

By: Parker

S.B. No. 2223

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.]~~

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

6 (16-a) "Electronic" means relating to technology
7 having electrical, digital, magnetic, wireless, optical,
8 electromagnetic, or similar capabilities.

9 (21) "Holder" means:

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

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

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

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

27 (27) "Person" means an individual, corporation,

1 business trust, estate, trust, partnership, limited liability
 2 company, association, joint venture, government, governmental
 3 subdivision, agency, or instrumentality, or ~~[public corporation,~~
 4 any other legal or commercial entity~~], or a protected series or~~
 5 ~~registered series of a for-profit entity]~~. The term includes a
 6 protected series or registered series, however denominated, of an
 7 entity if the protected series or registered series is established
 8 under law other than this title that limits, or limits if conditions
 9 specified under the law are satisfied, the ability of a creditor of
 10 the entity or of any other protected series or registered series of
 11 the entity to satisfy a claim from assets of the protected series or
 12 registered series.

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

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

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

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

1 under Paragraph (A).

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

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

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

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

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

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

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

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

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

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

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

27 (b) Where one of the following provisions of this title

1 specifies the applicable law, that provision governs and a contrary
2 agreement is effective only to the extent permitted by the law
3 (including the conflict of laws rules) so specified:

4 Rights of creditors against sold goods. Section 2.402.

5 Applicability of the chapter on Leases. Sections 2A.105 and
6 2A.106.

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

9 Governing law in the chapter on Funds Transfers. Section
10 4A.507.

11 Letters of Credit. Section 5.116.

12 Applicability of the chapter on Investment Securities.
13 Section 8.110.

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

17 Controllable electronic record. Section 12A.107.

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

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

24 ARTICLE 2. SALES

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

27 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

1 amended to read as follows:

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

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

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

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

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

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

24 Sec. 2.205. FIRM OFFERS. An offer by a merchant to buy or
25 sell goods in a signed record [~~writing~~] which by its terms gives
26 assurance that it will be held open is not revocable, for lack of
27 consideration, during the time stated or if no time is stated for a

1 reasonable time, but in no event may such period of irrevocability
2 exceed three months; but any such term of assurance on a form
3 supplied by the offeree must be separately signed by the offeror.

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

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

11 ARTICLE 3. LEASES

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

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

20 (b) In a hybrid lease:

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

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

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

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

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

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

11 (8-a) "Hybrid lease" means a single transaction
12 involving a lease of goods and:

13 (A) the provision of services;

14 (B) the sale of other goods; or

15 (C) subject to the second sentence of Section
16 2A.102(a), a sale, lease, or license of property other than goods.

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

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

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

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

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

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

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

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

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

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

21 (3) a reasonable lease term.

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

24 Sec. 2A.202. FINAL [~~WRITTEN~~] EXPRESSION; PAROL OR
25 EXTRINSIC EVIDENCE. Terms with respect to which the confirmatory
26 memoranda of the parties agree or which are otherwise set forth in a
27 record [~~writing~~] intended by the parties as a final expression of

1 their agreement with respect to such terms as are included therein
2 may not be contradicted by evidence of a prior agreement or of a
3 contemporaneous oral agreement but may be explained or
4 supplemented:

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

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

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

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

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

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

27 SECTION 3.08. The heading of Section 2A.208, Business &

1 Commerce Code, is amended to read as follows:

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

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

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

10 ARTICLE 4. NEGOTIABLE INSTRUMENTS

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

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

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

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

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

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

26 (B) an authorization or power to the holder to
27 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 depository 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~~

1 ~~association with the record of an electronic symbol, sound, or~~
2 ~~process with the present intent to adopt or accept the record.]~~

3 ARTICLE 5. FUNDS TRANSFERS

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

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

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

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

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

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

21 Sec. 4A.201. SECURITY PROCEDURE. "Security procedure"
22 means a procedure established by an agreement between a customer
23 and a receiving bank for the purpose of (i) verifying that a payment
24 order or communication amending or cancelling a payment order is
25 that of the customer, or (ii) detecting error in the transmission or
26 the content of the payment order or communication. A security
27 procedure may impose an obligation on the receiving bank or the

1 customer and may require the use of algorithms or other codes,
 2 identifying words, ~~[or]~~ numbers, symbols, sounds, biometrics,
 3 encryption, callback procedures, or similar security devices.
 4 Comparison of a signature on a payment order or communication with
 5 an authorized specimen signature of the customer or requiring a
 6 payment order to be sent from a known e-mail address, IP address, or
 7 telephone number is not by itself a security procedure.

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

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

26 (c) Commercial reasonableness of a security procedure is a
 27 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:

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

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

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

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

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

20 (2) If the originator is not a bank and proves that the
21 person identified by number was not entitled to receive payment
22 from the originator, the originator is not obliged to pay its order
23 unless the originator's bank proves that the originator, before
24 acceptance of the originator's order, had notice that payment of a
25 payment order issued by the originator might be made by the
26 beneficiary's bank on the basis of an identifying or bank account
27 number even if it identifies a person different from the named

1 beneficiary. Proof of notice may be made by any admissible
2 evidence. The originator's bank satisfies the burden of proof if it
3 proves that the originator, before the payment order was accepted,
4 signed a record [~~writing~~] stating the information to which the
5 notice relates.

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

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

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

22 (2) If the sender is not a bank and the receiving bank
23 proves that the sender, before the payment order was accepted, had
24 notice that the receiving bank might rely on the number as the
25 proper identification of the intermediary or beneficiary's bank
26 even if it identifies a person different from the bank identified by
27 name, the rights and obligations of the sender and the receiving

1 bank are governed by Subsection (b)(1), as though the sender were a
2 bank. Proof of notice may be made by any admissible evidence. The
3 receiving bank satisfies the burden of proof if it proves that the
4 sender, before the payment order was accepted, signed a record
5 [~~writing~~] stating the information to which the notice relates.

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

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

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

18 (a) A payment order is rejected by the receiving bank by a
19 notice of rejection transmitted to the sender orally[~~7~~
20 ~~electronically,~~] or in a record [~~writing~~]. A notice of rejection
21 need not use any particular words and is sufficient if it indicates
22 that the receiving bank is rejecting the order or will not execute
23 or pay the order. Rejection is effective when the notice is given
24 if transmission is by a means that is reasonable under the
25 circumstances. If notice of rejection is given by a means that is
26 not reasonable, rejection is effective when the notice is received.
27 If an agreement of the sender and receiving bank establishes the

1 means to be used to reject a payment order:

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

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

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

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

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

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

23 (d) If a receiving bank fails to execute a payment order it
24 was obliged by express agreement to execute, the receiving bank is
25 liable to the sender for its expenses in the transaction and for
26 incidental expenses and interest losses resulting from the failure
27 to execute. Additional damages, including consequential damages,

1 are recoverable to the extent provided in an express ~~[written]~~
2 agreement of the receiving bank, evidenced by a record, but are not
3 otherwise recoverable.

4 ARTICLE 6. LETTERS OF CREDIT

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

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

10 ~~[(1) by a signature; or~~
11 ~~[(2) in accordance with the agreement of the parties~~
12 ~~or the standard practice referred to in Section 5.108(e)].~~

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

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

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

1 indicated, the person is considered to be located at the address
2 from which the person's undertaking was issued.

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

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

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

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

27 (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;

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

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

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

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

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

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

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

23 (B) transfer control of each authoritative
24 electronic copy.

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

27 (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
<u>Controllable account</u>	<u>Section 9.102</u>
<u>Controllable electronic record</u>	<u>Section 12A.102</u>
<u>Controllable payment intangible</u>	<u>Section 9.102</u>
Delivery	Section 8.301
Investment company security	Section 8.103
Issuer	Section 8.201
Overissue	Section 8.210

1 Protected purchaser Section 8.303

2 Securities account Section 8.501

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

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

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

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

12 (1) the purchaser becomes the entitlement holder;

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

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

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

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

25 (h) A person that has control under this section is not
26 required to acknowledge that it has control on behalf of a
27 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

1 that has been or is to be sold, leased, licensed, assigned, or
 2 otherwise disposed of, (ii) for services rendered or to be
 3 rendered, (iii) for a policy of insurance issued or to be issued,
 4 (iv) for a secondary obligation incurred or to be incurred, (v) for
 5 energy provided or to be provided, (vi) for the use or hire of a
 6 vessel under a charter or other contract, (vii) arising out of the
 7 use of a credit or charge card or information contained on or for
 8 use with the card, or (viii) as winnings in a lottery or other game
 9 of chance operated or sponsored by a state, governmental unit of a
 10 state, or person licensed or authorized to operate the game by a
 11 state or governmental unit of a state. The term includes
 12 controllable accounts and health-care-insurance receivables. The
 13 term does not include (i) chattel paper ~~[rights to payment~~
 14 ~~evidenced by chattel paper or an instrument]~~, (ii) commercial tort
 15 claims, (iii) deposit accounts, (iv) investment property, (v)
 16 letter-of-credit rights or letters of credit, ~~[or]~~ (vi) rights to
 17 payment for money or funds advanced or sold, other than rights
 18 arising out of the use of a credit or charge card or information
 19 contained on or for use with the card, or (vii) rights to payment
 20 evidenced by an instrument.

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

26 (4) "Accounting," except as used in "accounting for,"
 27 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

1 with the transaction giving rise to the lease, if:

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

4 (ii) the predominant purpose of the
5 transaction giving rise to the lease was to give the lessee the
6 right to possession and use of the goods. The term does not include
7 a right to payment arising out of a charter or other contract
8 involving the use or hire of a vessel or a right to payment arising
9 out of the use of a credit or charge card or information contained
10 on or for use with the card ~~[a record or records that evidence both a~~

11 ~~monetary obligation and a security interest in specific goods, a~~
12 ~~security interest in specific goods and software used in the goods,~~
13 ~~a security interest in specific goods and license of software used~~
14 ~~in the goods, a lease of specific goods, or a lease of specific~~
15 ~~goods and license of software used in the goods. In this~~
16 ~~subdivision, "monetary obligation" means a monetary obligation~~
17 ~~secured by the goods or owed under a lease of the goods and includes~~
18 ~~a monetary obligation with respect to software used in the goods.~~
19 ~~The term does not include (i) charters or other contracts involving~~
20 ~~the use or hire of a vessel or (ii) records that evidence a right to~~
21 ~~payment arising out of the use of a credit or charge card or~~
22 ~~information contained on or for use with the card. If a transaction~~
23 ~~is evidenced by records that include an instrument or series of~~
24 ~~instruments, the group of records taken together constitutes~~
25 ~~chattel paper].~~

26 (27-a) "Controllable account" means an account
27 evidenced by a controllable electronic record that provides that

1 the account debtor undertakes to pay the person that has control
2 under Section 12A.105 of the controllable electronic record.

3 (27-b) "Controllable payment intangible" means a
4 payment intangible evidenced by a controllable electronic record
5 that provides that the account debtor undertakes to pay the person
6 that has control under Section 12A.105 of the controllable
7 electronic record.

8 (31-a) "Electronic money" means money in an electronic
9 form.

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

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

27 (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~~ ~~[Section 7.106.]~~

~~document of title)]~~

"Controllable electronic record" Section 12A.102.

1	"Customer"	Section 4.104.
2	"Entitlement holder"	Section 8.102.
3	"Financial asset"	Section 8.102.
4	"Holder in due course"	Section 3.302.
5	"Issuer" (with respect to a	
6	letter of credit	
7	or letter-of-credit right)	Section 5.102.
8	"Issuer" (with respect to a	Section 8.201.
9	security)	
10	"Lease"	Section 2A.103.
11	"Lease agreement"	Section 2A.103.
12	"Lease contract"	Section 2A.103.
13	"Leasehold interest"	Section 2A.103.
14	"Lessee"	Section 2A.103.
15	"Lessee in ordinary course of	Section 2A.103.
16	business"	
17	"Lessor"	Section 2A.103.
18	"Lessor's residual interest"	Section 2A.103.
19	"Letter of credit"	Section 5.102.
20	"Merchant"	Section 2.104.
21	"Negotiable instrument"	Section 3.104.
22	"Nominated person"	Section 5.102.
23	"Note"	Section 3.104.
24	"Proceeds of a letter of credit"	Section 5.114.
25	<u>"Protected purchaser"</u>	<u>Section 8.303.</u>
26	"Prove"	Section 3.103.
27	<u>"Qualifying purchaser"</u>	<u>Section 12A.102.</u>

1	"Sale"	Section 2.106.
2	"Securities account"	Section 8.501.
3	"Securities intermediary"	Section 8.102.
4	"Security"	Section 8.102.
5	"Security certificate"	Section 8.102.
6	"Security entitlement"	Section 8.102.
7	"Uncertificated security"	Section 8.102.
8	["Virtual currency"]	[Section 12.001.]

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

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

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

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

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

21 (4) another person, other than the debtor:

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

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

27 SECTION 9.04. Section 9.105, Business & Commerce Code, is

1 amended to read as follows:

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

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

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

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

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

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

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

27 (6) any amendment of the authoritative copy is readily

1 identifiable as authorized or unauthorized.

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

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

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

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

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

18 (B) transfer control of the authoritative
19 electronic copy.

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

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

1 (2) the power is shared with another person.

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

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

7 (2) the other person:

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

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

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

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

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

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

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

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

27 (1) the electronic money, a record attached to or

1 logically associated with the electronic money, or a system in
2 which the electronic money is recorded gives the person:

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

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

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

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

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

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

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

26 (2) the power is shared with another person.

27 (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

1 the controllable electronic record that evidences the controllable
2 account or controllable payment intangible.

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

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

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

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

17 (1) value has been given;

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

20 (3) one of the following conditions is met:

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

25 (B) the collateral is not a certificated security
26 and is in the possession of the secured party under Section 9.313
27 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 (1) to consumer goods as proceeds under Section
 2 9.315(a) or commingled goods under Section 9.336(c);
 3 (2) to a commercial tort claim as proceeds under
 4 Section 9.315(a); or
 5 (3) under an after-acquired property clause to
 6 property that is proceeds of consumer goods or a commercial tort
 7 claim.

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

10 (c) Except as otherwise provided in Subsection (d), a
 11 secured party having possession of collateral or control of
 12 collateral under Section 7.106, 9.104, 9.105, 9.1051, 9.106, ~~[ex]~~
 13 9.107, or 9.1072:

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

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

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

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

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

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

1 comply with instructions originated by the secured party;

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

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

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

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

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

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

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

26 (4) a secured party having control of investment
27 property under Section 8.106(d)(2) or 9.106(b) shall send to the

1 securities intermediary or commodity intermediary with which the
2 security entitlement or commodity contract is maintained a signed
3 ~~[an authenticated]~~ record that releases the securities
4 intermediary or commodity intermediary from any further obligation
5 to comply with entitlement orders or directions originated by the
6 secured party;

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

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

17 (7) a secured party having control under Section
18 9.1051 of electronic money shall transfer control of the electronic
19 money to the debtor or a person designated by the debtor; and

20 (8) a secured party having control under Section
21 12A.105 of a controllable electronic record, other than a buyer of a
22 controllable account or controllable payment intangible evidenced
23 by the controllable electronic record, shall transfer control of
24 the controllable electronic record to the debtor or a person
25 designated by the debtor [+

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

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

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

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

14 (b) Within 10 days after receiving a signed ~~[an~~
15 ~~authenticated]~~ demand by the debtor, a secured party shall send to
16 an account debtor that has received notification under Section
17 9.406(a) or 12A.106(b) of an assignment to the secured party as
18 assignee a signed ~~[under Section 9.406(a) an authenticated]~~ record
19 that releases the account debtor from any further obligation to the
20 secured party.

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

23 (a) In this section:

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

26 (2) "Request for an accounting" means a record signed
27 ~~[authenticated]~~ by a debtor requesting that the recipient provide

1 an accounting of the unpaid obligations secured by collateral and
2 reasonably identifying the transaction or relationship that is the
3 subject of the request.

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

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

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

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

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

26 (c) A secured party that claims a security interest in all
27 of a particular type of collateral owned by the debtor may comply

1 with a request regarding a list of collateral by sending to the
2 debtor a signed [~~an authenticated~~] record including a statement to
3 that effect within 14 days after receipt.

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

9 (1) disclaiming any interest in the collateral; and

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

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

19 (1) disclaiming any interest in the obligations; and

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

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

25 Sec. 9.301. LAW GOVERNING PERFECTION AND PRIORITY OF
26 SECURITY INTERESTS. Except as otherwise provided in Sections 9.303
27 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

1 commodity contract or commodity account.

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

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

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

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

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

26 (2) If Subdivision (1) does not apply and the rules of
27 the system in which the authoritative electronic copy is recorded

1 are readily available for review and expressly provide that a
2 particular jurisdiction is the chattel paper's jurisdiction for
3 purposes of this subchapter, this chapter, or this title, that
4 jurisdiction is the chattel paper's jurisdiction.

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

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

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

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

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

27 (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:

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

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

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

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

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

19 (2) and except as otherwise provided in Section
20 9.308(d), a security interest in a letter-of-credit right may be
21 perfected only by control under Section 9.314; [~~and~~]

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

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

27 (e) A security interest in certificated securities,

1 negotiable documents, or instruments is perfected without filing or
2 the taking of possession or control for a period of 20 days from the
3 time it attaches to the extent that it arises for new value given
4 under a signed [~~an authenticated~~] security agreement.

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

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

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

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

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

26 (d) If perfection of a security interest depends upon
27 possession of the collateral by a secured party, perfection occurs

1 not ~~[no]~~ earlier than the time the secured party takes possession
2 and continues only while the secured party retains possession.

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

5 (a) A security interest in controllable accounts,
6 controllable electronic records, controllable payment intangibles,
7 deposit accounts, electronic documents, electronic money,
8 investment property, or letter-of-credit rights ~~[investment~~
9 ~~property, deposit accounts, letter-of-credit rights, virtual~~
10 ~~currencies, electronic chattel paper, or electronic documents]~~ may
11 be perfected by control of the collateral under Section 7.106,
12 9.104, 9.1051, ~~[9.105,~~ 9.106, 9.107, or 9.1072 ~~[9.1071]~~.

13 (b) A security interest in controllable accounts,
14 controllable electronic records, controllable payment intangibles,
15 deposit accounts, electronic documents, electronic money, or
16 letter-of-credit rights ~~[deposit accounts, electronic chattel~~
17 ~~paper, virtual currencies, letter-of-credit rights, or electronic~~
18 ~~documents]~~ is perfected by control under Section 7.106, 9.104,
19 9.1051, ~~[9.105,~~ 9.107, or 9.1072 not earlier than the time ~~[9.1071~~
20 ~~when]~~ the secured party obtains control and remains perfected by
21 control only while the secured party retains control.

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

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

27 (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

1 of a security interest if, without knowledge of the security
2 interest and before it is perfected, the buyer gives value and
3 obtains control of the controllable electronic record.

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

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

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

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

18 (2) 45 days after the purchase.

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

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

25 (2) 45 days after the lease contract becomes
26 enforceable.

27 SECTION 9.26. Sections 9.324(b) and (d), Business &

1 Commerce Code, are amended to read as follows:

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

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

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

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

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

24 (d) Subject to Subsection (e) and except as otherwise
25 provided in Subsection (g), a perfected purchase-money security
26 interest in livestock that are farm products has priority over a
27 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:

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

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

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

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

24 (f) For purposes of Subsections (b) and (d), if the
25 authoritative copies of the record evidencing chattel paper or an
26 instrument indicate ~~[indicates]~~ that the chattel paper or
27 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:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (a) Subject to Subsections (b)-(i) and Subsection (l), an

1 account debtor on an account, chattel paper, or a payment
2 intangible may discharge its obligation by paying the assignor
3 until, but not after, the account debtor receives a notification,
4 signed [~~authenticated~~] by the assignor or the assignee, that the
5 amount due or to become due has been assigned and that payment is to
6 be made to the assignee. After receipt of the notification, the
7 account debtor may discharge its obligation by paying the assignee
8 and may not discharge the obligation by paying the assignor.

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

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

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

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

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

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

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

27 (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 (1), an account debtor may not waive or vary its option under Subsection (b)(3).

(1) 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

1 amended by adding Subsection (f) to read as follows:

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

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

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

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

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

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

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

21 (2) property that becomes collateral under Section
22 9.315(a)(2), whether or not the security agreement expressly covers
23 proceeds.

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

26 (b) To comply with Subsection (a), a secured party shall
27 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

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

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

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

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

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

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

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

26 (2) If requested by a secured party, a holder of a
27 subordinate security interest or other lien shall furnish

1 reasonable proof of the interest or lien within a reasonable time.
2 Unless the holder complies, the secured party need not comply with
3 the holder's demand under Subdivision (1)(C).

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

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

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

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

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

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

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

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

27 (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

1 deficiency of the person to which the notification is sent;

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

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

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

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

13 (Name and address of secured party)

14 (Date)

15 NOTICE OF OUR PLAN TO SELL PROPERTY

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

17 Subject: (Identify transaction)

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

20 {1} We will sell (describe collateral) at public sale. A sale could
21 include a lease or license. The sale will be held as follows:

22 (Date)

23 (Time)

24 (Place)

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

26 {2} We will sell (describe collateral) at private sale sometime
27 after (date). A sale could include a lease or license.

1 {3} The money that we get from the sale, after paying our costs,
2 will reduce the amount you owe. If we get less money than you owe,
3 you (will or will not, as applicable) still owe us the difference.
4 If we get more money than you owe, you will get the extra money,
5 unless we must pay it to someone else.

6 {4} You can get the property back at any time before we sell it by
7 paying us the full amount you owe, not just the past due payments,
8 including our expenses. To learn the exact amount you must pay, call
9 us at (telephone number).

10 {5} If you want us to explain to you in (writing) (writing or in
11 (description of electronic record)) (description of electronic
12 record) how we have figured the amount that you owe us,

13 {6} call us at (telephone number) (or) (write us at (secured
14 party's address)) (or contact us by (description of electronic
15 communication method))

16 {7} and request (a written explanation) (a written explanation or
17 an explanation in (description of electronic record)) (an
18 explanation in (description of electronic record)).

19 {8} We will charge you \$ (amount) for the explanation if we sent you
20 another written explanation of the amount you owe us within the last
21 six months.

22 {9} If you need more information about the sale (call us at
23 (telephone number)) (or) (write us at (secured party's address))
24 (or contact us by (description of electronic communication
25 method)).

26 {10} We are sending this notice to the following other people who
27 have an interest in (describe collateral) or who owe money under

1 your agreement:
2 (Names of all other debtors and obligors, if any)
3 [_____ [Name and address of secured party]
4 [_____ [Date]
5 [NOTICE OF OUR PLAN TO SELL PROPERTY
6 [_____ [Name and address of any obligor who is also a
7 debtor]
8 [Subject: _____ [Identification of Transaction]
9 [We have your _____ [describe collateral], because you broke
10 promises in our agreement.
11 [For a public disposition:]
12 [We will sell _____ [describe collateral] at public sale. A
13 sale could include a lease or license. The sale will be held as
14 follows:
15 [Date: _____
16 [Time: _____
17 [Place: _____
18 [You may attend the sale and bring bidders if you want.
19 [For a private disposition:]
20 [We will sell _____ [describe collateral] at private sale
21 sometime after _____ [date]. A sale could include a lease or
22 license.
23 [The money that we get from the sale (after paying our costs) will
24 reduce the amount you owe. If we get less money than you owe, you
25 _____ [will or will not, as applicable] still owe us the
26 difference. If we get more money than you owe, you will get the
27 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] for 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] for 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

1 explanation is included in item {5} as a method for communicating
2 the explanation and the sender will charge the recipient for
3 another written explanation.

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

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

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

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

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

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

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

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

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

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

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

14 (a) In this section:

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

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

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

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

25 (D) provides a telephone number or mailing
26 address from which additional information concerning the
27 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

1 an obligation secured by specified collateral;

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

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

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

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

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

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

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

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

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

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

26 (4) Subsection (e) does not require the secured party
27 to dispose of the collateral or the debtor waives the requirement

1 pursuant to Section 9.624.

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

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

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

8 (c) For purposes of this section:

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

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

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

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

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

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

1 (1) within 90 days after taking possession; or

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

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

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

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

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

18 (A) identified the collateral;

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

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

24 (3) any other secured party that, 10 days before the
25 debtor consented to the acceptance, held a security interest in the
26 collateral perfected by compliance with a statute, regulation, or
27 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:

1 CHAPTER 12A. CONTROLLABLE ELECTRONIC RECORDS

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

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

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

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

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

19 (A) Section 201(a)(1) of the Electronic
20 Signatures in Global and National Commerce Act, 15 U.S.C. Section
21 7021(a)(1), as amended; or

22 (B) Section 322.016(a) of this code.

23 (4) "Value" has the meaning provided in Section
24 3.303(a), as if references in that subsection to an "instrument"
25 were references to a controllable account, controllable electronic
26 record, or controllable payment intangible.

27 (b) The definitions in Chapter 9 of "account debtor,"

1 "controllable account," "controllable payment intangible,"
2 "chattel paper," "deposit account," "electronic money," and
3 "investment property" apply to this chapter.

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

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

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

13 (1) Title 4, Finance Code; and

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

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

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

27 (c) Except as provided in this section, law other than this

1 chapter determines whether a person acquires a right in a
2 controllable electronic record and the right the person acquires.

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

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

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

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

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

27 Sec. 12A.105. CONTROL OF CONTROLLABLE ELECTRONIC RECORD.

1 (a) A person has control of a controllable electronic record if the
2 electronic record, a record attached to or logically associated
3 with the electronic record, or a system in which the electronic
4 record is recorded:

5 (1) gives the person:

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

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

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

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

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

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

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

1 (2) the power is shared with another person.

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

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

6 (2) the other person:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (4) identifies the transferee, in any reasonable way,
27 including by name, identifying number, cryptographic key, office,

1 or account number; and

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

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

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

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

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

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

22 (A) divide a payment;

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

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

27 (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

1 Subsection (b), the local law of a controllable electronic record's
2 jurisdiction governs a matter covered by this chapter.

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

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

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

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

23 (3) If Subdivisions (1) and (2) do not apply and the
24 controllable electronic record, or a record attached to or
25 logically associated with the controllable electronic record and
26 readily available for review, expressly provides that the
27 controllable electronic record is governed by the law of a

1 particular jurisdiction, that jurisdiction is the controllable
2 electronic record's jurisdiction.

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

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

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

19 (e) To the extent Subsections (a) and (b) provide that the
20 local law of the controllable electronic record's jurisdiction
21 governs a matter covered by this chapter, that law governs even if
22 the matter or a transaction to which the matter relates does not
23 bear any relation to the controllable electronic record's
24 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, 2027.

(2) "Amending act" means the Act of the 89th
Legislature, Regular Session, 2025, 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, 2025, 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, 2025.

(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, 2025, 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, 2025, including the rights, duties, and interests flowing from the transaction, lien, or interest, remains valid on and after September 1, 2025; 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.

1 (c) Notwithstanding any other provision of this chapter:

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

7 (2) control of a virtual currency accomplished under
8 repealed Chapter 12 constitutes control of a controllable
9 electronic record under Chapter 9, as amended by the amending act,
10 and Chapter 12A, as added by the amending act.

11 (d) The amending act does not affect an action, case, or
12 proceeding commenced before September 1, 2025.

13 Sec. 12B.302. SECURITY INTEREST PERFECTED BEFORE EFFECTIVE
14 DATE. (a) A security interest that is enforceable and perfected
15 immediately before September 1, 2025, is a perfected security
16 interest under this title, as amended by the amending act, if, on
17 September 1, 2025, the requirements for enforceability and
18 perfection under this title, as amended by the amending act, are
19 satisfied without further action.

20 (b) If a security interest is enforceable and perfected
21 immediately before September 1, 2025, but the requirements for
22 enforceability or perfection under this title, as amended by the
23 amending act, are not satisfied on September 1, 2025, the security
24 interest:

25 (1) is a perfected security interest until the earlier
26 of the time perfection would have ceased under the law in effect
27 immediately before September 1, 2025, or the adjustment date;

1 (2) remains enforceable thereafter only if the
2 security interest satisfies the requirements for enforceability
3 under Section 9.203, as amended by the amending act, before the
4 adjustment date; and

5 (3) remains perfected thereafter only if the
6 requirements for perfection under the title, as amended by the
7 amending act, are satisfied before the time specified in
8 Subdivision (1).

9 Sec. 12B.303. SECURITY INTEREST UNPERFECTED BEFORE
10 EFFECTIVE DATE. A security interest that is enforceable
11 immediately before September 1, 2025, but is unperfected at that
12 time:

13 (1) remains an enforceable security interest until the
14 adjustment date;

15 (2) remains enforceable thereafter if the security
16 interest becomes enforceable under Section 9.203, as amended by the
17 amending act, on September 1, 2025, or before the adjustment date;
18 and

19 (3) becomes perfected:

20 (A) without further action, on September 1, 2025,
21 if the requirements for perfection under this title, as amended by
22 the amending act, are satisfied before or at that time; or

23 (B) when the requirements for perfection are
24 satisfied if the requirements are satisfied after that time.

25 Sec. 12B.304. EFFECTIVENESS OF ACTION TAKEN BEFORE
26 EFFECTIVE DATE. (a) If action, other than the filing of a
27 financing statement, is taken before September 1, 2025, and the

1 action would have resulted in perfection of the security interest
2 had the security interest become enforceable before September 1,
3 2025, the action is effective to perfect a security interest that
4 attaches under this title, as amended by the amending act, before
5 the adjustment date. An attached security interest becomes
6 unperfected on the adjustment date unless the security interest
7 becomes a perfected security interest under this title, as amended
8 by the amending act, before the adjustment date.

9 (b) The filing of a financing statement before September 1,
10 2025, is effective to perfect a security interest on September 1,
11 2025, to the extent the filing would satisfy the requirements for
12 perfection under this title, as amended by the amending act.

13 (c) The taking of an action before September 1, 2025, is
14 sufficient for the enforceability of a security interest on
15 September 1, 2025, if the action would satisfy the requirements for
16 enforceability under this title, as amended by the amending act.

17 Sec. 12B.305. PRIORITY. (a) Subject to Subsections (b) and
18 (c), this title, as amended by the amending act, determines the
19 priority of conflicting claims to collateral.

20 (b) Subject to Subsection (c), if the priorities of claims
21 to collateral were established before September 1, 2025, Chapter 9,
22 as in effect immediately before September 1, 2025, determines
23 priority.

24 (c) On the adjustment date, to the extent the priorities
25 determined by Chapter 9, as amended by the amending act, modify the
26 priorities established before September 1, 2025, the priorities of
27 claims to Chapter 12A property and electronic money established

before September 1, 2025, 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, 2025, 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, 2025, the priorities of claims to Chapter 12A property established before September 1, 2025, 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, 2025.