

SENATE BILL NO. 23  
INTRODUCED BY M. HALLIGAN

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE SECURED TRANSACTION CHAPTER OF THE UNIFORM COMMERCIAL CODE TO ADOPT ERRATA AND REVISIONS TO THE MOST RECENT VERSION OF THE SECURED TRANSACTION LAWS; AMENDING SECTIONS 30-1-105, 30-1-201, 30-9-122, 30-9-124, 30-9-129, 30-9-220, 30-9-331, 30-9-337, 30-9-343, 30-9-351, 30-9-356, 30-9-446, 30-9-447, 30-9-448, 30-9-449, 30-9-529, 30-9-533, 30-9-545, 30-9-608, 30-9-613, 30-9-615, AND 30-9-625, MCA, AND SECTION 164, CHAPTER 305, LAWS OF 1999; AND PROVIDING AN EFFECTIVE DATE."

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

**Section 1.** Section 30-1-105, MCA, is amended to read:

**"30-1-105. (Temporary) Territorial application of the code -- parties' power to choose applicable law.** (1) Except as provided in this section, when a transaction bears a reasonable relation to this state and also to another state or nation, the parties may agree that the law either of this state or of the other state or nation shall govern their rights and duties. Failing agreement, this code applies to transactions bearing an appropriate relation to this state.

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

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

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

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

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

Letters of Credit. 30-5-136.

Applicability of the Chapter on Investment Securities. 30-8-120.

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

**30-1-105. (Effective July 1, 2001) Territorial application of code -- parties' power to choose applicable law.** (1) Except as provided in this section, when a transaction bears a reasonable relation to this state and also to another state or nation, the parties may agree that the law either of this state or of the other state

or nation governs their rights and duties. Failing agreement, this code applies to transactions bearing an appropriate relation to this state.

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

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

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

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

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

Letters of Credit. 30-5-136.

Applicability of the Chapter on Investment Securities. 30-8-120.

Law governing perfection, the effect of perfection or nonperfection, and the priority of security interest and agricultural liens. 30-9-321 through 30-9-327."

**Section 2.** Section 30-1-201, MCA, is amended to read:

**"30-1-201. (Temporary) General definitions.** Subject to additional definitions contained in the subsequent chapters of this code which are applicable to specific chapters or parts thereof, and unless the context otherwise requires, in this code:

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

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

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

(4) "Bank" means any person engaged in the business of banking.

(5) "Bearer" means the person in possession of an instrument, document of title, or certificated security payable to bearer or endorsed in blank.

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

consignment note or air waybill.

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

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

(9) "Buyer in ordinary course of business" means a person who, in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind, but does not include a pawnbroker. All persons who sell minerals or the like (including oil and gas) at wellhead or minehead shall be considered to be persons in the business of selling goods of that kind. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

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

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

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

(13) "Defendant" includes a person in the position of defendant in a cross-action or counterclaim.

(14) "Delivery" with respect to instruments, documents of title, chattel paper, or certificated securities means voluntary transfer of possession.

(15) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

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

(17) "Fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of this code to the extent that under a particular agreement or document unlike units are treated as equivalents.

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

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

(20) "Holder", with respect to a:

(a) negotiable instrument, means the person in possession if the instrument is payable to bearer or to the person in possession;

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

(c) document of title, means the person in possession if the goods are deliverable to bearer or to the order of the person in possession.

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

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

(23) A person is "insolvent" who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due or is insolvent within the meaning of the federal bankruptcy law.

(24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government or intergovernmental organization.

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

(a) he has actual knowledge of it; or

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

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

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

it. A person "receives" a notice or notification when:

(a) it comes to his attention; or

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

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

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

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

(30) "Person" includes an individual or an organization.

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

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

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

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

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

(36) "Rights" includes remedies.

(37) (a) "Security interest" means an interest in personal property or fixtures that secures payment or performance of an obligation. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (30-2-401) is limited in effect to a reservation of a "security interest". The term also

includes any interest of a buyer of accounts or chattel paper that is subject to chapter 9. The special property interest of a buyer of goods on identification of those goods to a contract for sale under 30-2-401 is not a "security interest", but a buyer may also acquire a "security interest" by complying with chapter 9. Unless a consignment is intended as security, reservation of title thereunder is not a "security interest", but a consignment in any event is subject to the provisions on consignment sales (30-2-326). Whether a transaction creates a lease or security interest is determined by the facts of each case; however, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee and:

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

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

- (i) the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;
- (ii) the lessee assumes risk of loss of the goods or agrees to pay taxes, insurance, filing, recording, or registration fees or service or maintenance costs with respect to the goods;
- (iii) the lessee has an option to renew the lease or to become the owner of the goods;
- (iv) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market value for the use of the goods for the term of the renewal at the time the option is to be performed; or
- (v) the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

(c) For purposes of this subsection (37):

- (i) additional consideration is not nominal if:
  - (A) when the option to renew the lease is granted to the lessee, the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed; or

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

(ii) additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised;

(iii) "reasonably predictable" and "remaining economic life of the goods" are to be determined with reference to the facts and circumstances at the time the transaction is entered into; and

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

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

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

(40) "Surety" includes guarantor.

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

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

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

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

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

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

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

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

(45) "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.

(46) "Written" or "writing" includes printing, typewriting, or any other intentional reduction to tangible form.

**30-1-201. (Effective July 1, 2001) General definitions.** Subject to additional definitions contained in the subsequent chapters of this code that are applicable to specific chapters or parts thereof, and unless the context otherwise requires, in this code:

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

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

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

(4) "Bank" means any person engaged in the business of banking.

(5) "Bearer" means the person in possession of an instrument, document of title, or certificated security payable to bearer or endorsed in blank.

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

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

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

(9) "Buyer in ordinary course of business" means a person that buys goods, in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas, or other mineral at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured



credit and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under chapter 2 may be a buyer in ordinary course of business. A person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt is not a buyer in ordinary course of business.

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

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

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

(13) "Defendant" includes a person in the position of defendant in a cross-action or counterclaim.

(14) "Delivery" with respect to instruments, documents of title, chattel paper, or certificated securities means voluntary transfer of possession.

(15) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

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

(17) "Fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of this code to the extent that under a particular agreement or document unlike units are treated as equivalents.

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

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

(20) "Holder", with respect to a:

(a) negotiable instrument, means the person in possession if the instrument is payable to bearer or to the person in possession;

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

(c) document of title, means the person in possession if the goods are deliverable to bearer or to the order of the person in possession.

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

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

(23) A person is "insolvent" who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due or is insolvent within the meaning of the federal bankruptcy law.

(24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government or intergovernmental organization.

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

(a) he has actual knowledge of it; or

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

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

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

(a) it comes to his attention; or

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

(27) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating

significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

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

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

(30) "Person" includes an individual or an organization.

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

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

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

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

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

(36) "Rights" includes remedies.

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

of the goods is an obligation for the term of the lease not subject to termination by the lessee and:

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

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

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

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

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

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

(ii) the lessee assumes risk of loss of the goods or agrees to pay taxes, insurance, filing, recording, or registration fees or service or maintenance costs with respect to the goods;

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

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

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

(c) For purposes of this subsection (37):

(i) additional consideration is not nominal if:

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

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

(ii) additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised;

(iii) "reasonably predictable" and "remaining economic life of the goods" are to be determined with reference to the facts and circumstances at the time the transaction is entered into; and

(iv) "present value" means the amount as of a date certain of one or more sums payable in the future,

discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

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

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

(40) "Surety" includes guarantor.

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

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

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

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

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

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

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

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

(45) "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.

(46) "Written" or "writing" includes printing, typewriting, or any other intentional reduction to tangible form."

**Section 3.** Section 30-9-122, MCA, is amended to read:

**"30-9-122. (Effective July 1, 2001) Definitions and index of definitions.** (1) As used in this chapter,

the following definitions apply:

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

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

- (A) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of;
- (B) for services rendered or to be rendered;
- (C) for a policy of insurance issued or to be issued;
- (D) for a secondary obligation incurred or to be incurred;
- (E) for energy provided or to be provided;
- (F) for the use or hire of a vessel under a charter or other contract;
- (G) arising out of the use of a credit or charge card or information contained on or for use with the card;

or

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

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

(iii) The term does not include:

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

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

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

- (i) authenticated by a secured party;
- (ii) indicating the aggregate unpaid secured obligations as of a date not more than 35 days earlier or 35 days later than the date of the record; and

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

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

(i) that secures payment or performance of an obligation for:

(A) goods or services furnished in connection with a debtor's farming operation; or

(B) rent on real property leased by a debtor in connection with its farming operation;

(ii) that is created by statute in favor of a person that:

(A) in the ordinary course of its business furnished goods or services to a debtor in connection with a debtor's farming operation; or

(B) leased real property to a debtor in connection with the debtor's farming operation; and

(iii) whose effectiveness does not depend on the person's possession of the personal property.

(f) "As-extracted collateral" means:

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

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

(B) attaches to the minerals as extracted; or

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

(g) "Authenticate" means to:

(i) sign; or

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

(A) identify the authenticating party; and

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

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

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

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

(k) (i) "Chattel paper" means a record or records that evidence both a monetary obligation and a security interest in ~~or a lease of~~ specific goods, ~~or of a security interest in~~ specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this subsection (1)(k)(i), "monetary

obligation" means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods.

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

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

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

(B) If a transaction is evidenced both by a security agreement or lease and by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

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

(i) proceeds to which a security interest attaches under 30-9-335;

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

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

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

(i) the claimant is an organization; or

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

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

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

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

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

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

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

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

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

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

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



(r) "Communicate" means:

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

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

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

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

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

(i) the merchant:

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

(B) is not an auctioneer; and

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) a security interest secures the obligation; and

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

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

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

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

(bb) "Debtor" means:

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

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

(iii) a consignee.

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

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

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

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

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

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

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

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

(B) aquatic goods produced in aquacultural operations;

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

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

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

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

(jj) "File number" means the number assigned to an initial financing statement pursuant to 30-9-539(1).

(kk) "Filing office" means an office designated in 30-9-521 as the place to file a financing statement.

(ll) "Filing-office rule" means a rule adopted pursuant to 30-9-546.

(mm) "Financing statement" means a record or records composed of an initial financing statement and

any filed record relating to the initial financing statement.

(nn) "Fixture filing" means the filing of a financing statement covering goods that are or are to become fixtures and satisfying the requirements of 30-9-522(1) and (2). The term includes the filing of a financing statement covering goods of a transmitting utility that are or are to become fixtures.

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

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

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

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

(A) fixtures;

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

(C) the unborn young of animals;

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

(E) manufactured homes.

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

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

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

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

(ss) "Governmental unit" means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, or a foreign country. The term includes an organization with

a separate corporate existence only if the organization is eligible to issue debt obligations on which interest is exempt from income taxation under the laws of the United States.

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

(uu) (i) "Instrument" means:

(A) a negotiable instrument; or

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

(ii) The term does not include:

(A) investment property;

(B) a letter of credit; or

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

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

(i) are leased by a person as lessor;

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

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

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

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

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

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

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

(zz) "Lien creditor" means:

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

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

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

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

(aaa) "Manufactured home" means a structure, transportable in one or more sections, that in the traveling mode is 8 body feet or more in width or 40 body feet or more in length or that when erected on site is 320 or more square feet and that is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this subsection except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States secretary of housing and urban development and complies with the standards established under Title 42 of the United States Code.

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

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

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

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

(ddd) "New debtor" means a person that becomes bound as debtor under 30-9-213(4) by a security agreement previously entered into by another person.

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

(A) money;

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

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

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

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

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

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

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

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

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

(hhh) "Original debtor", except as used in 30-9-330(3), means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under 30-9-213(4).

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

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

- (i) the spouse of the individual;
- (ii) a brother, brother-in-law, sister, or sister-in-law of the individual;
- (iii) an ancestor or lineal descendant of the individual or the individual's spouse; and
- (iv) any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

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

- (i) a person directly or indirectly controlling, controlled by, or under common control with the organization;
- (ii) an officer or director of, or a person performing similar functions with respect to, the organization;
- (iii) an officer or director of, or a person performing similar functions with respect to, a person described in subsection (1)(kkk)(i);
- (iv) the spouse of an individual described in subsection (1)(kkk)(i), (1)(kkk)(ii), or (1)(kkk)(iii); or
- (v) an individual who is related by blood or marriage to an individual described in subsections (1)(kkk)(i), (1)(kkk)(ii), (1)(kkk)(iii), or (1)(kkk)(iv) and shares the same home with the individual.

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

- (i) whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;
- (ii) whatever is collected on, or distributed on account of, collateral;
- (iii) rights arising out of collateral;
- (iv) to the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to the collateral; and
- (v) to the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects in, or damage to the collateral.

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

- (i) evidences a promise to pay a monetary obligation;
- (ii) does not evidence an order to pay; and
- (iii) does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

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

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

- (i) bonds, debentures, certificates of participation, or similar debt securities are issued;
- (ii) all or a portion of the securities issued have an initial stated maturity of at least 20 years; and
- (iii) the debtor, the obligor, the secured party, the account debtor or other person obligated on collateral, the assignor or assignee of a secured obligation, or the assignor or assignee of a security interest is a state or a governmental unit of a state.

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

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

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

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

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

(ttt) "Secured party" means:

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

30-4-208, or 30-5-118.

(uuu) "Security agreement" means an agreement that creates or provides for a security interest.

(vvv) "Send", in connection with a record or notification, means to:

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

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

(www) (i) "Software" means a computer program, any informational content included in the program, and any supporting information provided in connection with a transaction relating to the computer program or informational content.

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

(xxx) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

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

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

(aaaa) "Termination statement" means an amendment of a financing statement that:

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

(bbbb) "Transmitting utility" means a person primarily engaged in the business of:

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

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

"Applicant" 30-5-122.



"Beneficiary" 30-5-122.  
"Broker" 30-8-112.  
"Certificated security" 30-8-112.  
"Check" 30-3-104.  
"Clearing corporation" 30-8-112.  
"Contract for sale" 30-2-106.  
"Customer" 30-4-104.  
"Entitlement holder" 30-8-112.  
"Financial asset" 30-8-112.  
"Holder in due course" 30-3-302.  
"Issuer" (with respect to a letter of credit or letter-of-credit right) 30-5-122.  
"Issuer" (with respect to a security) 30-8-211.  
"Lease" 30-2A-103.  
"Lease agreement" 30-2A-103.  
"Lease contract" 30-2A-103.  
"Leasehold interest" 30-2A-103.  
"Lessee" 30-2A-103.  
"Lessee in ordinary course of business" 30-2A-103.  
"Lessor" 30-2A-103.  
"Lessor's residual interest" 30-2A-103.  
"Letter of credit" 30-5-122.  
"Merchant" 30-2-104.  
"Negotiable instrument" 30-3-104.  
"Nominated person" 30-5-122.  
"Note" 30-3-104.  
"Proceeds of a letter of credit" 30-5-134.  
"Prove" 30-3-102.  
"Sale" 30-2-106.  
"Securities account" 30-8-501.  
"Securities intermediary" 30-8-112.  
"Security" 30-8-112.

"Security certificate" 30-8-112.

"Security entitlement" 30-8-112.

"Uncertificated security" 30-8-112.

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

**Section 4.** Section 30-9-124, MCA, is amended to read:

**"30-9-124. (Effective July 1, 2001) Control of deposit account.** (1) A secured party has control of a deposit account if:

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

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

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

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

**SECTION 5. SECTION 30-9-129, MCA, IS AMENDED TO READ:**

**"30-9-129. (Effective July 1, 2001) Scope.** (1) Except as otherwise provided in subsections (3) and (4), this chapter applies to:

(a) any transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;

(b) an agricultural lien;

(c) a sale of an account, chattel paper, payment intangible, or promissory note;

(d) a consignment;

(e) a security interest arising under 30-2-401, 30-2-505, 30-2-711(3), or 30-2A-508(5), to the extent provided in 30-9-130; and

(f) a security interest arising under 30-4-208 or 30-5-118.

(2) The application of this chapter to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this chapter does not apply.

(3) This chapter does not apply to the extent that:

- (a) a statute, regulation, or treaty of the United States preempts this chapter;
  - (b) another statute of this state expressly governs the creation, perfection, priority, or enforcement of a security interest created by this state or a governmental unit of this state;
  - (c) a statute of another state, a foreign country, or a governmental unit of another state or a foreign country, other than a statute generally applicable to security interests, expressly governs creation, perfection, priority, or enforcement of a security interest created by the state, country, or governmental unit; or
  - (d) the rights of a transferee beneficiary or nominated person under a letter of credit are independent and superior under 30-5-134.
- (4) This chapter does not apply to:
- (a) a landlord's lien, other than an agricultural lien;
  - (b) a lien, other than an agricultural lien, given by statute or other rule of law for services or materials, but 30-9-353 applies with respect to priority of the lien;
  - (c) an assignment of a claim for wages, salary, or other compensation of an employee;
  - (d) a sale of accounts, chattel paper, payment intangibles, or promissory notes as part of a sale of the business out of which they arose;
  - (e) an assignment of accounts, chattel paper, payment intangibles, or promissory notes that is for the purpose of collection only;
  - (f) an assignment of a right to payment under a contract to an assignee that is also obliged to perform under the contract;
  - (g) an assignment of a single account, payment intangible, or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness;
  - (h) a transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health care provider of a health-care-insurance receivable and any subsequent assignment of the right to payment, but 30-9-335 and 30-9-342 apply with respect to proceeds and priorities in proceeds;
  - (i) an assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral;
  - (j) a right of recoupment or setoff, but:
    - (i) 30-9-360 applies with respect to the effectiveness of rights of recoupment or setoff against deposit accounts; and
    - (ii) 30-9-444 applies with respect to defenses or claims of an account debtor;
  - (k) the creation or transfer of an interest in or lien on real property, including a lease or rents thereunder,

except to the extent that provision is made for:

- (i) liens on real property in 30-9-213 and 30-9-328;
- (ii) fixtures in 30-9-354;
- (iii) fixture filings in 30-9-521, 30-9-522, 30-9-532, 30-9-536, and 30-9-539; and
- (iv) security agreements covering personal and real property in 30-9-604;
- (l) an assignment of a claim arising in tort, other than a commercial tort claim, but 30-9-335 and 30-9-342

apply with respect to proceeds and priorities in proceeds; or

(m) a transfer by a government or governmental subdivision or agency; or

~~(m)~~(n) an assignment of a deposit account in a consumer transaction, except that 30-9-335 and 30-9-342 apply with respect to proceeds and priorities in proceeds."

**Section 6.** Section 30-9-220, MCA, is amended to read:

**"30-9-220. (Effective July 1, 2001) Request for accounting -- request regarding list of collateral or statement of account.** (1) In this section, the following definitions apply:

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

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

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

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

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

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

(b) in the case of a request regarding a list of collateral or a request regarding a statement of account,

by authenticating and sending to the debtor an approval or correction.

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

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

(a) disclaiming any interest in the collateral; and

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

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

(a) disclaiming any interest in the obligations; and

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

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

**Section 7.** Section 30-9-331, MCA, is amended to read:

**"30-9-331. (Effective July 1, 2001) Perfection of security interests in property subject to certain statutes, regulations, and treaties.** (1) Except as otherwise provided in subsection (4), the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(a) a statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt 30-9-330(1);

(b) the certificate of ownership provisions of Title 23 or Title 61; or

(c) a certificate of title statute of another jurisdiction that provides for a security interest to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

(2) Compliance with the requirements of a statute, regulation, or treaty described in subsection (1) for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this chapter. Except as otherwise provided in 30-9-333 and 30-9-336(4) and (5) and subsection (4) of this section for goods covered by a certificate of title, a security interest in property subject to a statute, regulation, or treaty described in subsection (1) may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

(3) Except as otherwise provided in 30-9-336(4) and (5) and subsection (4) of this section, duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation, or treaty described in subsection (1) are governed by the statute, regulation, or treaty. In other respects the security interest is subject to this chapter.

(4) During any period in which collateral subject to a statute specified in subsection (1)(b) is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling ~~or leasing~~ goods of that kind, this section does not apply to a security interest in that collateral created by that person ~~as debtor.~~"

**Section 8.** Section 30-9-337, MCA, is amended to read:

**"30-9-337. (Effective July 1, 2001) Interests that take priority over or take free of unperfected security interest or agricultural lien.** (1) ~~An unperfected~~ A security interest or agricultural lien is subordinate to the rights of:

(a) a person entitled to priority under 30-9-342; and

(b) except as otherwise provided in subsection (5), a person that becomes a lien creditor before the earlier of the time:

(i) the security interest or agricultural lien is perfected; or

(ii) one of the conditions specified in 30-9-213(2)(c) is met and a financing statement covering the collateral is filed.

(2) Except as otherwise provided in subsection (5), a buyer, other than a secured party, of chattel paper, documents, goods, instruments, or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(3) Except as otherwise provided in subsection (5), a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the

security interest or agricultural lien and before it is perfected.

(4) A licensee of a general intangible or a buyer, other than a secured party, of accounts, general intangibles, or investment property other than a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(5) Except as otherwise provided in 30-9-340 and 30-9-341, if a person files a financing statement with respect to a purchase-money security interest before or within 20 days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor that arise between the time the security interest attaches and the time of filing."

**Section 9.** Section 30-9-343, MCA, is amended to read:

**"30-9-343. (Effective July 1, 2001) Future advances.** (1) Except as otherwise provided in subsection (3), for purposes of determining the priority of a perfected security interest under 30-9-342(1)(a), perfection of the security interest dates from the time an advance is made to the extent that the security interest secures an advance that:

(a) is made while the security interest is perfected only:

(i) under 30-9-329 when it attaches; or

(ii) temporarily under 30-9-332(5), (6), or (7); and

(b) is not made pursuant to a commitment entered into before or while the security interest is perfected by a method other than under 30-9-329 or 30-9-332(5), (6), or (7).

(2) Except as otherwise provided in subsection (3), a security interest is subordinate to the rights of a person that becomes a lien creditor ~~while the security interest is perfected only~~ to the extent that it the security interest secures advances an advance made more than 45 days after the person becomes a lien creditor unless the advance is made:

(a) without knowledge of the lien; or

(b) pursuant to a commitment entered into without knowledge of the lien.

(3) Subsections (1) and (2) do not apply to a security interest held by a secured party that is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor.

(4) Except as otherwise provided in subsection (5), a buyer of goods other than a buyer in ordinary course of business takes free of a security interest to the extent that it secures advances made after the earlier of:

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

(b) 45 days after the purchase.

(5) Subsection (4) does not apply if the advance is made pursuant to a commitment entered into without knowledge of the buyer's purchase and before the expiration of the 45-day period.

(6) Except as otherwise provided in subsection (7), a lessee of goods, other than a lessee in ordinary course of business, takes the leasehold interest free of a security interest to the extent that it secures advances made after the earlier of:

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

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

(7) Subsection (6) does not apply if the advance is made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the 45-day period."

**Section 10.** Section 30-9-351, MCA, is amended to read:

**"30-9-351. (Effective July 1, 2001) Priority of rights of purchasers of instruments, documents, and securities under other chapters -- priority of interests in financial assets and security entitlements under chapter 8.** (1) This chapter does not limit the rights of a holder in due course of a negotiable instrument, a holder to whom a negotiable document of title has been duly negotiated, or a protected purchaser of a security. These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided in chapters 3, 7, and 8.

(2) This chapter does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of ~~an adverse a~~ claim under chapter 8.

(3) Filing under this chapter does not constitute notice of a claim or defense to the holders, purchasers, or persons mentioned in subsections (1) and (2)."

**Section 11.** Section 30-9-356, MCA, is amended to read:

**"30-9-356. (Effective July 1, 2001) Commingled goods.** (1) In this section, "commingled goods" means goods that are physically united with other goods in such a manner that their identity is lost in a product or mass.

(2) A security interest does not exist in commingled goods as such. However, a security interest may attach to a product or mass that results when goods become commingled goods.

(3) If collateral becomes commingled goods, a security interest attaches to the product or mass.

(4) If a security interest in collateral is perfected before the collateral becomes commingled goods, the security interest that attaches to the product or mass under subsection (3) is perfected.



(5) Except as otherwise provided in subsection (6), the other provisions of this part, as applicable, determine the priority of a security interest that attaches to the product or mass under subsection (3).

(6) If more than one security interest attaches to the product or mass under subsection (3), the following rules determine priority:

(a) A security interest that is perfected under subsection (4) has priority over a security interest that is unperfected at the time the collateral becomes commingled goods.

(b) If more than one security interest is perfected under subsection (4), the security interests rank equally in proportion to the value of the collateral at the time it became commingled goods."

**Section 12.** Section 30-9-446, MCA, is amended to read:

**"30-9-446. (Effective July 1, 2001) Discharge of account debtor -- notification of assignment -- identification and proof of assignment -- ~~term prohibiting restrictions on assignment of accounts, chattel paper, payment intangibles, and promissory notes ineffective.~~** (1) Subject to subsections (2) through ~~(8)~~ (9), an account debtor on an account, chattel paper, or payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(2) Subject to subsection ~~(7)~~ (8), notification is ineffective under subsection (1):

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

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

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

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

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

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

(3) Subject to subsection ~~(7)~~ (8), if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor

may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (1).

(4) Except as otherwise provided in 30-2A-303, 30-9-447, and subsection (5) of this section, and subject to subsection ~~(7)~~ (8) of this section, a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

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

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

(5) Subsection (4) does not apply to:

(A) THE ASSIGNMENT OR TRANSFER OR THE CREATION, ATTACHMENT, PERFECTION, OR ENFORCEMENT OF A SECURITY INTEREST IN:

(i) A CLAIM OR RIGHT TO RECEIVE COMPENSATION FOR INJURIES OR SICKNESS AS DESCRIBED IN 26 U.S.C. 104(A)(2); OR

(ii) A CLAIM OR RIGHT TO RECEIVE BENEFITS UNDER A SPECIAL NEEDS TRUST AS DESCRIBED IN 42 U.S.C. 1396P(D)(4); OR

(B) the sale of a payment intangible or promissory note.

(6) Except as otherwise provided in 30-2A-303 and 30-9-447 and subject to subsections (8) and (9), a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation:

(a) prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in the account or chattel paper; or

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

~~(6)(7)~~ Subject to subsection ~~(7)~~ (8), an account debtor may not waive or vary its option under subsection (2)(c).

~~(7)~~(8) This section is subject to law other than this chapter that establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

~~(8)~~(9) This section does not apply to an assignment of a health-care-insurance receivable."

**Section 13.** Section 30-9-447, MCA, is amended to read:

**"30-9-447. (Effective July 1, 2001) Restrictions on creation or enforcement of security interest in leasehold interest or in lessor's residual interest.** (1) Except as otherwise provided in subsection (2), a term in a lease agreement is ineffective to the extent that it:

(a) prohibits, restricts, or requires the consent of a party to the lease to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, an interest of a party under the lease contract or in the lessor's residual interest in the goods; or

(b) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the lease.

(2) Except as otherwise provided in 30-2A-303(7), a term described in subsection (1)(b) is effective to the extent that there is:

(a) a transfer by the lessee of the lessee's right of possession or use of the goods in violation of the term; or

(b) a delegation of a material performance of either party to the lease contract in violation of the term.

(3) The creation, attachment, perfection, or enforcement of a security interest in the lessor's interest under the lease contract or the lessor's residual interest in the goods is not a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on the lessee within 30-2A-303(4). This subsection does not apply to the extent that enforcement results in a delegation of a material performance of the lessor."

**Section 14.** Section 30-9-448, MCA, is amended to read:

**"30-9-448. (Effective July 1, 2001) Restrictions on assignment of promissory notes, health-care-insurance receivables, and certain general intangibles ineffective.** (1) Except as otherwise provided in subsection (2), a term in a promissory note or in an agreement between an account debtor and a debtor that relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license, or franchise, and that prohibits, restricts, or requires the consent of the person obligated on the

promissory note or the account debtor to, the assignment or transfer of, or the creation, attachment, or perfection of a security interest in, the promissory note, health-care-insurance receivable, or general intangible is ineffective to the extent that the term:

(a) would impair the creation, attachment, or perfection of a security interest; or

(b) provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(2) Subsection (1) applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note.

(3) A rule of law, including a provision in a statute or governmental rule or regulation, that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health-care-insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation:

(a) would impair the creation, attachment, or perfection of a security interest; or

(b) provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(4) To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor that relates to a health-care-insurance receivable or general intangible or a rule of law described in subsection (3) would be effective under law other than this chapter but is ineffective under subsection (1) or (3), the creation, attachment, or perfection of a security interest in the promissory note, health-care-insurance receivable, or general intangible:

(a) is not enforceable against the person obligated on the promissory note or the account debtor;

(b) does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;

(c) does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;

(d) does not entitle the secured party to use or assign the debtor's rights under the promissory note,

health-care-insurance receivable, or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health-care-insurance receivable, or general intangible;

(e) does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and

(f) does not entitle the secured party to enforce the security interest in the promissory note, health-care-insurance receivable, or general intangible.

(5) SUBSECTIONS (1) AND (3) DO NOT APPLY TO THE ASSIGNMENT OR TRANSFER OR THE CREATION, ATTACHMENT, OR PERFECTION OF A SECURITY INTEREST IN:

(A) A CLAIM OR RIGHT TO RECEIVE COMPENSATION FOR INJURIES OR SICKNESS AS DESCRIBED IN 26 U.S.C. 104(A)(2);

(B) A CLAIM OR RIGHT TO RECEIVE BENEFITS UNDER A SPECIAL NEEDS TRUST AS DESCRIBED IN 42 U.S.C. 1396P(D)(4).

~~(5)~~(6) This section prevails over any inconsistent provisions of other statutes or rules."

**Section 15.** Section 30-9-449, MCA, is amended to read:

**"30-9-449. (Effective July 1, 2001) Restrictions on assignment of letter-of-credit rights ineffective.**

(1) A term in a letter of credit or a rule of law, including a provision in a statute or governmental rule or regulation, custom, or practice applicable to the letter of credit that prohibits, restricts, or requires the consent of an applicant, issuer, or nominated person to a beneficiary's assignment of or creation of a security interest in a letter-of-credit right is ineffective to the extent that the term or rule of law, custom, or practice:

(a) would impair the creation, attachment, or perfection of a security interest in the letter-of-credit right; or

(b) provides that the assignment or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the letter-of-credit right.

(2) To the extent that a term in a letter of credit is ineffective under subsection (1) but would be effective under law other than this chapter or a custom or practice applicable to the letter of credit, to the transfer of a right to draw or otherwise demand performance under the letter of credit, or to the assignment of a right to proceeds of the letter of credit, the creation, attachment, or perfection of a security interest in the letter-of-credit right:

(a) is not enforceable against the applicant, issuer, nominated person, or transferee beneficiary;

(b) imposes no duties or obligations on the applicant, issuer, nominated person, or transferee beneficiary; and

(c) does not require the applicant, issuer, nominated person, or transferee beneficiary to recognize the security interest, pay or render performance to the secured party, or accept payment or other performance from the secured party."

**Section 16.** Section 30-9-529, MCA, is amended to read:

**"30-9-529. (Effective July 1, 2001) Persons entitled to file record.** (1) A person may file an initial financing statement, an amendment that adds collateral covered by a financing statement, or an amendment that adds a debtor to a financing statement only if:

(a) the debtor authorizes the filing in an authenticated record or pursuant to subsection (2) or (3); or

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

(2) By authenticating a security agreement, a debtor authorizes the filing of an initial financing statement and an amendment covering:

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

(b) property that becomes collateral under 30-9-335(1)(b), whether or not the security agreement expressly covers proceeds.

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

(a) the secured party of record authorizes the filing; or

(b) the amendment is a termination statement for a financing statement as to which the secured party of record has failed to file or send a termination statement as required by 30-9-533(1) or (3), the debtor authorizes the filing, and the termination statement indicates that the debtor authorized it to be filed.

(4) If there is more than one secured party of record for a financing statement, each secured party of record may authorize the filing of an amendment under subsection (3)."

**Section 17.** Section 30-9-533, MCA, is amended to read:

**"30-9-533. (Effective July 1, 2001) Termination statement.** (1) A secured party shall cause the secured party of record for a financing statement to file a termination statement for the financing statement if the financing statement covers consumer goods and:

(a) there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or

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

(2) To comply with subsection (1), a secured party shall cause the secured party of record to file the termination statement:

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

(b) if earlier, within 20 days after the secured party receives an authenticated demand from a debtor.

(3) In cases not governed by subsection (1), within 20 days after a secured party receives an authenticated demand from a debtor, the secured party shall cause the secured party of record for a financing statement to send to the debtor a termination statement for the financing statement or file the termination statement in the filing office if:

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

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

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

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

(4) Except as otherwise provided in 30-9-530, upon the filing of a termination statement with the filing office, the financing statement to which the termination statement relates ceases to be effective. Except as otherwise provided in 30-9-530, for purposes of 30-9-539(7), 30-9-542(1), and 30-9-543(3), the filing with the filing office of a termination statement relating to a financing statement that indicates that the debtor is a transmitting utility also causes the effectiveness of the financing statement to lapse."

**Section 18.** Section 30-9-545, MCA, is amended to read:

**"30-9-545. (Effective July 1, 2001) Fees.** (1) Except as otherwise provided in subsection (5), the fee for filing and indexing a record under this part, other than an initial financing statement of the kind described in ~~30-9-522(3)~~ subsection (2), must be commensurate with costs and must be established by rule.

(2) Except as otherwise provided in subsection (5), the fee for filing and indexing an initial financing

statement of the kind described in ~~30-9-522(3)~~ filed in connection with a public-finance transaction or a manufactured-home transaction must be commensurate with costs and must be established by rule.

(3) The number of names required to be indexed does not affect the amount of the fees in subsections (1) and (2).

(4) The fee for responding to a request for information from the filing office, including for communicating whether there is on file any financing statement naming a particular debtor, must be commensurate with costs and must be established by rule.

(5) This section does not require a fee with respect to a record of mortgage that is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut under 30-9-522(3). However, the recording and satisfaction fees that otherwise would be applicable to the record of mortgage apply."

**Section 19.** Section 30-9-608, MCA, is amended to read:

**"30-9-608. (Effective July 1, 2001) Application of proceeds of collection or enforcement -- liability for deficiency and right to surplus.** (1) If a security interest or agricultural lien secures payment or performance of an obligation, the following rules apply:

(a) A secured party shall apply or pay over for application the cash proceeds of collection or enforcement under ~~this section~~ 30-9-607 in the following order to:

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

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

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

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

(c) A secured party need not apply or pay over for application the noncash proceeds of collection and enforcement under ~~this section~~ 30-9-607 unless the failure to do so would be commercially unreasonable. A



secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

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

(2) If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes, the debtor is not entitled to any surplus and the obligor is not liable for any deficiency."

**Section 20.** Section 30-9-613, MCA, is amended to read:

**"30-9-613. (Effective July 1, 2001) Contents and form of notification before disposition of collateral -- general.** (1) Except in a consumer-goods transaction, the following rules apply:

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

(i) describes the debtor and the secured party;

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

(iii) states the method of intended disposition;

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

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

(b) Whether the contents of a notification that lacks any of the information set forth in subsection (1) are nevertheless sufficient is a question of fact.

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

(i) information not specified by that subsection; or

(ii) minor errors that are not seriously misleading.

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

(2) The following form of notification and the form appearing in 30-9-614(3), when completed, each provides sufficient information:

NOTIFICATION OF DISPOSITION OF COLLATERAL

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

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

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

[For a public disposition:]

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

Day and Date: .....

Time: .....

Place: .....

[For a private disposition:]

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

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

[End of Form]"

**Section 21.** Section 30-9-615, MCA, is amended to read:

**"30-9-615. (Effective July 1, 2001) Application of proceeds of disposition -- liability for deficiency and right to surplus.** (1) A secured party shall apply or pay over for application the cash proceeds of disposition under 30-9-610 in the following order to:

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

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

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

(i) the secured party receives from the holder of the subordinate security interest an authenticated demand for proceeds before distribution of the proceeds is completed; and

(ii) if a consignor has an interest in the collateral, the subordinate security interest or lien is senior to the interest of the consignor; and

(d) a secured party that is a consignor of the collateral if the secured party receives from the consignor

an authenticated demand for proceeds before distribution of the proceeds is completed.

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

(3) A secured party need not apply or pay over for application noncash proceeds of disposition under ~~this section~~ 30-9-610 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(4) If the security interest under which a disposition is made secures payment or performance of an obligation, after making the payments and applications required by subsection (1) and permitted by subsection (3):

(a) unless subsection (1)(d) requires the secured party to apply or pay over cash proceeds to a consignor, the secured party shall account to and pay a debtor for any surplus; and

(b) the obligor is liable for any deficiency.

(5) If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes:

(a) the debtor is not entitled to any surplus; and

(b) the obligor is not liable for any deficiency.

(6) The surplus or deficiency following a disposition is calculated based on the amount of proceeds that would have been realized in a disposition complying with the requirements of this part to a transferee other than the secured party, a person related to the secured party, or a secondary obligor if:

(a) the transferee in the disposition is the secured party, a person related to the secured party, or a secondary obligor; and

(b) the amount of proceeds of the disposition is significantly below the range of proceeds that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

(7) A secured party that receives cash proceeds of a disposition in good faith and without knowledge that the receipt violates the rights of the holder of a security interest or other lien that is not subordinate to the security interest or agricultural lien under which the disposition is made:

(a) takes the cash proceeds free of the security interest or other lien;

(b) is not obligated to apply the proceeds of the disposition to the satisfaction of obligations secured by the security interest or other lien; and

(c) is not obligated to account to or pay the holder of the security interest or other lien for any surplus."

**Section 22.** Section 30-9-625, MCA, is amended to read:

**"30-9-625. (Effective July 1, 2001) Remedies for secured party's failure to comply with chapter.**

(1) If it is established that a secured party is not proceeding in accordance with this chapter, a court may order or restrain collection, enforcement, or disposition of collateral on appropriate terms and conditions.

(2) Subject to subsections (3), (4), and (6), a secured party person is liable for damages in the amount of any loss caused by a failure to comply with this chapter. Loss caused by a failure to comply with a request under ~~30-9-220~~ may include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing.

(3) Except as otherwise provided in 30-9-628:

(a) a person that, at the time of the failure, was a debtor, was an obligor, or held a security interest in or other lien on the collateral may recover damages under subsection (2) for its loss; and

(b) if the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply with this part may recover for that failure in any event an amount not less than the credit service charge plus 10% of the principal amount of the obligation or the time-price differential plus 10% of the cash price.

(4) A debtor whose deficiency is eliminated under 30-9-626 may recover damages for the loss of any surplus. However, a debtor or secondary obligor whose deficiency is eliminated or reduced under 30-9-626 may not otherwise recover under subsection (2) of this section for noncompliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance.

(5) In addition to any damages recoverable under subsection (2), the debtor, consumer obligor, or person named as a debtor in a filed record, as applicable, may recover \$500 in each case from:

(a) a secured party that fails to comply with 30-9-218;

(b) a secured party that fails to comply with 30-9-219;

(c) a person that files a record that the person is not entitled to file under 30-9-529(1);

(d) a secured party that fails to cause the secured party of record to file or send a termination statement as required by 30-9-533(1) or (3);

(e) a secured party that fails to comply with 30-9-616(2)(a) and whose failure is part of a pattern, or consistent with a practice, of noncompliance; or

(f) a secured party that fails to comply with 30-9-616(2)(b).

(6) A debtor or consumer obligor may recover damages under subsection (2) and, in addition, \$500 in each case from a person that, without reasonable cause, fails to comply with a request under 30-9-220. A recipient of a request under 30-9-220 that never claimed an interest in the collateral or obligations that are the subject of a request under that section has a reasonable excuse for failure to comply with the request within the meaning of this subsection.

(7) If a secured party fails to comply with a request regarding a list of collateral or a statement of account under 30-9-220, the secured party may claim a security interest only as shown in the list or statement included in the request as against a person that is reasonably misled by the failure."

**Section 23.** Section 164, Chapter 305, Laws of 1999, is amended to read:

**"Section 164. Effectiveness of action taken before effective date of act.** (1) If action other than the filing of a financing statement is taken before [this act] takes effect and the action would have resulted in priority of a security interest over the rights of a lien creditor had the security interest become enforceable before [this act] takes effect, the action is sufficient to perfect a security interest that attaches under [this act] within 1 year after [this act] takes effect. An attached security interest becomes unperfected 1 year after [this act] takes effect unless the security interest becomes a perfected security interest under [this act] before the expiration of that period.

(2) The filing of a financing statement before [this act] takes effect is sufficient to perfect a security interest that attaches after [this act] takes effect to the extent the filing would satisfy the applicable requirements for perfection under [this act].

(3) [This act] does not render ineffective an effective financing statement that is filed before [this act] takes effect in accordance with the law of the jurisdiction governing perfection as provided in [former 30-9-103]. However, except as otherwise provided in subsection (4):

(a) the financing statement ceases to be effective at the earlier of:

(i) the time the financing statement would have ceased to be effective under the law of the jurisdiction in which it is filed; or

(ii) 5 years after [this act] takes effect; and

(b) a continuation statement filed after [this act] takes effect does not continue the effectiveness of the financing statement.

(4) A continuation statement filed after [this act] takes effect and in accordance with the law of the jurisdiction governing perfection as provided in [sections 20 through 61] is effective to continue the effectiveness

of a financing statement filed in that jurisdiction before [this act] takes effect.

(5) Subsection (3)(b) applies to a financing statement that, before [this act] takes effect, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in [former 30-9-103] only to the extent that Title 30, chapter 9, part 3, provides that the law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

~~(5)(6)~~ [This act] does not render ineffective an effective financing statement that was filed before [this act] takes effect and in the office specified in [former 30-9-401]. However, except as otherwise provided in subsection ~~(6)~~ (7):

(a) the financing statement ceases to be effective at the earlier of:

- (i) the time the financing statement would have ceased to be effective under [former chapter 9]; or
- (ii) 5 years after [this act] takes effect; and

(b) a continuation statement filed after [this act] takes effect does not continue the effectiveness of the financing statement.

~~(6)(7)~~ A continuation statement filed after [this act] takes effect and in the office specified in [section 71] is effective to continue the effectiveness of a financing statement filed in that office before [this act] takes effect.

~~(7)(8)~~ A financing statement that includes a financing statement filed before [this act] takes effect and a continuation statement filed after [this act] takes effect is effective only to the extent that it satisfies the requirements of [sections 71 through 97] for an initial financing statement."

**NEW SECTION. Section 24. Amendment of pre-effective-date financing statement.** (1) In this section, "pre-effective-date financing statement" means a financing statement filed before [this act] and Chapter 305, Laws of 1999, take effect.

(2) After [this act] and Chapter 305, Laws of 1999, take effect, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in a pre-effective-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in Title 30, chapter 9, part 3. However, the effectiveness of a pre-effective-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

(3) Except as otherwise provided in subsection (4), if the law of this state governs perfection of a security interest, the information in a pre-effective-date financing statement may be amended after [this act] and Chapter 305, Laws of 1999, take effect only if:

(a) the pre-effective-date financing statement and an amendment are filed in the office specified in 30-9-521;

(b) an amendment is filed in the office specified in 30-9-521 concurrently with, or after the filing in that office of, an initial financing statement that satisfies section 164(3), Chapter 305, Laws of 1999; or

(c) an initial financing statement that provides the information as amended and satisfies section 164(3), Chapter 305, Laws of 1999, is filed in the office specified in 30-9-521.

(4) If the law of this state governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement may be continued only under section 164(4) and (5) or section 165, Chapter 305, Laws of 1999.

(5) Whether or not the law of this state governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement filed in this state may be terminated after [this act] and Chapter 305, Laws of 1999, take effect by filing a termination statement in the office in which the pre-effective-date financing statement is filed, unless an initial financing statement that satisfies section 164(3), Chapter 305, Laws of 1999, has been filed in the office specified by the law of the jurisdiction governing perfection as provided in Title 30, chapter 9, part 3, as the office in which to file a financing statement.

NEW SECTION. SECTION 25. CODIFICATION INSTRUCTION. [SECTION 24] AND SECTIONS 161 THROUGH 167, CHAPTER 305, LAWS OF 1999, ARE INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 30, CHAPTER 9, AND THE PROVISIONS OF TITLE 30, CHAPTER 9, APPLY TO [SECTION 24] AND SECTIONS 161 THROUGH 167, CHAPTER 305, LAWS OF 1999.

NEW SECTION. Section 26. Effective date. [This act] is effective July 1, 2001.

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