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4

A Bill

HOUSE BILL 1746

5 By: Representative M. Brown
6 By: Senator Dees
7

For An Act To Be Entitled

9 AN ACT TO AMEND THE UNIFORM COMMERCIAL CODE; AND FOR
10 OTHER PURPOSES.
11

Subtitle

12 TO AMEND THE UNIFORM COMMERCIAL CODE.
13

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
15

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

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

20 (1) "Action", in the sense of a judicial proceeding, includes
21 recoupment, counterclaim, set-off, suit in equity, and any other proceedings
22 in which rights are determined.
23

24 (2) "Aggrieved party" means a party entitled to pursue a remedy.
25

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

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

33 (5) "Bearer" means a person in control of a negotiable
34 electronic document of title or a person in possession of a negotiable
35 instrument, negotiable tangible document of title, or certificated security
36 that is payable to bearer or indorsed in blank.



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

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

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

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

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

30 ~~Conspicuous terms include the following:~~

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

34 ~~(B) language in the body of a record or display in larger~~
35 ~~type than the surrounding text, or in contrasting type, font, or color to the~~
36 ~~surrounding text of the same size, or set off from surrounding text of the~~

1 ~~same size by symbols or other marks that call attention to the language.~~

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

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

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

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

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

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

30 (16A) "Electronic" means relating to technology having
31 electrical, digital, magnetic, wireless, optical, electromagnetic, or similar
32 capabilities.

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

35 (18) "Fungible goods" means:

36 (A) goods of which any unit, by nature or usage of trade,

1 is the equivalent of any other like unit; or

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

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

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

7 (21) "Holder" means:

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

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

14 (C) the person in control, other than pursuant to § 4-7-
15 106(g), of a negotiable electronic document of title.

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

19 (23) "Insolvent" means:

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

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

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

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

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

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

36 (27) "Person" means an individual, corporation, business trust,

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

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

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

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

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

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

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

28 (34) "Right" includes remedy.

29 (35) "Security interest" means an interest in personal property
30 or fixtures which secures payment or performance of an obligation. "Security
31 interest" includes any interest of a consignor and a buyer of accounts,
32 chattel paper, a payment intangible, or a promissory note in a transaction
33 that is subject to Chapter 9. "Security interest" does not include the
34 special property interest of a buyer of goods on identification of those
35 goods to a contract for sale under § 4-2-401, but a buyer may also acquire a
36 "security interest" by complying with Chapter 9. Except as otherwise provided

1 in § 4-2-505, the right of a seller or lessor of goods under Chapter 2 or 2A
 2 to retain or acquire possession of the goods is not a “security interest”,
 3 but a seller or lessor may also acquire a “security interest” by complying
 4 with Chapter 9. The retention or reservation of title by a seller of goods
 5 notwithstanding shipment or delivery to the buyer under § 4-2-401 is limited
 6 in effect to a reservation of a “security interest.” Whether a transaction in
 7 the form of a lease creates a “security interest” is determined pursuant to §
 8 4-1-203.

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

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

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

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

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

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

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

27 (38) “State” means a state of the United States, the District of
 28 Columbia, Puerto Rico, the United States Virgin Islands, or any territory or
 29 insular possession subject to the jurisdiction of the United States.

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

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

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

35 (42) “Warehouse receipt” means a document of title issued by a
 36 person engaged in the business of storing goods for hire.

1 (43) "Writing" includes printing, typewriting, or any other
2 intentional reduction to tangible form. "Written" has a corresponding
3 meaning.
4

5 SECTION 2. Arkansas Code § 4-1-204 is amended to read as follows:
6 4-1-204. Value.

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

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

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

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

17 (4) in return for any consideration sufficient to support a
18 simple contract.
19

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

21 4-1-301. Territorial application of the subtitle – Parties' power to
22 choose applicable law.

23 (1) Except as provided in this section, when a transaction bears
24 a reasonable relation to this state and also to another state or nation, the
25 parties may agree that the law either of this state or of such other state or
26 nation shall govern their rights and duties. Failing such agreement this
27 subtitle applies to transactions bearing an appropriate relation to this
28 state.

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

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

34 Applicability of the chapter on leases. Sections 4-2A-105 and 4-
35 2A-106.

36 Applicability of the chapter on bank deposits and collections.

1 Section 4-4-102.

2 Governing law in the chapter on funds transfers. Section 4-4A-
3 507.

4 Letters of Credit. Section 4-5-116.

5 Applicability of the chapter on Investment Securities. Section 4-
6 8-110.

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

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

12
13 SECTION 4. Arkansas Code § 4-1-306 is amended to read as follows:
14 4-1-306. Waiver or renunciation of claim or right after breach.

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

18
19 SECTION 5. Arkansas Code § 4-2-102 is amended to read as follows:
20 4-2-102. Scope – Certain security and other transactions excluded from
21 chapter.

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

29 (2) In a hybrid transaction:

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

34 (b) If the sale-of-goods aspects predominate, this chapter
35 applies to the transaction but does not preclude application in appropriate
36 circumstances of other law to aspects of the transaction which do not relate

1 to the sale of goods.

2 (3) This chapter does not:

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

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

8
9 SECTION 6. Arkansas Code § 4-2-106 is amended to read as follows:

10 4-2-106. Definitions – “Contract” – “Agreement” – “Contract for sale”
11 – “Sale” – “Present sale” – “Conforming” to contract – “Termination” –
12 “Cancellation” – “Hybrid Transaction”.

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

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

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

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

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

33 (a) the provision of services;

34 (b) a lease of other goods; or

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

36

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

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

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

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

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

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

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

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

32
33 SECTION 8. Arkansas Code § 4-2-202 is amended to read as follows:

34 4-2-202. Final ~~written~~ expression – Parol or extrinsic evidence.

35 Terms with respect to which the confirmatory memoranda of the parties
36 agree or which are otherwise set forth in a ~~writing~~ record intended by the

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

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

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

10
11 SECTION 9. Arkansas Code § 4-2-203 is amended to read as follows:

12 4-2-203. Seals inoperative.

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

17
18 SECTION 10. Arkansas Code § 4-2-205 is amended to read as follows:

19 4-2-205. Firm offers.

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

26
27 SECTION 11. Arkansas Code § 4-2-209(2), concerning the modification or
28 rescission of a signed writing under the Uniform Commercial Code, is amended
29 to read as follows:

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

34
35 SECTION 12. Arkansas Code § 4-2A-102 is amended to read as follows:

36 4-2A-102. Scope.

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

4 (2) In a hybrid lease:

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

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

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

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

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

18
19 SECTION 13. Arkansas Code § 4-2A-103(1), concerning definitions used
20 in the Uniform Commercial Code, is amended to read as follows:

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

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

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

33 (c) “Commercial unit” means such a unit of goods as by
34 commercial usage is a single whole for purposes of lease and division of
35 which materially impairs its character or value on the market or in use. A
36 commercial unit may be a single article, as a machine, or a set of articles,

1 as a suite of furniture or a line of machinery, or a quantity, as a gross or
2 carload, or any other unit treated in use or in the relevant market as a
3 single whole.

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

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

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

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

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

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

19 (iii) one of the following occurs:

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

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

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

33 (D) if the lease is not a consumer lease, the
34 lessor, before the lessee signs the lease contract, informs the lessee in
35 writing (a) of the identity of the person supplying the goods to the lessor,
36 unless the lessee has selected that person and directed the lessor to acquire

1 the goods or the right to possession and use of the goods from that person,
2 (b) that the lessee is entitled under this chapter to the promises and
3 warranties, including those of any third party, provided to the lessor by the
4 person supplying the goods in connection with or as part of the contract by
5 which the lessor acquired the goods or the right to possession and use of the
6 goods, and (c) that the lessee may communicate with the person supplying the
7 goods to the lessor and receive an accurate and complete statement of those
8 promises and warranties, including any disclaimers and limitations of them or
9 of remedies.

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

15 (h.1) "Hybrid lease" means a single transaction involving a
16 lease of goods and:

17 (i) the provision of services;

18 (ii) a sale of other goods; or

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

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

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

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

35 (l) "Lease contract" means the total legal obligation that
36 results from the lease agreement as affected by this chapter and any other

1 applicable rules of law. Unless the context clearly indicates otherwise, the
2 term includes a sublease contract.

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

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

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

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

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

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

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

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

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

1 the transaction was entered into.

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

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

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

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

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

15
16 SECTION 14. Arkansas Code § 4-2A-107 is amended to read as follows:

17 4-2A-107. Waiver or renunciation of claim or right after default.

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

22
23 SECTION 15. Arkansas Code § 4-2A-201 is amended to read as follows:

24 4-2A-201. Statute of frauds.

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

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

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

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

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

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

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

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

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

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

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

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

27 (c) a reasonable lease term.
28

29 SECTION 16. Arkansas Code § 4-2A-202 is amended to read as follows:

30 4-2A-202. Final ~~written~~ expression – Parol or extrinsic evidence.

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

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

3 (b) by evidence of consistent additional terms unless the court
4 finds the ~~writing~~ record to have been intended also as a complete and
5 exclusive statement of the terms of the agreement.
6

7 SECTION 17. Arkansas Code § 4-2A-203 is amended to read as follows:
8 4-2A-203. Seals inoperative.

9 The affixing of a seal to a ~~writing~~ record evidencing a lease contract
10 or an offer to enter into a lease contract does not render the ~~writing~~ record
11 a sealed instrument and the law with respect to sealed instruments does not
12 apply to the lease contract or offer.
13

14 SECTION 18. Arkansas Code § 4-2A-205 is amended to read as follows:
15 4-2A-205. Firm offers.

16 An offer by a merchant to lease goods to or from another person in a
17 signed ~~writing~~ record that by its terms gives assurance it will be held open
18 is not revocable, for lack of consideration, during the time stated or, if no
19 time is stated, for a reasonable time, but in no event may the period of
20 irrevocability exceed three (3) months. Any such term of assurance on a form
21 supplied by the offeree must be separately signed by the offeror.
22

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

26 (2) A signed lease agreement that excludes modification or rescission
27 except by a signed ~~writing~~ record may not be otherwise modified or rescinded,
28 but, except as between merchants, such a requirement on a form supplied by a
29 merchant must be separately signed by the other party.
30

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

34 (a) Except as provided in subsections (c) and (d), "negotiable
35 instrument" means an unconditional promise or order to pay a fixed amount of
36 money, with or without interest or other charges described in the promise or

1 order, if it:

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

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

5 (3) does not state any other undertaking or instruction by the
6 person promising or ordering payment to do any act in addition to the payment
7 of money, but the promise or order may contain (i) an undertaking or power to
8 give, maintain, or protect collateral to secure payment, (ii) an
9 authorization or power to the holder to confess judgment or realize on or
10 dispose of collateral, ~~or~~ (iii) a waiver of the benefit of any law intended
11 for the advantage or protection of an obligor, (iv) a term that specifies the
12 law that governs the promise or order, or (v) an undertaking to resolve in a
13 specified forum a dispute concerning the promise or order.
14

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

17 (a) "Issue" means:

18 (1) the first delivery of an instrument by the maker or drawer,
19 whether to a holder or nonholder, for the purpose of giving rights on the
20 instrument to any person; or

21 (2) if agreed by the payee, the first transmission by the drawer
22 to the payee of an image of an item and information derived from the item
23 that enables the depository bank to collect the item by transferring or
24 presenting under federal law an electronic check.
25

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

27 4-3-401. Signature necessary for liability on instrument.

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

32 ~~(b) A signature may be made (i) manually or by means of a device or~~
33 ~~machine, and (ii) by the use of any name, including a trade or assumed name,~~
34 ~~or by a word, mark, or symbol executed or adopted by a person with present~~
35 ~~intention to authenticate a writing.~~
36

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

2 4-3-604. Discharge by cancellation or renunciation.

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

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

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

21
22 SECTION 24. Arkansas Code § 4-4A-103(a)(1), concerning the definition
23 of "payment order" used in the Uniform Commercial Code, is amended to read as
24 follows:

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

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

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

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

36

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

2 4-4A-201. Security procedure.

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

15
16 SECTION 26. Arkansas Code § 4-4A-202(b), concerning the verification
17 and authenticity of payment orders under the Uniform Commercial Code, is
18 amended to read as follows:

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

33
34 SECTION 27. Arkansas Code § 4-4A-202(c), concerning the commercial
35 reasonableness of the security procedure used to verify the authenticity of a
36 payment order under the Uniform Commercial Code, is amended to read as

1 follows:

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

15
16 SECTION 28. Arkansas Code § 4-4A-203(a)(1), concerning the
17 unenforceability of certain payment orders under the Uniform Commercial Code,
18 is amended to read as follows:

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

22
23 SECTION 29. Arkansas Code § 4-4A-207(c)(2), concerning the rules
24 applicable for misdescription of a beneficiary of a payment order under the
25 Uniform Commercial Code, is amended to read as follows:

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

1
2 SECTION 30. Arkansas Code § 4-4A-208(b)(2), concerning the
3 misdescription of an intermediary bank or beneficiary's bank in a payment
4 order under the Uniform Commercial Code, is amended to read as follows:

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

15
16 SECTION 31. Arkansas Code § 4-4A-210(a), concerning the rejection of a
17 payment order under the Uniform Commercial Code, is amended to read as
18 follows:

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

31
32 SECTION 32. Arkansas Code § 4-4A-211(a), concerning the cancellation
33 and amendment of a payment order under the Uniform Commercial Code, is
34 amended to read as follows:

35 (a) A communication of the sender of a payment order cancelling or
36 amending the order may be transmitted to the receiving bank orally,

1 ~~electronically~~, or in ~~writing~~ a record. If a security procedure is in effect
 2 between the sender and the receiving bank, the communication is not effective
 3 to cancel or amend the order unless the communication is verified pursuant to
 4 the security procedure or the bank agrees to the cancellation or amendment.
 5

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

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

14 (d) If a receiving bank fails to execute a payment order it was
 15 obliged by express agreement to execute, the receiving bank is liable to the
 16 sender for its expenses in the transaction and for incidental expenses and
 17 interest losses resulting from the failure to execute. Additional damages,
 18 including consequential damages, are recoverable to the extent provided in an
 19 express ~~written~~ agreement of the receiving bank, evidenced by a record, but
 20 are not otherwise recoverable.
 21

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

23 4-5-104. Formal requirements.

24 A letter of credit, confirmation, advice, transfer, amendment, or
 25 cancellation may be issued in any form that is a signed record ~~and is~~
 26 ~~authenticated (i) by a signature or (ii) in accordance with the agreement of~~
 27 ~~the parties or the standard practice referred to in § 4-5-108(e).~~
 28

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

30 4-5-116. Choice of law and forum.

31 (a) The liability of an issuer, nominated person, or adviser for
 32 action or omission is governed by the law of the jurisdiction chosen by an
 33 agreement in the form of a record signed ~~or otherwise authenticated~~ by the
 34 affected parties ~~in the manner provided in § 4-5-104~~ or by a provision in the
 35 person's letter of credit, confirmation, or other undertaking. The
 36 jurisdiction whose law is chosen need not bear any relation to the

1 transaction.

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

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

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

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

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

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

34

35 SECTION 36. Arkansas Code § 4-7-102(a)(12), concerning the definition
36 of "sign" in the Uniform Commercial Code, is amended to read as follows:

1 (12) ~~“Sign” means, with present intent to authenticate or adopt~~
 2 ~~a record;~~
 3 ~~(A) to execute or adopt a tangible symbol; or~~
 4 ~~(B) to attach to or logically associate with the record an~~
 5 ~~electronic sound, symbol, or process. [Reserved.]~~
 6

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

8 4-7-106. Control of electronic document of title.

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

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

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

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

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

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

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

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

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

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

34 (c) A system satisfies subsection (a), and a person has control of an
 35 electronic document of title, if an authoritative electronic copy of the
 36 document, a record attached to or logically associated with the electronic

1 copy, or a system in which the electronic copy is recorded:

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

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

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

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

12 (B) transfer control of each authoritative electronic
13 copy.

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

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

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

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

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

26 (2) the other person:

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

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

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

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

36 (1) has control of the document and acknowledges that it has

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

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

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

11
 12 SECTION 38. Arkansas Code § 4-8-102(a)(6), concerning the definition
 13 of "communicate" in the Uniform Commercial Code, is amended to read as
 14 follows:

15 (6) "Communicate" means to:
 16 (i) send a signed ~~writing~~ record; or
 17 (ii) transmit information by any mechanism agreed upon by
 18 the persons transmitting and receiving the information.

19
 20 SECTION 39. Arkansas Code § 4-8-102(b), concerning definitions used in
 21 the Uniform Commercial Code, is amended to read as follows:

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

24	Appropriate person	§ 4-8-107
25	Control	§ 4-8-106
26	<u>Controllable account</u>	<u>§ 4-9-102</u>
27	<u>Controllable electronic record</u>	<u>§ 4-12-102</u>
28	<u>Controllable payment intangible</u>	<u>§ 4-9-102</u>
29	Delivery	§ 4-8-301
30	Investment company security	§ 4-8-103
31	Issuer	§ 4-8-201
32	Overissue	§ 4-8-210
33	Protected purchaser	§ 4-8-303
34	Securities account	§ 4-8-501

35
 36 SECTION 40. Arkansas Code § 4-8-103, concerning the rules for

1 determining whether certain obligations and interests are securities or
2 financial assets in the Uniform Commercial Code, is amended to add an
3 additional subsection to read as follows:

4 (h) A controllable account, controllable electronic record, or
5 controllable payment intangible is not a financial asset unless § 4-8-
6 102(a)(9)(iii) applies.

7
8 SECTION 41. Arkansas Code § 4-8-106(d), concerning control of a
9 security entitlement by a purchaser under the Uniform Commercial Code, is
10 amended to read as follows:

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

12 (1) the purchaser becomes the entitlement holder;

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

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

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

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

26
27 SECTION 42. Arkansas Code § 4-8-106, concerning control under the
28 Uniform Commercial Code, is amended to add additional subsections to read as
29 follows:

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

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

1
2 SECTION 43. Arkansas Code § 4-8-110, concerning the applicability of
3 the Uniform Commercial Code and choice of law under the Uniform Commercial
4 Code, is amended to add an additional subsection to read as follows:

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

9
10 SECTION 44. Arkansas Code § 4-8-303(b), concerning a protected
11 purchaser under the Uniform Commercial Code, is amended to read as follows:

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

15
16 SECTION 45. Arkansas Code § 4-9-102 is amended to read as follows:
17 4-9-102. Definitions and index of definitions.

18 (a) In this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (6) "As-extracted collateral" means:

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

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

6 (ii) attaches to the minerals as extracted; or

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

10 (7) ~~"Authenticate" means:~~

11 ~~(A) to sign; or~~

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

15 (7A) "Assignee", except as used in "assignee for benefit of
16 creditors", means a person (i) in whose favor a security interest that
17 secures an obligation is created or provided for under a security agreement,
18 whether or not the obligation is outstanding or (ii) to which an account,
19 chattel paper, payment intangible, or promissory note has been sold. The term
20 includes a person to which a security interest has been transferred by a
21 secured party.

22 (7B) "Assignor" means a person that (i) under a security
23 agreement creates or provides for a security interest that secures an
24 obligation or (ii) sells an account, chattel paper, payment intangible, or
25 promissory note. The term includes a secured party that has transferred a
26 security interest to another person.

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

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

32 (10) "Certificate of title" means a certificate of title with
33 respect to which a statute provides for the security interest in question to
34 be indicated on the certificate as a condition or result of the security
35 interest's obtaining priority over the rights of a lien creditor with respect
36 to the collateral. The term includes another record maintained as an

1 alternative to a certificate of title by the governmental unit that issues
2 certificates of title if a statute permits the security interest in question
3 to be indicated on the record as a condition or result of the security
4 interest's obtaining priority over the rights of a lien creditor with respect
5 to the collateral.

6 (11) "Chattel paper" means:

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

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

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

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

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

36 (12) "Collateral" means the property subject to a security

1 interest or agricultural lien. The term includes:

2 (A) proceeds to which a security interest attaches;

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

5 (C) goods that are the subject of a consignment.

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

8 (A) the claimant is an organization; or

9 (B) the claimant is an individual and the claim:

10 (i) arose in the course of the claimant's business
11 or profession; and

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

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

17 (15) "Commodity contract" means a commodity futures contract, an
18 option on a commodity futures contract, a commodity option, or another
19 contract if the contract or option is:

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

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

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

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

29 (A) is registered as a futures commission merchant under
30 federal commodities law; or

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

34 (18) "Communicate" means:

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

36 (B) to transmit a record by any means agreed upon by the

1 persons sending and receiving the record; or

2 (C) in the case of transmission of a record to or by a
3 filing office, to transmit a record by any means prescribed by filing office
4 rule.

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

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

9 (A) the merchant:

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

12 (ii) is not an auctioneer; and

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

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

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

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

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

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

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

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

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

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

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

35 (26) "Consumer transaction" means a transaction in which (i) an
36 individual incurs an obligation primarily for personal, family, or household

1 purposes, (ii) a security interest secures the obligation, and (iii) the
2 collateral is held or acquired primarily for personal, family, or household
3 purposes. The term includes consumer-goods transactions.

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

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

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

11 (27A) "Controllable account" means an account evidenced by a
12 controllable electronic record that provides that the account debtor
13 undertakes to pay the person that has control under § 4-12-105 of the
14 controllable electronic record.

15 (27B) "Controllable payment intangible" means a payment
16 intangible evidenced by a controllable electronic record that provides that
17 the account debtor undertakes to pay the person that has control under § 4-
18 12-105 of the controllable electronic record.

19 (28) "Debtor" means:

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

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

25 (C) a consignee.

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

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

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

34 (31A) "Electronic money" means money in an electronic form.

35 (32) "Encumbrance" means a right, other than an ownership
36 interest, in real property. The term includes mortgages and other liens on

1 real property.

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

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

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

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

9 (ii) aquatic goods produced in aquacultural

10 operations;

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

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

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

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

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

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

23 (38) "Filing office rule" means a rule adopted pursuant to § 4-
24 9-526.

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

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

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

35 (42) "General intangible" means any personal property, including
36 things in action, other than accounts, chattel paper, commercial tort claims,

1 deposit accounts, documents, goods, instruments, investment property, letter-
2 of-credit rights, letters of credit, money, and oil, gas, or other minerals
3 before extraction. The term includes controllable electronic records, payment
4 intangibles, and software.

5 (43) [Reserved.]

6 (44) "Goods" means all things that are movable when a security
7 interest attaches. The term includes (i) fixtures, (ii) standing timber that
8 is to be cut and removed under a conveyance or contract for sale, (iii) the
9 unborn young of animals, (iv) crops grown, growing, or to be grown, even if
10 the crops are produced on trees, vines, or bushes, and (v) manufactured
11 homes. The term also includes a computer program embedded in goods and any
12 supporting information provided in connection with a transaction relating to
13 the program if (i) the program is associated with the goods in such a manner
14 that it customarily is considered part of the goods, or (ii) by becoming the
15 owner of the goods, a person acquires a right to use the program in
16 connection with the goods. The term does not include a computer program
17 embedded in goods that consist solely of the medium in which the program is
18 embedded. The term also does not include accounts, chattel paper, commercial
19 tort claims, deposit accounts, documents, general intangibles, instruments,
20 investment property, letter-of-credit rights, letters of credit, money, or
21 oil, gas, or other minerals before extraction.

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

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

31 (47) "Instrument" means a negotiable instrument or any other
32 writing that evidences a right to the payment of a monetary obligation, is
33 not itself a security agreement or lease, and is of a type that in ordinary
34 course of business is transferred by delivery with any necessary indorsement
35 or assignment. The term does not include (i) investment property, (ii)
36 letters of credit, ~~or~~ (iii) writings that evidence a right to payment arising

1 out of the use of a credit or charge card or information contained on or for
2 use with the card, or (iv) writings that evidence chattel paper.

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

4 (A) are leased by a person as lessor;

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

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

8 or

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

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

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

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

22 (52) "Lien creditor" means:

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

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

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

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

30 (53) "Manufactured home" means a structure, transportable in one
31 (1) or more sections, which, in the traveling mode, is eight body feet or
32 more in width or 40 body feet or more in length, or, when erected on site, is
33 320 or more square feet, and which is built on a permanent chassis and
34 designed to be used as a dwelling with or without a permanent foundation when
35 connected to the required utilities, and includes the plumbing, heating, air-
36 conditioning, and electrical systems contained therein. The term includes any

1 structure that meets all of the requirements of this paragraph except the
2 size requirements and with respect to which the manufacturer voluntarily
3 files a certification required by the United States Secretary of Housing and
4 Urban Development and complies with the standards established under Title 42
5 of the United States Code.

6 (54) "Manufactured-home transaction" means a secured
7 transaction:

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

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

12 (54A) "Money" has the meaning in § 4-1-201(b)(24), but does not
13 include (i) a deposit account or (ii) money in an electronic form that cannot
14 be subjected to control under § 4-9-105A.

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

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

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

24 (58) "Noncash proceeds" means proceeds other than cash proceeds.

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

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

35 (61) "Payment intangible" means a general intangible under which
36 the account debtor's principal obligation is a monetary obligation. The term

1 includes a controllable payment intangible.

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

3 (A) the spouse of the individual;

4 (B) a brother, brother-in-law, sister, or sister-in-law of
5 the individual;

6 (C) an ancestor or lineal descendant of the individual or
7 the individual's spouse; or

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

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

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

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

17 (C) an officer or director of, or a person performing
18 similar functions with respect to, a person described in subparagraph (A);

19 (D) the spouse of an individual described in subparagraph
20 (A), (B), or (C); or

21 (E) an individual who is related by blood or marriage to
22 an individual described in subparagraph (A), (B), (C), or (D) and shares the
23 same home with the individual.

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

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

28 (B) whatever is collected on, or distributed on account
29 of, collateral;

30 (C) rights arising out of collateral;

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

34 (E) to the extent of the value of collateral and to the
35 extent payable to the debtor or the secured party, insurance payable by
36 reason of the loss or nonconformity of, defects or infringement of rights in,

1 or damage to, the collateral.

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

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

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

12 (A) debt securities are issued;

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

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

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

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

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

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

35 (69) "Pursuant to commitment", with respect to an advance made
36 or other value given by a secured party, means pursuant to the secured

1 party's obligation, whether or not a subsequent event of default or other
2 event not within the secured party's control has relieved or may relieve the
3 secured party from its obligation.

4 (70) [Repealed.]

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

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

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

17 (A) the obligor's obligation is secondary; or

18 (B) the obligor has a right of recourse with respect to an
19 obligation secured by collateral against the debtor, another obligor, or
20 property of either.

21 (74) "Secured party" means:

22 (A) a person in whose favor a security interest is created
23 or provided for under a security agreement, whether or not any obligation to
24 be secured is outstanding;

25 (B) a person that holds an agricultural lien;

26 (C) a consignor;

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

29 (E) a trustee, indenture trustee, agent, collateral agent,
30 or other representative in whose favor a security interest or agricultural
31 lien is created or provided for; or

32 (F) a person that holds a security interest arising under
33 § 4-2-401, § 4-2-505, § 4-2-711(3), § 4-2A-508(5), § 4-4-210, or § 4-5-118.

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

36 (76) ~~"Send", in connection with a record or notification, means:~~

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

5 ~~(B) to cause the record or notification to be received~~
6 ~~within the time that it would have been received if properly sent under~~
7 ~~subparagraph (A).~~ [Reserved.]

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

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

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

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

22 (80A) "Tangible money" means money in a tangible form.

23 (81) "Termination statement" means an amendment of a financing
24 statement which:

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

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

29 (82) "Transmitting utility" means a person primarily engaged in
30 the business of:

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

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

35 (C) transmitting goods by pipeline or sewer; or

36 (D) producing or transmitting electricity, steam, gas, or

1 water.

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

4 "Applicant". Section 4-5-102.

5 "Beneficiary". Section 4-5-102.

6 "Broker". Section 4-8-102.

7 "Certificated security". Section 4-8-102.

8 "Check". Section 4-3-104.

9 "Clearing corporation". Section 4-8-102.

10 "Contract for sale". Section 4-2-106.

11 "Controllable electronic record". Section 4-12-102.

12 "Customer". Section 4-4-104.

13 "Entitlement holder". Section 4-8-102.

14 "Financial asset". Section 4-8-102.

15 "Holder in due course". Section 4-3-302.

16 "Issuer" (with respect to a letter of credit or letter-of-credit
17 right). Section 4-5-102.

18 "Issuer" (with respect to a security). Section 4-8-201.

19 "Issuer" (with respect to documents of title). Section 4-7-102.

20 "Lease". Section 4-2A-103.

21 "Lease agreement". Section 4-2A-103.

22 "Lease contract". Section 4-2A-103.

23 "Leasehold interest". Section 4-2A-103.

24 "Lessee". Section 4-2A-103.

25 "Lessee in ordinary course of business". Section 4-2A-103.

26 "Lessor". Section 4-2A-103.

27 "Lessor's residual interest". Section 4-2A-103.

28 "Letter of credit". Section 4-5-102.

29 "Merchant". Section 4-2-104.

30 "Negotiable instrument". Section 4-3-104.

31 "Nominated person". Section 4-5-102.

32 "Note". Section 4-3-104.

33 "Proceeds of a letter of credit". Section 4-5-114.

34 "Protected purchaser". Section 4-8-303.

35 "Prove". Section 4-3-103.

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

1 "Sale". Section 4-2-106.

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

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

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

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

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

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

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

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

11
12 SECTION 46. Arkansas Code § 4-9-104(a), concerning the control of a
13 deposit account in the Uniform Commercial Code, is amended to read as
14 follows:

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

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

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

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

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

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

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

30
31 SECTION 47. Arkansas Code § 4-9-105 is amended to read as follows:

32 4-9-105. Control of electronic copy of record evidencing chattel
33 paper.

34 (a) A ~~secured party purchaser~~ purchaser has control of ~~electronic an~~
35 authoritative electronic copy of a record evidencing chattel paper if a
36 system employed for evidencing the ~~transfer~~ assignment of interests in the

1 chattel paper reliably establishes the ~~secured party~~ purchaser as the person
2 to which the ~~chattel paper~~ authoritative electronic copy was assigned.

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

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

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

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

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

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

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

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

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

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

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

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

33 (B) transfer control of the authoritative electronic copy.

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

36 (1) the authoritative electronic copy, a record attached to or

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

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

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

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

10 (2) the other person:

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

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

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

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

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

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

25
 26 SECTION 48. Arkansas Code Title 4, Chapter 9, Subchapter 1, is amended
 27 to add an additional section to read as follows:

28 4-9-105A. Control of electronic money.

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

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

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

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

36 (i) prevent others from availing themselves of

1 substantially all the benefit from the electronic money; and
 2 (ii) transfer control of the electronic money to
 3 another person or cause another person to obtain control of other electronic
 4 money as a result of the transfer of the electronic money; and

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

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

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

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

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

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

21 (2) the other person:

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

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

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

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

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

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

35
 36 SECTION 49. Arkansas Code Title 4, Chapter 9, Subchapter 1, is amended

1 to add additional sections to read as follows:

2 4-9-107A. Control of controllable electronic record, controllable
3 account, or controllable payment intangible.

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

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

10
11 4-9-107B. No requirement to acknowledge or confirm; No duties.

12 (a) A person that has control under § 4-9-104, § 4-9-105, or § 4-9-
13 105A is not required to acknowledge that it has control on behalf of another
14 person.

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

20
21 SECTION 50. Arkansas Code § 4-9-203(b), concerning the attachment and
22 enforceability of a security interest against a debtor and third parties in
23 the Uniform Commercial Code, is amended to read as follows:

24 (b) Except as otherwise provided in subsections (c) through (i), a
25 security interest is enforceable against the debtor and third parties with
26 respect to the collateral only if:

27 (1) value has been given;

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

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

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

34 (B) the collateral is not a certificated security and is
35 in the possession of the secured party under § 4-9-313 pursuant to the
36 debtor's security agreement;

1 (C) the collateral is a certificated security in
 2 registered form and the security certificate has been delivered to the
 3 secured party under § 4-8-301 pursuant to the debtor's security agreement; ~~or~~

4 (D) the collateral is controllable accounts, controllable
 5 electronic records, controllable payment intangibles, deposit accounts,
 6 electronic ~~chattel paper~~ documents, electronic money, investment property, or
 7 letter-of-credit rights, ~~or electronic documents,~~ and the secured party has
 8 control under § 4-7-106, § 4-9-104, ~~§ 4-9-105,~~ § 4-9-105A, § 4-9-106, ~~or~~ § 4-
 9 9-107, or § 4-9-107A pursuant to the debtor's security agreement; or

10 (E) the collateral is chattel paper and the secured party
 11 has possession and control under § 4-9-314A pursuant to the debtor's security
 12 agreement.

13
 14 SECTION 51. Arkansas Code § 4-9-204 is amended to read as follows:

15 4-9-204. After-acquired property – Future advances.

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

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

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

24 (2) a commercial tort claim.

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

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

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

30 or

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

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

1
2 SECTION 52. Arkansas Code § 4-9-207(c), concerning the rights of a
3 secured party having possession or control of collateral under the Uniform
4 Commercial Code, is amended to read as follows:

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

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

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

12 (3) may create a security interest in the collateral.
13

14 SECTION 53. Arkansas Code § 4-9-208(b), concerning the additional
15 duties of a secured party having control of collateral in the Uniform
16 Commercial Code, is amended to read as follows:

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

19 (1) a secured party having control of a deposit account under §
20 4-9-104(a)(2) shall send to the bank with which the deposit account is
21 maintained ~~an authenticated statement~~ a signed record that releases the bank
22 from any further obligation to comply with instructions originated by the
23 secured party;

24 (2) a secured party having control of a deposit account under §
25 4-9-104(a)(3) shall:

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

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

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

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

34 ~~(B) if the debtor designates a custodian that is the~~
35 ~~designated custodian with which the authoritative copy of the electronic~~
36 ~~chattel paper is maintained for the secured party, communicate to the~~

1 ~~eustodian an authenticated record releasing the designated custodian from any~~
2 ~~further obligation to comply with instructions originated by the secured~~
3 ~~party and instructing the custodian to comply with instructions originated by~~
4 ~~the debtor; and~~

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

11 (4) a secured party having control of investment property under
12 § 4-8-106(d)(2) or § 4-9-106(b) shall send to the securities intermediary or
13 commodity intermediary with which the security entitlement or commodity
14 contract is maintained ~~an authenticated~~ a signed record that releases the
15 securities intermediary or commodity intermediary from any further obligation
16 to comply with entitlement orders or directions originated by the secured
17 party;

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

23 (6) a secured party having control under § 4-7-106 of an
24 authoritative electronic copy of an electronic document shall ~~transfer~~
25 control of the electronic copy to the debtor or a person designated by the
26 debtor;

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

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

36 ~~(C) take appropriate action to enable the debtor or its~~

1 ~~designated custodian to make copies of or revisions to the authoritative copy~~
 2 ~~which add or change an identified assignee of the authoritative copy without~~
 3 ~~the consent of the secured party~~

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

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

12
 13 SECTION 54. Arkansas Code § 4-9-209(b), concerning the duties of a
 14 secured party if an account debtor has been notified of an assignment in the
 15 Uniform Commercial Code, is amended to read as follows:

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

22
 23 SECTION 55. Arkansas Code § 4-9-210 is amended to read as follows:

24 4-9-210. Request for accounting – Request regarding list of collateral
 25 or statement of account.

26 (a) In this section:

27 (1) “Request” means a record of a type described in paragraph
 28 (2), (3), or (4).

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

33 (3) “Request regarding a list of collateral” means a record
 34 ~~authenticated~~ signed by a debtor requesting that the recipient approve or
 35 correct a list of what the debtor believes to be the collateral securing an
 36 obligation and reasonably identifying the transaction or relationship that is

1 the subject of the request.

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

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

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

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

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

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

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

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

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

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

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

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

8
9 SECTION 56. Arkansas Code § 4-9-301 is amended to read as follows:

10 4-9-301. Law governing perfection and priority of security interests.

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

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

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

23 (3) Except as otherwise provided in paragraph (4) of this
24 section, while tangible negotiable documents, goods, instruments, or tangible
25 ~~money, or tangible chattel paper~~ is located in a jurisdiction, the local law
26 of that jurisdiction governs:

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

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

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

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

1
2 SECTION 57. Arkansas Code § 4-9-304(a), concerning the law governing
3 perfection and priority of security interests in deposit accounts in the
4 Uniform Commercial Code, is amended to read as follows:

5 (a) The local law of a bank's jurisdiction governs perfection, the
6 effect of perfection or nonperfection, and the priority of a security
7 interest in a deposit account maintained with that bank even if the
8 transaction does not bear any relation to the bank's jurisdiction.
9

10 SECTION 58. Arkansas Code § 4-9-305(a), concerning the law governing
11 perfection and priority of security interests in investment property in the
12 Uniform Commercial Code, is amended to add an additional subdivision to read
13 as follows:

14 (5) Paragraphs (2), (3), and (4) apply even if the transaction
15 does not bear any relation to the jurisdiction.
16

17 SECTION 59. Arkansas Code Title 4, Chapter 9, Subchapter 3, is amended
18 to add additional sections to read as follows:

19 4-9-306A. Law governing perfection and priority of security
20 interests in chattel paper.

21 (a) Except as provided in subsection (d), if chattel paper is
22 evidenced only by an authoritative electronic copy of the chattel paper or is
23 evidenced by an authoritative electronic copy and an authoritative tangible
24 copy, the local law of the chattel paper's jurisdiction governs perfection,
25 the effect of perfection or nonperfection, and the priority of a security
26 interest in the chattel paper, even if the transaction does not bear any
27 relation to the chattel paper's jurisdiction.

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

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

36 (2) If paragraph (1) does not apply and the rules of the system

1 in which the authoritative electronic copy is recorded are readily available
2 for review and expressly provide that a particular jurisdiction is the
3 chattel paper's jurisdiction for purposes of this part, this chapter, or the
4 Uniform Commercial Code, that jurisdiction is the chattel paper's
5 jurisdiction.

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

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

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

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

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

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

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

29
30 4-9-306B. Law governing perfection and priority of security
31 interests in controllable accounts, controllable electronic records, and
32 controllable payment intangibles.

33 (a) Except as provided in subsection (b), the local law of the
34 controllable electronic record's jurisdiction specified in § 4-12-107(c) and
35 (d) governs perfection, the effect of perfection or nonperfection, and the
36 priority of a security interest in a controllable electronic record and a

1 security interest in a controllable account or controllable payment
 2 intangible evidenced by the controllable electronic record.

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

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

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

11
 12 SECTION 60. Arkansas Code § 4-9-310(b), concerning when the filing of
 13 a financing statement is not a requirement to perfect a security interest in
 14 the Uniform Commercial Code, is amended to read as follows:

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

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

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

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

21 (4) in goods in possession of a bailee which is perfected under
 22 § 4-9-312(d)(1) or (2);

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

26 (6) in collateral in the secured party's possession under § 4-9-
 27 313;

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

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

34 (8.1) in chattel paper which is perfected by possession and
 35 control under § 4-9-314A;

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

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

2
3 SECTION 61. Arkansas Code § 4-9-312 is amended to read as follows:

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

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

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

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

17 (2) and except as otherwise provided in § 4-9-308(d), a security
18 interest in a letter-of-credit right may be perfected only by control under §
19 4-9-314; ~~and~~

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

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

24 (c) While goods are in the possession of a bailee that has issued a
25 negotiable document covering the goods:

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

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

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

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

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

1 (3) filing as to the goods.

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

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

12 (1) ultimate sale or exchange; or

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

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

20 (1) ultimate sale or exchange; or

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

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

25
26 SECTION 62. Arkansas Code § 4-9-313(a), concerning when possession by
27 or delivery to a secured party perfects a security interest without filing in
28 the Uniform Commercial Code, is amended to read as follows:

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

35
36 SECTION 63. Arkansas Code § 4-9-313(c), concerning when a secured

1 party takes possession of collateral in the Uniform Commercial Code, is
2 amended to read as follows:

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

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

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

14

15 SECTION 64. Arkansas Code § 4-9-313(d), concerning the timeline of
16 perfection of a security interests dependent upon possession in the Uniform
17 Commercial Code, is amended to read as follows:

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

22

23 SECTION 65. Arkansas Code § 4-9-314 is amended to read as follows:
24 4-9-314. Perfection by control.

25 (a) A security interest in ~~investment property, deposit accounts,~~
26 ~~letter-of-credit rights,~~ virtual currencies, ~~electronic chattel paper, or~~
27 ~~electronic documents~~ controllable accounts, controllable electronic records,
28 controllable payment intangibles, deposit accounts, electronic documents,
29 electronic money, investment property, or letter-of-credit rights may be
30 perfected by control of the collateral under § 4-7-106, § 4-9-104, ~~§ 4-9-105~~
31 § 4-9-105A, § 4-9-106, ~~or~~ § 4-9-107, or § 4-9-107A.

32 (b) A security interest in ~~deposit accounts, electronic chattel paper,~~
33 virtual currencies, ~~letter-of-credit rights, or electronic documents~~
34 controllable accounts, controllable electronic records, controllable payment
35 intangibles, deposit accounts, electronic documents, electronic money, or
36 letter-of-credit rights is perfected by control under § 4-7-106, § 4-9-104, §

1 ~~4-9-105~~ § 4-9-105A, § 4-9-106, ~~or~~ § 4-9-107, or § 4-9-107A when not earlier
 2 than the time the secured party obtains control and remains perfected by
 3 control only while the secured party retains control.

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

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

8 (2) one of the following occurs:

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

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

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

15
 16 SECTION 66. Arkansas Code Title 4, Chapter 9, Subchapter 3, is amended
 17 to add an additional section to read as follows:

18 4-9-314A. Perfection by possession and control of chattel paper.

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

23 (b) A security interest is perfected under subsection (a) not earlier
 24 than the time the secured party takes possession and obtains control and
 25 remains perfected under subsection (a) only while the secured party retains
 26 possession and control.

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

30
 31 SECTION 67. Arkansas Code § 4-9-316(a), concerning the effect of
 32 change in governing law in the Uniform Commercial Code, is amended to read
 33 as follows:

34 (a) A security interest perfected pursuant to the law of the
 35 jurisdiction designated in § 4-9-301(1), ~~or~~ § 4-9-305(c), § 4-9-306A(d), or §
 36 4-9-306B(b) remains perfected until the earliest of:

1 (1) the time perfection would have ceased under the law of that
2 jurisdiction;

3 (2) the expiration of four (4) months after a change of the
4 debtor's location to another jurisdiction; or

5 (3) the expiration of one (1) year after a transfer of
6 collateral to a person that thereby becomes a debtor and is located in
7 another jurisdiction.
8

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

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

20 (1) the time the security interest would have become unperfected
21 under the law of that jurisdiction; or

22 (2) the expiration of four (4) months after a change of the
23 applicable jurisdiction to another jurisdiction.
24

25 SECTION 69. Arkansas Code § 4-9-317 is amended to read as follows:

26 4-9-317. Interests that take priority over or take free of security
27 interest or agricultural lien.

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

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

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

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

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

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

7 (c) Except as otherwise provided in subsection (e), a lessee of goods
8 takes free of a security interest or agricultural lien if the lessee gives
9 value and receives delivery of the collateral without knowledge of the
10 security interest or agricultural lien and before it is perfected.

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

17 (e) Except as otherwise provided in §§ 4-9-320 and 4-9-321, if a
18 person files a financing statement with respect to a purchase-money security
19 interest before or within twenty (20) days after the debtor receives delivery
20 of the collateral, the security interest takes priority over the rights of a
21 buyer, lessee, or lien creditor which arise between the time the security
22 interest attaches and the time of filing.

23 (f) A buyer, other than a secured party, of chattel paper takes free
24 of a security interest if, without knowledge of the security interest and
25 before it is perfected, the buyer gives value and:

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

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

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

36 (h) A buyer of a controllable electronic record takes free of a

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

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

9
10 SECTION 70. Arkansas Code § 4-9-323(d), concerning future advances in
11 the Uniform Commercial Code, is amended to read as follows:

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

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

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

18
19 SECTION 71. Arkansas Code § 4-9-323(f), concerning future advances in
20 the Uniform Commercial Code, is amended to read as follows:

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

25 (1) the time the secured party acquires knowledge of the lease;
26 or

27 (2) forty-five (45) days after the lease contract becomes
28 enforceable.

29
30 SECTION 72. Arkansas Code § 4-9-324(b), concerning the priority of
31 purchase-money security interests in the Uniform Commercial Code, is amended
32 to read as follows:

33 (b) Subject to subsection (c) and except as otherwise provided in
34 subsection (g), a perfected purchase-money security interest in inventory has
35 priority over a conflicting security interest in the same inventory, has
36 priority over a conflicting security interest in chattel paper or an

1 instrument constituting proceeds of the inventory and in proceeds of the
2 chattel paper, if so provided in § 4-9-330, and, except as otherwise provided
3 in § 4-9-327, also has priority in identifiable cash proceeds of the
4 inventory to the extent the identifiable cash proceeds are received on or
5 before the delivery of the inventory to a buyer, if:

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

8 (2) the purchase-money secured party sends ~~an authenticated~~ a
9 signed notification to the holder of the conflicting security interest;

10 (3) the holder of the conflicting security interest receives the
11 notification within five (5) years before the debtor receives possession of
12 the inventory; and

13 (4) the notification states that the person sending the
14 notification has or expects to acquire a purchase-money security interest in
15 inventory of the debtor and describes the inventory.

16
17 SECTION 73. Arkansas Code § 4-9-324(d), concerning the priority of
18 purchase-money security interests in the Uniform Commercial Code, is amended
19 to read as follows:

20 (d) Subject to subsection (e) and except as otherwise provided in
21 subsection (g), a perfected purchase-money security interest in livestock
22 that are farm products has priority over a conflicting security interest in
23 the same livestock, and, except as otherwise provided in § 4-9-327, a
24 perfected security interest in their identifiable proceeds and identifiable
25 products in their unmanufactured states also has priority, if:

26 (1) the purchase-money security interest is perfected when the
27 debtor receives possession of the livestock;

28 (2) the purchase-money secured party sends ~~an authenticated~~ a
29 signed notification to the holder of the conflicting security interest;

30 (3) the holder of the conflicting security interest receives the
31 notification within six months before the debtor receives possession of the
32 livestock; and

33 (4) the notification states that the person sending the
34 notification has or expects to acquire a purchase-money security interest in
35 livestock of the debtor and describes the livestock.

36

1 SECTION 74. Arkansas Code Title 4, Chapter 9, Subchapter 3, is amended
2 to add an additional section to read as follows:

3 4-9-326A. Priority of security interest in controllable account,
4 controllable electronic record, and controllable payment intangible.

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

10
11 SECTION 75. Arkansas Code § 4-9-330 is amended to read as follows:

12 4-9-330. Priority of purchaser of chattel paper or instrument.

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

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

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

24 (b) A purchaser of chattel paper has priority over a security interest
25 in the chattel paper which is claimed other than merely as proceeds of
26 inventory subject to a security interest if the purchaser gives new value,
27 ~~and~~ takes possession of each authoritative tangible copy of the record
28 evidencing the chattel paper, ~~or~~ and obtains control ~~of~~ under § 4-9-105 of
29 each authoritative electronic copy of the record evidencing the chattel paper
30 under ~~§ 4-9-105~~ in good faith, in the ordinary course of the purchaser's
31 business, and without knowledge that the purchase violates the rights of the
32 secured party.

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

36 (1) § 4-9-322 provides for priority in the proceeds; or

1 (2) the proceeds consist of the specific goods covered by the
2 chattel paper or cash proceeds of the specific goods, even if the purchaser's
3 security interest in the proceeds is unperfected.

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

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

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

18
19 SECTION 76 Arkansas Code § 4-9-331 is amended to read as follows:

20 4-9-331. Priority of rights of purchasers of ~~instruments~~ controllable
21 accounts, controllable electronic records, controllable payment intangibles,
22 documents, instruments, and securities, and virtual currencies under other
23 chapters – Priority of interests in financial assets and security
24 entitlements and protection against assertion of claim under Chapter 8, and
25 ~~virtual currencies under Chapter 11~~ Chapter 12.

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

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

1 (c) Filing under this chapter does not constitute notice of a claim or
2 defense to the holders, or purchasers, or persons described in subsections
3 (a) and (b).
4

5 SECTION 77. Arkansas Code § 4-9-332 is amended to read as follows:

6 4-9-332. Transfer of money – Transfer of funds from deposit account.

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

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

15 (c) A transferee of electronic money takes the money free of a
16 security interest if the transferee obtains control of the money without
17 acting in collusion with the debtor in violating the rights of the secured
18 party.
19

20 SECTION 78. Arkansas Code § 4-9-334(f), concerning the priority of
21 security interests in fixtures and crops in the Uniform Commercial Code, is
22 amended to read as follows:

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

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

29 (2) the debtor has a right to remove the goods as against the
30 encumbrancer or owner.
31

32 SECTION 79. Arkansas Code § 4-9-341 is amended to read as follows:

33 4-9-341. Bank's rights and duties with respect to deposit account.

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

1 terminated, suspended, or modified by:

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

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

5 (3) the bank's receipt of instructions from the secured party.
6

7 SECTION 80. Arkansas Code § 4-9-404(a), concerning the rights acquired
8 by an assignee in the Uniform Commercial Code, is amended to read as follows:

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

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

15 (2) any other defense or claim of the account debtor against the
16 assignor which accrues before the account debtor receives a notification of
17 the assignment ~~authenticated~~ signed by the assignor or the assignee.
18

19 SECTION 81. Arkansas Code § 4-9-406 is amended to read as follows:

20 4-9-406. Discharge of account debtor – Notification of assignment –
21 Identification and proof of assignment – Restrictions on assignment of
22 accounts, chattel paper, payment intangibles, and promissory notes
23 ineffective.

24 (a) Subject to subsections (b)-(i) and (k), an account debtor on an
25 account, chattel paper, or a payment intangible may discharge its obligation
26 by paying the assignor until, but not after, the account debtor receives a
27 notification, ~~authenticated~~ signed by the assignor or the assignee, that the
28 amount due or to become due has been assigned and that payment is to be made
29 to the assignee. After receipt of the notification, the account debtor may
30 discharge its obligation by paying the assignee and may not discharge the
31 obligation by paying the assignor.

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

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

35 (2) to the extent that an agreement between an account debtor
36 and a seller of a payment intangible limits the account debtor's duty to pay

1 a person other than the seller and the limitation is effective under law
2 other than this chapter; or

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

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

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

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

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

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

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

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

31 (e) Subsection (d) does not apply to the sale of a payment intangible
32 or promissory note, other than a sale pursuant to a disposition under § 4-9-
33 610 or an acceptance of collateral under § 4-9-620.

34 (f) Except as otherwise provided in §§ 4-2A-303 and 4-9-407 and
35 subject to subsections (h) and (i), a rule of law, statute, or regulation
36 that prohibits, restricts, or requires the consent of a government,

1 governmental body or official, or account debtor to the assignment or
2 transfer of, or creation of a security interest in, an account or chattel
3 paper is ineffective to the extent that the rule of law, statute, or
4 regulation:

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

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

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

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

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

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

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

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

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

36 (k) Subsections (a), (b), (c), and (g) do not apply to a controllable

1 account or controllable payment intangible.

2
3 SECTION 82. Arkansas Code § 4-9-408, concerning restrictions on
4 assignment of promissory notes, health-care-insurance receivables, and
5 certain general intangibles ineffective in the Uniform Commercial Code, is
6 amended to add an additional subsection to read as follows:

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

9
10 SECTION 83. Arkansas Code § 4-9-509(a) and (b), concerning persons
11 entitled to file a record under the Uniform Commercial Code, are amended to
12 read as follows:

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

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

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

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

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

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

27
28 SECTION 84. Arkansas Code § 4-9-513(b) and (c), concerning the
29 termination statement under the Uniform Commercial Code, are amended to read
30 as follows:

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

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

36 (2) if earlier, within twenty (20) days after the secured party

1 receives ~~an authenticated~~ a signed demand from a debtor.

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

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

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

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

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

20

21 SECTION 85. Arkansas Code § 4-9-601(b), concerning the rights and
22 duties of a secured party in the Uniform Commercial Code, is amended to read
23 as follows:

24 (b) A secured party in possession of collateral or control of
25 collateral under § 4-7-106, § 4-9-104, § 4-9-105, § 4-9-105A, § 4-9-106, ~~or §~~
26 4-9-107, or § 4-9-107A has the rights and duties provided in § 4-9-207.

27

28 SECTION 86. Arkansas Code § 4-9-605 is amended to read as follows:

29 4-9-605. Unknown debtor or secondary obligor.

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

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

34 (A) that the person is a debtor or obligor;

35 (B) the identity of the person; and

36 (C) how to communicate with the person; or

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

3 (A) that the person is a debtor; and

4 (B) the identity of the person.

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

10 (1) the person is a debtor or obligor; and

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

15
16 SECTION 87. Arkansas Code § 4-9-608(a)(1), concerning the application
17 of proceeds of collection or enforcement under the Uniform Commercial Code,
18 is amended to read as follows:

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

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

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

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

33
34 SECTION 88. Arkansas Code § 4-9-611 is amended to read as follows:

35 4-9-611. Notification before disposition of collateral.

36 (a) In this section, "notification date" means the earlier of the date

1 on which:

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

4 (2) the debtor and any secondary obligor waive the right to
5 notification.

6 (b) Except as otherwise provided in subsection (d), a secured party
7 that disposes of collateral under § 4-9-610 shall send to the persons
8 specified in subsection (c) a reasonable ~~authenticated~~ signed notification of
9 disposition.

10 (c) To comply with subsection (b), the secured party shall send ~~an~~
11 ~~authenticated~~ a signed notification of disposition to:

12 (1) the debtor;

13 (2) any secondary obligor; and

14 (3) if the collateral is other than consumer goods:

15 (A) any other person from which the secured party has
16 received, before the notification date, ~~an authenticated~~ a signed
17 notification of a claim of an interest in the collateral;

18 (B) any other secured party or lienholder that, ten (10)
19 days before the notification date, held a security interest in or other lien
20 on the collateral perfected by the filing of a financing statement that:

21 (i) identified the collateral;

22 (ii) was indexed under the debtor's name as of that
23 date; and

24 (iii) was filed in the office in which to file a
25 financing statement against the debtor covering the collateral as of that
26 date; and

27 (C) any other secured party that, ten (10) days before the
28 notification date, held a security interest in the collateral perfected by
29 compliance with a statute, regulation, or treaty described in § 4-9-311(a).

30 (d) Subsection (b) does not apply if the collateral is perishable or
31 threatens to decline speedily in value or is of a type customarily sold on a
32 recognized market.

33 (e) A secured party complies with the requirement for notification
34 prescribed by subdivision (c)(3)(B) if:

35 (1) not later than twenty (20) days or earlier than thirty (30)
36 days before the notification date, the secured party requests, in a

1 commercially reasonable manner, information concerning financing statements
2 indexed under the debtor's name in the office indicated in subdivision
3 (c)(3)(B); and

4 (2) before the notification date, the secured party:

5 (A) did not receive a response to the request for
6 information; or

7 (B) received a response to the request for information and
8 sent ~~an authenticated~~ a signed notification of disposition to each secured
9 party or other lienholder named in that response whose financing statement
10 covered the collateral.

11
12 SECTION 89. Arkansas Code § 4-9-613 is amended to read as follows:

13 4-9-613. Contents and form of notification before disposition of
14 collateral: General.

15 (a) Except in a consumer-goods transaction, the following rules apply:

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

18 (A) describes the debtor and the secured party;

19 (B) describes the collateral that is the subject of the
20 intended disposition;

21 (C) states the method of intended disposition;

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

24 (E) states the time and place of a public disposition or
25 the time after which any other disposition is to be made.

26 (2) Whether the contents of a notification that lacks any of the
27 information specified in paragraph (1) are nevertheless sufficient is a
28 question of fact.

29 (3) The contents of a notification providing substantially the
30 information specified in paragraph (1) are sufficient, even if the
31 notification includes:

32 (A) information not specified by that paragraph; or

33 (B) minor errors that are not seriously misleading.

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

35 (5) The following form of notification and the form appearing in
36 ~~§ 4-9-614(3)~~ § 4-9-614(a)(3), when completed in accordance with the

1 instructions in subsection (b) and § 4-9-614(b), each provides sufficient
 2 information:

3 NOTIFICATION OF DISPOSITION OF COLLATERAL

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

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

8 {1} Name of any Debtor(s) debtor that is not an addressee: {Include
 9 only if debtor(s) are not an addressee} (Name of each debtor)

10 {2} We will sell (describe collateral)(to the highest qualified
 11 bidder) at public sale. A sale could include a lease or license. The sale
 12 will be held as follows:

13 ~~{For a public disposition:}~~

14 ~~We will sell {or lease or license, as applicable} the {describe collateral}~~
 15 ~~{to the highest qualified bidder} in public as follows:~~

16 ~~Day and (Date)+~~

17 ~~(Time)+~~

18 ~~(Place)+~~

19 ~~{For a private disposition:}~~

20 {3} We will sell {or lease or license, as applicable} the {(describe
 21 collateral)} privately at private sale sometime after {day and (date)}. A
 22 sale could include a lease or license.

23 {4} You are entitled to an accounting of the unpaid indebtedness
 24 secured by the property that we intend to sell {or lease or license, as
 25 applicable} {for a charge of \$ } or, as applicable, lease or license.

26 {5} If you request an accounting you must pay a charge of \$ (amount).

27 {6} You may request an accounting by calling us at {telephone number}
 28 (telephone number).

29 [End of Form]

30 (b) The following instructions apply to the form of notification in
 31 subsection (a)(5):

32 (1) The instructions in this subsection refer to the numbers in
 33 braces before items in the form of notification in subsection (a)(5). Do not
 34 include the numbers or braces in the notification. The numbers and braces are
 35 used only for the purpose of these instructions.

36 (2) Include and complete item {1} only if there is a debtor that

1 is not an addressee of the notification and list the name or names.

2 (3) Include and complete either item {2}, if the notification
 3 relates to a public disposition of the collateral, or item {3}, if the
 4 notification relates to a private disposition of the collateral. If item {2}
 5 is included, include the words "to the highest qualified bidder" only if
 6 applicable.

7 (4) Include and complete items {4} and {6}.

8 (5) Include and complete item {5} only if the sender will charge
 9 the recipient for an accounting.

10

11 SECTION 90. Arkansas Code § 4-9-614 is amended to read as follows:

12 4-9-614. Contents and form of notification before disposition of
 13 collateral: Consumer-goods transaction.

14 (a) In a consumer-goods transaction, the following rules apply:

15 (1) A notification of disposition must provide the following
 16 information:

17 (A) the information specified in ~~§ 4-9-613(1)~~ § 4-9-
 18 613(a)(1);

19 (B) a description of any liability for a deficiency of the
 20 person to which the notification is sent;

21 (C) a telephone number from which the amount that must be
 22 paid to the secured party to redeem the collateral under § 4-9-623 is
 23 available; and

24 (D) a telephone number or mailing address from which
 25 additional information concerning the disposition and the obligation secured
 26 is available.

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

28 (3) The following form of notification, when completed in
 29 accordance with the instructions in subsection (b), provides sufficient
 30 information:

31 {(Name and address of secured party)}

32 {(Date)}

33 NOTICE OF OUR PLAN TO SELL PROPERTY

34 {(Name and address of any obligor who is also a debtor)}

35 Subject: {~~Identification of Transaction~~ (Identity
 36 transaction)}

1 We have your ~~+(describe collateral)+~~, because you broke promises in our
2 agreement.

3 ~~{For a public disposition:}~~

4 {1} We will sell ~~+(describe collateral)+~~ at public sale. A sale could
5 include a lease or license. The sale will be held as follows:

6 (Date+)

7 (Time+)

8 (Place+)

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

10 ~~{For a private disposition:}~~

11 {2} We will sell ~~+(describe collateral)+~~ at private sale sometime
12 after ~~+(date)+~~. A sale could include a lease or license.

13 {3} The money that we get from the sale, ~~(after paying our costs),~~
14 will reduce the amount you owe. If we get less money than you owe, you ~~+(will~~
15 ~~or will not, as applicable)+~~ still owe us the difference. If we get more
16 money than you owe, you will get the extra money, unless we must pay it to
17 someone else.

18 {4} You can get the property back at any time before we sell it by
19 paying us the full amount you owe, ~~(not just the past due payments),~~
20 including our expenses. To learn the exact amount you must pay, call us at
21 ~~+(telephone number)+~~.

22 {5} If you want us to explain to you in (writing)(writing or in
23 (description of electronic record))(description of electronic record) how we
24 have figured the amount that you owe us, ~~you may~~ {6} call us at ~~+(telephone~~
25 ~~number)+~~~~+(or)(write us at +(secured party's address+))~~ (or contact us by
26 (description of electronic communication method)) {7} and request (a written
27 explanation)(a written explanation or an explanation in (description of
28 electronic record))(an explanation in (description of electronic record)).

29 {8} ~~+(We will charge you \$ (amount) for the explanation if we sent you~~
30 ~~another written explanation of the amount you owe us within the last six~~
31 ~~months.+)~~

32 {9} If you need more information about the sale (call us at
33 +(telephone number+)) +(or)(write us at +(secured party's address+)) (or
34 contact us by (description of electronic communication method)).

35 {10} We are sending this notice to the following other people who have
36 an interest in ~~+(describe collateral)+~~ or who owe money under your agreement:

1 ~~{(Names of all other debtors and obligors, if any)}~~

2 [End of Form]

3 ~~(4) A notification in the form of paragraph (3) is sufficient,~~
4 ~~even if additional information appears at the end of the form.~~

5 ~~(5) A notification in the form of paragraph (3) is sufficient,~~
6 ~~even if it includes errors in information not required by paragraph (1),~~
7 ~~unless the error is misleading with respect to rights arising under this~~
8 ~~chapter.~~

9 ~~(6) If a notification under this section is not in the form of~~
10 ~~paragraph (3), law other than this chapter determines the effect of including~~
11 ~~information not required by paragraph (1).~~

12 (b) The following instructions apply to the form of notification in
13 subsection (a)(3):

14 (1) The instructions in this subsection refer to the numbers in
15 braces before items in the form of notification in subsection (a)(3). Do not
16 include the numbers or braces in the notification. The numbers and braces are
17 used only for the purpose of these instructions.

18 (2) Include and complete either item {1}, if the notification
19 relates to a public disposition of the collateral, or item {2}, if the
20 notification relates to a private disposition of the collateral.

21 (3) Include and complete items {3}, {4}, {5}, {6}, and {7}.

22 (4) In item {5}, include and complete any one of the three
23 alternative methods for the explanation—writing, writing or electronic
24 record, or electronic record.

25 (5) In item {6}, include the telephone number. In addition, the
26 sender may include and complete either or both of the two additional
27 alternative methods of communication—writing or electronic communication—for
28 the recipient of the notification to communicate with the sender. Neither of
29 the two additional methods of communication is required to be included.

30 (6) In item {7}, include and complete the method or methods for
31 the explanation—writing, writing or electronic record, or electronic record—
32 included in item {5}.

33 (7) Include and complete item {8} only if a written explanation
34 is included in item {5} as a method for communicating the explanation and the
35 sender will charge the recipient for another written explanation.

36 (8) In item {9}, include either the telephone number or the

1 address or both the telephone number and the address. In addition, the sender
 2 may include and complete the additional method of communication—electronic
 3 communication—for the recipient of the notification to communicate with the
 4 sender. The additional method of electronic communication is not required to
 5 be included.

6 (9) If item {10} does not apply, insert “None” after
 7 “agreement:”.

8
 9 SECTION 91. Arkansas Code § 4-9-615(a), concerning an application of
 10 proceeds of disposition under the Uniform Commercial Code, is amended to read
 11 as follows:

12 (a) A secured party shall apply or pay over for application the cash
 13 proceeds of disposition under § 4-9-610 in the following order to:

14 (1) the reasonable expenses of retaking, holding, preparing for
 15 disposition, processing, and disposing, and, to the extent provided for by
 16 agreement and not prohibited by law, reasonable attorney’s fees and legal
 17 expenses incurred by the secured party;

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

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

22 (A) the secured party receives from the holder of the
 23 subordinate security interest or other lien ~~an authenticated~~ a signed demand
 24 for proceeds before distribution of the proceeds is completed; and

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

28 (4) a secured party that is a consignor of the collateral if the
 29 secured party receives from the consignor ~~an authenticated~~ a signed demand
 30 for proceeds before distribution of the proceeds is completed.

31
 32 SECTION 92. Arkansas Code § 4-9-616(a)-(c), concerning the explanation
 33 of calculation of surplus or deficiency, are amended to read as follows:

34 (a) In this section:

35 (1) “Explanation” means a ~~writing~~ record that:

36 (A) states the amount of the surplus or deficiency;

1 (B) provides an explanation in accordance with subsection
2 (c) of how the secured party calculated the surplus or deficiency;

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

6 (D) provides a telephone number or mailing address from
7 which additional information concerning the transaction is available.

8 (2) "Request" means a record:

9 (A) ~~authenticated~~ signed by a debtor or consumer obligor;

10 (B) requesting that the recipient provide an explanation;
11 and

12 (C) sent after disposition of the collateral under § 4-9-
13 610.

14 (b) In a consumer-goods transaction in which the debtor is entitled to
15 a surplus or a consumer obligor is liable for a deficiency under § 4-9-615,
16 the secured party shall:

17 (1) send an explanation to the debtor or consumer obligor, as
18 applicable, after the disposition and:

19 (A) before or when the secured party accounts to the
20 debtor and pays any surplus or first makes ~~written~~ demand in a record on the
21 consumer obligor after the disposition for payment of the deficiency; and

22 (B) within fourteen (14) days after receipt of a request;
23 or

24 (2) in the case of a consumer obligor who is liable for a
25 deficiency, within fourteen (14) days after receipt of a request, send to the
26 consumer obligor a record waiving the secured party's right to a deficiency.

27 (c) To comply with subsection (a)(1)(B), ~~a writing~~ an explanation must
28 provide the following information in the following order:

29 (1) the aggregate amount of obligations secured by the security
30 interest under which the disposition was made, and, if the amount reflects a
31 rebate of unearned interest or credit service charge, an indication of that
32 fact, calculated as of a specified date:

33 (A) if the secured party takes or receives possession of
34 the collateral after default, not more than thirty-five (35) days before the
35 secured party takes or receives possession; or

36 (B) if the secured party takes or receives possession of

1 the collateral before default or does not take possession of the collateral,
2 not more than thirty-five (35) days before the disposition;

3 (2) the amount of proceeds of the disposition;

4 (3) the aggregate amount of the obligations after deducting the
5 amount of proceeds;

6 (4) the amount, in the aggregate or by type, and types of
7 expenses, including expenses of retaking, holding, preparing for disposition,
8 processing, and disposing of the collateral, and attorney's fees secured by
9 the collateral which are known to the secured party and relate to the current
10 disposition;

11 (5) the amount, in the aggregate or by type, and types of
12 credits, including rebates of interest or credit service charges, to which
13 the obligor is known to be entitled and which are not reflected in the amount
14 in paragraph (1); and

15 (6) the amount of the surplus or deficiency.
16

17 SECTION 93. Arkansas Code § 4-9-619(a), concerning the transfer of
18 record or legal title under the Uniform Commercial Code, is amended to read
19 as follows:

20 (a) In this section, "transfer statement" means a record ~~authenticated~~
21 signed by a secured party stating:

22 (1) that the debtor has defaulted in connection with an
23 obligation secured by specified collateral;

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

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

28 (4) the name and mailing address of the secured party, debtor,
29 and transferee.
30

31 SECTION 94. Arkansas Code § 4-9-620 is amended to read as follows:

32 4-9-620. Acceptance of collateral in full or partial satisfaction of
33 obligation – Compulsory disposition of collateral.

34 (a) Except as otherwise provided in subsection (g), a secured party
35 may accept collateral in full or partial satisfaction of the obligation it
36 secures only if:

1 (1) the debtor consents to the acceptance under subsection (c);

2 (2) the secured party does not receive, within the time set
3 forth in subsection (d), a notification of objection to the proposal
4 ~~authenticated~~ signed by:

5 (A) a person to which the secured party was required to
6 send a proposal under § 4-9-621; or

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

10 (3) if the collateral is consumer goods, the collateral is not
11 in the possession of the debtor when the debtor consents to the acceptance;
12 and

13 (4) subsection (e) does not require the secured party to dispose
14 of the collateral or the debtor waives the requirement pursuant to § 4-9-624.

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

17 (1) the secured party consents to the acceptance in ~~an~~
18 ~~authenticated~~ a signed record or sends a proposal to the debtor; and

19 (2) the conditions of subsection (a) are met.

20 (c) For purposes of this section:

21 (1) a debtor consents to an acceptance of collateral in partial
22 satisfaction of the obligation it secures only if the debtor agrees to the
23 terms of the acceptance in a record ~~authenticated~~ signed after default; and

24 (2) a debtor consents to an acceptance of collateral in full
25 satisfaction of the obligation it secures only if the debtor agrees to the
26 terms of the acceptance in a record ~~authenticated~~ signed after default or the
27 secured party:

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

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

33 (C) does not receive a notification of objection
34 ~~authenticated~~ signed by the debtor within twenty (20) days after the proposal
35 is sent.

36 (d) To be effective under subsection (a)(2), a notification of

1 objection must be received by the secured party:

2 (1) in the case of a person to which the proposal was sent
3 pursuant to § 4-9-621, within twenty (20) days after notification was sent to
4 that person; and

5 (2) in other cases:

6 (A) within twenty (20) days after the last notification
7 was sent pursuant to § 4-9-621; or

8 (B) if a notification was not sent, before the debtor
9 consents to the acceptance under subsection (c).

10 (e) A secured party that has taken possession of collateral shall
11 dispose of the collateral pursuant to § 4-9-610 within the time specified in
12 subsection (f) if:

13 (1) sixty percent (60%) of the cash price has been paid in the
14 case of a purchase-money security interest in consumer goods; or

15 (2) sixty percent (60%) of the principal amount of the
16 obligation secured has been paid in the case of a non-purchase-money security
17 interest in consumer goods.

18 (f) To comply with subsection (e), the secured party shall dispose of
19 the collateral:

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

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

24 (g) In a consumer transaction, a secured party may not accept
25 collateral in partial satisfaction of the obligation it secures.

26

27 SECTION 95. Arkansas Code § 4-9-621(a), concerning the notification of
28 proposal to accept collateral under the Uniform Commercial Code, is amended
29 to read as follows:

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

32 (1) any person from which the secured party has received, before
33 the debtor consented to the acceptance, ~~an authenticated~~ a signed
34 notification of a claim of an interest in the collateral;

35 (2) any other secured party or lienholder that, ten (10) days
36 before the debtor consented to the acceptance, held a security interest in or

1 other lien on the collateral perfected by the filing of a financing statement
2 that:

3 (A) identified the collateral;

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

5 and

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

9 (3) any other secured party that, ten (10) days before the
10 debtor consented to the acceptance, held a security interest in the
11 collateral perfected by compliance with a statute, regulation, or treaty
12 described in § 4-9-311(a).

13

14 SECTION 96. Arkansas Code § 4-9-624 is amended to read as follows:

15 4-9-624. Waiver.

16 (a) A debtor or secondary obligor may waive the right to notification
17 of disposition of collateral under § 4-9-611 only by an agreement to that
18 effect entered into and ~~authenticated~~ signed after default.

19 (b) A debtor may waive the right to require disposition of collateral
20 under § 4-9-620(e) only by an agreement to that effect entered into and
21 ~~authenticated~~ signed after default.

22 (c) Except in a consumer-goods transaction, a debtor or secondary
23 obligor may waive the right to redeem collateral under § 4-9-623 only by an
24 agreement to that effect entered into and ~~authenticated~~ signed after default.

25

26 SECTION 97. Arkansas Code § 4-9-628 is amended to read as follows:

27 4-9-628. Nonliability and limitation on liability of secured party –
28 Liability of secondary obligor.

29 (a) ~~Unless~~ Subject to subsection (f), unless a secured party knows
30 that a person is a debtor or obligor, knows the identity of the person, and
31 knows how to communicate with the person:

32 (1) the secured party is not liable to the person, or to a
33 secured party or lienholder that has filed a financing statement against the
34 person, for failure to comply with this chapter; and

35 (2) the secured party's failure to comply with this chapter does
36 not affect the liability of the person for a deficiency.

1 (b) A Subject to subsection (f), a secured party is not liable because
2 of its status as secured party:

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

5 (A) that the person is a debtor or obligor;

6 (B) the identity of the person; and

7 (C) how to communicate with the person; or

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

10 (A) that the person is a debtor; and

11 (B) the identity of the person.

12 (c) A secured party is not liable to any person, and a person's
13 liability for a deficiency is not affected, because of any act or omission
14 arising out of the secured party's reasonable belief that a transaction is
15 not a consumer-goods transaction or a consumer transaction or that goods are
16 not consumer goods, if the secured party's belief is based on its reasonable
17 reliance on:

18 (1) a debtor's representation concerning the purpose for which
19 collateral was to be used, acquired, or held; or

20 (2) an obligor's representation concerning the purpose for which
21 a secured obligation was incurred.

22 (d) A secured party is not liable to any person under § 4-9-625(c)(2)
23 for its failure to comply with § 4-9-616.

24 (e) A secured party is not liable under § 4-9-625(c)(2) more than once
25 with respect to any one (1) secured obligation.

26 (f) Subsections (a) and (b) do not apply to limit the liability of a
27 secured party to a person if, at the time the secured party obtains control
28 of collateral that is a controllable account, controllable electronic record,
29 or controllable payment intangible or at the time the security interest
30 attaches to the collateral, whichever is later:

31 (1) the person is a debtor or obligor; and

32 (2) the secured party knows that the information in subsection
33 (b)(1)(A), (B), or (C) relating to the person is not provided by the
34 collateral, a record attached to or logically associated with the collateral,
35 or the system in which the collateral is recorded.

36

1 SECTION 98. Arkansas Code Title 4, Chapter 11, Subchapter 1 is
2 repealed.

3 ~~4-11-101. Short title.~~

4 ~~This chapter may be cited as Uniform Commercial Code Virtual Currency~~
5 ~~of Arkansas.~~

6
7 ~~4-11-102. Definitions.~~

8 ~~In this chapter, "virtual currency":~~

9 ~~(1) means a digital representation of value that:~~

10 ~~(A) is used as a medium of exchange, unit of account, or~~
11 ~~store of value; and~~

12 ~~(B) is not legal tender, whether or not denominated in~~
13 ~~legal tender; and~~

14 ~~(2) does not include:~~

15 ~~(A) a transaction in which a merchant grants, as part of~~
16 ~~an affinity or rewards program, value that cannot be taken from or exchanged~~
17 ~~with the merchant for legal tender, bank credit, or virtual currency; or~~

18 ~~(B) a digital representation of value issued by or on~~
19 ~~behalf of a publisher and used solely within an online game, game platform,~~
20 ~~or family of games sold by the same publisher or offered on the same game~~
21 ~~platform.~~

22
23 ~~4-11-103. Scope.~~

24 ~~This chapter applies to virtual currency.~~

25
26 ~~4-11-104. Rights in virtual currency.~~

27 ~~(a) In this section:~~

28 ~~(1) "Adverse claim" means a claim that a claimant has a property~~
29 ~~interest in a virtual currency and that it is a violation of the rights of~~
30 ~~the claimant for another person to hold, transfer, or deal with the virtual~~
31 ~~currency.~~

32 ~~(2) "Qualifying purchaser" means a purchaser that obtains~~
33 ~~control of a virtual currency for value and without notice of any adverse~~
34 ~~claim.~~

35 ~~(b) Subject to subsections (c) through (h), law other than this~~
36 ~~chapter determines whether a person acquires rights in a virtual currency and~~

1 ~~the rights that the person acquires.~~

2 ~~(c) A purchaser of a virtual currency acquires all rights in the~~
 3 ~~virtual currency that the transferor had or had power to transfer.~~

4 ~~(d) A purchaser of a limited interest in a virtual currency acquires~~
 5 ~~rights only to the extent of the interest purchased.~~

6 ~~(e) In addition to acquiring the rights of a purchaser, a qualifying~~
 7 ~~purchaser acquires its rights in a virtual currency free of any adverse~~
 8 ~~claim.~~

9 ~~(f) An action based on an adverse claim to a virtual currency, whether~~
 10 ~~framed in conversion, replevin, constructive trust, equitable lien, or other~~
 11 ~~theory, may not be asserted against a qualifying purchaser that acquires its~~
 12 ~~interest in, and obtains control of, the virtual currency for value and~~
 13 ~~without notice of the adverse claim.~~

14 ~~(g) A person has notice of an adverse claim if:~~

15 ~~(1) the person knows of the adverse claim; or~~

16 ~~(2) the person is aware of facts sufficient to indicate that~~
 17 ~~there is a significant probability that the adverse claim exists and~~
 18 ~~deliberately avoids information that would establish the existence of the~~
 19 ~~adverse claim.~~

20 ~~(h) Filing of a financing statement under Chapter 9 is not notice of~~
 21 ~~an adverse claim to a virtual currency.~~

22
 23 ~~4-11-105. Control of virtual currency.~~

24 ~~(a) A person has "control" of a virtual currency if the following~~
 25 ~~conditions are met:~~

26 ~~(1) the virtual currency or the system in which it is recorded,~~
 27 ~~if any, gives the person:~~

28 ~~(A) the power to derive substantially all the benefit from~~
 29 ~~the virtual currency;~~

30 ~~(B) subject to subsection (b), the exclusive power to~~
 31 ~~prevent others from deriving substantially all the benefit from the virtual~~
 32 ~~currency; and~~

33 ~~(C) subject to subsection (b), the exclusive power to~~
 34 ~~transfer control of the virtual currency to another person or cause another~~
 35 ~~person to obtain control of a virtual currency that derives from the virtual~~
 36 ~~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 99. 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.

1 (2) “Qualifying purchaser” means a purchaser of a controllable
2 electronic record or an interest in a controllable electronic record that
3 obtains control of the controllable electronic record for value, in good
4 faith, and without notice of a claim of a property right in the controllable
5 electronic record.

6 (3) “Transferable record” has the meaning provided for that term
7 in:

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

11 (B) Uniform Electronic Transactions Act, § 25-32-116.

12 (4) “Value” has the meaning provided in § 4-3-303(a), as if
13 references in that subsection to an “instrument” were references to a
14 controllable account, controllable electronic record, or controllable payment
15 intangible.

16 (b) The definitions in Chapter 9 of “account debtor”, “controllable
17 account”, “controllable payment intangible”, “chattel paper”, “deposit
18 account”, “electronic money”, and “investment property” apply to this
19 chapter.

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

22
23 4-12-103. Relation to Chapter 9 and consumer laws.

24 (a) If there is conflict between this chapter and Chapter 9, Chapter 9
25 governs.

26 (b) A transaction subject to this chapter is subject to any applicable
27 rule of law that establishes a different rule for consumers and to (i) any
28 other statute or regulation that regulates the rates, charges, agreements,
29 and practices for loans, credit sales, or other extensions of credit and (ii)
30 any consumer-protection statute or regulation.

31
32 4-12-104. Rights in controllable account, controllable electronic
33 record, and controllable payment intangible.

34 (a) This section applies to the acquisition and purchase of rights in
35 a controllable account or controllable payment intangible, including the
36 rights and benefits under subsections (c), (d), (e), (g), and (h) of a

1 purchaser and qualifying purchaser, in the same manner this section applies
2 to a controllable electronic record.

3 (b) To determine whether a purchaser of a controllable account or a
4 controllable payment intangible is a qualifying purchaser, the purchaser
5 obtains control of the account or payment intangible if it obtains control of
6 the controllable electronic record that evidences the account or payment
7 intangible.

8 (c) Except as provided in this section, law other than this chapter
9 determines whether a person acquires a right in a controllable electronic
10 record and the right the person acquires.

11 (d) A purchaser of a controllable electronic record acquires all
12 rights in the controllable electronic record that the transferor had or had
13 power to transfer, except that a purchaser of a limited interest in a
14 controllable electronic record acquires rights only to the extent of the
15 interest purchased.

16 (e) A qualifying purchaser acquires its rights in the controllable
17 electronic record free of a claim of a property right in the controllable
18 electronic record.

19 (f) Except as provided in subsections (a) and (e) for a controllable
20 account and a controllable payment intangible or law other than this chapter,
21 a qualifying purchaser takes a right to payment, right to performance, or
22 other interest in property evidenced by the controllable electronic record
23 subject to a claim of a property right in the right to payment, right to
24 performance, or other interest in property.

25 (g) An action may not be asserted against a qualifying purchaser based
26 on both a purchase by the qualifying purchaser of a controllable electronic
27 record and a claim of a property right in another controllable electronic
28 record, whether the action is framed in conversion, replevin, constructive
29 trust, equitable lien, or other theory.

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

32
33 4-12-105. Control of controllable electronic record.

34 (a) A person has control of a controllable electronic record if the
35 electronic record, a record attached to or logically associated with the
36 electronic record, or a system in which the electronic record is recorded:

1 (1) gives the person:

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

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

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

7 (ii) transfer control of the electronic record to
8 another person or cause another person to obtain control of another
9 controllable electronic record as a result of the transfer of the electronic
10 record; and

11 (2) enables the person readily to identify itself in any way,
12 including by name, identifying number, cryptographic key, office, or account
13 number, as having the powers specified in paragraph (1).

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

16 (1) the controllable electronic record, a record attached to or
17 logically associated with the electronic record, or a system in which the
18 electronic record is recorded limits the use of the electronic record or has
19 a protocol programmed to cause a change, including a transfer or loss of
20 control or a modification of benefits afforded by the electronic record; or

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

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

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

26 (2) the other person:

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

29 (B) is the transferor to the person of an interest in the
30 controllable electronic record or a controllable account or controllable
31 payment intangible evidenced by the controllable electronic record.

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

34 (e) A person has control of a controllable electronic record if
35 another person, other than the transferor to the person of an interest in the
36 controllable electronic record or a controllable account or controllable

1 payment intangible evidenced by the controllable electronic record:

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

4 (2) obtains control of the electronic record after having
5 acknowledged that it will obtain control of the electronic record on behalf
6 of the person.

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

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

14
15 4-12-106. Discharge of account debtor on controllable account or
16 controllable payment intangible.

17 (a) An account debtor on a controllable account or controllable
18 payment intangible may discharge its obligation by paying:

19 (1) the person having control of the controllable electronic
20 record that evidences the controllable account or controllable payment
21 intangible; or

22 (2) except as provided in subsection (b), a person that formerly
23 had control of the controllable electronic record.

24 (b) Subject to subsection (d), the account debtor may not discharge
25 its obligation by paying a person that formerly had control of the
26 controllable electronic record if the account debtor receives a notification
27 that:

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

30 (2) reasonably identifies the controllable account or
31 controllable payment intangible;

32 (3) notifies the account debtor that control of the controllable
33 electronic record that evidences the controllable account or controllable
34 payment intangible was transferred;

35 (4) identifies the transferee, in any reasonable way, including
36 by name, identifying number, cryptographic key, office, or account number;

1 and

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

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

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

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

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

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

22 (A) divide a payment;

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

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

27 (e) Subject to subsection (h), if requested by the account debtor, the
28 person giving the notification under subsection (b) seasonably shall furnish
29 reasonable proof, using the method in the agreement referred to in subsection
30 (d)(1), that control of the controllable electronic record has been
31 transferred. Unless the person complies with the request, the account debtor
32 may discharge its obligation by paying a person that formerly had control,
33 even if the account debtor has received a notification under subsection (b).

34 (f) A person furnishes reasonable proof under subsection (e) that
35 control has been transferred if the person demonstrates, using the method in
36 the agreement referred to in subsection (d)(1), that the transferee has the

1 power to:

2 (1) avail itself of substantially all the benefit from the
3 controllable electronic record;

4 (2) prevent others from availing themselves of substantially all
5 the benefit from the controllable electronic record; and

6 (3) transfer the powers specified in paragraphs (1) and (2) to
7 another person.

8 (g) Subject to subsection (h), an account debtor may not waive or vary
9 its rights under subsections (d)(1) and (e) or its option under subsection
10 (d)(3).

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

15
16 4-12-107. Governing Law.

17 (a) Except as provided in subsection (b), the local law of a
18 controllable electronic record's jurisdiction governs a matter covered by
19 this chapter.

20 (b) For a controllable electronic record that evidences a controllable
21 account or controllable payment intangible, the local law of the controllable
22 electronic record's jurisdiction governs a matter covered by § 4-12-106
23 unless an effective agreement determines that the local law of another
24 jurisdiction governs.

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

27 (1) If the controllable electronic record, or a record attached
28 to or logically associated with the controllable electronic record and
29 readily available for review, expressly provides that a particular
30 jurisdiction is the controllable electronic record's jurisdiction for
31 purposes of this chapter or the Uniform Commercial Code, that jurisdiction is
32 the controllable electronic record's jurisdiction.

33 (2) If paragraph (1) does not apply and the rules of the system
34 in which the controllable electronic record is recorded are readily available
35 for review and expressly provide that a particular jurisdiction is the
36 controllable electronic record's jurisdiction for purposes of this chapter or

1 the Uniform Commercial Code, that jurisdiction is the controllable electronic
 2 record's jurisdiction.

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

9 (4) If paragraphs (1), (2), and (3) do not apply and the rules
 10 of the system in which the controllable electronic record is recorded are
 11 readily available for review and expressly provide that the controllable
 12 electronic record or the system is governed by the law of a particular
 13 jurisdiction, that jurisdiction is the controllable electronic record's
 14 jurisdiction.

15 (5) If paragraphs (1) through (4) do not apply, the controllable
 16 electronic record's jurisdiction is the District of Columbia.

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

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

28 (f) The rights acquired under § 4-12-104 by a purchaser or qualifying
 29 purchaser are governed by the law applicable under this section at the time
 30 of purchase.

31
 32 CHAPTER 12A

33 TRANSITIONAL PROVISIONS FOR UNIFORM COMMERCIAL CODE AMENDMENTS (2022)

34 PART 1 – GENERAL PROVISIONS AND DEFINITIONS

35
 36 4-12A-101. Title.

1 This chapter may be cited as "Transitional Provisions for Uniform
2 Commercial Code Amendments (2022)".

3
4 4-12A-102. Definitions.

5 (a) In this chapter:

6 (1) "Adjustment date" means September 1, 2027.

7 (2) "Chapter 12" means Chapter 12 of the Uniform Commercial
8 Code.

9 (3) "Chapter 12 property" means a controllable account,
10 controllable electronic record, or controllable payment intangible.

11 (b) The following definitions in other chapters of the Uniform
12 Commercial Code apply to this chapter.

13 "Controllable account". Section 4-9-102.

14 "Controllable electronic record". Section 4-12-102.

15 "Controllable payment intangible". Section 4-9-102.

16 "Electronic money". Section 4-9-102.

17 "Financing statement". Section 4-9-102.

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

20
21 PART 2 – GENERAL TRANSITIONAL PROVISION

22
23 4-12A-201. Saving Clause.

24 Except as provided in Part 3, a transaction validly entered into before
25 September 1, 2026, and the rights, duties, and interests flowing from the
26 transaction remain valid thereafter and may be terminated, completed,
27 consummated, or enforced as required or permitted by law other than the
28 Uniform Commercial Code or, if applicable, the Uniform Commercial Code, as
29 though this act had not taken effect.

30
31 PART 3 – TRANSITIONAL PROVISIONS FOR CHAPTERS 9 AND 12

32
33 4-12A-301. Saving Clause.

34 (a) Except as provided in this part, Chapter 9 as amended by this act
35 and Chapter 12 apply to a transaction, lien, or other interest in property,
36 even if the transaction, lien, or interest was entered into, created, or

1 acquired before September 1, 2026.

2 (b) Except as provided in subsection (c) and § 4-12A-302 through § 4-
3 12A-306:

4 (1) a transaction, lien, or interest in property that was
5 validly entered into, created, or transferred before September 1, 2026 and
6 was not governed by the Uniform Commercial Code, but would be subject to
7 Chapter 9 as amended by this act or Chapter 12 if it had been entered into,
8 created, or transferred on or after September 1, 2026, including the rights,
9 duties, and interests flowing from the transaction, lien, or interest,
10 remains valid on and after September 1, 2026; and

11 (2) the transaction, lien, or interest may be terminated,
12 completed, consummated, and enforced as required or permitted by this act or
13 by the law that would apply if this act had not taken effect.

14 (c) This act does not affect an action, case, or proceeding commenced
15 before September 1, 2026.

16
17 4-12A-302. Security interest perfected before effective date.

18 (a) A security interest that is enforceable and perfected immediately
19 before September 1, 2026 is a perfected security interest under this act if,
20 on September 1, 2026, the requirements for enforceability and perfection
21 under this act are satisfied without further action.

22 (b) If a security interest is enforceable and perfected immediately
23 before September 1, 2026, but the requirements for enforceability or
24 perfection under this act are not satisfied on September 1, 2026, the
25 security interest:

26 (1) is a perfected security interest until the earlier of the
27 time perfection would have ceased under the law in effect immediately before
28 September 1, 2026 or the adjustment date;

29 (2) remains enforceable thereafter only if the security interest
30 satisfies the requirements for enforceability under § 4-9-203, as amended by
31 this act, before the adjustment date; and

32 (3) remains perfected thereafter only if the requirements for
33 perfection under this act are satisfied before the time specified in
34 paragraph (1).

35
36 4-12A-303. Security interest unperfected before effective date.

1 A security interest that is enforceable immediately before September 1,
2 2026, but is unperfected at that time:

3 (1) remains an enforceable security interest until the
4 adjustment date;

5 (2) remains enforceable thereafter if the security interest
6 becomes enforceable under § 4-9-203, as amended by this act, on September 1,
7 2026, or before the adjustment date; and

8 (3) becomes perfected:

9 (A) without further action, on September 1, 2026, if the
10 requirements for perfection under this act are satisfied before or at that
11 time; or

12 (B) when the requirements for perfection are satisfied if
13 the requirements are satisfied after that time.

14
15 4-12A-304. Effectiveness of actions taken before effective date.

16 (a) If action, other than the filing of a financing statement, is
17 taken before September 1, 2026, and the action would have resulted in
18 perfection of the security interest had the security interest become
19 enforceable before September 1, 2026, the action is effective to perfect a
20 security interest that attaches under this act before the adjustment date. An
21 attached security interest becomes unperfected on the adjustment date unless
22 the security interest becomes a perfected security interest under this act
23 before the adjustment date.

24 (b) The filing of a financing statement before September 1, 2026, is
25 effective to perfect a security interest on September 1, 2026, to the extent
26 the filing would satisfy the requirements for perfection under this act.

27 (c) The taking of an action before September 1, 2026, is sufficient
28 for the enforceability of a security interest on September 1, 2026, if the
29 action would satisfy the requirements for enforceability under this act.

30
31 4-12A-305. Priority.

32 (a) Subject to subsections (b) and (c), this act determines the
33 priority of conflicting claims to collateral.

34 (b) Subject to subsection (c), if the priorities of claims to
35 collateral were established before September 1, 2026, Chapter 9 as in effect
36 before September 1, 2026, determines priority.

1 (c) On the adjustment date, to the extent the priorities determined by
2 Chapter 9 as amended by this act modify the priorities established before
3 September 1, 2026, the priorities of claims to Chapter 12 property and
4 electronic money established before September 1, 2026, cease to apply.

5
6 4-12A-306. Priority of claims when priority rules of Chapter 9 do
7 not apply.

8 (a) Subject to subsections (b) and (c), Chapter 12 determines the
9 priority of conflicting claims to Chapter 12 property when the priority rules
10 of Chapter 9 as amended by this act do not apply.

11 (b) Subject to subsection (c), when the priority rules of Chapter 9 as
12 amended by this act do not apply and the priorities of claims to Chapter 12
13 property were established before September 1, 2026, law other than Chapter 12
14 determines priority.

15 (c) When the priority rules of Chapter 9 as amended by this act do not
16 apply, to the extent the priorities determined by this act modify the
17 priorities established before September 1, 2026, the priorities of claims to
18 Chapter 12 property established before September 1, 2026, cease to apply on
19 the adjustment date.

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21 SECTION 100. DO NOT CODIFY. Effective date.

22 This act takes effect on September 1, 2026.
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