credit rights or electronic documents, and the secured party has control under Section 55-7-106, 55-9-104, 55-9-105, 55-9-106 or 55-9-107 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 96. Section 55-9-207 NMSA 1978 (being Laws 2001, Chapter 139, Section 17) 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, 55-9-106 or 55-9-107 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 97. Section 55-9-208 NMSA 1978 (being Laws 2001, Chapter 139, Section 18) 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 an authenticated 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 an authenticated statement 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 of electronic chattel paper under Section 55-9-105 NMSA 1978 shall:

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

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

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

(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 an authenticated 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 an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party; and

(6) a secured party having control of an electronic document shall:

(A) give control of the electronic document to the debtor or its designated custodian;

(B) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic document is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from

any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(C) take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party."

Section 98. Section 55-9-301 NMSA 1978 (being Laws 2001, Chapter 139, Section 21) 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 55-9-306 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 documents, goods, instruments, money or tangible chattel paper 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 99. Section 55-9-304 NMSA 1978 (being Laws 2001, Chapter 139, Section 24) 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.

(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."

2001, Chapter 139, Section 29) is amended to read:

"55-9-309. SECURITY INTEREST PERFECTED UPON ATTACHMENT.--The following security interests are perfected when they attach:

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

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

(3) a sale of a payment intangible;

(4) a sale of a promissory note;

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

(6) 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, until the debtor obtains possession of the collateral;

(7) a security interest of a collecting bank arising under Section 55-4-210 NMSA 1978;

(8) a security interest of an issuer or nominated person arising under Section 55-5-118 NMSA 1978;

(9) a security interest arising in the delivery of a financial asset under Subsection (c) of Section 55-9-206 NMSA 1978;

(10) a security interest in investment property created by a broker or securities intermediary;

(11) a security interest in a commodity contract or a commodity account created by a commodity intermediary;

(12) an assignment for the benefit of all creditors of the transferor and subsequent transfers by the assignee thereunder;

(13) a security interest created by an assignment of a beneficial interest in a decedent's estate; and

(14) a sale by an individual of an account that is a right to payment of winnings in a lottery or other game of chance."

Section 101. Section 55-9-310 NMSA 1978 (being Laws 2001, Chapter 139, Section 30) 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 deposit accounts, electronic chattel paper, 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 55-9-316 NMSA 1978.

(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 102. Section 55-9-312 NMSA 1978 (being Laws 2001, Chapter 139, Section 32) is amended to read:

"55-9-312. PERFECTION OF SECURITY INTERESTS IN CHATTEL PAPER, 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, negotiable documents, instruments or investment property 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; and

(3) a security interest in money may be perfected only by the secured party's taking possession under Section 55-9-313 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 an authenticated 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 103. Section 55-9-313 NMSA 1978 (being Laws 2001, Chapter 139, Section 33) 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 tangible negotiable documents, goods, instruments, money or tangible chattel paper 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 authenticates 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 authenticated a record acknowledging that it will hold possession of 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 no 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 104. Section 55-9-314 NMSA 1978 (being Laws 2001, Chapter 139, Section 34) is amended to read:

"55-9-314. PERFECTION BY CONTROL.--

(a) A security interest in investment property,

deposit accounts, letter-of-credit rights, electronic chattel paper or electronic documents may be perfected by control of the collateral under Section 55-7-106, 55-9-104, 55-9-105, 55-9-106 or 55-9-107 NMSA 1978.

(b) A security interest in deposit accounts, electronic chattel paper, letter-of-credit rights or electronic documents is perfected by control under Section 55-7-106, 55-9-104, 55-9-105 or 55-9-107 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 from 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 105. Section 55-9-317 NMSA 1978 (being Laws 2001, Chapter 139, Section 37) 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 tangible chattel paper, tangible documents, goods, instruments 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) A licensee of a general intangible or a buyer, other than a secured party, of accounts, electronic chattel paper, electronic documents, general intangibles or investment property other than 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."

Section 106. Section 55-9-338 NMSA 1978 (being Laws 2001, Chapter 139, Section 58) is amended to read:

"55-9-338. PRIORITY OF SECURITY INTEREST OR AGRICULTURAL LIEN PERFECTED BY FILED FINANCING STATEMENT PROVIDING CERTAIN INCORRECT INFORMATION.--If a security interest or agricultural lien is perfected by a filed

financing statement providing information described in Paragraph (5) of Subsection (b) of Section 55-9-516 NMSA 1978 that is incorrect at the time the financing statement is filed:

(1) the security interest or agricultural lien is subordinate to a conflicting perfected security interest in the collateral to the extent that the holder of the conflicting security interest gives value in reasonable reliance upon the incorrect information; and

(2) a purchaser, other than a secured party, of the collateral takes free of the security interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect information, the purchaser gives value and, in the case of tangible chattel paper, tangible documents, goods, instruments or a security certificate, receives delivery of the collateral."

Section 107. 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 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 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 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 108. Section 55-9-525 NMSA 1978 (being Laws 2001, Chapter 139, Section 96, as amended) is amended to read:

"55-9-525. FEES.--

(a) Except as provided in Subsections (b) and (d) of this section, the fee for filing and indexing a record

pursuant to Section 55-9-501 through 55-9-526 NMSA 1978 is:

(1) if the record is communicated in writing in a form prescribed by the secretary of state:

(i) twenty dollars (\$20.00) if the record consists of one, two or three pages;

(ii) forty dollars (\$40.00) if the record consists of at least four pages, but no more than twenty-five pages; and

(iii) one hundred dollars (\$100) if the record consists of more than twenty-five pages, plus five dollars (\$5.00) for each page;

(2) if the record is communicated in writing, but not in a form prescribed by the secretary of state, double the amount specified in Paragraph (1) of this subsection for a record of the same length;

(3) if the record is communicated by facsimile or a similar medium and the use of that medium is authorized by filing-office rule, the amount specified in Paragraph (1) of this subsection for a record of the same length; and

(4) if the record is communicated in any other medium authorized by filing-office rule:

(i) ten dollars (\$10.00) if the record consists of fifteen thousand or fewer bytes; and

(ii) twenty dollars (\$20.00) if the

record consists of more than fifteen thousand bytes.

(b) Except as otherwise provided in Subsection (d) of this section, the fee for filing and indexing an initial financing statement of the following kind is the amount specified in Subsection (a) of this section plus:

(1) one hundred dollars (\$100) if the financing statement states that a debtor is a transmitting utility; and

(2) one hundred dollars (\$100) if the financing statement indicates that it is filed in connection with a manufactured-home transaction.

(c) The number of names required to be indexed does not affect the amount of the fee set forth in Subsections (a) and (b) of this section.

(d) This section does not require a fee with respect to a record of a mortgage that is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut under Subsection (c) of Section 55-9-502 NMSA 1978. However, the recording fees that otherwise would be applicable to the record of the mortgage apply.

(e) The secretary of state is authorized to establish additional fees for sale of data or records by adopting and publishing rules, pursuant to Section 55-9-526 NMSA 1978, to implement the requirements set forth in Chapter

55, Article 9 NMSA 1978."

Section 109. Section 55-9-601 NMSA 1978 (being Laws 2001, Chapter 139, Section 98) 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, 55-9-105, 55-9-106 or 55-9-107 NMSA 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."

act applies to a document of title that is issued or a bailment that arises on or after the effective date of this act. This act does not apply to a document of title that is issued or a bailment that arises before the effective date of this act even if the document of title or bailment would be subject to this act if the document of title had been issued or bailment had arisen on or after the effective date of this act. This act does not apply to a right of action regarding a document of title or bailment that has accrued before the effective date of this act.

Section 111. TEMPORARY PROVISION--EFFECTIVENESS.--A document of title issued or a bailment that arises before the effective date of this act and the rights, obligations and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this act as if amendment or repeal had not occurred and may be terminated, completed, consummated or enforced under that statute or other rule.

Section 112. TEMPORARY PROVISION--EFFECTIVENESS.-- Paragraphs 5 and 46 of Subsection A of Section 55-9-102 and Section 55-9-304 NMSA 1978 as amended by Sections 94 and 99 of this act shall be construed as declaring the law as it existed prior to the enactment of this act and not as modifying it.

Section 113. REPEAL.--Sections 55-1-109, 55-1-207, 55-1-208, 55-1-209, 55-2-208, 55-2A-207, 55-7-701 through

55-7-706 and 55-7-801 through 55-7-807 NMSA 1978 (being Laws 1961, Chapter 96, Sections 1-109, 1-207 and 1-208, Laws 1992, Chapter 114, Section 5, Laws 1961, Chapter 96, Section 2-208, Laws 1992, Chapter 114, Section 23 and Laws 1961, Chapter 96, Sections 7-701 through 7-706 and Sections 7-801 through 7-807, as amended) are repealed.

Section 114. APPLICABILITY.--Section 100 of this act applies to a sale of an account described in Subsection (14) of Section 55-9-309 NMSA 1978 even if the sale was entered into before that subsection took effect. However, if the relative priorities of conflicting claims to the account were established before that subsection took effect, Chapter 55, Article 9 NMSA 1978 as in effect immediately prior to the date that subsection took effect determines priority.

Section 115. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 2006. _____