

AN ACT

RELATING TO COMMERCE; MAKING CHANGES TO THE UNIFORM COMMERCIAL CODE AS ENACTED IN NEW MEXICO TO MAKE IT UNIFORM; AMENDING SECTIONS OF THE UNIFORM FRAUDULENT TRANSFER ACT; CHANGING THE NAME OF THE UNIFORM FRAUDULENT TRANSFER ACT TO THE UNIFORM VOIDABLE TRANSACTIONS ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**SECTION 1.** Section 55-2A-529 NMSA 1978 (being Laws 1992, Chapter 114, Section 84) is amended to read:

"55-2A-529. LESSOR'S ACTION FOR THE RENT.--

(1) After default by the lessee under the lease contract of the type described in Section 55-2A-523(1) or 55-2A-523(3) (a) NMSA 1978 or, if agreed, after other default by the lessee, if the lessor complies with Subsection (2) of this section, the lessor may recover from the lessee as damages:

(a) for goods accepted by the lessee and not repossessed by or tendered to the lessor, and for conforming goods lost or damaged within a commercially reasonable time after risk of loss passes to the lessee (Section 55-2A-219 NMSA 1978), (i) accrued and unpaid rent as of the date of entry of judgment in favor of the lessor, (ii) the present value as of the same date of the rent for the then remaining lease term of the lease agreement, and (iii) any incidental

damages allowed under Section 55-2A-530 NMSA 1978, less expenses saved in consequence of the lessee's default; and

(b) for goods identified to the lease contract if the lessor is unable after reasonable effort to dispose of them at a reasonable price or the circumstances reasonably indicate that effort will be unavailing, (i) accrued and unpaid rent as of the date of entry of judgment in favor of the lessor, (ii) the present value as of the same date of the rent for the then remaining lease term of the lease agreement, and (iii) any incidental damages allowed under Section 55-2A-530 NMSA 1978, less expenses saved in consequence of the lessee's default.

(2) Except as provided in Subsection (3) of this section, the lessor shall hold for the lessee for the remaining lease term of the lease agreement any goods that have been identified to the lease contract and are in the lessor's control.

(3) The lessor may dispose of the goods at any time before collection of the judgment for damages obtained pursuant to Subsection (1) of this section. If the disposition is before the end of the remaining lease term of the lease agreement, the lessor's recovery against the lessee for damages is governed by Section 55-2A-527 or 55-2A-528 NMSA 1978, and the lessor will cause an appropriate credit to be provided against a judgment for damages to the extent that the

amount of the judgment exceeds the recovery available pursuant to Section 55-2A-527 or 55-2A-528 NMSA 1978.

(4) Payment of the judgment for damages obtained pursuant to Subsection (1) of this section entitles the lessee to the use and possession of the goods not then disposed of for the remaining lease term of and in accordance with the lease agreement.

(5) After default by the lessee under the lease contract of the type described in Section 55-2A-523(1) or Section 55-2A-523(3) (a) NMSA 1978 or, if agreed, after other default by the lessee, a lessor who is held not entitled to rent under this section must nevertheless be awarded damages for non-acceptance under Section 55-2A-527 or 55-2A-528 NMSA 1978."

**SECTION 2.** Section 55-3-415 NMSA 1978 (being Laws 1992, Chapter 114, Section 140) is amended to read:

"55-3-415. OBLIGATION OF INDORSER.--

(a) Subject to Subsections (b), (c), (d) and (e) of this section and to Section 55-3-419(d) NMSA 1978, if an instrument is dishonored, an indorser is obliged to pay the amount due on the instrument (i) according to the terms of the instrument at the time it was indorsed or (ii) if the indorser indorsed an incomplete instrument, according to its terms when completed, to the extent stated in Sections 55-3-115 and 55-3-407 NMSA 1978. The obligation of the indorser is owed to

a person entitled to enforce the instrument or to a subsequent indorser who paid the instrument under this section.

(b) If an indorsement states that it is made "without recourse" or otherwise disclaims liability of the indorser, the indorser is not liable under Subsection (a) of this section to pay the instrument.

(c) If notice of dishonor of an instrument is required by Section 55-3-503 NMSA 1978 and notice of dishonor complying with that section is not given to an indorser, the liability of the indorser under Subsection (a) of this section is discharged.

(d) If a draft is accepted by a bank after an indorsement is made, the liability of the indorser under Subsection (a) of this section is discharged.

(e) If an indorser of a check is liable under Subsection (a) of this section and the check is not presented for payment, or given to a depository bank for collection, within thirty days after the day the indorsement was made, the liability of the indorser under Subsection (a) of this section is discharged."

**SECTION 3.** Section 55-4A-106 NMSA 1978 (being Laws 1992, Chapter 114, Section 202, as amended) is amended to read:

"55-4A-106. TIME PAYMENT ORDER IS RECEIVED.--

(a) The time of receipt of a payment order or

communication canceling or amending a payment order is determined by the rules applicable to receipt of a notice stated in Section 55-1-202 NMSA 1978. A receiving bank may fix a cut-off time or times on a funds-transfer business day for the receipt and processing of payment orders and communications canceling or amending payment orders. Different cut-off times may apply to payment orders, cancellations or amendments, or to different categories of payment orders, cancellations or amendments. A cut-off time may apply to senders generally or different cut-off times may apply to different senders or categories of payment orders. If a payment order or communication canceling or amending a payment order is received after the close of a funds-transfer business day or after the appropriate cut-off time on a funds-transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds-transfer business day.

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

**SECTION 4.** Section 55-9-331 NMSA 1978 (being Laws 2001, Chapter 139, Section 51) is amended to read:

"55-9-331. PRIORITY OF RIGHTS OF PURCHASERS OF INSTRUMENTS, DOCUMENTS AND SECURITIES UNDER OTHER ARTICLES-- PRIORITY OF INTERESTS IN FINANCIAL ASSETS AND SECURITY ENTITLEMENTS UNDER CHAPTER 55, ARTICLE 8 NMSA 1978.--

(a) Chapter 55, Article 9 NMSA 1978 does not limit the rights of a holder in due course of a negotiable instrument, a holder to which a negotiable document of title has been duly negotiated or a protected purchaser of a security. These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided in Chapter 55, Articles 3, 7 and 8 NMSA 1978.

(b) Chapter 55, Article 9 NMSA 1978 does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of a claim under Chapter 55, Article 8 NMSA 1978.

(c) Filing under Chapter 55, Article 9 NMSA 1978 does not constitute notice of a claim or defense to the holders, or purchasers, or persons described in Subsections (a) and (b) of this section."

**SECTION 5.** Section 55-9-502 NMSA 1978 (being Laws 2001, Chapter 139, Section 73, as amended) is amended to read:

"55-9-502. CONTENTS OF FINANCING STATEMENT--RECORD OF MORTGAGE AS FINANCING STATEMENT--TIME OF FILING FINANCING STATEMENT.--

(a) Subject to Subsection (b) of this section, a

financing statement is sufficient only if it:

- (1) provides the name of the debtor;
- (2) provides the name of the secured party or a representative of the secured party; and
- (3) indicates the collateral covered by the financing statement.

(b) Except as otherwise provided in Subsection (b) of Section 55-9-501 NMSA 1978, to be sufficient a financing statement that covers as-extracted collateral or timber to be cut, or that is filed as a fixture filing and covers goods that are or are to become fixtures, must satisfy Subsection (a) of this section and also:

- (1) indicate that it covers this type of collateral;
- (2) indicate that it is to be filed for record in the real property records;
- (3) provide a description of the real property to which the collateral is related sufficient to give constructive notice of a mortgage pursuant to the laws of this state if the description were contained in a record of the mortgage of the real property; and
- (4) if the debtor does not have an interest of record in the real property, provide the name of a record owner.

(c) A record of a mortgage is effective, from the

date it is filed for record, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if:

(1) the record indicates the goods or accounts that it covers;

(2) the goods are or are to become fixtures related to the real property described in the record or the collateral is related to the real property described in the record and is as-extracted collateral or timber to be cut;

(3) the record satisfies the requirements for a financing statement in this section but:

(A) the record need not indicate that it is to be filed for record in the real property records; and

(B) the record sufficiently provides the name of a debtor who is an individual if it provides the individual name of the debtor or the surname and first personal name of the debtor, even if the debtor is an individual to whom Paragraph (4) of Subsection (a) of Section 55-9-503 NMSA 1978 applies; and

(4) the record is duly recorded.

(d) A financing statement may be filed before a security agreement is made or a security interest otherwise attaches."

**SECTION 6.** Section 55-9-512 NMSA 1978 (being Laws 2001, Chapter 139, Section 83) is amended to read:



"55-9-512. AMENDMENT OF FINANCING STATEMENT.--

(a) Subject to Section 55-9-509 NMSA 1978, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or, subject to Subsection (e) of this section, otherwise amend the information provided in, a financing statement by filing an amendment that:

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

(2) if the amendment relates to an initial financing statement filed for record in a county clerk's office, provides the information specified in Subsection (b) of Section 55-9-502 NMSA 1978.

(b) Except as otherwise provided in Section 55-9-515 NMSA 1978, the filing of an amendment does not extend the period of effectiveness of the financing statement.

(c) A financing statement that is amended by an amendment that adds collateral is effective as to the added collateral only from the date of the filing of the amendment.

(d) A financing statement that is amended by an amendment that adds a debtor is effective as to the added debtor only from the date of the filing of the amendment.

(e) An amendment is ineffective to the extent it:

(1) purports to delete all debtors and fails to provide the name of a debtor to be covered by the financing

statement; or

(2) purports to delete all secured parties of record and fails to provide the name of a new secured party of record."

**SECTION 7.** Section 55-12-111 NMSA 1978 (being Laws 2005, Chapter 144, Section 111) is amended to read:

"55-12-111. TEMPORARY PROVISION--EFFECTIVENESS.--

A. A document of title issued or a bailment that arises before the effective date of this act and the rights, obligations and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this act as if amendment or repeal had not occurred and may be terminated, completed, consummated or enforced under that statute or other rule.

B. The provisions of Article 7 of the Uniform Commercial Code do not repeal or modify any laws prescribing the form or contents of documents of title or the services or facilities to be afforded by bailees, or otherwise regulating bailees' businesses in respects not specifically dealt with in the Uniform Commercial Code; but the fact that such laws are violated does not affect the status of a document of title that otherwise conforms with the definition of a document of title."

**SECTION 8.** A new section of the Uniform Commercial Code is enacted to read:

"PRESUMPTION THAT RULE OF LAW CONTINUES UNCHANGED.--The provisions of this act shall be deemed declaratory of the meaning of the Uniform Commercial Code as that code existed prior to July 1, 2015."

**SECTION 9.** Section 56-10-14 NMSA 1978 (being Laws 1989, Chapter 382, Section 1) is amended to read:

"56-10-14. SHORT TITLE.--Sections 56-10-14 through 56-10-29 NMSA 1978 may be cited as the "Uniform Voidable Transactions Act"."

**SECTION 10.** Section 56-10-15 NMSA 1978 (being Laws 1989, Chapter 382, Section 2) is amended to read:

"56-10-15. DEFINITIONS.--As used in the Uniform Voidable Transactions Act:

A. "affiliate" means:

(1) a person that directly or indirectly owns, controls or holds, with power to vote, twenty percent or more of the outstanding voting securities of the debtor, other than a person that holds the securities:

(a) as a fiduciary or agent without sole discretionary power to vote the securities; or

(b) solely to secure a debt, if the person has not in fact exercised the power to vote;

(2) a corporation, twenty percent or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with power to vote, by the debtor or

a person that directly or indirectly owns, controls or holds, with power to vote, twenty percent or more of the outstanding voting securities of the debtor, other than a person that holds the securities:

(a) as a fiduciary or agent without sole discretionary power to vote the securities; or

(b) solely to secure a debt, if the person has not in fact exercised the power to vote;

(3) a person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor; or

(4) a person that operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets;

B. "asset" means property of a debtor, but the term does not include:

(1) property to the extent it is encumbered by a valid lien;

(2) property to the extent it is generally exempt under nonbankruptcy law; or

(3) an interest in property held in tenancy by the entirety to the extent it is not subject to process by a creditor holding a claim against only one tenant;

C. "claim", except when used in the phrase "claim

for relief", means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured;

D. "creditor" means a person that has a claim;

E. "debt" means liability on a claim;

F. "debtor" means a person that is liable on a claim;

G. "electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities;

H. "insider" includes:

(1) if the debtor is an individual:

(a) a relative of the debtor or of a general partner of the debtor;

(b) a partnership in which the debtor is a general partner;

(c) a general partner in a partnership described in Subparagraph (b) of this paragraph; or

(d) a corporation of which the debtor is a director, officer or person in control;

(2) if the debtor is a corporation:

(a) a director of the debtor;

(b) an officer of the debtor;

(c) a person in control of the debtor;

(d) a partnership in which the debtor is a general partner;

(e) a general partner in a partnership described in Subparagraph (d) of this paragraph; or

(f) a relative of a general partner, director, officer or person in control of the debtor;

(3) if the debtor is a partnership:

(a) a general partner in the debtor;

(b) a relative of a general partner in, a general partner of, or a person in control of the debtor;

(c) another partnership in which the debtor is a general partner;

(d) a general partner in a partnership described in Subparagraph (c) of this paragraph; or

(e) a person in control of the debtor;

(4) an affiliate or an insider of an affiliate as if the affiliate were the debtor; and

(5) a managing agent of the debtor;

I. "lien" means a charge against or an interest in property to secure payment of a debt or performance of an obligation and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien or a statutory lien;

J. "organization" means a person other than an individual;

K. "person" means an individual, an estate, a business or nonprofit entity, a public corporation, a government or governmental subdivision, agency or instrumentality or another legal entity;

L. "property" means anything that may be the subject of ownership;

M. "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

N. "relative" means an individual related by consanguinity within the third degree as determined by the common law, a spouse or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree;

O. "sign" means, with present intent to authenticate or adopt a record, to:

- (1) execute or adopt a tangible symbol; or
- (2) attach to or logically associate with the record an electronic symbol, a sound or a process;

P. "transfer" means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset and includes payment of money, release, lease, license and creation of a lien or other encumbrance; and

Q. "valid lien" means a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings."

**SECTION 11.** Section 56-10-16 NMSA 1978 (being Laws 1989, Chapter 382, Section 3) is amended to read:

"56-10-16. INSOLVENCY.--

A. A debtor is insolvent if, at a fair valuation, the sum of the debtor's debts is greater than the sum of the debtor's assets.

B. A debtor that is generally not paying the debtor's debts as they become due other than as a result of a bona fide dispute is presumed to be insolvent. The presumption imposes on the party against which the presumption is directed the burden of proving that the nonexistence of insolvency is more probable than its existence.

C. Assets under this section do not include property that has been transferred, concealed or removed with intent to hinder, delay or defraud creditors or that has been transferred in a manner making the transfer voidable under the Uniform Voidable Transactions Act.

D. Debts under this section do not include an obligation to the extent it is secured by a valid lien on property of the debtor not included as an asset."

**SECTION 12.** Section 56-10-17 NMSA 1978 (being Laws 1989, Chapter 382, Section 4) is amended to read:



"56-10-17. VALUE.--

A. Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied, but value does not include an unperformed promise made otherwise than in the ordinary course of the promisor's business to furnish support to the debtor or another person.

B. For the purposes of Paragraph (2) of Subsection A of Section 56-10-18 and Section 56-10-19 NMSA 1978, a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure sale or execution of a power of sale for the acquisition or disposition of the interest of the debtor upon default under a mortgage, deed of trust or security agreement.

C. A transfer is made for present value if the exchange between the debtor and the transferee is intended by them to be contemporaneous and is in fact substantially contemporaneous."

**SECTION 13.** Section 56-10-18 NMSA 1978 (being Laws 1989, Chapter 382, Section 5) is amended to read:

"56-10-18. TRANSFER OR OBLIGATION VOIDABLE AS TO PRESENT OR FUTURE CREDITOR.--

A. A transfer made or obligation incurred by a debtor is voidable as to a creditor, whether the creditor's

claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(1) with actual intent to hinder, delay or defraud any creditor of the debtor; or

(2) without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

(a) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

(b) intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.

B. In determining actual intent under Paragraph (1) of Subsection A of this section, consideration may be given, among other factors, to whether:

(1) the transfer or obligation was to an insider;

(2) the debtor retained possession or control of the property transferred after the transfer;

(3) the transfer or obligation was disclosed or concealed;

(4) before the transfer was made or

obligation was incurred, the debtor has been sued or threatened with suit;

(5) the transfer was of substantially all the debtor's assets;

(6) the debtor absconded;

(7) the debtor removed or concealed assets;

(8) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;

(9) the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;

(10) the transfer occurred shortly before or shortly after a substantial debt was incurred; and

(11) the debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

C. A creditor making a claim for relief under Subsection A of this section has the burden of proving the elements of the claim for relief by a preponderance of the evidence."

**SECTION 14.** Section 56-10-19 NMSA 1978 (being Laws 1989, Chapter 382, Section 6) is amended to read:

"56-10-19. TRANSFER OR OBLIGATION VOIDABLE AS TO PRESENT CREDITOR.--

A. A transfer made or obligation incurred by a debtor is voidable as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

B. A transfer made by a debtor is voidable as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time and the insider had reasonable cause to believe that the debtor was insolvent.

C. Subject to Subsection B of Section 56-10-16 NMSA 1978, a creditor making a claim for relief under Subsection A or B of this section has the burden of proving the elements of the claim for relief by a preponderance of the evidence."

**SECTION 15.** Section 56-10-20 NMSA 1978 (being Laws 1989, Chapter 382, Section 7) is amended to read:

"56-10-20. WHEN TRANSFER IS MADE OR OBLIGATION IS INCURRED.--For the purposes of the Uniform Voidable Transactions Act:

A. a transfer is made:

(1) with respect to an asset that is real

property other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so far perfected that a good-faith purchaser of the asset from the debtor against which applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee; and

(2) with respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien otherwise than under the Uniform Voidable Transactions Act that is superior to the interests of the transferee;

B. if applicable law permits the transfer to be perfected as provided in Subsection A of this section and the transfer is not so perfected before the commencement of an action for relief under the Uniform Voidable Transactions Act, the transfer is deemed made immediately before the commencement of the action;

C. if applicable law does not permit the transfer to be perfected as provided in Subsection A of this section, the transfer is made when it becomes effective between the debtor and the transferee;

D. a transfer is not made until the debtor has acquired rights in the asset transferred; and

E. an obligation is incurred:

(1) if oral, when it becomes effective between the parties; or

(2) if evidenced by a record, when the record signed by the obligor is delivered to or for the benefit of the obligee."

**SECTION 16.** Section 56-10-21 NMSA 1978 (being Laws 1989, Chapter 382, Section 8) is amended to read:

"56-10-21. REMEDIES OF CREDITOR.--

A. In an action for relief against a transfer or obligation under the Uniform Voidable Transactions Act, a creditor, subject to the limitations in Section 56-10-22 NMSA 1978, may obtain:

(1) avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim;

(2) an attachment or other provisional remedy against the asset transferred or other property of the transferee if available under applicable law; and

(3) subject to applicable principles of equity and in accordance with applicable rules of civil procedure:

(a) an injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;

(b) appointment of a receiver to take

charge of the asset transferred or of other property of the transferee; or

(c) any other relief the circumstances may require.

B. If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds."

**SECTION 17.** Section 56-10-22 NMSA 1978 (being Laws 1989, Chapter 382, Section 9) is amended to read:

"56-10-22. DEFENSES, LIABILITY AND PROTECTION OF TRANSFEREE OR OBLIGEE.--

A. A transfer or obligation is not voidable under Paragraph (1) of Subsection A of Section 56-10-18 NMSA 1978 against a person that took in good faith and for a reasonably equivalent value given the debtor or against any subsequent transferee or obligee.

B. To the extent a transfer is avoidable in an action by a creditor under Paragraph (1) of Subsection A of Section 56-10-21 NMSA 1978:

(1) except as otherwise provided in this section, the creditor may recover judgment for the value of the asset transferred, as adjusted under Subsection C of this section, or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered

against:

(a) the first transferee of the asset or the person for whose benefit the transfer was made; or

(b) an immediate or mediate transferee of the first transferee, other than: 1) a good-faith transferee that took for value; or 2) an immediate or mediate good-faith transferee of a person described in Item 1) of this subparagraph; and

(2) recovery pursuant to Paragraph (1) of Subsection A or Subsection B of Section 56-10-21 NMSA 1978 of or from the asset transferred or its proceeds, by levy or otherwise, is available only against a person described in Subparagraph (a) or (b) of Paragraph (1) of this subsection.

C. If the judgment under Subsection B of this section is based upon the value of the asset transferred, the judgment must be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

D. Notwithstanding voidability of a transfer or an obligation under the Uniform Voidable Transactions Act, a good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to:

(1) a lien on or a right to retain an interest in the asset transferred;

(2) enforcement of an obligation incurred;



or

(3) a reduction in the amount of the liability on the judgment.

E. A transfer is not voidable under Paragraph (2) of Subsection A of Section 56-10-18 NMSA 1978 or under Section 56-10-19 NMSA 1978 if the transfer results from:

(1) termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or

(2) enforcement of a security interest in compliance with Chapter 55, Article 9 NMSA 1978, other than acceptance of collateral in full or partial satisfaction of the obligation it secures.

F. A transfer is not voidable under Subsection B of Section 56-10-19 NMSA 1978:

(1) to the extent the insider gave new value to or for the benefit of the debtor after the transfer was made, except to the extent the new value was secured by a valid lien;

(2) if made in the ordinary course of business or financial affairs of the debtor and the insider; or

(3) if made pursuant to a good-faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose as well as an antecedent debt of

the debtor.

G. In determining the burden of proving matters referred to in this section:

(1) a party that seeks to invoke Subsection A, D, E or F of this section has the burden of proving the applicability of that subsection;

(2) except as otherwise provided in Paragraphs (3) and (4) of this subsection, the creditor has the burden of proving each applicable element of Subsection B or C of this section;

(3) the transferee has the burden of proving the applicability to the transferee of Item 1) or 2) of Subparagraph (b) of Paragraph (1) of Subsection B of this section; and

(4) a party that seeks adjustment under Subsection C of this section has the burden of proving the adjustment.

H. The standard of proof required to establish matters referred to in this section is preponderance of the evidence."

**SECTION 18.** Section 56-10-23 NMSA 1978 (being Laws 1989, Chapter 382, Section 10) is amended to read:

"56-10-23. EXTINGUISHMENT OF CAUSE OF ACTION.--A cause of action with respect to a transfer or obligation under the Uniform Voidable Transactions Act is extinguished unless

action is brought:

A. under Paragraph (1) of Subsection A of Section 56-10-18 NMSA 1978 not later than four years after the transfer was made or the obligation was incurred or, if later, not later than one year after the transfer or obligation was or could reasonably have been discovered by the claimant;

B. under Paragraph (2) of Subsection A of Section 56-10-18 NMSA 1978 or Subsection A of Section 56-10-19 NMSA 1978 not later than four years after the transfer was made or the obligation was incurred; or

C. under Subsection B of Section 56-10-19 NMSA 1978 not later than one year after the transfer was made."

**SECTION 19.** Section 56-10-24 NMSA 1978 (being Laws 1989, Chapter 382, Section 11) is recompiled as Section 56-10-26 NMSA 1978 and is amended to read:

"56-10-26. SUPPLEMENTARY PROVISIONS.--

A. Unless displaced by the provisions of the Uniform Voidable Transactions Act, the principles of law and equity, including the law merchant and the law relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency or other validating or invalidating cause, supplement its provisions.

B. The provisions of the Uniform Voidable Transactions Act are not the exclusive law on the subject of

voidable transfers and obligations.

C. The provisions of the Uniform Voidable Transactions Act operate independently of rules in organic law that govern the internal affairs of business organizations that limit distributions by those organizations to their equity owners. Compliance with those rules does not insulate such distributions from being voidable pursuant to the provisions of that act."

**SECTION 20.** A new section of the Uniform Voidable Transactions Act, Section 56-10-24 NMSA 1978, is enacted to read:

"56-10-24. GOVERNING LAW.--

A. In this section, in determining a debtor's location, a debtor:

(1) who is an individual is located at the individual's principal residence;

(2) that is an organization and has only one place of business is located at its place of business; and

(3) that is an organization and has more than one place of business is located at its chief executive office.

B. A claim for relief in the nature of a claim for relief under the Uniform Voidable Transactions Act is governed by the local law of the jurisdiction in which the debtor is located when the transfer is made or the obligation is

incurred."

**SECTION 21.** Section 56-10-25 NMSA 1978 (being Laws 1989, Chapter 382, Section 12) is recompiled as Section 56-10-27 NMSA 1978 and is amended to read:

"56-10-27. UNIFORMITY OF APPLICATION AND CONSTRUCTION.--The Uniform Voidable Transactions Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of the Uniform Voidable Transactions Act among states enacting it."

**SECTION 22.** A new section of the Uniform Voidable Transactions Act, Section 56-10-25 NMSA 1978, is enacted to read:

"56-10-25. APPLICATION TO SERIES ORGANIZATION.--

A. As used in this section:

(1) "protected series" means an arrangement, however denominated, created by a series organization that, pursuant to the law under which the series organization is organized, has the characteristics set forth in Paragraph (2) of this subsection; and

(2) "series organization" means an organization that, pursuant to the law under which it is organized, has the following characteristics:

(a) the organic record of the organization provides for creation by the organization of one or more protected series, however denominated, with respect to

specified property of the organization, and for records to be maintained for each protected series that identify the property of or associated with the protected series;

(b) debt incurred or existing with respect to the activities of, or property of or associated with, a particular protected series is enforceable against the property of or associated with the protected series only, and not against the property of or associated with the organization or other protected series of the organization; and

(c) debt incurred or existing with respect to the activities or property of the organization is enforceable against the property of the organization only, and not against the property of or associated with a protected series of the organization.

B. A series organization and each protected series of the organization is a separate person for purposes of the Uniform Voidable Transactions Act, even if for other purposes a protected series is not a person separate from the organization or other protected series of the organization.

C. The provisions of the Uniform Voidable Transactions Act do not authorize or prohibit the creation of a protected series or series organization."

**SECTION 23.** A new section of the Uniform Voidable Transactions Act, Section 56-10-28 NMSA 1978, is enacted to

read:

"56-10-28. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.--The Uniform Voidable Transactions Act modifies, limits or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b)."

**SECTION 24.** A new section of the Uniform Voidable Transactions Act, Section 56-10-29 NMSA 1978, is enacted to read:

"56-10-29. APPLICABILITY.--

A. The provisions of the Uniform Voidable Transactions Act:

(1) apply to a transfer made or obligation incurred on or after January 1, 2016; but

(2) do not apply to:

(a) a transfer made or an obligation incurred before January 1, 2016; or

(b) a right of action that has accrued before January 1, 2016.

B. A transfer made or an obligation incurred before January 1, 2016 and the rights, obligations and interests flowing from that transfer or obligation are

governed by the Uniform Fraudulent Transfer Act as if the Uniform Voidable Transactions Act had not been enacted and may be terminated, completed, consummated or enforced pursuant to the Uniform Fraudulent Transfer Act.

C. For the purposes of this section, a transfer is made and an obligation is incurred at the time provided in Section 56-10-20 NMSA 1978."

**SECTION 25. EFFECTIVE DATE.--**

A. The effective date of the provisions of Sections 1 through 8 of this act is July 1, 2015.

B. The effective date of the provisions of Sections 9 through 24 of this act is January 1, 2016.=====