

1 SENATE BILL NO. 370
2 INTRODUCED BY S. FITZPATRICK, E. BUTTREY, D. SALOMON, E. BOLDMAN, S. MORIGEAU, J. SMALL,
3 J. KASSMIER, B. MERCER, K. SULLIVAN
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE UNIFORM COMMERCIAL CODE;
6 UPDATING TERMINOLOGY FOR THE DIGITAL AGE; PROVIDING RULES FOR TRANSACTIONS
7 INVOLVING CERTAIN DIGITAL ASSETS; AND AMENDING SECTIONS 30-1-101, 30-1-107, 30-1-201, 30-1-
8 212, 30-1-301, 30-2-102, 30-2-106, 30-2-201, 30-2-202, 30-2-203, 30-2-205, 30-2-209, 30-2A-102, 30-2A-103,
9 30-2A-107, 30-2A-201, 30-2A-202, 30-2A-203, 30-2A-205, 30-2A-208, 30-3-104, 30-3-125, 30-3-401, 30-3-605,
10 30-4A-103, 30-4A-201, 30-4A-202, 30-4A-203, 30-4A-207, 30-4A-208, 30-4A-210, 30-4A-211, 30-4A-305, 30-5-
11 124, 30-5-136, 30-7-102, 30-7-107, 30-8-112, 30-8-113, 30-8-116, 30-8-120, 30-8-333, 30-9A-102, 30-9A-104,
12 30-9A-105, 30-9A-203, 30-9A-204, 30-9A-207, 30-9A-208, 30-9A-209, 30-9A-210, 30-9A-301, 30-9A-304, 30-
13 9A-305, 30-9A-310, 30-9A-312, 30-9A-313, 30-9A-314, 30-9A-316, 30-9A-317, 30-9A-323, 30-9A-324, 30-9A-
14 330, 30-9A-331, 30-9A-332, 30-9A-334, 30-9A-341, 30-9A-404, 30-9A-406, 30-9A-408, 30-9A-509, 30-9A-513,
15 30-9A-601, 30-9A-605, 30-9A-608, 30-9A-611, 30-9A-613, 30-9A-614, 30-9A-615, 30-9A-616, 30-9A-619, 30-
16 9A-620, 30-9A-621, 30-9A-624, 30-9A-628, 30-18-115, AND 45-6-315, MCA."

17
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

19
20 **Section 1.** Section 30-1-101, MCA, is amended to read:

21 **"30-1-101. Short titles -- scope of chapter.** (1) Chapters 1 through 9A and [sections 93 through 108]
22 of this title may be cited as Uniform Commercial Code.

23 (2) As used in chapters 1 through 9A and [sections 93 through 108] of this title "code" means
24 "Uniform Commercial Code" unless the context indicates otherwise.

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

26 (4) This chapter applies to a transaction to the extent that it is governed by chapters 2 through 5,
27 7, 8, and 9A and [sections 93 through 108] of this title."

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1

2 **Section 2.** Section 30-1-107, MCA, is amended to read:

3 **"30-1-107. Waiver or renunciation of claim or right after breach.** A claim or right arising out of an
4 alleged breach may be discharged in whole or in part without consideration by agreement of the aggrieved
5 party in ~~an authenticated~~ a signed record."

6

7 **Section 3.** Section 30-1-201, MCA, is amended to read:

8 **"30-1-201. General definitions.** (1) Unless the context requires otherwise, words or phrases defined
9 in this section, or in the additional definitions contained in other chapters of the code that apply to particular
10 chapters or parts of chapters, have the meanings stated.

11 (2) Subject to additional definitions contained in other chapters of this code that apply to specific
12 chapters or parts of chapters:

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

15 (b) "Aggrieved party" means a party entitled to pursue a remedy.

16 (c) "Agreement" means the bargain of the parties in fact, as found in their language or inferred
17 from other circumstances, including course of performance, course of dealing, or usage of trade as provided in
18 30-1-205.

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

20 ~~(i) sign; or~~

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

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

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

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

26 ~~(f)~~(e) "Bearer" means a person in control of a negotiable electronic document of title or a person in
27 possession of a negotiable instrument, negotiable tangible document of title, or certificated security payable to

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1 bearer or endorsed in blank.

2 ~~(g)~~(f) (i) "Bill of lading" means a document of title evidencing the receipt of goods for shipment issued
3 by a person engaged in the business of directly or indirectly transporting or forwarding goods.

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

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

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

8 ~~(j)~~(i) "Buyer in ordinary course of business" means a person that buys goods, in good faith, without
9 knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a
10 person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the
11 ordinary course if the sale to the person comports with the usual or customary practices in the kind of business
12 in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas,
13 or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer
14 in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured
15 credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that
16 takes possession of the goods or has a right to recover the goods from the seller under chapter 2 may be a
17 buyer in ordinary course of business. A person that acquires goods in a transfer in bulk or as security for or in
18 total or partial satisfaction of a money debt is not a buyer in ordinary course of business.

19 ~~(k)~~(j) "Conspicuous", with reference to a term, means so written, displayed, or presented that, based
20 on the totality of the circumstances, a reasonable person against which it is to operate ought to have noticed it.

21 Whether a term is "conspicuous" or not is for decision by the court. ~~Conspicuous terms include the following:~~

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

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

27 ~~(l)~~(k) "Consumer" means an individual who enters into a transaction primarily for personal, family, or

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1 household purposes.

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

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

7 ~~(o)~~(n) "Defendant" includes a person in the position of defendant in a counterclaim or third-party
8 claim.

9 ~~(p)~~(o) "Delivery", with respect to an electronic document of title, means voluntary transfer of control
10 and, with respect to ~~instruments, tangible documents of title, or an instrument, a tangible document of title, or~~
11 an authoritative tangible copy of a record evidencing chattel paper, means voluntary transfer of possession.

12 ~~(q)~~(p) (i) "Document of title" means a record:

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

16 (B) that purports to be issued by or addressed to a bailee and to cover goods in the bailee's
17 possession which are either identified or are fungible portions of an identified mass.

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

22 ~~(r)~~ (q) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical,
23 electromagnetic, or similar capabilities.

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

25 (s) "Fungible goods" means:

26 (i) goods of which any unit, by nature or usage of trade, is the equivalent of any other like unit; or

27 (ii) goods which by agreement are treated as equivalent.

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- 1 (t) "Genuine" means free of forgery or counterfeiting.
- 2 (u) "Good faith", except as otherwise provided in chapter 5, means honesty in fact and the
3 observance of reasonable commercial standards of fair dealing.
- 4 (v) "Holder" means:
- 5 (i) the person in possession of a negotiable instrument that is payable either to bearer or to an
6 identified person that is the person in possession;
- 7 (ii) a the person in possession of a negotiable tangible document of title if the goods are
8 deliverable either to bearer or to the order of the person in possession; or
- 9 (iii) a the person in control, other than pursuant to 30-7-107(7) of a negotiable electronic document
10 of title.
- 11 (w) "Insolvency proceedings" includes an assignment for the benefit of creditors or other
12 proceeding intended to liquidate or rehabilitate the estate of the person involved.
- 13 (x) "Insolvent" means:
- 14 (i) having generally ceased to pay debts in the ordinary course of business other than as a result
15 of bona fide dispute;
- 16 (ii) unable to pay debts as they become due; or
- 17 (iii) insolvent within the meaning of the federal bankruptcy law.
- 18 (y) (i) "Money" means a medium of exchange that is currently authorized or adopted by a domestic
19 or foreign government. The term includes a monetary unit of account established by an intergovernmental
20 organization or by pursuant to an agreement between two or more countries.
- 21 (ii) The term does not include:
- 22 (A) an electronic record that is a medium of exchange recorded and transferable in a system that
23 existed and operated for the medium of exchange before the medium of exchange was authorized or adopted
24 by the government; or-
- 25 (B) any central bank digital currency or any requirement to accept or use a central bank digital
26 currency, unless the central bank digital currency is specifically recognized and approved by Montana law.
- 27 (z) "Organization" means a person other than an individual.

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

3 (bb) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited
4 liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality,
5 ~~public corporation~~, or any other legal or commercial entity. The term includes a protected series, however
6 denominated, of an entity if the protected series is established under law other than this code that limits, or
7 limits if conditions specified under the law are satisfied, the ability of a creditor of the entity or of any other
8 protected series of the entity to satisfy a claim from assets of the protected series.

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

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

13 (ee) "Purchaser" means a person that takes by purchase.

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

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

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

20 (ii) "Right" includes a remedy.

21 (jj) "Security interest" means an interest in personal property or fixtures which secures payment or
22 performance of an obligation. The term also includes any interest of a consignor and a buyer of accounts,
23 chattel paper, a payment intangible, or a promissory note in a transaction that is subject to chapter 9A. The
24 special property interest of a buyer of goods on identification of those goods to a contract for sale under 30-2-
25 401 is not a "security interest", but a buyer may also acquire a "security interest" by complying with chapter 9A.
26 Except as otherwise provided in 30-2-505, the right of a seller or lessor of goods under chapter 2 or 2A to retain
27 or acquire possession of the goods is not a "security interest", but a seller or lessor may also acquire a "security

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1 interest" by complying with chapter 9A. The retention or reservation of title by a seller of goods notwithstanding
2 shipment or delivery to the buyer (30-2-401) is limited in effect to a reservation of a "security interest". Whether
3 a transaction in the form of a lease creates a "security interest" is determined pursuant to 30-1-211.

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

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

9 (ii) ~~in any other way to cause to be received any record or notice within the time it would have~~
10 ~~arrived if properly sent to cause the record or notification to be received within the time it would have been~~
11 received if properly sent under subsection (2)(kk)(i).

12 (ll) (i) ~~"Signed" includes any symbol executed or adopted with present intention to adopt or accept~~
13 ~~a writing. "Sign" means, with present intent to authenticate or adopt a record:~~

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

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

16 (ii) "Signed", "signing", and "signature" have corresponding meanings.

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

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

19 (oo) "Unauthorized" signature means a signature made without actual, implied, or apparent
20 authority. The term includes a forgery.

21 (pp) "Warehouse receipt" means a document of title issued by a person engaged in the business of
22 storing goods for hire.

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

25

26 **Section 4.** Section 30-1-212, MCA, is amended to read:

27 **"30-1-212. Value.** Except as otherwise provided in chapters 3 through 5 and [sections 93 through

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1 108], a person gives value for rights if the person acquires them:

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

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

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

7 (4) in return for any consideration sufficient to support a simple contract."
8

9 **Section 5.** Section 30-1-301, MCA, is amended to read:

10 **"30-1-301. Territorial applicability -- parties power to choose applicable law.** (1) Except as
11 otherwise provided in this section, when a transaction bears a reasonable relation to this state and also to
12 another state or nation, the parties may agree that the law either of this state or of the other state or nation shall
13 govern their rights and duties.

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

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

18 (a) Section 30-2-402;

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

20 (c) Section 30-4-102;

21 (d) Section 30-4A-507;

22 (e) Section 30-5-136;

23 (f) Section 30-8-120;

24 (g) Sections 30-9A-301 through 30-9A-307;

25 (h) Section [section 99]."
26

27 **Section 6.** Section 30-2-102, MCA, is amended to read:

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1 **"30-2-102. Scope -- certain security and other transactions excluded from this chapter. (1)**

2 Unless the context otherwise requires, and except as provided in subsection (3), this chapter applies to
3 transactions in goods ~~it does not apply to any transaction which although in the form of an unconditional~~
4 ~~contract to sell or present sale is intended to operate only as a security transaction nor does this chapter impair~~
5 ~~or repeal any statute regulating sales to consumers, farmers or other specified classes of buyers. and, in the~~
6 ~~case of a hybrid transaction, it applies to the extent provided in subsection (2).~~

7 (2) In a hybrid transaction:

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

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

14 (3) This chapter does not:

15 (a) apply to a transaction that, even though in the form of an unconditional contract to sell or
16 present sale, operates only to create a security interest; or

17 (b) impair or repeal a statute regulating sales to consumers, farmers, or other specified classes of
18 buyers."

19
20 **Section 7.** Section 30-2-106, MCA, is amended to read:

21 **"30-2-106. Definitions -- "contract" -- "agreement" -- "contract for sale" -- "sale" -- "present**
22 **sale" -- "conforming" to contract -- "termination" -- "cancellation" -- "hybrid transaction". (1)** In this

23 chapter unless the context otherwise requires "contract" and "agreement" are limited to those relating to the
24 present or future sale of goods. "Contract for sale" includes both a present sale of goods and a contract to sell
25 goods at a future time. A "sale" consists in the passing of title from the seller to the buyer for a price (30-2-
26 401). A "present sale" means a sale which is accomplished by the making of the contract.

27 (2) Goods or conduct including any part of a performance are "conforming" or conform to the

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1 contract when they are in accordance with the obligations under the contract.

2 (3) "Termination" occurs when either party pursuant to a power created by agreement or law puts
3 an end to the contract otherwise than for its breach. On "termination" all obligations which are still executory on
4 both sides are discharged but any right based on prior breach or performance survives.

5 (4) "Cancellation" occurs when either party puts an end to the contract for breach by the other and
6 its effect is the same as that of "termination" except that the canceling party also retains any remedy for breach
7 of the whole contract or any unperformed balance.

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

9 (a) the provision of services;

10 (b) a lease of other goods; or

11 (c) a sale, lease, or license of property other than goods."

12

13 **Section 8.** Section 30-2-201, MCA, is amended to read:

14 **"30-2-201. Formal requirements -- statute of frauds.** (1) Except as otherwise provided in this
15 section a contract for the sale of goods for the price of \$500 or more is not enforceable by way of action or
16 defense unless there is ~~some writing~~ a record sufficient to indicate that a contract for sale has been made
17 between the parties and signed by the party against whom enforcement is sought or by the party's authorized
18 agent or broker. A writing record is not insufficient because it omits or incorrectly states a term agreed upon but
19 the contract is not enforceable under this subsection beyond the quantity of goods shown in the writing record.

20 (2) Between merchants if within a reasonable time a writing record in confirmation of the contract
21 and sufficient against the sender is received and the party receiving it has reason to know its contents, it
22 satisfies the requirements of subsection (1) against the party unless ~~written notice~~ in a record of objection to its
23 contents is given within 10 days after it is received.

24 (3) A contract which does not satisfy the requirements of subsection (1) but which is valid in other
25 respects is enforceable:

26 (a) if the goods are to be specially manufactured for the buyer and are not suitable for sale to
27 others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and

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1 under circumstances which reasonably indicate that the goods are for the buyer, has made either a substantial
2 beginning of their manufacture or commitments for their procurement; or

3 (b) if the party against whom enforcement is sought admits in the party's pleading, testimony, or
4 otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision
5 beyond the quantity of goods admitted; or

6 (c) with respect to goods for which payment has been made and accepted or which have been
7 received and accepted (30-2-606)."

8

9 **Section 9.** Section 30-2-202, MCA, is amended to read:

10 **"30-2-202. Final written expression -- parol or extrinsic evidence.** Terms with respect to which the
11 confirmatory memoranda of the parties agree or which are otherwise set forth in a writing record intended by
12 the parties as a final expression of their agreement with respect to such terms as are included therein may not
13 be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be
14 explained or supplemented:

15 (a)(1) by course of dealing or usage of trade (30-1-205) or by course of performance (30-2-208); and

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

18

19 **Section 10.** Section 30-2-203, MCA, is amended to read:

20 **"30-2-203. Seals inoperative.** The affixing of a seal to a writing record evidencing a contract for sale
21 or an offer to buy or sell goods does not constitute the writing record a sealed instrument and the law with
22 respect to sealed instruments does not apply to such a contract or offer."

23

24 **Section 11.** Section 30-2-205, MCA, is amended to read:

25 **"30-2-205. Firm offers.** An offer by a merchant to buy or sell goods in a signed writing record which
26 by its terms gives assurance that it will be held open is not revocable, for lack of consideration, during the time
27 stated or if no time is stated for a reasonable time, but in no event may such period of irrevocability exceed 3

1 months; but any such term of assurance on a form supplied by the offeree must be separately signed by the
2 offeror."

3

4 **Section 12.** Section 30-2-209, MCA, is amended to read:

5 **"30-2-209. Modification, rescission, and waiver.** (1) An agreement modifying a contract within this
6 chapter needs no consideration to be binding.

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

10 (3) The requirements of the statute of frauds section of this chapter (30-2-201) must be satisfied if
11 the contract as modified is within its provisions.

12 (4) Although an attempt at modification or rescission does not satisfy the requirements of
13 subsection (2) or (3) it can operate as a waiver.

14 (5) A party who has made a waiver affecting an executory portion of the contract may retract the
15 waiver by reasonable notification received by the other party that strict performance will be required of any term
16 waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver."

17

18 **Section 13.** Section 30-2A-102, MCA, is amended to read:

19 **"30-2A-102. Scope.** (1) This chapter applies to any transaction, regardless of form, that creates a
20 lease and, in the case of a hybrid lease, it applies to the extent provided in subsection (2).

21 (2) In a hybrid lease:

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

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

25 (ii) 30-2A-209 applies if the lease is a finance lease; and

26 (iii) 30-2A-407 applies to the promises of the lessee in a finance lease to the extent the promises
27 are consideration for the right to possession and use of the leased goods; and

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

4

5 **Section 14.** Section 30-2A-103, MCA, is amended to read:

6 **"30-2A-103. Definitions and index of definitions.** (1) In this chapter, unless the context otherwise
7 requires, the following definitions apply:

8 (a) "Buyer in ordinary course of business" means a person, who in good faith and without
9 knowledge that the sale to the buyer is in violation of the ownership rights or security interest or leasehold
10 interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of
11 that kind, but the term does not include a pawnbroker. "Buying" may be for cash or by exchange of other
12 property or on secured or unsecured credit and includes acquiring goods or documents of title under a
13 preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial
14 satisfaction of a money debt.

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

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

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

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

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- 1 (f) "Fault" means wrongful act, omission, breach, or default.
- 2 (g) "Finance lease" means a lease with respect to which:
- 3 (i) the lessor does not select, manufacture, or supply the goods;
- 4 (ii) the lessor acquires the goods or the right to possession and use of the goods in connection
- 5 with the lease; and
- 6 (iii) one of the following occurs:
- 7 (A) the lessee receives a copy of the contract by which the lessor acquired the goods or the right to
- 8 possession and use of the goods before signing the lease contract;
- 9 (B) the lessee's approval of the contract by which the lessor acquired the goods or the right to
- 10 possession and use of the goods is a condition to effectiveness of the lease contract;
- 11 (C) the lessee, before signing the lease contract, receives an accurate and complete statement
- 12 designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of
- 13 remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods,
- 14 provided to the lessor by the person supplying the goods in connection with or as part of the contract by which
- 15 the lessor acquired the goods or the right to possession and use of the goods; or
- 16 (D) if the lease is not a consumer lease, the lessor, before the lessee signs the lease contract,
- 17 informs the lessee in writing:
- 18 (I) of the identity of the person supplying the goods to the lessor, unless the lessee has selected
- 19 that person and directed the lessor to acquire the goods or the right to possession and use of the goods from
- 20 that person;
- 21 (II) that the lessee is entitled under this chapter to the promises and warranties, including those of
- 22 any third party, provided to the lessor by the person supplying the goods in connection with or as part of the
- 23 contract by which the lessor acquired the goods or the right to possession and use of the goods; and
- 24 (III) that the lessee may communicate with the person supplying the goods to the lessor and
- 25 receive an accurate and complete statement of those promises and warranties, including any disclaimers and
- 26 limitations of them or of remedies.
- 27 (h) "Goods" means all things that are movable at the time of identification to the lease contract, or

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1 are fixtures (30-2A-309), but the term does not include money, documents, instruments, accounts, chattel
2 paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also
3 includes the unborn young of animals.

4 (i) "Hybrid lease" means a single transaction involving a lease of goods and:

5 (i) the provision of services;

6 (ii) a sale of other goods; or

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

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

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

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

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

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

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

24 (e)(p) "Lessee in ordinary course of business" means a person, who in good faith and without
25 knowledge that the lease to the person is in violation of the ownership rights or security interest or leasehold
26 interest of a third party in the goods, leases in ordinary course from a person in the business of selling or
27 leasing goods of that kind, but the term does not include a pawnbroker. "Leasing" may be for cash or by

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1 exchange of other property or on secured or unsecured credit and includes acquiring goods or documents of
2 title under a preexisting lease contract but does not include a transfer in bulk or as security for or in total or
3 partial satisfaction of a money debt.

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

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

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

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

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

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

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

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

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

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

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

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- 1 (2) Other definitions applying to this chapter and the sections in which they appear are:
- 2 (a) "Accessions". 30-2A-310(1).
- 3 (b) "Construction mortgage". 30-2A-309(1)(d).
- 4 (c) "Encumbrance". 30-2A-309(1)(e).
- 5 (d) "Fixtures". 30-2A-309(1)(a).
- 6 (e) "Fixture filing". 30-2A-309(1)(b).
- 7 (f) "Purchase money lease". 30-2A-309(1)(c).
- 8 (3) The following definitions in other chapters apply to this chapter:
- 9 (a) "Account". 30-9A-102(1)(b).
- 10 (b) "Between merchants". 30-2-104(3).
- 11 (c) "Buyer". 30-2-103(1)(a).
- 12 (d) "Chattel paper". 30-9A-102(1)(~~k~~)(l).
- 13 (e) "Consumer goods". 30-9A-102(1)(~~w~~)(x).
- 14 (f) "Document". 30-9A-102(1)(~~dd~~)(gg).
- 15 (g) "Entrusting". 30-2-403(3).
- 16 (h) "General intangible". 30-9A-102(1)(~~pp~~)(rr).
- 17 (i) "Good faith". 30-2-103(1)(b).
- 18 (j) "Instrument". 30-9A-102(1)(~~uu~~)(ww).
- 19 (k) "Merchant". 30-2-104(1).
- 20 (l) "Mortgage". 30-9A-102(1)(~~ccc~~)(fff).
- 21 (m) "Pursuant to commitment". 30-9A-102(1)(~~qqq~~)(ttt).
- 22 (n) "Receipt". 30-2-103(1)(c).
- 23 (o) "Sale". 30-2-106(1).
- 24 (p) "Sale on approval". 30-2-326.
- 25 (q) "Sale or return". 30-2-326.
- 26 (r) "Seller". 30-2-103(1)(d).
- 27 (4) In addition, Title 30, chapter 1, contains general definitions and principles of construction and

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1 interpretation applicable throughout this chapter."

2

3 **Section 15.** Section 30-2A-107, MCA, is amended to read:

4 **"30-2A-107. Waiver or renunciation of claim or right after default.** Any claim or right arising out of
5 an alleged default or breach of warranty may be discharged in whole or in part without consideration by a
6 ~~written~~ waiver or renunciation in a signed and record delivered by the aggrieved party."

7

8 **Section 16.** Section 30-2A-201, MCA, is amended to read:

9 **"30-2A-201. Statute of frauds.** (1) A lease contract is not enforceable by way of action or defense
10 unless:

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

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

16 (2) Any description of leased goods or of the lease term is sufficient and satisfies subsection (1)(b),
17 whether or not it is specific, if it reasonably identifies what is described.

18 (3) A ~~writing~~ record is not insufficient because it omits or incorrectly states a term agreed upon, but
19 the lease contract is not enforceable under subsection (1)(b) beyond the lease term and the quantity of goods
20 shown in the writing record.

21 (4) A lease contract that does not satisfy the requirements of subsection (1), but which is valid in
22 other respects, is enforceable:

23 (a) if the goods are to be specially manufactured or obtained for the lessee and are not suitable for
24 lease or sale to others in the ordinary course of the lessor's business and the lessor, before notice of
25 repudiation is received and under circumstances that reasonably indicate that the goods are for the lessee, has
26 made either a substantial beginning of their manufacture or commitments for their procurement;

27 (b) if the party against whom enforcement is sought admits in that party's pleading, testimony, or

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1 otherwise in court that a lease contract was made but the lease contract is not enforceable under this provision
2 beyond the quantity of goods admitted; or

3 (c) with respect to goods that have been received and accepted by the lessee.

4 (5) The lease term under a lease contract referred to in subsection (4) is:

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

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

9 (c) a reasonable lease term."

10

11 **Section 17.** Section 30-2A-202, MCA, is amended to read:

12 **"30-2A-202. Final written expression -- parol or extrinsic evidence.** Terms with respect to which
13 the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing-record intended
14 by the parties as a final expression of their agreement with respect to such terms as are included therein may
15 not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be
16 explained or supplemented:

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

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

20

21 **Section 18.** Section 30-2A-203, MCA, is amended to read:

22 **"30-2A-203. Seals inoperative.** The affixing of a seal to a writing-record evidencing a lease contract
23 or an offer to enter into a lease contract does not render the writing-record a sealed instrument, and the law
24 with respect to sealed instruments does not apply to the lease contract or offer."

25

26 **Section 19.** Section 30-2A-205, MCA, is amended to read:

27 **"30-2A-205. Firm offers.** An offer by a merchant to lease goods to or from another person in a signed

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1 ~~writing record~~ that by its terms gives assurance it will be held open is not revocable, for lack of consideration,
2 during the time stated or, if no time is stated, for a reasonable time, but in no event may the period of
3 irrevocability exceed 3 months. Any such term of assurance on a form supplied by the offeree must be
4 separately signed by the offeror."
5

6 **Section 20.** Section 30-2A-208, MCA, is amended to read:

7 **"30-2A-208. Modification, rescission, and waiver.** (1) An agreement modifying a lease contract
8 needs no consideration to be binding.

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

12 (3) Although an attempt at modification or rescission does not satisfy the requirements of
13 subsection (2), it may operate as a waiver.

14 (4) A party who has made a waiver affecting an executory portion of a lease contract may retract
15 the waiver by reasonable notification received by the other party that strict performance will be required of any
16 term waived, unless the retraction would be unjust in view of a material change of position in reliance on the
17 waiver."
18

19 **Section 21.** Section 30-3-104, MCA, is amended to read:

20 **"30-3-104. Negotiable instrument.** (1) "Negotiable instrument" means an unconditional promise or
21 order to pay a fixed amount of money, with or without interest or other charges described in the promise or
22 order, if it:

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

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

26 (c) does not state any other undertaking or instruction by the person promising or ordering

27 payment to do any act in addition to the payment of money except that the promise or order may contain:

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- 1 (i) an undertaking or power to give, maintain, or protect collateral to secure payment;
- 2 (ii) an authorization or power to the holder to confess judgment or realize on or dispose of
- 3 collateral; or
- 4 (iii) a waiver of the benefit of any law intended for the advantage or protection of any obligor;
- 5 (iv) a term that specifies the law that governs the promise or order; or
- 6 (v) an undertaking to resolve in a specified forum a dispute concerning the promise or order.
- 7 (2) "Instrument" means a negotiable instrument.
- 8 (3) An order that meets all of the requirements of subsection (1) except subsection (1)(a) and
- 9 otherwise falls within the definition of "check" in subsection (6) is a negotiable instrument and a check.
- 10 (4) Notwithstanding the provisions of subsection (1), a promise or order other than a check is not
- 11 an instrument if, at the time it is issued or first comes into possession of a holder, it contains a conspicuous
- 12 statement, however expressed, indicating that the writing is not an instrument governed by this chapter.
- 13 (5) An instrument is a "note" if it is a promise and is a "draft" if it is an order. If an instrument falls
- 14 within the definition of both note and draft, the person entitled to enforce the instrument may treat it as either.
- 15 (6) (a) "Check" means:
- 16 (i) a draft, other than a documentary draft, payable on demand and drawn on a bank; or
- 17 (ii) a cashier's check or teller's check.
- 18 (b) An instrument may be a check even though it is described on its face by another term, such as
- 19 "money order".
- 20 (7) "Cashier's check" means a draft with respect to which the drawer and drawee are the same
- 21 bank or branches of the same bank.
- 22 (8) "Teller's check" means a draft drawn by a bank:
- 23 (a) on another bank; or
- 24 (b) payable at or through a bank.
- 25 (9) "Traveler's check" means an instrument that:
- 26 (a) is payable on demand;
- 27 (b) is drawn on or payable at or through a bank;

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- 1 (c) is designated by the term traveler's check or by a substantially similar term; and
2 (d) requires, as a condition to payment, a countersignature by a person whose specimen signature
3 appears on the instrument.

4 (10) "Certificate of deposit" means an instrument containing an acknowledgment by a bank that a
5 sum of money has been received by the bank and a promise by the bank to repay the sum of money. A
6 certificate of deposit is a note of the bank."

7

8 **Section 22.** Section 30-3-125, MCA, is amended to read:

9 **"30-3-125. Issue of instrument.** (1) "Issue" means:

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

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

15 (2) An unissued instrument or an unissued incomplete instrument (30-3-115) that is completed is
16 binding on the maker or drawer, but nonissuance is a defense. An instrument that is conditionally issued or is
17 issued for a special purpose is binding on the maker or drawer, but failure of the condition or special purpose to
18 be fulfilled is a defense.

19 (3) "Issuer" applies to issued and unissued instruments and means any person that signs an
20 instrument as maker or drawer."

21

22 **Section 23.** Section 30-3-401, MCA, is amended to read:

23 **"30-3-401. Signature necessary for liability on instrument.** ~~(1)~~A person is not liable on an
24 instrument unless:

25 ~~(a)~~(1) the person signed the instrument; or

26 ~~(b)~~(2) the person is represented by an agent or representative who signed the instrument and the
27 signature is binding on the represented person under 30-3-403.

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1 ~~(2) A signature is made:~~
2 ~~(a) manually or by means of a device or machine; and~~
3 ~~(b) by use of any name, including any trade or assumed name, or by any word, mark, or symbol~~
4 ~~executed or adopted by a person with present intention to authenticate a writing."~~
5

6 **Section 24.** Section 30-3-605, MCA, is amended to read:

7 **"30-3-605. Discharge by cancellation or renunciation.** (1) A person entitled to enforce an
8 instrument may, with or without consideration, discharge the obligation of a party to pay the instrument:

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

12 (b) by agreeing not to sue or otherwise renouncing rights against the party by a signed ~~writing~~
13 record. The obligation of a party to pay a check is not discharged solely by destruction of the check in
14 connection with a process in which information is extracted from the check and an image of the check is made
15 and, subsequently, the information and image are transmitted for payment.

16 (2) Cancellation or striking out of an indorsement pursuant to subsection (1) does not affect the
17 status and rights of a party derived from the indorsement."
18

19 **Section 25.** Section 30-4A-103, MCA, is amended to read:

20 **"30-4A-103. Payment order -- definitions.** (1) In this chapter, the following definitions apply:

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

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

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

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

3 (b) "Beneficiary" means the person to be paid by the beneficiary's bank.

4 (c) "Beneficiary's bank" means the bank identified in a payment order in which an account of the
5 beneficiary is to be credited pursuant to the order or that otherwise is to make payment to the beneficiary if the
6 order does not provide for payment to an account.

7 (d) "Receiving bank" means the bank to which the sender's instruction is addressed.

8 (e) "Sender" means the person giving the instruction to the receiving bank.

9 (2) If an instruction complying with subsection (1)(a) is to make more than one payment to a
10 beneficiary, the instruction is a separate payment order with respect to each payment.

11 (3) A payment order is issued when it is sent to the receiving bank."
12

13 **Section 26.** Section 30-4A-201, MCA, is amended to read:

14 **"30-4A-201. Security procedure.** "Security procedure" means a procedure established by agreement
15 of a customer and a receiving bank for the purpose of verifying that a payment order or communication
16 amending or canceling a payment order is that of the customer or detecting error in the transmission or the
17 content of the payment order or communication. A security procedure may impose an obligation on the
18 receiving bank or the customer and may require the use of algorithms or other codes, identifying words or
19 numbers, symbols, sounds, biometrics, encryption, callback procedures, or similar security devices.
20 Comparison of a signature on a payment order or communication with an authorized specimen signature of the
21 customer or requiring a payment order to be sent from a known e-mail address, IP address, or telephone
22 number is not by itself a security procedure."
23

24 **Section 27.** Section 30-4A-202, MCA, is amended to read:

25 **"30-4A-202. Authorized and verified payment orders.** (1) A payment order received by the
26 receiving bank is the authorized order of the person identified as sender if that person authorized the order or is
27 otherwise bound by it under the law of agency.

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

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

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

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

21 (4) The term "sender" in this chapter includes the customer in whose name a payment order is
22 issued if the order is the authorized order of the customer under subsection (1) or if it is effective as the order of
23 the customer under subsection (2).

24 (5) This section applies to amendments and cancellations of payment orders to the same extent it
25 applies to payment orders.

26 (6) Except as provided in this section and in 30-4A-203(1)(a), rights and obligations arising under
27 this section or 30-4A-203 may not be varied by agreement."

1

2 **Section 28.** Section 30-4A-203, MCA, is amended to read:

3 **"30-4A-203. Unenforceability of certain verified payment orders.** (1) If an accepted payment order
4 is not, under 30-4A-202(1), an authorized order of a customer identified as sender, but is effective as an order
5 of the customer pursuant to 30-4A-202(2), the following rules apply:

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

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

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

12 (B) who obtained access to transmitting facilities of the customer or who obtained, from a source
13 controlled by the customer and without authority of the receiving bank, information facilitating breach of the
14 security procedure, regardless of how the information was obtained or whether the customer was at fault.

15 (ii) Information includes any access device, computer software, or the like.

16 (2) This section applies to amendments of payment orders to the same extent it applies to
17 payment orders."

18

19 **Section 29.** Section 30-4A-207, MCA, is amended to read:

20 **"30-4A-207. Misdescription of beneficiary.** (1) Subject to subsection (2), if, in a payment order
21 received by the beneficiary's bank, the name, bank account number, or other identification of the beneficiary
22 refers to a nonexistent or unidentifiable person or account, no person has rights as a beneficiary of the order
23 and acceptance of the order cannot occur.

24 (2) If a payment order received by the beneficiary's bank identifies the beneficiary both by name
25 and by an identifying or bank account number and the name and number identify different persons, the
26 following rules apply:

27 (a) Except as otherwise provided in subsection (3), if the beneficiary's bank does not know that the

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1 name and number refer to different persons, it may rely on the number as the proper identification of the
2 beneficiary of the order. The beneficiary's bank need not determine whether the name and number refer to the
3 same person.

4 (b) If the beneficiary's bank pays the person identified by name or knows that the name and
5 number identify different persons, no person has rights as beneficiary except the person paid by the
6 beneficiary's bank if that person was entitled to receive payment from the originator of the funds transfer. If no
7 person has rights as beneficiary, acceptance of the order cannot occur.

8 (3) If a payment order described in subsection (2) is accepted, the originator's payment order
9 described the beneficiary inconsistently by name and number, and the beneficiary's bank pays the person
10 identified by number as permitted by subsection (2)(a), the following rules apply:

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

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

20 (4) In a case governed by subsection (2)(a), if the beneficiary's bank rightfully pays the person
21 identified by number and that person was not entitled to receive payment from the originator, the amount paid
22 may be recovered from that person to the extent allowed by the law governing mistake and restitution as
23 follows:

24 (a) If the originator is obliged to pay its payment order as stated in subsection (3), the originator
25 has the right to recover.

26 (b) If the originator is not a bank and is not obliged to pay its payment order, the originator's bank
27 has the right to recover."

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Section 30. Section 30-4A-208, MCA, is amended to read:

"30-4A-208. Misdescription of intermediary bank or beneficiary's bank. (1) This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank only by an identifying number as follows:

(a) The receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank and need not determine whether the number identifies a bank.

(b) The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.

(2) This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank, both by name and an identifying number, if the name and number identify different persons as follows:

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

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

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

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1 not determine whether the name and number refer to the same person.

2 (d) If the receiving bank knows that the name and number identify different persons, reliance on
3 either the name or the number in executing the sender's payment order is a breach of the obligation stated in
4 30-4A-302(1)(a)."

5

6 **Section 31.** Section 30-4A-210, MCA, is amended to read:

7 **"30-4A-210. Rejection of payment order.** (1) A payment order is rejected by the receiving bank by a
8 notice of rejection transmitted to the sender orally, electronically, or in writing a record. A notice of rejection
9 need not use any particular words and is sufficient if it indicates that the receiving bank is rejecting the order or
10 will not execute or pay the order. Rejection is effective when the notice is given if transmission is by a means
11 that is reasonable in the circumstances. If notice of rejection is given by a means that is not reasonable,
12 rejection is effective when the notice is received. If an agreement of the sender and receiving bank establishes
13 the means to be used to reject a payment order:

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

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

17 (2) This subsection applies if a receiving bank other than the beneficiary's bank fails to execute a
18 payment order despite the existence on the execution date of a withdrawable credit balance in an authorized
19 account of the sender sufficient to cover the order. If the sender does not receive notice of rejection of the order
20 on the execution date and the authorized account of the sender does not bear interest, the bank is obliged to
21 pay interest to the sender on the amount of the order for the number of days elapsing after the execution date
22 to the earlier of the day the order is canceled pursuant to 30-4A-211(4) or the day the sender receives notice or
23 learns that the order was not executed, counting the final day of the period as an elapsed day. If the
24 withdrawable credit balance during that period falls below the amount of the order, the amount of interest is
25 reduced accordingly.

26 (3) If a receiving bank suspends payments, all unaccepted payment orders issued to it are
27 considered rejected at the time the bank suspends payments.

1 (4) Acceptance of a payment order precludes a later rejection of the order. Rejection of a payment
2 order precludes a later acceptance of the order."

3

4 **Section 32.** Section 30-4A-211, MCA, is amended to read:

5 **"30-4A-211. Cancellation and amendment of payment order.** (1) A communication of the sender of
6 a payment order canceling or amending the order may be transmitted to the receiving bank orally,
7 electronically, or in writing a record. If a security procedure is in effect between the sender and the receiving
8 bank, the communication is not effective to cancel or amend the order unless the communication is verified
9 pursuant to the security procedure or the bank agrees to the cancellation or amendment.

10 (2) Subject to subsection (1), a communication by the sender canceling or amending a payment
11 order is effective to cancel or amend the order if notice of the communication is received at a time and in a
12 manner affording the receiving bank a reasonable opportunity to act on the communication before the bank
13 accepts the payment order.

14 (3) After a payment order has been accepted, cancellation or amendment of the order is not
15 effective unless the receiving bank agrees or a funds-transfer system rule allows cancellation or amendment
16 without agreement of the bank as follows:

17 (a) With respect to a payment order accepted by a receiving bank other than the beneficiary's
18 bank, cancellation or amendment is not effective unless a conforming cancellation or amendment of the
19 payment order issued by the receiving bank is also made.

20 (b) (i) With respect to a payment order accepted by the beneficiary's bank, cancellation or
21 amendment is not effective unless the order was issued in execution of an unauthorized payment order or
22 because of a mistake by a sender in the funds transfer that resulted in the issuance of a payment order:

23 (A) that is a duplicate of a payment order previously issued by the sender;

24 (B) that orders payment to a beneficiary not entitled to receive payment from the originator; or

25 (C) that orders payment in an amount greater than the amount the beneficiary was entitled to
26 receive from the originator.

27 (ii) If the payment order is canceled or amended, the beneficiary's bank is entitled to recover from

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1 the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and
2 restitution.

3 (4) An unaccepted payment order is canceled by operation of law at the close of the fifth funds-
4 transfer business day of the receiving bank after the execution date or payment date of the order.

5 (5) A canceled payment order cannot be accepted. If an accepted payment order is canceled, the
6 acceptance is nullified and no person has any right or obligation based on the acceptance. Amendment of a
7 payment order is considered to be cancellation of the original order at the time of amendment and issue of a
8 new payment order in the amended form at the same time.

9 (6) Unless otherwise provided in an agreement of the parties or in a funds-transfer system rule, if
10 the receiving bank, after accepting a payment order, agrees to cancellation or amendment of the order by the
11 sender or is bound by a funds-transfer system rule allowing cancellation or amendment without the bank's
12 agreement, the sender, whether or not cancellation or amendment is effective, is liable to the bank for any loss
13 and expenses, including reasonable attorney fees, incurred by the bank as a result of the cancellation or
14 amendment or attempted cancellation or amendment.

15 (7) A payment order is not revoked by the death or legal incapacity of the sender unless the
16 receiving bank knows of the death or of an adjudication of incapacity by a court of competent jurisdiction and
17 has reasonable opportunity to act before acceptance of the order.

18 (8) A funds-transfer system rule is not effective to the extent it conflicts with subsection (3)(b)."
19

20 **Section 33.** Section 30-4A-305, MCA, is amended to read:

21 **"30-4A-305. Liability for late or improper execution or failure to execute payment order.** (1) If a
22 funds transfer is completed but execution of a payment order by the receiving bank in breach of 30-4A-302
23 results in delay in payment to the beneficiary, the bank is obliged to pay interest to either the originator or the
24 beneficiary of the funds transfer for the period of delay caused by the improper execution. Except as provided in
25 subsection (3), additional damages are not recoverable.

26 (2) If execution of a payment order by a receiving bank in breach of 30-4A-302 results in
27 noncompletion of the funds transfer, failure to use an intermediary bank designated by the originator, or

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1 issuance of a payment order that does not comply with the terms of the payment order of the originator, the
2 bank is liable to the originator for its expenses in the funds transfer and for incidental expenses and interest
3 losses, to the extent not covered by subsection (1), resulting from the improper execution. Except as provided
4 in subsection (3), additional damages are not recoverable.

5 (3) In addition to the amounts payable under subsections (1) and (2), damages, including
6 consequential damages, are recoverable to the extent provided in an express ~~written~~ agreement of the
7 receiving bank, evidenced by a record.

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

13 (5) Reasonable attorney fees are recoverable if demand for compensation under subsection (1) or
14 (2) is made and refused before an action is brought on the claim. If a claim is made for breach of an agreement
15 under subsection (4) and the agreement does not provide for damages, reasonable attorney fees are
16 recoverable if demand for compensation under subsection (4) is made and refused before an action is brought
17 on the claim.

18 (6) Except as stated in this section, the liability of a receiving bank under subsections (1) and (2)
19 may not be varied by agreement."
20

21 **Section 34.** Section 30-5-124, MCA, is amended to read:

22 **"30-5-124. Formal requirements.** A letter of credit, confirmation, advice, transfer, amendment, or
23 cancellation may be issued in any form that is a signed record ~~and is authenticated:~~

24 ~~(1) by a signature; or~~

25 ~~(2) in accordance with the agreement of the parties or the standard practice referred to in 30-5-~~

26 ~~128(5)."~~

27

1 **Section 35.** Section 30-5-136, MCA, is amended to read:

2 "**30-5-136. Choice of law and forum.** (1) The liability of an issuer, nominated person, or adviser for
3 action or omission is governed by the law of the jurisdiction chosen by an agreement in the form of a record
4 signed ~~or otherwise authenticated~~ by the affected parties ~~in the manner provided in 30-5-124~~ or by a provision
5 in the person's letter of credit, confirmation, or other undertaking. The jurisdiction whose law is chosen need not
6 bear any relation to the transaction.

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

11 (3) For the purpose of jurisdiction, choice of law, and recognition of interbranch letters of credit, but
12 not enforcement of a judgment, all branches of a bank are considered separate juridical entities and a bank is
13 considered to be located at the place where its relevant branch is considered to be located under ~~this~~
14 subsection (4).

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

18 (3)(5) (a) Except as otherwise provided in this subsection, the liability of an issuer, nominated person,
19 or adviser is governed by any rules of custom or practice, such as the Uniform Customs and Practice for
20 Documentary Credits, to which the letter of credit, confirmation, or other undertaking is expressly made subject.

21 (b) The rules of custom and practice govern except to the extent of any conflict with the
22 nonvariable provisions specified in 30-5-123(3) if:

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

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

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

27 (4)(6) If there is conflict between this chapter and chapter 3, 4, 4A, or 9A, this chapter governs.

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1 ~~(5)(7)~~ The forum for settling disputes arising out of an undertaking within this chapter may be chosen
2 in the manner and with the binding effect that governing law may be chosen in accordance with subsection (1)."

3

4 **Section 36.** Section 30-7-102, MCA, is amended to read:

5 **"30-7-102. Definitions and index of definitions.** (1) In this chapter, unless the context otherwise
6 requires:

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

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

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

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

14 (e) "Delivery order" means a record that contains an order to deliver goods directed to a
15 warehouse, carrier, or other person that in the ordinary course of business issues warehouse receipts or bills of
16 lading.

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

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

21 (h) "Issuer" means a bailee that issues a document of title or, in the case of an unaccepted
22 delivery order, the person that orders the possessor of goods to deliver. The term includes a person for which
23 an agent or employee purports to act in issuing a document if the agent or employee has real or apparent
24 authority to issue documents, even if the issuer did not receive any goods, the goods were misdescribed, or in
25 any other respect the agent or employee violated the issuer's instructions.

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

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1 record under, a nonnegotiable document of title.

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

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

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

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

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

8 ~~(m)(k)~~ "Warehouse" means a person engaged in the business of storing goods for hire.

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

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

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

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

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

15

16 **Section 37.** Section 30-7-107, MCA, is amended to read:

17 **"30-7-107. Control of electronic document of title.** (1) A person has control of an electronic
18 document of title if a system employed for evidencing the transfer of interests in the electronic document
19 reliably establishes that person as the person to which the electronic document was issued or transferred.

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

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

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

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

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

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

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

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

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

8 (3) A system satisfies subsection (1), and a person has control of an electronic document of title, if
9 an authoritative electronic copy of the document, a record attached to or logically associated with the electronic
10 copy, or a system in which the electronic copy is recorded:

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

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

16 (c) gives the person exclusive power, subject to subsection (4), to:

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

19 (ii) transfer control of each authoritative electronic copy.

20 (4) Subject to subsection (5), a power is exclusive under subsection (3)(c)(i) and (3)(c)(ii) even if:

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

25 (b) the power is shared with another person.

26 (5) A power of a person is not shared with another person under subsection (4)(b) and the
27 person's power is not exclusive if:

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

2 (b) the other person:

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

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

5 (6) If a person has the powers specified in subsection (3)(c)(i) and (3)(c)(ii), the powers are
6 presumed to be exclusive.

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

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

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

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

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

17

18 **Section 38.** Section 30-8-112, MCA, is amended to read:

19 **"30-8-112. Definitions and index of definitions.** (1) In this chapter:

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

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

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

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

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- 1 (e) "Clearing corporation" means:
- 2 (i) a person that is registered as a "clearing agency" under the federal securities laws;
- 3 (ii) a federal reserve bank; or
- 4 (iii) any other person that provides clearance or settlement services with respect to financial assets
- 5 that would require it to register as a clearing agency under the federal securities laws but for an exclusion or
- 6 exemption from the registration requirement, if its activities as a clearing corporation, including promulgation of
- 7 rules, are subject to regulation by a federal or state governmental authority.
- 8 (f) "Communicate" means to:
- 9 (i) send a signed writing record; or
- 10 (ii) transmit information by any mechanism agreed upon by the persons transmitting and receiving
- 11 the information.
- 12 (g) "Entitlement holder" means a person identified in the records of a securities intermediary as the
- 13 person having a security entitlement against the securities intermediary. If a person acquires a security
- 14 entitlement by virtue of 30-8-501(2)(b) or (2)(c), that person is the entitlement holder.
- 15 (h) "Entitlement order" means a notification communicated to a securities intermediary directing
- 16 transfer or redemption of a financial asset to which the entitlement holder has a security entitlement.
- 17 (i) (i) "Financial asset," except as otherwise provided in 30-8-113, means:
- 18 (A) a security;
- 19 (B) an obligation of a person or a share, participation, or other interest in a person or in property or
- 20 an enterprise of a person, which is, or is of a type, dealt in or traded on financial markets, or which is
- 21 recognized in any area in which it is issued or dealt in as a medium for investment; or
- 22 (C) any property that is held by a securities intermediary for another person in a securities account
- 23 if the securities intermediary has expressly agreed with the other person that the property is to be treated as a
- 24 financial asset under this chapter.
- 25 (ii) As context requires, the term means either the interest itself or the means by which a person's
- 26 claim to it is evidenced, including a certificated or uncertificated security, a security certificate, or a security
- 27 entitlement.

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

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

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

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

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

11 (ii) a transfer of the security may be registered upon books maintained for that purpose by or on
12 behalf of the issuer, or the security certificate so states.

13 (n) "Securities intermediary" means:

14 (i) a clearing corporation; or

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

17 (o) "Security," except as otherwise provided in 30-8-113, means an obligation of an issuer or a
18 share, participation, or other interest in an issuer or in property or an enterprise of an issuer:

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

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

23 (iii) which:

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

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

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

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1 (q) "Security entitlement" means the rights and property interest of an entitlement holder with
2 respect to a financial asset specified in part 5 of this chapter.

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

4 (2) ~~Other~~ The following definitions applying to in this chapter and ~~the sections in which they appear~~
5 ~~are other chapters apply to this chapter:~~

6 "Appropriate person" 30-8-117

7 "Control" 30-8-116

8 "Controllable account" 30-9A-102

9 "Controllable electronic record" [section 94]

10 "Controllable payment intangible" 30-9A-102

11 "Delivery" 30-8-331

12 "Investment company security" 30-8-113

13 "Issuer" 30-8-211

14 "Overissue" 30-8-220

15 "Protected purchaser" 30-8-333

16 "Securities account" 30-8-501

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

19 (4) The characterization of a person, business, or transaction for purposes of this chapter does not
20 determine the characterization of the person, business, or transaction for purposes of any other law, regulation,
21 or rule."

22

23 **Section 39.** Section 30-8-113, MCA, is amended to read:

24 **"30-8-113. Rules for determining whether certain obligations and interests are securities or**
25 **financial assets.** (1) A share or similar equity interest issued by a corporation, business trust, joint-stock
26 company, or similar entity is a security.

27 (2) An "investment company security" is a security. "Investment company security" means a share

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

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

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

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

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

15 (7) A document of title, as defined in 30-1-201(2)(q), is not a financial asset unless 30-8-
16 112(1)(i)(C)(1)(i)(i)(C) applies.

17 (8) A controllable account, controllable electronic record, or controllable payment intangible is not
18 a financial asset unless 30-8-112(1)(i)(i)(C) applies."

19

20 **Section 40.** Section 30-8-116, MCA, is amended to read:

21 **"30-8-116. Control.** (1) A purchaser has "control" of a certificated security in bearer form if the
22 certificated security is delivered to the purchaser.

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

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

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

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

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

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

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

6 (a) the purchaser becomes the entitlement holder;

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

9 (c) ~~another person has control of the security entitlement on behalf of the purchaser or, having~~
10 ~~previously acquired control of the security entitlement, acknowledges that it has control on behalf of the~~
11 ~~purchaser person, other than the transferor to the purchaser of an interest in the security entitlement:~~

12 (i) _____ has control of the security entitlement and acknowledges that it has control on behalf of the
13 purchaser; or

14 (ii) _____ obtains control of the security entitlement after having acknowledged that it will obtain control of
15 the security entitlement on behalf of the purchaser.

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

18 (6) A purchaser who has satisfied the requirements of subsection (3) or (4) has control even if the
19 registered owner in the case of subsection (3) or the entitlement holder in the case of subsection (4) retains the
20 right to make substitutions for the uncertificated security or security entitlement, to originate instructions or
21 entitlement orders to the issuer or securities intermediary, or otherwise to deal with the uncertificated security or
22 security entitlement.

23 (7) An issuer or a securities intermediary may not enter into an agreement of the kind described in
24 subsection (3)(b) or (4)(b) without the consent of the registered owner or entitlement holder, but an issuer or a
25 securities intermediary is not required to enter into such an agreement even though the registered owner or
26 entitlement holder so directs. An issuer or securities intermediary that has entered into such an agreement is
27 not required to confirm the existence of the agreement to another party unless requested to do so by the

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1 registered owner or entitlement holder.

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

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

7

8 **Section 41.** Section 30-8-120, MCA, is amended to read:

9 **"30-8-120. Applicability -- choice of law.** (1) The local law of the issuer's jurisdiction, as specified in
10 subsection (4), governs:

- 11 (a) the validity of a security;
- 12 (b) the rights and duties of the issuer with respect to registration of transfer;
- 13 (c) the effectiveness of registration of transfer by the issuer;
- 14 (d) whether the issuer owes any duties to an adverse claimant to a security; and
- 15 (e) whether an adverse claim can be asserted against a person to whom transfer of a certificated
16 or uncertificated security is registered or a person who obtains control of an uncertificated security.

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

- 19 (a) acquisition of a security entitlement from the securities intermediary;
- 20 (b) the rights and duties of the securities intermediary and entitlement holder arising out of a
21 security entitlement;
- 22 (c) whether the securities intermediary owes any duties to an adverse claimant to a security
23 entitlement; and
- 24 (d) whether an adverse claim can be asserted against a person who acquires a security
25 entitlement from the securities intermediary or a person who purchases a security entitlement or interest therein
26 from an entitlement holder.

27 (3) The local law of the jurisdiction in which a security certificate is located at the time of delivery

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1 governs whether an adverse claim can be asserted against a person to whom the security certificate is
2 delivered.

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

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

9 (a) If an agreement between the securities intermediary and its entitlement holder governing the
10 securities account expressly provides that a particular jurisdiction is the security intermediary's jurisdiction for
11 the purposes of this part, this chapter, or chapters 1 through 9A, and [sections 93 through 108] of this title, that
12 jurisdiction is the securities intermediary's jurisdiction.

13 (b) If subsection (5)(a) does not apply and an agreement between the securities intermediary and
14 its entitlement holder expressly provides that the agreement is governed by the law of a particular jurisdiction,
15 that jurisdiction is the securities intermediary's jurisdiction.

16 (c) If neither subsection (5)(a) nor (5)(b) applies and an agreement between the securities
17 intermediary and its entitlement holder governing the securities account expressly provides that the securities
18 account is maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary's
19 jurisdiction.

20 (d) If subsection (5)(a), (5)(b), or (5)(c) does not apply, the securities intermediary's jurisdiction is
21 the jurisdiction in which the office identified in an account statement as the office serving the entitlement
22 holder's account is located.

23 (e) If subsection (5)(a), (5)(b), (5)(c), or (5)(d) does not apply the securities intermediary's
24 jurisdiction is the jurisdiction in which the chief executive office of the securities intermediary is located.

25 (6) A securities intermediary's jurisdiction is not determined by the physical location of certificates
26 representing financial assets, or by the jurisdiction in which is organized the issuer of the financial asset with
27 respect to which an entitlement holder has a security entitlement, or by the location of facilities for data

1 processing or other recordkeeping concerning the account.

2 (7) The local law of the issuer's jurisdiction or the securities intermediary's jurisdiction governs a
3 matter or transaction specified in subsection (1) or (2) even if the matter or transaction does not bear any
4 relation to the jurisdiction."

5

6 **Section 42.** Section 30-8-333, MCA, is amended to read:

7 **"30-8-333. Protected purchaser.** (1) "Protected purchaser" means a purchaser of a certificated or
8 uncertificated security, or of an interest therein, who:

9 (a) gives value;

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

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

12 (2) ~~In addition to acquiring the rights of a purchaser, a~~ A protected purchaser also acquires its
13 interest in the security free of any adverse claim."

14

15 **Section 43.** Section 30-9A-102, MCA, is amended to read:

16 **"30-9A-102. Definitions and index of definitions.** (1) As used in this chapter, the following
17 definitions apply:

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

20 (b) (i) "Account", except as used in "account for", "account statement", "account to", "commodity
21 account" in subsection (1)(o), "customer's account", "deposit account" in subsection (1)(ff), "on account of", and
22 "statement of account", means a right to payment of a monetary obligation, whether or not earned by

23 performance:

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

26 (B) for services rendered or to be rendered;

27 (C) for a policy of insurance issued or to be issued;

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- 1 (D) for a secondary obligation incurred or to be incurred;
- 2 (E) for energy provided or to be provided;
- 3 (F) for the use or hire of a vessel under a charter or other contract;
- 4 (G) arising out of the use of a credit or charge card or information contained on or for use with the
- 5 card; or
- 6 (H) as winnings in a lottery or other game of chance operated or sponsored by a state,
- 7 governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental
- 8 unit of a state.
- 9 (ii) The term includes a controllable account and a health-care-insurance receivable.
- 10 (iii) The term does not include:
- 11 (A) ~~a right to payment evidenced by chattel paper or an instrument~~ chattel paper;
- 12 (B) a commercial tort claim;
- 13 (C) a deposit account;
- 14 (D) investment property;
- 15 (E) a letter-of-credit right; ~~or~~
- 16 (F) a right to payment for money or funds advanced or sold, other than a right arising out of the
- 17 use of a credit or charge card or information contained on or for use with the card; or
- 18 (G) rights to payment evidenced by an instrument.
- 19 (c) "Account debtor" means a person obligated on an account, chattel paper, or general intangible.
- 20 The term does not include a person obligated to pay a negotiable instrument, even if the negotiable instrument
- 21 ~~constitutes part of evidences~~ chattel paper.
- 22 (d) "Accounting", except as used in "accounting for", means a record:
- 23 (i) ~~authenticated~~ signed by a secured party;
- 24 (ii) indicating the aggregate unpaid secured obligations as of a date not more than 35 days earlier
- 25 or 35 days later than the date of the record; and
- 26 (iii) identifying the components of the obligations in reasonable detail.
- 27 (e) "Agricultural lien" means an interest, other than a security interest, in farm products:

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- 1 (i) that secures payment or performance of an obligation for:
- 2 (A) goods or services furnished in connection with a debtor's farming operation; or
- 3 (B) rent on real property leased by a debtor in connection with its farming operation;
- 4 (ii) that is created by statute in favor of a person that:
- 5 (A) in the ordinary course of its business furnished goods or services to a debtor in connection with
- 6 a debtor's farming operation; or
- 7 (B) leased real property to a debtor in connection with the debtor's farming operation; and
- 8 (iii) whose effectiveness does not depend on the person's possession of the personal property.
- 9 (f) "As-extracted collateral" means:
- 10 (i) oil, gas, or other minerals that are subject to a security interest that:
- 11 (A) is created by a debtor having an interest in the minerals before extraction; and
- 12 (B) attaches to the minerals as extracted; or
- 13 (ii) accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in
- 14 which the debtor had an interest before extraction.
- 15 ~~(g) "Authenticate" means:~~
- 16 ~~(i) to sign; or~~
- 17 ~~(ii) with present intent to adopt or accept a record, to attach to or logically associate with the record an~~
- 18 ~~electronic sound, symbol, or process.~~
- 19 (g) (i) "Assignee", except as used in "assignee for benefit of creditors", means a person:
- 20 (A) in whose favor a security interest that secures an obligation is created or provided for under a
- 21 security agreement, whether or not the obligation is outstanding; or
- 22 (B) to which an account, chattel paper, payment intangible, or promissory note has been sold.
- 23 (ii) The term includes a person to which a security interest has been transferred by a secured
- 24 party.
- 25 (h) (i) "Assignor" means a person that:
- 26 (A) under a security agreement creates or provides for a security interest that secures an
- 27 obligation; or

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1 (B) sells an account, chattel paper, payment intangible, or promissory note.

2 (ii) The term includes a secured party that has transferred a security interest to another person.

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

5 ~~(+)(j)~~ "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the like.

6 ~~(j)(k)~~ "Certificate of title" means a certificate of title with respect to which a statute provides for the
7 security interest in question to be indicated on the certificate as a condition or result of the security interest's
8 obtaining priority over the rights of a lien creditor with respect to the collateral. The term includes another record
9 maintained as an alternative to a certificate of title by the governmental unit that issues certificates of title if a
10 statute permits the security interest in question to be indicated on the record as a condition or result of the
11 security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

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

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

19 ~~(l) charters or other contracts involving the use or hire of a vessel; or~~

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

22 ~~(B) If a transaction is evidenced by records that include an instrument or series of instruments, the~~
23 ~~group of records taken together constitutes chattel paper.~~

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

26 (B) a right to payment of a monetary obligation owed by a lessee under a lease agreement with
27 respect to specific goods and a monetary obligation owed by the lessee in connection with the transaction

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1 giving rise to the lease, if:

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

3 (II) the predominant purpose of the transaction giving rise to the lease was to give the lessee the
4 right to possession and use of the goods.

5 (ii) The term does not include a right to payment arising out of a charter or other contract involving
6 the use or hire of a vessel or a right to payment arising out of the use of a credit or charge card or information
7 contained on or for use with the card.

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

- 10 (i) proceeds to which a security interest attaches under 30-9A-315;
- 11 (ii) accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and
- 12 (iii) goods that are the subject of a consignment.

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

- 14 (i) the claimant is an organization; or
- 15 (ii) the claimant is an individual and the claim:
- 16 (A) arose in the course of the claimant's business or profession; and
- 17 (B) does not include damages arising out of personal injury to or the death of an individual.

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

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

- 22 (i) traded on or subject to the rules of a board of trade that has been designated as a contract
23 market for such a contract pursuant to federal commodities laws; or
- 24 (ii) traded on a foreign commodity board of trade, exchange, or market and is carried on the books
25 of a commodity intermediary for a commodity customer.

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

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1 ~~(q)~~(r) "Commodity intermediary" means a person that:

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

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

5 ~~(r)~~(s) "Communicate" means:

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

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

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

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

12 ~~(t)~~(u) "Consignment" means a transaction, regardless of its form, in which a person delivers goods to
13 a merchant for the purpose of sale and:

14 (i) the merchant:

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

16 (B) is not an auctioneer; and

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (ii) a security interest secures the obligation; and

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

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

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

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

15 (cc) "Controllable account" means an account evidenced by a controllable electronic record that
16 provides that the account debtor undertakes to pay the person that has control under [section 97] of the
17 controllable electronic record.

18 (dd) "Controllable payment intangible" means a payment intangible evidenced by a controllable
19 electronic record that provides that the account debtor undertakes to pay the person that has control under
20 [section 97] of the controllable electronic record.

21 ~~(bb)~~(ee) "Debtor" means:

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

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

25 (iii) a consignee.

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

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

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

4 (hh) "Electronic money" means money in an electronic form.

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

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

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

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

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

12 (B) aquatic goods produced in aquacultural operations;

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

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

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

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

18 ~~(jj)~~(ll) "File number" means the number assigned to an initial financing statement pursuant to 30-9A-
19 519(1).

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

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

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

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

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1 ~~(ee)~~(qq) "Fixtures" means goods that have become so related to particular real property that an
2 interest in them arises under real property law.

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

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

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

12 (A) fixtures;

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

14 (C) the unborn young of animals;

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

17 (E) manufactured homes.

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

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

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

25 (iii) The term does not include a program integrated with goods that consist solely of the medium
26 with which the program is integrated. The term also does not include accounts, chattel paper, commercial tort
27 claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit

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1 rights, letters of credit, money, or oil, gas, or other minerals before extraction.

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

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

8 ~~(uu)~~(ww) (i) "Instrument" means:

9 (A) a negotiable instrument; or

10 (B) any other writing that evidences a right to the payment of a monetary obligation, is not itself a
11 security agreement or lease, and is of a type that in the ordinary course of business is transferred by delivery
12 with any necessary indorsement or assignment.

13 (ii) The term does not include:

14 (A) investment property;

15 (B) a letter of credit; or

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

18 (D) a writing that evidences chattel paper.

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

20 (i) are leased by a person as lessor;

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

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

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

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

26 ~~(xx)~~(zz) "Jurisdiction of organization", with respect to a registered organization, means the jurisdiction
27 under whose law the organization is formed or organized.

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

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

5 ~~(zz)~~(bbb) "Lien creditor" means:

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

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

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

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

10 ~~(aaa)~~(ccc) "Manufactured home" means a structure, transportable in one or more sections, that in the
11 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
12 320 or more square feet and that is built on a permanent chassis and designed to be used as a dwelling with or
13 without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air-
14 conditioning, and electrical systems contained therein. The term includes any structure that meets all of the
15 requirements of this subsection except the size requirements and with respect to which the manufacturer
16 voluntarily files a certification required by the United States secretary of housing and urban development and
17 complies with the standards established under Title 42 of the United States Code.

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

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

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

23 ~~(eee)~~ "Money" has the meaning in 30-1-201(2)(z), but does not include:

24 (i) a deposit account; or

25 (ii) money in an electronic form that cannot be subjected to control under [section 46].

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

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

3 ~~(eee)~~(hhh) (i) "New value" means:

4 (A) money;

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

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

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

8 ~~(fff)~~(iii) "Noncash proceeds" means proceeds other than cash proceeds.

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

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

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

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

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

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

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

20 (ii) The term includes a controllable payment intangible.

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

22 (i) the spouse of the individual;

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

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

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

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

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

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

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

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

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

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

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

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

15 (iii) rights arising out of collateral;

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

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

20 ~~(mmm)(ppp)~~ "Promissory note" means an instrument that:

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

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

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

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

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1 ~~(eee)~~(rrr) "Public-finance transaction" means a secured transaction in connection with which:

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

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

4 (iii) the debtor, the obligor, the secured party, the account debtor or other person obligated on
5 collateral, the assignor or assignee of a secured obligation, or the assignor or assignee of a security interest is
6 a state or a governmental unit of a state.

7 ~~(ppp)~~(sss) "Public organic record" means a record that is available to the public for inspection and is:

8 (i) a record consisting of the record initially filed with or issued by a state or the United States to
9 form or organize an organization and any record filed with or issued by the state or the United States which
10 amends or restates the initial record;

11 (ii) an organic record of a business trust consisting of the record initially filed with a state and any
12 record filed with the state which amends or restates the initial record, if a statute of the state governing
13 business trusts requires that the record be filed with the state; or

14 (iii) a record consisting of legislation enacted by the legislature of a state or the congress of the
15 United States which forms or organizes an organization, any record amending the legislation, and any record
16 filed with or issued by the state or the United States which amends or restates the name of the organization.

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

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

24 ~~(sss)~~(vvv) "Registered organization" means an organization formed or organized solely under the law
25 of one state or the United States by the filing of a public organic record with, the issuance of a public organic
26 record by, or the enactment of legislation by the state or the United States. The term includes a business trust
27 that is formed or organized under the law of a single state if a statute of the state governing business trusts

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1 requires that the business trust's organic record be filed with the state.

2 ~~(ttt)(www)~~ "Secondary obligor" means an obligor to the extent that:

3 (i) the obligor's obligation is secondary; or

4 (ii) the obligor has a right of recourse with respect to an obligation secured by collateral against
5 the debtor, another obligor, or property of either.

6 ~~(uuu)(xxx)~~ "Secured party" means:

7 (i) a person in whose favor a security interest is created or provided for under a security
8 agreement, whether or not any obligation to be secured is outstanding;

9 (ii) a person that holds an agricultural lien;

10 (iii) a consignor;

11 (iv) a person to which accounts, chattel paper, payment intangibles, or promissory notes have
12 been sold;

13 (v) a trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a
14 security interest or agricultural lien is created or provided for; or

15 (vi) a person that holds a security interest arising under 30-2-401, 30-2-505, 30-2-711(3), 30-2A-
16 508(5), 30-4-208, or 30-5-118.

17 ~~(vvv)(yyy)~~ "Security agreement" means an agreement that creates or provides for a security interest.

18 ~~(www)~~ "Send", in connection with a record or notification, means to:

19 ~~(i) deposit in the mail, deliver for transmission, or transmit by any other usual means of
20 communication, with postage or cost of transmission provided for, addressed to any address reasonable under
21 the circumstances; or~~

22 ~~(ii) cause the record or notification to be received within the time that it would have been received if
23 properly sent under subsection (1)(www)(i).~~

24 ~~(xxx)(zzz)~~ (i) "Software" means a computer program, any informational content included in the
25 program, and any supporting information provided in connection with a transaction relating to the computer
26 program or informational content.

27 (ii) The term does not include a computer program that is contained in goods unless the goods are

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1 a computer or computer peripheral.

2 ~~(yyy)(aaaa)~~ "State" means a state of the United States, the District of Columbia, Puerto Rico, the
3 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United
4 States.

5 ~~(zzz)(bbbb)~~ "Supporting obligation" means a letter-of-credit right or secondary obligation that supports
6 the payment or performance of an account, chattel paper, document, general intangible, instrument, or
7 investment property.

8 ~~(aaaa)~~ "~~Tangible chattel paper~~" ~~means chattel paper evidenced by a record or records consisting of~~
9 ~~information that is inscribed on a tangible medium.~~

10 (cccc) "Tangible money" means money in a tangible form.

11 ~~(bbb)(ddd)~~ "Termination statement" means an amendment of a financing statement that:

- 12 (i) identifies, by its file number, the initial financing statement to which it relates; and
13 (ii) indicates either that it is a termination statement or that the identified financing statement is no
14 longer effective.

15 ~~(ccc)(eee)~~ "Transmitting utility" means a person primarily engaged in the business of:

- 16 (i) operating a railroad, subway, street railway, or trolley bus;
17 (ii) transmitting electric or electronic communications;
18 (iii) transmitting goods by pipeline or sewer; or
19 (iv) transmitting or producing and transmitting electricity, steam, gas, or water.

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

21 "Applicant" 30-5-122.

22 "Beneficiary" 30-5-122.

23 "Broker" 30-8-112.

24 "Certificated security" 30-8-112.

25 "Check" 30-3-104.

26 "Clearing corporation" 30-8-112.

27 "Contract for sale" 30-2-106.

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- 1 "Control" (with respect to a document of title) 30-7-107.
- 2 "Controllable electronic record" [section 94].
- 3 "Customer" 30-4-104.
- 4 "Entitlement holder" 30-8-112.
- 5 "Financial asset" 30-8-112.
- 6 "Holder in due course" 30-3-302.
- 7 "Issuer" (with respect to a letter of credit or letter-of-credit right) 30-5-122.
- 8 "Issuer" (with respect to a security) 30-8-211.
- 9 "Lease" 30-2A-103.
- 10 "Lease agreement" 30-2A-103.
- 11 "Lease contract" 30-2A-103.
- 12 "Leasehold interest" 30-2A-103.
- 13 "Lessee" 30-2A-103.
- 14 "Lessee in ordinary course of business" 30-2A-103.
- 15 "Lessor" 30-2A-103.
- 16 "Lessor's residual interest" 30-2A-103.
- 17 "Letter of credit" 30-5-122.
- 18 "Merchant" 30-2-104.
- 19 "Negotiable instrument" 30-3-104.
- 20 "Nominated person" 30-5-122.
- 21 "Note" 30-3-104.
- 22 "Proceeds of a letter of credit" 30-5-134.
- 23 "Protected purchaser" 30-8-333.
- 24 "Prove" 30-3-102.
- 25 "Qualifying purchaser" [section 94].
- 26 "Sale" 30-2-106.
- 27 "Securities account" 30-8-501.

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1 "Securities intermediary" 30-8-112.

2 "Security" 30-8-112.

3 "Security certificate" 30-8-112.

4 "Security entitlement" 30-8-112.

5 "Uncertificated security" 30-8-112.

6 (3) Chapter 1 contains general definitions and principles of construction and interpretation
7 applicable throughout this chapter."

8

9 **Section 44.** Section 30-9A-104, MCA, is amended to read:

10 **"30-9A-104. Control of deposit account.** (1) A secured party has control of a deposit account if:

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

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

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

16 (d) another person, other than the debtor:

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

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

21 (2) A secured party that has satisfied the requirements of subsection (1) has control, even if the
22 debtor retains the right to direct the disposition of funds from the deposit account."

23

24 **Section 45.** Section 30-9A-105, MCA, is amended to read:

25 **"30-9A-105. Control of electronic copy of record evidencing chattel paper.** (1) A ~~secured party~~
26 purchaser has control of ~~electronic chattel paper~~ an authoritative electronic copy of a record evidencing chattel
27 paper if a system employed for evidencing the ~~transfer of assignment of~~ interests in the chattel paper reliably

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1 establishes the ~~if a system employed for evidencing the transfer of interests in the chattel paper reliably~~
2 establishes the ~~purchaser~~ secured party as the person to which the authoritative electronic copy chattel paper
3 was assigned.

4 ~~(2) A system satisfies subsection (1) if the record or records comprising the chattel paper are created,~~
5 ~~stored, and assigned in such a manner that:~~

6 ~~(a) a single authoritative copy of the record or records exists that is unique, identifiable, and except as~~
7 ~~otherwise provided in subsections (2)(d), (2)(e), and (2)(f), unalterable;~~

8 ~~(b) the authoritative copy identifies the secured party as the assignee of the record or records;~~

9 ~~(c) the authoritative copy is communicated to and maintained by the secured party or its designated~~
10 ~~custodian;~~

11 ~~(d) copies or amendments that add or change an identified assignee of the authoritative copy can be~~
12 ~~made only with the consent of the secured party;~~

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

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

16 (2) A system satisfies subsection (1) if the record or records evidencing the chattel paper are
17 created, stored, and assigned in a manner that:

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

20 (b) the authoritative copy identifies the purchaser as the assignee of the record or records;

21 (c) the authoritative copy is communicated to and maintained by the purchaser or its designated
22 custodian;

23 (d) copies or amendments that add or change an identified assignee of the authoritative copy can
24 be made only with the consent of the purchaser;

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

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

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1 (3) A system satisfies subsection (1), and a purchaser has control of an authoritative electronic
2 copy of a record evidencing chattel paper, if the electronic copy, a record attached to or logically associated
3 with the electronic copy, or a system in which the electronic copy is recorded:

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

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

8 (c) gives the purchaser exclusive power, subject to subsection (4), to:

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

11 (ii) transfer control of the authoritative electronic copy.

12 (4) Subject to subsection (5), a power is exclusive under subsections (3)(c)(i) and (3)(c)(ii) even if:

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

17 (b) the power is shared with another person.

18 (5) A power of a purchaser is not shared with another person under subsection (4)(b) and the
19 purchaser's power is not exclusive if:

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

21 and

22 (b) the other person:

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

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

25 (6) If a purchaser has the powers specified in subsections (3)(c)(i) and (3)(c)(ii), the powers are
26 presumed to be exclusive.

27 (7) A purchaser has control of an authoritative electronic copy of a record evidencing chattel paper

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1 if another person, other than the transferor to the purchaser of an interest in the chattel paper:

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

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

6
7 **NEW SECTION. Section 46. Control of electronic money.** (1) A person has control of electronic
8 money if:

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

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

12 (ii) exclusive power, subject to subsection (2), to:

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

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

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

21 (2) Subject to subsection (3), a power is exclusive under subsections (1)(a)(ii)(A) and (1)(a)(ii)(B)
22 even if:

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

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

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

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- 1 (a) the person can exercise the power only if the power also is exercised by the other person; and
2 (b) the other person:
3 (i) can exercise the power without exercise of the power by the person; or
4 (ii) is the transferor to the person of an interest in the electronic money.
5 (4) If a person has the powers specified in subsection (1)(a)(ii)(A) and (1)(a)(ii)(B), the powers are
6 presumed to be exclusive.

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

- 9 (a) has control of the electronic money and acknowledges that it has control on behalf of the
10 person; or
11 (b) obtains control of the electronic money after having acknowledged that it will obtain control of
12 the electronic money on behalf of the person.

13
14 **NEW SECTION. Section 47. Control of controllable electronic record, controllable account, or**
15 **controllable payment intangible.** (1) A secured party has control of a controllable electronic record as
16 provided in [section 97].

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

20
21 **NEW SECTION. Section 48. No requirement to acknowledge or confirm -- no duties.** (1) A
22 person that has control under 30-9A-104, 30-9A-105, or [section 46] is not required to acknowledge that it has
23 control on behalf of another person.

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

27

1 **Section 49.** Section 30-9A-203, MCA, is amended to read:

2 **"30-9A-203. Attachment and enforcement of security interest -- proceeds -- supporting**

3 **obligations -- formal requisites.** (1) A security interest attaches to collateral when it becomes enforceable
4 against the debtor with respect to the collateral, unless an agreement expressly postpones the time of
5 attachment.

6 (2) Except as otherwise provided in subsections (3) through (9), a security interest is enforceable
7 against the debtor and third parties with respect to the collateral only if:

8 (a) value has been given;

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

11 (c) one of the following conditions is met:

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

14 (ii) the collateral is not a certificated security and is in the possession of the secured party under
15 30-9A-313 pursuant to the debtor's security agreement;

16 (iii) the collateral is a certificated security in registered form and the security certificate has been
17 delivered to the secured party under 30-8-331 pursuant to the debtor's security agreement; ~~or~~

18 (iv) the collateral is controllable accounts, controllable electronic records, controllable payment
19 intangibles, a deposit account, electronic chattel paper, deposit accounts, electronic documents, electronic
20 money, investment property, or a letter-of-credit right rights, or electronic document and the secured party has
21 control under 30-7-107, 30-9A-104, ~~30-9A-105, [section 46], 30-9A-106, or 30-9A-107, or [section 47]~~ pursuant
22 to the debtor's security agreement; or

23 (v) the collateral is chattel paper and the secured party has possession and control under [section
24 64] pursuant to the debtor's security agreement.

25 (3) Subsection (2) is subject to 30-4-208 on the security interest of a collecting bank, 30-5-118 on
26 the security interest of a letter-of-credit issuer or nominated person, 30-9A-110 on a security interest arising
27 under chapter 2 or 2A, and 30-9A-206 on security interests in investment property.

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1 (4) A person becomes bound as debtor by a security agreement entered into by another person if,
2 by operation of law other than this chapter or by contract:

3 (a) the security agreement becomes effective to create a security interest in the person's property;
4 or

5 (b) the person becomes generally obligated for the obligations of the other person, including the
6 obligation secured under the security agreement, and acquires or succeeds to all or substantially all of the
7 assets of the other person.

8 (5) If a new debtor becomes bound as debtor by a security agreement entered into by another
9 person:

10 (a) the agreement satisfies the requirements of subsection (2)(c) with respect to existing or after-
11 acquired property of the new debtor to the extent the property is described in the agreement; and

12 (b) another agreement is not necessary to make a security interest in the property enforceable.

13 (6) The attachment of a security interest in collateral gives the secured party the rights to proceeds
14 provided by 30-9A-315 and is also attachment of a security interest in a supporting obligation for the collateral.

15 (7) The attachment of a security interest in a right to payment or performance secured by a
16 security interest or other lien on personal or real property is also attachment of a security interest in the security
17 interest, mortgage, or other lien.

18 (8) The attachment of a security interest in a securities account is also attachment of a security
19 interest in the security entitlements carried in the securities account.

20 (9) The attachment of a security interest in a commodity account is also attachment of a security
21 interest in the commodity contracts carried in the commodity account."
22

23 **Section 50.** Section 30-9A-204, MCA, is amended to read:

24 **"30-9A-204. After acquired property -- future advances.** (1) Except as otherwise provided in
25 subsection (2), a security agreement may create or provide for a security interest in after-acquired collateral.

26 (2) (a) A-Subject to subsection (2)(b), a security interest does not attach under a term constituting
27 an after-acquired property clause to:

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

3 ~~(b)~~(ii) a commercial tort claim.

4 (b) Subsection (2)(a) does not prevent a security interest from attaching:

5 (i) to consumer goods as proceeds under 30-9A-315(1) or commingled goods under 30-
6 9A-336(3);

7 (ii) to a commercial tort claim as proceeds under 30-9A-315(1); or

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

10 (3) A security agreement may provide that collateral secures, or that accounts, chattel paper,
11 payment intangibles, or promissory notes are sold in connection with, future advances or other value, whether
12 or not the advances or value are given pursuant to commitment."

13

14 **Section 51.** Section 30-9A-207, MCA, is amended to read:

15 **"30-9A-207. Rights and duties of secured party having possession or control of collateral. (1)**

16 Except as otherwise provided in subsection (4), a secured party shall use reasonable care in the custody and
17 preservation of collateral in the secured party's possession. In the case of chattel paper or an instrument,
18 reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise
19 agreed.

20 (2) Except as otherwise provided in subsection (4), if a secured party has possession of collateral:

21 (a) reasonable expenses, including the cost of insurance and payment of taxes or other charges,
22 incurred in the custody, preservation, use, or operation of the collateral are chargeable to the debtor and are
23 secured by the collateral;

24 (b) the risk of accidental loss or damage is on the debtor to the extent of a deficiency in any
25 effective insurance coverage;

26 (c) the secured party shall keep the collateral identifiable, but fungible collateral may be
27 commingled; and

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- 1 (d) the secured party may use or operate the collateral:
- 2 (i) for the purpose of preserving the collateral or its value;
- 3 (ii) as permitted by an order of a court having competent jurisdiction; or
- 4 (iii) except in the case of consumer goods, in the manner and to the extent agreed by the debtor.
- 5 (3) Except as otherwise provided in subsection (4), a secured party having possession of collateral
- 6 or control of collateral under 30-7-107, 30-9A-104, 30-9A-105, [section 46], 30-9A-106, ~~or 30-9A-107, or~~
- 7 [section 47]:
- 8 (a) may hold as additional security any proceeds, except money or funds, received from the
- 9 collateral;
- 10 (b) shall apply money or funds received from the collateral to reduce the secured obligation, unless
- 11 remitted to the debtor; and
- 12 (c) may create a security interest in the collateral.
- 13 (4) If the secured party is a buyer of accounts, chattel paper, payment intangibles, or promissory
- 14 notes or a consignor:
- 15 (a) subsection (1) does not apply unless the secured party is entitled by agreement:
- 16 (i) to charge back uncollected collateral; or
- 17 (ii) otherwise to full or limited recourse against the debtor or a secondary obligor based on the
- 18 nonpayment or other default of an account debtor or other obligor on the collateral; and
- 19 (b) subsections (2) and (3) do not apply."
- 20

21 **Section 52.** Section 30-9A-208, MCA, is amended to read:

22 **"30-9A-208. Additional duties of secured party having control of collateral.** (1) This section

23 applies if:

- 24 (a) there is no outstanding secured obligation; and
- 25 (b) the secured party is not committed to make advances, incur obligations, or otherwise give
- 26 value.
- 27 (2) Within 10 days after receiving an ~~authenticated~~ signed demand by the debtor:

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1 (a) a secured party having control of a deposit account under 30-9A-104(1)(b) shall send to the
2 bank with which the deposit account is maintained ~~an authenticated statement~~ a signed record that releases the
3 bank from any further obligation to comply with instructions originated by the secured party;

4 (b) a secured party having control of a deposit account under 30-9A-104(1)(c) shall:

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

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

7 ~~(c) a secured party, other than a buyer, having control of electronic chattel paper under 30-9A-105~~
8 ~~shall:~~

9 ~~(i) communicate the authoritative copy of the electronic chattel paper to the debtor or its designated~~
10 ~~custodian;~~

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

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

19 (c) a secured party, other than a buyer, having control under 30-9A-105 of an authoritative
20 electronic copy of a record evidencing chattel paper shall transfer control of the electronic copy to the debtor or
21 a person designated by the debtor;

22 (d) a secured party having control of investment property under 30-8-116(4)(b) or 30-9A-106(2)
23 shall send to the securities intermediary or commodity intermediary with which the security entitlement or
24 commodity contract is maintained ~~an authenticated~~ a signed record that releases the securities intermediary or
25 commodity intermediary from any further obligation to comply with entitlement orders or directions originated by
26 the secured party;

27 (e) a secured party having control of a letter-of-credit right under 30-9A-107 shall send to each

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1 person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party ~~an~~
2 ~~authenticated~~ a signed release from any further obligation to pay or deliver proceeds of the letter of credit to the
3 secured party; and

4 ~~(f) a secured party having control of an electronic document shall:~~

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

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

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

14 (f) a secured party having control under 30-7-107 of an authoritative electronic copy of an
15 electronic document of title shall transfer control of the electronic copy to the debtor or a person designated by
16 the debtor;

17 (g) a secured party having control under [section 46] of electronic money shall transfer control of
18 the electronic money to the debtor or a person designated by the debtor; and

19 (h) a secured party having control under [section 97] of a controllable electronic record, other than
20 a buyer of a controllable account or controllable payment intangible evidenced by the controllable electronic
21 record, shall transfer control of the controllable electronic record to the debtor or a person designated by the
22 debtor."

23

24 **Section 53.** Section 30-9A-209, MCA, is amended to read:

25 **"30-9A-209. Duties of secured party if account debtor has been notified of assignment. (1)**

26 Except as otherwise provided in subsection (3), this section applies if:

27 (a) there is no outstanding secured obligation; and

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1 (b) the secured party is not committed to make advances, incur obligations, or otherwise give
2 value.

3 (2) Within 10 days after receiving an ~~authenticated~~ a signed demand by the debtor, a secured
4 party shall send to an account debtor that has received notification under 30-9A-406(1) or [section 98(2)] of an
5 assignment to the secured party as assignee ~~under 30-9A-406 (1)~~ an authenticated a signed record that
6 releases the account debtor from any further obligation to the secured party.

7 (3) This section does not apply to an assignment constituting the sale of an account, chattel paper,
8 or payment intangible."

9

10 **Section 54.** Section 30-9A-210, MCA, is amended to read:

11 **"30-9A-210. Request for accounting -- request regarding list of collateral or statement of**
12 **account.** (1) In this section, the following definitions apply:

13 (a) "Request" means a record of a type described in subsection (1)(b), (1)(c), or (1)(d).

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

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

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

24 (2) Subject to subsections (3), (4), (5), and (6), a secured party, other than a buyer of accounts,
25 chattel paper, payment intangibles, or promissory notes or a consignor shall comply with a request within 14
26 days after receipt:

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

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1 an accounting; and

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

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

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

10 (a) disclaiming any interest in the collateral; and

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

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

17 (a) disclaiming any interest in the obligations; and

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

20 (6) A debtor is entitled without charge to one response to a request under this section during any
21 6-month period. The secured party may require payment of a charge not exceeding \$25 for each additional
22 response."
23

24 **Section 55.** Section 30-9A-301, MCA, is amended to read:

25 **"30-9A-301. Law governing perfection and priority of security interests.** Except as otherwise
26 provided in 30-9A-303 through 30-9A-306 and [section 59], the following rules determine the law governing
27 perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

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

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

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

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

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

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

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

16

17 **Section 56.** Section 30-9A-304, MCA, is amended to read:

18 **"30-9A-304. Law governing perfection and priority of security interests in deposit accounts. (1)**

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

22 (2) The following rules determine a bank's jurisdiction for purposes of this part:

23 (a) If an agreement between the bank and the debtor governing the deposit account expressly
24 provides that a particular jurisdiction is the bank's jurisdiction for purposes of chapters 1 through 9A or this part,
25 that jurisdiction is the bank's jurisdiction.

26 (b) If subsection (2)(a) does not apply and an agreement between the bank and its customer
27 governing the deposit account expressly provides that the agreement is governed by the law of a particular

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1 jurisdiction, that jurisdiction is the bank's jurisdiction.

2 (c) If subsection (2)(a) or (2)(b) does not apply and an agreement between the bank and its
3 customer governing the deposit account expressly provides that the deposit account is maintained at an office
4 in a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

5 (d) If none of the preceding subsections apply, the bank's jurisdiction is the jurisdiction in which the
6 office identified in an account statement as the office serving the customer's account is located.

7 (e) If none of the preceding subsections apply, the bank's jurisdiction is the jurisdiction in which the
8 chief executive office of the bank is located."

9

10 **Section 57.** Section 30-9A-305, MCA, is amended to read:

11 **"30-9A-305. Law governing perfection and priority of security interests in investment property.**

12 (1) Except as otherwise provided in subsection (3), the following rules apply:

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

16 (b) The local law of the issuer's jurisdiction as specified in 30-8-120(4) governs perfection, the
17 effect of perfection or nonperfection, and the priority of a security interest in an uncertificated security.

18 (c) The local law of the securities intermediary's jurisdiction as specified in 30-8-120(5) governs
19 perfection, the effect of perfection or nonperfection, and the priority of a security interest in a security
20 entitlement or securities account.

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

24 (e) Subsections (1)(b), (1)(c), and (1)(d) apply even if the transaction does not bear any relation to the
25 jurisdiction.

26 (2) The following rules determine a commodity intermediary's jurisdiction for purposes of this part:

27 (a) If an agreement between the commodity intermediary and commodity customer governing the

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1 commodity account expressly provides that a particular jurisdiction is the commodity intermediary's jurisdiction
2 for purposes of chapters 1 through 9A or this part, that jurisdiction is the commodity intermediary's jurisdiction.

3 (b) If subsection (2)(a) does not apply and an agreement between the commodity intermediary and
4 commodity customer governing the commodity account expressly provides that the agreement is governed by
5 the law of a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

6 (c) If subsection (2)(a) or (2)(b) does not apply and an agreement between the commodity
7 intermediary and commodity customer governing the commodity account expressly provides that the
8 commodity account is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity
9 intermediary's jurisdiction.

10 (d) If none of the preceding subsections applies, the commodity intermediary's jurisdiction is the
11 jurisdiction in which the office identified in an account statement as the office serving the commodity customer's
12 account is located.

13 (e) If none of the preceding subsections applies, the commodity intermediary's jurisdiction is the
14 jurisdiction in which the chief executive office of the commodity intermediary is located.

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

16 (a) perfection of a security interest in investment property by filing;

17 (b) automatic perfection of a security interest in investment property granted by a broker or
18 securities intermediary; and

19 (c) automatic perfection of a security interest in a commodity contract or commodity account
20 granted by a commodity intermediary."

21

22 **NEW SECTION. Section 58. Laws governing perfection and priority of security interests in**

23 **chattel paper.** (1) Except as provided in subsection (4), if chattel paper is evidenced only by an authoritative
24 electronic copy of the chattel paper or is evidenced by an authoritative electronic copy and an authoritative
25 tangible copy, the local law of the chattel paper's jurisdiction governs perfection, the effect of perfection or
26 nonperfection, and the priority of a security interest in the chattel paper, even if the transaction does not bear
27 any relation to the chattel paper's jurisdiction.

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

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

6 (b) If subsection (2)(a) does not apply and the rules of the system in which the authoritative
7 electronic copy is recorded are readily available for review and expressly provide that a particular jurisdiction is
8 the chattel paper's jurisdiction for purposes of this part, this chapter, or this code, that jurisdiction is the chattel
9 paper's jurisdiction.

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

14 (d) If subsections (2)(a), (2)(b), and (2)(c) do not apply and the rules of the system in which the
15 authoritative electronic copy is recorded are readily available for review and expressly provide that the chattel
16 paper or the system is governed by the law of a particular jurisdiction, that jurisdiction is the chattel paper's
17 jurisdiction.

18 (e) If subsection (2)(a) through (2)(d) do not apply, the chattel paper's jurisdiction is the jurisdiction
19 in which the debtor is located.

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

23 (a) perfection of a security interest in the chattel paper by possession under [section 64]; and

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

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

1
2 **NEW SECTION. Section 59. Law governing perfection and priority of security interests in**
3 **controllable accounts, controllable electronic records, and controllable payment intangibles.** (1) Except
4 as provided in subsection (2), the local law of the controllable electronic record's jurisdiction specified in
5 [section 99(3) and (4)] governs perfection, the effect of perfection or nonperfection, and the priority of a security
6 interest in a controllable electronic record and a security interest in a controllable account or controllable
7 payment intangible evidenced by the controllable electronic record.

- 8 (2) The local law of the jurisdiction in which the debtor is located governs:
- 9 (a) perfection of a security interest in a controllable account, controllable electronic record, or
10 controllable payment intangible by filing; and
- 11 (b) automatic perfection of a security interest in a controllable payment intangible created by a sale
12 of the controllable payment intangible.

13
14 **Section 60.** Section 30-9A-310, MCA, is amended to read:

15 **"30-9A-310. When filing required to perfect security interest or agricultural lien -- security**
16 **interests and agricultural liens to which filing provisions do not apply.** (1) Except as otherwise provided in
17 30-9A-312(2) or subsection (2) of this section, a financing statement must be filed to perfect all security
18 interests and agricultural liens.

- 19 (2) The filing of a financing statement is not necessary to perfect a security interest:
- 20 (a) that is perfected under 30-9A-308(4), (5), (6), or (7);
- 21 (b) that is perfected under 30-9A-309 when it attaches;
- 22 (c) in property subject to a statute, regulation, or treaty described in 30-9A-311(1);
- 23 (d) in goods in possession of a bailee that is perfected under 30-9A-312(4)(a) or (4)(b);
- 24 (e) in certificated securities, documents, goods, or instruments that is perfected without filing or
25 possession under 30-9A-312(5), (6), or (7);
- 26 (f) in collateral in the secured party's possession under 30-9A-313;
- 27 (g) in a certificated security that is perfected by delivery of the security certificate to the secured

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1 party under 30-9A-313;

2 (h) in a controllable account, controllable electronic record, controllable payment intangible.

3 deposit account, ~~electronic chattel paper~~, electronic document, investment property, or letter-of-credit right that
4 is perfected by control under 30-9A-314;

5 (i) in chattel paper that is perfected by possession and control under [section 64];

6 ~~(j)(i)~~ in proceeds which is perfected under 30-9A-315; or

7 ~~(j)(k)~~ that is perfected under 30-9A-316.

8 (3) If a secured party assigns a perfected security interest or agricultural lien, a filing under this
9 chapter is not required to continue the perfected status of the security interest against creditors of and
10 transferees from the original debtor."
11

12 **Section 61.** Section 30-9A-312, MCA, is amended to read:

13 **"30-9A-312. Perfection of security interests in chattel paper, controllable accounts,**
14 **controllable electronic records, controllable payment intangibles, deposit accounts, documents, goods**
15 **covered by documents, instruments, investment property, letter-of-credit rights, and money --**
16 **perfection by permissive filing -- temporary perfection without filing or transfer of possession. (1) A**
17 **security interest in chattel paper, ~~negotiable documents,~~ controllable accounts, controllable electronic records,**
18 **controllable payment intangibles, instruments, ~~or investment property, or negotiable documents~~ may be**
19 **perfected by filing.**

20 (2) Except as otherwise provided in 30-9A-315(3) and (4) for proceeds:

21 (a) a security interest in a deposit account may be perfected only by control under 30-9A-314;

22 (b) a security interest in a letter-of-credit right may be perfected only by control under 30-9A-314,
23 except as otherwise provided in 30-9A-308(4); ~~and~~

24 (c) a security interest in tangible money may be perfected only by the secured party's taking
25 possession under 30-9A-313; and

26 (d) a security interest in electronic money may be perfected only by control under 30-9A-314.

27 (3) While goods are in the possession of a bailee that has issued a negotiable document covering

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1 the goods:

2 (a) a security interest in the goods may be perfected by perfecting a security interest in the
3 document; and

4 (b) a security interest perfected in the document has priority over any security interest that
5 becomes perfected in the goods by another method during that time.

6 (4) While goods are in the possession of a bailee that has issued a nonnegotiable document
7 covering the goods, a security interest in the goods may be perfected by:

8 (a) issuance of a document in the name of the secured party;

9 (b) the bailee's receipt of notification of the secured party's interest; or

10 (c) filing as to the goods.

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

14 (6) A perfected security interest in a negotiable document or goods in possession or control of a
15 bailee, other than one that has issued a negotiable document for the goods, remains perfected for 20 days
16 without filing if the secured party makes available to the debtor the goods or documents representing the goods
17 for the purpose of:

18 (a) ultimate sale or exchange; or

19 (b) loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise
20 dealing with them in a manner preliminary to their sale or exchange.

21 (7) A perfected security interest in a certificated security or instrument remains perfected for 20
22 days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose
23 of:

24 (a) ultimate sale or exchange; or

25 (b) presentation, collection, enforcement, renewal, or registration of transfer.

26 (8) After the 20-day period specified in subsection (5), (6), or (7) expires, perfection depends upon
27 compliance with this chapter."

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Section 62. 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, negotiable tangible documents, or tangible money, or tangible chattel paper~~ by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under 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~~ signs 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~~ signed a record acknowledging that it will hold possession of the 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~~ not 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

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1 acknowledgment violates the rights of a debtor; and

2 (b) unless the person otherwise agrees or law other than this chapter otherwise provides, the
3 person does not owe any duty to the secured party and is not required to confirm the acknowledgment to
4 another person.

5 (8) A secured party having possession of collateral does not relinquish possession by delivering
6 the collateral to a person other than the debtor or a lessee of the collateral from the debtor in the ordinary
7 course of the debtor's business if the person was instructed before the delivery or is instructed
8 contemporaneously with the delivery:

9 (a) to hold possession of the collateral for the secured party's benefit; or

10 (b) to redeliver the collateral to the secured party.

11 (9) A secured party does not relinquish possession even if a delivery under subsection (8) violates
12 the rights of a debtor. A person to which collateral is delivered under subsection (8) does not owe any duty to
13 the secured party and is not required to confirm the delivery to another person unless the person otherwise
14 agrees or law other than this chapter otherwise provides."

15

16 **Section 63.** Section 30-9A-314, MCA, is amended to read:

17 **"30-9A-314. Perfection by control.** (1) A security interest in ~~investment property, a deposit account,~~
18 ~~a letter-of-credit right, or electronic chattel paper~~ controllable accounts, controllable electronic records,
19 controllable payment intangibles, deposit accounts, electronic documents, electronic money, investment
20 property, or letter-of-credit rights may be perfected by control of the collateral under 30-7-107, 30-9A-104, 30-
21 9A-105, ~~[section 46], 30-9A-106, or 30-9A-107, or [section 47].~~

22 (2) A security interest in ~~a deposit account, electronic chattel paper, a letter-of-credit right, or~~
23 ~~electronic document~~ controllable accounts, controllable electronic records, controllable payment intangibles,
24 deposit accounts, electronic documents, electronic money, or letter-of-credit rights is perfected by control under
25 30-7-107, 30-9A-104, 30-9A-105, [section 46], or 30-9A-107, or [section 47] ~~when not earlier than the time the~~
26 secured party obtains control and remains perfected by control only while the secured party retains control.

27 (3) A security interest in investment property is perfected by control under 30-9A-106 ~~from not~~

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1 earlier than the time the secured party obtains control and remains perfected by control until:

2 (a) the secured party does not have control; and

3 (b) one of the following occurs:

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

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

8 (iii) if the collateral is a security entitlement, the debtor is or becomes the entitlement holder."
9

10 **NEW SECTION. Section 64. Perfection by possession and control of chattel paper.** (1) A

11 secured party may perfect a security interest in chattel paper by taking possession of each authoritative
12 tangible copy of the record evidencing the chattel paper and obtaining control of each authoritative electronic
13 copy of the electronic record evidencing the chattel paper.

14 (2) A security interest is perfected under subsection (1) not earlier than the time the secured party
15 takes possession and obtains control and remains perfected under subsection (1) only while the secured party
16 retains possession and control.

17 (3) Section 30-9A-313(3) and (6) through (9) applies to perfection by possession of an
18 authoritative tangible copy of a record evidencing chattel paper.
19

20 **Section 65.** Section 30-9A-316, MCA, is amended to read:

21 **"30-9A-316. Effect of change in applicable law.** (1) A security interest perfected pursuant to the law
22 of the jurisdiction designated in 30-9A-301(1), ~~or~~ 30-9A-305(3), [section 58(4)], or [section 59(2)] remains
23 perfected until the earliest of:

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

25 (b) the expiration of 4 months after a change of the debtor's location to another jurisdiction;

26 (c) the expiration of 1 year after a transfer of collateral to a person that thereby becomes a debtor
27 and is located in another jurisdiction; or

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1 (d) the expiration of 1 year after a new debtor located in another jurisdiction becomes bound under
2 30-9A-203(4).

3 (2) If a security interest described in subsection (1) becomes perfected under the law of the other
4 jurisdiction before the earliest time or event described in that subsection, it remains perfected thereafter. If the
5 security interest does not become perfected under the law of the other jurisdiction before the earliest time or
6 event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the
7 collateral for value.

8 (3) A possessory security interest in collateral, other than goods covered by a certificate of title and
9 as-extracted collateral consisting of goods, remains continuously perfected if:

10 (a) the collateral is located in one jurisdiction and subject to a security interest perfected under the
11 law of that jurisdiction;

12 (b) thereafter the collateral is brought into another jurisdiction; and

13 (c) upon entry into the other jurisdiction, the security interest is perfected under the law of the other
14 jurisdiction.

15 (4) Except as otherwise provided in subsection (5), a security interest in goods covered by a
16 certificate of title that is perfected by any method under the law of another jurisdiction when the goods become
17 covered by a certificate of title from this state remains perfected until the security interest would have become
18 unperfected under the law of the other jurisdiction had the goods not become so covered.

19 (5) A security interest described in subsection (4) becomes unperfected as against a purchaser of
20 the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value
21 if the applicable requirements for perfection under 30-9A-311(2) or 30-9A-313 are not satisfied before the
22 earlier of:

23 (a) the time the security interest would have become unperfected under the law of the other
24 jurisdiction had the goods not become covered by a certificate of title from this state; or

25 (b) the expiration of 4 months after the goods had become so covered.

26 (6) A security interest in chattel paper, a controllable account, controllable electronic record,
27 controllable payment intangible, deposit account, letter-of-credit right, or investment property that is perfected

1 under the law of the chattel paper's jurisdiction, the controllable electronic record's jurisdiction, the bank's
2 jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction,
3 or the commodity intermediary's jurisdiction, as applicable, remains perfected until the earlier of:

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

5 or

6 (b) the expiration of 4 months after a change of the applicable jurisdiction to another jurisdiction.

7 (7) If a security interest described in subsection (6) becomes perfected under the law of the other
8 jurisdiction before the earlier of the time or the end of the period described in that subsection, it remains
9 perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction
10 before the earlier of that time or the end of that period, it becomes unperfected and is deemed never to have
11 been perfected as against a purchaser of the collateral for value.

12 (8) The following rules apply to collateral to which a security interest attaches within 4 months after
13 the debtor changes its location to another jurisdiction:

14 (a) A financing statement filed before the change pursuant to the law of the jurisdiction designated
15 in 30-9A-301(1) or 30-9A-305(3) is effective to perfect a security interest in the collateral if the financing
16 statement would have been effective to perfect a security interest in the collateral had the debtor not changed
17 its location.

18 (b) If a security interest perfected by a financing statement that is effective under subsection (8)(a)
19 becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement
20 would have become ineffective under the law of the jurisdiction designated in 30-9A-301(1) or 30-9A-305(3) or
21 the expiration of the 4-month period, it remains perfected thereafter. If the security interest does not become
22 perfected under the law of the other jurisdiction before the earlier time or event, it becomes unperfected and is
23 deemed never to have been perfected as against a purchaser of the collateral for value.

24 (9) If a financing statement naming an original debtor is filed pursuant to the law of the jurisdiction
25 designated in 30-9A-301(1) or 30-9A-305(3) and the new debtor is located in another jurisdiction, the following
26 rules apply:

27 (a) The financing statement is effective to perfect a security interest in collateral acquired by the

1 new debtor before, and within 4 months after, the new debtor becomes bound under 30-9A-203(4), if the
2 financing statement would have been effective to perfect a security interest in the collateral had the collateral
3 been acquired by the original debtor.

4 (b) A security interest perfected by the financing statement and which becomes perfected under
5 the law of the other jurisdiction before the earlier of the time the financing statement would have become
6 ineffective under the law of the jurisdiction designated in 30-9A-301(1) or 30-9A-305(3) or the expiration of the
7 4-month period remains perfected thereafter. A security interest that is perfected by the financing statement but
8 which does not become perfected under the law of the other jurisdiction before the earlier time or event
9 becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for
10 value."
11

12 **Section 66.** Section 30-9A-317, MCA, is amended to read:

13 **"30-9A-317. Interests that take priority over or take free of security interest or agricultural lien.**

14 (1) A security interest or agricultural lien is subordinate to the rights of:

15 (a) a person entitled to priority under 30-9A-322; and

16 (b) except as otherwise provided in subsection (5), a person that becomes a lien creditor before
17 the earlier of the time:

18 (i) the security interest or agricultural lien is perfected; or

19 (ii) one of the conditions specified in 30-9A-203(2)(c) is met and a financing statement covering
20 the collateral is filed.

21 (2) Except as otherwise provided in subsection (5), a buyer, other than a secured party, ~~of chattel~~
22 ~~paper, tangible documents, of~~ goods, instruments, tangible documents, or a certificated security takes free of a
23 security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without
24 knowledge of the security interest or agricultural lien and before it is perfected.

25 (3) Except as otherwise provided in subsection (5), a lessee of goods takes free of a security
26 interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of
27 the security interest or agricultural lien and before it is perfected.

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1 (4) A Subject to subsections (6) through (9), a licensee of a general intangible or a buyer, other
2 than a secured party, of collateral other than tangible chattel paper, ~~electronic money, tangible documents,~~
3 goods, instruments, tangible documents, or a certificated security takes free of a security interest if the licensee
4 or buyer gives value without knowledge of the security interest and before it is perfected.

5 (5) Except as otherwise provided in 30-9A-320 and 30-9A-321, if a person files a financing
6 statement with respect to a purchase-money security interest before or within 20 days after the debtor receives
7 delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor that
8 arise between the time the security interest attaches and the time of filing.

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

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

13 (b) if each authoritative electronic copy of the record evidencing the chattel paper can be subjected
14 to control under 30-9A-105 obtains control of each authoritative electronic copy.

15 (7) A buyer of an electronic document takes free of a security interest if, without knowledge of the
16 security interest and before it is perfected, the buyer gives value and, if each authoritative electronic copy of the
17 document can be subjected to control under 30-7-107 obtains control of each authoritative electronic copy.

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

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

24

25 **Section 67.** Section 30-9A-323, MCA, is amended to read:

26 **"30-9A-323. Future advances.** (1) Except as otherwise provided in subsection (3), for purposes of
27 determining the priority of a perfected security interest under 30-9A-322(1)(a), perfection of the security interest

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1 dates from the time an advance is made to the extent that the security interest secures an advance that:

2 (a) is made while the security interest is perfected only:

3 (i) under 30-9A-309 when it attaches; or

4 (ii) temporarily under 30-9A-312(5), (6), or (7); and

5 (b) is not made pursuant to a commitment entered into before or while the security interest is
6 perfected by a method other than under 30-9A-309 or 30-9A-312(5), (6), or (7).

7 (2) Except as otherwise provided in subsection (3), a security interest is subordinate to the rights of
8 a person that becomes a lien creditor to the extent that the security interest secures an advance made more
9 than 45 days after the person becomes a lien creditor unless the advance is made:

10 (a) without knowledge of the lien; or

11 (b) pursuant to a commitment entered into without knowledge of the lien.

12 (3) Subsections (1) and (2) do not apply to a security interest held by a secured party that is a
13 buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor.

14 (4) Except as otherwise provided in subsection (5), a buyer of goods ~~other than a buyer in ordinary~~
15 ~~course of business~~ takes free of a security interest to the extent that it secures advances made after the earlier
16 of:

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

18 (b) 45 days after the purchase.

19 (5) Subsection (4) does not apply if the advance is made pursuant to a commitment entered into
20 without knowledge of the buyer's purchase and before the expiration of the 45-day period.

21 (6) Except as otherwise provided in subsection (7), a lessee of goods, ~~other than a lessee in~~
22 ~~ordinary course of business~~, takes the leasehold interest free of a security interest to the extent that it secures
23 advances made after the earlier of:

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

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

26 (7) Subsection (6) does not apply if the advance is made pursuant to a commitment entered into
27 without knowledge of the lease and before the expiration of the 45-day period."

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Section 68. Section 30-9A-324, MCA, is amended to read:

"30-9A-324. Priority of purchase-money security interests. (1) Except as otherwise provided in subsection (7), a perfected purchase-money security interest in goods other than inventory or livestock has priority over a conflicting security interest in the same goods, and except as otherwise provided in 30-9A-327, a perfected security interest in its identifiable proceeds also has priority, if the purchase-money security interest is perfected when the debtor receives possession of the collateral or within 20 days thereafter.

(2) Subject to subsection (3) and except as otherwise provided in subsection (7), a perfected purchase-money security interest in inventory has priority over a conflicting security interest in the same inventory, has priority over a conflicting security interest in chattel paper or an instrument constituting proceeds of the inventory and in proceeds of the chattel paper if so provided in 30-9A-330, and except as otherwise provided in 30-9A-327, also has priority in identifiable cash proceeds of the inventory to the extent the identifiable cash proceeds are received on or before the delivery of the inventory to a buyer, if:

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

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

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

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

(3) Subsections (2)(b) through (2)(d) apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of inventory:

(a) if the purchase-money security interest is perfected by filing, before the date of the filing; or

(b) if the purchase-money security interest is temporarily perfected without filing or possession under 30-9A-312(6), before the beginning of the 20-day period thereunder.

(4) Subject to subsection (5) and except as otherwise provided in subsection (7), a perfected

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1 purchase-money security interest in livestock that are farm products has priority over a conflicting security
2 interest in the same livestock, and except as otherwise provided in 30-9A-327, a perfected security interest in
3 their identifiable proceeds and identifiable products in their unmanufactured states also has priority, if:

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

6 (b) the purchase-money secured party sends ~~an authenticated~~ a signed notification to the holder of
7 the conflicting security interest;

8 (c) the holder of the conflicting security interest receives the notification within 6 months before the
9 debtor receives possession of the livestock; and

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

12 (5) Subsections (4)(b) through (4)(d) apply only if the holder of the conflicting security interest had
13 filed a financing statement covering the same types of livestock:

14 (a) if the purchase-money security interest is perfected by filing, before the date of the filing; or

15 (b) if the purchase-money security interest is temporarily perfected without filing or possession
16 under 30-9A-312(6), before the beginning of the 20-day period thereunder.

17 (6) Except as otherwise provided in subsection (7), a perfected purchase-money security interest
18 in software has priority over a conflicting security interest in the same collateral, and except as otherwise
19 provided in 30-9A-327, a perfected security interest in its identifiable proceeds also has priority, to the extent
20 that the purchase-money security interest in the goods in which the software was acquired for use has priority
21 in the goods and proceeds of the goods under this section.

22 (7) If more than one security interest qualifies for priority in the same collateral under subsection
23 (1), (2), (4), or (6):

24 (a) a security interest securing an obligation incurred as all or part of the price of the collateral has
25 priority over a security interest securing an obligation incurred for value given to enable the debtor to acquire
26 rights in or the use of collateral; and

27 (b) in all other cases, 30-9A-322(1) applies to the qualifying security interests."

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NEW SECTION. Section 69. Priority of security interest in controllable account, controllable electronic record, and controllable payment intangible. A security interest in a controllable account, controllable electronic record, or controllable payment intangible held by a secured party having control of the account, electronic record, or payment intangible has priority over a conflicting security interest held by a secured party that does not have control.

Section 70. Section 30-9A-330, MCA, is amended to read:

"30-9A-330. Purchase of chattel paper or instrument. (1) A purchaser of chattel paper has priority over a security interest in the chattel paper that is claimed merely as proceeds of inventory subject to a security interest if:

(a) in good faith and in the ordinary course of the purchaser's business, the purchaser gives new value, ~~and takes possession of~~ each authoritative tangible copy of the record evidencing the chattel paper, or ~~and obtains control of~~ under 30-9A-105 of each authoritative electronic copy of the record evidencing the chattel paper under 30-9A-105; and

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

(2) A purchaser of chattel paper has priority over a security interest in the chattel paper that is claimed other than merely as proceeds of inventory subject to a security interest if the purchaser gives new value, ~~and takes possession of~~ each authoritative tangible copy of the record evidencing the chattel paper, or ~~and obtains control of~~ under 30-9A-105 of each authoritative electronic copy of the record evidencing the chattel paper ~~under 30-9A-105~~ in good faith, in the ordinary course of the purchaser's business, and without knowledge that the purchase violates the rights of the secured party.

(3) Except as otherwise provided in 30-9A-327, a purchaser having priority in chattel paper under subsection (1) or (2) also has priority in proceeds of the chattel paper to the extent that:

- (a) 30-9A-322 provides for priority in the proceeds; or
- (b) the proceeds consist of the specific goods covered by the chattel paper or cash proceeds of

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1 the specific goods, even if the purchaser's security interest in the proceeds is unperfected.

2 (4) Except as otherwise provided in 30-9A-331(1), a purchaser of an instrument has priority over a
3 security interest in the instrument perfected by a method other than possession if the purchaser gives value and
4 takes possession of the instrument in good faith and without knowledge that the purchase violates the rights of
5 the secured party.

6 (5) For purposes of subsections (1) and (2), the holder of a purchase-money security interest in
7 inventory gives new value for chattel paper constituting proceeds of the inventory.

8 (6) For purposes of subsections (2) and (4), if the authoritative copies of the record evidencing
9 chattel paper or an instrument indicates-indicate that it the chattel paper or instrument has been assigned to an
10 identified secured party other than the purchaser, a purchaser of the chattel paper or instrument has knowledge
11 that the purchase violates the rights of the secured party."
12

13 **Section 71.** Section 30-9A-331, MCA, is amended to read:

14 **"30-9A-331. Priority of rights of purchasers of controllable accounts, controllable electronic**
15 **records, controllable payment intangibles, instruments, documents, instruments, and securities under**
16 **other chapters -- priority of interests in financial assets and security entitlements and protection**
17 **against assertion of claim under chapter 8 and [sections 93 through 99].** (1) This chapter does not limit the
18 rights of a holder in due course of a negotiable instrument, a holder to whom a negotiable document of title has
19 been duly negotiated, ~~or a protected purchaser of a security, or a qualifying purchaser of a controllable account,~~
20 controllable electronic record, or controllable payment intangible. These holders or purchasers take priority over
21 an earlier security interest, even if perfected, to the extent provided in chapters 3, 7, and 8, and [sections 93
22 through 99].

23 (2) This chapter does not limit the rights of or impose liability on a person to the extent that the
24 person is protected against the assertion of a claim under chapter 8 or [sections 93 through 99].

25 (3) Filing under this chapter does not constitute notice of a claim or defense to the holders,
26 purchasers, or persons mentioned in subsections (1) and (2)."
27

1 **Section 72.** Section 30-9A-332, MCA, is amended to read:

2 **"30-9A-332. Transfer of money -- transfer of funds from deposit account.** (1) A transferee of
3 ~~tangible~~ money takes the money free of a security interest ~~unless the transferee acts if the transferee receives~~
4 ~~possession of the money without acting~~ in collusion with the debtor in violating the rights of the secured party.

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

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

11

12 **Section 73.** Section 30-9A-334, MCA, is amended to read:

13 **"30-9A-334. Priority of security interests in fixtures and crops.** (1) A security interest under this
14 chapter may be created in goods that are fixtures or may continue in goods that become fixtures. A security
15 interest does not exist under this chapter in ordinary building materials incorporated into an improvement on
16 land.

17 (2) This chapter does not prevent creation of an encumbrance upon fixtures under real property
18 law.

19 (3) In cases not governed by subsections (4) through (8), a security interest in fixtures is
20 subordinate to a conflicting interest of an encumbrancer or owner of the related real property that is not the
21 debtor.

22 (4) Except as otherwise provided in subsection (8), a perfected security interest in fixtures has
23 priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest
24 of record in or is in possession of the real property and:

25 (a) the security interest is a purchase-money security interest;

26 (b) the interest of the encumbrancer or owner arises before the goods become fixtures; and

27 (c) the security interest is perfected by a fixture filing before the goods become fixtures or within 20

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1 days thereafter.

2 (5) A perfected security interest in fixtures has priority over a conflicting interest of an
3 encumbrancer or owner of the real property if:

4 (a) the debtor has an interest of record in the real property or is in possession of the real property
5 and the security interest:

6 (i) is perfected by a fixture filing before the interest of the encumbrancer or owner is of record; and

7 (ii) the security interest has priority over any conflicting interest of a predecessor in title of the
8 encumbrancer or owner;

9 (b) before the goods become fixtures, the security interest is perfected by any method permitted by
10 this chapter and the fixtures are readily removable:

11 (i) factory or office machines;

12 (ii) equipment that is not primarily used or leased for use in the operation of the real property; or

13 (iii) replacements of domestic appliances that are consumer goods;

14 (c) the conflicting interest is a lien on the real property obtained by legal or equitable proceedings
15 after the security interest was perfected by any method permitted by this chapter; or

16 (d) the security interest is:

17 (i) created in a manufactured home in a manufactured-home transaction; and

18 (ii) perfected pursuant to a statute described in 30-9A-311(1)(b).

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

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

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

24 (7) The priority of the security interest under subsection (6) continues for a reasonable time if the
25 debtor's right to remove the goods as against the encumbrancer or owner terminates.

26 (8) A mortgage is a "construction mortgage" to the extent that it secures an obligation incurred for
27 the construction of an improvement on land, including the acquisition cost of the land, if the recorded record so

1 indicates. Except as otherwise provided in subsections (5) and (6), a security interest in fixtures is subordinate
2 to a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the
3 completion of the construction. A mortgage has this priority to the same extent as a construction mortgage to
4 the extent that it is given to refinance a construction mortgage.

5 (9) A perfected security interest in crops growing on real property has priority over a conflicting
6 interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in
7 possession of the real property.

8 (10) Subsection (9) prevails over any inconsistent provisions of Title 71, chapter 3, parts 8 and 9."
9

10 **Section 74.** Section 30-9A-341, MCA, is amended to read:

11 **"30-9A-341. Bank's rights and duties with respect to deposit account.** Except as otherwise
12 provided in 30-9A-340(3) and unless the bank otherwise agrees in an ~~authenticated~~ signed record, a bank's
13 rights and duties with respect to a deposit account maintained with the bank are not terminated, suspended, or
14 modified by:

- 15 (1) the creation, attachment, or perfection of a security interest in the deposit account;
16 (2) the bank's knowledge of the security interest; or
17 (3) the bank's receipt of instructions from the secured party."
18

19 **Section 75.** Section 30-9A-404, MCA, is amended to read:

20 **"30-9A-404. Rights acquired by assignee -- claim and defenses against assignee.** (1) Unless an
21 account debtor has made an enforceable agreement not to assert defenses or claims, and subject to
22 subsections (2) through (5), the rights of an assignee are subject to:

- 23 (a) all terms of the agreement between the account debtor and assignor and any defense or claim
24 in recoupment arising from the transaction that gave rise to the contract; and
25 (b) any other defense or claim of the account debtor against the assignor that accrues before the
26 account debtor receives a notification of the assignment ~~authenticated~~ signed by the assignor or the assignee.
27 (2) Subject to subsection (3) and except as otherwise provided in subsection (4), the claim of an

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1 account debtor against an assignor may be asserted against an assignee under subsection (1) only to reduce
2 the amount the account debtor owes.

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

6 (4) In a consumer transaction, if a record evidences the account debtor's obligation, law other than
7 this chapter requires that the record provide a statement to the effect that the account debtor's recovery against
8 an assignee with respect to claims and defenses against the assignor may not exceed amounts paid by the
9 account debtor under the record, and the record does not provide such a statement, the extent to which a claim
10 of an account debtor against the assignor may be asserted against an assignee is determined as if the record
11 provided such a statement.

12 (5) This section does not apply to an assignment of a health-care-insurance receivable."
13

14 **Section 76.** Section 30-9A-406, MCA, is amended to read:

15 **"30-9A-406. Discharge of account debtor -- notification of assignment -- identification and**
16 **proof of assignment -- restrictions on assignment of accounts, chattel paper, payment intangibles, and**
17 **promissory notes ineffective.** (1) Subject to subsections (2) through (9) and (11), an account debtor on an
18 account, chattel paper, or payment intangible may discharge its obligation by paying the assignor until, but not
19 after, the account debtor receives a notification, ~~authenticated~~ signed by the assignor or the assignee, that the
20 amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt
21 of the notification, the account debtor may discharge its obligation by paying the assignee and may not
22 discharge the obligation by paying the assignor.

23 (2) Subject to ~~subsection~~ subsections (8) and (11), notification is ineffective under subsection (1):

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

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

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

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

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

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

7 (3) Subject to ~~subsection-subsections~~ (8) and (11), if requested by the account debtor, an
8 assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee
9 complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor
10 has received a notification under subsection (1).

11 (4) In this subsection, "promissory note" includes a negotiable instrument that evidences chattel
12 paper. Except as otherwise provided in 30-2A-303, 30-9A-407, and ~~subsection-subsections~~ (5) and (10) of this
13 section, and subject to subsection (8) of this section, a term in an agreement between an account debtor and
14 an assignor or in a promissory note is ineffective to the extent that it:

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

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

21 (5) Subsection (4) does not apply to the sale of a payment intangible or promissory note, other
22 than a sale pursuant to a disposition under 30-9A-610 or an acceptance of collateral under 30-9A-620.

23 (6) Except as otherwise provided in 30-2A-303, and 30-9A-407, and subsection (10) of this section
24 and subject to subsections (8) and (9) of this section, a rule of law, statute, or regulation that prohibits, restricts,
25 or requires the consent of a government, governmental body or official, or account debtor to the assignment or
26 transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the
27 rule of law, statute, or regulation:

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1 (a) prohibits, restricts, or requires the consent of the government, governmental body or official, or
2 account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a
3 security interest in the account or chattel paper; or

4 (b) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement
5 of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right
6 of termination, or remedy under the account or chattel paper.

7 (7) Subject to ~~subsection~~ subsections (8) and (11), an account debtor may not waive or vary its
8 option under subsection (2)(c).

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

12 (9) This section does not apply to an assignment of a health-care-insurance receivable.

13 (10) Subsections (4) and (6) do not apply to a security interest in an ownership interest in a general
14 partnership, limited partnership, or limited liability company.

15 (11) Subsections (1), (2), (3), and (7) do not apply to a controllable account or controllable payment
16 intangible."

17

18 **Section 77.** Section 30-9A-408, MCA, is amended to read:

19 **"30-9A-408. Restrictions on assignment of promissory notes, health-care-insurance**

20 **receivables, and certain general intangibles ineffective.** (1) Except as otherwise provided in ~~subsection~~

21 subsections (2) and (7), a term in a promissory note or in an agreement between an account debtor and a

22 debtor that relates to a health-care-insurance receivable or a general intangible, including a contract, permit,

23 license, or franchise, and that prohibits, restricts, or requires the consent of the person obligated on the

24 promissory note or the account debtor to, the assignment or transfer of, or the creation, attachment, or

25 perfection of a security interest in, the promissory note, health-care-insurance receivable, or general intangible

26 is ineffective to the extent that the term:

27 (a) would impair the creation, attachment, or perfection of a security interest; or

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1 (b) provides that the assignment or transfer or the creation, attachment, or perfection of the
2 security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of
3 termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

4 (2) Subsection (1) applies to a security interest in a payment intangible or promissory note only if
5 the security interest arises out of a sale of the payment intangible or promissory note, other than a sale
6 pursuant to a disposition under 30-9A-610 or an acceptance of collateral under 30-9A-620.

7 (3) A Except as provided in subsection (7), a rule of law, including a provision in a statute or
8 governmental rule or regulation, that prohibits, restricts, or requires the consent of a government, governmental
9 body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or
10 creation of a security interest in, a promissory note, health-care-insurance receivable, or general intangible,
11 including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the
12 extent that the rule of law, statute, or regulation:

13 (a) would impair the creation, attachment, or perfection of a security interest; or

14 (b) provides that the assignment or transfer or the creation, attachment, or perfection of the
15 security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of
16 termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

17 (4) To the extent that a term in a promissory note or in an agreement between an account debtor
18 and a debtor that relates to a health-care-insurance receivable or general intangible or a rule of law described
19 in subsection (3) would be effective under law other than this chapter but is ineffective under subsection (1) or
20 (3), the creation, attachment, or perfection of a security interest in the promissory note, health-care-insurance
21 receivable, or general intangible:

22 (a) is not enforceable against the person obligated on the promissory note or the account debtor;

23 (b) does not impose a duty or obligation on the person obligated on the promissory note or the
24 account debtor;

25 (c) does not require the person obligated on the promissory note or the account debtor to
26 recognize the security interest, pay or render performance to the secured party, or accept payment or
27 performance from the secured party;

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1 (d) does not entitle the secured party to use or assign the debtor's rights under the promissory
2 note, health-care-insurance receivable, or general intangible, including any related information or materials
3 furnished to the debtor in the transaction giving rise to the promissory note, health-care-insurance receivable, or
4 general intangible;

5 (e) does not entitle the secured party to use, assign, possess, or have access to any trade secrets
6 or confidential information of the person obligated on the promissory note or the account debtor; and

7 (f) does not entitle the secured party to enforce the security interest in the promissory note, health-
8 care-insurance receivable, or general intangible.

9 (5) Subsections (1) and (3) do not apply to the assignment or transfer or the creation, attachment,
10 or perfection of a security interest in:

11 (a) a claim or right to receive compensation for injuries or sickness as described in 26 U.S.C.
12 104(a)(2);

13 (b) a claim or right to receive benefits under a special needs trust as described in 42 U.S.C.
14 1396p(d)(4).

15 (6) This section prevails over any inconsistent provisions of other statutes or rules.

16 (7) This section does not apply to a security interest in an ownership interest in a general
17 partnership, limited partnership, or limited liability company.

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

20
21 **Section 78.** Section 30-9A-509, MCA, is amended to read:

22 **"30-9A-509. Persons entitled to file record.** (1) A person may file an initial financing statement, an
23 amendment that adds collateral covered by a financing statement, or an amendment that adds a debtor to a
24 financing statement only if:

25 (a) the debtor authorizes the filing in an ~~authenticated~~ a signed record or pursuant to subsection
26 (2) or (3); or

27 (b) the person holds an agricultural lien that has become effective at the time of filing and the

1 financing statement covers only collateral in which the person holds an agricultural lien.

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

4 (a) the collateral described in the security agreement; and

5 (b) property that becomes collateral under 30-9A-315(1)(b), whether or not the security agreement
6 expressly covers proceeds.

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

9 (a) the secured party of record authorizes the filing; or

10 (b) the amendment is a termination statement for a financing statement as to which the secured
11 party of record has failed to file or send a termination statement as required by 30-9A-513(1) or (3), the debtor
12 authorizes the filing, and the termination statement indicates that the debtor authorized it to be filed.

13 (4) If there is more than one secured party of record for a financing statement, each secured party
14 of record may authorize the filing of an amendment under subsection (3)."

15

16 **Section 79.** Section 30-9A-513, MCA, is amended to read:

17 **"30-9A-513. Termination statement.** (1) A secured party shall cause the secured party of record for
18 a financing statement to file a termination statement for the financing statement if the financing statement
19 covers consumer goods and:

20 (a) there is no obligation secured by the collateral covered by the financing statement and no
21 commitment to make an advance, incur an obligation, or otherwise give value; or

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

23 (2) To comply with subsection (1), a secured party shall cause the secured party of record to file
24 the termination statement:

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

27 (b) if earlier, within 20 days after the secured party receives an ~~authenticated~~ a signed demand

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1 from a debtor.

2 (3) In cases not governed by subsection (1), within 20 days after a secured party receives an
3 ~~authenticated~~a signed demand from a debtor, the secured party shall cause the secured party of record for a
4 financing statement to send to the debtor a termination statement for the financing statement or file the
5 termination statement in the filing office if:

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

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

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

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

14 (4) Except as otherwise provided in 30-9A-510, upon the filing of a termination statement with the
15 filing office, the financing statement to which the termination statement relates ceases to be effective. Except as
16 otherwise provided in 30-9A-510, for purposes of 30-9A-519(7), 30-9A-522(1), and 30-9A-523(3), the filing with
17 the filing office of a termination statement relating to a financing statement that indicates that the debtor is a
18 transmitting utility also causes the effectiveness of the financing statement to lapse."

19

20 **Section 80.** Section 30-9A-601, MCA, is amended to read:

21 **"30-9A-601. Rights after default -- judicial enforcement -- consignor or buyer of accounts,**
22 **chattel paper, payment intangibles, or promissory notes.** (1) After default, a secured party has the rights
23 provided in this part and, except as otherwise provided in 30-9A-602, those provided by agreement of the
24 parties. A secured party:

25 (a) may reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, or
26 agricultural lien by any available judicial procedure; and

27 (b) if the collateral is documents, may proceed either as to the documents or as to the goods they

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1 cover.

2 (2) A secured party in possession of collateral or control of collateral under 30-7-107, 30-9A-104,
3 30-9A-105, [section 46],30-9A-106, ~~or~~30-9A-107, or [section 47], has the rights and duties provided in 30-9A-
4 207.

5 (3) The rights under subsections (1) and (2) are cumulative and may be exercised simultaneously.

6 (4) Except as otherwise provided in 30-9A-605 and subsection (7) of this section, after default, a
7 debtor and an obligor have the rights provided in this part and by agreement of the parties.

8 (5) If a secured party has reduced its claim to judgment, the lien of any levy that may be made
9 upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:

10 (a) the date of perfection of the security interest or agricultural lien in the collateral;

11 (b) the date of filing a financing statement covering the collateral; or

12 (c) any date specified in a statute under which the agricultural lien was created.

13 (6) A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by
14 judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter
15 hold the collateral free of any other requirements of this chapter.

16 (7) Except as otherwise provided in 30-9A-607(3), this part imposes no duties upon a secured
17 party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes."

18

19 **Section 81.** Section 30-9A-605, MCA, is amended to read:

20 **"30-9A-605. Unknown debtor or secondary obligor.** (1) A-Except as provided in subsection (2),a
21 secured party does not owe a duty based on its status as secured party:

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

23 ~~(a)(i)~~ that the person is a debtor or obligor;

24 ~~(b)(ii)~~ the identity of the person; and

25 ~~(c)(iii)~~ how to communicate with the person; or

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

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1 ~~(a)~~(i) that a person is a debtor; and

2 ~~(b)~~(ii) the identity of the person.

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

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

7 (b) the secured party knows that the information in subsection (1)(a)(i), (1)(a)(ii), or (1)(a)(iii)
8 relating to the person is not provided by the collateral, a record attached to or logically associated with the
9 collateral, or the system in which the collateral is recorded."

10

11 **Section 82.** Section 30-9A-608, MCA, is amended to read:

12 **"30-9A-608. Application of proceeds of collection or enforcement -- liability for deficiency and**
13 **right to surplus.** (1) If a security interest or agricultural lien secures payment or performance of an obligation,
14 the following rules apply:

15 (a) A secured party shall apply or pay over for application the cash proceeds of collection or
16 enforcement under 30-9A-607 in the following order to:

17 (i) the reasonable expenses of collection and enforcement and, to the extent provided for by
18 agreement and not prohibited by law, reasonable attorneys fees and legal expenses incurred by the secured
19 party;

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

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

26 (b) If requested by a secured party, a holder of a subordinate security interest or other lien shall
27 furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder complies, the

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1 secured party need not comply with the holder's demand under subsection (1)(a)(iii).

2 (c) A secured party need not apply or pay over for application the noncash proceeds of collection
3 and enforcement under 30-9A-607 unless the failure to do so would be commercially unreasonable. A secured
4 party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable
5 manner.

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

8 (2) If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or
9 promissory notes, the debtor is not entitled to any surplus and the obligor is not liable for any deficiency."

10

11 **Section 83.** Section 30-9A-611, MCA, is amended to read:

12 **"30-9A-611. Notification before disposition of collateral.** (1) In this section, "notification date"
13 means the earlier of the date on which:

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

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

17 (2) Except as otherwise provided in subsection (4), a secured party that disposes of collateral
18 under 30-9A-610 shall send to the persons specified in subsection (3) a reasonable ~~authenticated~~ signed
19 notification of disposition.

20 (3) To comply with subsection (2), the secured party shall send ~~an authenticated~~ a signed
21 notification of disposition to:

22 (a) the debtor;

23 (b) any secondary obligor; and

24 (c) if the collateral is other than consumer goods:

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

27 (ii) any other secured party that, 10 days before the notification date, held a security interest in or

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1 agricultural lien on the collateral perfected by the filing of a financing statement that:

2 (A) identified the collateral;

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

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

6 (iii) any other secured party that, 10 days before the notification date, held a security interest in the
7 collateral perfected by compliance with a statute, regulation, or treaty described in 30-9A-311(1).

8 (4) Subsection (2) does not apply if the collateral is perishable or threatens to decline speedily in
9 value or is of a type customarily sold on a recognized market.

10 (5) A secured party complies with the requirement for notification prescribed in subsection (3)(c)(ii)
11 if:

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

15 (b) before the notification date, the secured party:

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

17 (ii) received a response to the request for information and sent an ~~authenticated~~ signed
18 notification of disposition to each secured party named in that response and whose financing statement
19 covered the collateral."

20

21 **Section 84.** Section 30-9A-613, MCA, is amended to read:

22 **"30-9A-613. Contents and form of notification before disposition of collateral -- general. (1)**

23 Except in a consumer-goods transaction, the following rules apply:

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

25 (i) describes the debtor and the secured party;

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

27 (iii) states the method of intended disposition;

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

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

5 (b) Whether the contents of a notification that lacks any of the information set forth in subsection
6 (1)(a) are nevertheless sufficient is a question of fact.

7 (c) The contents of a notification providing substantially the information specified in subsection
8 (1)(a) are sufficient, even if the notification includes:

9 (i) information not specified by that subsection; or

10 (ii) minor errors that are not seriously misleading.

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

12 (2)(e) The following form of notification and the form appearing in 30-9A-614(3) (1)(c), when
13 completed in accordance with the instructions in 30-9A-614(2) and subsection (2) of this section, each provides
14 sufficient information:

15 ~~NOTIFICATION OF DISPOSITION OF COLLATERAL~~

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

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

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

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

20 ~~We will sell [or lease or license, as applicable] the [describe collateral] [to the highest qualified bidder]~~

21 in public as follows:

22 Day and Date:

23 Time:

24 Place:

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

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

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1 collateral, or item [3], if the notification relates to a private disposition of the collateral. If item [2] is included,
2 include the words "to the highest qualified bidder" only if applicable.

3 (d) Include and complete items [4] and [6].

4 (e) Include and complete item [5] only if the sender will charge the recipient for an accounting."

5

6 **Section 85.** Section 30-9A-614, MCA, is amended to read:

7 **"30-9A-614. Contents and form of notification before disposition of collateral -- consumer-**
8 **goods transaction.** (1) In a consumer-goods transaction, the following rules apply:

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

10 (a)(i) the information specified in 30-9A-613(1)(a);

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

12 (c)(iii) a telephone number from which the amount that must be paid to the secured party to redeem
13 the collateral under 30-9A-623 is available; and

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

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

17 (3)(c) The following form of notification, when completed in accordance with the instructions in
18 subsection (2), provides sufficient information:

19 ~~[Name and address of secured party]~~

20 ~~[Date]~~

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

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

23 ~~Subject: [Identification of Transaction]~~

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

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

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

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

2 [1] We will sell (describe collateral) at public sale. A sale could include a lease or license. The sale will
3 be held as follows:

4 (Date)

5 (Time)

6 (Place)

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

8 [2] We will sell (describe collateral) at private sale sometime after (date). A sale could include a lease or
9 license.

10 [3] The money that we get from the sale, after paying our costs, will reduce the amount you owe. If we
11 get less money than you owe, you (will or will not, as applicable) still owe us the difference. If we get more
12 money than you owe, you will get the extra money, unless we must pay it to someone else.

13 [4] You can get the property back at any time before we sell it by paying us the full amount you owe,
14 not just the past due payments, including our expenses. To learn the exact amount you must pay, call us at
15 (telephone number).

16 [5] If you want us to explain to you in (writing) (writing or in (description of electronic record))
17 (description of electronic record) how we have figured the amount that you owe us, [6] call us at (telephone
18 number) (or) (write us at (secured party's address)) (or contact us by (description of electronic communication
19 method)) [7] and request (a written explanation) (a written explanation or an explanation in (description of
20 electronic record)) (an explanation in (description of electronic record)).

21 [8] We will charge you \$ (amount) for the explanation if we sent you another written explanation of the
22 amount you owe us within the last 6 months.

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

25 [10] We are sending this notice to the following other people who have an interest in (describe
26 collateral) or who owe money under your agreement:

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

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1 [End of Form]

2 (4)(d) A notification in the form of subsection (3) (1)(c) is sufficient, even if additional information
3 appears at the end of the form.

4 (5)(e) A notification in the form of subsection (3) (1)(c) is sufficient, even if it includes errors in
5 information not required by subsection (4) (1)(a), unless the error is misleading with respect to rights arising
6 under this chapter.

7 (6)(f) If a notification under this section is not in the form of subsection (3) (1)(c), law other than this
8 chapter determines the effect of including information not required by subsection (4) (1)(a).

9 (2) The following instructions apply to the form of notification in subsection (1)(c):

10 (a) The instructions in this subsection refer to the numbers in brackets before items in the form of
11 notification in subsection (1)(c). Do not include the numbers or brackets in the notification. The numbers and
12 brackets are used only for the purpose of these instructions.

13 (b) Include and complete either item [1], if the notification relates to a public disposition of the
14 collateral, or item [2], if the notification relates to a private disposition of the collateral.

15 (c) Include and complete items [3], [4], [5], [6], and [7].

16 (d) In item [5], include and complete any one of the three alternative methods for the explanation—
17 writing, writing or electronic record, or electronic record.

18 (e) In item [6], include the telephone number. In addition, the sender may include and complete
19 either or both of the two additional alternative methods of communication—writing or electronic
20 communication—for the recipient of the notification to communicate with the sender. Neither of the two
21 additional methods of communication is required to be included.

22 (f) In item [7], include and complete the method or methods for the explanation—writing, writing or
23 electronic record, or electronic record—included in item [5].

24 (g) Include and complete item [8] only if a written explanation is included in item [5] as a method
25 for communicating the explanation and the sender will charge the recipient for another written explanation.

26 (h) In item [9], include either the telephone number or the address or both the telephone number
27 and the address. In addition, the sender may include and complete the additional method of communication—

1 electronic communication—for the recipient of the notification to communicate with the sender. The additional
2 method of electronic communication is not required to be included.

3 (i) If item [10] does not apply, insert “None” after “agreement:.”.
4

5 **Section 86.** Section 30-9A-615, MCA, is amended to read:

6 **"30-9A-615. Application of proceeds of disposition -- liability for deficiency and right to**

7 **surplus.** (1) A secured party shall apply or pay over for application the cash proceeds of disposition under 30-
8 9A-610 in the following order to:

9 (a) the reasonable expenses of retaking, holding, preparing for disposition, processing, and
10 disposing, and to the extent provided for by agreement and not prohibited by law, reasonable attorneys fees
11 and legal expenses incurred by the secured party;

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

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

16 (i) the secured party receives from the holder of the subordinate security interest ~~an authenticated~~
17 a signed demand for proceeds before distribution of the proceeds is completed; and

18 (ii) if a consignor has an interest in the collateral, the subordinate security interest or lien is senior
19 to the interest of the consignor; and

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

22 (2) If requested by a secured party, a holder of a subordinate security interest or other lien shall
23 furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder does so, the secured
24 party need not comply with the holder's demand under subsection (1)(c).

25 (3) A secured party need not apply or pay over for application noncash proceeds of disposition
26 under 30-9A-610 unless the failure to do so would be commercially unreasonable. A secured party that applies
27 or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

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1 (4) If the security interest under which a disposition is made secures payment or performance of
2 an obligation, after making the payments and applications required by subsection (1) and permitted by
3 subsection (3):

4 (a) unless subsection (1)(d) requires the secured party to apply or pay over cash proceeds to a
5 consignor, the secured party shall account to and pay a debtor for any surplus; and

6 (b) the obligor is liable for any deficiency.

7 (5) If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or
8 promissory notes:

9 (a) the debtor is not entitled to any surplus; and

10 (b) the obligor is not liable for any deficiency.

11 (6) The surplus or deficiency following a disposition is calculated based on the amount of proceeds
12 that would have been realized in a disposition complying with the requirements of this part to a transferee other
13 than the secured party, a person related to the secured party, or a secondary obligor if:

14 (a) the transferee in the disposition is the secured party, a person related to the secured party, or a
15 secondary obligor; and

16 (b) the amount of proceeds of the disposition is significantly below the range of proceeds that a
17 complying disposition to a person other than the secured party, a person related to the secured party, or a
18 secondary obligor would have brought.

19 (7) A secured party that receives cash proceeds of a disposition in good faith and without
20 knowledge that the receipt violates the rights of the holder of a security interest or other lien that is not
21 subordinate to the security interest or agricultural lien under which the disposition is made:

22 (a) takes the cash proceeds free of the security interest or other lien;

23 (b) is not obligated to apply the proceeds of the disposition to the satisfaction of obligations
24 secured by the security interest or other lien; and

25 (c) is not obligated to account to or pay the holder of the security interest or other lien for any
26 surplus."

27

1 **Section 87.** Section 30-9A-616, MCA, is amended to read:

2 **"30-9A-616. Explanation of calculation of surplus or deficiency.** (1) In this section, the following
3 definitions apply:

4 (a) "Explanation" means a writing-record that:

5 (i) states the amount of the surplus or deficiency;

6 (ii) provides an explanation in accordance with subsection (3) of how the secured party calculated
7 the surplus or deficiency;

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

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

12 (b) "Request" means a record:

13 (i) authenticated signed by a debtor or consumer obligor;

14 (ii) requesting that the recipient provide an explanation; and

15 (iii) sent after disposition of the collateral under 30-9A-610.

16 (2) In a consumer-goods transaction in which the debtor is entitled to a surplus or a consumer
17 obligor is liable for a deficiency under 30-9A-615, the secured party shall:

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

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

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

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

24 (3) To comply with subsection (1)(a)(ii), a-writing-an explanation must provide the following
25 information in the following order:

26 (a) the aggregate amount of obligations secured by the security interest under which the
27 disposition was made, and if the amount reflects a rebate of unearned interest or credit service charge, an

1 indication of that fact, calculated as of a specified date:

2 (i) if the secured party takes or receives possession of the collateral after default, not more than
3 35 days before the secured party takes or receives possession; or

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

6 (b) the amount of proceeds of the disposition;

7 (c) the aggregate amount of the obligations after deducting the amount of proceeds;

8 (d) the amount, in the aggregate or by type, and types of expenses, including expenses of
9 retaking, holding, preparing for disposition, processing, and disposing of the collateral, and attorneys fees
10 secured by the collateral that are known to the secured party and relate to the current disposition;

11 (e) the amount, in the aggregate or by type, and types of credits, including rebates of interest or
12 credit service charges, to which the obligor is known to be entitled and that are not reflected in the amount in
13 subsection (3)(a); and

14 (f) the amount of the surplus or deficiency.

15 (4) A particular phrasing of the explanation is not required. An explanation complying substantially
16 with the requirements of subsection (1)(a) is sufficient, even if it includes minor errors that are not seriously
17 misleading.

18 (5) A debtor or consumer obligor is entitled without charge to one response to a request under this
19 section during any 6-month period in which the secured party did not send to the debtor or consumer obligor an
20 explanation pursuant to subsection (2)(a). The secured party may require payment of a charge not exceeding
21 \$25 for each additional response."

22

23 **Section 88.** Section 30-9A-619, MCA, is amended to read:

24 **"30-9A-619. Transfer of record or legal title.** (1) In this section, "transfer statement" means a record
25 ~~authenticated~~ signed by a secured party stating:

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

27 (b) that the secured party has exercised its postdefault remedies with respect to the collateral;

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

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

4 (2) A transfer statement entitles the transferee to the transfer of record of all rights of the debtor in
5 the collateral specified in the statement in any official filing, recording, registration, or certificate of title system
6 covering the collateral. If a transfer statement is presented with the applicable fee and request form to the
7 official or office responsible for maintaining the system, the official or office shall:

8 (a) accept the transfer statement;

9 (b) promptly amend its records to reflect the transfer; and

10 (c) if applicable, issue a new appropriate certificate of title in the name of transferee.

11 (3) A transfer of the record or legal title to collateral to a secured party under subsection (2) or
12 otherwise is not of itself a disposition of collateral under this chapter and does not of itself relieve the secured
13 party of its duties under this chapter."
14

15 **Section 89.** Section 30-9A-620, MCA, is amended to read:

16 **"30-9A-620. Acceptance of collateral in full or partial satisfaction -- compulsory disposition of**
17 **collateral.** (1) Except as otherwise provided in subsection (7), a secured party may accept collateral in full or
18 partial satisfaction of the obligation it secures only if:

19 (a) the debtor consents to the acceptance under subsection (3);

20 (b) the secured party does not receive, within the time set forth in subsection (4), a notification of
21 objection to the proposal authenticated signed by:

22 (i) a person to which the secured party was required to send a proposal under 30-9A-621; or

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

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

27 (d) subsection (5) does not require the secured party to dispose of the collateral.

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- 1 (2) A purported or apparent acceptance of collateral under this section is ineffective unless:
- 2 (a) the secured party consents to the acceptance in an ~~authenticated~~ a signed record or sends a
- 3 proposal to the debtor; and
- 4 (b) the conditions of subsection (1) are met.
- 5 (3) For purposes of this section:
- 6 (a) a debtor consents to an acceptance of collateral in partial satisfaction of the obligation it
- 7 secures only if the debtor agrees to the terms of the acceptance in a record ~~authenticated~~ signed after default;
- 8 and
- 9 (b) a debtor consents to an acceptance of collateral in full satisfaction of the obligation it secures
- 10 only if the debtor agrees to the terms of the acceptance in a record ~~authenticated~~ signed after default or the
- 11 secured party:
- 12 (i) sends to the debtor after default a proposal that is unconditional or subject only to a condition
- 13 that collateral not in the possession of the secured party be preserved or maintained;
- 14 (ii) in the proposal, proposes to accept collateral in full satisfaction of the obligation it secures; and
- 15 (iii) does not receive a notification of objection ~~authenticated~~ signed by the debtor within 20 days
- 16 after the proposal is sent.
- 17 (4) To be effective under subsection (1)(b), a notification of objection must be received by the
- 18 secured party:
- 19 (a) in the case of a person to which the proposal was sent pursuant to 30-9A-621, within 20 days
- 20 after notification was sent to that person; and
- 21 (b) in other cases:
- 22 (i) within 20 days after the last notification was sent pursuant to 30-9A-621; or
- 23 (ii) if a notification was not sent, before the debtor consents to the acceptance under subsection
- 24 (3).
- 25 (5) A secured party that has taken possession of collateral shall dispose of the collateral pursuant
- 26 to 30-9A-610 within the time specified in subsection (6) if:
- 27 (a) 60% of the cash price has been paid in the case of a purchase-money security interest in

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1 consumer goods; or

2 (b) 60% of the principal amount of the obligation secured has been paid in the case of a
3 nonpurchase-money security interest in consumer goods.

4 (6) To comply with subsection (5), the secured party shall dispose of the collateral:

5 (a) within 90 days after taking possession; or

6 (b) within any longer period to which the debtor and all secondary obligors have agreed by
7 ~~authenticating~~ signing a record including a statement to that effect after default.

8 (7) In a consumer transaction, a secured party may not accept collateral in partial satisfaction of
9 the obligation it secures."

10

11 **Section 90.** Section 30-9A-621, MCA, is amended to read:

12 **"30-9A-621. Notification of proposal to accept collateral.** (1) A secured party that desires to accept
13 collateral in full or partial satisfaction of the obligation it secures shall send its proposal to:

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

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

19 (i) identified the collateral;

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

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

23 (c) any other secured party that, 10 days before the debtor consented to the acceptance, held a
24 security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in 30-
25 9A-311(1).

26 (2) A secured party that desires to accept collateral in partial satisfaction of the obligation it
27 secures shall send its proposal to any secondary obligor in addition to the persons described in subsection (1)."

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Section 91. Section 30-9A-624, MCA, is amended to read:

"30-9A-624. Waiver. (1) A debtor or secondary obligor may waive the right to notification of disposition of collateral under 30-9A-611 only by ~~authenticating~~ an agreement to that effect entered into and ~~authenticated~~ signed after default.

(2) A debtor may waive the right to require disposition of collateral under 30-9A-620(5) only by an agreement to that effect entered into and ~~authenticated~~ signed after default.

(3) Except in a consumer-goods transaction, a debtor or secondary obligor may waive the right to redeem collateral under 30-9A-623 only by an agreement to that effect entered into and signed after default."

Section 92. Section 30-9A-628, MCA, is amended to read:

"30-9A-628. Nonliability and limitation on liability of secured party -- liability of secondary obligor. (1) ~~Unless Subject to subsection (6), unless~~ a secured party knows that a person is a debtor or obligor, knows the identity of the person, and knows how to communicate with the person:

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

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

(2) A Subject to subsection (6), a secured party is not liable because of its status as a secured party:

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

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

(ii) the identity of the person; and

(iii) how to communicate with the person; or

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

(i) that the person is a debtor; and

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1 (ii) the identity of the person.

2 (3) A secured party is not liable to any person, and a person's liability for a deficiency is not
3 affected, because of any act or omission arising out of the secured party's reasonable belief that a transaction
4 is not a consumer-goods transaction or a consumer transaction or that goods are not consumer goods if the
5 secured party's belief is based on its reasonable reliance on:

6 (a) a debtor's representation concerning the purpose for which collateral was to be used, acquired,
7 or held; or

8 (b) an obligor's representation concerning the purpose for which a secured obligation was
9 incurred.

10 (4) A secured party is not liable to any person under 30-9A-625(3)(b) for its failure to comply with
11 30-9A-616.

12 (5) A secured party is not liable under 30-9A-625(3)(b) more than once with respect to any one
13 secured obligation.

14 (6) Subsections (1) and (2) do not apply to limit the liability of a secured party to a person if, at the
15 time the secured party obtains control of collateral that is a controllable account, controllable electronic record,
16 or controllable payment intangible or at the time the security interest attaches to the collateral, whichever is
17 later:

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

19 (b) the secured party knows that the information in subsection (2)(a)(i), (2)(a)(ii), or (2)(a)(iii)
20 relating to the person is not provided by the collateral, a record attached to or logically associated with the
21 collateral, or the system in which the collateral is recorded."

22
23 **NEW SECTION. Section 93. Title.** [Sections 93 through 99] may be cited as "Uniform Commercial
24 Code--Controllable Electronic Records".

25
26 **NEW SECTION. Section 94. Definitions.** (1) As used in [sections 93 through 99], the following
27 definitions apply:

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1 (a) (i) "Controllable electronic record" means a record stored in an electronic medium that can be
2 subjected to control under [section 97].

3 (ii) The term does not include a controllable account, a controllable payment intangible, a deposit
4 account, an electronic copy of a record evidencing chattel paper, an electronic document of title, electronic
5 money, investment property, or a transferable record.

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

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

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

12 (ii) 30-18-115(1).

13 (d) "Value" has the meaning provided in 30-3-303(1), as if references in that subsection to an
14 "instrument" were references to a controllable account, controllable electronic record, or controllable payment
15 intangible.

16 (2) The definitions in Title 30, chapter 9A, of "account debtor", "controllable account", "controllable
17 payment intangible", "chattel paper", "deposit account", "electronic money", and "investment property" apply to
18 [sections 93 through 99].

19 (3) Title 30, chapter 1, contains general definitions and principles of construction and interpretation
20 applicable throughout [sections 93 through 99].

21

22 **NEW SECTION. Section 95. Relation to Title 30, chapter 9A, and consumer laws.** (1) If there is
23 conflict between Title 30, chapter 9A, and [sections 93 through 99], Title 30, chapter 9A, governs.

24 (2) A transaction subject to [sections 93 through 99] is subject to any applicable rule of law that
25 establishes a different rule for consumers, Title 30, chapter 14, part 1, Title 31, chapter 1, and Title 32, chapter
26 6, part 1.

27

1 NEW SECTION. **Section 96. Rights in controllable account, controllable electronic record, and**
2 **controllable payment intangible.** (1) This section applies to the acquisition and purchase of rights in a
3 controllable account or controllable payment intangible, including the rights and benefits under subsections (3),
4 (4), (5), (7), and (8) of a purchaser and qualifying purchaser, in the same manner this section applies to a
5 controllable electronic record.

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

9 (3) Except as provided in this section, law other than [sections 93 through 99] determines whether
10 a person acquires a right in a controllable electronic record and the right the person acquires.

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

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

16 (6) Except as provided in subsections (1) and (5) for a controllable account and a controllable
17 payment intangible or law other than [sections 93 through 99], a qualifying purchaser takes a right to payment,
18 right to performance, or other interest in property evidenced by the controllable electronic record subject to a
19 claim of a property right in the right to payment, right to performance, or other interest in property.

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

24 (8) Filing of a financing statement under Title 30, chapter 9A, is not notice of a claim of a property
25 right in a controllable electronic record.

26

27 NEW SECTION. **Section 97. Control of controllable electronic record.** (1) A person has control of

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1 a controllable electronic record if the electronic record, a record attached to or logically associated with the
2 electronic record, or a system in which the electronic record is recorded:

3 (a) gives the person:

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

5 (ii) exclusive power, subject to subsection (2), to:

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

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

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

12 (2) Subject to subsection (3), a power is exclusive under subsection (1)(a)(ii)(A) and (1)(a)(ii)(B)
13 even if:

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

18 (b) the power is shared with another person.

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

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

22 (b) the other person:

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

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

26 (4) If a person has the powers specified in subsection (1)(a)(ii)(A) and (1)(a)(ii)(B), the powers are
27 presumed to be exclusive.

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

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

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

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

10 (7) If a person acknowledges that it has or will obtain control on behalf of another person, unless
11 the person otherwise agrees or a law other than Title 30, chapter 9A, or [sections 93 through 99] otherwise
12 provides, the person does not owe any duty to the other person and is not required to confirm the
13 acknowledgment to any other person.

14

15 NEW SECTION. **Section 98. Discharge of account debtor on controllable account or**

16 **controllable payment intangible.** (1) An account debtor on a controllable account or controllable payment
17 intangible may discharge its obligation by paying:

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

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

22 (2) Subject to subsection (4), the account debtor may not discharge its obligation by paying a
23 person that formerly had control of the controllable electronic record if the account debtor receives a notification
24 that:

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

26 (b) reasonably identifies the controllable account or controllable payment intangible;

27 (c) notifies the account debtor that control of the controllable electronic record that evidences the

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1 controllable account or controllable payment intangible was transferred;

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

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

6 (3) After receipt of a notification that complies with subsection (2), the account debtor may
7 discharge its obligation by paying in accordance with the notification and may not discharge the obligation by
8 paying a person that formerly had control.

9 (4) Subject to subsection (8), notification is ineffective under subsection (2):

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

14 (b) to the extent an agreement between the account debtor and seller of a payment intangible
15 limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law
16 other than [sections 93 through 99]; or

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

18 (i) divide a payment;

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

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

21 (5) Subject to subsection (8), if requested by the account debtor, the person giving the notification
22 under subsection (2) seasonably shall furnish reasonable proof, using the method in the agreement referred to
23 in subsection (4)(a), that control of the controllable electronic record has been transferred. Unless the person
24 complies with the request, the account debtor may discharge its obligation by paying a person that formerly had
25 control, even if the account debtor has received a notification under subsection (2).

26 (6) A person furnishes reasonable proof under subsection (5) that control has been transferred if
27 the person demonstrates, using the method in the agreement referred to in subsection (4)(a), that the

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1 transferee has the power to:

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

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

5 (c) transfer the powers specified in subsections (6)(a) and (6)(b) to another person.

6 (7) Subject to subsection (8), an account debtor may not waive or vary its rights under subsections
7 (4)(a) and (5) or its option under subsection (4)(c).

8 (8) This section is subject to law other than [sections 93 through 99] which establishes a different
9 rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or
10 household purposes.

11

12 **NEW SECTION. Section 99. Governing law.** (1) Except as provided in subsection (2), the local law
13 of a controllable electronic record's jurisdiction governs a matter covered by [sections 93 through 99].

14 (2) For a controllable electronic record that evidences a controllable account or controllable
15 payment intangible, the local law of the controllable electronic record's jurisdiction governs a matter covered by
16 [section 98] unless an effective agreement determines that the local law of another jurisdiction governs.

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

18 (a) If the controllable electronic record, or a record attached to or logically associated with the
19 controllable electronic record and readily available for review, expressly provides that a particular jurisdiction is
20 the controllable electronic record's jurisdiction for purposes of this code or [sections 93 through 99], that
21 jurisdiction is the controllable electronic record's jurisdiction.

22 (b) If subsection (3)(a) does not apply and the rules of the system in which the controllable
23 electronic record is recorded are readily available for review and expressly provide that a particular jurisdiction
24 is the controllable electronic record's jurisdiction for purposes of this code or [sections 93 through 99], that
25 jurisdiction is the controllable electronic record's jurisdiction.

26 (c) If subsections (3)(a) and (3)(b) do not apply and the controllable electronic record, or a record
27 attached to or logically associated with the controllable electronic record and readily available for review,

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1 expressly provides that the controllable electronic record is governed by the law of a particular jurisdiction, that
2 jurisdiction is the controllable electronic record's jurisdiction.

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

7 (e) If subsections (3)(a) through (3)(d) do not apply, the controllable electronic record's jurisdiction
8 is the District of Columbia.

9 (4)(a) If subsection (3)(e) applies and [sections 93 through 99] are not in effect in the District of
10 Columbia without material modification, the governing law for a matter covered by [sections 93 through 99] is
11 the law of the District of Columbia as though [sections 93 through 99] were in effect in the District of Columbia
12 without material modification.

13 (b) In this subsection, "[sections 93 through 99]" means Article 12 of Uniform Commercial Code
14 Amendments (2022).

15 (5) To the extent subsections (1) and (2) provide that the local law of the controllable electronic
16 record's jurisdiction governs a matter covered by [sections 93 through 99], that law governs even if the matter
17 or a transaction to which the matter relates does not bear any relation to the controllable electronic record's
18 jurisdiction.

19 (6) The rights acquired under [section 96] by a purchaser or qualifying purchaser are governed by
20 the law applicable under this section at the time of purchase.

21

22 **NEW SECTION. Section 100. Title.** [Sections 100 through 108] may be cited as Transitional
23 Provisions for Uniform Commercial Code Amendments (2022).

24

25 **NEW SECTION. Section 101. Definitions.** (1) In [sections 100 through 108], the following definitions
26 apply:

27 (a) "Adjustment date" means July 1, 2025, or the date that is 1 year after [the effective date of this

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1 act], whichever is later.

2 (b) “[Sections 93 through 99]” means Article 12 of the Uniform Commercial Code.

3 (c) “Article 12 property” means a controllable account, controllable electronic record, or
4 controllable payment intangible.

5 (2) The following definitions in other articles of the Uniform Commercial Code apply to [sections
6 100 through 108]:

7 (a) “Controllable account”. 30-9A-102.

8 (b) “Controllable electronic record”. [Section 94].

9 (c) “Controllable payment intangible”. 30-9A-102.

10 (d) “Electronic money”. 30-9A-102.

11 (e) “Financing statement”. 30-9A-102.

12 (3) Title 30, chapter 1, contains general definitions and principles of construction and interpretation
13 applicable throughout [sections 100 through 108].

14
15 **NEW SECTION. Section 102. Saving clause.** Except as provided in [sections 103 through 108], a
16 transaction validly entered into before [the effective date of this act] and the rights, duties, and interests flowing
17 from the transaction remain valid thereafter and may be terminated, completed, consummated, or enforced as
18 required or permitted by law other than the Uniform Commercial Code or, if applicable, the Uniform Commercial
19 Code, as though [this act] had not taken effect.

20
21 **NEW SECTION. Section 103. Saving Clause.** (1) Except as provided in [sections 103 through 108],
22 Title 30, chapter 9A, as amended by [this act] and [sections 93 through 99] apply to a transaction, lien, or other
23 interest in property, even if the transaction, lien, or interest was entered into, created, or acquired before [the
24 effective date of this act].

25 (2) Except as provided in subsection (3) and [sections 104 through 108]:

26 (a) a transaction, lien, or interest in property that was validly entered into, created, or transferred
27 before [the effective date of this act] and was not governed by the Uniform Commercial Code, but would be

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1 subject to Title 30, chapter 9A, as amended by [this act] or [sections 93 through 99] if it had been entered into,
2 created, or transferred on or after [the effective date of this act], including the rights, duties, and interests
3 flowing from the transaction, lien, or interest, remains valid on and after [the effective date of this act]; and

4 (b) the transaction, lien, or interest may be terminated, completed, consummated, and enforced as
5 required or permitted by [this act] or by the law that would apply if [this act] had not taken effect.

6 (3) [This act] does not affect an action, case, or proceeding commenced before [the effective date
7 of this act].

8
9 **NEW SECTION. Section 104. Security interest perfected before effective date.** (1) A security
10 interest that is enforceable and perfected immediately before [the effective date of this act] is a perfected
11 security interest under [this act] if, on [the effective date of this act], the requirements for enforceability and
12 perfection under [this act] are satisfied without further action.

13 (2) If a security interest is enforceable and perfected immediately before [the effective date of this
14 act], but the requirements for enforceability or perfection under [this act] are not satisfied on [the effective date
15 of this act], the security interest:

16 (a) is a perfected security interest until the earlier of the time perfection would have ceased under
17 the law in effect immediately before [the effective date of this act] or the adjustment date;

18 (b) remains enforceable thereafter only if the security interest satisfies the requirements for
19 enforceability under 30-9-203, as amended by [this act], before the adjustment date; and

20 (c) remains perfected thereafter only if the requirements for perfection under [this act] are satisfied
21 before the time specified in subsection (2)(a).

22

23 **NEW SECTION. Section 105. Security interest unperfected before effective date.** A security
24 interest that is enforceable immediately before [the effective date of this act] but is unperfected at that time:

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

26 (2) remains enforceable thereafter if the security interest becomes enforceable under 30-9A-203,
27 as amended by [this act], on [the effective date of this act] or before the adjustment date; and

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1 (3) becomes perfected:

2 (a) without further action, on [the effective date of this act] if the requirements for perfection under
3 [this act] are satisfied before or at that time; or

4 (b) when the requirements for perfection are satisfied if the requirements are satisfied after that
5 time.

6
7 **NEW SECTION. Section 106. Effectiveness of actions taken before effective date.** (1) If action,
8 other than the filing of a financing statement, is taken before [the effective date of this act] and the action would
9 have resulted in perfection of the security interest had the security interest become enforceable before [the
10 effective date of this act], the action is effective to perfect a security interest that attaches under [this act] before
11 the adjustment date. An attached security interest becomes unperfected on the adjustment date unless the
12 security interest becomes a perfected security interest under [this act] before the adjustment date.

13 (2) The filing of a financing statement before [the effective date of this act] is effective to perfect a
14 security interest on [the effective date of this act] to the extent the filing would satisfy the requirements for
15 perfection under [this act].

16 (3) The taking of an action before [the effective date of this act] is sufficient for the enforceability of
17 a security interest on [the effective date of this act] if the action would satisfy the requirements for enforceability
18 under [this act].

19
20 **NEW SECTION. Section 107. Priority.** (1) Subject to subsections (2) and (3), [this act] determines
21 the priority of conflicting claims to collateral.

22 (2) Subject to subsection (3), if the priorities of claims to collateral were established before [the
23 effective date of this act], Title 30, chapter 9A, as in effect before [the effective date of this act] determines
24 priority.

25 (3) On the adjustment date, to the extent the priorities determined by Title 30, chapter 9A, as
26 amended by [this act], modify the priorities established before [the effective date of this act], the priorities of
27 claims to [sections 93 through 99] property and electronic money established before [the effective date of this

1 act] cease to apply.

2

3 **NEW SECTION. Section 108. Priority of claims when priority rules of Title 30, chapter 9A, do**
4 **not apply.** (1) Subject to subsections (2) and (3), [sections 93 through 99] determine the priority of conflicting
5 claims to [sections 93 through 99] property when the priority rules of Title 30, chapter 9A,as amended by [this
6 act] do not apply.

7 (2) Subject to subsection (3), when the priority rules of Title 30, chapter 9A, as amended by [this
8 act] do not apply and the priorities of claims to [sections 93 through 99] property were established before [the
9 effective date of this act], law other than [sections 93 through 99] determines priority.

10 (3) When the priority rules of Title 30, chapter 9A, as amended by [this act] do not apply, to the
11 extent the priorities determined by [this act] modify the priorities established before [the effective date of this
12 act], the priorities of claims to [sections 93 through 99] property established before [the effective date of this act]
13 cease to apply on the adjustment date.

14

15 **Section 109.** Section 30-18-115, MCA, is amended to read:

16 **"30-18-115. Transferable records.** (1) In this section, "transferable record" means an electronic
17 record that:

18 (a) would be a note under Title 30, chapter 3, or a document under Title 30, chapter 7, if the
19 electronic record were in writing; and

20 (b) the issuer of the electronic record expressly has agreed is a transferable record.

21 (2) A person has control of a transferable record if a system employed for evidencing the transfer
22 of interests in the transferable record reliably establishes that person as the person to which the transferable
23 record was issued or transferred.

24 (3) A system satisfies subsection (2), and a person is considered to have control of a transferable
25 record, if the transferable record is created, stored, and assigned in a manner that:

26 (a) a single authoritative copy of the transferable record exists that is unique, identifiable, and,
27 except as otherwise provided in subsections (3)(d) through (3)(f), unalterable;

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- 1 (b) the authoritative copy identifies the person asserting control as:
- 2 (i) the person to which the transferable record was issued; or
- 3 (ii) if the authoritative copy indicates that the transferable record has been transferred, the person
- 4 to which the transferable record was most recently transferred;
- 5 (c) the authoritative copy is communicated to and maintained by the person asserting control or its
- 6 designated custodian;
- 7 (d) copies or revisions that add or change an identified assignee of the authoritative copy can be
- 8 made only with the consent of the person asserting control;
- 9 (e) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that
- 10 is not the authoritative copy; and
- 11 (f) any revision of the authoritative copy is readily identifiable as authorized or unauthorized.
- 12 (4) Except as otherwise agreed, a person having control of a transferable record is the holder, as
- 13 defined in 30-1-201(2)(v) ~~(2)(w)~~, of the transferable record and has the same rights and defenses as a holder of
- 14 an equivalent record or writing under Title 30, chapters 1 through 9A, including, if the applicable statutory
- 15 requirements under 30-3-302(1), 30-7-501, or 30-9A-330 are satisfied, the rights and defenses of a holder in
- 16 due course, a holder to which a negotiable document of title has been duly negotiated, or a purchaser,
- 17 respectively. Delivery, possession, and indorsement are not required to obtain or exercise any of the rights
- 18 under this subsection.
- 19 (5) Except as otherwise agreed, an obligor under a transferable record has the same rights and
- 20 defenses as an equivalent obligor under equivalent records or writings under Title 30, chapters 1 through 9A.
- 21 (6) If requested by a person against which enforcement is sought, the person seeking to enforce
- 22 the transferable record shall provide reasonable proof that the person is in control of the transferable record.
- 23 Proof may include access to the authoritative copy of the transferable record and related business records
- 24 sufficient to review the terms of the transferable record and to establish the identity of the person having control
- 25 of the transferable record."
- 26
- 27

Section 110. Section 45-6-315, MCA, is amended to read:

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1 **"45-6-315. Defrauding creditors.** (1) A person commits the offense of defrauding secured creditors if
2 the person destroys, conceals, encumbers, transfers, removes from the state, or otherwise deals with property
3 subject to a security interest with the purpose to hinder enforcement of that interest.

4 (2) "Security interest" means an interest in personal property or fixtures as defined in the Uniform
5 Commercial Code, 30-1-201~~(2)(jj)~~ (2)(kk).

6 (3) A person convicted of the offense of defrauding secured creditors shall be fined not to exceed
7 \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

8 (4) A person who destroys, conceals, encumbers, transfers, removes from the state, or otherwise
9 deals with property subject to a security interest with the purpose of depriving the owner of the property or of
10 the proceeds and value from the property may be prosecuted under 45-6-301."

11
12 NEW SECTION. Section 111. Codification instruction. (1) [Section 46] is intended to be codified as
13 30-9A-105A and the provisions of Title 30, chapters 1 through 9A, apply to [section 46].

14 (2) [Section 47] is intended to be codified as 30-9A-107A, and the provisions of Title 30, chapters 1
15 through 9A, apply to [section 47].

16 (3) [Section 48] is intended to be codified as 30-9A-107B, and the provisions of Title 30, chapters 1
17 through 9A, apply to [section 48].

18 (4) [Section 58] is intended to be codified as 30-9A-306A, and the provisions of Title 30, chapters 1
19 through 9A, apply to [section 58].

20 (5) [Section 59] is intended to be codified as 30-9A-306B, and the provisions of Title 30, chapters 1
21 through 9A, apply to [section 59].

22 (6) [Section 64] is intended to be codified as 30-9A-314A, and the provisions of Title 30, chapters 1
23 through 9A, apply to [section 64].

24 (7) [Section 69] is intended to be codified as 30-9A-326A, and the provisions of Title 30, chapters 1
25 through 9A, apply to [section 69].

26 (8) [Sections 93 through 99] are intended to be codified as Title 30, chapter 12A, and the
27 provisions of Title 30, chapters 1 through 9A, apply to [sections 93 through 99].

