

SENATE BILL NO. 6
INTRODUCED BY DANIELS
BY REQUEST OF THE CODE COMMISSIONER

IN THE SENATE

January 7, 1985	Introduced and referred to Committee on Business and Industry.
January 14, 1985	Committee recommend bill do pass. Report adopted.
January 15, 1985	Bill printed and placed on members' desks.
January 16, 1985	Second reading, pass consideration.
January 17, 1985	Second reading, do pass.
January 18, 1985	Considered correctly engrossed.
January 19, 1985	Third reading, passed. Ayes, 42; Noes, 0.
	Transmitted to House.

IN THE HOUSE

January 21, 1985	Introduced and referred to Committee on Business and Labor.
March 6, 1985	Committee recommend bill be concurred in. Report adopted.
March 7, 1985	Second reading, concurred in.
March 9, 1985	Third reading, concurred in.
	Returned to Senate.

IN THE SENATE

March 11, 1985

Received from House.

Sent to enrolling.

Reported correctly enrolled.

1 SENATE Bill No. 6

2 AN ACT TO GENERALLY REVISE TITLE 30, CHAPTERS 8 AND 9, OF
3 MONTANA'S CODIFICATION OF THE UNIFORM COMMERCIAL CODE TO
4 CONFORM WITH THE INTENT OF CHAPTER 402, LAWS OF 1983, WHICH
5 SUBSTANTIALLY ADOPTED THE 1972 AND 1977 CHANGES RECOMMENDED
6 BY THE UNIFORM LAW COMMISSIONERS; AMENDING SECTIONS
7 30-8-202, 30-8-205, 30-8-207, 30-8-309, 30-8-313, 30-8-319,
8 30-8-405, 30-9-312, AND 30-9-318, MCA; AND PROVIDING AN
9 IMMEDIATE EFFECTIVE DATE AND RETROACTIVE APPLICATION TO THE
10 EFFECTIVE DATE OF CHAPTER 402, LAWS OF 1983.

11 Section 1. 30-8-202. This amendment inserts language
12 in (1)(b) to clarify that terms of an uncertificated
13 security contained in the initial transaction statement sent
14 to the registered owner apply to a subsequent purchaser. In
15 subsection (2) language is inserted for readability.

16 Section 2. 30-8-205. This amendment inserts language
17 to clarify that the effect of an unauthorized signature on
18 the initial transaction statement of an uncertificated
19 security is the same as an unauthorized signature on a
20 certificated security. The catchline is amended for
21 consistency with the section because 30-1-109 provides that
22 section captions are substantive parts of the UCC.

23 Section 3. 30-8-207. This amendment inserts the word
24 "interest" in subsection (5) for conformity to the remainder
25 of that subsection.

26 Section 4. 30-8-309. This amendment inserts the word
27 "certificated" before "security" for conformity to the
28 remainder of the section.

29 Section 5. 30-8-313. This amendment makes minor
30 changes for readability and conformity to the UCC format.

31 Section 6. 30-8-319. This amendment corrects an
32 erroneous reference in subsection (3) to reflect Montana's
33 codification of the UCC.

34 Section 7. 30-8-405. This amendment inserts the word
35 "certificated" before "security" in subsection (1) to
36 clarify that this section applies only to certificated
37 securities.

38 Section 8. 30-9-312. This amendment inserts language
39 in subsection (6) to conform to the remainder of the
40 subsection.

1 Section 9. 30-9-318. This amendment resolves a
2 conflict between the catchline and subsection (4). Section
3 30-1-109 provides that catchlines in the UCC are substantive
4 law.

5 Section 10. Effective date -- applicability. This act
6 is intended to be effective immediately and to apply
7 retroactively to the effective date of Chapter 402, Laws of
8 1983, because the purpose of this bill is to conform to the
9 intent of the UCC revision.

1 SENATE BILL NO. 6
 2 INTRODUCTION BY DANIELS
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4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE
 6 TITLE 30, CHAPTERS 8 AND 9, OF MONTANA'S CODIFICATION OF THE
 7 UNIFORM COMMERCIAL CODE TO CONFORM WITH THE INTENT OF
 8 CHAPTER 402, LAWS OF 1983, WHICH SUBSTANTIALLY ADOPTED THE
 9 1972 AND 1977 CHANGES RECOMMENDED BY THE UNIFORM LAW
 10 COMMISSIONERS; AMENDING SECTIONS 30-8-202, 30-8-205,
 11 30-8-207, 30-8-309, 30-8-313, 30-8-319, 30-8-405, 30-9-312,
 12 AND 30-9-318, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE
 13 AND RETROACTIVE APPLICATION TO THE EFFECTIVE DATE OF CHAPTER
 14 402, LAWS OF 1983."

15
 16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17 Section 1. Section 30-8-202, MCA, is amended to read:
 18 "30-8-202. Issuer's responsibility and defenses --
 19 notice of defect or defense. (1) Even against a purchaser
 20 for value and without notice, the terms of a security
 21 include:

22 (a) if the security is certificated, those stated on
 23 the security;

24 (b) if the security is uncertificated, those contained
 25 in the initial transaction statement sent to such purchaser

1 or, if his interest is transferred to him other than by
 2 registration of transfer, pledge, or release, the initial
 3 transaction statement sent to the registered owner or
 4 registered pledgee; and

5 (c) those made part of the security by reference, on
 6 the certificated security or in the initial transaction
 7 statement, to another instrument, indenture, or document or
 8 to a constitution, statute, ordinance, rule, regulation,
 9 order, or the like, to the extent that the terms referred to
 10 do not conflict with the terms stated on the certificated
 11 security or contained in the statement. A reference under
 12 this subsection does not of itself charge a purchaser for
 13 value with notice of a defect going to the validity of the
 14 security, even though the certificated security or statement
 15 expressly states that a person accepting it admits notice.

16 (2) A certificated security in the hands of a
 17 purchaser for value or an uncertificated security as to
 18 which an initial transaction statement has been sent to a
 19 purchaser for value, other than a security issued by a
 20 government or governmental agency or unit, even though
 21 issued with a defect going to its validity, is valid with
 22 respect to the purchaser if he is without notice of the
 23 particular defect unless the defect involves a violation of
 24 constitutional provisions, in which case the security is
 25 valid with respect to a subsequent purchaser for value and



1 without notice of the defect. This subsection applies to an
 2 issuer that is a government or governmental agency or unit
 3 only if either there has been substantial compliance with
 4 the legal requirements governing the issue or the issuer has
 5 received a substantial consideration for the issue as a
 6 whole or for the particular security and a stated purpose of
 7 the issue is one for which the issuer has power to borrow
 8 money or issue the security.

9 (3) Except as provided in the case of certain
 10 unauthorized signatures (30-8-205), lack of genuineness of a
 11 certificated security or an initial transaction statement is
 12 a complete defense, even against a purchaser for value and
 13 without notice.

14 (4) All other defenses of the issuer of a certificated
 15 or uncertificated security, including nondelivery and
 16 conditional delivery of a certificated security, are
 17 ineffective against a purchaser for value who has taken
 18 without notice of the particular defense.

19 (5) Nothing in this section shall be construed to
 20 affect the right of a party to a "when, as and if issued" or
 21 a "when distributed" contract to cancel the contract in the
 22 event of a material change in the character of the security
 23 that is the subject of the contract or in the plan or
 24 arrangement pursuant to which the security is to be issued
 25 or distributed."

1 Section 2. Section 30-8-205, MCA, is amended to read:
 2 "30-8-205. Effect of unauthorized signature on issue
 3 certificated security or initial transaction statement. An

4 unauthorized signature placed on a certificated security
 5 prior to or in the course of issue or placed on an initial
 6 transaction statement is ineffective, but the signature is
 7 effective in favor of a purchaser for value of the
 8 certificated security or a purchaser for value of an
 9 uncertificated security to whom such the initial transaction
 10 statement has been sent, if the purchaser is without notice
 11 of the lack of authority and the signing has been done by:

12 (1) an authenticating trustee, registrar, transfer
 13 agent, or other person entrusted by the issuer with the
 14 signing of the security, or of similar securities, or of
 15 initial transaction statements or the immediate preparation
 16 for signing of any of them; or

17 (2) an employee of the issuer, or of any of the
 18 foregoing, entrusted with responsible handling of the
 19 security or initial transaction statement."

20 Section 3. Section 30-8-207, MCA, is amended to read:

21 "30-8-207. Rights and duties of issuer with respect to
 22 registered owners and registered pledgees. (1) Prior to due
 23 presentment for registration of transfer of a certificated
 24 security in registered form, the issuer or indenture trustee
 25 may treat the registered owner as the person exclusively

1 entitled to vote, to receive notifications, and otherwise to
2 exercise all the rights and powers of an owner.

3 (2) Subject to the provisions of subsections (3), (4),
4 and (6), the issuer or indenture trustee may treat the
5 registered owner of an uncertificated security as the person
6 exclusively entitled to vote, to receive notifications, and
7 otherwise to exercise all the rights and powers of an owner.

8 (3) The registered owner of an uncertificated security
9 that is subject to a registered pledge is not entitled to
10 registration of transfer prior to the due presentment to the
11 issuer of a release instruction. The exercise of conversion
12 rights with respect to a convertible uncertificated security
13 is a transfer within the meaning of this section.

14 (4) Upon due presentment of a transfer instruction
15 from the registered pledgee of an uncertificated security,
16 the issuer shall:

17 (a) register the transfer of the security to the new
18 owner free of pledge, if the instruction specifies a new
19 owner (who may be the registered pledgee) and does not
20 specify a pledgee;

21 (b) register the transfer of the security to the new
22 owner subject to the interest of the existing pledgee, if
23 the instruction specifies a new owner and the existing
24 pledgee; or

25 (c) register the release of the security from the

1 existing pledge and register the pledge of the security to
2 the other pledgee, if the instruction specifies the existing
3 owner and another pledgee.

4 (5) Continuity of perfection of a security interest is
5 not broken by registration of transfer under subsection
6 (4)(b) or by registration of release and pledge under
7 subsection (4)(c), if the security interest is assigned.

8 (6) If an uncertificated security is subject to a
9 registered pledge:

10 (a) any uncertificated securities issued in exchange
11 for or distributed with respect to the pledged security
12 shall be registered subject to the pledge;

13 (b) any certificated securities issued in exchange for
14 or distributed with respect to the pledged security shall be
15 delivered to the registered pledgee; and

16 (c) any money paid in exchange for or in redemption of
17 part or all of the security shall be paid to the registered
18 pledgee.

19 (7) Nothing in this chapter shall be construed to
20 affect the liability of the registered owner of a security
21 for calls, assessments, or the like."

22 Section 4. Section 30-8-309, MCA, is amended to read:

23 "30-8-309. Effect of endorsement without delivery. An
24 endorsement of a certificated security, whether special or
25 in blank, does not constitute a transfer until delivery of

1 the certificated security on which it appears or, if the
2 endorsement is on a separate document, until delivery of
3 both the document and the certificated security."

4 Section 5. Section 30-8-313, MCA, is amended to read:

5 "30-8-313. When transfer to purchaser occurs --
6 financial intermediary as bona fide purchaser -- "financial
7 intermediary". (1) Transfer of a security or limited
8 interest (including a security interest) therein to a
9 purchaser occurs only:

10 (a) at the time he or a person designated by him
11 acquires possession of a certificated security;

12 (b) at the time the transfer, pledge, or release of an
13 uncertificated security is registered to him or a person
14 designated by him;

15 (c) at the time his financial intermediary acquires
16 possession of a certificated security specially endorsed to
17 or issued in the name of the purchaser;

18 (d) at the time a financial intermediary, not a
19 clearing corporation, sends him confirmation of the purchase
20 and also by book entry or otherwise identifies as belonging
21 to the purchaser:

22 (i) a specific certificated security in the financial
23 intermediary's possession;

24 (ii) a quantity of securities that constitute or are
25 part of a fungible bulk of certificated securities in the

1 financial intermediary's possession or of uncertificated
2 securities registered in the name of the financial
3 intermediary; or

4 (iii) a quantity of securities that constitute or are
5 part of a fungible bulk of securities shown on the account
6 of the financial intermediary on the books of another
7 financial intermediary;

8 (e) with respect to an identified certificated
9 security to be delivered while still in the possession of a
10 third person, not a financial intermediary, at the time that
11 person acknowledges that he holds for the purchaser;

12 (f) with respect to a specific uncertificated security
13 the pledge or transfer of which has been registered to a
14 third person, not a financial intermediary, at the time that
15 person acknowledges that he holds for the purchaser;

16 (g) at the time appropriate entries to the account of
17 the purchaser or a person designated by him on the books of
18 a clearing corporation are made under 30-8-320;

19 (h) with respect to the transfer of a security
20 interest ~~if~~ where the debtor has signed a security agreement
21 containing a description of the security, at the time a
22 written notification, which, in the case of the creation of
23 the security interest, is signed by the debtor (which may be
24 a copy of the security agreement) or which, in the case of
25 the release or assignment of the security interest created

1 pursuant to this paragraph, is signed by the secured party,
2 is received by:

3 (i) a financial intermediary on whose books the
4 interest of the transferor in the security appears;

5 (ii) a third person, not a financial intermediary, in
6 possession of the security, if it is certificated;

7 (iii) a third person, not a financial intermediary, who
8 is the registered owner of the security, if it is
9 uncertificated and not subject to a registered pledge; or

10 (iv) a third person, not a financial intermediary, who
11 is the registered pledgee of the security, if it is
12 uncertificated and subject to a registered pledge;

13 (i) with respect to the transfer of a security
14 interest if where the transferor has signed a security
15 agreement containing a description of the security, at the
16 time new value is given by the secured party; or

17 (j) with respect to the transfer of a security
18 interest if where the secured party is a financial
19 intermediary and the security has already been transferred
20 to the financial intermediary under (a), (b), (c), (d), or
21 (g) of subsection (1), at the time the transferor has signed
22 a security agreement containing a description of the
23 security and value is given by a the secured party.

24 (2) The purchaser is the owner of a security held for
25 him by a financial intermediary, but cannot be a bona fide

1 purchaser of a security so held except in the circumstances
2 specified in (c), (d)(i), and (g) of subsection (1). If a
3 security so held is part of a fungible bulk, as in the
4 circumstances specified in (d)(ii) and (d)(iii) of
5 subsection (1), the purchaser is the owner of a
6 proportionate property interest in the fungible bulk.

7 (3) Notice of an adverse claim received by the
8 financial intermediary or by the purchaser after the
9 financial intermediary takes delivery of a certificated
10 security as a holder for value or after the transfer,
11 pledge, or release of an uncertificated security has been
12 registered free of the claim to a financial intermediary who
13 has given value is not effective either as to the financial
14 intermediary or as to the purchaser. However, as between the
15 financial intermediary and the purchaser, the purchaser may
16 demand transfer of an equivalent security as to which no
17 notice of adverse claim has been received.

18 (4) A "financial intermediary" is a bank, broker,
19 clearing corporation, or other person (or the nominee of any
20 of them) which in the ordinary course of its business
21 maintains security accounts for its customers and is acting
22 in that capacity. A financial intermediary may have a
23 security interest in securities held in account for its
24 customer."

25 Section 6. Section 30-8-319, MCA, is amended to read:

1 "30-8-319. Statute of frauds. A contract for the sale
2 of securities is not enforceable by way of action or defense
3 unless:

4 (1) there is some writing signed by the party against
5 whom enforcement is sought or by his authorized agent or
6 broker sufficient to indicate that a contract has been made
7 for sale of a stated quantity of described securities at a
8 defined or stated price;

9 (2) delivery of a certificated security or transfer
10 instruction has been accepted, or transfer of an
11 uncertificated security has been registered and the
12 transferee has failed to send written objection to the
13 issuer within 10 days after receipt of the initial
14 transaction statement confirming the registration, or
15 payment has been made, but the contract is enforceable under
16 this provision only to the extent of the delivery,
17 registration, or payment;

18 (3) within a reasonable time a writing in confirmation
19 of the sale or purchase and sufficient against the sender
20 under ~~paragraph (a)~~ subsection (1) has been received by the
21 party against whom enforcement is sought and he has failed
22 to send written objection to its contents within 10 days
23 after its receipt; or

24 (4) the party against whom enforcement is sought
25 admits in his pleading, testimony, or otherwise in court

1 that a contract was made for the sale of a stated quantity
2 of described securities at a defined or stated price."

3 Section 7. Section 30-8-405, MCA, is amended to read:

4 "30-8-405. Lost, destroyed, and stolen certificated
5 securities. (1) If a certificated security has been lost,
6 apparently destroyed, or wrongfully taken, and the owner
7 fails to notify the issuer of that fact within a reasonable
8 time after he has notice of it and the issuer registers a
9 transfer of the security before receiving notification, the
10 owner is precluded from asserting against the issuer any
11 claim for registering the transfer under 30-8-404 or any
12 claim to a new security under this section.

13 (2) If the owner of a certificated security claims
14 that the security has been lost, destroyed, or wrongfully
15 taken, the issuer shall issue a new certificated security
16 or, at the option of the issuer, an equivalent
17 uncertificated security in place of the original security if
18 the owner:

19 (a) so requests before the issuer has notice that the
20 security has been acquired by a bona fide purchaser;

21 (b) files with the issuer a sufficient indemnity bond;
22 and

23 (c) satisfies any other reasonable requirements
24 imposed by the issuer.

25 (3) If, after the issue of a new certificated or

1 uncertificated security, a bona fide purchaser of the
 2 original certificated security presents it for registration
 3 of transfer, the issuer shall register the transfer unless
 4 registration would result in overissue, in which event the
 5 issuer's liability is governed by 30-8-104. In addition to
 6 any rights on the indemnity bond, the issuer may recover the
 7 new certificated security from the person to whom it was
 8 issued or any person taking under him except a bona fide
 9 purchaser or may cancel the uncertificated security unless a
 10 bona fide purchaser or any person taking under a bona fide
 11 purchaser is then the registered owner or registered pledgee
 12 thereof."

13 Section 8. Section 30-9-312, MCA, is amended to read:
 14 "30-9-312. Priorities among conflicting security
 15 interests in the same collateral. (1) The rules of priority
 16 stated in other sections of this part and in the following
 17 sections shall govern where applicable: 30-4-208 with
 18 respect to the security interest of collecting banks in
 19 items being collected, accompanying documents, and proceeds;
 20 30-9-103 on security interests related to other
 21 jurisdictions; and 30-9-114 on consignments.

22 (2) A perfected security interest in crops for new
 23 value given to enable the debtor to produce the crops during
 24 the production season and given not more than 3 months
 25 before the crops become growing crops by planting or

1 otherwise takes priority over an earlier perfected security
 2 interest to the extent that such earlier interest secures
 3 obligations due more than 6 months before the crops become
 4 growing crops by planting or otherwise, even though the
 5 person giving new value had knowledge of the earlier
 6 security interest.

7 (3) A perfected purchase money security interest in
 8 inventory has priority over a conflicting security interest
 9 in the same inventory and also has priority in identifiable
 10 cash proceeds received on or before the delivery of the
 11 inventory to a buyer if:

12 (a) the purchase money security interest is perfected
 13 at the time the debtor receives possession of the inventory;
 14 and

15 (b) the purchase money secured party gives
 16 notification in writing to the holder of the conflicting
 17 security interest if the holder had filed a financing
 18 statement covering the same types of inventory:

19 (i) before the date of the filing made by the purchase
 20 money secured party; or

21 (ii) before the beginning of the 21-day period if the
 22 purchase money security interest is temporarily perfected
 23 without filing or possession (30-9-304(5)); and

24 (c) the holder of the conflicting security interest
 25 receives notification within 5 years before the debtor

1 receives possession of the inventory; and

2 (d) the notification states that the person giving the
3 notice has or expects to acquire a purchase money security
4 interest in inventory of the debtor, describing such
5 inventory by item or type.

6 (4) A purchase money security interest in collateral
7 other than inventory has priority over a conflicting
8 security interest in the same collateral or its proceeds if
9 the purchase money security interest is perfected at the
10 time the debtor receives possession of the collateral or
11 within 10 days thereafter.

12 (5) In all cases not governed by other rules stated in
13 this section (including cases of purchase money security
14 interests which do not qualify for the special priorities
15 set forth in subsections (3) and (4) of this section),
16 priority between conflicting security interests in the same
17 collateral shall be determined according to the following
18 rules:

19 (a) Conflicting security interests rank according to
20 priority in the time of filing or perfection. Priority
21 dates from the time a filing is first made covering the
22 collateral or the time the security interest is first
23 perfected, whichever is earlier, provided that there is no
24 period thereafter when there is neither filing nor
25 perfection.

1 (b) So long as conflicting security interests are
2 unperfected, the first to attach has priority.

3 (6) For the purposes of subsection (5), a date of
4 filing or perfection as to collateral is also a date of
5 filing or perfection as to proceeds.

6 (7) If future advances are made while a security
7 interest is perfected by filing, the taking of possession,
8 or under 30-8-321 on securities, the security interest has
9 the same priority for the purposes of subsection (5) with
10 respect to the future advances as it does with respect to
11 the first advance. If a commitment is made before or while
12 the security interest is so perfected, the security interest
13 has the same priority with respect to advances made pursuant
14 thereto. In other cases a perfected security interest has
15 priority from the date the advance is made."

16 Section 9. Section 30-9-318, MCA, is amended to read:
17 "30-9-318. Defenses against assignee -- modification
18 of contract after notification of assignment -- term
19 prohibiting assignment ineffective -- identification and
20 proof of assignment. (1) Unless an account debtor has made
21 an enforceable agreement not to assert defenses or claims
22 arising out of a sale as provided in 30-9-206, the rights of
23 an assignee are subject to:

24 (a) all the terms of the contract between the account
25 debtor and assignor and any defense or claim arising

1 therefrom; and

2 (b) any other defense or claim of the account debtor
3 against the assignor which accrues before the account debtor
4 receives notification of the assignment.

5 (2) So far as the right to payment or a part thereof
6 under an assigned contract has not been fully earned by
7 performance, and notwithstanding notification of the
8 assignment, any modification of or substitution for the
9 contract made in good faith and in accordance with
10 reasonable commercial standards is effective against an
11 assignee unless the account debtor has otherwise agreed, but
12 the assignee acquires corresponding rights under the
13 modified or substituted contract. The assignment may provide
14 that such modification or substitution is a breach by the
15 assignor.

16 (3) The account debtor is authorized to pay the
17 assignor until the account debtor receives notification that
18 the amount due or to become due has been assigned and that
19 payment is to be made to the assignee. A notification which
20 does not reasonably identify the rights assigned is
21 ineffective. If requested by the account debtor, the
22 assignee must seasonably furnish reasonable proof that the
23 assignment has been made, and unless he does so the account
24 debtor may pay the assignor.

25 (4) A term in any contract between an account debtor

1 and an assignor is ~~effective~~ ineffective if it prohibits
2 assignment of an account or prohibits creation of a security
3 interest in a general intangible for money due or to become
4 due or requires the account debtor's consent to such
5 assignment or security interest."

6 NEW SECTION. Section 10. Effective date --
7 applicability. This act is effective on passage and approval
8 and applies retroactively to October 1, 1983, the effective
9 date of Chapter 402, Laws of 1983.

-End-

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25 in the initial transaction statement sent to such purchaser

1 or, if his interest is transferred to him other than by
2 registration of transfer, pledge, or release, the initial
3 transaction statement sent to the registered owner or
4 registered pledgee; and

5 (c) those made part of the security by reference, on
6 the certificated security or in the initial transaction
7 statement, to another instrument, indenture, or document or
8 to a constitution, statute, ordinance, rule, regulation,
9 order, or the like, to the extent that the terms referred to
10 do not conflict with the terms stated on the certificated
11 security or contained in the statement. A reference under
12 this subsection does not of itself charge a purchaser for
13 value with notice of a defect going to the validity of the
14 security, even though the certificated security or statement
15 expressly states that a person accepting it admits notice.

16 (2) A certificated security in the hands of a
17 purchaser for value or an uncertificated security as to
18 which an initial transaction statement has been sent to a
19 purchaser for value, other than a security issued by a
20 government or governmental agency or unit, even though
21 issued with a defect going to its validity, is valid with
22 respect to the purchaser if he is without notice of the
23 particular defect unless the defect involves a violation of
24 constitutional provisions, in which case the security is
25 valid with respect to a subsequent purchaser for value and



1 without notice of the defect. This subsection applies to an
 2 issuer that is a government or governmental agency or unit
 3 only if either there has been substantial compliance with
 4 the legal requirements governing the issue or the issuer has
 5 received a substantial consideration for the issue as a
 6 whole or for the particular security and a stated purpose of
 7 the issue is one for which the issuer has power to borrow
 8 money or issue the security.

9 (3) Except as provided in the case of certain
 10 unauthorized signatures (30-8-205), lack of genuineness of a
 11 certificated security or an initial transaction statement is
 12 a complete defense, even against a purchaser for value and
 13 without notice.

14 (4) All other defenses of the issuer of a certificated
 15 or uncertificated security, including nondelivery and
 16 conditional delivery of a certificated security, are
 17 ineffective against a purchaser for value who has taken
 18 without notice of the particular defense.

19 (5) Nothing in this section shall be construed to
 20 affect the right of a party to a "when, as and if issued" or
 21 a "when distributed" contract to cancel the contract in the
 22 event of a material change in the character of the security
 23 that is the subject of the contract or in the plan or
 24 arrangement pursuant to which the security is to be issued
 25 or distributed."

1 Section 2. Section 30-8-205, MCA, is amended to read:
 2 "30-8-205. Effect of unauthorized signature on ~~issue~~
 3 certificated security or initial transaction statement. An
 4 unauthorized signature placed on a certificated security
 5 prior to or in the course of issue or placed on an initial
 6 transaction statement is ineffective, but the signature is
 7 effective in favor of a purchaser for value of the
 8 certificated security or a purchaser for value of an
 9 uncertificated security to whom ~~such the~~ initial transaction
 10 statement has been sent, if the purchaser is without notice
 11 of the lack of authority and the signing has been done by:
 12 (1) an authenticating trustee, registrar, transfer
 13 agent, or other person entrusted by the issuer with the
 14 signing of the security, or of similar securities, or of
 15 initial transaction statements or the immediate preparation
 16 for signing of any of them; or
 17 (2) an employee of the issuer, or of any of the
 18 foregoing, entrusted with responsible handling of the
 19 security or initial transaction statement."

20 Section 3. Section 30-8-207, MCA, is amended to read:
 21 "30-8-207. Rights and duties of issuer with respect to
 22 registered owners and registered pledgees. (1) Prior to due
 23 presentment for registration of transfer of a certificated
 24 security in registered form, the issuer or indenture trustee
 25 may treat the registered owner as the person exclusively

1 entitled to vote, to receive notifications, and otherwise to
2 exercise all the rights and powers of an owner.

3 (2) Subject to the provisions of subsections (3), (4),
4 and (6), the issuer or indenture trustee may treat the
5 registered owner of an uncertificated security as the person
6 exclusively entitled to vote, to receive notifications, and
7 otherwise to exercise all the rights and powers of an owner.

8 (3) The registered owner of an uncertificated security
9 that is subject to a registered pledge is not entitled to
10 registration of transfer prior to the due presentment to the
11 issuer of a release instruction. The exercise of conversion
12 rights with respect to a convertible uncertificated security
13 is a transfer within the meaning of this section.

14 (4) Upon due presentment of a transfer instruction
15 from the registered pledgee of an uncertificated security,
16 the issuer shall:

17 (a) register the transfer of the security to the new
18 owner free of pledge, if the instruction specifies a new
19 owner (who may be the registered pledgee) and does not
20 specify a pledgee;

21 (b) register the transfer of the security to the new
22 owner subject to the interest of the existing pledgee, if
23 the instruction specifies a new owner and the existing
24 pledgee; or

25 (c) register the release of the security from the

1 existing pledge and register the pledge of the security to
2 the other pledgee, if the instruction specifies the existing
3 owner and another pledgee.

4 (5) Continuity of perfection of a security interest is
5 not broken by registration of transfer under subsection
6 (4)(b) or by registration of release and pledge under
7 subsection (4)(c), if the security interest is assigned.

8 (6) If an uncertificated security is subject to a
9 registered pledge:

10 (a) any uncertificated securities issued in exchange
11 for or distributed with respect to the pledged security
12 shall be registered subject to the pledge;

13 (b) any certificated securities issued in exchange for
14 or distributed with respect to the pledged security shall be
15 delivered to the registered pledgee; and

16 (c) any money paid in exchange for or in redemption of
17 part or all of the security shall be paid to the registered
18 pledgee.

19 (7) Nothing in this chapter shall be construed to
20 affect the liability of the registered owner of a security
21 for calls, assessments, or the like."

22 Section 4. Section 30-8-309, MCA, is amended to read:

23 "30-8-309. Effect of endorsement without delivery. An
24 endorsement of a certificated security, whether special or
25 in blank, does not constitute a transfer until delivery of

1 the certificated security on which it appears or, if the
2 endorsement is on a separate document, until delivery of
3 both the document and the certificated security."

4 Section 5. Section 30-8-313, MCA, is amended to read:

5 "30-8-313. When transfer to purchaser occurs --
6 financial intermediary as bona fide purchaser -- "financial
7 intermediary". (1) Transfer of a security or limited
8 interest (including a security interest) therein to a
9 purchaser occurs only:

10 (a) at the time he or a person designated by him
11 acquires possession of a certificated security;

12 (b) at the time the transfer, pledge, or release of an
13 uncertificated security is registered to him or a person
14 designated by him;

15 (c) at the time his financial intermediary acquires
16 possession of a certificated security specially endorsed to
17 or issued in the name of the purchaser;

18 (d) at the time a financial intermediary, not a
19 clearing corporation, sends him confirmation of the purchase
20 and also by book entry or otherwise identifies as belonging
21 to the purchaser:

22 (i) a specific certificated security in the financial
23 intermediary's possession;

24 (ii) a quantity of securities that constitute or are
25 part of a fungible bulk of certificated securities in the

1 financial intermediary's possession or of uncertificated
2 securities registered in the name of the financial
3 intermediary; or

4 (iii) a quantity of securities that constitute or are
5 part of a fungible bulk of securities shown on the account
6 of the financial intermediary on the books of another
7 financial intermediary;

8 (e) with respect to an identified certificated
9 security to be delivered while still in the possession of a
10 third person, not a financial intermediary, at the time that
11 person acknowledges that he holds for the purchaser;

12 (f) with respect to a specific uncertificated security
13 the pledge or transfer of which has been registered to a
14 third person, not a financial intermediary, at the time that
15 person acknowledges that he holds for the purchaser;

16 (g) at the time appropriate entries to the account of
17 the purchaser or a person designated by him on the books of
18 a clearing corporation are made under 30-8-320;

19 (h) with respect to the transfer of a security
20 interest if where the debtor has signed a security agreement
21 containing a description of the security, at the time a
22 written notification, which, in the case of the creation of
23 the security interest, is signed by the debtor (which may be
24 a copy of the security agreement) or which, in the case of
25 the release or assignment of the security interest created

1 pursuant to this paragraph, is signed by the secured party,
2 is received by:

3 (i) a financial intermediary on whose books the
4 interest of the transferor in the security appears;

5 (ii) a third person, not a financial intermediary, in
6 possession of the security, if it is certificated;

7 (iii) a third person, not a financial intermediary, who
8 is the registered owner of the security, if it is
9 uncertificated and not subject to a registered pledge; or

10 (iv) a third person, not a financial intermediary, who
11 is the registered pledgee of the security, if it is
12 uncertificated and subject to a registered pledge;

13 (i) with respect to the transfer of a security
14 interest if where the transferor has signed a security
15 agreement containing a description of the security, at the
16 time new value is given by the secured party; or

17 (j) with respect to the transfer of a security
18 interest if where the secured party is a financial
19 intermediary and the security has already been transferred
20 to the financial intermediary under (a), (b), (c), (d), or
21 (g) of subsection (1), at the time the transferor has signed
22 a security agreement containing a description of the
23 security and value is given by a the secured party.

24 (2) The purchaser is the owner of a security held for
25 him by a financial intermediary, but cannot be a bona fide

1 purchaser of a security so held except in the circumstances
2 specified in (c), (d)(i), and (g) of subsection (1). If a
3 security so held is part of a fungible bulk, as in the
4 circumstances specified in (d)(ii) and (d)(iii) of
5 subsection (1), the purchaser is the owner of a
6 proportionate property interest in the fungible bulk.

7 (3) Notice of an adverse claim received by the
8 financial intermediary or by the purchaser after the
9 financial intermediary takes delivery of a certificated
10 security as a holder for value or after the transfer,
11 pledge, or release of an uncertificated security has been
12 registered free of the claim to a financial intermediary who
13 has given value is not effective either as to the financial
14 intermediary or as to the purchaser. However, as between the
15 financial intermediary and the purchaser, the purchaser may
16 demand transfer of an equivalent security as to which no
17 notice of adverse claim has been received.

18 (4) A "financial intermediary" is a bank, broker,
19 clearing corporation, or other person (or the nominee of any
20 of them) which in the ordinary course of its business
21 maintains security accounts for its customers and is acting
22 in that capacity. A financial intermediary may have a
23 security interest in securities held in account for its
24 customer."

25 Section 6. Section 30-8-319, MCA, is amended to read:

1 "30-8-319. Statute of frauds. A contract for the sale
2 of securities is not enforceable by way of action or defense
3 unless:

4 (1) there is some writing signed by the party against
5 whom enforcement is sought or by his authorized agent or
6 broker sufficient to indicate that a contract has been made
7 for sale of a stated quantity of described securities at a
8 defined or stated price;

9 (2) delivery of a certificated security or transfer
10 instruction has been accepted, or transfer of an
11 uncertificated security has been registered and the
12 transferee has failed to send written objection to the
13 issuer within 10 days after receipt of the initial
14 transaction statement confirming the registration, or
15 payment has been made, but the contract is enforceable under
16 this provision only to the extent of the delivery,
17 registration, or payment;

18 (3) within a reasonable time a writing in confirmation
19 of the sale or purchase and sufficient against the sender
20 under ~~paragraph (a)~~ subsection (1) has been received by the
21 party against whom enforcement is sought and he has failed
22 to send written objection to its contents within 10 days
23 after its receipt; or

24 (4) the party against whom enforcement is sought
25 admits in his pleading, testimony, or otherwise in court

1 that a contract was made for the sale of a stated quantity
2 of described securities at a defined or stated price."

3 Section 7. Section 30-8-405, MCA, is amended to read:

4 "30-8-405. Lost, destroyed, and stolen certificated
5 securities. (1) If a certificated security has been lost,
6 apparently destroyed, or wrongfully taken, and the owner
7 fails to notify the issuer of that fact within a reasonable
8 time after he has notice of it and the issuer registers a
9 transfer of the security before receiving notification, the
10 owner is precluded from asserting against the issuer any
11 claim for registering the transfer under 30-8-404 or any
12 claim to a new security under this section.

13 (2) If the owner of a certificated security claims
14 that the security has been lost, destroyed, or wrongfully
15 taken, the issuer shall issue a new certificated security
16 or, at the option of the issuer, an equivalent
17 uncertificated security in place of the original security if
18 the owner:

19 (a) so requests before the issuer has notice that the
20 security has been acquired by a bona fide purchaser;

21 (b) files with the issuer a sufficient indemnity bond;
22 and

23 (c) satisfies any other reasonable requirements
24 imposed by the issuer.

25 (3) If, after the issue of a new certificated or

1 uncertificated security, a bona fide purchaser of the
 2 original certificated security presents it for registration
 3 of transfer, the issuer shall register the transfer unless
 4 registration would result in overissue, in which event the
 5 issuer's liability is governed by 30-8-104. In addition to
 6 any rights on the indemnity bond, the issuer may recover the
 7 new certificated security from the person to whom it was
 8 issued or any person taking under him except a bona fide
 9 purchaser or may cancel the uncertificated security unless a
 10 bona fide purchaser or any person taking under a bona fide
 11 purchaser is then the registered owner or registered pledgee
 12 thereof."

13 Section 8. Section 30-9-312, MCA, is amended to read:

14 "30-9-312. Priorities among conflicting security
 15 interests in the same collateral. (1) The rules of priority
 16 stated in other sections of this part and in the following
 17 sections shall govern where applicable: 30-4-208 with
 18 respect to the security interest of collecting banks in
 19 items being collected, accompanying documents, and proceeds;
 20 30-9-103 on security interests related to other
 21 jurisdictions; and 30-9-114 on consignments.

22 (2) A perfected security interest in crops for new
 23 value given to enable the debtor to produce the crops during
 24 the production season and given not more than 3 months
 25 before the crops become growing crops by planting or

1 otherwise takes priority over an earlier perfected security
 2 interest to the extent that such earlier interest secures
 3 obligations due more than 6 months before the crops become
 4 growing crops by planting or otherwise, even though the
 5 person giving new value had knowledge of the earlier
 6 security interest.

7 (3) A perfected purchase money security interest in
 8 inventory has priority over a conflicting security interest
 9 in the same inventory and also has priority in identifiable
 10 cash proceeds received on or before the delivery of the
 11 inventory to a buyer if:

12 (a) the purchase money security interest is perfected
 13 at the time the debtor receives possession of the inventory;
 14 and

15 (b) the purchase money secured party gives
 16 notification in writing to the holder of the conflicting
 17 security interest if the holder had filed a financing
 18 statement covering the same types of inventory:

19 (i) before the date of the filing made by the purchase
 20 money secured party; or

21 (ii) before the beginning of the 21-day period if the
 22 purchase money security interest is temporarily perfected
 23 without filing or possession (30-9-304(5)); and

24 (c) the holder of the conflicting security interest
 25 receives notification within 5 years before the debtor

1 receives possession of the inventory; and

2 (d) the notification states that the person giving the
3 notice has or expects to acquire a purchase money security
4 interest in inventory of the debtor, describing such
5 inventory by item or type.

6 (4) A purchase money security interest in collateral
7 other than inventory has priority over a conflicting
8 security interest in the same collateral or its proceeds if
9 the purchase money security interest is perfected at the
10 time the debtor receives possession of the collateral or
11 within 10 days thereafter.

12 (5) In all cases not governed by other rules stated in
13 this section (including cases of purchase money security
14 interests which do not qualify for the special priorities
15 set forth in subsections (3) and (4) of this section),
16 priority between conflicting security interests in the same
17 collateral shall be determined according to the following
18 rules:

19 (a) Conflicting security interests rank according to
20 priority in the time of filing or perfection. Priority
21 dates from the time a filing is first made covering the
22 collateral or the time the security interest is first
23 perfected, whichever is earlier, provided that there is no
24 period thereafter when there is neither filing nor
25 perfection.

1 (b) So long as conflicting security interests are
2 unperfected, the first to attach has priority.

3 (6) For the purposes of subsection (5), a date of
4 filing or perfection as to collateral is also a date of
5 filing or perfection as to proceeds.

6 (7) If future advances are made while a security
7 interest is perfected by filing, the taking of possession,
8 or under 30-8-321 on securities, the security interest has
9 the same priority for the purposes of subsection (5) with
10 respect to the future advances as it does with respect to
11 the first advance. If a commitment is made before or while
12 the security interest is so perfected, the security interest
13 has the same priority with respect to advances made pursuant
14 thereto. In other cases a perfected security interest has
15 priority from the date the advance is made."

16 Section 9. Section 30-9-318, MCA, is amended to read:
17 "30-9-318. Defenses against assignee -- modification
18 of contract after notification of assignment -- term
19 prohibiting assignment ineffective -- identification and
20 proof of assignment. (1) Unless an account debtor has made
21 an enforceable agreement not to assert defenses or claims
22 arising out of a sale as provided in 30-9-206, the rights of
23 an assignee are subject to:

24 (a) all the terms of the contract between the account
25 debtor and assignor and any defense or claim arising

1 therefrom; and

2 (b) any other defense or claim of the account debtor

3 against the assignor which accrues before the account debtor

4 receives notification of the assignment.

5 (2) So far as the right to payment or a part thereof

6 under an assigned contract has not been fully earned by

7 performance, and notwithstanding notification of the

8 assignment, any modification of or substitution for the

9 contract made in good faith and in accordance with

10 reasonable commercial standards is effective against an

11 assignee unless the account debtor has otherwise agreed, but

12 the assignee acquires corresponding rights under the

13 modified or substituted contract. The assignment may provide

14 that such modification or substitution is a breach by the

15 assignor.

16 (3) The account debtor is authorized to pay the

17 assignor until the account debtor receives notification that

18 the amount due or to become due has been assigned and that

19 payment is to be made to the assignee. A notification which

20 does not reasonably identify the rights assigned is

21 ineffective. If requested by the account debtor, the

22 assignee must seasonably furnish reasonable proof that the

23 assignment has been made, and unless he does so the account

24 debtor may pay the assignor.

25 (4) A term in any contract between an account debtor

1 and an assignor is ~~effective~~ ineffective if it prohibits

2 assignment of an account or prohibits creation of a security

3 interest in a general intangible for money due or to become

4 due or requires the account debtor's consent to such

5 assignment or security interest."

6 NEW SECTION. Section 10. Effective date --

7 applicability. This act is effective on passage and approval

8 and applies retroactively to October 1, 1983, the effective

9 date of Chapter 402, Laws of 1983.

-End-

1 SENATE Bill No. 6

2 AN ACT TO GENERALLY REVISE TITLE 30, CHAPTERS 8 AND 9, OF
3 MONTANA'S CODIFICATION OF THE UNIFORM COMMERCIAL CODE TO
4 CONFORM WITH THE INTENT OF CHAPTER 402, LAWS OF 1983, WHICH
5 SUBSTANTIALLY ADOPTED THE 1972 AND 1977 CHANGES RECOMMENDED
6 BY THE UNIFORM LAW COMMISSIONERS; AMENDING SECTIONS
7 30-8-202, 30-8-205, 30-8-207, 30-8-309, 30-8-313, 30-8-319,
8 30-8-405, 30-9-312, AND 30-9-318, MCA; AND PROVIDING AN
9 IMMEDIATE EFFECTIVE DATE AND RETROACTIVE APPLICATION TO THE
10 EFFECTIVE DATE OF CHAPTER 402, LAWS OF 1983.

11 Section 1. 30-8-202. This amendment inserts language
12 in (1)(b) to clarify that terms of an uncertificated
13 security contained in the initial transaction statement sent
14 to the registered owner apply to a subsequent purchaser. In
15 subsection (2) language is inserted for readability.

16 Section 2. 30-8-205. This amendment inserts language
17 to clarify that the effect of an unauthorized signature on
18 the initial transaction statement of an uncertificated
19 security is the same as an unauthorized signature on a
20 certificated security. The catchline is amended for
21 consistency with the section because 30-1-109 provides that
22 section captions are substantive parts of the UCC.

23 Section 3. 30-8-207. This amendment inserts the word
24 "interest" in subsection (5) for conformity to the remainder
25 of that subsection.

26 Section 4. 30-8-309. This amendment inserts the word
27 "certificated" before "security" for conformity to the
28 remainder of the section.

29 Section 5. 30-8-313. This amendment makes minor
30 changes for readability and conformity to the UCC format.

31 Section 6. 30-8-319. This amendment corrects an
32 erroneous reference in subsection (3) to reflect Montana's
33 codification of the UCC.

34 Section 7. 30-8-405. This amendment inserts the word
35 "certificated" before "security" in subsection (1) to
36 clarify that this section applies only to certificated
37 securities.

38 Section 8. 30-9-312. This amendment inserts language
39 in subsection (6) to conform to the remainder of the
40 subsection.

THIRD READING

1 Section 9. 30-9-318. This amendment resolves a
2 conflict between the catchline and subsection (4). Section
3 30-1-109 provides that catchlines in the UCC are substantive
4 law.

5 Section 10. Effective date -- applicability. This act
6 is intended to be effective immediately and to apply
7 retroactively to the effective date of Chapter 402, Laws of
8 1983, because the purpose of this bill is to conform to the
9 intent of the UCC revision.

1 SENATE BILL NO. 6
 2 INTRODUCTION BY DANIELS
 3 BY REQUEST OF THE CODE COMMISSIONER
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE
 6 TITLE 30, CHAPTERS 8 AND 9, OF MONTANA'S CODIFICATION OF THE
 7 UNIFORM COMMERCIAL CODE TO CONFORM WITH THE INTENT OF
 8 CHAPTER 402, LAWS OF 1983, WHICH SUBSTANTIALLY ADOPTED THE
 9 1972 AND 1977 CHANGES RECOMMENDED BY THE UNIFORM LAW
 10 COMMISSIONERS; AMENDING SECTIONS 30-8-202, 30-8-205,
 11 30-8-207, 30-8-309, 30-8-313, 30-8-319, 30-8-405, 30-9-312,
 12 AND 30-9-318, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE
 13 AND RETROACTIVE APPLICATION TO THE EFFECTIVE DATE OF CHAPTER
 14 402, LAWS OF 1983."
 15

16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17 Section 1. Section 30-8-202, MCA, is amended to read:
 18 "30-8-202. Issuer's responsibility and defenses --
 19 notice of defect or defense. (1) Even against a purchaser
 20 for value and without notice, the terms of a security
 21 include:

22 (a) if the security is certificated, those stated on
 23 the security;

24 (b) if the security is uncertificated, those contained
 25 in the initial transaction statement sent to such purchaser

1 or, if his interest is transferred to him other than by
 2 registration of transfer, pledge, or release, the initial
 3 transaction statement sent to the registered owner or
 4 registered pledgee; and

5 (c) those made part of the security by reference, on
 6 the certificated security or in the initial transaction
 7 statement, to another instrument, indenture, or document or
 8 to a constitution, statute, ordinance, rule, regulation,
 9 order, or the like, to the extent that the terms referred to
 10 do not conflict with the terms stated on the certificated
 11 security or contained in the statement. A reference under
 12 this subsection does not of itself charge a purchaser for
 13 value with notice of a defect going to the validity of the
 14 security, even though the certificated security or statement
 15 expressly states that a person accepting it admits notice.

16 (2) A certificated security in the hands of a
 17 purchaser for value or an uncertificated security as to
 18 which an initial transaction statement has been sent to a
 19 purchaser for value, other than a security issued by a
 20 government or governmental agency or unit, even though
 21 issued with a defect going to its validity, is valid with
 22 respect to the purchaser if he is without notice of the
 23 particular defect unless the defect involves a violation of
 24 constitutional provisions, in which case the security is
 25 valid with respect to a subsequent purchaser for value and

1 without notice of the defect. This subsection applies to an
 2 issuer that is a government or governmental agency or unit
 3 only if either there has been substantial compliance with
 4 the legal requirements governing the issue or the issuer has
 5 received a substantial consideration for the issue as a
 6 whole or for the particular security and a stated purpose of
 7 the issue is one for which the issuer has power to borrow
 8 money or issue the security.

9 (3) Except as provided in the case of certain
 10 unauthorized signatures (30-8-205), lack of genuineness of a
 11 certificated security or an initial transaction statement is
 12 a complete defense, even against a purchaser for value and
 13 without notice.

14 (4) All other defenses of the issuer of a certificated
 15 or uncertificated security, including nondelivery and
 16 conditional delivery of a certificated security, are
 17 ineffective against a purchaser for value who has taken
 18 without notice of the particular defense.

19 (5) Nothing in this section shall be construed to
 20 affect the right of a party to a "when, as and if issued" or
 21 a "when distributed" contract to cancel the contract in the
 22 event of a material change in the character of the security
 23 that is the subject of the contract or in the plan or
 24 arrangement pursuant to which the security is to be issued
 25 or distributed."

1 Section 2. Section 30-8-205, MCA, is amended to read:
 2 "30-8-205. Effect of unauthorized signature on ~~issue~~
 3 certificated security or initial transaction statement. An
 4 unauthorized signature placed on a certificated security
 5 prior to or in the course of issue or placed on an initial
 6 transaction statement is ineffective, but the signature is
 7 effective in favor of a purchaser for value of the
 8 certificated security or a purchaser for value of an
 9 uncertificated security to whom ~~such the~~ initial transaction
 10 statement has been sent, if the purchaser is without notice
 11 of the lack of authority and the signing has been done by:
 12 (1) an authenticating trustee, registrar, transfer
 13 agent, or other person entrusted by the issuer with the
 14 signing of the security, or of similar securities, or of
 15 initial transaction statements or the immediate preparation
 16 for signing of any of them; or
 17 (2) an employee of the issuer, or of any of the
 18 foregoing, entrusted with responsible handling of the
 19 security or initial transaction statement."

20 Section 3. Section 30-8-207, MCA, is amended to read:
 21 "30-8-207. Rights and duties of issuer with respect to
 22 registered owners and registered pledgees. (1) Prior to due
 23 presentment for registration of transfer of a certificated
 24 security in registered form, the issuer or indenture trustee
 25 may treat the registered owner as the person exclusively

1 entitled to vote, to receive notifications, and otherwise to
2 exercise all the rights and powers of an owner.

3 (2) Subject to the provisions of subsections (3), (4),
4 and (6), the issuer or indenture trustee may treat the
5 registered owner of an uncertificated security as the person
6 exclusively entitled to vote, to receive notifications, and
7 otherwise to exercise all the rights and powers of an owner.

8 (3) The registered owner of an uncertificated security
9 that is subject to a registered pledge is not entitled to
10 registration of transfer prior to the due presentment to the
11 issuer of a release instruction. The exercise of conversion
12 rights with respect to a convertible uncertificated security
13 is a transfer within the meaning of this section.

14 (4) Upon due presentment of a transfer instruction
15 from the registered pledgee of an uncertificated security,
16 the issuer shall:

17 (a) register the transfer of the security to the new
18 owner free of pledge, if the instruction specifies a new
19 owner (who may be the registered pledgee) and does not
20 specify a pledgee;

21 (b) register the transfer of the security to the new
22 owner subject to the interest of the existing pledgee, if
23 the instruction specifies a new owner and the existing
24 pledgee; or

25 (c) register the release of the security from the

1 existing pledge and register the pledge of the security to
2 the other pledgee, if the instruction specifies the existing
3 owner and another pledgee.

4 (5) Continuity of perfection of a security interest is
5 not broken by registration of transfer under subsection
6 (4)(b) or by registration of release and pledge under
7 subsection (4)(c), if the security interest is assigned.

8 (6) If an uncertificated security is subject to a
9 registered pledge:

10 (a) any uncertificated securities issued in exchange
11 for or distributed with respect to the pledged security
12 shall be registered subject to the pledge;

13 (b) any certificated securities issued in exchange for
14 or distributed with respect to the pledged security shall be
15 delivered to the registered pledgee; and

16 (c) any money paid in exchange for or in redemption of
17 part or all of the security shall be paid to the registered
18 pledgee.

19 (7) Nothing in this chapter shall be construed to
20 affect the liability of the registered owner of a security
21 for calls, assessments, or the like."

22 Section 4. Section 30-8-309, MCA, is amended to read:

23 "30-8-309. Effect of endorsement without delivery. An
24 endorsement of a certificated security, whether special or
25 in blank, does not constitute a transfer until delivery of

1 the certificated security on which it appears or, if the
2 endorsement is on a separate document, until delivery of
3 both the document and the certificated security."

4 Section 5. Section 30-8-313, MCA, is amended to read:

5 "30-8-313. When transfer to purchaser occurs --
6 financial intermediary as bona fide purchaser -- "financial
7 intermediary". (1) Transfer of a security or limited
8 interest (including a security interest) therein to a
9 purchaser occurs only:

10 (a) at the time he or a person designated by him
11 acquires possession of a certificated security;

12 (b) at the time the transfer, pledge, or release of an
13 uncertificated security is registered to him or a person
14 designated by him;

15 (c) at the time his financial intermediary acquires
16 possession of a certificated security specially endorsed to
17 or issued in the name of the purchaser;

18 (d) at the time a financial intermediary, not a
19 clearing corporation, sends him confirmation of the purchase
20 and also by book entry or otherwise identifies as belonging
21 to the purchaser:

22 (i) a specific certificated security in the financial
23 intermediary's possession;

24 (ii) a quantity of securities that constitute or are
25 part of a fungible bulk of certificated securities in the

1 financial intermediary's possession or of uncertificated
2 securities registered in the name of the financial
3 intermediary; or

4 (iii) a quantity of securities that constitute or are
5 part of a fungible bulk of securities shown on the account
6 of the financial intermediary on the books of another
7 financial intermediary;

8 (e) with respect to an identified certificated
9 security to be delivered while still in the possession of a
10 third person, not a financial intermediary, at the time that
11 person acknowledges that he holds for the purchaser;

12 (f) with respect to a specific uncertificated security
13 the pledge or transfer of which has been registered to a
14 third person, not a financial intermediary, at the time that
15 person acknowledges that he holds for the purchaser;

16 (g) at the time appropriate entries to the account of
17 the purchaser or a person designated by him on the books of
18 a clearing corporation are made under 30-8-320;

19 (h) with respect to the transfer of a security
20 interest if where the debtor has signed a security agreement
21 containing a description of the security, at the time a
22 written notification, which, in the case of the creation of
23 the security interest, is signed by the debtor (which may be
24 a copy of the security agreement) or which, in the case of
25 the release or assignment of the security interest created

1 pursuant to this paragraph, is signed by the secured party,
2 is received by:

3 (i) a financial intermediary on whose books the
4 interest of the transferor in the security appears;

5 (ii) a third person, not a financial intermediary, in
6 possession of the security, if it is certificated;

7 (iii) a third person, not a financial intermediary, who
8 is the registered owner of the security, if it is
9 uncertificated and not subject to a registered pledge; or

10 (iv) a third person, not a financial intermediary, who
11 is the registered pledgee of the security, if it is
12 uncertificated and subject to a registered pledge;

13 (i) with respect to the transfer of a security
14 interest ~~if~~ where the transferor has signed a security
15 agreement containing a description of the security, at the
16 time new value is given by the secured party; or

17 (j) with respect to the transfer of a security
18 interest ~~if~~ where the secured party is a financial
19 intermediary and the security has already been transferred
20 to the financial intermediary under (a), (b), (c), (d), or
21 (g) of subsection (1), at the time the transferor has signed
22 a security agreement containing a description of the
23 security and value is given by ~~a~~ the secured party.

24 (2) The purchaser is the owner of a security held for
25 him by a financial intermediary, but cannot be a bona fide

1 purchaser of a security so held except in the circumstances
2 specified in (c), (d)(i), and (g) of subsection (1). If a
3 security so held is part of a fungible bulk, as in the
4 circumstances specified in (d)(ii) and (d)(iii) of
5 subsection (1), the purchaser is the owner of a
6 proportionate property interest in the fungible bulk.

7 (3) Notice of an adverse claim received by the
8 financial intermediary or by the purchaser after the
9 financial intermediary takes delivery of a certificated
10 security as a holder for value or after the transfer,
11 pledge, or release of an uncertificated security has been
12 registered free of the claim to a financial intermediary who
13 has given value is not effective either as to the financial
14 intermediary or as to the purchaser. However, as between the
15 financial intermediary and the purchaser, the purchaser may
16 demand transfer of an equivalent security as to which no
17 notice of adverse claim has been received.

18 (4) A "financial intermediary" is a bank, broker,
19 clearing corporation, or other person (or the nominee of any
20 of them) which in the ordinary course of its business
21 maintains security accounts for its customers and is acting
22 in that capacity. A financial intermediary may have a
23 security interest in securities held in account for its
24 customer."

25 Section 6. Section 30-8-319, MCA, is amended to read:

1 "30-8-319. Statute of frauds. A contract for the sale
2 of securities is not enforceable by way of action or defense
3 unless:

4 (1) there is some writing signed by the party against
5 whom enforcement is sought or by his authorized agent or
6 broker sufficient to indicate that a contract has been made
7 for sale of a stated quantity of described securities at a
8 defined or stated price;

9 (2) delivery of a certificated security or transfer
10 instruction has been accepted, or transfer of an
11 uncertificated security has been registered and the
12 transferee has failed to send written objection to the
13 issuer within 10 days after receipt of the initial
14 transaction statement confirming the registration, or
15 payment has been made, but the contract is enforceable under
16 this provision only to the extent of the delivery,
17 registration, or payment;

18 (3) within a reasonable time a writing in confirmation
19 of the sale or purchase and sufficient against the sender
20 under ~~paragraph (a)~~ subsection (1) has been received by the
21 party against whom enforcement is sought and he has failed
22 to send written objection to its contents within 10 days
23 after its receipt; or

24 (4) the party against whom enforcement is sought
25 admits in his pleading, testimony, or otherwise in court

1 that a contract was made for the sale of a stated quantity
2 of described securities at a defined or stated price."

3 Section 7. Section 30-8-405, MCA, is amended to read:
4 "30-8-405. Lost, destroyed, and stolen certificated
5 securities. (1) If a certificated security has been lost,
6 apparently destroyed, or wrongfully taken, and the owner
7 fails to notify the issuer of that fact within a reasonable
8 time after he has notice of it and the issuer registers a
9 transfer of the security before receiving notification, the
10 owner is precluded from asserting against the issuer any
11 claim for registering the transfer under 30-8-404 or any
12 claim to a new security under this section.

13 (2) If the owner of a certificated security claims
14 that the security has been lost, destroyed, or wrongfully
15 taken, the issuer shall issue a new certificated security
16 or, at the option of the issuer, an equivalent
17 uncertificated security in place of the original security if
18 the owner:

19 (a) so requests before the issuer has notice that the
20 security has been acquired by a bona fide purchaser;

21 (b) files with the issuer a sufficient indemnity bond;
22 and

23 (c) satisfies any other reasonable requirements
24 imposed by the issuer.

25 (3) If, after the issue of a new certificated or

1 uncertificated security, a bona fide purchaser of the
 2 original certificated security presents it for registration
 3 of transfer, the issuer shall register the transfer unless
 4 registration would result in overissue, in which event the
 5 issuer's liability is governed by 30-8-104. In addition to
 6 any rights on the indemnity bond, the issuer may recover the
 7 new certificated security from the person to whom it was
 8 issued or any person taking under him except a bona fide
 9 purchaser or may cancel the uncertificated security unless a
 10 bona fide purchaser or any person taking under a bona fide
 11 purchaser is then the registered owner or registered pledgee
 12 thereof."

13 Section 8. Section 30-9-312, MCA, is amended to read:

14 "30-9-312. Priorities among conflicting security
 15 interests in the same collateral. (1) The rules of priority
 16 stated in other sections of this part and in the following
 17 sections shall govern where applicable: 30-4-208 with
 18 respect to the security interest of collecting banks in
 19 items being collected, accompanying documents, and proceeds;
 20 30-9-103 on security interests related to other
 21 jurisdictions; and 30-9-114 on consignments.

22 (2) A perfected security interest in crops for new
 23 value given to enable the debtor to produce the crops during
 24 the production season and given not more than 3 months
 25 before the crops become growing crops by planting or

1 otherwise takes priority over an earlier perfected security
 2 interest to the extent that such earlier interest secures
 3 obligations due more than 6 months before the crops become
 4 growing crops by planting or otherwise, even though the
 5 person giving new value had knowledge of the earlier
 6 security interest.

7 (3) A perfected purchase money security interest in
 8 inventory has priority over a conflicting security interest
 9 in the same inventory and also has priority in identifiable
 10 cash proceeds received on or before the delivery of the
 11 inventory to a buyer if:

12 (a) the purchase money security interest is perfected
 13 at the time the debtor receives possession of the inventory;
 14 and

15 (b) the purchase money secured party gives
 16 notification in writing to the holder of the conflicting
 17 security interest if the holder had filed a financing
 18 statement covering the same types of inventory:

19 (i) before the date of the filing made by the purchase
 20 money secured party; or

21 (ii) before the beginning of the 21-day period if the
 22 purchase money security interest is temporarily perfected
 23 without filing or possession (30-9-304(5)); and

24 (c) the holder of the conflicting security interest
 25 receives notification within 5 years before the debtor

1 receives possession of the inventory; and

2 (d) the notification states that the person giving the
3 notice has or expects to acquire a purchase money security
4 interest in inventory of the debtor, describing such
5 inventory by item or type.

6 (4) A purchase money security interest in collateral
7 other than inventory has priority over a conflicting
8 security interest in the same collateral or its proceeds if
9 the purchase money security interest is perfected at the
10 time the debtor receives possession of the collateral or
11 within 10 days thereafter.

12 (5) In all cases not governed by other rules stated in
13 this section (including cases of purchase money security
14 interests which do not qualify for the special priorities
15 set forth in subsections (3) and (4) of this section),
16 priority between conflicting security interests in the same
17 collateral shall be determined according to the following
18 rules:

19 (a) Conflicting security interests rank according to
20 priority in the time of filing or perfection. Priority
21 dates from the time a filing is first made covering the
22 collateral or the time the security interest is first
23 perfected, whichever is earlier, provided that there is no
24 period thereafter when there is neither filing nor
25 perfection.

1 (b) So long as conflicting security interests are
2 unperfected, the first to attach has priority.

3 (6) For the purposes of subsection (5), a date of
4 filing or perfection as to collateral is also a date of
5 filing or perfection as to proceeds.

6 (7) If future advances are made while a security
7 interest is perfected by filing, the taking of possession,
8 or under 30-8-321 on securities, the security interest has
9 the same priority for the purposes of subsection (5) with
10 respect to the future advances as it does with respect to
11 the first advance. If a commitment is made before or while
12 the security interest is so perfected, the security interest
13 has the same priority with respect to advances made pursuant
14 thereto. In other cases a perfected security interest has
15 priority from the date the advance is made."

16 Section 9. Section 30-9-318, MCA, is amended to read:
17 "30-9-318. Defenses against assignee -- modification
18 of contract after notification of assignment -- term
19 prohibiting assignment ineffective -- identification and
20 proof of assignment. (1) Unless an account debtor has made
21 an enforceable agreement not to assert defenses or claims
22 arising out of a sale as provided in 30-9-206, the rights of
23 an assignee are subject to:

24 (a) all the terms of the contract between the account
25 debtor and assignor and any defense or claim arising

1 therefrom; and

2 (b) any other defense or claim of the account debtor
3 against the assignor which accrues before the account debtor
4 receives notification of the assignment.

5 (2) So far as the right to payment or a part thereof
6 under an assigned contract has not been fully earned by
7 performance, and notwithstanding notification of the
8 assignment, any modification of or substitution for the
9 contract made in good faith and in accordance with
10 reasonable commercial standards is effective against an
11 assignee unless the account debtor has otherwise agreed, but
12 the assignee acquires corresponding rights under the
13 modified or substituted contract. The assignment may provide
14 that such modification or substitution is a breach by the
15 assignor.

16 (3) The account debtor is authorized to pay the
17 assignor until the account debtor receives notification that
18 the amount due or to become due has been assigned and that
19 payment is to be made to the assignee. A notification which
20 does not reasonably identify the rights assigned is
21 ineffective. If requested by the account debtor, the
22 assignee must seasonably furnish reasonable proof that the
23 assignment has been made, and unless he does so the account
24 debtor may pay the assignor.

25 (4) A term in any contract between an account debtor

1 and an assignor is ~~effective~~ ineffective if it prohibits
2 assignment of an account or prohibits creation of a security
3 interest in a general intangible for money due or to become
4 due or requires the account debtor's consent to such
5 assignment or security interest."

6 NEW SECTION. Section 10. Effective date --
7 applicability. This act is effective on passage and approval
8 and applies retroactively to October 1, 1983, the effective
9 date of Chapter 402, Laws of 1983.

-End-

1 SENATE BILL NO. 6
 2 INTRODUCED BY DANIELS
 3 BY REQUEST OF THE CODE COMMISSIONER

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE
 6 TITLE 30, CHAPTERS 8 AND 9, OF MONTANA'S CODIFICATION OF THE
 7 UNIFORM COMMERCIAL CODE TO CONFORM WITH THE INTENT OF
 8 CHAPTER 402, LAWS OF 1983, WHICH SUBSTANTIALLY ADOPTED THE
 9 1972 AND 1977 CHANGES RECOMMENDED BY THE UNIFORM LAW
 10 COMMISSIONERS; AMENDING SECTIONS 30-8-202, 30-8-205,
 11 30-8-207, 30-8-309, 30-8-313, 30-8-319, 30-8-405, 30-9-312,
 12 AND 30-9-318, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE
 13 AND RETROACTIVE APPLICATION TO THE EFFECTIVE DATE OF CHAPTER
 14 402, LAWS OF 1983."

15
 16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 17 Section 1. Section 30-8-202, MCA, is amended to read:
 18 "30-8-202. Issuer's responsibility and defenses --
 19 notice of defect or defense. (1) Even against a purchaser
 20 for value and without notice, the terms of a security
 21 include:
 22 (a) if the security is certificated, those stated on
 23 the security;
 24 (b) if the security is uncertificated, those contained
 25 in the initial transaction statement sent to such purchaser

There are no changes in SB 6 and will not be re-run. Please refer to white, yellow or blue copy for complete text.