

SENATE BILL NO. 401  
INTRODUCED BY J. LASLOVICH

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CHAPTER 1 AND CHAPTER 7 OF THE UNIFORM COMMERCIAL CODE; REVISING CHAPTER 1 TO REFLECT THE SCOPE OF THE CHAPTER, THE APPLICABILITY OF SUPPLEMENTAL PRINCIPLES OF LAW, THE CONCEPT OF GOOD FAITH, CHOICE OF LAW, THE RELEVANCE OF COURSE OF PERFORMANCE BETWEEN THE PARTIES, AND THE EXISTENCE OF AN INDEPENDENT STATUTE OF FRAUDS; REVISING CHAPTER 7, CONCERNING DOCUMENTS OF TITLE, TO REFLECT THE DEVELOPMENT OF ELECTRONIC DOCUMENTS OF TITLE; REVISING OTHER PROVISIONS TO REFLECT THE REVISIONS TO CHAPTER 1 AND CHAPTER 7; AMENDING SECTIONS 30-1-101, 30-1-102, 30-1-107, 30-1-201, 30-1-204, 30-1-205, 30-1-208, 30-1-209, 30-2-104, 30-2-310, 30-2-323, 30-2-401, 30-2-503, 30-2-506, 30-2-509, 30-2-605, 30-2-705, 30-2A-103, 30-2A-514, 30-2A-518, 30-2A-519, 30-2A-526, 30-2A-527, 30-2A-528, 30-3-102, 30-4-104, 30-4A-105, 30-4A-106, 30-5-123, 30-7-102, 30-7-103, 30-7-104, 30-7-201, 30-7-202, 30-7-203, 30-7-204, 30-7-205, 30-7-206, 30-7-207, 30-7-208, 30-7-209, 30-7-210, 30-7-301, 30-7-302, 30-7-303, 30-7-304, 30-7-305, 30-7-307, 30-7-308, 30-7-309, 30-7-401, 30-7-402, 30-7-403, 30-7-404, 30-7-501, 30-7-502, 30-7-503, 30-7-504, 30-7-506, 30-7-507, 30-7-508, 30-7-509, 30-7-601, 30-7-602, 30-7-603, 30-8-113, 30-9A-102, 30-9A-203, 30-9A-207, 30-9A-208, 30-9A-301, 30-9A-310, 30-9A-312, 30-9A-313, 30-9A-314, 30-9A-317, 30-9A-338, 30-9A-601, 30-18-103, 30-18-115, 45-6-315, AND 71-3-125, MCA; REPEALING SECTIONS 30-1-105, 30-1-110, 30-1-111, 30-1-206, 30-7-105, 30-7-701, 30-7-702, 30-7-703, 30-7-704, 30-7-705, AND 30-7-706, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

**Section 1.** Section 30-1-101, MCA, is amended to read:

**"30-1-101. Short title titles -- scope of chapter.** (1) Chapters 1 through 9A of this title ~~shall be known and~~ may be cited as Uniform Commercial Code.

(2) As used in chapters 1 through 9A of this title "code" means "Uniform Commercial Code" unless the context indicates otherwise.

(3) This chapter may be cited as the Uniform Commercial Code - General Provisions.

(4) This chapter applies to a transaction to the extent that it is not governed by chapters 2 through 5, 7, 8, and 9A of this title."

**Section 2.** Section 30-1-102, MCA, is amended to read:

**"30-1-102. Purposes -- rules of construction --~~variation by agreement.~~** (1) This code ~~shall~~ must be liberally construed and applied to promote its underlying purposes and policies:

~~——(2) Underlying purposes and policies of this code, which~~ are:

(a) to simplify, clarify, and modernize the law governing commercial transactions;

(b) to permit the continued expansion of commercial practices through custom, usage, and agreement of the parties;

(c) to make uniform the law among the various jurisdictions.

~~(3) The effect of provisions of this code may be varied by agreement, except as otherwise provided in this code and except that the obligations of good faith, diligence, reasonableness and care prescribed by this code may not be disclaimed by agreement but the parties may by agreement determine the standards by which the performance of such obligations are to be measured if such standards are not manifestly unreasonable.~~

~~——(4) The presence in certain provisions of this code of the words "unless otherwise agreed" or words of similar import does not imply that the effect of other provisions may not be varied by agreement under subsection (3).~~

~~(5)~~(2) In this code unless the context otherwise requires:

(a) words in the singular number include the plural, and in the plural include the singular;

(b) words of the masculine gender include the feminine and the neuter, and when the sense so indicates words of the neuter gender may refer to any gender."

**Section 3.** Section 30-1-107, MCA, is amended to read:

**"30-1-107. Waiver or renunciation of claim or right after breach.** ~~Any~~ A claim or right arising out of an alleged breach ~~can~~ may be discharged in whole or in part without consideration by ~~a written waiver or renunciation signed and delivered by agreement of the aggrieved party in an authenticated record.~~"

**Section 4.** Section 30-1-201, MCA, is amended to read:

**"30-1-201. General definitions.** (1) Unless the context requires otherwise, words or phrases defined in this section, or in the additional definitions contained in other chapters of the code that apply to particular chapters or parts of chapters, have the meanings stated.

(2) Subject to additional definitions contained in the subsequent other chapters of this code that are applicable apply to specific chapters or parts thereof of chapters, and unless the context otherwise requires, in

this code:

~~(1)(a)~~ "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, setoff, suit in equity, and any other ~~proceedings~~ proceeding in which rights are determined.

~~(2)(b)~~ "Aggrieved party" means a party entitled to ~~resort to~~ pursue a remedy.

~~(3)(c)~~ "Agreement" means the bargain of the parties in fact, as found in their language or ~~by implication~~ inferred from other circumstances, including course of performance, course of dealing, or usage of trade ~~or course of performance~~ as provided in this code ~~(30-1-205 and 30-2-208)~~. Whether an agreement has legal consequences is determined by the provisions of this code, if applicable; otherwise by the law of contracts ~~(30-1-103)~~.

~~(d)~~ "Authenticate" means to:

~~(i)~~ sign; or

~~(ii)~~ execute or adopt a symbol, or encrypt a record in whole or in part, with present intent to:

~~(A)~~ identify the authenticating party; and

~~(B)~~ adopt, accept, or establish the authenticity of a record or term.

~~(4)(e)~~ "Bank" means any person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company.

~~(5)(f)~~ "Bearer" means ~~the~~ a person in control of a negotiable electronic document of title or a person in possession of an a negotiable instrument, negotiable tangible document of title, or certificated security payable to bearer or endorsed in blank.

~~(6)(g)~~ ~~(i)~~ "Bill of lading" means a document of title evidencing the receipt of goods for shipment issued by a person engaged in the business of directly or indirectly transporting or forwarding goods, ~~and includes an airbill~~. "Airbill" ~~means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.~~

~~(ii)~~ The term does not include a warehouse receipt.

~~(7)(h)~~ "Branch" includes a separately incorporated foreign branch of a bank.

~~(8)(i)~~ "Burden of establishing" a fact means the burden of persuading the ~~triers~~ trier of fact that the existence of the fact is more probable than its nonexistence.

~~(9)(j)~~ "Buyer in ordinary course of business" means a person that buys goods, in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business

in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas, or other ~~mineral~~ minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under chapter 2 may be a buyer in ordinary course of business. A person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt is not a buyer in ordinary course of business.

~~(10)(k)~~ "Conspicuous": ~~A with reference to a term, or clause is conspicuous when it is~~ means so written, displayed, or presented that a reasonable person against ~~whom~~ which it is to operate ought to have noticed it. ~~A printed heading in capitals (as: Non-Negotiable Bill of Lading) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous". Whether a term or clause is "conspicuous" or not is for decision by the court. Conspicuous terms include the following:~~

(i) 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

(ii) 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.

(l) "Consumer" means an individual who enters into a transaction primarily for personal, family, or household purposes.

~~(11)(m)~~ "Contract" means the total legal obligation ~~which~~ that results from the parties' agreement as affected by this code and as supplemented by any other applicable rules of law.

~~(12)(n)~~ "Creditor" includes a general creditor, a secured creditor, a lien creditor, and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity, and an executor or administrator of an insolvent debtor's or assignor's estate.

~~(13)(o)~~ "Defendant" includes a person in the position of defendant in a ~~cross-action or~~ counterclaim or third party claim.

~~(14)(p)~~ "Delivery" with respect to an electronic document of title means voluntary transfer of control and with respect to instruments, tangible documents of title, or chattel paper; or ~~certificated securities~~ means voluntary transfer of possession.

~~(15)(q)~~ (i) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or

order for the delivery of goods, and also any other document which means a record:

(A) that in the regular course of business or financing is treated as adequately evidencing that the person in possession or control of it the record is entitled to receive, control, hold, and dispose of the document record and the goods it the record covers; and

(B) that purports to be issued by or addressed to a bailee and to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass. To be a document of title, a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

(ii) The term includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt, and order for delivery of goods. An electronic document of title is evidenced by a record consisting of information stored in an electronic medium. A tangible document of title is evidenced by a record consisting of information that is inscribed on a tangible medium.

~~(16)(r)~~ "Fault" means wrongful act, omission, or breach, or default.

~~(17)(s)~~ "Fungible" with respect to "Fungible goods" or securities means:

(i) goods or securities of which any unit is, by nature or usage of trade, is the equivalent of any other like unit; or. Goods which are not fungible shall be deemed fungible for the purposes of this code to the extent that under a particular

(ii) goods which by agreement or document unlike units are treated as equivalents equivalent.

~~(18)(t)~~ "Genuine" means free of forgery or counterfeiting.

~~(19)(u)~~ "Good faith", except as otherwise provided in chapter 5, means honesty in fact in the conduct of transaction concerned and the observance of reasonable commercial standards of fair dealing.

~~(20)(v)~~ "Holder"; with respect to a means:

~~(a)(i)~~ negotiable instrument, means the person in possession if the of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession;

~~(b)~~ certified security, means the person in possession is the registered owner, the security has been indorsed to the person in possession by the registered owner, or the security is in bearer form; or

~~(c)(ii)~~ a person in possession of a negotiable tangible document of title, means the person in possession if the goods are deliverable either to bearer or to the order of the person in possession; or

(iii) a person in control of a negotiable electronic document of title.

~~(21)~~ To "honor" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

~~(22)(w)~~ "Insolvency proceedings" includes ~~any~~ an assignment for the benefit of creditors or other ~~proceedings proceeding~~ intended to liquidate or rehabilitate the estate of the person involved.

~~(23)(x)~~ "Insolvent" means:

~~(i)~~ A person is "insolvent" who either has having generally ceased to pay his debts in the ordinary course of business other than as a result of bona fide dispute;

~~(ii)~~ ~~or cannot~~ unable to pay his debts as they become due; or

~~(iii)~~ is insolvent within the meaning of the federal bankruptcy law.

~~(24)(y)~~ "Money" means a medium of exchange currently authorized or adopted by a domestic or foreign government. The term includes a monetary unit of account established by an ~~or~~ intergovernmental organization or by agreement between two or more countries.

~~(25)~~ A person has "notice" of a fact when:

~~—— (a) he has actual knowledge of it; or~~

~~—— (b) he has received a notice or notification of it; or~~

~~—— (c) from all the facts and circumstances known to him at the time in question he has reason to know that it exists. A person "knows" or has "knowledge" of a fact when he has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this code.~~

~~—— (26)~~ A person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person "receives" a notice or notification when:

~~—— (a) it comes to his attention; or~~

~~—— (b) it is duly delivered at the place of business through which the contract was made or at any other place held out by him as the place for receipt of such communications.~~

~~—— (27)~~ Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

~~(28)(z)~~ "Organization" ~~includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity~~ means a person other than an individual.

~~(29)(aa)~~ "Party", as distinct from "third party", ~~means a person who~~ that has engaged in a transaction or made an agreement ~~within~~ subject to this code.

~~(30)(bb)~~ "Person" ~~includes~~ means an individual, ~~or an organization~~ corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

~~(31)(cc)~~ "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

~~(32)(dd)~~ "Purchase" ~~includes~~ means taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.

~~(33)(ee)~~ "Purchaser" means a person ~~who~~ that takes by purchase.

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

~~(34)(gg)~~ "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

~~(35)(hh)~~ "Representative" ~~includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or~~ means any other person empowered to act for another, including an agent, an officer of a corporation or association, and a trustee, executor, or administrator of an estate.

~~(36)(ii)~~ "Rights" "Right" ~~includes remedies~~ a remedy.

~~(37)(jj)~~ ~~(a)~~ "Security interest" means an interest in personal property or fixtures ~~that~~ which secures payment or performance of an obligation. The term also includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to chapter 9A. The special property interest of a buyer of goods on identification of those goods to a contract for sale under 30-2-401 is not a "security interest", but a buyer may also acquire a "security interest" by complying with chapter 9A. Except as otherwise provided in 30-2-505, the right of a seller or lessor of goods under chapter 2 or 2A to retain or acquire possession of the goods is not a "security interest", but a seller or lessor may also acquire a "security interest" by complying with chapter 9A. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (30-2-401) is limited in effect to a reservation of a "security interest". Whether a transaction ~~creates in the form of a lease or security interest is determined by the facts of~~

each case; however, a transaction creates a "security interest" if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee and:

- ~~\_\_\_\_\_ (i) the original term of the lease is equal to or greater than the remaining economic life of the goods;~~
- ~~\_\_\_\_\_ (ii) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;~~
- ~~\_\_\_\_\_ (iii) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement; or~~
- ~~\_\_\_\_\_ (iv) the lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement is determined pursuant to [section 10].~~

(b) A transaction does not create a security interest merely because it provides that:

- ~~\_\_\_\_\_ (i) the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;~~
- ~~\_\_\_\_\_ (ii) the lessee assumes risk of loss of the goods or agrees to pay taxes, insurance, filing, recording, or registration fees or service or maintenance costs with respect to the goods;~~
- ~~\_\_\_\_\_ (iii) the lessee has an option to renew the lease or to become the owner of the goods;~~
- ~~\_\_\_\_\_ (iv) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market value for the use of the goods for the term of the renewal at the time the option is to be performed; or~~
- ~~\_\_\_\_\_ (v) the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.~~
- ~~\_\_\_\_\_ (c) For purposes of this subsection (37):~~
  - ~~\_\_\_\_\_ (i) additional consideration is not nominal if:~~
    - ~~\_\_\_\_\_ (A) when the option to renew the lease is granted to the lessee, the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed; or~~
    - ~~\_\_\_\_\_ (B) when the option to become the owner of the goods is granted to the lessee, the price is stated to be the fair market value of the goods determined at the time the option is to be performed;~~
  - ~~\_\_\_\_\_ (ii) additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised;~~
  - ~~\_\_\_\_\_ (iii) "reasonably predictable" and "remaining economic life of the goods" are to be determined with~~



reference to the facts and circumstances at the time the transaction is entered into; and

~~—— (iv) "present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.~~

~~(38)(kk)~~ "Send" in connection with any a writing, record, or notice means:

~~(i) to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed, and in the case of an instrument, to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances; or. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending~~

~~(ii) in any other way to cause to be received any record or notice within the time it would have arrived if properly sent.~~

~~(39)(ll)~~ "Signed" includes any symbol executed or adopted ~~by a party~~ with present intention to authenticate adopt or accept a writing.

~~(40)(mm)~~ "Surety" includes a guarantor or other secondary obligor.

~~(41) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.~~

~~(42)(nn)~~ "Term" means ~~that~~ a portion of an agreement which that relates to a particular matter.

~~(43)(oo)~~ "Unauthorized" signature means ~~one~~ a signature made without actual, implied, or apparent authority. ~~and~~ The term includes a forgery.

~~(44) "Value". Except as otherwise provided with respect to negotiable instruments and bank collections (30-3-303, 30-4-208, and 30-4-209), a person gives "value" for rights if he acquires them:~~

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

~~—— (b) as security for or in total or partial satisfaction of a preexisting claim; or~~

~~—— (c) by accepting delivery pursuant to a preexisting contract for purchase; or~~

~~—— (d) generally, in return for any consideration sufficient to support a simple contract.~~

~~(45)(pp)~~ "Warehouse receipt" means a ~~receipt~~ document of title issued by a person engaged in the

business of storing goods for hire.

~~(46)(qq)~~ "Written" or "writing" "Writing" includes printing, typewriting, or any other intentional reduction to tangible form. "Written" has a corresponding meaning."

**Section 5.** Section 30-1-204, MCA, is amended to read:

**"30-1-204. Time -- reasonable Reasonable time -- "seasonably" seasonableness.** (1) ~~Whenever~~ Whether a time for taking an action required by this code requires any action to be taken within a reasonable time, any time which is not manifestly unreasonable may be fixed by agreement.

~~— (2) What is a reasonable time for taking any action depends on the nature, purpose, and circumstances of such the action.~~

~~(3)(2)~~ An action is taken "seasonably" ~~when~~ if it is taken at or within the time agreed or, if no time is agreed, at or within a reasonable time."

**Section 6.** Section 30-1-205, MCA, is amended to read:

**"30-1-205. Course of performance, course of dealing, and usage of trade.** (1) A "course of performance" is a sequence of conduct between the parties to a particular transaction that exists if:

(a) the agreement of the parties with respect to the transaction involves repeated occasions for performance by a party; and

(b) the other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection.

~~(1)(2)~~ A "course of dealing" is a sequence of ~~previous~~ conduct concerning previous transactions between the parties to a particular transaction ~~which~~ that is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

~~(2)(3)~~ A "usage of trade" is any practice or method of dealing having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage are to be proved as facts. If it is established that such a usage is embodied in a ~~written~~ trade code or similar ~~writing~~ record, the interpretation of the ~~writing~~ record is ~~for the court~~ a question of law.

~~(3)(4)~~ A course of performance or course of dealing between the parties and any or usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware ~~give particular~~ is relevant in ascertaining the meaning to and supplement or qualify terms of an of the parties' agreement and may

supplement or qualify the terms of the agreement. A usage of trade applicable in the place in which part of the performance under the agreement is to occur may be so utilized as to that part of the performance.

~~(4)(5) The~~ Except as otherwise provided in subsection (6), the express terms of an agreement and an any applicable course of performance, course of dealing, or usage of trade shall must be construed wherever reasonable as consistent with each other, but when if such a construction is unreasonable:

(a) express terms control both prevail over course of performance, course of dealing, and usage of trade;

(b) course of performance prevails over course of dealing and usage of trade; and

(c) course of dealing controls prevails over usage of trade.

~~(5)(6) An applicable usage of trade in the place where any part of performance is to occur shall be used in interpreting the agreement as to that part~~ Subject to 30-2-209, a course of performance is relevant to show a waiver or modification of any term inconsistent with the course of the performance.

~~(6)(7) Evidence of a relevant usage of trade offered by one party is not admissible unless and until he that party has given the other party such notice as that the court finds sufficient to prevent unfair surprise to the latter other party."~~

**Section 7.** Section 30-1-208, MCA, is amended to read:

**"30-1-208. Option to accelerate at will.** A term providing that one party or ~~his~~ that party's successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or "when ~~he the party~~ "deems himself itself insecure" or in words of similar import, ~~shall be construed to mean that he shall have~~ means that the party has power to do so only if ~~he~~ that party in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against ~~whom~~ which the power has been exercised."

**Section 8.** Section 30-1-209, MCA, is amended to read:

**"30-1-209. Subordinated obligations.** An obligation may be issued as subordinated to ~~payment performance~~ performance of another obligation of the person obligated, or a creditor may subordinate ~~his~~ its right to ~~payment performance~~ performance of an obligation by agreement with either the person obligated or another creditor of the person obligated. ~~Such a subordination~~ Subordination does not create a security interest as against either the common debtor or a subordinated creditor. ~~This section shall be construed as declaring the law as it existed prior to the enactment of this section and not as modifying it."~~

**NEW SECTION. Section 9. Notice -- knowledge.** (1) Subject to subsection (6), a person has "notice" of a fact if the person:

- (a) has actual knowledge of it;
- (b) has received a notice or notification of it; or
- (c) from all the facts and circumstances known to the person at the time in question, has reason to know that it exists.

(2) "Knowledge" means actual knowledge.

(3) "Discover", "learn", or words of similar import refer to knowledge rather than to notice.

(4) A person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course, whether or not the other person actually comes to know of it.

(5) Subject to subsection (6), a person "receives" a notice or notification when:

- (a) it comes to that person's attention; or
- (b) it is duly delivered in a form reasonable under the circumstances at the place of business through which the contract was made or at another location held out by that person as the place for receipt of such communications.

(6) Notice, knowledge, or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and, in any event, from the time it would have been brought to the individual's attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

**NEW SECTION. Section 10. Lease distinguished from security interest.** (1) Whether a transaction in the form of a lease creates a lease or security interest is determined by the facts of each case.

(2) A transaction in the form of a lease creates a security interest if the consideration that the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease and is not subject to termination by the lessee and:

- (a) the original term of the lease is equal to or greater than the remaining economic life of the goods;

(b) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

(c) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement; or

(d) the lessee has an option to become the owner of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement.

(3) A transaction in the form of a lease does not create a security interest merely because:

(a) the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;

(b) the lessee assumes risk of loss of the goods;

(c) the lessee agrees to pay taxes, insurance, filing, recording, or registration fees, or service or maintenance costs with respect to the goods;

(d) the lessee has an option to renew the lease or to become the owner of the goods;

(e) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed; or

(f) the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

(4) Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised. Additional consideration is not nominal if:

(a) when the option to renew the lease is granted to the lessee, the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed; or

(b) when the option to become the owner of the goods is granted to the lessee, the price is stated to be the fair market value of the goods determined at the time the option is to be performed.

(c) The "remaining economic life of the goods" and "reasonably predictable" fair market rent, fair market value, or cost of performing under the lease agreement must be determined with reference to the facts and circumstances at the time the transaction is entered into.

**NEW SECTION. Section 11. Value.** Except as otherwise provided in chapters 3 through 5, a person gives value for rights if the person acquires them:

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

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

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

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

**NEW SECTION. Section 12. Territorial applicability -- parties power to choose applicable law.** (1)

Except as otherwise provided in this section, when a transaction bears a reasonable relation to this state and also to another state or nation, the parties may agree that the law either of this state or of the other state or nation shall govern their rights and duties.

(2) In the absence of an agreement effective under subsection (1) and except as provided in subsection (3), this code applies to transactions bearing an appropriate relation to this state.

(3) If one of the following provisions of this code specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law so specified:

(a) Section 30-2-402;

(b) Sections 30-2A-105 and 30-2A-106;

(c) Section 30-4-102;

(d) Section 30-4A-507;

(e) Sections 30-9A-301 through 30-9A-307.

**NEW SECTION. Section 13. Variation by agreement.** (1) Except as otherwise provided in subsection (2) or elsewhere in this code, the effect of provisions of this code may be varied by agreement.

(2) The obligations of good faith, diligence, reasonableness, and care prescribed by this code may not be disclaimed by agreement. The parties, by agreement, may determine the standards by which the performance of those obligations is to be measured if those standards are not manifestly unreasonable. Whenever this code requires any action to be taken within a reasonable time, any time which is not manifestly unreasonable may be fixed by agreement.

(3) The presence in certain provisions of this code of the phrase "unless otherwise agreed", or words of similar import, does not imply that the effect of other provisions may not be varied by agreement under this section.

**Section 14.** Section 30-2-104, MCA, is amended to read:

**"30-2-104. Definitions -- "merchant" -- "between merchants" -- "financing agency".** (1) "Merchant" means a person ~~who that~~ deals in goods of the kind or otherwise ~~by his occupation holds himself out~~ is held out by occupation as having knowledge or skill peculiar to the practices or goods involved in the transaction or to ~~whom such~~ which the knowledge or skill may be attributed by ~~his~~ the person's employment of an agent or broker or other intermediary ~~who by his occupation holds himself~~ that is held out by occupation as having ~~such the~~ knowledge or skill.

(2) "Financing agency" means a bank, finance company or other person ~~who that~~ in the ordinary course of business makes advances against goods or documents of title or ~~who that~~ by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller's draft or making advances against it or by merely taking it for collection whether or not documents of title accompany or are associated with the draft. "Financing agency" includes also a bank or other person ~~who that~~ similarly intervenes between persons ~~who that~~ are in the position of seller and buyer in respect to the goods (30-2-707).

(3) "Between merchants" means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants."

**Section 15.** Section 30-2-310, MCA, is amended to read:

**"30-2-310. Open time for payment or running of credit -- authority to ship under reservation.**

Unless otherwise agreed:

(a) payment is due at the time and place at which the buyer is to receive the goods even though the place of shipment is the place of delivery; and

(b) if the seller is authorized to send the goods ~~he~~ the seller may ship them under reservation, and may tender the documents of title, but the buyer may inspect the goods after their arrival before payment is due unless such inspection is inconsistent with the terms of the contract (30-2-513); and

(c) if delivery is authorized and made by way of documents of title otherwise than by subsection (b) then payment is due regardless of where the goods are to be received:

(i) at the time and place at which the buyer is to receive delivery of the tangible documents ~~regardless of where the goods are to be received;~~

(ii) at the time the buyer is to receive delivery of the electronic documents and at the seller's place of business or, if none, the seller's residence; and

(d) where the seller is required or authorized to ship the goods on credit the credit period runs from the time of shipment but postdating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period."

**Section 16.** Section 30-2-323, MCA, is amended to read:

**"30-2-323. Form of bill of lading required in overseas shipment -- "overseas".** (1) Where the contract contemplates overseas shipment and contains a term C.I.F. or C.&F. or F.O.B. vessel, the seller unless otherwise agreed must obtain a negotiable bill of lading stating that the goods have been loaded on board or, in the case of a term C.I.F. or C.&F., received for shipment.

(2) Where in a case within subsection (1) a tangible bill of lading has been issued in a set of parts, unless otherwise agreed if the documents are not to be sent from abroad the buyer may demand tender of the full set; otherwise only one part of the bill of lading need be tendered. Even if the agreement expressly requires a full set:

(a) due tender of a single part is acceptable within the provisions of this chapter on cure of improper delivery (subsection (1) of 30-2-508); and

(b) even though the full set is demanded, if the documents are sent from abroad the person tendering an incomplete set may nevertheless require payment upon furnishing an indemnity which the buyer in good faith deems adequate.

(3) A shipment by water or by air or a contract contemplating such shipment is "overseas" insofar as by usage of trade or agreement it is subject to the commercial, financing or shipping practices characteristic of international deep water commerce."

**Section 17.** Section 30-2-401, MCA, is amended to read:

**"30-2-401. Passing of title -- reservation for security -- limited application of this section.** Each provision of this chapter with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this chapter and matters concerning title become material the following rules apply:

(1) Title to goods cannot pass under a contract for sale prior to their identification to the contract (30-2-501), and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by this code. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the



provisions of the Chapter on Secured Transactions (Chapter 9A), title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

(2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference to the ~~physical~~ delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading:

(a) if the contract requires or authorizes the seller to send the goods to the buyer but does not require ~~him the seller~~ to deliver them at destination, title passes to the buyer at the time and place of shipment; but

(b) if the contract requires delivery at destination, title passes on tender there.

(3) Unless otherwise explicitly agreed where delivery is to be made without moving the goods,

(a) if the seller is to deliver a tangible document of title, title passes at the time when and the place where ~~he the seller~~ delivers such documents and if the seller is to deliver an electronic document of title, title passes when the seller delivers the document; or

(b) if the goods are at the time of contracting already identified and no documents of title are to be delivered, title passes at the time and place of contracting.

(4) For transactions involving interstate shipment of cattle or cattle being released from auction yards for interstate shipment the seller may issue a regular title or bill of sale, or give a conditional transfer of title or bill of sale. The conditional transfer of title or bill of sale is fully validated and the title passes when the following conditions are met:

(a) the bank on which the buyer's warrant, check, or draft was drawn notifies the seller, or his designated bank, that the instrument of payment has cleared the bank for payment; and

(b) a copy of the notification from the buyer's bank is attached to the conditional transfer of title or bill of sale.

(5) A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance ~~reverts~~ retests title to the goods in the seller. Such ~~reverting~~ recessing occurs by operation of law and is not a "sale".

**Section 18.** Section 30-2-503, MCA, is amended to read:

**"30-2-503. Manner of seller's tender of delivery.** (1) Tender of delivery requires that the seller put and hold conforming goods at the buyer's disposition and give the buyer any notification reasonably necessary to enable ~~him~~ the buyer to take delivery. The manner, time and place for tender are determined by the agreement

and this chapter, and in particular:

(a) tender must be at a reasonable hour, and if it is of goods they must be kept available for the period reasonably necessary to enable the buyer to take possession; but

(b) unless otherwise agreed the buyer must furnish facilities reasonably suited to the receipt of the goods.

(2) Where the case is within the next section respecting shipment tender requires that the seller comply with its provisions.

(3) Where the seller is required to deliver at a particular destination tender requires that ~~he~~ the seller comply with subsection (1) and also in any appropriate case tender documents as described in subsections (4) and (5) of this section.

(4) Where goods are in the possession of a bailee and are to be delivered without being moved:

(a) tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgment by the bailee of the buyer's right to possession of the goods; but

(b) tender to the buyer of a nonnegotiable document of title or of a ~~written direction to~~ record directing the bailee to deliver is sufficient tender unless the buyer seasonably objects, and except as otherwise provided in chapter 9A receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the nonnegotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

(5) Where the contract requires the seller to deliver documents:

(a) ~~he the seller~~ must tender all such documents in correct form; ~~except as provided in this chapter with respect to bills of lading in a set (subsection (2) of 30-2-323); and~~

(b) tender through customary banking channels is sufficient and dishonor of a draft accompanying the documents constitutes nonacceptance or rejection."

**Section 19.** Section 30-2-506, MCA, is amended to read:

**"30-2-506. Rights of financing agency.** (1) A financing agency by paying or purchasing for value a draft which relates to a shipment of goods acquires to the extent of the payment or purchase and in addition to its own rights under the draft and any document of title securing it any rights of the shipper in the goods including the right to stop delivery and the shipper's right to have the draft honored by the buyer.

(2) The right to reimbursement of a financing agency which has in good faith honored or purchased the draft under commitment to or authority from the buyer is not impaired by subsequent discovery of defects with reference to any relevant document which was apparently regular ~~on its face.~~"

**Section 20.** Section 30-2-509, MCA, is amended to read:

**"30-2-509. Risk of loss in the absence of breach.** (1) Where the contract requires or authorizes the seller to ship the goods by carrier:

(a) if it does not require ~~him~~ the seller to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are ~~duty~~ delivered to the carrier even though the shipment is under reservation (30-2-505); but

(b) if it does require ~~him~~ the seller to deliver them at a particular destination and the goods are there ~~duty~~ tendered while in the possession of the carrier, the risk of loss passes to the buyer when the goods are there ~~duty~~ so tendered as to enable the buyer to take delivery.

(2) Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer:

(a) on ~~his~~ the buyer's receipt of possession or control of a negotiable document of title covering the goods; or

(b) on acknowledgment by the bailee of the buyer's right to possession of the goods; or

(c) after his receipt of possession or control of a nonnegotiable document of title or other ~~written~~ direction to deliver in a record, as provided in subsection (4)(b) of 30-2-503.

(3) In any case not within subsection (1) or (2), the risk of loss passes to the buyer on ~~his~~ the buyer's receipt of the goods if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery.

(4) The provisions of this section are subject to contrary agreement of the parties and to the provisions of this chapter on sale on approval (30-2-327) and on effect of breach on risk of loss (30-2-510)."

**Section 21.** Section 30-2-605, MCA, is amended to read:

**"30-2-605. Waiver of buyer's objections by failure to particularize.** (1) The buyer's failure to state in connection with rejection a particular defect which is ascertainable by reasonable inspection precludes ~~him~~ the buyer from relying on the unstated defect to justify rejection or to establish breach:

(a) where the seller could have cured it if stated seasonably; or

(b) between merchants when the seller has after rejection made a request in writing for a full and final

written statement of all defects on which the buyer proposes to rely.

(2) Payment against documents made without reservation of rights precludes recovery of the payment for defects apparent ~~on the face of~~ in the documents."

**Section 22.** Section 30-2-705, MCA, is amended to read:

**"30-2-705. Seller's stoppage of delivery in transit or otherwise.** (1) The seller may stop delivery of goods in the possession of a carrier or other bailee when ~~he~~ the seller discovers the buyer to be insolvent (30-2-702) and may stop delivery of carload, truckload, planeload or larger shipments of express or freight when the buyer repudiates or fails to make a payment due before delivery or if for any other reason the seller has a right to withhold or reclaim the goods.

(2) As against such buyer the seller may stop delivery until:

(a) receipt of the goods by the buyer; or  
 (b) acknowledgment to the buyer by any bailee of the goods except a carrier that the bailee holds the goods for the buyer; or

(c) such acknowledgment to the buyer by a carrier by reshipment or as ~~warehouseman~~ a warehouse;  
 or

(d) negotiation to the buyer of any negotiable document of title covering the goods.

(3) (a) To stop delivery the seller must so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After such notification the bailee must hold and deliver the goods according to the directions of the seller but the seller is liable to the bailee for any ensuing charges or damages.

(c) If a negotiable document of title has been issued for goods the bailee is not obliged to obey a notification to stop until surrender of possession or control of the document.

(d) A carrier ~~who~~ that has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor."

**Section 23.** Section 30-2A-103, MCA, is amended to read:

**"30-2A-103. Definitions and index of definitions.** (1) In this chapter, unless the context otherwise requires, the following definitions apply:

(a) "Buyer in ordinary course of business" means a person, who in good faith and without knowledge that the sale to the buyer is in violation of the ownership rights or security interest or leasehold interest of a third

party in the goods, buys in ordinary course from a person in the business of selling goods of that kind, but the term does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes ~~receiving~~ acquiring goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(b) "Cancellation" occurs when either party puts an end to the lease contract for default by the other party.

(c) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine; a set of articles, as a suite of furniture or a line of machinery; a quantity, as a gross or carload; or any other unit treated in use or in the relevant market as a single whole.

(d) "Conforming" goods or performance under a lease contract means goods or performance that is in accordance with the obligations under the lease contract.

(e) "Consumer lease" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual and who takes under the lease primarily for a personal, family, or household purpose if the total payments to be made under the lease contract, excluding payments for options to renew or buy, do not exceed \$25,000.

(f) "Fault" means wrongful act, omission, breach, or default.

(g) "Finance lease" means a lease with respect to which:

(i) the lessor does not select, manufacture, or supply the goods;

(ii) the lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and

(iii) one of the following occurs:

(A) the lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;

(B) the lessee's approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract;

(C) the lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; or

(D) if the lease is not a consumer lease, the lessor, before the lessee signs the lease contract, informs the lessee in writing:

(I) of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person;

(II) that the lessee is entitled under this chapter to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; and

(III) that the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.

(h) "Goods" means all things that are movable at the time of identification to the lease contract, or are fixtures (30-2A-309), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

(i) "Installment lease contract" means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause "each delivery is a separate lease" or its equivalent.

(j) "Lease" means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

(k) "Lease agreement" means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances, including course of dealing or usage of trade or course of performance as provided in this chapter. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

(l) "Lease contract" means the total legal obligation that results from the lease agreement as affected by this chapter and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.

(m) "Leasehold interest" means the interest of the lessor or the lessee under a lease contract.

(n) "Lessee" means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a ~~sublessee~~ sublease.

(o) "Lessee in ordinary course of business" means a person, who in good faith and without knowledge that the lease to him is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, leases in ordinary course from a person in the business of selling or leasing goods of that kind, but the term does not include a pawnbroker. "Leasing" may be for cash or by exchange of other property or on secured or unsecured credit and includes ~~receiving~~ acquiring goods or documents of title under a preexisting lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(p) "Lessor" means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

(q) "Lessor's residual interest" means the lessor's interest in the goods after expiration, termination, or cancellation of the lease contract.

(r) "Lien" means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.

(s) "Lot" means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.

(t) "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind subject to the lease.

(u) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(v) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods.

(w) "Sublease" means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.

(x) "Supplier" means a person from whom a lessor buys or leases goods to be leased under a finance lease.

(y) "Supply contract" means a contract under which a lessor buys or leases goods to be leased.

(z) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

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

- (a) "Accessions". 30-2A-310(1).
- (b) "Construction mortgage". 30-2A-309(1)(d).
- (c) "Encumbrance". 30-2A-309(1)(e).
- (d) "Fixtures". 30-2A-309(1)(a).
- (e) "Fixture filing". 30-2A-309(1)(b).
- (f) "Purchase money lease". 30-2A-309(1)(c).

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

- (a) "Account". 30-9A-102(1)(b).
- (b) "Between merchants". 30-2-104(3).
- (c) "Buyer". 30-2-103(1)(a).
- (d) "Chattel paper". 30-9A-102(1)(k).
- (e) "Consumer goods". 30-9A-102(1)(w).
- (f) "Document". 30-9A-102(1)(dd).
- (g) "Entrusting". 30-2-403(3).
- (h) "General intangible". 30-9A-102(1)(pp).
- (i) "Good faith". 30-2-103(1)(b).
- (j) "Instrument". 30-9A-102(1)(uu).
- (k) "Merchant". 30-2-104(1).
- (l) "Mortgage". 30-9A-102(1)(ccc).
- (m) "Pursuant to commitment". 30-9A-102(1)(ppp).
- (n) "Receipt". 30-2-103(1)(c).
- (o) "Sale". 30-2-106(1).
- (p) "Sale on approval". 30-2-326.
- (q) "Sale or return". 30-2-326.
- (r) "Seller". 30-2-103(1)(d).

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

**Section 24.** Section 30-2A-514, MCA, is amended to read:

**"30-2A-514. Waiver of lessee's objections.** (1) In rejecting goods, a lessee's failure to state a particular



defect that is ascertainable by reasonable inspection precludes the lessee from relying on the defect to justify rejection or to establish default:

(a) if, stated seasonably, the lessor or the supplier could have cured it (30-2A-513); or

(b) between merchants if the lessor or the supplier after rejection has made a request in writing for a full and final written statement of all defects on which the lessee proposes to rely.

(2) A lessee's failure to reserve rights when paying rent or other consideration against documents precludes recovery of the payment for defects apparent ~~on the face of~~ in the documents."

**Section 25.** Section 30-2A-518, MCA, is amended to read:

**"30-2A-518. Cover -- substitute goods.** (1) After a default by a lessor under the lease contract of the type described in 30-2A-508(1) or, if agreed, after other default by the lessor, the lessee may cover by making any purchase or lease of or contract to purchase or lease goods in substitution for those due from the lessor.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (30-2A-504) or otherwise determined pursuant to agreement of the parties (~~30-1-102(3)~~ and 30-2A-503), if a lessee's cover is by a lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages:

(a) the present value, as of the date of the commencement of the term of the new lease agreement, of the rent under the new lease agreement applicable to that period of the new lease term that is comparable to the then remaining term of the original lease agreement minus the present value as of the same date of the total rent for the then remaining lease term of the original lease agreement; and

(b) any incidental or consequential damages less expenses saved in consequence of the lessor's default.

(3) If a lessee's cover is by lease agreement that for any reason does not qualify for treatment under subsection (2) or is by purchase or otherwise, the lessee may recover from the lessor as if the lessee had elected not to cover and 30-2A-519 governs."

**Section 26.** Section 30-2A-519, MCA, is amended to read:

**"30-2A-519. Lessee's damages for nondelivery, repudiation, default, and breach of warranty in regard to accepted goods.** (1) Except as otherwise provided with respect to damages liquidated in the lease agreement (30-2A-504) or otherwise determined pursuant to agreement of the parties (~~30-1-102(3)~~ and 30-2A-503), if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement that

for any reason does not qualify for treatment under 30-2A-518(2) or is by purchase or otherwise, the measure of damages for nondelivery or repudiation by the lessor or for rejection or revocation of acceptance by the lessee is the present value, as of the date of the default, of the then market rent minus the present value as of the same date of the original rent, computed for the remaining lease term of the original lease agreement, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(2) Market rent is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

(3) Except as otherwise agreed, if the lessee has accepted goods and given notification (30-2A-516(3)), the measure of damages for nonconforming tender or delivery or other default by a lessor is the loss resulting in the ordinary course of events from the lessor's default as determined in any manner that is reasonable, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(4) Except as otherwise agreed, the measure of damages for breach of warranty is the present value at the time and place of acceptance of the difference between the value of the use of the goods accepted and the value if they had been as warranted for the lease term, unless special circumstances show proximate damages of a different amount, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default or breach of warranty."

**Section 27.** Section 30-2A-526, MCA, is amended to read:

**"30-2A-526. Lessor's stoppage of delivery in transit or otherwise.** (1) A lessor may stop delivery of goods in the possession of a carrier or other bailee if the lessor discovers the lessee to be insolvent and may stop delivery of carload, truckload, planeload, or larger shipments of express or freight if the lessee repudiates or fails to make a payment due before delivery, whether for rent, security, or otherwise under the lease contract or for any other reason the lessor has a right to withhold or take possession of the goods.

(2) In pursuing its remedies under subsection (1), the lessor may stop delivery until:

- (a) receipt of the goods by the lessee;
- (b) acknowledgment to the lessee by any bailee of the goods, except a carrier, that the bailee holds the goods for the lessee; or
- (c) such an acknowledgment to the lessee by a carrier via reshipment or as ~~warehouseman~~ a warehouse.

(3) (a) To stop delivery, a lessor shall so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After notification, the bailee shall hold and deliver the goods according to the directions of the lessor, but the lessor is liable to the bailee for any ensuing charges or damages.

(c) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor."

**Section 28.** Section 30-2A-527, MCA, is amended to read:

**"30-2A-527. Lessor's rights to dispose of goods.** (1) After a default by a lessee under the lease contract described in 30-2A-523(1) or (3)(a) or after the lessor refuses to deliver or takes possession of goods (30-2A-525 or 30-2A-526) or, if agreed, after other default by a lessee, the lessor may dispose of the goods concerned or the undelivered balance thereof by lease, sale, or otherwise.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (30-2A-504) or otherwise determined pursuant to agreement of the parties (~~30-1-102(3)~~ and 30-2A-503), if the disposition is by lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessor may recover from the lessee as damages:

(a) accrued and unpaid rent as of the date of the commencement of the term of the new lease agreement;

(b) the present value, as of the same date, of the total rent for the then remaining lease term of the original lease agreement minus the present value, as of the same date, of the rent under the new lease agreement applicable to that period of the new lease term that is comparable to the then remaining term of the original lease agreement; and

(c) any incidental damages allowed under 30-2A-530 less expenses saved in consequence of the lessee's default.

(3) If the lessor's disposition is by lease agreement that for any reason does not qualify for treatment under subsection (2) or is by sale or otherwise, the lessor may recover from the lessee as if the lessor had elected not to dispose of the goods and 30-2A-528 governs.

(4) A subsequent buyer or lessee who buys or leases from the lessor in good faith for value as a result of a disposition under this section takes the goods free of the original lease contract and any rights of the original lessee even though the lessor fails to comply with one or more of the requirements of this chapter.

(5) The lessor is not accountable to the lessee for any profit made on any disposition. A lessee who has rightfully rejected or justifiably revoked acceptance shall account to the lessor for any excess over the amount of the lessee's security interest (30-2A-508(5))."

**Section 29.** Section 30-2A-528, MCA, is amended to read:

**"30-2A-528. Lessor's damages for nonacceptance, failure to pay, repudiation, or other default.**

(1) Except as otherwise provided with respect to damages liquidated in the lease agreement (30-2A-504) or otherwise determined pursuant to agreement of the parties (~~30-1-102(3)~~ and 30-2A-503), if a lessor elects to retain the goods or a lessor elects to dispose of the goods and the disposition is by lease agreement that for any reason does not qualify for treatment under 30-2A-527(2) or is by sale or otherwise, the lessor may recover from the lessee as damages for a default of the type described in 30-2A-523(1) or (3)(a) or, if agreed, for other default of the lessee:

(a) accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods or, if the lessee has taken possession of the goods, as of the date the lessor repossesses the goods or an earlier date on which the lessee makes a tender of the goods to the lessor;

(b) the present value as of the date determined under subsection (1)(a) of the total rent for the then remaining lease term of the original lease agreement minus the present value as of the same date of the market rent at the place where the goods are located, computed for the same lease term; and

(c) any incidental damages allowed under 30-2A-530 less expenses saved in consequence of the lessee's default.

(2) If the measure of damages provided in subsection (1) is inadequate to put a lessor in as good a position as performance would have, the measure of damages is the present value of the profit, including reasonable overhead, that the lessor would have made from full performance by the lessee, together with any incidental damages allowed under 30-2A-530, allowance due for costs reasonably incurred, and credit due for payments or proceeds of disposition."

**Section 30.** Section 30-3-102, MCA, is amended to read:

**"30-3-102. Definitions.** (1) In this chapter, unless the context otherwise requires, the following definitions apply:

(a) "Acceptor" means a drawee that has accepted a draft.

(b) "Drawee" means a person ordered in a draft to make payment.

(c) "Drawer" means a person that signs a draft as a person ordering payment.

(d) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(e) "Maker" means a person that signs a note as promisor of payment.

(f) "Order" means a written instruction to pay money signed by the person giving the instruction. The instruction may be addressed to any person, including the person giving the instruction, or to one or more persons jointly or in the alternative but not in succession. An authorization to pay is not an order unless the person authorized to pay is also instructed to pay.

(g) "Ordinary care" in the case of a person engaged in business means observance of reasonable commercial standards, prevailing in the area in which that person is located, with respect to the business in which that person is engaged. In the case of a bank that takes an instrument for processing for collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank's prescribed procedures and the bank's procedures do not vary unreasonably from general banking usage not disapproved by this chapter or chapter 4.

(h) "Party" means party to an instrument.

(i) "Promise" means a written undertaking to pay money signed by the person undertaking to pay. An acknowledgment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation.

(j) "Prove" with respect to a fact means to meet the burden of establishing the fact (~~30-1-201(8)~~ 30-1-201(2)(i)).

(k) "Remitter" means a person that purchases an instrument from its issuer if the instrument is payable to an identified person other than the purchaser.

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

"Acceptance". 30-3-410.

"Accommodated party". 30-3-415.

"Accommodation party". 30-3-415.

"Alteration". 30-3-407.

"Anomalous indorsement". 30-3-204.

"Blank indorsement". 30-3-204.

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

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

"Certified check". 30-3-410.

"Check". 30-3-104.

"Consideration". 30-3-303.

"Draft". 30-3-104.

"Fiduciary". 30-3-308.  
"Holder in due course". 30-3-302.  
"Incomplete instrument". 30-3-115.  
"Indorsement". 30-3-203.  
"Indorser". 30-3-203.  
"Instrument". 30-3-104.  
"Issue". 30-3-125.  
"Issuer". 30-3-125.  
"Negotiable instrument". 30-3-104.  
"Negotiation". 30-3-202.  
"Note". 30-3-104.  
"Payable at a definite time". 30-3-109.  
"Payable on demand". 30-3-108.  
"Payable to bearer". 30-3-111.  
"Payable to order". 30-3-111.  
"Payment". 30-3-603.  
"Person entitled to enforce". 30-3-301.  
"Presentment". 30-3-504.  
"Reacquisition". 30-3-208.  
"Represented person". 30-3-308.  
"Special indorsement". 30-3-204.  
"Teller's check". 30-3-104.  
"Transfer of instrument". 30-3-210.  
"Traveler's check". 30-3-104.  
"Value". 30-3-303.

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

"Bank". 30-4-105.  
"Banking day". 30-4-104.  
"Clearinghouse". 30-4-104.  
"Collecting bank". 30-4-105.  
"Customer". 30-4-104.

"Depositary bank". 30-4-105.

"Documentary draft". 30-4-104.

"Intermediary bank". 30-4-105.

"Item". 30-4-104.

"Payor bank". 30-4-105.

"Suspends payments". 30-4-104.

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

**Section 31.** Section 30-4-104, MCA, is amended to read:

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

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

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

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

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

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

(f) "documentary draft" means a draft to be presented for acceptance or payment if specified documents, certificated securities (30-8-112) or instructions for uncertificated securities (30-8-112), or other certificates, statements, or the like are to be received by the drawee or other payor before acceptance or payment of the draft;

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

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

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

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

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

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

"Bank". 30-4-105.

"Collecting bank". 30-4-105.

"Depository bank". 30-4-105.

"Intermediary bank". 30-4-105.

"Payor bank". 30-4-105.

"Presenting bank". 30-4-105.

"Presentment notice". 30-4-111.

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

"Acceptance". 30-3-410.

"Alteration". 30-3-407.

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

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

"Certified check". 30-3-410.

"Check". 30-3-104.

"Control". [section 39].

"Drawee". 30-3-102.

"Good faith". 30-3-102.

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

"Instrument". 30-3-104.

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

"Order". 30-3-102.

"Ordinary care". 30-3-102.

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

"Presentment". 30-3-504.

"Promise". 30-3-102.

"Prove". 30-3-102.

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



"Unauthorized signature". 30-3-404.

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

**Section 32.** Section 30-4A-105, MCA, is amended to read:

**"30-4A-105. Other definitions.** (1) In this chapter, the following definitions apply:

(a) "Authorized account" means a deposit account of a customer in a bank designated by the customer as a source of payment of payment orders issued by the customer to the bank. If a customer does not so designate an account, any account of the customer is an authorized account if payment of a payment order from that account is not inconsistent with a restriction on the use of that account.

(b) "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company. A branch or separate office of a bank is a separate bank for purposes of this chapter.

(c) "Customer" means a person, including a bank, having an account with a bank or from whom a bank has agreed to receive payment orders.

(d) "Funds-transfer business day" of a receiving bank means the part of a day during which the receiving bank is open for the receipt, processing, and transmittal of payment orders and cancellations and amendments of payment orders.

(e) "Funds-transfer system" means a wire transfer network, automated clearinghouse, or other communication system of a clearinghouse or other association of banks through which a payment order by a bank may be transmitted to the bank to which the order is addressed.

(f) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(g) "Prove", with respect to a fact, means to meet the burden of establishing the fact (~~30-1-201(8)~~ 30-1-201(2)(i)).

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

"Acceptance". 30-4A-209.

"Beneficiary". 30-4A-103.

"Beneficiary's bank". 30-4A-103.

"Executed". 30-4A-301.

"Execution date". 30-4A-301.

"Funds transfer". 30-4A-104.

"Funds-transfer system rule". 30-4A-501.

"Intermediary bank". 30-4A-104.

"Originator". 30-4A-104.

"Originator's bank". 30-4A-104.

"Payment by beneficiary's bank to beneficiary". 30-4A-405.

"Payment by originator to beneficiary". 30-4A-406.

"Payment by sender to receiving bank". 30-4A-403.

"Payment date". 30-4A-401.

"Payment order". 30-4A-103.

"Receiving bank". 30-4A-103.

"Security procedure". 30-4A-201.

"Sender". 30-4A-103.

(3) The following definitions in chapter 4 apply to this chapter:

"Clearinghouse". 30-4-104.

"Item". 30-4-104.

"Suspends payments". 30-4-104.

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

**Section 33.** Section 30-4A-106, MCA, is amended to read:

**"30-4A-106. Time payment order is received.** (1) The time of receipt of a payment order or communication canceling or amending a payment order is determined by the rules applicable to receipt of a notice stated in ~~30-4-201(27)~~ [section 9]. A receiving bank may fix a cutoff time or times on a funds-transfer business day for the receipt and processing of payment orders and communications canceling or amending payment orders. Different cutoff times may apply to payment orders, cancellations, or amendments or to different categories of payment orders, cancellations, or amendments. A cutoff time may apply to senders generally or different cutoff times may apply to different senders or categories of payment orders. If a payment order or communication canceling or amending a payment order is received after the close of a funds-transfer business day or after the appropriate cutoff time on a funds-transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds-transfer business day.

(2) If this chapter refers to an execution date or payment date or state a day on which a receiving bank is required to take action and the date or day does not fall on a funds-transfer business day, the next day that is a funds-transfer business day is treated as the date or day stated, unless the contrary is stated in this chapter."

**Section 34.** Section 30-5-123, MCA, is amended to read:

**"30-5-123. Scope.** (1) This chapter applies to letters of credit and to certain rights and obligations arising out of transactions involving letters of credit.

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

(3) With the exception of this subsection, subsections (1) and (4), 30-5-122(1)(i) and (1)(j), 30-5-126(4), and 30-5-134(4), and except to the extent prohibited in ~~30-1-102(3)~~ and 30-5-137(4), the effect of this chapter may be varied by agreement or by a provision stated or incorporated by reference in an undertaking. A term in an agreement or undertaking generally excusing liability or generally limiting remedies for failure to perform obligations is not sufficient to vary obligations prescribed by this chapter.

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

**Section 35.** Section 30-7-102, MCA, is amended to read:

**"30-7-102. Definitions and index of definitions.** (1) In this chapter, unless the context otherwise requires:

(a) "Bailee" means ~~the~~ a person who that by a warehouse receipt, bill of lading, or other document of title acknowledges possession of goods and contracts to deliver them.

(b) "Carrier" means a person that issues a bill of lading.

~~(b)~~(c) "Consignee" means the person named in a bill of lading to whom which or to whose order the bill promises delivery.

~~(c)~~(d) "Consignor" means the person named in a bill of lading as the person from whom which the goods have been received for shipment.

~~(d)~~(e) "Delivery order" means a written order record that contains an order to deliver goods directed to a ~~warehouseman~~ warehouse, carrier, or other person ~~who that~~ in the ordinary course of business issues

warehouse receipts or bills of lading.

~~(e) "Document" means document of title as defined in 30-1-201(15).~~

(f) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

~~(f)(g)~~ (g) "Goods" means all things which that are treated as movable for the purposes of a contract of for storage or transportation.

~~(g)(h)~~ (h) "Issuer" means a bailee who that issues a document of title or, except that in relation to the case of an unaccepted delivery order, it means the person who that orders the possessor of goods to deliver. Issuer The term includes any a person for whom which an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, notwithstanding that even if the issuer received no did not receive any goods, or that the goods were misdescribed, or that in any other respect the agent or employee violated his the issuer's instructions.

(i) "Person entitled under a document" means the holder, in the case of a negotiable document of title, or the person to which delivery of the goods is to be made by the terms of, or pursuant to instructions in a record under, a nonnegotiable document of title.

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

(k) "Shipper" means a person that enters into a contract of transportation with a carrier.

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

(i) to execute or adopt a tangible symbol; or

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

~~(h)(m)~~ (m) "Warehouseman" is "Warehouse" means a person engaged in the business of storing goods for hire.

~~(2) Other definitions applying to this chapter or to specified parts thereof, and the sections in which they appear are:~~

——— ~~"Duly negotiate". 30-7-501.~~

——— ~~"Person entitled under the document". 30-7-403(4).~~

~~(3)(2)~~ (2) Definitions in other chapters applying to this chapter and the sections in which they appear are:

(a) "Contract for sale". 30-2-106.

(b) "Lessee in ordinary course". 30-2A-103.

~~"Overseas". 30-2-323.~~

(c) "Receipt" of goods. 30-2-103.

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

**Section 36.** Section 30-7-103, MCA, is amended to read:

**"30-7-103. Relation of chapter to treaty, or statute, tariff, classification or regulation.** (1) This chapter is subject to any treaty or statute of the United States or a regulatory statute of this state to the extent the treaty, statute, or regulatory statute is applicable.

(2) This chapter does not repeal or modify any law prescribing the form or contents of a document of title or the services or facilities to be afforded by a bailee, or otherwise regulating a bailee's businesses in respects not specifically treated in this chapter. However, violation of these laws does not affect the status of a document of title that otherwise complies with the definition of a document of title.

(3) This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. 7003(b).

(4) To the extent that any treaty or statute of the United States, regulatory statute of this state or tariff, classification or regulation filed or issued pursuant thereto is applicable there is a conflict between the Uniform Electronic Transactions Act, Title 30, chapter 18, part 1, and this chapter, the provisions of this chapter are subject thereto governs."

**Section 37.** Section 30-7-104, MCA, is amended to read:

**"30-7-104. Negotiable and nonnegotiable warehouse receipt, bill of lading or other document of title.** (1) ~~A warehouse receipt, bill of lading or other document of title is negotiable:~~

- ~~—— (a) if by its terms the goods are to be delivered to bearer or to the order of a named person; or~~
- ~~—— (b) where recognized in overseas trade, if it runs to a named person or assigns.~~

(2) ~~Any other~~ A document of title other than one described in subsection (1) is nonnegotiable. A bill of lading in which it is stated that states that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against a written order signed by the same or another named person.

(3) A document of title is nonnegotiable if, at the time it is issued, the document has a conspicuous

legend, however expressed, that it is nonnegotiable."

**NEW SECTION. Section 38. Reissuance in alternative medium.** (1) Upon request of a person entitled under an electronic document of title, the issuer of the electronic document may issue a tangible document of title as a substitute for the electronic document if:

(a) the person entitled under the electronic document surrenders control of the document to the issuer; and

(b) the tangible document when issued contains a statement that it is issued in substitution for the electronic document.

(2) Upon issuance of a tangible document of title in substitution for an electronic document of title in accordance with subsection (1):

(a) the electronic document ceases to have any effect or validity; and

(b) the person that procured issuance of the tangible document warrants to all subsequent persons entitled under the tangible document that the warrantor was a person entitled under the electronic document when the warrantor surrendered control of the electronic document to the issuer.

(3) Upon request of a person entitled under a tangible document of title, the issuer of the tangible document may issue an electronic document of title as a substitute for the tangible document if:

(a) the person entitled under the tangible document surrenders possession of the document to the issuer; and

(b) the electronic document when issued contains a statement that it is issued in substitution for the tangible document.

(4) Upon issuance of the electronic document of title in substitution for a tangible document of title in accordance with subsection (3):

(a) the tangible document ceases to have any effect or validity; and

(b) the person that procured issuance of the electronic document warrants to all subsequent persons entitled under the electronic document that the warrantor was a person entitled under the tangible document when the warrantor surrendered possession of the tangible document to the issuer.

**NEW SECTION. Section 39. Control of electronic document of title.** (1) A person has control of an electronic document of title if a system employed for evidencing the transfer of interests in the electronic document reliably establishes that person as the person to which the electronic document was issued or

transferred.

(2) A system satisfies subsection (1), and a person is considered to have control of an electronic document of title, if the document is created, stored, and assigned in such a manner that:

(a) a single authoritative copy of the document exists which is unique, identifiable, and, except as otherwise provided in subsections (2)(d), (2)(e), and (2)(f), unalterable;

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

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

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

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

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

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

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

**Section 40.** Section 30-7-201, MCA, is amended to read:

**"30-7-201. Who Person that may issue a warehouse receipt -- storage under government bond.**

(1) A warehouse receipt may be issued by any ~~warehouseman~~ warehouse.

(2) ~~Where~~ If goods, including distilled spirits and agricultural commodities, are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods ~~has like effect as~~ is considered to be a warehouse receipt even ~~though~~ if issued by a person ~~who~~ that is the owner of the goods and is not a ~~warehouseman~~ warehouse."

**Section 41.** Section 30-7-202, MCA, is amended to read:

**"30-7-202. Form of warehouse receipt -- essential terms -- optional terms.** (1) A warehouse receipt need not be in any particular form.

(2) Unless a warehouse receipt ~~embodies within its written or printed terms~~ provides for each of the following, the ~~warehouseman~~ warehouse is liable for damages caused ~~by the omission~~ to a person injured ~~thereby~~ by its omission:

- (a) the location of the warehouse facility where the goods are stored;
  - (b) the date of issue of the receipt;
  - (c) the ~~consecutive number~~ unique identification code of the receipt;
  - (d) a statement whether the goods received will be delivered to the bearer, to a ~~specified~~ named person, or to a ~~specified~~ named person or ~~his~~ its order;
  - (e) the rate of storage and handling charges, ~~except that where~~ but if goods are stored under a field warehousing arrangement, a statement of that fact is sufficient on a nonnegotiable receipt;
  - (f) a description of the goods or ~~of~~ the packages containing them;
  - (g) the signature of the ~~warehouseman~~, which may be made by his ~~authorized~~ warehouse or its agent;
  - (h) if the receipt is issued for goods ~~of which the warehouseman is owner~~ that the warehouse owns, either solely, ~~or~~ jointly, or in common with others, the fact of ~~such~~ that ownership; and
  - (i) a statement of the amount of advances made and of liabilities incurred for which the ~~warehouseman~~ warehouse claims a lien or security interest, ~~(30-7-209)~~. ~~If~~ but if the precise amount of ~~such~~ advances made or ~~such~~ liabilities incurred is, at the time of the issue of the receipt, unknown to the ~~warehouseman~~ warehouse or to his ~~its~~ agent ~~who issues~~ that issued it the receipt, a statement of the fact that advances have been made or liabilities incurred and the purpose ~~thereof~~ of the advances or liabilities is sufficient.
- (3) A ~~warehouseman~~ warehouse may insert in his ~~its~~ receipt any ~~other~~ terms ~~which~~ that are not contrary to the provisions of this code and do not impair his ~~its~~ obligation of delivery (under 30-7-403) or his ~~its~~ duty of care (under 30-7-204). Any contrary provisions ~~shall be~~ are ineffective."

**Section 42.** Section 30-7-203, MCA, is amended to read:

**"30-7-203. Liability for nonreceipt or misdescription.** A party to or purchaser for value in good faith of a document of title, other than a bill of lading, ~~relying in either case~~ that relies upon the description ~~therein~~ of the goods in the document may recover from the issuer damages caused by the nonreceipt or misdescription of the goods, except to the extent that:

- (1) the document conspicuously indicates that the issuer does not know whether ~~any~~ all or part ~~or all~~ of the goods in fact were received or conform to the description, ~~as where~~ such as a case in which the description is in terms of marks or labels or kind, quantity, or condition, or the receipt or description is qualified by "contents, condition, and quality unknown", "said to contain", or ~~the like~~ words of similar import, if ~~such~~ the indication ~~be~~ is true; or
- (2) the party or purchaser ~~otherwise~~ has notice of the nonreceipt or misdescription."



**Section 43.** Section 30-7-204, MCA, is amended to read:

**"30-7-204. Duty of care -- contractual limitation of warehouseman's warehouse's liability.** (1) A ~~warehouseman~~ warehouse is liable for damages for loss of or injury to the goods caused by his its failure to exercise ~~such care in~~ with regard to ~~them as~~ the goods that a reasonably careful ~~man~~ person would exercise under ~~like~~ similar circumstances, ~~but~~ However, unless otherwise agreed, ~~he~~ the warehouse is not liable for damages ~~which that~~ that could not have been avoided by the exercise of ~~such that~~ that care.

(2) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage, ~~and setting forth a specific liability per article or item, or value per unit of weight,~~ beyond which the ~~warehouseman shall not be~~ warehouse is not liable; Such a limitation is not effective with respect to the warehouse's liability for conversion to its own use. ~~provided, however, that such~~ The warehouse's liability, ~~may~~ may on ~~written~~ request of the bailor in a record at the time of signing such storage agreement or within a reasonable time after receipt of the warehouse receipt, may be increased on part or all of the goods ~~thereunder, in which~~ covered by the storage agreement or the warehouse receipt. In this event, increased rates may be charged based on such an increased valuation, ~~but that no such increase shall be permitted contrary to a lawful limitation of liability contained in the warehouseman's tariff, if any of the goods.~~ No such limitation is effective with respect to the warehouseman's liability for conversion to his own use.

(3) Reasonable provisions as to the time and manner of presenting claims and instituting actions based on the bailment may be included in the warehouse receipt or ~~tariff~~ storage agreement."

**Section 44.** Section 30-7-205, MCA, is amended to read:

**"30-7-205. Title under warehouse receipt defeated in certain cases.** A buyer in the ordinary course of business of fungible goods sold and delivered by a ~~warehouseman who~~ warehouse that is also in the business of buying and selling such goods takes free of any claim under a warehouse receipt even ~~though it~~ if the receipt is negotiable and has been duly negotiated."

**Section 45.** Section 30-7-206, MCA, is amended to read:

**"30-7-206. Termination of storage at warehouseman's warehouse's option.** (1) A warehouseman ~~may on notifying~~ warehouse, by giving notice to the person on whose account the goods are held and any other person known to claim an interest in the goods, may require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document of title, or, if ~~no~~ a period is not fixed, within a stated period not less than 30 days after the ~~notification~~ warehouse gives notice. If the goods

are not removed before the date specified in the ~~notification notice~~, the ~~warehouseman~~ warehouse may sell them in accordance with the provisions of the section on enforcement of a warehouseman's lien (pursuant to 30-7-210).

(2) If a ~~warehouseman~~ warehouse in good faith believes that the goods are about to deteriorate or decline in value to less than the amount of his ~~its~~ lien within the time prescribed in subsection (1) ~~and 30-7-210~~, ~~for notification, advertisement and sale~~, the ~~warehouseman~~ warehouse may specify in the ~~notification notice given under subsection (1)~~ any reasonable shorter time for removal of the goods and, ~~in case if~~ the goods are not removed, may sell them at public sale held not less than 1 week after a single advertisement or posting.

(3) If, ~~as a result of a quality or condition of the goods of which the warehouseman had no~~ warehouse ~~did not have~~ notice at the time of deposit, the goods are a hazard to other property, ~~or to the warehouse facilities~~, or ~~to other~~ persons, the ~~warehouseman~~ warehouse may sell the goods at public or private sale without advertisement or ~~posting~~ on reasonable notification to all persons known to claim an interest in the goods. If the ~~warehouseman~~ warehouse, after a reasonable effort, is unable to sell the goods, ~~he it~~ may dispose of them in any lawful manner and ~~shall does not~~ incur ~~no~~ liability by reason of ~~such that~~ disposition.

(4) ~~The warehouseman must~~ A warehouse shall deliver the goods to any person entitled to them under this chapter upon due demand made at any time prior to sale or other disposition under this section.

(5) ~~The warehouseman~~ A warehouse may satisfy his ~~its~~ lien from the proceeds of any sale or disposition under this section but ~~must shall~~ hold the balance for delivery on the demand of any person to ~~whom he~~ which the warehouse would have been bound to deliver the goods."

**Section 46.** Section 30-7-207, MCA, is amended to read:

**"30-7-207. Goods must be kept separate -- fungible goods.** (1) Unless the warehouse receipt otherwise provides, a ~~warehouseman must~~ warehouse shall keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods, ~~except that~~ However, different lots of fungible goods may be commingled.

(2) ~~Fungible~~ If different lots of fungible goods so are commingled, are the goods owned in common by the persons entitled thereto and the ~~warehouseman~~ warehouse is severally liable to each owner for that owner's share. ~~Where if~~, because of overissue, a mass of fungible goods is insufficient to meet all the receipts ~~which~~ the ~~warehouseman~~ warehouse has issued against it, the persons entitled include all holders to ~~whom~~ which overissued receipts have been duly negotiated."

**Section 47.** Section 30-7-208, MCA, is amended to read:

**"30-7-208. Altered warehouse receipts.** ~~Where~~ If a blank in a negotiable tangible warehouse receipt has been filled in without authority, a good faith purchaser for value and without notice of the ~~want~~ lack of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any tangible or electronic warehouse receipt enforceable against the issuer according to its original tenor."

**Section 48.** Section 30-7-209, MCA, is amended to read:

**"30-7-209. Lien of warehouseman warehouse.** (1) A warehouseman warehouse has a lien against the bailor on the goods covered by a warehouse receipt or storage agreement or on the proceeds thereof in ~~his~~ its possession for charges for storage or transportation, (including demurrage and terminal charges), insurance, labor, or other charges, present or future, in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for ~~like~~ similar charges or expenses in relation to other goods whenever deposited and it is stated in the receipt or storage agreement that a lien is claimed for charges and expenses in relation to other goods, the warehouseman warehouse also has a lien against ~~him~~ for such the goods covered by the warehouse receipt or storage agreement or on the proceeds thereof in its possession for those charges and expenses, whether or not the other goods have been delivered by the warehouseman warehouse. ~~But~~ However, as against a person to ~~whom~~ which a negotiable warehouse receipt is duly negotiated, a warehouseman's warehouse's lien is limited to charges in an amount or at a rate specified ~~on~~ in the warehouse receipt or, if no charges are so specified, ~~then~~ to a reasonable charge for storage of the specific goods covered by the receipt subsequent to the date of the receipt.

(2) The warehouseman warehouse may also reserve a security interest under chapter 9A against the bailor for a the maximum amount specified on the receipt for charges other than those specified in subsection (1), such as for money advanced and interest. ~~Such a~~ A security interest is governed by ~~the Chapter on Secured Transactions (Chapter~~ chapter 9A).

(3) A warehouseman's warehouse's lien for charges and expenses under subsection (1) or a security interest under subsection (2) is also effective against any person ~~who~~ that so entrusted the bailor with possession of the goods that a pledge of them by ~~him~~ the bailor to a good faith purchaser for value would have been valid, ~~but~~ However, the lien or security interest is not effective against a person ~~as to whom the document confers no right in the goods covered by it under 30-7-503~~ that before issuance of a document of title had a legal interest or a perfected security interest in the goods and that did not:

(a) deliver or entrust the goods or any document covering the goods to the bailor or the bailor's nominee

with actual or apparent authority to ship, store, or sell; or with power to obtain delivery under 30-7-403; or with power of disposition under 30-2-403, 30-2A-304(2), 30-2A-305(2), or 30-9A-320 or other statute or rule of law;  
or

(b) acquiesce in the procurement by the bailor or its nominee of any document.

(4) A warehouse's lien on household goods for charges and expenses in relation to the goods under subsection (1) is also effective against all persons if the depositor was the legal possessor of the goods at the time of deposit. In this subsection, "household goods" means furniture, furnishings, or personal effects used by the depositor in a dwelling.

(4)(5) A warehouseman warehouse loses his its lien on any goods which he that it voluntarily delivers or which he unjustifiably refuses to deliver."

**Section 49.** Section 30-7-210, MCA, is amended to read:

**"30-7-210. Enforcement of warehouseman's warehouse's lien.** (1) Except as provided in subsection (2), a warehouseman's warehouse's lien may be enforced by public or private sale of the goods, in block or in ~~parcels~~ packages, at any time or place and on any terms ~~which that~~ that are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the ~~warehouseman~~ warehouse is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. ~~If the warehouseman either~~ The warehouse has sold in a commercially reasonable manner if the warehouse sells the goods in the usual manner in any recognized market therefor, or if he sells at the price current in such that market at the time of his the sale, or if he has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold; he has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to ~~insure~~ ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.

(2) A ~~warehouseman's~~ warehouse's lien on goods, other than goods stored by a merchant in the course of his its business, may be enforced only ~~as follows~~ if the following requirements are satisfied:

(a) All persons known to claim an interest in the goods must be notified.

~~(b) The notification must be delivered in person or sent by registered or certified letter to the last known address of any person to be notified.~~

~~(c)~~(b) The notification must include an itemized statement of the claim, a description of the goods subject

to the lien, a demand for payment within a specified time not less than 10 days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.

~~(d)~~(c) The sale must conform to the terms of the notification.

~~(e)~~(d) The sale must be held at the nearest suitable place to ~~that~~ where the goods are held or stored.

~~(f)~~(e) After the expiration of the time given in the notification, an advertisement of the sale must be published once a week for 2 weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account they are being held, and the time and place of the sale. The sale must take place at least 15 days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least 10 days before the sale in not less than six conspicuous places in the neighborhood of the proposed sale.

(3) Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred ~~under~~ in complying with this section. In that event, the goods ~~must~~ may not be sold, but must be retained by the ~~warehouseman~~ warehouse subject to the terms of the receipt and this chapter.

(4) ~~The warehouseman~~ A warehouse may buy at any public sale pursuant to this section.

(5) A purchaser in good faith of goods sold to enforce a ~~warehouseman's~~ warehouse's lien takes the goods free of any rights of persons against whom the lien was valid, despite ~~noncompliance by the warehouseman~~ warehouse's noncompliance with the ~~requirements~~ of this section.

(6) ~~The warehouseman~~ A warehouse may satisfy ~~his~~ its lien from the proceeds of any sale pursuant to this section but ~~must~~ shall hold the balance, if any, for delivery on demand to any person to ~~whom he~~ which the warehouse would have been bound to deliver the goods.

(7) The rights provided by this section ~~shall be~~ are in addition to all other rights allowed by law to a creditor against ~~his~~ a debtor.

(8) ~~Where~~ If a lien is on goods stored by a merchant in the course of ~~his~~ its business, the lien may be enforced in accordance with either subsection (1) or (2).

(9) ~~The warehouseman~~ A warehouse is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of willful violation, is liable for conversion."

**Section 50.** Section 30-7-301, MCA, is amended to read:

**"30-7-301. Liability for nonreceipt or misdescription -- "said to contain" -- "shipper's load and count" -- improper handling.** (1) A consignee of a nonnegotiable bill ~~who~~ which has given value in good faith, or a holder to ~~whom~~ which a negotiable bill has been duly negotiated, ~~relying in either case~~ upon the description ~~therein~~ of the goods in the bill; or upon the date ~~therein~~ shown in the bill, may recover from the issuer damages caused by the misdating of the bill or the nonreceipt or misdescription of the goods, except to the extent that the document of title indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, such as where in a case in which the description is in terms of marks or labels or kind, quantity, or condition or the receipt or description is qualified by "contents or condition of contents of packages unknown", "said to contain", "shipper's weight, load and count", ~~or the like~~ words of similar import, if ~~such that~~ that indication ~~be~~ is true.

(2) ~~When~~ If goods are loaded by ~~an~~ the issuer ~~who is a common carrier of the bill of lading~~, the issuer ~~must~~ shall count the packages of goods if ~~package freight shipped in packages~~ and ascertain the kind and quantity if ~~shipped in bulk freight~~. ~~In and words such cases as~~ "shipper's weight, load and count" or ~~other~~ words of similar import indicating that the description was made by the shipper are ineffective except as to freight goods concealed by packages.

(3) ~~When~~ If bulk ~~freight is~~ goods are loaded by a shipper ~~who~~ that makes available to the issuer ~~of the bill of lading~~ adequate facilities for weighing ~~such freight those goods~~, ~~an~~ the issuer ~~who is a common carrier~~ must shall ascertain the kind and quantity within a reasonable time after receiving the ~~written~~ shipper's request ~~of the shipper in a record~~ to do so. ~~In such cases that case~~, "shipper's weight" or other words of ~~like purport similar import~~ are ineffective.

(4) The issuer, ~~may~~ by ~~inserting~~ including in the bill of lading the words "shipper's weight, load and count", ~~or other words of like purport similar import~~, may indicate that the goods were loaded by the shipper, ~~and if such that statement be is true~~, the issuer ~~shall is not be~~ liable for damages caused by the improper loading. ~~But their~~ However, omission of such words does not imply liability for ~~such damages caused by improper loading~~.

(5) ~~The~~ A shipper ~~shall be deemed to have guaranteed guarantees~~ to the issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition, ~~and~~ weight, as furnished by ~~him~~; the shipper, and the shipper shall indemnify the issuer against damage caused by inaccuracies in ~~such those~~ particulars. ~~The~~ This right of the issuer to ~~such that~~ indemnity ~~shall in no way does not~~ limit ~~his~~ its responsibility ~~and or~~ liability under the contract of carriage to any person other than the shipper."

**Section 51.** Section 30-7-302, MCA, is amended to read:

**"30-7-302. Through bills of lading and similar documents of title.** (1) The issuer of a through bill of lading or other document of title embodying an undertaking to be performed in part by persons acting as its agents or by ~~connecting carriers~~ a performing carrier is liable to ~~anyone~~ any person entitled to recover on the document for any breach by ~~such the other persons~~ person or ~~by a connecting~~ the performing carrier of its obligation under the document, ~~but~~ However, to the extent that the bill covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation, this liability for breach by the other person or the performing carrier may be varied by agreement of the parties.

(2) Where goods covered by a through bill of lading or other document embodying an undertaking to be performed in part by persons other than the issuer are received by any such person, he is subject with respect to his own performance while the goods are in his possession to the obligation of the issuer. His obligation is discharged by delivery of the goods to another such person pursuant to the document, and does not include liability for breach by any other such persons or by the issuer.

(3) The issuer of ~~such a~~ through bill of lading or other document ~~shall be~~ of title described in subsection (1) is entitled to recover from the ~~connecting performing~~ carrier, or ~~such~~ other person in possession of the goods when the breach of the obligation under the document occurred;

(a) the amount it may be required to pay to ~~anyone~~ any person entitled to recover on the document ~~therefor for the breach~~, as may be evidenced by any receipt, judgment, or transcript ~~thereof~~, of judgment; and

(b) the amount of any expense reasonably incurred by it the issuer in defending any action ~~brought commenced~~ by ~~anyone~~ any person entitled to recover on the document ~~therefor for the breach~~."

**Section 52.** Section 30-7-303, MCA, is amended to read:

**"30-7-303. Diversion -- reconsignment -- change of instructions.** (1) Unless the bill of lading otherwise provides, ~~the a~~ carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods, without liability for misdelivery, on instructions from:

(a) the holder of a negotiable bill; or

(b) the consignor on a nonnegotiable bill ~~notwithstanding~~ even if the consignee has given contrary instructions ~~from the consignee~~; or

(c) the consignee on a nonnegotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the bill; ~~or~~

(d) the consignee on a nonnegotiable bill in the absence of contrary instructions from the consignor, if

the goods have arrived at the billed destination or if the consignee is in possession of the tangible bill or in control of the electronic bill; or

~~(d)~~(e) the consignee on a nonnegotiable bill, if ~~he~~ the consignee is entitled as against the consignor to dispose of ~~them~~ the goods.

(2) Unless ~~such~~ instructions described in subsection (1) are ~~noted on~~ included in a negotiable bill of lading, a person to ~~whom~~ which the bill is duly negotiated ~~can~~ may hold the bailee according to the original terms."

**Section 53.** Section 30-7-304, MCA, is amended to read:

**"30-7-304. Bills Tangible bills of lading in a set.** (1) Except ~~where~~ as customary in ~~overseas~~ international transportation, a bill of lading ~~must~~ may not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.

(2) ~~Where~~ If a tangible bill of lading is lawfully ~~drawn~~ issued in a set of parts, each of which ~~is numbered~~ contains an identification code and is expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts constitute one bill.

(3) ~~Where~~ If a tangible negotiable bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to ~~whom~~ which the first due negotiation is made prevails as to both the document of title and the goods even ~~though~~ if any later holder may have received the goods from the carrier in good faith and discharged the carrier's obligation by ~~surrender of his~~ surrendering its part.

(4) ~~Any~~ A person ~~who~~ that negotiates or transfers a single part of a tangible bill of lading ~~drawn~~ issued in a set is liable to holders of that part as if it were the whole set.

(5) The bailee is obliged to deliver in accordance with ~~Part~~ part 4 of this chapter against the first presented part of a tangible bill of lading lawfully ~~drawn~~ issued in a set. ~~Such delivery~~ Delivery in this manner discharges the bailee's obligation on the whole bill."

**Section 54.** Section 30-7-305, MCA, is amended to read:

**"30-7-305. Destination bills.** (1) Instead of issuing a bill of lading to the consignor at the place of shipment, a carrier, ~~may~~ at the request of the consignor, may procure the bill to be issued at destination or at any other place designated in the request.

(2) Upon request of ~~anyone~~ any person entitled as against ~~the~~ a carrier to control the goods while in transit and on surrender of possession or control of any outstanding bill of lading or other receipt covering ~~such~~ the goods, the issuer, subject to [section 38], may procure a substitute bill to be issued at any place designated



in the request."

**Section 55.** Section 30-7-307, MCA, is amended to read:

**"30-7-307. Lien of carrier.** (1) A carrier has a lien on the goods covered by a bill of lading or on the proceeds thereof in its possession for charges ~~subsequent to~~ after the date of ~~its~~ the carrier's receipt of the goods for storage or transportation ~~{including demurrage and terminal charges}~~, and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. ~~But~~ However, against a purchaser for value of a negotiable bill of lading, a carrier's lien is limited to charges stated in the bill or the applicable tariffs, or if no charges are stated, ~~then to~~ a reasonable charge.

(2) A lien for charges and expenses under subsection (1) on goods ~~which~~ that the carrier was required by law to receive for transportation is effective against the consignor or any person entitled to the goods unless the carrier had notice that the consignor lacked authority to subject the goods to ~~such~~ those charges and expenses. Any other lien under subsection (1) is effective against the consignor and any person ~~who~~ that permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked ~~such~~ authority.

(3) A carrier loses ~~his~~ its lien on any goods ~~which he~~ that it voluntarily delivers or ~~which he~~ unjustifiably refuses to deliver."

**Section 56.** Section 30-7-308, MCA, is amended to read:

**"30-7-308. Enforcement of carrier's lien.** (1) A carrier's lien on goods may be enforced by public or private sale of the goods, in ~~bulk~~ bulk or in ~~parcels~~ packages, at any time or place and on any terms ~~which~~ that are commercially reasonable, after notifying all persons known to claim an interest in the goods. ~~Such~~ The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. ~~if the~~ The carrier ~~either sells the~~ has sold goods in a commercially reasonable manner if the carrier sells the goods in the usual manner in any recognized market therefor, ~~or if he~~ sells at the price current in ~~such~~ that market at the time of ~~his~~ sale, ~~or if he~~ has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold ~~he has sold in a commercially reasonable manner~~. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

(2) Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred ~~under~~ in complying with this section. In that event, the goods ~~must~~ may not be sold, but must be retained by the carrier, subject to the terms of the bill of lading and this chapter.

(3) ~~The~~ A carrier may buy at any public sale pursuant to this section.

(4) A purchaser in good faith of goods sold to enforce a carrier's lien takes the goods free of any rights of persons against ~~whom~~ which the lien was valid, despite ~~the carrier's noncompliance by the carrier with the requirements of~~ this section.

(5) ~~The~~ A carrier may satisfy ~~his~~ its lien from the proceeds of any sale pursuant to this section but ~~must~~ shall hold the balance, if any, for delivery on demand to any person to ~~whom he~~ which the carrier would have been bound to deliver the goods.

(6) The rights provided by this section ~~shall be~~ are in addition to all other rights allowed by law to a creditor against ~~his~~ a debtor.

(7) A carrier's lien may be enforced ~~in accordance with~~ pursuant to either subsection (1) or the procedure set forth in ~~subsection (2) of 30-7-210~~ 30-7-210(2).

(8) ~~The~~ A carrier is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of willful violation, is liable for conversion."

**Section 57.** Section 30-7-309, MCA, is amended to read:

**"30-7-309. Duty of care -- contractual limitation of carrier's liability.** (1) A carrier ~~who~~ that issues a bill of lading, whether negotiable or nonnegotiable, ~~must~~ shall exercise the degree of care in relation to the goods which a reasonably careful ~~man~~ person would exercise under ~~like~~ similar circumstances. This subsection does not ~~repeal or change~~ affect any law statute, regulation, or rule of law ~~which~~ that imposes liability upon a common carrier for damages not caused by its negligence.

(2) Damages may be limited by a ~~provision~~ term in the bill of lading or in a transportation agreement that the carrier's liability ~~shall~~ may not exceed a value stated in the ~~document~~ bill or transportation agreement if the carrier's rates are dependent upon value and the consignor ~~by the carrier's tariff~~ is afforded an opportunity to declare a higher value or a value as lawfully provided in the tariff, or where no tariff is filed he is otherwise and ~~the consignor is advised of such the opportunity;~~ but no ~~However,~~ such a limitation is not effective with respect to the carrier's liability for conversion to its own use.

(3) Reasonable provisions as to the time and manner of presenting claims and ~~instituting~~ commencing

actions based on the shipment may be included in a bill of lading or ~~tariff~~ transportation agreement."

**Section 58.** Section 30-7-401, MCA, is amended to read:

**"30-7-401. Irregularities in issue of receipt or bill or conduct of issuer.** The obligations imposed by this chapter on an issuer apply to a document of title ~~regardless of the fact that~~ even if:

- (a) the document ~~may~~ does not comply with the requirements of this chapter or of any other ~~law~~ statute, rule, or regulation regarding its issue, form or content; ~~or~~
- (b) the issuer ~~may have~~ violated laws regulating the conduct of ~~his~~ its business; ~~or~~
- (c) the goods covered by the document were owned by the bailee ~~at the time~~ when the document was issued; or
- (d) the person issuing the document ~~does not come within the definition of warehouseman if it is not a warehouse but the document purports to be a warehouse receipt.~~

**Section 59.** Section 30-7-402, MCA, is amended to read:

**"30-7-402. Duplicate receipt or bill -- overissue.** ~~Neither a~~ A duplicate ~~nor~~ or any other document of title purporting to cover goods already represented by an outstanding document of the same issuer ~~confers~~ does not confer any right in the goods, except as provided in the case of tangible bills of lading in a set of parts, overissue of documents for fungible goods, and substitutes for lost, stolen, or destroyed documents, or substitute documents issued pursuant to [section 38]. ~~But the~~ The issuer is liable for damages caused by ~~his~~ its overissue or failure to identify a duplicate document ~~as such~~ by a conspicuous notation ~~on its face.~~

**Section 60.** Section 30-7-403, MCA, is amended to read:

**"30-7-403. Obligation of warehouseman warehouse or carrier to deliver -- excuse.** (1) ~~The~~ A bailee ~~must~~ shall deliver the goods to a person entitled under ~~the~~ a document of title ~~who~~ if the person complies with subsections (2) and (3), unless and to the extent that the bailee establishes any of the following:

- (a) delivery of the goods to a person whose receipt was rightful as against the claimant;
- (b) damage to or delay, loss, or destruction of the goods for which the bailee is not liable;
- (c) previous sale or other disposition of the goods in lawful enforcement of a lien or on ~~warehouseman's~~ a warehouse's lawful termination of storage;
- (d) the exercise by a seller of ~~his~~ its right to stop delivery pursuant to ~~the provisions of the Chapter on Sales (30-2-705)~~ or by a lessor of its right to stop delivery pursuant to 30-2A-526;

(e) a diversion, reassignment, or other disposition pursuant to the provisions of this chapter (30-7-303) or tariff regulating such right;

(f) release, satisfaction, or any other fact affording a personal defense against the claimant; or

(g) any other lawful excuse.

(2) A person claiming goods covered by a document of title ~~must~~ shall satisfy the bailee's lien ~~where~~ if the bailee so requests or ~~where~~ the bailee is prohibited by law from delivering the goods until the charges are paid.

(3) Unless ~~the~~ a person claiming the goods is one against ~~whom~~ which the document ~~confers no~~ of title does not confer a right under 30-7-503(1);

(a) ~~he must~~ the person claiming under a document shall surrender ~~for cancellation or notation of partial deliveries~~ possession or control of any outstanding negotiable document covering the goods; ~~for cancellation or indication of partial deliveries;~~ and

(b) the bailee ~~must~~ shall cancel the document or conspicuously ~~note~~ indicate in the document the partial delivery ~~thereon~~ or be liable to any person to ~~whom~~ which the document is duly negotiated.

(4) ~~"Person entitled under the document" means holder in the case of a negotiable document, or the person to whom delivery is to be made by the terms of or pursuant to written instructions under a nonnegotiable document."~~

**Section 61.** Section 30-7-404, MCA, is amended to read:

**"30-7-404. No liability for good faith delivery pursuant to ~~receipt or bill~~ document of title.** A bailee who ~~that~~ in good faith including observance of reasonable commercial standards has received goods and delivered or otherwise disposed of ~~them~~ the goods according to the terms of the document of title or pursuant to this chapter is not liable ~~therefor~~. ~~This rule applies for the goods even though if:~~

(1) the person from whom ~~he~~ the bailee received the goods ~~had no~~ did not have authority to procure the document or to dispose of the goods; ~~and~~ or

(2) ~~even though~~ the person to ~~whom~~ which the bailee delivered the goods ~~had no~~ did not have authority to receive ~~them~~ the goods."

**Section 62.** Section 30-7-501, MCA, is amended to read:

**"30-7-501. Form of negotiation and requirements of "due negotiation".** (1) ~~A~~ The following rules apply to a tangible negotiable document of title:

(a) If the document's original terms running run to the order of a named person, the document is negotiated by his the named person's endorsement and delivery. After his the named person's endorsement in blank or to bearer, any person can may negotiate it the document by delivery alone.

~~(2)(b) (a) A negotiable document of title is also negotiated by delivery alone when by its original terms it runs run to bearer, it is negotiated by delivery alone;~~

~~(b)(c) when a document running~~ If the document's original terms run to the order of a named person and it is delivered to him the named person, the effect is the same as if the document had been negotiated.

~~(3)(d) Negotiation of a negotiable the document of title after it has been endorsed to a specified named person requires endorsement by the special endorsee named person as well as delivery.~~

~~(4)(e) A negotiable document of title is "duly negotiated" when if it is negotiated in the manner stated in this section subsection (1)(e) to a holder who that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves receiving the document in settlement or payment of a money obligation.~~

(2) The following rules apply to a negotiable electronic document of title:

(a) If the document's original terms run to the order of a named person or to bearer, the document is negotiated by delivery of the document to another person. Endorsement by the named person is not required to negotiate the document.

(b) If the document's original terms run to the order of a named person and the named person has control of the document, the effect is the same as if the document had been negotiated.

(c) A document is duly negotiated if it is negotiated in the manner stated in this subsection (2) to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves taking delivery of the document in settlement or payment of a monetary obligation.

~~(5)(d) Endorsement of a nonnegotiable document of title neither makes it negotiable nor adds to the transferee's rights.~~

~~(6)(e) The naming in a negotiable bill of lading of a person to be notified of the arrival of the goods does not limit the negotiability of the bill nor or constitute notice to a purchaser thereof of the bill of any interest of such that person in the goods."~~

**Section 63.** Section 30-7-502, MCA, is amended to read:

**"30-7-502. Rights acquired by due negotiation.** (1) Subject to ~~the following section and to the provisions of 30-7-205 and 30-7-503,~~ on fungible goods, a holder to ~~whom~~ which a negotiable document of title has been duly negotiated acquires thereby:

- (a) title to the document;
- (b) title to the goods;
- (c) all rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and
- (d) the direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by ~~him~~ the issuer except those arising under the terms of the document or under this chapter. In the case of a delivery order, the bailee's obligation accrues only upon the bailee's acceptance of the delivery order and the obligation acquired by the holder is that the issuer and any endorser will procure the acceptance of the bailee.

(2) Subject to ~~the following section 30-7-503,~~ title and rights ~~so~~ acquired by due negotiation are not defeated by any stoppage of the goods represented by the document of title or by surrender of ~~such~~ the goods by the bailee; and are not impaired even ~~though~~ if:

- (a) the due negotiation or any prior due negotiation constituted a breach of duty;
- (b) ~~or even though~~ any person has been deprived of possession of ~~the~~ a negotiable tangible document or control of a negotiable electronic document by misrepresentation, fraud, accident, mistake, duress, loss, theft or conversion; ~~;~~ or
- (c) ~~even though~~ a previous sale or other transfer of the goods or document has been made to a third person."

**Section 64.** Section 30-7-503, MCA, is amended to read:

**"30-7-503. Document of title to goods defeated in certain cases.** (1) A document of title confers no right in goods against a person ~~who~~ that before issuance of the document had a legal interest or a perfected security interest in ~~them~~ the goods and ~~who neither~~ that did not:

- (a) ~~delivered or entrusted them~~ deliver or entrust the goods or any document of title covering ~~them~~ the goods to the bailor or the bailor's nominee with actual or apparent authority to ship, store or sell; ~~or~~ with power to obtain delivery under ~~this chapter (30-7-403);~~ or with power of disposition under ~~this code (30-2-403, 30-2A-304(2), 30-2A-305(2), and or 30-9A-320)~~ or other statute or rule of law; ~~nor or~~
- (b) ~~acquiesced~~ acquiesce in the procurement by the bailor or the bailor's nominee of any document of

title.

(2) Title to goods based upon an unaccepted delivery order is subject to the rights of ~~anyone~~ any person to whom which a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. ~~Such a~~ That title may be defeated under ~~the next section~~ 30-7-504 to the same extent as the rights of the issuer or a transferee from the issuer.

(3) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of ~~anyone~~ any person to whom which a bill issued by the freight forwarder is duly negotiated; ~~but~~ However, delivery by the carrier in accordance with part 4 of this chapter pursuant to its own bill of lading discharges the carrier's obligation to deliver."

**Section 65.** Section 30-7-504, MCA, is amended to read:

**"30-7-504. Rights acquired in the absence of due negotiation -- effect of diversion -- seller's stoppage of delivery.** (1) A transferee of a document of title, whether negotiable or nonnegotiable, to whom which the document has been delivered but not duly negotiated, acquires the title and rights ~~which his~~ that its transferor had or had actual authority to convey.

(2) In the case of a nonnegotiable document of title, until but not after the bailee receives notification of the transfer, the rights of the transferee may be defeated:

(a) by those creditors of the transferor who could treat the sale as void under 30-2-402 or 30-2A-308;

or

(b) by a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of ~~his~~ the buyer's rights; or

(c) as against the bailee, by good faith dealings of the bailee with the transferor.

(3) A diversion or other change of shipping instructions by the consignor in a nonnegotiable bill of lading which causes the bailee not to deliver to the consignee defeats the consignee's title to the goods if ~~they~~ the goods have been delivered to a buyer in ordinary course of business or a lessee in ordinary course of business and in any event defeats the consignee's rights against the bailee.

(4) Delivery of goods pursuant to a nonnegotiable document may be stopped by a seller under 30-2-705 or a lessor under 30-2A-526, and subject to the ~~requirement~~ requirements of due notification ~~there provided in those sections~~. A bailee honoring the seller's instructions is entitled to be indemnified by the seller against any resulting loss or expense."

**Section 66.** Section 30-7-506, MCA, is amended to read:

**"30-7-506. Delivery without endorsement -- right to compel endorsement.** The transferee of a negotiable document of title has a specifically enforceable right to have his its transferor supply any necessary endorsement, but the transfer becomes a negotiation only as of the time the endorsement is supplied."

**Section 67.** Section 30-7-507, MCA, is amended to read:

**"30-7-507. Warranties on negotiation or ~~transfer of receipt or bill~~ delivery of document of title.** ~~Where~~ If a person negotiates or ~~transfers~~ delivers a document of title for value, otherwise than as a mere intermediary under ~~the next following section 30-7-508, then~~ unless otherwise agreed, he the transferor warrants to his its immediate purchaser only in addition to any warranty made in selling or leasing the goods that:

- (a) ~~that~~ the document is genuine; ~~and~~
- (b) ~~that he has no~~ the transferor does not have knowledge of any fact ~~which~~ that would impair its the document's validity or worth; and
- (c) ~~that his~~ the negotiation or ~~transfer~~ delivery is rightful and fully effective with respect to the title to the document and the goods it represents."

**Section 68.** Section 30-7-508, MCA, is amended to read:

**"30-7-508. Warranties of collecting bank as to documents of title.** A collecting bank or other intermediary known to be entrusted with documents of title on behalf of another or with collection of a draft or other claim against delivery of documents warrants by ~~such~~ the delivery of the documents only its own good faith and authority. ~~This rule applies even though the~~ if the collecting bank or other intermediary has purchased or made advances against the claim or draft to be collected."

**Section 69.** Section 30-7-509, MCA, is amended to read:

**"30-7-509. ~~Receipt or bill -- when adequate~~ Adequate compliance with commercial contract.** ~~The question whether~~ Whether a document is adequate to fulfill the obligations of a contract for sale, a contract for lease, or the conditions of a credit is governed by the ~~Chapters on Sales (Chapter chapter 2), 2A, and on Letters of Credit (Chapter or 5).~~

**Section 70.** Section 30-7-601, MCA, is amended to read:

**"30-7-601. Lost and missing documents.** (1) If a document has been lost, stolen, or destroyed, a court



may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with ~~such the~~ order. If the document was negotiable, a court may not order delivery of the goods or issuance of a substitute document without the claimant must post claimant's posting security approved by the court to indemnify unless it finds that any person ~~who that~~ may suffer loss as a result of nonsurrender of possession or control of the document is adequately protected against the loss. If the document was not negotiable nonnegotiable, such the court may require security may be required at the discretion of the court. The court may also ~~in its discretion~~ order payment of the bailee's reasonable costs and ~~counsel~~ attorney's fees in any action under this subsection.

(2) A bailee ~~who that~~ without court order delivers goods to a person claiming under a missing negotiable document of title is liable to any person injured thereby; ~~and if~~ if the delivery is not in good faith, the bailee is becomes liable for conversion. Delivery in good faith is not conversion ~~if made in accordance with a filed classification or tariff or, where no classification or tariff is filed,~~ if the claimant posts security with the bailee in an amount at least double the value of the goods at the time of posting to indemnify any person injured by the delivery ~~who which~~ which files a notice of claim within 1 year after the delivery."

**Section 71.** Section 30-7-602, MCA, is amended to read:

**"30-7-602. Attachment of goods covered by a negotiable document of title.** ~~Except where the~~ Unless a document of title was originally issued upon delivery of the goods by a person ~~who had no that did not~~ have power to dispose of them, ~~no a~~ lien attaches does not attach by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless possession or control of the document be is first surrendered to the bailee or ~~its the document's~~ negotiation is enjoined; ~~and the~~ The bailee ~~shall~~ may not be compelled to deliver the goods pursuant to process until possession or control of the document is surrendered to him the bailee or impounded by to the court. ~~One who purchases~~ A purchaser of the document for value without notice of the process or injunction takes free of the lien imposed by judicial process."

**Section 72.** Section 30-7-603, MCA, is amended to read:

**"30-7-603. Conflicting claims -- interpleader.** If more than one person claims title to or possession of the goods, the bailee is excused from delivery until ~~he the bailee~~ the bailee has ~~had~~ a reasonable time to ascertain the validity of the adverse claims or to bring commence an action ~~to compel all claimants to interplead and may compel such for~~ interpleader; ~~The bailee may assert an interpleader either in defending an action for nondelivery of the goods, or by original action, whichever is appropriate.~~

**Section 73.** Section 30-8-113, MCA, is amended to read:

**"30-8-113. Rules for determining whether certain obligations and interests are securities or financial assets.** (1) A share or similar equity interest issued by a corporation, business trust, joint-stock company, or similar entity is a security.

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

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

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

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

(6) A commodity contract, as defined in 30-9A-102, is not a security or a financial asset.

(7) A document of title, as defined in 30-1-201(2)(q), is not a financial asset unless 30-8-112(1)(i)(C) applies.

**Section 74.** Section 30-9A-102, MCA, is amended to read:

**"30-9A-102. Definitions and index of definitions.** (1) As used in this chapter, the following definitions apply:

(a) "Accession" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(b) (i) "Account", except as used in "account for", means a right to payment of a monetary obligation, whether or not earned by performance:

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

(B) for services rendered or to be rendered;

- (C) for a policy of insurance issued or to be issued;
- (D) for a secondary obligation incurred or to be incurred;
- (E) for energy provided or to be provided;
- (F) for the use or hire of a vessel under a charter or other contract;
- (G) arising out of the use of a credit or charge card or information contained on or for use with the card;

or

(H) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state.

(ii) The term includes a health-care-insurance receivable.

(iii) The term does not include:

- (A) a right to payment evidenced by chattel paper or an instrument;
- (B) a commercial tort claim;
- (C) a deposit account;
- (D) investment property;
- (E) a letter-of-credit right; or
- (F) a right to payment for money or funds advanced or sold, other than a right arising out of the use of a credit or charge card or information contained on or for use with the card.

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

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

- (i) authenticated by a secured party;
- (ii) 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

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

(e) "Agricultural lien" means an interest, other than a security interest, in farm products:

- (i) that secures payment or performance of an obligation for:
  - (A) goods or services furnished in connection with a debtor's farming operation; or
  - (B) rent on real property leased by a debtor in connection with its farming operation;
- (ii) that is created by statute in favor of a person that:
  - (A) in the ordinary course of its business furnished goods or services to a debtor in connection with a

debtor's farming operation; or

- (B) leased real property to a debtor in connection with the debtor's farming operation; and
- (iii) whose effectiveness does not depend on the person's possession of the personal property.

(f) "As-extracted collateral" means:

- (i) oil, gas, or other minerals that are subject to a security interest that:

- (A) is created by a debtor having an interest in the minerals before extraction; and

- (B) attaches to the minerals as extracted; or

(ii) accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

(g) "Authenticate" means to:

- (i) sign; or

- (ii) execute or adopt a symbol, or encrypt a record in whole or in part, with present intent to:

- (A) identify the authenticating party; and

- (B) adopt, accept, or establish the authenticity of a record or term.

(h) "Bank" means an organization that is engaged in the business of banking. The term includes a savings bank, savings and loan association, credit union, and trust company.

(i) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the like.

(j) "Certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

(k) (i) "Chattel paper" means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this subsection (1)(k)(i), "monetary obligation" means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods.

(ii) (A) The term does not include:

- (I) charters or other contracts involving the use or hire of a vessel; or

- (II) records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(B) If a transaction is evidenced by records that include an instrument or series of instruments, the group

of records taken together constitutes chattel paper.

(l) "Collateral" means the property subject to a security interest or agricultural lien. The term includes:

(i) proceeds to which a security interest attaches under 30-9A-315;

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

(iii) goods that are the subject of a consignment.

(m) "Commercial tort claim" means a claim arising in tort if:

(i) the claimant is an organization; or

(ii) the claimant is an individual and the claim:

(A) arose in the course of the claimant's business or profession; and

(B) does not include damages arising out of personal injury to or the death of an individual.

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

(o) "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:

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

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

(p) "Commodity customer" means a person for which a commodity intermediary carries a commodity contract on its books.

(q) "Commodity intermediary" means a person that:

(i) is registered as a futures commission merchant under federal commodities law; or

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

(r) "Communicate" means:

(i) to send a written or other tangible record;

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

(iii) in the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.

(s) "Consignee" means a merchant to which goods are delivered in a consignment.

(t) "Consignment" means a transaction, regardless of its form, in which a person delivers goods to a

merchant for the purpose of sale and:

(i) the merchant:

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

(B) is not an auctioneer; and

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

(ii) with respect to each delivery, the aggregate value of the goods is \$1,000 or more at the time of delivery;

(iii) the goods are not consumer goods immediately before delivery; and

(iv) the transaction does not create a security interest that secures an obligation.

(u) "Consignor" means a person that delivers goods to a consignee in a consignment.

(v) "Consumer debtor" means a debtor in a consumer transaction.

(w) "Consumer goods" means goods that are used or bought for use primarily for personal, family, or household purposes.

(x) "Consumer-goods transaction" means a transaction to the extent that:

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

(ii) a security interest in consumer goods or in consumer goods and software that is used, licensed, or bought for use primarily for personal, family, or household purposes secures the obligation.

(y) "Consumer obligor" means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family, or household purposes.

(z) "Consumer transaction" means a transaction to the extent that:

(i) an individual incurs an obligation primarily for personal, family, or household purposes;

(ii) a security interest secures the obligation; and

(iii) the collateral is held or acquired primarily for personal, family, or household purposes. The term includes a consumer-goods transaction.

(aa) "Continuation statement" means an amendment of a financing statement that:

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

(ii) indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(bb) "Debtor" means:

(i) a person having a property interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;

(ii) a seller of accounts, chattel paper, payment intangibles, or promissory notes; or

(iii) a consignee.

(cc) "Deposit account" means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or an account evidenced by an instrument.

(dd) "Document" means a document of title or a receipt of the type described in 30-7-201(2).

(ee) "Electronic chattel paper" means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

(ff) "Encumbrance" means a right, other than an ownership interest, in real property. The term includes a mortgage and other lien on real property.

(gg) "Equipment" means goods other than inventory, farm products, or consumer goods.

(hh) "Farm products" means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and that are:

(i) crops grown, growing, or to be grown, including:

(A) crops produced on trees, vines, and bushes; and

(B) aquatic goods produced in aquacultural operations;

(ii) livestock, born or unborn, including aquatic goods produced in aquacultural operations;

(iii) supplies used or produced in a farming operation; or

(iv) products of crops or livestock in their unmanufactured states.

(ii) "Farming operation" means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

(jj) "File number" means the number assigned to an initial financing statement pursuant to 30-9A-519(1).

(kk) "Filing office" means an office designated in 30-9A-501 as the place to file a financing statement.

(ll) "Filing-office rule" means a rule adopted pursuant to 30-9A-526.

(mm) "Financing statement" means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(nn) "Fixture filing" means the filing of a financing statement covering goods that are or are to become fixtures and satisfying the requirements of 30-9A-502(1) and (2). The term includes the filing of a financing statement covering goods of a transmitting utility that are or are to become fixtures.

(oo) "Fixtures" means goods that have become so related to particular real property that an interest in them arises under real property law.

(pp) "General intangible" means any personal property, including things in action, other than accounts,

chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes a payment intangible and software.

(qq) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(rr) (i) "Goods" means all things that are movable when a security interest attaches. The term includes:

(A) fixtures;

(B) standing timber that is to be cut and removed under a conveyance or contract for sale;

(C) the unborn young of animals;

(D) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes; and

(E) manufactured homes.

(ii) The term also includes a computer program structurally integrated with goods, any informational content included in the program, and any supporting information provided in connection with a transaction relating to the program or informational content if:

(A) the program is associated with the goods in such a manner that it customarily is considered part of the goods; or

(B) by becoming the owner of the goods, a person would acquire a right to use the program in connection with the goods.

(iii) The term does not include a program integrated with goods that consist solely of the medium with which the program is integrated. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

(ss) "Governmental unit" means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, or a foreign country. The term includes an organization with a separate corporate existence only if the organization is eligible to issue debt obligations on which interest is exempt from income taxation under the laws of the United States.

(tt) "Health-care-insurance receivable" means an interest in or claim under a policy of insurance that is a right to payment of a monetary obligation for health care goods or services provided.

(uu) (i) "Instrument" means:

(A) a negotiable instrument; or

(B) any other writing that evidences a right to the payment of a monetary obligation, is not itself a security



agreement or lease, and is of a type that in the ordinary course of business is transferred by delivery with any necessary indorsement or assignment.

(ii) The term does not include:

(A) investment property;

(B) a letter of credit; or

(C) a writing that evidences a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(vv) "Inventory" means goods, other than farm products, that:

(i) are leased by a person as lessor;

(ii) are held by a person for sale or lease or to be furnished under contracts of service;

(iii) are furnished by a person under a contract of service; or

(iv) consist of raw materials, work in process, or materials used or consumed in a business.

(ww) "Investment property" means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

(xx) "Jurisdiction of organization", with respect to a registered organization, means the jurisdiction under whose law the organization is organized.

(yy) (i) "Letter-of-credit right" means a right to payment and performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance.

(ii) The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(zz) "Lien creditor" means:

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

(ii) an assignee for benefit of creditors from the time of assignment;

(iii) a trustee in bankruptcy from the date of the filing of the petition; and

(iv) a receiver in equity from the time of appointment.

(aaa) "Manufactured home" means a structure, transportable in one or more sections, that in the traveling mode is 8 body feet or more in width or 40 body feet or more in length or that when erected on site is 320 or more square feet and that is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this subsection except the size requirements and with respect to which the manufacturer

voluntarily files a certification required by the United States secretary of housing and urban development and complies with the standards established under Title 42 of the United States Code.

(bbb) "Manufactured-home transaction" means a secured transaction:

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

(ii) in which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

(ccc) "Mortgage" means a consensual interest in real property, including fixtures, that is created by a mortgage, trust deed, or similar transaction.

(ddd) "New debtor" means a person that becomes bound as debtor under 30-9A-203(4) by a security agreement previously entered into by another person.

(eee) (i) "New value" means:

(A) money;

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

(C) release by a transferee of an interest in property previously transferred to the transferee.

(ii) The term does not include an obligation substituted for another obligation.

(fff) "Noncash proceeds" means proceeds other than cash proceeds.

(ggg) (i) "Obligor" means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral:

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

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

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

(ii) The term does not include an issuer or a nominated person under a letter of credit.

(hhh) "Original debtor", except as used in 30-9A-310(3), means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under 30-9A-203(4).

(iii) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation.

(jjj) "Person related to", with respect to an individual, means:

(i) the spouse of the individual;

(ii) a brother, brother-in-law, sister, or sister-in-law of the individual;

(iii) an ancestor or lineal descendant of the individual or the individual's spouse; and

(iv) any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

(kkk) "Person related to", with respect to an organization, means:

(i) a person directly or indirectly controlling, controlled by, or under common control with the organization;

(ii) an officer or director of, or a person performing similar functions with respect to, the organization;

(iii) an officer or director of, or a person performing similar functions with respect to, a person described in subsection (1)(kkk)(i);

(iv) the spouse of an individual described in subsection (1)(kkk)(i), (1)(kkk)(ii), or (1)(kkk)(iii); or

(v) an individual who is related by blood or marriage to an individual described in subsections (1)(kkk)(i), (1)(kkk)(ii), (1)(kkk)(iii), or (1)(kkk)(iv) and shares the same home with the individual.

(lll) "Proceeds", except as used in 30-9A-609(2), means the following property:

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

(ii) whatever is collected on, or distributed on account of, collateral;

(iii) rights arising out of collateral;

(iv) to the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to the collateral; and

(v) to the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects in, or damage to the collateral.

(mmm) "Promissory note" means an instrument that:

(i) evidences a promise to pay a monetary obligation;

(ii) does not evidence an order to pay; and

(iii) does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(nnn) "Proposal" means a record authenticated by a secured party and including the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to 30-9A-620 through 30-9A-622.

(ooo) "Public-finance transaction" means a secured transaction in connection with which:

(i) bonds, debentures, certificates of participation, or similar debt securities are issued;

(ii) all or a portion of the securities issued have an initial stated maturity of at least 20 years; and

(iii) the debtor, the obligor, the secured party, the account debtor or other person obligated on collateral,

the assignor or assignee of a secured obligation, or the assignor or assignee of a security interest is a state or a governmental unit of a state.

(ppp) "Pursuant to commitment", with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.

(qqq) "Record", except as used in "for record", "of record", "record or legal title", and "record owner", means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(rrr) "Registered organization" means an organization organized solely under the law of one state or the United States and as to which the state or the United States is required to maintain a public record showing the organization to have been organized.

(sss) "Secondary obligor" means an obligor to the extent that:

- (i) the obligor's obligation is secondary; or
- (ii) the obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

(ttt) "Secured party" means:

- (i) a person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;
- (ii) a person that holds an agricultural lien;
- (iii) a consignor;
- (iv) a person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;
- (v) a trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or
- (vi) a person that holds a security interest arising under 30-2-401, 30-2-505, 30-2-711(3), 30-2A-508(5), 30-4-208, or 30-5-118.

(uuu) "Security agreement" means an agreement that creates or provides for a security interest.

(vvv) "Send", in connection with a record or notification, means to:

- (i) deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or
- (ii) cause the record or notification to be received within the time that it would have been received if

properly sent under subsection (1)(vvv)(i).

(www) (i) "Software" means a computer program, any informational content included in the program, and any supporting information provided in connection with a transaction relating to the computer program or informational content.

(ii) The term does not include a computer program that is contained in goods unless the goods are a computer or computer peripheral.

(xxx) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(yyy) "Supporting obligation" means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, document, general intangible, instrument, or investment property.

(zzz) "Tangible chattel paper" means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

(aaaa) "Termination statement" means an amendment of a financing statement that:

(i) identifies, by its file number, the initial financing statement to which it relates; and  
(ii) indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(bbbb) "Transmitting utility" means a person primarily engaged in the business of:

(i) operating a railroad, subway, street railway, or trolley bus;  
(ii) transmitting electric or electronic communications;  
(iii) transmitting goods by pipeline or sewer; or  
(iv) transmitting or producing and transmitting electricity, steam, gas, or water.

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

"Applicant" 30-5-122.

"Beneficiary" 30-5-122.

"Broker" 30-8-112.

"Certificated security" 30-8-112.

"Check" 30-3-104.

"Clearing corporation" 30-8-112.

"Contract for sale" 30-2-106.

"Control" (with respect to a document of title) [section 39].

"Customer" 30-4-104.  
"Entitlement holder" 30-8-112.  
"Financial asset" 30-8-112.  
"Holder in due course" 30-3-302.  
"Issuer" (with respect to a letter of credit or letter-of-credit right) 30-5-122.  
"Issuer" (with respect to a security) 30-8-211.  
"Lease" 30-2A-103.  
"Lease agreement" 30-2A-103.  
"Lease contract" 30-2A-103.  
"Leasehold interest" 30-2A-103.  
"Lessee" 30-2A-103.  
"Lessee in ordinary course of business" 30-2A-103.  
"Lessor" 30-2A-103.  
"Lessor's residual interest" 30-2A-103.  
"Letter of credit" 30-5-122.  
"Merchant" 30-2-104.  
"Negotiable instrument" 30-3-104.  
"Nominated person" 30-5-122.  
"Note" 30-3-104.  
"Proceeds of a letter of credit" 30-5-134.  
"Prove" 30-3-102.  
"Sale" 30-2-106.  
"Securities account" 30-8-501.  
"Securities intermediary" 30-8-112.  
"Security" 30-8-112.  
"Security certificate" 30-8-112.  
"Security entitlement" 30-8-112.  
"Uncertificated security" 30-8-112.

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

**Section 75.** Section 30-9A-203, MCA, is amended to read:

**"30-9A-203. Attachment and enforcement of security interest -- proceeds -- supporting obligations -- formal requisites.** (1) A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.

(2) Except as otherwise provided in subsections (3) through (9), a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

(a) value has been given;

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

(c) one of the following conditions is met:

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

(ii) the collateral is not a certificated security and is in the possession of the secured party under 30-9A-313 pursuant to the debtor's security agreement;

(iii) the collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under 30-8-331 pursuant to the debtor's security agreement; or

(iv) the collateral is a deposit account, electronic chattel paper, investment property, ~~or~~ a letter-of-credit right, or electronic document and the secured party has control under 30-9A-104, 30-9A-105, 30-9A-106, ~~or~~ 30-9A-107, or [section 39] pursuant to the debtor's security agreement.

(3) Subsection (2) is subject to 30-4-208 on the security interest of a collecting bank, 30-5-118 on the security interest of a letter-of-credit issuer or nominated person, 30-9A-110 on a security interest arising under chapter 2 or 2A, and 30-9A-206 on security interests in investment property.

(4) A person becomes bound as debtor by a security agreement entered into by another person if, by operation of law other than this chapter or by contract:

(a) the security agreement becomes effective to create a security interest in the person's property; or

(b) the person becomes generally obligated for the obligations of the other person, including the obligation secured under the security agreement, and acquires or succeeds to all or substantially all of the assets of the other person.

(5) If a new debtor becomes bound as debtor by a security agreement entered into by another person:

(a) the agreement satisfies the requirements of subsection (2)(c) with respect to existing or after-acquired

property of the new debtor to the extent the property is described in the agreement; and

(b) another agreement is not necessary to make a security interest in the property enforceable.

(6) The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by 30-9A-315 and is also attachment of a security interest in a supporting obligation for the collateral.

(7) The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien.

(8) The attachment of a security interest in a securities account is also attachment of a security interest in the security entitlements carried in the securities account.

(9) The attachment of a security interest in a commodity account is also attachment of a security interest in the commodity contracts carried in the commodity account."

**Section 76.** Section 30-9A-207, MCA, is amended to read:

**"30-9A-207. Rights and duties of secured party having possession or control of collateral.** (1)

Except as otherwise provided in subsection (4), a secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession. In the case of chattel paper or an instrument, reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(2) Except as otherwise provided in subsection (4), if a secured party has possession of collateral:

(a) reasonable expenses, including the cost of insurance and payment of taxes or other charges, incurred in the custody, preservation, use, or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(b) the risk of accidental loss or damage is on the debtor to the extent of a deficiency in any effective insurance coverage;

(c) the secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and

(d) the secured party may use or operate the collateral:

(i) for the purpose of preserving the collateral or its value;

(ii) as permitted by an order of a court having competent jurisdiction; or

(iii) except in the case of consumer goods, in the manner and to the extent agreed by the debtor.

(3) Except as otherwise provided in subsection (4), a secured party having possession of collateral or control of collateral under 30-9A-104, 30-9A-105, 30-9A-106, ~~or~~ 30-9A-107, or [section 39]:



- (a) may hold as additional security any proceeds, except money or funds, received from the collateral;
- (b) shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and
- (c) may create a security interest in the collateral.
- (4) If the secured party is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor:
  - (a) subsection (1) does not apply unless the secured party is entitled by agreement:
    - (i) to charge back uncollected collateral; or
    - (ii) otherwise to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other default of an account debtor or other obligor on the collateral; and
  - (b) subsections (2) and (3) do not apply."

**Section 77.** Section 30-9A-208, MCA, is amended to read:

**"30-9A-208. Additional duties of secured party having control of collateral.** (1) This section applies if:

- (a) there is no outstanding secured obligation; and
- (b) the secured party is not committed to make advances, incur obligations, or otherwise give value.
- (2) Within 10 days after receiving an authenticated demand by the debtor:
  - (a) a secured party having control of a deposit account under 30-9A-104(1)(b) shall send to the bank with which the deposit account is maintained an authenticated statement that releases the bank from any further obligation to comply with instructions originated by the secured party;
  - (b) a secured party having control of a deposit account under 30-9A-104(1)(c) shall:
    - (i) pay the debtor the balance on deposit in the deposit account; or
    - (ii) transfer the balance on deposit into a deposit account in the debtor's name;
  - (c) a secured party, other than a buyer, having control of electronic chattel paper under 30-9A-105 shall:
    - (i) communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian;
    - (ii) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

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

(d) a secured party having control of investment property under 30-8-116(4)(b) or 30-9A-106(2) shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party; ~~and~~

(e) a secured party having control of a letter-of-credit right under 30-9A-107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party; and

(f) a secured party having control of an electronic document shall:

(i) give control of the electronic document to the debtor or its designated custodian;

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

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

**Section 78.** Section 30-9A-301, MCA, is amended to read:

**"30-9A-301. Law governing perfection and priority of security interests.** Except as otherwise provided in 30-9A-303 through 30-9A-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 subsection (4), while tangible negotiable documents, goods, instruments, 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 79.** Section 30-9A-310, MCA, is amended to read:

**"30-9A-310. When filing required to perfect security interest or agricultural lien -- security interests and agricultural liens to which filing provisions do not apply.** (1) Except as otherwise provided in 30-9A-312(2) or subsection (2) of this section, a financing statement must be filed to perfect all security interests and agricultural liens.

- (2) The filing of a financing statement is not necessary to perfect a security interest:
  - (a) that is perfected under 30-9A-308(4), (5), (6), or (7);
  - (b) that is perfected under 30-9A-309 when it attaches;
  - (c) in property subject to a statute, regulation, or treaty described in 30-9A-311(1);
  - (d) in goods in possession of a bailee that is perfected under 30-9A-312(4)(a) or (4)(b);
  - (e) in certificated securities, documents, goods, or instruments that is perfected without filing or possession under 30-9A-312(5), (6), or (7);
  - (f) in collateral in the secured party's possession under 30-9A-313;
  - (g) in a certificated security that is perfected by delivery of the security certificate to the secured party under 30-9A-313;
  - (h) in a deposit account, electronic chattel paper, electronic document, investment property, or letter-of-credit right that is perfected by control under 30-9A-314;
  - (i) in proceeds which is perfected under 30-9A-315; or
  - (j) that is perfected under 30-9A-316.
- (3) If a secured party assigns a perfected security interest or agricultural lien, a filing under this chapter is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor."

**Section 80.** Section 30-9A-312, MCA, is amended to read:

**"30-9A-312. Perfection of security interests in chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letter-of-credit rights, and money -- perfection by permissive filing -- temporary perfection without filing or transfer of possession.** (1) A security interest in chattel paper, negotiable documents, instruments, or investment property may be perfected by filing.

(2) Except as otherwise provided in 30-9A-315(3) and (4) for proceeds:

(a) a security interest in a deposit account may be perfected only by control under 30-9A-314;

(b) a security interest in a letter-of-credit right may be perfected only by control under 30-9A-314, except as otherwise provided in 30-9A-308(4); and

(c) a security interest in money may be perfected only by the secured party's taking possession under 30-9A-313.

(3) While goods are in the possession of a bailee that has issued a negotiable document covering the goods:

(a) a security interest in the goods may be perfected by perfecting a security interest in the document;

and

(b) a security interest perfected in the document has priority over any security interest that becomes perfected in the goods by another method during that time.

(4) While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:

(a) issuance of a document in the name of the secured party;

(b) the bailee's receipt of notification of the secured party's interest; or

(c) filing as to the goods.

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

(6) A perfected security interest in a negotiable document or goods in possession or control of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for 20 days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:

(a) ultimate sale or exchange; or

(b) loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing

with them in a manner preliminary to their sale or exchange.

(7) A perfected security interest in a certificated security or instrument remains perfected for 20 days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:

- (a) ultimate sale or exchange; or
- (b) presentation, collection, enforcement, renewal, or registration of transfer.

(8) After the 20-day period specified in subsection (5), (6), or (7) expires, perfection depends upon compliance with this chapter."

**Section 81.** Section 30-9A-313, MCA, is amended to read:

**"30-9A-313. When possession by or delivery to secured party perfects security interest without filing.** (1) Except as otherwise provided in subsection (2), a secured party may perfect a security interest in tangible negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under 30-8-331.

(2) With respect to goods covered by a certificate of title issued by this state, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in 30-9A-316(4).

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

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

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

(4) If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.

(5) A security interest in a certificated security in registered form is perfected by delivery when delivery of the certificated security occurs under 30-8-331 and remains perfected by delivery until the debtor obtains possession of the security certificate.

(6) A person in possession of collateral is not required to acknowledge that it holds possession for a

secured party's benefit.

(7) If a person acknowledges that it holds possession for the secured party's benefit:

(a) the acknowledgment is effective under 30-8-331(1) or subsection (3) of this section, even if the acknowledgment violates the rights of a debtor; and

(b) unless the person otherwise agrees or law other than this chapter otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.

(8) A secured party having possession of collateral does not relinquish possession by delivering the collateral to a person other than the debtor or a lessee of the collateral from the debtor in the ordinary course of the debtor's business if the person was instructed before the delivery or is instructed contemporaneously with the delivery:

(a) to hold possession of the collateral for the secured party's benefit; or

(b) to redeliver the collateral to the secured party.

(9) A secured party does not relinquish possession even if a delivery under subsection (8) violates the rights of a debtor. A person to which collateral is delivered under subsection (8) does not owe any duty to the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees or law other than this chapter otherwise provides."

**Section 82.** Section 30-9A-314, MCA, is amended to read:

**"30-9A-314. Perfection by control.** (1) A security interest in investment property, a deposit account, a letter-of-credit right, or electronic chattel paper may be perfected by control of the collateral under 30-9A-104, 30-9A-105, 30-9A-106, ~~or~~ 30-9A-107, or [section 39].

(2) A security interest in a deposit account, electronic chattel paper, ~~or~~ a letter-of-credit right, or electronic document is perfected by control under 30-9A-104, 30-9A-105, ~~or~~ 30-9A-107, or [section 39] when the secured party obtains control and remains perfected by control only while the secured party retains control.

(3) A security interest in investment property is perfected by control under 30-9A-106 from the time the secured party obtains control and remains perfected by control until:

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

(b) one of the following occurs:

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

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

registered owner; or

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

**Section 83.** Section 30-9A-317, MCA, is amended to read:

**"30-9A-317. Interests that take priority over or take free of security interest or agricultural lien.**

(1) A security interest or agricultural lien is subordinate to the rights of:

(a) a person entitled to priority under 30-9A-322; and

(b) except as otherwise provided in subsection (5), a person that becomes a lien creditor before the earlier of the time:

(i) the security interest or agricultural lien is perfected; or

(ii) one of the conditions specified in 30-9A-203(2)(c) is met and a financing statement covering the collateral is filed.

(2) Except as otherwise provided in subsection (5), a buyer, other than a secured party, of chattel paper, tangible documents, goods, instruments, or a security certificate 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.

(3) Except as otherwise provided in subsection (5), a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(4) A licensee of a general intangible or a buyer, other than a secured party, of accounts, electronic documents, general intangibles, or investment property other than 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.

(5) Except as otherwise provided in 30-9A-320 and 30-9A-321, if a person files a financing statement with respect to a purchase-money security interest before or within 20 days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor that arise between the time the security interest attaches and the time of filing."

**Section 84.** Section 30-9A-338, MCA, is amended to read:

**"30-9A-338. Priority of security interest or agricultural lien perfected by filed financing statement providing certain incorrect information.** If a security interest or agricultural lien is perfected by a filed financing statement providing information described in 30-9A-516(2)(e) that is incorrect at the time the financing statement

is filed:

(1) the security interest or agricultural lien is subordinate to a conflicting perfected security interest in the collateral to the extent that the holder of the conflicting security interest gives value in reasonable reliance upon the incorrect information; and

(2) a purchaser, other than a secured party, of the collateral takes free of the security interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect information, the purchaser gives value and, in the case of tangible chattel paper, tangible documents, goods, instruments, or a security certificate, receives delivery of the collateral."

**Section 85.** Section 30-9A-601, MCA, is amended to read:

**"30-9A-601. Rights after default -- judicial enforcement -- consignor or buyer of accounts, chattel paper, payment intangibles, or promissory notes.** (1) After default, a secured party has the rights provided in this part and, except as otherwise provided in 30-9A-602, those provided by agreement of the parties. A secured party:

(a) may reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, or agricultural lien by any available judicial procedure; and

(b) if the collateral is documents, may proceed either as to the documents or as to the goods they cover.

(2) A secured party in possession of collateral or control of collateral under 30-9A-104, 30-9A-105, 30-9A-106, ~~or 30-9A-107~~, or [section 39] has the rights and duties provided in 30-9A-207.

(3) The rights under subsections (1) and (2) are cumulative and may be exercised simultaneously.

(4) Except as otherwise provided in 30-9A-605 and subsection (7) of this section, after default, a debtor and an obligor have the rights provided in this part and by agreement of the parties.

(5) If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:

(a) the date of perfection of the security interest or agricultural lien in the collateral;

(b) the date of filing a financing statement covering the collateral; or

(c) any date specified in a statute under which the agricultural lien was created.

(6) A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this chapter.

(7) Except as otherwise provided in 30-9A-607(3), this part imposes no duties upon a secured party that



is a consignor or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes."

**Section 86.** Section 30-18-103, MCA, is amended to read:

**"30-18-103. Scope.** (1) Except as otherwise provided in subsection (2), this part applies to electronic records and electronic signatures relating to a transaction.

(2) This part does not apply to a transaction to the extent it is governed by:

- (a) a law governing the creation and execution of wills, codicils, or testamentary trusts; and
- (b) Title 30, chapter 1, other than 30-1-107 and ~~30-1-206~~, and chapters 3 through 9A.

(3) This part applies to an electronic record or electronic signature otherwise excluded from the application of this part under subsection (2) to the extent it is governed by a law other than those specified in subsection (2).

(4) A transaction subject to this part is also subject to other applicable substantive law."

**Section 87.** Section 30-18-115, MCA, is amended to read:

**"30-18-115. Transferable records.** (1) In this section, "transferable record" means an electronic record that:

(a) would be a note under Title 30, chapter 3, or a document under Title 30, chapter 7, if the electronic record were in writing; and

(b) the issuer of the electronic record expressly has agreed is a transferable record.

(2) A person has control of a transferable record if a system employed for evidencing the transfer of interests in the transferable record reliably establishes that person as the person to which the transferable record was issued or transferred.

(3) A system satisfies subsection (2), and a person is considered to have control of a transferable record, if the transferable record is created, stored, and assigned in a manner that:

(a) a single authoritative copy of the transferable record exists that is unique, identifiable, and, except as otherwise provided in subsections (3)(d) through (3)(f), unalterable;

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

(i) the person to which the transferable record was issued; or

(ii) if the authoritative copy indicates that the transferable record has been transferred, the person to which the transferable record was most recently transferred;

(c) the authoritative copy is communicated to and maintained by the person asserting control or its

designated custodian;

(d) copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

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

(f) any revision of the authoritative copy is readily identifiable as authorized or unauthorized.

(4) Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in ~~30-1-201(20)~~ 30-1-201(2)(v), of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under Title 30, chapters 1 through 9A, including, if the applicable statutory requirements under 30-3-302(1), 30-7-501, or 30-9A-330 are satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable document of title has been duly negotiated, or a purchaser, respectively. Delivery, possession, and indorsement are not required to obtain or exercise any of the rights under this subsection.

(5) Except as otherwise agreed, an obligor under a transferable record has the same rights and defenses as an equivalent obligor under equivalent records or writings under Title 30, chapters 1 through 9A.

(6) If requested by a person against which enforcement is sought, the person seeking to enforce the transferable record shall provide reasonable proof that the person is in control of the transferable record. Proof may include access to the authoritative copy of the transferable record and related business records sufficient to review the terms of the transferable record and to establish the identity of the person having control of the transferable record."

**Section 88.** Section 45-6-315, MCA, is amended to read:

**"45-6-315. Defrauding creditors.** (1) A person commits the offense of defrauding secured creditors if he destroys, conceals, encumbers, transfers, removes from the state, or otherwise deals with property subject to a security interest with the purpose to hinder enforcement of that interest.

(2) "Security interest" means an interest in personal property or fixtures as defined in the Uniform Commercial Code (~~30-1-201(37)~~ 30-1-201(2)(jj)).

(3) A person convicted of the offense of defrauding secured creditors shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(4) A person who destroys, conceals, encumbers, transfers, removes from the state, or otherwise deals with property subject to a security interest with the purpose of depriving the owner of the property or of the

proceeds and value therefrom may be prosecuted under 45-6-301."

**Section 89.** Section 71-3-125, MCA, is amended to read:

**"71-3-125. Filing of agricultural lien statements.** (1) Unless a statement of an agricultural lien has been filed in the office of the secretary of state as provided in this chapter, a buyer who, in ordinary course of business as defined in ~~30-1-201(9)~~ 30-1-201(2)(j), buys a farm product takes it free of any lien created by this chapter even though the lien is otherwise perfected.

(2) A statement of an agricultural lien is sufficient if it:

- (a) gives the names and addresses of the debtor and lienor;
  - (b) describes the type of lien and its statutory authority;
  - (c) describes the collateral;
  - (d) contains the notation by the secretary of state of the date of filing and filing number;
  - (e) is signed by the lienor;
  - (f) describes the service or product furnished. If the collateral is farm products, the statement must state the county in which the farm products are located, designated by type of farm product.
  - (g) states the price or wage agreed upon or, if the price or wage was not agreed upon, the reasonable value of the service or product furnished;
  - (h) states the amount remaining unpaid;
  - (i) states the terms and period of employment if it is a farm laborer's lien filed pursuant to part 4 of this chapter;
  - (j) describes the land upon which seed or grain was or will be sown, planted, or used if it is a lien for seed or grain filed pursuant to part 7 of this chapter;
  - (k) describes the land upon which the grain or crops were grown and the place the grain or crops are presently stored if it is a thresher's lien filed pursuant to part 8 of this chapter;
  - (l) describes the land upon which the service was performed if it is a lien for spraying or dusting filed pursuant to part 9 of this chapter; and
  - (m) states the starting date of insurance coverage if it is a lien filed pursuant to part 7 of this chapter.
- (3) The agricultural lien statement must be in the form prescribed by the secretary of state.
- (4) The secretary of state shall:
- (a) record the agricultural lien statement on the centralized computer system as set forth in 30-9A-502;
- and

(b) establish fees for such recordings as set forth in 30-9A-525.

(5) For the purposes of this section, an agricultural lien means a lien under part 4, 7, 8, or 9 of this chapter.

(6) A statement of an agricultural lien or continuation statement that has been filed at the office of the county clerk and recorder lapses on March 31, 1990, unless prior to that date there is filed in the office of the secretary of state a certified copy of the statement and all related documents on file with the county clerk and recorder."

**NEW SECTION. Section 90. Repealer.** Sections 30-1-105, 30-1-110, 30-1-111, 30-1-206, 30-7-105, 30-7-701, 30-7-702, 30-7-703, 30-7-704, 30-7-705, and 30-7-706, MCA, are repealed.

**NEW SECTION. Section 91. Codification instructions.** (1) [Sections 9 through 13] are intended to be codified as an integral part of Title 30, chapter 1, and the provisions of Title 30, chapter 1, apply to [sections 9 through 13].

(2) [Sections 38 and 39] are intended to be codified as an integral part of Title 30, chapter 7, and the provisions of Title 30, chapter 7, apply to [sections 38 and 39].

**NEW SECTION. Section 92. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**NEW SECTION. Section 93. Applicability.** [This act] applies to a document of title that is issued or a bailment that arises on or after [the effective date of this act]. This act] does not apply to a document of title that is issued or a bailment that arises before [the effective date of this act] even if the document of title or bailment would be subject to [this act] if the document of title had been issued or bailment had arisen after [the effective date of this act]. [This act] does not apply to a right of action that has accrued before [the effective date of this act].

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