

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
94th General Assembly
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A Bill

HOUSE BILL 1588

By: Representative S. Meeks

By: Senator J. Dismang

For An Act To Be Entitled

AN ACT TO AMEND THE UNIFORM COMMERCIAL CODE; AND FOR
OTHER PURPOSES.

Subtitle

TO AMEND THE UNIFORM COMMERCIAL CODE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 4-1-201(b), concerning the general definitions in the Uniform Commercial Code, is amended to read as follows:

(b) Subject to definitions contained in other chapters of this subtitle that apply to particular chapters or parts thereof:

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

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

(3) "Agreement", as distinguished from "contract", means the bargain of the parties in fact, as found in their language or inferred from other circumstances, including course of performance, course of dealing, or usage of trade as provided in § 4-1-303.

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

(5) "Bearer" means a person in control of a negotiable electronic document of title or a person in possession of a negotiable instrument, negotiable tangible document of title, or certificated security



that is payable to bearer or indorsed in blank.

(6) "Bill of lading" means a document of title evidencing the receipt of goods for shipment issued by a person engaged in the business of directly or indirectly transporting or forwarding goods. The term does not include a warehouse receipt.

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

(8) "Burden of establishing" a fact means the burden of persuading the trier 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 minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under Chapter 2 may be a buyer in ordinary course of business. "Buyer in ordinary course of business" does not include a person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

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

~~Conspicuous terms include the following:~~

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

~~(B) language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to the~~

~~surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the language.~~

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

(12) "Contract", as distinguished from "agreement", means the total legal obligation that results from the parties' agreement as determined by this subtitle as supplemented by any other applicable laws.

(13) "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.

(14) "Defendant" includes a person in the position of defendant in a counterclaim, cross-claim, or third-party claim.

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

(16) "Document of title" means a record (i) that in the regular course of business or financing is treated as adequately evidencing that the person in possession or control of the record is entitled to receive, control, hold, and dispose of the record and the goods the record covers and (ii) that purports to be issued by or addressed to a bailee and to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass. The term includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt, and order for delivery of goods. An electronic document of title means a document of title evidenced by a record consisting of information stored in an electronic medium. A tangible document of title means a document of title evidenced by a record consisting of information that is inscribed on a tangible medium.

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

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

(18) "Fungible goods" means:

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

(B) goods that by agreement are treated as equivalent.

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

(20) "Good faith," except otherwise provided in Chapter 5, means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(21) "Holder" means:

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

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

(C) the person in control, other than pursuant to § 4-7-106(g), of a negotiable electronic document of title.

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

(23) "Insolvent" means:

(A) having generally ceased to pay debts in the ordinary course of business other than as a result of bona fide dispute;

(B) being unable to pay debts as they become due; or

(C) being insolvent within the meaning of federal bankruptcy law.

(24) "Money" means a medium of exchange that is currently authorized or adopted by a domestic or foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two (2) or more countries. The term does not include an electronic record that is a medium of exchange recorded and transferable in a system that existed and operated for the medium of exchange before the medium of exchange was authorized or adopted by the government.

(25) "Organization" means a person other than an individual.

(26) "Party", as distinguished from a "third party", means a person that has engaged in a transaction or made an agreement subject to this subtitle.

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

(28) "Present value" means the amount as of a date certain of one (1) or more sums payable in the future, discounted to the date certain by use of either an interest rate specified by the parties if that rate is not manifestly unreasonable at the time the transaction is entered into or, if an interest rate is not so specified, a commercially reasonable rate that takes into account the facts and circumstances at the time the transaction is entered into.

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

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

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

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

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

(34) "Right" includes remedy.

(35) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. "Security interest" 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. "Security interest" does not include the special property interest of a buyer of goods on identification of those goods to a contract for sale under § 4-2-401, but a buyer may also acquire a

“security interest” by complying with Chapter 9. Except as otherwise provided in § 4-2-505, 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 under § 4-2-401 is limited in effect to a reservation of a “security interest.” Whether a transaction in the form of a lease creates a “security interest” is determined pursuant to § 4-1-203.

(36) “Send”, in connection with a ~~writing, record, or notice~~ notification means:

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

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

(37) ~~“Signed” includes using any symbol executed or adopted with present intention to adopt or accept a writing~~ “Sign” means, with present intent to authenticate or adopt a record:

(A) execute or adopt a tangible symbol; or

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

“Signed”, “signing”, and “signature” have corresponding meanings.

(38) “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.

(39) “Surety” includes a guarantor or other secondary obligor.

(40) “Term” means a portion of an agreement that relates to a particular matter.

(41) “Unauthorized signature” means a signature made without actual, implied, or apparent authority. The term includes a forgery.

(42) “Warehouse receipt” means a document of title issued by a

person engaged in the business of storing goods for hire.

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

SECTION 2. Arkansas Code § 4-1-204 is amended to read as follows:
4-1-204. Value.

Except as otherwise provided in Chapters 3, 4, ~~and 5~~, 6, and 12, a person gives value for rights if the person acquires them:

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

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

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

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

SECTION 3. Arkansas Code § 4-1-301 is amended to read as follows:

4-1-301. Territorial application of the subtitle – 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 such other state or nation shall govern their rights and duties. Failing such agreement this subtitle applies to transactions bearing an appropriate relation to this state.

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

Rights of creditors against sold goods. Section 4-2-402.

Applicability of the chapter on leases. Sections 4-2A-105 and 4-2A-106.

Applicability of the chapter on bank deposits and collections.
Section 4-4-102.

Governing law in the chapter on funds transfers. Section 4-4A-507.

Letters of Credit. Section 4-5-116.

Applicability of the chapter on Investment Securities. Section 4-8-110.

Law governing perfection, the effect of perfection or non-perfection, and the priority of security interests and agricultural liens. Sections 4-9-301 through 4-9-307.

Governing law in the chapter on controllable electronic records.
Section 4-12-107.

SECTION 4. Arkansas Code § 4-1-306 is amended to read as follows:

4-1-306. Waiver or renunciation of claim or right after breach.

A claim or right arising out of an alleged breach may be discharged in whole or in part without consideration by agreement of the aggrieved party in ~~an authenticated~~ a signed record.

SECTION 5. Arkansas Code § 4-2-102 is amended to read as follows:

4-2-102. Scope – Certain security and other transactions excluded from chapter.

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

(2) In a hybrid transaction:

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

(b) If the sale-of-goods aspects predominate, this chapter applies to the transaction but does not preclude application in appropriate

circumstances of other law to aspects of the transaction which do not relate to the sale of goods.

(3) This chapter does not:

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

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

SECTION 6. Arkansas Code § 4-2-106 is amended to read as follows:

4-2-106. Definitions – “Contract” – “Agreement” – “Contract for sale” – “Sale” – “Present sale” – “Conforming” to contract – “Termination” – “Cancellation” – “Hybrid Transaction”.

(1) In this chapter unless the context otherwise requires “contract” and “agreement” are limited to those relating to the present or future sale of goods. “Contract for sale” includes both a present sale of goods and a contract to sell goods at a future time. A “sale” consists in the passing of title from the seller to the buyer for a price (§ 4-2-401). A “present sale” means a sale which is accomplished by the making of the contract.

(2) Goods or conduct including any part of a performance are “conforming” or conform to the contract when they are in accordance with the obligations under the contract.

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

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

(5) “Hybrid transaction” means a single transaction involving a sale of goods and:

(a) the provision of services;

(b) a lease of other goods; or

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

SECTION 7. Arkansas Code § 4-2-201 is amended to read as follows:

4-2-201. Formal requirements – Statute of frauds.

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

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

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

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

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

(c) with respect to goods for which payment has been made and accepted or which have been received and accepted (§ 4-2-606).

SECTION 8. Arkansas Code § 4-2-202 is amended to read as follows:

4-2-202. Final ~~written~~ expression – Parol or extrinsic evidence.

Terms with respect to which the confirmatory memoranda of the parties

agree or which are otherwise set forth in a ~~writing~~ record intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented;

(a) by course of performance, course of dealing, or usage of trade (§ 4-1-303); and

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

SECTION 9. Arkansas Code § 4-2-203 is amended to read as follows:

4-2-203. Seals inoperative.

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

SECTION 10. Arkansas Code § 4-2-205 is amended to read as follows:

4-2-205. Firm offers.

An offer by a merchant to buy or sell goods in a signed ~~writing~~ record which by its terms gives assurance that it will be held open is not revocable, for lack of consideration, during the time stated or if no time is stated for a reasonable time, but in no event may such period of irrevocability exceed three (3) months; but any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

SECTION 11. Arkansas Code § 4-2-209(2), concerning the modification or rescission of a signed writing under the Uniform Commercial Code, is amended to read as follows:

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

SECTION 12. Arkansas Code § 4-2A-102 is amended to read as follows:

4-2A-102. Scope.

(1) This chapter applies to any transaction, regardless of form, that creates a lease and, in the case of a hybrid lease, it applies to the extent provided in subsection (2).

(2) In a hybrid lease:

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

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

(ii) Section 4-2A-209 applies if the lease is a finance lease; and

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

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

SECTION 13. Arkansas Code § 4-2A-103(1), concerning definitions used in the Uniform Commercial Code, is amended to read as follows:

(1) In this chapter unless the context otherwise requires:

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

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

(c) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A

commercial unit may be a single article, as a machine, or a set of articles, as a suite of furniture or a line of machinery, or a quantity, as a gross or carload, or any other unit treated in use or in the relevant market as a single whole.

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

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

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

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

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

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

(iii) one of the following occurs:

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

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

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

(D) if the lease is not a consumer lease, the lessor, before the lessee signs the lease contract, informs the lessee in writing (a) of the identity of the person supplying the goods to the lessor,

unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person, (b) that the lessee is entitled under this chapter to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods, and (c) that the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.

(h) "Goods" means all things that are movable at the time of identification to the lease contract, or are fixtures (§ 4-2A-309), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

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

(i) the provision of services;

(ii) a sale of other goods; or

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

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

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

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

(l) "Lease contract" means the total legal obligation that

results from the lease agreement as affected by this chapter and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.

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

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

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

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

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

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

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

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

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

that takes into account the facts and circumstances of each case at the time the transaction was entered into.

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

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

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

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

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

SECTION 14. Arkansas Code § 4-2A-107 is amended to read as follows:

4-2A-107. Waiver or renunciation of claim or right after default.

Any claim or right arising out of an alleged default or breach of warranty may be discharged in whole or in part without consideration by a ~~written~~ waiver or renunciation in a signed and record delivered by the aggrieved party.

SECTION 15. Arkansas Code § 4-2A-201 is amended to read as follows:

4-2A-201. Statute of frauds.

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

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

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

(2) Any description of leased goods or of the lease term is sufficient and satisfies subsection (1)(b), whether or not it is specific, if it

reasonably identifies what is described.

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

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

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

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

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

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

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

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

(c) a reasonable lease term.

SECTION 16. Arkansas Code § 4-2A-202 is amended to read as follows:
4-2A-202. Final ~~written~~ expression – Parol or extrinsic evidence.

Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a ~~writing~~ record intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or

supplemented:

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

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

SECTION 17. Arkansas Code § 4-2A-203 is amended to read as follows:
4-2A-203. Seals inoperative.

The affixing of a seal to a writing record evidencing a lease contract or an offer to enter into a lease contract does not render the writing record a sealed instrument and the law with respect to sealed instruments does not apply to the lease contract or offer.

SECTION 18. Arkansas Code § 4-2A-205 is amended to read as follows:
4-2A-205. Firm offers.

An offer by a merchant to lease goods to or from another person in a signed writing record that by its terms gives assurance it will be held open is not revocable, for lack of consideration, during the time stated or, if no time is stated, for a reasonable time, but in no event may the period of irrevocability exceed three (3) months. Any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

SECTION 19. Arkansas Code § 4-2A-208(2), concerning the modification or rescission of a signed writing under the Uniform Commercial Code, is amended to read as follows:

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

SECTION 20. Arkansas Code § 4-3-104(a), concerning the definition of "negotiable instrument" used in the Uniform Commercial Code, is amended to read as follows:

(a) Except as provided in subsections (c) and (d), "negotiable instrument" means an unconditional promise or order to pay a fixed amount of

money, with or without interest or other charges described in the promise or order, if it:

- (1) is payable to bearer or to order at the time it is issued or first comes into possession of a holder;
- (2) is payable on demand or at a definite time; and
- (3) does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain (i) an undertaking or power to give, maintain, or protect collateral to secure payment, (ii) an authorization or power to the holder to confess judgment or realize on or dispose of collateral, ~~or~~ (iii) a waiver of the benefit of any law intended for the advantage or protection of an obligor, (iv) a term that specifies the law that governs the promise or order, or (v) an undertaking to resolve in a specified forum a dispute concerning the promise or order.

SECTION 21. Arkansas Code § 4-3-105(a), concerning the definition of "issue" used in the Uniform Commercial Code, is amended to read as follows:

(a) "Issue" means:

- (1) the first delivery of an instrument by the maker or drawer, whether to a holder or nonholder, for the purpose of giving rights on the instrument to any person; or
- (2) if agreed by the payee, the first transmission by the drawer to the payee of an image of an item and information derived from the item that enables the depository bank to collect the item by transferring or presenting under federal law an electronic check.

SECTION 22. Arkansas Code § 4-3-401 is amended to read as follows:

4-3-401. Signature necessary for liability on instrument.

~~(a)~~ A person is not liable on an instrument unless (i) the person signed the instrument, or (ii) the person is represented by an agent or representative who signed the instrument and the signature is binding on the represented person under § 4-3-402.

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

SECTION 23. Arkansas Code § 4-3-604 is amended to read as follows:

4-3-604. Discharge by cancellation or renunciation.

(a) A person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument (i) by an intentional voluntary act, such as surrender of the instrument to the party, destruction, mutilation, or cancellation of the instrument, cancellation or striking out of the party's signature, or the addition of words to the instrument indicating discharge, or (ii) by agreeing not to sue or otherwise renouncing rights against the party by a signed record. The obligation of a party to pay a check is not discharged solely by destruction of the check in connection with a process in which information is extracted from the check and an image of the check is made and, subsequently, the information and image are transmitted for payment.

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

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

SECTION 24. Arkansas Code § 4-4A-103(a)(1), concerning the definition of "payment order" used in the Uniform Commercial Code, is amended to read as follows:

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

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

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

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

SECTION 25. Arkansas Code § 4-4A-201 is amended to read as follows:

4-4A-201. Security procedure.

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

SECTION 26. Arkansas Code § 4-4A-202(b), concerning the verification and authenticity of payment orders under the Uniform Commercial Code, is amended to read as follows:

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

SECTION 27. Arkansas Code § 4-4A-202(c), concerning the commercial reasonableness of the security procedure used to verify the authenticity of a

payment order under the Uniform Commercial Code, is amended to read as follows:

(c) Commercial reasonableness of a security procedure is a question of law to be determined by considering the wishes of the customer expressed to the bank, the circumstances of the customer known to the bank, including the size, type, and frequency of payment orders normally issued by the customer to the bank, alternative security procedures offered to the customer, and security procedures in general use by customers and receiving banks similarly situated. A security procedure is deemed to be commercially reasonable if (i) the security procedure was chosen by the customer after the bank offered, and the customer refused, a security procedure that was commercially reasonable for that customer, and (ii) the customer expressly agreed in writing a record to be bound by any payment order, whether or not authorized, issued in its name and accepted by the bank in compliance with the bank's obligations under the security procedure chosen by the customer.

SECTION 28. Arkansas Code § 4-4A-203(a)(1), concerning the unenforceability of certain payment orders under the Uniform Commercial Code, is amended to read as follows:

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

SECTION 29. Arkansas Code § 4-4A-207(c)(2), concerning the rules applicable for misdescription of a beneficiary of a payment order under the Uniform Commercial Code, is amended to read as follows:

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

to which the notice relates.

SECTION 30. Arkansas Code § 4-4A-208(b)(2), concerning the misdescription of an intermediary bank or beneficiary's bank in a payment order under the Uniform Commercial Code, is amended to read as follows:

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

SECTION 31. Arkansas Code § 4-4A-210(a), concerning the rejection of a payment order under the Uniform Commercial Code, is amended to read as follows:

(a) A payment order is rejected by the receiving bank by a notice of rejection transmitted to the sender orally, ~~electronically~~, or in writing a record. A notice of rejection need not use any particular words and is sufficient if it indicates that the receiving bank is rejecting the order or will not execute or pay the order. Rejection is effective when the notice is given if transmission is by a means that is reasonable in the circumstances. If notice of rejection is given by a means that is not reasonable, rejection is effective when the notice is received. If an agreement of the sender and receiving bank establishes the means to be used to reject a payment order, (i) any means complying with the agreement is reasonable and (ii) any means not complying is not reasonable unless no significant delay in receipt of the notice resulted from the use of the noncomplying means.

SECTION 32. Arkansas Code § 4-4A-211(a), concerning the cancellation and amendment of a payment order under the Uniform Commercial Code, is amended to read as follows:

(a) A communication of the sender of a payment order cancelling or

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

SECTION 33. Arkansas Code § 4-4A-305(c) and (d), concerning the liability of consequential damages for late or improper execution or failure to execute a payment order under the Uniform Commercial Code, are amended to read as follows:

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

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

SECTION 34. Arkansas Code § 4-5-104 is amended to read as follows:

4-5-104. Formal requirements.

A letter of credit, confirmation, advice, transfer, amendment, or cancellation may be issued in any form that is a signed record ~~and is authenticated (i) by a signature or (ii) in accordance with the agreement of the parties or the standard practice referred to in § 4-5-108(e).~~

SECTION 35. Arkansas Code § 4-5-116 is amended to read as follows:

4-5-116. Choice of law and forum.

(a) The liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction chosen by an agreement in the form of a record signed ~~or otherwise authenticated~~ by the affected parties ~~in the manner provided in § 4-5-104~~ or by a provision in the person's letter of credit, confirmation, or other undertaking. The

jurisdiction whose law is chosen need not bear any relation to the transaction.

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

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

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

~~(e)~~(e) Except as otherwise provided in this subsection, the liability of an issuer, nominated person, or adviser is governed by any rules of custom or practice, such as the Uniform Customs and Practice for Documentary Credits, to which the letter of credit, confirmation, or other undertaking is expressly made subject. If (i) this chapter would govern the liability of an issuer, nominated person, or adviser under subsection (a) or (b) of this section, (ii) the relevant undertaking incorporates rules of custom or practice, and (iii) there is conflict between this chapter and those rules as applied to that undertaking, those rules govern except to the extent of any conflict with the nonvariable provisions specified in § 4-5-103(c).

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

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

SECTION 36. Arkansas Code § 4-7-102(a)(12), concerning the definition

of "sign" in the Uniform Commercial Code, is amended to read as follows:

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

~~(A) to execute or adopt a tangible symbol; or~~

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

SECTION 37. Arkansas Code § 4-7-106 is amended to read as follows:

4-7-106. Control of electronic document of title.

(a) A person has control of an electronic document of title if a system employed for evidencing the transfer of interests in the electronic document reliably establishes that person as the person to which the electronic document was issued or transferred.

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

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

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

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

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

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

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

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

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

(c) A system satisfies subsection (a), and a person has control of an electronic document of title, if an authoritative electronic copy of the

document, a record attached to or logically associated with the electronic copy, or a system in which the electronic copy is recorded:

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

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

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

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

(B) transfer control of each authoritative electronic copy.

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

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

(2) the power is shared with another person.

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

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

(2) the other person:

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

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

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

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

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

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

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

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

SECTION 38. Arkansas Code § 4-8-102(a)(6), concerning the definition of "communicate" in the Uniform Commercial Code, is amended to read as follows:

(6) "Communicate" means to:

(i) send a signed ~~writing~~ record; or

(ii) transmit information by any mechanism agreed upon by the persons transmitting and receiving the information.

SECTION 39. Arkansas Code § 4-8-102(b), concerning definitions used in the Uniform Commercial Code, is amended to read as follows:

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

Appropriate person	§ 4-8-107
Control	§ 4-8-106
<u>Controllable account</u>	<u>§ 4-9-102</u>
<u>Controllable electronic record</u>	<u>§ 4-12-102</u>
<u>Controllable payment intangible</u>	<u>§ 4-9-102</u>
Delivery	§ 4-8-301
Investment company security	§ 4-8-103
Issuer	§ 4-8-201
Overissue	§ 4-8-210
Protected purchaser	§ 4-8-303
Securities account	§ 4-8-501

SECTION 40. Arkansas Code § 4-8-103, concerning the rules for determining whether certain obligations and interests are securities or financial assets in the Uniform Commercial Code, is amended to add an additional subsection to read as follows:

(h) A controllable account, controllable electronic record, or controllable payment intangible is not a financial asset unless § 4-8-102(a)(9)(iii) applies.

SECTION 41. Arkansas Code § 4-8-106(d), concerning control of a security entitlement by a purchaser under the Uniform Commercial Code, is amended to read as follows:

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

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

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

(A) has control of the security entitlement and acknowledges that it has control on behalf of the purchaser; or

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

SECTION 42. Arkansas Code § 4-8-106, concerning control under the Uniform Commercial Code, is amended to add additional subsections to read as follows:

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

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

any other person.

SECTION 43. Arkansas Code § 4-8-110, concerning the applicability of the Uniform Commercial Code and choice of law under the Uniform Commercial Code, is amended to add an additional subsection to read as follows:

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

SECTION 44. Arkansas Code § 4-8-303(b), concerning a protected purchaser under the Uniform Commercial Code, is amended to read as follows:

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

SECTION 45. Arkansas Code § 4-9-102 is amended to read as follows:
4-9-102. Definitions and index of definitions.

(a) In this chapter:

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

(2) "Account", except as used in "account for", "account statement", "account to", "commodity account" in paragraph (14), "customer's account", "deposit account" in paragraph (29), "on account of", and "statement of account", means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state.

The term includes controllable accounts and health-care-insurance receivables. The term does not include (i) ~~rights to payment evidenced by chattel paper or an instrument~~ chattel paper, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, ~~or~~ (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card, or (vii) rights to payment evidenced by an instrument.

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

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

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

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

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

(5) "Agricultural lien" means an interest, other than a security interest or a landlord's lien under § 18-41-101 or § 18-41-103, in farm products:

(A) which secures payment or performance of an obligation for:

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

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

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

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

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

(C) whose effectiveness does not depend on the person's

possession of the personal property.

(6) “As-extracted collateral” means:

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

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

(ii) attaches to the minerals as extracted; or

(B) 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.

~~(7) “Authenticate” means:~~

~~(A) to sign; or~~

~~(B) with present intent to adopt or accept a record, to attach to or logically associate with the record an electronic sound, symbol, or process. [Reserved.]~~

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

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

(8) “Bank” means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions, and trust companies.

(9) “Cash proceeds” means proceeds that are money, checks, deposit accounts, or the like.

(10) “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. The term includes another record maintained as an alternative to a certificate of title by the governmental unit that issues certificates of title if a statute permits the security interest in question to be indicated on the record as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

(11) "Chattel paper" means:

(A) a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this paragraph, "monetary obligation" means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term does not include (i) charters or other contracts involving the use or hire of a vessel or (ii) records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper right to payment of a monetary obligation secured by specific goods, if the right to payment and security agreement are evidenced by a record; or

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

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

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

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

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

- (A) proceeds to which a security interest attaches;
- (B) accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and
- (C) goods that are the subject of a consignment.

(13) "Commercial tort claim" means a claim arising in tort with respect to which:

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

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

(15) "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:

- (A) 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
- (B) 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.

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

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

- (A) is registered as a futures commission merchant under federal commodities law; or
- (B) 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.

(18) "Communicate" means:

- (A) to send a written or other tangible record;

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

(C) 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.

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

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

(A) the merchant:

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

(ii) is not an auctioneer; and

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

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

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

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

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

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

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

(24) "Consumer-goods transaction" means a consumer transaction in which:

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

(B) a security interest in consumer goods secures the obligation.

(25) "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.

(26) "Consumer transaction" means a transaction in which (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 consumer-goods transactions.

(27) "Continuation statement" means an amendment of a financing statement which:

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

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

(27A) "Controllable account" means an account evidenced by a controllable electronic record that provides that the account debtor undertakes to pay the person that has control under § 4-12-105 of the controllable electronic record.

(27B) "Controllable payment intangible" means a payment intangible evidenced by a controllable electronic record that provides that the account debtor undertakes to pay the person that has control under § 4-12-105 of the controllable electronic record.

(28) "Debtor" means:

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

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

(C) a consignee.

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

(30) "Document" means a document of title or a receipt of the type described in § 4-7-201(b).

~~(31) "Electronic chattel paper" means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.~~
[Reserved.]

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

(32) "Encumbrance" means a right, other than an ownership

interest, in real property. The term includes mortgages and other liens on real property.

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

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

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

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

(ii) aquatic goods produced in aquacultural

operations;

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

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

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

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

(36) "File number" means the number assigned to an initial financing statement pursuant to § 4-9-519(a).

(37) "Filing office" means an office designated in § 4-9-501 as the place to file a financing statement.

(38) "Filing office rule" means a rule adopted pursuant to § 4-9-526.

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

(40) "Fixture filing" means the filing of a financing statement covering goods that are or are to become fixtures and satisfying § 4-9-502(a) and (b). The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

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

(42) "General intangible" means any personal property, including

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

(43) [Reserved.]

(44) "Goods" means all things that are movable when a security interest attaches. The term includes (i) fixtures, (ii) standing timber that is to be cut and removed under a conveyance or contract for sale, (iii) the unborn young of animals, (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and (v) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. 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.

(45) "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 having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

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

(47) "Instrument" means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include (i) investment property, (ii)

letters of credit, ~~or~~ (iii) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card, or (iv) writings that evidence chattel paper.

(48) "Inventory" means goods, other than farm products, which:

(A) are leased by a person as lessor;

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

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

or

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

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

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

(51) "Letter-of-credit right" means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(52) "Lien creditor" means:

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

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

(C) a trustee in bankruptcy from the date of the filing of the petition; or

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

(53) "Manufactured home" means a structure, transportable in one (1) or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which 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 paragraph 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.

(54) “Manufactured-home transaction” means a secured transaction:

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

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

(54A) “Money” has the meaning in § 4-1-201(b)(24), but does not include (i) a deposit account or (ii) money in an electronic form that cannot be subjected to control under § 4-9-105A.

(55) “Mortgage” means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.

(56) “New debtor” means a person that becomes bound as debtor under § 4-9-203(d) by a security agreement previously entered into by another person.

(57) “New value” means (i) money, (ii) money’s worth in property, services, or new credit, or (iii) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

(58) “Noncash proceeds” means proceeds other than cash proceeds.

(59) “Obligor” means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral, (i) owes payment or other performance of the obligation, (ii) has provided property other than the collateral to secure payment or other performance of the obligation, or (iii) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

(60) “Original debtor”, except as used in § 4-9-310(c), means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under § 4-9-203(d).

(61) “Payment intangible” means a general intangible under which

the account debtor's principal obligation is a monetary obligation. The term includes a controllable payment intangible.

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

- (A) the spouse of the individual;
- (B) a brother, brother-in-law, sister, or sister-in-law of the individual;
- (C) an ancestor or lineal descendant of the individual or the individual's spouse; or
- (D) any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

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

- (A) a person directly or indirectly controlling, controlled by, or under common control with the organization;
- (B) an officer or director of, or a person performing similar functions with respect to, the organization;
- (C) an officer or director of, or a person performing similar functions with respect to, a person described in subparagraph (A);
- (D) the spouse of an individual described in subparagraph (A), (B), or (C); or
- (E) an individual who is related by blood or marriage to an individual described in subparagraph (A), (B), (C), or (D) and shares the same home with the individual.

(64) "Proceeds", except as used in § 4-9-609(b), means the following property:

- (A) whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;
- (B) whatever is collected on, or distributed on account of, collateral;
- (C) rights arising out of collateral;
- (D) 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; or
- (E) 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 or infringement of rights in, or damage to, the collateral.

(65) "Promissory note" means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(66) "Proposal" means a record ~~authenticated~~ signed by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to §§ 4-9-620, 4-9-621, and 4-9-622.

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

(A) debt securities are issued;

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

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

(68) "Public organic record" means a record that is available to the public for inspection and is:

(A) a record consisting of the record initially filed with or issued by a State or the United States to form or organize an organization and any record filed with or issued by the State or the United States which amends or restates the initial record;

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

(C) a record consisting of legislation enacted by the legislature of a State or the Congress of the United States which forms or organizes an organization, any record amending the legislation, and any record filed with or issued by the State or the United States which amends or restates the name of the organization.

(69) "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.

(70) [Repealed.]

(71) "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 which is stored in an electronic or other medium and is retrievable in perceivable form.

(72) "Registered organization" means an organization formed or organized solely under the law of a single State or the United States by the filing of a public organic record with, the issuance of a public organic record by, or the enactment of legislation by the State or the United States. The term includes a business trust that is formed or organized under the law of a single State if a statute of the State governing business trusts requires that the business trust's organic record be filed with the State.

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

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

(74) "Secured party" means:

(A) 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;

(B) a person that holds an agricultural lien;

(C) a consignor;

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

(E) 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

(F) a person that holds a security interest arising under § 4-2-401, § 4-2-505, § 4-2-711(3), § 4-2A-508(5), § 4-4-210, or § 4-5-118.

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

(76) ~~“Send”, in connection with a record or notification, means:~~
~~(A) to 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~~
~~(B) to cause the record or notification to be received~~
~~within the time that it would have been received if properly sent under~~
~~subparagraph (A).~~ [Reserved.]

(77) “Software” means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

(78) “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.

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

(80) ~~“Tangible chattel paper” means chattel paper evidenced by a~~
~~record or records consisting of information that is inscribed on a tangible~~
~~medium.~~ [Reserved.]

(80A) “Tangible money” means money in a tangible form.

(81) “Termination statement” means an amendment of a financing statement which:

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

(B) indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(82) “Transmitting utility” means a person primarily engaged in the business of:

(A) operating a railroad, subway, street railway, or trolley bus;

(B) transmitting communications electrically, electromagnetically, or by light;

(C) transmitting goods by pipeline or sewer; or

(D) producing or transmitting electricity, steam, gas, or water.

(b) "Control" as provided in § 4-7-106 and the following definitions in other chapters apply to this chapter:

- "Applicant". Section 4-5-102.
- "Beneficiary". Section 4-5-102.
- "Broker". Section 4-8-102.
- "Certificated security". Section 4-8-102.
- "Check". Section 4-3-104.
- "Clearing corporation". Section 4-8-102.
- "Contract for sale". Section 4-2-106.
- "Controllable electronic record". Section 4-12-102.
- "Customer". Section 4-4-104.
- "Entitlement holder". Section 4-8-102.
- "Financial asset". Section 4-8-102.
- "Holder in due course". Section 4-3-302.
- "Issuer" (with respect to a letter of credit or letter-of-credit right). Section 4-5-102.
- "Issuer" (with respect to a security). Section 4-8-201.
- "Issuer" (with respect to documents of title). Section 4-7-102.
- "Lease". Section 4-2A-103.
- "Lease agreement". Section 4-2A-103.
- "Lease contract". Section 4-2A-103.
- "Leasehold interest". Section 4-2A-103.
- "Lessee". Section 4-2A-103.
- "Lessee in ordinary course of business". Section 4-2A-103.
- "Lessor". Section 4-2A-103.
- "Lessor's residual interest". Section 4-2A-103.
- "Letter of credit". Section 4-5-102.
- "Merchant". Section 4-2-104.
- "Negotiable instrument". Section 4-3-104.
- "Nominated person". Section 4-5-102.
- "Note". Section 4-3-104.
- "Proceeds of a letter of credit". Section 4-5-114.
- "Protected purchaser". Section 4-8-303.
- "Prove". Section 4-3-103.

"Qualifying purchaser". Section 4-12-102.

"Sale". Section 4-2-106.

"Securities account". Section 4-8-501.

"Securities intermediary". Section 4-8-102.

"Security". Section 4-8-102.

"Security certificate". Section 4-8-102.

"Security entitlement". Section 4-8-102.

"Uncertificated security". Section 4-8-102.

~~"Virtual currency". Section 4-11-102.~~

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

SECTION 46. Arkansas Code § 4-9-104(a), concerning the control of a deposit account in the Uniform Commercial Code, is amended to read as follows:

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

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

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

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

(4) another person, other than the debtor:

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

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

SECTION 47. Arkansas Code § 4-9-105 is amended to read as follows:

4-9-105. Control of electronic copy of record evidencing chattel paper.

(a) A ~~secured party purchaser~~ purchaser has control of ~~electronic an~~ authoritative electronic copy of a record evidencing chattel paper if a

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) transfer control of the authoritative electronic copy.

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

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

(2) the power is shared with another person.

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

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

(2) the other person:

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

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

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

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

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

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

SECTION 48. Arkansas Code Title 4, Chapter 9, Subchapter 1, is amended to add an additional section to read as follows:

4-9-105A. Control of electronic money.

(a) A person has control of electronic money if:

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

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

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

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

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

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

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

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

(2) the power is shared with another person.

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

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

(2) the other person:

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

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

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

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

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

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

SECTION 49. Arkansas Code § 4-9-107 is amended to read as follows:

4-9-107. Control of letter-of-credit right — ~~Control of virtual currency.~~

~~(a)~~ A secured party has control of a letter-of-credit right to the extent of any right to payment or performance by the issuer or any nominated person if the issuer or nominated person has consented to an assignment of proceeds of the letter of credit under § 4-5-114(c) or otherwise applicable law or practice.

~~(b)~~ ~~A secured party has control of a virtual currency as provided in § 4-11-105.~~

SECTION 50. Arkansas Code Title 4, Chapter 9, Subchapter 1, is amended to add additional sections to read as follows:

4-9-107A. Control of controllable electronic record, controllable account, or controllable payment intangible.

(a) A secured party has control of a controllable electronic record as provided in § 4-12-105.

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

4-9-107B. No requirement to acknowledge or confirm; No duties.

(a) A person that has control under § 4-9-104, § 4-9-105, or § 4-9-105A is not required to acknowledge that it has control on behalf of another person.

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

SECTION 51. Arkansas Code § 4-9-203(b), concerning the attachment and enforceability of a security interest against a debtor and third parties in the Uniform Commercial Code, is amended to read as follows:

(b) Except as otherwise provided in subsections (c) through (i), a

security interest is enforceable against the debtor and third parties with respect to the collateral only if:

- (1) value has been given;
- (2) the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and
- (3) one of the following conditions is met:
 - (A) the debtor has ~~authenticated~~ signed a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;
 - (B) the collateral is not a certificated security and is in the possession of the secured party under § 4-9-313 pursuant to the debtor's security agreement;
 - (C) the collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under § 4-8-301 pursuant to the debtor's security agreement; ~~or~~
 - (D) the collateral is controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, electronic ~~chattel paper~~ documents, electronic money, investment property, or letter-of-credit rights, ~~or electronic documents~~, and the secured party has control under § 4-7-106, § 4-9-104, ~~§ 4-9-105~~, § 4-9-105A, § 4-9-106, ~~or § 4-9-107~~, or § 4-9-107A pursuant to the debtor's security agreement; or
 - (E) the collateral is chattel paper and the secured party has possession and control under § 4-9-314A pursuant to the debtor's security agreement.

SECTION 52. Arkansas Code § 4-9-204 is amended to read as follows:

4-9-204. After-acquired property – Future advances.

(a) Except as otherwise provided in subsection (b), a security agreement may create or provide for a security interest in after-acquired collateral.

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

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

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

(1) to consumer goods as proceeds under § 4-9-315(a) or commingled goods under § 4-9-336(c);

(2) to a commercial tort claim as proceeds under § 4-9-315(a);

or

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

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

SECTION 53. Arkansas Code § 4-9-207(c), concerning the rights of a secured party having possession or control of collateral under the Uniform Commercial Code, is amended to read as follows:

(c) Except as otherwise provided in subsection (d), a secured party having possession of collateral or control of collateral under § 4-7-106, § 4-9-104, § 4-9-105, § 4-9-105A, § 4-9-106, ~~or § 4-9-107~~, or § 4-9-107A:

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

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

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

SECTION 54. Arkansas Code § 4-9-208(b), concerning the additional duties of a secured party having control of collateral in the Uniform Commercial Code, is amended to read as follows:

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

(1) a secured party having control of a deposit account under § 4-9-104(a)(2) shall send to the bank with which the deposit account is maintained ~~an authenticated statement~~ a signed record that releases the bank from any further obligation to comply with instructions originated by the secured party;

(2) a secured party having control of a deposit account under §

4-9-104(a)(3) shall:

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

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

(3) a secured party, other than a buyer, having control of ~~electronic chattel paper~~ under § 4-9-105 ~~shall~~;

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

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

~~(C) take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party of an authoritative electronic copy of a record evidencing chattel paper shall transfer control of the electronic copy to the debtor or a person designated by the debtor;~~

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

(5) a secured party having control of a letter-of-credit right under § 4-9-107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party ~~an authenticated~~ a signed release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party; ~~and~~

(6) a secured party having control under § 4-7-106 of an authoritative electronic copy of an electronic document of title shall~~+~~

transfer control of the electronic copy to the debtor or a person designated by the debtor;

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

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

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

(7) a secured party having control under § 4-9-105A of electronic money shall transfer control of the electronic money to the debtor or a person designated by the debtor; and

(8) a secured party having control under § 4-12-105 of a controllable electronic record, other than a buyer of a controllable account or controllable payment intangible evidenced by the controllable electronic record, shall transfer control of the controllable electronic record to the debtor or a person designated by the debtor.

SECTION 55. Arkansas Code § 4-9-209(b), concerning the duties of a secured party if an account debtor has been notified of an assignment in the Uniform Commercial Code, is amended to read as follows:

(b) Within ten (10) days after receiving ~~an authenticated~~ a signed demand by the debtor, a secured party shall send to an account debtor that has received notification under § 4-9-406(a) or § 4-12-106(b) of an assignment to the secured party as assignee ~~under § 4-9-406(a) an authenticated~~ a signed record that releases the account debtor from any further obligation to the secured party.

SECTION 56. Arkansas Code § 4-9-210 is amended to read as follows:

4-9-210. Request for accounting – Request regarding list of collateral

or statement of account.

(a) In this section:

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

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

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

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

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

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

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

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

(d) A person that receives a request regarding a list of collateral, claims no interest in the collateral when it receives the request, and claimed an interest in the collateral at an earlier time shall comply with

the request within fourteen (14) days after receipt by sending to the debtor ~~an authenticated~~ a signed record:

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

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

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

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

SECTION 57. Arkansas Code § 4-9-301 is amended to read as follows:

4-9-301. Law governing perfection and priority of security interests.

Except as otherwise provided in §§ 4-9-303 – ~~4-9-306~~ 4-9-306B, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

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

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

(3) Except as otherwise provided in paragraph (4) of this section, while tangible negotiable documents, goods, instruments, or tangible

money, ~~or tangible chattel paper~~ is located in a jurisdiction, the local law of that jurisdiction governs:

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

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

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

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

SECTION 58. Arkansas Code § 4-9-304(a), concerning the law governing perfection and priority of security interests in deposit accounts in the Uniform Commercial Code, is amended to read as follows:

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

SECTION 59. Arkansas Code § 4-9-305(a), concerning the law governing perfection and priority of security interests in investment property in the Uniform Commercial Code, is amended to add an additional subdivision to read as follows:

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

SECTION 60. Arkansas Code Title 4, Chapter 9, Subchapter 3, is amended to add additional sections to read as follows:

4-9-306A. Law governing perfection and priority of security interests in chattel paper.

(a) Except as provided in subsection (d), if chattel paper is evidenced only by an authoritative electronic copy of the chattel paper or is evidenced by an authoritative electronic copy and an authoritative tangible copy, the local law of the chattel paper's jurisdiction governs perfection,

the effect of perfection or nonperfection, and the priority of a security interest in the chattel paper, even if the transaction does not bear any relation to the chattel paper's jurisdiction.

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

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

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

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

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

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

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

(1) perfection of a security interest in the chattel paper by possession under § 4-9-314A; and

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

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

4-9-306B. Law governing perfection and priority of security interests in controllable accounts, controllable electronic records, and controllable payment intangibles.

(a) Except as provided in subsection (b), the local law of the controllable electronic record's jurisdiction specified in § 4-12-107(c) and (d) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a controllable electronic record and a security interest in a controllable account or controllable payment intangible evidenced by the controllable electronic record.

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

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

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

SECTION 61. Arkansas Code § 4-9-310(b), concerning when the filing of a financing statement is not a requirement to perfect a security interest in the Uniform Commercial Code, is amended to read as follows:

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

(1) that is perfected under § 4-9-308(d), (e), (f), or (g);

(2) that is perfected under § 4-9-309 when it attaches;

(3) in property subject to a statute, regulation, or treaty described in § 4-9-311(a);

(4) in goods in possession of a bailee which is perfected under § 4-9-312(d)(1) or (2);

(5) in certificated securities, documents, goods, or instruments which is perfected without filing or possession under § 4-9-312(e), (f), or

(g);

(6) in collateral in the secured party's possession under § 4-9-313;

(7) in a certificated security which is perfected by delivery of the security certificate to the secured party under § 4-9-313;

(8) in controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, ~~electronic chattel paper~~, electronic documents, investment property, ~~virtual currencies~~, or letter-of-credit rights which is perfected by control under § 4-9-314;

(8)(1) in chattel paper which is perfected by possession and control under § 4-9-314A;

(9) in proceeds which is perfected under § 4-9-315; or

(10) that is perfected under § 4-9-316.

SECTION 62. Arkansas Code § 4-9-312 is amended to read as follows:

4-9-312. Perfection of security interests in chattel paper, controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, documents, goods covered by documents, instruments, investment property, ~~virtual currencies~~, letter-of-credit rights, and money – Perfection by permissive filing – Temporary perfection without filing or transfer of possession.

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

(b) Except as otherwise provided in § 4-9-315(c) and (d) for proceeds:

(1) a security interest in a deposit account may be perfected only by control under § 4-9-314;

(2) and except as otherwise provided in § 4-9-308(d), a security interest in a letter-of-credit right may be perfected only by control under § 4-9-314; ~~and~~

(3) a security interest in tangible money may be perfected only by the secured party's taking possession under § 4-9-313; ~~and~~

(4) a security interest in electronic money may be perfected only by control under § 4-9-314.

(c) While goods are in the possession of a bailee that has issued a

negotiable document covering the goods:

(1) a security interest in the goods may be perfected by perfecting a security interest in the document; and

(2) a security interest perfected in the document has priority over any security interest that becomes perfected in the goods by another method during that time.

(d) While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:

(1) issuance of a document in the name of the secured party;

(2) the bailee's receipt of notification of the secured party's interest; or

(3) filing as to the goods.

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

(f) A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for twenty (20) days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:

(1) ultimate sale or exchange; or

(2) loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.

(g) A perfected security interest in a certificated security or instrument remains perfected for twenty (20) days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:

(1) ultimate sale or exchange; or

(2) presentation, collection, enforcement, renewal, or registration of transfer.

(h) After the twenty-day period specified in subsection (e), (f), or (g) expires, perfection depends upon compliance with this chapter.

SECTION 63. Arkansas Code § 4-9-313(a), concerning when possession by or delivery to a secured party perfects a security interest without filing in the Uniform Commercial Code, is amended to read as follows:

(a) Except as otherwise provided in subsection (b), a secured party may perfect a security interest in ~~tangible negotiable documents~~, goods, instruments, negotiable tangible documents, or tangible money, ~~or tangible chattel paper~~ by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under § 4-8-301.

SECTION 64. Arkansas Code § 4-9-313(c), concerning when a secured party takes possession of collateral in the Uniform Commercial Code, is amended to read as follows:

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

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

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

SECTION 65. Arkansas Code § 4-9-313(d), concerning the timeline of perfection of a security interests dependent upon possession in the Uniform Commercial Code, is amended to read as follows:

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

SECTION 66. Arkansas Code § 4-9-314 is amended to read as follows:
4-9-314. Perfection by control.

(a) A security interest in ~~investment property, deposit accounts, letter-of-credit rights, virtual currencies, electronic chattel paper, or electronic documents~~ controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, electronic documents, electronic money, investment property, or letter-of-credit rights may be perfected by control of the collateral under § 4-7-106, § 4-9-104, ~~§ 4-9-105~~ § 4-9-105A, § 4-9-106, ~~or § 4-9-107, or § 4-9-107A.~~

(b) A security interest in ~~deposit accounts, electronic chattel paper, virtual currencies, letter-of-credit rights, or electronic documents~~ controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, electronic documents, electronic money, or letter-of-credit rights is perfected by control under § 4-7-106, § 4-9-104, ~~§ 4-9-105~~ § 4-9-105A, ~~§ 4-9-106, or § 4-9-107, or § 4-9-107A~~ when not earlier than the time the secured party obtains control and remains perfected by control only while the secured party retains control.

(c) A security interest in investment property is perfected by control under § 4-9-106 ~~from~~ not earlier than the time the secured party obtains control and remains perfected by control until:

- (1) the secured party does not have control; and
- (2) one of the following occurs:

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

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

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

SECTION 67. Arkansas Code Title 4, Chapter 9, Subchapter 3, is amended to add an additional section to read as follows:

4-9-314A. Perfection by possession and control of chattel paper.

(a) A secured party may perfect a security interest in chattel paper by taking possession of each authoritative tangible copy of the record evidencing the chattel paper and obtaining control of each authoritative electronic copy of the electronic record evidencing the chattel paper.

(b) A security interest is perfected under subsection (a) not earlier than the time the secured party takes possession and obtains control and

remains perfected under subsection (a) only while the secured party retains possession and control.

(c) Section 4-9-313(c) and (f) through (i) applies to perfection by possession of an authoritative tangible copy of a record evidencing chattel paper.

SECTION 68. Arkansas Code § 4-9-316(a), concerning the effect of change in governing law in the Uniform Commercial Code, is amended to read as follows:

(a) A security interest perfected pursuant to the law of the jurisdiction designated in § 4-9-301(1), ~~or § 4-9-305(c), § 4-9-306A(d), or § 4-9-306(B)(b)~~ remains perfected until the earliest of:

- (1) the time perfection would have ceased under the law of that jurisdiction;
- (2) the expiration of four (4) months after a change of the debtor's location to another jurisdiction; or
- (3) the expiration of one (1) year after a transfer of collateral to a person that thereby becomes a debtor and is located in another jurisdiction.

SECTION 69. Arkansas Code § 4-9-316(f), concerning the effect of change in governing law in the Uniform Commercial Code, is amended to read as follows:

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

- (1) the time the security interest would have become unperfected under the law of that jurisdiction; or
- (2) the expiration of four (4) months after a change of the applicable jurisdiction to another jurisdiction.

SECTION 70. Arkansas Code § 4-9-317 is amended to read as follows:

4-9-317. Interests that take priority over or take free of security interest or agricultural lien.

(a) A security interest or agricultural lien is subordinate to the rights of:

(1) a person entitled to priority under § 4-9-322; and

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

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

(B) one of the conditions specified in § 4-9-203(b)(3) is met and a financing statement covering the collateral is filed.

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

(c) Except as otherwise provided in subsection (e), 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.

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

(e) Except as otherwise provided in §§ 4-9-320 and 4-9-321, if a person files a financing statement with respect to a purchase-money security interest before or within twenty (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 which arise between the time the security interest attaches and the time of filing.

(f) A buyer, other than a secured party, of chattel paper takes free of a security interest if, without knowledge of the security interest and

before it is perfected, the buyer gives value and:

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

(2) if each authoritative electronic copy of the record evidencing the chattel paper can be subjected to control under § 4-9-105, obtains control of each authoritative electronic copy.

(g) A buyer of an electronic document takes free of a security interest if, without knowledge of the security interest and before it is perfected, the buyer gives value and, if each authoritative electronic copy of the document can be subjected to control under § 4-7-106, obtains control of each authoritative electronic copy.

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

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

SECTION 71. Arkansas Code § 4-9-323(d), concerning future advances in the Uniform Commercial Code, is amended to read as follows:

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

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

(2) forty-five (45) days after the purchase.

SECTION 72. Arkansas Code § 4-9-323(f), concerning future advances in the Uniform Commercial Code, is amended to read as follows:

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

- (1) the time the secured party acquires knowledge of the lease;
or
- (2) forty-five (45) days after the lease contract becomes enforceable.

SECTION 73. Arkansas Code § 4-9-324(b), concerning the priority of purchase-money security interests in the Uniform Commercial Code, is amended to read as follows:

(b) Subject to subsection (c) and except as otherwise provided in subsection (g), a perfected purchase-money security interest in inventory has priority over a conflicting security interest in the same inventory, has priority over a conflicting security interest in chattel paper or an instrument constituting proceeds of the inventory and in proceeds of the chattel paper, if so provided in § 4-9-330, and, except as otherwise provided in § 4-9-327, also has priority in identifiable cash proceeds of the inventory to the extent the identifiable cash proceeds are received on or before the delivery of the inventory to a buyer, if:

- (1) the purchase-money security interest is perfected when the debtor receives possession of the inventory;
- (2) the purchase-money secured party sends ~~an authenticated~~ a signed notification to the holder of the conflicting security interest;
- (3) the holder of the conflicting security interest receives the notification within five (5) years before the debtor receives possession of the inventory; and
- (4) the notification states that the person sending the notification has or expects to acquire a purchase-money security interest in inventory of the debtor and describes the inventory.

SECTION 74. Arkansas Code § 4-9-324(d), concerning the priority of purchase-money security interests in the Uniform Commercial Code, is amended to read as follows:

(d) Subject to subsection (e) and except as otherwise provided in subsection (g), a perfected purchase-money security interest in livestock that are farm products has priority over a conflicting security interest in the same livestock, and, except as otherwise provided in § 4-9-327, a perfected security interest in their identifiable proceeds and identifiable

products in their unmanufactured states also has priority, if:

- (1) the purchase-money security interest is perfected when the debtor receives possession of the livestock;
- (2) the purchase-money secured party sends ~~an authenticated~~ a signed notification to the holder of the conflicting security interest;
- (3) the holder of the conflicting security interest receives the notification within six months before the debtor receives possession of the livestock; and
- (4) the notification states that the person sending the notification has or expects to acquire a purchase-money security interest in livestock of the debtor and describes the livestock.

SECTION 75. Arkansas Code Title 4, Chapter 9, Subchapter 3, is amended to add an additional section to read as follows:

4-9-326A. Priority of security interest in controllable account, controllable electronic record, and controllable payment intangible.

A security interest in a controllable account, controllable electronic record, or controllable payment intangible held by a secured party having control of the account, electronic record, or payment intangible has priority over a conflicting security interest held by a secured party that does not have control.

SECTION 76. Arkansas Code § 4-9-330 is amended to read as follows:

4-9-330. Priority of purchaser of chattel paper or instrument.

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

(1) in good faith and in the ordinary course of the purchaser's business, the purchaser gives new value, ~~and~~ takes possession of each authoritative tangible copy of the record evidencing the chattel paper, ~~or~~ and obtains control of under § 4-9-105 of each authoritative electronic copy of the record evidencing the chattel paper ~~under § 4-9-105~~; and

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

(b) A purchaser of chattel paper has priority over a security interest

in the chattel paper which is claimed other than merely as proceeds of inventory subject to a security interest if the purchaser gives new value, ~~and~~ takes possession of each authoritative tangible copy of the record evidencing the chattel paper, ~~or~~ and obtains control ~~of~~ under § 4-9-105 of each authoritative electronic copy of the record evidencing the chattel paper ~~under § 4-9-105~~ in good faith, in the ordinary course of the purchaser's business, and without knowledge that the purchase violates the rights of the secured party.

(c) Except as otherwise provided in § 4-9-327, a purchaser having priority in chattel paper under subsection (a) or (b) also has priority in proceeds of the chattel paper to the extent that:

- (1) § 4-9-322 provides for priority in the proceeds; or
- (2) the proceeds consist of the specific goods covered by the chattel paper or cash proceeds of the specific goods, even if the purchaser's security interest in the proceeds is unperfected.

(d) Except as otherwise provided in § 4-9-331(a), a purchaser of an instrument has priority over a security interest in the instrument perfected by a method other than possession if the purchaser gives value and takes possession of the instrument in good faith and without knowledge that the purchase violates the rights of the secured party.

(e) For purposes of subsections (a) and (b), the holder of a purchase-money security interest in inventory gives new value for chattel paper constituting proceeds of the inventory.

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

SECTION 77 Arkansas Code § 4-9-331 is amended to read as follows:

4-9-331. Priority of rights of purchasers of ~~instruments~~ controllable accounts, controllable electronic records, controllable payment intangibles, documents, instruments, and securities, ~~and virtual currencies~~ under other chapters – Priority of interests in financial assets and security entitlements and protection against assertion of claim under Chapter 8 and

~~virtual currencies under Chapter 11~~ Chapter 12.

(a) This chapter does not limit the rights of a holder in due course of a negotiable instrument, a holder to which a negotiable document of title has been duly negotiated, a protected purchaser of a security, or a qualifying purchaser of a ~~virtual currency~~ controllable account, controllable electronic record, or controllable payment intangible. These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided in Chapter 3, Chapter 7, Chapter 8, and ~~Chapter 11~~ Chapter 12.

(b) This chapter does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of a claim under Chapter 8 or ~~Chapter 11~~ Chapter 12.

(c) Filing under this chapter does not constitute notice of a claim or defense to the holders, or purchasers, or persons described in subsections (a) and (b).

SECTION 78. Arkansas Code § 4-9-332 is amended to read as follows:

4-9-332. Transfer of money – Transfer of funds from deposit account.

(a) A transferee of tangible money takes the money free of a security interest ~~unless the transferee acts~~ if the transferee receives possession of the money without acting in collusion with the debtor in violating the rights of the secured party.

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

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

SECTION 79. Arkansas Code § 4-9-334(f), concerning the priority of security interests in fixtures and crops in the Uniform Commercial Code, is amended to read as follows:

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

property if:

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

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

SECTION 80. Arkansas Code § 4-9-341 is amended to read as follows:

4-9-341. Bank's rights and duties with respect to deposit account.

Except as otherwise provided in § 4-9-340(c), and unless the bank otherwise agrees in ~~an authenticated~~ a signed record, a bank's rights and duties with respect to a deposit account maintained with the bank are not terminated, suspended, or modified by:

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

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

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

SECTION 81. Arkansas Code § 4-9-404(a), concerning the rights acquired by an assignee in the Uniform Commercial Code, is amended to read as follows:

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

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

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

SECTION 82. Arkansas Code § 4-9-406 is amended to read as follows:

4-9-406. Discharge of account debtor – Notification of assignment – Identification and proof of assignment – Restrictions on assignment of accounts, chattel paper, payment intangibles, and promissory notes ineffective.

(a) Subject to subsections (b)-(i) and (k), an account debtor on an

account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, ~~authenticated~~ signed by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(b) Subject to ~~subsection (h)~~ subsections (h) and (k), notification is ineffective under subsection (a):

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

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

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

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

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

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

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

(d) ~~Except~~ In this subsection, "promissory note" includes a negotiable instrument that evidences chattel paper, except as otherwise provided in subsection (e) and §§ 4-2A-303 and 4-9-407, and subject to subsection (h), a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

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

promissory note; or

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

(e) Subsection (d) does not apply to the sale of a payment intangible or promissory note, other than a sale pursuant to a disposition under § 4-9-610 or an acceptance of collateral under § 4-9-620.

(f) Except as otherwise provided in §§ 4-2A-303 and 4-9-407 and subject to subsections (h) and (i), 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:

(1) 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

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

(g) Subject to ~~subsection (h)~~ subsections (h) and (k), an account debtor may not waive or vary its option under subsection (b)(3).

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

(i) This section does not apply to an assignment of a health-care-insurance receivable. Subsections (d) and (f) do not apply to assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in:

(1) a right the assignment or transfer of which is prohibited or restricted by § 11-9-110(a).

(2) a claim or right to receive amounts (whether by suit or agreement and whether as lump sums or as periodic payments) as damages (other than punitive damages) on account of personal physical injuries or physical sickness.

(3) a claim or right to receive benefits under a special needs trust as described in 42 U.S.C. § 1396p(d)(4).

(j) Except to the extent otherwise provided in subsection (i), this section prevails over any inconsistent provision of an existing or future statute, rule or regulation of this state unless the provision is contained in a statute of this state, refers expressly to this section and states that the provision prevails over this section.

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

SECTION 83. Arkansas Code § 4-9-408, concerning restrictions on assignment of promissory notes, health-care-insurance receivables, and certain general intangibles ineffective in the Uniform Commercial Code, is amended to add an additional subsection to read as follows:

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

SECTION 84. Arkansas Code § 4-9-509(a) and (b), concerning persons entitled to file a record under the Uniform Commercial Code, are amended to read as follows:

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

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

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

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

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

(2) property that becomes collateral under § 4-9-315(a)(2), whether or not the security agreement expressly covers proceeds.

SECTION 85. Arkansas Code § 4-9-513(b) and (c), concerning the termination statement under the Uniform Commercial Code, are amended to read as follows:

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

(1) within one (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

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

(c) In cases not governed by subsection (a), within twenty (20) days after a secured party receives ~~an authenticated~~ a signed 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:

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

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

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

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

SECTION 86. Arkansas Code Title 4, Chapter 5, Subchapter 5, is amended to add an additional section to read as follows:

4-9-530. Penalty.

An individual who causes a record to be communicated to the filing

office for filing affirms under penalty of perjury that the record was not filed with the intent to harass or defraud.

SECTION 87. Arkansas Code § 4-9-601(b), concerning the rights and duties of a secured party in the Uniform Commercial Code, is amended to read as follows:

(b) A secured party in possession of collateral or control of collateral under § 4-7-106, § 4-9-104, § 4-9-105, § 4-9-105A, § 4-9-106, ~~or § 4-9-107,~~ or § 4-9-107A has the rights and duties provided in § 4-9-207.

SECTION 88. Arkansas Code § 4-9-605 is amended to read as follows:
4-9-605. Unknown debtor or secondary obligor.

(a) A Except as provided in subsection (b), a secured party does not owe a duty based on its status as secured party:

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

- (A) that the person is a debtor or obligor;
- (B) the identity of the person; and
- (C) how to communicate with the person; or

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

- (A) that the person is a debtor; and
- (B) the identity of the person.

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

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

SECTION 89. Arkansas Code § 4-9-608(a)(1), concerning the application of proceeds of collection or enforcement under the Uniform Commercial Code,

is amended to read as follows:

(1) A secured party shall apply or pay over for application the cash proceeds of collection or enforcement under § 4-9-607 in the following order to:

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

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

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

SECTION 90. Arkansas Code § 4-9-611 is amended to read as follows:

4-9-611. Notification before disposition of collateral.

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

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

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

(b) Except as otherwise provided in subsection (d), a secured party that disposes of collateral under § 4-9-610 shall send to the persons specified in subsection (c) a reasonable ~~authenticated~~ signed notification of disposition.

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

(1) the debtor;

(2) any secondary obligor; and

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

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

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

(i) identified the collateral;

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

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

(C) any other secured party that, ten (10) days before the notification date, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in § 4-9-311(a).

(d) Subsection (b) does not apply if the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market.

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

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

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

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

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

SECTION 91. Arkansas Code § 4-9-613 is amended to read as follows:

4-9-613. Contents and form of notification before disposition of collateral: General.

(a) Except in a consumer-goods transaction, the following rules apply:

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

- (A) describes the debtor and the secured party;
- (B) describes the collateral that is the subject of the intended disposition;
- (C) states the method of intended disposition;
- (D) states that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting; and
- (E) states the time and place of a public disposition or the time after which any other disposition is to be made.

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

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

- (A) information not specified by that paragraph; or
 - (B) minor errors that are not seriously misleading.
- (4) A particular phrasing of the notification is not required.

(5) The following form of notification and the form appearing in ~~§ 4-9-614(3)~~ § 4-9-614(a)(3), when completed in accordance with the instructions in subsection (b) and § 4-9-614(b), 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]

{1} Name of ~~any Debtor(s)~~ debtor that is not an addressee: ~~{Include only if debtor(s) are not an addressee}~~ (Name of each debtor)

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

~~{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:}~~

{3} We will sell ~~for lease or license, as applicable~~ the [describe collateral-] privately at private sale sometime after ~~day and~~ (date)}. A sale could include a lease or license.

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

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

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

[End of Form]

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

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

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

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

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

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

SECTION 92. Arkansas Code § 4-9-614 is amended to read as follows:

4-9-614. Contents and form of notification before disposition of collateral: Consumer-goods transaction.

(a) In a consumer-goods transaction, the following rules apply:

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

(A) the information specified in ~~§ 4-9-613(1)~~ § 4-9-

613(a)(1);

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

(C) a telephone number from which the amount that must be paid to the secured party to redeem the collateral under § 4-9-623 is available; and

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

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

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

{(Name and address of secured party)}

{(Date)}

NOTICE OF OUR PLAN TO SELL PROPERTY

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

Subject: {~~Identification of Transaction~~} (Identity)

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

~~{For a public disposition:}~~

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

{(Date)}

{(Time)}

{(Place)}

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

~~{For a private disposition:}~~

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

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

{4} You can get the property back at any time before we sell it by

paying us the full amount you owe, ~~{not just the past due payments},~~ including our expenses. To learn the exact amount you must pay, call us at ~~{(telephone number)}.~~

{5} If you want us to explain to you in (writing)(writing or in (description of electronic record))(description of electronic record) how we have figured the amount that you owe us, ~~you may {6}~~ call us at ~~{(telephone number)}—{or}(write us at {(secured party's address+)})~~ (or contact us by (description of electronic communication method)) {7} and request (a written explanation)(a written explanation or an explanation in (description of electronic record))(an explanation in (description of electronic record)).

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

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

{10} We are sending this notice to the following other people who have an interest in {(describe collateral)} or who owe money under your agreement: {(Names of all other debtors and obligors, if any)}

[End of Form]

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

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

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

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

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

(2) Include and complete either item {1}, if the notification

relates to a public disposition of the collateral, or item {2}, if the notification relates to a private disposition of the collateral.

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

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

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

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

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

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

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

SECTION 93. Arkansas Code § 4-9-615(a), concerning an application of proceeds of disposition under the Uniform Commercial Code, is amended to read as follows:

(a) A secured party shall apply or pay over for application the cash proceeds of disposition under § 4-9-610 in the following order to:

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

(2) the satisfaction of obligations secured by the security

interest or agricultural lien under which the disposition is made;

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

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

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

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

SECTION 94. Arkansas Code § 4-9-616(a)-(c), concerning the explanation of calculation of surplus or deficiency, are amended to read as follows:

(a) In this section:

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

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

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

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

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

(2) "Request" means a record:

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

(B) requesting that the recipient provide an explanation;

and

(C) sent after disposition of the collateral under § 4-9-610.

(b) In a consumer-goods transaction in which the debtor is entitled to a surplus or a consumer obligor is liable for a deficiency under § 4-9-615, the secured party shall:

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

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

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

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

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

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

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

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

(2) the amount of proceeds of the disposition;

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

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

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

(6) the amount of the surplus or deficiency.

SECTION 95. Arkansas Code § 4-9-619(a), concerning the transfer of record or legal title under the Uniform Commercial Code, is amended to read

as follows:

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

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

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

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

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

SECTION 96. Arkansas Code § 4-9-620 is amended to read as follows:

4-9-620. Acceptance of collateral in full or partial satisfaction of obligation – Compulsory disposition of collateral.

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

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

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

(A) a person to which the secured party was required to send a proposal under § 4-9-621; or

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

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

(4) subsection (e) does not require the secured party to dispose of the collateral or the debtor waives the requirement pursuant to § 4-9-624.

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

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

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

(c) For purposes of this section:

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

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

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

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

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

(d) To be effective under subsection (a)(2), a notification of objection must be received by the secured party:

(1) in the case of a person to which the proposal was sent pursuant to § 4-9-621, within twenty (20) days after notification was sent to that person; and

(2) in other cases:

(A) within twenty (20) days after the last notification was sent pursuant to § 4-9-621; or

(B) if a notification was not sent, before the debtor consents to the acceptance under subsection (c).

(e) A secured party that has taken possession of collateral shall dispose of the collateral pursuant to § 4-9-610 within the time specified in subsection (f) if:

(1) sixty percent (60%) of the cash price has been paid in the case of a purchase-money security interest in consumer goods; or

(2) sixty percent (60%) of the principal amount of the obligation secured has been paid in the case of a non-purchase-money security interest in consumer goods.

(f) To comply with subsection (e), the secured party shall dispose of

the collateral:

(1) within ninety (90) days after taking possession; or
 (2) within any longer period to which the debtor and all secondary obligors have agreed in an agreement to that effect entered into and ~~authenticated~~ signed after default.

(g) In a consumer transaction, a secured party may not accept collateral in partial satisfaction of the obligation it secures.

SECTION 97. Arkansas Code § 4-9-621(a), concerning the notification of proposal to accept collateral under the Uniform Commercial Code, is amended to read as follows:

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

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

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

(A) identified the collateral;

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

and

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

(3) any other secured party that, ten (10) days before the debtor consented to the acceptance, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in § 4-9-311(a).

SECTION 98. Arkansas Code § 4-9-624 is amended to read as follows:

4-9-624. Waiver.

(a) A debtor or secondary obligor may waive the right to notification of disposition of collateral under § 4-9-611 only by an agreement to that effect entered into and ~~authenticated~~ signed after default.

(b) A debtor may waive the right to require disposition of collateral under § 4-9-620(e) only by an agreement to that effect entered into and ~~authenticated~~ signed after default.

(c) Except in a consumer-goods transaction, a debtor or secondary obligor may waive the right to redeem collateral under § 4-9-623 only by an agreement to that effect entered into and ~~authenticated~~ signed after default.

SECTION 99. Arkansas Code § 4-9-628 is amended to read as follows:

4-9-628. Nonliability and limitation on liability of secured party – Liability of secondary obligor.

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

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

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

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

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

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

(B) the identity of the person; and

(C) how to communicate with the person; or

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

(A) that the person is a debtor; and

(B) the identity of the person.

(c) A secured party is not liable to any person, and a person's liability for a deficiency is not affected, because of any act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer-goods transaction or a consumer transaction or that goods are not consumer goods, if the secured party's belief is based on its reasonable reliance on:

(1) a debtor's representation concerning the purpose for which

collateral was to be used, acquired, or held; or

(2) an obligor's representation concerning the purpose for which a secured obligation was incurred.

(d) A secured party is not liable to any person under § 4-9-625(c)(2) for its failure to comply with § 4-9-616.

(e) A secured party is not liable under § 4-9-625(c)(2) more than once with respect to any one (1) secured obligation.

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

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

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

SECTION 100. Arkansas Code Title 4, Chapter 11, is repealed.

~~CHAPTER 11~~

~~VIRTUAL CURRENCY~~

~~4-11-101. Short title.~~

~~This chapter may be cited as Uniform Commercial Code Virtual Currency of Arkansas.~~

~~4-11-102. Definitions.~~

~~In this chapter, "virtual currency":~~

~~(1) means a digital representation of value that:~~

~~(A) is used as a medium of exchange, unit of account, or store of value; and~~

~~(B) is not legal tender, whether or not denominated in legal tender; and~~

~~(2) does not include:~~

~~(A) a transaction in which a merchant grants, as part of an affinity or rewards program, value that cannot be taken from or exchanged~~

~~with the merchant for legal tender, bank credit, or virtual currency; or~~
~~(B) a digital representation of value issued by or on~~
~~behalf of a publisher and used solely within an online game, game platform,~~
~~or family of games sold by the same publisher or offered on the same game~~
~~platform.~~

~~4-11-103. Scope.~~

~~This chapter applies to virtual currency.~~

~~4-11-104. Rights in virtual currency.~~

~~(a) In this section:~~

~~(1) "Adverse claim" means a claim that a claimant has a property interest in a virtual currency and that it is a violation of the rights of the claimant for another person to hold, transfer, or deal with the virtual currency.~~

~~(2) "Qualifying purchaser" means a purchaser that obtains control of a virtual currency for value and without notice of any adverse claim.~~

~~(b) Subject to subsections (c) through (h), law other than this chapter determines whether a person acquires rights in a virtual currency and the rights that the person acquires.~~

~~(c) A purchaser of a virtual currency acquires all rights in the virtual currency that the transferor had or had power to transfer.~~

~~(d) A purchaser of a limited interest in a virtual currency acquires rights only to the extent of the interest purchased.~~

~~(e) In addition to acquiring the rights of a purchaser, a qualifying purchaser acquires its rights in a virtual currency free of any adverse claim.~~

~~(f) An action based on an adverse claim to a virtual currency, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a qualifying purchaser that acquires its interest in, and obtains control of, the virtual currency for value and without notice of the adverse claim.~~

~~(g) A person has notice of an adverse claim if:~~

~~(1) the person knows of the adverse claim; or~~

~~(2) the person is aware of facts sufficient to indicate that~~

~~there is a significant probability that the adverse claim exists and deliberately avoids information that would establish the existence of the adverse claim.~~

~~(h) Filing of a financing statement under Chapter 9 is not notice of an adverse claim to a virtual currency.~~

~~4-11-105. Control of virtual currency.~~

~~(a) A person has "control" of a virtual currency if the following conditions are met:~~

~~(1) the virtual currency or the system in which it is recorded, if any, gives the person:~~

~~(A) the power to derive substantially all the benefit from the virtual currency;~~

~~(B) subject to subsection (b), the exclusive power to prevent others from deriving substantially all the benefit from the virtual currency; and~~

~~(C) subject to subsection (b), the exclusive power to transfer control of the virtual currency to another person or cause another person to obtain control of a virtual currency that derives from the virtual currency; and~~

~~(2) the virtual currency, a record attached to or logically associated with the virtual currency, or the system in which the virtual currency is recorded, if any, enables the person to readily identify itself as having the powers specified in subparagraph (a)(1).~~

~~(b) A power specified in subparagraph (a)(1)(B) or (a)(1)(C) can be exclusive, even if:~~

~~(1) the virtual currency or the system in which it is recorded, if any, limits the use to which the virtual currency may be put or has protocols that are programmed to result in a transfer of control; and~~

~~(2) the person has agreed to share the power with another person.~~

~~(c) For the purposes of subparagraph (a)(2), a person may be identified in any way, including by name, identifying number, cryptographic key, office, or account number.~~

~~4-11-106. Savings clause.~~

~~This chapter does not affect an action, case, or proceeding commenced before this chapter takes effect.~~

SECTION 101. Arkansas Code Title 4 is amended to add additional chapters to read as follows:

CHAPTER 12

CONTROLLABLE ELECTRONIC RECORDS

4-12-101. Title.

This chapter may be cited as Uniform Commercial Code-Controllable Electronic Records.

4-12-102. Definitions.

(a) In this chapter:

(1) "Controllable electronic record" means a record stored in an electronic medium that can be subjected to control under § 4-12-105. The term does not include a controllable account, a controllable payment intangible, a deposit account, an electronic copy of a record evidencing chattel paper, an electronic document of title, electronic money, investment property, or a transferable record.

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

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

(A) Section 201(a)(1) of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7021(a)(1), as it existed on January 1, 2023; or

(B) Uniform Electronic Transactions Act, § 25-32-116.

(4) "Value" has the meaning provided in § 4-3-303(a), as if references in that subsection to an "instrument" were references to a controllable account, controllable electronic record, or controllable payment intangible.

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

account”, “controllable payment intangible”, “chattel paper”, “deposit account”, “electronic money”, and “investment property” apply to this chapter.

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

4-12-103. Relation to Chapter 9 and consumer laws.

(a) If there is conflict between this chapter and Chapter 9, Chapter 9 governs.

(b) A transaction subject to this chapter is subject to any applicable rule of law that establishes a different rule for consumers and to (i) any other statute or regulation that regulates the rates, charges, agreements, and practices for loans, credit sales, or other extensions of credit and (ii) any consumer-protection statute or regulation.

4-12-104. Rights in controllable account, controllable electronic record, and controllable payment intangible.

(a) This section applies to the acquisition and purchase of rights in a controllable account or controllable payment intangible, including the rights and benefits under subsections (c), (d), (e), (g), and (h) of a purchaser and qualifying purchaser, in the same manner this section applies to a controllable electronic record.

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

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

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

(e) A qualifying purchaser acquires its rights in the controllable

electronic record free of a claim of a property right in the controllable electronic record.

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

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

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

4-12-105. Control of controllable electronic record.

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

(1) gives the person:

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

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

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

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

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

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

(1) the controllable electronic record, a record attached to or

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

(2) the power is shared with another person.

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

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

(2) the other person:

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

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

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

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

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

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

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

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

4-12-106. Discharge of account debtor on controllable account or controllable payment intangible.

(a) An account debtor on a controllable account or controllable payment intangible may discharge its obligation by paying:

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

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

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

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

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

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

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

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

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

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

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

(2) to the extent an agreement between the account debtor and

seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this chapter; or

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

(A) divide a payment;

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

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

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

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

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

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

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

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

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

4-12-107. Governing Law.

(a) Except as provided in subsection (b), the local law of a controllable electronic record's jurisdiction governs a matter covered by this chapter.

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

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

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

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

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

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

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

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

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

(f) The rights acquired under 4-12-104 by a purchaser or qualifying purchaser are governed by the law applicable under this section at the time of purchase.

CHAPTER 12A

TRANSITIONAL PROVISIONS FOR UNIFORM COMMERCIAL CODE AMENDMENTS (2022)

PART 1 – GENERAL PROVISIONS AND DEFINITIONS

4-12A-101. Title.

This chapter may be cited as "Transitional Provisions for Uniform Commercial Code Amendments (2022)".

4-12A-102. Definitions.

(a) In this chapter:

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

(2) "Chapter 12" means Chapter 12 of the Uniform Commercial Code.

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

(b) The following definitions in other chapters of the Uniform Commercial Code apply to this chapter.

"Controllable account". Section 4-9-102.

"Controllable electronic record". Section 4-12-102.

"Controllable payment intangible". Section 9-102.

"Electronic money". Section 4-9-102.

"Financing statement". Section 4-9-102.

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

PART 2 – GENERAL TRANSITIONAL PROVISION

4-12A-201. Saving Clause.

Except as provided in Part 3, a transaction validly entered into before July 1, 2024 and the rights, duties, and interests flowing from the transaction remain valid thereafter and may be terminated, completed, consummated, or enforced as required or permitted by law other than the Uniform Commercial Code or, if applicable, the Uniform Commercial Code, as though this act had not taken effect.

PART 3 – TRANSITIONAL PROVISIONS FOR CHAPTERS 9 AND 12

4-12A-301. Saving Clause.

(a) Except as provided in this part, Chapter 9 as amended by this act and Chapter 12 apply to a transaction, lien, or other interest in property, even if the transaction, lien, or interest was entered into, created, or acquired before July 1, 2024.

(b) Except as provided in subsection (c) and § 4-12A-302 through § 4-12A-306:

(1) a transaction, lien, or interest in property that was validly entered into, created, or transferred before July 1, 2024 and was not governed by the Uniform Commercial Code, but would be subject to Chapter 9 as amended by this act or Chapter 12 if it had been entered into, created, or transferred on or after July 1, 2024, including the rights, duties, and interests flowing from the transaction, lien, or interest, remains valid on and after July 1, 2024; and

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

(c) Notwithstanding any other provision of this chapter:

(1) virtual currency under repealed Chapter 11 and Chapter 9 as in existence before amendment by this act constitutes a controllable

electronic record under Chapter 12 and Chapter 9 as amended by this act; and

(2) control of virtual currency accomplished under repealed Chapter 11 constitutes control of a controllable electronic record under Chapter 12 and Chapter 9 as amended by this act.

4-12A-302. Security interest perfected before effective date.

(a) A security interest that is enforceable and perfected immediately before July 1, 2024 is a perfected security interest under this act if, on July 1, 2024, the requirements for enforceability and perfection under this act are satisfied without further action.

(b) If a security interest is enforceable and perfected immediately before July 1, 2024, but the requirements for enforceability or perfection under this act are not satisfied on July 1, 2024, the security interest:

(1) is a perfected security interest until the earlier of the time perfection would have ceased under the law in effect immediately before July 1, 2024 or the adjustment date;

(2) remains enforceable thereafter only if the security interest satisfies the requirements for enforceability under § 4-9-203, as amended by this act, before the adjustment date; and

(3) remains perfected thereafter only if the requirements for perfection under this act are satisfied before the time specified in paragraph (1).

4-12A-303. Security interest unperfected before effective date.

A security interest that is enforceable immediately before July 1, 2024 but is unperfected at that time:

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

(2) remains enforceable thereafter if the security interest becomes enforceable under § 4-9-203, as amended by this act, on July 1, 2024 or before the adjustment date; and

(3) becomes perfected:

(A) without further action, on July 1, 2024 if the requirements for perfection under this act are satisfied before or at that time; or

(B) when the requirements for perfection are satisfied if

the requirements are satisfied after that time.

4-12A-304. Effectiveness of actions taken before effective date.

(a) If action, other than the filing of a financing statement, is taken before July 1, 2024 and the action would have resulted in perfection of the security interest had the security interest become enforceable before July 1, 2024, the action is effective to perfect a security interest that attaches under this act before the adjustment date. An attached security interest becomes unperfected on the adjustment date unless the security interest becomes a perfected security interest under this act before the adjustment date.

(b) The filing of a financing statement before July 1, 2024 is effective to perfect a security interest on July 1, 2024 to the extent the filing would satisfy the requirements for perfection under this act.

(c) The taking of an action before July 1, 2024 is sufficient for the enforceability of a security interest on July 1, 2024 if the action would satisfy the requirements for enforceability under this act.

4-12A-305. Priority of claims when priority rules of Chapter 9 do not apply.

(a) Subject to subsections (b) and (c), this act determines the priority of conflicting claims to collateral.

(b) Subject to subsection (c), if the priorities of claims to collateral were established before July 1, 2024, Chapter 9 as in effect before July 1, 2024, determines priority.

(c) On the adjustment date, to the extent the priorities determined by Chapter 9 as amended by this act modify the priorities established before July 1, 2024, the priorities of claims to Chapter 12 property and electronic money established before July 1, 2024, the effective date of this act cease to apply.

4-12A-306. Priority of claims when priority rules of Chapter 9 do not apply.

(a) Subject to subsections (b) and (c), Chapter 12 determines the priority of conflicting claims to Chapter 12 property when the priority rules of Chapter 9 as amended by this act do not apply.

(b) Subject to subsection (c), when the priority rules of Chapter 9 as amended by this act do not apply and the priorities of claims to Chapter 12 property were established before July 1, 2024, the effective date of this act, law other than Chapter 12 determines priority.

(c) When the priority rules of Chapter 9 as amended by this act do not apply, to the extent the priorities determined by this act modify the priorities established before July 1, 2024, the priorities of claims to Chapter 12 property established before July 1, 2024, cease to apply on the adjustment date.

SECTION 102. Effective date.

This act takes effect on July 1, 2024.