88R6131 SRA-F

By:  Capriglione H.B. No. 5011

A BILL TO BE ENTITLED

AN ACT

relating to amendments to the Uniform Commercial Code, including amendments concerning certain intangible assets and the perfection of security interests in those assets.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. GENERAL PROVISIONS

SECTION 1.01.  Section 1.201(b), Business & Commerce Code, is amended by amending Subdivisions (10), (15), (21), (24), (27), (33), (36), and (37) and adding Subdivision (16-a) to read as follows:

(10)  "Conspicuous," with reference to a term, means so written, displayed, or presented that, based on the totality of the circumstances, a reasonable person against which it is to operate ought to have noticed it. Whether a term is "conspicuous" or not is a decision for the court. [~~Conspicuous terms include the following:~~

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

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

(15)  "Delivery," with respect to an electronic document of title, means voluntary transfer of control, and with respect to an instrument, a tangible document of title, or an authoritative tangible copy of a record evidencing chattel paper, means voluntary transfer of possession.

(16-a)  "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(21)  "Holder" means:

(A)  the person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession;

(B)  the person in possession of a negotiable tangible document of title if the goods are deliverable either to bearer or to the order of the person in possession; or

(C)  a person in control, other than pursuant to Section 7.106(g), of a negotiable electronic document of title.

(24)  "Money" means a medium of exchange that is currently authorized or adopted by a domestic or foreign government. The term includes a monetary unit of account established by an intergovernmental organization, or pursuant to an [~~by~~] agreement between two or more countries. The term does not include an electronic record that is a medium of exchange recorded and transferable in a system that existed and operated for the medium of exchange before the medium of exchange was authorized or adopted by the government.

(27)  "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, or [~~public corporation,~~] any other legal or commercial entity[~~, or a protected series or registered series of a for-profit entity~~]. The term includes a protected series or registered series, however denominated, of an entity if the protected series or registered series is established under law other than this title that limits, or limits if conditions specified under the law are satisfied, the ability of a creditor of the entity or of any other protected series or registered series of the entity to satisfy a claim from assets of the protected series or registered series.

(33)  "Representative" means a person empowered to act for another, including an agent, an officer of an organization [~~a corporation or association~~], and a trustee, executor, or administrator of an estate.

(36)  "Send," in connection with a [~~writing,~~] record[~~,~~] or notification, [~~notice~~] means:

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

(B)  to [~~in any other way~~] cause the record or notification to be received [~~any record or notice~~] within the time [~~at which~~] it would have been received [~~arrived~~] if properly sent under Paragraph (A).

(37)  "Sign" means, with present intent to authenticate or adopt a record:

(A)  execute or adopt a tangible symbol; or

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

"Signed," "signing," and "signature" have corresponding meanings [~~includes using any symbol executed or adopted with present intention to adopt or accept a writing~~].

SECTION 1.02.  Section 1.204, Business & Commerce Code, is amended to read as follows:

Sec. 1.204.  VALUE. Except as otherwise provided in Chapters 3, 4, [~~and~~] 5, and 12A, a person gives value for rights if the person acquires them:

(1)  in return for a binding commitment to extend credit or for the extension of immediately available credit, whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection;

(2)  as security for, or in total or partial satisfaction of, a preexisting claim;

(3)  by accepting delivery under a preexisting contract for purchase; or

(4)  in return for any consideration sufficient to support a simple contract.

SECTION 1.03.  Section 1.301(b), Business & Commerce Code, is amended to read as follows:

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

Rights of creditors against sold goods. Section 2.402.

Applicability of the chapter on Leases. Sections 2A.105 and 2A.106.

Applicability of the chapter on Bank Deposits and Collections. Section 4.102.

Governing law in the chapter on Funds Transfers. Section 4A.507.

Letters of Credit. Section 5.116.

Applicability of the chapter on Investment Securities. Section 8.110.

Law governing perfection, the effect of perfection or nonperfection, and the priority of security interests and agricultural liens. Sections 9.301-9.307.

Controllable electronic record. Section 12A.107.

SECTION 1.04.  Section 1.306, Business & Commerce Code, is amended to read as follows:

Sec. 1.306.  WAIVER OF RENUNCIATION OF CLAIM OR RIGHT AFTER BREACH. A claim or right arising out of an alleged breach may be discharged in whole or in part without consideration by agreement of the aggrieved party in a signed [~~an authenticated~~] record.

ARTICLE 2. SALES

SECTION 2.01.  Section 2.102, Business & Commerce Code, is amended to read as follows:

Sec. 2.102.  SCOPE; CERTAIN SECURITY AND OTHER TRANSACTIONS EXCLUDED FROM THIS CHAPTER. (a) Unless the context otherwise requires, and except as provided in Subsection (c), this chapter applies to transactions in goods and, in the case of a hybrid transaction, it applies to the extent provided in Subsection (b).

(b)  In a hybrid transaction:

(1)  if the sale-of-goods aspects do not predominate, only the provisions of this chapter which relate primarily to the sale-of-goods aspects of the transaction apply, and the provisions that relate primarily to the transaction as a whole do not apply; or

(2)  if the sale-of-goods aspects predominate, this chapter applies to the transaction but does not preclude application in appropriate circumstances of other law to aspects of the transaction which do not relate to the sale of goods.

(c)  This chapter [~~; it~~] does not:

(1)  apply to a [~~any~~] transaction that, even though [~~which although~~] in the form of an unconditional contract to sell or present sale, operates only to create a security interest; or

(2)  [~~is intended to operate only as a security transaction nor does this chapter~~] impair or repeal any statute regulating sales to consumers, farmers, or other specified classes of buyers.

SECTION 2.02.  The heading to Section 2.106, Business & Commerce Code, is amended to read as follows:

Sec. 2.106.  DEFINITIONS: "CONTRACT"; "AGREEMENT"; "CONTRACT FOR SALE"; "SALE"; "PRESENT SALE"; "CONFORMING" TO CONTRACT; "TERMINATION"; "CANCELLATION"; "HYBRID TRANSACTION".

SECTION 2.03.  Section 2.106, Business & Commerce Code, is amended by adding Subsection (e) to read as follows:

(e)  "Hybrid transaction" means a single transaction involving a sale of goods and:

(1)  the provision of services;

(2)  a lease of other goods; or

(3)  a sale, lease, or license of property other than goods.

SECTION 2.04.  Sections 2.201(a) and (b), Business & Commerce Code, are amended to read as follows:

(a)  Except as otherwise provided in this section a contract for the sale of goods for the price of $500 or more is not enforceable by way of action or defense unless there is a record [~~some writing~~] sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by the party's [~~his~~] authorized agent or broker. A record [~~writing~~] is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this subsection [~~paragraph~~] beyond the quantity of goods shown in the record [~~such writing~~].

(b)  Between merchants if within a reasonable time a record [~~writing~~] in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of Subsection (a) against the [~~such~~] party unless [~~written~~] notice in a record of objection to its contents is given within ten days after it is received.

SECTION 2.05.  Section 2.202, Business & Commerce Code, is amended to read as follows:

Sec. 2.202.  FINAL [~~WRITTEN~~] EXPRESSION: PAROL OR EXTRINSIC EVIDENCE. Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a record [~~writing~~] intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

(1)  by course of performance, course of dealing, or usage of trade (Section 1.303); and

(2)  by evidence of consistent additional terms unless the court finds the record [~~writing~~] to have been intended also as a complete and exclusive statement of the terms of the agreement.

SECTION 2.06.  Section 2.203, Business & Commerce Code, is amended to read as follows:

Sec. 2.203.  SEALS INOPERATIVE. The affixing of a seal to a record [~~writing~~] evidencing a contract for sale or an offer to buy or sell goods does not constitute the record [~~writing~~] a sealed instrument and the law with respect to sealed instruments does not apply to such a contract or offer.

SECTION 2.07.  Section 2.205, Business & Commerce Code, is amended to read as follows:

Sec. 2.205.  FIRM OFFERS. An offer by a merchant to buy or sell goods in a signed record [~~writing~~] which by its terms gives assurance that it will be held open is not revocable, for lack of consideration, during the time stated or if no time is stated for a reasonable time, but in no event may such period of irrevocability exceed three months; but any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

SECTION 2.08.  Section 2.209(b), Business & Commerce Code, is amended to read as follows:

(b)  A signed agreement which excludes modification or rescission except by a signed writing or other signed record cannot be otherwise modified or rescinded, but except as between merchants such a requirement on a form supplied by the merchant must be separately signed by the other party.

ARTICLE 3. LEASES

SECTION 3.01.  Section 2A.102, Business & Commerce Code, is amended to read as follows:

Sec. 2A.102.  SCOPE. (a) This chapter applies to any transaction, regardless of form, that creates a lease of goods and, in the case of a hybrid lease, it applies to the extent provided in Subsection (b). This chapter does not apply to a transaction that creates an interest in or lease of real estate, except to the extent that provision is made for leases of fixtures by Section 2A.309.

(b)  In a hybrid lease:

(1)  if the lease-of-goods aspects do not predominate:

(A)  only the provisions of this chapter which relate primarily to the lease-of-goods aspects of the transaction apply, and the provisions that relate primarily to the transaction as a whole do not apply;

(B)  Section 2A.209 applies if the lease is a finance lease; and

(C)  Section 2A.407 applies to the promises of the lessee in a finance lease to the extent the promises are consideration for the right to possession and use of the leased goods; and

(2)  if the lease-of-goods aspects predominate, this chapter applies to the transaction, but does not preclude application in appropriate circumstances of other law to aspects of the lease which do not relate to the lease of goods.

SECTION 3.02.  Section 2A.103(a), Business & Commerce Code, is amended by adding Subdivision (8-a) to read as follows:

(8-a)  "Hybrid lease" means a single transaction involving a lease of goods and:

(A)  the provision of services;

(B)  the sale of other goods; or

(C)  subject to the second sentence of Section 2A.102(a), a sale, lease, or license of property other than goods.

SECTION 3.03.  Section 2A.107, Business & Commerce Code, is amended to read as follows:

Sec. 2A.107.  WAIVER OR RENUNCIATION OF CLAIM OR RIGHT AFTER DEFAULT. A claim or right arising out of an alleged default or breach of warranty may be discharged in whole or in part without consideration by a [~~written~~] waiver or renunciation in a signed record [~~and~~] delivered by the aggrieved party.

SECTION 3.04.  Sections 2A.201(a), (c), and (e), Business & Commerce Code, are amended to read as follows:

(a)  A lease contract is not enforceable by way of action or defense unless:

(1)  the total payments to be made under the lease contract, excluding payments for options to renew or buy, are less than $1,000; or

(2)  there is a record [~~writing~~], signed by the party against whom enforcement is sought or by that party's authorized agent, sufficient to indicate that a lease contract has been made between the parties and to describe the goods leased and the lease term.

(c)  A record [~~writing~~] is not insufficient because it omits or incorrectly states a term agreed upon, but the lease contract is not enforceable under Subsection (a)(2) beyond the lease term and the quantity of goods shown in the record [~~writing~~].

(e)  The lease term under a lease contract referred to in Subsection (d) is:

(1)  if there is a record [~~writing~~] signed by the party against whom enforcement is sought or by that party's authorized agent specifying the lease term, the term so specified;

(2)  if the party against whom enforcement is sought admits in that party's pleading, testimony, or otherwise in court a lease term, the term so admitted; or

(3)  a reasonable lease term.

SECTION 3.05.  Section 2A.202, Business & Commerce Code, is amended to read as follows:

Sec. 2A.202.  FINAL [~~WRITTEN~~] EXPRESSION; PAROL OR EXTRINSIC EVIDENCE. Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a record [~~writing~~] intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of a prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

(1)  by course of dealing or usage of trade or by course of performance; and

(2)  by evidence of consistent additional terms unless the court finds the record [~~writing~~] to have been intended also as a complete and exclusive statement of the terms of the agreement.

SECTION 3.06.  Section 2A.203, Business & Commerce Code, is amended to read as follows:

Sec. 2A.203.  SEALS INOPERATIVE. The affixing of a seal to a record [~~writing~~] evidencing a lease contract or an offer to enter into a lease contract does not render the record [~~writing~~] a sealed instrument and the law with respect to sealed instruments does not apply to the lease contract or offer.

SECTION 3.07.  Section 2A.205, Business & Commerce Code, is amended to read as follows:

Sec. 2A.205.  FIRM OFFERS. An offer by a merchant to lease goods to or from another person in a signed record [~~writing~~] that by its terms gives assurance it will be held open is not revocable, for lack of consideration, during the time stated or, if no time is stated, for a reasonable time, but in no event may the period of irrevocability exceed three months. Any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

SECTION 3.08.  The heading of Section 2A.208, Business & Commerce Code, is amended to read as follows:

Sec. 2A.208.  MODIFICATION, RESCISSION, AND WAIVER.

SECTION 3.09.  Section 2A.208(b), Business & Commerce Code, is amended to read as follows:

(b)  A signed lease agreement that excludes modification or rescission except by a signed record [~~writing~~] may not be otherwise modified or rescinded, but, except as between merchants, such a requirement on a form supplied by a merchant must be separately signed by the other party.

ARTICLE 4. NEGOTIABLE INSTRUMENTS

SECTION 4.01.  Section 3.104(a), Business & Commerce Code, is amended to read as follows:

(a)  Except as provided in Subsections (c) and (d), "negotiable instrument" means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:

(1)  is payable to bearer or to order at the time it is issued or first comes into possession of a holder;

(2)  is payable on demand or at a definite time; and

(3)  does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain:

(A)  an undertaking or power to give, maintain, or protect collateral to secure payment;

(B)  an authorization or power to the holder to confess judgment or realize on or dispose of collateral; [~~or~~]

(C)  a waiver of the benefit of any law intended for the advantage or protection of an obligor;

(D)  a term that specifies the law that governs the promise or order; or

(E)  an undertaking to resolve in a specified forum a dispute concerning the promise or order.

SECTION 4.02.  Section 3.105(a), Business & Commerce Code, is amended to read as follows:

(a)  "Issue" means:

(1)  the first delivery of an instrument by the maker or drawer, whether to a holder or nonholder, for the purpose of giving rights on the instrument to any person; or

(2)  if agreed by the payee, the first transmission by the drawer to the payee of an image of an item and information derived from the item that enables the depositary bank to collect the item by transferring or presenting under federal law an electronic check.

SECTION 4.03.  Section 3.401, Business & Commerce Code, is amended to read as follows:

Sec. 3.401.  SIGNATURE NECESSARY FOR LIABILITY ON INSTRUMENT. [~~(a)~~] A person is not liable on an instrument unless the person:

(1)  signed the instrument; or

(2)  is represented by an agent or representative who signed the instrument and the signature is binding on the represented person under Section 3.402.

[~~(b)  A signature may be made (i) manually or by means of a device or machine, and (ii) by the use of any name, including a trade or assumed name, or by a word, mark, or symbol executed or adopted by a person with present intention to authenticate a writing.~~]

SECTION 4.04.  Section 3.604, Business & Commerce Code, is amended to read as follows:

Sec. 3.604.  DISCHARGE BY CANCELLATION OR RENUNCIATION. (a) A person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument:

(1)  by an intentional voluntary act, such as surrender of the instrument to the party, destruction, mutilation, or cancellation of the instrument, cancellation or striking out of the party's signature, or the addition of words to the instrument indicating discharge; or

(2)  by agreeing not to sue or otherwise renouncing rights against the party by a signed record.

(b)  The obligation of a party to pay a check is not discharged solely by destruction of the check in connection with a process in which information is extracted from the check and an image of the check is made and, subsequently, the information and image are transmitted for payment.

(c)  Cancellation or striking out of an indorsement pursuant to Subsection (a) does not affect the status and rights of a party derived from the indorsement.

[~~(c)  In this section, "signed," with respect to a record that is not a writing, includes the attachment to or logical association with the record of an electronic symbol, sound, or process with the present intent to adopt or accept the record.~~]

ARTICLE 5. FUNDS TRANSFERS

SECTION 5.01.  Section 4A.103(a)(1), Business & Commerce Code, is amended to read as follows:

(1)  "Payment order" means an instruction of a sender to a receiving bank, transmitted orally or in a record, [~~electronically, or in writing,~~] to pay, or to cause another bank to pay, a fixed or determinable amount of money to a beneficiary if:

(A)  the instruction does not state a condition of payment to the beneficiary other than the time of payment;

(B)  the receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender; and

(C)  the instruction is transmitted by the sender directly to the receiving bank or to an agent, funds transfer system, or communication system for transmittal to the receiving bank.

SECTION 5.02.  Section 4A.201, Business & Commerce Code, is amended to read as follows:

Sec. 4A.201.  SECURITY PROCEDURE. "Security procedure" means a procedure established by an agreement between a customer and a receiving bank for the purpose of (i) verifying that a payment order or communication amending or cancelling a payment order is that of the customer, or (ii) detecting error in the transmission or the content of the payment order or communication. A security procedure may impose an obligation on the receiving bank or the customer and may require the use of algorithms or other codes, identifying words, [~~or~~] numbers, symbols, sounds, biometrics, encryption, callback procedures, or similar security devices. Comparison of a signature on a payment order or communication with an authorized specimen signature of the customer or requiring a payment order to be sent from a known e-mail address, IP address, or telephone number is not by itself a security procedure.

SECTION 5.03.  Sections 4A.202(b) and (c), Business & Commerce Code, are amended to read as follows:

(b)  If a bank and its customer have agreed that the authenticity of payment orders issued to the bank in the name of the customer as sender will be verified pursuant to a security procedure, a payment order received by the receiving bank is effective as the order of the customer, whether or not authorized, if (i) the security procedure is a commercially reasonable method of providing security against unauthorized payment orders, and (ii) the bank proves that it accepted the payment order in good faith and in compliance with the bank's obligations under the security procedure and any [~~written~~] agreement or instruction of the customer, evidenced by a record, restricting acceptance of payment orders issued in the name of the customer. The bank is not required to follow an instruction that violates an [~~a written~~] agreement with the customer evidenced by a record, or notice of which is not received at a time and in a manner affording the bank a reasonable opportunity to act on it before the payment order is accepted.

(c)  Commercial reasonableness of a security procedure is a question of law to be determined by considering the wishes of the customer expressed to the bank, the circumstances of the customer known to the bank, including the size, type, and frequency of payment orders normally issued by the customer to the bank, alternative security procedures offered to the customer, and security procedures in general use by customers and receiving banks similarly situated. A security procedure is deemed to be commercially reasonable if:

(1)  the security procedure was chosen by the customer after the bank offered, and the customer refused, a security procedure that was commercially reasonable for the customer; and

(2)  the customer expressly agreed in a record [~~writing~~] to be bound by any payment order, whether or not authorized, issued in its name and accepted by the bank in compliance with the bank's obligations under the security procedure chosen by the customer.

SECTION 5.04.  Section 4A.203(a), Business & Commerce Code, is amended to read as follows:

(a)  If an accepted payment order is not, under Section 4A.202(a), an authorized order of a customer identified as sender, but is effective as an order of the customer pursuant to Section 4A.202(b), the following rules apply:

(1)  By express [~~written~~] agreement evidenced by a record, the receiving bank may limit the extent to which it is entitled to enforce or retain payment of the payment order.

(2)  The receiving bank is not entitled to enforce or retain payment of the payment order if the customer proves that the order was not caused, directly or indirectly, by a person:

(A)  entrusted at any time with duties to act for the customer with respect to payment orders or the security procedure; or

(B)  who obtained access to transmitting facilities of the customer or who obtained, from a source controlled by the customer and without authority of the receiving bank, information facilitating breach of the security procedure, regardless of how the information was obtained or whether the customer was at fault. Information includes any access device, computer software, or the like.

SECTION 5.05.  Section 4A.207(c), Business & Commerce Code, is amended to read as follows:

(c)  If (i) a payment order described in Subsection (b) is accepted, (ii) the originator's payment order described the beneficiary inconsistently by name and number, and (iii) the beneficiary's bank pays the person identified by number as permitted by Subsection (b)(1), the following rules apply:

(1)  If the originator is a bank, the originator is obliged to pay its order.

(2)  If the originator is not a bank and proves that the person identified by number was not entitled to receive payment from the originator, the originator is not obliged to pay its order unless the originator's bank proves that the originator, before acceptance of the originator's order, had notice that payment of a payment order issued by the originator might be made by the beneficiary's bank on the basis of an identifying or bank account number even if it identifies a person different from the named beneficiary. Proof of notice may be made by any admissible evidence. The originator's bank satisfies the burden of proof if it proves that the originator, before the payment order was accepted, signed a record [~~writing~~] stating the information to which the notice relates.

SECTION 5.06.  Section 4A.208(b), Business & Commerce Code, is amended to read as follows:

(b)  This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank both by name and an identifying number if the name and number identify different persons.

(1)  If the sender is a bank, the receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank if the receiving bank, when it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person or whether the number refers to a bank. The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.

(2)  If the sender is not a bank and the receiving bank proves that the sender, before the payment order was accepted, had notice that the receiving bank might rely on the number as the proper identification of the intermediary or beneficiary's bank even if it identifies a person different from the bank identified by name, the rights and obligations of the sender and the receiving bank are governed by Subsection (b)(1), as though the sender were a bank. Proof of notice may be made by any admissible evidence. The receiving bank satisfies the burden of proof if it proves that the sender, before the payment order was accepted, signed a record [~~writing~~] stating the information to which the notice relates.

(3)  Regardless of whether the sender is a bank, the receiving bank may rely on the name as the proper identification of the intermediary or beneficiary's bank if the receiving bank, at the time it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person.

(4)  If the receiving bank knows that the name and number identify different persons, reliance on either the name or the number in executing the sender's payment order is a breach of the obligation stated in Section 4A.302(a)(1).

SECTION 5.07.  Section 4A.210(a), Business & Commerce Code, is amended to read as follows:

(a)  A payment order is rejected by the receiving bank by a notice of rejection transmitted to the sender orally[~~, electronically,~~] or in a record [~~writing~~]. A notice of rejection need not use any particular words and is sufficient if it indicates that the receiving bank is rejecting the order or will not execute or pay the order. Rejection is effective when the notice is given if transmission is by a means that is reasonable under the circumstances. If notice of rejection is given by a means that is not reasonable, rejection is effective when the notice is received. If an agreement of the sender and receiving bank establishes the means to be used to reject a payment order:

(1)  any means complying with the agreement is reasonable; and

(2)  any means not complying is not reasonable unless no significant delay in receipt of the notice resulted from the use of the noncomplying means.

SECTION 5.08.  Section 4A.211(a), Business & Commerce Code, is amended to read as follows:

(a)  A communication of the sender of a payment order cancelling or amending the order may be transmitted to the receiving bank orally[~~, electronically,~~] or in a record [~~writing~~]. If a security procedure is in effect between the sender and the receiving bank, the communication is not effective to cancel or amend the order unless the communication is verified pursuant to the security procedure or the bank agrees to the cancellation or amendment.

SECTION 5.09.  Sections 4A.305(c) and (d), Business & Commerce Code, are amended to read as follows:

(c)  In addition to the amounts payable under Subsections (a) and (b), damages, including consequential damages, are recoverable to the extent provided in an express [~~written~~] agreement of the receiving bank, evidenced by a record.

(d)  If a receiving bank fails to execute a payment order it was obliged by express agreement to execute, the receiving bank is liable to the sender for its expenses in the transaction and for incidental expenses and interest losses resulting from the failure to execute. Additional damages, including consequential damages, are recoverable to the extent provided in an express [~~written~~] agreement of the receiving bank, evidenced by a record, but are not otherwise recoverable.

ARTICLE 6. LETTERS OF CREDIT

SECTION 6.01.  Section 5.104, Business & Commerce Code, is amended to read as follows:

Sec. 5.104.  FORMAL REQUIREMENTS. A letter of credit, confirmation, advice, transfer, amendment, or cancellation may be issued in any form that is a signed record [~~and is authenticated:~~

[~~(1)  by a signature; or~~

[~~(2)  in accordance with the agreement of the parties or the standard practice referred to in Section 5.108(e)~~].

SECTION 6.02.  Section 5.116, Business & Commerce Code, is amended to read as follows:

Sec. 5.116.  CHOICE OF LAW AND FORUM. (a) The liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction chosen by an agreement in the form of a record signed [~~or otherwise authenticated~~] by the affected parties [~~in the manner provided in Section 5.104~~] or by a provision in the person's letter of credit, confirmation, or other undertaking. The jurisdiction whose law is chosen need not bear any relation to the transaction.

(b)  Unless Subsection (a) applies, the liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction in which the person is located. The person is considered to be located at the address indicated in the person's undertaking. If more than one address is indicated, the person is considered to be located at the address from which the person's undertaking was issued.

(c)  For the purpose of jurisdiction, choice of law, and recognition of interbranch letters of credit, but not enforcement of a judgment, all branches of a bank are considered separate juridical entities, and a bank is considered to be located at the place where its relevant branch is considered to be located under Subsection (d) [~~this subsection~~].

(d)  A branch of a bank is considered to be located at the address indicated in the branch's undertaking. If more than one address is indicated, the branch is considered to be located at the address from which the undertaking was issued.

(e) [~~(c)~~]  Except as otherwise provided in this subsection, the liability of an issuer, nominated person, or adviser is governed by any rules of custom or practice, such as the Uniform Customs and Practice for Documentary Credits, to which the letter of credit, confirmation, or other undertaking is expressly made subject. If (i) this chapter would govern the liability of an issuer, nominated person, or adviser under Subsection (a) or (b), (ii) the relevant undertaking incorporates rules of custom or practice, and (iii) there is conflict between this chapter and those rules as applied to that undertaking, those rules govern except to the extent of any conflict with the nonvariable provisions specified in Section 5.103(c).

(f) [~~(d)~~]  If there is conflict between this chapter and Chapter 3, 4, 4A, or 9, this chapter governs.

(g) [~~(e)~~]  The forum for settling disputes arising out of an undertaking within this chapter may be chosen in the manner and with the binding effect that governing law may be chosen in accordance with Subsection (a).

ARTICLE 7. DOCUMENTS OF TITLE

SECTION 7.01.  Section 7.106, Business & Commerce Code, is amended by amending Subsection (b) and adding Subsections (c), (d), (e), (f), (g), (h), and (i) to read as follows:

(b)  A system satisfies Subsection (a), and a person has [~~is deemed to have~~] control of an electronic document of title, if the document is created, stored, and transferred [~~assigned~~] in [~~such~~] a manner that:

(1)  a single authoritative copy of the document exists which is unique, identifiable, and, except as otherwise provided in Subdivisions (4), (5), and (6), unalterable;

(2)  the authoritative copy identifies the person asserting control as:

(A)  the person to which the document was issued; or

(B)  if the authoritative copy indicates that the document has been transferred, the person to which the document was most recently transferred;

(3)  the authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(4)  copies or amendments that add or change an identified transferee [~~assignee~~] of the authoritative copy can be made only with the consent of the person asserting control;

(5)  each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6)  any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

(c)  A system satisfies Subsection (a), and a person has control of an electronic document of title, if an authoritative electronic copy of the document, a record attached to or logically associated with the electronic copy, or a system in which the electronic copy is recorded:

(1)  enables the person readily to identify each electronic copy as either an authoritative copy or a nonauthoritative copy;

(2)  enables the person readily to identify itself in any way, including by name, identifying number, cryptographic key, office, or account number, as the person to which each authoritative electronic copy was issued or transferred; and

(3)  gives the person exclusive power, subject to Subsection (d), to:

(A)  prevent others from adding or changing the person to which each authoritative electronic copy has been issued or transferred; and

(B)  transfer control of each authoritative electronic copy.

(d)  Subject to Subsection (e), a power is exclusive under Subsections (c)(3)(A) and (B), even if:

(1)  the authoritative electronic copy, a record attached to or logically associated with the authoritative electronic copy, or a system in which the authoritative electronic copy is recorded limits the use of the document of title or has a protocol that is programmed to cause a change, including a transfer or loss of control; or

(2)  the power is shared with another person.

(e)  A power of a person is not shared with another person under Subsection (d)(2) and the person's power is not exclusive if:

(1)  the person can exercise the power only if the power also is exercised by the other person; and

(2)  the other person:

(A)  can exercise the power without exercise of the power by the person; or

(B)  is the transferor to the person of an interest in the document of title.

(f)  If a person has the powers specified in Subsections (c)(3)(A) and (B), the powers are presumed to be exclusive.

(g)  A person has control of an electronic document of title if another person, other than the transferor to the person of an interest in the document:

(1)  has control of the document and acknowledges that it has control on behalf of the person; or

(2)  obtains control of the document after having acknowledged that it will obtain control of the document on behalf of the person.

(h)  A person that has control under this section is not required to acknowledge that it has control on behalf of another person.

(i)  If a person acknowledges that it has or will obtain control on behalf of another person, unless the person otherwise agrees or law other than this chapter or Chapter 9 otherwise provides, the person does not owe any duty to the other person and is not required to confirm the acknowledgment to any other person.

ARTICLE 8. INVESTMENT SECURITIES

SECTION 8.01.  Section 8.102(a)(6), Business & Commerce Code, is amended to read as follows:

(6)  "Communicate" means to:

(A)  send a signed record [~~writing~~]; or

(B)  transmit information by any mechanism agreed on by the persons transmitting and receiving the information.

SECTION 8.02.  Section 8.102(b), Business & Commerce Code, is amended to read as follows:

(b)  The following [~~Other~~] definitions in [~~applying to~~] this chapter and other chapters apply to this chapter [~~the sections in which they appear are~~]:

|  |  |
| --- | --- |
| Appropriate person | Section 8.107 |
| Control | Section 8.106 |
| Controllable account | Section 9.102 |
| Controllable electronic record | Section 12A.102 |
| Controllable payment intangible | Section 9.102 |
| Delivery | Section 8.301 |
| Investment company security | Section 8.103 |
| Issuer | Section 8.201 |
| Overissue | Section 8.210 |
| Protected purchaser | Section 8.303 |
| Securities account | Section 8.501 |

SECTION 8.03.  Section 8.103, Business & Commerce Code, is amended by adding Subsection (h) to read as follows:

(h)  A controllable account, controllable electronic record, or controllable payment intangible is not a financial asset unless Section 8.102(a)(9)(C) applies.

SECTION 8.04.  Section 8.106, Business & Commerce Code, is amended by amending Subsection (d) and adding Subsections (h) and (i) to read as follows:

(d)  A purchaser has control of a security entitlement if:

(1)  the purchaser becomes the entitlement holder;

(2)  the securities intermediary has agreed that it will comply with entitlement orders originated by the purchaser without further consent by the entitlement holder; or

(3)  another person, other than the transferor to the purchaser of an interest in the security entitlement:

(A)  has control of the security entitlement and [~~on behalf of the purchaser or, having previously acquired control of the security entitlement,~~] acknowledges that it has control on behalf of the purchaser; or

(B)  obtains control of the security entitlement after having acknowledged that it will obtain control of the security entitlement on behalf of the purchaser.

(h)  A person that has control under this section is not required to acknowledge that it has control on behalf of a purchaser.

(i)  If a person acknowledges that it has or will obtain control on behalf of a purchaser, unless the person otherwise agrees or law other than this chapter or Chapter 9 otherwise provides, the person does not owe any duty to the purchaser and is not required to confirm the acknowledgment to any other person.

SECTION 8.05.  Section 8.110, Business & Commerce Code, is amended by adding Subsection (g) to read as follows:

(g)  The local law of the issuer's jurisdiction or the securities intermediary's jurisdiction governs a matter or transaction specified in Subsection (a) or (b) even if the matter or transaction does not bear any relation to the jurisdiction.

SECTION 8.06.  Section 8.303(b), Business & Commerce Code, is amended to read as follows:

(b)  A [~~In addition to acquiring the rights of a purchaser, a~~] protected purchaser [~~also~~] acquires its interest in the security free of any adverse claim.

ARTICLE 9. SECURED TRANSACTIONS

SECTION 9.01.  Section 9.102(a), Business & Commerce Code, is amended by amending Subdivisions (2), (3), (4), (11), (42), (47), (62), and (67) and adding Subdivisions (7-a), (7-b), (27-a), (27-b), (31-a), (54-a), and (79-a) to read as follows:

(2)  "Account," except as used in "account for," "account statement," "account to," the definition of "commodity account" in Subdivision (14), "customer's account," the definition of "deposit account" in Subdivision (29), "on account of," and "statement of account," means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state. The term includes controllable accounts and health-care-insurance receivables. The term does not include (i) chattel paper [~~rights to payment evidenced by chattel paper or an instrument~~], (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, [~~or~~] (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card, or (vii) rights to payment evidenced by an instrument.

(3)  "Account debtor" means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the negotiable instrument evidences [~~constitutes part of~~] chattel paper.

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

(A)  signed [~~authenticated~~] by a secured party;

(B)  indicating the aggregate unpaid secured obligations as of a date not more than 35 days earlier or 35 days later than the date of the record; and

(C)  identifying the components of the obligations in reasonable detail.

(7-a)  "Assignee," except as used in "assignee for benefit of creditors," means a person (i) in whose favor a security interest that secures an obligation is created or provided for under a security agreement, whether or not the obligation is outstanding or (ii) to which an account, chattel paper, payment intangible, or promissory note has been sold. The term includes a person to which a security interest has been transferred by a secured party.

(7-b)  "Assignor" means a person that (i) under a security agreement creates or provides for a security interest that secures an obligation or (ii) sells an account, chattel paper, payment intangible, or promissory note. The term includes a secured party that has transferred a security interest to another person.

(11)  "Chattel paper" means:

(A)  a right to payment of a monetary obligation secured by specific goods, if the right to payment and security agreement are evidenced by a record; or

(B)  a right to payment of a monetary obligation owed by a lessee under a lease agreement with respect to specific goods and a monetary obligation owed by the lessee in connection with the transaction giving rise to the lease, if:

(i)  the right to payment and lease agreement are evidenced by a record; and

(ii)  the predominant purpose of the transaction giving rise to the lease was to give the lessee the right to possession and use of the goods. The term does not include a right to payment arising out of a charter or other contract involving the use or hire of a vessel or a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card [~~a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this subdivision, "monetary obligation" means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term does not include (i) charters or other contracts involving the use or hire of a vessel or (ii) records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper~~].

(27-a)  "Controllable account" means an account evidenced by a controllable electronic record that provides that the account debtor undertakes to pay the person that has control under Section 12A.105 of the controllable electronic record.

(27-b)  "Controllable payment intangible" means a payment intangible evidenced by a controllable electronic record that provides that the account debtor undertakes to pay the person that has control under Section 12A.105 of the controllable electronic record.

(31-a)  "Electronic money" means money in an electronic form.

(42)  "General intangible" means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes controllable electronic records, payment intangibles, and software.

(47)  "Instrument" means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include (i) investment property, (ii) letters of credit, (iii) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card, [~~or~~] (iv) nonnegotiable certificates of deposit, or (v) writings that evidence chattel paper.

(54-a)  "Money" has the meaning in Section 1.201(b)(24), but does not include (i) a deposit account or (ii) money in an electronic form that cannot be subjected to control under Section 9.1051.

(62)  "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation. The term includes a controllable payment intangible.

(67)  "Proposal" means a record signed [~~authenticated~~] by a secured party that includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to Sections 9.620, 9.621, and 9.622.

(79-a)  "Tangible money" means money in a tangible form.

SECTION 9.02.  Section 9.102(b), Business & Commerce Code, is amended to read as follows:

(b)  "Control" as provided in Section 7.106 and the [~~The~~] following definitions in other chapters apply to this chapter:

|  |  |
| --- | --- |
| "Applicant" | Section 5.102. |
| "Beneficiary" | Section 5.102. |
| "Broker" | Section 8.102. |
| "Certificated security" | Section 8.102. |
| "Check" | Section 3.104. |
| "Clearing corporation" | Section 8.102. |
| "Contract for sale" | Section 2.106. |
| [~~"Control" (with respect to a document of title)~~] | [~~Section 7.106.~~] |
| "Controllable electronic record" | Section 12A.102. |
| "Customer" | Section 4.104. |
| "Entitlement holder" | Section 8.102. |
| "Financial asset" | Section 8.102. |
| "Holder in due course" | Section 3.302. |
| "Issuer" (with respect to a letter of credit |  |
| or letter-of-credit right) | Section 5.102. |
| "Issuer" (with respect to a security) | Section 8.201. |
| "Lease" | Section 2A.103. |
| "Lease agreement" | Section 2A.103. |
| "Lease contract" | Section 2A.103. |
| "Leasehold interest" | Section 2A.103. |
| "Lessee" | Section 2A.103. |
| "Lessee in ordinary course of business" | Section 2A.103. |
| "Lessor" | Section 2A.103. |
| "Lessor's residual interest" | Section 2A.103. |
| "Letter of credit" | Section 5.102. |
| "Merchant" | Section 2.104. |
| "Negotiable instrument" | Section 3.104. |
| "Nominated person" | Section 5.102. |
| "Note" | Section 3.104. |
| "Proceeds of a letter of credit" | Section 5.114. |
| "Protected purchaser" | Section 8.303. |
| "Prove" | Section 3.103. |
| "Qualifying purchaser" | Section 12A.102. |
| "Sale" | Section 2.106. |
| "Securities account" | Section 8.501. |
| "Securities intermediary" | Section 8.102. |
| "Security" | Section 8.102. |
| "Security certificate" | Section 8.102. |
| "Security entitlement" | Section 8.102. |
| "Uncertificated security" | Section 8.102. |
| [~~"Virtual currency"~~] | [~~Section 12.001.~~] |

SECTION 9.03.  Section 9.104(a), Business & Commerce Code, is amended to read as follows:

(a)  A secured party has control of a deposit account if:

(1)  the secured party is the bank with which the deposit account is maintained;

(2)  the debtor, secured party, and bank have agreed in a signed [~~an authenticated~~] record that the bank will comply with instructions originated by the secured party directing disposition of the funds in the deposit account without further consent by the debtor; [~~or~~]

(3)  the secured party becomes the bank's customer with respect to the deposit account; or

(4)  another person, other than the debtor:

(A)  has control of the deposit account and acknowledges that it has control on behalf of the secured party; or

(B)  obtains control of the deposit account after having acknowledged that it will obtain control of the deposit account on behalf of the secured party.

SECTION 9.04.  Section 9.105, Business & Commerce Code, is amended to read as follows:

Sec. 9.105.  CONTROL OF ELECTRONIC COPY OF RECORD EVIDENCING CHATTEL PAPER. (a) A purchaser [~~secured party~~] has control of an authoritative electronic copy of a record evidencing chattel paper if a system employed for evidencing the assignment [~~transfer~~] of interests in the chattel paper reliably establishes the purchaser [~~secured party~~] as the person to which the authoritative electronic copy [~~chattel paper~~] was assigned.

(b)  A system satisfies Subsection (a)[~~, and a secured party has control of electronic chattel paper,~~] if the record or records evidencing [~~comprising~~] the chattel paper are created, stored, and assigned in [~~such~~] a manner that:

(1)  a single authoritative copy of the record or records exists which [~~that~~] is unique, identifiable, and, except as otherwise provided in Subdivisions (4), (5), and (6), unalterable;

(2)  the authoritative copy identifies the purchaser [~~secured party~~] as the assignee of the record or records;

(3)  the authoritative copy is communicated to and maintained by the purchaser [~~secured party~~] or its designated custodian;

(4)  copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the purchaser [~~secured party~~];

(5)  each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6)  any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

(c)  A system satisfies Subsection (a), and a purchaser has control of an authoritative electronic copy of a record evidencing chattel paper, if the electronic copy, a record attached to or logically associated with the electronic copy, or a system in which the electronic copy is recorded:

(1)  enables the purchaser readily to identify each electronic copy as an authoritative copy or a nonauthoritative copy;

(2)  enables the purchaser readily to identify itself in any way, including by name, identifying number, cryptographic key, office, or account number, as the assignee of the authoritative electronic copy; and

(3)  gives the purchaser exclusive power, subject to Subsection (d), to:

(A)  prevent others from adding or changing an identified assignee of the authoritative electronic copy; and

(B)  transfer control of the authoritative electronic copy.

(d)  Subject to Subsection (e), a power is exclusive under Subsections (c)(3)(A) and (B) even if:

(1)  the authoritative electronic copy, a record attached to or logically associated with the authoritative electronic copy, or a system in which the authoritative electronic copy is recorded limits the use of the authoritative electronic copy or has a protocol programmed to cause a change, including a transfer or loss of control; or

(2)  the power is shared with another person.

(e)  A power of a purchaser is not shared with another person under Subsection (d)(2) and the purchaser's power is not exclusive if:

(1)  the purchaser can exercise the power only if the power also is exercised by the other person; and

(2)  the other person:

(A)  can exercise the power without exercise of the power by the purchaser; or

(B)  is the transferor to the purchaser of an interest in the chattel paper.

(f)  If a purchaser has the powers specified in Subsections (c)(3)(A) and (B), the powers are presumed to be exclusive.

(g)  A purchaser has control of an authoritative electronic copy of a record evidencing chattel paper if another person, other than the transferor to the purchaser of an interest in the chattel paper:

(1)  has control of the authoritative electronic copy and acknowledges that it has control on behalf of the purchaser; or

(2)  obtains control of the authoritative electronic copy after having acknowledged that it will obtain control of the electronic copy on behalf of the purchaser.

SECTION 9.05.  Subchapter A, Chapter 9, Business & Commerce Code, is amended by adding Section 9.1051 to read as follows:

Sec. 9.1051.  CONTROL OF ELECTRONIC MONEY. (a) A person has control of electronic money if:

(1)  the electronic money, a record attached to or logically associated with the electronic money, or a system in which the electronic money is recorded gives the person:

(A)  power to avail itself of substantially all the benefit from the electronic money; and

(B)  exclusive power, subject to Subsection (b), to:

(i)  prevent others from availing themselves of substantially all the benefit from the electronic money; and

(ii)  transfer control of the electronic money to another person or cause another person to obtain control of other electronic money as a result of the transfer of the electronic money; and

(2)  the electronic money, a record attached to or logically associated with the electronic money, or a system in which the electronic money is recorded enables the person readily to identify itself in any way, including by name, identifying number, cryptographic key, office, or account number, as having the powers under Subdivision (1).

(b)  Subject to Subsection (c), a power is exclusive under Subsections (a)(1)(B)(i) and (ii) even if:

(1)  the electronic money, a record attached to or logically associated with the electronic money, or a system in which the electronic money is recorded limits the use of the electronic money or has a protocol programmed to cause a change, including a transfer or loss of control; or

(2)  the power is shared with another person.

(c)  A power of a person is not shared with another person under Subsection (b)(2) and the person's power is not exclusive if:

(1)  the person can exercise the power only if the power also is exercised by the other person; and

(2)  the other person:

(A)  can exercise the power without exercise of the power by the person; or

(B)  is the transferor to the person of an interest in the electronic money.

(d)  If a person has the powers specified in Subsections (a)(1)(B)(i) and (ii), the powers are presumed to be exclusive.

(e)  A person has control of electronic money if another person, other than the transferor to the person of an interest in the electronic money:

(1)  has control of the electronic money and acknowledges that it has control on behalf of the person; or

(2)  obtains control of the electronic money after having acknowledged that it will obtain control of the electronic money on behalf of the person.

SECTION 9.06.  Subchapter A, Chapter 9, Business & Commerce Code, is amended by adding Sections 9.1072 and 9.1073 to read as follows:

Sec. 9.1072.  CONTROL OF CONTROLLABLE ELECTRONIC RECORD, CONTROLLABLE ACCOUNT, OR CONTROLLABLE PAYMENT INTANGIBLE. (a) A secured party has control of a controllable electronic record as provided in Section 12A.105.

(b)  A secured party has control of a controllable account or controllable payment intangible if the secured party has control of the controllable electronic record that evidences the controllable account or controllable payment intangible.

Sec. 9.1073.  NO REQUIREMENT TO ACKNOWLEDGE OR CONFIRM; NO DUTIES. (a) A person that has control under Section 9.104, 9.105, or 9.1051 is not required to acknowledge that it has control on behalf of another person.

(b)  If a person acknowledges that it has or will obtain control on behalf of another person, unless the person otherwise agrees or law other than this chapter otherwise provides, the person does not owe any duty to the other person and is not required to confirm the acknowledgment to any other person.

SECTION 9.07.  Section 9.203(b), Business & Commerce Code, is amended to read as follows:

(b)  Except as otherwise provided in Subsections (c)-(j), a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

(1)  value has been given;

(2)  the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and

(3)  one of the following conditions is met:

(A)  the debtor has signed [~~authenticated~~] a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;

(B)  the collateral is not a certificated security and is in the possession of the secured party under Section 9.313 pursuant to the debtor's security agreement;

(C)  the collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under Section 8.301 pursuant to the debtor's security agreement; [~~or~~]

(D)  the collateral is controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, electronic documents, electronic money, [~~electronic chattel paper,~~] investment property, or letter-of-credit rights, [~~or electronic documents,~~] and the secured party has control under Section 7.106, 9.104, 9.1051 [~~9.105~~], 9.106, [~~or~~] 9.107, or 9.1072 pursuant to the debtor's security agreement; or

(E)  the collateral is chattel paper and the secured party has possession and control under Section 9.3141 pursuant to the debtor's security agreement.

SECTION 9.08.  Section 9.204, Business & Commerce Code, is amended by amending Subsection (b) and adding Subsection (b-1) to read as follows:

(b)  Subject to Subsection (b-1), a [~~A~~] security interest does not attach under a term constituting an after-acquired property clause to:

(1)  consumer goods, other than an accession when given as additional security, unless the debtor acquires rights in them within 10 days after the secured party gives value; or

(2)  a commercial tort claim.

(b-1)  Subsection (b) does not prevent a security interest from attaching:

(1)  to consumer goods as proceeds under Section 9.315(a) or commingled goods under Section 9.336(c);

(2)  to a commercial tort claim as proceeds under Section 9.315(a); or

(3)  under an after-acquired property clause to property that is proceeds of consumer goods or a commercial tort claim.

SECTION 9.09.  Section 9.207(c), Business & Commerce Code, is amended to read as follows:

(c)  Except as otherwise provided in Subsection (d), a secured party having possession of collateral or control of collateral under Section 7.106, 9.104, 9.105, 9.1051, 9.106, [~~or~~] 9.107, or 9.1072:

(1)  may hold as additional security any proceeds, except money or funds, received from the collateral;

(2)  shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and

(3)  may create a security interest in the collateral.

SECTION 9.10.  Section 9.208(b), Business & Commerce Code, is amended to read as follows:

(b)  Within 10 days after receiving a signed [~~an authenticated~~] demand by the debtor:

(1)  a secured party having control of a deposit account under Section 9.104(a)(2) shall send to the bank with which the deposit account is maintained a signed record [~~an authenticated statement~~] that releases the bank from any further obligation to comply with instructions originated by the secured party;

(2)  a secured party having control of a deposit account under Section 9.104(a)(3) shall:

(A)  pay the debtor the balance on deposit in the deposit account; or

(B)  transfer the balance on deposit into a deposit account in the debtor's name;

(3)  a secured party, other than a buyer, having control [~~of electronic chattel paper~~] under Section 9.105 of an authoritative electronic copy of a record evidencing chattel paper shall transfer control of the electronic copy to the debtor or a person designated by the debtor [~~:~~

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

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

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

(4)  a secured party having control of investment property under Section 8.106(d)(2) or 9.106(b) shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained a signed [~~an authenticated~~] record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party;

(5)  a secured party having control of a letter-of-credit right under Section 9.107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party a signed [~~an authenticated~~] release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party; [~~and~~]

(6)  a secured party having control under Section 7.106 of an authoritative copy of an electronic document of title [~~of an electronic document~~] shall transfer control of the electronic copy to the debtor or a person designated by the debtor;

(7)  a secured party having control under Section 9.1051 of electronic money shall transfer control of the electronic money to the debtor or a person designated by the debtor; and

(8)  a secured party having control under Section 12A.105 of a controllable electronic record, other than a buyer of a controllable account or controllable payment intangible evidenced by the controllable electronic record, shall transfer control of the controllable electronic record to the debtor or a person designated by the debtor [~~:~~

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

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

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

SECTION 9.11.  Section 9.209(b), Business & Commerce Code, is amended to read as follows:

(b)  Within 10 days after receiving a signed [~~an authenticated~~] demand by the debtor, a secured party shall send to an account debtor that has received notification under Section 9.406(a) or 12A.106(b) of an assignment to the secured party as assignee a signed [~~under Section 9.406(a) an authenticated~~] record that releases the account debtor from any further obligation to the secured party.

SECTION 9.12.  Sections 9.210(a), (b), (c), (d), and (e), Business & Commerce Code, are amended to read as follows:

(a)  In this section:

(1)  "Request" means a record of a type described in Subdivision (2), (3), or (4).

(2)  "Request for an accounting" means a record signed [~~authenticated~~] by a debtor requesting that the recipient provide an accounting of the unpaid obligations secured by collateral and reasonably identifying the transaction or relationship that is the subject of the request.

(3)  "Request regarding a list of collateral" means a record signed [~~authenticated~~] by a debtor requesting that the recipient approve or correct a list of what the debtor believes to be the collateral securing an obligation and reasonably identifying the transaction or relationship that is the subject of the request.

(4)  "Request regarding a statement of account" means a record signed [~~authenticated~~] by a debtor requesting that the recipient approve or correct a statement indicating what the debtor believes to be the aggregate amount of unpaid obligations secured by collateral as of a specified date and reasonably identifying the transaction or relationship that is the subject of the request.

(b)  Subject to Subsections (c), (d), (e), and (f), a secured party, other than a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor, shall comply with a request within 14 days after receipt:

(1)  in the case of a request for an accounting, by signing [~~authenticating~~] and sending to the debtor an accounting; and

(2)  in the case of a request regarding a list of collateral or a request regarding a statement of account, by signing [~~authenticating~~] and sending to the debtor an approval or correction.

(c)  A secured party that claims a security interest in all of a particular type of collateral owned by the debtor may comply with a request regarding a list of collateral by sending to the debtor a signed [~~an authenticated~~] record including a statement to that effect within 14 days after receipt.

(d)  A person that receives a request regarding a list of collateral, claims no interest in the collateral when it receives the request, and claimed an interest in the collateral at an earlier time shall comply with the request within 14 days after receipt by sending to the debtor a signed [~~an authenticated~~] record:

(1)  disclaiming any interest in the collateral; and

(2)  if known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the collateral.

(e)  A person that receives a request for an accounting or a request regarding a statement of account, claims no interest in the obligations when it receives the request, and claimed an interest in the obligations at an earlier time shall comply with the request within 14 days after receipt by sending to the debtor a signed [~~an authenticated~~] record:

(1)  disclaiming any interest in the obligations; and

(2)  if known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the obligations.

SECTION 9.13.  Section 9.301, Business & Commerce Code, is amended to read as follows:

Sec. 9.301.  LAW GOVERNING PERFECTION AND PRIORITY OF SECURITY INTERESTS. Except as otherwise provided in Sections 9.303 through 9.3062 [~~9.306~~], the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

(1)  Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.

(2)  While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral.

(3)  Except as otherwise provided in Subdivision (4), while [~~tangible~~] negotiable tangible documents, goods, instruments, or tangible money[~~, or tangible chattel paper~~] is located in a jurisdiction, the local law of that jurisdiction governs:

(A)  perfection of a security interest in the goods by filing a fixture filing;

(B)  perfection of a security interest in timber to be cut; and

(C)  the effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.

(4)  The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.

SECTION 9.14.  Section 9.304(a), Business & Commerce Code, is amended to read as follows:

(a)  The local law of a bank's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a deposit account maintained with that bank even if the transaction does not bear any relation to the bank's jurisdiction.

SECTION 9.15.  Section 9.305(a), Business & Commerce Code, is amended to read as follows:

(a)  Except as otherwise provided in Subsection (c), the following rules apply:

(1)  While a security certificate is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in the certificated security represented thereby.

(2)  The local law of the issuer's jurisdiction as specified in Section 8.110(d) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in an uncertificated security.

(3)  The local law of the securities intermediary's jurisdiction as specified in Section 8.110(e) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a security entitlement or securities account.

(4)  The local law of the commodity intermediary's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a commodity contract or commodity account.

(5)  Subdivisions (2), (3), and (4) apply even if the transaction does not bear any relation to the jurisdiction.

SECTION 9.16.  Subchapter C, Chapter 9, Business & Commerce Code, is amended by adding Sections 9.3061 and 9.3062 to read as follows:

Sec. 9.3061.  LAW GOVERNING PERFECTION AND PRIORITY OF SECURITY INTERESTS IN CHATTEL PAPER. (a) Except as provided in Subsection (d), if chattel paper is evidenced only by an authoritative electronic copy of the chattel paper or is evidenced by an authoritative electronic copy and an authoritative tangible copy, the local law of the chattel paper's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in the chattel paper, even if the transaction does not bear any relation to the chattel paper's jurisdiction.

(b)  The following rules determine the chattel paper's jurisdiction under this section:

(1)  If the authoritative electronic copy of the record evidencing chattel paper, or a record attached to or logically associated with the electronic copy and readily available for review, expressly provides that a particular jurisdiction is the chattel paper's jurisdiction for purposes of this subchapter, this chapter, or this title, that jurisdiction is the chattel paper's jurisdiction.

(2)  If Subdivision (1) does not apply and the rules of the system in which the authoritative electronic copy is recorded are readily available for review and expressly provide that a particular jurisdiction is the chattel paper's jurisdiction for purposes of this subchapter, this chapter, or this title, that jurisdiction is the chattel paper's jurisdiction.

(3)  If Subdivisions (1) and (2) do not apply and the authoritative electronic copy, or a record attached to or logically associated with the electronic copy and readily available for review, expressly provides that the chattel paper is governed by the law of a particular jurisdiction, that jurisdiction is the chattel paper's jurisdiction.

(4)  If Subdivisions (1), (2), and (3) do not apply and the rules of the system in which the authoritative electronic copy is recorded are readily available for review and expressly provide that the chattel paper or the system is governed by the law of a particular jurisdiction, that jurisdiction is the chattel paper's jurisdiction.

(5)  If Subdivisions (1) through (4) do not apply, the chattel paper's jurisdiction is the jurisdiction in which the debtor is located.

(c)  If an authoritative tangible copy of a record evidences chattel paper and the chattel paper is not evidenced by an authoritative electronic copy, while the authoritative tangible copy of the record evidencing chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

(1)  perfection of a security interest in the chattel paper by possession under Section 9.3141; and

(2)  the effect of perfection or nonperfection and the priority of a security interest in the chattel paper.

(d)  The local law of the jurisdiction in which the debtor is located governs perfection of a security interest in chattel paper by filing.

Sec. 9.3062.  LAW GOVERNING PERFECTION AND PRIORITY OF SECURITY INTERESTS IN CONTROLLABLE ACCOUNTS, CONTROLLABLE ELECTRONIC RECORDS, AND CONTROLLABLE PAYMENT INTANGIBLES. (a) Except as provided in Subsection (b), the local law of the controllable electronic record's jurisdiction specified in Sections 12A.107(c) and (d) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a controllable electronic record and a security interest in a controllable account or controllable payment intangible evidenced by the controllable electronic record.

(b)  The local law of the jurisdiction in which the debtor is located governs:

(1)  perfection of a security interest in a controllable account, controllable electronic record, or controllable payment intangible by filing; and

(2)  automatic perfection of a security interest in a controllable payment intangible created by a sale of the controllable payment intangible.

SECTION 9.17.  Section 9.310(b), Business & Commerce Code, is amended to read as follows:

(b)  The filing of a financing statement is not necessary to perfect a security interest:

(1)  that is perfected under Section 9.308(d), (e), (f), or (g);

(2)  that is perfected under Section 9.309 when it attaches;

(3)  in property subject to a statute, regulation, or treaty described in Section 9.311(a);

(4)  in goods in possession of a bailee that is perfected under Section 9.312(d)(1) or (2);

(5)  in certificated securities, documents, goods, or instruments which is perfected without filing, control or possession under Section 9.312(e), (f), or (g);

(6)  in collateral in the secured party's possession under Section 9.313;

(7)  in a certificated security that is perfected by delivery of the security certificate to the secured party under Section 9.313;

(8)  in controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, [~~electronic chattel paper,~~] electronic documents, investment property, [~~virtual currencies,~~] or letter-of-credit rights that is perfected by control under Section 9.314;

(8-a)  in chattel paper which is perfected by possession and control under Section 9.3141;

(9)  in proceeds that is perfected under Section 9.315; or

(10)  that is perfected under Section 9.316.

SECTION 9.18.  The heading to Section 9.312, Business & Commerce Code, is amended to read as follows:

Sec. 9.312.  PERFECTION OF SECURITY INTERESTS IN CHATTEL PAPER, CONTROLLABLE ACCOUNTS, CONTROLLABLE ELECTRONIC RECORDS, CONTROLLABLE PAYMENT INTANGIBLES, DEPOSIT ACCOUNTS, DOCUMENTS, AND GOODS COVERED BY DOCUMENTS, INSTRUMENTS, INVESTMENT PROPERTY, [~~VIRTUAL CURRENCIES,~~] LETTER-OF-CREDIT RIGHTS, AND MONEY; PERFECTION BY PERMISSIVE FILING; TEMPORARY PERFECTION WITHOUT FILING OR TRANSFER OF POSSESSION.

SECTION 9.19.  Sections 9.312(a), (b), and (e), Business & Commerce Code, are amended to read as follows:

(a)  A security interest in chattel paper, controllable accounts, controllable electronic records, controllable payment intangibles, [~~negotiable documents,~~] instruments, investment property, or negotiable documents [~~and virtual currencies~~] may be perfected by filing.

(b)  Except as otherwise provided in Sections 9.315(c) and (d) for proceeds:

(1)  a security interest in a deposit account may be perfected only by control under Section 9.314;

(2)  and except as otherwise provided in Section 9.308(d), a security interest in a letter-of-credit right may be perfected only by control under Section 9.314; [~~and~~]

(3)  a security interest in tangible money may be perfected only by the secured party's taking possession under Section 9.313; and

(4)  a security interest in electronic money may be perfected only by control under Section 9.314.

(e)  A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession or control for a period of 20 days from the time it attaches to the extent that it arises for new value given under a signed [~~an authenticated~~] security agreement.

SECTION 9.20.  Sections 9.313(a), (c), and (d), Business & Commerce Code, are amended to read as follows:

(a)  Except as otherwise provided in Subsection (b), a secured party may perfect a security interest in [~~tangible negotiable documents,~~] goods, instruments, negotiable tangible documents, or tangible money[~~, or tangible chattel paper~~] by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under Section 8.301.

(c)  With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business when:

(1)  the person in possession signs [~~authenticates~~] a record acknowledging that it holds possession of the collateral for the secured party's benefit; or

(2)  the person takes possession of the collateral after having signed [~~authenticated~~] a record acknowledging that it will hold possession of the collateral for the secured party's benefit.

(d)  If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs not [~~no~~] earlier than the time the secured party takes possession and continues only while the secured party retains possession.

SECTION 9.21.  Sections 9.314(a), (b), and (c), Business & Commerce Code, are amended to read as follows:

(a)  A security interest in controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, electronic documents, electronic money, investment property, or letter-of-credit rights [~~investment property, deposit accounts, letter-of-credit rights, virtual currencies, electronic chattel paper, or electronic documents~~] may be perfected by control of the collateral under Section 7.106, 9.104, 9.1051, [~~9.105,~~] 9.106, 9.107, or 9.1072 [~~9.1071~~].

(b)  A security interest in controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, electronic documents, electronic money, or letter-of-credit rights [~~deposit accounts, electronic chattel paper, virtual currencies, letter-of-credit rights, or electronic documents~~] is perfected by control under Section 7.106, 9.104, 9.1051, [~~9.105,~~] 9.107, or 9.1072 not earlier than the time [~~9.1071 when~~] the secured party obtains control and remains perfected by control only while the secured party retains control.

(c)  A security interest in investment property is perfected by control under Section 9.106 not earlier than [~~from~~] the time the secured party obtains control and remains perfected by control until:

(1)  the secured party does not have control; and

(2)  one of the following occurs:

(A)  if the collateral is a certificated security, the debtor has or acquires possession of the security certificate;

(B)  if the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner; or

(C)  if the collateral is a security entitlement, the debtor is or becomes the entitlement holder.

SECTION 9.22.  Subchapter C, Chapter 9, Business & Commerce Code, is amended by adding Section 9.3141 to read as follows:

Sec. 9.3141.  PERFECTION BY POSSESSION AND CONTROL OF CHATTEL PAPER. (a) A secured party may perfect a security interest in chattel paper by taking possession of each authoritative tangible copy of the record evidencing the chattel paper and obtaining control of each authoritative electronic copy of the electronic record evidencing the chattel paper.

(b)  A security interest is perfected under Subsection (a) not earlier than the time the secured party takes possession and obtains control and remains perfected under Subsection (a) only while the secured party retains possession and control.

(c)  Sections 9.313(c) and (f) through (i) apply to perfection by possession of an authoritative tangible copy of a record evidencing chattel paper.

SECTION 9.23.  Sections 9.316(a) and (f), Business & Commerce Code, are amended to read as follows:

(a)  A security interest perfected pursuant to the law of the jurisdiction designated in Section 9.301(1), [~~or~~] 9.305(c), 9.3061(d), or 9.3062(b) remains perfected until the earliest of:

(1)  the time perfection would have ceased under the law of that jurisdiction;

(2)  the expiration of four months after a change of the debtor's location to another jurisdiction; or

(3)  the expiration of one year after a transfer of collateral to a person that thereby becomes a debtor and is located in another jurisdiction.

(f)  A security interest in chattel paper, controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, letter-of-credit rights, or investment property that is perfected under the law of the chattel paper's jurisdiction, the controllable electronic record's jurisdiction, the bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's jurisdiction, as applicable, remains perfected until the earlier of:

(1)  the time the security interest would have become unperfected under the law of that jurisdiction; or

(2)  the expiration of four months after a change of the applicable jurisdiction to another jurisdiction.

SECTION 9.24.  Section 9.317, Business & Commerce Code, is amended by amending Subsections (b) and (d) and adding Subsections (f), (g), (h), and (i) to read as follows:

(b)  Except as otherwise provided in Subsection (e), a buyer, other than a secured party, of [~~tangible chattel paper, tangible documents,~~] goods, instruments, tangible documents, or a certificated security takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d)  Subject to Subsections (f) through (i), a [~~A~~] licensee of a general intangible or a buyer, other than a secured party, of collateral other than electric money, [~~tangible chattel paper,~~] tangible documents, goods, instruments, or a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(f)  A buyer, other than a secured party, of chattel paper takes free of a security interest if, without knowledge of the security interest and before it is perfected, the buyer gives value and:

(1)  receives delivery of each authoritative tangible copy of the record evidencing the chattel paper; and

(2)  if each authoritative electronic copy of the record evidencing the chattel paper can be subjected to control under Section 9.105, obtains control of each authoritative electronic copy.

(g)  A buyer of an electronic document takes free of a security interest if, without knowledge of the security interest and before it is perfected, the buyer gives value and, if each authoritative electronic copy of the document can be subjected to control under Section 7.106, obtains control of each authoritative electronic copy.

(h)  A buyer of a controllable electronic record takes free of a security interest if, without knowledge of the security interest and before it is perfected, the buyer gives value and obtains control of the controllable electronic record.

(i)  A buyer, other than a secured party, of a controllable account or a controllable payment intangible takes free of a security interest if, without knowledge of the security interest and before it is perfected, the buyer gives value and obtains control of the controllable account or controllable payment intangible.

SECTION 9.25.  Sections 9.323(d) and (f), Business & Commerce Code, are amended to read as follows:

(d)  Except as otherwise provided in Subsection (e), a buyer of goods [~~other than a buyer in ordinary course of business~~] takes free of a security interest to the extent that it secures advances made after the earlier of:

(1)  the time the secured party acquires knowledge of the buyer's purchase; or

(2)  45 days after the purchase.

(f)  Except as otherwise provided in Subsection (g), a lessee of goods[~~, other than a lessee in ordinary course of business,~~] takes the leasehold interest free of a security interest to the extent that it secures advances made after the earlier of:

(1)  the time the secured party acquires knowledge of the lease; or

(2)  45 days after the lease contract becomes enforceable.

SECTION 9.26.  Sections 9.324(b) and (d), Business & Commerce Code, are amended to read as follows:

(b)  Subject to Subsection (c) and except as otherwise provided in Subsection (g), a perfected purchase-money security interest in inventory has priority over a conflicting security interest in the same inventory, has priority over a conflicting security interest in chattel paper or an instrument constituting proceeds of the inventory and in proceeds of the chattel paper, if so provided in Section 9.330, and, except as otherwise provided in Section 9.327, also has priority in identifiable cash proceeds of the inventory to the extent the identifiable cash proceeds are received on or before the delivery of the inventory to a buyer, if:

(1)  the purchase-money security interest is perfected when the debtor receives possession of the inventory;

(2)  the purchase-money secured party sends a signed [~~an authenticated~~] notification to the holder of the conflicting security interest;

(3)  the holder of the conflicting security interest receives any required notification within five years before the debtor receives possession of the inventory; and

(4)  the notification states that the person sending the notification has or expects to acquire a purchase-money security interest in inventory of the debtor and describes the inventory.

(d)  Subject to Subsection (e) and except as otherwise provided in Subsection (g), a perfected purchase-money security interest in livestock that are farm products has priority over a conflicting security interest in the same livestock, and, except as otherwise provided in Section 9.327, a perfected security interest in their identifiable proceeds and identifiable products in their unmanufactured states also has priority, if:

(1)  the purchase-money security interest is perfected when the debtor receives possession of the livestock;

(2)  the purchase-money secured party sends a signed [~~an authenticated~~] notification to the holder of the conflicting security interest;

(3)  the holder of the conflicting security interest receives the notification within six months before the debtor receives possession of the livestock; and

(4)  the notification states that the person sending the notification has or expects to acquire a purchase-money security interest in livestock of the debtor and describes the livestock.

SECTION 9.27.  Subchapter C, Chapter 9, Business & Commerce Code, is amended by adding Section 9.3261 to read as follows:

Sec. 9.3261.  PRIORITY OF SECURITY INTEREST IN CONTROLLABLE ACCOUNT, CONTROLLABLE ELECTRONIC RECORD, AND CONTROLLABLE PAYMENT INTANGIBLE. A security interest in a controllable account, controllable electronic record, or controllable payment intangible held by a secured party having control of the account, electronic record, or payment intangible has priority over a conflicting security interest held by a secured party that does not have control.

SECTION 9.28.  Sections 9.330(a), (b), and (f), Business & Commerce Code, are amended to read as follows:

(a)  A purchaser of chattel paper has priority over a security interest in the chattel paper that is claimed merely as proceeds of inventory subject to a security interest if:

(1)  in good faith and in the ordinary course of the purchaser's business, the purchaser gives new value and takes possession of each authoritative tangible copy of the record evidencing the chattel paper, and [~~or~~] obtains control under Section 9.105 of each authoritative electronic copy of the record evidencing [~~of~~] the chattel paper [~~under Section 9.105~~]; and

(2)  the authoritative copies of the record evidencing the chattel paper do [~~chattel paper does~~] not indicate that the chattel paper [~~it~~] has been assigned to an identified assignee other than the purchaser.

(b)  A purchaser of chattel paper has priority over a security interest in the chattel paper that is claimed other than merely as proceeds of inventory subject to a security interest if the purchaser gives new value, [~~and~~] takes possession of each authoritative tangible copy of the record evidencing the chattel paper, and [~~or~~] obtains control under Section 9.105 of each authoritative electronic copy of the record evidencing [~~of~~] the chattel paper [~~under Section 9.105~~] in good faith, in the ordinary course of the purchaser's business, and without knowledge that the purchase violates the rights of the secured party.

(f)  For purposes of Subsections (b) and (d), if the authoritative copies of the record evidencing chattel paper or an instrument indicate [~~indicates~~] that the chattel paper or instrument [~~it~~] has been assigned to an identified secured party other than the purchaser, a purchaser of the chattel paper or instrument has knowledge that the purchase violates the rights of the secured party.

SECTION 9.29.  The heading to Section 9.331, Business & Commerce Code, is amended to read as follows:

Sec. 9.331.  PRIORITY OF RIGHTS OF PURCHASERS OF CONTROLLABLE ACCOUNTS, CONTROLLABLE ELECTRONIC RECORDS, CONTROLLABLE PAYMENT INTANGIBLES, [~~INSTRUMENTS,~~] DOCUMENTS, INSTRUMENTS, AND SECURITIES[~~, AND VIRTUAL CURRENCIES~~] UNDER OTHER CHAPTERS; PRIORITY OF INTERESTS IN FINANCIAL ASSETS AND SECURITY ENTITLEMENTS AND PROTECTION AGAINST ASSERTION OF CLAIM UNDER CHAPTERS [~~CHAPTER~~] 8 AND 12A [~~VIRTUAL CURRENCIES UNDER CHAPTER 12~~].

SECTION 9.30.  Sections 9.331(a) and (b), Business & Commerce Code, are amended to read as follows:

(a)  This chapter does not limit the rights of a holder in due course of a negotiable instrument, a holder to which a negotiable document of title has been duly negotiated, a protected purchaser of a security, or a qualifying purchaser of a controllable account, controllable electronic record, or controllable payment intangible [~~virtual currency~~]. These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided in Chapters 3, 7, 8, and 12A [~~12~~].

(b)  This chapter does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of a claim under Chapter 8 or 12A [~~12~~].

SECTION 9.31.  Section 9.332, Business & Commerce Code, is amended to read as follows:

Sec. 9.332.  TRANSFER OF MONEY; TRANSFER OF FUNDS FROM DEPOSIT ACCOUNT. (a) A transferee of tangible money takes the money free of a security interest if the transferee receives possession of the money without acting [~~unless the transferee acts~~] in collusion with the debtor in violating the rights of the secured party.

(b)  A transferee of funds from a deposit account takes the funds free of a security interest in the deposit account if the transferee receives the funds without acting [~~unless the transferee acts~~] in collusion with the debtor in violating the rights of the secured party.

(c)  A transferee of electronic money takes the money free of a security interest if the transferee obtains control of the money without acting in collusion with the debtor in violating the rights of the secured party.

SECTION 9.32.  Section 9.334(f), Business & Commerce Code, is amended to read as follows:

(f)  A security interest in fixtures, whether or not perfected, has priority over the conflicting interest of an encumbrancer or owner of the real property if:

(1)  the encumbrancer or owner has, in a signed [~~an authenticated~~] record, consented to the security interest or disclaimed an interest in the goods as fixtures; or

(2)  the debtor has a right to remove the goods as against the encumbrancer or owner.

SECTION 9.33.  Section 9.341, Business & Commerce Code, is amended to read as follows:

Sec. 9.341.  BANK'S RIGHTS AND DUTIES WITH RESPECT TO DEPOSIT ACCOUNT. Except as otherwise provided in Section 9.340(c), and unless the bank otherwise agrees in a signed [~~an authenticated~~] record, a bank's rights and duties with respect to a deposit account maintained with the bank are not terminated, suspended, or modified by:

(1)  the creation, attachment, or perfection of a security interest in the deposit account;

(2)  the bank's knowledge of the security interest; or

(3)  the bank's receipt of instructions from the secured party.

SECTION 9.34.  Section 9.404(a), Business & Commerce Code, is amended to read as follows:

(a)  Unless an account debtor has made an enforceable agreement not to assert defenses or claims, and subject to Subsections (b)-(e), the rights of an assignee are subject to:

(1)  all terms of the agreement between the account debtor and assignor and any defense or claim in recoupment arising from the transaction that gave rise to the contract; and

(2)  any other defense or claim of the account debtor against the assignor that accrues before the account debtor receives a notification of the assignment signed [~~authenticated~~] by the assignor or the assignee.

SECTION 9.35.  Section 9.406, Business & Commerce Code, is amended by amending Subsections (a), (b), (c), (d), and (g) and adding Subsection (l) to read as follows:

(a)  Subject to Subsections (b)-(i) and Subsection (l), an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, signed [~~authenticated~~] by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(b)  Subject to Subsections [~~Subsection~~] (h) and (l), notification is ineffective under Subsection (a):

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

(2)  to the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this chapter; or

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

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

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

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

(c)  Subject to Subsections [~~Subsection~~] (h) and (l), if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under Subsection (a).

(d)  In this subsection, "promissory note" includes a negotiable instrument that evidences chattel paper. Except as otherwise provided in Subsection (e) and Sections 2A.303 and 9.407, and subject to Subsection (h), a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

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

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

(g)  Subject to Subsections [~~Subsection~~] (h) and (l), an account debtor may not waive or vary its option under Subsection (b)(3).

(l)  Subsections (a), (b), (c), and (g) do not apply to a controllable account or controllable payment intangible.

SECTION 9.36.  Section 9.408, Business & Commerce Code, is amended by adding Subsection (f) to read as follows:

(f)  In this section, "promissory note" includes a negotiable instrument that evidences chattel paper.

SECTION 9.37.  Sections 9.509(a) and (b), Business & Commerce Code, are amended to read as follows:

(a)  A person may file an initial financing statement, amendment that adds collateral covered by a financing statement, or amendment that adds a debtor to a financing statement only if:

(1)  the debtor authorizes the filing in a signed [~~an authenticated~~] record or pursuant to Subsection (b) or (c); or

(2)  the person holds an agricultural lien that has become effective at the time of filing and the financing statement covers only collateral in which the person holds an agricultural lien.

(b)  By signing [~~authenticating~~] or becoming bound as debtor by a security agreement, a debtor or new debtor authorizes the filing of an initial financing statement, and an amendment, covering:

(1)  the collateral described in the security agreement; and

(2)  property that becomes collateral under Section 9.315(a)(2), whether or not the security agreement expressly covers proceeds.

SECTION 9.38.  Sections 9.513(b) and (c), Business & Commerce Code, are amended to read as follows:

(b)  To comply with Subsection (a), a secured party shall cause the secured party of record to file the termination statement:

(1)  within one month after there is no obligation secured by the collateral covered by the financing statement and no commitment to make advances, incur an obligation, or otherwise give value; or

(2)  if earlier, within 20 days after the secured party receives a signed [~~an authenticated~~] demand from a debtor.

(c)  In cases not governed by Subsection (a), within 20 days after a secured party receives a signed [~~an authenticated~~] demand from a debtor, the secured party shall cause the secured party of record for a financing statement to send the debtor a termination statement for the financing statement or file the termination statement in the filing office if:

(1)  except in the case of a financing statement covering accounts or chattel paper that has been sold or goods that are the subject of a consignment, there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value;

(2)  the financing statement covers accounts or chattel paper that has been sold but as to which the account debtor or other person obligated has discharged its obligation;

(3)  the financing statement covers goods that were the subject of a consignment to the debtor but are not in the debtor's possession; or

(4)  the debtor did not authorize the filing of the initial financing statement.

SECTION 9.39.  Section 9.601(b), Business & Commerce Code, is amended to read as follows:

(b)  A secured party in possession of collateral or control of collateral under Section 7.106, 9.104, 9.105, 9.1051, 9.106, [~~or~~] 9.107, or 9.1072 has the rights and duties provided in Section 9.207.

SECTION 9.40.  Section 9.605, Business & Commerce Code, is amended to read as follows:

Sec. 9.605.  UNKNOWN DEBTOR OR SECONDARY OBLIGOR. (a) Except as provided in Subsection (b), a [~~A~~] secured party does not owe a duty based on its status as secured party:

(1)  to a person that is a debtor or obligor, unless the secured party knows:

(A)  that the person is a debtor or obligor;

(B)  the identity of the person; and

(C)  how to communicate with the person; or

(2)  to a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

(A)  that the person is a debtor; and

(B)  the identity of the person.

(b)  A secured party owes a duty based on its status as a secured party to a person if, at the time the secured party obtains control of collateral that is a controllable account, controllable electronic record, or controllable payment intangible or at the time the security interest attaches to the collateral, whichever is later:

(1)  the person is a debtor or obligor; and

(2)  the secured party knows that the information in Subsection (a)(1)(A), (B), or (C) relating to the person is not provided by the collateral, a record attached to or logically associated with the collateral, or the system in which the collateral is recorded.

SECTION 9.41.  Section 9.608(a), Business & Commerce Code, is amended to read as follows:

(a)  If a security interest or agricultural lien secures payment or performance of an obligation, the following rules apply:

(1)  A secured party shall apply or pay over for application the cash proceeds of collection or enforcement under Section 9.607 in the following order to:

(A)  the reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

(B)  the satisfaction of obligations secured by the security interest or agricultural lien under which the collection or enforcement is made; and

(C)  the satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest or agricultural lien under which the collection or enforcement is made if the secured party receives a signed [~~an authenticated~~] demand for proceeds before distribution of the proceeds is completed.

(2)  If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder complies, the secured party need not comply with the holder's demand under Subdivision (1)(C).

(3)  A secured party need not apply or pay over for application noncash proceeds of collection and enforcement under Section 9.607 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(4)  A secured party shall account to and pay a debtor for any surplus, and the obligor is liable for any deficiency.

SECTION 9.42.  Sections 9.611(a), (b), (c), and (e), Business & Commerce Code, are amended to read as follows:

(a)  In this section, "notification date" means the earlier of the date on which:

(1)  a secured party sends to the debtor and any secondary obligor a signed [~~an authenticated~~] notification of disposition; or

(2)  the debtor and any secondary obligor waive the right to notification.

(b)  Except as otherwise provided in Subsection (d), a secured party that disposes of collateral under Section 9.610 shall send to the persons specified in Subsection (c) a reasonable signed [~~authenticated~~] notification of disposition.

(c)  To comply with Subsection (b), the secured party shall send a signed [~~an authenticated~~] notification of disposition to:

(1)  the debtor;

(2)  any secondary obligor; and

(3)  if the collateral is other than consumer goods:

(A)  any other person from which the secured party has received, before the notification date, a signed [~~an authenticated~~] notification of a claim of an interest in the collateral;

(B)  any other secured party or lienholder that, 10 days before the notification date, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

(i)  identified the collateral;

(ii)  was indexed under the debtor's name as of that date; and

(iii)  was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date; and

(C)  any other secured party that, 10 days before the notification date, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in Section 9.311(a).

(e)  A secured party complies with the requirement for notification prescribed by Subsection (c)(3)(B) if:

(1)  not later than 20 days or earlier than 30 days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor's name in the office indicated in Subsection (c)(3)(B); and

(2)  before the notification date, the secured party:

(A)  did not receive a response to the request for information; or

(B)  received a response to the request for information and sent a signed [~~an authenticated~~] notification of disposition to each secured party or other lienholder named in that response whose financing statement covered the collateral.

SECTION 9.43.  Section 9.613, Business & Commerce Code, is amended to read as follows:

Sec. 9.613.  CONTENTS AND FORM OF NOTIFICATION BEFORE DISPOSITION OF COLLATERAL: GENERAL. (a) Except in a consumer-goods transaction, the following rules apply:

(1)  The contents of a notification of disposition are sufficient if the notification:

(A)  describes the debtor and the secured party;

(B)  describes the collateral that is the subject of the intended disposition;

(C)  states the method of intended disposition;

(D)  states that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting; and

(E)  states the time and place of a public disposition or the time after which any other disposition is to be made.

(2)  Whether the contents of a notification that lacks any of the information specified in Subdivision (1) are nevertheless sufficient is a question of fact.

(3)  The contents of a notification providing substantially the information specified in Subdivision (1) are sufficient, even if the notification includes:

(A)  information not specified by that subdivision; or

(B)  minor errors that are not seriously misleading.

(4)  A particular phrasing of the notification is not required.

(5)  The following form of notification and the form appearing in Section 9.614(a)(3) [~~9.614(3)~~], when completed in accordance with the instructions in Subsection (b) and Section 9.614(b), each provide sufficient information:

NOTIFICATION OF DISPOSITION OF COLLATERAL

To: (Name of debtor, obligor, or other person to which the notification is sent)

From: (Name, address, and telephone number of secured party)

{1} Name of any debtor that is not an addressee: (Name of each debtor)

{2} We will sell (describe collateral) (to the highest qualified bidder) at public sale. A sale could include a lease or license. The sale will be held as follows:

(Date)

(Time)

(Place)

{3} We will sell (describe collateral) at private sale sometime after (date). A sale could include a lease or license.

{4} You are entitled to an accounting of the unpaid indebtedness secured by the property that we intend to sell or, as applicable, lease or license.

{5} If you request an accounting you must pay a charge of $ (amount).

{6} You may request an accounting by calling us at (telephone number).

(b)  The following instructions apply to the form of notification in Subsection (a)(5):

(1)  The instructions in this subsection refer to the numbers in braces before items in the form of notification in Subsection (a)(5). Do not include the numbers or braces in the notification. The numbers and braces are used only for the purpose of these instructions.

(2)  Include and complete item {1} only if there is a debtor that is not an addressee of the notification and list the name or names.

(3)  Include and complete either item {2}, if the notification relates to a public disposition of the collateral, or item {3}, if the notification relates to a private disposition of the collateral. If item {2} is included, include the words "to the highest qualified bidder" only if applicable.

(4)  Include and complete items {4} and {6}.

(5)  Include and complete item {5} only if the sender will charge the recipient for an accounting.

[~~NOTIFICATION OF DISPOSITION OF COLLATERAL~~

[~~To: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[Name of debtor, obligor, or other person to which the notification is sent]~~

[~~From: \_\_\_\_\_\_\_\_[Name, address, and telephone number of secured party]~~

[~~Name of Debtor(s): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Include only if debtor(s) are not an addressee]~~

[~~[For a public disposition:]~~

[~~We will sell [or lease or license, as applicable] the [describe collateral] [to the highest qualified bidder] in public as follows:~~

[~~Day and Date: \_\_\_\_\_\_ Time: \_\_\_\_\_ Place: \_\_\_\_\_\_\_[For a private disposition:]~~

[~~We will sell [or lease or license, as applicable] the \_\_\_\_\_\_\_\_\_ [describe collateral] privately sometime after \_\_\_\_\_ [day and date].~~

[~~You are entitled to an accounting of the unpaid indebtedness secured by the property that we intend to sell [or lease or license, as applicable] [for a charge of $\_\_\_\_]. You may request an accounting by calling us at \_\_\_\_\_\_ [telephone number].~~]

SECTION 9.44.  Section 9.614, Business & Commerce Code, is amended to read as follows:

Sec. 9.614.  CONTENTS AND FORM OF NOTIFICATION BEFORE DISPOSITION OF COLLATERAL: CONSUMER-GOODS TRANSACTION. (a) In a consumer-goods transaction, the following rules apply:

(1)  A notification of disposition must provide the following information:

(A)  the information specified in Section 9.613(a)(1) [~~9.613(1)~~];

(B)  a description of any liability for a deficiency of the person to which the notification is sent;

(C)  a telephone number from which the amount that must be paid to the secured party to redeem the collateral under Section 9.623 is available; and

(D)  a telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available.

(2)  A particular phrasing of the notification is not required.

(3)  The following form of notification, when completed in accordance with the instructions in Subsection (b), provides sufficient information:

(Name and address of secured party)

(Date)

NOTICE OF OUR PLAN TO SELL PROPERTY

(Name and address of any obligor who is also a debtor)

Subject: (Identify transaction)

We have your (describe collateral), because you broke promises in our agreement.

{1} We will sell (describe collateral) at public sale. A sale could include a lease or license. The sale will be held as follows:

(Date)

(Time)

(Place)

You may attend the sale and bring bidders if you want.

{2} We will sell (describe collateral) at private sale sometime after (date). A sale could include a lease or license.

{3} The money that we get from the sale, after paying our costs, will reduce the amount you owe. If we get less money than you owe, you (will or will not, as applicable) still owe us the difference. If we get more money than you owe, you will get the extra money, unless we must pay it to someone else.

{4} You can get the property back at any time before we sell it by paying us the full amount you owe, not just the past due payments, including our expenses. To learn the exact amount you must pay, call us at (telephone number).

{5} If you want us to explain to you in (writing) (writing or in (description of electronic record)) (description of electronic record) how we have figured the amount that you owe us,

{6} call us at (telephone number) (or) (write us at (secured party's address)) (or contact us by (description of electronic communication method))

{7} and request (a written explanation) (a written explanation or an explanation in (description of electronic record)) (an explanation in (description of electronic record)).

{8} We will charge you $ (amount) for the explanation if we sent you another written explanation of the amount you owe us within the last six months.

{9} If you need more information about the sale (call us at (telephone number)) (or) (write us at (secured party's address)) (or contact us by (description of electronic communication method)).

{10} We are sending this notice to the following other people who have an interest in (describe collateral) or who owe money under your agreement:

(Names of all other debtors and obligors, if any)

[~~\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Name and address of secured party]~~

[~~\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Date]~~

[~~NOTICE OF OUR PLAN TO SELL PROPERTY~~

[~~\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Name and address of any obligor who is also a debtor]~~

[~~Subject: \_\_\_\_\_\_\_\_\_\_\_ [Identification of Transaction]~~

[~~We have your \_\_\_\_\_\_\_\_\_[describe collateral], because you broke promises in our agreement.~~

[~~[For a public disposition:]~~

[~~We will sell \_\_\_\_\_\_\_\_\_[describe collateral] at public sale. A sale could include a lease or license. The sale will be held as follows:~~

[~~Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_~~

[~~Time:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_~~

[~~Place:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_~~

[~~You may attend the sale and bring bidders if you want.~~

[~~[For a private disposition:]~~

[~~We will sell \_\_\_\_\_\_\_\_\_\_\_[describe collateral] at private sale sometime after \_\_\_\_\_\_\_\_[date]. A sale could include a lease or license.~~

[~~The money that we get from the sale (after paying our costs) will reduce the amount you owe. If we get less money than you owe, you \_\_\_\_\_\_\_\_[will or will not, as applicable] still owe us the difference. If we get more money than you owe, you will get the extra money, unless we must pay it to someone else.~~

[~~You can get the property back at any time before we sell it by paying us the full amount you owe (not just the past due payments), including our expenses. To learn the exact amount you must pay, call us at \_\_\_\_\_\_\_\_\_\_[telephone number].~~

[~~If you want us to explain to you in writing how we have figured the amount that you owe us, you may call us at \_\_\_\_\_\_[telephone number] [or write us at \_\_\_\_\_\_\_[secured party's address] \_\_\_\_\_\_\_\_\_\_\_] and request a written explanation. [We will charge you $\_\_\_\_\_\_\_\_ for the explanation if we sent you another written explanation of the amount you owe us within the last six months.]~~

[~~If you need more information about the sale call us at \_\_\_\_\_\_\_\_\_ [telephone number] [or write us at \_\_\_\_\_\_ [secured party's address] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_].~~

[~~We are sending this notice to the following other people who have an interest in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[describe collateral] or who owe money under your agreement:~~

[~~\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Names of all other debtors and obligors, if any]~~]

(4)  A notification in the form of Subdivision (3) is sufficient, even if additional information appears at the end of the form.

(5)  A notification in the form of Subdivision (3) is sufficient, even if it includes errors in information not required by Subdivision (1), unless the error is misleading with respect to rights arising under this chapter.

(6)  If a notification under this section is not in the form of Subdivision (3), law other than this chapter determines the effect of including information not required by Subdivision (1).

(b)  The following instructions apply to the form of notification in Subsection (a)(3):

(1)  The instructions in this subsection refer to the numbers in braces before items in the form of notification in Subsection (a)(3). Do not include the numbers or braces in the notification. The numbers and braces are used only for the purpose of these instructions.

(2)  Include and complete either item {1}, if the notification relates to a public disposition of the collateral, or item {2}, if the notification relates to a private disposition of the collateral.

(3)  Include and complete items {3}, {4}, {5}, {6}, and {7}.

(4)  In item {5}, include and complete any one of the three alternative methods for the explanation-writing, writing or electronic record, or electronic record.

(5)  In item {6}, include the telephone number. In addition, the sender may include and complete either or both of the two additional alternative methods of communication-writing or electronic communication-for the recipient of the notification to communicate with the sender. Neither of the two additional methods of communication is required to be included.

(6)  In item {7}, include and complete the method or methods for the explanation-writing, writing or electronic record, or electronic record-included in item {5}.

(7)  Include and complete item {8} only if a written explanation is included in item {5} as a method for communicating the explanation and the sender will charge the recipient for another written explanation.

(8)  In item {9}, include either the telephone number or the address or both the telephone number and the address. In addition, the sender may include and complete the additional method of communication-electronic communication-for the recipient of the notification to communicate with the sender. The additional method of electronic communication is not required to be included.

(9)  If item {10} does not apply, insert "None" after "agreement:".

SECTION 9.45.  Section 9.615(a), Business & Commerce Code, is amended to read as follows:

(a)  A secured party shall apply or pay over for application the cash proceeds of disposition under Section 9.610 in the following order to:

(1)  the reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

(2)  the satisfaction of obligations secured by the security interest or agricultural lien under which the disposition is made;

(3)  the satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral if:

(A)  the secured party receives from the holder of the subordinate security interest or other lien a signed [~~an authenticated~~] demand for proceeds before distribution of the proceeds is completed; and

(B)  in a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor; and

(4)  a secured party that is a consignor of the collateral if the secured party receives from the consignor a signed [~~an authenticated~~] demand for proceeds before distribution of the proceeds is completed.

SECTION 9.46.  Sections 9.616(a), (b), and (c), Business & Commerce Code, are amended to read as follows:

(a)  In this section:

(1)  "Explanation" means a record [~~writing~~] that:

(A)  states the amount of the surplus or deficiency;

(B)  provides an explanation in accordance with Subsection (c) of how the secured party calculated the surplus or deficiency;

(C)  states, if applicable, that future debits, credits, charges, including additional credit service charges or interest, rebates, and expenses may affect the amount of the surplus or deficiency; and

(D)  provides a telephone number or mailing address from which additional information concerning the transaction is available.

(2)  "Request" means a record:

(A)  signed [~~authenticated~~] by a debtor or consumer obligor;

(B)  requesting that the recipient provide an explanation; and

(C)  sent after disposition of the collateral under Section 9.610.

(b)  In a consumer-goods transaction in which the debtor is entitled to a surplus or a consumer obligor is liable for a deficiency under Section 9.615, the secured party shall:

(1)  send an explanation to the debtor or consumer obligor, as applicable, after the disposition and:

(A)  before or when the secured party accounts to the debtor and pays any surplus or first makes [~~written~~] demand in a record on the consumer obligor after the disposition for payment of the deficiency; and

(B)  within 14 days after receipt of a request; or

(2)  in the case of a consumer obligor who is liable for a deficiency, within 14 days after receipt of a request, send to the consumer obligor a record waiving the secured party's right to a deficiency.

(c)  To comply with Subsection (a)(1)(B), an explanation [~~a writing~~] must provide the following information in the following order:

(1)  the aggregate amount of obligations secured by the security interest under which the disposition was made and, if the amount reflects a rebate of unearned interest or credit service charge, an indication of that fact, calculated as of a specified date:

(A)  if the secured party takes or receives possession of the collateral after default, not more than 35 days before the secured party takes or receives possession; or

(B)  if the secured party takes or receives possession of the collateral before default or does not take possession of the collateral, not more than 35 days before the disposition;

(2)  the amount of proceeds of the disposition;

(3)  the aggregate amount of the obligations after deducting the amount of proceeds;

(4)  the amount, in the aggregate or by type, and types of expenses, including expenses of retaking, holding, preparing for disposition, processing, and disposing of the collateral, and attorney's fees secured by the collateral which are known to the secured party and relate to the current disposition;

(5)  the amount, in the aggregate or by type, and types of credits, including rebates of interest or credit service charges, to which the obligor is known to be entitled and which are not reflected in the amount in Subdivision (1); and

(6)  the amount of the surplus or deficiency.

SECTION 9.47.  Section 9.619(a), Business & Commerce Code, is amended to read as follows:

(a)  In this section, "transfer statement" means a record signed [~~authenticated~~] by a secured party stating:

(1)  that the debtor has defaulted in connection with an obligation secured by specified collateral;

(2)  that the secured party has exercised its post-default remedies with respect to the collateral;

(3)  that, by reason of the exercise, a transferee has acquired the rights of the debtor in the collateral; and

(4)  the name and mailing address of the secured party, debtor, and transferee.

SECTION 9.48.  Sections 9.620(a), (b), (c), and (f), Business & Commerce Code, are amended to read as follows:

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

(1)  the debtor consents to the acceptance under Subsection (c);

(2)  the secured party does not receive, within the time set forth in Subsection (d), a notification of objection to the proposal signed [~~authenticated~~] by:

(A)  a person to which the secured party was required to send a proposal under Section 9.621; or

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

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

(4)  Subsection (e) does not require the secured party to dispose of the collateral or the debtor waives the requirement pursuant to Section 9.624.

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

(1)  the secured party consents to the acceptance in a signed [~~an authenticated~~] record or sends a proposal to the debtor; and

(2)  the conditions of Subsection (a) are met.

(c)  For purposes of this section:

(1)  a debtor consents to an acceptance of collateral in partial satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record signed [~~authenticated~~] after default; and

(2)  a debtor consents to an acceptance of collateral in full satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record signed [~~authenticated~~] after default or the secured party:

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

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

(C)  does not receive a notification of objection signed [~~authenticated~~] by the debtor within 20 days after the proposal is sent.

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

(1)  within 90 days after taking possession; or

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

SECTION 9.49.  Section 9.621(a), Business & Commerce Code, is amended to read as follows:

(a)  A secured party that desires to accept collateral in full or partial satisfaction of the obligation it secures shall send its proposal to:

(1)  any person from which the secured party has received, before the debtor consented to the acceptance, a signed [~~an authenticated~~] notification of a claim of an interest in the collateral;

(2)  any other secured party or lienholder that, 10 days before the debtor consented to the acceptance, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

(A)  identified the collateral;

(B)  was indexed under the debtor's name as of that date; and

(C)  was filed in the office or offices in which to file a financing statement against the debtor covering the collateral as of that date; and

(3)  any other secured party that, 10 days before the debtor consented to the acceptance, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in Section 9.311(a).

SECTION 9.50.  Section 9.624, Business & Commerce Code, is amended to read as follows:

Sec. 9.624.  WAIVER. (a) A debtor or secondary obligor may waive the right to notification of disposition of collateral under Section 9.611 only by an agreement to that effect entered into and signed [~~authenticated~~] after default.

(b)  A debtor may waive the right to require disposition of collateral under Section 9.620(e) only by an agreement to that effect entered into and signed [~~authenticated~~] after default.

(c)  Except in a consumer-goods transaction, a debtor or secondary obligor may waive the right to redeem collateral under Section 9.623 only by an agreement to that effect entered into and signed [~~authenticated~~] after default.

SECTION 9.51.  Section 9.628, Business & Commerce Code, is amended by amending Subsections (a) and (b) and adding Subsection (f) to read as follows:

(a)  Subject to Subsection (f), unless [~~Unless~~] a secured party knows that a person is a debtor or obligor, knows the identity of the person, and knows how to communicate with the person:

(1)  the secured party is not liable to the person, or to a secured party or lienholder that has filed a financing statement against the person, for failure to comply with this chapter; and

(2)  the secured party's failure to comply with this chapter does not affect the liability of the person for a deficiency.

(b)  Subject to Subsection (f), a [~~A~~] secured party is not liable because of its status as secured party:

(1)  to a person that is a debtor or obligor, unless the secured party knows:

(A)  that the person is a debtor or obligor;

(B)  the identity of the person; and

(C)  how to communicate with the person; or

(2)  to a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

(A)  that the person is a debtor; and

(B)  the identity of the person.

(f)  Subsections (a) and (b) do not apply to limit the liability of a secured party to a person if, at the time the secured party obtains control of collateral that is a controllable account, controllable electronic record, or controllable payment intangible or at the time the security interest attaches to the collateral, whichever is later:

(1)  the person is a debtor or obligor; and

(2)  the secured party knows that the information in Subsection (b)(1)(A), (B), or (C) relating to the person is not provided by the collateral, a record attached to or logically associated with the collateral, or the system in which the collateral is recorded.

ARTICLE 10. CONTROLLABLE ELECTRONIC RECORDS

SECTION 10.01.  Title 1, Business & Commerce Code, is amended by adding Chapters 12A and 12B to read as follows:

CHAPTER 12A. CONTROLLABLE ELECTRONIC RECORDS

Sec. 12A.101.  TITLE. This chapter may be cited as Uniform Commercial Code - Controllable Electronic Records.

Sec. 12A.102.  DEFINITIONS. (a) In this chapter:

(1)  "Controllable electronic record" means a record stored in an electronic medium that can be subjected to control under Section 12A.105. The term does not include a controllable account, a controllable payment intangible, a deposit account, an electronic copy of a record evidencing chattel paper, an electronic document of title, electronic money, investment property, or a transferable record.

(2)  "Qualifying purchaser" means a purchaser of a controllable electronic record or an interest in a controllable electronic record that obtains control of the controllable electronic record for value, in good faith, and without notice of a claim of a property right in the controllable electronic record.

(3)  "Transferable record" has the meaning provided for that term in:

(A)  Section 201(a)(1) of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7021(a)(1), as amended; or

(B)  Section 322.016(a) of this code.

(4)  "Value" has the meaning provided in Section 3.303(a), as if references in that subsection to an "instrument" were references to a controllable account, controllable electronic record, or controllable payment intangible.

(b)  The definitions in Chapter 9 of "account debtor," "controllable account," "controllable payment intangible," "chattel paper," "deposit account," "electronic money," and "investment property" apply to this chapter.

(c)  Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

Sec. 12A.103.  RELATION TO CHAPTER 9 AND CONSUMER LAWS. (a) If there is conflict between this chapter and Chapter 9, Chapter 9 governs.

(b)  A transaction subject to this chapter is subject to any applicable rule of law that establishes a different rule for consumers and to:

(1)  Title 4, Finance Code; and

(2)  Subchapter E, Chapter 17, of this code.

Sec. 12A.104.  RIGHTS IN CONTROLLABLE ACCOUNT, CONTROLLABLE ELECTRONIC RECORD, AND CONTROLLABLE PAYMENT INTANGIBLE. (a) This section applies to the acquisition and purchase of rights in a controllable account or controllable payment intangible, including the rights and benefits under Subsections (c), (d), (e), (g), and (h) of a purchaser and qualifying purchaser, in the same manner this section applies to a controllable electronic record.

(b)  To determine whether a purchaser of a controllable account or a controllable payment intangible is a qualifying purchaser, the purchaser obtains control of the account or payment intangible if it obtains control of the controllable electronic record that evidences the account or payment intangible.

(c)  Except as provided in this section, law other than this chapter determines whether a person acquires a right in a controllable electronic record and the right the person acquires.

(d)  A purchaser of a controllable electronic record acquires all rights in the controllable electronic record that the transferor had or had power to transfer, except that a purchaser of a limited interest in a controllable electronic record acquires rights only to the extent of the interest purchased.

(e)  A qualifying purchaser acquires its rights in the controllable electronic record free of a claim of a property right in the controllable electronic record.

(f)  Except as provided in Subsections (a) and (e) for a controllable account and a controllable payment intangible or law other than this chapter, a qualifying purchaser takes a right to payment, right to performance, or other interest in property evidenced by the controllable electronic record subject to a claim of a property right in the right to payment, right to performance, or other interest in property.

(g)  An action may not be asserted against a qualifying purchaser based on both a purchase by the qualifying purchaser of a controllable electronic record and a claim of a property right in another controllable electronic record, whether the action is framed in conversion, replevin, constructive trust, equitable lien, or other theory.

(h)  Filing of a financing statement under Chapter 9 is not notice of a claim of a property right in a controllable electronic record.

Sec. 12A.105.  CONTROL OF CONTROLLABLE ELECTRONIC RECORD. (a) A person has control of a controllable electronic record if the electronic record, a record attached to or logically associated with the electronic record, or a system in which the electronic record is recorded:

(1)  gives the person:

(A)  power to avail itself of substantially all the benefit from the electronic record; and

(B)  exclusive power, subject to Subsection (b), to:

(i)  prevent others from availing themselves of substantially all the benefit from the electronic record; and

(ii)  transfer control of the electronic record to another person or cause another person to obtain control of another controllable electronic record as a result of the transfer of the electronic record; and

(2)  enables the person readily to identify itself in any way, including by name, identifying number, cryptographic key, office, or account number, as having the powers specified in Subdivision (1).

(b)  Subject to Subsection (c), a power is exclusive under Subsections (a)(1)(B)(i) and (ii) even if:

(1)  the controllable electronic record, a record attached to or logically associated with the electronic record, or a system in which the electronic record is recorded limits the use of the electronic record or has a protocol programmed to cause a change, including a transfer or loss of control or a modification of benefits afforded by the electronic record; or

(2)  the power is shared with another person.

(c)  A power of a person is not shared with another person under Subsection (b)(2) and the person's power is not exclusive if:

(1)  the person can exercise the power only if the power also is exercised by the other person; and

(2)  the other person:

(A)  can exercise the power without exercise of the power by the person; or

(B)  is the transferor to the person of an interest in the controllable electronic record or a controllable account or controllable payment intangible evidenced by the controllable electronic record.

(d)  If a person has the powers specified in Subsections (a)(1)(B)(i) and (ii), the powers are presumed to be exclusive.

(e)  A person has control of a controllable electronic record if another person, other than the transferor to the person of an interest in the controllable electronic record or a controllable account or controllable payment intangible evidenced by the controllable electronic record:

(1)  has control of the electronic record and acknowledges that it has control on behalf of the person; or

(2)  obtains control of the electronic record after having acknowledged that it will obtain control of the electronic record on behalf of the person.

(f)  A person that has control under this section is not required to acknowledge that it has control on behalf of another person.

(g)  If a person acknowledges that it has or will obtain control on behalf of another person, unless the person otherwise agrees or law other than this chapter or Chapter 9 otherwise provides, the person does not owe any duty to the other person and is not required to confirm the acknowledgment to any other person.

Sec. 12A.106.  DISCHARGE OF ACCOUNT DEBTOR ON CONTROLLABLE ACCOUNT OR CONTROLLABLE PAYMENT INTANGIBLE. (a) An account debtor on a controllable account or controllable payment intangible may discharge its obligation by paying:

(1)  the person having control of the controllable electronic record that evidences the controllable account or controllable payment intangible; or

(2)  except as provided in Subsection (b), a person that formerly had control of the controllable electronic record.

(b)  Subject to Subsection (d), the account debtor may not discharge its obligation by paying a person that formerly had control of the controllable electronic record if the account debtor receives a notification that:

(1)  is signed by a person that formerly had control or the person to which control was transferred;

(2)  reasonably identifies the controllable account or controllable payment intangible;

(3)  notifies the account debtor that control of the controllable electronic record that evidences the controllable account or controllable payment intangible was transferred;

(4)  identifies the transferee, in any reasonable way, including by name, identifying number, cryptographic key, office, or account number; and

(5)  provides a commercially reasonable method by which the account debtor is to pay the transferee.

(c)  After receipt of a notification that complies with Subsection (b), the account debtor may discharge its obligation by paying in accordance with the notification and may not discharge the obligation by paying a person that formerly had control.

(d)  Subject to Subsection (h), notification is ineffective under Subsection (b):

(1)  unless, before the notification is sent, the account debtor and the person that, at that time, had control of the controllable electronic record that evidences the controllable account or controllable payment intangible agree in a signed record to a commercially reasonable method by which a person may furnish reasonable proof that control has been transferred;

(2)  to the extent an agreement between the account debtor and seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this chapter; or

(3)  at the option of the account debtor, if the notification notifies the account debtor to:

(A)  divide a payment;

(B)  make less than the full amount of an installment or other periodic payment; or

(C)  pay any part of a payment by more than one method or to more than one person.

(e)  Subject to Subsection (h), if requested by the account debtor, the person giving the notification under Subsection (b) seasonably shall furnish reasonable proof, using the method in the agreement referred to in Subsection (d)(1), that control of the controllable electronic record has been transferred. Unless the person complies with the request, the account debtor may discharge its obligation by paying a person that formerly had control, even if the account debtor has received a notification under Subsection (b).

(f)  A person furnishes reasonable proof under Subsection (e) that control has been transferred if the person demonstrates, using the method in the agreement referred to in Subsection (d)(1), that the transferee has the power to:

(1)  avail itself of substantially all the benefit from the controllable electronic record;

(2)  prevent others from availing themselves of substantially all the benefit from the controllable electronic record; and

(3)  transfer the powers specified in Subdivisions (1) and (2) to another person.

(g)  Subject to Subsection (h), an account debtor may not waive or vary its rights under Subsections (d)(1) and (e) or its option under Subsection (d)(3).

(h)  This section is subject to law other than this chapter which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

Sec. 12A.107.  GOVERNING LAW. (a) Except as provided in Subsection (b), the local law of a controllable electronic record's jurisdiction governs a matter covered by this chapter.

(b)  For a controllable electronic record that evidences a controllable account or controllable payment intangible, the local law of the controllable electronic record's jurisdiction governs a matter covered by Section 12A.106 unless an effective agreement determines that the local law of another jurisdiction governs.

(c)  The following rules determine a controllable electronic record's jurisdiction under this section:

(1)  If the controllable electronic record, or a record attached to or logically associated with the controllable electronic record and readily available for review, expressly provides that a particular jurisdiction is the controllable electronic record's jurisdiction for purposes of this chapter or this title, that jurisdiction is the controllable electronic record's jurisdiction.

(2)  If Subdivision (1) does not apply and the rules of the system in which the controllable electronic record is recorded are readily available for review and expressly provide that a particular jurisdiction is the controllable electronic record's jurisdiction for purposes of this chapter or this title, that jurisdiction is the controllable electronic record's jurisdiction.

(3)  If Subdivisions (1) and (2) do not apply and the controllable electronic record, or a record attached to or logically associated with the controllable electronic record and readily available for review, expressly provides that the controllable electronic record is governed by the law of a particular jurisdiction, that jurisdiction is the controllable electronic record's jurisdiction.

(4)  If Subdivisions (1), (2), and (3) do not apply and the rules of the system in which the controllable electronic record is recorded are readily available for review and expressly provide that the controllable electronic record or the system is governed by the law of a particular jurisdiction, that jurisdiction is the controllable electronic record's jurisdiction.

(5)  If Subdivisions (1) through (4) do not apply, the controllable electronic record's jurisdiction is the District of Columbia.

(d)  If Subsection (c)(5) applies and Chapter 12 is not in effect in the District of Columbia without material modification, the governing law for a matter covered by this chapter is the law of the District of Columbia as though Chapter 12 were in effect in the District of Columbia without material modification. In this subsection, "Chapter 12" means Chapter 12 of Uniform Commercial Code Amendments (2022).

(e)  To the extent Subsections (a) and (b) provide that the local law of the controllable electronic record's jurisdiction governs a matter covered by this chapter, that law governs even if the matter or a transaction to which the matter relates does not bear any relation to the controllable electronic record's jurisdiction.

CHAPTER 12B. TRANSITIONAL PROVISIONS FOR UNIFORM COMMERCIAL CODE AMENDMENTS (2022)

SUBCHAPTER A. GENERAL PROVISIONS AND DEFINITIONS

Sec. 12B.101.  TITLE. This chapter may be cited as Transitional Provisions for Uniform Commercial Code Amendments (2022).

Sec. 12B.102.  DEFINITIONS. (a) In this chapter:

(1)  "Adjustment date" means July 1, 2025.

(2)  "Amending act" means the Act of the 88th Legislature, Regular Session, 2023, that enacted this chapter.

(3)  "Chapter 12A property" means a controllable account, controllable electronic record, or controllable payment intangible.

(4)  "Repealed Chapter 12" means former Chapter 12 as that chapter existed immediately before repeal by the amending act.

(b)  The following definitions in other chapters of this title apply to this chapter.

"Controllable account"Section 9.102.

"Controllable electronic record"Section 12A.102.

"Controllable payment intangible"Section 9.102.

"Electronic money"Section 9.102.

"Financing statement"Section 9.102.

(c)  Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

SUBCHAPTER B. GENERAL TRANSITIONAL PROVISION

Sec. 12B.201.  SAVING CLAUSE. Except as provided in Subchapter C, a transaction validly entered into before September 1, 2023, and the rights, duties, and interests flowing from the transaction remain valid thereafter and may be terminated, completed, consummated, or enforced as required or permitted by law other than this title or, if applicable, this title, as though the amending act had not taken effect.

SUBCHAPTER C. TRANSITIONAL PROVISIONS FOR CHAPTERS 9, 12, and 12A

Sec. 12B.301.  SAVING CLAUSE. (a) Except as provided in this subchapter, Chapter 9, as amended by the amending act, and Chapter 12A, as added by the amending act, apply to a transaction, lien, or other interest in property, even if the transaction, lien, or interest was entered into, created, or acquired before September 1, 2023.

(b)  Except as provided in Subsection (c) and Sections 12B.302 through 12B.306:

(1)  a transaction, lien, or interest in property that was validly entered into, created, or transferred before September 1, 2023, and was not governed by this title, but would be subject to Chapter 9, as amended by the amending act, or Chapter 12A, as added by the amending act, if it had been entered into, created, or transferred on or after September 1, 2023, including the rights, duties, and interests flowing from the transaction, lien, or interest, remains valid on and after September 1, 2023; and

(2)  the transaction, lien, or interest in property may be terminated, completed, consummated, and enforced as required or permitted by the amending act or by the law that would apply if the amending act had not taken effect.

(c)  Notwithstanding any other provision of this chapter:

(1)  virtual currency under repealed Chapter 12 and Chapter 9, as that chapter existed before its amendment by the amending act, constitutes a controllable electronic record under Chapter 9, as amended by the amending act, and Chapter 12A, as added by the amending act; and

(2)  control of a virtual currency accomplished under repealed Chapter 12 constitutes control of a controllable electronic record under Chapter 9, as amended by the amending act, and Chapter 12A, as added by the amending act.

(d)  The amending act does not affect an action, case, or proceeding commenced before September 1, 2023.

Sec. 12B.302.  SECURITY INTEREST PERFECTED BEFORE EFFECTIVE DATE. (a) A security interest that is enforceable and perfected immediately before September 1, 2023, is a perfected security interest under this title, as amended by the amending act, if, on September 1, 2023, the requirements for enforceability and perfection under this title, as amended by the amending act, are satisfied without further action.

(b)  If a security interest is enforceable and perfected immediately before September 1, 2023, but the requirements for enforceability or perfection under this title, as amended by the amending act, are not satisfied on September 1, 2023, the security interest:

(1)  is a perfected security interest until the earlier of the time perfection would have ceased under the law in effect immediately before September 1, 2023, or the adjustment date;

(2)  remains enforceable thereafter only if the security interest satisfies the requirements for enforceability under Section 9.203, as amended by the amending act, before the adjustment date; and

(3)  remains perfected thereafter only if the requirements for perfection under the title, as amended by the amending act, are satisfied before the time specified in Subdivision (1).

Sec. 12B.303.  SECURITY INTEREST UNPERFECTED BEFORE EFFECTIVE DATE. A security interest that is enforceable immediately before September 1, 2023, but is unperfected at that time:

(1)  remains an enforceable security interest until the adjustment date;

(2)  remains enforceable thereafter if the security interest becomes enforceable under Section 9.203, as amended by the amending act, on September 1, 2023, or before the adjustment date; and

(3)  becomes perfected:

(A)  without further action, on September 1, 2023, if the requirements for perfection under this title, as amended by the amending act, are satisfied before or at that time; or

(B)  when the requirements for perfection are satisfied if the requirements are satisfied after that time.

Sec. 12B.304.  EFFECTIVENESS OF ACTION TAKEN BEFORE EFFECTIVE DATE. (a) If action, other than the filing of a financing statement, is taken before September 1, 2023, and the action would have resulted in perfection of the security interest had the security interest become enforceable before September 1, 2023, the action is effective to perfect a security interest that attaches under this title, as amended by the amending act, before the adjustment date. An attached security interest becomes unperfected on the adjustment date unless the security interest becomes a perfected security interest under this title, as amended by the amending act, before the adjustment date.

(b)  The filing of a financing statement before September 1, 2023, is effective to perfect a security interest on September 1, 2023, to the extent the filing would satisfy the requirements for perfection under this title, as amended by the amending act.

(c)  The taking of an action before September 1, 2023, is sufficient for the enforceability of a security interest on September 1, 2023, if the action would satisfy the requirements for enforceability under this title, as amended by the amending act.

Sec. 12B.305.  PRIORITY. (a) Subject to Subsections (b) and (c), this title, as amended by the amending act, determines the priority of conflicting claims to collateral.

(b)  Subject to Subsection (c), if the priorities of claims to collateral were established before September 1, 2023, Chapter 9, as in effect immediately before September 1, 2023, determines priority.

(c)  On the adjustment date, to the extent the priorities determined by Chapter 9, as amended by the amending act, modify the priorities established before September 1, 2023, the priorities of claims to Chapter 12A property and electronic money established before September 1, 2023, cease to apply.

Sec. 12B.306.  PRIORITY OF CLAIMS WHEN PRIORITY RULES OF CHAPTER 9 DO NOT APPLY. (a) Subject to Subsections (b) and (c), Chapter 12A determines the priority of conflicting claims to Chapter 12A property when the priority rules of Chapter 9, as amended by the amending act, do not apply.

(b)  Subject to Subsection (c), when the priority rules of Chapter 9, as amended by the amending act, do not apply and the priorities of claims to Chapter 12A property were established before September 1, 2023, law other than Chapter 12A determines priority.

(c)  When the priority rules of Chapter 9, as amended by the amending act, do not apply, to the extent the priorities determined by this title, as amended by the amending act, modify the priorities established before September 1, 2023, the priorities of claims to Chapter 12A property established before September 1, 2023, cease to apply on the adjustment date.

ARTICLE 11. REPEALERS

SECTION 11.01.  The following provisions of Title 1, Business & Commerce Code, are repealed:

(1)  Section 7.102(a)(12);

(2)  Sections 9.102(a)(7), (31), (75), and (79);

(3)  Section 9.1071; and

(4)  Chapter 12.

ARTICLE 12. EFFECTIVE DATE

SECTION 12.01.  This Act takes effect September 1, 2023.