

1 *House* BILL NO. *426*
 2 INTRODUCED BY *Kevin Kautel*, *Shelby*, *Scott Schmidt*
 3 *McCuller*, *Susan Harrington*, *Ellen Dowell*

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE UNIFORM COMMERCIAL CODE;
 5 REPLACING THE FORMER LAWS GOVERNING LETTERS OF CREDIT WITH UPDATED LAWS; CONFORMING
 6 THE LAWS GOVERNING LETTERS OF CREDIT TO CURRENT USAGE AND PRACTICE; ACCOMMODATING
 7 NEW FORMS OF LETTERS OF CREDIT, PARTICULARLY THE USE OF ELECTRONIC MEDIA; MAINTAINING
 8 LETTERS OF CREDIT AS AN INEXPENSIVE AND EFFICIENT INSTRUMENT FOR FACILITATING TRADE;
 9 REPLACING THE FORMER LAWS GOVERNING INVESTMENT SECURITIES WITH UPDATED LAWS;
 10 ADDRESSING SECURITIES HOLDING THROUGH SECURITIES INTERMEDIARIES; PROVIDING A MODERN
 11 LEGAL STRUCTURE FOR CURRENT SECURITIES HOLDING PRACTICES; PROVIDING RULES FOR
 12 DETERMINING RIGHTS UNDER THE INDIRECT HOLDING OF SECURITIES; REVISING OTHER LAWS TO
 13 REFLECT THE REVISIONS TO THE LAWS GOVERNING LETTERS OF CREDIT AND INVESTMENT
 14 SECURITIES; AMENDING SECTIONS 30-1-105, 30-1-206, 30-2-512, 30-3-124, 30-4-104, 30-9-103,
 15 30-9-104, 30-9-105, 30-9-106, 30-9-203, 30-9-301, 30-9-302, 30-9-303, 30-9-304, 30-9-305, 30-9-306,
 16 30-9-309, 30-9-312, AND 32-1-426, MCA; AND REPEALING SECTIONS 30-5-102, 30-5-103, 30-5-104,
 17 30-5-105, 30-5-106, 30-5-107, 30-5-108, 30-5-109, 30-5-110, 30-5-111, 30-5-112, 30-5-113, 30-5-114,
 18 30-5-115, 30-5-116, 30-5-117, 30-8-102, 30-8-103, 30-8-104, 30-8-105, 30-8-106, 30-8-107, 30-8-108,
 19 30-8-201, 30-8-202, 30-8-203, 30-8-204, 30-8-205, 30-8-206, 30-8-207, 30-8-208, 30-8-301, 30-8-302,
 20 30-8-303, 30-8-304, 30-8-305, 30-8-306, 30-8-307, 30-8-308, 30-8-309, 30-8-310, 30-8-311, 30-8-312,
 21 30-8-313, 30-8-314, 30-8-315, 30-8-316, 30-8-317, 30-8-318, 30-8-319, 30-8-320, 30-8-321, 30-8-401,
 22 30-8-402, 30-8-403, 30-8-404, 30-8-405, 30-8-406, 30-8-407, 30-8-408, 30-10-401, 30-10-402,
 23 30-10-403, 30-10-404, 30-10-405, 30-10-406, 30-10-407, 30-10-408, 30-10-409, 30-10-410, AND
 24 30-10-411, MCA."

25
 26 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

27
 28 **Section 1.** Section 30-1-105, MCA, is amended to read:
 29 **"30-1-105. Territorial application of the code -- parties' power to choose applicable law.** (1) Except
 30 as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also



1 to another state or nation, the parties may agree that the law either of this state or of ~~such~~ the other state
 2 or nation shall govern their rights and duties. Failing ~~such~~ agreement, this code applies to transactions
 3 bearing an appropriate relation to this state.

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

7 Rights of creditors against sold goods. 30-2-402.

8 Applicability of the Chapter on Leases. 30-2A-105 and 30-2A-106.

9 Applicability of the Chapter on Bank Deposits and Collections. 30-4-102.

10 Governing law in the Chapter on Funds Transfers. 30-4A-507.

11 Letters of Credit. [Section 20].

12 Applicability of the Chapter on Investment Securities. ~~30-8-106~~ [section 30].

13 Perfection provisions of the Chapter on Secured Transactions. 30-9-103."

14

15 **Section 2.** Section 30-1-206, MCA, is amended to read:

16 "**30-1-206. Statute of frauds for kinds of personal property not otherwise covered.** (1) Except in
 17 the cases described in subsection (2) ~~of this section~~ a contract for the sale of personal property is not
 18 enforceable by way of action or defense beyond \$5,000 in amount or value of remedy unless there is some
 19 writing which indicates that a contract for sale has been made between the parties at a defined or stated
 20 price, reasonably identifies the subject matter, and is signed by the party against whom enforcement is
 21 sought or by ~~his~~ the party's authorized agent.

22 (2) Subsection (1) of this section does not apply to contracts for the sale of goods (30-2-201) nor
 23 of securities (~~30-8-319~~ [section 33]) nor to security agreements (30-9-203)."

24

25 **Section 3.** Section 30-2-512, MCA, is amended to read:

26 "**30-2-512. Payment by buyer before inspection.** (1) Where the contract requires payment before
 27 inspection nonconformity of the goods does not excuse the buyer from so making payment unless:

28 (a) the nonconformity appears without inspection; or

29 (b) despite tender of the required documents the circumstances would justify injunction against
 30 honor under the provisions of this code (~~30-5-114~~ [section 13(2)]).

1 (2) Payment pursuant to subsection (1) does not constitute an acceptance of goods or impair the
2 buyer's right to inspect or any of his the buyer's remedies."

3
4 **Section 4.** Section 30-3-124, MCA, is amended to read:

5 **"30-3-124. Subject matter.** (1) This chapter applies to negotiable instruments. It does not apply
6 to money or to payment orders governed by chapter 4A. A negotiable instrument that is also a certificated
7 security under ~~30-8-102(1)(a)~~ section 22(1)(d) is subject to chapter 8 and to this chapter.

8 (2) In the event of conflict between the provisions of this chapter and those of chapter 4, chapter
9 8, or chapter 9, the provisions of chapter 4, chapter 8, and chapter 9 prevail over those of this chapter.

10 (3) Regulations of the board of governors of the federal reserve system and operating circulars of
11 the federal reserve banks supersede any inconsistent provision of this chapter to the extent of the
12 inconsistency."

13
14 **Section 5.** Section 30-4-104, MCA, is amended to read:

15 **"30-4-104. Definitions and index of definitions.** (1) In this chapter, unless the context otherwise
16 requires:

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

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

20 (c) "banking day" means the part of a day on which a bank is open to the public for carrying on
21 substantially all of its banking functions;

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

23 (e) "customer" means a person having an account with a bank or for whom a bank has agreed to
24 collect items and includes a bank maintaining an account at another bank;

25 (f) "documentary draft" means a draft to be presented for acceptance or payment if specified
26 documents, certificated securities (section 22) or ~~transfer statements~~ instructions for uncertificated
27 securities (section 22), or other certificates, statements, or the like are to be received by the drawee or
28 other payor before acceptance or payment of the draft;

29 (g) "draft" means a draft as defined in 30-3-104 or an item, other than an instrument, that is an
30 order;

1 (h) "item" means an instrument or a promise or an order to pay money handled by a bank for
2 collection or payment. The term does not include a payment order governed by chapter 4A or a credit or
3 debit card slip.

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

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

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

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

13 "Bank". 30-4-105.

14 "Collecting bank". 30-4-105.

15 "Depository bank". 30-4-105.

16 "Intermediary bank". 30-4-105.

17 "Payor bank". 30-4-105.

18 "Presenting bank". 30-4-105.

19 "Presentment notice". 30-4-111.

20 (3) The following definitions in other chapters apply to this chapter:

21 "Acceptance". 30-3-410.

22 "Alteration". 30-3-407.

23 "Cashier's check". 30-3-104.

24 "Certificate of deposit". 30-3-104.

25 "Certified check". 30-3-410.

26 "Check". 30-3-104.

27 "Drawee". 30-3-102.

28 "Good faith". 30-3-102.

29 "Holder in due course". 30-3-302.

30 "Instrument". 30-3-104.

1 "Notice of dishonor". 30-3-508.

2 "Order". 30-3-102.

3 "Ordinary care". 30-3-102.

4 "Person entitled to enforce". 30-3-301.

5 "Presentment". 30-3-504.

6 "Promise". 30-3-102.

7 "Prove". 30-3-102.

8 "Teller's check". 30-3-104.

9 "Unauthorized signature". 30-3-404.

10 (4) In addition, chapter 1 contains general definitions and principles of construction and
11 interpretation applicable throughout this chapter."

12

13 **NEW SECTION. Section 6. Definitions.** (1) In this chapter:

14 (a) "Adviser" means a person who, at the request of the issuer, a confirmer, or another adviser,
15 notifies or requests another adviser to notify the beneficiary that a letter of credit has been issued,
16 confirmed, or amended.

17 (b) "Applicant" means a person at whose request or for whose account a letter of credit is issued.
18 The term includes a person who requests an issuer to issue a letter of credit on behalf of another if the
19 person making the request undertakes an obligation to reimburse the issuer.

20 (c) "Beneficiary" means a person who under the terms of a letter of credit is entitled to have its
21 complying presentation honored. The term includes a person to whom drawing rights have been transferred
22 under a transferable letter of credit.

23 (d) "Confirmer" means a nominated person who undertakes, at the request or with the consent of
24 the issuer, to honor a presentation under a letter of credit issued by another.

25 (e) "Dishonor" of a letter of credit means failure timely to honor or to take an interim action, such
26 as acceptance of a draft, that may be required by the letter of credit.

27 (f)(i) "Document" means a draft or other demand, document of title, investment security,
28 certificate, invoice, or other record, statement, or representation of fact, law, right, or opinion:

29 (A) which is presented in a written or other medium permitted by the letter of credit or, unless
30 prohibited by the letter of credit, by the standard practice referred to in [section 12(5)]; and

1 (B) which is capable of being examined for compliance with the terms and conditions of the letter
2 of credit.

3 (ii) A document may not be oral.

4 (g) "Good faith" means honesty in fact in the conduct or transaction concerned.

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

7 (i) upon payment;

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

10 (iii) if the letter of credit provides for incurring a deferred obligation, upon incurring the obligation
11 and, at maturity, its performance.

12 (i) "Issuer" means a bank or other person that issues a letter of credit, but does not include an
13 individual who makes an engagement for personal, family, or household purposes.

14 (j) "Letter of credit" means a definite undertaking that satisfies the requirements of [section 8] by
15 an issuer to a beneficiary at the request or for the account of an applicant or, in the case of a financial
16 institution, to itself or for its own account, to honor a documentary presentation by payment or delivery
17 of an item of value.

18 (k) "Nominated person" means a person whom the issuer:

19 (i) designates or authorizes to pay, accept, negotiate, or otherwise give value under a letter of
20 credit; and

21 (ii) undertakes by agreement or custom and practice to reimburse.

22 (l) "Presentation" means delivery of a document to an issuer or nominated person for honor or
23 giving of value under a letter of credit.

24 (m) "Presenter" means a person making a presentation as or on behalf of a beneficiary or
25 nominated person.

26 (n) "Record" means information that is inscribed on a tangible medium, or that is stored in an
27 electronic or other medium and is retrievable in perceivable form.

28 (o) "Successor of a beneficiary" means a person who succeeds to substantially all of the rights of
29 a beneficiary by operation of law, including a corporation with or into which the beneficiary has been
30 merged or consolidated, an administrator, executor, personal representative, trustee in bankruptcy, debtor

1 in possession, liquidator, and receiver.

2 (2) Definitions in other chapters applying to this chapter and the sections in which they appear are:

3 "Accept" or "Acceptance" 30-3-410

4 "Value" 30-3-303, 30-4-209

5 (3) Chapter 1 contains certain additional general definitions and principles of construction and
6 interpretation applicable throughout this chapter.

7

8 **NEW SECTION. Section 7. Scope.** (1) This chapter applies to letters of credit and to certain rights
9 and obligations arising out of transactions involving letters of credit.

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

12 (3) With the exception of this subsection, subsections (1) and (4), [sections 6(1)(i) and (1)(j), 10(4),
13 and 18(4)], and except to the extent prohibited in 30-1-102(3) and [section 21(4)], the effect of this
14 chapter may be varied by agreement or by a provision stated or incorporated by reference in an
15 undertaking. A term in an agreement or undertaking generally excusing liability or generally limiting
16 remedies for failure to perform obligations is not sufficient to vary obligations prescribed by this chapter.

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

21

22 **NEW SECTION. Section 8. Formal requirements.** A letter of credit, confirmation, advice, transfer,
23 amendment, or cancellation may be issued in any form that is a record and is authenticated:

24 (1) by a signature; or

25 (2) in accordance with the agreement of the parties or the standard practice referred to in [section
26 12(5)].

27

28 **NEW SECTION. Section 9. Consideration.** Consideration is not required to issue, amend, transfer,
29 or cancel a letter of credit, advice, or confirmation.

30

1 **NEW SECTION. Section 10. Issuance, amendment, cancellation, and duration.** (1) A letter of
2 credit is issued and becomes enforceable according to its terms against the issuer when the issuer sends
3 or otherwise transmits it to the person requested to advise or to the beneficiary. A letter of credit is
4 revocable only if it so provides.

5 (2) After a letter of credit is issued, rights and obligations of a beneficiary, applicant, confirmer,
6 and issuer are not affected by an amendment or cancellation to which that person has not consented
7 except to the extent the letter of credit provides that it is revocable or that the issuer may amend or cancel
8 the letter of credit without that consent.

9 (3) If there is no stated expiration date or other provision that determines its duration, a letter of
10 credit expires one year after its stated date of issuance or, if none is stated, after the date on which it is
11 issued.

12 (4) A letter of credit that states that it is perpetual expires 5 years after its stated date of issuance,
13 or if none is stated, after the date on which it is issued.

14

15 **NEW SECTION. Section 11. Confirmer, nominated person, and adviser.** (1) A confirmer is directly
16 obligated on a letter of credit and has the rights and obligations of an issuer to the extent of its
17 confirmation. The confirmer also has rights against and obligations to the issuer as if the issuer were an
18 applicant and the confirmer had issued the letter of credit at the request and for the account of the issuer.

19 (2) A nominated person who is not a confirmer is not obligated to honor or otherwise give value
20 for a presentation.

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

27 (4) A person who notifies a transferee beneficiary of the terms of a letter of credit, confirmation,
28 amendment, or advice has the rights and obligations of an adviser under subsection (3). The terms in the
29 notice to the transferee beneficiary may differ from the terms in any notice to the transferor beneficiary to
30 the extent permitted by the letter of credit, confirmation, amendment, or advice received by the person who

1 so notifies.

2

3 NEW SECTION. **Section 12. Issuer's rights and obligations.** (1) Except as otherwise provided in
4 [section 13], an issuer shall honor a presentation that, as determined by the standard practice referred to
5 in subsection (5), appears on its face strictly to comply with the terms and conditions of the letter of credit.
6 Except as otherwise provided in [section 17] and unless otherwise agreed with the applicant, an issuer shall
7 dishonor a presentation that does not appear so to comply.

8 (2) An issuer has a reasonable time after presentation, but not beyond the end of the seventh
9 business day of the issuer after the day of its receipt of documents:

10 (a) to honor;

11 (b) if the letter of credit provides for honor to be completed more than 7 business days after
12 presentation, to accept a draft or incur a deferred obligation; or

13 (c) to give notice to the presenter of discrepancies in the presentation.

14 (3) Except as otherwise provided in subsection (4), an issuer is precluded from asserting as a basis
15 for dishonor any discrepancy if timely notice is not given, or any discrepancy not stated in the notice if
16 timely notice is given.

17 (4) Failure to give the notice specified in subsection (2) or to mention fraud, forgery, or expiration
18 in the notice does not preclude the issuer from asserting as a basis for dishonor fraud or forgery as
19 described in [section 13(1)] or expiration of the letter of credit before presentation.

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

24 (6) An issuer is not responsible for:

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

26 (b) an act or omission of others; or

27 (c) observance or knowledge of the usage of a particular trade other than the standard practice
28 referred to in subsection (5).

29 (7) If an undertaking constituting a letter of credit under [section 6(1)(j)] contains nondocumentary
30 conditions, an issuer shall disregard the nondocumentary conditions and treat them as if they were not

1 stated.

2 (8) An issuer that has dishonored a presentation shall return the documents or hold them at the
3 disposal of, and send advice to that effect to, the presenter.

4 (9) An issuer that has honored a presentation as permitted or required by this chapter:

5 (a) is entitled to be reimbursed by the applicant in immediately available funds not later than the
6 date of its payment of funds;

7 (b) takes the documents free of claims of the beneficiary or presenter;

8 (c) is precluded from asserting a right of recourse on a draft under 30-3-414 and 30-3-415;

9 (d) except as otherwise provided in [sections 14 and 21], is precluded from restitution of money
10 paid or other value given by mistake to the extent the mistake concerns discrepancies in the documents
11 or tender which are apparent on the face of the presentation; and

12 (e) is discharged to the extent of its performance under the letter of credit unless the issuer
13 honored a presentation in which a required signature of a beneficiary was forged.

14

15 **NEW SECTION. Section 13. Fraud and forgery.** (1) If a presentation is made that appears on its
16 face strictly to comply with the terms and conditions of the letter of credit, but a required document is
17 forged or materially fraudulent, or honor of the presentation would facilitate a material fraud by the
18 beneficiary on the issuer or applicant:

19 (a) the issuer shall honor the presentation, if honor is demanded by:

20 (i) a nominated person who has given value in good faith and without notice of forgery or material
21 fraud;

22 (ii) a confirmer who has honored its confirmation in good faith;

23 (iii) a holder in due course of a draft drawn under the letter of credit which was taken after
24 acceptance by the issuer or nominated person; or

25 (iv) an assignee of the issuer's or nominated person's deferred obligation that was taken for value
26 and without notice of forgery or material fraud after the obligation was incurred by the issuer or nominated
27 person; and

28 (b) the issuer, acting in good faith, may honor or dishonor the presentation in any other case.

29 (2) If an applicant claims that a required document is forged or materially fraudulent or that honor
30 of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant, a court

1 of competent jurisdiction may temporarily or permanently enjoin the issuer from honoring a presentation
2 or grant similar relief against the issuer or other persons only if the court finds that:

3 (a) the relief is not prohibited under the law applicable to an accepted draft or deferred obligation
4 incurred by the issuer;

5 (b) a beneficiary, issuer, or nominated person who may be adversely affected is adequately
6 protected against loss that it may suffer because the relief is granted;

7 (c) all of the conditions to entitle a person to the relief under the law of this state have been met;
8 and

9 (d) on the basis of the information submitted to the court, the applicant is more likely than not to
10 succeed under its claim of forgery or material fraud and the person demanding honor does not qualify for
11 protection under subsection (1)(a).

12

13 **NEW SECTION. Section 14. Warranties.** (1) If its presentation is honored, the beneficiary
14 warrants:

15 (a) to the issuer, any other person to whom presentation is made, and the applicant that there is
16 no fraud or forgery of the kind described in [section 13(1)]; and

17 (b) to the applicant that the drawing does not violate any agreement between the applicant and
18 beneficiary or any other agreement intended by them to be augmented by the letter of credit.

19 (2) The warranties in subsection (1) are in addition to warranties arising under chapters 3, 4, 7,
20 and 8 because of the presentation or transfer of documents covered by any of those chapters.

21

22 **NEW SECTION. Section 15. Remedies.** (1) If an issuer wrongfully dishonors or repudiates its
23 obligation to pay money under a letter of credit before presentation, the beneficiary, successor, or
24 nominated person presenting on its own behalf may recover from the issuer the amount that is the subject
25 of the dishonor or repudiation. If the issuer's obligation under the letter of credit is not for the payment
26 of money, the claimant may obtain specific performance or, at the claimant's election, recover an amount
27 equal to the value of performance from the issuer. In either case, the claimant may also recover incidental
28 but not consequential damages. The claimant is not obligated to take action to avoid damages that might
29 be due from the issuer under this subsection. If, although not obligated to do so, the claimant avoids
30 damages, the claimant's recovery from the issuer must be reduced by the amount of damages avoided.

1 The issuer has the burden of proving the amount of damages avoided. In the case of repudiation the
2 claimant need not present any document.

3 (2) If an issuer wrongfully dishonors a draft or demand presented under a letter of credit or honors
4 a draft or demand in breach of its obligation to the applicant, the applicant may recover damages resulting
5 from the breach, including incidental but not consequential damages, less any amount saved as a result of
6 the breach.

7 (3) If an adviser or nominated person other than a confirmer breaches an obligation under this
8 chapter or an issuer breaches an obligation not covered in subsection (1) or (2), a person to whom the
9 obligation is owed may recover damages resulting from the breach, including incidental but not
10 consequential damages, less any amount saved as a result of the breach. To the extent of the
11 confirmation, a confirmer has the liability of an issuer specified in this subsection and subsections (1) and
12 (2).

13 (4) An issuer, nominated person, or adviser who is found liable under subsection (1), (2), or (3)
14 shall pay interest on the amount owed from the date of wrongful dishonor or other appropriate date.

15 (5) Reasonable attorney's fees and other expenses of litigation must be awarded to the prevailing
16 party in an action in which a remedy is sought under this chapter.

17 (6) Damages that would otherwise be payable by a party for breach of an obligation under this
18 chapter may be liquidated by agreement or undertaking, but only in an amount or by a formula that is
19 reasonable in light of the harm anticipated.

20

21 **NEW SECTION. Section 16. Transfer of letter of credit.** (1) Except as otherwise provided in
22 [section 17], unless a letter of credit provides that it is transferable, the right of a beneficiary to draw or
23 otherwise demand performance under a letter of credit may not be transferred.

24 (2) Even if a letter of credit provides that it is transferable, the issuer may refuse to recognize or
25 carry out a transfer if:

26 (a) the transfer would violate applicable law; or

27 (b) the transferor or transferee has failed to comply with any requirement stated in the letter of
28 credit or any other requirement relating to transfer imposed by the issuer which is within the standard
29 practice referred to in [section 12(5)] or is otherwise reasonable under the circumstances.

30

1 **NEW SECTION. Section 17. Transfer by operation of law.** (1) A successor of a beneficiary may
2 consent to amendments, sign and present documents, and receive payment or other items of value in the
3 name of the beneficiary without disclosing its status as a successor.

4 (2) A successor of a beneficiary may consent to amendments, sign and present documents, and
5 receive payment or other items of value in its own name as the disclosed successor of the beneficiary.
6 Except as otherwise provided in subsection (5), an issuer shall recognize a disclosed successor of a
7 beneficiary as beneficiary in full substitution for its predecessor upon compliance with the requirements for
8 recognition by the issuer of a transfer of drawing rights by operation of law under the standard practice
9 referred to in [section 12(5)] or, in the absence of such a practice, compliance with other reasonable
10 procedures sufficient to protect the issuer.

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

13 (4) Honor of a purported successor's apparently complying presentation under subsection (1) or
14 (2) has the consequences specified in [section 12(9)] even if the purported successor is not the successor
15 of a beneficiary. Documents signed in the name of the beneficiary or of a disclosed successor by a person
16 who is neither the beneficiary nor the successor of the beneficiary are forged documents for the purposes
17 of [section 13].

18 (5) An issuer whose rights of reimbursement are not covered by subsection (4) or substantially
19 similar law and any confirmer or nominated person may decline to recognize a presentation under
20 subsection (2).

21 (6) A beneficiary whose name is changed after the issuance of a letter of credit has the same rights
22 and obligations as a successor of a beneficiary under this section.

23

24 **NEW SECTION. Section 18. Assignment of proceeds.** (1) (a) In this section, "proceeds of a letter
25 of credit" means the cash, check, accepted draft, or other item of value paid or delivered upon honor or
26 giving of value by the issuer or any nominated person under the letter of credit.

27 (b) The term does not include a beneficiary's drawing rights or documents presented by the
28 beneficiary.

29 (2) A beneficiary may assign its right to part or all of the proceeds of a letter of credit. The
30 beneficiary may do so before presentation as a present assignment of its right to receive proceeds

1 contingent upon its compliance with the terms and conditions of the letter of credit.

2 (3) An issuer or nominated person need not recognize an assignment of proceeds of a letter of
3 credit until it consents to the assignment.

4 (4) An issuer or nominated person has no obligation to give or withhold its consent to an
5 assignment of proceeds of a letter of credit, but consent may not be unreasonably withheld if the assignee
6 possesses and exhibits the letter of credit and presentation of the letter of credit is a condition to honor.

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

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

17

18 **NEW SECTION. Section 19. Statute of limitations.** An action to enforce a right or obligation
19 arising under this chapter must be commenced within 1 year after the expiration date of the relevant letter
20 of credit or 1 year after the cause of action accrues, whichever occurs later. A cause of action accrues
21 when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach.

22

23 **NEW SECTION. Section 20. Choice of law and forum.** (1) The liability of an issuer, nominated
24 person, or adviser for action or omission is governed by the law of the jurisdiction chosen by an agreement
25 in the form of a record signed or otherwise authenticated by the affected parties in the manner provided
26 in [section 8] or by a provision in the person's letter of credit, confirmation, or other undertaking. The
27 jurisdiction whose law is chosen need not bear any relation to the transaction.

28 (2) Unless subsection (1) applies, the liability of an issuer, nominated person, or adviser for action
29 or omission is governed by the law of the jurisdiction in which the person is located. The person is
30 considered to be located at the address indicated in the person's undertaking. If more than one address

1 is indicated, the person is considered to be located at the address from which the person's undertaking was
2 issued. For the purpose of jurisdiction, choice of law, and recognition of interbranch letters of credit, but
3 not enforcement of a judgment, all branches of a bank are considered separate juridical entities and a bank
4 is considered to be located at the place where its relevant branch is considered to be located under this
5 subsection.

6 (3) (a) Except as otherwise provided in this subsection, the liability of an issuer, nominated person,
7 or adviser is governed by any rules of custom or practice, such as the Uniform Customs and Practice for
8 Documentary Credits, to which the letter of credit, confirmation, or other undertaking is expressly made
9 subject.

10 (b) The rules of custom and practice govern except to the extent of any conflict with the
11 nonvariable provisions specified in [section 7(3)] if:

12 (i) this chapter would govern the liability of an issuer, nominated person, or adviser under
13 subsection (1) or (2);

14 (ii) the relevant undertaking incorporates rules of custom or practice; and

15 (iii) there is conflict between this chapter and those rules as applied to that undertaking.

16 (4) If there is conflict between this chapter and chapter 3, 4, 4A, or 9, this chapter governs.

17 (5) The forum for settling disputes arising out of an undertaking within this chapter may be chosen
18 in the manner and with the binding effect that governing law may be chosen in accordance with subsection
19 (1).

20

21 **NEW SECTION. Section 21. Subrogation of issuer, applicant, and nominated person.** (1) An
22 issuer that honors a beneficiary's presentation is subrogated to the rights of the beneficiary to the same
23 extent as if the issuer were a secondary obligor of the underlying obligation owed to the beneficiary and
24 of the applicant to the same extent as if the issuer were the secondary obligor of the underlying obligation
25 owed to the applicant.

26 (2) An applicant that reimburses an issuer is subrogated to the rights of the issuer against any
27 beneficiary, presenter, or nominated person to the same extent as if the applicant were the secondary
28 obligor of the obligations owed to the issuer and has the rights of subrogation of the issuer to the rights
29 of the beneficiary stated in subsection (1).

30 (3) A nominated person who pays or gives value against a draft or demand presented under a letter

1 of credit is subrogated to the rights of:

2 (a) the issuer against the applicant to the same extent as if the nominated person were a secondary
3 obligor of the obligation owed to the issuer by the applicant;

4 (b) the beneficiary to the same extent as if the nominated person were a secondary obligor of the
5 underlying obligation owed to the beneficiary; and

6 (c) the applicant to same extent as if the nominated person were a secondary obligor of the
7 underlying obligation owed to the applicant.

8 (4) Notwithstanding any agreement or term to the contrary, the rights of subrogation stated in
9 subsections (1) and (2) do not arise until the issuer honors the letter of credit or otherwise pays and the
10 rights in subsection (3) do not arise until the nominated person pays or otherwise gives value. Until then,
11 the issuer, nominated person, and the applicant do not derive under this section present or prospective
12 rights forming the basis of a claim, defense, or excuse.

13

14 **NEW SECTION. Section 22. Definitions.** (1) In this chapter:

15 (a) "Adverse claim" means a claim that a claimant has a property interest in a financial asset and
16 that it is a violation of the rights of the claimant for another person to hold, transfer, or deal with the
17 financial asset.

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

20 (c) "Broker" means a person defined as a broker or dealer under the federal securities laws, but
21 without excluding a bank acting in that capacity.

22 (d) "Certificated security" means a security that is represented by a certificate.

23 (e) "Clearing corporation" means:

24 (i) a person that is registered as a "clearing agency" under the federal securities laws;

25 (ii) a federal reserve bank; or

26 (iii) any other person that provides clearance or settlement services with respect to financial assets
27 that would require it to register as a clearing agency under the federal securities laws but for an exclusion
28 or exemption from the registration requirement, if its activities as a clearing corporation, including
29 promulgation of rules, are subject to regulation by a federal or state governmental authority.

30 (f) "Communicate" means to:

1 (i) send a signed writing; or

2 (ii) transmit information by any mechanism agreed upon by the persons transmitting and receiving
3 the information.

4 (g) "Entitlement holder" means a person identified in the records of a securities intermediary as the
5 person having a security entitlement against the securities intermediary. If a person acquires a security
6 entitlement by virtue of [section 61(2)(b) or (2)(c)], that person is the entitlement holder.

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

9 (i) (i) "Financial asset," except as otherwise provided in [section 23], means:

10 (A) a security;

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

14 (C) any property that is held by a securities intermediary for another person in a securities account
15 if the securities intermediary has expressly agreed with the other person that the property is to be treated
16 as a financial asset under this chapter.

17 (ii) As context requires, the term means either the interest itself or the means by which a person's
18 claim to it is evidenced, including a certificated or uncertificated security, a security certificate, or a security
19 entitlement.

20 (j) "Good faith," for purposes of the obligation of good faith in the performance or enforcement of
21 contracts or duties within this chapter, means honesty in fact and the observance of reasonable commercial
22 standards of fair dealing.

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

26 (l) "Instruction" means a notification communicated to the issuer of an uncertificated security
27 which directs that the transfer of the security be registered or that the security be redeemed.

28 (m) "Registered form," as applied to a certificated security, means a form in which:

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

30 (ii) a transfer of the security may be registered upon books maintained for that purpose by or on

1 behalf of the issuer, or the security certificate so states.

2 (n) "Securities intermediary" means:

3 (i) a clearing corporation; or

4 (ii) a person, including a bank or broker, that in the ordinary course of its business maintains
5 securities accounts for others and is acting in that capacity.

6 (o) "Security," except as otherwise provided in [section 23], means an obligation of an issuer or
7 a share, participation, or other interest in an issuer or in property or an enterprise of an issuer:

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

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

12 (iii) which:

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

14 (B) is a medium for investment and by its terms expressly provides that it is a security governed
15 by this chapter.

16 (p) "Security certificate" means a certificate representing a security.

17 (q) "Security entitlement" means the rights and property interest of an entitlement holder with
18 respect to a financial asset specified in [sections 61 through 71].

19 (r) "Uncertificated security" means a security that is not represented by a certificate.

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

21 "Appropriate person" [section 27]

22 "Control" [section 26]

23 "Delivery" [section 47]

24 "Investment company security" [section 23]

25 "Issuer" [section 37]

26 "Overissue" [section 46]

27 "Protected purchaser" [section 49]

28 "Securities account" [section 61]

29 (3) In addition, chapter 1 contains general definitions and principles of construction and
30 interpretation applicable throughout this chapter.

1 (4) The characterization of a person, business, or transaction for purposes of this chapter does not
2 determine the characterization of the person, business, or transaction for purposes of any other law,
3 regulation, or rule.

4
5 NEW SECTION. **Section 23. Rules for determining whether certain obligations and interests are**
6 **securities or financial assets.** (1) A share or similar equity interest issued by a corporation, business trust,
7 joint stock company, or similar entity is a security.

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

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

18 (4) A writing that is a security certificate is governed by this chapter and not by chapter 3, even
19 though it also meets the requirements of that chapter. However, a negotiable instrument governed by
20 chapter 3 is a financial asset if it is held in a securities account.

21 (5) An option or similar obligation issued by a clearing corporation to its participants is not a
22 security, but is a financial asset.

23 (6) A commodity contract, as defined in [section 76], is not a security or a financial asset.

24
25 NEW SECTION. **Section 24. Acquisition of security or financial asset or interest therein.** (1) A
26 person acquires a security or an interest therein, under this chapter, if:

27 (a) the person is a purchaser to whom a security is delivered pursuant to [section 47]; or

28 (b) the person acquires a security entitlement to the security pursuant to [section 61].

29 (2) A person acquires a financial asset, other than a security, or an interest therein, under this
30 chapter, if the person acquires a security entitlement to the financial asset.

1 (3) A person who acquires a security entitlement to a security or other financial asset has the rights
2 specified in [sections 61 through 71], but is a purchaser of any security, security entitlement, or other
3 financial asset held by the securities intermediary only to the extent provided in [section 63].

4 (4) Unless the context shows that a different meaning is intended, a person who is required by
5 other law, regulation, rule, or agreement to transfer, deliver, present, surrender, exchange, or otherwise
6 put in the possession of another person a security or financial asset satisfies that requirement by causing
7 the other person to acquire an interest in the security or financial asset pursuant to subsection (1) or (2).

8
9 **NEW SECTION. Section 25. Notice of adverse claim.** (1) A person has notice of an adverse claim
10 if:

11 (a) the person knows of the adverse claim;

12 (b) the person is aware of facts sufficient to indicate that there is a significant probability that the
13 adverse claim exists and deliberately avoids information that would establish the existence of the adverse
14 claim; or

15 (c) the person has a duty, imposed by statute or regulation, to investigate whether an adverse
16 claim exists, and the investigation so required would establish the existence of the adverse claim.

17 (2) Having knowledge that a financial asset or interest therein is or has been transferred by a
18 representative imposes no duty of inquiry into the rightfulness of a transaction and is not notice of an
19 adverse claim. However, a person who knows that a representative has transferred a financial asset or
20 interest therein in a transaction that is, or whose proceeds are being used, for the individual benefit of the
21 representative or otherwise in breach of duty has notice of an adverse claim.

22 (3) An act or event that creates a right to immediate performance of the principal obligation
23 represented by a security certificate or sets a date on or after which the certificate is to be presented or
24 surrendered for redemption or exchange does not itself constitute notice of an adverse claim except in the
25 case of a transfer more than:

26 (a) 1 year after a date set for presentment or surrender for redemption or exchange; or

27 (b) 6 months after a date set for payment of money against presentation or surrender of the
28 certificate, if money was available for payment on that date.

29 (4) A purchaser of a certificated security has notice of an adverse claim if the security certificate:

30 (a) whether in bearer or registered form, has been indorsed "for collection" or "for surrender" or

1 for some other purpose not involving transfer; or

2 (b) is in bearer form and has on it an unambiguous statement that it is the property of a person
3 other than the transferor, but the mere writing of a name on the certificate is not such a statement.

4 (5) Filing of a financing statement under chapter 9 is not notice of an adverse claim to a financial
5 asset.

6

7 **NEW SECTION. Section 26. Control.** (1) A purchaser has "control" of a certificated security in
8 bearer form if the certificated security is delivered to the purchaser.

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

11 (a) the certificate is indorsed to the purchaser or in blank by an effective indorsement; or

12 (b) the certificate is registered in the name of the purchaser, upon original issue or registration of
13 transfer by the issuer.

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

15 (a) the uncertificated security is delivered to the purchaser; or

16 (b) the issuer has agreed that it will comply with instructions originated by the purchaser without
17 further consent by the registered owner.

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

19 (a) the purchaser becomes the entitlement holder; or

20 (b) the securities intermediary has agreed that it will comply with entitlement orders originated by
21 the purchaser without further consent by the entitlement holder.

22 (5) If an interest in a security entitlement is granted by the entitlement holder to the entitlement
23 holder's own securities intermediary, the securities intermediary has control.

24 (6) A purchaser who has satisfied the requirements of subsection (3)(b) or (4)(b) has control even
25 if the registered owner in the case of subsection (3)(b) or the entitlement holder in the case of subsection
26 (4)(b) retains the right to make substitutions for the uncertificated security or security entitlement, to
27 originate instructions or entitlement orders to the issuer or securities intermediary, or otherwise to deal with
28 the uncertificated security or security entitlement.

29 (7) An issuer or a securities intermediary may not enter into an agreement of the kind described
30 in subsection (3)(b) or (4)(b) without the consent of the registered owner or entitlement holder, but an

1 issuer or a securities intermediary is not required to enter into such an agreement even though the
2 registered owner or entitlement holder so directs. An issuer or securities intermediary that has entered into
3 such an agreement is not required to confirm the existence of the agreement to another party unless
4 requested to do so by the registered owner or entitlement holder.

5

6 **NEW SECTION. Section 27. Whether indorsement, instruction, or entitlement order is effective.**

7 (1) "Appropriate person" means:

8 (a) with respect to an indorsement, the person specified by a security certificate or by an effective
9 special indorsement to be entitled to the security;

10 (b) with respect to an instruction, the registered owner of an uncertificated security;

11 (c) with respect to an entitlement order, the entitlement holder;

12 (d) if the person designated in subsection (1)(a), (1)(b), or (1)(c) is deceased, the designated
13 person's successor taking under other law or the designated person's personal representative acting for
14 the estate of the decedent; or

15 (e) if the person designated in subsection (1)(a), (1)(b), or (1)(c) lacks capacity, the designated
16 person's guardian, conservator, or other similar representative who has power under other law to transfer
17 the security or financial asset.

18 (2) An indorsement, instruction, or entitlement order is effective if:

19 (a) it is made by the appropriate person;

20 (b) it is made by a person who has power under the law of agency to transfer the security or
21 financial asset on behalf of the appropriate person, including, in the case of an instruction or entitlement
22 order, a person who has control under [section 26(3)(b) or (4)(b)]; or

23 (c) the appropriate person has ratified it or is otherwise precluded from asserting its ineffectiveness.

24 (3) An indorsement, instruction, or entitlement order made by a representative is effective even
25 if:

26 (a) the representative has failed to comply with a controlling instrument or with the law of the state
27 having jurisdiction of the representative relationship, including any law requiring the representative to obtain
28 court approval of the transaction; or

29 (b) the representative's action in making the indorsement, instruction, or entitlement order or using
30 the proceeds of the transaction is otherwise a breach of duty.

1 (4) If a security is registered in the name of or specially indorsed to a person described as a
2 representative, or if a securities account is maintained in the name of a person described as a
3 representative, an indorsement, instruction, or entitlement order made by the person is effective even
4 though the person is no longer serving in the described capacity.

5 (5) Effectiveness of an indorsement, instruction, or entitlement order is determined as of the date
6 the indorsement, instruction, or entitlement order is made, and an indorsement, instruction, or entitlement
7 order does not become ineffective by reason of any later change of circumstances.

8

9 **NEW SECTION. Section 28. Warranties in direct holding.** (1) A person who transfers a certificated
10 security to a purchaser for value warrants to the purchaser, and an indorser, if the transfer is by
11 indorsement, warrants to any subsequent purchaser that:

12 (a) the certificate is genuine and has not been materially altered;

13 (b) the transferor or indorser does not know of any fact that might impair the validity of the
14 security;

15 (c) there is no adverse claim to the security;

16 (d) the transfer does not violate any restriction on transfer;

17 (e) if the transfer is by indorsement, the indorsement is made by an appropriate person, or if the
18 indorsement is by an agent, the agent has actual authority to act on behalf of the appropriate person; and

19 (f) the transfer is otherwise effective and rightful.

20 (2) A person who originates an instruction for registration of transfer of an uncertificated security
21 to a purchaser for value warrants to the purchaser that:

22 (a) the instruction is made by an appropriate person, or if the instruction is by an agent, the agent
23 has actual authority to act on behalf of the appropriate person;

24 (b) the security is valid;

25 (c) there is no adverse claim to the security; and

26 (d) at the time the instruction is presented to the issuer:

27 (i) the purchaser will be entitled to the registration of transfer;

28 (ii) the transfer will be registered by the issuer free from all liens, security interests, restrictions, and
29 claims other than those specified in the instruction;

30 (iii) the transfer will not violate any restriction on transfer; and

1 (iv) the requested transfer will otherwise be effective and rightful.

2 (3) A person who transfers an uncertificated security to a purchaser for value and does not
3 originate an instruction in connection with the transfer warrants that:

4 (a) the uncertificated security is valid;

5 (b) there is no adverse claim to the security;

6 (c) the transfer does not violate any restriction on transfer; and

7 (d) the transfer is otherwise effective and rightful.

8 (4) A person who indorses a security certificate warrants to the issuer that:

9 (a) there is no adverse claim to the security; and

10 (b) the indorsement is effective.

11 (5) A person who originates an instruction for registration of transfer of an uncertificated security
12 warrants to the issuer that:

13 (a) the instruction is effective; and

14 (b) at the time the instruction is presented to the issuer the purchaser will be entitled to the
15 registration of transfer.

16 (6) A person who presents a certificated security for registration of transfer or for payment or
17 exchange warrants to the issuer that the person is entitled to the registration, payment, or exchange, but
18 a purchaser for value and without notice of adverse claims to whom transfer is registered warrants only
19 that the person has no knowledge of any unauthorized signature in a necessary indorsement.

20 (7) If a person acts as agent of another in delivering a certificated security to a purchaser, the
21 identity of the principal was known to the person to whom the certificate was delivered, and the certificate
22 delivered by the agent was received by the agent from the principal or received by the agent from another
23 person at the direction of the principal, the person delivering the security certificate warrants only that the
24 delivering person has authority to act for the principal and does not know of any adverse claim to the
25 certificated security.

26 (8) A secured party who redelivers a security certificate received, or after payment and on order
27 of the debtor delivers the security certificate to another person, makes only the warranties of an agent
28 under subsection (7).

29 (9) Except as otherwise provided in subsection (7), a broker acting for a customer makes to the
30 issuer and a purchaser the warranties provided in subsections (1) through (6). A broker that delivers a

1 security certificate to its customer, or causes its customer to be registered as the owner of an uncertificated
2 security, makes to the customer the warranties provided in subsection (1) or (2) and has the rights and
3 privileges of a purchaser under this section. The warranties of and in favor of the broker acting as an agent
4 are in addition to applicable warranties given by and in favor of the customer.

5
6 **NEW SECTION. Section 29. Warranties in indirect holding.** (1) A person who originates an
7 entitlement order to a securities intermediary warrants to the securities intermediary that:

8 (a) the entitlement order is made by an appropriate person, or if the entitlement order is by an
9 agent, the agent has actual authority to act on behalf of the appropriate person; and

10 (b) there is no adverse claim to the security entitlement.

11 (2) A person who delivers a security certificate to a securities intermediary for credit to a securities
12 account or originates an instruction with respect to an uncertificated security directing that the
13 uncertificated security be credited to a securities account makes to the securities intermediary the
14 warranties specified in [section 28(1) or (2)].

15 (3) If a securities intermediary delivers a security certificate to its entitlement holder or causes its
16 entitlement holder to be registered as the owner of an uncertificated security, the securities intermediary
17 makes to the entitlement holder the warranties specified in [section 28(1) or (2)].

18
19 **NEW SECTION. Section 30. Applicability -- choice of law.** (1) The local law of the issuer's
20 jurisdiction, as specified in subsection (4), governs:

21 (a) the validity of a security;

22 (b) the rights and duties of the issuer with respect to registration of transfer;

23 (c) the effectiveness of registration of transfer by the issuer;

24 (d) whether the issuer owes any duties to an adverse claimant to a security; and

25 (e) whether an adverse claim can be asserted against a person to whom transfer of a certificated
26 or uncertificated security is registered or a person who obtains control of an uncertificated security.

27 (2) The local law of the securities intermediary's jurisdiction, as specified in subsection (5),
28 governs:

29 (a) acquisition of a security entitlement from the securities intermediary;

30 (b) the rights and duties of the securities intermediary and entitlement holder arising out of a

1 security entitlement;

2 (c) whether the securities intermediary owes any duties to an adverse claimant to a security
3 entitlement; and

4 (d) whether an adverse claim can be asserted against a person who acquires a security entitlement
5 from the securities intermediary or a person who purchases a security entitlement or interest therein from
6 an entitlement holder.

7 (3) The local law of the jurisdiction in which a security certificate is located at the time of delivery
8 governs whether an adverse claim can be asserted against a person to whom the security certificate is
9 delivered.

10 (4) "Issuer's jurisdiction" means the jurisdiction under which the issuer of the security is organized
11 or, if permitted by the law of that jurisdiction, the law of another jurisdiction specified by the issuer. An
12 issuer organized under the law of this state may specify the law of another jurisdiction as the law governing
13 the matters specified in subsections (1)(b) through (1)(e).

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

16 (a) If an agreement between the securities intermediary and its entitlement holder specifies that
17 it is governed by the law of a particular jurisdiction, that jurisdiction is the securities intermediary's
18 jurisdiction.

19 (b) If an agreement between the securities intermediary and its entitlement holder does not specify
20 the governing law as provided in subsection (5)(a), but expressly specifies that the securities account is
21 maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary's
22 jurisdiction.

23 (c) If an agreement between the securities intermediary and its entitlement holder does not specify
24 a jurisdiction as provided in subsection (5)(a) or (5)(b), the securities intermediary's jurisdiction is the
25 jurisdiction in which is located the office identified in an account statement as the office serving the
26 entitlement holder's account.

27 (d) If an agreement between the securities intermediary and its entitlement holder does not specify
28 a jurisdiction as provided in subsection (5)(a) or (5)(b) and an account statement does not identify an office
29 serving the entitlement holder's account as provided in subsection (5)(c), the securities intermediary's
30 jurisdiction is the jurisdiction in which is located the chief executive office of the securities intermediary.

1 (6) A securities intermediary's jurisdiction is not determined by the physical location of certificates
2 representing financial assets, or by the jurisdiction in which is organized the issuer of the financial asset
3 with respect to which an entitlement holder has a security entitlement, or by the location of facilities for
4 data processing or other recordkeeping concerning the account.

5
6 NEW SECTION. **Section 31. Clearing corporation rules.** A rule adopted by a clearing corporation
7 governing rights and obligations among the clearing corporation and its participants in the clearing
8 corporation is effective even if the rule conflicts with this chapter and affects another party who does not
9 consent to the rule.

10
11 NEW SECTION. **Section 32. Creditor's legal process.** (1) The interest of a debtor in a certificated
12 security may be reached by a creditor only by actual seizure of the security certificate by the officer making
13 the attachment or levy, except as otherwise provided in subsection (4). However, a certificated security
14 for which the certificate has been surrendered to the issuer may be reached by a creditor by legal process
15 upon the issuer.

16 (2) The interest of a debtor in an uncertificated security may be reached by a creditor only by legal
17 process upon the issuer at its chief executive office in the United States, except as otherwise provided in
18 subsection (4).

19 (3) The interest of a debtor in a security entitlement may be reached by a creditor only by legal
20 process upon the securities intermediary with whom the debtor's securities account is maintained, except
21 as otherwise provided in subsection (4).

22 (4) The interest of a debtor in a certificated security for which the certificate is in the possession
23 of a secured party, or in an uncertificated security registered in the name of a secured party, or a security
24 entitlement maintained in the name of a secured party, may be reached by a creditor by legal process upon
25 the secured party.

26 (5) A creditor whose debtor is the owner of a certificated security, uncertificated security, or
27 security entitlement is entitled to aid from a court of competent jurisdiction, by injunction or otherwise, in
28 reaching the certificated security, uncertificated security, or security entitlement or in satisfying the claim
29 by means allowed at law or in equity in regard to property that cannot readily be reached by other legal
30 process.

1 **NEW SECTION.** **Section 33. Statute of frauds inapplicable.** A contract or modification of a
2 contract for the sale or purchase of a security is enforceable whether or not there is a writing signed or
3 record authenticated by a party against whom enforcement is sought, even if the contract or modification
4 is not capable of performance within 1 year of its making.

5
6 **NEW SECTION.** **Section 34. Evidentiary rules concerning certificated securities.** The following
7 rules apply in an action on a certificated security against the issuer:

8 (1) Unless specifically denied in the pleadings, each signature on a security certificate or in a
9 necessary indorsement is admitted.

10 (2) If the effectiveness of a signature is put in issue, the burden of establishing effectiveness is on
11 the party claiming under the signature, but the signature is presumed to be genuine or authorized.

12 (3) If signatures on a security certificate are admitted or established, production of the certificate
13 entitles a holder to recover on it unless the defendant establishes a defense or a defect going to the validity
14 of the security.

15 (4) If it is shown that a defense or defect exists, the plaintiff has the burden of establishing that
16 the plaintiff or some person under whom the plaintiff claims is a person against whom the defense or defect
17 cannot be asserted.

18
19 **NEW SECTION.** **Section 35. Securities intermediary and others not liable to adverse claimant.** A
20 securities intermediary that has transferred a financial asset pursuant to an effective entitlement order, or
21 a broker or other agent or bailee that has dealt with a financial asset at the direction of its customer or
22 principal, is not liable to a person having an adverse claim to the financial asset, unless the securities
23 intermediary, or broker or other agent or bailee:

24 (1) took the action after it had been served with an injunction, restraining order, or other legal
25 process enjoining it from doing so, issued by a court of competent jurisdiction, and had a reasonable
26 opportunity to act on the injunction, restraining order, or other legal process;

27 (2) acted in collusion with the wrongdoer in violating the rights of the adverse claimant; or

28 (3) in the case of a security certificate that has been stolen, acted with notice of the adverse claim.
29

30 **NEW SECTION.** **Section 36. Securities intermediary as purchaser for value.** A securities

1 intermediary that receives a financial asset and establishes a security entitlement to the financial asset in
2 favor of an entitlement holder is a purchaser for value of the financial asset. A securities intermediary that
3 acquires a security entitlement to a financial asset from another securities intermediary acquires the security
4 entitlement for value if the securities intermediary acquiring the security entitlement establishes a security
5 entitlement to the financial asset in favor of an entitlement holder.

6

7 **NEW SECTION. Section 37. Issuer.** (1) With respect to an obligation on or a defense to a
8 security, an "issuer" includes a person that:

9 (a) places or authorizes the placing of its name on a security certificate, other than as
10 authenticating trustee, registrar, transfer agent, or the like, to evidence a share, participation, or other
11 interest in its property or in an enterprise, or to evidence its duty to perform an obligation represented by
12 the certificate;

13 (b) creates a share, participation, or other interest in its property or in an enterprise, or undertakes
14 an obligation, that is an uncertificated security;

15 (c) directly or indirectly creates a fractional interest in its rights or property, if the fractional interest
16 is represented by a security certificate; or

17 (d) becomes responsible for, or in place of, another person described as an issuer in this section.

18 (2) With respect to an obligation on or defense to a security, a guarantor is an issuer to the extent
19 of its guaranty, whether or not its obligation is noted on a security certificate.

20 (3) With respect to a registration of a transfer, issuer means a person on whose behalf transfer
21 books are maintained.

22

23 **NEW SECTION. Section 38. Issuer's responsibility and defenses -- notice of defect or defense.**

24 (1) Even against a purchaser for value and without notice, the terms of a certificated security include terms
25 stated on the certificate and terms made part of the security by reference on the certificate to another
26 instrument, indenture, or document or to a constitution, statute, ordinance, rule, regulation, order, or the
27 like, to the extent the terms referred to do not conflict with terms stated on the certificate. A reference
28 under this subsection does not of itself charge a purchaser for value with notice of a defect going to the
29 validity of the security, even if the certificate expressly states that a person accepting it admits notice. The
30 terms of an uncertificated security include those stated in any instrument, indenture, or document or in a

1 constitution, statute, ordinance, rule, regulation, order, or the like, pursuant to which the security is issued.

2 (2) The following rules apply if an issuer asserts that a security is not valid:

3 (a) A security other than one issued by a government or governmental subdivision, agency, or
4 instrumentality, even though issued with a defect going to its validity, is valid in the hands of a purchaser
5 for value and without notice of the particular defect unless the defect involves a violation of a constitutional
6 provision. In that case, the security is valid in the hands of a purchaser for value and without notice of the
7 defect, other than one who takes by original issue.

8 (b) Subsection (2)(a) applies to an issuer that is a government or governmental subdivision, agency,
9 or instrumentality only if there has been substantial compliance with the legal requirements governing the
10 issue or the issuer has received a substantial consideration for the issue as a whole or for the particular
11 security and a stated purpose of the issue is one for which the issuer has power to borrow money or issue
12 the security.

13 (3) Except as otherwise provided in [section 41], lack of genuineness of a certificated security is
14 a complete defense, even against a purchaser for value and without notice.

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

18 (5) This section does not affect the right of a party to cancel a contract for a security "when, as
19 and if issued" or "when distributed" in the event of a material change in the character of the security that
20 is the subject of the contract or in the plan or arrangement pursuant to which the security is to be issued
21 or distributed.

22 (6) If a security is held by a securities intermediary against whom an entitlement holder has a
23 security entitlement with respect to the security, the issuer may not assert any defense that the issuer
24 could not assert if the entitlement holder held the security directly.

25

26 **NEW SECTION. Section 39. Staleness as notice of defect or defense.** After an act or event, other
27 than a call that has been revoked, creating a right to immediate performance of the principal obligation
28 represented by a certificated security or setting a date on or after which the security is to be presented or
29 surrendered for redemption or exchange, a purchaser is charged with notice of any defect in its issue or
30 defense of the issuer, if the act or event:

1 (1) requires the payment of money, the delivery of a certificated security, the registration of
 2 transfer of an uncertificated security, or any of them on presentation or surrender of the security certificate,
 3 the money or security is available on the date set for payment or exchange, and the purchaser takes the
 4 security more than one year after that date; or

5 (2) is not covered by subsection (1) and the purchaser takes the security more than 2 years after
 6 the date set for surrender or presentation or the date on which performance became due.

7

8 **NEW SECTION. Section 40. Effect of issuer's restriction on transfer.** A restriction on transfer of
 9 a security imposed by the issuer, even if otherwise lawful, is ineffective against a person without
 10 knowledge of the restriction unless:

11 (1) the security is certificated and the restriction is noted conspicuously on the security certificate;

12 or

13 (2) the security is uncertificated and the registered owner has been notified of the restriction.

14

15 **NEW SECTION. Section 41. Effect of unauthorized signature on security certificate.** An
 16 unauthorized signature placed on a security certificate before or in the course of issue is ineffective, but
 17 the signature is effective in favor of a purchaser for value of the certificated security if the purchaser is
 18 without notice of the lack of authority and the signing has been done by:

19 (1) an authenticating trustee, registrar, transfer agent, or other person entrusted by the issuer with
 20 the signing of the security certificate or of similar security certificates, or the immediate preparation for
 21 signing of any of them; or

22 (2) an employee of the issuer, or of any of the persons listed in subsection (1), entrusted with
 23 responsible handling of the security certificate.

24

25 **NEW SECTION. Section 42. Completion of alteration of security certificate.** (1) If a security
 26 certificate contains the signatures necessary to its issue or transfer but is incomplete in any other respect:

27 (a) any person may complete it by filling in the blanks as authorized; and

28 (b) even if the blanks are incorrectly filled in, the security certificate as completed is enforceable
 29 by a purchaser who took it for value and without notice of the incorrectness.

30 (2) A complete security certificate that has been improperly altered, even if fraudulently, remains

1 enforceable, but only according to its original terms.

2

3 **NEW SECTION. Section 43. Rights and duties of issuer with respect to registered owners.** (1)

4 Before due presentment for registration of transfer of a certificated security in registered form or of an
5 instruction requesting registration of transfer of an uncertificated security, the issuer or indenture trustee
6 may treat the registered owner as the person exclusively entitled to vote, receive notifications, and
7 otherwise exercise all the rights and powers of an owner.

8 (2) This chapter does not affect the liability of the registered owner of a security for a call,
9 assessment, or the like.

10

11 **NEW SECTION. Section 44. Effect of signature of authenticating trustee, registrar, or transfer**
12 **agent.** (1) A person signing a security certificate as authenticating trustee, registrar, transfer agent, or the
13 like, warrants to a purchaser for value of the certificated security, if the purchaser is without notice of a
14 particular defect, that:

15 (a) the certificate is genuine;

16 (b) the person's own participation in the issue of the security is within the person's capacity and
17 within the scope of the authority received by the person from the issuer; and

18 (c) the person has reasonable grounds to believe that the certificated security is in the form and
19 within the amount the issuer is authorized to issue.

20 (2) Unless otherwise agreed, a person signing under subsection (1) does not assume responsibility
21 for the validity of the security in other respects.

22

23 **NEW SECTION. Section 45. Issuer's lien.** A lien in favor of an issuer upon a certificated security
24 is valid against a purchaser only if the right of the issuer to the lien is noted conspicuously on the security
25 certificate.

26

27 **NEW SECTION. Section 46. Overissue.** (1) In this section, "overissue" means the issue of
28 securities in excess of the amount the issuer has corporate power to issue, but an overissue does not occur
29 if appropriate action has cured the overissue.

30 (2) Except as otherwise provided in subsections (3) and (4), the provisions of this chapter which

1 validate a security or compel its issue or reissue do not apply to the extent that validation, issue, or reissue
2 would result in overissue.

3 (3) If an identical security not constituting an overissue is reasonably available for purchase, a
4 person entitled to issue or validation may compel the issuer to purchase the security and deliver it if
5 certificated or register its transfer if uncertificated, against surrender of any security certificate the person
6 holds.

7 (4) If a security is not reasonably available for purchase, a person entitled to issue or validation may
8 recover from the issuer the price the person or the last purchaser for value paid for it with interest from the
9 date of the person's demand.

10

11 **NEW SECTION. Section 47. Delivery.** (1) Delivery of a certificated security to a purchaser occurs
12 when:

13 (a) the purchaser acquires possession of the security certificate;

14 (b) another person, other than a securities intermediary, either acquires possession of the security
15 certificate on behalf of the purchaser or, having previously acquired possession of the certificate,
16 acknowledges that it holds for the purchaser; or

17 (c) a securities intermediary acting on behalf of the purchaser acquires possession of the security
18 certificate, only if the certificate is in registered form and has been specially indorsed to the purchaser by
19 an effective indorsement.

20 (2) Delivery of an uncertificated security to a purchaser occurs when:

21 (a) the issuer registers the purchaser as the registered owner, upon original issue or registration of
22 transfer; or

23 (b) another person, other than a securities intermediary, either becomes the registered owner of the
24 uncertificated security on behalf of the purchaser or, having previously become the registered owner,
25 acknowledges that it holds for the purchaser.

26

27 **NEW SECTION. Section 48. Rights of purchaser.** (1) Except as otherwise provided in subsections
28 (2) and (3), upon delivery of a certificated or uncertificated security to a purchaser, the purchaser acquires
29 all rights in the security that the transferor had or had power to transfer.

30 (2) A purchaser of a limited interest acquires rights only to the extent of the interest purchased.

1 (3) A purchaser of a certificated security who as a previous holder had notice of an adverse claim
2 does not improve its position by taking from a protected purchaser.

3
4 **NEW SECTION. Section 49. Protected purchaser.** (1) "Protected purchaser" means a purchaser
5 of a certificated or uncertificated security, or of an interest therein, who:

6 (a) gives value;

7 (b) does not have notice of any adverse claim to the security; and

8 (c) obtains control of the certificated or uncertificated security.

9 (2) In addition to acquiring the rights of a purchaser, a protected purchaser also acquires its interest
10 in the security free of any adverse claim.

11
12 **NEW SECTION. Section 50. Indorsement.** (1) An indorsement may be in blank or special. An
13 indorsement in blank includes an indorsement to bearer. A special indorsement specifies to whom a
14 security is to be transferred or who has power to transfer it. A holder may convert a blank indorsement
15 to a special indorsement.

16 (2) An indorsement purporting to be only of part of a security certificate representing units intended
17 by the issuer to be separately transferable is effective to the extent of the indorsement.

18 (3) An indorsement, whether special or in blank, does not constitute a transfer until delivery of the
19 certificate on which it appears or, if the indorsement is on a separate document, until delivery of both the
20 document and the certificate.

21 (4) If a security certificate in registered form has been delivered to a purchaser without a necessary
22 indorsement, the purchaser may become a protected purchaser only when the indorsement is supplied.
23 However, against a transferor, a transfer is complete upon delivery and the purchaser has a specifically
24 enforceable right to have any necessary indorsement supplied.

25 (5) An indorsement of a security certificate in bearer form may give notice of an adverse claim to
26 the certificate, but it does not otherwise affect a right to registration that the holder possesses.

27 (6) Unless otherwise agreed, a person making an indorsement assumes only the obligations
28 provided in [section 28] and not an obligation that the security will be honored by the issuer.

29
30 **NEW SECTION. Section 51. Instruction.** (1) If an instruction has been originated by an

1 appropriate person but is incomplete in any other respect, any person may complete it as authorized and
2 the issuer may rely on it as completed, even though it has been completed incorrectly.

3 (2) Unless otherwise agreed, a person initiating an instruction assumes only the obligations imposed
4 by [section 28] and not an obligation that the security will be honored by the issuer.

5

6 **NEW SECTION. Section 52. Effect of guaranteeing signature, indorsement, or instruction.** (1)

7 A person who guarantees a signature of an indorser of a security certificate warrants that at the time of
8 signing:

9 (a) the signature was genuine;

10 (b) the signer was an appropriate person to indorse, or if the signature is by an agent, the agent
11 had actual authority to act on behalf of the appropriate person; and

12 (c) the signer had legal capacity to sign.

13 (2) A person who guarantees a signature of the originator of an instruction warrants that at the
14 time of signing:

15 (a) the signature was genuine;

16 (b) the signer was an appropriate person to originate the instruction, or if the signature is by an
17 agent, the agent had actual authority to act on behalf of the appropriate person, if the person specified in
18 the instruction as the registered owner was, in fact, the registered owner, as to which fact the signature
19 guarantor does not make a warranty; and

20 (c) the signer had legal capacity to sign.

21 (3) A person who specially guarantees the signature of an originator of an instruction makes the
22 warranties of a signature guarantor under subsection (2) and also warrants that at the time the instruction
23 is presented to the issuer:

24 (a) the person specified in the instruction as the registered owner of the uncertificated security will
25 be the registered owner; and

26 (b) the transfer of the uncertificated security requested in the instruction will be registered by the
27 issuer free from all liens, security interests, restrictions, and claims other than those specified in the
28 instruction.

29 (4) A guarantor under subsections (1) and (2) or a special guarantor under subsection (3) does not
30 otherwise warrant the rightfulness of the transfer.

1 (5) A person who guarantees an indorsement of a security certificate makes the warranties of a
2 signature guarantor under subsection (1) and also warrants the rightfulness of the transfer in all respects.

3 (6) A person who guarantees an instruction requesting the transfer of an uncertificated security
4 makes the warranties of a special signature guarantor under subsection (3) and also warrants the
5 rightfulness of the transfer in all respects.

6 (7) An issuer may not require a special guaranty of signature, a guaranty of indorsement, or a
7 guaranty of instruction as a condition to registration of transfer.

8 (8) The warranties under this section are made to a person taking or dealing with the security in
9 reliance on the guaranty, and the guarantor is liable to the person for loss resulting from their breach. An
10 indorser or originator of an instruction whose signature, indorsement, or instruction has been guaranteed
11 is liable to a guarantor for any loss suffered by the guarantor as a result of breach of the warranties of the
12 guarantor.

13

14 **NEW SECTION. Section 53. Purchaser's right to requisites for registration of transfer.** Unless
15 otherwise agreed, the transferor of a security on due demand shall supply the purchaser with proof of
16 authority to transfer or with any other requisite necessary to obtain registration of the transfer of the
17 security, but if the transfer is not for value, a transferor need not comply unless the purchaser pays the
18 necessary expenses. If the transferor fails within a reasonable time to comply with the demand, the
19 purchaser may reject or rescind the transfer.

20

21 **NEW SECTION. Section 54. Duty of issuer to register transfer.** (1) If a certificated security in
22 registered form is presented to an issuer with a request to register transfer or an instruction is presented
23 to an issuer with a request to register transfer of an uncertificated security, the issuer shall register the
24 transfer as requested if:

25 (a) under the terms of the security the person seeking registration of transfer is eligible to have the
26 security registered in its name;

27 (b) the indorsement or instruction is made by the appropriate person or by an agent who has actual
28 authority to act on behalf of the appropriate person;

29 (c) reasonable assurance is given that the indorsement or instruction is genuine and authorized
30 ((section 55));

- 1 (d) any applicable law relating to the collection of taxes has been complied with;
- 2 (e) the transfer does not violate any restriction on transfer imposed by the issuer in accordance
3 with [section 40];
- 4 (f) a demand that the issuer not register transfer has not become effective under [section 56], or
5 the issuer has complied with [section 56(2)] but no legal process or indemnity bond is obtained as provided
6 in [section 56(4)]; and
- 7 (g) the transfer is in fact rightful or is to a protected purchaser.
- 8 (2) If an issuer is under a duty to register a transfer of a security, the issuer is liable to a person
9 presenting a certificated security or an instruction for registration or to the person's principal for loss
10 resulting from unreasonable delay in registration or failure or refusal to register the transfer.

11

12 **NEW SECTION. Section 55. Assurance that indorsement or instruction is effective.** (1) An issuer
13 may require the following assurance that each necessary indorsement or each instruction is genuine and
14 authorized:

15 (a) in all cases, a guaranty of the signature of the person making an indorsement or originating an
16 instruction including, in the case of an instruction, reasonable assurance of identity;

17 (b) if the indorsement is made or the instruction is originated by an agent, appropriate assurance
18 of actual authority to sign;

19 (c) if the indorsement is made or the instruction is originated by a fiduciary pursuant to [section
20 27(1)(d) or (1)(e)], appropriate evidence of appointment or incumbency;

21 (d) if there is more than one fiduciary, reasonable assurance that all who are required to sign have
22 done so; and

23 (e) if the indorsement is made or the instruction is originated by a person not covered by another
24 provision of this subsection, assurance appropriate to the case corresponding as nearly as may be to the
25 provisions of this subsection.

26 (2) An issuer may elect to require reasonable assurance beyond that specified in this section.

27 (3) In this section:

28 (a) "Guaranty of the signature" means a guaranty signed by or on behalf of a person reasonably
29 believed by the issuer to be responsible. An issuer may adopt standards with respect to responsibility if
30 they are not manifestly unreasonable.

1 (b) "Appropriate evidence of appointment or incumbency" means:

2 (i) in the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the
3 direction or supervision of the court or an officer thereof and dated within 60 days before the date of
4 presentation for transfer; or

5 (ii) in any other case, a copy of a document showing the appointment or a certificate issued by or
6 on behalf of a person reasonably believed by an issuer to be responsible or, in the absence of that
7 document or certificate, other evidence the issuer reasonably considers appropriate.

8

9 **NEW SECTION. Section 56. Demand that issuer not register transfer.** (1) A person who is an
10 appropriate person to make an indorsement or originate an instruction may demand that the issuer not
11 register transfer of a security by communicating to the issuer a notification that identifies the registered
12 owner and the issue of which the security is a part and provides an address for communications directed
13 to the person making the demand. The demand is effective only if it is received by the issuer at a time and
14 in a manner affording the issuer reasonable opportunity to act on it.

15 (2) If a certificated security in registered form is presented to an issuer with a request to register
16 transfer or an instruction is presented to an issuer with a request to register transfer of an uncertificated
17 security after a demand that the issuer not register transfer has become effective, the issuer shall promptly
18 communicate to:

19 (a) the person who initiated the demand at the address provided in the demand; and

20 (b) the person who presented the security for registration of transfer or initiated the instruction
21 requesting registration of transfer a notification stating that:

22 (i) the certificated security has been presented for registration of transfer or the instruction for
23 registration of transfer of the uncertificated security has been received;

24 (ii) a demand that the issuer not register transfer had previously been received; and

25 (iii) the issuer will withhold registration of transfer for a period of time stated in the notification in
26 order to provide the person who initiated the demand an opportunity to obtain legal process or an indemnity
27 bond.

28 (3) The period described in subsection (2)(b)(iii) may not exceed 30 days after the date of
29 communication of the notification. A shorter period may be specified by the issuer if it is not manifestly
30 unreasonable.

1 (4) An issuer is not liable to a person who initiated a demand that the issuer not register transfer
2 for any loss the person suffers as a result of registration of a transfer pursuant to an effective indorsement
3 or instruction if the person who initiated the demand does not, within the time stated in the issuer's
4 communication, either:

5 (a) obtain an appropriate restraining order, injunction, or other process from a court of competent
6 jurisdiction enjoining the issuer from registering the transfer; or

7 (b) file with the issuer an indemnity bond, sufficient in the issuer's judgment to protect the issuer
8 and any transfer agent, registrar, or other agent of the issuer involved from any loss it or they may suffer
9 by refusing to register the transfer.

10 (5) This section does not relieve an issuer from liability for registering transfer pursuant to an
11 indorsement or instruction that was not effective.

12
13 **NEW SECTION. Section 57. Wrongful registration.** (1) Except as otherwise provided in [section
14 59], an issuer is liable for wrongful registration of transfer if the issuer has registered a transfer of a security
15 to a person not entitled to it, and the transfer was registered:

16 (a) pursuant to an ineffective indorsement or instruction;

17 (b) after a demand that the issuer not register transfer became effective under [section 56(1)] and
18 the issuer did not comply with [section 56(2)];

19 (c) after the issuer had been served with an injunction, restraining order, or other legal process
20 enjoining it from registering the transfer, issued by a court of competent jurisdiction, and the issuer had a
21 reasonable opportunity to act on the injunction, restraining order, or other legal process; or

22 (d) by an issuer acting in collusion with the wrongdoer.

23 (2) An issuer that is liable for wrongful registration of transfer under subsection (1) on demand shall
24 provide the person entitled to the security with a like certificated or uncertificated security, and any
25 payments or distributions that the person did not receive as a result of the wrongful registration. If an
26 overissue would result, the issuer's liability to provide the person with a like security is governed by
27 [section 46].

28 (3) Except as otherwise provided in subsection (1) or in a law relating to the collection of taxes,
29 an issuer is not liable to an owner or other person suffering loss as a result of the registration of a transfer
30 of a security if registration was made pursuant to an effective indorsement or instruction.

1 **NEW SECTION. Section 58. Replacement of lost, destroyed, or wrongfully taken security**
2 **certificate.** (1) If an owner of a certificated security, whether in registered or bearer form, claims that the
3 certificate has been lost, destroyed, or wrongfully taken, the issuer shall issue a new certificate if the
4 owner:

5 (a) so requests before the issuer has notice that the certificate has been acquired by a protected
6 purchaser;

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

8 (c) satisfies other reasonable requirements imposed by the issuer.

9 (2) If, after the issue of a new security certificate, a protected purchaser of the original certificate
10 presents it for registration of transfer, the issuer shall register the transfer unless an overissue would result.
11 In that case, the issuer's liability is governed by [section 46]. In addition to any rights on the indemnity
12 bond, an issuer may recover the new certificate from a person to whom it was issued or any person taking
13 under that person, except a protected purchaser.

14
15 **NEW SECTION. Section 59. Obligation to notify issuer of lost, destroyed, or wrongfully taken**
16 **security certificate.** If a security certificate has been lost, apparently destroyed, or wrongfully taken, and
17 the owner fails to notify the issuer of that fact within a reasonable time after the owner has notice of it and
18 the issuer registers a transfer of the security before receiving notification, the owner may not assert against
19 the issuer a claim for registering the transfer under [section 57] or a claim to a new security certificate
20 under [section 58].

21
22 **NEW SECTION. Section 60. Authenticating trustee, transfer agent, and registrar.** A person acting
23 as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of a
24 transfer of its securities, in the issue of new security certificates or uncertificated securities, or in the
25 cancellation of surrendered security certificates has the same obligation to the holder or owner of a
26 certificated or uncertificated security with regard to the particular functions performed as the issuer has in
27 regard to those functions.

28
29 **NEW SECTION. Section 61. Securities account -- acquisition of security entitlement from securities**
30 **intermediary.** (1) "Securities account" means an account to which a financial asset is or may be credited

1 in accordance with an agreement under which the person maintaining the account undertakes to treat the
2 person for whom the account is maintained as entitled to exercise the rights that comprise the financial
3 asset.

4 (2) Except as otherwise provided in subsections (4) and (5), a person acquires a security
5 entitlement if a securities intermediary:

6 (a) indicates by book entry that a financial asset has been credited to the person's securities
7 account;

8 (b) receives a financial asset from the person or acquires a financial asset for the person and, in
9 either case, accepts it for credit to the person's securities account; or

10 (c) becomes obligated under other law, regulation, or rule to credit a financial asset to the person's
11 securities account.

12 (3) If a condition of subsection (2) has been met, a person has a security entitlement even though
13 the securities intermediary does not itself hold the financial asset.

14 (4) If a securities intermediary holds a financial asset for another person, and the financial asset
15 is registered in the name of, payable to the order of, or specially indorsed to the other person, and has not
16 been indorsed to the securities intermediary or in blank, the other person is treated as holding the financial
17 asset directly rather than as having a security entitlement with respect to the financial asset.

18 (5) Issuance of a security is not establishment of a security entitlement.

19

20 **NEW SECTION. Section 62. Assertion of adverse claim against entitlement holder.** An action
21 based on an adverse claim to a financial asset, whether framed in conversion, replevin, constructive trust,
22 equitable lien, or other theory, may not be asserted against a person who acquires a security entitlement
23 under [section 61] for value and without notice of the adverse claim.

24

25 **NEW SECTION. Section 63. Property interest of entitlement holder in financial asset held by**
26 **securities intermediary.** (1) To the extent necessary for a securities intermediary to satisfy all security
27 entitlements with respect to a particular financial asset, all interests in that financial asset held by the
28 securities intermediary are held by the securities intermediary for the entitlement holders, are not property
29 of the securities intermediary, and are not subject to claims of creditors of the securities intermediary,
30 except as otherwise provided in [section 71].

1 (2) An entitlement holder's property interest with respect to a particular financial asset under
2 subsection (1) is a pro rata property interest in all interests in that financial asset held by the securities
3 intermediary, without regard to the time the entitlement holder acquired the security entitlement or the time
4 the securities intermediary acquired the interest in that financial asset.

5 (3) An entitlement holder's property interest with respect to a particular financial asset under
6 subsection (1) may be enforced against the securities intermediary only by exercise of the entitlement
7 holder's rights under [sections 65 through 68].

8 (4) An entitlement holder's property interest with respect to a particular financial asset under
9 subsection (1) may be enforced against a purchaser of the financial asset or interest therein only if:

10 (a) insolvency proceedings have been initiated by or against the securities intermediary;

11 (b) the securities intermediary does not have sufficient interests in the financial asset to satisfy the
12 security entitlements of all of its entitlement holders to that financial asset;

13 (c) the securities intermediary violated its obligations under [section 64] by transferring the financial
14 asset or interest therein to the purchaser; and

15 (d) the purchaser is not protected under subsection (6).

16 (5) The trustee or other liquidator, acting on behalf of all entitlement holders having security
17 entitlements with respect to a particular financial asset, may recover the financial asset, or interest therein,
18 from the purchaser. If the trustee or other liquidator elects not to pursue that right, an entitlement holder
19 whose security entitlement remains unsatisfied has the right to recover its interest in the financial asset
20 from the purchaser.

21 (6) An action based on the entitlement holder's property interest with respect to a particular
22 financial asset under subsection (1), whether framed in conversion, replevin, constructive trust, equitable
23 lien, or other theory, may not be asserted against any purchaser of a financial asset or interest therein who
24 gives value, obtains control, and does not act in collusion with the securities intermediary in violating the
25 securities intermediary's obligations under [section 64].

26
27 **NEW SECTION. Section 64. Duty of securities intermediary to maintain financial asset.** (1) A
28 securities intermediary shall promptly obtain and thereafter maintain a financial asset in a quantity
29 corresponding to the aggregate of all security entitlements it has established in favor of its entitlement
30 holders with respect to that financial asset. The securities intermediary may maintain those financial assets

1 directly or through one or more other securities intermediaries.

2 (2) Except to the extent otherwise agreed by its entitlement holder, a securities intermediary may
3 not grant any security interests in a financial asset it is obligated to maintain pursuant to subsection (1).

4 (3) A securities intermediary satisfies the duty in subsection (1) if:

5 (a) the securities intermediary acts with respect to the duty as agreed upon by the entitlement
6 holder and the securities intermediary; or

7 (b) in the absence of agreement, the securities intermediary exercises due care in accordance with
8 reasonable commercial standards to obtain and maintain the financial asset.

9 (4) This section does not apply to a clearing corporation that is itself the obligor of an option or
10 similar obligation to which its entitlement holders have security entitlements.

11

12 **NEW SECTION. Section 65. Duty of securities intermediary with respect to payments and**

13 **distributions.** (1) A securities intermediary shall take action to obtain a payment or distribution made by
14 the issuer of a financial asset. A securities intermediary satisfies the duty if:

15 (a) the securities intermediary acts with respect to the duty as agreed upon by the entitlement
16 holder and the securities intermediary; or

17 (b) in the absence of agreement, the securities intermediary exercises due care in accordance with
18 reasonable commercial standards to attempt to obtain the payment or distribution.

19 (2) A securities intermediary is obligated to its entitlement holder for a payment or distribution
20 made by the issuer of a financial asset if the payment or distribution is received by the securities
21 intermediary.

22

23 **NEW SECTION. Section 66. Duty of securities intermediary to exercise rights as directed by**

24 **entitlement holder.** A securities intermediary shall exercise rights with respect to a financial asset if
25 directed to do so by an entitlement holder. A securities intermediary satisfies the duty if:

26 (1) the securities intermediary acts with respect to the duty as agreed upon by the entitlement
27 holder and the securities intermediary; or

28 (2) in the absence of agreement, the securities intermediary either places the entitlement holder
29 in a position to exercise the rights directly or exercises due care in accordance with reasonable commercial
30 standards to follow the direction of the entitlement holder.

1 **NEW SECTION. Section 67. Duty of securities intermediary to comply with entitlement order.** (1)

2 A securities intermediary shall comply with an entitlement order if the entitlement order is originated by the
3 appropriate person, the securities intermediary has had reasonable opportunity to assure itself that the
4 entitlement order is genuine and authorized, and the securities intermediary has had reasonable opportunity
5 to comply with the entitlement order. A securities intermediary satisfies the duty if:

6 (a) the securities intermediary acts with respect to the duty as agreed upon by the entitlement
7 holder and the securities intermediary; or

8 (b) in the absence of agreement, the securities intermediary exercises due care in accordance with
9 reasonable commercial standards to comply with the entitlement order.

10 (2) If a securities intermediary transfers a financial asset pursuant to an ineffective entitlement
11 order, the securities intermediary shall reestablish a security entitlement in favor of the person entitled to
12 it, and pay or credit any payments or distributions that the person did not receive as a result of the
13 wrongful transfer. If the securities intermediary does not reestablish a security entitlement, the securities
14 intermediary is liable to the entitlement holder for damages.

15

16 **NEW SECTION. Section 68. Duty of securities intermediary to change entitlement holder's position**
17 **to other form of security holding.** A securities intermediary shall act at the direction of an entitlement

18 holder to change a security entitlement into another available form of holding for which the entitlement
19 holder is eligible, or to cause the financial asset to be transferred to a securities account of the entitlement
20 holder with another securities intermediary. A securities intermediary satisfies the duty if:

21 (1) the securities intermediary acts as agreed upon by the entitlement holder and the securities
22 intermediary; or

23 (2) in the absence of agreement, the securities intermediary exercises due care in accordance with
24 reasonable commercial standards to follow the direction of the entitlement holder.

25

26 **NEW SECTION. Section 69. Specification of duties of securities intermediary by other statute or**
27 **regulation -- manner of performance of duties of securities intermediary and exercise of rights of entitlement**
28 **holder.** (1) If the substance of a duty imposed upon a securities intermediary by [sections 64 through 68]
29 is the subject of other statute, regulation, or rule, compliance with that statute, regulation, or rule satisfies
30 the duty.

1 (2) To the extent that specific standards for the performance of the duties of a securities
2 intermediary or the exercise of the rights of an entitlement holder are not specified by other statute,
3 regulation, or rule or by agreement between the securities intermediary and entitlement holder, the
4 securities intermediary shall perform its duties and the entitlement holder shall exercise its rights in a
5 commercially reasonable manner.

6 (3) The obligation of a securities intermediary to perform the duties imposed by [sections 64
7 through 68] is subject to:

8 (a) rights of the securities intermediary arising out of a security interest under a security agreement
9 with the entitlement holder or otherwise; and

10 (b) rights of the securities intermediary under other law, regulation, rule, or agreement to withhold
11 performance of its duties as a result of unfulfilled obligations of the entitlement holder to the securities
12 intermediary.

13 (4) [Sections 64 through 68] do not require a securities intermediary to take any action that is
14 prohibited by other statute, regulation, or rule.

15
16 **NEW SECTION. Section 70. Rights of purchaser of security entitlement from entitlement holder.**

17 (1) An action based on an adverse claim to a financial asset or security entitlement, whether framed in
18 conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a
19 person who purchases a security entitlement, or an interest therein, from an entitlement holder if the
20 purchaser gives value, does not have notice of the adverse claim, and obtains control.

21 (2) If an adverse claim could not have been asserted against an entitlement holder under [section
22 62], the adverse claim cannot be asserted against a person who purchases a security entitlement, or an
23 interest therein, from the entitlement holder.

24 (3) In a case not covered by the priority rules in chapter 9, a purchaser for value of a security
25 entitlement, or an interest therein, who obtains control has priority over a purchaser of a security
26 entitlement, or an interest therein, who does not obtain control. Purchasers who have control rank equally,
27 except that a securities intermediary as purchaser has priority over a conflicting purchaser who has control
28 unless otherwise agreed by the securities intermediary.

29
30 **NEW SECTION. Section 71. Priority among security interests and entitlement holders.** (1) Except

1 as otherwise provided in subsections (2) and (3), if a securities intermediary does not have sufficient
2 interests in a particular financial asset to satisfy both its obligations to entitlement holders who have
3 security entitlements to that financial asset and its obligation to a creditor of the securities intermediary
4 who has a security interest in that financial asset, the claims of entitlement holders, other than the creditor,
5 have priority over the claim of the creditor.

6 (2) A claim of a creditor of a securities intermediary who has a security interest in a financial asset
7 held by a securities intermediary has priority over claims of the securities intermediary's entitlement holders
8 who have security entitlements with respect to that financial asset if the creditor has control over the
9 financial asset.

10 (3) If a clearing corporation does not have sufficient financial assets to satisfy both its obligations
11 to entitlement holders who have security entitlements with respect to a financial asset and its obligation
12 to a creditor of the clearing corporation who has a security interest in that financial asset, the claim of the
13 creditor has priority over the claims of entitlement holders.

14

15 **Section 72.** Section 30-9-103, MCA, is amended to read:

16 **"30-9-103. Perfection of security interests in multiple state transactions.** (1) (a) Subsection (1)
17 applies to documents and instruments and to goods other than those covered by a certificate of title
18 described in subsection (2), mobile goods described in subsection (3), and minerals described in subsection
19 (5).

20 (b) Except as otherwise provided in subsection (1), perfection and the effect of perfection or
21 nonperfection of a security interest in collateral are governed by the law of the jurisdiction where the
22 collateral is when the last event occurs on which is based the assertion that the security interest is
23 perfected or unperfected.

24 (c) If the parties to a transaction creating a purchase money security interest in goods in one
25 jurisdiction understand at the time that the security interest attaches that the goods will be kept in another
26 jurisdiction, then the law of the other jurisdiction governs the perfection and the effect of perfection or
27 nonperfection of the security interest from the time it attaches until 30 days after the debtor receives
28 possession of the goods and thereafter if the goods are taken to the other jurisdiction before the end of the
29 30-day period.

30 (d) When collateral is brought into and kept in this state while subject to a security interest

1 perfected under the law of the jurisdiction from which the collateral was removed, the security interest
2 remains perfected, but if action is required by part 3 of this chapter to perfect the security interest:

3 (i) if the action is not taken before the expiration of the period of perfection in the other jurisdiction
4 or the end of 4 months after the collateral is brought into this state, whichever period first expires, the
5 security interest becomes unperfected at the end of that period and is thereafter considered to have been
6 unperfected as against a person who became a purchaser after removal;

7 (ii) if the action is taken before the expiration of the period specified in (1)(d)(i), the security interest
8 continues perfected thereafter;

9 (iii) for the purpose of priority over a buyer of consumer goods (30-9-307(2)), the period of the
10 effectiveness of a filing in the jurisdiction from which the collateral is removed is governed by the rules with
11 respect to perfection in (1)(d)(i) and (ii).

12 (2) (a) Subsection (2) applies to goods covered by a certificate of title issued under a statute of
13 this state or of another jurisdiction under the law of which indication of a security interest on the certificate
14 is required as a condition of perfection.

15 (b) Except as otherwise provided in subsection (2), perfection and the effect of perfection or
16 nonperfection of the security interest are governed by the law (including the conflict of laws rules) of the
17 jurisdiction issuing the certificate until 4 months after the goods are removed from that jurisdiction and
18 thereafter until the goods are registered in another jurisdiction, but in any event not beyond surrender of
19 the certificate. After the expiration of that period, the goods are not covered by the certificate of title within
20 the meaning of this section.

21 (c) Except with respect to the rights of a buyer described in (2)(d), a security interest, perfected
22 in another jurisdiction otherwise than by notation on a certificate of title, in goods brought into this state
23 and thereafter covered by a certificate of title issued by this state is subject to the rules stated in (1)(d).

24 (d) If goods are brought into this state while a security interest therein is perfected in any manner
25 under the law of the jurisdiction from which the goods are removed and a certificate of title is issued by
26 this state and the certificate does not show that the goods are subject to the security interest or that they
27 may be subject to security interests not shown on the certificate, the security interest is subordinate to the
28 rights of a buyer of the goods who is not in the business of selling goods of that kind to the extent that
29 he the buyer gives value and receives delivery of the goods after issuance of the certificate and without
30 knowledge of the security interest.

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

7 (b) The law (including the conflict of laws rules) of the jurisdiction in which the debtor is located
8 governs the perfection and the effect of perfection or nonperfection of the security interest.

9 (c) If, however, the debtor is located in a jurisdiction which is not a part of the United States and
10 which does not provide for perfection of the security interest by filing or recording in that jurisdiction, the
11 law of the jurisdiction in the United States in which the debtor has its major executive office in the United
12 States governs the perfection and the effect of perfection or nonperfection of the security interest through
13 filing. In the alternative, if the debtor is located in a jurisdiction which is not a part of the United States or
14 Canada and the collateral is accounts or general intangibles for money due or to become due, the security
15 interest may be perfected by notification to the account debtor. As used in subsection (3)(c), "United
16 States" includes its territories and possessions and the Commonwealth of Puerto Rico.

17 (d) A debtor shall be considered located at ~~his~~ the debtor's place of business if ~~he~~ the debtor has
18 one, at ~~his~~ the chief executive office if ~~he~~ the debtor has more than one place of business, otherwise at
19 ~~his~~ the debtor's residence. If, however, the debtor is a foreign air carrier under the Federal Aviation Act,
20 it shall be considered located at the designated office of the agent upon whom service of process may be
21 made on behalf of the foreign air carrier.

22 (e) A security interest perfected under the law of the jurisdiction of the location of the debtor is
23 perfected until the expiration of 4 months after a change of the debtor's location to another jurisdiction or
24 until perfection would have ceased by the law of the first jurisdiction, whichever period first expires. Unless
25 perfected in the new jurisdiction before the end of that period, it becomes unperfected thereafter and is
26 considered to have been unperfected as against a person who became a purchaser after the change.

27 (4) The rules stated for goods in subsection (1) apply to a possessory security interest in chattel
28 paper. The rules stated for accounts in subsection (3) apply to a nonpossessory security interest in chattel
29 paper, but the security interest may not be perfected by notification to the account debtor.

30 (5) Perfection and the effect of perfection or nonperfection of a security interest which is created

1 by a debtor who has an interest in minerals or the like (including oil and gas) before extraction and which
2 attaches thereto as extracted or which attaches to an account resulting from the sale thereof at the
3 wellhead or minehead are governed by the law (including the conflict of laws rules) of the jurisdiction
4 wherein the wellhead or minehead is located.

5 (6) ~~(a) The law (including the conflict of laws rules) of the jurisdiction of organization of the issuer~~
6 ~~governs the perfection and the effect of perfection or nonperfection of a security interest in uncertificated~~
7 ~~securities. This subsection (6) applies to investment property.~~

8 (b) Except as otherwise provided in subsection (6)(f), during the time that a security certificate is
9 located in a jurisdiction, perfection of a security interest, the effect of perfection or nonperfection, and the
10 priority of a security interest in the certificated security are governed by the local law of that jurisdiction.

11 (c) Except as otherwise provided in subsection (6)(f), perfection of a security interest, the effect
12 of perfection or nonperfection, and the priority of a security interest in an uncertificated security are
13 governed by the local law of the issuer's jurisdiction as specified in [section 30(4)].

14 (d) Except as otherwise provided in subsection (6)(f), perfection of a security interest, the effect
15 of perfection or nonperfection, and the priority of a security interest in a security entitlement or securities
16 account are governed by the local law of the securities intermediary's jurisdiction as specified in [section
17 30(5)].

18 (e) Except as otherwise provided in subsection (6)(f), perfection of a security interest, the effect
19 of perfection or nonperfection, and the priority of a security interest in a commodity contract or commodity
20 account are governed by the local law of the commodity intermediary's jurisdiction. The following rules
21 determine a "commodity intermediary's jurisdiction" for purposes of this subsection (6)(e):

22 (i) If an agreement between the commodity intermediary and commodity customer specifies that
23 it is governed by the law of a particular jurisdiction, that jurisdiction is the commodity intermediary's
24 jurisdiction.

25 (ii) If an agreement between the commodity intermediary and commodity customer does not specify
26 the governing law as provided in subsection (6)(e)(i), but expressly specifies that the commodity account
27 is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity intermediary's
28 jurisdiction.

29 (iii) If an agreement between the commodity intermediary and commodity customer does not specify
30 a jurisdiction as provided in subsections (6)(e)(i) or (6)(e)(ii), the commodity intermediary's jurisdiction is

1 the jurisdiction in which is located the office identified in an account statement as the office serving the
2 commodity customer's account.

3 (iv) If an agreement between the commodity intermediary and commodity customer does not specify
4 a jurisdiction as provided in subsections (6)(e)(i) or (6)(e)(ii) and an account statement does not identify an
5 office serving the commodity customer's account as provided in subsection (6)(e)(iii), the commodity
6 intermediary's jurisdiction is the jurisdiction in which is located the chief executive office of the commodity
7 intermediary.

8 (f) Perfection of a security interest by filing, automatic perfection of a security interest in
9 investment property granted by a broker or securities intermediary, and automatic perfection of a security
10 interest in a commodity contract or commodity account granted by a commodity intermediary are governed
11 by the local law of the jurisdiction in which the debtor is located."

12
13 **Section 73.** Section 30-9-104, MCA, is amended to read:

14 **"30-9-104. Transactions excluded from chapter.** This chapter does not apply:

15 (1) to a security interest subject to any statute of the United States such as the Ship Mortgage Act,
16 1920, to the extent that the statute governs the rights of parties to and third parties affected by
17 transactions in particular types of property;

18 (2) to a landlord's lien;

19 (3) to a lien given by statute or other rule of law for services or materials except as provided in
20 30-9-310 on priority of such liens;

21 (4) to a transfer of a claim for wages, salary, or other compensation of an employee;

22 (5) to a transfer by a government or governmental subdivision or agency;

23 (6) to a sale of accounts or chattel paper as part of a sale of the business out of which they arose,
24 or an assignment of accounts or chattel paper which is for the purpose of collection only, or a transfer of
25 a right to payment under a contract to an assignee who is also to do the performance under the contract,
26 or a transfer of a single account to an assignee in whole or partial satisfaction of a preexisting
27 indebtedness;

28 (7) to a transfer of an interest or claim in or under any policy of insurance, except as provided with
29 respect to proceeds (30-9-306) and priorities in proceeds (30-9-312);

30 (8) to a right represented by a judgment (other than a judgment taken on a right to payment which

1 was collateral);

2 (9) to any right of setoff;

3 (10) except to the extent that provision is made for fixtures in 30-9-313, to the creation or transfer
4 of an interest in or lien on real estate, including a lease or rents under the lease;

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

6 (12) to a transfer of an interest in any deposit account (30-9-105(1)), except as provided with
7 respect to proceeds (30-9-306) and priorities in proceeds (30-9-312); ~~or~~

8 (13) to liquor in an agency liquor store as defined in 16-1-106; or

9 (14) to a transfer of an interest in a letter of credit other than the rights to proceeds of a written
10 letter of credit."

11

12 **Section 74.** Section 30-9-105, MCA, is amended to read:

13 **"30-9-105. Definitions and index of definitions.** (1) In this chapter, the following definitions apply
14 unless the context otherwise requires:

15 (a) "Account debtor" means the person who is obligated on an account, chattel paper, or general
16 intangible.

17 (b) "Chattel paper" means a writing or writings which evidence both a monetary obligation and a
18 security interest in or a lease of specific goods, but a charter or other contract involving the use or hire of
19 a vessel is not chattel paper. When a transaction is evidenced both by such a security agreement or a lease
20 and by an instrument or a series of instruments, the group of writings taken together constitutes chattel
21 paper.

22 (c) "Collateral" means the property subject to a security interest, and includes accounts and chattel
23 paper which have been sold.

24 (d) "Debtor" means the person who owes payment or other performance of the obligation secured,
25 whether or not he owns or has rights in the collateral, and includes the seller of accounts or chattel paper.
26 When the debtor and the owner of the collateral are not the same person, the term "debtor" means the
27 owner of the collateral in any provision of the chapter dealing with the collateral, the obligor in any
28 provision dealing with the obligation, and may include both where the context so requires.

29 (e) "Deposit account" means a demand, time, savings, passbook, or like account maintained with
30 a bank, savings and loan association, credit union, or like organization, other than an account evidenced

1 by a certificate of deposit.

2 (f) "Document" means document of title as defined in the general definitions of chapter 1
3 (30-1-201) and a receipt of the kind described in 30-7-201(2).

4 (g) "Encumbrance" includes real estate mortgages and other liens on real estate and all other rights
5 in real estate that are not ownership interests.

6 (h) "Goods" includes all things which are movable at the time the security interest attaches or
7 which are fixtures (30-9-313), but does not include money, documents, instruments, investment property,
8 accounts, chattel paper, general intangibles, or minerals or the like (including oil and gas) before extraction.
9 "Goods" also includes standing timber that is to be cut and removed under a conveyance or contract for
10 sale, the unborn young of animals, and growing crops.

11 (i) "Instrument" means a negotiable instrument (defined in 30-3-104), ~~or a certificated security~~
12 ~~(defined in 30-8-102)~~ or any other writing which evidences a right to the payment of money and is not itself
13 a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery
14 with any necessary endorsement or assignment. The term does not include investment property.

15 (j) "Mortgage" means a consensual interest created by a real estate mortgage, a trust deed on real
16 estate, or the like.

17 (k) An advance is made "pursuant to commitment" if the secured party has bound ~~himself~~ the
18 secured party to make it, whether or not a subsequent event of default or other event not within ~~his~~ the
19 secured party's control has relieved or may relieve ~~him~~ the secured party from ~~his~~ the secured party's
20 obligation.

21 (l) "Security agreement" means an agreement which creates or provides for a security interest.

22 (m) "Secured party" means a lender, seller, or other person in whose favor there is a security
23 interest, including a person to whom accounts or chattel paper have been sold. When the holders of
24 obligations issued under an indenture of trust, equipment trust agreement, or the like are represented by
25 a trustee or other person, the representative is the secured party.

26 (n) "Transmitting utility" means any person primarily engaged in the railroad, street railway, or
27 trolley bus business; the electric or electronics communications transmission business; the transmission of
28 goods by pipeline; or the transmission or the production and transmission of electricity, steam, gas, or
29 water or the provision of sewer service.

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

- 1 "Account". 30-9-106.
2 "Attach". 30-9-203.
3 "Commodity contract". [section 76].
4 "Commodity customer". [section 76].
5 "Commodity intermediary". [section 76].
6 "Construction mortgage". 30-9-313(1).
7 "Consumer goods". 30-9-109(1).
8 "Control". [section 76].
9 "Equipment". 30-9-109(2).
10 "Farm products". 30-9-109(3).
11 "Fixture". 30-9-313(1).
12 "Fixture filing". 30-9-313.
13 "General intangibles". 30-9-106.
14 "Inventory". 30-9-109(4).
15 "Investment property". [section 76].
16 "Lien creditor". 30-9-301(3).
17 "Proceeds". 30-9-306(1).
18 "Purchase money security interest". 30-9-107.
19 "United States". 30-9-103.
20 (3) The following definitions in other chapters apply to this chapter:
21 "Broker". [section 22].
22 "Certificated security". [section 22].
23 "Check". 30-3-104.
24 "Clearing corporation". [section 22].
25 "Contract for sale". 30-2-106.
26 "Control". [section 26].
27 "Delivery". [section 47].
28 "Entitlement holder". [section 22].
29 "Financial asset". [section 22].
30 "Holder in due course". 30-3-302.

1 "Letter of credit". [section 6].

2 "Note". 30-3-104.

3 "Proceeds of a letter of credit". [section 18(1)].

4 "Sale". 30-2-106.

5 "Securities intermediary". [section 22].

6 "Security". [section 22].

7 "Security certificate". [section 22]

8 "Security entitlement". [section 22].

9 "Uncertificated security". [section 22].

10 (4) In addition Chapter 1 contains general definitions and principles of construction and
11 interpretation applicable throughout this chapter."

12

13 **Section 75.** Section 30-9-106, MCA, is amended to read:

14 **"30-9-106. Definitions -- "account" -- "general intangibles".** "Account" means any right to
15 payment for goods sold or leased or for services rendered which is not evidenced by an instrument or
16 chattel paper, whether or not it has been earned by performance. "General intangibles" means any personal
17 property (including things in action) other than goods, accounts, chattel paper, documents, instruments,
18 investment property, rights to proceeds of written letters of credit, and money. All rights to payment earned
19 or unearned under a charter or other contract involving the use or hire of a vessel and all rights incident to
20 the charter or contract are accounts."

21

22 **NEW SECTION. Section 76. Investment property.** (1) In this chapter:

23 (a) "Commodity account" means an account maintained by a commodity intermediary in which a
24 commodity contract is carried for a commodity customer.

25 (b) "Commodity contract" means a commodity futures contract, an option on a commodity futures
26 contract, a commodity option, or other contract that, in each case, is:

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

29 (ii) traded on a foreign commodity board of trade, exchange, or market, and is carried on the books
30 of a commodity intermediary for a commodity customer.

1 (c) "Commodity customer" means a person for whom a commodity intermediary carries a
2 commodity contract on its books.

3 (d) "Commodity intermediary" means:

4 (i) a person who is registered as a futures commission merchant under the federal commodities
5 laws; or

6 (ii) a person who in the ordinary course of its business provides clearance or settlement services
7 for a board of trade that has been designated as a contract market pursuant to the federal commodities
8 laws.

9 (e) "Control" with respect to a certificated security, uncertificated security, or security entitlement
10 has the meaning specified in [section 26]. A secured party has control over a commodity contract if by
11 agreement among the commodity customer, the commodity intermediary, and the secured party, the
12 commodity intermediary has agreed that it will apply any value distributed on account of the commodity
13 contract as directed by the secured party without further consent by the commodity customer. If a
14 commodity customer grants a security interest in a commodity contract to its own commodity intermediary,
15 the commodity intermediary as secured party has control. A secured party has control over a securities
16 account or commodity account if the secured party has control over all security entitlements or commodity
17 contracts carried in the securities account or commodity account.

18 (f) "Investment property" means:

19 (i) a security, whether certificated or uncertificated;

20 (ii) a security entitlement;

21 (iii) a securities account;

22 (iv) a commodity contract; or

23 (v) a commodity account.

24 (2) Attachment or perfection of a security interest in a securities account is also attachment or
25 perfection of a security interest in all security entitlements carried in the securities account. Attachment
26 or perfection of a security interest in a commodity account is also attachment or perfection of a security
27 interest in all commodity contracts carried in the commodity account.

28 (3) A description of collateral in a security agreement or financing statement is sufficient to create
29 or perfect a security interest in a certificated security, uncertificated security, security entitlement,
30 securities account, commodity contract, or commodity account whether it describes the collateral by those

1 terms, or as investment property, or by description of the underlying security, financial asset, or commodity
2 contract. A description of investment property collateral in a security agreement or financing statement
3 is sufficient if it identifies the collateral by specific listing, by category, by quantity, by a computational or
4 allocational formula or procedure, or by any other method, if the identity of the collateral is objectively
5 determinable.

6 (4) Perfection of a security interest in investment property is governed by the following rules:

7 (a) A security interest in investment property may be perfected by control.

8 (b) Except as otherwise provided in subsections (4)(c) and (4)(d), a security interest in investment
9 property may be perfected by filing.

10 (c) If the debtor is a broker or securities intermediary, a security interest in investment property is
11 perfected when it attaches. The filing of a financing statement with respect to a security interest in
12 investment property granted by a broker or securities intermediary has no effect for purposes of perfection
13 or priority with respect to that security interest.

14 (d) If a debtor is a commodity intermediary, a security interest in a commodity contract or a
15 commodity account is perfected when it attaches. The filing of a financing statement with respect to a
16 security interest in a commodity contract or a commodity account granted by a commodity intermediary
17 has no effect for purposes of perfection or priority with respect to that security interest.

18 (5) Priority between conflicting security interests in the same investment property is governed by
19 the following rules:

20 (a) A security interest of a secured party who has control over investment property has priority
21 over a security interest of a secured party who does not have control over the investment property.

22 (b) Except as otherwise provided in subsections (5)(c) and (5)(d), conflicting security interests of
23 secured parties each of whom has control rank equally.

24 (c) Except as otherwise agreed by the securities intermediary, a security interest in a security
25 entitlement or a securities account granted to the debtor's own securities intermediary has priority over any
26 security interest granted by the debtor to another secured party.

27 (d) Except as otherwise agreed by the commodity intermediary, a security interest in a commodity
28 contract or a commodity account granted to the debtor's own commodity intermediary has priority over
29 any security interest granted by the debtor to another secured party.

30 (e) Conflicting security interests granted by a broker, a securities intermediary, or a commodity

1 intermediary which are perfected without control rank equally.

2 (f) In all other cases, priority between conflicting security interests in investment property is
3 governed by 30-9-312(5), (6), and (7). Section 30-9-312(4) does not apply to investment property.

4 (6) If a security certificate in registered form is delivered to a secured party pursuant to agreement,
5 a written security agreement is not required for attachment or enforceability of the security interest, delivery
6 suffices for perfection of the security interest, and the security interest has priority over a conflicting
7 security interest perfected by means other than control, even if a necessary indorsement is lacking.

8

9 **NEW SECTION. Section 77. Security interest arising in purchase or delivery of financial asset.** (1)

10 If a person buys a financial asset through a securities intermediary in a transaction in which the buyer is
11 obligated to pay the purchase price to the securities intermediary at the time of the purchase, and the
12 securities intermediary credits the financial asset to the buyer's securities account before the buyer pays
13 the securities intermediary, the securities intermediary has a security interest in the buyer's security
14 entitlement securing the buyer's obligation to pay. A security agreement is not required for attachment or
15 enforceability of the security interest, and the security interest is automatically perfected.

16 (2) If a certificated security, or other financial asset represented by a writing which in the ordinary
17 course of business is transferred by delivery with any necessary indorsement or assignment is delivered
18 pursuant to an agreement between persons in the business of dealing with such securities or financial
19 assets and the agreement calls for delivery versus payment, the person delivering the certificate or other
20 financial asset has a security interest in the certificated security or other financial asset securing the seller's
21 right to receive payment. A security agreement is not required for attachment or enforceability of the
22 security interest, and the security interest is automatically perfected.

23

24 **Section 78.** Section 30-9-203, MCA, is amended to read:

25 **"30-9-203. Attachment and enforceability of security interest -- proceeds, formal requisites.** (1)

26 Subject to the provisions of 30-4-208 on the security interest of a collecting bank, ~~30-8-324~~ [sections 76
27 and 77] on security interests in ~~securities~~ investment property, and 30-9-113 on a security interest arising
28 under the Chapter on Sales, a security interest is not enforceable against the debtor or third parties with
29 respect to the collateral and does not attach unless:

30 (a) the collateral is in the possession of the secured party pursuant to agreement, the collateral is

1 investment property and the secured party has control pursuant to agreement, or the debtor has signed a
2 security agreement which contains a description of the collateral and in addition, when the security interest
3 covers crops growing or to be grown or timber to be cut, a description of the land concerned;

4 (b) value has been given; and

5 (c) the debtor has rights in the collateral.

6 (2) A security interest attaches when it becomes enforceable against the debtor with respect to
7 the collateral. Attachment occurs as soon as all of the events specified in subsection (1) have taken place
8 unless explicit agreement postpones the time of attaching.

9 (3) Unless otherwise agreed a security agreement gives the secured party the rights to proceeds
10 provided by 30-9-306.

11 (4) A transaction, although subject to this chapter, is also subject to Title 23, chapter 2, part 5,
12 to Title 23, chapter 2, part 6, to Title 32, chapter 5, as enacted by Chapter 283, Laws of Montana 1959,
13 to Title 31, chapter 1, part 2, as enacted by Chapter 282, Laws of Montana 1959, and to 81-8-301
14 through 81-8-305, Title 61, chapter 3, Title 16, chapters 1 through 6, and Title 31, chapter 1, part 4, as
15 amended, and in the case of conflict between the provisions of this chapter and any such statute, the
16 provisions of such statute control. Failure to comply with any applicable statute has only the effect which
17 is specified therein."

18

19 **Section 79.** Section 30-9-301, MCA, is amended to read:

20 **"30-9-301. Persons who take priority over unperfected security interests -- right of "lien creditor".**

21 (1) Except as otherwise provided in subsection (2), an unperfected security interest is subordinate to the
22 rights of:

23 (a) persons entitled to priority under 30-9-312;

24 (b) a person who becomes a lien creditor before the security interest is perfected;

25 (c) in the case of goods, instruments, documents, and chattel paper, a person who is not a secured
26 party and who is a transferee in bulk or other buyer not in ordinary course of business or is a buyer of farm
27 products in ordinary course of business, to the extent that ~~he~~ the person gives value and receives delivery
28 of the collateral without knowledge of the security interest and before it is perfected;

29 (d) in the case of accounts, ~~and~~ general intangibles, and investment property, a person who is not
30 a secured party and who is a transferee to the extent that ~~he~~ the person gives value without knowledge

1 of the security interest and before it is perfected.

2 (2) If the secured party files with respect to a purchase money security interest before or within
3 20 days after the debtor receives possession of the collateral, ~~he~~ the secured party takes priority over the
4 rights of a transferee in bulk or of a lien creditor which arise between the time the security interest attaches
5 and the time of filing.

6 (3) A "lien creditor" means a creditor who has acquired a lien on the property involved by
7 attachment, levy, or the like and includes an assignee for benefit of creditors from the time of assignment
8 and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time
9 of appointment.

10 (4) A person who becomes a lien creditor while a security interest is perfected takes subject to the
11 security interest only to the extent that it secures advances made before ~~he~~ the person becomes a lien
12 creditor or within 45 days thereafter or made without knowledge of the lien or pursuant to a commitment
13 entered into without knowledge of the lien."
14

15 **Section 80.** Section 30-9-302, MCA, is amended to read:

16 **"30-9-302. When filing is required to perfect security interest -- security interests to which filing**
17 **provisions of this chapter do not apply.** (1) A financing statement must be filed to perfect all security
18 interests except the following:

19 (a) a security interest in collateral in possession of the secured party under 30-9-305;

20 (b) a security interest temporarily perfected in instruments, certificated securities, or documents
21 without delivery under 30-9-304 or in proceeds for a 10-day period under 30-9-306;

22 (c) a security interest created by an assignment of a beneficial interest in a trust or a decedent's
23 estate;

24 (d) a purchase money security interest in consumer goods; but filing is required for a motor vehicle
25 required to be registered, and fixture filing is required for priority over conflicting interests in fixtures to the
26 extent provided in 30-9-313;

27 (e) an assignment of accounts which does not alone or in conjunction with other assignments to
28 the same assignee transfer a significant part of the outstanding accounts of the assignor;

29 (f) a security interest of a collecting bank (30-4-208), ~~in securities (30-8-321)~~, or arising under the
30 Chapter on Sales or covered in subsection (3) of this section;

1 (g) an assignment for the benefit of all creditors of the transferor, and subsequent transfers by the
2 assignee thereunder;

3 (h) a security interest in investment property that is perfected without filing under [section 76 or
4 77].

5 (2) If a secured party assigns a perfected security interest, no filing under this chapter is required
6 in order to continue the perfected status of the security interest against creditors of and transferees from
7 the original debtor.

8 (3) The filing of a financing statement otherwise required by this chapter is not necessary or
9 effective to perfect a security interest in property subject to:

10 (a) a statute or treaty of the United States which provides for a national or international registration
11 or a national or international certificate of title or which specifies a place of filing different from that
12 specified in this chapter for filing of the security interest; or

13 (b) the following statutes of this state: Title 61, chapter 3; Title 23, chapter 2, parts 5 and 6; but
14 during any period in which collateral is inventory held for sale by a person who is in the business of selling
15 goods of that kind, the filing provisions of this chapter (part 4) apply to a security interest in that collateral
16 created by ~~him~~ the person as debtor; or

17 (c) a certificate of title statute of another jurisdiction under the law of which indication of a security
18 interest on the certificate is required as a condition of perfection (30-9-103(2)).

19 (4) Compliance with a statute or treaty described in subsection (3) is equivalent to the filing of a
20 financing statement under this chapter, and a security interest in property subject to the statute or treaty
21 can be perfected only by compliance therewith except as provided in 30-9-103 on multiple state
22 transactions. Duration and renewal of perfection of a security interest perfected by compliance with the
23 statute or treaty are governed by the provisions of the statute or treaty; in other respects the security
24 interest is subject to this chapter."
25

26 **Section 81.** Section 30-9-303, MCA, is amended to read:

27 **"30-9-303. When security interest is perfected -- continuity of perfection.** (1) A security interest
28 is perfected when it has attached and when all of the applicable steps required for perfection have been
29 taken. Such steps are specified in [section 76], 30-9-302, 30-9-304, 30-9-305, and 30-9-306. If such steps
30 are taken before the security interest attaches, it is perfected at the time when it attaches.

1 (2) If a security interest is originally perfected in any way permitted under this chapter and is
 2 subsequently perfected in some other way under this chapter, without an intermediate period when it was
 3 unperfected, the security interest shall be deemed to be perfected continuously for the purposes of this
 4 chapter."

5

6 **Section 82.** Section 30-9-304, MCA, is amended to read:

7 **"30-9-304. Perfection of security interest in instruments, documents, proceeds of a written letter**

8 **of credit, and goods covered by documents -- perfection by permissive filing -- temporary perfection without**

9 **filing or transfer of possession.** (1) A security interest in chattel paper or negotiable documents may be

10 perfected by filing. A security interest in the right to proceeds of a written letter of credit can be perfected

11 only by the secured party's taking possession of the letter of credit. A security interest in money or

12 instruments (other than ~~certificated securities or~~ instruments which constitute part of chattel paper) can

13 be perfected only by the secured party's taking possession, except as provided in subsections (4) and (5)

14 of this section and subsections (2) and (3) of 30-9-306 on proceeds.

15 (2) During the period that goods are in the possession of the issuer of a negotiable document

16 therefor, a security interest in the goods is perfected by perfecting a security interest in the document, and

17 any security interest in the goods otherwise perfected during such period is subject thereto.

18 (3) A security interest in goods in the possession of a bailee other than one who has issued a

19 negotiable document therefor is perfected by issuance of a document in the name of the secured party or

20 by the bailee's receipt of notification of the secured party's interest or by filing as to the goods.

21 (4) A security interest in instruments, ~~other than~~ ~~certificated securities,~~ or negotiable documents

22 is perfected without filing or the taking of possession for a period of 21 days from the time it attaches to

23 the extent that it arises for new value given under a written security agreement.

24 (5) A security interest remains perfected for a period of 21 days without filing where a secured

25 party having a perfected security interest in an instrument, ~~other than~~ ~~a certificated security,~~ a negotiable

26 document, or goods in possession of a bailee other than one who has issued a negotiable document

27 therefor:

28 (a) makes available to the debtor the goods or documents representing the goods for the purpose

29 of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping,

30 manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or

1 exchange; but priority between conflicting security interests in the goods is subject to 30-9-312(3); or

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

4 (6) After the 21-day period in subsections (4) and (5), perfection depends upon compliance with
5 applicable provisions of this chapter."

6
7 **Section 83.** Section 30-9-305, MCA, is amended to read:

8 **"30-9-305. When possession by secured party perfects security interest without filing.** A security
9 interest in ~~letters of credit and advices of credit (subsection 30-5-116(2)(a)), goods, instruments (other than~~
10 ~~certificated securities),~~ money, negotiable documents, or chattel paper may be perfected by the secured
11 party's taking possession of the collateral. A security interest in the right to proceeds of a written letter of
12 credit may be perfected by the secured party's taking possession of the letter of credit. If such collateral
13 other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to
14 have possession from the time the bailee receives notification of the secured party's interest. A security
15 interest is perfected by possession from the time possession is taken without relation back and continues
16 only so long as possession is retained, unless otherwise specified in this chapter. The security interest may
17 be otherwise perfected as provided in this chapter before or after the period of possession by the secured
18 party."

19
20 **Section 84.** Section 30-9-306, MCA, is amended to read:

21 **"30-9-306. "Proceeds" -- secured party's rights on disposition of collateral.** (1) "Proceeds"
22 includes whatever is received upon the sale, exchange, collection, or other disposition of collateral or
23 proceeds. Insurance payable by reason of loss or damage to the collateral is proceeds, except to the extent
24 that it is payable to a person other than a party to the security agreement. Any payments or distributions
25 made with respect to investment property collateral are proceeds. Money, checks, deposit accounts, and
26 the like are "cash proceeds". All other proceeds are "noncash proceeds".

27 (2) Except where this chapter otherwise provides, a security interest continues in collateral
28 notwithstanding sale, exchange, or other disposition thereof unless the disposition was authorized by the
29 secured party in the security agreement or otherwise, and also continues in any identifiable proceeds
30 including collections received by the debtor.

1 (3) (a) The security interest in proceeds is a continuously perfected security interest if the interest
2 in the original collateral was perfected, but it ceases to be a perfected security interest and becomes
3 unperfected 10 days after receipt of the proceeds by the debtor unless:

4 (i) a filed financing statement covers the original collateral and the proceeds are collateral in which
5 a security interest may be perfected by filing in the office or offices where the financing statement has been
6 filed and, if the proceeds are acquired with cash proceeds, the description of collateral in the financing
7 statement indicates the types of property constituting the proceeds;

8 (ii) a filed financing statement covers the original collateral and the proceeds are identifiable cash
9 proceeds; ~~or~~

10 (iii) the original collateral was investment property and the proceeds are identifiable cash proceeds;

11 or

12 ~~(iii)~~(iv) the security interest in the proceeds is perfected before the expiration of the 10-day period.

13 (b) Except as provided in this section, a security interest in proceeds can be perfected only by the
14 methods or under the circumstances permitted in this chapter for original collateral of the same type.

15 (4) In the event of insolvency proceedings instituted by or against a debtor, a secured party with
16 a perfected security interest in proceeds has a perfected security interest only in the following proceeds:

17 (a) in identifiable noncash proceeds and in separate deposit accounts containing only proceeds;

18 (b) in identifiable cash proceeds in the form of money which is neither commingled with other
19 money nor deposited in a deposit account prior to the insolvency proceedings;

20 (c) in identifiable cash proceeds in the form of checks and the like which are not deposited in a
21 deposit account prior to the insolvency proceedings; and

22 (d) in all cash and deposit accounts of the debtor in which proceeds have been commingled with
23 other funds, but the perfected security interest under this ~~paragraph~~ subsection (4)(d) is:

24 (i) subject to any right of setoff; and

25 (ii) limited to an amount not greater than the amount of any cash proceeds received by the debtor
26 within 10 days before the institution of the insolvency proceedings less the sum of:

27 (A) the payments to the secured party on account of cash proceeds received by the debtor during
28 such period; and

29 (B) the cash proceeds received by the debtor during such period to which the secured party is
30 entitled under subsections (4)(a) through (4)(c).

1 (5) If a sale of goods results in an account or chattel paper which is transferred by the seller to a
 2 secured party, and if the goods are returned to or are repossessed by the seller or the secured party, the
 3 following rules determine priorities:

4 (a) If the goods were collateral at the time of sale for an indebtedness of the seller which is still
 5 unpaid, the original security interest attaches again to the goods and continues as a perfected security
 6 interest if it was perfected at the time when the goods were sold. If the security interest was originally
 7 perfected by a filing which is still effective, nothing further is required to continue the perfected status; in
 8 any other case, the secured party must take possession of the returned or repossessed goods or must file.

9 (b) An unpaid transferee of the chattel paper has a security interest in the goods against the
 10 transferor. ~~Such~~ The security interest is prior to a security interest asserted under ~~paragraph subsection~~
 11 (5)(a) to the extent that the transferee of the chattel paper was entitled to priority under 30-9-308.

12 (c) An unpaid transferee of the account has a security interest in the goods against the transferor.
 13 ~~Such~~ The security interest is subordinate to a security interest asserted under ~~paragraph subsection~~ (5)(a).

14 (d) A security interest of an unpaid transferee asserted under ~~paragraph subsection~~ (5)(b) or (5)(c)
 15 must be perfected for protection against creditors of the transferor and purchasers of the returned or
 16 repossessed goods."

17
 18 **Section 85.** Section 30-9-309, MCA, is amended to read:

19 "**30-9-309. Protection of purchasers of instruments, documents, and securities.** Nothing in this
 20 chapter limits the rights of a holder in due course of a negotiable instrument (30-3-302) or a holder to
 21 whom a negotiable document of title has been duly negotiated (30-7-501) or a ~~bona fide~~ protected
 22 purchaser of a security (~~30-8-302~~ [section 49]), and ~~such the~~ holders or purchasers take priority over an
 23 earlier security interest even though perfected. Filing under this chapter does not constitute notice of the
 24 security interest to ~~such the~~ holders or purchasers."

25
 26 **Section 86.** Section 30-9-312, MCA, is amended to read:

27 "**30-9-312. Priorities among conflicting security interests in the same collateral.** (1) The rules of
 28 priority stated in other sections of this part and in the following sections shall govern where applicable:
 29 ~~30-4-208~~ 30-4-210 with respect to the security interest of collecting banks in items being collected,
 30 accompanying documents, and proceeds; 30-9-103 on security interests related to other jurisdictions; and

1 30-9-114 on consignments; and [section 76] on security interests in investment property.

2 (2) A perfected security interest in crops for new value given to enable the debtor to produce the
3 crops during the production season and given not more than 3 months before the crops become growing
4 crops by planting or otherwise takes priority over an earlier perfected security interest to the extent that
5 ~~such~~ the earlier interest secures obligations due more than 6 months before the crops become growing
6 crops by planting or otherwise, even though the person giving new value had knowledge of the earlier
7 security interest.

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

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

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

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

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

18 (c) the holder of the conflicting security interest receives notification within 5 years before the
19 debtor receives possession of the inventory; and

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

22 (4) A purchase money security interest in collateral other than inventory has priority over a
23 conflicting security interest in the same collateral or its proceeds if the purchase money security interest
24 is perfected at the time the debtor receives possession of the collateral or within 20 days thereafter.

25 (5) In all cases not governed by other rules stated in this section (including cases of purchase
26 money security interests which do not qualify for the special priorities set forth in subsections (3) and (4)
27 of this section), priority between conflicting security interests in the same collateral ~~shall~~ must be
28 determined according to the following rules:

29 (a) Conflicting security interests rank according to priority in the time of filing or perfection. Priority
30 dates from the time a filing is first made covering the collateral or the time the security interest is first

1 perfected, whichever is earlier, provided that there is no period thereafter when there is neither filing nor
2 perfection.

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

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

6 (7) If future advances are made while a security interest is perfected by filing, the taking of
7 possession, or under ~~30-8-321 on securities~~ [section 76 or 77] on investment property, the security interest
8 has the same priority for the purposes of subsection (5) or [section 76(5)] with respect to the future
9 advances as it does with respect to the first advance. If a commitment is made before or while the security
10 interest is so perfected, the security interest has the same priority with respect to advances made pursuant
11 thereto. In other cases a perfected security interest has priority from the date the advance is made."
12

13 **Section 87.** Section 32-1-426, MCA, is amended to read:

14 **"32-1-426. Deposit of securities in central depository.** (1) Notwithstanding any other provision
15 of law, any fiduciary, as defined in 32-1-425, holding securities in its fiduciary capacity, any bank or trust
16 company holding securities as a custodian or managing agent, and any bank or trust company holding
17 securities as custodian for a fiduciary is authorized to deposit or arrange for the deposit of the securities
18 in a clearing corporation, as defined in ~~30-8-102~~ [section 22]. When the securities are ~~so~~ deposited,
19 certificates representing securities of the same class of the same issuer may be merged and held in bulk
20 in the name of the nominee of ~~such the~~ the clearing corporation with any other ~~such~~ securities deposited in
21 ~~such the~~ the clearing corporation by any person regardless of the ownership of the securities, and certificates
22 of small denomination may be merged into one or more certificates of larger denomination. The records of
23 ~~such the~~ the fiduciary and the records of ~~such the~~ the bank or trust company acting as custodian, as managing
24 agent, or a custodian for a fiduciary ~~shall~~ must at all times show the name of the party for whose account
25 the securities are deposited. Title to the securities may be transferred by bookkeeping entry on the books
26 of the clearing corporation without physical delivery of certificates representing ~~such the~~ the securities. A bank
27 or trust company ~~so~~ depositing securities pursuant to this section is subject to rules which in the case of
28 state chartered institutions, the state banking board and, in the case of national banking associations, the
29 comptroller of the currency, may from time to time adopt. A bank or trust company acting as custodian for
30 a fiduciary shall, on demand of the fiduciary, certify in writing to the fiduciary the securities ~~so~~ deposited

1 by the bank or trust company in the clearing corporation for the account of ~~such~~ the fiduciary. A fiduciary
 2 shall, on demand by any party to a judicial proceeding for the settlement of the fiduciary's account or on
 3 demand by the attorney for ~~such~~ the party, certify in writing to the party the securities deposited by the
 4 fiduciary in the clearing corporation for its account as ~~such~~ the fiduciary.

5 (2) This section ~~shall apply~~ applies to any fiduciary holding securities in its fiduciary capacity and
 6 to any bank or trust company holding securities as a custodian, managing agent, or custodian for a
 7 fiduciary ~~acting on July 1, 1977, or who thereafter may act~~ regardless of the date of the agreement,
 8 instrument, or court order by which it is appointed and regardless of whether or not ~~such~~ the fiduciary,
 9 custodian, managing agent, or custodian for a fiduciary owns capital stock of ~~such~~ the clearing
 10 corporation."

11
 12 **NEW SECTION.** **Section 88. Repealer.** Sections 30-5-102, 30-5-103, 30-5-104, 30-5-105,
 13 30-5-106, 30-5-107, 30-5-108, 30-5-109, 30-5-110, 30-5-111, 30-5-112, 30-5-113, 30-5-114, 30-5-115,
 14 30-5-116, 30-5-117, 30-8-102, 30-8-103, 30-8-104, 30-8-105, 30-8-106, 30-8-107, 30-8-108, 30-8-201,
 15 30-8-202, 30-8-203, 30-8-204, 30-8-205, 30-8-206, 30-8-207, 30-8-208, 30-8-301, 30-8-302, 30-8-303,
 16 30-8-304, 30-8-305, 30-8-306, 30-8-307, 30-8-308, 30-8-309, 30-8-310, 30-8-311, 30-8-312, 30-8-313,
 17 30-8-314, 30-8-315, 30-8-316, 30-8-317, 30-8-318, 30-8-319, 30-8-320, 30-8-321, 30-8-401, 30-8-402,
 18 30-8-403, 30-8-404, 30-8-405, 30-8-406, 30-8-407, 30-8-408, 30-10-401, 30-10-402, 30-10-403,
 19 30-10-404, 30-10-405, 30-10-406, 30-10-407, 30-10-408, 30-10-409, 30-10-410, and 30-10-411, MCA,
 20 are repealed.

21
 22 **NEW SECTION.** **Section 89. Codification instructions.** (1) [Sections 6 through 21] are intended
 23 to be codified as an integral part of Title 30, chapter 5, and the provisions of Title 30, chapter 5, apply to
 24 [sections 6 through 21].

25 (2) [Sections 22 through 71] are intended to be codified as an integral part of Title 30, chapter 8,
 26 and the provisions of Title 30, chapter 5, apply to [sections 22 through 71].

27 (3) [Sections 76 and 77] are intended to be codified as an integral part of Title 30, chapter 9, part
 28 1, and the provisions of Title 30, chapter 9, part 1, apply to [sections 76 and 77].

29 -END-

1 *Stevan* *House* BILL NO. *426*
 2 INTRODUCED BY *Kath* *Kellyan* *Schmidt*
 3 *McCubbin* *Green* *Harrington* *Ellis* *Dowell*

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE UNIFORM COMMERCIAL CODE;
 5 REPLACING THE FORMER LAWS GOVERNING LETTERS OF CREDIT WITH UPDATED LAWS; CONFORMING
 6 THE LAWS GOVERNING LETTERS OF CREDIT TO CURRENT USAGE AND PRACTICE; ACCOMMODATING
 7 NEW FORMS OF LETTERS OF CREDIT, PARTICULARLY THE USE OF ELECTRONIC MEDIA; MAINTAINING
 8 LETTERS OF CREDIT AS AN INEXPENSIVE AND EFFICIENT INSTRUMENT FOR FACILITATING TRADE;
 9 REPLACING THE FORMER LAWS GOVERNING INVESTMENT SECURITIES WITH UPDATED LAWS;
 10 ADDRESSING SECURITIES HOLDING THROUGH SECURITIES INTERMEDIARIES; PROVIDING A MODERN
 11 LEGAL STRUCTURE FOR CURRENT SECURITIES HOLDING PRACTICES; PROVIDING RULES FOR
 12 DETERMINING RIGHTS UNDER THE INDIRECT HOLDING OF SECURITIES; REVISING OTHER LAWS TO
 13 REFLECT THE REVISIONS TO THE LAWS GOVERNING LETTERS OF CREDIT AND INVESTMENT
 14 SECURITIES; AMENDING SECTIONS 30-1-105, 30-1-206, 30-2-512, 30-3-124, 30-4-104, 30-9-103,

THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE REPRINTED. PLEASE REFER TO INTRODUCED COPY (WHITE) FOR COMPLETE TEXT.

1 *Stevenson* House BILL NO. 426

2 INTRODUCED BY *East* ~~*Sullivan* *Trent* *Schmidt*~~

3 ~~*McCulloch* *Green* *Harrington* *Ellis* *Dowell*~~

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE UNIFORM COMMERCIAL CODE;
5 REPLACING THE FORMER LAWS GOVERNING LETTERS OF CREDIT WITH UPDATED LAWS; CONFORMING
6 THE LAWS GOVERNING LETTERS OF CREDIT TO CURRENT USAGE AND PRACTICE; ACCOMMODATING
7 NEW FORMS OF LETTERS OF CREDIT, PARTICULARLY THE USE OF ELECTRONIC MEDIA; MAINTAINING
8 LETTERS OF CREDIT AS AN INEXPENSIVE AND EFFICIENT INSTRUMENT FOR FACILITATING TRADE;
9 REPLACING THE FORMER LAWS GOVERNING INVESTMENT SECURITIES WITH UPDATED LAWS;
10 ADDRESSING SECURITIES HOLDING THROUGH SECURITIES INTERMEDIARIES; PROVIDING A MODERN
11 LEGAL STRUCTURE FOR CURRENT SECURITIES HOLDING PRACTICES; PROVIDING RULES FOR
12 DETERMINING RIGHTS UNDER THE INDIRECT HOLDING OF SECURITIES; REVISING OTHER LAWS TO
13 REFLECT THE REVISIONS TO THE LAWS GOVERNING LETTERS OF CREDIT AND INVESTMENT
14 SECURITIES; AMENDING SECTIONS 30-1-105, 30-1-206, 30-2-512, 30-3-124, 30-4-104, 30-9-105

THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE REPRINTED. PLEASE REFER TO INTRODUCED COPY (WHITE) FOR COMPLETE TEXT.

1 HOUSE BILL NO. 426

2 INTRODUCED BY KOTTEL, HALLIGAN, WYATT, SCHMIDT, MCCULLOCH, GILLAN, HARRINGTON,
3 ELLINGSON, DOWELL, DEVANEY, TUSS
45 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE UNIFORM COMMERCIAL CODE;
6 REPLACING THE FORMER LAWS GOVERNING LETTERS OF CREDIT WITH UPDATED LAWS; CONFORMING
7 THE LAWS GOVERNING LETTERS OF CREDIT TO CURRENT USAGE AND PRACTICE; ACCOMMODATING
8 NEW FORMS OF LETTERS OF CREDIT, PARTICULARLY THE USE OF ELECTRONIC MEDIA; MAINTAINING
9 LETTERS OF CREDIT AS AN INEXPENSIVE AND EFFICIENT INSTRUMENT FOR FACILITATING TRADE;
10 REPLACING THE FORMER LAWS GOVERNING INVESTMENT SECURITIES WITH UPDATED LAWS;
11 ADDRESSING SECURITIES HOLDING THROUGH SECURITIES INTERMEDIARIES; PROVIDING A MODERN
12 LEGAL STRUCTURE FOR CURRENT SECURITIES HOLDING PRACTICES; PROVIDING RULES FOR
13 DETERMINING RIGHTS UNDER THE INDIRECT HOLDING OF SECURITIES; REVISING OTHER LAWS TO
14 REFLECT THE REVISIONS TO THE LAWS GOVERNING LETTERS OF CREDIT AND INVESTMENT
15 SECURITIES; AMENDING SECTIONS 30-1-105, 30-1-206, 30-2-512, 30-3-124, 30-4-104, 30-9-103,
16 30-9-104, 30-9-105, 30-9-106, 30-9-203, 30-9-301, 30-9-302, 30-9-303, 30-9-304, 30-9-305, 30-9-306,
17 30-9-309, 30-9-312, AND 32-1-426, MCA; AND REPEALING SECTIONS 30-5-102, 30-5-103, 30-5-104,
18 30-5-105, 30-5-106, 30-5-107, 30-5-108, 30-5-109, 30-5-110, 30-5-111, 30-5-112, 30-5-113, 30-5-114,
19 30-5-115, 30-5-116, 30-5-117, 30-8-102, 30-8-103, 30-8-104, 30-8-105, 30-8-106, 30-8-107, 30-8-108,
20 30-8-201, 30-8-202, 30-8-203, 30-8-204, 30-8-205, 30-8-206, 30-8-207, 30-8-208, 30-8-301, 30-8-302,
21 30-8-303, 30-8-304, 30-8-305, 30-8-306, 30-8-307, 30-8-308, 30-8-309, 30-8-310, 30-8-311, 30-8-312,
22 30-8-313, 30-8-314, 30-8-315, 30-8-316, 30-8-317, 30-8-318, 30-8-319, 30-8-320, 30-8-321, 30-8-401,
23 30-8-402, 30-8-403, 30-8-404, 30-8-405, 30-8-406, 30-8-407, 30-8-408, 30-10-401, 30-10-402,
24 30-10-403, 30-10-404, 30-10-405, 30-10-406, 30-10-407, 30-10-408, 30-10-409, 30-10-410, AND
25 30-10-411, MCA."26
27 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
2829 **Section 1.** Section 30-1-105, MCA, is amended to read:30 **"30-1-105. Territorial application of the code -- parties' power to choose applicable law. (1) Except**

1 as provided ~~hereafter~~ in this section, when a transaction bears a reasonable relation to this state and also
 2 to another state or nation, the parties may agree that the law either of this state or of ~~such the~~ other state
 3 or nation shall govern their rights and duties. Failing ~~such~~ agreement, this code applies to transactions
 4 bearing an appropriate relation to this state.

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

8 Rights of creditors against sold goods. 30-2-402.

9 Applicability of the Chapter on Leases. 30-2A-105 and 30-2A-106.

10 Applicability of the Chapter on Bank Deposits and Collections. 30-4-102.

11 Governing law in the Chapter on Funds Transfers. 30-4A-507.

12 Letters of Credit. [Section 20].

13 Applicability of the Chapter on Investment Securities. ~~30-8-106~~ [section 30].

14 Perfection provisions of the Chapter on Secured Transactions. 30-9-103."

15

16 **Section 2.** Section 30-1-206, MCA, is amended to read:

17 "**30-1-206. Statute of frauds for kinds of personal property not otherwise covered.** (1) Except in
 18 the cases described in subsection (2) ~~of this section~~ a contract for the sale of personal property is not
 19 enforceable by way of action or defense beyond \$5,000 in amount or value of remedy unless there is some
 20 writing which indicates that a contract for sale has been made between the parties at a defined or stated
 21 price, reasonably identifies the subject matter, and is signed by the party against whom enforcement is
 22 sought or by ~~his~~ the party's authorized agent.

23 (2) Subsection (1) of this section does not apply to contracts for the sale of goods (30-2-201) nor
 24 of securities (~~30-8-319~~ [section 33]) nor to security agreements (30-9-203)."

25

26 **Section 3.** Section 30-2-512, MCA, is amended to read:

27 "**30-2-512. Payment by buyer before inspection.** (1) Where the contract requires payment before
 28 inspection nonconformity of the goods does not excuse the buyer from so making payment unless:

29 (a) the nonconformity appears without inspection; or

30 (b) despite tender of the required documents the circumstances would justify injunction against

1 honor under the provisions of this code (~~30-5-114~~ section 13(2)).

2 (2) Payment pursuant to subsection (1) does not constitute an acceptance of goods or impair the
3 buyer's right to inspect or any of his the buyer's remedies."

4

5 **Section 4.** Section 30-3-124, MCA, is amended to read:

6 "**30-3-124. Subject matter.** (1) This chapter applies to negotiable instruments. It does not apply
7 to money or to payment orders governed by chapter 4A. A negotiable instrument that is also a certificated
8 security under ~~30-8-102(1)(a)~~ section 22(1)(d) is subject to chapter 8 and to this chapter.

9 (2) In the event of conflict between the provisions of this chapter and those of chapter 4, chapter
10 8, or chapter 9, the provisions of chapter 4, chapter 8, and chapter 9 prevail over those of this chapter.

11 (3) Regulations of the board of governors of the federal reserve system and operating circulars of
12 the federal reserve banks supersede any inconsistent provision of this chapter to the extent of the
13 inconsistency."

14

15 **Section 5.** Section 30-4-104, MCA, is amended to read:

16 "**30-4-104. Definitions and index of definitions.** (1) In this chapter, unless the context otherwise
17 requires:

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

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

21 (c) "banking day" means the part of a day on which a bank is open to the public for carrying on
22 substantially all of its banking functions;

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

24 (e) "customer" means a person having an account with a bank or for whom a bank has agreed to
25 collect items and includes a bank maintaining an account at another bank;

26 (f) "documentary draft" means a draft to be presented for acceptance or payment if specified
27 documents, certificated securities [[section 22]] or ~~transfer statements~~ instructions for uncertificated
28 securities [[section 22]], or other certificates, statements, or the like are to be received by the drawee or
29 other payor before acceptance or payment of the draft;

30 (g) "draft" means a draft as defined in 30-3-104 or an item, other than an instrument, that is an

1 order;

2 (h) "item" means an instrument or a promise or an order to pay money handled by a bank for
3 collection or payment. The term does not include a payment order governed by chapter 4A or a credit or
4 debit card slip.

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

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

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

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

14 "Bank". 30-4-105.

15 "Collecting bank". 30-4-105.

16 "Depository bank". 30-4-105.

17 "Intermediary bank". 30-4-105.

18 "Payor bank". 30-4-105.

19 "Presenting bank". 30-4-105.

20 "Presentment notice". 30-4-111.

21 (3) The following definitions in other chapters apply to this chapter:

22 "Acceptance". 30-3-410.

23 "Alteration". 30-3-407.

24 "Cashier's check". 30-3-104.

25 "Certificate of deposit". 30-3-104.

26 "Certified check". 30-3-410.

27 "Check". 30-3-104.

28 "Drawee". 30-3-102.

29 "Good faith". 30-3-102.

30 "Holder in due course". 30-3-302.

- 1 "Instrument". 30-3-104.
2 "Notice of dishonor". 30-3-508.
3 "Order". 30-3-102.
4 "Ordinary care". 30-3-102.
5 "Person entitled to enforce". 30-3-301.
6 "Presentment". 30-3-504.
7 "Promise". 30-3-102.
8 "Prove". 30-3-102.
9 "Teller's check". 30-3-104.
10 "Unauthorized signature". 30-3-404.

11 (4) In addition, chapter 1 contains general definitions and principles of construction and
12 interpretation applicable throughout this chapter."

13

14 **NEW SECTION. Section 6. Definitions.** (1) In this chapter:

15 (a) "Adviser" means a person who, at the request of the issuer, a confirmer, or another adviser,
16 notifies or requests another adviser to notify the beneficiary that a letter of credit has been issued,
17 confirmed, or amended.

18 (b) "Applicant" means a person at whose request or for whose account a letter of credit is issued.
19 The term includes a person who requests an issuer to issue a letter of credit on behalf of another if the
20 person making the request undertakes an obligation to reimburse the issuer.

21 (c) "Beneficiary" means a person who under the terms of a letter of credit is entitled to have its
22 complying presentation honored. The term includes a person to whom drawing rights have been transferred
23 under a transferable letter of credit.

24 (d) "Confirmer" means a nominated person who undertakes, at the request or with the consent of
25 the issuer, to honor a presentation under a letter of credit issued by another.

26 (e) "Dishonor" of a letter of credit means failure timely to honor or to take an interim action, such
27 as acceptance of a draft, that may be required by the letter of credit.

28 (f)(i) "Document" means a draft or other demand, document of title, investment security,
29 certificate, invoice, or other record, statement, or representation of fact, law, right, or opinion:

30 (A) which is presented in a written or other medium permitted by the letter of credit or, unless

1 prohibited by the letter of credit, by the standard practice referred to in [section 12(5)]; and

2 (B) which is capable of being examined for compliance with the terms and conditions of the letter
3 of credit.

4 (ii) A document may not be oral.

5 (g) "Good faith" means honesty in fact in the conduct or transaction concerned.

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

8 (i) upon payment;

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

11 (iii) if the letter of credit provides for incurring a deferred obligation, upon incurring the obligation
12 and, at maturity, its performance.

13 (i) "Issuer" means a bank or other person that issues a letter of credit, but does not include an
14 individual who makes an engagement for personal, family, or household purposes.

15 (j) "Letter of credit" means a definite undertaking that satisfies the requirements of [section 8] by
16 an issuer to a beneficiary at the request or for the account of an applicant or, in the case of a financial
17 institution, to itself or for its own account, to honor a documentary presentation by payment or delivery
18 of an item of value.

19 (k) "Nominated person" means a person whom the issuer:

20 (i) designates or authorizes to pay, accept, negotiate, or otherwise give value under a letter of
21 credit; and

22 (ii) undertakes by agreement or custom and practice to reimburse.

23 (l) "Presentation" means delivery of a document to an issuer or nominated person for honor or
24 giving of value under a letter of credit.

25 (m) "Presenter" means a person making a presentation as or on behalf of a beneficiary or
26 nominated person.

27 (n) "Record" means information that is inscribed on a tangible medium, or that is stored in an
28 electronic or other medium and is retrievable in perceivable form.

29 (o) "Successor of a beneficiary" means a person who succeeds to substantially all of the rights of
30 a beneficiary by operation of law, including a corporation with or into which the beneficiary has been

1 merged or consolidated, an administrator, executor, personal representative, trustee in bankruptcy, debtor
2 in possession, liquidator, and receiver.

3 (2) Definitions in other chapters applying to this chapter and the sections in which they appear are:

4 "Accept" or "Acceptance" 30-3-410

5 "Value" 30-3-303, 30-4-209

6 (3) Chapter 1 contains certain additional general definitions and principles of construction and
7 interpretation applicable throughout this chapter.

8

9 **NEW SECTION. Section 7. Scope.** (1) This chapter applies to letters of credit and to certain rights
10 and obligations arising out of transactions involving letters of credit.

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

13 (3) With the exception of this subsection, subsections (1) and (4), [sections 6(1)(i) and (1)(j), 10(4),
14 and 18(4)], and except to the extent prohibited in 30-1-102(3) and [section 21(4)], the effect of this
15 chapter may be varied by agreement or by a provision stated or incorporated by reference in an
16 undertaking. A term in an agreement or undertaking generally excusing liability or generally limiting
17 remedies for failure to perform obligations is not sufficient to vary obligations prescribed by this chapter.

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

22

23 **NEW SECTION. Section 8. Formal requirements.** A letter of credit, confirmation, advice, transfer,
24 amendment, or cancellation may be issued in any form that is a record and is authenticated:

25 (1) by a signature; or

26 (2) in accordance with the agreement of the parties or the standard practice referred to in [section
27 12(5)].

28

29 **NEW SECTION. Section 9. Consideration.** Consideration is not required to issue, amend, transfer,
30 or cancel a letter of credit, advice, or confirmation.

1 **NEW SECTION. Section 10. Issuance, amendment, cancellation, and duration.** (1) A letter of
2 credit is issued and becomes enforceable according to its terms against the issuer when the issuer sends
3 or otherwise transmits it to the person requested to advise or to the beneficiary. A letter of credit is
4 revocable only if it so provides.

5 (2) After a letter of credit is issued, rights and obligations of a beneficiary, applicant, confirmer,
6 and issuer are not affected by an amendment or cancellation to which that person has not consented
7 except to the extent the letter of credit provides that it is revocable or that the issuer may amend or cancel
8 the letter of credit without that consent.

9 (3) If there is no stated expiration date or other provision that determines its duration, a letter of
10 credit expires one year after its stated date of issuance or, if none is stated, after the date on which it is
11 issued.

12 (4) A letter of credit that states that it is perpetual expires 5 years after its stated date of issuance,
13 or if none is stated, after the date on which it is issued.

14

15 **NEW SECTION. Section 11. Confirmer, nominated person, and adviser.** (1) A confirmer is directly
16 obligated on a letter of credit and has the rights and obligations of an issuer to the extent of its
17 confirmation. The confirmer also has rights against and obligations to the issuer as if the issuer were an
18 applicant and the confirmer had issued the letter of credit at the request and for the account of the issuer.

19 (2) A nominated person who is not a confirmer is not obligated to honor or otherwise give value
20 for a presentation.

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

27 (4) A person who notifies a transferee beneficiary of the terms of a letter of credit, confirmation,
28 amendment, or advice has the rights and obligations of an adviser under subsection (3). The terms in the
29 notice to the transferee beneficiary may differ from the terms in any notice to the transferor beneficiary to
30 the extent permitted by the letter of credit, confirmation, amendment, or advice received by the person who

1 so notifies.

2

3 **NEW SECTION. Section 12. Issuer's rights and obligations.** (1) Except as otherwise provided in
4 [section 13], an issuer shall honor a presentation that, as determined by the standard practice referred to
5 in subsection (5), appears on its face strictly to comply with the terms and conditions of the letter of credit.
6 Except as otherwise provided in [section 17] and unless otherwise agreed with the applicant, an issuer shall
7 dishonor a presentation that does not appear so to comply.

8 (2) An issuer has a reasonable time after presentation, but not beyond the end of the seventh
9 business day of the issuer after the day of its receipt of documents:

10 (a) to honor;

11 (b) if the letter of credit provides for honor to be completed more than 7 business days after
12 presentation, to accept a draft or incur a deferred obligation; or

13 (c) to give notice to the presenter of discrepancies in the presentation.

14 (3) Except as otherwise provided in subsection (4), an issuer is precluded from asserting as a basis
15 for dishonor any discrepancy if timely notice is not given, or any discrepancy not stated in the notice if
16 timely notice is given.

17 (4) Failure to give the notice specified in subsection (2) or to mention fraud, forgery, or expiration
18 in the notice does not preclude the issuer from asserting as a basis for dishonor fraud or forgery as
19 described in [section 13(1)] or expiration of the letter of credit before presentation.

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

24 (6) An issuer is not responsible for:

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

26 (b) an act or omission of others; or

27 (c) observance or knowledge of the usage of a particular trade other than the standard practice
28 referred to in subsection (5).

29 (7) If an undertaking constituting a letter of credit under [section 6(1)(j)] contains nondocumentary
30 conditions, an issuer shall disregard the nondocumentary conditions and treat them as if they were not

1 stated.

2 (8) An issuer that has dishonored a presentation shall return the documents or hold them at the
3 disposal of, and send advice to that effect to, the presenter.

4 (9) An issuer that has honored a presentation as permitted or required by this chapter:

5 (a) is entitled to be reimbursed by the applicant in immediately available funds not later than the
6 date of its payment of funds;

7 (b) takes the documents free of claims of the beneficiary or presenter;

8 (c) is precluded from asserting a right of recourse on a draft under 30-3-414 and 30-3-415;

9 (d) except as otherwise provided in [sections 14 and 21], is precluded from restitution of money
10 paid or other value given by mistake to the extent the mistake concerns discrepancies in the documents
11 or tender which are apparent on the face of the presentation; and

12 (e) is discharged to the extent of its performance under the letter of credit unless the issuer
13 honored a presentation in which a required signature of a beneficiary was forged.

14

15 **NEW SECTION. Section 13. Fraud and forgery.** (1) If a presentation is made that appears on its
16 face strictly to comply with the terms and conditions of the letter of credit, but a required document is
17 forged or materially fraudulent, or honor of the presentation would facilitate a material fraud by the
18 beneficiary on the issuer or applicant:

19 (a) the issuer shall honor the presentation, if honor is demanded by:

20 (i) a nominated person who has given value in good faith and without notice of forgery or material
21 fraud;

22 (ii) a confirmer who has honored its confirmation in good faith;

23 (iii) a holder in due course of a draft drawn under the letter of credit which was taken after
24 acceptance by the issuer or nominated person; or

25 (iv) an assignee of the issuer's or nominated person's deferred obligation that was taken for value
26 and without notice of forgery or material fraud after the obligation was incurred by the issuer or nominated
27 person; and

28 (b) the issuer, acting in good faith, may honor or dishonor the presentation in any other case.

29 (2) If an applicant claims that a required document is forged or materially fraudulent or that honor
30 of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant, a court

1 of competent jurisdiction may temporarily or permanently enjoin the issuer from honoring a presentation
2 or grant similar relief against the issuer or other persons only if the court finds that:

3 (a) the relief is not prohibited under the law applicable to an accepted draft or deferred obligation
4 incurred by the issuer;

5 (b) a beneficiary, issuer, or nominated person who may be adversely affected is adequately
6 protected against loss that it may suffer because the relief is granted;

7 (c) all of the conditions to entitle a person to the relief under the law of this state have been met;
8 and

9 (d) on the basis of the information submitted to the court, the applicant is more likely than not to
10 succeed under its claim of forgery or material fraud and the person demanding honor does not qualify for
11 protection under subsection (1)(a).

12

13 **NEW SECTION. Section 14. Warranties.** (1) If its presentation is honored, the beneficiary
14 warrants:

15 (a) to the issuer, any other person to whom presentation is made, and the applicant that there is
16 no fraud or forgery of the kind described in [section 13(1)]; and

17 (b) to the applicant that the drawing does not violate any agreement between the applicant and
18 beneficiary or any other agreement intended by them to be augmented by the letter of credit.

19 (2) The warranties in subsection (1) are in addition to warranties arising under chapters 3, 4, 7,
20 and 8 because of the presentation or transfer of documents covered by any of those chapters.

21

22 **NEW SECTION. Section 15. Remedies.** (1) If an issuer wrongfully dishonors or repudiates its
23 obligation to pay money under a letter of credit before presentation, the beneficiary, successor, or
24 nominated person presenting on its own behalf may recover from the issuer the amount that is the subject
25 of the dishonor or repudiation. If the issuer's obligation under the letter of credit is not for the payment
26 of money, the claimant may obtain specific performance or, at the claimant's election, recover an amount
27 equal to the value of performance from the issuer. In either case, the claimant may also recover incidental
28 but not consequential damages. The claimant is not obligated to take action to avoid damages that might
29 be due from the issuer under this subsection. If, although not obligated to do so, the claimant avoids
30 damages, the claimant's recovery from the issuer must be reduced by the amount of damages avoided.

1 The issuer has the burden of proving the amount of damages avoided. In the case of repudiation the
2 claimant need not present any document.

3 (2) If an issuer wrongfully dishonors a draft or demand presented under a letter of credit or honors
4 a draft or demand in breach of its obligation to the applicant, the applicant may recover damages resulting
5 from the breach, including incidental but not consequential damages, less any amount saved as a result of
6 the breach.

7 (3) If an adviser or nominated person other than a confirmer breaches an obligation under this
8 chapter or an issuer breaches an obligation not covered in subsection (1) or (2), a person to whom the
9 obligation is owed may recover damages resulting from the breach, including incidental but not
10 consequential damages, less any amount saved as a result of the breach. To the extent of the
11 confirmation, a confirmer has the liability of an issuer specified in this subsection and subsections (1) and
12 (2).

13 (4) An issuer, nominated person, or adviser who is found liable under subsection (1), (2), or (3)
14 shall pay interest on the amount owed from the date of wrongful dishonor or other appropriate date.

15 (5) Reasonable attorney's fees and other expenses of litigation must be awarded to the prevailing
16 party in an action in which a remedy is sought under this chapter.

17 (6) Damages that would otherwise be payable by a party for breach of an obligation under this
18 chapter may be liquidated by agreement or undertaking, but only in an amount or by a formula that is
19 reasonable in light of the harm anticipated.

20

21 **NEW SECTION. Section 16. Transfer of letter of credit.** (1) Except as otherwise provided in
22 [section 17], unless a letter of credit provides that it is transferable, the right of a beneficiary to draw or
23 otherwise demand performance under a letter of credit may not be transferred.

24 (2) Even if a letter of credit provides that it is transferable, the issuer may refuse to recognize or
25 carry out a transfer if:

26 (a) the transfer would violate applicable law; or

27 (b) the transferor or transferee has failed to comply with any requirement stated in the letter of
28 credit or any other requirement relating to transfer imposed by the issuer which is within the standard
29 practice referred to in [section 12(5)] or is otherwise reasonable under the circumstances.

30

1 **NEW SECTION. Section 17. Transfer by operation of law.** (1) A successor of a beneficiary may
2 consent to amendments, sign and present documents, and receive payment or other items of value in the
3 name of the beneficiary without disclosing its status as a successor.

4 (2) A successor of a beneficiary may consent to amendments, sign and present documents, and
5 receive payment or other items of value in its own name as the disclosed successor of the beneficiary.
6 Except as otherwise provided in subsection (5), an issuer shall recognize a disclosed successor of a
7 beneficiary as beneficiary in full substitution for its predecessor upon compliance with the requirements for
8 recognition by the issuer of a transfer of drawing rights by operation of law under the standard practice
9 referred to in [section 12(5)] or, in the absence of such a practice, compliance with other reasonable
10 procedures sufficient to protect the issuer.

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

13 (4) Honor of a purported successor's apparently complying presentation under subsection (1) or
14 (2) has the consequences specified in [section 12(9)] even if the purported successor is not the successor
15 of a beneficiary. Documents signed in the name of the beneficiary or of a disclosed successor by a person
16 who is neither the beneficiary nor the successor of the beneficiary are forged documents for the purposes
17 of [section 13].

18 (5) An issuer whose rights of reimbursement are not covered by subsection (4) or substantially
19 similar law and any confirmer or nominated person may decline to recognize a presentation under
20 subsection (2).

21 (6) A beneficiary whose name is changed after the issuance of a letter of credit has the same rights
22 and obligations as a successor of a beneficiary under this section.

23
24 **NEW SECTION. Section 18. Assignment of proceeds.** (1) (a) In this section, "proceeds of a letter
25 of credit" means the cash, check, accepted draft, or other item of value paid or delivered upon honor or
26 giving of value by the issuer or any nominated person under the letter of credit.

27 (b) The term does not include a beneficiary's drawing rights or documents presented by the
28 beneficiary.

29 (2) A beneficiary may assign its right to part or all of the proceeds of a letter of credit. The
30 beneficiary may do so before presentation as a present assignment of its right to receive proceeds

1 contingent upon its compliance with the terms and conditions of the letter of credit.

2 (3) An issuer or nominated person need not recognize an assignment of proceeds of a letter of
3 credit until it consents to the assignment.

4 (4) An issuer or nominated person has no obligation to give or withhold its consent to an
5 assignment of proceeds of a letter of credit, but consent may not be unreasonably withheld if the assignee
6 possesses and exhibits the letter of credit and presentation of the letter of credit is a condition to honor.

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

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

17

18 **NEW SECTION. Section 19. Statute of limitations.** An action to enforce a right or obligation
19 arising under this chapter must be commenced within 1 year after the expiration date of the relevant letter
20 of credit or 1 year after the cause of action accrues, whichever occurs later. A cause of action accrues
21 when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach.

22

23 **NEW SECTION. Section 20. Choice of law and forum.** (1) The liability of an issuer, nominated
24 person, or adviser for action or omission is governed by the law of the jurisdiction chosen by an agreement
25 in the form of a record signed or otherwise authenticated by the affected parties in the manner provided
26 in [section 8] or by a provision in the person's letter of credit, confirmation, or other undertaking. The
27 jurisdiction whose law is chosen need not bear any relation to the transaction.

28 (2) Unless subsection (1) applies, the liability of an issuer, nominated person, or adviser for action
29 or omission is governed by the law of the jurisdiction in which the person is located. The person is
30 considered to be located at the address indicated in the person's undertaking. If more than one address

1 is indicated, the person is considered to be located at the address from which the person's undertaking was
2 issued. For the purpose of jurisdiction, choice of law, and recognition of interbranch letters of credit, but
3 not enforcement of a judgment, all branches of a bank are considered separate juridical entities and a bank
4 is considered to be located at the place where its relevant branch is considered to be located under this
5 subsection.

6 (3) (a) Except as otherwise provided in this subsection, the liability of an issuer, nominated person,
7 or adviser is governed by any rules of custom or practice, such as the Uniform Customs and Practice for
8 Documentary Credits, to which the letter of credit, confirmation, or other undertaking is expressly made
9 subject.

10 (b) The rules of custom and practice govern except to the extent of any conflict with the
11 nonvariable provisions specified in [section 7(3)] if:

12 (i) this chapter would govern the liability of an issuer, nominated person, or adviser under
13 subsection (1) or (2);

14 (ii) the relevant undertaking incorporates rules of custom or practice; and

15 (iii) there is conflict between this chapter and those rules as applied to that undertaking.

16 (4) If there is conflict between this chapter and chapter 3, 4, 4A, or 9, this chapter governs.

17 (5) The forum for settling disputes arising out of an undertaking within this chapter may be chosen
18 in the manner and with the binding effect that governing law may be chosen in accordance with subsection
19 (1).

20
21 **NEW SECTION. Section 21. Subrogation of issuer, applicant, and nominated person.** (1) An
22 issuer that honors a beneficiary's presentation is subrogated to the rights of the beneficiary to the same
23 extent as if the issuer were a secondary obligor of the underlying obligation owed to the beneficiary and
24 of the applicant to the same extent as if the issuer were the secondary obligor of the underlying obligation
25 owed to the applicant.

26 (2) An applicant that reimburses an issuer is subrogated to the rights of the issuer against any
27 beneficiary, presenter, or nominated person to the same extent as if the applicant were the secondary
28 obligor of the obligations owed to the issuer and has the rights of subrogation of the issuer to the rights
29 of the beneficiary stated in subsection (1).

30 (3) A nominated person who pays or gives value against a draft or demand presented under a letter

1 of credit is subrogated to the rights of:

2 (a) the issuer against the applicant to the same extent as if the nominated person were a secondary
3 obligor of the obligation owed to the issuer by the applicant;

4 (b) the beneficiary to the same extent as if the nominated person were a secondary obligor of the
5 underlying obligation owed to the beneficiary; and

6 (c) the applicant to same extent as if the nominated person were a secondary obligor of the
7 underlying obligation owed to the applicant.

8 (4) Notwithstanding any agreement or term to the contrary, the rights of subrogation stated in
9 subsections (1) and (2) do not arise until the issuer honors the letter of credit or otherwise pays and the
10 rights in subsection (3) do not arise until the nominated person pays or otherwise gives value. Until then,
11 the issuer, nominated person, and the applicant do not derive under this section present or prospective
12 rights forming the basis of a claim, defense, or excuse.

13

14 **NEW SECTION. Section 22. Definitions.** (1) In this chapter:

15 (a) "Adverse claim" means a claim that a claimant has a property interest in a financial asset and
16 that it is a violation of the rights of the claimant for another person to hold, transfer, or deal with the
17 financial asset.

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

20 (c) "Broker" means a person defined as a broker or dealer under the federal securities laws, but
21 without excluding a bank acting in that capacity.

22 (d) "Certificated security" means a security that is represented by a certificate.

23 (e) "Clearing corporation" means:

24 (i) a person that is registered as a "clearing agency" under the federal securities laws;

25 (ii) a federal reserve bank; or

26 (iii) any other person that provides clearance or settlement services with respect to financial assets
27 that would require it to register as a clearing agency under the federal securities laws but for an exclusion
28 or exemption from the registration requirement, if its activities as a clearing corporation, including
29 promulgation of rules, are subject to regulation by a federal or state governmental authority.

30 (f) "Communicate" means to:

1 (i) send a signed writing; or

2 (ii) transmit information by any mechanism agreed upon by the persons transmitting and receiving
3 the information.

4 (g) "Entitlement holder" means a person identified in the records of a securities intermediary as the
5 person having a security entitlement against the securities intermediary. If a person acquires a security
6 entitlement by virtue of [section 61(2)(b) or (2)(c)], that person is the entitlement holder.

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

9 (i) (i) "Financial asset," except as otherwise provided in [section 23], means:

10 (A) a security;

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

14 (C) any property that is held by a securities intermediary for another person in a securities account
15 if the securities intermediary has expressly agreed with the other person that the property is to be treated
16 as a financial asset under this chapter.

17 (ii) As context requires, the term means either the interest itself or the means by which a person's
18 claim to it is evidenced, including a certificated or uncertificated security, a security certificate, or a security
19 entitlement.

20 (j) "Good faith," for purposes of the obligation of good faith in the performance or enforcement of
21 contracts or duties within this chapter, means honesty in fact and the observance of reasonable commercial
22 standards of fair dealing.

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

26 (l) "Instruction" means a notification communicated to the issuer of an uncertificated security
27 which directs that the transfer of the security be registered or that the security be redeemed.

28 (m) "Registered form," as applied to a certificated security, means a form in which:

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

30 (ii) a transfer of the security may be registered upon books maintained for that purpose by or on

1 behalf of the issuer, or the security certificate so states.

2 (n) "Securities intermediary" means:

3 (i) a clearing corporation; or

4 (ii) a person, including a bank or broker, that in the ordinary course of its business maintains
5 securities accounts for others and is acting in that capacity.

6 (o) "Security," except as otherwise provided in [section 23], means an obligation of an issuer or
7 a share, participation, or other interest in an issuer or in property or an enterprise of an issuer:

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

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

12 (iii) which:

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

14 (B) is a medium for investment and by its terms expressly provides that it is a security governed
15 by this chapter.

16 (p) "Security certificate" means a certificate representing a security.

17 (q) "Security entitlement" means the rights and property interest of an entitlement holder with
18 respect to a financial asset specified in [sections 61 through 71].

19 (r) "Uncertificated security" means a security that is not represented by a certificate.

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

21 "Appropriate person" [section 27]

22 "Control" [section 26]

23 "Delivery" [section 47]

24 "Investment company security" [section 23]

25 "Issuer" [section 37]

26 "Overissue" [section 46]

27 "Protected purchaser" [section 49]

28 "Securities account" [section 61]

29 (3) In addition, chapter 1 contains general definitions and principles of construction and
30 interpretation applicable throughout this chapter.

1 (4) The characterization of a person, business, or transaction for purposes of this chapter does not
2 determine the characterization of the person, business, or transaction for purposes of any other law,
3 regulation, or rule.

4
5 **NEW SECTION. Section 23. Rules for determining whether certain obligations and interests are**
6 **securities or financial assets.** (1) A share or similar equity interest issued by a corporation, business trust,
7 joint stock company, or similar entity is a security.

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

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

18 (4) A writing that is a security certificate is governed by this chapter and not by chapter 3, even
19 though it also meets the requirements of that chapter. However, a negotiable instrument governed by
20 chapter 3 is a financial asset if it is held in a securities account.

21 (5) An option or similar obligation issued by a clearing corporation to its participants is not a
22 security, but is a financial asset.

23 (6) A commodity contract, as defined in [section 76], is not a security or a financial asset.

24
25 **NEW SECTION. Section 24. Acquisition of security or financial asset or interest therein.** (1) A
26 person acquires a security or an interest therein, under this chapter, if:

27 (a) the person is a purchaser to whom a security is delivered pursuant to [section 47]; or

28 (b) the person acquires a security entitlement to the security pursuant to [section 61].

29 (2) A person acquires a financial asset, other than a security, or an interest therein, under this
30 chapter, if the person acquires a security entitlement to the financial asset.

1 (3) A person who acquires a security entitlement to a security or other financial asset has the rights
2 specified in [sections 61 through 71], but is a purchaser of any security, security entitlement, or other
3 financial asset held by the securities intermediary only to the extent provided in [section 63].

4 (4) Unless the context shows that a different meaning is intended, a person who is required by
5 other law, regulation, rule, or agreement to transfer, deliver, present, surrender, exchange, or otherwise
6 put in the possession of another person a security or financial asset satisfies that requirement by causing
7 the other person to acquire an interest in the security or financial asset pursuant to subsection (1) or (2).

8

9 **NEW SECTION. Section 25. Notice of adverse claim.** (1) A person has notice of an adverse claim
10 if:

11 (a) the person knows of the adverse claim;

12 (b) the person is aware of facts sufficient to indicate that there is a significant probability that the
13 adverse claim exists and deliberately avoids information that would establish the existence of the adverse
14 claim; or

15 (c) the person has a duty, imposed by statute or regulation, to investigate whether an adverse
16 claim exists, and the investigation so required would establish the existence of the adverse claim.

17 (2) Having knowledge that a financial asset or interest therein is or has been transferred by a
18 representative imposes no duty of inquiry into the rightfulness of a transaction and is not notice of an
19 adverse claim. However, a person who knows that a representative has transferred a financial asset or
20 interest therein in a transaction that is, or whose proceeds are being used, for the individual benefit of the
21 representative or otherwise in breach of duty has notice of an adverse claim.

22 (3) An act or event that creates a right to immediate performance of the principal obligation
23 represented by a security certificate or sets a date on or after which the certificate is to be presented or
24 surrendered for redemption or exchange does not itself constitute notice of an adverse claim except in the
25 case of a transfer more than:

26 (a) 1 year after a date set for presentment or surrender for redemption or exchange; or

27 (b) 6 months after a date set for payment of money against presentation or surrender of the
28 certificate, if money was available for payment on that date.

29 (4) A purchaser of a certificated security has notice of an adverse claim if the security certificate:

30 (a) whether in bearer or registered form, has been indorsed "for collection" or "for surrender" or

1 for some other purpose not involving transfer; or

2 (b) is in bearer form and has on it an unambiguous statement that it is the property of a person
3 other than the transferor, but the mere writing of a name on the certificate is not such a statement.

4 (5) Filing of a financing statement under chapter 9 is not notice of an adverse claim to a financial
5 asset.

6
7 **NEW SECTION. Section 26. Control.** (1) A purchaser has "control" of a certificated security in
8 bearer form if the certificated security is delivered to the purchaser.

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

11 (a) the certificate is indorsed to the purchaser or in blank by an effective indorsement; or

12 (b) the certificate is registered in the name of the purchaser, upon original issue or registration of
13 transfer by the issuer.

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

15 (a) the uncertificated security is delivered to the purchaser; or

16 (b) the issuer has agreed that it will comply with instructions originated by the purchaser without
17 further consent by the registered owner.

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

19 (a) the purchaser becomes the entitlement holder; or

20 (b) the securities intermediary has agreed that it will comply with entitlement orders originated by
21 the purchaser without further consent by the entitlement holder.

22 (5) If an interest in a security entitlement is granted by the entitlement holder to the entitlement
23 holder's own securities intermediary, the securities intermediary has control.

24 (6) A purchaser who has satisfied the requirements of subsection (3)(b) or (4)(b) has control even
25 if the registered owner in the case of subsection (3)(b) or the entitlement holder in the case of subsection
26 (4)(b) retains the right to make substitutions for the uncertificated security or security entitlement, to
27 originate instructions or entitlement orders to the issuer or securities intermediary, or otherwise to deal with
28 the uncertificated security or security entitlement.

29 (7) An issuer or a securities intermediary may not enter into an agreement of the kind described
30 in subsection (3)(b) or (4)(b) without the consent of the registered owner or entitlement holder, but an

1 issuer or a securities intermediary is not required to enter into such an agreement even though the
2 registered owner or entitlement holder so directs. An issuer or securities intermediary that has entered into
3 such an agreement is not required to confirm the existence of the agreement to another party unless
4 requested to do so by the registered owner or entitlement holder.

5

6 **NEW SECTION. Section 27. Whether indorsement, instruction, or entitlement order is effective.**

7 (1) "Appropriate person" means:

8 (a) with respect to an indorsement, the person specified by a security certificate or by an effective
9 special indorsement to be entitled to the security;

10 (b) with respect to an instruction, the registered owner of an uncertificated security;

11 (c) with respect to an entitlement order, the entitlement holder;

12 (d) if the person designated in subsection (1)(a), (1)(b), or (1)(c) is deceased, the designated
13 person's successor taking under other law or the designated person's personal representative acting for
14 the estate of the decedent; or

15 (e) if the person designated in subsection (1)(a), (1)(b), or (1)(c) lacks capacity, the designated
16 person's guardian, conservator, or other similar representative who has power under other law to transfer
17 the security or financial asset.

18 (2) An indorsement, instruction, or entitlement order is effective if:

19 (a) it is made by the appropriate person;

20 (b) it is made by a person who has power under the law of agency to transfer the security or
21 financial asset on behalf of the appropriate person, including, in the case of an instruction or entitlement
22 order, a person who has control under [section 26(3)(b) or (4)(b)]; or

23 (c) the appropriate person has ratified it or is otherwise precluded from asserting its ineffectiveness.

24 (3) An indorsement, instruction, or entitlement order made by a representative is effective even
25 if:

26 (a) the representative has failed to comply with a controlling instrument or with the law of the state
27 having jurisdiction of the representative relationship, including any law requiring the representative to obtain
28 court approval of the transaction; or

29 (b) the representative's action in making the indorsement, instruction, or entitlement order or using
30 the proceeds of the transaction is otherwise a breach of duty.

1 (4) If a security is registered in the name of or specially indorsed to a person described as a
2 representative, or if a securities account is maintained in the name of a person described as a
3 representative, an indorsement, instruction, or entitlement order made by the person is effective even
4 though the person is no longer serving in the described capacity.

5 (5) Effectiveness of an indorsement, instruction, or entitlement order is determined as of the date
6 the indorsement, instruction, or entitlement order is made, and an indorsement, instruction, or entitlement
7 order does not become ineffective by reason of any later change of circumstances.

8
9 **NEW SECTION. Section 28. Warranties in direct holding.** (1) A person who transfers a certificated
10 security to a purchaser for value warrants to the purchaser, and an indorser, if the transfer is by
11 indorsement, warrants to any subsequent purchaser that:

12 (a) the certificate is genuine and has not been materially altered;

13 (b) the transferor or indorser does not know of any fact that might impair the validity of the
14 security;

15 (c) there is no adverse claim to the security;

16 (d) the transfer does not violate any restriction on transfer;

17 (e) if the transfer is by indorsement, the indorsement is made by an appropriate person, or if the
18 indorsement is by an agent, the agent has actual authority to act on behalf of the appropriate person; and

19 (f) the transfer is otherwise effective and rightful.

20 (2) A person who originates an instruction for registration of transfer of an uncertificated security
21 to a purchaser for value warrants to the purchaser that:

22 (a) the instruction is made by an appropriate person, or if the instruction is by an agent, the agent
23 has actual authority to act on behalf of the appropriate person;

24 (b) the security is valid;

25 (c) there is no adverse claim to the security; and

26 (d) at the time the instruction is presented to the issuer:

27 (i) the purchaser will be entitled to the registration of transfer;

28 (ii) the transfer will be registered by the issuer free from all liens, security interests, restrictions, and
29 claims other than those specified in the instruction;

30 (iii) the transfer will not violate any restriction on transfer; and

1 (iv) the requested transfer will otherwise be effective and rightful.

2 (3) A person who transfers an uncertificated security to a purchaser for value and does not
3 originate an instruction in connection with the transfer warrants that:

4 (a) the uncertificated security is valid;

5 (b) there is no adverse claim to the security;

6 (c) the transfer does not violate any restriction on transfer; and

7 (d) the transfer is otherwise effective and rightful.

8 (4) A person who indorses a security certificate warrants to the issuer that:

9 (a) there is no adverse claim to the security; and

10 (b) the indorsement is effective.

11 (5) A person who originates an instruction for registration of transfer of an uncertificated security
12 warrants to the issuer that:

13 (a) the instruction is effective; and

14 (b) at the time the instruction is presented to the issuer the purchaser will be entitled to the
15 registration of transfer.

16 (6) A person who presents a certificated security for registration of transfer or for payment or
17 exchange warrants to the issuer that the person is entitled to the registration, payment, or exchange, but
18 a purchaser for value and without notice of adverse claims to whom transfer is registered warrants only
19 that the person has no knowledge of any unauthorized signature in a necessary indorsement.

20 (7) If a person acts as agent of another in delivering a certificated security to a purchaser, the
21 identity of the principal was known to the person to whom the certificate was delivered, and the certificate
22 delivered by the agent was received by the agent from the principal or received by the agent from another
23 person at the direction of the principal, the person delivering the security certificate warrants only that the
24 delivering person has authority to act for the principal and does not know of any adverse claim to the
25 certificated security.

26 (8) A secured party who redelivers a security certificate received, or after payment and on order
27 of the debtor delivers the security certificate to another person, makes only the warranties of an agent
28 under subsection (7).

29 (9) Except as otherwise provided in subsection (7), a broker acting for a customer makes to the
30 issuer and a purchaser the warranties provided in subsections (1) through (6). A broker that delivers a

1 security certificate to its customer, or causes its customer to be registered as the owner of an uncertificated
2 security, makes to the customer the warranties provided in subsection (1) or (2) and has the rights and
3 privileges of a purchaser under this section. The warranties of and in favor of the broker acting as an agent
4 are in addition to applicable warranties given by and in favor of the customer.

5
6 **NEW SECTION. Section 29. Warranties in indirect holding.** (1) A person who originates an
7 entitlement order to a securities intermediary warrants to the securities intermediary that:

8 (a) the entitlement order is made by an appropriate person, or if the entitlement order is by an
9 agent, the agent has actual authority to act on behalf of the appropriate person; and

10 (b) there is no adverse claim to the security entitlement.

11 (2) A person who delivers a security certificate to a securities intermediary for credit to a securities
12 account or originates an instruction with respect to an uncertificated security directing that the
13 uncertificated security be credited to a securities account makes to the securities intermediary the
14 warranties specified in [section 28(1) or (2)].

15 (3) If a securities intermediary delivers a security certificate to its entitlement holder or causes its
16 entitlement holder to be registered as the owner of an uncertificated security, the securities intermediary
17 makes to the entitlement holder the warranties specified in [section 28(1) or (2)].

18
19 **NEW SECTION. Section 30. Applicability -- choice of law.** (1) The local law of the issuer's
20 jurisdiction, as specified in subsection (4), governs:

21 (a) the validity of a security;

22 (b) the rights and duties of the issuer with respect to registration of transfer;

23 (c) the effectiveness of registration of transfer by the issuer;

24 (d) whether the issuer owes any duties to an adverse claimant to a security; and

25 (e) whether an adverse claim can be asserted against a person to whom transfer of a certificated
26 or uncertificated security is registered or a person who obtains control of an uncertificated security.

27 (2) The local law of the securities intermediary's jurisdiction, as specified in subsection (5),
28 governs:

29 (a) acquisition of a security entitlement from the securities intermediary;

30 (b) the rights and duties of the securities intermediary and entitlement holder arising out of a

1 security entitlement;

2 (c) whether the securities intermediary owes any duties to an adverse claimant to a security
3 entitlement; and

4 (d) whether an adverse claim can be asserted against a person who acquires a security entitlement
5 from the securities intermediary or a person who purchases a security entitlement or interest therein from
6 an entitlement holder.

7 (3) The local law of the jurisdiction in which a security certificate is located at the time of delivery
8 governs whether an adverse claim can be asserted against a person to whom the security certificate is
9 delivered.

10 (4) "Issuer's jurisdiction" means the jurisdiction under which the issuer of the security is organized
11 or, if permitted by the law of that jurisdiction, the law of another jurisdiction specified by the issuer. An
12 issuer organized under the law of this state may specify the law of another jurisdiction as the law governing
13 the matters specified in subsections (1)(b) through (1)(e).

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

16 (a) If an agreement between the securities intermediary and its entitlement holder specifies that
17 it is governed by the law of a particular jurisdiction, that jurisdiction is the securities intermediary's
18 jurisdiction.

19 (b) If an agreement between the securities intermediary and its entitlement holder does not specify
20 the governing law as provided in subsection (5)(a), but expressly specifies that the securities account is
21 maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary's
22 jurisdiction.

23 (c) If an agreement between the securities intermediary and its entitlement holder does not specify
24 a jurisdiction as provided in subsection (5)(a) or (5)(b), the securities intermediary's jurisdiction is the
25 jurisdiction in which is located the office identified in an account statement as the office serving the
26 entitlement holder's account.

27 (d) If an agreement between the securities intermediary and its entitlement holder does not specify
28 a jurisdiction as provided in subsection (5)(a) or (5)(b) and an account statement does not identify an office
29 serving the entitlement holder's account as provided in subsection (5)(c), the securities intermediary's
30 jurisdiction is the jurisdiction in which is located the chief executive office of the securities intermediary.

1 (6) A securities intermediary's jurisdiction is not determined by the physical location of certificates
2 representing financial assets, or by the jurisdiction in which is organized the issuer of the financial asset
3 with respect to which an entitlement holder has a security entitlement, or by the location of facilities for
4 data processing or other recordkeeping concerning the account.

5
6 **NEW SECTION. Section 31. Clearing corporation rules.** A rule adopted by a clearing corporation
7 governing rights and obligations among the clearing corporation and its participants in the clearing
8 corporation is effective even if the rule conflicts with this chapter and affects another party who does not
9 consent to the rule.

10
11 **NEW SECTION. Section 32. Creditor's legal process.** (1) The interest of a debtor in a certificated
12 security may be reached by a creditor only by actual seizure of the security certificate by the officer making
13 the attachment or levy, except as otherwise provided in subsection (4). However, a certificated security
14 for which the certificate has been surrendered to the issuer may be reached by a creditor by legal process
15 upon the issuer.

16 (2) The interest of a debtor in an uncertificated security may be reached by a creditor only by legal
17 process upon the issuer at its chief executive office in the United States, except as otherwise provided in
18 subsection (4).

19 (3) The interest of a debtor in a security entitlement may be reached by a creditor only by legal
20 process upon the securities intermediary with whom the debtor's securities account is maintained, except
21 as otherwise provided in subsection (4).

22 (4) The interest of a debtor in a certificated security for which the certificate is in the possession
23 of a secured party, or in an uncertificated security registered in the name of a secured party, or a security
24 entitlement maintained in the name of a secured party, may be reached by a creditor by legal process upon
25 the secured party.

26 (5) A creditor whose debtor is the owner of a certificated security, uncertificated security, or
27 security entitlement is entitled to aid from a court of competent jurisdiction, by injunction or otherwise, in
28 reaching the certificated security, uncertificated security, or security entitlement or in satisfying the claim
29 by means allowed at law or in equity in regard to property that cannot readily be reached by other legal
30 process.

1 **NEW SECTION. Section 33. Statute of frauds inapplicable.** A contract or modification of a
2 contract for the sale or purchase of a security is enforceable whether or not there is a writing signed or
3 record authenticated by a party against whom enforcement is sought, even if the contract or modification
4 is not capable of performance within 1 year of its making.

5

6 **NEW SECTION. Section 34. Evidentiary rules concerning certificated securities.** The following
7 rules apply in an action on a certificated security against the issuer:

8 (1) Unless specifically denied in the pleadings, each signature on a security certificate or in a
9 necessary indorsement is admitted.

10 (2) If the effectiveness of a signature is put in issue, the burden of establishing effectiveness is on
11 the party claiming under the signature, but the signature is presumed to be genuine or authorized.

12 (3) If signatures on a security certificate are admitted or established, production of the certificate
13 entitles a holder to recover on it unless the defendant establishes a defense or a defect going to the validity
14 of the security.

15 (4) If it is shown that a defense or defect exists, the plaintiff has the burden of establishing that
16 the plaintiff or some person under whom the plaintiff claims is a person against whom the defense or defect
17 cannot be asserted.

18

19 **NEW SECTION. Section 35. Securities intermediary and others not liable to adverse claimant.** A
20 securities intermediary that has transferred a financial asset pursuant to an effective entitlement order, or
21 a broker or other agent or bailee that has dealt with a financial asset at the direction of its customer or
22 principal, is not liable to a person having an adverse claim to the financial asset, unless the securities
23 intermediary, or broker or other agent or bailee:

24 (1) took the action after it had been served with an injunction, restraining order, or other legal
25 process enjoining it from doing so, issued by a court of competent jurisdiction, and had a reasonable
26 opportunity to act on the injunction, restraining order, or other legal process;

27 (2) acted in collusion with the wrongdoer in violating the rights of the adverse claimant; or

28 (3) in the case of a security certificate that has been stolen, acted with notice of the adverse claim.

29

30 **NEW SECTION. Section 36. Securities intermediary as purchaser for value.** A securities

1 intermediary that receives a financial asset and establishes a security entitlement to the financial asset in
 2 favor of an entitlement holder is a purchaser for value of the financial asset. A securities intermediary that
 3 acquires a security entitlement to a financial asset from another securities intermediary acquires the security
 4 entitlement for value if the securities intermediary acquiring the security entitlement establishes a security
 5 entitlement to the financial asset in favor of an entitlement holder.

6
 7 **NEW SECTION. Section 37. Issuer.** (1) With respect to an obligation on or a defense to a
 8 security, an "issuer" includes a person that:

9 (a) places or authorizes the placing of its name on a security certificate, other than as
 10 authenticating trustee, registrar, transfer agent, or the like, to evidence a share, participation, or other
 11 interest in its property or in an enterprise, or to evidence its duty to perform an obligation represented by
 12 the certificate;

13 (b) creates a share, participation, or other interest in its property or in an enterprise, or undertakes
 14 an obligation, that is an uncertificated security;

15 (c) directly or indirectly creates a fractional interest in its rights or property, if the fractional interest
 16 is represented by a security certificate; or

17 (d) becomes responsible for, or in place of, another person described as an issuer in this section.

18 (2) With respect to an obligation on or defense to a security, a guarantor is an issuer to the extent
 19 of its guaranty, whether or not its obligation is noted on a security certificate.

20 (3) With respect to a registration of a transfer, issuer means a person on whose behalf transfer
 21 books are maintained.

22
 23 **NEW SECTION. Section 38. Issuer's responsibility and defenses -- notice of defect or defense.**

24 (1) Even against a purchaser for value and without notice, the terms of a certificated security include terms
 25 stated on the certificate and terms made part of the security by reference on the certificate to another
 26 instrument, indenture, or document or to a constitution, statute, ordinance, rule, regulation, order, or the
 27 like, to the extent the terms referred to do not conflict with terms stated on the certificate. A reference
 28 under this subsection does not of itself charge a purchaser for value with notice of a defect going to the
 29 validity of the security, even if the certificate expressly states that a person accepting it admits notice. The
 30 terms of an uncertificated security include those stated in any instrument, indenture, or document or in a

1 constitution, statute, ordinance, rule, regulation, order, or the like, pursuant to which the security is issued.

2 (2) The following rules apply if an issuer asserts that a security is not valid:

3 (a) A security other than one issued by a government or governmental subdivision, agency, or
4 instrumentality, even though issued with a defect going to its validity, is valid in the hands of a purchaser
5 for value and without notice of the particular defect unless the defect involves a violation of a constitutional
6 provision. In that case, the security is valid in the hands of a purchaser for value and without notice of the
7 defect, other than one who takes by original issue.

8 (b) Subsection (2)(a) applies to an issuer that is a government or governmental subdivision, agency,
9 or instrumentality only if there has been substantial compliance with the legal requirements governing the
10 issue or the issuer has received a substantial consideration for the issue as a whole or for the particular
11 security and a stated purpose of the issue is one for which the issuer has power to borrow money or issue
12 the security.

13 (3) Except as otherwise provided in [section 41], lack of genuineness of a certificated security is
14 a complete defense, even against a purchaser for value and without notice.

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

18 (5) This section does not affect the right of a party to cancel a contract for a security "when, as
19 and if issued" or "when distributed" in the event of a material change in the character of the security that
20 is the subject of the contract or in the plan or arrangement pursuant to which the security is to be issued
21 or distributed.

22 (6) If a security is held by a securities intermediary against whom an entitlement holder has a
23 security entitlement with respect to the security, the issuer may not assert any defense that the issuer
24 could not assert if the entitlement holder held the security directly.

25

26 **NEW SECTION. Section 39. Staleness as notice of defect or defense.** After an act or event, other
27 than a call that has been revoked, creating a right to immediate performance of the principal obligation
28 represented by a certificated security or setting a date on or after which the security is to be presented or
29 surrendered for redemption or exchange, a purchaser is charged with notice of any defect in its issue or
30 defense of the issuer, if the act or event:

1 (1) requires the payment of money, the delivery of a certificated security, the registration of
2 transfer of an uncertificated security, or any of them on presentation or surrender of the security certificate,
3 the money or security is available on the date set for payment or exchange, and the purchaser takes the
4 security more than one year after that date; or

5 (2) is not covered by subsection (1) and the purchaser takes the security more than 2 years after
6 the date set for surrender or presentation or the date on which performance became due.

7
8 **NEW SECTION. Section 40. Effect of issuer's restriction on transfer.** A restriction on transfer of
9 a security imposed by the issuer, even if otherwise lawful, is ineffective against a person without
10 knowledge of the restriction unless:

11 (1) the security is certificated and the restriction is noted conspicuously on the security certificate;
12 or

13 (2) the security is uncertificated and the registered owner has been notified of the restriction.
14

15 **NEW SECTION. Section 41. Effect of unauthorized signature on security certificate.** An
16 unauthorized signature placed on a security certificate before or in the course of issue is ineffective, but
17 the signature is effective in favor of a purchaser for value of the certificated security if the purchaser is
18 without notice of the lack of authority and the signing has been done by:

19 (1) an authenticating trustee, registrar, transfer agent, or other person entrusted by the issuer with
20 the signing of the security certificate or of similar security certificates, or the immediate preparation for
21 signing of any of them; or

22 (2) an employee of the issuer, or of any of the persons listed in subsection (1), entrusted with
23 responsible handling of the security certificate.
24

25 **NEW SECTION. Section 42. Completion of alteration of security certificate.** (1) If a security
26 certificate contains the signatures necessary to its issue or transfer but is incomplete in any other respect:

27 (a) any person may complete it by filling in the blanks as authorized; and

28 (b) even if the blanks are incorrectly filled in, the security certificate as completed is enforceable
29 by a purchaser who took it for value and without notice of the incorrectness.

30 (2) A complete security certificate that has been improperly altered, even if fraudulently, remains

1 enforceable, but only according to its original terms.

2

3 **NEW SECTION. Section 43. Rights and duties of issuer with respect to registered owners.** (1)

4 Before due presentment for registration of transfer of a certificated security in registered form or of an
5 instruction requesting registration of transfer of an uncertificated security, the issuer or indenture trustee
6 may treat the registered owner as the person exclusively entitled to vote, receive notifications, and
7 otherwise exercise all the rights and powers of an owner.

8 (2) This chapter does not affect the liability of the registered owner of a security for a call,
9 assessment, or the like.

10

11 **NEW SECTION. Section 44. Effect of signature of authenticating trustee, registrar, or transfer**

12 **agent.** (1) A person signing a security certificate as authenticating trustee, registrar, transfer agent, or the
13 like, warrants to a purchaser for value of the certificated security, if the purchaser is without notice of a
14 particular defect, that:

15 (a) the certificate is genuine;

16 (b) the person's own participation in the issue of the security is within the person's capacity and
17 within the scope of the authority received by the person from the issuer; and

18 (c) the person has reasonable grounds to believe that the certificated security is in the form and
19 within the amount the issuer is authorized to issue.

20 (2) Unless otherwise agreed, a person signing under subsection (1) does not assume responsibility
21 for the validity of the security in other respects.

22

23 **NEW SECTION. Section 45. Issuer's lien.** A lien in favor of an issuer upon a certificated security
24 is valid against a purchaser only if the right of the issuer to the lien is noted conspicuously on the security
25 certificate.

26

27 **NEW SECTION. Section 46. Overissue.** (1) In this section, "overissue" means the issue of
28 securities in excess of the amount the issuer has corporate power to issue, but an overissue does not occur
29 if appropriate action has cured the overissue.

30 (2) Except as otherwise provided in subsections (3) and (4), the provisions of this chapter which

1 validate a security or compel its issue or reissue do not apply to the extent that validation, issue, or reissue
2 would result in overissue.

3 (3) If an identical security not constituting an overissue is reasonably available for purchase, a
4 person entitled to issue or validation may compel the issuer to purchase the security and deliver it if
5 certificated or register its transfer if uncertificated, against surrender of any security certificate the person
6 holds.

7 (4) If a security is not reasonably available for purchase, a person entitled to issue or validation may
8 recover from the issuer the price the person or the last purchaser for value paid for it with interest from the
9 date of the person's demand.

10

11 **NEW SECTION. Section 47. Delivery.** (1) Delivery of a certificated security to a purchaser occurs
12 when:

13 (a) the purchaser acquires possession of the security certificate;

14 (b) another person, other than a securities intermediary, either acquires possession of the security
15 certificate on behalf of the purchaser or, having previously acquired possession of the certificate,
16 acknowledges that it holds for the purchaser; or

17 (c) a securities intermediary acting on behalf of the purchaser acquires possession of the security
18 certificate, only if the certificate is in registered form and has been specially indorsed to the purchaser by
19 an effective indorsement.

20 (2) Delivery of an uncertificated security to a purchaser occurs when:

21 (a) the issuer registers the purchaser as the registered owner, upon original issue or registration of
22 transfer; or

23 (b) another person, other than a securities intermediary, either becomes the registered owner of the
24 uncertificated security on behalf of the purchaser or, having previously become the registered owner,
25 acknowledges that it holds for the purchaser.

26

27 **NEW SECTION. Section 48. Rights of purchaser.** (1) Except as otherwise provided in subsections
28 (2) and (3), upon delivery of a certificated or uncertificated security to a purchaser, the purchaser acquires
29 all rights in the security that the transferor had or had power to transfer.

30 (2) A purchaser of a limited interest acquires rights only to the extent of the interest purchased.

1 (3) A purchaser of a certificated security who as a previous holder had notice of an adverse claim
2 does not improve its position by taking from a protected purchaser.

3
4 **NEW SECTION. Section 49. Protected purchaser.** (1) "Protected purchaser" means a purchaser
5 of a certificated or uncertificated security, or of an interest therein, who:

6 (a) gives value;

7 (b) does not have notice of any adverse claim to the security; and

8 (c) obtains control of the certificated or uncertificated security.

9 (2) In addition to acquiring the rights of a purchaser, a protected purchaser also acquires its interest
10 in the security free of any adverse claim.

11
12 **NEW SECTION. Section 50. Indorsement.** (1) An indorsement may be in blank or special. An
13 indorsement in blank includes an indorsement to bearer. A special indorsement specifies to whom a
14 security is to be transferred or who has power to transfer it. A holder may convert a blank indorsement
15 to a special indorsement.

16 (2) An indorsement purporting to be only of part of a security certificate representing units intended
17 by the issuer to be separately transferable is effective to the extent of the indorsement.

18 (3) An indorsement, whether special or in blank, does not constitute a transfer until delivery of the
19 certificate on which it appears or, if the indorsement is on a separate document, until delivery of both the
20 document and the certificate.

21 (4) If a security certificate in registered form has been delivered to a purchaser without a necessary
22 indorsement, the purchaser may become a protected purchaser only when the indorsement is supplied.
23 However, against a transferor, a transfer is complete upon delivery and the purchaser has a specifically
24 enforceable right to have any necessary indorsement supplied.

25 (5) An indorsement of a security certificate in bearer form may give notice of an adverse claim to
26 the certificate, but it does not otherwise affect a right to registration that the holder possesses.

27 (6) Unless otherwise agreed, a person making an indorsement assumes only the obligations
28 provided in [section 28] and not an obligation that the security will be honored by the issuer.

29
30 **NEW SECTION. Section 51. Instruction.** (1) If an instruction has been originated by an

1 appropriate person but is incomplete in any other respect, any person may complete it as authorized and
2 the issuer may rely on it as completed, even though it has been completed incorrectly.

3 (2) Unless otherwise agreed, a person initiating an instruction assumes only the obligations imposed
4 by [section 28] and not an obligation that the security will be honored by the issuer.

5
6 **NEW SECTION. Section 52. Effect of guaranteeing signature, indorsement, or instruction.** (1)

7 A person who guarantees a signature of an indorser of a security certificate warrants that at the time of
8 signing:

9 (a) the signature was genuine;

10 (b) the signer was an appropriate person to indorse, or if the signature is by an agent, the agent
11 had actual authority to act on behalf of the appropriate person; and

12 (c) the signer had legal capacity to sign.

13 (2) A person who guarantees a signature of the originator of an instruction warrants that at the
14 time of signing:

15 (a) the signature was genuine;

16 (b) the signer was an appropriate person to originate the instruction, or if the signature is by an
17 agent, the agent had actual authority to act on behalf of the appropriate person, if the person specified in
18 the instruction as the registered owner was, in fact, the registered owner, as to which fact the signature
19 guarantor does not make a warranty; and

20 (c) the signer had legal capacity to sign.

21 (3) A person who specially guarantees the signature of an originator of an instruction makes the
22 warranties of a signature guarantor under subsection (2) and also warrants that at the time the instruction
23 is presented to the issuer:

24 (a) the person specified in the instruction as the registered owner of the uncertificated security will
25 be the registered owner; and

26 (b) the transfer of the uncertificated security requested in the instruction will be registered by the
27 issuer free from all liens, security interests, restrictions, and claims other than those specified in the
28 instruction.

29 (4) A guarantor under subsections (1) and (2) or a special guarantor under subsection (3) does not
30 otherwise warrant the rightfulness of the transfer.

1 (5) A person who guarantees an indorsement of a security certificate makes the warranties of a
2 signature guarantor under subsection (1) and also warrants the rightfulness of the transfer in all respects.

3 (6) A person who guarantees an instruction requesting the transfer of an uncertificated security
4 makes the warranties of a special signature guarantor under subsection (3) and also warrants the
5 rightfulness of the transfer in all respects.

6 (7) An issuer may not require a special guaranty of signature, a guaranty of indorsement, or a
7 guaranty of instruction as a condition to registration of transfer.

8 (8) The warranties under this section are made to a person taking or dealing with the security in
9 reliance on the guaranty, and the guarantor is liable to the person for loss resulting from their breach. An
10 indorser or originator of an instruction whose signature, indorsement, or instruction has been guaranteed
11 is liable to a guarantor for any loss suffered by the guarantor as a result of breach of the warranties of the
12 guarantor.

13

14 **NEW SECTION. Section 53. Purchaser's right to requisites for registration of transfer.** Unless
15 otherwise agreed, the transferor of a security on due demand shall supply the purchaser with proof of
16 authority to transfer or with any other requisite necessary to obtain registration of the transfer of the
17 security, but if the transfer is not for value, a transferor need not comply unless the purchaser pays the
18 necessary expenses. If the transferor fails within a reasonable time to comply with the demand, the
19 purchaser may reject or rescind the transfer.

20

21 **NEW SECTION. Section 54. Duty of issuer to register transfer.** (1) If a certificated security in
22 registered form is presented to an issuer with a request to register transfer or an instruction is presented
23 to an issuer with a request to register transfer of an uncertificated security, the issuer shall register the
24 transfer as requested if:

25 (a) under the terms of the security the person seeking registration of transfer is eligible to have the
26 security registered in its name;

27 (b) the indorsement or instruction is made by the appropriate person or by an agent who has actual
28 authority to act on behalf of the appropriate person;

29 (c) reasonable assurance is given that the indorsement or instruction is genuine and authorized
30 ([section 55]);

- 1 (d) any applicable law relating to the collection of taxes has been complied with;
- 2 (e) the transfer does not violate any restriction on transfer imposed by the issuer in accordance
3 with [section 40];
- 4 (f) a demand that the issuer not register transfer has not become effective under [section 56], or
5 the issuer has complied with [section 56(2)] but no legal process or indemnity bond is obtained as provided
6 in [section 56(4)]; and
- 7 (g) the transfer is in fact rightful or is to a protected purchaser.

8 (2) If an issuer is under a duty to register a transfer of a security, the issuer is liable to a person
9 presenting a certificated security or an instruction for registration or to the person's principal for loss
10 resulting from unreasonable delay in registration or failure or refusal to register the transfer.

11

12 **NEW SECTION. Section 55. Assurance that indorsement or instruction is effective.** (1) An issuer
13 may require the following assurance that each necessary indorsement or each instruction is genuine and
14 authorized:

15 (a) in all cases, a guaranty of the signature of the person making an indorsement or originating an
16 instruction including, in the case of an instruction, reasonable assurance of identity;

17 (b) if the indorsement is made or the instruction is originated by an agent, appropriate assurance
18 of actual authority to sign;

19 (c) if the indorsement is made or the instruction is originated by a fiduciary pursuant to [section
20 27(1)(d) or (1)(e)], appropriate evidence of appointment or incumbency;

21 (d) if there is more than one fiduciary, reasonable assurance that all who are required to sign have
22 done so; and

23 (e) if the indorsement is made or the instruction is originated by a person not covered by another
24 provision of this subsection, assurance appropriate to the case corresponding as nearly as may be to the
25 provisions of this subsection.

26 (2) An issuer may elect to require reasonable assurance beyond that specified in this section.

27 (3) In this section:

28 (a) "Guaranty of the signature" means a guaranty signed by or on behalf of a person reasonably
29 believed by the issuer to be responsible. An issuer may adopt standards with respect to responsibility if
30 they are not manifestly unreasonable.

1 (b) "Appropriate evidence of appointment or incumbency" means:

2 (i) in the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the
3 direction or supervision of the court or an officer thereof and dated within 60 days before the date of
4 presentation for transfer; or

5 (ii) in any other case, a copy of a document showing the appointment or a certificate issued by or
6 on behalf of a person reasonably believed by an issuer to be responsible or, in the absence of that
7 document or certificate, other evidence the issuer reasonably considers appropriate.

8

9 **NEW SECTION. Section 56. Demand that issuer not register transfer.** (1) A person who is an
10 appropriate person to make an indorsement or originate an instruction may demand that the issuer not
11 register transfer of a security by communicating to the issuer a notification that identifies the registered
12 owner and the issue of which the security is a part and provides an address for communications directed
13 to the person making the demand. The demand is effective only if it is received by the issuer at a time and
14 in a manner affording the issuer reasonable opportunity to act on it.

15 (2) If a certificated security in registered form is presented to an issuer with a request to register
16 transfer or an instruction is presented to an issuer with a request to register transfer of an uncertificated
17 security after a demand that the issuer not register transfer has become effective, the issuer shall promptly
18 communicate to:

19 (a) the person who initiated the demand at the address provided in the demand; and

20 (b) the person who presented the security for registration of transfer or initiated the instruction
21 requesting registration of transfer a notification stating that:

22 (i) the certificated security has been presented for registration of transfer or the instruction for
23 registration of transfer of the uncertificated security has been received;

24 (ii) a demand that the issuer not register transfer had previously been received; and

25 (iii) the issuer will withhold registration of transfer for a period of time stated in the notification in
26 order to provide the person who initiated the demand an opportunity to obtain legal process or an indemnity
27 bond.

28 (3) The period described in subsection (2)(b)(iii) may not exceed 30 days after the date of
29 communication of the notification. A shorter period may be specified by the issuer if it is not manifestly
30 unreasonable.

1 (4) An issuer is not liable to a person who initiated a demand that the issuer not register transfer
2 for any loss the person suffers as a result of registration of a transfer pursuant to an effective indorsement
3 or instruction if the person who initiated the demand does not, within the time stated in the issuer's
4 communication, either:

5 (a) obtain an appropriate restraining order, injunction, or other process from a court of competent
6 jurisdiction enjoining the issuer from registering the transfer; or

7 (b) file with the issuer an indemnity bond, sufficient in the issuer's judgment to protect the issuer
8 and any transfer agent, registrar, or other agent of the issuer involved from any loss it or they may suffer
9 by refusing to register the transfer.

10 (5) This section does not relieve an issuer from liability for registering transfer pursuant to an
11 indorsement or instruction that was not effective.

12

13 NEW SECTION. Section 57. Wrongful registration. (1) Except as otherwise provided in [section
14 59], an issuer is liable for wrongful registration of transfer if the issuer has registered a transfer of a security
15 to a person not entitled to it, and the transfer was registered:

16 (a) pursuant to an ineffective indorsement or instruction;

17 (b) after a demand that the issuer not register transfer became effective under [section 56(1)] and
18 the issuer did not comply with [section 56(2)];

19 (c) after the issuer had been served with an injunction, restraining order, or other legal process
20 enjoining it from registering the transfer, issued by a court of competent jurisdiction, and the issuer had a
21 reasonable opportunity to act on the injunction, restraining order, or other legal process; or

22 (d) by an issuer acting in collusion with the wrongdoer.

23 (2) An issuer that is liable for wrongful registration of transfer under subsection (1) on demand shall
24 provide the person entitled to the security with a like certificated or uncertificated security, and any
25 payments or distributions that the person did not receive as a result of the wrongful registration. If an
26 overissue would result, the issuer's liability to provide the person with a like security is governed by
27 [section 46].

28 (3) Except as otherwise provided in subsection (1) or in a law relating to the collection of taxes,
29 an issuer is not liable to an owner or other person suffering loss as a result of the registration of a transfer
30 of a security if registration was made pursuant to an effective indorsement or instruction.

1 **NEW SECTION. Section 58. Replacement of lost, destroyed, or wrongfully taken security**
2 **certificate.** (1) If an owner of a certificated security, whether in registered or bearer form, claims that the
3 certificate has been lost, destroyed, or wrongfully taken, the issuer shall issue a new certificate if the
4 owner:

5 (a) so requests before the issuer has notice that the certificate has been acquired by a protected
6 purchaser;

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

8 (c) satisfies other reasonable requirements imposed by the issuer.

9 (2) If, after the issue of a new security certificate, a protected purchaser of the original certificate
10 presents it for registration of transfer, the issuer shall register the transfer unless an overissue would result.
11 In that case, the issuer's liability is governed by [section 46]. In addition to any rights on the indemnity
12 bond, an issuer may recover the new certificate from a person to whom it was issued or any person taking
13 under that person, except a protected purchaser.

14

15 **NEW SECTION. Section 59. Obligation to notify issuer of lost, destroyed, or wrongfully taken**
16 **security certificate.** If a security certificate has been lost, apparently destroyed, or wrongfully taken, and
17 the owner fails to notify the issuer of that fact within a reasonable time after the owner has notice of it and
18 the issuer registers a transfer of the security before receiving notification, the owner may not assert against
19 the issuer a claim for registering the transfer under [section 57] or a claim to a new security certificate
20 under [section 58].

21

22 **NEW SECTION. Section 60. Authenticating trustee, transfer agent, and registrar.** A person acting
23 as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of a
24 transfer of its securities, in the issue of new security certificates or uncertificated securities, or in the
25 cancellation of surrendered security certificates has the same obligation to the holder or owner of a
26 certificated or uncertificated security with regard to the particular functions performed as the issuer has in
27 regard to those functions.

28

29 **NEW SECTION. Section 61. Securities account -- acquisition of security entitlement from securities**
30 **intermediary.** (1) "Securities account" means an account to which a financial asset is or may be credited

1 in accordance with an agreement under which the person maintaining the account undertakes to treat the
2 person for whom the account is maintained as entitled to exercise the rights that comprise the financial
3 asset.

4 (2) Except as otherwise provided in subsections (4) and (5), a person acquires a security
5 entitlement if a securities intermediary:

6 (a) indicates by book entry that a financial asset has been credited to the person's securities
7 account;

8 (b) receives a financial asset from the person or acquires a financial asset for the person and, in
9 either case, accepts it for credit to the person's securities account; or

10 (c) becomes obligated under other law, regulation, or rule to credit a financial asset to the person's
11 securities account.

12 (3) If a condition of subsection (2) has been met, a person has a security entitlement even though
13 the securities intermediary does not itself hold the financial asset.

14 (4) If a securities intermediary holds a financial asset for another person, and the financial asset
15 is registered in the name of, payable to the order of, or specially indorsed to the other person, and has not
16 been indorsed to the securities intermediary or in blank, the other person is treated as holding the financial
17 asset directly rather than as having a security entitlement with respect to the financial asset.

18 (5) Issuance of a security is not establishment of a security entitlement.

19

20 **NEW SECTION. Section 62. Assertion of adverse claim against entitlement holder.** An action
21 based on an adverse claim to a financial asset, whether framed in conversion, replevin, constructive trust,
22 equitable lien, or other theory, may not be asserted against a person who acquires a security entitlement
23 under [section 61] for value and without notice of the adverse claim.

24

25 **NEW SECTION. Section 63. Property interest of entitlement holder in financial asset held by**
26 **securities intermediary.** (1) To the extent necessary for a securities intermediary to satisfy all security
27 entitlements with respect to a particular financial asset, all interests in that financial asset held by the
28 securities intermediary are held by the securities intermediary for the entitlement holders, are not property
29 of the securities intermediary, and are not subject to claims of creditors of the securities intermediary,
30 except as otherwise provided in [section 71].

1 (2) An entitlement holder's property interest with respect to a particular financial asset under
2 subsection (1) is a pro rata property interest in all interests in that financial asset held by the securities
3 intermediary, without regard to the time the entitlement holder acquired the security entitlement or the time
4 the securities intermediary acquired the interest in that financial asset.

5 (3) An entitlement holder's property interest with respect to a particular financial asset under
6 subsection (1) may be enforced against the securities intermediary only by exercise of the entitlement
7 holder's rights under [sections 65 through 68].

8 (4) An entitlement holder's property interest with respect to a particular financial asset under
9 subsection (1) may be enforced against a purchaser of the financial asset or interest therein only if:

10 (a) insolvency proceedings have been initiated by or against the securities intermediary;

11 (b) the securities intermediary does not have sufficient interests in the financial asset to satisfy the
12 security entitlements of all of its entitlement holders to that financial asset;

13 (c) the securities intermediary violated its obligations under [section 64] by transferring the financial
14 asset or interest therein to the purchaser; and

15 (d) the purchaser is not protected under subsection (6).

16 (5) The trustee or other liquidator, acting on behalf of all entitlement holders having security
17 entitlements with respect to a particular financial asset, may recover the financial asset, or interest therein,
18 from the purchaser. If the trustee or other liquidator elects not to pursue that right, an entitlement holder
19 whose security entitlement remains unsatisfied has the right to recover its interest in the financial asset
20 from the purchaser.

21 (6) An action based on the entitlement holder's property interest with respect to a particular
22 financial asset under subsection (1), whether framed in conversion, replevin, constructive trust, equitable
23 lien, or other theory, may not be asserted against any purchaser of a financial asset or interest therein who
24 gives value, obtains control, and does not act in collusion with the securities intermediary in violating the
25 securities intermediary's obligations under [section 64].

26
27 **NEW SECTION. Section 64. Duty of securities intermediary to maintain financial asset.** (1) A
28 securities intermediary shall promptly obtain and thereafter maintain a financial asset in a quantity
29 corresponding to the aggregate of all security entitlements it has established in favor of its entitlement
30 holders with respect to that financial asset. The securities intermediary may maintain those financial assets

1 directly or through one or more other securities intermediaries.

2 (2) Except to the extent otherwise agreed by its entitlement holder, a securities intermediary may
3 not grant any security interests in a financial asset it is obligated to maintain pursuant to subsection (1).

4 (3) A securities intermediary satisfies the duty in subsection (1) if:

5 (a) the securities intermediary acts with respect to the duty as agreed upon by the entitlement
6 holder and the securities intermediary; or

7 (b) in the absence of agreement, the securities intermediary exercises due care in accordance with
8 reasonable commercial standards to obtain and maintain the financial asset.

9 (4) This section does not apply to a clearing corporation that is itself the obligor of an option or
10 similar obligation to which its entitlement holders have security entitlements.

11
12 **NEW SECTION. Section 65. Duty of securities intermediary with respect to payments and**

13 **distributions.** (1) A securities intermediary shall take action to obtain a payment or distribution made by
14 the issuer of a financial asset. A securities intermediary satisfies the duty if:

15 (a) the securities intermediary acts with respect to the duty as agreed upon by the entitlement
16 holder and the securities intermediary; or

17 (b) in the absence of agreement, the securities intermediary exercises due care in accordance with
18 reasonable commercial standards to attempt to obtain the payment or distribution.

19 (2) A securities intermediary is obligated to its entitlement holder for a payment or distribution
20 made by the issuer of a financial asset if the payment or distribution is received by the securities
21 intermediary.

22
23 **NEW SECTION. Section 66. Duty of securities intermediary to exercise rights as directed by**

24 **entitlement holder.** A securities intermediary shall exercise rights with respect to a financial asset if
25 directed to do so by an entitlement holder. A securities intermediary satisfies the duty if:

26 (1) the securities intermediary acts with respect to the duty as agreed upon by the entitlement
27 holder and the securities intermediary; or

28 (2) in the absence of agreement, the securities intermediary either places the entitlement holder
29 in a position to exercise the rights directly or exercises due care in accordance with reasonable commercial
30 standards to follow the direction of the entitlement holder.

1 **NEW SECTION. Section 67. Duty of securities intermediary to comply with entitlement order.** (1)

2 A securities intermediary shall comply with an entitlement order if the entitlement order is originated by the
3 appropriate person, the securities intermediary has had reasonable opportunity to assure itself that the
4 entitlement order is genuine and authorized, and the securities intermediary has had reasonable opportunity
5 to comply with the entitlement order. A securities intermediary satisfies the duty if:

6 (a) the securities intermediary acts with respect to the duty as agreed upon by the entitlement
7 holder and the securities intermediary; or

8 (b) in the absence of agreement, the securities intermediary exercises due care in accordance with
9 reasonable commercial standards to comply with the entitlement order.

10 (2) If a securities intermediary transfers a financial asset pursuant to an ineffective entitlement
11 order, the securities intermediary shall reestablish a security entitlement in favor of the person entitled to
12 it, and pay or credit any payments or distributions that the person did not receive as a result of the
13 wrongful transfer. If the securities intermediary does not reestablish a security entitlement, the securities
14 intermediary is liable to the entitlement holder for damages.

15

16 **NEW SECTION. Section 68. Duty of securities intermediary to change entitlement holder's position**
17 **to other form of security holding.** A securities intermediary shall act at the direction of an entitlement
18 holder to change a security entitlement into another available form of holding for which the entitlement
19 holder is eligible, or to cause the financial asset to be transferred to a securities account of the entitlement
20 holder with another securities intermediary. A securities intermediary satisfies the duty if:

21 (1) the securities intermediary acts as agreed upon by the entitlement holder and the securities
22 intermediary; or

23 (2) in the absence of agreement, the securities intermediary exercises due care in accordance with
24 reasonable commercial standards to follow the direction of the entitlement holder.

25

26 **NEW SECTION. Section 69. Specification of duties of securities intermediary by other statute or**
27 **regulation -- manner of performance of duties of securities intermediary and exercise of rights of entitlement**
28 **holder.** (1) If the substance of a duty imposed upon a securities intermediary by [sections 64 through 68]
29 is the subject of other statute, regulation, or rule, compliance with that statute, regulation, or rule satisfies
30 the duty.

1 (2) To the extent that specific standards for the performance of the duties of a securities
2 intermediary or the exercise of the rights of an entitlement holder are not specified by other statute,
3 regulation, or rule or by agreement between the securities intermediary and entitlement holder, the
4 securities intermediary shall perform its duties and the entitlement holder shall exercise its rights in a
5 commercially reasonable manner.

6 (3) The obligation of a securities intermediary to perform the duties imposed by [sections 64
7 through 68] is subject to:

8 (a) rights of the securities intermediary arising out of a security interest under a security agreement
9 with the entitlement holder or otherwise; and

10 (b) rights of the securities intermediary under other law, regulation, rule, or agreement to withhold
11 performance of its duties as a result of unfulfilled obligations of the entitlement holder to the securities
12 intermediary.

13 (4) [Sections 64 through 68] do not require a securities intermediary to take any action that is
14 prohibited by other statute, regulation, or rule.

15
16 **NEW SECTION. Section 70. Rights of purchaser of security entitlement from entitlement holder.**

17 (1) An action based on an adverse claim to a financial asset or security entitlement, whether framed in
18 conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a
19 person who purchases a security entitlement, or an interest therein, from an entitlement holder if the
20 purchaser gives value, does not have notice of the adverse claim, and obtains control.

21 (2) If an adverse claim could not have been asserted against an entitlement holder under [section
22 62], the adverse claim cannot be asserted against a person who purchases a security entitlement, or an
23 interest therein, from the entitlement holder.

24 (3) In a case not covered by the priority rules in chapter 9, a purchaser for value of a security
25 entitlement, or an interest therein, who obtains control has priority over a purchaser of a security
26 entitlement, or an interest therein, who does not obtain control. Purchasers who have control rank equally,
27 except that a securities intermediary as purchaser has priority over a conflicting purchaser who has control
28 unless otherwise agreed by the securities intermediary.

29
30 **NEW SECTION. Section 71. Priority among security interests and entitlement holders.** (1) Except

1 as otherwise provided in subsections (2) and (3), if a securities intermediary does not have sufficient
2 interests in a particular financial asset to satisfy both its obligations to entitlement holders who have
3 security entitlements to that financial asset and its obligation to a creditor of the securities intermediary
4 who has a security interest in that financial asset, the claims of entitlement holders, other than the creditor,
5 have priority over the claim of the creditor.

6 (2) A claim of a creditor of a securities intermediary who has a security interest in a financial asset
7 held by a securities intermediary has priority over claims of the securities intermediary's entitlement holders
8 who have security entitlements with respect to that financial asset if the creditor has control over the
9 financial asset.

10 (3) If a clearing corporation does not have sufficient financial assets to satisfy both its obligations
11 to entitlement holders who have security entitlements with respect to a financial asset and its obligation
12 to a creditor of the clearing corporation who has a security interest in that financial asset, the claim of the
13 creditor has priority over the claims of entitlement holders.

14

15 **Section 72.** Section 30-9-103, MCA, is amended to read:

16 **"30-9-103. Perfection of security interests in multiple state transactions.** (1) (a) Subsection (1)
17 applies to documents and instruments and to goods other than those covered by a certificate of title
18 described in subsection (2), mobile goods described in subsection (3), and minerals described in subsection
19 (5).

20 (b) Except as otherwise provided in subsection (1), perfection and the effect of perfection or
21 nonperfection of a security interest in collateral are governed by the law of the jurisdiction where the
22 collateral is when the last event occurs on which is based the assertion that the security interest is
23 perfected or unperfected.

24 (c) If the parties to a transaction creating a purchase money security interest in goods in one
25 jurisdiction understand at the time that the security interest attaches that the goods will be kept in another
26 jurisdiction, then the law of the other jurisdiction governs the perfection and the effect of perfection or
27 nonperfection of the security interest from the time it attaches until 30 days after the debtor receives
28 possession of the goods and thereafter if the goods are taken to the other jurisdiction before the end of the
29 30-day period.

30 (d) When collateral is brought into and kept in this state while subject to a security interest

1 perfected under the law of the jurisdiction from which the collateral was removed, the security interest
2 remains perfected, but if action is required by part 3 of this chapter to perfect the security interest:

3 (i) if the action is not taken before the expiration of the period of perfection in the other jurisdiction
4 or the end of 4 months after the collateral is brought into this state, whichever period first expires, the
5 security interest becomes unperfected at the end of that period and is thereafter considered to have been
6 unperfected as against a person who became a purchaser after removal;

7 (ii) if the action is taken before the expiration of the period specified in (1)(d)(i), the security interest
8 continues perfected thereafter;

9 (iii) for the purpose of priority over a buyer of consumer goods (30-9-307(2)), the period of the
10 effectiveness of a filing in the jurisdiction from which the collateral is removed is governed by the rules with
11 respect to perfection in (1)(d)(i) and (ii).

12 (2) (a) Subsection (2) applies to goods covered by a certificate of title issued under a statute of
13 this state or of another jurisdiction under the law of which indication of a security interest on the certificate
14 is required as a condition of perfection.

15 (b) Except as otherwise provided in subsection (2), perfection and the effect of perfection or
16 nonperfection of the security interest are governed by the law (including the conflict of laws rules) of the
17 jurisdiction issuing the certificate until 4 months after the goods are removed from that jurisdiction and
18 thereafter until the goods are registered in another jurisdiction, but in any event not beyond surrender of
19 the certificate. After the expiration of that period, the goods are not covered by the certificate of title within
20 the meaning of this section.

21 (c) Except with respect to the rights of a buyer described in (2)(d), a security interest, perfected
22 in another jurisdiction otherwise than by notation on a certificate of title, in goods brought into this state
23 and thereafter covered by a certificate of title issued by this state is subject to the rules stated in (1)(d).

24 (d) If goods are brought into this state while a security interest therein is perfected in any manner
25 under the law of the jurisdiction from which the goods are removed and a certificate of title is issued by
26 this state and the certificate does not show that the goods are subject to the security interest or that they
27 may be subject to security interests not shown on the certificate, the security interest is subordinate to the
28 rights of a buyer of the goods who is not in the business of selling goods of that kind to the extent that
29 ~~he~~ the buyer gives value and receives delivery of the goods after issuance of the certificate and without
30 knowledge of the security interest.

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

7 (b) The law (including the conflict of laws rules) of the jurisdiction in which the debtor is located
8 governs the perfection and the effect of perfection or nonperfection of the security interest.

9 (c) If, however, the debtor is located in a jurisdiction which is not a part of the United States and
10 which does not provide for perfection of the security interest by filing or recording in that jurisdiction, the
11 law of the jurisdiction in the United States in which the debtor has its major executive office in the United
12 States governs the perfection and the effect of perfection or nonperfection of the security interest through
13 filing. In the alternative, if the debtor is located in a jurisdiction which is not a part of the United States or
14 Canada and the collateral is accounts or general intangibles for money due or to become due, the security
15 interest may be perfected by notification to the account debtor. As used in subsection (3)(c), "United
16 States" includes its territories and possessions and the Commonwealth of Puerto Rico.

17 (d) A debtor shall be considered located at ~~his~~ the debtor's place of business if ~~he~~ the debtor has
18 one, at ~~his~~ the chief executive office if ~~he~~ the debtor has more than one place of business, otherwise at
19 ~~his~~ the debtor's residence. If, however, the debtor is a foreign air carrier under the Federal Aviation Act,
20 it shall be considered located at the designated office of the agent upon whom service of process may be
21 made on behalf of the foreign air carrier.

22 (e) A security interest perfected under the law of the jurisdiction of the location of the debtor is
23 perfected until the expiration of 4 months after a change of the debtor's location to another jurisdiction or
24 until perfection would have ceased by the law of the first jurisdiction, whichever period first expires. Unless
25 perfected in the new jurisdiction before the end of that period, it becomes unperfected thereafter and is
26 considered to have been unperfected as against a person who became a purchaser after the change.

27 (4) The rules stated for goods in subsection (1) apply to a possessory security interest in chattel
28 paper. The rules stated for accounts in subsection (3) apply to a nonpossessory security interest in chattel
29 paper, but the security interest may not be perfected by notification to the account debtor.

30 (5) Perfection and the effect of perfection or nonperfection of a security interest which is created

1 by a debtor who has an interest in minerals or the like (including oil and gas) before extraction and which
2 attaches thereto as extracted or which attaches to an account resulting from the sale thereof at the
3 wellhead or minehead are governed by the law (including the conflict of laws rules) of the jurisdiction
4 wherein the wellhead or minehead is located.

5 (6) ~~(a) The law (including the conflict of laws rules) of the jurisdiction of organization of the issuer~~
6 ~~governs the perfection and the effect of perfection or nonperfection of a security interest in uncertificated~~
7 ~~securities. This subsection (6) applies to investment property.~~

8 (b) Except as otherwise provided in subsection (6)(f), during the time that a security certificate is
9 located in a jurisdiction, perfection of a security interest, the effect of perfection or nonperfection, and the
10 priority of a security interest in the certificated security are governed by the local law of that jurisdiction.

11 (c) Except as otherwise provided in subsection (6)(f), perfection of a security interest, the effect
12 of perfection or nonperfection, and the priority of a security interest in an uncertificated security are
13 governed by the local law of the issuer's jurisdiction as specified in [section 30(4)].

14 (d) Except as otherwise provided in subsection (6)(f), perfection of a security interest, the effect
15 of perfection or nonperfection, and the priority of a security interest in a security entitlement or securities
16 account are governed by the local law of the securities intermediary's jurisdiction as specified in [section
17 30(5)].

18 (e) Except as otherwise provided in subsection (6)(f), perfection of a security interest, the effect
19 of perfection or nonperfection, and the priority of a security interest in a commodity contract or commodity
20 account are governed by the local law of the commodity intermediary's jurisdiction. The following rules
21 determine a "commodity intermediary's jurisdiction" for purposes of this subsection (6)(e):

22 (i) If an agreement between the commodity intermediary and commodity customer specifies that
23 it is governed by the law of a particular jurisdiction, that jurisdiction is the commodity intermediary's
24 jurisdiction.

25 (ii) If an agreement between the commodity intermediary and commodity customer does not specify
26 the governing law as provided in subsection (6)(e)(i), but expressly specifies that the commodity account
27 is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity intermediary's
28 jurisdiction.

29 (iii) If an agreement between the commodity intermediary and commodity customer does not specify
30 a jurisdiction as provided in subsections (6)(e)(i) or (6)(e)(ii), the commodity intermediary's jurisdiction is

1 the jurisdiction in which is located the office identified in an account statement as the office serving the
2 commodity customer's account.

3 (iv) If an agreement between the commodity intermediary and commodity customer does not specify
4 a jurisdiction as provided in subsections (6)(e)(i) or (6)(e)(ii) and an account statement does not identify an
5 office serving the commodity customer's account as provided in subsection (6)(e)(iii), the commodity
6 intermediary's jurisdiction is the jurisdiction in which is located the chief executive office of the commodity
7 intermediary.

8 (f) Perfection of a security interest by filing, automatic perfection of a security interest in
9 investment property granted by a broker or securities intermediary, and automatic perfection of a security
10 interest in a commodity contract or commodity account granted by a commodity intermediary are governed
11 by the local law of the jurisdiction in which the debtor is located."

12

13 **Section 73.** Section 30-9-104, MCA, is amended to read:

14 **"30-9-104. Transactions excluded from chapter.** This chapter does not apply:

15 (1) to a security interest subject to any statute of the United States such as the Ship Mortgage Act,
16 1920, to the extent that the statute governs the rights of parties to and third parties affected by
17 transactions in particular types of property;

18 (2) to a landlord's lien;

19 (3) to a lien given by statute or other rule of law for services or materials except as provided in
20 30-9-310 on priority of such liens;

21 (4) to a transfer of a claim for wages, salary, or other compensation of an employee;

22 (5) to a transfer by a government or governmental subdivision or agency;

23 (6) to a sale of accounts or chattel paper as part of a sale of the business out of which they arose,
24 or an assignment of accounts or chattel paper which is for the purpose of collection only, or a transfer of
25 a right to payment under a contract to an assignee who is also to do the performance under the contract,
26 or a transfer of a single account to an assignee in whole or partial satisfaction of a preexisting
27 indebtedness;

28 (7) to a transfer of an interest or claim in or under any policy of insurance, except as provided with
29 respect to proceeds (30-9-306) and priorities in proceeds (30-9-312);

30 (8) to a right represented by a judgment (other than a judgment taken on a right to payment which

1 was collateral);

2 (9) to any right of setoff;

3 (10) except to the extent that provision is made for fixtures in 30-9-313, to the creation or transfer
4 of an interest in or lien on real estate, including a lease or rents under the lease;

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

6 (12) to a transfer of an interest in any deposit account (30-9-105(1)), except as provided with
7 respect to proceeds (30-9-306) and priorities in proceeds (30-9-312); or

8 (13) to liquor in an agency liquor store as defined in 16-1-106; or

9 (14) to a transfer of an interest in a letter of credit other than the rights to proceeds of a written
10 letter of credit."

11
12 **Section 74.** Section 30-9-105, MCA, is amended to read:

13 **"30-9-105. Definitions and index of definitions.** (1) In this chapter, the following definitions apply
14 unless the context otherwise requires:

15 (a) "Account debtor" means the person who is obligated on an account, chattel paper, or general
16 intangible.

17 (b) "Chattel paper" means a writing or writings which evidence both a monetary obligation and a
18 security interest in or a lease of specific goods, but a charter or other contract involving the use or hire of
19 a vessel is not chattel paper. When a transaction is evidenced both by such a security agreement or a lease
20 and by an instrument or a series of instruments, the group of writings taken together constitutes chattel
21 paper.

22 (c) "Collateral" means the property subject to a security interest, and includes accounts and chattel
23 paper which have been sold.

24 (d) "Debtor" means the person who owes payment or other performance of the obligation secured,
25 whether or not he owns or has rights in the collateral, and includes the seller of accounts or chattel paper.
26 When the debtor and the owner of the collateral are not the same person, the term "debtor" means the
27 owner of the collateral in any provision of the chapter dealing with the collateral, the obligor in any
28 provision dealing with the obligation, and may include both where the context so requires.

29 (e) "Deposit account" means a demand, time, savings, passbook, or like account maintained with
30 a bank, savings and loan association, credit union, or like organization, other than an account evidenced

1 by a certificate of deposit.

2 (f) "Document" means document of title as defined in the general definitions of chapter 1
3 (30-1-201) and a receipt of the kind described in 30-7-201(2).

4 (g) "Encumbrance" includes real estate mortgages and other liens on real estate and all other rights
5 in real estate that are not ownership interests.

6 (h) "Goods" includes all things which are movable at the time the security interest attaches or
7 which are fixtures (30-9-313), but does not include money, documents, instruments, investment property,
8 accounts, chattel paper, general intangibles, or minerals or the like (including oil and gas) before extraction.
9 "Goods" also includes standing timber that is to be cut and removed under a conveyance or contract for
10 sale, the unborn young of animals, and growing crops.

11 (i) "Instrument" means a negotiable instrument (defined in 30-3-104), ~~or a certificated security~~
12 ~~(defined in 30-8-102)~~ or any other writing which evidences a right to the payment of money and is not itself
13 a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery
14 with any necessary endorsement or assignment. The term does not include investment property.

15 (j) "Mortgage" means a consensual interest created by a real estate mortgage, a trust deed on real
16 estate, or the like.

17 (k) An advance is made "pursuant to commitment" if the secured party has bound ~~himself~~ the
18 secured party to make it, whether or not a subsequent event of default or other event not within ~~his~~ the
19 secured party's control has relieved or may relieve ~~him~~ the secured party from ~~his~~ the secured party's
20 obligation.

21 (l) "Security agreement" means an agreement which creates or provides for a security interest.

22 (m) "Secured party" means a lender, seller, or other person in whose favor there is a security
23 interest, including a person to whom accounts or chattel paper have been sold. When the holders of
24 obligations issued under an indenture of trust, equipment trust agreement, or the like are represented by
25 a trustee or other person, the representative is the secured party.

26 (n) "Transmitting utility" means any person primarily engaged in the railroad, street railway, or
27 trolley bus business; the electric or electronics communications transmission business; the transmission of
28 goods by pipeline; or the transmission or the production and transmission of electricity, steam, gas, or
29 water or the provision of sewer service.

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

- 1 "Account". 30-9-106.
2 "Attach". 30-9-203.
3 "Commodity contract". [section 76].
4 "Commodity customer". [section 76].
5 "Commodity intermediary". [section 76].
6 "Construction mortgage". 30-9-313(1).
7 "Consumer goods". 30-9-109(1).
8 "Control". [section 76].
9 "Equipment". 30-9-109(2).
10 "Farm products". 30-9-109(3).
11 "Fixture". 30-9-313(1).
12 "Fixture filing". 30-9-313.
13 "General intangibles". 30-9-106.
14 "Inventory". 30-9-109(4).
15 "Investment property". [section 76].
16 "Lien creditor". 30-9-301(3).
17 "Proceeds". 30-9-306(1).
18 "Purchase money security interest". 30-9-107.
19 "United States". 30-9-103.
20 (3) The following definitions in other chapters apply to this chapter:
21 "Broker". [section 22].
22 "Certificated security". [section 22].
23 "Check". 30-3-104.
24 "Clearing corporation". [section 22].
25 "Contract for sale". 30-2-106.
26 "Control". [section 26].
27 "Delivery". [section 47].
28 "Entitlement holder". [section 22].
29 "Financial asset". [section 22].
30 "Holder in due course". 30-3-302.

- 1 "Letter of credit". [section 6].
 2 "Note". 30-3-104.
 3 "Proceeds of a letter of credit". [section 18(1)].
 4 "Sale". 30-2-106.
 5 "Securities intermediary". [section 22].
 6 "Security". [section 22].
 7 "Security certificate". [section 22]
 8 "Security entitlement". [section 22].
 9 "Uncertificated security". [section 22].

10 (4) In addition Chapter 1 contains general definitions and principles of construction and
 11 interpretation applicable throughout this chapter."

12

13 **Section 75.** Section 30-9-106, MCA, is amended to read:

14 **"30-9-106. Definitions -- "account" -- "general intangibles".** "Account" means any right to
 15 payment for goods sold or leased or for services rendered which is not evidenced by an instrument or
 16 chattel paper, whether or not it has been earned by performance. "General intangibles" means any personal
 17 property (including things in action) other than goods, accounts, chattel paper, documents, instruments,
 18 investment property, rights to proceeds of written letters of credit, and money. All rights to payment earned
 19 or unearned under a charter or other contract involving the use or hire of a vessel and all rights incident to
 20 the charter or contract are accounts."

21

22 **NEW SECTION. Section 76. Investment property.** (1) In this chapter:

23 (a) "Commodity account" means an account maintained by a commodity intermediary in which a
 24 commodity contract is carried for a commodity customer.

25 (b) "Commodity contract" means a commodity futures contract, an option on a commodity futures
 26 contract, a commodity option, or other contract that, in each case, is:

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

29 (ii) traded on a foreign commodity board of trade, exchange, or market, and is carried on the books
 30 of a commodity intermediary for a commodity customer.

1 (c) "Commodity customer" means a person for whom a commodity intermediary carries a
2 commodity contract on its books.

3 (d) "Commodity intermediary" means:

4 (i) a person who is registered as a futures commission merchant under the federal commodities
5 laws; or

6 (ii) a person who in the ordinary course of its business provides clearance or settlement services
7 for a board of trade that has been designated as a contract market pursuant to the federal commodities
8 laws.

9 (e) "Control" with respect to a certificated security, uncertificated security, or security entitlement
10 has the meaning specified in [section 26]. A secured party has control over a commodity contract if by
11 agreement among the commodity customer, the commodity intermediary, and the secured party, the
12 commodity intermediary has agreed that it will apply any value distributed on account of the commodity
13 contract as directed by the secured party without further consent by the commodity customer. If a
14 commodity customer grants a security interest in a commodity contract to its own commodity intermediary,
15 the commodity intermediary as secured party has control. A secured party has control over a securities
16 account or commodity account if the secured party has control over all security entitlements or commodity
17 contracts carried in the securities account or commodity account.

18 (f) "Investment property" means:

19 (i) a security, whether certificated or uncertificated;

20 (ii) a security entitlement;

21 (iii) a securities account;

22 (iv) a commodity contract; or

23 (v) a commodity account.

24 (2) Attachment or perfection of a security interest in a securities account is also attachment or
25 perfection of a security interest in all security entitlements carried in the securities account. Attachment
26 or perfection of a security interest in a commodity account is also attachment or perfection of a security
27 interest in all commodity contracts carried in the commodity account.

28 (3) A description of collateral in a security agreement or financing statement is sufficient to create
29 or perfect a security interest in a certificated security, uncertificated security, security entitlement,
30 securities account, commodity contract, or commodity account whether it describes the collateral by those

1 terms, or as investment property, or by description of the underlying security, financial asset, or commodity
2 contract. A description of investment property collateral in a security agreement or financing statement
3 is sufficient if it identifies the collateral by specific listing, by category, by quantity, by a computational or
4 allocational formula or procedure, or by any other method, if the identity of the collateral is objectively
5 determinable.

6 (4) Perfection of a security interest in investment property is governed by the following rules:

7 (a) A security interest in investment property may be perfected by control.

8 (b) Except as otherwise provided in subsections (4)(c) and (4)(d), a security interest in investment
9 property may be perfected by filing.

10 (c) If the debtor is a broker or securities intermediary, a security interest in investment property is
11 perfected when it attaches. The filing of a financing statement with respect to a security interest in
12 investment property granted by a broker or securities intermediary has no effect for purposes of perfection
13 or priority with respect to that security interest.

14 (d) If a debtor is a commodity intermediary, a security interest in a commodity contract or a
15 commodity account is perfected when it attaches. The filing of a financing statement with respect to a
16 security interest in a commodity contract or a commodity account granted by a commodity intermediary
17 has no effect for purposes of perfection or priority with respect to that security interest.

18 (5) Priority between conflicting security interests in the same investment property is governed by
19 the following rules:

20 (a) A security interest of a secured party who has control over investment property has priority
21 over a security interest of a secured party who does not have control over the investment property.

22 (b) Except as otherwise provided in subsections (5)(c) and (5)(d), conflicting security interests of
23 secured parties each of whom has control rank equally.

24 (c) Except as otherwise agreed by the securities intermediary, a security interest in a security
25 entitlement or a securities account granted to the debtor's own securities intermediary has priority over any
26 security interest granted by the debtor to another secured party.

27 (d) Except as otherwise agreed by the commodity intermediary, a security interest in a commodity
28 contract or a commodity account granted to the debtor's own commodity intermediary has priority over
29 any security interest granted by the debtor to another secured party.

30 (e) Conflicting security interests granted by a broker, a securities intermediary, or a commodity

1 intermediary which are perfected without control rank equally.

2 (f) In all other cases, priority between conflicting security interests in investment property is
3 governed by 30-9-312(5), (6), and (7). Section 30-9-312(4) does not apply to investment property.

4 (6) If a security certificate in registered form is delivered to a secured party pursuant to agreement,
5 a written security agreement is not required for attachment or enforceability of the security interest, delivery
6 suffices for perfection of the security interest, and the security interest has priority over a conflicting
7 security interest perfected by means other than control, even if a necessary indorsement is lacking.

8
9 **NEW SECTION. Section 77. Security interest arising in purchase or delivery of financial asset.** (1)

10 If a person buys a financial asset through a securities intermediary in a transaction in which the buyer is
11 obligated to pay the purchase price to the securities intermediary at the time of the purchase, and the
12 securities intermediary credits the financial asset to the buyer's securities account before the buyer pays
13 the securities intermediary, the securities intermediary has a security interest in the buyer's security
14 entitlement securing the buyer's obligation to pay. A security agreement is not required for attachment or
15 enforceability of the security interest, and the security interest is automatically perfected.

16 (2) If a certificated security, or other financial asset represented by a writing which in the ordinary
17 course of business is transferred by delivery with any necessary indorsement or assignment is delivered
18 pursuant to an agreement between persons in the business of dealing with such securities or financial
19 assets and the agreement calls for delivery versus payment, the person delivering the certificate or other
20 financial asset has a security interest in the certificated security or other financial asset securing the seller's
21 right to receive payment. A security agreement is not required for attachment or enforceability of the
22 security interest, and the security interest is automatically perfected.

23

24 **Section 78.** Section 30-9-203, MCA, is amended to read:

25 **"30-9-203. Attachment and enforceability of security interest -- proceeds, formal requisites.** (1)
26 Subject to the provisions of 30-4-208 on the security interest of a collecting bank, ~~30-8-324~~ [sections 76
27 and 77] on security interests in ~~securities~~ investment property, and 30-9-113 on a security interest arising
28 under the Chapter on Sales, a security interest is not enforceable against the debtor or third parties with
29 respect to the collateral and does not attach unless:

30 (a) the collateral is in the possession of the secured party pursuant to agreement, the collateral is

1 investment property and the secured party has control pursuant to agreement, or the debtor has signed a
 2 security agreement which contains a description of the collateral and in addition, when the security interest
 3 covers crops growing or to be grown or timber to be cut, a description of the land concerned;

4 (b) value has been given; and

5 (c) the debtor has rights in the collateral.

6 (2) A security interest attaches when it becomes enforceable against the debtor with respect to
 7 the collateral. Attachment occurs as soon as all of the events specified in subsection (1) have taken place
 8 unless explicit agreement postpones the time of attaching.

9 (3) Unless otherwise agreed a security agreement gives the secured party the rights to proceeds
 10 provided by 30-9-306.

11 (4) A transaction, although subject to this chapter, is also subject to Title 23, chapter 2, part 5,
 12 to Title 23, chapter 2, part 6, to Title 32, chapter 5, as enacted by Chapter 283, Laws of Montana 1959,
 13 to Title 31, chapter 1, part 2, as enacted by Chapter 282, Laws of Montana 1959, and to 81-8-301
 14 through 81-8-305, Title 61, chapter 3, Title 16, chapters 1 through 6, and Title 31, chapter 1, part 4, as
 15 amended, and in the case of conflict between the provisions of this chapter and any such statute, the
 16 provisions of such statute control. Failure to comply with any applicable statute has only the effect which
 17 is specified therein."

18

19 **Section 79.** Section 30-9-301, MCA, is amended to read:

20 **"30-9-301. Persons who take priority over unperfected security interests -- right of "lien creditor".**

21 (1) Except as otherwise provided in subsection (2), an unperfected security interest is subordinate to the
 22 rights of:

23 (a) persons entitled to priority under 30-9-312;

24 (b) a person who becomes a lien creditor before the security interest is perfected;

25 (c) in the case of goods, instruments, documents, and chattel paper, a person who is not a secured
 26 party and who is a transferee in bulk or other buyer not in ordinary course of business or is a buyer of farm
 27 products in ordinary course of business, to the extent that ~~he~~ the person gives value and receives delivery
 28 of the collateral without knowledge of the security interest and before it is perfected;

29 (d) in the case of accounts, ~~and~~ general intangibles, and investment property, a person who is not
 30 a secured party and who is a transferee to the extent that ~~he~~ the person gives value without knowledge

1 of the security interest and before it is perfected.

2 (2) If the secured party files with respect to a purchase money security interest before or within
3 20 days after the debtor receives possession of the collateral, ~~he~~ the secured party takes priority over the
4 rights of a transferee in bulk or of a lien creditor which arise between the time the security interest attaches
5 and the time of filing.

6 (3) A "lien creditor" means a creditor who has acquired a lien on the property involved by
7 attachment, levy, or the like and includes an assignee for benefit of creditors from the time of assignment
8 and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time
9 of appointment.

10 (4) A person who becomes a lien creditor while a security interest is perfected takes subject to the
11 security interest only to the extent that it secures advances made before ~~he~~ the person becomes a lien
12 creditor or within 45 days thereafter or made without knowledge of the lien or pursuant to a commitment
13 entered into without knowledge of the lien."
14

15 **Section 80.** Section 30-9-302, MCA, is amended to read:

16 **"30-9-302. When filing is required to perfect security interest -- security interests to which filing**
17 **provisions of this chapter do not apply.** (1) A financing statement must be filed to perfect all security
18 interests except the following:

19 (a) a security interest in collateral in possession of the secured party under 30-9-305;

20 (b) a security interest temporarily perfected in instruments, certificated securities, or documents
21 without delivery under 30-9-304 or in proceeds for a 10-day period under 30-9-306;

22 (c) a security interest created by an assignment of a beneficial interest in a trust or a decedent's
23 estate;

24 (d) a purchase money security interest in consumer goods; but filing is required for a motor vehicle
25 required to be registered, and fixture filing is required for priority over conflicting interests in fixtures to the
26 extent provided in 30-9-313;

27 (e) an assignment of accounts which does not alone or in conjunction with other assignments to
28 the same assignee transfer a significant part of the outstanding accounts of the assignor;

29 (f) a security interest of a collecting bank (30-4-208), ~~in securities (30-8-321)~~, or arising under the
30 Chapter on Sales or covered in subsection (3) of this section;

1 (g) an assignment for the benefit of all creditors of the transferor, and subsequent transfers by the
2 assignee thereunder;

3 (h) a security interest in investment property that is perfected without filing under [section 76 or
4 77].

5 (2) If a secured party assigns a perfected security interest, no filing under this chapter is required
6 in order to continue the perfected status of the security interest against creditors of and transferees from
7 the original debtor.

8 (3) The filing of a financing statement otherwise required by this chapter is not necessary or
9 effective to perfect a security interest in property subject to:

10 (a) a statute or treaty of the United States which provides for a national or international registration
11 or a national or international certificate of title or which specifies a place of filing different from that
12 specified in this chapter for filing of the security interest; or

13 (b) the following statutes of this state: Title 61, chapter 3; Title 23, chapter 2, parts 5 and 6; but
14 during any period in which collateral is inventory held for sale by a person who is in the business of selling
15 goods of that kind, the filing provisions of this chapter (part 4) apply to a security interest in that collateral
16 created by ~~him~~ the person as debtor; or

17 (c) a certificate of title statute of another jurisdiction under the law of which indication of a security
18 interest on the certificate is required as a condition of perfection (30-9-103(2)).

19 (4) Compliance with a statute or treaty described in subsection (3) is equivalent to the filing of a
20 financing statement under this chapter, and a security interest in property subject to the statute or treaty
21 can be perfected only by compliance therewith except as provided in 30-9-103 on multiple state
22 transactions. Duration and renewal of perfection of a security interest perfected by compliance with the
23 statute or treaty are governed by the provisions of the statute or treaty; in other respects the security
24 interest is subject to this chapter."

25

26 **Section 81.** Section 30-9-303, MCA, is amended to read:

27 **"30-9-303. When security interest is perfected -- continuity of perfection.** (1) A security interest
28 is perfected when it has attached and when all of the applicable steps required for perfection have been
29 taken. Such steps are specified in [section 76], 30-9-302, 30-9-304, 30-9-305, and 30-9-306. If such steps
30 are taken before the security interest attaches, it is perfected at the time when it attaches.

1 (2) If a security interest is originally perfected in any way permitted under this chapter and is
2 subsequently perfected in some other way under this chapter, without an intermediate period when it was
3 unperfected, the security interest shall be deemed to be perfected continuously for the purposes of this
4 chapter."

5
6 **Section 82.** Section 30-9-304, MCA, is amended to read:

7 **"30-9-304. Perfection of security interest in instruments, documents, proceeds of a written letter**
8 **of credit, and goods covered by documents -- perfection by permissive filing -- temporary perfection without**
9 **filing or transfer of possession.** (1) A security interest in chattel paper or negotiable documents may be
10 perfected by filing. A security interest in the right to proceeds of a written letter of credit can be perfected
11 only by the secured party's taking possession of the letter of credit. A security interest in money or
12 instruments (other than ~~certificated securities or~~ instruments which constitute part of chattel paper) can
13 be perfected only by the secured party's taking possession, except as provided in subsections (4) and (5)
14 of this section and subsections (2) and (3) of 30-9-306 on proceeds.

15 (2) During the period that goods are in the possession of the issuer of a negotiable document
16 therefor, a security interest in the goods is perfected by perfecting a security interest in the document, and
17 any security interest in the goods otherwise perfected during such period is subject thereto.

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

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

24 (5) A security interest remains perfected for a period of 21 days without filing where a secured
25 party having a perfected security interest in an instrument, ~~(other than~~ a certificated security}, a negotiable
26 document, or goods in possession of a bailee other than one who has issued a negotiable document
27 therefor:

28 (a) makes available to the debtor the goods or documents representing the goods for the purpose
29 of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping,
30 manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or

1 exchange; but priority between conflicting security interests in the goods is subject to 30-9-312(3); or

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

4 (6) After the 21-day period in subsections (4) and (5), perfection depends upon compliance with
5 applicable provisions of this chapter."
6

7 **Section 83.** Section 30-9-305, MCA, is amended to read:

8 **"30-9-305. When possession by secured party perfects security interest without filing.** A security
9 interest in ~~letters of credit and advices of credit (subsection 30-5-116(2)(a)),~~ goods, instruments ~~(other than~~
10 ~~certificated securities)~~, money, negotiable documents, or chattel paper may be perfected by the secured
11 party's taking possession of the collateral. A security interest in the right to proceeds of a written letter of
12 credit may be perfected by the secured party's taking possession of the letter of credit. If such collateral
13 other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to
14 have possession from the time the bailee receives notification of the secured party's interest. A security
15 interest is perfected by possession from the time possession is taken without relation back and continues
16 only so long as possession is retained, unless otherwise specified in this chapter. The security interest may
17 be otherwise perfected as provided in this chapter before or after the period of possession by the secured
18 party."
19

20 **Section 84.** Section 30-9-306, MCA, is amended to read:

21 **"30-9-306. "Proceeds" -- secured party's rights on disposition of collateral.** (1) "Proceeds"
22 includes whatever is received upon the sale, exchange, collection, or other disposition of collateral or
23 proceeds. Insurance payable by reason of loss or damage to the collateral is proceeds, except to the extent
24 that it is payable to a person other than a party to the security agreement. Any payments or distributions
25 made with respect to investment property collateral are proceeds. Money, checks, deposit accounts, and
26 the like are "cash proceeds". All other proceeds are "noncash proceeds".

27 (2) Except where this chapter otherwise provides, a security interest continues in collateral
28 notwithstanding sale, exchange, or other disposition thereof unless the disposition was authorized by the
29 secured party in the security agreement or otherwise, and also continues in any identifiable proceeds
30 including collections received by the debtor.

1 (3) (a) The security interest in proceeds is a continuously perfected security interest if the interest
 2 in the original collateral was perfected, but it ceases to be a perfected security interest and becomes
 3 unperfected 10 days after receipt of the proceeds by the debtor unless:

4 (i) a filed financing statement covers the original collateral and the proceeds are collateral in which
 5 a security interest may be perfected by filing in the office or offices where the financing statement has been
 6 filed and, if the proceeds are acquired with cash proceeds, the description of collateral in the financing
 7 statement indicates the types of property constituting the proceeds;

8 (ii) a filed financing statement covers the original collateral and the proceeds are identifiable cash
 9 proceeds; ~~or~~

10 (iii) the original collateral was investment property and the proceeds are identifiable cash proceeds;

11 or

12 ~~(iii)~~(iv) the security interest in the proceeds is perfected before the expiration of the 10-day period.

13 (b) Except as provided in this section, a security interest in proceeds can be perfected only by the
 14 methods or under the circumstances permitted in this chapter for original collateral of the same type.

15 (4) In the event of insolvency proceedings instituted by or against a debtor, a secured party with
 16 a perfected security interest in proceeds has a perfected security interest only in the following proceeds:

17 (a) in identifiable noncash proceeds and in separate deposit accounts containing only proceeds;

18 (b) in identifiable cash proceeds in the form of money which is neither commingled with other
 19 money nor deposited in a deposit account prior to the insolvency proceedings;

20 (c) in identifiable cash proceeds in the form of checks and the like which are not deposited in a
 21 deposit account prior to the insolvency proceedings; and

22 (d) in all cash and deposit accounts of the debtor in which proceeds have been commingled with
 23 other funds, but the perfected security interest under this ~~paragraph~~ subsection (4)(d) is:

24 (i) subject to any right of setoff; and

25 (ii) limited to an amount not greater than the amount of any cash proceeds received by the debtor
 26 within 10 days before the institution of the insolvency proceedings less the sum of:

27 (A) the payments to the secured party on account of cash proceeds received by the debtor during
 28 such period; and

29 (B) the cash proceeds received by the debtor during such period to which the secured party is
 30 entitled under subsections (4)(a) through (4)(c).

1 (5) If a sale of goods results in an account or chattel paper which is transferred by the seller to a
 2 secured party, and if the goods are returned to or are repossessed by the seller or the secured party, the
 3 following rules determine priorities:

4 (a) If the goods were collateral at the time of sale for an indebtedness of the seller which is still
 5 unpaid, the original security interest attaches again to the goods and continues as a perfected security
 6 interest if it was perfected at the time when the goods were sold. If the security interest was originally
 7 perfected by a filing which is still effective, nothing further is required to continue the perfected status; in
 8 any other case, the secured party must take possession of the returned or repossessed goods or must file.

9 (b) An unpaid transferee of the chattel paper has a security interest in the goods against the
 10 transferor. ~~Such~~ The security interest is prior to a security interest asserted under ~~paragraph subsection~~
 11 (5)(a) to the extent that the transferee of the chattel paper was entitled to priority under 30-9-308.

12 (c) An unpaid transferee of the account has a security interest in the goods against the transferor.
 13 ~~Such~~ The security interest is subordinate to a security interest asserted under ~~paragraph subsection~~ (5)(a).

14 (d) A security interest of an unpaid transferee asserted under ~~paragraph subsection~~ (5)(b) or (5)(c)
 15 must be perfected for protection against creditors of the transferor and purchasers of the returned or
 16 repossessed goods."

17

18 **Section 85.** Section 30-9-309, MCA, is amended to read:

19 **"30-9-309. Protection of purchasers of instruments, documents, and securities.** Nothing in this
 20 chapter limits the rights of a holder in due course of a negotiable instrument (30-3-302) or a holder to
 21 whom a negotiable document of title has been duly negotiated (30-7-501) or a ~~bona-fide~~ protected
 22 purchaser of a security (~~30-8-302~~ [section 49]), and ~~such~~ the holders or purchasers take priority over an
 23 earlier security interest even though perfected. Filing under this chapter does not constitute notice of the
 24 security interest to ~~such~~ the holders or purchasers."

25

26 **Section 86.** Section 30-9-312, MCA, is amended to read:

27 **"30-9-312. Priorities among conflicting security interests in the same collateral.** (1) The rules of
 28 priority stated in other sections of this part and in the following sections shall govern where applicable:
 29 ~~30-4-208~~ 30-4-210 with respect to the security interest of collecting banks in items being collected,
 30 accompanying documents, and proceeds; 30-9-103 on security interests related to other jurisdictions; and

1 30-9-114 on consignments; and [section 76] on security interests in investment property.

2 (2) A perfected security interest in crops for new value given to enable the debtor to produce the
3 crops during the production season and given not more than 3 months before the crops become growing
4 crops by planting or otherwise takes priority over an earlier perfected security interest to the extent that
5 ~~such~~ the earlier interest secures obligations due more than 6 months before the crops become growing
6 crops by planting or otherwise, even though the person giving new value had knowledge of the earlier
7 security interest.

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

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

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

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

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

18 (c) the holder of the conflicting security interest receives notification within 5 years before the
19 debtor receives possession of the inventory; and

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

22 (4) A purchase money security interest in collateral other than inventory has priority over a
23 conflicting security interest in the same collateral or its proceeds if the purchase money security interest
24 is perfected at the time the debtor receives possession of the collateral or within 20 days thereafter.

25 (5) In all cases not governed by other rules stated in this section (including cases of purchase
26 money security interests which do not qualify for the special priorities set forth in subsections (3) and (4)
27 of this section), priority between conflicting security interests in the same collateral ~~shall~~ must be
28 determined according to the following rules:

29 (a) Conflicting security interests rank according to priority in the time of filing or perfection. Priority
30 dates from the time a filing is first made covering the collateral or the time the security interest is first

1 perfected, whichever is earlier, provided that there is no period thereafter when there is neither filing nor
2 perfection.

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

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

6 (7) If future advances are made while a security interest is perfected by filing, the taking of
7 possession, or under ~~30-8-321 on securities~~ [section 76 or 77] on investment property, the security interest
8 has the same priority for the purposes of subsection (5) or [section 76(5)] with respect to the future
9 advances as it does with respect to the first advance. If a commitment is made before or while the security
10 interest is so perfected, the security interest has the same priority with respect to advances made pursuant
11 thereto. In other cases a perfected security interest has priority from the date the advance is made."
12

13 **Section 87.** Section 32-1-426, MCA, is amended to read:

14 **"32-1-426. Deposit of securities in central depository.** (1) Notwithstanding any other provision
15 of law, any fiduciary, as defined in 32-1-425, holding securities in its fiduciary capacity, any bank or trust
16 company holding securities as a custodian or managing agent, and any bank or trust company holding
17 securities as custodian for a fiduciary is authorized to deposit or arrange for the deposit of the securities
18 in a clearing corporation, as defined in ~~30-8-102~~ [section 22]. When the securities are ~~so~~ deposited,
19 certificates representing securities of the same class of the same issuer may be merged and held in bulk
20 in the name of the nominee of ~~such~~ the clearing corporation with any other ~~such~~ securities deposited in
21 ~~such~~ the clearing corporation by any person regardless of the ownership of the securities, and certificates
22 of small denomination may be merged into one or more certificates of larger denomination. The records of
23 ~~such~~ the fiduciary and the records of ~~such~~ the bank or trust company acting as custodian, as managing
24 agent, or a custodian for a fiduciary ~~shall~~ must at all times show the name of the party for whose account
25 the securities are deposited. Title to the securities may be transferred by bookkeeping entry on the books
26 of the clearing corporation without physical delivery of certificates representing ~~such~~ the securities. A bank
27 or trust company ~~so~~ depositing securities pursuant to this section is subject to rules which in the case of
28 state chartered institutions, the state banking board and, in the case of national banking associations, the
29 comptroller of the currency, may from time to time adopt. A bank or trust company acting as custodian for
30 a fiduciary shall, on demand of the fiduciary, certify in writing to the fiduciary the securities ~~so~~ deposited

1 by the bank or trust company in the clearing corporation for the account of ~~such~~ the fiduciary. A fiduciary
 2 shall, on demand by any party to a judicial proceeding for the settlement of the fiduciary's account or on
 3 demand by the attorney for ~~such~~ the party, certify in writing to the party the securities deposited by the
 4 fiduciary in the clearing corporation for its account as ~~such~~ the fiduciary.

5 (2) This section ~~shall apply~~ applies to any fiduciary holding securities in its fiduciary capacity and
 6 to any bank or trust company holding securities as a custodian, managing agent, or custodian for a
 7 fiduciary ~~acting on July 1, 1977, or who thereafter may act~~ regardless of the date of the agreement,
 8 instrument, or court order by which it is appointed and regardless of whether or not ~~such~~ the fiduciary,
 9 custodian, managing agent, or custodian for a fiduciary owns capital stock of ~~such~~ the clearing
 10 corporation."

11
 12 **NEW SECTION. Section 88. Repealer.** Sections 30-5-102, 30-5-103, 30-5-104, 30-5-105,
 13 30-5-106, 30-5-107, 30-5-108, 30-5-109, 30-5-110, 30-5-111, 30-5-112, 30-5-113, 30-5-114, 30-5-115,
 14 30-5-116, 30-5-117, 30-8-102, 30-8-103, 30-8-104, 30-8-105, 30-8-106, 30-8-107, 30-8-108, 30-8-201,
 15 30-8-202, 30-8-203, 30-8-204, 30-8-205, 30-8-206, 30-8-207, 30-8-208, 30-8-301, 30-8-302, 30-8-303,
 16 30-8-304, 30-8-305, 30-8-306, 30-8-307, 30-8-308, 30-8-309, 30-8-310, 30-8-311, 30-8-312, 30-8-313,
 17 30-8-314, 30-8-315, 30-8-316, 30-8-317, 30-8-318, 30-8-319, 30-8-320, 30-8-321, 30-8-401, 30-8-402,
 18 30-8-403, 30-8-404, 30-8-405, 30-8-406, 30-8-407, 30-8-408, 30-10-401, 30-10-402, 30-10-403,
 19 30-10-404, 30-10-405, 30-10-406, 30-10-407, 30-10-408, 30-10-409, 30-10-410, and 30-10-411, MCA,
 20 are repealed.

21
 22 **NEW SECTION. Section 89. Codification instructions.** (1) [Sections 6 through 21] are intended
 23 to be codified as an integral part of Title 30, chapter 5, and the provisions of Title 30, chapter 5, apply to
 24 [sections 6 through 21].

25 (2) [Sections 22 through 71] are intended to be codified as an integral part of Title 30, chapter 8,
 26 and the provisions of Title 30, chapter ~~5~~ 8, apply to [sections 22 through 71].

27 (3) [Sections 76 and 77] are intended to be codified as an integral part of Title 30, chapter 9, part
 28 1, and the provisions of Title 30, chapter 9, part 1, apply to [sections 76 and 77].

29 -END-

1 HOUSE BILL NO. 426

2 INTRODUCED BY KOTTEL, HALLIGAN, WYATT, SCHMIDT, MCCULLOCH, GILLAN, HARRINGTON,
3 ELLINGSON, DOWELL, DEVANEY, TUSS

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE UNIFORM COMMERCIAL CODE;
6 REPLACING THE FORMER LAWS GOVERNING LETTERS OF CREDIT WITH UPDATED LAWS; CONFORMING
7 THE LAWS GOVERNING LETTERS OF CREDIT TO CURRENT USAGE AND PRACTICE; ACCOMMODATING
8 NEW FORMS OF LETTERS OF CREDIT, PARTICULARLY THE USE OF ELECTRONIC MEDIA; MAINTAINING
9 LETTERS OF CREDIT AS AN INEXPENSIVE AND EFFICIENT INSTRUMENT FOR FACILITATING TRADE;
10 REPLACING THE FORMER LAWS GOVERNING INVESTMENT SECURITIES WITH UPDATED LAWS;
11 ADDRESSING SECURITIES HOLDING THROUGH SECURITIES INTERMEDIARIES; PROVIDING A MODERN
12 LEGAL STRUCTURE FOR CURRENT SECURITIES HOLDING PRACTICES; PROVIDING RULES FOR
13 DETERMINING RIGHTS UNDER THE INDIRECT HOLDING OF SECURITIES; REVISING OTHER LAWS TO
14 REFLECT THE REVISIONS TO THE LAWS GOVERNING LETTERS OF CREDIT AND INVESTMENT
15 SECURITIES; AMENDING SECTIONS 30-1-105, 30-1-206, 30-2-512, 30-3-124, 30-4-104, 30-9-103,
16 30-9-104, 30-9-105, 30-9-106, 30-9-203, 30-9-301, 30-9-302, 30-9-303, 30-9-304, 30-9-305, 30-9-306,
17 30-9-309, 30-9-312, AND 32-1-426, MCA; AND REPEALING SECTIONS 30-5-102, 30-5-103, 30-5-104,
18 30-5-105, 30-5-106, 30-5-107, 30-5-108, 30-5-109, 30-5-110, 30-5-111, 30-5-112, 30-5-113, 30-5-114,
19 30-5-115, 30-5-116, 30-5-117, 30-8-102, 30-8-103, 30-8-104, 30-8-105, 30-8-106, 30-8-107, 30-8-108,
20 30-8-201, 30-8-202, 30-8-203, 30-8-204, 30-8-205, 30-8-206, 30-8-207, 30-8-208, 30-8-301, 30-8-302,
21 30-8-303, 30-8-304, 30-8-305, 30-8-306, 30-8-307, 30-8-308, 30-8-309, 30-8-310, 30-8-311, 30-8-312,
22 30-8-313, 30-8-314, 30-8-315, 30-8-316, 30-8-317, 30-8-318, 30-8-319, 30-8-320, 30-8-321, 30-8-401,
23 30-8-402, 30-8-403, 30-8-404, 30-8-405, 30-8-406, 30-8-407, 30-8-408, 30-10-401, 30-10-402,
24 30-10-403, 30-10-404, 30-10-405, 30-10-406, 30-10-407, 30-10-408, 30-10-409, 30-10-410, AND
25 30-10-411, MCA."

26
27 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

28
29 Section 1. Section 30-1-105, MCA, is amended to read:

30 "30-1-105. Territorial application of the code -- parties' power to choose applicable law. (1) Except

1 as provided ~~hereafter~~ in this section, when a transaction bears a reasonable relation to this state and also
 2 to another state or nation, the parties may agree that the law either of this state or of ~~such~~ the other state
 3 or nation shall govern their rights and duties. Failing ~~such~~ agreement, this code applies to transactions
 4 bearing an appropriate relation to this state.

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

8 Rights of creditors against sold goods. 30-2-402.

9 Applicability of the Chapter on Leases. 30-2A-105 and 30-2A-106.

10 Applicability of the Chapter on Bank Deposits and Collections. 30-4-102.

11 Governing law in the Chapter on Funds Transfers. 30-4A-507.

12 Letters of Credit. [Section 20].

13 Applicability of the Chapter on Investment Securities. ~~30-8-106~~ [section 30].

14 Perfection provisions of the Chapter on Secured Transactions. 30-9-103."

15

16 **Section 2.** Section 30-1-206, MCA, is amended to read:

17 **"30-1-206. Statute of frauds for kinds of personal property not otherwise covered.** (1) Except in
 18 the cases described in subsection (2) ~~of this section~~ a contract for the sale of personal property is not
 19 enforceable by way of action or defense beyond \$5,000 in amount or value of remedy unless there is some
 20 writing which indicates that a contract for sale has been made between the parties at a defined or stated
 21 price, reasonably identifies the subject matter, and is signed by the party against whom enforcement is
 22 sought or by ~~his~~ the party's authorized agent.

23 (2) Subsection (1) of this section does not apply to contracts for the sale of goods (30-2-201) nor
 24 of securities (~~30-8-319~~ [section 33]) nor to security agreements (30-9-203)."

25

26 **Section 3.** Section 30-2-512, MCA, is amended to read:

27 **"30-2-512. Payment by buyer before inspection.** (1) Where the contract requires payment before
 28 inspection nonconformity of the goods does not excuse the buyer from so making payment unless:

29 (a) the nonconformity appears without inspection; or

30 (b) despite tender of the required documents the circumstances would justify injunction against

1 honor under the provisions of this code (~~30-5-114~~ section 13(2)).

2 (2) Payment pursuant to subsection (1) does not constitute an acceptance of goods or impair the
3 buyer's right to inspect or any of ~~his~~ the buyer's remedies."

4

5 **Section 4.** Section 30-3-124, MCA, is amended to read:

6 "**30-3-124. Subject matter.** (1) This chapter applies to negotiable instruments. It does not apply
7 to money or to payment orders governed by chapter 4A. A negotiable instrument that is also a certificated
8 security under ~~30-8-102(1)(a)~~ section 22(1)(d) is subject to chapter 8 and to this chapter.

9 (2) In the event of conflict between the provisions of this chapter and those of chapter 4, chapter
10 8, or chapter 9, the provisions of chapter 4, chapter 8, and chapter 9 prevail over those of this chapter.

11 (3) Regulations of the board of governors of the federal reserve system and operating circulars of
12 the federal reserve banks supersede any inconsistent provision of this chapter to the extent of the
13 inconsistency."

14

15 **Section 5.** Section 30-4-104, MCA, is amended to read:

16 "**30-4-104. Definitions and index of definitions.** (1) In this chapter, unless the context otherwise
17 requires:

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

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

21 (c) "banking day" means the part of a day on which a bank is open to the public for carrying on
22 substantially all of its banking functions;

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

24 (e) "customer" means a person having an account with a bank or for whom a bank has agreed to
25 collect items and includes a bank maintaining an account at another bank;

26 (f) "documentary draft" means a draft to be presented for acceptance or payment if specified
27 documents, certificated securities [[section 22]] or ~~transfer statements~~ instructions for uncertificated
28 securities [[section 22]], or other certificates, statements, or the like are to be received by the drawee or
29 other payor before acceptance or payment of the draft;

30 (g) "draft" means a draft as defined in 30-3-104 or an item, other than an instrument, that is an

1 order;

2 (h) "item" means an instrument or a promise or an order to pay money handled by a bank for
3 collection or payment. The term does not include a payment order governed by chapter 4A or a credit or
4 debit card slip.

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

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

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

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

14 "Bank". 30-4-105.

15 "Collecting bank". 30-4-105.

16 "Depository bank". 30-4-105.

17 "Intermediary bank". 30-4-105.

18 "Payor bank". 30-4-105.

19 "Presenting bank". 30-4-105.

20 "Presentment notice". 30-4-111.

21 (3) The following definitions in other chapters apply to this chapter:

22 "Acceptance". 30-3-410.

23 "Alteration". 30-3-407.

24 "Cashier's check". 30-3-104.

25 "Certificate of deposit". 30-3-104.

26 "Certified check". 30-3-410.

27 "Check". 30-3-104.

28 "Drawee". 30-3-102.

29 "Good faith". 30-3-102.

30 "Holder in due course". 30-3-302.

- 1 "Instrument". 30-3-104.
 2 "Notice of dishonor". 30-3-508.
 3 "Order". 30-3-102.
 4 "Ordinary care". 30-3-102.
 5 "Person entitled to enforce". 30-3-301.
 6 "Presentment". 30-3-504.
 7 "Promise". 30-3-102.
 8 "Prove". 30-3-102.
 9 "Teller's check". 30-3-104.
 10 "Unauthorized signature". 30-3-404.

11 (4) In addition, chapter 1 contains general definitions and principles of construction and
 12 interpretation applicable throughout this chapter."
 13

14 **NEW SECTION. Section 6. Definitions.** (1) In this chapter:

15 (a) "Adviser" means a person who, at the request of the issuer, a confirmer, or another adviser,
 16 notifies or requests another adviser to notify the beneficiary that a letter of credit has been issued,
 17 confirmed, or amended.

18 (b) "Applicant" means a person at whose request or for whose account a letter of credit is issued.
 19 The term includes a person who requests an issuer to issue a letter of credit on behalf of another if the
 20 person making the request undertakes an obligation to reimburse the issuer.

21 (c) "Beneficiary" means a person who under the terms of a letter of credit is entitled to have its
 22 complying presentation honored. The term includes a person to whom drawing rights have been transferred
 23 under a transferable letter of credit.

24 (d) "Confirmer" means a nominated person who undertakes, at the request or with the consent of
 25 the issuer, to honor a presentation under a letter of credit issued by another.

26 (e) "Dishonor" of a letter of credit means failure timely to honor or to take an interim action, such
 27 as acceptance of a draft, that may be required by the letter of credit.

28 (f)(i) "Document" means a draft or other demand, document of title, investment security,
 29 certificate, invoice, or other record, statement, or representation of fact, law, right, or opinion:

30 (A) which is presented in a written or other medium permitted by the letter of credit or, unless

1 prohibited by the letter of credit, by the standard practice referred to in [section 12(5)]; and

2 (B) which is capable of being examined for compliance with the terms and conditions of the letter
3 of credit.

4 (ii) A document may not be oral.

5 (g) "Good faith" means honesty in fact in the conduct or transaction concerned.

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

8 (i) upon payment;

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

11 (iii) if the letter of credit provides for incurring a deferred obligation, upon incurring the obligation
12 and, at maturity, its performance.

13 (i) "Issuer" means a bank or other person that issues a letter of credit, but does not include an
14 individual who makes an engagement for personal, family, or household purposes.

15 (j) "Letter of credit" means a definite undertaking that satisfies the requirements of [section 8] by
16 an issuer to a beneficiary at the request or for the account of an applicant or, in the case of a financial
17 institution, to itself or for its own account, to honor a documentary presentation by payment or delivery
18 of an item of value.

19 (k) "Nominated person" means a person whom the issuer:

20 (i) designates or authorizes to pay, accept, negotiate, or otherwise give value under a letter of
21 credit; and

22 (ii) undertakes by agreement or custom and practice to reimburse.

23 (l) "Presentation" means delivery of a document to an issuer or nominated person for honor or
24 giving of value under a letter of credit.

25 (m) "Presenter" means a person making a presentation as or on behalf of a beneficiary or
26 nominated person.

27 (n) "Record" means information that is inscribed on a tangible medium, or that is stored in an
28 electronic or other medium and is retrievable in perceivable form.

29 (o) "Successor of a beneficiary" means a person who succeeds to substantially all of the rights of
30 a beneficiary by operation of law, including a corporation with or into which the beneficiary has been

1 merged or consolidated, an administrator, executor, personal representative, trustee in bankruptcy, debtor
2 in possession, liquidator, and receiver.

3 (2) Definitions in other chapters applying to this chapter and the sections in which they appear are:

4 "Accept" or "Acceptance" 30-3-410

5 "Value" 30-3-303, 30-4-209

6 (3) Chapter 1 contains certain additional general definitions and principles of construction and
7 interpretation applicable throughout this chapter.

8

9 **NEW SECTION. Section 7. Scope.** (1) This chapter applies to letters of credit and to certain rights
10 and obligations arising out of transactions involving letters of credit.

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

13 (3) With the exception of this subsection, subsections (1) and (4), [sections 6(1)(i) and (1)(j), 10(4),
14 and 18(4)], and except to the extent prohibited in 30-1-102(3) and [section 21(4)], the effect of this
15 chapter may be varied by agreement or by a provision stated or incorporated by reference in an
16 undertaking. A term in an agreement or undertaking generally excusing liability or generally limiting
17 remedies for failure to perform obligations is not sufficient to vary obligations prescribed by this chapter.

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

22

23 **NEW SECTION. Section 8. Formal requirements.** A letter of credit, confirmation, advice, transfer,
24 amendment, or cancellation may be issued in any form that is a record and is authenticated:

25 (1) by a signature; or

26 (2) in accordance with the agreement of the parties or the standard practice referred to in [section
27 12(5)].

28

29 **NEW SECTION. Section 9. Consideration.** Consideration is not required to issue, amend, transfer,
30 or cancel a letter of credit, advice, or confirmation.

1 **NEW SECTION. Section 10. Issuance, amendment, cancellation, and duration.** (1) A letter of
2 credit is issued and becomes enforceable according to its terms against the issuer when the issuer sends
3 or otherwise transmits it to the person requested to advise or to the beneficiary. A letter of credit is
4 revocable only if it so provides.

5 (2) After a letter of credit is issued, rights and obligations of a beneficiary, applicant, confirmer,
6 and issuer are not affected by an amendment or cancellation to which that person has not consented
7 except to the extent the letter of credit provides that it is revocable or that the issuer may amend or cancel
8 the letter of credit without that consent.

9 (3) If there is no stated expiration date or other provision that determines its duration, a letter of
10 credit expires one year after its stated date of issuance or, if none is stated, after the date on which it is
11 issued.

12 (4) A letter of credit that states that it is perpetual expires 5 years after its stated date of issuance,
13 or if none is stated, after the date on which it is issued.

14

15 **NEW SECTION. Section 11. Confirmer, nominated person, and adviser.** (1) A confirmer is directly
16 obligated on a letter of credit and has the rights and obligations of an issuer to the extent of its
17 confirmation. The confirmer also has rights against and obligations to the issuer as if the issuer were an
18 applicant and the confirmer had issued the letter of credit at the request and for the account of the issuer.

19 (2) A nominated person who is not a confirmer is not obligated to honor or otherwise give value
20 for a presentation.

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

27 (4) A person who notifies a transferee beneficiary of the terms of a letter of credit, confirmation,
28 amendment, or advice has the rights and obligations of an adviser under subsection (3). The terms in the
29 notice to the transferee beneficiary may differ from the terms in any notice to the transferor beneficiary to
30 the extent permitted by the letter of credit, confirmation, amendment, or advice received by the person who

1 so notifies.

2

3 **NEW SECTION. Section 12. Issuer's rights and obligations.** (1) Except as otherwise provided in
4 [section 13], an issuer shall honor a presentation that, as determined by the standard practice referred to
5 in subsection (5), appears on its face strictly to comply with the terms and conditions of the letter of credit.
6 Except as otherwise provided in [section 17] and unless otherwise agreed with the applicant, an issuer shall
7 dishonor a presentation that does not appear so to comply.

8 (2) An issuer has a reasonable time after presentation, but not beyond the end of the seventh
9 business day of the issuer after the day of its receipt of documents:

10 (a) to honor;

11 (b) if the letter of credit provides for honor to be completed more than 7 business days after
12 presentation, to accept a draft or incur a deferred obligation; or

13 (c) to give notice to the presenter of discrepancies in the presentation.

14 (3) Except as otherwise provided in subsection (4), an issuer is precluded from asserting as a basis
15 for dishonor any discrepancy if timely notice is not given, or any discrepancy not stated in the notice if
16 timely notice is given.

17 (4) Failure to give the notice specified in subsection (2) or to mention fraud, forgery, or expiration
18 in the notice does not preclude the issuer from asserting as a basis for dishonor fraud or forgery as
19 described in [section 13(1)] or expiration of the letter of credit before presentation.

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

24 (6) An issuer is not responsible for:

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

26 (b) an act or omission of others; or

27 (c) observance or knowledge of the usage of a particular trade other than the standard practice
28 referred to in subsection (5).

29 (7) If an undertaking constituting a letter of credit under [section 6(1)(j)] contains nondocumentary
30 conditions, an issuer shall disregard the nondocumentary conditions and treat them as if they were not

1 stated.

2 (8) An issuer that has dishonored a presentation shall return the documents or hold them at the
3 disposal of, and send advice to that effect to, the presenter.

4 (9) An issuer that has honored a presentation as permitted or required by this chapter:

5 (a) is entitled to be reimbursed by the applicant in immediately available funds not later than the
6 date of its payment of funds;

7 (b) takes the documents free of claims of the beneficiary or presenter;

8 (c) is precluded from asserting a right of recourse on a draft under 30-3-414 and 30-3-415;

9 (d) except as otherwise provided in [sections 14 and 21], is precluded from restitution of money
10 paid or other value given by mistake to the extent the mistake concerns discrepancies in the documents
11 or tender which are apparent on the face of the presentation; and

12 (e) is discharged to the extent of its performance under the letter of credit unless the issuer
13 honored a presentation in which a required signature of a beneficiary was forged.

14

15 **NEW SECTION. Section 13. Fraud and forgery.** (1) If a presentation is made that appears on its
16 face strictly to comply with the terms and conditions of the letter of credit, but a required document is
17 forged or materially fraudulent, or honor of the presentation would facilitate a material fraud by the
18 beneficiary on the issuer or applicant:

19 (a) the issuer shall honor the presentation, if honor is demanded by:

20 (i) a nominated person who has given value in good faith and without notice of forgery or material
21 fraud;

22 (ii) a confirmer who has honored its confirmation in good faith;

23 (iii) a holder in due course of a draft drawn under the letter of credit which was taken after
24 acceptance by the issuer or nominated person; or

25 (iv) an assignee of the issuer's or nominated person's deferred obligation that was taken for value
26 and without notice of forgery or material fraud after the obligation was incurred by the issuer or nominated
27 person; and

28 (b) the issuer, acting in good faith, may honor or dishonor the presentation in any other case.

29 (2) If an applicant claims that a required document is forged or materially fraudulent or that honor
30 of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant, a court

1 of competent jurisdiction may temporarily or permanently enjoin the issuer from honoring a presentation
 2 or grant similar relief against the issuer or other persons only if the court finds that:

3 (a) the relief is not prohibited under the law applicable to an accepted draft or deferred obligation
 4 incurred by the issuer;

5 (b) a beneficiary, issuer, or nominated person who may be adversely affected is adequately
 6 protected against loss that it may suffer because the relief is granted;

7 (c) all of the conditions to entitle a person to the relief under the law of this state have been met;
 8 and

9 (d) on the basis of the information submitted to the court, the applicant is more likely than not to
 10 succeed under its claim of forgery or material fraud and the person demanding honor does not qualify for
 11 protection under subsection (1)(a).

12

13 **NEW SECTION. Section 14. Warranties.** (1) If its presentation is honored, the beneficiary
 14 warrants:

15 (a) to the issuer, any other person to whom presentation is made, and the applicant that there is
 16 no fraud or forgery of the kind described in [section 13(1)]; and

17 (b) to the applicant that the drawing does not violate any agreement between the applicant and
 18 beneficiary or any other agreement intended by them to be augmented by the letter of credit.

19 (2) The warranties in subsection (1) are in addition to warranties arising under chapters 3, 4, 7,
 20 and 8 because of the presentation or transfer of documents covered by any of those chapters.

21

22 **NEW SECTION. Section 15. Remedies.** (1) If an issuer wrongfully dishonors or repudiates its
 23 obligation to pay money under a letter of credit before presentation, the beneficiary, successor, or
 24 nominated person presenting on its own behalf may recover from the issuer the amount that is the subject
 25 of the dishonor or repudiation. If the issuer's obligation under the letter of credit is not for the payment
 26 of money, the claimant may obtain specific performance or, at the claimant's election, recover an amount
 27 equal to the value of performance from the issuer. In either case, the claimant may also recover incidental
 28 but not consequential damages. The claimant is not obligated to take action to avoid damages that might
 29 be due from the issuer under this subsection. If, although not obligated to do so, the claimant avoids
 30 damages, the claimant's recovery from the issuer must be reduced by the amount of damages avoided.

1 The issuer has the burden of proving the amount of damages avoided. In the case of repudiation the
2 claimant need not present any document.

3 (2) If an issuer wrongfully dishonors a draft or demand presented under a letter of credit or honors
4 a draft or demand in breach of its obligation to the applicant, the applicant may recover damages resulting
5 from the breach, including incidental but not consequential damages, less any amount saved as a result of
6 the breach.

7 (3) If an adviser or nominated person other than a confirmer breaches an obligation under this
8 chapter or an issuer breaches an obligation not covered in subsection (1) or (2), a person to whom the
9 obligation is owed may recover damages resulting from the breach, including incidental but not
10 consequential damages, less any amount saved as a result of the breach. To the extent of the
11 confirmation, a confirmer has the liability of an issuer specified in this subsection and subsections (1) and
12 (2).

13 (4) An issuer, nominated person, or adviser who is found liable under subsection (1), (2), or (3)
14 shall pay interest on the amount owed from the date of wrongful dishonor or other appropriate date.

15 (5) Reasonable attorney's fees and other expenses of litigation must be awarded to the prevailing
16 party in an action in which a remedy is sought under this chapter.

17 (6) Damages that would otherwise be payable by a party for breach of an obligation under this
18 chapter may be liquidated by agreement or undertaking, but only in an amount or by a formula that is
19 reasonable in light of the harm anticipated.

20

21 **NEW SECTION. Section 16. Transfer of letter of credit.** (1) Except as otherwise provided in
22 [section 17], unless a letter of credit provides that it is transferable, the right of a beneficiary to draw or
23 otherwise demand performance under a letter of credit may not be transferred.

24 (2) Even if a letter of credit provides that it is transferable, the issuer may refuse to recognize or
25 carry out a transfer if:

26 (a) the transfer would violate applicable law; or

27 (b) the transferor or transferee has failed to comply with any requirement stated in the letter of
28 credit or any other requirement relating to transfer imposed by the issuer which is within the standard
29 practice referred to in [section 12(5)] or is otherwise reasonable under the circumstances.

30

1 **NEW SECTION. Section 17. Transfer by operation of law.** (1) A successor of a beneficiary may
2 consent to amendments, sign and present documents, and receive payment or other items of value in the
3 name of the beneficiary without disclosing its status as a successor.

4 (2) A successor of a beneficiary may consent to amendments, sign and present documents, and
5 receive payment or other items of value in its own name as the disclosed successor of the beneficiary.
6 Except as otherwise provided in subsection (5), an issuer shall recognize a disclosed successor of a
7 beneficiary as beneficiary in full substitution for its predecessor upon compliance with the requirements for
8 recognition by the issuer of a transfer of drawing rights by operation of law under the standard practice
9 referred to in [section 12(5)] or, in the absence of such a practice, compliance with other reasonable
10 procedures sufficient to protect the issuer.

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

13 (4) Honor of a purported successor's apparently complying presentation under subsection (1) or
14 (2) has the consequences specified in [section 12(9)] even if the purported successor is not the successor
15 of a beneficiary. Documents signed in the name of the beneficiary or of a disclosed successor by a person
16 who is neither the beneficiary nor the successor of the beneficiary are forged documents for the purposes
17 of [section 13].

18 (5) An issuer whose rights of reimbursement are not covered by subsection (4) or substantially
19 similar law and any confirmer or nominated person may decline to recognize a presentation under
20 subsection (2).

21 (6) A beneficiary whose name is changed after the issuance of a letter of credit has the same rights
22 and obligations as a successor of a beneficiary under this section.

23

24 **NEW SECTION. Section 18. Assignment of proceeds.** (1) (a) In this section, "proceeds of a letter
25 of credit" means the cash, check, accepted draft, or other item of value paid or delivered upon honor or
26 giving of value by the issuer or any nominated person under the letter of credit.

27 (b) The term does not include a beneficiary's drawing rights or documents presented by the
28 beneficiary.

29 (2) A beneficiary may assign its right to part or all of the proceeds of a letter of credit. The
30 beneficiary may do so before presentation as a present assignment of its right to receive proceeds

1 contingent upon its compliance with the terms and conditions of the letter of credit.

2 (3) An issuer or nominated person need not recognize an assignment of proceeds of a letter of
3 credit until it consents to the assignment.

4 (4) An issuer or nominated person has no obligation to give or withhold its consent to an
5 assignment of proceeds of a letter of credit, but consent may not be unreasonably withheld if the assignee
6 possesses and exhibits the letter of credit and presentation of the letter of credit is a condition to honor.

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

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

17

18 **NEW SECTION. Section 19. Statute of limitations.** An action to enforce a right or obligation
19 arising under this chapter must be commenced within 1 year after the expiration date of the relevant letter
20 of credit or 1 year after the cause of action accrues, whichever occurs later. A cause of action accrues
21 when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach.

22

23 **NEW SECTION. Section 20. Choice of law and forum.** (1) The liability of an issuer, nominated
24 person, or adviser for action or omission is governed by the law of the jurisdiction chosen by an agreement
25 in the form of a record signed or otherwise authenticated by the affected parties in the manner provided
26 in [section 8] or by a provision in the person's letter of credit, confirmation, or other undertaking. The
27 jurisdiction whose law is chosen need not bear any relation to the transaction.

28 (2) Unless subsection (1) applies, the liability of an issuer, nominated person, or adviser for action
29 or omission is governed by the law of the jurisdiction in which the person is located. The person is
30 considered to be located at the address indicated in the person's undertaking. If more than one address

1 is indicated, the person is considered to be located at the address from which the person's undertaking was
2 issued. For the purpose of jurisdiction, choice of law, and recognition of interbranch letters of credit, but
3 not enforcement of a judgment, all branches of a bank are considered separate juridical entities and a bank
4 is considered to be located at the place where its relevant branch is considered to be located under this
5 subsection.

6 (3) (a) Except as otherwise provided in this subsection, the liability of an issuer, nominated person,
7 or adviser is governed by any rules of custom or practice, such as the Uniform Customs and Practice for
8 Documentary Credits, to which the letter of credit, confirmation, or other undertaking is expressly made
9 subject.

10 (b) The rules of custom and practice govern except to the extent of any conflict with the
11 nonvariable provisions specified in [section 7(3)] if:

12 (i) this chapter would govern the liability of an issuer, nominated person, or adviser under
13 subsection (1) or (2);

14 (ii) the relevant undertaking incorporates rules of custom or practice; and

15 (iii) there is conflict between this chapter and those rules as applied to that undertaking.

16 (4) If there is conflict between this chapter and chapter 3, 4, 4A, or 9, this chapter governs.

17 (5) The forum for settling disputes arising out of an undertaking within this chapter may be chosen
18 in the manner and with the binding effect that governing law may be chosen in accordance with subsection
19 (1).

20

21 **NEW SECTION. Section 21. Subrogation of issuer, applicant, and nominated person.** (1) An
22 issuer that honors a beneficiary's presentation is subrogated to the rights of the beneficiary to the same
23 extent as if the issuer were a secondary obligor of the underlying obligation owed to the beneficiary and
24 of the applicant to the same extent as if the issuer were the secondary obligor of the underlying obligation
25 owed to the applicant.

26 (2) An applicant that reimburses an issuer is subrogated to the rights of the issuer against any
27 beneficiary, presenter, or nominated person to the same extent as if the applicant were the secondary
28 obligor of the obligations owed to the issuer and has the rights of subrogation of the issuer to the rights
29 of the beneficiary stated in subsection (1).

30 (3) A nominated person who pays or gives value against a draft or demand presented under a letter

1 of credit is subrogated to the rights of:

2 (a) the issuer against the applicant to the same extent as if the nominated person were a secondary
3 obligor of the obligation owed to the issuer by the applicant;

4 (b) the beneficiary to the same extent as if the nominated person were a secondary obligor of the
5 underlying obligation owed to the beneficiary; and

6 (c) the applicant to same extent as if the nominated person were a secondary obligor of the
7 underlying obligation owed to the applicant.

8 (4) Notwithstanding any agreement or term to the contrary, the rights of subrogation stated in
9 subsections (1) and (2) do not arise until the issuer honors the letter of credit or otherwise pays and the
10 rights in subsection (3) do not arise until the nominated person pays or otherwise gives value. Until then,
11 the issuer, nominated person, and the applicant do not derive under this section present or prospective
12 rights forming the basis of a claim, defense, or excuse.

13

14 **NEW SECTION. Section 22. Definitions.** (1) In this chapter:

15 (a) "Adverse claim" means a claim that a claimant has a property interest in a financial asset and
16 that it is a violation of the rights of the claimant for another person to hold, transfer, or deal with the
17 financial asset.

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

20 (c) "Broker" means a person defined as a broker or dealer under the federal securities laws, but
21 without excluding a bank acting in that capacity.

22 (d) "Certificated security" means a security that is represented by a certificate.

23 (e) "Clearing corporation" means:

24 (i) a person that is registered as a "clearing agency" under the federal securities laws;

25 (ii) a federal reserve bank; or

26 (iii) any other person that provides clearance or settlement services with respect to financial assets
27 that would require it to register as a clearing agency under the federal securities laws but for an exclusion
28 or exemption from the registration requirement, if its activities as a clearing corporation, including
29 promulgation of rules, are subject to regulation by a federal or state governmental authority.

30 (f) "Communicate" means to:

1 (i) send a signed writing; or
 2 (ii) transmit information by any mechanism agreed upon by the persons transmitting and receiving
 3 the information.

4 (g) "Entitlement holder" means a person identified in the records of a securities intermediary as the
 5 person having a security entitlement against the securities intermediary. If a person acquires a security
 6 entitlement by virtue of [section 61(2)(b) or (2)(c)], that person is the entitlement holder.

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

9 (i) (i) "Financial asset," except as otherwise provided in [section 23], means:

10 (A) a security;

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

14 (C) any property that is held by a securities intermediary for another person in a securities account
 15 if the securities intermediary has expressly agreed with the other person that the property is to be treated
 16 as a financial asset under this chapter.

17 (ii) As context requires, the term means either the interest itself or the means by which a person's
 18 claim to it is evidenced, including a certificated or uncertificated security, a security certificate, or a security
 19 entitlement.

20 (j) "Good faith," for purposes of the obligation of good faith in the performance or enforcement of
 21 contracts or duties within this chapter, means honesty in fact and the observance of reasonable commercial
 22 standards of fair dealing.

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

26 (l) "Instruction" means a notification communicated to the issuer of an uncertificated security
 27 which directs that the transfer of the security be registered or that the security be redeemed.

28 (m) "Registered form," as applied to a certificated security, means a form in which:

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

30 (ii) a transfer of the security may be registered upon books maintained for that purpose by or on

1 behalf of the issuer, or the security certificate so states.

2 (n) "Securities intermediary" means:

3 (i) a clearing corporation; or

4 (ii) a person, including a bank or broker, that in the ordinary course of its business maintains
5 securities accounts for others and is acting in that capacity.

6 (o) "Security," except as otherwise provided in [section 23], means an obligation of an issuer or
7 a share, participation, or other interest in an issuer or in property or an enterprise of an issuer:

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

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

12 (iii) which:

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

14 (B) is a medium for investment and by its terms expressly provides that it is a security governed
15 by this chapter.

16 (p) "Security certificate" means a certificate representing a security.

17 (q) "Security entitlement" means the rights and property interest of an entitlement holder with
18 respect to a financial asset specified in [sections 61 through 71].

19 (r) "Uncertificated security" means a security that is not represented by a certificate.

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

21 "Appropriate person" [section 27]

22 "Control" [section 26]

23 "Delivery" [section 47]

24 "Investment company security" [section 23]

25 "Issuer" [section 37]

26 "Overissue" [section 46]

27 "Protected purchaser" [section 49]

28 "Securities account" [section 61]

29 (3) In addition, chapter 1 contains general definitions and principles of construction and
30 interpretation applicable throughout this chapter.

1 (4) The characterization of a person, business, or transaction for purposes of this chapter does not
2 determine the characterization of the person, business, or transaction for purposes of any other law,
3 regulation, or rule.

4
5 **NEW SECTION. Section 23. Rules for determining whether certain obligations and interests are**
6 **securities or financial assets.** (1) A share or similar equity interest issued by a corporation, business trust,
7 joint stock company, or similar entity is a security.

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

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

18 (4) A writing that is a security certificate is governed by this chapter and not by chapter 3, even
19 though it also meets the requirements of that chapter. However, a negotiable instrument governed by
20 chapter 3 is a financial asset if it is held in a securities account.

21 (5) An option or similar obligation issued by a clearing corporation to its participants is not a
22 security, but is a financial asset.

23 (6) A commodity contract, as defined in [section 76], is not a security or a financial asset.

24
25 **NEW SECTION. Section 24. Acquisition of security or financial asset or interest therein.** (1) A
26 person acquires a security or an interest therein, under this chapter, if:

27 (a) the person is a purchaser to whom a security is delivered pursuant to [section 47]; or

28 (b) the person acquires a security entitlement to the security pursuant to [section 61].

29 (2) A person acquires a financial asset, other than a security, or an interest therein, under this
30 chapter, if the person acquires a security entitlement to the financial asset.

1 (3) A person who acquires a security entitlement to a security or other financial asset has the rights
2 specified in [sections 61 through 71], but is a purchaser of any security, security entitlement, or other
3 financial asset held by the securities intermediary only to the extent provided in [section 63].

4 (4) Unless the context shows that a different meaning is intended, a person who is required by
5 other law, regulation, rule, or agreement to transfer, deliver, present, surrender, exchange, or otherwise
6 put in the possession of another person a security or financial asset satisfies that requirement by causing
7 the other person to acquire an interest in the security or financial asset pursuant to subsection (1) or (2).

8
9 **NEW SECTION. Section 25. Notice of adverse claim.** (1) A person has notice of an adverse claim
10 if:

11 (a) the person knows of the adverse claim;

12 (b) the person is aware of facts sufficient to indicate that there is a significant probability that the
13 adverse claim exists and deliberately avoids information that would establish the existence of the adverse
14 claim; or

15 (c) the person has a duty, imposed by statute or regulation, to investigate whether an adverse
16 claim exists, and the investigation so required would establish the existence of the adverse claim.

17 (2) Having knowledge that a financial asset or interest therein is or has been transferred by a
18 representative imposes no duty of inquiry into the rightfulness of a transaction and is not notice of an
19 adverse claim. However, a person who knows that a representative has transferred a financial asset or
20 interest therein in a transaction that is, or whose proceeds are being used, for the individual benefit of the
21 representative or otherwise in breach of duty has notice of an adverse claim.

22 (3) An act or event that creates a right to immediate performance of the principal obligation
23 represented by a security certificate or sets a date on or after which the certificate is to be presented or
24 surrendered for redemption or exchange does not itself constitute notice of an adverse claim except in the
25 case of a transfer more than:

26 (a) 1 year after a date set for presentment or surrender for redemption or exchange; or

27 (b) 6 months after a date set for payment of money against presentation or surrender of the
28 certificate, if money was available for payment on that date.

29 (4) A purchaser of a certificated security has notice of an adverse claim if the security certificate:

30 (a) whether in bearer or registered form, has been indorsed "for collection" or "for surrender" or

1 for some other purpose not involving transfer; or

2 (b) is in bearer form and has on it an unambiguous statement that it is the property of a person
3 other than the transferor, but the mere writing of a name on the certificate is not such a statement.

4 (5) Filing of a financing statement under chapter 9 is not notice of an adverse claim to a financial
5 asset.

6

7 NEW SECTION. **Section 26. Control.** (1) A purchaser has "control" of a certificated security in
8 bearer form if the certificated security is delivered to the purchaser.

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

11 (a) the certificate is indorsed to the purchaser or in blank by an effective indorsement; or

12 (b) the certificate is registered in the name of the purchaser, upon original issue or registration of
13 transfer by the issuer.

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

15 (a) the uncertificated security is delivered to the purchaser; or

16 (b) the issuer has agreed that it will comply with instructions originated by the purchaser without
17 further consent by the registered owner.

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

19 (a) the purchaser becomes the entitlement holder; or

20 (b) the securities intermediary has agreed that it will comply with entitlement orders originated by
21 the purchaser without further consent by the entitlement holder.

22 (5) If an interest in a security entitlement is granted by the entitlement holder to the entitlement
23 holder's own securities intermediary, the securities intermediary has control.

24 (6) A purchaser who has satisfied the requirements of subsection (3)(b) or (4)(b) has control even
25 if the registered owner in the case of subsection (3)(b) or the entitlement holder in the case of subsection
26 (4)(b) retains the right to make substitutions for the uncertificated security or security entitlement, to
27 originate instructions or entitlement orders to the issuer or securities intermediary, or otherwise to deal with
28 the uncertificated security or security entitlement.

29 (7) An issuer or a securities intermediary may not enter into an agreement of the kind described
30 in subsection (3)(b) or (4)(b) without the consent of the registered owner or entitlement holder, but an

1 issuer or a securities intermediary is not required to enter into such an agreement even though the
2 registered owner or entitlement holder so directs. An issuer or securities intermediary that has entered into
3 such an agreement is not required to confirm the existence of the agreement to another party unless
4 requested to do so by the registered owner or entitlement holder.

5
6 **NEW SECTION. Section 27. Whether indorsement, instruction, or entitlement order is effective.**

7 (1) "Appropriate person" means:

8 (a) with respect to an indorsement, the person specified by a security certificate or by an effective
9 special indorsement to be entitled to the security;

10 (b) with respect to an instruction, the registered owner of an uncertificated security;

11 (c) with respect to an entitlement order, the entitlement holder;

12 (d) if the person designated in subsection (1)(a), (1)(b), or (1)(c) is deceased, the designated
13 person's successor taking under other law or the designated person's personal representative acting for
14 the estate of the decedent; or

15 (e) if the person designated in subsection (1)(a), (1)(b), or (1)(c) lacks capacity, the designated
16 person's guardian, conservator, or other similar representative who has power under other law to transfer
17 the security or financial asset.

18 (2) An indorsement, instruction, or entitlement order is effective if:

19 (a) it is made by the appropriate person;

20 (b) it is made by a person who has power under the law of agency to transfer the security or
21 financial asset on behalf of the appropriate person, including, in the case of an instruction or entitlement
22 order, a person who has control under [section 26(3)(b) or (4)(b)]; or

23 (c) the appropriate person has ratified it or is otherwise precluded from asserting its ineffectiveness.

24 (3) An indorsement, instruction, or entitlement order made by a representative is effective even
25 if:

26 (a) the representative has failed to comply with a controlling instrument or with the law of the state
27 having jurisdiction of the representative relationship, including any law requiring the representative to obtain
28 court approval of the transaction; or

29 (b) the representative's action in making the indorsement, instruction, or entitlement order or using
30 the proceeds of the transaction is otherwise a breach of duty.

1 (4) If a security is registered in the name of or specially indorsed to a person described as a
2 representative, or if a securities account is maintained in the name of a person described as a
3 representative, an indorsement, instruction, or entitlement order made by the person is effective even
4 though the person is no longer serving in the described capacity.

5 (5) Effectiveness of an indorsement, instruction, or entitlement order is determined as of the date
6 the indorsement, instruction, or entitlement order is made, and an indorsement, instruction, or entitlement
7 order does not become ineffective by reason of any later change of circumstances.

8
9 **NEW SECTION. Section 28. Warranties in direct holding.** (1) A person who transfers a certificated
10 security to a purchaser for value warrants to the purchaser, and an indorser, if the transfer is by
11 indorsement, warrants to any subsequent purchaser that:

12 (a) the certificate is genuine and has not been materially altered;

13 (b) the transferor or indorser does not know of any fact that might impair the validity of the
14 security;

15 (c) there is no adverse claim to the security;

16 (d) the transfer does not violate any restriction on transfer;

17 (e) if the transfer is by indorsement, the indorsement is made by an appropriate person, or if the
18 indorsement is by an agent, the agent has actual authority to act on behalf of the appropriate person; and

19 (f) the transfer is otherwise effective and rightful.

20 (2) A person who originates an instruction for registration of transfer of an uncertificated security
21 to a purchaser for value warrants to the purchaser that:

22 (a) the instruction is made by an appropriate person, or if the instruction is by an agent, the agent
23 has actual authority to act on behalf of the appropriate person;

24 (b) the security is valid;

25 (c) there is no adverse claim to the security; and

26 (d) at the time the instruction is presented to the issuer:

27 (i) the purchaser will be entitled to the registration of transfer;

28 (ii) the transfer will be registered by the issuer free from all liens, security interests, restrictions, and
29 claims other than those specified in the instruction;

30 (iii) the transfer will not violate any restriction on transfer; and

- 1 (iv) the requested transfer will otherwise be effective and rightful.
- 2 (3) A person who transfers an uncertificated security to a purchaser for value and does not
3 originate an instruction in connection with the transfer warrants that:
- 4 (a) the uncertificated security is valid;
- 5 (b) there is no adverse claim to the security;
- 6 (c) the transfer does not violate any restriction on transfer; and
- 7 (d) the transfer is otherwise effective and rightful.
- 8 (4) A person who indorses a security certificate warrants to the issuer that:
- 9 (a) there is no adverse claim to the security; and
- 10 (b) the indorsement is effective.
- 11 (5) A person who originates an instruction for registration of transfer of an uncertificated security
12 warrants to the issuer that:
- 13 (a) the instruction is effective; and
- 14 (b) at the time the instruction is presented to the issuer the purchaser will be entitled to the
15 registration of transfer.
- 16 (6) A person who presents a certificated security for registration of transfer or for payment or
17 exchange warrants to the issuer that the person is entitled to the registration, payment, or exchange, but
18 a purchaser for value and without notice of adverse claims to whom transfer is registered warrants only
19 that the person has no knowledge of any unauthorized signature in a necessary indorsement.
- 20 (7) If a person acts as agent of another in delivering a certificated security to a purchaser, the
21 identity of the principal was known to the person to whom the certificate was delivered, and the certificate
22 delivered by the agent was received by the agent from the principal or received by the agent from another
23 person at the direction of the principal, the person delivering the security certificate warrants only that the
24 delivering person has authority to act for the principal and does not know of any adverse claim to the
25 certificated security.
- 26 (8) A secured party who redelivers a security certificate received, or after payment and on order
27 of the debtor delivers the security certificate to another person, makes only the warranties of an agent
28 under subsection (7).
- 29 (9) Except as otherwise provided in subsection (7), a broker acting for a customer makes to the
30 issuer and a purchaser the warranties provided in subsections (1) through (6). A broker that delivers a

1 security certificate to its customer, or causes its customer to be registered as the owner of an uncertificated
2 security, makes to the customer the warranties provided in subsection (1) or (2) and has the rights and
3 privileges of a purchaser under this section. The warranties of and in favor of the broker acting as an agent
4 are in addition to applicable warranties given by and in favor of the customer.

5
6 **NEW SECTION. Section 29. Warranties in indirect holding.** (1) A person who originates an
7 entitlement order to a securities intermediary warrants to the securities intermediary that:

8 (a) the entitlement order is made by an appropriate person, or if the entitlement order is by an
9 agent, the agent has actual authority to act on behalf of the appropriate person; and

10 (b) there is no adverse claim to the security entitlement.

11 (2) A person who delivers a security certificate to a securities intermediary for credit to a securities
12 account or originates an instruction with respect to an uncertificated security directing that the
13 uncertificated security be credited to a securities account makes to the securities intermediary the
14 warranties specified in [section 28(1) or (2)].

15 (3) If a securities intermediary delivers a security certificate to its entitlement holder or causes its
16 entitlement holder to be registered as the owner of an uncertificated security, the securities intermediary
17 makes to the entitlement holder the warranties specified in [section 28(1) or (2)].

18
19 **NEW SECTION. Section 30. Applicability -- choice of law.** (1) The local law of the issuer's
20 jurisdiction, as specified in subsection (4), governs:

21 (a) the validity of a security;

22 (b) the rights and duties of the issuer with respect to registration of transfer;

23 (c) the effectiveness of registration of transfer by the issuer;

24 (d) whether the issuer owes any duties to an adverse claimant to a security; and

25 (e) whether an adverse claim can be asserted against a person to whom transfer of a certificated
26 or uncertificated security is registered or a person who obtains control of an uncertificated security.

27 (2) The local law of the securities intermediary's jurisdiction, as specified in subsection (5),
28 governs:

29 (a) acquisition of a security entitlement from the securities intermediary;

30 (b) the rights and duties of the securities intermediary and entitlement holder arising out of a

1 security entitlement;

2 (c) whether the securities intermediary owes any duties to an adverse claimant to a security
3 entitlement; and

4 (d) whether an adverse claim can be asserted against a person who acquires a security entitlement
5 from the securities intermediary or a person who purchases a security entitlement or interest therein from
6 an entitlement holder.

7 (3) The local law of the jurisdiction in which a security certificate is located at the time of delivery
8 governs whether an adverse claim can be asserted against a person to whom the security certificate is
9 delivered.

10 (4) "Issuer's jurisdiction" means the jurisdiction under which the issuer of the security is organized
11 or, if permitted by the law of that jurisdiction, the law of another jurisdiction specified by the issuer. An
12 issuer organized under the law of this state may specify the law of another jurisdiction as the law governing
13 the matters specified in subsections (1)(b) through (1)(e).

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

16 (a) If an agreement between the securities intermediary and its entitlement holder specifies that
17 it is governed by the law of a particular jurisdiction, that jurisdiction is the securities intermediary's
18 jurisdiction.

19 (b) If an agreement between the securities intermediary and its entitlement holder does not specify
20 the governing law as provided in subsection (5)(a), but expressly specifies that the securities account is
21 maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary's
22 jurisdiction.

23 (c) If an agreement between the securities intermediary and its entitlement holder does not specify
24 a jurisdiction as provided in subsection (5)(a) or (5)(b), the securities intermediary's jurisdiction is the
25 jurisdiction in which is located the office identified in an account statement as the office serving the
26 entitlement holder's account.

27 (d) If an agreement between the securities intermediary and its entitlement holder does not specify
28 a jurisdiction as provided in subsection (5)(a) or (5)(b) and an account statement does not identify an office
29 serving the entitlement holder's account as provided in subsection (5)(c), the securities intermediary's
30 jurisdiction is the jurisdiction in which is located the chief executive office of the securities intermediary.

1 (6) A securities intermediary’s jurisdiction is not determined by the physical location of certificates
 2 representing financial assets, or by the jurisdiction in which is organized the issuer of the financial asset
 3 with respect to which an entitlement holder has a security entitlement, or by the location of facilities for
 4 data processing or other recordkeeping concerning the account.

5

6 NEW SECTION. Section 31. Clearing corporation rules. A rule adopted by a clearing corporation
 7 governing rights and obligations among the clearing corporation and its participants in the clearing
 8 corporation is effective even if the rule conflicts with this chapter and affects another party who does not
 9 consent to the rule.

10

11 NEW SECTION. Section 32. Creditor’s legal process. (1) The interest of a debtor in a certificated
 12 security may be reached by a creditor only by actual seizure of the security certificate by the officer making
 13 the attachment or levy, except as otherwise provided in subsection (4). However, a certificated security
 14 for which the certificate has been surrendered to the issuer may be reached by a creditor by legal process
 15 upon the issuer.

16 (2) The interest of a debtor in an uncertificated security may be reached by a creditor only by legal
 17 process upon the issuer at its chief executive office in the United States, except as otherwise provided in
 18 subsection (4).

19 (3) The interest of a debtor in a security entitlement may be reached by a creditor only by legal
 20 process upon the securities intermediary with whom the debtor’s securities account is maintained, except
 21 as otherwise provided in subsection (4).

22 (4) The interest of a debtor in a certificated security for which the certificate is in the possession
 23 of a secured party, or in an uncertificated security registered in the name of a secured party, or a security
 24 entitlement maintained in the name of a secured party, may be reached by a creditor by legal process upon
 25 the secured party.

26 (5) A creditor whose debtor is the owner of a certificated security, uncertificated security, or
 27 security entitlement is entitled to aid from a court of competent jurisdiction, by injunction or otherwise, in
 28 reaching the certificated security, uncertificated security, or security entitlement or in satisfying the claim
 29 by means allowed at law or in equity in regard to property that cannot readily be reached by other legal
 30 process.

1 **NEW SECTION.** **Section 33. Statute of frauds inapplicable.** A contract or modification of a
2 contract for the sale or purchase of a security is enforceable whether or not there is a writing signed or
3 record authenticated by a party against whom enforcement is sought, even if the contract or modification
4 is not capable of performance within 1 year of its making.

5

6 **NEW SECTION.** **Section 34. Evidentiary rules concerning certificated securities.** The following
7 rules apply in an action on a certificated security against the issuer:

8 (1) Unless specifically denied in the pleadings, each signature on a security certificate or in a
9 necessary indorsement is admitted.

10 (2) If the effectiveness of a signature is put in issue, the burden of establishing effectiveness is on
11 the party claiming under the signature, but the signature is presumed to be genuine or authorized.

12 (3) If signatures on a security certificate are admitted or established, production of the certificate
13 entitles a holder to recover on it unless the defendant establishes a defense or a defect going to the validity
14 of the security.

15 (4) If it is shown that a defense or defect exists, the plaintiff has the burden of establishing that
16 the plaintiff or some person under whom the plaintiff claims is a person against whom the defense or defect
17 cannot be asserted.

18

19 **NEW SECTION.** **Section 35. Securities intermediary and others not liable to adverse claimant.** A
20 securities intermediary that has transferred a financial asset pursuant to an effective entitlement order, or
21 a broker or other agent or bailee that has dealt with a financial asset at the direction of its customer or
22 principal, is not liable to a person having an adverse claim to the financial asset, unless the securities
23 intermediary, or broker or other agent or bailee:

24 (1) took the action after it had been served with an injunction, restraining order, or other legal
25 process enjoining it from doing so, issued by a court of competent jurisdiction, and had a reasonable
26 opportunity to act on the injunction, restraining order, or other legal process;

27 (2) acted in collusion with the wrongdoer in violating the rights of the adverse claimant; or

28 (3) in the case of a security certificate that has been stolen, acted with notice of the adverse claim.

29

30 **NEW SECTION.** **Section 36. Securities intermediary as purchaser for value.** A securities

1 intermediary that receives a financial asset and establishes a security entitlement to the financial asset in
2 favor of an entitlement holder is a purchaser for value of the financial asset. A securities intermediary that
3 acquires a security entitlement to a financial asset from another securities intermediary acquires the security
4 entitlement for value if the securities intermediary acquiring the security entitlement establishes a security
5 entitlement to the financial asset in favor of an entitlement holder.

6
7 **NEW SECTION. Section 37. Issuer.** (1) With respect to an obligation on or a defense to a
8 security, an "issuer" includes a person that:

9 (a) places or authorizes the placing of its name on a security certificate, other than as
10 authenticating trustee, registrar, transfer agent, or the like, to evidence a share, participation, or other
11 interest in its property or in an enterprise, or to evidence its duty to perform an obligation represented by
12 the certificate;

13 (b) creates a share, participation, or other interest in its property or in an enterprise, or undertakes
14 an obligation, that is an uncertificated security;

15 (c) directly or indirectly creates a fractional interest in its rights or property, if the fractional interest
16 is represented by a security certificate; or

17 (d) becomes responsible for, or in place of, another person described as an issuer in this section.

18 (2) With respect to an obligation on or defense to a security, a guarantor is an issuer to the extent
19 of its guaranty, whether or not its obligation is noted on a security certificate.

20 (3) With respect to a registration of a transfer, issuer means a person on whose behalf transfer
21 books are maintained.

22
23 **NEW SECTION. Section 38. Issuer's responsibility and defenses -- notice of defect or defense.**

24 (1) Even against a purchaser for value and without notice, the terms of a certificated security include terms
25 stated on the certificate and terms made part of the security by reference on the certificate to another
26 instrument, indenture, or document or to a constitution, statute, ordinance, rule, regulation, order, or the
27 like, to the extent the terms referred to do not conflict with terms stated on the certificate. A reference
28 under this subsection does not of itself charge a purchaser for value with notice of a defect going to the
29 validity of the security, even if the certificate expressly states that a person accepting it admits notice. The
30 terms of an uncertificated security include those stated in any instrument, indenture, or document or in a

1 constitution, statute, ordinance, rule, regulation, order, or the like, pursuant to which the security is issued.

2 (2) The following rules apply if an issuer asserts that a security is not valid:

3 (a) A security other than one issued by a government or governmental subdivision, agency, or
4 instrumentality, even though issued with a defect going to its validity, is valid in the hands of a purchaser
5 for value and without notice of the particular defect unless the defect involves a violation of a constitutional
6 provision. In that case, the security is valid in the hands of a purchaser for value and without notice of the
7 defect, other than one who takes by original issue.

8 (b) Subsection (2)(a) applies to an issuer that is a government or governmental subdivision, agency,
9 or instrumentality only if there has been substantial compliance with the legal requirements governing the
10 issue or the issuer has received a substantial consideration for the issue as a whole or for the particular
11 security and a stated purpose of the issue is one for which the issuer has power to borrow money or issue
12 the security.

13 (3) Except as otherwise provided in [section 41], lack of genuineness of a certificated security is
14 a complete defense, even against a purchaser for value and without notice.

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

18 (5) This section does not affect the right of a party to cancel a contract for a security "when, as
19 and if issued" or "when distributed" in the event of a material change in the character of the security that
20 is the subject of the contract or in the plan or arrangement pursuant to which the security is to be issued
21 or distributed.

22 (6) If a security is held by a securities intermediary against whom an entitlement holder has a
23 security entitlement with respect to the security, the issuer may not assert any defense that the issuer
24 could not assert if the entitlement holder held the security directly.

25

26 **NEW SECTION. Section 39. Staleness as notice of defect or defense.** After an act or event, other
27 than a call that has been revoked, creating a right to immediate performance of the principal obligation
28 represented by a certificated security or setting a date on or after which the security is to be presented or
29 surrendered for redemption or exchange, a purchaser is charged with notice of any defect in its issue or
30 defense of the issuer, if the act or event:

1 (1) requires the payment of money, the delivery of a certificated security, the registration of
 2 transfer of an uncertificated security, or any of them on presentation or surrender of the security certificate,
 3 the money or security is available on the date set for payment or exchange, and the purchaser takes the
 4 security more than one year after that date; or

5 (2) is not covered by subsection (1) and the purchaser takes the security more than 2 years after
 6 the date set for surrender or presentation or the date on which performance became due.

7
 8 **NEW SECTION. Section 40. Effect of issuer's restriction on transfer.** A restriction on transfer of
 9 a security imposed by the issuer, even if otherwise lawful, is ineffective against a person without
 10 knowledge of the restriction unless:

11 (1) the security is certificated and the restriction is noted conspicuously on the security certificate;
 12 or

13 (2) the security is uncertificated and the registered owner has been notified of the restriction.

14
 15 **NEW SECTION. Section 41. Effect of unauthorized signature on security certificate.** An
 16 unauthorized signature placed on a security certificate before or in the course of issue is ineffective, but
 17 the signature is effective in favor of a purchaser for value of the certificated security if the purchaser is
 18 without notice of the lack of authority and the signing has been done by:

19 (1) an authenticating trustee, registrar, transfer agent, or other person entrusted by the issuer with
 20 the signing of the security certificate or of similar security certificates, or the immediate preparation for
 21 signing of any of them; or

22 (2) an employee of the issuer, or of any of the persons listed in subsection (1), entrusted with
 23 responsible handling of the security certificate.

24
 25 **NEW SECTION. Section 42. Completion of alteration of security certificate.** (1) If a security
 26 certificate contains the signatures necessary to its issue or transfer but is incomplete in any other respect:

27 (a) any person may complete it by filling in the blanks as authorized; and

28 (b) even if the blanks are incorrectly filled in, the security certificate as completed is enforceable
 29 by a purchaser who took it for value and without notice of the incorrectness.

30 (2) A complete security certificate that has been improperly altered, even if fraudulently, remains

1 enforceable, but only according to its original terms.

2

3 **NEW SECTION. Section 43. Rights and duties of issuer with respect to registered owners.** (1)

4 Before due presentment for registration of transfer of a certificated security in registered form or of an
5 instruction requesting registration of transfer of an uncertificated security, the issuer or indenture trustee
6 may treat the registered owner as the person exclusively entitled to vote, receive notifications, and
7 otherwise exercise all the rights and powers of an owner.

8 (2) This chapter does not affect the liability of the registered owner of a security for a call,
9 assessment, or the like.

10

11 **NEW SECTION. Section 44. Effect of signature of authenticating trustee, registrar, or transfer**
12 **agent.** (1) A person signing a security certificate as authenticating trustee, registrar, transfer agent, or the
13 like, warrants to a purchaser for value of the certificated security, if the purchaser is without notice of a
14 particular defect, that:

15 (a) the certificate is genuine;

16 (b) the person's own participation in the issue of the security is within the person's capacity and
17 within the scope of the authority received by the person from the issuer; and

18 (c) the person has reasonable grounds to believe that the certificated security is in the form and
19 within the amount the issuer is authorized to issue.

20 (2) Unless otherwise agreed, a person signing under subsection (1) does not assume responsibility
21 for the validity of the security in other respects.

22

23 **NEW SECTION. Section 45. Issuer's lien.** A lien in favor of an issuer upon a certificated security
24 is valid against a purchaser only if the right of the issuer to the lien is noted conspicuously on the security
25 certificate.

26

27 **NEW SECTION. Section 46. Overissue.** (1) In this section, "overissue" means the issue of
28 securities in excess of the amount the issuer has corporate power to issue, but an overissue does not occur
29 if appropriate action has cured the overissue.

30 (2) Except as otherwise provided in subsections (3) and (4), the provisions of this chapter which

1 validate a security or compel its issue or reissue do not apply to the extent that validation, issue, or reissue
2 would result in overissue.

3 (3) If an identical security not constituting an overissue is reasonably available for purchase, a
4 person entitled to issue or validation may compel the issuer to purchase the security and deliver it if
5 certificated or register its transfer if uncertificated, against surrender of any security certificate the person
6 holds.

7 (4) If a security is not reasonably available for purchase, a person entitled to issue or validation may
8 recover from the issuer the price the person or the last purchaser for value paid for it with interest from the
9 date of the person's demand.

10

11 **NEW SECTION. Section 47. Delivery.** (1) Delivery of a certificated security to a purchaser occurs
12 when:

13 (a) the purchaser acquires possession of the security certificate;

14 (b) another person, other than a securities intermediary, either acquires possession of the security
15 certificate on behalf of the purchaser or, having previously acquired possession of the certificate,
16 acknowledges that it holds for the purchaser; or

17 (c) a securities intermediary acting on behalf of the purchaser acquires possession of the security
18 certificate, only if the certificate is in registered form and has been specially indorsed to the purchaser by
19 an effective indorsement.

20 (2) Delivery of an uncertificated security to a purchaser occurs when:

21 (a) the issuer registers the purchaser as the registered owner, upon original issue or registration of
22 transfer; or

23 (b) another person, other than a securities intermediary, either becomes the registered owner of the
24 uncertificated security on behalf of the purchaser or, having previously become the registered owner,
25 acknowledges that it holds for the purchaser.

26

27 **NEW SECTION. Section 48. Rights of purchaser.** (1) Except as otherwise provided in subsections
28 (2) and (3), upon delivery of a certificated or uncertificated security to a purchaser, the purchaser acquires
29 all rights in the security that the transferor had or had power to transfer.

30 (2) A purchaser of a limited interest acquires rights only to the extent of the interest purchased.

1 (3) A purchaser of a certificated security who as a previous holder had notice of an adverse claim
2 does not improve its position by taking from a protected purchaser.

3

4 **NEW SECTION. Section 49. Protected purchaser.** (1) "Protected purchaser" means a purchaser
5 of a certificated or uncertificated security, or of an interest therein, who:

6 (a) gives value;

7 (b) does not have notice of any adverse claim to the security; and

8 (c) obtains control of the certificated or uncertificated security.

9 (2) In addition to acquiring the rights of a purchaser, a protected purchaser also acquires its interest
10 in the security free of any adverse claim.

11

12 **NEW SECTION. Section 50. Indorsement.** (1) An indorsement may be in blank or special. An
13 indorsement in blank includes an indorsement to bearer. A special indorsement specifies to whom a
14 security is to be transferred or who has power to transfer it. A holder may convert a blank indorsement
15 to a special indorsement.

16 (2) An indorsement purporting to be only of part of a security certificate representing units intended
17 by the issuer to be separately transferable is effective to the extent of the indorsement.

18 (3) An indorsement, whether special or in blank, does not constitute a transfer until delivery of the
19 certificate on which it appears or, if the indorsement is on a separate document, until delivery of both the
20 document and the certificate.

21 (4) If a security certificate in registered form has been delivered to a purchaser without a necessary
22 indorsement, the purchaser may become a protected purchaser only when the indorsement is supplied.
23 However, against a transferor, a transfer is complete upon delivery and the purchaser has a specifically
24 enforceable right to have any necessary indorsement supplied.

25 (5) An indorsement of a security certificate in bearer form may give notice of an adverse claim to
26 the certificate, but it does not otherwise affect a right to registration that the holder possesses.

27 (6) Unless otherwise agreed, a person making an indorsement assumes only the obligations
28 provided in [section 28] and not an obligation that the security will be honored by the issuer.

29

30 **NEW SECTION. Section 51. Instruction.** (1) If an instruction has been originated by an

1 appropriate person but is incomplete in any other respect, any person may complete it as authorized and
2 the issuer may rely on it as completed, even though it has been completed incorrectly.

3 (2) Unless otherwise agreed, a person initiating an instruction assumes only the obligations imposed
4 by [section 28] and not an obligation that the security will be honored by the issuer.

5

6 **NEW SECTION. Section 52. Effect of guaranteeing signature, indorsement, or instruction.** (1)

7 A person who guarantees a signature of an indorser of a security certificate warrants that at the time of
8 signing:

9 (a) the signature was genuine;

10 (b) the signer was an appropriate person to indorse, or if the signature is by an agent, the agent
11 had actual authority to act on behalf of the appropriate person; and

12 (c) the signer had legal capacity to sign.

13 (2) A person who guarantees a signature of the originator of an instruction warrants that at the
14 time of signing:

15 (a) the signature was genuine;

16 (b) the signer was an appropriate person to originate the instruction, or if the signature is by an
17 agent, the agent had actual authority to act on behalf of the appropriate person, if the person specified in
18 the instruction as the registered owner was, in fact, the registered owner, as to which fact the signature
19 guarantor does not make a warranty; and

20 (c) the signer had legal capacity to sign.

21 (3) A person who specially guarantees the signature of an originator of an instruction makes the
22 warranties of a signature guarantor under subsection (2) and also warrants that at the time the instruction
23 is presented to the issuer:

24 (a) the person specified in the instruction as the registered owner of the uncertificated security will
25 be the registered owner; and

26 (b) the transfer of the uncertificated security requested in the instruction will be registered by the
27 issuer free from all liens, security interests, restrictions, and claims other than those specified in the
28 instruction.

29 (4) A guarantor under subsections (1) and (2) or a special guarantor under subsection (3) does not
30 otherwise warrant the rightfulness of the transfer.

1 (5) A person who guarantees an indorsement of a security certificate makes the warranties of a
2 signature guarantor under subsection (1) and also warrants the rightfulness of the transfer in all respects.

3 (6) A person who guarantees an instruction requesting the transfer of an uncertificated security
4 makes the warranties of a special signature guarantor under subsection (3) and also warrants the
5 rightfulness of the transfer in all respects.

6 (7) An issuer may not require a special guaranty of signature, a guaranty of indorsement, or a
7 guaranty of instruction as a condition to registration of transfer.

8 (8) The warranties under this section are made to a person taking or dealing with the security in
9 reliance on the guaranty, and the guarantor is liable to the person for loss resulting from their breach. An
10 indorser or originator of an instruction whose signature, indorsement, or instruction has been guaranteed
11 is liable to a guarantor for any loss suffered by the guarantor as a result of breach of the warranties of the
12 guarantor.

13

14 **NEW SECTION. Section 53. Purchaser's right to requisites for registration of transfer.** Unless
15 otherwise agreed, the transferor of a security on due demand shall supply the purchaser with proof of
16 authority to transfer or with any other requisite necessary to obtain registration of the transfer of the
17 security, but if the transfer is not for value, a transferor need not comply unless the purchaser pays the
18 necessary expenses. If the transferor fails within a reasonable time to comply with the demand, the
19 purchaser may reject or rescind the transfer.

20

21 **NEW SECTION. Section 54. Duty of issuer to register transfer.** (1) If a certificated security in
22 registered form is presented to an issuer with a request to register transfer or an instruction is presented
23 to an issuer with a request to register transfer of an uncertificated security, the issuer shall register the
24 transfer as requested if:

25 (a) under the terms of the security the person seeking registration of transfer is eligible to have the
26 security registered in its name;

27 (b) the indorsement or instruction is made by the appropriate person or by an agent who has actual
28 authority to act on behalf of the appropriate person;

29 (c) reasonable assurance is given that the indorsement or instruction is genuine and authorized
30 ([section 55]);

- 1 (d) any applicable law relating to the collection of taxes has been complied with;
- 2 (e) the transfer does not violate any restriction on transfer imposed by the issuer in accordance
3 with [section 40];
- 4 (f) a demand that the issuer not register transfer has not become effective under [section 56], or
5 the issuer has complied with [section 56(2)] but no legal process or indemnity bond is obtained as provided
6 in [section 56(4)]; and
- 7 (g) the transfer is in fact rightful or is to a protected purchaser.

8 (2) If an issuer is under a duty to register a transfer of a security, the issuer is liable to a person
9 presenting a certificated security or an instruction for registration or to the person's principal for loss
10 resulting from unreasonable delay in registration or failure or refusal to register the transfer.

11

12 **NEW SECTION. Section 55. Assurance that indorsement or instruction is effective.** (1) An issuer
13 may require the following assurance that each necessary indorsement or each instruction is genuine and
14 authorized:

15 (a) in all cases, a guaranty of the signature of the person making an indorsement or originating an
16 instruction including, in the case of an instruction, reasonable assurance of identity;

17 (b) if the indorsement is made or the instruction is originated by an agent, appropriate assurance
18 of actual authority to sign;

19 (c) if the indorsement is made or the instruction is originated by a fiduciary pursuant to [section
20 27(1)(d) or (1)(e)], appropriate evidence of appointment or incumbency;

21 (d) if there is more than one fiduciary, reasonable assurance that all who are required to sign have
22 done so; and

23 (e) if the indorsement is made or the instruction is originated by a person not covered by another
24 provision of this subsection, assurance appropriate to the case corresponding as nearly as may be to the
25 provisions of this subsection.

26 (2) An issuer may elect to require reasonable assurance beyond that specified in this section.

27 (3) In this section:

28 (a) "Guaranty of the signature" means a guaranty signed by or on behalf of a person reasonably
29 believed by the issuer to be responsible. An issuer may adopt standards with respect to responsibility if
30 they are not manifestly unreasonable.

1 (b) "Appropriate evidence of appointment or incumbency" means:

2 (i) in the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the
3 direction or supervision of the court or an officer thereof and dated within 60 days before the date of
4 presentation for transfer; or

5 (ii) in any other case, a copy of a document showing the appointment or a certificate issued by or
6 on behalf of a person reasonably believed by an issuer to be responsible or, in the absence of that
7 document or certificate, other evidence the issuer reasonably considers appropriate.

8

9 **NEW SECTION. Section 56. Demand that issuer not register transfer.** (1) A person who is an
10 appropriate person to make an indorsement or originate an instruction may demand that the issuer not
11 register transfer of a security by communicating to the issuer a notification that identifies the registered
12 owner and the issue of which the security is a part and provides an address for communications directed
13 to the person making the demand. The demand is effective only if it is received by the issuer at a time and
14 in a manner affording the issuer reasonable opportunity to act on it.

15 (2) If a certificated security in registered form is presented to an issuer with a request to register
16 transfer or an instruction is presented to an issuer with a request to register transfer of an uncertificated
17 security after a demand that the issuer not register transfer has become effective, the issuer shall promptly
18 communicate to:

19 (a) the person who initiated the demand at the address provided in the demand; and

20 (b) the person who presented the security for registration of transfer or initiated the instruction
21 requesting registration of transfer a notification stating that:

22 (i) the certificated security has been presented for registration of transfer or the instruction for
23 registration of transfer of the uncertificated security has been received;

24 (ii) a demand that the issuer not register transfer had previously been received; and

25 (iii) the issuer will withhold registration of transfer for a period of time stated in the notification in
26 order to provide the person who initiated the demand an opportunity to obtain legal process or an indemnity
27 bond.

28 (3) The period described in subsection (2)(b)(iii) may not exceed 30 days after the date of
29 communication of the notification. A shorter period may be specified by the issuer if it is not manifestly
30 unreasonable.

1 (4) An issuer is not liable to a person who initiated a demand that the issuer not register transfer
2 for any loss the person suffers as a result of registration of a transfer pursuant to an effective indorsement
3 or instruction if the person who initiated the demand does not, within the time stated in the issuer's
4 communication, either:

5 (a) obtain an appropriate restraining order, injunction, or other process from a court of competent
6 jurisdiction enjoining the issuer from registering the transfer; or

7 (b) file with the issuer an indemnity bond, sufficient in the issuer's judgment to protect the issuer
8 and any transfer agent, registrar, or other agent of the issuer involved from any loss it or they may suffer
9 by refusing to register the transfer.

10 (5) This section does not relieve an issuer from liability for registering transfer pursuant to an
11 indorsement or instruction that was not effective.

12
13 **NEW SECTION. Section 57. Wrongful registration.** (1) Except as otherwise provided in [section
14 59], an issuer is liable for wrongful registration of transfer if the issuer has registered a transfer of a security
15 to a person not entitled to it, and the transfer was registered:

16 (a) pursuant to an ineffective indorsement or instruction;

17 (b) after a demand that the issuer not register transfer became effective under [section 56(1)] and
18 the issuer did not comply with [section 56(2)];

19 (c) after the issuer had been served with an injunction, restraining order, or other legal process
20 enjoining it from registering the transfer, issued by a court of competent jurisdiction, and the issuer had a
21 reasonable opportunity to act on the injunction, restraining order, or other legal process; or

22 (d) by an issuer acting in collusion with the wrongdoer.

23 (2) An issuer that is liable for wrongful registration of transfer under subsection (1) on demand shall
24 provide the person entitled to the security with a like certificated or uncertificated security, and any
25 payments or distributions that the person did not receive as a result of the wrongful registration. If an
26 overissue would result, the issuer's liability to provide the person with a like security is governed by
27 [section 46].

28 (3) Except as otherwise provided in subsection (1) or in a law relating to the collection of taxes,
29 an issuer is not liable to an owner or other person suffering loss as a result of the registration of a transfer
30 of a security if registration was made pursuant to an effective indorsement or instruction.

1 **NEW SECTION. Section 58. Replacement of lost, destroyed, or wrongfully taken security**
2 **certificate.** (1) If an owner of a certificated security, whether in registered or bearer form, claims that the
3 certificate has been lost, destroyed, or wrongfully taken, the issuer shall issue a new certificate if the
4 owner:

5 (a) so requests before the issuer has notice that the certificate has been acquired by a protected
6 purchaser;

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

8 (c) satisfies other reasonable requirements imposed by the issuer.

9 (2) If, after the issue of a new security certificate, a protected purchaser of the original certificate
10 presents it for registration of transfer, the issuer shall register the transfer unless an overissue would result.
11 In that case, the issuer's liability is governed by [section 46]. In addition to any rights on the indemnity
12 bond, an issuer may recover the new certificate from a person to whom it was issued or any person taking
13 under that person, except a protected purchaser.

14

15 **NEW SECTION. Section 59. Obligation to notify issuer of lost, destroyed, or wrongfully taken**
16 **security certificate.** If a security certificate has been lost, apparently destroyed, or wrongfully taken, and
17 the owner fails to notify the issuer of that fact within a reasonable time after the owner has notice of it and
18 the issuer registers a transfer of the security before receiving notification, the owner may not assert against
19 the issuer a claim for registering the transfer under [section 57] or a claim to a new security certificate
20 under [section 58].

21

22 **NEW SECTION. Section 60. Authenticating trustee, transfer agent, and registrar.** A person acting
23 as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of a
24 transfer of its securities, in the issue of new security certificates or uncertificated securities, or in the
25 cancellation of surrendered security certificates has the same obligation to the holder or owner of a
26 certificated or uncertificated security with regard to the particular functions performed as the issuer has in
27 regard to those functions.

28

29 **NEW SECTION. Section 61. Securities account -- acquisition of security entitlement from securities**
30 **intermediary.** (1) "Securities account" means an account to which a financial asset is or may be credited

1 in accordance with an agreement under which the person maintaining the account undertakes to treat the
2 person for whom the account is maintained as entitled to exercise the rights that comprise the financial
3 asset.

4 (2) Except as otherwise provided in subsections (4) and (5), a person acquires a security
5 entitlement if a securities intermediary:

6 (a) indicates by book entry that a financial asset has been credited to the person's securities
7 account;

8 (b) receives a financial asset from the person or acquires a financial asset for the person and, in
9 either case, accepts it for credit to the person's securities account; or

10 (c) becomes obligated under other law, regulation, or rule to credit a financial asset to the person's
11 securities account.

12 (3) If a condition of subsection (2) has been met, a person has a security entitlement even though
13 the securities intermediary does not itself hold the financial asset.

14 (4) If a securities intermediary holds a financial asset for another person, and the financial asset
15 is registered in the name of, payable to the order of, or specially indorsed to the other person, and has not
16 been indorsed to the securities intermediary or in blank, the other person is treated as holding the financial
17 asset directly rather than as having a security entitlement with respect to the financial asset.

18 (5) Issuance of a security is not establishment of a security entitlement.

19

20 **NEW SECTION. Section 62. Assertion of adverse claim against entitlement holder.** An action
21 based on an adverse claim to a financial asset, whether framed in conversion, replevin, constructive trust,
22 equitable lien, or other theory, may not be asserted against a person who acquires a security entitlement
23 under [section 61] for value and without notice of the adverse claim.

24

25 **NEW SECTION. Section 63. Property interest of entitlement holder in financial asset held by**
26 **securities intermediary.** (1) To the extent necessary for a securities intermediary to satisfy all security
27 entitlements with respect to a particular financial asset, all interests in that financial asset held by the
28 securities intermediary are held by the securities intermediary for the entitlement holders, are not property
29 of the securities intermediary, and are not subject to claims of creditors of the securities intermediary,
30 except as otherwise provided in [section 71].

1 (2) An entitlement holder's property interest with respect to a particular financial asset under
2 subsection (1) is a pro rata property interest in all interests in that financial asset held by the securities
3 intermediary, without regard to the time the entitlement holder acquired the security entitlement or the time
4 the securities intermediary acquired the interest in that financial asset.

5 (3) An entitlement holder's property interest with respect to a particular financial asset under
6 subsection (1) may be enforced against the securities intermediary only by exercise of the entitlement
7 holder's rights under [sections 65 through 68].

8 (4) An entitlement holder's property interest with respect to a particular financial asset under
9 subsection (1) may be enforced against a purchaser of the financial asset or interest therein only if:

10 (a) insolvency proceedings have been initiated by or against the securities intermediary;

11 (b) the securities intermediary does not have sufficient interests in the financial asset to satisfy the
12 security entitlements of all of its entitlement holders to that financial asset;

13 (c) the securities intermediary violated its obligations under [section 64] by transferring the financial
14 asset or interest therein to the purchaser; and

15 (d) the purchaser is not protected under subsection (6).

16 (5) The trustee or other liquidator, acting on behalf of all entitlement holders having security
17 entitlements with respect to a particular financial asset, may recover the financial asset, or interest therein,
18 from the purchaser. If the trustee or other liquidator elects not to pursue that right, an entitlement holder
19 whose security entitlement remains unsatisfied has the right to recover its interest in the financial asset
20 from the purchaser.

21 (6) An action based on the entitlement holder's property interest with respect to a particular
22 financial asset under subsection (1), whether framed in conversion, replevin, constructive trust, equitable
23 lien, or other theory, may not be asserted against any purchaser of a financial asset or interest therein who
24 gives value, obtains control, and does not act in collusion with the securities intermediary in violating the
25 securities intermediary's obligations under [section 64].

26
27 **NEW SECTION. Section 64. Duty of securities intermediary to maintain financial asset.** (1) A
28 securities intermediary shall promptly obtain and thereafter maintain a financial asset in a quantity
29 corresponding to the aggregate of all security entitlements it has established in favor of its entitlement
30 holders with respect to that financial asset. The securities intermediary may maintain those financial assets

1 directly or through one or more other securities intermediaries.

2 (2) Except to the extent otherwise agreed by its entitlement holder, a securities intermediary may
3 not grant any security interests in a financial asset it is obligated to maintain pursuant to subsection (1).

4 (3) A securities intermediary satisfies the duty in subsection (1) if:

5 (a) the securities intermediary acts with respect to the duty as agreed upon by the entitlement
6 holder and the securities intermediary; or

7 (b) in the absence of agreement, the securities intermediary exercises due care in accordance with
8 reasonable commercial standards to obtain and maintain the financial asset.

9 (4) This section does not apply to a clearing corporation that is itself the obligor of an option or
10 similar obligation to which its entitlement holders have security entitlements.

11

12 **NEW SECTION. Section 65. Duty of securities intermediary with respect to payments and**
13 **distributions.** (1) A securities intermediary shall take action to obtain a payment or distribution made by
14 the issuer of a financial asset. A securities intermediary satisfies the duty if:

15 (a) the securities intermediary acts with respect to the duty as agreed upon by the entitlement
16 holder and the securities intermediary; or

17 (b) in the absence of agreement, the securities intermediary exercises due care in accordance with
18 reasonable commercial standards to attempt to obtain the payment or distribution.

19 (2) A securities intermediary is obligated to its entitlement holder for a payment or distribution
20 made by the issuer of a financial asset if the payment or distribution is received by the securities
21 intermediary.

22

23 **NEW SECTION. Section 66. Duty of securities intermediary to exercise rights as directed by**
24 **entitlement holder.** A securities intermediary shall exercise rights with respect to a financial asset if
25 directed to do so by an entitlement holder. A securities intermediary satisfies the duty if:

26 (1) the securities intermediary acts with respect to the duty as agreed upon by the entitlement
27 holder and the securities intermediary; or

28 (2) in the absence of agreement, the securities intermediary either places the entitlement holder
29 in a position to exercise the rights directly or exercises due care in accordance with reasonable commercial
30 standards to follow the direction of the entitlement holder.

1 **NEW SECTION. Section 67. Duty of securities intermediary to comply with entitlement order.** (1)

2 A securities intermediary shall comply with an entitlement order if the entitlement order is originated by the
3 appropriate person, the securities intermediary has had reasonable opportunity to assure itself that the
4 entitlement order is genuine and authorized, and the securities intermediary has had reasonable opportunity
5 to comply with the entitlement order. A securities intermediary satisfies the duty if:

6 (a) the securities intermediary acts with respect to the duty as agreed upon by the entitlement
7 holder and the securities intermediary; or

8 (b) in the absence of agreement, the securities intermediary exercises due care in accordance with
9 reasonable commercial standards to comply with the entitlement order.

10 (2) If a securities intermediary transfers a financial asset pursuant to an ineffective entitlement
11 order, the securities intermediary shall reestablish a security entitlement in favor of the person entitled to
12 it, and pay or credit any payments or distributions that the person did not receive as a result of the
13 wrongful transfer. If the securities intermediary does not reestablish a security entitlement, the securities
14 intermediary is liable to the entitlement holder for damages.

15

16 **NEW SECTION. Section 68. Duty of securities intermediary to change entitlement holder's position**

17 **to other form of security holding.** A securities intermediary shall act at the direction of an entitlement
18 holder to change a security entitlement into another available form of holding for which the entitlement
19 holder is eligible, or to cause the financial asset to be transferred to a securities account of the entitlement
20 holder with another securities intermediary. A securities intermediary satisfies the duty if:

21 (1) the securities intermediary acts as agreed upon by the entitlement holder and the securities
22 intermediary; or

23 (2) in the absence of agreement, the securities intermediary exercises due care in accordance with
24 reasonable commercial standards to follow the direction of the entitlement holder.

25

26 **NEW SECTION. Section 69. Specification of duties of securities intermediary by other statute or**
27 **regulation -- manner of performance of duties of securities intermediary and exercise of rights of entitlement**

28 **holder.** (1) If the substance of a duty imposed upon a securities intermediary by [sections 64 through 68]
29 is the subject of other statute, regulation, or rule, compliance with that statute, regulation, or rule satisfies
30 the duty.

1 (2) To the extent that specific standards for the performance of the duties of a securities
 2 intermediary or the exercise of the rights of an entitlement holder are not specified by other statute,
 3 regulation, or rule or by agreement between the securities intermediary and entitlement holder, the
 4 securities intermediary shall perform its duties and the entitlement holder shall exercise its rights in a
 5 commercially reasonable manner.

6 (3) The obligation of a securities intermediary to perform the duties imposed by [sections 64
 7 through 68] is subject to:

8 (a) rights of the securities intermediary arising out of a security interest under a security agreement
 9 with the entitlement holder or otherwise; and

10 (b) rights of the securities intermediary under other law, regulation, rule, or agreement to withhold
 11 performance of its duties as a result of unfulfilled obligations of the entitlement holder to the securities
 12 intermediary.

13 (4) [Sections 64 through 68] do not require a securities intermediary to take any action that is
 14 prohibited by other statute, regulation, or rule.

15

16 **NEW SECTION. Section 70. Rights of purchaser of security entitlement from entitlement holder.**

17 (1) An action based on an adverse claim to a financial asset or security entitlement, whether framed in
 18 conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a
 19 person who purchases a security entitlement, or an interest therein, from an entitlement holder if the
 20 purchaser gives value, does not have notice of the adverse claim, and obtains control.

21 (2) If an adverse claim could not have been asserted against an entitlement holder under [section
 22 62], the adverse claim cannot be asserted against a person who purchases a security entitlement, or an
 23 interest therein, from the entitlement holder.

24 (3) In a case not covered by the priority rules in chapter 9, a purchaser for value of a security
 25 entitlement, or an interest therein, who obtains control has priority over a purchaser of a security
 26 entitlement, or an interest therein, who does not obtain control. Purchasers who have control rank equally,
 27 except that a securities intermediary as purchaser has priority over a conflicting purchaser who has control
 28 unless otherwise agreed by the securities intermediary.

29

30 **NEW SECTION. Section 71. Priority among security interests and entitlement holders.** (1) Except

1 as otherwise provided in subsections (2) and (3), if a securities intermediary does not have sufficient
2 interests in a particular financial asset to satisfy both its obligations to entitlement holders who have
3 security entitlements to that financial asset and its obligation to a creditor of the securities intermediary
4 who has a security interest in that financial asset, the claims of entitlement holders, other than the creditor,
5 have priority over the claim of the creditor.

6 (2) A claim of a creditor of a securities intermediary who has a security interest in a financial asset
7 held by a securities intermediary has priority over claims of the securities intermediary's entitlement holders
8 who have security entitlements with respect to that financial asset if the creditor has control over the
9 financial asset.

10 (3) If a clearing corporation does not have sufficient financial assets to satisfy both its obligations
11 to entitlement holders who have security entitlements with respect to a financial asset and its obligation
12 to a creditor of the clearing corporation who has a security interest in that financial asset, the claim of the
13 creditor has priority over the claims of entitlement holders.

14

15 **Section 72.** Section 30-9-103, MCA, is amended to read:

16 **"30-9-103. Perfection of security interests in multiple state transactions.** (1) (a) Subsection (1)
17 applies to documents and instruments and to goods other than those covered by a certificate of title
18 described in subsection (2), mobile goods described in subsection (3), and minerals described in subsection
19 (5).

20 (b) Except as otherwise provided in subsection (1), perfection and the effect of perfection or
21 nonperfection of a security interest in collateral are governed by the law of the jurisdiction where the
22 collateral is when the last event occurs on which is based the assertion that the security interest is
23 perfected or unperfected.

24 (c) If the parties to a transaction creating a purchase money security interest in goods in one
25 jurisdiction understand at the time that the security interest attaches that the goods will be kept in another
26 jurisdiction, then the law of the other jurisdiction governs the perfection and the effect of perfection or
27 nonperfection of the security interest from the time it attaches until 30 days after the debtor receives
28 possession of the goods and thereafter if the goods are taken to the other jurisdiction before the end of the
29 30-day period.

30 (d) When collateral is brought into and kept in this state while subject to a security interest

1 perfected under the law of the jurisdiction from which the collateral was removed, the security interest
2 remains perfected, but if action is required by part 3 of this chapter to perfect the security interest:

3 (i) if the action is not taken before the expiration of the period of perfection in the other jurisdiction
4 or the end of 4 months after the collateral is brought into this state, whichever period first expires, the
5 security interest becomes unperfected at the end of that period and is thereafter considered to have been
6 unperfected as against a person who became a purchaser after removal;

7 (ii) if the action is taken before the expiration of the period specified in (1)(d)(i), the security interest
8 continues perfected thereafter;

9 (iii) for the purpose of priority over a buyer of consumer goods (30-9-307(2)), the period of the
10 effectiveness of a filing in the jurisdiction from which the collateral is removed is governed by the rules with
11 respect to perfection in (1)(d)(i) and (ii).

12 (2) (a) Subsection (2) applies to goods covered by a certificate of title issued under a statute of
13 this state or of another jurisdiction under the law of which indication of a security interest on the certificate
14 is required as a condition of perfection.

15 (b) Except as otherwise provided in subsection (2), perfection and the effect of perfection or
16 nonperfection of the security interest are governed by the law (including the conflict of laws rules) of the
17 jurisdiction issuing the certificate until 4 months after the goods are removed from that jurisdiction and
18 thereafter until the goods are registered in another jurisdiction, but in any event not beyond surrender of
19 the certificate. After the expiration of that period, the goods are not covered by the certificate of title within
20 the meaning of this section.

21 (c) Except with respect to the rights of a buyer described in (2)(d), a security interest, perfected
22 in another jurisdiction otherwise than by notation on a certificate of title, in goods brought into this state
23 and thereafter covered by a certificate of title issued by this state is subject to the rules stated in (1)(d).

24 (d) If goods are brought into this state while a security interest therein is perfected in any manner
25 under the law of the jurisdiction from which the goods are removed and a certificate of title is issued by
26 this state and the certificate does not show that the goods are subject to the security interest or that they
27 may be subject to security interests not shown on the certificate, the security interest is subordinate to the
28 rights of a buyer of the goods who is not in the business of selling goods of that kind to the extent that
29 ~~he~~ the buyer gives value and receives delivery of the goods after issuance of the certificate and without
30 knowledge of the security interest.

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

7 (b) The law (including the conflict of laws rules) of the jurisdiction in which the debtor is located
8 governs the perfection and the effect of perfection or nonperfection of the security interest.

9 (c) If, however, the debtor is located in a jurisdiction which is not a part of the United States and
10 which does not provide for perfection of the security interest by filing or recording in that jurisdiction, the
11 law of the jurisdiction in the United States in which the debtor has its major executive office in the United
12 States governs the perfection and the effect of perfection or nonperfection of the security interest through
13 filing. In the alternative, if the debtor is located in a jurisdiction which is not a part of the United States or
14 Canada and the collateral is accounts or general intangibles for money due or to become due, the security
15 interest may be perfected by notification to the account debtor. As used in subsection (3)(c), "United
16 States" includes its territories and possessions and the Commonwealth of Puerto Rico.

17 (d) A debtor shall be considered located at ~~his~~ the debtor's place of business if ~~he~~ the debtor has
18 one, at ~~his~~ the chief executive office if ~~he~~ the debtor has more than one place of business, otherwise at
19 ~~his~~ the debtor's residence. If, however, the debtor is a foreign air carrier under the Federal Aviation Act,
20 it shall be considered located at the designated office of the agent upon whom service of process may be
21 made on behalf of the foreign air carrier.

22 (e) A security interest perfected under the law of the jurisdiction of the location of the debtor is
23 perfected until the expiration of 4 months after a change of the debtor's location to another jurisdiction or
24 until perfection would have ceased by the law of the first jurisdiction, whichever period first expires. Unless
25 perfected in the new jurisdiction before the end of that period, it becomes unperfected thereafter and is
26 considered to have been unperfected as against a person who became a purchaser after the change.

27 (4) The rules stated for goods in subsection (1) apply to a possessory security interest in chattel
28 paper. The rules stated for accounts in subsection (3) apply to a nonpossessory security interest in chattel
29 paper, but the security interest may not be perfected by notification to the account debtor.

30 (5) Perfection and the effect of perfection or nonperfection of a security interest which is created

1 by a debtor who has an interest in minerals or the like (including oil and gas) before extraction and which
2 attaches thereto as extracted or which attaches to an account resulting from the sale thereof at the
3 wellhead or minehead are governed by the law (including the conflict of laws rules) of the jurisdiction
4 wherein the wellhead or minehead is located.

5 ~~(6) (a) The law (including the conflict of laws rules) of the jurisdiction of organization of the issuer~~
6 ~~governs the perfection and the effect of perfection or nonperfection of a security interest in uncertificated~~
7 ~~securities. This subsection (6) applies to investment property.~~

8 (b) Except as otherwise provided in subsection (6)(f), during the time that a security certificate is
9 located in a jurisdiction, perfection of a security interest, the effect of perfection or nonperfection, and the
10 priority of a security interest in the certificated security are governed by the local law of that jurisdiction.

11 (c) Except as otherwise provided in subsection (6)(f), perfection of a security interest, the effect
12 of perfection or nonperfection, and the priority of a security interest in an uncertificated security are
13 governed by the local law of the issuer's jurisdiction as specified in [section 30(4)].

14 (d) Except as otherwise provided in subsection (6)(f), perfection of a security interest, the effect
15 of perfection or nonperfection, and the priority of a security interest in a security entitlement or securities
16 account are governed by the local law of the securities intermediary's jurisdiction as specified in [section
17 30(5)].

18 (e) Except as otherwise provided in subsection (6)(f), perfection of a security interest, the effect
19 of perfection or nonperfection, and the priority of a security interest in a commodity contract or commodity
20 account are governed by the local law of the commodity intermediary's jurisdiction. The following rules
21 determine a "commodity intermediary's jurisdiction" for purposes of this subsection (6)(e):

22 (i) If an agreement between the commodity intermediary and commodity customer specifies that
23 it is governed by the law of a particular jurisdiction, that jurisdiction is the commodity intermediary's
24 jurisdiction.

25 (ii) If an agreement between the commodity intermediary and commodity customer does not specify
26 the governing law as provided in subsection (6)(e)(i), but expressly specifies that the commodity account
27 is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity intermediary's
28 jurisdiction.

29 (iii) If an agreement between the commodity intermediary and commodity customer does not specify
30 a jurisdiction as provided in subsections (6)(e)(i) or (6)(e)(ii), the commodity intermediary's jurisdiction is

1 the jurisdiction in which is located the office identified in an account statement as the office serving the
 2 commodity customer's account.

3 (iv) If an agreement between the commodity intermediary and commodity customer does not specify
 4 a jurisdiction as provided in subsections (6)(e)(i) or (6)(e)(ii) and an account statement does not identify an
 5 office serving the commodity customer's account as provided in subsection (6)(e)(iii), the commodity
 6 intermediary's jurisdiction is the jurisdiction in which is located the chief executive office of the commodity
 7 intermediary.

8 (f) Perfection of a security interest by filing, automatic perfection of a security interest in
 9 investment property granted by a broker or securities intermediary, and automatic perfection of a security
 10 interest in a commodity contract or commodity account granted by a commodity intermediary are governed
 11 by the local law of the jurisdiction in which the debtor is located."

12

13 **Section 73.** Section 30-9-104, MCA, is amended to read:

14 **"30-9-104. Transactions excluded from chapter.** This chapter does not apply:

15 (1) to a security interest subject to any statute of the United States such as the Ship Mortgage Act,
 16 1920, to the extent that the statute governs the rights of parties to and third parties affected by
 17 transactions in particular types of property;

18 (2) to a landlord's lien;

19 (3) to a lien given by statute or other rule of law for services or materials except as provided in
 20 30-9-310 on priority of such liens;

21 (4) to a transfer of a claim for wages, salary, or other compensation of an employee;

22 (5) to a transfer by a government or governmental subdivision or agency;

23 (6) to a sale of accounts or chattel paper as part of a sale of the business out of which they arose,
 24 or an assignment of accounts or chattel paper which is for the purpose of collection only, or a transfer of
 25 a right to payment under a contract to an assignee who is also to do the performance under the contract,
 26 or a transfer of a single account to an assignee in whole or partial satisfaction of a preexisting
 27 indebtedness;

28 (7) to a transfer of an interest or claim in or under any policy of insurance, except as provided with
 29 respect to proceeds (30-9-306) and priorities in proceeds (30-9-312);

30 (8) to a right represented by a judgment (other than a judgment taken on a right to payment which

1 was collateral);

2 (9) to any right of setoff;

3 (10) except to the extent that provision is made for fixtures in 30-9-313, to the creation or transfer
4 of an interest in or lien on real estate, including a lease or rents under the lease;

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

6 (12) to a transfer of an interest in any deposit account (30-9-105(1)), except as provided with
7 respect to proceeds (30-9-306) and priorities in proceeds (30-9-312); ~~or~~

8 (13) to liquor in an agency liquor store as defined in 16-1-106; or

9 (14) to a transfer of an interest in a letter of credit other than the rights to proceeds of a written
10 letter of credit."

11

12 **Section 74.** Section 30-9-105, MCA, is amended to read:

13 **"30-9-105. Definitions and index of definitions.** (1) In this chapter, the following definitions apply
14 unless the context otherwise requires:

15 (a) "Account debtor" means the person who is obligated on an account, chattel paper, or general
16 intangible.

17 (b) "Chattel paper" means a writing or writings which evidence both a monetary obligation and a
18 security interest in or a lease of specific goods, but a charter or other contract involving the use or hire of
19 a vessel is not chattel paper. When a transaction is evidenced both by such a security agreement or a lease
20 and by an instrument or a series of instruments, the group of writings taken together constitutes chattel
21 paper.

22 (c) "Collateral" means the property subject to a security interest, and includes accounts and chattel
23 paper which have been sold.

24 (d) "Debtor" means the person who owes payment or other performance of the obligation secured,
25 whether or not he owns or has rights in the collateral, and includes the seller of accounts or chattel paper.
26 When the debtor and the owner of the collateral are not the same person, the term "debtor" means the
27 owner of the collateral in any provision of the chapter dealing with the collateral, the obligor in any
28 provision dealing with the obligation, and may include both where the context so requires.

29 (e) "Deposit account" means a demand, time, savings, passbook, or like account maintained with
30 a bank, savings and loan association, credit union, or like organization, other than an account evidenced

1 by a certificate of deposit.

2 (f) "Document" means document of title as defined in the general definitions of chapter 1
3 (30-1-201) and a receipt of the kind described in 30-7-201(2).

4 (g) "Encumbrance" includes real estate mortgages and other liens on real estate and all other rights
5 in real estate that are not ownership interests.

6 (h) "Goods" includes all things which are movable at the time the security interest attaches or
7 which are fixtures (30-9-313), but does not include money, documents, instruments, investment property,
8 accounts, chattel paper, general intangibles, or minerals or the like (including oil and gas) before extraction.
9 "Goods" also includes standing timber that is to be cut and removed under a conveyance or contract for
10 sale, the unborn young of animals, and growing crops.

11 (i) "Instrument" means a negotiable instrument (defined in 30-3-104), ~~or a certificated security~~
12 ~~(defined in 30-8-102)~~ or any other writing which evidences a right to the payment of money and is not itself
13 a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery
14 with any necessary endorsement or assignment. The term does not include investment property.

15 (j) "Mortgage" means a consensual interest created by a real estate mortgage, a trust deed on real
16 estate, or the like.

17 (k) An advance is made "pursuant to commitment" if the secured party has bound ~~himself~~ the
18 secured party to make it, whether or not a subsequent event of default or other event not within ~~his~~ the
19 secured party's control has relieved or may relieve ~~him~~ the secured party from ~~his~~ the secured party's
20 obligation.

21 (l) "Security agreement" means an agreement which creates or provides for a security interest.

22 (m) "Secured party" means a lender, seller, or other person in whose favor there is a security
23 interest, including a person to whom accounts or chattel paper have been sold. When the holders of
24 obligations issued under an indenture of trust, equipment trust agreement, or the like are represented by
25 a trustee or other person, the representative is the secured party.

26 (n) "Transmitting utility" means any person primarily engaged in the railroad, street railway, or
27 trolley bus business; the electric or electronics communications transmission business; the transmission of
28 goods by pipeline; or the transmission or the production and transmission of electricity, steam, gas, or
29 water or the provision of sewer service.

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

- 1 "Account". 30-9-106.
- 2 "Attach". 30-9-203.
- 3 "Commodity contract". [section 76].
- 4 "Commodity customer". [section 76].
- 5 "Commodity intermediary". [section 76].
- 6 "Construction mortgage". 30-9-313(1).
- 7 "Consumer goods". 30-9-109(1).
- 8 "Control". [section 76].
- 9 "Equipment". 30-9-109(2).
- 10 "Farm products". 30-9-109(3).
- 11 "Fixture". 30-9-313(1).
- 12 "Fixture filing". 30-9-313.
- 13 "General intangibles". 30-9-106.
- 14 "Inventory". 30-9-109(4).
- 15 "Investment property". [section 76].
- 16 "Lien creditor". 30-9-301(3).
- 17 "Proceeds". 30-9-306(1).
- 18 "Purchase money security interest". 30-9-107.
- 19 "United States". 30-9-103.
- 20 (3) The following definitions in other chapters apply to this chapter:
- 21 "Broker". [section 22].
- 22 "Certificated security". [section 22].
- 23 "Check". 30-3-104.
- 24 "Clearing corporation". [section 22].
- 25 "Contract for sale". 30-2-106.
- 26 "Control". [section 26].
- 27 "Delivery". [section 47].
- 28 "Entitlement holder". [section 22].
- 29 "Financial asset". [section 22].
- 30 "Holder in due course". 30-3-302.

- 1 "Letter of credit". [section 6].
 2 "Note". 30-3-104.
 3 "Proceeds of a letter of credit". [section 18(1)].
 4 "Sale". 30-2-106.
 5 "Securities intermediary". [section 22].
 6 "Security". [section 22].
 7 "Security certificate". [section 22]
 8 "Security entitlement". [section 22].
 9 "Uncertificated security". [section 22].

10 (4) In addition Chapter 1 contains general definitions and principles of construction and
 11 interpretation applicable throughout this chapter."

12

13 **Section 75.** Section 30-9-106, MCA, is amended to read:

14 **"30-9-106. Definitions -- "account" -- "general intangibles".** "Account" means any right to
 15 payment for goods sold or leased or for services rendered which is not evidenced by an instrument or
 16 chattel paper, whether or not it has been earned by performance. "General intangibles" means any personal
 17 property (including things in action) other than goods, accounts, chattel paper, documents, instruments,
 18 investment property, rights to proceeds of written letters of credit, and money. All rights to payment earned
 19 or unearned under a charter or other contract involving the use or hire of a vessel and all rights incident to
 20 the charter or contract are accounts."

21

22 **NEW SECTION. Section 76. Investment property.** (1) In this chapter:

23 (a) "Commodity account" means an account maintained by a commodity intermediary in which a
 24 commodity contract is carried for a commodity customer.

25 (b) "Commodity contract" means a commodity futures contract, an option on a commodity futures
 26 contract, a commodity option, or other contract that, in each case, is:

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

29 (ii) traded on a foreign commodity board of trade, exchange, or market, and is carried on the books
 30 of a commodity intermediary for a commodity customer.

1 (c) "Commodity customer" means a person for whom a commodity intermediary carries a
2 commodity contract on its books.

3 (d) "Commodity intermediary" means:

4 (i) a person who is registered as a futures commission merchant under the federal commodities
5 laws; or

6 (ii) a person who in the ordinary course of its business provides clearance or settlement services
7 for a board of trade that has been designated as a contract market pursuant to the federal commodities
8 laws.

9 (e) "Control" with respect to a certificated security, uncertificated security, or security entitlement
10 has the meaning specified in [section 26]. A secured party has control over a commodity contract if by
11 agreement among the commodity customer, the commodity intermediary, and the secured party, the
12 commodity intermediary has agreed that it will apply any value distributed on account of the commodity
13 contract as directed by the secured party without further consent by the commodity customer. If a
14 commodity customer grants a security interest in a commodity contract to its own commodity intermediary,
15 the commodity intermediary as secured party has control. A secured party has control over a securities
16 account or commodity account if the secured party has control over all security entitlements or commodity
17 contracts carried in the securities account or commodity account.

18 (f) "Investment property" means:

19 (i) a security, whether certificated or uncertificated;

20 (ii) a security entitlement;

21 (iii) a securities account;

22 (iv) a commodity contract; or

23 (v) a commodity account.

24 (2) Attachment or perfection of a security interest in a securities account is also attachment or
25 perfection of a security interest in all security entitlements carried in the securities account. Attachment
26 or perfection of a security interest in a commodity account is also attachment or perfection of a security
27 interest in all commodity contracts carried in the commodity account.

28 (3) A description of collateral in a security agreement or financing statement is sufficient to create
29 or perfect a security interest in a certificated security, uncertificated security, security entitlement,
30 securities account, commodity contract, or commodity account whether it describes the collateral by those

1 terms, or as investment property, or by description of the underlying security, financial asset, or commodity
2 contract. A description of investment property collateral in a security agreement or financing statement
3 is sufficient if it identifies the collateral by specific listing, by category, by quantity, by a computational or
4 allocational formula or procedure, or by any other method, if the identity of the collateral is objectively
5 determinable.

6 (4) Perfection of a security interest in investment property is governed by the following rules:

7 (a) A security interest in investment property may be perfected by control.

8 (b) Except as otherwise provided in subsections (4)(c) and (4)(d), a security interest in investment
9 property may be perfected by filing.

10 (c) If the debtor is a broker or securities intermediary, a security interest in investment property is
11 perfected when it attaches. The filing of a financing statement with respect to a security interest in
12 investment property granted by a broker or securities intermediary has no effect for purposes of perfection
13 or priority with respect to that security interest.

14 (d) If a debtor is a commodity intermediary, a security interest in a commodity contract or a
15 commodity account is perfected when it attaches. The filing of a financing statement with respect to a
16 security interest in a commodity contract or a commodity account granted by a commodity intermediary
17 has no effect for purposes of perfection or priority with respect to that security interest.

18 (5) Priority between conflicting security interests in the same investment property is governed by
19 the following rules:

20 (a) A security interest of a secured party who has control over investment property has priority
21 over a security interest of a secured party who does not have control over the investment property.

22 (b) Except as otherwise provided in subsections (5)(c) and (5)(d), conflicting security interests of
23 secured parties each of whom has control rank equally.

24 (c) Except as otherwise agreed by the securities intermediary, a security interest in a security
25 entitlement or a securities account granted to the debtor's own securities intermediary has priority over any
26 security interest granted by the debtor to another secured party.

27 (d) Except as otherwise agreed by the commodity intermediary, a security interest in a commodity
28 contract or a commodity account granted to the debtor's own commodity intermediary has priority over
29 any security interest granted by the debtor to another secured party.

30 (e) Conflicting security interests granted by a broker, a securities intermediary, or a commodity

1 intermediary which are perfected without control rank equally.

2 (f) In all other cases, priority between conflicting security interests in investment property is
3 governed by 30-9-312(5), (6), and (7). Section 30-9-312(4) does not apply to investment property.

4 (6) If a security certificate in registered form is delivered to a secured party pursuant to agreement,
5 a written security agreement is not required for attachment or enforceability of the security interest, delivery
6 suffices for perfection of the security interest, and the security interest has priority over a conflicting
7 security interest perfected by means other than control, even if a necessary indorsement is lacking.

8

9 **NEW SECTION. Section 77. Security interest arising in purchase or delivery of financial asset.** (1)

10 If a person buys a financial asset through a securities intermediary in a transaction in which the buyer is
11 obligated to pay the purchase price to the securities intermediary at the time of the purchase, and the
12 securities intermediary credits the financial asset to the buyer's securities account before the buyer pays
13 the securities intermediary, the securities intermediary has a security interest in the buyer's security
14 entitlement securing the buyer's obligation to pay. A security agreement is not required for attachment or
15 enforceability of the security interest, and the security interest is automatically perfected.

16 (2) If a certificated security, or other financial asset represented by a writing which in the ordinary
17 course of business is transferred by delivery with any necessary indorsement or assignment is delivered
18 pursuant to an agreement between persons in the business of dealing with such securities or financial
19 assets and the agreement calls for delivery versus payment, the person delivering the certificate or other
20 financial asset has a security interest in the certificated security or other financial asset securing the seller's
21 right to receive payment. A security agreement is not required for attachment or enforceability of the
22 security interest, and the security interest is automatically perfected.

23

24 **Section 78.** Section 30-9-203, MCA, is amended to read:

25 **"30-9-203. Attachment and enforceability of security interest -- proceeds, formal requisites.** (1)

26 Subject to the provisions of 30-4-208 on the security interest of a collecting bank, ~~30-8-321~~ [sections 76
27 and 77] on security interests in ~~securities investment property~~, and 30-9-113 on a security interest arising
28 under the Chapter on Sales, a security interest is not enforceable against the debtor or third parties with
29 respect to the collateral and does not attach unless:

30 (a) the collateral is in the possession of the secured party pursuant to agreement, the collateral is

1 investment property and the secured party has control pursuant to agreement, or the debtor has signed a
 2 security agreement which contains a description of the collateral and in addition, when the security interest
 3 covers crops growing or to be grown or timber to be cut, a description of the land concerned;

4 (b) value has been given; and

5 (c) the debtor has rights in the collateral.

6 (2) A security interest attaches when it becomes enforceable against the debtor with respect to
 7 the collateral. Attachment occurs as soon as all of the events specified in subsection (1) have taken place
 8 unless explicit agreement postpones the time of attaching.

9 (3) Unless otherwise agreed a security agreement gives the secured party the rights to proceeds
 10 provided by 30-9-306.

11 (4) A transaction, although subject to this chapter, is also subject to Title 23, chapter 2, part 5,
 12 to Title 23, chapter 2, part 6, to Title 32, chapter 5, as enacted by Chapter 283, Laws of Montana 1959,
 13 to Title 31, chapter 1, part 2, as enacted by Chapter 282, Laws of Montana 1959, and to 81-8-301
 14 through 81-8-305, Title 61, chapter 3, Title 16, chapters 1 through 6, and Title 31, chapter 1, part 4, as
 15 amended, and in the case of conflict between the provisions of this chapter and any such statute, the
 16 provisions of such statute control. Failure to comply with any applicable statute has only the effect which
 17 is specified therein."

18

19 **Section 79.** Section 30-9-301, MCA, is amended to read:

20 **"30-9-301. Persons who take priority over unperfected security interests -- right of "lien creditor".**

21 (1) Except as otherwise provided in subsection (2), an unperfected security interest is subordinate to the
 22 rights of:

23 (a) persons entitled to priority under 30-9-312;

24 (b) a person who becomes a lien creditor before the security interest is perfected;

25 (c) in the case of goods, instruments, documents, and chattel paper, a person who is not a secured
 26 party and who is a transferee in bulk or other buyer not in ordinary course of business or is a buyer of farm
 27 products in ordinary course of business, to the extent that ~~he~~ the person gives value and receives delivery
 28 of the collateral without knowledge of the security interest and before it is perfected;

29 (d) in the case of accounts, ~~and~~ general intangibles, and investment property, a person who is not
 30 a secured party and who is a transferee to the extent that ~~he~~ the person gives value without knowledge

1 of the security interest and before it is perfected.

2 (2) If the secured party files with respect to a purchase money security interest before or within
3 20 days after the debtor receives possession of the collateral, ~~he~~ the secured party takes priority over the
4 rights of a transferee in bulk or of a lien creditor which arise between the time the security interest attaches
5 and the time of filing.

6 (3) A "lien creditor" means a creditor who has acquired a lien on the property involved by
7 attachment, levy, or the like and includes an assignee for benefit of creditors from the time of assignment
8 and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time
9 of appointment.

10 (4) A person who becomes a lien creditor while a security interest is perfected takes subject to the
11 security interest only to the extent that it secures advances made before ~~he~~ the person becomes a lien
12 creditor or within 45 days thereafter or made without knowledge of the lien or pursuant to a commitment
13 entered into without knowledge of the lien."
14

15 **Section 80.** Section 30-9-302, MCA, is amended to read:

16 **"30-9-302. When filing is required to perfect security interest -- security interests to which filing**
17 **provisions of this chapter do not apply.** (1) A financing statement must be filed to perfect all security
18 interests except the following:

19 (a) a security interest in collateral in possession of the secured party under 30-9-305;

20 (b) a security interest temporarily perfected in instruments, certificated securities, or documents
21 without delivery under 30-9-304 or in proceeds for a 10-day period under 30-9-306;

22 (c) a security interest created by an assignment of a beneficial interest in a trust or a decedent's
23 estate;

24 (d) a purchase money security interest in consumer goods; but filing is required for a motor vehicle
25 required to be registered, and fixture filing is required for priority over conflicting interests in fixtures to the
26 extent provided in 30-9-313;

27 (e) an assignment of accounts which does not alone or in conjunction with other assignments to
28 the same assignee transfer a significant part of the outstanding accounts of the assignor;

29 (f) a security interest of a collecting bank (30-4-208), ~~in securities (30-8-321)~~, or arising under the
30 Chapter on Sales or covered in subsection (3) of this section;

1 (g) an assignment for the benefit of all creditors of the transferor, and subsequent transfers by the
2 assignee thereunder;

3 (h) a security interest in investment property that is perfected without filing under [section 76 or
4 77].

5 (2) If a secured party assigns a perfected security interest, no filing under this chapter is required
6 in order to continue the perfected status of the security interest against creditors of and transferees from
7 the original debtor.

8 (3) The filing of a financing statement otherwise required by this chapter is not necessary or
9 effective to perfect a security interest in property subject to:

10 (a) a statute or treaty of the United States which provides for a national or international registration
11 or a national or international certificate of title or which specifies a place of filing different from that
12 specified in this chapter for filing of the security interest; or

13 (b) the following statutes of this state: Title 61, chapter 3; Title 23, chapter 2, parts 5 and 6; but
14 during any period in which collateral is inventory held for sale by a person who is in the business of selling
15 goods of that kind, the filing provisions of this chapter (part 4) apply to a security interest in that collateral
16 created by ~~him~~ the person as debtor; or

17 (c) a certificate of title statute of another jurisdiction under the law of which indication of a security
18 interest on the certificate is required as a condition of perfection (30-9-103(2)).

19 (4) Compliance with a statute or treaty described in subsection (3) is equivalent to the filing of a
20 financing statement under this chapter, and a security interest in property subject to the statute or treaty
21 can be perfected only by compliance therewith except as provided in 30-9-103 on multiple state
22 transactions. Duration and renewal of perfection of a security interest perfected by compliance with the
23 statute or treaty are governed by the provisions of the statute or treaty; in other respects the security
24 interest is subject to this chapter."
25

26 **Section 81.** Section 30-9-303, MCA, is amended to read:

27 **"30-9-303. When security interest is perfected -- continuity of perfection.** (1) A security interest
28 is perfected when it has attached and when all of the applicable steps required for perfection have been
29 taken. Such steps are specified in [section 76], 30-9-302, 30-9-304, 30-9-305, and 30-9-306. If such steps
30 are taken before the security interest attaches, it is perfected at the time when it attaches.

1 (2) If a security interest is originally perfected in any way permitted under this chapter and is
 2 subsequently perfected in some other way under this chapter, without an intermediate period when it was
 3 unperfected, the security interest shall be deemed to be perfected continuously for the purposes of this
 4 chapter."

5
 6 **Section 82.** Section 30-9-304, MCA, is amended to read:

7 **"30-9-304. Perfection of security interest in instruments, documents, proceeds of a written letter**
 8 **of credit, and goods covered by documents -- perfection by permissive filing -- temporary perfection without**
 9 **filing or transfer of possession.** (1) A security interest in chattel paper or negotiable documents may be
 10 perfected by filing. A security interest in the right to proceeds of a written letter of credit can be perfected
 11 only by the secured party's taking possession of the letter of credit. A security interest in money or
 12 instruments (other than ~~certificated securities or~~ instruments which constitute part of chattel paper) can
 13 be perfected only by the secured party's taking possession, except as provided in subsections (4) and (5)
 14 of this section and subsections (2) and (3) of 30-9-306 on proceeds.

15 (2) During the period that goods are in the possession of the issuer of a negotiable document
 16 therefor, a security interest in the goods is perfected by perfecting a security interest in the document, and
 17 any security interest in the goods otherwise perfected during such period is subject thereto.

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

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

24 (5) A security interest remains perfected for a period of 21 days without filing where a secured
 25 party having a perfected security interest in an instrument, ~~(other than a certificated security),~~ a negotiable
 26 document, or goods in possession of a bailee other than one who has issued a negotiable document
 27 therefor:

28 (a) makes available to the debtor the goods or documents representing the goods for the purpose
 29 of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping,
 30 manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or

1 exchange; but priority between conflicting security interests in the goods is subject to 30-9-312(3); or

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

4 (6) After the 21-day period in subsections (4) and (5), perfection depends upon compliance with
5 applicable provisions of this chapter."
6

7 **Section 83.** Section 30-9-305, MCA, is amended to read:

8 **"30-9-305. When possession by secured party perfects security interest without filing.** A security
9 interest in ~~letters of credit and advices of credit (subsection 30-5-116(2)(a)),~~ goods, instruments ~~(other than~~
10 ~~certificated securities),~~ money, negotiable documents, or chattel paper may be perfected by the secured
11 party's taking possession of the collateral. A security interest in the right to proceeds of a written letter of
12 credit may be perfected by the secured party's taking possession of the letter of credit. If such collateral
13 other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to
14 have possession from the time the bailee receives notification of the secured party's interest. A security
15 interest is perfected by possession from the time possession is taken without relation back and continues
16 only so long as possession is retained, unless otherwise specified in this chapter. The security interest may
17 be otherwise perfected as provided in this chapter before or after the period of possession by the secured
18 party."
19

20 **Section 84.** Section 30-9-306, MCA, is amended to read:

21 **"30-9-306. "Proceeds" -- secured party's rights on disposition of collateral.** (1) "Proceeds"
22 includes whatever is received upon the sale, exchange, collection, or other disposition of collateral or
23 proceeds. Insurance payable by reason of loss or damage to the collateral is proceeds, except to the extent
24 that it is payable to a person other than a party to the security agreement. Any payments or distributions
25 made with respect to investment property collateral are proceeds. Money, checks, deposit accounts, and
26 the like are "cash proceeds". All other proceeds are "noncash proceeds".

27 (2) Except where this chapter otherwise provides, a security interest continues in collateral
28 notwithstanding sale, exchange, or other disposition thereof unless the disposition was authorized by the
29 secured party in the security agreement or otherwise, and also continues in any identifiable proceeds
30 including collections received by the debtor.

1 (3) (a) The security interest in proceeds is a continuously perfected security interest if the interest
 2 in the original collateral was perfected, but it ceases to be a perfected security interest and becomes
 3 unperfected 10 days after receipt of the proceeds by the debtor unless:

4 (i) a filed financing statement covers the original collateral and the proceeds are collateral in which
 5 a security interest may be perfected by filing in the office or offices where the financing statement has been
 6 filed and, if the proceeds are acquired with cash proceeds, the description of collateral in the financing
 7 statement indicates the types of property constituting the proceeds;

8 (ii) a filed financing statement covers the original collateral and the proceeds are identifiable cash
 9 proceeds; ~~or~~

10 (iii) the original collateral was investment property and the proceeds are identifiable cash proceeds;

11 or

12 ~~(iii)~~(iv) the security interest in the proceeds is perfected before the expiration of the 10-day period.

13 (b) Except as provided in this section, a security interest in proceeds can be perfected only by the
 14 methods or under the circumstances permitted in this chapter for original collateral of the same type.

15 (4) In the event of insolvency proceedings instituted by or against a debtor, a secured party with
 16 a perfected security interest in proceeds has a perfected security interest only in the following proceeds:

17 (a) in identifiable noncash proceeds and in separate deposit accounts containing only proceeds;

18 (b) in identifiable cash proceeds in the form of money which is neither commingled with other
 19 money nor deposited in a deposit account prior to the insolvency proceedings;

20 (c) in identifiable cash proceeds in the form of checks and the like which are not deposited in a
 21 deposit account prior to the insolvency proceedings; and

22 (d) in all cash and deposit accounts of the debtor in which proceeds have been commingled with
 23 other funds, but the perfected security interest under this ~~paragraph~~ subsection (4)(d) is:

24 (i) subject to any right of setoff; and

25 (ii) limited to an amount not greater than the amount of any cash proceeds received by the debtor
 26 within 10 days before the institution of the insolvency proceedings less the sum of:

27 (A) the payments to the secured party on account of cash proceeds received by the debtor during
 28 such period; and

29 (B) the cash proceeds received by the debtor during such period to which the secured party is
 30 entitled under subsections (4)(a) through (4)(c).

1 (5) If a sale of goods results in an account or chattel paper which is transferred by the seller to a
 2 secured party, and if the goods are returned to or are repossessed by the seller or the secured party, the
 3 following rules determine priorities:

4 (a) If the goods were collateral at the time of sale for an indebtedness of the seller which is still
 5 unpaid, the original security interest attaches again to the goods and continues as a perfected security
 6 interest if it was perfected at the time when the goods were sold. If the security interest was originally
 7 perfected by a filing which is still effective, nothing further is required to continue the perfected status; in
 8 any other case, the secured party must take possession of the returned or repossessed goods or must file.

9 (b) An unpaid transferee of the chattel paper has a security interest in the goods against the
 10 transferor. ~~Such~~ The security interest is prior to a security interest asserted under ~~paragraph subsection~~
 11 (5)(a) to the extent that the transferee of the chattel paper was entitled to priority under 30-9-308.

12 (c) An unpaid transferee of the account has a security interest in the goods against the transferor.
 13 ~~Such~~ The security interest is subordinate to a security interest asserted under ~~paragraph subsection~~ (5)(a).

14 (d) A security interest of an unpaid transferee asserted under ~~paragraph subsection~~ (5)(b) or (5)(c)
 15 must be perfected for protection against creditors of the transferor and purchasers of the returned or
 16 repossessed goods."

17

18 **Section 85.** Section 30-9-309, MCA, is amended to read:

19 **"30-9-309. Protection of purchasers of instruments, documents, and securities.** Nothing in this
 20 chapter limits the rights of a holder in due course of a negotiable instrument (30-3-302) or a holder to
 21 whom a negotiable document of title has been duly negotiated (30-7-501) or a ~~bona-fide~~ protected
 22 purchaser of a security (~~30-8-302~~ [section 49]), and ~~such~~ the holders or purchasers take priority over an
 23 earlier security interest even though perfected. Filing under this chapter does not constitute notice of the
 24 security interest to ~~such~~ the holders or purchasers."

25

26 **Section 86.** Section 30-9-312, MCA, is amended to read:

27 **"30-9-312. Priorities among conflicting security interests in the same collateral.** (1) The rules of
 28 priority stated in other sections of this part and in the following sections shall govern where applicable:
 29 ~~30-4-208~~ 30-4-210 with respect to the security interest of collecting banks in items being collected,
 30 accompanying documents, and proceeds; 30-9-103 on security interests related to other jurisdictions; ~~and~~

1 30-9-114 on consignments; and [section 76] on security interests in investment property.

2 (2) A perfected security interest in crops for new value given to enable the debtor to produce the
3 crops during the production season and given not more than 3 months before the crops become growing
4 crops by planting or otherwise takes priority over an earlier perfected security interest to the extent that
5 ~~such the~~ earlier interest secures obligations due more than 6 months before the crops become growing
6 crops by planting or otherwise, even though the person giving new value had knowledge of the earlier
7 security interest.

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

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

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

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

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

18 (c) the holder of the conflicting security interest receives notification within 5 years before the
19 debtor receives possession of the inventory; and

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

22 (4) A purchase money security interest in collateral other than inventory has priority over a
23 conflicting security interest in the same collateral or its proceeds if the purchase money security interest
24 is perfected at the time the debtor receives possession of the collateral or within 20 days thereafter.

25 (5) In all cases not governed by other rules stated in this section (including cases of purchase
26 money security interests which do not qualify for the special priorities set forth in subsections (3) and (4)
27 of this section), priority between conflicting security interests in the same collateral ~~shall~~ must be
28 determined according to the following rules:

29 (a) Conflicting security interests rank according to priority in the time of filing or perfection. Priority
30 dates from the time a filing is first made covering the collateral or the time the security interest is first

1 perfected, whichever is earlier, provided that there is no period thereafter when there is neither filing nor
2 perfection.

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

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

6 (7) If future advances are made while a security interest is perfected by filing, the taking of
7 possession, or under ~~30-8-321 on securities~~ [section 76 or 77] on investment property, the security interest
8 has the same priority for the purposes of subsection (5) or [section 76(5)] with respect to the future
9 advances as it does with respect to the first advance. If a commitment is made before or while the security
10 interest is so perfected, the security interest has the same priority with respect to advances made pursuant
11 thereto. In other cases a perfected security interest has priority from the date the advance is made."
12

13 **Section 87.** Section 32-1-426, MCA, is amended to read:

14 **"32-1-426. Deposit of securities in central depository.** (1) Notwithstanding any other provision
15 of law, any fiduciary, as defined in 32-1-425, holding securities in its fiduciary capacity, any bank or trust
16 company holding securities as a custodian or managing agent, and any bank or trust company holding
17 securities as custodian for a fiduciary is authorized to deposit or arrange for the deposit of the securities
18 in a clearing corporation, as defined in ~~30-8-102~~ [section 22]. When the securities are ~~so~~ deposited,
19 certificates representing securities of the same class of the same issuer may be merged and held in bulk
20 in the name of the nominee of ~~such~~ the clearing corporation with any other ~~such~~ securities deposited in
21 ~~such~~ the clearing corporation by any person regardless of the ownership of the securities, and certificates
22 of small denomination may be merged into one or more certificates of larger denomination. The records of
23 ~~such~~ the fiduciary and the records of ~~such~~ the bank or trust company acting as custodian, as managing
24 agent, or a custodian for a fiduciary ~~shall~~ must at all times show the name of the party for whose account
25 the securities are deposited. Title to the securities may be transferred by bookkeeping entry on the books
26 of the clearing corporation without physical delivery of certificates representing ~~such~~ the securities. A bank
27 or trust company ~~so~~ depositing securities pursuant to this section is subject to rules which in the case of
28 state chartered institutions, the state banking board and, in the case of national banking associations, the
29 comptroller of the currency, may from time to time adopt. A bank or trust company acting as custodian for
30 a fiduciary shall, on demand of the fiduciary, certify in writing to the fiduciary the securities ~~so~~ deposited

1 by the bank or trust company in the clearing corporation for the account of ~~such~~ the fiduciary. A fiduciary
 2 shall, on demand by any party to a judicial proceeding for the settlement of the fiduciary's account or on
 3 demand by the attorney for ~~such~~ the party, certify in writing to the party the securities deposited by the
 4 fiduciary in the clearing corporation for its account as ~~such~~ the fiduciary.

5 (2) This section ~~shall apply~~ applies to any fiduciary holding securities in its fiduciary capacity and
 6 to any bank or trust company holding securities as a custodian, managing agent, or custodian for a
 7 fiduciary ~~acting on July 1, 1977, or who thereafter may act~~ regardless of the date of the agreement,
 8 instrument, or court order by which it is appointed and regardless of whether or not ~~such~~ the fiduciary,
 9 custodian, managing agent, or custodian for a fiduciary owns capital stock of ~~such~~ the clearing
 10 corporation."

11
 12 **NEW SECTION. Section 88. Repealer.** Sections 30-5-102, 30-5-103, 30-5-104, 30-5-105,
 13 30-5-106, 30-5-107, 30-5-108, 30-5-109, 30-5-110, 30-5-111, 30-5-112, 30-5-113, 30-5-114, 30-5-115,
 14 30-5-116, 30-5-117, 30-8-102, 30-8-103, 30-8-104, 30-8-105, 30-8-106, 30-8-107, 30-8-108, 30-8-201,
 15 30-8-202, 30-8-203, 30-8-204, 30-8-205, 30-8-206, 30-8-207, 30-8-208, 30-8-301, 30-8-302, 30-8-303,
 16 30-8-304, 30-8-305, 30-8-306, 30-8-307, 30-8-308, 30-8-309, 30-8-310, 30-8-311, 30-8-312, 30-8-313,
 17 30-8-314, 30-8-315, 30-8-316, 30-8-317, 30-8-318, 30-8-319, 30-8-320, 30-8-321, 30-8-401, 30-8-402,
 18 30-8-403, 30-8-404, 30-8-405, 30-8-406, 30-8-407, 30-8-408, 30-10-401, 30-10-402, 30-10-403,
 19 30-10-404, 30-10-405, 30-10-406, 30-10-407, 30-10-408, 30-10-409, 30-10-410, and 30-10-411, MCA,
 20 are repealed.

21
 22 **NEW SECTION. Section 89. Codification instructions.** (1) [Sections 6 through 21] are intended
 23 to be codified as an integral part of Title 30, chapter 5, and the provisions of Title 30, chapter 5, apply to
 24 [sections 6 through 21].

25 (2) [Sections 22 through 71] are intended to be codified as an integral part of Title 30, chapter 8,
 26 and the provisions of Title 30, chapter ~~5~~ 8, apply to [sections 22 through 71].

27 (3) [Sections 76 and 77] are intended to be codified as an integral part of Title 30, chapter 9, part
 28 1, and the provisions of Title 30, chapter 9, part 1, apply to [sections 76 and 77].

29 -END-