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HOUSE BILL 191

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

Zachary J. Cook

AN ACT

RELATING TO SECURED TRANSACTIONS; CONFORMING PROVISIONS OF THE
UNIFORM COMMERCIAL CODE TO THE OFFICIAL TEXT; REPEALING SECTION
55-1-110 NMSA 1978 (BEING LAWS 2015, CHAPTER 54, SECTION 8).

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

SECTION 1. Section 55-3-309 NMSA 1978 (being Laws 1992,
Chapter 114, Section 122) is amended to read:

"55-3-309. ENFORCEMENT OF LOST, DESTROYED OR STOLEN
INSTRUMENT.--

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

(1) the person [~~was in possession of~~] seeking
to enforce the instrument:

[~~and~~] (A) was entitled to enforce [~~it~~]
the instrument when loss of possession occurred [~~it~~]; or

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1 (B) has directly or indirectly acquired
2 ownership of the instrument from a person who was entitled to
3 enforce the instrument when loss of possession occurred;

4 (2) the loss of possession was not the result
5 of a transfer by the person or a lawful seizure; and

6 [~~(iii)~~] (3) the person cannot reasonably
7 obtain possession of the instrument because the instrument was
8 destroyed, its whereabouts cannot be determined or it is in the
9 wrongful possession of an unknown person or a person that
10 cannot be found or is not amenable to service of process.

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

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

24 "55-9-102. DEFINITIONS AND INDEX OF DEFINITIONS.--

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

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

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

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

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

11 (ii) for services rendered or to be
12 rendered;

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

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

17 (v) for energy provided or to be
18 provided;

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

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

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

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1 governmental unit of a state or person licensed or authorized
2 to operate the game by a state or governmental unit of a state;
3 and

4 (B) includes health-care-insurance
5 receivables; but

6 (C) does not include:

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

9 (ii) commercial tort claims;

10 (iii) deposit accounts;

11 (iv) investment property;

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

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

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

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

25 (A) authenticated by a secured party;

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1 (B) indicating the aggregate unpaid
2 secured obligations as of a date not more than thirty-five days
3 earlier or thirty-five days later than the date of the record;
4 and

5 (C) identifying the components of the
6 obligations in reasonable detail;

7 (5) "agricultural lien" means an interest in
8 farm products:

9 (A) that secures payment or performance
10 of an obligation for:

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

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

15 (B) that is created by statute in favor
16 of a person that:

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

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

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

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

25 (A) oil, gas or other minerals that are

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1 subject to a security interest that:

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

4 (ii) attaches to the minerals as
5 extracted; or

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

9 (7) "authenticate" means to:

10 (A) sign; or

11 (B) with present intent to adopt or
12 accept a record, to attach to or logically associate with the
13 record an electronic sound, symbol or process;

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

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

20 (10) "certificate of title" means a
21 certificate of title with respect to which a statute provides
22 for the security interest in question to be indicated on the
23 certificate as a condition or result of the security interest's
24 obtaining priority over the rights of a lien creditor with
25 respect to the collateral. The term includes another record

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1 maintained as an alternative to a certificate of title by the
2 governmental unit that issues certificates of title if a
3 statute permits the security interest in question to be
4 indicated on the record as a condition or result of the
5 security interest's obtaining priority over the rights of a
6 lien creditor with respect to the collateral;

7 (11) "chattel paper" means a record or records
8 that evidence both a monetary obligation and a security
9 interest in specific goods, a security interest in specific
10 goods and software used in the goods, a security interest in
11 specific goods and license of software used in the goods or a
12 lease of specific goods or a lease of specific goods and
13 license of software used in the goods. In this paragraph,
14 "monetary obligation" means a monetary obligation secured by
15 the goods or owed under a lease of the goods and includes a
16 monetary obligation with respect to software used in the goods.
17 The term does not include:

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

20 (B) records that evidence a right to
21 payment arising out of the use of a credit or charge card or
22 information contained on or for use with the card. If a
23 transaction is evidenced by records that include an instrument
24 or series of instruments, the group of records taken together
25 constitutes chattel paper;

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

3 (A) proceeds to which a security
4 interest attaches;

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

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

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

11 (A) the claimant is an organization; or

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

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

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

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

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

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

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

7 (16) "commodity customer" means a person for
8 which a commodity intermediary carries a commodity contract on
9 its books;

10 (17) "commodity intermediary" means a person
11 that:

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

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

18 (18) "communicate" means:

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

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

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

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

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

6 (A) the merchant:

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

9 (ii) is not an auctioneer; and

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

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

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

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

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

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

24 (23) "consumer goods" means goods that are
25 used or bought for use primarily for personal, family or

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1 household purposes;

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

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

6 (B) a security interest in consumer
7 goods secures the obligation;

8 (25) "consumer obligor" means an obligor who
9 is an individual and who incurred the obligation as part of a
10 transaction entered into primarily for personal, family or
11 household purposes;

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

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

16 (B) a security interest secures the
17 obligation; and

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

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

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

25 (B) indicates that it is a continuation

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1 statement for, or that it is filed to continue the
2 effectiveness of, the identified financing statement;

3 (28) "debtor" means:

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

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

9 (C) a consignee;

10 (29) "deposit account" means a demand, time,
11 savings, passbook or similar account maintained with a bank.

12 The term does not include investment property or accounts
13 evidenced by an instrument;

14 (30) "document" means a document of title or a
15 receipt of the type described in Subsection (b) of Section
16 55-7-201 NMSA 1978;

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

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

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

25 (34) "farm products" means goods, other than

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1 standing timber, with respect to which the debtor is engaged in
2 a farming operation and that are:

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

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

7 (ii) aquatic goods produced in
8 aquacultural operations;

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

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

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

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

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

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

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

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

4 (40) "fixture filing" means the filing of a
5 financing statement covering goods that are or are to become
6 fixtures and satisfying Subsections (a) and (b) of Section
7 55-9-502 NMSA 1978. The term includes the filing of a
8 financing statement covering goods of a transmitting utility
9 that are or are to become fixtures;

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

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

20 (43) [Reserved];

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

23 (A) includes:

24 (i) fixtures;

25 (ii) standing timber that is to be

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1 cut and removed under a conveyance or contract for sale;

2 (iii) the unborn young of animals;

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

6 (v) manufactured homes; and

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

14 (B) does not include:

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

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

23 (45) "governmental unit" means a subdivision,
24 agency, department, county, parish, municipality or other unit
25 of the government of the United States, a state or a foreign

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1 country. The term includes an organization having a separate
2 corporate existence if the organization is eligible to issue
3 debt on which interest is exempt from income taxation under the
4 laws of the United States;

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

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

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

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

- 22 (A) are leased by a person as lessor;
- 23 (B) are held by a person for sale or
24 lease or to be furnished under a contract of service;
- 25 (C) are furnished by a person under a

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1 contract of service; or

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

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

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

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

16 (52) "lien creditor" means:

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

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

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

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

25 (53) "manufactured home" means a structure,

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

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

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

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

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

25 (56) "new debtor" means a person that becomes

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1 bound as debtor under Subsection (d) of Section 55-9-203 NMSA
2 1978 by a security agreement previously entered into by another
3 person;

4 (57) "new value" means:

5 (A) money;

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

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

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

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

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

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

22 (C) is otherwise accountable in whole or
23 in part for payment or other performance of the obligation.

24 The term does not include issuers or nominated persons under a
25 letter of credit;

1 (60) "original debtor", except as used in
2 Subsection (c) of Section 55-9-310 NMSA 1978, means a person
3 that, as debtor, entered into a security agreement to which a
4 new debtor has become bound under Subsection (d) of Section
5 55-9-203 NMSA 1978;

6 (61) "payment intangible" means a general
7 intangible under which the account debtor's principal
8 obligation is a monetary obligation;

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

11 (A) the spouse of the individual;

12 (B) a brother, brother-in-law, sister or
13 sister-in-law of the individual;

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

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

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

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

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

1 organization;

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

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

7 (E) an individual who is related by
8 blood or marriage to an individual described in Subparagraph
9 (A), (B), (C) or (D) of this paragraph and shares the same home
10 with the individual;

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

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

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

17 (C) rights arising out of collateral;

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

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

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1 damage to, the collateral;

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

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

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

14 (A) debt securities are issued;

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

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

23 [~~67~~] (68) "public organic record" means a
24 record that is available to the public for inspection and is:

25 (A) a record consisting of the record

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1 initially filed with or issued by a state or the United States
2 to form or organize an organization and any record filed with
3 or issued by the state or the United States that amends or
4 restates the initial record;

5 (B) an organic record of a business
6 trust consisting of the record initially filed with a state and
7 any record filed with the state that amends or restates the
8 initial record if a statute of the state governing business
9 trusts requires that the record be filed with the state; or

10 (C) a record consisting of legislation
11 enacted by the legislature of a state or the congress of the
12 United States that forms or organizes an organization; any
13 record amending the legislation; and any record filed with or
14 issued by the state or the United States that amends or
15 restates the name of the organization;

16 [~~(68)~~] (69) "pursuant to commitment", with
17 respect to an advance made or other value given by a secured
18 party, means pursuant to the secured party's obligation,
19 whether or not a subsequent event of default or other event not
20 within the secured party's control has relieved or may relieve
21 the secured party from its obligation;

22 [~~(69)~~] (70) "record", except as used in "for
23 record", "of record", "record or legal title" and "record
24 owner", means information that is inscribed on a tangible
25 medium or that is stored in an electronic or other medium and

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1 is retrievable in perceivable form;

2 [~~(70)~~] (71) "registered organization" means an
3 organization formed or organized solely under the law of a
4 single state or the United States by the filing of a public
5 organic record with, the issuance of a public organic record by
6 or the enactment of legislation by the state or the United
7 States. The term includes a business trust that is formed or
8 organized under the law of a single state if a statute of the
9 state governing business trusts requires that the business
10 trust's organic record be filed with the state;

11 [~~(71)~~] (72) "secondary obligor" means an
12 obligor to the extent that:

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

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

18 [~~(72)~~] (73) "secured party" means:

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

22 (B) a person that holds an agricultural
23 lien;

24 (C) a consignor;

25 (D) a person to which accounts, chattel

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1 paper, payment intangibles or promissory notes have been sold;

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

6 (F) a person that holds a security
7 interest arising under Section 55-2-401, Section 55-2-505,
8 Subsection (3) of Section 55-2-711, Subsection (5) of Section
9 55-2A-508, Section 55-4-210 or Section 55-5-118 NMSA 1978;

10 ~~[(73)]~~ (74) "security agreement" means an
11 agreement that creates or provides for a security interest;

12 ~~[(74)]~~ (75) "send", in connection with a
13 record or notification, means:

14 (A) to deposit in the mail, deliver for
15 transmission or transmit by any other usual means of
16 communication, with postage or cost of transmission provided
17 for, addressed to any address reasonable under the
18 circumstances; or

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

22 ~~[(75)]~~ (76) "software" means a computer
23 program and any supporting information provided in connection
24 with a transaction relating to the program. The term does not
25 include a computer program that is included in the definition

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1 of goods;

2 [~~(76)~~] (77) "state" means a state of the
3 United States, the District of Columbia, Puerto Rico, the
4 United States Virgin Islands or any territory or insular
5 possession subject to the jurisdiction of the United States;

6 [~~(77)~~] (78) "supporting obligation" means a
7 letter-of-credit right or secondary obligation that supports
8 the payment or performance of an account, chattel paper, a
9 document, a general intangible, an instrument or investment
10 property;

11 [~~(78)~~] (79) "tangible chattel paper" means
12 chattel paper evidenced by a record or records consisting of
13 information that is inscribed on a tangible medium;

14 [~~(79)~~] (80) "termination statement" means an
15 amendment of a financing statement that:

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

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

21 [~~(80)~~] (81) "transmitting utility" means an
22 organization primarily engaged in the business of:

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

25 (B) transmitting communications

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1 electrically, electromagnetically or by light;

2 (C) transmitting goods by pipeline or
3 sewer; or

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

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

9 "applicant" Section
10 55-5-102 NMSA 1978;

11 "beneficiary" Section
12 55-5-102 NMSA 1978;

13 "broker" Section
14 55-8-102 NMSA 1978;

15 "certificated security" Section
16 55-8-102 NMSA 1978;

17 "check" Section
18 55-3-104 NMSA 1978;

19 "clearing corporation" Section
20 55-8-102 NMSA 1978;

21 "contract for sale" Section
22 55-2-106 NMSA 1978;

23 "customer" Section
24 55-4-104 NMSA 1978;

25 "entitlement holder" Section

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1 55-8-102 NMSA 1978;
2 "financial asset" Section
3 55-8-102 NMSA 1978;
4 "holder in due course" Section
5 55-3-302 NMSA 1978;
6 "issuer" (with respect to a letter of credit or
7 letter-of-credit right) Section
8 55-5-102 NMSA 1978;
9 "issuer" (with respect to a security) . . . Section
10 55-8-201 NMSA 1978;
11 "issuer" (with respect to documents of
12 title) Section
13 55-7-102 NMSA 1978;
14 "lease" Section
15 55-2A-103 NMSA 1978;
16 "lease agreement" Section
17 55-2A-103 NMSA 1978;
18 "lease contract" Section
19 55-2A-103 NMSA 1978;
20 "leasehold interest" Section
21 55-2A-103 NMSA 1978;
22 "lessee" Section
23 55-2A-103 NMSA 1978;
24 "lessee in ordinary course of business" . . Section
25 55-2A-103 NMSA 1978;

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1 "lessor" Section
2 55-2A-103 NMSA 1978;
3 "lessor's residual interest" Section
4 55-2A-103 NMSA 1978;
5 "letter of credit" Section
6 55-5-102 NMSA 1978;
7 "merchant" Section
8 55-2-104 NMSA 1978;
9 "negotiable instrument" Section
10 55-3-104 NMSA 1978;
11 "nominated person" Section
12 55-5-102 NMSA 1978;
13 "note" Section
14 55-3-104 NMSA 1978;
15 "proceeds of a letter of credit" Section
16 55-5-114 NMSA 1978;
17 "prove" Section
18 55-3-103 NMSA 1978;
19 "sale" Section
20 55-2-106 NMSA 1978;
21 "securities account" Section
22 55-8-501 NMSA 1978;
23 "securities intermediary" Section
24 55-8-102 NMSA 1978;
25 "security" Section

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1 55-8-102 NMSA 1978;
2 "security certificate" Section
3 55-8-102 NMSA 1978;
4 "security entitlement" Section
5 55-8-102 NMSA 1978; and
6 "uncertificated security" Section
7 55-8-102 NMSA 1978.

8 (c) Chapter 12, Article 2A and Chapter 55, Article
9 1 NMSA 1978 contain general definitions and principles of
10 construction and interpretation applicable throughout Chapter
11 55, Article 9 NMSA 1978."

12 SECTION 3. Section 55-9-109 NMSA 1978 (being Laws 2001,
13 Chapter 139, Section 9) is amended to read:

14 "55-9-109. SCOPE.--

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

- 18 (1) a transaction, regardless of its form,
19 that creates a security interest in personal property or
20 fixtures by contract;
- 21 (2) an agricultural lien;
- 22 (3) a sale of accounts, chattel paper, payment
23 intangibles or promissory notes;
- 24 (4) a consignment;
- 25 (5) a security interest arising under Section

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1 55-2-401, 55-2-505, Subsection (3) of Section 55-2-711 or
2 Subsection (5) of Section 55-2A-508 NMSA 1978, as provided in
3 Section 55-9-110 NMSA 1978; and

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

6 (b) The application of Chapter 55, Article 9 NMSA
7 1978 to a security interest in a secured obligation is not
8 affected by the fact that the obligation is itself secured by a
9 transaction or interest to which this article does not apply.

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

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

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

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

24 (4) the rights of a transferee beneficiary or
25 nominated person under a letter of credit are independent and

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1 superior under Section 55-5-114 NMSA 1978.

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

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

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

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

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

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

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

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

24 (8) a transfer of an interest in or an
25 assignment of a claim under a policy of insurance, other than

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1 an assignment by or to a health-care provider of a health-care-
2 insurance receivable and any subsequent assignment of the right
3 to payment, but Sections 55-9-315 and 55-9-322 NMSA 1978 apply
4 with respect to proceeds and priorities in proceeds;

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

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

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

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

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

17 (A) liens on real property in Sections
18 55-9-203 and 55-9-308 NMSA 1978;

19 (B) fixtures in Section 55-9-334 NMSA
20 1978;

21 (C) fixture filings in Sections
22 55-9-501, 55-9-502, 55-9-512, 55-9-516 and 55-9-519 NMSA 1978;
23 and

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

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1 (12) an assignment of a claim arising in tort,
2 other than a commercial tort claim, but Sections 55-9-315 and
3 55-9-322 NMSA 1978 apply with respect to proceeds and
4 priorities in proceeds;

5 (13) an assignment of a deposit account in a
6 consumer transaction, but Sections 55-9-315 and 55-9-322 NMSA
7 1978 apply with respect to proceeds and priorities in proceeds;
8 or

9 (14) a public-finance transaction or other
10 transfer by this state or a governmental unit of this state."

11 SECTION 4. Section 55-9-406 NMSA 1978 (being Laws 2001,
12 Chapter 139, Section 68, as amended) is amended to read:

13 "55-9-406. DISCHARGE OF ACCOUNT DEBTOR--NOTIFICATION OF
14 ASSIGNMENT--IDENTIFICATION AND PROOF OF ASSIGNMENT--
15 RESTRICTIONS ON ASSIGNMENT OF ACCOUNTS, CHATTEL PAPER, PAYMENT
16 INTANGIBLES AND PROMISSORY NOTES INEFFECTIVE.--

17 (a) Subject to Subsections (b) through (i) of this
18 section, an account debtor on an account, chattel paper or a
19 payment intangible may discharge its obligation by paying the
20 assignor until, but not after, the account debtor receives a
21 notification, authenticated by the assignor or the assignee,
22 that the amount due or to become due has been assigned and that
23 payment is to be made to the assignee. After receipt of the
24 notification, the account debtor may discharge its obligation
25 by paying the assignee and may not discharge the obligation by

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1 paying the assignor.

2 (b) Subject to Subsection (h) of this section,
3 notification is ineffective under Subsection (a) of this
4 section:

5 (1) if it does not reasonably identify the
6 rights assigned;

7 (2) to the extent that an agreement between an
8 account debtor and a seller of a payment intangible limits the
9 account debtor's duty to pay a person other than the seller and
10 the limitation is effective under law other than Chapter 55,
11 Article 9 NMSA 1978; or

12 (3) at the option of an account debtor, if the
13 notification notifies the account debtor to make less than the
14 full amount of any installment or other periodic payment to the
15 assignee, even if:

16 (A) only a portion of the account,
17 chattel paper or payment intangible has been assigned to that
18 assignee;

19 (B) a portion has been assigned to
20 another assignee; or

21 (C) the account debtor knows that the
22 assignment to that assignee is limited.

23 (c) Subject to Subsection (h) of this section, if
24 requested by the account debtor, an assignee shall seasonably
25 furnish reasonable proof that the assignment has been made.

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1 Unless the assignee complies, the account debtor may discharge
2 its obligation by paying the assignor, even if the account
3 debtor has received a notification under Subsection (a) of this
4 section.

5 (d) Except as otherwise provided in Subsection (e)
6 of this section and Sections 55-2A-303 and 55-9-407 NMSA 1978,
7 and subject to Subsection (h) of this section, a term in an
8 agreement between an account debtor and an assignor or in a
9 promissory note is ineffective to the extent that it:

10 (1) prohibits, restricts or requires the
11 consent of the account debtor or person obligated on the
12 promissory note to the assignment or transfer of, or the
13 creation, attachment, perfection or enforcement of a security
14 interest in, the account, chattel paper, payment intangible or
15 promissory note; or

16 (2) provides that the assignment or transfer
17 or the creation, attachment, perfection or enforcement of the
18 security interest may give rise to a default, breach, right of
19 recoupment, claim, defense, termination, right of termination
20 or remedy under the account, chattel paper, payment intangible
21 or promissory note.

22 (e) Subsection (d) of this section does not apply
23 to the sale of a payment intangible or promissory note, other
24 than a sale pursuant to a disposition under Section 55-9-610
25 NMSA 1978 or an acceptance of collateral under Section 55-9-620

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1 NMSA 1978.

2 (f) Except as otherwise provided in Sections
3 55-2A-303 and 55-9-407 NMSA 1978 and subject to Subsections (h)
4 and (i) of this section, a rule of law, statute or regulation
5 that prohibits, restricts or requires the consent of a
6 government, governmental body or official, or account debtor to
7 the assignment or transfer of, or creation of a security
8 interest in, an account or chattel paper is ineffective to the
9 extent that the rule of law, statute or regulation:

10 (1) prohibits, restricts or requires the
11 consent of the government, governmental body or official, or
12 account debtor to the assignment or transfer of, or the
13 creation, attachment, perfection or enforcement of a security
14 interest in the account or chattel paper; or

15 (2) provides that the assignment or transfer
16 or the creation, attachment, perfection or enforcement of the
17 security interest may give rise to a default, breach, right of
18 recoupment, claim, defense, termination, right of termination
19 or remedy under the account or chattel paper.

20 (g) Subject to Subsection (h) of this section, an
21 account debtor may not waive or vary its option under Paragraph
22 (3) of Subsection (b) of this section.

23 (h) This section is subject to law other than
24 Chapter 55, Article 9 NMSA 1978 that establishes a different
25 rule for an account debtor who is an individual and who

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1 incurred the obligation primarily for personal, family or
2 household purposes.

3 (i) This section does not apply to an assignment of
4 a health-care-insurance receivable.

5 (j) This section is subject to laws other than
6 Chapter 55, Article 9 NMSA 1978 to the extent that those laws
7 prohibit or restrict the assignment, transfer of or creation of
8 a security interest in benefits, compensation, any other
9 account or chattel paper.

10 (k) Subsections (d), (f) and (j) of this section do
11 not apply to a security interest in an ownership interest in a
12 general partnership, limited partnership or limited liability
13 company."

14 SECTION 5. Section 55-9-408 NMSA 1978 (being Laws 2001,
15 Chapter 139, Section 70, as amended) is amended to read:

16 "55-9-408. RESTRICTIONS ON ASSIGNMENT OF PROMISSORY
17 NOTES, HEALTH-CARE-INSURANCE RECEIVABLES AND CERTAIN GENERAL
18 INTANGIBLES INEFFECTIVE.--

19 (a) Except as otherwise provided in Subsection (b)
20 of this section, a term in a promissory note or in an agreement
21 between an account debtor and a debtor that relates to a
22 health-care-insurance receivable or a general intangible,
23 including a contract, permit, license or franchise, and that
24 prohibits, restricts or requires the consent of the person
25 obligated on the promissory note or the account debtor to the

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1 assignment or transfer of, or creation, attachment or
2 perfection of a security interest in, the promissory note,
3 health-care-insurance receivable or general intangible is
4 ineffective to the extent that the term:

5 (1) would impair the creation, attachment or
6 perfection of a security interest; or

7 (2) provides that the assignment or transfer
8 or the creation, attachment or perfection of the security
9 interest may give rise to a default, breach, right of
10 recoupment, claim, defense, termination, right of termination
11 or remedy under the promissory note, health-care-insurance
12 receivable or general intangible.

13 (b) Subsection (a) of this section applies to a
14 security interest in a payment intangible or promissory note
15 only if the security interest arises out of a sale of the
16 payment intangible or promissory note other than a sale
17 pursuant to a disposition under Section 55-9-610 NMSA 1978 or
18 an acceptance of collateral under Section 55-9-620 NMSA 1978.

19 (c) A rule of law, statute or regulation that
20 prohibits, restricts or requires the consent of a government,
21 governmental body or official, person obligated on a promissory
22 note or account debtor to the assignment or transfer of, or
23 creation of a security interest in, a promissory note, health-
24 care-insurance receivable or general intangible, including a
25 contract, permit, license or franchise between an account

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1 debtor and a debtor, is ineffective to the extent that the rule
2 of law, statute or regulation:

3 (1) would impair the creation, attachment or
4 perfection of a security interest; or

5 (2) provides that the assignment or transfer
6 or the creation, attachment or perfection of the security
7 interest may give rise to a default, breach, right of
8 recoupment, claim, defense, termination, right of termination
9 or remedy under the promissory note, health-care-insurance
10 receivable or general intangible.

11 (d) To the extent that a term in a promissory note
12 or in an agreement between an account debtor and a debtor that
13 relates to a health-care-insurance receivable or general
14 intangible or a rule of law, statute or regulation described in
15 Subsection (c) of this section would be effective under law
16 other than Chapter 55, Article 9 NMSA 1978 but is ineffective
17 under Subsection (a) or (c) of this section, the creation,
18 attachment or perfection of a security interest in the
19 promissory note, health-care-insurance receivable or general
20 intangible:

21 (1) is not enforceable against the person
22 obligated on the promissory note or the account debtor;

23 (2) does not impose a duty or obligation on
24 the person obligated on the promissory note or the account
25 debtor;

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1 (3) does not require the person obligated on
2 the promissory note or the account debtor to recognize the
3 security interest, pay or render performance to the secured
4 party or accept payment or performance from the secured party;

5 (4) does not entitle the secured party to use
6 or assign the debtor's rights under the promissory note,
7 health-care-insurance receivable or general intangible,
8 including any related information or materials furnished to the
9 debtor in the transaction giving rise to the promissory note,
10 health-care-insurance receivable or general intangible;

11 (5) does not entitle the secured party to use,
12 assign, possess or have access to any trade secrets or
13 confidential information of the person obligated on the
14 promissory note or the account debtor; and

15 (6) does not entitle the secured party to
16 enforce the security interest in the promissory note, health-
17 care-insurance receivable or general intangible. The
18 provisions of this section shall prevail over an inconsistent
19 provision of an existing or future statute or rule of this
20 state, unless the inconsistent provision is set forth in a
21 statute of this state that refers expressly to this section and
22 states that the inconsistent provision shall prevail over the
23 provisions of this section.

24 (e) This section does not apply to a security
25 interest in an ownership interest in a general partnership,

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1 limited partnership or limited liability company."

2 SECTION 6. Section 55-9-620 NMSA 1978 (being Laws 2001,
3 Chapter 139, Section 117) is amended to read:

4 "55-9-620. ACCEPTANCE OF COLLATERAL IN FULL OR PARTIAL
5 SATISFACTION OF OBLIGATION--COMPULSORY DISPOSITION OF
6 COLLATERAL.--

7 (a) Except as otherwise provided in Subsection (g)
8 of this section, a secured party may accept collateral in full
9 or partial satisfaction of the obligation it secures only if:

10 (1) the debtor consents to the acceptance
11 under Subsection (c) of this section;

12 (2) the secured party does not receive, within
13 the time set forth in Subsection (d) of this section, a
14 notification of objection to the proposal authenticated by:

15 (A) a person to which the secured party
16 was required to send a proposal under Section 55-9-621 NMSA
17 1978; or

18 (B) any other person, other than the
19 debtor, holding an interest in the collateral subordinate to
20 the security interest that is the subject of the proposal;

21 (3) if the collateral is consumer goods, the
22 collateral is not in the possession of the debtor when the
23 debtor consents to the acceptance; and

24 (4) Subsection (e) of this section does not
25 require the secured party to dispose of the collateral or the

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1 debtor waives the requirement pursuant to Section 55-9-624 NMSA
2 1978.

3 (b) A purported or apparent acceptance of
4 collateral under this section is ineffective unless:

5 (1) the secured party consents to the
6 acceptance in an authenticated record or sends a proposal to
7 the debtor; and

8 (2) the conditions of Subsection (a) of this
9 section are met.

10 (c) For purposes of this section:

11 (1) a debtor consents to an acceptance of
12 collateral in partial satisfaction of the obligation it secures
13 only if the debtor agrees to the terms of the acceptance in a
14 record authenticated after default; and

15 (2) a debtor consents to an acceptance of
16 collateral in full satisfaction of the obligation it secures
17 only if the debtor agrees to the terms of the acceptance in a
18 record authenticated after default or the secured party:

19 (A) sends to the debtor after default a
20 proposal that is unconditional or subject only to a condition
21 that collateral not in the possession of the secured party be
22 preserved or maintained;

23 (B) in the proposal, proposes to accept
24 collateral in full satisfaction of the obligation it secures;
25 and

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1 (C) does not receive a notification of
2 objection authenticated by the debtor within twenty days after
3 the proposal is sent.

4 (d) To be effective under Paragraph (2) of
5 Subsection (a) of this section, a notification of objection
6 must be received by the secured party:

7 (1) in the case of a person to which the
8 proposal was sent pursuant to Section 55-9-621 NMSA 1978,
9 within twenty days after notification was sent to that person;
10 and

11 (2) in other cases:

12 (A) within twenty days after the last
13 notification was sent pursuant to Section 55-9-621 NMSA 1978;
14 or

15 (B) if a notification was not sent,
16 before the debtor consents to the acceptance under Subsection
17 (c) of this section.

18 (e) A secured party that has taken possession of
19 collateral shall dispose of the collateral pursuant to Section
20 55-9-610 NMSA 1978 within the time specified in Subsection (f)
21 of this section if:

22 (1) sixty percent of the cash price has been
23 paid in the case of a purchase-money security interest in
24 consumer goods; or

25 (2) sixty percent of the principal amount of

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1 the obligation secured has been paid in the case of a non-
2 purchase-money security interest in consumer goods.

3 (f) To comply with Subsection (e) of this section,
4 the secured party shall dispose of the collateral:

5 (1) within ninety days after taking
6 possession; or

7 (2) within any longer period to which the
8 debtor and all secondary obligors have agreed in an agreement
9 to that effect entered into and authenticated after default.

10 (g) In a consumer transaction, a secured party may
11 not accept collateral in partial satisfaction of the obligation
12 it secures."

13 SECTION 7. REPEAL.--Section 55-1-110 NMSA 1978 (being
14 Laws 2015, Chapter 54, Section 8) is repealed.