ENROLLED SENATE
BILL NO. 25

BY: TAYLOR of the SENATE

and

JOHNSON (Glen) and HOLT of the HOUSE

AN ACT RELATING TO THE COMMERCIAL CODE AND TO MOTOR VEHICLES; AMENDING 12A O.S. 1981, SECTIONS 1-201, AS LAST AMENDED BY SECTION 82, CHAPTER 86, O.S.L. 1988, 1-207, SECTIONS 3, 4, 18, 33, 34, 37, 39, 47, 48, 50, 54, 55, 63, 64, 65, 66, 70, 71, 72, 74, 75, AND 76, CHAPTER 86, O.S.L. 1988, 3-101, 3-102, AS AMENDED BY SECTION 1, CHAPTER 39, O.S.L. 1988, 3-103, 3-104, 3-105, 3-106, 3-107, 3-108, 3-109, 3-110, 3-111, 3-112, 3-113, 3-114, 3-115, 3-116, 3-117, 3-118, 3-119, 3-201, 3-202, 3-203, 3-204, 3-205, 3-206, 3-207, 3-301, 3-302, 3-303, 3-304, 3-305, 3-306, 3-307, 3-401, 3-402, 3-403, 3-404, 3-405, 3-406, 3-407, 3-408, 3-409, 3-410, 3-411, 3-412, 3-413, 3-414, 3-415, 3-416, 3-417, 3-418, 3-419, 3-501, 3-502, 3-503, 3-504, 3-505, 3-601, 3-602, 3-603, 3-604, 3-605, 4-101, 4-102, 4-103, 4-104, AS AMENDED BY SECTION 2, CHAPTER 39, O.S.L. 1988, 4-105, 4-107, 4-108, 4-201, 4-202, 4-203, 4-204, 4-205, 4-206, 4-207, 4-208, 4-209, 4-210, 4-211, 4-212, 4-213, 4-214, 4-301, 4-302, 4-303, 4-401, 4-402, 4-403, 4-405, 4-406, 4-407, 4-501, 4-502, 4-503 AND 4-504 (12A O.S. SUPP. 1990, SECTIONS 1-201, 2A-103, 2A-104, 2A-209, 2A-303, 2A-304, 2A-307, 2A-309, 2A-407, 2A-501, 2A-503, 2A-507, 2A-508, 2A-516, 2A-517, 2A-518, 2A-519, 2A-523, 2A-524, 2A-525, 2A-527, 2A-528, 2A-529, 3-102 AND 4-104), WHICH RELATE TO THE UNIFORM COMMERCIAL CODE, LEASES, NEGOTIABLE INSTRUMENTS AND BANK DEPOSITS AND COLLECTIONS, AND AMENDING SECTION 13, CHAPTER 179, O.S.L. 1985, AS LAST AMENDED BY SECTION 3, CHAPTER 58, O.S.L. 1989, (47 O.S. SUPP. 1990, SECTION 1110), WHICH RELATES TO SECURITY INTERESTS IN CERTAIN MOTOR VEHICLES; MODIFYING LANGUAGE TO PROVIDE UNIFORMITY; PROVIDING AND MODIFYING DEFINITIONS; MAKING CERTAIN PROVISIONS INAPPLICABLE TO ACCORD AND SATISFACTION; MODIFYING APPLICATION OF CERTAIN OTHER DEFINITIONS; MODIFYING APPLICABILITY OF CERTAIN OTHER LAWS; STATING AND MODIFYING CROSS REFERENCES TO OTHER PROVISIONS; CLARIFYING RESOLUTION OF CERTAIN CONFLICTS; CLARIFYING APPLICABILITY OF CERTAIN WARRANTIES RELATING TO CERTAIN SUPPLY CONTRACTS; CLARIFYING EFFECT OF MODIFICATION OR RESCISSION ON CERTAIN PROMISES AND WARRANTIES; PROVIDING FOR RETENTION OF CERTAIN RIGHTS; MODIFYING ALIENABILITY OF CERTAIN INTERESTS IN GOODS UNDER LEASE CONTRACT;

PROVIDING FOR DELEGATION OF PERFORMANCE OF CERTAIN DUTIES; AUTHORIZING TRANSFER OF CERTAIN RIGHTS UNDER CERTAIN CIRCUMSTANCES; LIMITING POWER TO TRANSFER CERTAIN LEASEHOLD INTERESTS TO SUBSEQUENT LESSEE; MODIFYING PRIORITY OF CERTAIN LIENS; CLARIFYING CERTAIN RIGHTS IN FIXTURES; DECLARING AUTHORITY TO SUBORDINATE PRIORITY BY AGREEMENT; DECLARING VALIDITY OF CERTAIN COVENANTS; PROVIDING FOR ALTERATION OR EXCLUSION OF CERTAIN CONSEQUENTIAL DAMAGES; MODIFYING TIME OF DETERMINATION OF MARKET RENT; MODIFYING AND EXPANDING LESSEE'S REMEDIES; CLARIFYING EFFECT OF ACCEPTANCE OF CERTAIN TENDER; CLARIFYING CERTAIN NOTICE PROCEDURES; AUTHORIZING REVOCATION OF ACCEPTANCE UNDER CERTAIN CIRCUMSTANCES WITH EXCEPTIONS; EXPANDING TYPES OF DEFAULT FOR WHICH LESSEE MAY COVER; MODIFYING PERIOD AND MANNER OF CALCULATION OF CERTAIN DAMAGES; EXPANDING LESSOR'S REMEDIES; MODIFYING LESSOR'S RIGHT TO POSSESSION OF GOODS; MODIFYING LESSOR'S RIGHT TO DISPOSE OF GOODS; MODIFYING PERIOD AND MANNER OF CALCULATION OF CERTAIN DAMAGES; MODIFYING PROCEDURES FOR LESSOR'S ACTION FOR THE RENT; AUTHORIZING RECOVERY FOR LOSS OR DAMAGE TO RESIDUAL INTERESTS; ALTERING SHORT TITLE; DECLARING SUBJECT MATTER OF CERTAIN PROVISIONS; PROVIDING FOR RESOLUTION OF CERTAIN CONFLICTS; MODIFYING CERTAIN ATTRIBUTES OF VARIOUS INSTRUMENTS; MODIFYING MATTERS RELATING TO ISSUANCE OF INSTRUMENTS; PROVIDING FOR CONDITIONAL AND UNCONDITIONAL PROMISES AND ORDERS; PROVIDING FOR DETERMINATION AND PAYMENT OF AMOUNTS EXPRESSED IN FOREIGN MONEY; PROVIDING FOR PAYMENT ON DEMAND OR AT A DEFINITE TIME; PROVIDING FOR PAYMENT TO BEARER OR TO ORDER; PROVIDING FOR IDENTIFICATION OF PERSON TO WHOM INSTRUMENT IS PAYABLE; PROVIDING FOR DETERMINATION OF PLACE OF PAYMENT; PROVIDING FOR ACCRUAL OF INTEREST ON AN INSTRUMENT AND PROVIDING METHODS FOR CALCULATION; AUTHORIZING ANTEDATING AND POSTDATING OF INSTRUMENTS AND PROVIDING PROCEDURES FOR UNDATED INSTRUMENTS; PROVIDING FOR RESOLUTION OF CONFLICTS BETWEEN TERMS OF AN INSTRUMENT; PROVIDING PROCEDURES FOR INCOMPLETE INSTRUMENTS; ESTABLISHING JOINT AND SEVERAL LIABILITY OF PARTIES ON AN INSTRUMENT AND PROVIDING FOR CONTRIBUTION; AUTHORIZING MODIFICATION OF CERTAIN OBLIGATIONS BY AGREEMENT UNDER CERTAIN CIRCUMSTANCES; DECLARING VARIOUS PERIODS OF LIMITATION OF ACTIONS; AUTHORIZING WRITTEN NOTICE TO THIRD PERSON AND STATING CONTENTS NEEDED TO MAKE ACTIONS BINDING; PROVIDING FOR NEGOTIATION OF INSTRUMENTS; MAKING NEGOTIATION OF INSTRUMENT SUBJECT TO RESCISSION; PROVIDING FOR TRANSFER OF AN INSTRUMENT AND DECLARING RIGHTS AFTER TRANSFER; PROVIDING PROCEDURES AND CONDITIONS FOR INDORSEMENT OF INSTRUMENTS INCLUDING SPECIAL, BLANK, ANOMALOUS AND RESTRICTIVE INDORSEMENTS; PROVIDING FOR REACQUISITION OF INSTRUMENTS; DECLARING PERSONS

WHO MAY ENFORCE AN INSTRUMENT; PROVIDING FOR PROCEDURES AND CONDITIONS RELATING TO HOLDERS IN DUE COURSE; PROVIDING FOR DETERMINATION OF VALUE OF AND CONSIDERATION FOR INSTRUMENTS; DECLARING WHEN INSTRUMENT IS OVERDUE AND PROVIDING PROCEDURES; MAKING ENFORCEMENT OF INSTRUMENTS SUBJECT TO CERTAIN DEFENSES AND PROCEDURES; MAKING RIGHTS OF CERTAIN TAKERS SUBJECT TO CERTAIN CLAIMS TO INSTRUMENT; STATING RULES REGARDING CERTAIN BREACHES OF FIDUCIARY DUTIES; PROVIDING FOR PROOF OF SIGNATURES AND STATUS OF CERTAIN HOLDERS; PROVIDING FOR ENFORCEMENT OF LOST, DESTROYED OR STOLEN INSTRUMENTS; STATING EFFECT OF INSTRUMENT ON CERTAIN OBLIGATIONS; PROVIDING FOR USE OF AN INSTRUMENT AS ACCORD AND SATISFACTION OF CERTAIN CLAIMS; PROVIDING PROCEDURES FOR VARIOUS LOST, DESTROYED OR STOLEN CHECKS; DECLARING LIABILITY OF CERTAIN PARTIES DUE TO CERTAIN SIGNATURES; STATING LIABILITY OF CERTAIN PARTIES DUE TO IMPERSONATIONS AND FICTITIOUS PAYEES; STATING RESPONSIBILITY OF CERTAIN EMPLOYERS FOR FRAUDULENT INDORSEMENTS BY EMPLOYEES; PROVIDING FOR SITUATIONS IN WHICH NEGLIGENCE CONTRIBUTES TO FORGING OR ALTERING OF INSTRUMENT; PROVIDING PROCEDURES DEALING WITH ALTERATION OF INSTRUMENTS; STATING LIABILITY OF DRAWEE ON UNACCEPTED DRAFT; PROVIDING PROCEDURES RELATING TO ACCEPTANCE OF DRAFTS AND CERTIFIED CHECKS; PROVIDING FOR ACCEPTANCES VARYING DRAFT; PROVIDING PROCEDURES FOR REFUSAL TO PAY CERTAIN CHECKS; DECLARING OBLIGATIONS OF ACCEPTOR, DRAWER AND INDORSER OF A DRAFT; STATING TRANSFER AND PRESENTMENT WARRANTIES AND PROVIDING PROCEDURES; PROVIDING PROCEDURES FOR PAYMENT OR ACCEPTANCE BY MISTAKE; PROVIDING PROCEDURES FOR INSTRUMENTS SIGNED FOR ACCOMMODATION; STATING LAW AND PROCEDURES APPLICABLE TO CONVERSION OF INSTRUMENT; PROVIDING PROCEDURES FOR PRESENTMENT AND DISHONOR OF INSTRUMENTS; REQUIRING CERTAIN NOTICE OF DISHONOR; STATING WHEN NOTICE OR PRESENTMENT IS EXCUSED; DECLARING ADMISSIBILITY OF CERTAIN EVIDENCE OF DISHONOR; PROVIDING FOR DISCHARGE OF CERTAIN OBLIGATIONS AND STATING EFFECT OF DISCHARGE; STATING WHEN PAYMENT IS MADE; DECLARING EFFECT OF PAYMENT; STATING EFFECTS OF TENDER OF PAYMENT; PROVIDING FOR DISCHARGE OF INSTRUMENT BY CANCELLATION OR RENUNCIATION; PROVIDING FOR DISCHARGE OF INDORSERS, ACCOMMODATION AND OTHER PARTIES; MODIFYING APPLICABILITY OF CERTAIN PROVISIONS; PROVIDING FOR VARIATION OF CERTAIN PROVISIONS BY AGREEMENT; STATING MEASURES OF DAMAGES; DECLARING ACTIONS WHICH CONSTITUTE ORDINARY CARE; PROVIDING PROCEDURES FOR ITEMS PAYABLE THROUGH OR AT A BANK; STATING WHEN A BANK IS A COLLECTING BANK; PROVIDING FOR SEPARATE OFFICES OF A BANK; PROVIDING FOR TIME OF RECEIPT OF ITEMS; PROVIDING PROCEDURES FOR DELAYS IN COLLECTING ITEMS; AUTHORIZING AND PROVIDING PROCEDURES FOR ELECTRONIC PRESENTMENT OF ITEMS;

STATING LIMITATIONS OF ACTIONS; DECLARING STATUS OF CERTAIN BANKS AND CREDITS; MAKING CERTAIN PROVISIONS APPLICABLE TO CERTAIN ITEMS; RESTRICTING ACQUISITION OF CERTAIN RIGHTS AFTER CERTAIN INDORSEMENT; STATING RESPONSIBILITY FOR COLLECTION OR RETURN OF AN ITEM; DECLARING WHEN ACTION IS TIMELY; MODIFYING EFFECT OF CERTAIN INSTRUCTIONS; REQUIRING CERTAIN METHODS OF SENDING AND PRESENTING ITEMS; DECLARING CERTAIN DEPOSITARY BANK TO BE HOLDER OF UNINDORSED ITEMS; AUTHORIZING AGREEMENTS FOR FURTHER TRANSFER OF ITEMS; PROVIDING FOR TRANSFER, PRESENTMENT, ENCODING AND RETENTION WARRANTIES; DECLARING SECURITY INTEREST OF CERTAIN BANK IN CERTAIN ITEMS, DOCUMENTS AND PROCEEDS; DECLARING WHEN BANK GIVES VALUE FOR PURPOSES OF STATUS AS HOLDER IN DUE COURSE; PROVIDING PROCEDURES FOR PRESENTMENT OF ITEMS BY CERTAIN NOTICE; DECLARING LIABILITY OF DRAWER AND INDORSER OF CERTAIN ITEMS; PROVIDING PROCEDURES FOR DETERMINATION OF MEDIUM AND TIME OF SETTLEMENT BY BANK; DECLARING RIGHT OF CHARGE-BACK OR REFUND; ESTABLISHING LIABILITY OF CERTAIN BANK; PROVIDING PROCEDURES FOR RETURN OF ITEMS; DECLARING TIME OF FINAL PAYMENT OF ITEM; DECLARING WHEN CERTAIN DEBITS AND CREDITS BECOME FINAL; DECLARING WHEN CERTAIN CREDITS BECOME AVAILABLE FOR WITHDRAWAL; PROVIDING PROCEDURES IN CASE OF INSOLVENCY AND FOR DETERMINATION OF PREFERENCE; PROVIDING PROCEDURES FOR DEFERRED POSTING, FOR RECOVERY OF PAYMENT BY RETURN OF ITEM AND FOR RETURN OF ITEM; STATING TIME OF DISHONOR; DECLARING PAYOR BANK'S RESPONSIBILITY FOR LATE RETURN OF ITEM; STATING TIME WHEN CERTAIN ITEMS ARE SUBJECT TO CERTAIN NOTICES, ORDERS, PROCESSES AND SETOFF; STATING ORDER IN WHICH ITEMS MAY BE CHARGED OR CERTIFIED; STATING WHEN CERTAIN BANKS MAY CHARGE CERTAIN ACCOUNTS; DECLARING LIABILITY FOR WRONGFUL DISHONOR OF ITEM; STATING TIMES FOR DETERMINATION OF SUFFICIENCY OF ACCOUNT; DECLARING RIGHT TO STOP PAYMENT OF AN ITEM; PLACING BURDEN OF PROOF OF LOSS ON CUSTOMER; RELIEVING BANK OF OBLIGATION TO PAY CERTAIN CHECKS AFTER CERTAIN TIME; STATING EFFECT OF DEATH OR INCOMPETENCE OF CUSTOMER; STATING CUSTOMER'S DUTIES TO DISCOVER AND REPORT UNAUTHORIZED SIGNATURE OR ALTERATION; STATING CERTAIN SUBROGATION RIGHTS; PROVIDING PROCEDURES FOR HANDLING DOCUMENTARY DRAFTS; PROVIDING PROCEDURES FOR HANDLING "ON ARRIVAL" DRAFTS; STATING RIGHTS AND RESPONSIBILITIES OF CERTAIN BANKS FOR DOCUMENTS AND GOODS; REQUIRING CERTAIN REPORT OF DISHONOR; AUTHORIZING USE OF REFEREE AND PROVIDING PROCEDURES; STATING PRIVILEGES OF CERTAIN BANK UNDER CERTAIN CIRCUMSTANCES; DECLARING CERTAIN LIEN FOR CERTAIN EXPENSES; DECLARING THAT CERTAIN TRANSACTIONS DO NOT CREATE SALE OR SECURITY INTEREST IN CERTAIN VEHICLES OR TRAILERS; PROVIDING FOR TRANSITION AND DECLARING VALIDITY

OF PROVISIONS; REPEALING 12A O.S. 1981, SECTIONS 3-120, 3-121, 3-122, 3-208, 3-506, 3-507, 3-508, 3-509, 3-510, 3-511, 3-606, 3-701, 3-801, 3-802, 3-803, 3-804 AND 3-805, WHICH RELATE TO NEGOTIABLE INSTRUMENTS; PROVIDING FOR CODIFICATION; PROVIDING FOR NONCODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 12A O.S. 1981, Section 1-201, as last amended by Section 82, Chapter 86, O.S.L. 1988 (12A O.S. Supp. 1990, Section 1-201), is amended to read as follows:

Section 1-201.

GENERAL DEFINITIONS.

Subject to additional definitions contained in the subsequent articles of the Uniform Commercial Code which are applicable to specific articles or parts thereof, and unless the context otherwise requires, in the Uniform Commercial Code:

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

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

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

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

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

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

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

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

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

(10) "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals, as: NONNEGOTIABLE BILL OF LADING, is conspicuous. Language in the body

of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous". Whether a term or clause is "conspicuous" or not is for decision by the court.

(11) "Contract" means the total legal obligation which results from the parties' agreement as affected by the provisions of the Uniform Commercial Code and any other applicable rules of law. (Compare "Agreement".)

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

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

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

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

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

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

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

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

(20) "Holder" ~~means a person who is in possession of a document of title or an instrument or a certificated investment security drawn, issued, or endorsed to him or to his order or to bearer or in blank~~ with respect to a negotiable instrument, means the person in possession if the instrument is payable to bearer or, in the case of an instrument payable to an identified person, if the identified person is in possession. "Holder" with respect to a document of title means the person in possession if the goods are deliverable to bearer or to the order of the person in possession.

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

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

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

(24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government ~~as a part of its currency~~ and includes a monetary unit of account established by an

intergovernmental organization or by agreement between two or more nations.

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

(a) he has actual knowledge of it; or

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

(c) from all the facts and circumstances known to him at the time in question he has reason to know that it exists.

A person "knows" or has "knowledge" of a fact when he has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by the provisions of the Uniform Commercial Code.

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

(a) it comes to his attention; or

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

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

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

(29) "Party", as distinct from "third party", means a person who has engaged in a transaction or made an agreement within the provisions of the Uniform Commercial Code.

(30) "Person" includes an individual or an organization (See Section 1-102 of this title).

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

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

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

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

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

(36) "Rights" includes remedies.

(37) (a) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The retention or reservation of title by a seller of goods regardless of shipment or delivery to the buyer (Section 2-401 of this title) is limited in effect to a reservation of a "security interest". The term also includes any interest of a buyer of accounts or chattel paper which is subject to Article 9 of this title. The special property interest of a buyer of goods on identification of such goods to a contract for sale under Section 2-401 of this title is not a "security interest", but a buyer may also acquire a "security interest" by complying with the provisions of Article 9 of this title. Unless a consignment is intended as security, reservation of title thereunder is not a "security interest" but a consignment is in any event subject to the provisions on consignment sales (Section 2-326 of this title).

(b) Whether a transaction creates a lease or security interest is determined by the facts of each case; however, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee, and:

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

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

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

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

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

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

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

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

(iv) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the

use of the goods for the term of the renewal at the time the option is to be performed, or

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

(d) For purposes of this subsection:

(i) additional consideration is not nominal if:

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

(B) when the option to become the owner of the goods is granted to the lessee the price is stated to be the fair market value of the goods determined at the time the option is to be performed. Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised;

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

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

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

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

(40) "Surety" includes guarantor.

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

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

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

(44) "Value". Except as otherwise provided for in Sections 3-303, 4-208 and 4-209 of this title with respect to negotiable

instruments and bank collections, a person gives "value" for rights if he acquires them:

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

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

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

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

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

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

SECTION 2. AMENDATORY 12A O.S. 1981, Section 1-207, is amended to read as follows:

Section 1-207. PERFORMANCE OR ACCEPTANCE UNDER RESERVATION OF RIGHTS.

(1) A party who, with explicit reservation of rights, performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as "without prejudice", "under protest" or the like are sufficient.

(2) Subsection (1) of this section does not apply to an accord and satisfaction.

SECTION 3. AMENDATORY Section 3, Chapter 86, O.S.L. 1988 (12A O.S. Supp. 1990, Section 2A-103), is amended to read as follows:

Section 2A-103.

DEFINITIONS AND INDEX OF DEFINITIONS

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

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

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

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

(d) "Conforming" goods or performance under a lease contract means goods or performance that are in

accordance with the obligations under the lease contract.

(e) "Consumer lease" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee~~, except an organization,~~ who is an individual and who takes under the lease primarily for a personal, family, or household purpose, if the total payments to be made under the lease contract, excluding payments for options to renew or buy, do not exceed ~~Twenty-five Thousand Dollars ($25,000.00)~~ Forty-five Thousand Dollars ($45,000.00).

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

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

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

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

(iii) ~~either~~ one of the following occurs:

(A) the lessee receives a copy of the contract ~~evidencing the lessor's purchase~~ by which the lessor acquired the goods or the right to possession and use of the goods ~~on or~~ before signing the lease contract~~, or~~;

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

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

(D) if the lease is not a consumer lease, the lessor, before the lessee signs the lease contract, informs the lessee in writing (a) of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person, (b) that the lessee is entitled under this article to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to

possession and use of the goods, and (c) that the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.

(h) "Goods" means all things that are movable at the time of identification to the lease contract, or are fixtures (Section ~~39~~ 2A-309 of this ~~act~~ title), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

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

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

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

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

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

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

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

(p) "Lessor" means a person who transfers the right to possession and use of goods under a lease. Unless the

context clearly indicates otherwise, the term includes a sublessor.

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

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

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

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

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

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

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

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

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

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

(2) Other definitions applying to this article and the sections in which they appear are:

"Accessions". Subsection (1) of Section ~~40~~ 2A-310 of this ~~act~~ title.

"Construction mortgage". Paragraph (d) of subsection (1) of Section ~~39~~ 2A-309 of this ~~act~~ title.

"Encumbrance". Paragraph (e) of subsection (1) of Section ~~39~~ 2A-309 of this ~~act~~ title.

"Fixtures". Paragraph (a) of subsection (1) of Section ~~39~~ 2A-309 of this ~~act~~ title.

"Fixture filing". Paragraph (b) of subsection (1) of Section ~~39~~ 2A-309 of this ~~act~~ title.

"Purchase money lease". Paragraph (c) of subsection (1) of Section ~~39~~ 2A-309 of this ~~act~~ title.

(3) The following definitions in other articles apply to this article:

"~~Accounts~~ Account". Section 9-106 of ~~Title 12A of the Oklahoma Statutes~~ this title.

"Between merchants". Subsection (3) of Section 2-104~~(3)~~ of ~~Title 12A of the Oklahoma Statutes~~ this title.

"Buyer". Paragraph (a) of subsection (1) of Section 2-103~~(1)(a)~~ of ~~Title 12A of the Oklahoma Statutes~~ this title.

"Chattel paper". Paragraph (b) of subsection (1) of Section 9-105~~(1)(b)~~ of ~~Title 12A of the Oklahoma Statutes~~ this title.

"Consumer goods". Subsection (1) of Section 9-109~~(1)~~ of ~~Title 12A of the Oklahoma Statutes~~ this title.

"~~Documents~~ Document". Paragraph (f) of subsection (1) of Section 9-105~~(1)(f)~~ of ~~Title 12A of the Oklahoma Statutes~~ this title.

"Entrusting". Subsection (3) of Section 2-403~~(3)~~ of ~~Title 12A of the Oklahoma Statutes~~ this title.

"General intangibles". Section 9-106 of ~~Title 12A of the Oklahoma Statutes~~ this title.

"Good faith". Paragraph (b) of subsection (1) of Section 2-103~~(1)(b)~~ of ~~Title 12A of the Oklahoma Statutes~~ this title.

"~~Instruments~~ Instrument". Paragraph (i) of subsection (1) of Section 9-105~~(1)(i)~~ of ~~Title 12A of the Oklahoma Statutes~~ this title.

"Merchant". Subsection (1) of Section 2-104~~(1)~~ of ~~Title 12A of the Oklahoma Statutes~~ this title.

"Mortgage". Paragraph (j) of subsection (1) of Section 9-105~~(1)(j)~~ of ~~Title 12A of the Oklahoma Statutes~~ this title.

"Pursuant to commitment". Paragraph (k) of subsection (1) of Section 9-105~~(1)(k)~~ of ~~Title 12A of the Oklahoma Statutes~~ this title.

"Receipt". Paragraph (c) of subsection (1) of Section 2-103~~(1)(c)~~ of ~~Title 12A of the Oklahoma Statutes~~ this title.

"Sale". Subsection (1) of Section 2-106~~(1)~~ of ~~Title 12A of the Oklahoma Statutes~~ this title.

"Sale on ~~Approval~~ approval". Section 2-326 of ~~Title 12A of the Oklahoma Statutes~~ this title.

"Sale or ~~Return~~ return". Section 2-326 of ~~Title 12A of the Oklahoma Statutes~~ this title.

"Seller". Paragraph (d) of subsection (1) of Section 2-103~~(1)(d)~~ of ~~Title 12A of the Oklahoma Statutes~~ this title.

(4) In addition, Article 1 of the Uniform Commercial Code, this title, contains general definitions and principles of construction and interpretation applicable throughout this article.

SECTION 4. AMENDATORY Section 4, Chapter 86, O.S.L. 1988 (12A O.S. Supp. 1990, Section 2A-104), is amended to read as follows:

Section 2A-104.

LEASES SUBJECT TO OTHER ~~STATUTES~~ LAW

(1) A lease, although subject to this article, is also subject to any applicable:

(a) ~~statute of the United States;~~

~~(b)~~ certificate of title statute of this state;

~~(c)~~ (b) certificate of title statute of another jurisdiction (Section ~~5~~ 2A-105 of this ~~act~~ title); or

~~(d)~~ (c) consumer protection statute of this state, or final consumer protection decision of a court of this state existing on January 1, 1992.

(2) In case of conflict between ~~the provisions of~~ this article, other than ~~Section 5, Section 8, and subsections (3) of Sections 34 and 35 of this act~~ Section 2A-105, subsection (3) of Section 2A-304, and subsection (3) of Section 2A-305 of this title, and ~~any~~ a statute or decision referred to in subsection (1) of this section, the ~~provisions of that~~ statute or decision ~~control~~ controls.

(3) Failure to comply with ~~any~~ an applicable ~~statute~~ law has only the effect specified therein.

SECTION 5. AMENDATORY Section 18, Chapter 86, O.S.L. 1988 (12A O.S. Supp. 1990, Section 2A-209), is amended to read as follows:

Section 2A-209.

LESSEE UNDER FINANCE LEASE AS BENEFICIARY OF SUPPLY CONTRACT

(1) The benefit of the supplier's promises to the lessor under the supply contract and of all warranties, whether express or implied, ~~under~~ including those of any third party provided in connection with or as part of the supply contract, extends to the lessee to the extent of the lessee's leasehold interest under a finance lease related to the supply contract, but is subject to the terms of the warranty and of the supply contract and all ~~of the supplier's~~ defenses or claims arising therefrom.

(2) The extension of the benefit of ~~the~~ a supplier's promises and of warranties to the lessee (subsection (1) of this section) does not:

~~(a)~~ (i) modify the rights and obligations of the parties to the supply contract, whether arising therefrom or otherwise, or

~~(b)~~ (ii) impose any duty or liability under the supply contract on the lessee.

(3) Any modification or rescission of the supply contract by the supplier and the lessor is effective ~~against~~ between the supplier and the lessee unless, ~~prior to~~ before the modification or rescission, the supplier has received notice that the lessee has entered into a finance lease related to the supply contract. ~~If the supply contract is modified or rescinded after the lessee enters the finance lease, the lessee has a cause of action against the lessor, and against the supplier if the supplier has notice of the lessee's entering the finance lease when the supply contract is modified or rescinded. The lessee's recovery from such action shall put the lessee in as good a position as if the modification or rescission had not occurred.~~ If the modification or rescission is effective between the supplier and the lessee, the lessor is deemed to have assumed, in addition to the obligations of the lessor to the lessee under the lease contract, promises of the supplier to the lessor and warranties that were so modified or rescinded as they existed and were available to the lessee before modification or rescission.

(4) In addition to the extension of the benefit of the supplier's promises and of warranties to the lessee under subsection (1) of this section, the lessee retains all rights that the lessee may have against the supplier which arise from an agreement between the lessee and the supplier or under other law.

SECTION 6. AMENDATORY Section 33, Chapter 86, O.S.L. 1988 (12A O.S. Supp. 1990, Section 2A-303), is amended to read as follows:

Section 2A-303.

ALIENABILITY OF PARTY'S INTEREST UNDER LEASE CONTRACT
OR OF LESSOR'S RESIDUAL INTEREST IN GOODS;
DELEGATION OF PERFORMANCE; ~~ASSIGNMENT~~
TRANSFER OF RIGHTS

~~(1) Any interest of a party under a lease contract and the lessor's residual interest in the goods may be transferred unless:~~

~~(a) the transfer is voluntary and the lease contract prohibits the transfer; or~~

~~(b) the transfer materially changes the duty of or materially increases the burden or risk imposed on the~~

~~other party to the lease contract, and within a reasonable time after notice of the transfer the other party demands that the transferee comply with subsection (2) of this section and the transferee fails to comply.~~

~~(2) Within a reasonable time after demand pursuant to paragraph (b) of subsection (1) of this section, the transferee shall:~~

~~(a) cure or provide adequate assurance that he will promptly cure any default other than one arising from the transfer;~~

~~(b) compensate or provide adequate assurance that he will promptly compensate the other party to the lease contract and any other person holding an interest in the lease contract, except the party whose interest is being transferred, for any loss to that party resulting from the transfer;~~

~~(c) provide adequate assurance of future due performance under the lease contract; and~~

~~(d) assume the lease contract.~~

~~(3) Demand pursuant to paragraph (b) of subsection (1) of this section is without prejudice to the other party's rights against the transferee and the party whose interest is transferred.~~

(1) As used in this section, "creation of a security interest" includes the sale of a lease contract that is subject to Article 9 of this title, Secured Transactions, by reason of paragraph (b) of subsection (1) of Section 9-102 of this title.

(2) Except as provided in subsections (3) and (4) of this section, a provision in a lease agreement which (i) prohibits the voluntary or involuntary transfer, including a transfer by sale, sublease, creation or enforcement of a security interest, or attachment, levy, or other judicial process, of an interest of a party under the lease contract or of the lessor's residual interest in the goods, or (ii) makes such a transfer an event of default, gives rise to the rights and remedies provided in subsection (5) of this section, but a transfer that is prohibited or is an event of default under the lease agreement is otherwise effective.

(3) A provision in a lease agreement which (i) prohibits the creation or enforcement of a security interest in an interest of a party under the lease contract or in the lessor's residual interest in the goods, or (ii) makes such a transfer an event of default, is not enforceable unless, and then only to the extent that, there is an actual transfer by the lessee of the lessee's right of possession or use of the goods in violation of the provision or an actual delegation of a material performance of either party to the lease contract in violation of the provision. Neither the granting nor the enforcement of a security interest in (i) the lessor's interest under the lease contract or (ii) the lessor's residual interest in the goods is a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the lessee within the purview of subsection (5) of this section unless, and then only to the extent that, there is an actual delegation of a material performance of the lessor.

(4) A provision in a lease agreement which (i) prohibits a transfer of a right to damages for default with respect to the whole lease contract or of a right to payment arising out of the transferor's due performance of the transferor's entire obligation, or (ii) makes such a transfer an event of default, is not enforceable, and such a transfer is not a transfer that materially impairs the prospect of obtaining return performance by, materially

changes the duty of, or materially increases the burden of risk imposed on, the other party to the lease contract within the purview of subsection (5) of this section.

(5) Subject to subsections (3) and (4) of this section:

(a) if a transfer is made which is made an event of default under a lease agreement, the party to the lease contract not making the transfer, unless that party waives the default or otherwise agrees, has the rights and remedies described in subsection (2) of Section 2A-501 of this title; or

(b) if paragraph (a) of this subsection is not applicable and if a transfer is made that (i) is prohibited under a lease agreement or (ii) materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract, unless the party not making the transfer agrees at any time to the transfer in the lease contract or otherwise, then, except as limited by contract, (i) the transferor is liable to the party not making the transfer for damages caused by the transfer to the extent that the damages could not reasonably be prevented by the party not making the transfer and (ii) a court having jurisdiction may grant other appropriate relief, including cancellation of the lease contract or an injunction against the transfer.

~~(4)~~ (6) ~~An assignment~~ A transfer of "the lease" or of "all my rights under the lease", or ~~an assignment~~ a transfer in similar general terms, is a transfer of rights~~,~~ and, unless the language or the circumstances, as in ~~an assignment~~ a transfer for security, indicate the contrary, the ~~assignment~~ transfer is a delegation of duties by the ~~assignor to the assignee and acceptance~~ transferor to the transferee. Acceptance by the ~~assignee~~ transferee constitutes a promise by ~~him~~ the transferee to perform those duties. ~~This~~ The promise is enforceable by either the ~~assignor~~ transferor or the other party to the lease contract.

~~(5)~~ (7) Unless otherwise agreed by the lessor and the lessee, ~~no~~ a delegation of performance ~~relieves~~ does not relieve the ~~assignor~~ transferor as against the other party of any duty to perform or of any liability for default.

~~(6) A right to damages for default with respect to the whole lease contract or a right arising out of the assignor's due performance of his entire obligation can be assigned despite agreement otherwise.~~

~~(7)~~ (8) ~~To~~ In a consumer lease, to prohibit the transfer of an interest of a party under ~~a~~ the lease contract or to make a transfer an event of default, the language ~~of prohibition~~ must be specific, by a writing, and conspicuous.

SECTION 7. AMENDATORY Section 34, Chapter 86, O.S.L. 1988 (12A O.S. Supp. 1990, Section 2A-304), is amended to read as follows:

Section 2A-304.

SUBSEQUENT LEASE OF GOODS BY LESSOR

(1) Subject to ~~the provisions of~~ Section ~~33~~ 2A-303 of this ~~act~~ title, a subsequent lessee from a lessor of goods under an existing lease contract obtains, to the extent of the leasehold interest transferred, the leasehold interest in the goods that the lessor had or had power to transfer, and except as provided in subsection (2) of this section and subsection (4) of Section ~~74~~ 2A-527 of this ~~act~~

title, takes subject to the existing lease contract. A lessor with voidable title has power to transfer a good leasehold interest to a good faith subsequent lessee for value, but only to the extent ~~provided for a subsequent lessee from a lessor of goods under an existing lease contract. When~~ set forth in the preceding sentence. If goods have been delivered under a transaction of purchase, the lessor has that power even though:

(a) the lessor's transferor was deceived as to the identity of the lessor;

(b) the delivery was in exchange for a check which is later dishonored;

(c) it was agreed that the transaction was to be a "cash sale"; or

(d) the delivery was procured through fraud punishable as larcenous under the criminal law.

(2) A subsequent lessee in the ordinary course of business from a lessor who is a merchant dealing in goods of that kind to whom the goods were entrusted by the existing lessee of that lessor before the interest of the subsequent lessee became enforceable against ~~the~~ that lessor obtains, to the extent of the leasehold interest transferred, all of ~~the~~ that lessor's and the existing lessee's rights to the goods, and takes free of the existing lease contract.

(3) A subsequent lessee from the lessor of goods that are subject to an existing lease contract and are covered by a certificate of title issued under a statute of this state or of another jurisdiction takes no greater rights than those provided both by this section and by the certificate of title statute.

SECTION 8. AMENDATORY Section 37, Chapter 86, O.S.L. 1988 (12A O.S. Supp. 1990, Section 2A-307), is amended to read as follows:

Section 2A-307.

PRIORITY OF LIENS ARISING BY ATTACHMENT OR LEVY ON, SECURITY INTERESTS IN, AND OTHER CLAIMS TO GOODS

(1) Except as otherwise provided in Section ~~36~~ 2A-306 of this ~~act~~ title, a creditor of a lessee takes subject to the lease contract.

(2) Except as otherwise provided in subsections (3) and (4) of this section and in Sections ~~36~~ 2A-306 and ~~38~~ 2A-308 of this ~~act~~ title, a creditor of a lessor takes subject to the lease contract unless:

(a) ~~unless~~ the creditor holds a lien that attached to the goods before the lease contract became enforceable~~, or~~;

(b) ~~unless~~ the creditor holds a security interest in the goods ~~that under the Uniform Commercial Code - Secured Transactions would have priority over any other security interest in the goods perfected by a filing covering the goods and made at the time the lease contract became enforceable, whether or not any other security interest existed.~~ and the lessee did not give value and receive delivery of the goods without knowledge of the security interest; or

(c) the creditor holds a security interest in the goods which was perfected (Section 9-303 of this title) before the lease contract became enforceable.

(3) A lessee in the ordinary course of business takes the leasehold interest free of a security interest in the goods created by the lessor even though the security interest is perfected (Section 9-303 of this title) and the lessee knows of its existence.

(4) A lessee other than a lessee in the ordinary course of business takes the leasehold interest free of a security interest to the extent that it secures future advances made after the secured party acquires knowledge of the lease or more than forty-five (45) days after the lease contract becomes enforceable, whichever first occurs, unless the future advances are made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the forty-five-day period.

SECTION 9. AMENDATORY Section 39, Chapter 86, O.S.L. 1988 (12A O.S. Supp. 1990, Section 2A-309), is amended to read as follows:

Section 2A-309.

LESSOR'S AND LESSEE'S RIGHTS WHEN GOODS BECOME FIXTURES

(1) In this section:

(a) goods are "fixtures" when they become so related to particular real estate that an interest in them arise under real estate law;

(b) a "fixture filing" is the filing, in the office where a mortgage on the real estate would be filed or recorded, of a financing statement ~~concerning~~ covering goods that are or are to become fixtures and conforming to the requirements of subsection (5) of Section 9-402 of ~~Title 12A of the Oklahoma Statutes~~ this title, as applicable, and Section 9-401A of ~~Title 12A of the Oklahoma Statutes~~ this title;

(c) a lease is a "purchase money lease" unless the lessee has possession or use of the goods or the right to possession or use of the goods before the lease agreement is enforceable;

(d) a mortgage is a "construction mortgage" to the extent it secures an obligation incurred for the construction of an improvement on land including the acquisition cost of the land, if the recorded writing so indicates; and

(e) "encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests.

(2) Under this article a lease may be of goods that are fixtures or may continue in goods that become fixtures, but no lease exists under this article of ordinary building materials incorporated into an improvement on land.

(3) This article does not prevent creation of a lease of fixtures pursuant to real estate law.

(4) The perfected interest of a lessor of fixtures has priority over a conflicting interest of an encumbrancer or owner of the real estate if:

(a) the lease is a purchase money lease, the conflicting interest of the encumbrancer or owner arises before the goods become fixtures, the interest of the lessor is perfected by a fixture filing before the goods become fixtures or within ten (10) days thereafter, and the lessee has an interest of record in the real estate or is in possession of the real estate; or

(b) the interest of the lessor is perfected by a fixture filing before the interest of the encumbrancer or owner is of record, the lessor's interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the lessee has an interest of record in the real estate or is in possession of the real estate.

(5) The interest of a lessor of fixtures, whether or not perfected, has priority over the conflicting interest of an encumbrancer or owner of the real estate if:

(a) the fixtures are readily removable factory or office machines, readily removable equipment that is not primarily used or leased for use in the operation of the real estate, or readily removable replacements of domestic appliances that are goods subject to a consumer lease, and before the goods become fixtures the lease contract is enforceable; or

(b) the conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the lease contract is enforceable; or

(c) the encumbrancer or owner has consented in writing to the lease or has disclaimed an interest in the goods as fixtures; or

(d) the lessee has a right to remove the goods as against the encumbrancer or owner. If the lessee's right to remove terminates, the priority of the interest of the lessor continues for a reasonable time.

(6) Notwithstanding paragraph (a) of subsection (4) of this section but otherwise subject to subsections (4) and (5) of this section, the interest of a lessor of fixtures, including the lessor's residual interest, is subordinate to the conflicting interest of an encumbrancer of the real estate under a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent given to refinance a construction mortgage, the conflicting interest of an encumbrancer of the real estate under a mortgage has this priority to the same extent as the encumbrancer of the real estate under the construction mortgage.

(7) In cases other than those described in subsections (1) through (6) of this section, priority between the interest of a lessor of fixtures, including the lessor's residual interest, and the conflicting interest of an encumbrancer or owner of the real estate who is not the lessee is determined by the priority rules governing conflicting interests in real estate.

(8) If the interest of a lessor of fixtures, including the lessor's residual interest, has priority over all conflicting interests of all owners and encumbrancers of the real estate, the lessor or the lessee~~: (a)~~ may (i) on default, expiration, termination, or cancellation of the lease agreement ~~by the other party~~ but subject to the ~~provisions of the~~ lease agreement and this article, or ~~(b)~~ (ii) if necessary to enforce ~~his~~ other rights and remedies of the lessor or lessee under this article, ~~may~~ remove the goods from the real estate, free and clear of all conflicting interests of all owners and encumbrancers of the real estate, but ~~he~~ the lessor or lessee must reimburse any encumbrancer or owner of the real estate who is not the lessee and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation.

(9) Even though the lease agreement does not create a security interest, the interest of a lessor of fixtures, including the lessor's residual interest, is perfected by filing a financing statement as a fixture filing for leased goods that are or are to

become fixtures in accordance with the relevant provisions of the Uniform Commercial Code - Secured Transactions.

SECTION 10. NEW LAW A New section of law to be codified in the Oklahoma Statutes as Section 2A-311 of Title 12A, unless there is created a duplication in numbering, reads as follows:

PRIORITY SUBJECT TO SUBORDINATION.

Nothing in this article prevents subordination by agreement by any person entitled to priority.

SECTION 11. AMENDATORY Section 47, Chapter 86, O.S.L. 1988 (12A O.S. Supp. 1990, Section 2A-407), is amended to read as follows:

Section 2A-407.

IRREVOCABLE PROMISES; FINANCE LEASES

(1) In the case of a finance lease that is not a consumer lease the lessee's promises under the lease contract become irrevocable and independent upon the lessee's acceptance of the goods.

(2) A promise that has become irrevocable and independent under subsection (1) of this section:

(a) is effective and enforceable between the parties, and by or against third parties including assignees of the parties, and

(b) is not subject to cancellation, termination, modification, repudiation, excuse, or substitution without the consent of the party to whom the promise runs.

(3) This section does not affect the validity under any other law of a covenant in any lease contract making the lessee's promises irrevocable and independent upon the lessee's acceptance of the goods.

SECTION 12. AMENDATORY Section 48, Chapter 86, O.S.L. 1988 (12A O.S. Supp. 1990, Section 2A-501), is amended to read as follows:

Section 2A-501.

DEFAULT; PROCEDURE

(1) Whether the lessor or the lessee is in default under a lease contract is determined by the lease agreement and this article.

(2) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement has rights and remedies as provided in this article and, except as limited by this article, as provided in the lease agreement.

(3) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement may reduce the party's claim to judgment, or otherwise enforce the lease contract by self-help or any available judicial procedure or nonjudicial procedure, including administrative proceeding, arbitration, or the like, in accordance with this article.

(4) Except as otherwise provided in subsection (1) of Section 1-106 of this title or this article or the lease agreement, the rights and remedies referred to in subsections (2) and (3) of this section are cumulative.

(5) If the lease agreement covers both real property and goods, the party seeking enforcement may proceed under this Part as to the goods, or under other applicable law as to both the real property and the goods in accordance with ~~his~~ that party's rights and remedies in respect of the real property, in which case this Part does not apply.

SECTION 13. AMENDATORY Section 50, Chapter 86, O.S.L. 1988 (12A O.S. Supp. 1990, Section 2A-503), is amended to read as follows:

Section 2A-503.

MODIFICATION OR IMPAIRMENT OF RIGHTS AND REMEDIES

(1) Except as otherwise provided in this article, the lease agreement may include rights and remedies for default in addition to or in substitution for those provided in this article and may limit or alter the measure of damages recoverable under this article.

(2) Resort to a remedy provided under this article or in the lease agreement is optional unless the remedy is expressly agreed to be exclusive. If circumstances cause an exclusive or limited remedy to fail of its essential purpose, or provision for an exclusive remedy is unconscionable, remedy may be had as provided in this article.

(3) Consequential damages may be liquidated under Section ~~51~~ 2A-504 of this ~~act~~ title, or may otherwise be limited, altered, or excluded unless the limitation, alteration, or exclusion is unconscionable. Limitation, alteration, or exclusion of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable but limitation, alteration, or exclusion of damages where the loss is commercial is not prima facie unconscionable.

(4) Rights and remedies on default by the lessor or the lessee with respect to any obligation or promise collateral or ancillary to the lease contract are not impaired by this article.

SECTION 14. AMENDATORY Section 54, Chapter 86, O.S.L. 1988 (12A O.S. Supp. 1990, Section 2A-507), is amended to read as follows:

Section 2A-507.

PROOF OF MARKET RENT; TIME AND PLACE

(1) Damages based on market rent (Section ~~66~~ 2A-519 or ~~75~~ 2A-528 of this ~~act~~ title) are determined according to the rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the ~~time of the default~~ times specified in Sections 2A-519 and 2A-528 of this title.

(2) If evidence of rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the times or places described in this article is not readily available, the rent prevailing within any reasonable time before or after the time described or at any other place or for a different lease term which in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the difference, including the cost of transporting the goods to or from the other place.

(3) Evidence of a relevant rent prevailing at a time or place or for a lease term other than the one described in this article offered by one party is not admissible unless and until he has given the other party notice the court finds sufficient to prevent unfair surprise.

(4) If the prevailing rent or value of any goods regularly leased in any established market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of that market are admissible in evidence. The circumstances of the preparation of the report may be shown to affect its weight but not its admissibility.

SECTION 15. AMENDATORY Section 55, Chapter 86, O.S.L. 1988 (12A O.S. Supp. 1990, Section 2A-508), is amended to read as follows:

Section 2A-508.

LESSEE'S REMEDIES

(1) If a lessor fails to deliver the goods in conformity to the lease contract (Section ~~56~~ 2A-509 of this ~~act~~ title) or repudiates the lease contract (Section ~~42~~ 2A-402 of this ~~act~~ title), or a lessee rightfully rejects the goods (Section ~~56~~ 2A-509 of this ~~act~~ title) or justifiably revokes acceptance of the goods (Section ~~64~~ 2A-517 of this ~~act~~ title), then with respect to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (Section ~~57~~ 2A-510 of this ~~act~~ title), the lessor is in default under the lease contract and the lessee may:

(a) cancel the lease contract (subsection (1) of Section ~~52~~ 2A-505 of this ~~act~~ title);

(b) recover so much of the rent and security as has been paid~~, but in the case of an installment lease contract the recovery is that which~~ and is just under the circumstances;

(c) cover and recover damages as to all goods affected whether or not they have been identified to the lease contract (Sections ~~65~~ 2A-518 and ~~67~~ 2A-520 of this ~~act~~ title), or recover damages for nondelivery (Sections ~~66~~ 2A-519 and ~~67~~ 2A-520 of this ~~act~~ title)~~.~~;

(d) exercise any other rights or pursue any other remedies provided in the lease contract.

(2) If a lessor fails to deliver the goods in conformity to the lease contract or repudiates the lease contract, the lessee may also:

(a) if the goods have been identified, recover them (Section ~~69~~ 2A-522 of this ~~act~~ title); or

(b) in a proper case, obtain specific performance or replevy the goods (Section ~~68~~ 2A-521 of this ~~act~~ title).

(3) If a lessor is otherwise in default under a lease contract, the lessee may exercise the rights and pursue the remedies provided in the lease contract, which may include a right to cancel the lease, and ~~this article~~ in subsection (3) of Section 2A-519 of this title.

(4) If a lessor has breached a warranty, whether express or implied, the lessee may recover damages (subsection (4) of Section ~~66~~ 2A-519 of this ~~act~~ title).

(5) On rightful rejection or justifiable revocation or acceptance, a lessee has a security interest in goods in the lessee's possession or control for any rent and security that has been paid and any expenses reasonably incurred in their inspection, receipt, transportation, and care and custody and may hold those goods and dispose of them in good faith and in a commercially reasonable manner, subject to ~~the provisions of~~ subsection (5) of Section ~~74~~ 2A-527 of this ~~act~~ title.

(6) Subject to the provisions of Section ~~47~~ 2A-407 of this ~~act~~ title, a lessee, on notifying the lessor of the lessee's intention to do so, may deduct all or any part of the damages resulting from any default under the lease contract from any part of the rent still due under the same lease contract.

SECTION 16. AMENDATORY Section 63, Chapter 86, O.S.L. 1988 (12A O.S. Supp. 1990, Section 2A-516), is amended to read as follows:

Section 2A-516.

EFFECT OF ACCEPTANCE OF GOODS; NOTICE OF DEFAULT; BURDEN OF ESTABLISHING DEFAULT AFTER ACCEPTANCE; NOTICE OF CLAIM OR LITIGATION TO PERSON ANSWERABLE OVER

(1) A lessee must pay rent for any goods accepted in accordance with the lease contract, with due allowance for goods rightfully rejected or not delivered.

(2) A lessee's acceptance of goods precludes rejection of the goods accepted. In the case of a finance lease, if made with knowledge of a nonconformity, acceptance cannot be revoked because of it. In any other case, if made with knowledge of a nonconformity, acceptance cannot be revoked because of it unless the acceptance was on the reasonable assumption that the nonconformity would be seasonably cured. Acceptance does not of itself impair any other remedy provided by this article or the lease agreement for nonconformity.

(3) If a tender has been accepted:

(a) within a reasonable time after the lessee discovers or should have discovered any default, the lessee shall notify the lessor and the supplier, if any, or be barred from any remedy against the party not notified;

(b) except in the case of a consumer lease, within a reasonable time after the lessee receives notice of litigation for infringement or the like (Section ~~20~~ 2A-211 of this ~~act~~ title) the lessee shall notify the lessor or be barred from any remedy over for liability established by the litigation; and

(c) the burden is on the lessee to establish any default.

(4) If a lessee is sued for breach of a warranty or other obligation for which a lessor or a supplier is answerable over the following apply:

(a) the lessee may give the lessor or the supplier, or both, written notice of the litigation. If the notice states that the ~~lessor or the supplier~~ person notified may come in and defend and that if the ~~lessor or the supplier~~ person notified does not do so ~~he~~ that person will be bound in any action against ~~him~~ that person by the lessee by any determination of fact common to the two litigations, then unless the ~~lessor or the supplier~~ person notified after seasonable receipt of the notice does come in and defend ~~he~~ that person is so bound.

(b) the lessor or the supplier may demand in writing that the lessee turn over control of the litigation including settlement if the claim is one for infringement or the like (Section ~~20~~ 2A-211 of this ~~act~~ title) or else be barred from any remedy over. If the demand states that the lessor or the supplier agrees to bear all expense and to satisfy any adverse judgment, then unless the lessee after seasonable receipt of the demand does turn over control the lessee is so barred.

(5) ~~The provisions of subsections~~ Subsections (3) and (4) of this section apply to any obligation of a lessee to hold the lessor or the supplier harmless against infringement or the like (Section ~~20~~ 2A-211 of this ~~act~~ title).

SECTION 17. AMENDATORY Section 64, Chapter 86, O.S.L. 1988 (12A O.S. Supp. 1990, Section 2A-517), is amended to read as follows:

Section 2A-517.

REVOCATION OF ACCEPTANCE OF GOODS

(1) A lessee may revoke acceptance of a lot or commercial unit whose nonconformity substantially impairs its value to the lessee if ~~he~~ the lessee has accepted it:

(a) except in the case of a finance lease, on the reasonable assumption that its nonconformity would be cured and it has not been seasonably cured; or

(b) without discovery of the nonconformity if the lessee's acceptance was reasonably induced either by the lessor's assurances or, except in the case of a finance lease, by the difficulty of discovery before acceptance.

(2) Except in the case of a finance lease that is not a consumer lease, a lessee may revoke acceptance of a lot or commercial unit if the lessor defaults under the lease contract and the default substantially impairs the value of that lot or commercial unit to the lessee.

(3) If the lease agreement so provides, the lessee may revoke acceptance of a lot or commercial unit because of other defaults by the lessor.

(4) Revocation of acceptance must occur within a reasonable time after the lessee discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by the nonconformity. Revocation is not effective until the lessee notifies the lessor.

~~(3)~~ (5) A lessee who so revokes has the same rights and duties with regard to the goods involved as if the lessee had rejected them.

SECTION 18. AMENDATORY Section 65, Chapter 86, O.S.L. 1988 (12A O.S. Supp. 1990, Section 2A-518), is amended to read as follows:

Section 2A-518.

COVER; SUBSTITUTE GOODS

(1) After a default by a lessor under the lease contract of the type described in ~~(~~subsection (1) of Section ~~55~~ 2A-508 of this ~~act~~ title~~)~~, or, if agreed, after other default by the lessor, the lessee may cover by making any purchase or lease of or contract to purchase or lease goods in substitution for those due from the lessor.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (Section ~~51~~ 2A-504 of this ~~act~~ title) or otherwise determined ~~by~~ pursuant to agreement of the parties (subsection (3) of Section 1-102~~(3)~~ and Section 2A-503 of ~~Title 12A of the Oklahoma Statutes~~ this title), if a lessee's cover is by a lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages:

~~(a)~~ (i) the present value, as of the date of ~~default~~ the commencement of the term of the new lease agreement, of ~~the difference between~~ the ~~total~~ rent ~~for the lease term of~~ under the new lease agreement ~~and~~ applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement minus the present value as of the same date of the total rent for the then remaining lease term of the original lease agreement, and

~~(b)~~ (ii) any incidental or consequential damages less expenses saved in consequence of the lessor's default.

(3) If a lessee's cover is by lease agreement that for any reason does not qualify for treatment under subsection (2) of this section, or is by purchase or otherwise, the lessee may recover from the lessor as if the lessee had elected not to cover and Section ~~66~~ 2A-519 of this ~~act~~ title governs.

SECTION 19. AMENDATORY Section 66, Chapter 86, O.S.L. 1988 (12A O.S. Supp. 1990, Section 2A-519), is amended to read as follows:

Section 2A-519.

LESSEE'S DAMAGES FOR NONDELIVERY, REPUDIATION, DEFAULT AND BREACH OF WARRANTY IN REGARD TO ACCEPTED GOODS

(1) Except as otherwise provided with respect to damages liquidated in the lease agreement (Section ~~51~~ 2A-504 of this ~~act~~ title) or otherwise determined ~~by~~ pursuant to agreement of the parties (subsection (3) of Section 1-102~~(3) of Title 12A of the Oklahoma Statutes~~ and Section 2A-503 of this title), if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement that for any reason does not qualify for treatment under subsection (2) of Section ~~65~~ 2A-518 of this ~~act~~ title, or is by purchase or otherwise, the measure of damages for nondelivery or repudiation by the lessor or for rejection or revocation of acceptance by the lessee is the present value, as of the date of the default, of the ~~difference between the~~ then market rent ~~and~~ minus the present value as of the same date of the original rent, computed for the remaining lease term of the original lease agreement, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(2) Market rent is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

(3) ~~If~~ Except as otherwise agreed, if the lessee has accepted goods and given notification (subsection (3) of Section ~~63~~ 2A-516 of this ~~act~~ title), the measure of damages for nonconforming tender or delivery or other default by a lessor is the loss resulting in the ordinary course of events from the lessor's default as determined in any manner that is reasonable together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(4) ~~The~~ Except as otherwise agreed, the measure of damages for breach of warranty is the present value at the time and place of acceptance of the difference between the value of the use of the goods accepted and the value if they had been as warranted for the lease term, unless special circumstances show proximate damages of a different amount, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default or breach of warranty.

SECTION 20. AMENDATORY Section 70, Chapter 86, O.S.L. 1988 (12A O.S. Supp. 1990, Section 2A-523), is amended to read as follows:

Section 2A-523.

LESSOR'S REMEDIES

(1) If a lessee wrongfully rejects or revokes acceptance of goods or fails to make a payment when due or repudiates with respect to a part or the whole, then, with respect to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (Section ~~57~~ 2A-510 of this ~~act~~ title), the lessee is in default under the lease contract and the lessor may:

(a) cancel the lease contract (subsection (1) of Section ~~52~~ 2A-505 of this ~~act~~ title);

(b) proceed respecting goods not identified to the lease contract (Section ~~71~~ 2A-524 of this ~~act~~ title);

(c) withhold delivery of the goods and take possession of goods previously delivered (Section ~~72~~ 2A-525 of this ~~act~~ title);

(d) stop delivery of the goods by any bailee (Section ~~73~~ 2A-526 of this ~~act~~ title);

(e) dispose of the goods and recover damages (Section ~~74~~ 2A-527 of this ~~act~~ title), or retain the goods and recover damages (Section ~~75~~ 2A-528 of this ~~act~~ title), or in a proper case recover rent (Section ~~76~~ 2A-529 of this ~~act~~ title)~~.~~; or

(f) exercise any other rights or pursue any other remedies provided in the lease contract.

(2) If a lessor does not fully exercise a right or obtain a remedy to which the lessor is entitled under subsection (1) of this section, the lessor may recover the loss resulting in the ordinary course of events from the lessee's default as determined in any reasonable manner, together with incidental damages, less expenses saved in consequence of the lessee's default.

(3) If a lessee is otherwise in default under a lease contract, the lessor may exercise the rights and pursue the remedies provided in the lease contract ~~and this article~~, which may include a right to cancel the lease. In addition, unless otherwise provided in the lease contract:

(a) if the default substantially impairs the value of the lease contract to the lessor, the lessor may exercise the rights and pursue the remedies provided in subsection (1) or (2) of this section; or

(b) if the default does not substantially impair the value of the lease contract to the lessor, the lessor may recover as provided in subsection (2) of this section.

SECTION 21. AMENDATORY Section 72, Chapter 86, O.S.L. 1988 (12A O.S. Supp. 1990, Section 2A-525), is amended to read as follows:

Section 2A-525.

LESSOR'S RIGHT TO POSSESSION OF GOODS

(1) If a lessor discovers the lessee to be insolvent, the lessor may refuse to deliver the goods.

(2) ~~The lessor has on~~ After a default by the lessee under the lease contract of the type described in subsection (1) of Section 2A-523 or paragraph (a) of subsection (3) of Section 2A-523 of this title or, if agreed, after other default by the lessee, the lessor has the right to take possession of the goods. If the lease contract so provides, the lessor may require the lessee to assemble the goods and make them available to the lessor at a place to be designated by the lessor which is reasonably convenient to both parties. Without removal, the lessor may render unusable any goods employed in trade or business, and may dispose of goods on the lessee's premises (Section ~~74~~ 2A-527 of this ~~act~~ title).

(3) The lessor may proceed under subsection (2) of this section without judicial process if ~~that~~ it can be done without breach of the peace or the lessor may proceed by action.

SECTION 22. AMENDATORY Section 74, Chapter 86, O.S.L. 1988 (12A O.S. Supp. 1990, Section 2A-527), is amended to read as follows:

Section 2A-527.

LESSOR'S RIGHTS TO DISPOSE OF GOODS

(1) After a default by a lessee under the lease contract of the type described in ~~(~~subsection (1) of Section ~~70~~ 2A-523 of this ~~act)~~ title or paragraph (a) of subsection (3) of Section 2A-523 of this title or after the lessor refuses to deliver or takes possession of goods (Section ~~72~~ 2A-525 or ~~73~~ 2A-526 of this ~~act~~ title), or, if agreed, after other default by a lessee, the lessor may dispose of the goods concerned or the undelivered balance thereof by lease, sale, or otherwise.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (Section ~~51~~ 2A-504 of this ~~act~~ title) or otherwise determined ~~by~~ pursuant to agreement of the parties (subsection (3) of Section 1-102~~(3)~~ and Section 2A-503 of ~~Title 12A of the Oklahoma Statutes~~ this title), if the disposition is by lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessor may recover from the lessee as damages:

~~(a)~~ (i) accrued and unpaid rent as of the date of ~~default~~ the commencement of the term of the new lease agreement,

~~(b)~~ (ii) the present value, as of the same date, ~~of default~~ of the ~~difference between the~~ total rent for the then remaining lease term of the original lease agreement ~~and the total rent for the lease term~~ minus the present value, as of the same date, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement, and

~~(c)~~ (iii) any incidental damages allowed under Section ~~77~~ 2A-530 of this ~~act~~ title, less expenses saved in consequence of the lessee's default.

(3) If the lessor's disposition is by lease agreement that for any reason does not qualify for treatment under subsection (2) of this section, or is by sale or otherwise, the lessor may recover from the lessee as if the lessor had elected not to dispose of the goods and Section ~~75~~ 2A-528 of this ~~act~~ title governs.

(4) A subsequent buyer or lessee who buys or leases from the lessor in good faith for value as a result of a disposition under this section takes the goods free of the original lease contract and any rights of the original lessee even though the lessor fails to comply with one or more of the requirements of this article.

(5) The lessor is not accountable to the lessee for any profit made on any disposition. A lessee who has rightfully rejected or justifiably revoked acceptance shall account to the lessor for any excess over the amount of the lessee's security interest (subsection (5) of Section ~~55~~ 2A-508 of this ~~act~~ title).

SECTION 23. AMENDATORY Section 75, Chapter 86, O.S.L. 1988 (12A O.S. Supp. 1990, Section 2A-528), is amended to read as follows:

Section 2A-528.

LESSOR'S DAMAGES FOR NONACCEPTANCE ~~OR~~, FAILURE TO PAY, REPUDIATION, OR OTHER DEFAULT

(1) Except as otherwise provided with respect to damages liquidated in the lease agreement (Section ~~51~~ 2A-504 of this ~~act~~ title) or otherwise determined ~~by~~ pursuant to agreement of the parties (subsection (3) of Section 1-102~~(3) of Title 12A of the Oklahoma Statutes~~ and Section 2A-503 of this title), if a lessor elects to retain the goods or a lessor elects to dispose of the

goods and the disposition is by lease agreement that for any reason does not qualify for treatment under subsection (2) of Section ~~74~~ 2A-527 of this ~~act~~ title, or is by sale or otherwise, the lessor may recover from the lessee as damages for ~~nonacceptance or repudiation by~~ a default of the type described in subsection (1) of Section 2A-523 or paragraph (a) of subsection (3) of Section 2A-523, or, if agreed, for other default of the lessee:

~~(a)~~ (i) accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods, or, if the lessee has taken possession of the goods, as of the date the lessor repossesses the goods or an earlier date on which the lessee makes a tender of the goods to the lessor,

~~(b)~~ (ii) the present value as of the date ~~of default~~ determined under clause (i) of this subsection of the ~~difference between the~~ total rent for the then remaining lease term of the original lease agreement ~~and~~ minus the present value as of the same date of the market rent at the ~~time and~~ place ~~for tender~~ where the goods are located computed for the same lease term, and

~~(c)~~ (iii) any incidental damages allowed under Section ~~77~~ 2A-530 of this ~~act~~ title, less expenses saved in consequence of the lessee's default.

(2) If the measure of damages provided in subsection (1) of this section is inadequate to put a lessor in as good a position as performance would have, the measure of damages is the present value of the profit, including reasonable overhead, the lessor would have made from full performance by the lessee, together with any incidental damages allowed under Section ~~77~~ 2A-530 of this ~~act~~ title, due allowance for costs reasonably incurred and due credit for payments or proceeds of disposition.

SECTION 24. AMENDATORY Section 76, Chapter 86, O.S.L. 1988 (12A O.S. Supp. 1990, Section 2A-529), is amended to read as follows:

Section 2A-529.

LESSOR'S ACTION FOR THE RENT

(1) After default by the lessee under the lease contract of the type described in ~~(~~subsection (1) of Section ~~70~~ 2A-523 or paragraph (a) of subsection (3) of Section 2A-523 of this ~~act)~~ title, 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 ~~28~~ 2A-219 of this ~~act~~ title):

(i) accrued and unpaid rent as of the date of ~~default~~ entry of judgment in favor of the lessor,

(ii) the present value as of the same date ~~of default~~ of the rent for the then remaining lease term of the lease agreement, and

(iii) any incidental damages allowed under Section ~~77~~ 2A-530 of this ~~act~~ title, 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 ~~default~~ entry of judgment in favor of the lessor,

(ii) the present value as of the same date of ~~default of~~ the rent for the then remaining lease term of the lease agreement, and

(iii) any incidental damages allowed under Section ~~77~~ 2A-530 of this ~~act~~ title, 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 ~~will be~~ is governed by Section ~~74~~ 2A-527 or ~~75~~ 2A-528 of this ~~act~~ title, 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 2A-527 or 2A-528 of this title.

(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 ~~a lessee has wrongfully rejected or revoked acceptance of goods, has failed to pay rent then due, or has repudiated (Section 42 of this act)~~ default by the lessee under the lease contract of the type described in either subsection (1) of Section 2A-523 of this title or paragraph (a) of subsection (3) of Section 2A-523 of this title 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 nonacceptance under Sections ~~74~~ 2A-527 ~~and~~ or ~~75~~ 2A-528 of this ~~act~~ title.

SECTION 25. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2A-532 of Title 12A, unless there is created a duplication in numbering, reads as follows:

LESSOR'S RIGHTS TO RESIDUAL INTEREST

In addition to any other recovery permitted by this article or other law, the lessor may recover from the lessee an amount that will fully compensate the lessor for any loss of or damage to the lessor's residual interest in the goods caused by the default of the lessee.

SECTION 26. AMENDATORY 12A O.S. 1981, Section 3-101, is amended to read as follows:

Section 3-101.

SHORT TITLE

This article ~~shall be known and~~ may be cited as Uniform Commercial Code - ~~Commercial Paper~~ Negotiable Instruments.

SECTION 27. AMENDATORY 12A O.S. 1981, Section 3-102, as amended by Section 1, Chapter 39, O.S.L. 1988 (12A O.S. Supp. 1990, Section 3-102), is amended to read as follows:

Section 3-102. ~~Definitions and Index of Definitions.~~

~~(1) In this article unless the context otherwise requires:~~

~~(a) "Bank" means any person engaged in the business of banking, including banks, savings and loan associations, savings banks and credit unions.~~

~~(b) "Issue" means the first delivery of an instrument to a holder or a remitter.~~

~~(c) An "order" is a direction to pay and must be more than an authorization or request. It must identify the person to pay with reasonable certainty. It may be addressed to one or more such persons jointly or in the alternative but not in succession.~~

~~(d) A "promise" is an undertaking to pay and must be more than an acknowledgment of an obligation.~~

~~(e) "Secondary party" means a drawer or endorser.~~

~~(f) "Instrument" means a negotiable instrument.~~

~~(2) Other definitions applying to this article and the sections in which they appear are:~~

~~"Acceptance". Section 3-410.~~

~~"Accommodation party". Section 3-415.~~

~~"Alteration". Section 3-407.~~

~~"Certificate of deposit". Section 3-104.~~

~~"Certification". Section 3-411.~~

~~"Check". Section 3-104.~~

~~"Definite time". Section 3-109.~~

~~"Dishonor". Section 3-507.~~

~~"Documentary draft". Section 4-104.~~

~~"Draft". Section 3-104.~~

~~"Holder in due course". Section 3-302.~~

~~"Negotiation". Section 3-202.~~

~~"Note". Section 3-104.~~

~~"Notice of dishonor". Section 3-508.~~

~~"On demand". Section 3-108.~~

~~"Presentment". Section 3-504.~~

~~"Protest". Section 3-509.~~

~~"Restrictive endorsement". Section 3-205.~~

~~"Signature". Section 3-401.~~

~~(3) The following definitions in other articles apply to this article:~~

~~"Account". Section 4-104.~~

~~"Banking day". Section 4-104.~~

~~"Clearing house". Section 4-104.~~

~~"Collecting bank". Section 4-105.~~

~~"Customer". Section 4-104.~~

~~"Depositary bank". Section 4-105.~~

~~"Documentary draft". Section 4-104.~~

~~"Intermediary bank". Section 4-105.~~

~~"Item". Section 4-104.~~

~~"Midnight deadline". Section 4-104.~~

~~"Payor bank". Section 4-105.~~

~~(4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.~~

SUBJECT MATTER

(a) This article applies to negotiable instruments. It does not apply to money, to payment orders governed by Article 4A of this title, or to securities governed by Article 8 of this title.

(b) If there is conflict between this article and Article 4 or 9, Articles 4 and 9 govern.

(c) Regulations of the Board of Governors of the Federal Reserve System and operating circulars of the Federal Reserve Banks supercede any inconsistent provision of this article to the extent of the inconsistency.

SECTION 28. AMENDATORY 12A O.S. 1981, Section 3-103, is amended to read as follows:

Section 3-103. ~~Limitations of Scope of Article.~~

~~(1) This article does not apply to money, documents of title or investment securities.~~

~~(2) The provisions of this article are subject to the provisions of the Article on Bank Deposits and Collections (Article 4) and Secured Transactions (Article 9).~~

DEFINITIONS

(a) In this article:

(1) "Acceptor" means a drawee who has accepted a draft;

(2) "Drawee" means a person ordered in a draft to make payment;

(3) "Drawer" means a person who signs or is identified in a draft as a person ordering payment;

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

(5) "Maker" means a person who signs or is identified in a note as a person undertaking to pay;

(6) "Order" means a written instruction to pay money signed by the person giving the instruction. The instruction may be addressed to any person, including the person giving the instruction, or to one or more persons jointly or in the alternative but not in succession. An authorization to pay is not an order unless the person authorized to pay is also instructed to pay;

(7) "Ordinary care" in the case of a person engaged in business means observance of reasonable commercial standards, prevailing in the area in which the person is located, with respect to the business in which the person is engaged. In the case of a bank that takes an instrument for processing for collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank's prescribed procedures and the bank's procedures do not vary unreasonably from general banking usage not disapproved by this article or Article 4 of this title;

(8) "Party" means a party to an instrument;

(9) "Promise" means a written undertaking to pay money signed by the person undertaking to pay. An acknowledgment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation;

(10) "Prove" with respect to a fact means to meet the burden of establishing the fact (subsection (8) of Section 1-201 of this title); and

(11) "Remitter" means a person who purchases an instrument from its issuer if the instrument is payable to an identified person other than the purchaser.

(b) Other definitions applying to this article and the sections in which they appear in this title are:

"Acceptance"	Section 3-409
"Accommodated party"	Section 3-419
"Accommodation party"	Section 3-419
"Alteration"	Section 3-407
"Anomalous indorsement"	Section 3-205
"Blank indorsement"	Section 3-205
"Cashier's check"	Section 3-104
"Certificate of deposit"	Section 3-104
"Certified check"	Section 3-409

"Check"	Section 3-104
"Consideration"	Section 3-303
"Draft"	Section 3-104
"Holder in due course"	Section 3-302
"Incomplete instrument"	Section 3-115
"Indorsement"	Section 3-204
"Indorser"	Section 3-204
"Instrument"	Section 3-104
"Issue"	Section 3-105
"Issuer"	Section 3-105
"Negotiable instrument"	Section 3-104
"Negotiation"	Section 3-201
"Note"	Section 3-104
"Payable at a definite time"	Section 3-108
"Payable on demand"	Section 3-108
"Payable to bearer"	Section 3-109
"Payable to order"	Section 3-109
"Payment"	Section 3-602
"Person entitled to enforce"	Section 3-301
"Presentment"	Section 3-501
"Reacquisition"	Section 3-207
"Special indorsement"	Section 3-205
"Teller's check"	Section 3-104
"Transfer of instrument"	Section 3-203
"Traveler's check"	Section 3-104
"Value"	Section 3-303

(c) The following definitions in other articles of this title apply to this article:

"Bank"	Section 4-105
"Banking day"	Section 4-104
"Clearing house"	Section 4-104
"Collecting bank"	Section 4-105
"Depositary bank"	Section 4-105
"Documentary draft"	Section 4-104
"Intermediary bank"	Section 4-105
"Item"	Section 4-104
"Payor bank"	Section 4-105
"Suspends payments"	Section 4-104

(d) In addition, Article 1 of the Uniform Commercial Code, this title, contains general definitions and principles of construction and interpretation applicable throughout this article.

SECTION 29. AMENDATORY 12A O.S. 1981, Section 3-104, is amended to read as follows:

Section 3-104. ~~Form of Negotiable Instruments; "Draft"; "Check"; "Certificate of Deposit"; 'Note"~~

~~(1) Any writing to be a negotiable instrument within this article must~~

~~(a) be signed by the maker or drawer; and~~

~~(b) contain an unconditional promise or order to pay a sum certain in money and no other promise, order, obligation or power given by the maker or drawer except as authorized by this article; and~~

~~(c) be payable on demand or at a definite time; and~~

~~(d) be payable to order or to bearer.~~

~~(2) A writing which complies with the requirements of this section is~~

~~(a) a "draft" ("bill of exchange") if it is an order;~~

~~(b) a "check" if it is a draft drawn on a bank and payable on demand;~~

~~(c) a "certificate of deposit" if it is an acknowledgment by a bank of receipt of money with an engagement or repay it;~~

~~(d) a "note" if it is a promise other than a certificate of deposit.~~

~~(3) As used in other articles of this act, and as the context may require, the terms "draft", "check", "certificate of deposit" and "note" may refer to instruments which are not negotiable within this article as well as to instruments which are so negotiable.~~

NEGOTIABLE INSTRUMENT

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

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

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

(3) does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain (i) an undertaking or power to give, maintain, or protect collateral to secure payment, (ii) an authorization or power to the holder to confess judgment or realize on or dispose of collateral, or (iii) a waiver of the benefit of any law intended for the advantage or protection of an obligor.

(b) "Instrument" means a negotiable instrument.

(c) An order that meets all of the requirements of subsection (a) of this section, except paragraph (1), and otherwise falls within the definition of "check" in subsection (f) of this section is a negotiable instrument and a check.

(d) A promise or order other than a check is not an instrument if, at the time it is issued or first comes into possession of a holder, it contains a conspicuous statement, however expressed, to the effect that the promise or order is not negotiable or is not an instrument governed by this article.

(e) An instrument is a "note" if it is a promise and is a "draft" if it is an order. If an instrument falls within the definition of both "note" and "draft", a person entitled to enforce the instrument may treat it as either.

(f) "Check" means (i) a draft, other than a documentary draft, payable on demand and drawn on a bank or (ii) a cashier's check or teller's check. An instrument may be a check even though it is described on its face by another term, such as "money order".

(g) "Cashier's check" means a draft with respect to which the drawer and drawee are the same bank or branches of the same bank.

(h) "Teller's check" means a draft drawn by a bank (i) on another bank, or (ii) payable at or through a bank.

(i) "Traveler's check" means an instrument that (i) is payable on demand, (ii) is drawn on or payable at or through a bank, (iii) is designated by the term "traveler's check" or by a substantially similar term, and (iv) requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the instrument.

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

SECTION 30. AMENDATORY 12A O.S. 1981, Section 3-105, is amended to read as follows:

Section 3-105. ~~When Promise or Order Unconditional.~~

~~(1) A promise or order otherwise unconditional is not made conditional by the fact that the instrument~~

~~(a) is subject to implied or constructive conditions; or~~

~~(b) states its consideration, whether performed or promised, or the transaction which gave rise to the instrument, or that the promise or order is made or the instrument matures in accordance with or "as per" such transaction; or~~

~~(c) refers to or states that it arises out of a separate agreement; or~~

~~(d) states that it is drawn under a letter of credit; or~~

~~(e) states that it is secured, whether by mortgage, reservation of title or otherwise; or~~

~~(f) indicates a particular account to be debited or any other fund or source from which reimbursement is expected; or~~

~~(g) is limited to payment out of a particular fund or the proceeds of a particular source, if the instrument is issued by a government or governmental agency or unit; or~~

~~(h) is limited to payment out of the entire assets of a partnership, unincorporated association, trust or estate by or on behalf of which the instrument is issued.~~

~~(2) A promise or order is not unconditional if the instrument~~

~~(a) states that it is subject to or governed by any other agreement; or~~

~~(b) states that it is to be paid only out of a particular fund or source except as provided in this section.~~

ISSUE OF INSTRUMENT

(a) "Issue" means the first delivery of an instrument by the maker or drawer, whether to a holder or nonholder, for the purpose of giving rights on the instrument to any person.

(b) An unissued instrument, or an unissued incomplete instrument that is completed, is binding on the maker or drawer, but nonissuance is a defense. An instrument that is conditionally issued or is issued for a special purpose is binding on the maker or drawer, but failure of the condition or special purpose to be fulfilled is a defense.

(c) "Issuer" applies to issued and unissued instruments and means a maker or drawer of an instrument.

SECTION 31. AMENDATORY 12A O.S. 1981, Section 3-106, is amended to read as follows:

Section 3-106. ~~Sum Certain.~~

~~(1) The sum payable is a sum certain even though it is to be paid~~

~~(a) with stated interest or by stated installments; or~~

~~(b) with stated different rates of interest before and after default or a specified date; or~~

~~(c) with a stated discount or addition if paid before or after the date fixed for payment; or~~

~~(d) with exchange or less exchange, whether at a fixed rate or at the current rate; or~~

~~(e) with costs of collection or an attorney's fee or both upon default.~~

~~(2) Nothing in this section shall validate any term which is otherwise illegal.~~

UNCONDITIONAL PROMISE OR ORDER

(a) Except as provided in this section, for the purposes of subsection (a) of Section 3-104 of this title, a promise or order is

unconditional unless it states (i) an express condition to payment, (ii) that the promise or order is subject to or governed by another writing, or (iii) that rights or obligations with respect to the promise or order are stated in another writing. A reference to another writing does not of itself make the promise or order conditional.

(b) A promise or order is not made conditional (i) by a reference to another writing for a statement of rights with respect to collateral, prepayment, or acceleration, or (ii) because payment is limited to resort to a particular fund or source.

(c) If a promise or order requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the promise or order, the condition does not make the promise or order conditional for the purposes of subsection (a) of Section 3-104 of this title. If the person whose specimen signature appears on an instrument fails to countersign the instrument, the failure to countersign is a defense to the obligation of the issuer, but the failure does not prevent a transferee of the instrument from becoming a holder of the instrument.

(d) If a promise or order at the time it is issued or first comes into possession of a holder contains a statement, required by applicable statutory or administrative law, to the effect that the rights of a holder or transferee are subject to claims or defenses that the issuer could assert against the original payee, the promise or order is not thereby made conditional for the purposes of subsection (a) of Section 3-104 of this title; but if the promise or order is an instrument, there cannot be a holder in due course of the instrument.

SECTION 32. AMENDATORY 12A O.S. 1981, Section 3-107, is amended to read as follows:

Section 3-107. ~~Money.~~

~~(1) An instrument is payable in money if the medium of exchange in which it is payable is money at the time the instrument is made. An instrument payable in "currency" or "current funds" is payable in money.~~

~~(2) A promise or order to pay a sum stated in a foreign currency is for a sum certain in money and, unless a different medium of payment is specified in the instrument, may be satisfied by payment of that number of dollars which the stated foreign currency will purchase at the buying sight rate for that currency on the day on which the instrument is payable or, if payable on demand, on the day of demand. If such an instrument specifies a foreign currency as the medium of payment the instrument is payable in that currency.~~

INSTRUMENT PAYABLE IN FOREIGN MONEY

Unless the instrument otherwise provides, an instrument that states the amount payable in foreign money may be paid in the foreign money or in an equivalent amount in dollars calculated by using the current bank-offered spot rate at the place of payment for the purchase of dollars on the day on which the instrument is paid.

SECTION 33. AMENDATORY 12A O.S. 1981, Section 3-108, is amended to read as follows:

Section 3-108. ~~Payable on Demand.~~

~~Instruments payable on demand include those payable at sight or on presentation and those in which no time for payment is stated.~~

PAYABLE ON DEMAND OR AT DEFINITE TIME

(a) A promise or order is "payable on demand" if it (i) states that it is payable on demand or at sight, or otherwise indicates that it is payable at the will of the holder, or (ii) does not state any time of payment.

(b) A promise or order is "payable at a definite time" if it is payable on elapse of a definite period of time after sight or acceptance or at a fixed date or dates or at a time or times readily ascertainable at the time the promise or order is issued, subject to rights of (i) prepayment, (ii) acceleration, (iii) extension at the option of the holder, or (iv) extension to a further definite time at the option of the maker or acceptor or automatically upon or after a specified act or event.

(c) If an instrument, payable at a fixed date, is also payable upon demand made before the fixed date, the instrument is payable on demand until the fixed date and, if demand for payment is not made before that date, becomes payable at a definite time on the fixed date.

SECTION 34. AMENDATORY 12A O.S. 1981, Section 3-109, is amended to read as follows:

Section 3-109. ~~Definite time.~~

~~(1) An instrument is payable at a definite time if by its terms it is payable~~

~~(a) on or before a stated date or at a fixed period after a stated date; or~~

~~(b) at a fixed period after sight; or~~

~~(c) at a definite time subject to any acceleration; or~~

~~(d) at a definite time subject to extension at the option of the holder, or to extension to a further definite time at the option of the maker or acceptor or automatically upon or after a specified act or event.~~

~~(2) An instrument which by its terms is otherwise payable only upon an act or event uncertain as to time of occurrence is not payable at a definite time even though the act or event has occurred.~~

PAYABLE TO BEARER OR TO ORDER

(a) A promise or order is payable to bearer if it:

(1) states that it is payable to bearer or to the order of bearer or otherwise indicates that the person in possession of the promise or order is entitled to payment;

(2) does not state a payee; or

(3) states that it is payable to or to the order of cash or otherwise indicates that it is not payable to an identified person.

(b) A promise or order that is not payable to bearer is payable to order if it is payable (i) to the order of an identified person or (ii) to an identified person or order. A promise or order that is payable to order is payable to the identified person.

(c) An instrument payable to bearer may become payable to an identified person if it is specially indorsed pursuant to subsection (a) of Section 3-205 of this title. An instrument payable to an identified person may become payable to bearer if it is indorsed in blank pursuant to subsection (b) of Section 3-205 of this title.

SECTION 35. AMENDATORY 12A O.S. 1981, Section 3-110, is amended to read as follows:

Section 3-110. ~~Payable to Order.~~

~~(1) An instrument is payable to order when by its terms it is payable to the order or assigns of any person therein specified with reasonable certainty, or to him or his order, or when it is conspicuously designated on its face as "exchange" or the like and names a payee. It may be payable to the order of~~

~~(a) the maker or drawer; or~~

~~(b) the drawee; or~~

~~(c) a payee who is not maker, drawer or drawee; or~~

~~(d) two or more payees together or in the alternative; or~~
~~(e) an estate, trust or fund, in which case it is payable to the order of the representative of such estate, trust or fund or his successors; or~~
~~(f) an office, or an officer by his title as such in which case it is payable to the principal but the incumbent of the office or his successors may act as if he or they were the holder; or~~
~~(g) a partnership or unincorporated association, in which case it is payable to the partnership or association and may be endorsed or transferred by any person there thereto authorized.~~

~~(2) An instrument not payable to order is not made so payable by such words as "payable upon return of this instrument properly endorsed."~~

~~(3) An instrument made payable both to order and to bearer is payable to order unless the bearer words are handwritten or typewritten.~~

IDENTIFICATION OF PERSON TO WHOM INSTRUMENT IS PAYABLE

(a) The person to whom an instrument is initially payable is determined by the intent of the person, whether or not authorized, signing as, or in the name or behalf of, the issuer of the instrument. The instrument is payable to the person intended by the signer even if that person is identified in the instrument by a name or other identification that is not that of the intended person. If more than one person signs in the name or behalf of the issuer of an instrument and all the signers do not intend the same person as payee, the instrument is payable to any person intended by one or more of the signers.

(b) If the signature of the issuer of an instrument is made by automated means, such as a check-writing machine, the payee of the instrument is determined by the intent of the person who supplied the name or identification of the payee, whether or not authorized to do so.

(c) A person to whom an instrument is payable may be identified in any way, including by name, identifying number, office, or account number. For the purpose of determining the holder of an instrument, the following rules apply:

(1) If an instrument is payable to an account and the account is identified only by number, the instrument is payable to the person to whom the account is payable. If an instrument is payable to an account identified by number and by the name of a person, the instrument is payable to the named person, whether or not that person is the owner of the account identified by number.

(2) If an instrument is payable to:

(i) a trust, an estate, or a person described as trustee or representative of a trust or estate, the instrument is payable to the trustee, the representative, or a successor of either, whether or not the beneficiary or estate is also named;

(ii) a person described as agent or similar representative of a named or identified person, the instrument is payable to the represented person, the representative, or a successor of the representative;

(iii) a fund or organization that is not a legal entity, the instrument is payable to a

representative of the members of the fund or organization; or

(iv) an office or to a person described as holding an office, the instrument is payable to the named person, the incumbent of the office, or a successor to the incumbent.

(d) If an instrument is payable to two or more persons alternatively, it is payable to any of them and may be negotiated, discharged, or enforced by any or all of them in possession of the instrument. If an instrument is payable to two or more persons not alternatively, it is payable to all of them and may be negotiated, discharged, or enforced only by all of them. If an instrument payable to two or more persons is ambiguous as to whether it is payable to the persons alternatively, the instrument is payable to the persons alternatively.

SECTION 36. AMENDATORY 12A O.S. 1981, Section 3-111, is amended to read as follows:

Section 3-111. ~~Payable to Bearer.~~

~~An instrument is payable to bearer when by its terms it is payable to~~

~~(a) bearer or the order of bearer; or~~

~~(b) a specified person or bearer; or~~

~~(c) "cash" or the order of "cash", or any other indication which does not purport to designate a specific payee.~~

PLACE OF PAYMENT

Except as otherwise provided for items in Article 4 of this title, an instrument is payable at the place of payment stated in the instrument. If no place of payment is stated, an instrument is payable at the address of the drawee or maker stated in the instrument. If no address is stated, the place of payment is the place of business of the drawee or maker. If a drawee or maker has more than one place of business, the place of payment is any place of business of the drawee or maker chosen by the person entitled to enforce the instrument. If the drawee or maker has no place of business, the place of payment is the residence of the drawee or maker.

SECTION 37. AMENDATORY 12A O.S. 1981, Section 3-112, is amended to read as follows:

Section 3-112. ~~Terms and Omissions Not Affecting Negotiability.~~

~~(1) The negotiability of an instrument is not affected by~~

~~(a) the omission of a statement of any consideration or of the place where the instrument is drawn or payable; or~~

~~(b) a statement that collateral has been given for the instrument or in case of default on the instrument the collateral may be sold; or~~

~~(c) a promise or power to maintain or protect collateral or to give additional collateral; or~~

~~(d) a term authorizing a confession of judgment on the instrument if it is not paid when due; or~~

~~(e) a term purporting to waive the benefit of any law intended for the advantage or protection of any obligor; or~~

~~(f) a term in a draft providing that the payee by indorsing or cashing it acknowledges full satisfaction of an obligation of the drawer; or~~

~~(g) a statement in a draft drawn in a set of parts (Section 3-801) to the effect that the order is effective only if no other part has been honored.~~

~~(2) Nothing in this section shall validate any term which is otherwise illegal.~~

INTEREST

(a) Unless otherwise provided in the instrument, (i) an instrument is not payable with interest, and (ii) interest on an interest-bearing instrument is payable from the date of the instrument.

(b) Interest may be stated in an instrument as a fixed or variable amount of money or it may be expressed as a fixed or variable rate or rates. The amount or rate of interest may be stated or described in the instrument in any manner and may require reference to information not contained in the instrument. If an instrument provides for interest, but the amount of interest payable cannot be ascertained from the description, interest is payable at the judgment rate in effect at the place of payment of the instrument and at the time interest first accrues.

SECTION 38. AMENDATORY 12A O.S. 1981, Section 3-113, is amended to read as follows:

Section 3-113. ~~Seal.~~

~~An instrument otherwise negotiable is within this article even though it is under a seal~~

DATE OF INSTRUMENT

(a) An instrument may be antedated or postdated. The date stated determines the time of payment if the instrument is payable at a fixed period after date. Except as provided in subsection (c) of Section 4-401 of this title, an instrument payable on demand is not payable before the date of the instrument.

(b) If an instrument is undated, its date is the date of its issue or, in the case of an unissued instrument, the date it first comes into possession of a holder.

SECTION 39. AMENDATORY 12A O.S. 1981, Section 3-114, is amended to read as follows:

Section 3-114. ~~Date, Antedating, Postdating.~~

~~(1) The negotiability of an instrument is not affected by the fact that it is undated, antedated or postdated.~~

~~(2) Where an instrument is antedated or postdated the time when it is payable is determined by the stated date if the instrument is payable on demand or at a fixed period after date.~~

~~(3) Where the instrument or any signature thereon is dated, the date is presumed to be correct.~~

CONTRADICTORY TERMS OF INSTRUMENT

If an instrument contains contradictory terms, typewritten terms prevail over printed terms, handwritten terms prevail over both, and words prevail over numbers.

SECTION 40. AMENDATORY 12A O.S. 1981, Section 3-115, is amended to read as follows:

Section 3-115. ~~Incomplete Instruments.~~

~~(1) When a paper whose contents at the time of signing show that it is intended to become an instrument is signed while still incomplete in any necessary respect it cannot be enforced until completed, but when it is completed in accordance with authority given it is effective as completed.~~

~~(2) If the completion is unauthorized the rules as to material alteration apply (Section 3-407), even though the paper was not delivered by the maker or drawer; but the burden of establishing that any completion is unauthorized is on the party so asserting.~~

INCOMPLETE INSTRUMENT

(a) "Incomplete instrument" means a signed writing, whether or not issued by the signer, the contents of which show at the time of signing that it is incomplete but that the signer intended it to be completed by the addition of words or numbers.

(b) Subject to subsection (c) of this section, if an incomplete instrument is an instrument under Section 3-104 of this title, it

may be enforced according to its terms if it is not completed, or according to its terms as augmented by completion. If an incomplete instrument is not an instrument under Section 3-104 of this title, but, after completion, the requirements of Section 3-104 of this title, are met, the instrument may be enforced according to its terms as augmented by completion.

(c) If words or numbers are added to an incomplete instrument without authority of the signer, there is an alteration of the incomplete instrument under Section 3-407 of this title.

(d) The burden of establishing that words or numbers were added to an incomplete instrument without authority of the signer is on the person asserting the lack of authority.

SECTION 41. AMENDATORY 12A O.S. 1981, Section 3-116, is amended to read as follows:

Section 3-116. ~~Instruments Payable to Two or More Persons.~~

~~An instrument payable to the order of two or more persons~~

~~(a) if in the alternative is payable to any one of them and may be negotiated, discharged or enforced by any of them who has possession of it;~~

~~(b) if not in the alternative is payable to all of them and may be negotiated, discharged or enforced only by all of them.~~

JOINT AND SEVERAL LIABILITY; CONTRIBUTION

(a) Except as otherwise provided in the instrument, two or more persons who have the same liability on an instrument as makers, drawers, acceptors, indorsers who indorse as joint payees, or anomalous indorsers are jointly and severally liable in the capacity in which they sign.

(b) Except as provided in subsection (e) of Section 3-419 of this title or by agreement of the affected parties, a party having joint and several liability who pays the instrument is entitled to receive from any party having the same joint and several liability contribution in accordance with applicable law.

(c) Discharge of one party having joint and several liability by a person entitled to enforce the instrument does not affect the right under subsection (b) of this section of a party having the same joint and several liability to receive contribution from the party discharged.

SECTION 42. AMENDATORY 12A O.S. 1981, Section 3-117, is amended to read as follows:

Section 3-117. ~~Instruments Payable With Words of Description.~~

~~An instrument made payable to a named person with the addition of words describing him~~

~~(a) as agent or officer of a specified person is payable to his principal but the agent or officer may act as if he were the holder;~~

~~(b) as any other fiduciary for a specified person or purpose is payable to the payee and may be negotiated, discharged or enforced by him;~~

~~(c) in any other manner is payable to the payee unconditionally and the additional words are without effect on subsequent parties.~~

OTHER AGREEMENTS AFFECTING INSTRUMENT

Subject to applicable law regarding exclusion of proof of contemporaneous or previous agreements, the obligation of a party to an instrument to pay the instrument may be modified, supplemented, or nullified by a separate agreement of the obligor and a person entitled to enforce the instrument, if the instrument is issued or the obligation is incurred in reliance on the agreement or as part of the same transaction giving rise to the agreement. To the extent

an obligation is modified, supplemented, or nullified by an agreement under this section, the agreement is a defense to the obligation.

SECTION 43. AMENDATORY 12A O.S. 1981, Section 3-118, is amended to read as follows:

Section 3-118. ~~Ambiguous Terms and Rules of Construction. The following rules apply to every instrument:~~

~~(a) Where there is doubt whether the instrument is a draft or a note the holder may treat it as either. A draft drawn on the drawer is effective as a note.~~

~~(b) Handwritten terms control typewritten and printed terms, and typewritten control printed.~~

~~(c) Words control figures except that if the words are ambiguous figures control.~~

~~(d) Unless otherwise specified a provision for interest means interest at the judgment rate at the place of payment from the date of the instrument, or if it is undated from the date of issue.~~

~~(e) Unless the instrument otherwise specifies two or more persons who sign as maker, acceptor or drawer or endorser and as a part of the same transaction are jointly and severally liable even though the instrument contains such words as "I promise to pay."~~

~~(f) Unless otherwise specified consent to extension authorizes a single extension for not longer than the original period. A consent to extension, expressed in the instrument, is binding on secondary parties and accommodation makers. A holder may not exercise his option to extend an instrument over the objection of a maker or acceptor or other party who in accordance with Section 3-604 tenders full payment when the instrument is due.~~

STATUTE OF LIMITATIONS

(a) Except as provided in subsection (e) of this section, an action to enforce the obligation of a party to pay a note payable at a definite time must be commenced within six (6) years after the due date or dates stated in the note or, if a due date is accelerated, within six (6) years after the accelerated due date.

(b) Except as provided in subsection (d) or (e) of this section, if demand for payment is made to the maker of a note payable on demand, an action to enforce the obligation of a party to pay the note must be commenced within six (6) years after the demand. If no demand for payment is made to the maker, an action to enforce the note is barred if neither principal nor interest on the note has been paid for a continuous period of ten (10) years.

(c) Except as provided in subsection (d) of this section, an action to enforce the obligation of a party to an unaccepted draft to pay the draft must be commenced within three (3) years after dishonor of the draft or ten (10) years after the date of the draft, whichever period expires first.

(d) An action to enforce the obligation of the acceptor of a certified check or the issuer of a teller's check, cashier's check, or traveler's check must be commenced within three (3) years after demand for payment is made to the acceptor or issuer, as the case may be.

(e) An action to enforce the obligation of a party to a certificate of deposit to pay the instrument must be commenced within six (6) years after demand for payment is made to the maker, but if the instrument states a due date and the maker is not required to pay before that date, the six-year period begins when a demand for payment is in effect and the due date has passed.

(f) An action to enforce the obligation of a party to pay an accepted draft, other than a certified check, must be commenced (i) within six (6) years after the due date or dates stated in the draft or acceptance if the obligation of the acceptor is payable at a definite time, or (ii) within six (6) years after the date of the acceptance if the obligation of the acceptor is payable on demand.

(g) Unless governed by other law regarding claims for indemnity or contribution, an action (i) for conversion of an instrument, for money had and received, or like action based on conversion, (ii) for breach of warranty, or (iii) to enforce an obligation, duty, or right arising under this article and not governed by this section must be commenced within three (3) years after the claim for relief accrues.

SECTION 44. AMENDATORY 12A O.S. 1981, Section 3-119, is amended to read as follows:

Section 3-119. ~~Other Writings Affecting Instrument.~~

~~(1) As between the obligor and his immediate obligee or any transferee the terms of an instrument may be modified or affected by any other written agreement executed as a part of the same transaction, except that a holder in due course is not affected by any limitation of his rights arising out of the separate written agreement if he had no notice of the limitation when he took the instrument.~~

~~(2) A separate agreement does not affect the negotiability of an instrument.~~

NOTICE OF RIGHT TO DEFEND ACTION

In an action for breach of an obligation for which a third person is answerable over pursuant to this article or Article 4 of this title, the defendant may give the third person written notice of the litigation, and the person notified may then give similar notice to any other person who is answerable over. If the notice states (i) that the person notified may come in and defend and (ii) that failure to do so will bind the person notified in an action later brought by the person giving the notice as to any determination of fact common to the two litigations, the person notified is so bound unless after seasonable receipt of the notice the person notified does come in and defend.

SECTION 45. AMENDATORY 12A O.S. 1981, Section 3-201, is amended to read as follows:

Section 3-201. ~~Transfer: Right to Endorsement.~~

~~(1) Transfer of an instrument vests in the transferee such rights as the transferor has therein, except that a transferee who has himself been a party to any fraud or illegality affecting the instrument or who as a prior holder had notice of a defense or claim against it cannot improve his position by taking from a later holder in due course.~~

~~(2) A transfer of a security interest in an instrument vests the foregoing rights in the transferee to the extent of the interest transferred.~~

~~(3) Unless otherwise agreed any transfer for value of an instrument not then payable to bearer gives the transferee the specifically enforceable right to have the unqualified endorsement of the transferor. Negotiation takes effect only when the endorsement is made and until that time there is no presumption that the transferee is the owner.~~

NEGOTIATION

(a) "Negotiation" means a transfer of possession, whether voluntary or involuntary, of an instrument by a person other than the issuer to a person who thereby becomes its holder.

(b) Except for negotiation by a remitter, if an instrument is payable to an identified person, negotiation requires transfer of possession of the instrument and its indorsement by the holder. If an instrument is payable to bearer, it may be negotiated by transfer of possession alone.

SECTION 46. AMENDATORY 12A O.S. 1981, Section 3-202, is amended to read as follows:

Section 3-202. ~~Negotiation.~~

~~(1) Negotiation is the transfer of an instrument in such form that the transferee becomes a holder. If the instrument is payable to order it is negotiated by delivery with any necessary endorsement; if payable to bearer it is negotiated by delivery.~~

~~(2) An endorsement must be written by or on behalf of the holder and on the instrument or on a paper so firmly affixed thereto as to become a part thereof.~~

~~(3) An endorsement is effective for negotiation only when it conveys the entire instrument or any unpaid residue. If it purports to be of less it operates only as a partial assignment.~~

~~(4) Words of assignment, condition, waiver, guaranty, limitation or disclaimer of liability and the like accompanying an endorsement do not affect its character as an endorsement.~~

NEGOTIATION SUBJECT TO RESCISSION

(a) Negotiation is effective even if obtained (i) from an infant, a corporation exceeding its powers, or a person without capacity, (ii) by fraud, duress, or mistake, or (iii) in breach of duty or as part of an illegal transaction.

(b) To the extent permitted by other law, negotiation may be rescinded or may be subject to other remedies, but those remedies may not be asserted against a subsequent holder in due course or a person paying the instrument in good faith and without knowledge of facts that are a basis for rescission or other remedy.

SECTION 47. AMENDATORY 12A O.S. 1981, Section 3-203, is amended to read as follows:

Section 3-203. ~~Wrong or Misspelled Name.~~

~~Where an instrument is made payable to a person under a misspelled name or one other than his own he may endorse in that name or his own or both; but signature in both names may be required by a person paying or giving value for the instrument.~~

TRANSFER OF INSTRUMENT; RIGHTS ACQUIRED BY TRANSFER

(a) An instrument is transferred when it is delivered by a person other than its issuer for the purpose of giving to the person receiving delivery the right to enforce the instrument.

(b) Transfer of an instrument, whether or not the transfer is a negotiation, vests in the transferee any right of the transferor to enforce the instrument, including any right as a holder in due course, but the transferee cannot acquire rights of a holder in due course by a transfer, directly or indirectly, from a holder in due course if the transferee engaged in fraud or illegality affecting the instrument.

(c) Unless otherwise agreed, if an instrument is transferred for value and the transferee does not become a holder because of lack of indorsement by the transferor, the transferee has a specifically enforceable right to the unqualified indorsement of the transferor, but negotiation of the instrument does not occur until the indorsement is made.

(d) If a transferor purports to transfer less than the entire instrument, negotiation of the instrument does not occur. The transferee obtains no rights under this article and has only the rights of a partial assignee.

SECTION 48. AMENDATORY 12A O.S. 1981, Section 3-204, is amended to read as follows:

Section 3-204. ~~Special Endorsement; Blank Endorsement~~

~~(1) A special endorsement specifies the person to whom or to whose order it makes the instrument payable. Any instrument specially endorsed becomes payable to the order of the special endorsee and may be further negotiated only by his endorsement.~~

~~(2) An endorsement in blank specifies no particular endorsee and may consist of a mere signature. An instrument payable to order and endorsed in blank becomes payable to bearer and may be negotiated by delivery alone until specially endorsed.~~

~~(3) The holder may convert a blank endorsement into a special endorsement by writing over the signature of the endorser in blank any contract consistent with the character of the endorsement.~~

INDORSEMENT

(a) "Indorsement" means a signature, other than that of a signer as maker, drawer, or acceptor, that alone or accompanied by other words is made on an instrument for the purpose of (i) negotiating the instrument, (ii) restricting payment of the instrument, or (iii) incurring indorser's liability on the instrument, but regardless of the intent of the signer, a signature and its accompanying words is an indorsement unless the accompanying words, terms of the instrument, place of the signature, or other circumstances unambiguously indicate that the signature was made for a purpose other than indorsement. For the purpose of determining whether a signature is made on an instrument, a paper affixed to the instrument is a part of the instrument.

(b) "Indorser" means a person who makes an indorsement.

(c) For the purpose of determining whether the transferee of an instrument is a holder, an indorsement that transfers a security interest in the instrument is effective as an unqualified indorsement of the instrument.

(d) If an instrument is payable to a holder under a name that is not the name of the holder, indorsement may be made by the holder in the name stated in the instrument or in the holder's name or both, but signature in both names may be required by a person paying or taking the instrument for value or collection.

SECTION 49. AMENDATORY 12A O.S. 1981, Section 3-205, is amended to read as follows:

Section 3-205. ~~Restrictive Endorsements.~~

~~An endorsement is restrictive which either~~

~~(a) is conditional; or~~

~~(b) purports to prohibit further transfer of the instrument; or~~

~~(c) includes the words "for collection", "for deposit", "pay and bank", or like terms signifying a purpose of deposit or collection; or~~

~~(d) otherwise states that it is for the benefit or use of the endorser or of another person.~~

SPECIAL INDORSEMENT; BLANK INDORSEMENT; ANOMALOUS INDORSEMENT

(a) If an indorsement is made by the holder of an instrument, whether payable to an identified person or payable to bearer, and the indorsement identifies a person to whom it makes the instrument payable, it is a "special indorsement". When specially indorsed, an instrument becomes payable to the identified person and may be negotiated only by the indorsement of that person. The principles stated in Section 3-110 of this title apply to special indorsements.

(b) If an indorsement is made by the holder of an instrument and it is not a special indorsement, it is a "blank indorsement". When indorsed in blank, an instrument becomes payable to bearer and

may be negotiated by transfer of possession alone until specially indorsed.

(c) The holder may convert a blank indorsement that consists only of a signature into a special indorsement by writing, above the signature of the indorser, words identifying the person to whom the instrument is made payable.

(d) "Anomalous indorsement" means an indorsement made by a person who is not the holder of the instrument. An anomalous indorsement does not affect the manner in which the instrument may be negotiated.

SECTION 50. AMENDATORY 12A O.S. 1981, Section 3-206, is amended to read as follows:

Section 3-206. ~~Effect of Restrictive Endorsement.~~

~~(1) No restrictive endorsement prevents further transfer or negotiation of the instrument.~~

~~(2) An intermediary bank, or a payor bank which is not the depositary bank, is neither given notice nor otherwise affected by a restrictive endorsement of any person except the bank's immediate transferor or the person presenting for payment.~~

~~(3) Except for an intermediary bank, any transferee under an endorsement which is conditional or includes the words "for collection", "for deposit", "pay any bank", or like terms (subparagraphs (a) and (c) of Section 3-205) must pay or apply any value given by him for or on the security of the instrument consistently with the endorsement and to the extent that he does so he becomes a holder for value. In addition such transferee is a holder in due course if he otherwise complies with the requirements of Section 3-302 on what constitutes a holder in due course.~~

~~(4) The first taker under an endorsement for the benefit of the endorser or another person (subparagraph (d) of Section 3-205) must pay or apply any value given by him for or on the security of the instrument consistently with the endorsement and to the extent that he does so he becomes a holder for value. In addition such taker is a holder in due course if he otherwise complies with the requirements of Section 3-302 on what constitutes a holder in due course. A later holder for value is neither given notice nor otherwise affected by such restrictive endorsement unless he has knowledge that a fiduciary or other person has negotiated the instrument in any transaction for his own benefit or otherwise in breach of duty (subsection (2) of Section 3-304).~~

RESTRICTIVE INDORSEMENT

(a) An indorsement limiting payment to a particular person or otherwise prohibiting further transfer or negotiation of the instrument is not effective to prevent further transfer or negotiation of the instrument.

(b) An indorsement stating a condition to the right of the indorsee to receive payment does not affect the right of the indorsee to enforce the instrument. A person paying the instrument or taking it for value or collection may disregard the condition, and the rights and liabilities of that person are not affected by whether the condition has been fulfilled.

(c) If an instrument bears an indorsement (i) described in subsection (b) of Section 4-201 of this title, or (ii) in blank or to a particular bank using the words "for deposit", "for collection", or other words indicating a purpose of having the instrument collected by a bank for the indorser or for a particular account, the following rules apply:

(1) A person, other than a bank, who purchases the instrument when so indorsed converts the instrument unless the amount paid for the instrument is received

by the indorser or applied consistently with the indorsement;

(2) A depositary bank that purchases the instrument or takes it for collection when so indorsed converts the instrument unless the amount paid by the bank with respect to the instrument is received by the indorser or applied consistently with the indorsement;

(3) A payor bank that is also the depositary bank or that takes the instrument for immediate payment over the counter from a person other than a collecting bank converts the instrument unless the proceeds of the instrument are received by the indorser or applied consistently with the indorsement; and

(4) Except as otherwise provided in paragraph (3) of this subsection, a payor bank or intermediary bank may disregard the indorsement and is not liable if the proceeds of the instrument are not received by the indorser or applied consistently with the indorsement.

(d) Except for an indorsement covered by subsection (c) of this section, if an instrument bears an indorsement using words to the effect that payment is to be made to the indorsee as agent, trustee, or other fiduciary for the benefit of the indorser or another person, the following rules apply:

(1) Unless there is notice of breach of fiduciary duty as provided in Section 3-307 of this title, a person who purchases the instrument from the indorsee or takes the instrument from the indorsee for collection or payment may pay the proceeds of payment or the value given for the instrument to the indorsee without regard to whether the indorsee violates a fiduciary duty to the indorser; and

(2) A subsequent transferee of the instrument or person who pays the instrument is neither given notice nor otherwise affected by the restriction in the indorsement unless the transferee or payor knows that the fiduciary dealt with the instrument or its proceeds in breach of fiduciary duty.

(e) The presence on an instrument of an indorsement to which this section applies does not prevent a purchaser of the instrument from becoming a holder in due course of the instrument unless the purchaser is a converter under subsection (c) of this section or has notice or knowledge of breach of fiduciary duty as stated in subsection (d) of this section.

(f) In an action to enforce the obligation of a party to pay the instrument, the obligor has a defense if payment would violate an indorsement to which this section applies and the payment is not permitted by this section.

SECTION 51. AMENDATORY 12A O.S. 1981, Section 3-207, is amended to read as follows:

Section 3-207. ~~Negotiation Effective Although it May Be Rescinded.~~

~~(1) Negotiation is effective to transfer the instrument although the negotiation is~~

~~(a) made by an infant, a corporation exceeding its powers, or any other person without capacity; or~~

~~(b) obtained by fraud, duress or mistake of any kind; or~~

~~(c) part of an illegal transaction; or~~

~~(d) made in breach of duty.~~

~~(2) Except as against a subsequent holder in due course such negotiation is in an appropriate case subject to rescission, the~~

~~declaration of a constructive trust or any other remedy permitted by law.~~

REACQUISITION

Reacquisition of an instrument occurs if it is transferred to a former holder, by negotiation or otherwise. A former holder who reacquires the instrument may cancel indorsements made after the reacquirer first became a holder of the instrument. If the cancellation causes the instrument to be payable to the reacquirer or to bearer, the reacquirer may negotiate the instrument. An indorser whose indorsement is canceled is discharged, and the discharge is effective against any subsequent holder.

PART 3

ENFORCEMENT OF INSTRUMENTS

SECTION 52. AMENDATORY 12A O.S. 1981, Section 3-301, is amended to read as follows:

Section 3-301. ~~Rights of a Holder.~~

~~The holder of an instrument whether or not he is the owner may transfer or negotiate it and, except as otherwise provided in Section 3-603 on payment or satisfaction, discharge it or enforce payment in his own name.~~

PERSON ENTITLED TO ENFORCE INSTRUMENT

"Person entitled to enforce" an instrument means (i) the holder of the instrument, (ii) a nonholder in possession of the instrument who has the rights of a holder, or (iii) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to Section 3-309 or subsection (d) of Section 3-418 of this title. A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument.

SECTION 53. AMENDATORY 12A O.S. 1981, Section 3-302, is amended to read as follows:

Section 3-302. ~~Holder in Due Course.~~

~~(1) A holder in due course is a holder who takes the instrument~~

~~(a) for value; and~~

~~(b) in good faith; and~~

~~(c) without notice that it is overdue or has been dishonored or of any defense against or claim to it on the part of any person.~~

~~(2) A payee may be a holder in due course.~~

~~(3) A holder does not become a holder in due course of an instrument:~~

~~(a) by purchase of it at judicial sale or by taking it under legal process; or~~

~~(b) by acquiring it in taking over an estate; or~~

~~(c) by purchasing it as part of a bulk transaction not in regular course of business of the transferor.~~

~~(4) A purchaser of a limited interest can be a holder in due course only to the extent of the interest purchased.~~

HOLDER IN DUE COURSE

(a) Subject to subsection (c) of this section and subsection (d) of Section 3-106 of this title, "holder in due course" means the holder of an instrument if:

(1) the instrument when issued or negotiated to the holder does not bear such apparent evidence of forgery or alteration or is not otherwise so irregular or incomplete as to call into question its authenticity; and

(2) the holder took the instrument (i) for value, (ii) in good faith, (iii) without notice that the instrument is overdue or has been dishonored or that there is an uncured default with respect to payment of another instrument issued as part of the same series, (iv) without notice that the instrument contains an unauthorized signature or has been altered, (v) without notice of any claim to the instrument described in Section 3-306 of this title, and (vi) without notice that any party has a defense or claim in recoupment described in subsection (a) of Section 3-305 of this title.

(b) Notice of discharge of a party, other than discharge in an insolvency proceeding, is not notice of a defense under subsection (a) of this section, but discharge is effective against a person who became a holder in due course with notice of the discharge. Public filing or recording of a document does not of itself constitute notice of a defense, claim in recoupment, or claim to the instrument.

(c) Except to the extent a transferor or predecessor in interest has rights as a holder in due course, a person does not acquire rights of a holder in due course of an instrument taken (i) by legal process or by purchase in an execution, bankruptcy, or creditor's sale or similar proceeding, (ii) by purchase as part of a bulk transaction not in ordinary course of business of the transferor, or (iii) as the successor in interest to an estate or other organization.

(d) If, under paragraph (1) of subsection (a) of Section 3-303 of this title, the promise of performance that is the consideration for an instrument has been partially performed, the holder may assert rights as a holder in due course of the instrument only to the fraction of the amount payable under the instrument equal to the value of the partial performance divided by the value of the promised performance.

(e) If (i) the person entitled to enforce an instrument has only a security interest in the instrument and (ii) the person obliged to pay the instrument has a defense, claim in recoupment, or claim to the instrument that may be asserted against the person who granted the security interest, the person entitled to enforce the instrument may assert rights as a holder in due course only to an amount payable under the instrument which, at the time of enforcement of the instrument, does not exceed the amount of the unpaid obligation secured.

(f) To be effective, notice must be received at a time and in a manner that gives a reasonable opportunity to act on it.

(g) This section is subject to any law limiting status as a holder in due course in particular classes of transactions.

SECTION 54. AMENDATORY 12A O.S. 1981, Section 3-303, is amended to read as follows:

Section 3-303. ~~Taking for Value.~~

~~A holder takes the instrument for value~~

~~(a) to the extent that the agreed consideration has been performed or that he acquires a security interest in or a lien on the instrument otherwise than by legal process; or~~

~~(b) when he takes the instrument in payment of or as security for an antecedent claim against any person whether or not the claim is due; or~~

~~(c) when he gives a negotiable instrument for it or makes an irrevocable commitment to a third person.~~

VALUE AND CONSIDERATION

(a) An instrument is issued or transferred for value if:

(1) the instrument is issued or transferred for a promise of performance, to the extent the promise has been performed;

(2) the transferee acquires a security interest or other lien in the instrument other than a lien obtained by judicial proceeding;

(3) the instrument is issued or transferred as payment of, or as security for, an antecedent claim against any person, whether or not the claim is due;

(4) the instrument is issued or transferred in exchange for a negotiable instrument; or

(5) the instrument is issued or transferred in exchange for the incurring of an irrevocable obligation to a third party by the person taking the instrument.

(b) "Consideration" means any consideration sufficient to support a simple contract. The drawer or maker of an instrument has a defense if the instrument is issued without consideration. If an instrument is issued for a promise of performance, the issuer has a defense to the extent performance of the promise is due and the promise has not been performed. If an instrument is issued for value as stated in subsection (a) of this section, the instrument is also issued for consideration.

SECTION 55. AMENDATORY 12A O.S. 1981, Section 3-304, is amended to read as follows:

Section 3-304. ~~Notice to Purchaser.~~

~~(1) The purchaser has notice of a claim or defense if~~

~~(a) the instrument is so incomplete, bears such visible evidence of forgery or alteration, or is otherwise so irregular as to call into question its validity, terms or ownership or to create an ambiguity as to the party to pay; or~~

~~(b) the purchaser has notice that the obligation of any party is voidable in whole or in part, or that all parties have been discharged.~~

~~(2) The purchaser has notice of a claim against the instrument when he has knowledge that a fiduciary has negotiated the instrument in payment of or as security for his own debt or in any transaction for his own benefit or otherwise in breach of duty.~~

~~(3) The purchaser has notice that an instrument is overdue if he has reason to know~~

~~(a) that any part of the principal amount is overdue or that there is an uncured default in payment of another instrument of the same series; or~~

~~(b) that acceleration of the instrument has been made; or~~

~~(c) that he is taking a demand instrument after demand has been made or more than a reasonable length of time after its issue. A reasonable time for a check drawn and payable within the states and territories of the United States and the District of Columbia is presumed to be thirty (30) days.~~

~~(4) Knowledge of the following facts does not of itself give the purchaser notice of a defense or claim~~

~~(a) that the instrument is antedated or postdated;~~

~~(b) that it was issued or negotiated in return for an executory promise or accompained by a separate agreement, unless the purchaser has notice that a defense or claim has arisen from the terms thereof;~~

~~(c) that any party has signed for accommodation;~~

~~(d) that an incomplete instrument has been completed, unless the purchaser has notice of any improper completion;~~
~~(e) that any person negotiating the instrument is or was a fiduciary;~~
~~(f) that there has been default in payment of interest on the instrument or in payment of any other instrument, except one of the same series.~~

~~(5) The filing or recording of a document does not of itself constitute notice within the provisions of this article to a person who would otherwise be a holder in due course.~~

~~(6) To be effective notice must be received at such time and in such manner as to give a reasonable opportunity to act on it.~~

OVERDUE INSTRUMENT

(a) An instrument payable on demand becomes overdue at the earliest of the following times:

(1) on the day after the day demand for payment is duly made;

(2) if the instrument is a check, ninety (90) days after its date; or

(3) if the instrument is not a check, when the instrument has been outstanding for a period of time after its date which is unreasonably long under the circumstances of the particular case in light of the nature of the instrument and usage of the trade.

(b) With respect to an instrument payable at a definite time the following rules apply:

(1) If the principal is payable in installments and a due date has not been accelerated, the instrument becomes overdue upon default under the instrument for nonpayment of an installment, and the instrument remains overdue until the default is cured;

(2) If the principal is not payable in installments and the due date has not been accelerated, the instrument becomes overdue on the day after the due date; and

(3) If a due date with respect to principal has been accelerated, the instrument becomes overdue on the day after the accelerated due date.

(c) Unless the due date of principal has been accelerated, an instrument does not become overdue if there is default in payment of interest but no default in payment of principal.

SECTION 56. AMENDATORY 12A O.S. 1981, Section 3-305, is amended to read as follows:

Section 3-305. ~~Rights of a Holder in Due Course.~~

~~To the extent that a holder is a holder in due course he takes the instrument free from~~

~~(1) all claims to it on the part of any person; and~~

~~(2) all defenses of any party to the instrument with whom the holder has not dealt except~~

~~(a) infancy, to the extent that it is a defense to a simple contract; and~~
~~(b) such other incapacity, or duress, or illegality of the transaction, as renders the obligation of the party a nullity; and~~
~~(c) such misrepresentation as had induced the party to sign the instrument with neither knowledge nor reasonable opportunity to obtain knowledge of its character or its essential terms; and~~
~~(d) discharge in insolvency proceedings; and~~
~~(e) any other discharge of which the holder has notice when he takes the instrument.~~

DEFENSES AND CLAIMS IN RECOUPMENT

(a) Except as stated in subsection (b) of this section, the right to enforce the obligation of a party to pay an instrument is subject to the following:

(1) a defense of the obligor based on (i) infancy of the obligor to the extent it is a defense to a simple contract, (ii) duress, lack of legal capacity, or illegality of the transaction which, under other law, nullifies the obligation of the obligor, (iii) fraud that induced the obligor to sign the instrument with neither knowledge nor reasonable opportunity to learn of its character or its essential terms, or (iv) discharge of the obligor in insolvency proceedings;

(2) a defense of the obligor stated in another section of this article or a defense of the obligor that would be available if the person entitled to enforce the instrument were enforcing a right to payment under a simple contract; and

(3) a claim in recoupment of the obligor against the original payee of the instrument if the claim arose from the transaction that gave rise to the instrument; but the claim of the obligor may be asserted against a transferee of the instrument only to reduce the amount owing on the instrument at the time the action is brought.

(b) The right of a holder in due course to enforce the obligation of a party to pay the instrument is subject to defenses of the obligor stated in paragraph (1) of subsection (a) of this section, but is not subject to defenses of the obligor stated in paragraph (2) of subsection (a) of this section or claims in recoupment stated in paragraph (3) of subsection (a) of this section against a person other than the holder.

(c) Except as stated in subsection (d) of this section, in an action to enforce the obligation of a party to pay the instrument, the obligor may not assert against the person entitled to enforce the instrument a defense, claim in recoupment, or claim to the instrument (Section 3-306 of this title) of another person, but the other person's claim to the instrument may be asserted by the obligor if the other person is joined in the action and personally asserts the claim against the person entitled to enforce the instrument. An obligor is not obliged to pay the instrument if the person seeking enforcement of the instrument does not have rights of a holder in due course and the obligor proves that the instrument is a lost or stolen instrument.

(d) In an action to enforce the obligation of an accommodation party to pay an instrument, the accommodation party may assert against the person entitled to enforce the instrument any defense or claim in recoupment under subsection (a) of this section that the accommodated party could assert against the person entitled to enforce the instrument, except the defenses of discharge in insolvency proceedings, infancy, and lack of legal capacity.

SECTION 57. AMENDATORY 12A O.S. 1981, Section 3-306, is amended to read as follows:

Section 3-306. ~~Rights of One Not Holder in Due Course.~~

~~Unless he has the rights of a holder in due course any person takes the instrument subject to~~

~~(a) all valid claims to it on the part of any person; and~~

~~(b) all defenses of any party which would be available in an action on a simple contract; and~~

~~(c) the defenses of want or failure of consideration, nonperformance of any condition precedent, nondelivery, or delivery for a special purpose (Section 3-408); and~~

~~(d) the defense that he or a person through whom he holds the instrument acquired it by theft, or that payment or satisfaction to such holder would be inconsistent with the terms of a restrictive endorsement. The claim of any third person to the instrument is not otherwise available as a defense to any party liable thereon unless the third person himself defends the action for such party.~~

CLAIMS TO AN INSTRUMENT

A person taking an instrument, other than a person having rights of a holder in due course, is subject to a claim of a property or possessory right in the instrument or its proceeds, including a claim to rescind a negotiation and to recover the instrument or its proceeds. A person having rights of a holder in due course takes free of the claim to the instrument.

SECTION 58. AMENDATORY 12A O.S. 1981, Section 3-307, is amended to read as follows:

Section 3-307. ~~Burden of Establishing Signatures, Defenses and Due Course.~~

~~(1) Unless specifically denied in the pleadings each signature on an instrument is admitted. When the effectiveness of a signature is put in issue~~

~~(a) the burden of establishing it is on the party claiming under the signature; but~~

~~(b) the signature is presumed to be genuine or authorized except where the action is to enforce the obligation of a purported signer who has died or become incompetent before proof is required.~~

~~(2) When signatures are admitted or established, production of the instrument entitles a holder to recover on it unless the defendant establishes a defense.~~

~~(3) After it is shown that a defense exists a person claiming the rights of a holder in due course has the burden of establishing that he or some person under whom he claims is in all respects a holder in due course.~~

NOTICE OF BREACH OF FIDUCIARY DUTY

(a) In this section:

(1) "Fiduciary" means an agent, trustee, partner, corporate officer or director, or other representative owing a fiduciary duty with respect to an instrument; and

(2) "Represented person" means the principal, beneficiary, partnership, corporation, or other person to whom the duty stated in paragraph (1) of this subsection is owed.

(b) If (i) an instrument is taken from a fiduciary for payment or collection or for value, (ii) the taker has knowledge of the fiduciary status of the fiduciary, and (iii) the represented person makes a claim to the instrument or its proceeds on the basis that the transaction of the fiduciary is a breach of fiduciary duty, the following rules apply:

(1) Notice of breach of fiduciary duty by the fiduciary is notice of the claim of the represented person;

(2) In the case of an instrument payable to the represented person or the fiduciary as such, the taker has notice of the breach of fiduciary duty if the instrument is (i) taken in payment of or as security for a debt known by the taker to be the personal debt

of the fiduciary, (ii) taken in a transaction known by the taker to be for the personal benefit of the fiduciary, or (iii) deposited to an account other than an account of the fiduciary, as such, or an account of the represented person;

(3) If an instrument is issued by the represented person or the fiduciary as such, and made payable to the fiduciary personally, the taker does not have notice of the breach of fiduciary duty unless the taker knows of the breach of fiduciary duty; and

(4) If an instrument is issued by the represented person or the fiduciary as such, to the taker as payee, the taker has notice of the breach of fiduciary duty if the instrument is (i) taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary, (ii) taken in a transaction known by the taker to be for the personal benefit of the fiduciary, or (iii) deposited to an account other than an account of the fiduciary, as such, or an account of the represented person.

SECTION 59. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-308 of Title 12A, unless there is created a duplication in numbering, reads as follows:

PROOF OF SIGNATURES AND STATUS AS HOLDER IN DUE COURSE

(a) In an action with respect to an instrument, the authenticity of, and authority to make, each signature on the instrument is admitted unless specifically denied in the pleadings. If the validity of a signature is denied in the pleadings, the burden of establishing validity is on the person claiming validity, but the signature is presumed to be authentic and authorized unless the action is to enforce the liability of the purported signer and the signer is dead or incompetent at the time of trial of the issue of validity of the signature. If an action to enforce the instrument is brought against a person as the undisclosed principal of a person who signed the instrument as a party to the instrument, the plaintiff has the burden of establishing that the defendant is liable on the instrument as a represented person under subsection (a) of Section 65 of this act.

(b) If the validity of signatures is admitted or proved and there is compliance with subsection (a) of this section, a plaintiff producing the instrument is entitled to payment if the plaintiff proves entitlement to enforce the instrument under Section 52 of this act, unless the defendant proves a defense or claim in recoupment. If a defense or claim in recoupment is proved, the right to payment of the plaintiff is subject to the defense or claim, except to the extent the plaintiff proves that the plaintiff has rights of a holder in due course which are not subject to the defense or claim.

SECTION 60. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-309 of Title 12A, unless there is created a duplication in numbering, reads as follows:

ENFORCEMENT OF LOST, DESTROYED, OR STOLEN INSTRUMENT

(a) A person not in possession of an instrument is entitled to enforce the instrument if (i) the person was in possession of the instrument and entitled to enforce it when loss of possession occurred, (ii) the loss of possession was not the result of a transfer by the person or a lawful seizure, and (iii) the person cannot reasonably obtain possession of the instrument because the instrument was destroyed, its whereabouts cannot be determined, or

it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

(b) A person seeking enforcement of an instrument under subsection (a) of this section must prove the terms of the instrument and the person's right to enforce the instrument. If that proof is made, Section 59 of this act applies to the case as if the person seeking enforcement had produced the instrument. The court may not enter judgment in favor of the person seeking enforcement unless it finds that the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument. Adequate protection may be provided by any reasonable means.

SECTION 61. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-310 of Title 12A, unless there is created a duplication in numbering, reads as follows:

EFFECT OF INSTRUMENT ON OBLIGATION FOR WHICH TAKEN

(a) Unless otherwise agreed, if a certified check, cashier's check, or teller's check is taken for an obligation, the obligation is discharged to the same extent discharge would result if an amount of money equal to the amount of the instrument were taken in payment of the obligation. Discharge of the obligation does not affect any liability that the obligor may have as an indorser of the instrument.

(b) Unless otherwise agreed and except as provided in subsection (a) of this section, if a note or an uncertified check is taken for an obligation, the obligation is suspended to the same extent the obligation would be discharged if an amount of money equal to the amount of the instrument were taken, and the following rules apply:

(1) In the case of an uncertified check, suspension of the obligation continues until dishonor of the check or until it is paid or certified. Payment or certification of the check results in discharge of the obligation to the extent of the amount of the check;

(2) In the case of a note, suspension of the obligation continues until dishonor of the note or until it is paid. Payment of the note results in discharge of the obligation to the extent of the payment;

(3) Except as provided in paragraph (4) of this subsection, if the check or note is dishonored and the obligee of the obligation for which the instrument was taken is the person entitled to enforce the instrument, the obligee may enforce either the instrument or the obligation. In the case of an instrument of a third person which is negotiated to the obligee by the obligor, discharge of the obligor on the instrument also discharges the obligation; and

(4) If the person entitled to enforce the instrument taken for an obligation is a person other than the obligee, the obligee may not enforce the obligation to the extent the obligation is suspended. If the obligee is the person entitled to enforce the instrument but no longer has possession of it because it was lost, stolen, or destroyed, the obligation may not be enforced to the extent of the amount payable on the instrument, and to that extent the obligee's rights against the obligor are limited to enforcement of the instrument.

(c) If an instrument other than one described in subsection (a) or (b) of this section is taken for an obligation, the effect is (i)

that stated in subsection (a) of this section if the instrument is one on which a bank is liable as maker or acceptor, or (ii) that stated in subsection (b) of this section in any other case.

SECTION 62. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-311 of Title 12A, unless there is created a duplication in numbering, reads as follows:

ACCORD AND SATISFACTION BY USE OF INSTRUMENT

(a) If a person against whom a claim is asserted proves that (i) that person in good faith tendered an instrument to the claimant as full satisfaction of the claim, (ii) the amount of the claim was unliquidated or subject to a bona fide dispute, and (iii) the claimant obtained payment of the instrument, the following subsections apply.

(b) Unless subsection (c) of this section applies, the claim is discharged if the person against whom the claim is asserted proves that the instrument or an accompanying written communication contained a conspicuous statement to the effect that the instrument was tendered as full satisfaction of the claim.

(c) Subject to subsection (d) of this section, a claim is not discharged under subsection (b) of this section if either of the following applies:

(1) The claimant, if an organization, proves that (i) within a reasonable time before the tender, the claimant sent a conspicuous statement to the person against whom the claim is asserted that communications concerning disputed debts, including an instrument tendered as full satisfaction of a debt, are to be sent to a designated person, office, or place, and (ii) the instrument or accompanying communication was not received by that designated person, office or place; or

(2) The claimant, whether or not an organization, proves that within ninety (90) days after payment of the instrument, the claimant tendered repayment of the amount of the instrument to the person against whom the claim is asserted. This paragraph does not apply if the claimant is an organization that sent a statement complying with subparagraph (i) of paragraph (1) of this subsection.

(d) A claim is discharged if the person against whom the claim is asserted proves that within a reasonable time before collection of the instrument was initiated, the claimant, or an agent of the claimant having direct responsibility with respect to the disputed obligation, knew that the instrument was tendered in full satisfaction of the claim.

SECTION 63. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-312 of Title 12A, unless there is created a duplication in numbering, reads as follows:

LOST, DESTROYED, OR STOLEN CASHIER'S CHECK, TELLER'S CHECK, OR CERTIFIED CHECK

(a) In this section:

(1) "Check" means a cashier's check, teller's check, or certified check;

(2) "Claimant" means a person who claims the right to receive the amount of a cashier's check, teller's check, or certified check that was lost, destroyed, or stolen;

(3) "Declaration of loss" means a written statement, made under penalty of perjury, to the effect that (i) the declarer lost possession of a check, (ii) the declarer is the drawer or payee of the check, in the case of a certified check, or the remitter or payee of the check, in the case of a cashier's or teller's check, (iii) the loss of possession was not the result of a transfer by the declarer or a lawful seizure, and (iv) the declarer cannot reasonably obtain possession of the check because the check was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process; and

(4) "Obligated bank" means the issuer of a cashier's check or a teller's check or the acceptor of a certified check.

(b) A claimant may assert a claim to the amount of a check by a communication to the obligated bank describing the check with reasonable certainty and requesting payment of the amount of the check, if (i) the claimant is the drawer or payee of a certified check or the remitter or payee of a cashier's check or teller's check, (ii) the communication contains or is accompanied by a declaration of loss of the claimant with respect to the check, (iii) the communication is received at a time and in a manner affording the bank reasonable time to act on it before the check is paid, and (iv) the claimant provides reasonable identification if requested by the obligated bank. Delivery of a declaration of loss is a warranty of the truth of the statements made in the declaration. If a claim is asserted in compliance with this subsection, the following rules apply:

(1) The claim becomes enforceable at the later of (i) the time the claim is asserted, or (ii) the ninetieth (90th) day following the date of the check, in the case of a cashier's check or teller's check, or the ninetieth (90th) day following the date of the acceptance, in the case of a certified check;

(2) Until the claim becomes enforceable, it has no legal effect and the obligated bank may pay the check or, in the case of a teller's check, may permit the drawee to pay the check. Payment to a person entitled to enforce the check discharges all liability of the obligated bank with respect to the check;

(3) If the claim becomes enforceable before the check is presented for payment, the obligated bank is not obliged to pay the check; and

(4) When the claim becomes enforceable, the obligated bank becomes obliged to pay the amount of the check to the claimant if payment of the check has not been made to a person entitled to enforce the check. Subject to paragraph (1) of subsection (a) of Section 122 of this act, payment to the claimant discharges all liability of the obligated bank with respect to the check.

(c) If the obligated bank pays the amount of a check to a claimant under paragraph (4) of subsection (b) of this section and the check is presented for payment by a person having rights of a holder in due course, the claimant is obliged to (i) refund the payment to the obligated bank if the check is paid, or (ii) pay the amount of the check to the person having rights of a holder in due course if the check is dishonored.

(d) If a claimant has the right to assert a claim under subsection (b) of this section and is also a person entitled to enforce a cashier's check, teller's check, or certified check which is lost, destroyed, or stolen, the claimant may assert rights with respect to the check either under this section or Section 60 of this act.

PART 4

LIABILITY OF PARTIES

SECTION 64. AMENDATORY 12A O.S. 1981, Section 3-401, is amended to read as follows:

Section 3-401. ~~Signature.~~

~~(1) No person is liable on an instrument unless his signature appears thereon.~~

~~(2) A signature is made by use of any name, including any trade or assumed name, upon an instrument, or by any word or mark used in lieu of a written signature.~~

SIGNATURE

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

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

SECTION 65. AMENDATORY 12A O.S. 1981, Section 3-402, is amended to read as follows:

Section 3-402. ~~Signature in Ambiguous Capacity.~~

~~Unless the instrument clearly indicates that a signature is made in some other capacity it is an endorsement.~~

SIGNATURE BY REPRESENTATIVE

(a) If a person acting, or purporting to act, as a representative signs an instrument by signing either the name of the represented person or the name of the signer, the represented person is bound by the signature to the same extent the represented person would be bound if the signature were on a simple contract. If the represented person is bound, the signature of the representative is the "authorized signature of the represented person" and the represented person is liable on the instrument, whether or not identified in the instrument.

(b) If a representative signs the name of the representative to an instrument and the signature is an authorized signature of the represented person, the following rules apply:

(1) If the form of the signature shows unambiguously that the signature is made on behalf of the represented person who is identified in the instrument, the representative is not liable on the instrument; and

(2) Subject to subsection (c) of this section, if (i) the form of the signature does not show unambiguously that the signature is made in a representative capacity or (ii) the represented person is not identified in the instrument, the representative is liable on the instrument to a holder in due course that took the instrument without notice that the representative was not intended to be liable on the instrument. With respect to any other person, the representative is

liable on the instrument unless the representative proves that the original parties did not intend the representative to be liable on the instrument.

(c) If a representative signs the name of the representative as drawer of a check without indication of the representative status and the check is payable from an account of the represented person who is identified on the check, the signer is not liable on the check if the signature is an authorized signature of the represented person.

SECTION 66. AMENDATORY 12A O.S. 1981, Section 3-403, is amended to read as follows:

Section 3-403. ~~Signature by Authorized Representative.~~

~~(1) A signature may be made by an agent or other representative, and his authority to make it may be established as in other cases of representation. No particular form of appointment is necessary to establish such authority.~~

~~(2) An authorized representative who signs his own name to an instrument~~

~~(a) is personally obligated if the instrument neither names the person represented nor shows that the representative signed in a representative capacity;~~

~~(b) except as otherwise established between the immediate parties, is personally obligated if the instrument names the person represented but does not show that the representative signed in a representative capacity, or if the instrument does not name the person represented but does show that the representative signed in a representative capacity.~~

~~(3) Except as otherwise established the name of an organization preceded or followed by the name and office of an authorized individual is a signature made in a representative capacity.~~

UNAUTHORIZED SIGNATURE

(a) Unless otherwise provided in this article or Article 4 of this title, an unauthorized signature is ineffective except as the signature of the unauthorized signer in favor of a person who in good faith pays the instrument or takes it for value. An unauthorized signature may be ratified for all purposes of this article.

(b) If the signature of more than one person is required to constitute the authorized signature of an organization, the signature of the organization is unauthorized if one of the required signatures is lacking.

(c) The civil or criminal liability of a person who makes an unauthorized signature is not affected by any provision of this article which makes the unauthorized signature effective for the purposes of this article.

SECTION 67. AMENDATORY 12A O.S. 1981, Section 3-404, is amended to read as follows:

Section 3-404. ~~Unauthorized Signatures.~~

~~(1) Any unauthorized signature is wholly inoperative as that of the person whose name is signed unless he ratifies it or is precluded from denying it; but it operates as the signature of the unauthorized signer in favor of any person who in good faith pays the instrument or takes it for value.~~

~~(2) Any unauthorized signature may be ratified for all purposes of this article. Such ratification does not of itself affect any rights of the person ratifying against the actual signer.~~

IMPOSTORS; FICTITIOUS PAYEES

(a) If an impostor, by use of the mails or otherwise, induces the issuer of an instrument to issue the instrument to the imposter,

or to a person acting in concert with the impostor, by impersonating the payee of the instrument or a person authorized to act for the payee, an indorsement of the instrument by any person in the name of the payee is effective as the indorsement of the payee in favor of a person who, in good faith, pays the instrument or takes it for value or for collection.

(b) If (i) a person whose intent determines to whom an instrument is payable (subsection (a) or (b) of Section 3-110 of this title) does not intend the person identified as payee to have any interest in the instrument, or (ii) the person identified as payee of an instrument is a fictitious person, the following rules apply until the instrument is negotiated by special indorsement:

(1) Any person in possession of the instrument is its holder; and

(2) An indorsement by any person in the name of the payee stated in the instrument is effective as the indorsement of the payee in favor of a person who, in good faith, pays the instrument or takes it for value or for collection.

(c) Under subsection (a) or (b) of this section, an indorsement is made in the name of a payee if (i) it is made in a name substantially similar to that of the payee or (ii) the instrument, whether or not indorsed, is deposited in a depositary bank to an account in a name substantially similar to that of the payee.

(d) With respect to an instrument to which subsection (a) or (b) of this section applies, if a person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss resulting from payment of the instrument, the person bearing the loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinary care contributed to the loss.

SECTION 68. AMENDATORY 12A O.S. 1981, Section 3-405, is amended to read as follows:

Section 3-405. ~~Impostors; Signature in Name of Payee.~~

~~(1) An endorsement by any person in the name of a named payee is effective if~~

~~(a) an impostor by use of the mails or otherwise has induced the maker or drawer to issue the instrument to him or his confederate in the name of the payee; or~~

~~(b) a person signing as or on behalf of a maker or drawer intends the payee to have no interest in the instrument; or~~

~~(c) an agent or employee of the maker or drawer has supplied him with the name of the payee intending the latter to have no such interest.~~

~~(2) Nothing in this section shall affect the criminal or civil liability of the person so endorsing.~~

EMPLOYER'S RESPONSIBILITY FOR FRAUDULENT INDORSEMENT BY EMPLOYEE

(a) In this section:

(1) "Employee" includes an independent contractor and employee of an independent contractor retained by the employer;

(2) "Fraudulent indorsement" means (i) in the case of an instrument payable to the employer, a forged indorsement purporting to be that of the employer, or (ii) in the case of an instrument with respect to which the employer is the issuer, a forged indorsement

purporting to be that of the person identified as payee; and

(3) "Responsibility" with respect to instruments means authority (i) to sign or indorse instruments on behalf of the employer, (ii) to process instruments received by the employer for bookkeeping purposes, for deposit to an account, or for other disposition, (iii) to prepare or process instruments for issue in the name of the employer, (iv) to supply information determining the names or addresses of payees of instruments to be issued in the name of the employer, (v) to control the disposition of instruments to be issued in the name of the employer, or (vi) to act otherwise with respect to instruments in a responsible capacity. "Responsibility" does not include authority that merely allows an employee to have access to instruments or blank or incomplete instrument forms that are being stored or transported or are part of incoming or outgoing mail, or similar access.

(b) For the purpose of determining the rights and liabilities of a person who, in good faith, pays an instrument or takes it for value or for collection, if an employer entrusted an employee with responsibility with respect to the instrument and the employee or a person acting in concert with the employee makes a fraudulent indorsement of the instrument, the indorsement is effective as the indorsement of the person to whom the instrument is payable if it is made in the name of that person. If the person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss resulting from the fraud, the person bearing the loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinary care contributed to the loss.

(c) Under subsection (b) of this section, an indorsement is made in the name of the person to whom an instrument is payable if (i) it is made in a name substantially similar to the name of that person or (ii) the instrument, whether or not indorsed, is deposited in a depositary bank to an account in a name substantially similar to the name of that person.

SECTION 69. AMENDATORY 12A O.S. 1981, Section 3-406, is amended to read as follows:

Section 3-406. ~~Negligence Contributing to Alteration or Unauthorized Signature.~~

~~Any person who by his negligence substantially contributes to a material alteration of the instrument or to the making of an unauthorized signature is precluded from asserting the alteration or lack of authority against a holder in due course or against a drawee or other payor who pays the instrument in good faith and in accordance with the reasonable commercial standards of the drawee's or payor's business.~~

NEGLIGENCE CONTRIBUTING TO FORGED SIGNATURE
OR ALTERATION OF INSTRUMENT

(a) A person whose failure to exercise ordinary care substantially contributes to an alteration of an instrument or to the making of a forged signature on an instrument is precluded from asserting the alteration or the forgery against a person who, in good faith, pays the instrument or takes it for value or for collection.

(b) Under subsection (a) of this section, if the person asserting the preclusion fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss, the loss is allocated between the person precluded and the person asserting the preclusion according to the extent to which the failure of each to exercise ordinary care contributed to the loss.

(c) Under subsection (a) of this section, the burden of proving failure to exercise ordinary care is on the person asserting the preclusion. Under subsection (b) of this section, the burden of proving failure to exercise ordinary care is on the person precluded.

SECTION 70. AMENDATORY 12A O.S. 1981, Section 3-407, is amended to read as follows:

Section 3-407.

ALTERATION

~~(1) Any alteration of an instrument is material which changes the contract of any party thereto in any respect, including any such change in~~

~~(a) the number or relations of the parties; or~~

~~(b) an incomplete instrument, by completing it otherwise than as authorized; or~~

~~(c) the writing as signed, by adding to it or by removing any part of it.~~

~~(2) As against any person other than a subsequent holder in due course~~

~~(a) alteration by the holder which is both fraudulent and material discharges any party whose contract is thereby changed unless that party assents or is precluded from asserting the defense;~~

~~(b) no other alteration discharges any party and the instrument may be enforced according to its original tenor, or as to incomplete instruments according to the authority given.~~

~~(3) A subsequent holder in due course may in all cases enforce the instrument according to its original tenor, and when an incomplete instrument has been completed, he may enforce it as completed.~~

(a) "Alteration" means (i) an unauthorized change in an instrument that purports to modify in any respect the obligation of a party, or (ii) an unauthorized addition of words or numbers or other change to an incomplete instrument relating to the obligation of a party.

(b) Except as provided in subsection (c) of this section, an alteration fraudulently made discharges a party whose obligation is affected by the alteration unless that party assents or is precluded from asserting the alteration. No other alteration discharges a party, and the instrument may be enforced according to its original terms.

(c) A payor bank or drawee paying a fraudulently altered instrument or a person taking it for value, in good faith and without notice of the alteration, may enforce rights with respect to the instrument (i) according to its original terms, or (ii) in the case of an incomplete instrument altered by unauthorized completion, according to its terms as completed.

SECTION 71. AMENDATORY 12A O.S. 1981, Section 3-408, is amended to read as follows:

Section 3-408. ~~Consideration.~~

~~Want or failure of consideration is a defense as against any person not having the rights of a holder in due course (Section 3-305), except that no consideration is necessary for an instrument~~

~~or obligation thereon given in payment of or as security for an antecedent obligation of any kind. Nothing in this section shall be taken to displace any statute outside this act under which a promise is enforceable notwithstanding lack or failure of consideration. Partial failure of consideration is a defense pro tanto whether or not the failure is in an ascertained or liquidated amount.~~

DRAWEE NOT LIABLE ON UNACCEPTED DRAFT

A check or other draft does not of itself operate as an assignment of funds in the hands of the drawee available for its payment, and the drawee is not liable on the instrument until the drawee accepts it.

SECTION 72. AMENDATORY 12A O.S. 1981, Section 3-409, is amended to read as follows:

Section 3-409. ~~Draft Not an Assignment.~~

~~(1) A check or other draft does not of itself operate as an assignment of any funds in the hands of the drawee available for its payment, and the drawee is not liable on the instrument until he accepts it.~~

~~(2) Nothing in this section shall affect any liability in contract, tort or otherwise arising from any letter of credit or other obligation or representation which is not an acceptance.~~

ACCEPTANCE OF DRAFT; CERTIFIED CHECK

(a) "Acceptance" means the drawee's signed agreement to pay a draft as presented. It must be written on the draft and may consist of the drawee's signature alone. Acceptance may be made at any time and becomes effective when notification pursuant to instructions is given or the accepted draft is delivered for the purpose of giving rights on the acceptance to any person.

(b) A draft may be accepted although it has not been signed by the drawer, is otherwise incomplete, is overdue, or has been dishonored.

(c) If a draft is payable at a fixed period after sight and the acceptor fails to date the acceptance, the holder may complete the acceptance by supplying a date in good faith.

(d) "Certified check" means a check accepted by the bank on which it is drawn. Acceptance may be made as stated in subsection (a) of this section or by a writing on the check which indicates that the check is certified. The drawee of a check has no obligation to certify the check, and refusal to certify is not dishonor of the check.

SECTION 73. AMENDATORY 12A O.S. 1981, Section 3-410, is amended to read as follows:

Section 3-410. ~~Definition and Operation of Acceptance.~~

~~(1) Acceptance is the drawee's signed engagement to honor the draft as presented. It must be written on the draft, and may consist of his signature alone. It becomes operative when completed by delivery or notification.~~

~~(2) A draft may be accepted although it has not been signed by the drawer or is otherwise incomplete or is overdue or has been dishonored.~~

~~(3) Where the draft is payable at a fixed period after sight and the acceptor fails to date his acceptance the holder may complete it by supplying a date in good faith.~~

ACCEPTANCE VARYING DRAFT

(a) If the terms of a drawee's acceptance vary from the terms of the draft as presented, the holder may refuse the acceptance and treat the draft as dishonored. In that case, the drawee may cancel the acceptance.

(b) The terms of a draft are not varied by an acceptance to pay at a particular bank or place in the United States, unless the

acceptance states that the draft is to be paid only at that bank or place.

(c) If the holder assents to an acceptance varying the terms of a draft, the obligation of each drawer and indorser that does not expressly assent to the acceptance is discharged.

SECTION 74. AMENDATORY 12A O.S. 1981, Section 3-411, is amended to read as follows:

Section 3-411. ~~Certification of a Check.~~

~~(1) Certification of a check is acceptance. Where a holder procures certification the drawer and all prior endorsers are discharged.~~

~~(2) Unless otherwise agreed a bank has no obligation to certify a check.~~

~~(3) A bank may certify a check before returning it for lack of proper endorsement. If it does so the drawer is discharged.~~

REFUSAL TO PAY CASHIER'S CHECKS,
TELLER'S CHECKS, AND CERTIFIED CHECKS

(a) In this section, "obligated bank" means the acceptor of a certified check or the issuer of a cashier's check or teller's check bought from the issuer.

(b) If the obligated bank wrongfully (i) refuses to pay a cashier's check or certified check, (ii) stops payment of a teller's check, or (iii) refuses to pay a dishonored teller's check, the person asserting the right to enforce the check is entitled to compensation for expenses and loss of interest resulting from the nonpayment and may recover consequential damages if the obligated bank refuses to pay after receiving notice of particular circumstances giving rise to the damages.

(c) Expenses or consequential damages under subsection (b) of this section are not recoverable if the refusal of the obligated bank to pay occurs because (i) the bank suspends payments, (ii) the obligated bank asserts a claim or defense of the bank that it has reasonable grounds to believe is available against the person entitled to enforce the instrument, (iii) the obligated bank has a reasonable doubt whether the person demanding payment is the person entitled to enforce the instrument, or (iv) payment is prohibited by law.

SECTION 75. AMENDATORY 12A O.S. 1981, Section 3-412, is amended to read as follows:

Section 3-412. ~~Acceptance Varying Draft.~~

~~(1) Where the drawee's proffered acceptance in any manner varies the draft as presented the holder may refuse the acceptance and treat the draft as dishonored in which case the drawee is entitled to have his acceptance cancelled.~~

~~(2) The terms of the draft are not varied by an acceptance to pay at any particular bank or place in the continental United States, unless the acceptance states that the draft is to be paid only at such bank or place.~~

~~(3) Where the holder assents to an acceptance varying the terms of the draft each drawer and endorser who does not affirmatively assent is discharged.~~

OBLIGATION OF ISSUER OF NOTE OR CASHIER'S CHECK

The issuer of a note or cashier's check or other draft drawn on the drawer is obliged to pay the instrument (i) according to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder, or (ii) if the issuer signed an incomplete instrument, according to its terms when completed, to the extent stated in Sections 3-115 and 3-407 of this title. The obligation is owed to a person entitled to enforce the instrument or

to an indorser who paid the instrument under Section 3-415 of this title.

SECTION 76. AMENDATORY 12A O.S. 1981, Section 3-413, is amended to read as follows:

Section 3-413. ~~Contract of Maker, Drawer and Acceptor.~~

~~(1) The maker or acceptor engages that he will pay the instrument according to its tenor at the time of his engagement or as completed pursuant to Section 3-115 on incomplete instruments.~~

~~(2) The drawer engages that upon dishonor of the draft and any necessary notice of dishonor or protest he will pay the amount of the draft to the holder or to any endorser who takes it up. The drawer may disclaim this liability by drawing without recourse.~~

~~(3) By making, drawing or accepting the party admits as against all subsequent parties including the drawee the existence of the payee and his then capacity to endorse.~~

OBLIGATION OF ACCEPTOR

(a) The acceptor of a draft is obliged to pay the draft (i) according to its terms at the time it was accepted, even though the acceptance states that the draft is payable "as originally drawn" or equivalent terms, (ii) if the acceptance varies the terms of the draft, according to the terms of the draft as varied, or (iii) if the acceptance is of a draft that is an incomplete instrument, according to its terms when completed, to the extent stated in Sections 3-115 and 3-407 of this title. The obligation is owed to a person entitled to enforce the draft or to the drawer or an indorser who paid the draft under Section 3-414 or 3-415 of this title.

(b) If the certification of a check or other acceptance of a draft states the amount certified or accepted, the obligation of the acceptor is that amount. If (i) the certification or acceptance does not state an amount, (ii) the amount of the instrument is subsequently raised, and (iii) the instrument is then negotiated to a holder in due course, the obligation of the acceptor is the amount of the instrument at the time it was taken by the holder in due course.

SECTION 77. AMENDATORY 12A O.S. 1981, Section 3-414, is amended to read as follows:

Section 3-414. ~~Contract of Endorser; Order of Liability.~~

~~(1) Unless the endorsement otherwise specifies (as by such words as "without recourse") every endorser engages that upon dishonor and any necessary notice of dishonor and protest he will pay the instrument according to its tenor at the time of his endorsement to the holder or to any subsequent endorser who takes it up, even though the endorser who takes it up was not obligated to do so.~~

~~(2) Unless they otherwise agree endorsers are liable to one another in the order in which they endorse, which is presumed to be the order in which their signatures appear on the instrument.~~

OBLIGATION OF DRAWER

(a) This section does not apply to cashier's checks or other drafts drawn on the drawer.

(b) If an unaccepted draft is dishonored, the drawer is obliged to pay the draft (i) according to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder, or (ii) if the drawer signed an incomplete instrument, according to its terms when completed, to the extent stated in Sections 3-115 and 3-407 of this title. The obligation is owed to a person entitled to enforce the draft or to an indorser who paid the draft under Section 3-415 of this title.

(c) If a draft is accepted by a bank, the drawer is discharged, regardless of when or by whom acceptance was obtained.

(d) If a draft is accepted and the acceptor is not a bank, the obligation of the drawer to pay the draft if the draft is dishonored by the acceptor is the same as the obligation of an indorser under subsections (a) and (c) of Section 3-415 of this title.

(e) If a draft states that it is drawn "without recourse" or otherwise disclaims liability of the drawer to pay the draft, the drawer is not liable under subsection (b) of this section to pay the draft if the draft is not a check. A disclaimer of the liability stated in subsection (b) of this section is not effective if the draft is a check.

(f) If (i) a check is not presented for payment or given to a depositary bank for collection within thirty (30) days after its date, (ii) the drawee suspends payments after expiration of the thirty-day period without paying the check, and (iii) because of the suspension of payments, the drawer is deprived of funds maintained with the drawee to cover payment of the check, the drawer to the extent deprived of funds may discharge its obligation to pay the check by assigning to the person entitled to enforce the check the rights of the drawer against the drawee with respect to the funds.

SECTION 78. AMENDATORY 12A O.S. 1981, Section 3-415, is amended to read as follows:

Section 3-415. ~~Contract of Accommodation Party.~~

~~(1) An accommodation party is one who signs the instrument in any capacity for the purpose of lending his name to another party to it.~~

~~(2) When the instrument has been taken for value before it is due the accommodation party is liable in the capacity in which he has signed even though the taker knows of the accommodation.~~

~~(3) As against a holder in due course and without notice of the accommodation oral proof of the accommodation is not admissible to give the accommodation party the benefit of discharges dependent on his character as such. In other cases the accommodation character may be shown by oral proof.~~

~~(4) An endorsement which shows that it is not in the chain of title is notice of its accommodation character.~~

~~(5) An accommodation party is not liable to the party accommodated, and if he pays the instrument has a right of recourse on the instrument against such party.~~

OBLIGATION OF INDORSER

(a) Subject to subsections (b), (c), and (d) of this section and to subsection (d) of Section 3-419 of this title, 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 Section 3-115 and 3-407 of this title. 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 3-503 of this title 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 depositary bank for collection, within thirty (30) days after the day the indorsement was made, the liability of the indorser under subsection (a) of this section is discharged.

SECTION 79. AMENDATORY 12A O.S. 1981, Section 3-416, is amended to read as follows:

Section 3-416. ~~Contract of Guarantor.~~

~~(1) "Payment guaranteed" or equivalent words added to a signature mean that the signer engages that if the instrument is not paid when due he will pay it according to its tenor without resort by the holder to any other party.~~

~~(2) "Collection guaranteed" or equivalent words added to a signature mean that the signer engages that if the instrument is not paid when due he will pay it according to its tenor, but only after the holder has reduced his claim against the maker or acceptor to judgment and execution has been returned unsatisfied, or after the maker or acceptor has become insolvent or it is otherwise apparent that it is useless to proceed against him.~~

~~(3) Words of guaranty which do not otherwise specify guarantee payment.~~

~~(4) No words of guaranty added to the signature of a sole maker or acceptor affect his liability on the instrument. Such words added to the signature of one of two or more makers or acceptors create a presumption that the signature is for the accommodation of the others.~~

~~(5) When words of guaranty are used presentment, notice of dishonor and protest are not necessary to charge the user.~~

~~(6) Any guaranty written on the instrument is enforcible notwithstanding any statute of frauds.~~

TRANSFER WARRANTIES

(a) A person who transfers an instrument for consideration warrants to the transferee and, if the transfer is by indorsement, to any subsequent transferee that:

(1) The warrantor is a person entitled to enforce the instrument;

(2) All signatures on the instrument are authentic and authorized;

(3) The instrument has not been altered;

(4) The instrument is not subject to a defense or claim in recoupment of any party which can be asserted against the warrantor; and

(5) The warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer.

(b) A person to whom the warranties under subsection (a) of this section are made and who took the instrument in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the instrument plus expenses and loss of interest incurred as a result of the breach.

(c) The warranties stated in subsection (a) of this section cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty (30) days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection (b) of this section is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(d) A claim for relief for breach of warranty under this section accrues when the claimant has reason to know of the breach.

SECTION 80. AMENDATORY 12A O.S. 1981, Section 3-417, is amended to read as follows:

Section 3-417. ~~Warranties on Presentment and Transfer.~~

~~(1) Any person who obtains payment or acceptance and any prior transferor warrants to a person who in good faith pays or accepts that~~

~~(a) he has a good title to the instrument or is authorized to obtain payment or acceptance on behalf of one who has a good title; and~~

~~(b) he has no knowledge that the signature of the maker or drawer is unauthorized, except that this warranty is not given by a holder in due course acting in good faith.~~

~~(i) to a maker with respect to the maker's own signature; or~~

~~(ii) to a drawer with respect to the drawer's own signature, whether or not the drawer is also the drawee; or~~

~~(iii) to an acceptor of a draft if the holder in due course took the draft after the acceptance or obtained the acceptance without knowledge that the drawer's signature was unauthorized; and~~

~~(c) the instrument has not been materially altered, except that this warranty is not given by a holder in due course acting in good faith~~

~~(i) to the maker of a note; or~~

~~(ii) to the drawer of a draft whether or not the drawer is also the drawee; or~~

~~(iii) to the acceptor of a draft with respect to an alteration made prior to the acceptance if the holder in due course took the draft after the acceptance, even though the acceptance provided "payable as originally drawn" or equivalent terms; or~~

~~(iv) to the acceptor of a draft with respect to an alteration made after the acceptance.~~

~~(2) Any person who transfers an instrument and receives consideration warrants to his transferee and if the transfer is by endorsement to any subsequent holder who takes the instrument in good faith that~~

~~(a) he has a good title to the instrument or is authorized to obtain payment or acceptance on behalf of one who has a good title and the transfer is otherwise rightful; and~~

~~(b) all signatures are genuine or authorized; and~~

~~(c) the instrument has not been materially altered; and~~

~~(d) no defense of any party is good against him; and~~

~~(e) he has no knowledge of any insolvency proceeding instituted with respect to the maker or acceptor or the drawer of an unaccepted instrument.~~

~~(3) By transferring "without recourse" the transferor limits the obligation stated in subsection (2) (d) to a warranty that he has no knowledge of such a defense.~~

~~(4) A selling agent or broker who does not disclose the fact that he is acting only as such gives the warranties provided in this section, but if he makes such disclosure warrants only his good faith and authority.~~

PRESENTMENT WARRANTIES

(a) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, (i) the person obtaining payment or acceptance, at the time of presentment, and (ii) a previous transferor of the draft, at the time of transfer, warrant to the drawee making payment or accepting the draft in good faith that:

(1) The warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

(2) The draft has not been altered; and

(3) The warrantor has no knowledge that the signature of the drawer of the draft is unauthorized.

(b) A drawee making payment may recover from any warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft, breach of warranty is a defense to the obligation of the acceptor. If the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from any warrantor for breach of warranty the amounts stated in this subsection.

(c) If a drawee asserts a claim for breach of warranty under subsection (a) of this section based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under Section 3-404 or 3-405 of this title or the drawer is precluded under Section 3-406 or 4-406 of this title from asserting against the drawee the unauthorized indorsement or alteration.

(d) If (i) a dishonored draft is presented for payment to the drawer or an indorser or (ii) any other instrument is presented for payment to a party obliged to pay the instrument, and (iii) payment is received, the following rules apply:

(1) The person obtaining payment and a prior transferor of the instrument warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the instrument, a person entitled to enforce the instrument or authorized to obtain payment on behalf of a person entitled to enforce the instrument; and

(2) The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(e) The warranties stated in subsections (a) and (d) of this section cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty (30) days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection (b) or (d) of this section is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(f) A claim for relief for breach of warranty under this section accrues when the claimant has reason to know of the breach.

SECTION 81. AMENDATORY 12A O.S. 1981, Section 3-418, is amended to read as follows:

Section 3-418. ~~Finality of Payment or Acceptance.~~

~~Except for recovery of bank payments as provided in the article on Bank Deposits and Collections (Article 4) and except for liability for breach of warranty on presentment under the preceding section, payment or acceptance of any instrument is final in favor of a holder in due course, or a person who has in good faith changed his position in reliance on the payment.~~

PAYMENT OR ACCEPTANCE BY MISTAKE

(a) Except as provided in subsection (c) of this section, if the drawee of a draft pays or accepts the draft and the drawee acted on the mistaken belief that (i) payment of the draft had not been stopped pursuant to Section 4-403 of this title or (ii) the signature of the drawer of the draft was authorized, the drawee may recover the amount of the draft from the person to whom or for whose benefit payment was made or, in the case of acceptance, may revoke the acceptance. Rights of the drawee under this subsection are not affected by failure of the drawee to exercise ordinary care in paying or accepting the draft.

(b) Except as provided in subsection (c) of this section, if an instrument has been paid or accepted by mistake and the case is not covered by subsection (a) of this section, the person paying or accepting may, to the extent permitted by the law governing mistake and restitution, (i) recover the payment from the person to whom or for whose benefit payment was made or (ii) in the case of acceptance, may revoke the acceptance.

(c) The remedies provided by subsection (a) or (b) of this section may not be asserted against a person who took the instrument in good faith and for value or who in good faith changed position in reliance on the payment or acceptance. This subsection does not limit remedies provided by Section 3-417 or 4-407 of this title.

(d) Notwithstanding Section 4-215 of this title, if an instrument is paid or accepted by mistake and the payor or acceptor recovers payment or revokes acceptance under subsection (a) or (b) of this section, the instrument is deemed not to have been paid or accepted and is treated as dishonored, and the person from whom payment is recovered has rights as a person entitled to enforce the dishonored instrument.

SECTION 82. AMENDATORY 12A O.S. 1981, Section 3-419, is amended to read as follows:

Section 3-419. ~~Conversion of Instrument; Innocent Representative.~~

~~(1) An instrument is converted when~~

~~(a) a drawee to whom it is delivered for acceptance refuses to return it on demand; or~~

~~(b) any person to whom it is delivered for payment refuses on demand either to pay or to return it; or~~

~~(c) it is paid on a forged endorsement.~~

~~(2) In an action against a drawee under subsection (1) the measure of the drawee's liability is the face amount of the instrument. In any other action under subsection (1) the measure of liability is presumed to be the face amount of the instrument.~~

~~(3) Subject to the provisions of this act concerning restrictive endorsements a representative, including a depositary or collecting bank, who has in good faith and in accordance with the reasonable commercial standards applicable to the business of such representative dealt with an instrument or its proceeds on behalf of one who was not the true owner is not liable in conversion or otherwise to the true owner beyond the amount of any proceeds remaining in his hands.~~

~~(4) An intermediary bank or payor bank which is not a depositary bank is not liable in conversion solely by reason of the fact that proceeds of an item endorsed restrictively (Sections 3-205 and 3-206) are not paid or applied consistently with the restrictive endorsement of an endorser other than its immediate transferor.~~

INSTRUMENTS SIGNED FOR ACCOMMODATION

(a) If an instrument is issued for value given for the benefit of a party to the instrument ("accommodated party") and another party to the instrument ("accommodation party") signs the instrument for the purpose of incurring liability on the instrument without being a direct beneficiary of the value given for the instrument, the instrument is signed by the accommodation party "for accommodation".

(b) An accommodation party may sign the instrument as maker, drawer, acceptor, or indorser and, subject to subsection (d) of this section, is obliged to pay the instrument in the capacity in which the accommodation party signs. The obligation of an accommodation party may be enforced notwithstanding any statute of frauds and whether or not the accommodation party receives consideration for the accommodation.

(c) A person signing an instrument is presumed to be an accommodation party and there is notice that the instrument is signed for accommodation if the signature is an anomalous indorsement or is accompanied by words indicating that the signer is acting as surety or guarantor with respect to the obligation of another party to the instrument. Except as provided in Section 3-605 of this title, the obligation of an accommodation party to pay the instrument is not affected by the fact that the person enforcing the obligation had notice when the instrument was taken by that person that the accommodation party signed the instrument for accommodation.

(d) If the signature of a party to an instrument is accompanied by words indicating unambiguously that the party is guaranteeing collection rather than payment of the obligation of another party to the instrument, the signer is obliged to pay the amount due on the instrument to a person entitled to enforce the instrument only if (i) execution of judgment against the other party has been returned unsatisfied, (ii) the other party is insolvent or in an insolvency proceeding, (iii) the other party cannot be served with process, or (iv) it is otherwise apparent that payment cannot be obtained from the other party.

(e) An accommodation party who pays the instrument is entitled to reimbursement from the accommodated party and is entitled to enforce the instrument against the accommodated party. An accommodated party who pays the instrument has no right of recourse against, and is not entitled to contribution from, an accommodation party.

SECTION 83. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-420 of Title 12A, unless there is created a duplication in numbering, reads as follows:

CONVERSION OF INSTRUMENT

(a) The law applicable to conversion of personal property applies to instruments. An instrument is also converted if it is taken by transfer, other than a negotiation, from a person not entitled to enforce the instrument or a bank makes or obtains payment with respect to the instrument for a person not entitled to enforce the instrument or receive payment. An action for conversion of an instrument may not be brought by (i) the issuer or acceptor of the instrument or (ii) a payee or indorsee who did not receive

delivery of the instrument either directly or through delivery to an agent or a co-payee.

(b) In an action under subsection (a) of this section, the measure of liability is presumed to be the amount payable on the instrument, but recovery may not exceed the amount of the plaintiff's interest in the instrument.

(c) A representative, other than a depositary bank, who has in good faith dealt with an instrument or its proceeds on behalf of one who was not the person entitled to enforce the instrument is not liable in conversion to that person beyond the amount of any proceeds that it has not paid out.

PART 5

DISHONOR

SECTION 84. AMENDATORY 12A O.S. 1981, Section 3-501, is amended to read as follows:

Section 3-501. ~~When Presentment, Notice of Dishonor, and Protest Necessary or Permissible.~~

~~(1) Unless excused (Section 3-511) presentment is necessary to charge secondary parties as follows:~~

~~(a) presentment for acceptance is necessary to charge the drawer and indorsers of a draft where the draft so provides, or is payable elsewhere than at the residence or place of business of the drawee, or its date of payment depends upon such presentment. The holder may at his option present for acceptance any other draft payable at a stated date;~~

~~(b) presentment for payment is necessary to charge any endorser;~~

~~(c) in the case of any drawer, the acceptor of a draft payable at a bank or the maker of a note payable at a bank, presentment for payment is necessary, but failure to make presentment discharges such drawer, acceptor or maker only as stated in Section 3-502(1) (b).~~

~~(2) Unless excused (Section 3-511)~~

~~(a) notice of any dishonor is necessary to charge any endorser;~~

~~(b) in the case of any drawer, the acceptor of a draft payable at a bank or the maker of a note payable at a bank, notice of any dishonor is necessary, but failure to give such notice discharges such drawer, acceptor or maker only as stated in Section 3-502(1) (b).~~

~~(3) Unless excused (Section 3-511) protest of any dishonor is necessary to charge the drawer and endorsers of any draft which on its face appears to be drawn or payable outside of the states, territories, dependencies and possessions of the United States, the District of Columbia and the Commonwealth of Puerto Rico. The holder may at his option make protest of any dishonor of any other instrument and in the case of a foreign draft may on insolvency of the acceptor before maturity make protest for better security.~~

~~(4) Notwithstanding any provision of this section, neither presentment nor notice of dishonor nor protest is necessary to charge an endorser who has endorsed an instrument after maturity.~~

PRESENTMENT

(a) "Presentment" means a demand made by or on behalf of a person entitled to enforce an instrument (i) to pay the instrument made to the drawee or a party obliged to pay the instrument or, in the case of a note or accepted draft payable at a bank, to the bank, or (ii) to accept a draft made to the drawee.

(b) The following rules are subject to Article 4 of this title, agreement of the parties, and clearing-house rules and the like:

(1) Presentment may be made at the place of payment of the instrument and must be made at the place of payment if the instrument is payable at a bank in the United States; may be made by any commercially reasonable means, including an oral, written, or electronic communication; is effective when the demand for payment or acceptance is received by the person to whom presentment is made; and is effective if made to any one of two or more makers, acceptors, drawees, or other payors;

(2) Upon demand of the person to whom presentment is made, the person making presentment must (i) exhibit the instrument, (ii) give reasonable identification and, if presentment is made on behalf of another person, reasonable evidence of authority to do so, and (iii) sign a receipt on the instrument for any payment made or surrender the instrument if full payment is made;

(3) Without dishonoring the instrument, the party to whom presentment is made may (i) return the instrument for lack of a necessary indorsement, or (ii) refuse payment or acceptance for failure of the presentment to comply with the terms of the instrument, an agreement of the parties, or other applicable law or rule; and

(4) The party to whom presentment is made may treat presentment as occurring on the next business day after the day of presentment if the party to whom presentment is made has established a cutoff hour not earlier than 2 o'clock p.m. for the receipt and processing of instruments presented for payment or acceptance and presentment is made after the cutoff hour.

SECTION 85. AMENDATORY 12A O.S. 1981, Section 3-502, is amended to read as follows:

Section 3-502. ~~Unexcused Delay; Discharge.~~

~~(1) Where without excuse any necessary presentment or notice of dishonor is delayed beyond the time when it is due~~

~~(a) any endorser is discharged; and~~

~~(b) any drawer or the acceptor of a draft payable at a bank or the maker of a note payable at a bank who because the drawee or payor bank becomes insolvent during the delay is deprived of funds maintained with the drawee or payor bank to cover the instrument may discharge his liability by written assignment to the holder of his rights against the drawee or payor bank in respect of such funds, but such drawer, acceptor or maker is not otherwise discharged.~~

~~(2) Where without excuse a necessary protest is delayed beyond the time when it is due any drawer or endorser is discharged.~~

DISHONOR

(a) Dishonor of a note is governed by the following rules:

(1) If the note is payable on demand, the note is dishonored if presentment is duly made to the maker and the note is not paid on the day of presentment;

(2) If the note is not payable on demand and is payable at or through a bank or the terms of the note require presentment, the note is dishonored if presentment is duly made and the note is not paid on the day it

becomes payable or the day of presentment, whichever is later; and

(3) If the note is not payable on demand and paragraph (2) of this subsection does not apply, the note is dishonored if it is not paid on the day it becomes payable.

(b) Dishonor of an unaccepted draft other than a documentary draft is governed by the following rules:

(1) If a check is duly presented for payment to the payor bank otherwise than for immediate payment over the counter, the check is dishonored if the payor bank makes timely return of the check or sends timely notice of dishonor or nonpayment under Section 4-301 or 4-302 of this title, or becomes accountable for the amount of the check under Section 4-302 of this title;

(2) If a draft is payable on demand and paragraph (1) of this subsection does not apply, the draft is dishonored if presentment for payment is duly made to the drawee and the draft is not paid on the day of presentment;

(3) If a draft is payable on a date stated in the draft, the draft is dishonored if (i) presentment for payment is duly made to the drawee and payment is not made on the day the draft becomes payable or the day of presentment, whichever is later, or (ii) presentment for acceptance is duly made before the day the draft becomes payable and the draft is not accepted on the day of presentment; and

(4) If a draft is payable on elapse of a period of time after sight or acceptance, the draft is dishonored if presentment for acceptance is duly made and the draft is not accepted on the day of presentment.

(c) Dishonor of an unaccepted documentary draft occurs according to the rules stated in paragraphs (2), (3) and (4) of subsection (b) of this section, except that payment or acceptance may be delayed without dishonor until no later than the close of the third business day of the drawee following the day on which payment or acceptance is required by those paragraphs.

(d) Dishonor of an accepted draft is governed by the following rules:

(1) If the draft is payable on demand, the draft is dishonored if presentment for payment is duly made to the acceptor and the draft is not paid on the day of presentment; and

(2) If the draft is not payable on demand, the draft is dishonored if presentment for payment is duly made to the acceptor and payment is not made on the day it becomes payable or the day of presentment, whichever is later.

(e) In any case in which presentment is otherwise required for dishonor under this section and presentment is excused under Section 3-504 of this title, dishonor occurs without presentment if the instrument is not duly accepted or paid.

(f) If a draft is dishonored because timely acceptance of the draft was not made and the person entitled to demand acceptance consents to a late acceptance, from the time of acceptance the draft is treated as never having been dishonored.

SECTION 86. AMENDATORY 12A O.S. 1981, Section 3-503, is amended to read as follows:

Section 3-503. ~~Time of Presentment~~

~~(1) Unless a different time is expressed in the instrument the time for any presentment is determined as follows:~~

~~(a) where an instrument is payable at or a fixed period after a stated date any presentment for acceptance must be made on or before the date it is payable;~~

~~(b) where an instrument is payable after sight it must either be presented for acceptance or negotiated within a reasonable time after date or issue whichever is later;~~

~~(c) where an instrument shows the date on which it is payable presentment for payment is due on that date;~~

~~(d) where an instrument is accelerated presentment for payment is due within a reasonable time after the acceleration;~~

~~(e) with respect to the liability of any secondary party presentment for acceptance or payment of any other instrument is due within a reasonable time after such party becomes liable thereon.~~

~~(2) A reasonable time for presentment is determined by the nature of the instrument, any usage of banking or trade and the facts of the particular case. In the case of an uncertified check which is drawn and payable within the United States and which is not a draft drawn by a bank the following are presumed to be reasonable periods within which to present for payment or to initiate bank collection:~~

~~(a) with respect to the liability of the drawer, thirty (30) days after date or issue whichever is later; and~~

~~(b) with respect to the liability of an endorser, seven (7) days after his endorsement.~~

~~(3) Where any presentment is due on a day which is not a full business day for either the person making presentment or the party to pay or accept, presentment is due on the next following day which is a full business day for both parties.~~

~~(4) Presentment to be sufficient must be made at a reasonable hour, and if at a bank during its banking day.~~

NOTICE OF DISHONOR

(a) The obligation of an indorser stated in subsection (a) of Section 3-415 of this title and the obligation of a drawer stated in subsection (d) of Section 3-414 of this title may not be enforced unless (i) the indorsers or drawer is given notice of dishonor of the instrument complying with this section or (ii) notice of dishonor is excused under subsection (b) of Section 3-504 of this title.

(b) Notice of dishonor may be given by any person; may be given by any commercially reasonable means, including an oral, written, or electronic communication; and is sufficient if it reasonably identifies the instrument and indicates that the instrument has been dishonored or has not been paid or accepted. Return of an instrument given to a bank for collection is sufficient notice of dishonor.

(c) Subject to subsection (c) of Section 3-504 of this title, with respect to an instrument taken for collection by a collecting bank, notice of dishonor must be given (i) by the bank before midnight of the next banking day following the banking day on which the bank receives notice of dishonor of the instrument, or (ii) by any other person within thirty (30) days following the day on which the person receives notice of dishonor. With respect to any other instrument, notice of dishonor must be given within thirty (30) days following the day on which dishonor occurs.

SECTION 87. AMENDATORY 12A O.S. 1981, Section 3-504, is amended to read as follows:

Section 3-504. ~~How Presentment Made.~~

~~(1) Presentment is a demand for acceptance or payment made upon the maker, acceptor, drawee or other payor by or on behalf of the holder.~~

~~(2) Presentment may be made~~

~~(a) by mail, in which event the time of presentment is determined by the time of receipt of the mail; or~~

~~(b) through a clearing house; or~~

~~(c) at the place of acceptance or payment specified in the instrument or if there be none at the place of business or residence of the party to accept or pay. If neither the party to accept or pay nor anyone authorized to act for him is present or accessible at such place presentment is excused.~~

~~(3) It may be made~~

~~(a) to any one of two or more makers, acceptors, drawees or other payors; or~~

~~(b) to any person who has authority to make or refuse the acceptance or payment.~~

~~(4) A draft accepted or a note made payable at a bank in the continental United States must be presented at such bank.~~

~~(5) In the cases described in Section 4-210 presentment may be made in the manner and with the result stated in that section.~~

EXCUSED PRESENTMENT AND NOTICE OF DISHONOR

(a) Presentment for payment or acceptance of an instrument is excused if (i) the person entitled to present the instrument cannot with reasonable diligence make presentment, (ii) the maker or acceptor has repudiated an obligation to pay the instrument or is dead or in insolvency proceedings, (iii) by the terms of the instrument presentment is not necessary to enforce the obligation of indorsers or the drawer, (iv) the drawer or indorser whose obligation is being enforced has waived presentment or otherwise has no reason to expect or right to require that the instrument be paid or accepted, or (v) the drawer instructed the drawee not to pay or accept the draft or the drawee was not obligated to the drawer to pay the draft.

(b) Notice of dishonor is excused if (i) by the terms of the instrument notice of dishonor is not necessary to enforce the obligation of a party to pay the instrument, or (ii) the party whose obligation is being enforced waived notice of dishonor. A waiver of presentment is also a waiver of notice of dishonor.

(c) Delay in giving notice of dishonor is excused if the delay was caused by circumstances beyond the control of the person giving the notice and the person giving the notice exercised reasonable diligence after the cause of the delay ceased to operate.

SECTION 88. AMENDATORY 12A O.S. 1981, Section 3-505, is amended to read as follows:

Section 3-505. ~~Rights of Party to Whom Presentment is Made.~~

~~(1) The party to whom presentment is made may without dishonor require~~

~~(a) exhibition of the instrument; and~~

~~(b) reasonable identification of the person making presentment and evidence of his authority to make it if made for another; and~~

~~(c) that the instrument be produced for acceptance or payment at a place specified in it, or if there be none at any place reasonable in the circumstances; and~~

~~(d) a signed receipt on the instrument for any partial or full payment and its surrender upon full payment.~~

~~(2) Failure to comply with any such requirement invalidates the presentment but the person presenting has a reasonable time in which to comply and the time for acceptance or payment runs from time of compliance.~~

EVIDENCE OF DISHONOR

(a) The following are admissible as evidence and create a presumption of dishonor and of any notice of dishonor stated:

(1) A document regular in form as provided in subsection (b) of this section which purports to be a protest;

(2) A purported stamp or writing of the drawee, payor bank, or presenting bank on or accompanying the instrument stating that acceptance or payment has been refused unless reasons for the refusal are stated and the reasons are not consistent with dishonor; and

(3) A book or record of the drawee, payor bank, or collecting bank, kept in the usual course of business which shows dishonor, even if there is no evidence of who made the entry.

(b) A protest is a certificate of dishonor made by a United States consul or vice consul, or a notary public or other person authorized to administer oaths by the law of the place where dishonor occurs. It may be made upon information satisfactory to that person. The protest must identify the instrument and certify either that presentment has been made or, if not made, the reason why it was not made, and that the instrument has been dishonored by nonacceptance or nonpayment. The protest may also certify that notice of dishonor has been given to some or all parties.

PART 6

DISCHARGE AND PAYMENT

SECTION 89. AMENDATORY 12A O.S. 1981, Section 3-601, is amended to read as follows:

Section 3-601. ~~Discharge of Parties.~~

~~(1) The extent of the discharge of any party from liability on an instrument is governed by the sections on~~

~~(a) payment or satisfaction (Section 3-603); or~~

~~(b) tender of payment (Section 3-604); or~~

~~(c) cancellation or renunciation (Section 3-605); or~~

~~(d) impairment of right of recourse or of security (Section 3-606); or~~

~~(e) reacquisition of the instrument by a prior party (Section 3-208); or~~

~~(f) fraudulent and material alteration (Section 3-407); or~~

~~(g) certification of a check (Section 3-411); or~~

~~(h) acceptance varying a draft (Section 3-412); or~~

~~(i) unexcused delay in presentment or notice of dishonor or protest (Section 3-502).~~

~~(2) Any party is also discharged from his liability on an instrument to another party by any other act or agreement with such party which would discharge his simple contract for the payment of money.~~

~~(3) The liability of all parties is discharged when any party who has himself no right of action or recourse on the instrument~~

~~(a) reacquires the instrument in his own right; or~~

~~(b) is discharged under any provision of this article, except as otherwise provided with respect to discharge for impairment of recourse or of security (Section 3-606).~~

DISCHARGE AND EFFECT OF DISCHARGE

(a) The obligation of a party to pay the instrument is discharged as stated in this article or by an act or agreement with the party which would discharge an obligation to pay money under a simple contract.

(b) Discharge of the obligation of a party is not effective against a person acquiring rights of a holder in due course of the instrument without notice of the discharge.

SECTION 90. AMENDATORY 12A O.S. 1981, Section 3-602, is amended to read as follows:

Section 3-602. ~~Effect of Discharge Against Holder in Due Course.~~

~~No discharge of any party provided by this article is effective against a subsequent holder in due course unless he has notice thereof when he takes the instrument.~~

PAYMENT

(a) Subject to subsection (b) of this section, an instrument is paid to the extent payment is made (i) by or on behalf of a party obliged to pay the instrument, and (ii) to a person entitled to enforce the instrument. To the extent of the payment, the obligation of the party obliged to pay the instrument is discharged even though payment is made with knowledge of a claim to the instrument under Section 3-306 of this title by another person.

(b) The obligation of a party to pay the instrument is not discharged under subsection (a) of this section if:

(1) A claim to the instrument under Section 3-306 of this title is enforceable against the party receiving payment and (i) payment is made with knowledge by the payor that payment is prohibited by injunction or similar process of a court of competent jurisdiction, or (ii) in the case of an instrument other than a cashier's check, teller's check, or certified check, the party making payment accepted, from the person having a claim to the instrument, indemnity against loss resulting from refusal to pay the person entitled to enforce the instrument; or

(2) The person making payment knows that the instrument is a stolen instrument and pays a person it knows is in wrongful possession of the instrument.

SECTION 91. AMENDATORY 12A O.S. 1981, Section 3-603, is amended to read as follows:

Section 3-603. ~~Payment or Satisfaction.~~

~~(1) The liability of any party is discharged to the extent of his payment or satisfaction to the holder even though it is made with knowledge of a claim of another person to the instrument unless prior to such payment or satisfaction the person making the claim either supplies indemnity deemed adequate by the party seeking the discharge or enjoins payment or satisfaction by order of a court of competent jurisdiction in an action in which the adverse claimant and the holder are parties. This subsection does not, however, result in the discharge of the liability~~

~~(a) of a party who in bad faith pays or satisfies a holder who acquired the instrument by theft or who (unless having the rights of a holder in due course) holds through one who so acquired it; or~~

~~(b) of a party (other than an intermediary bank or a payor bank which is not a depositary bank) who pays or satisfies the holder of an instrument which has been restrictively endorsed in a manner not consistent with the terms of such restrictive endorsement.~~

~~(2) Payment or satisfaction may be made with the consent of the holder by any person including a stranger to the instrument. Surrender of the instrument to such a person gives him the rights of a transferee (Section 3-201).~~

TENDER OF PAYMENT

(a) If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument, the effect of tender is governed by principles of law applicable to tender of payment under a simple contract.

(b) If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument and the tender is refused, there is discharge, to the extent of the amount of the tender, of the obligation of an indorser or accommodation party having a right of recourse with respect to the obligation to which the tender relates.

(c) If tender of payment of an amount due on an instrument is made to a person entitled to enforce the instrument, the obligation of the obligor to pay interest after the due date on the amount tendered is discharged. If presentment is required with respect to an instrument and the obligor is able and ready to pay on the due date at every place of payment stated in the instrument, the obligor is deemed to have made tender of payment on the due date to the person entitled to enforce the instrument.

SECTION 92. AMENDATORY 12A O.S. 1981, Section 3-604, is amended to read as follows:

Section 3-604. ~~Tender of Payment.~~

~~(1) Any party making tender of full payment to a holder when or after it is due is discharged to the extent of all subsequent liability for interest, costs and attorney's fees.~~

~~(2) The holder's refusal of such tender wholly discharges any party who has a right of recourse against the party making the tender.~~

~~(3) Where the maker or acceptor of an instrument payable otherwise than on demand is able and ready to pay at every place of payment specified in the instrument when it is due, it is equivalent to tender.~~

DISCHARGE BY CANCELLATION OR RENUNCIATION

(a) A person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument (i) by an intentional voluntary act, such as surrender of the instrument to the party, destruction, mutilation, or cancellation of the instrument, cancellation or striking out of the party's signature, or the addition of words to the instrument indicating discharge, or (ii) by agreeing not to sue or otherwise renouncing rights against the party by a signed writing.

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

SECTION 93. AMENDATORY 12A O.S. 1981, Section 3-605, is amended to read as follows:

Section 3-605. ~~Cancellation and Renunciation.~~

~~(1) The holder of an instrument may even without consideration discharge any party~~

~~(a) in any manner apparent on the face of the instrument or the endorsement, as by intentionally canceling the instrument or the party's signature by destruction or mutilation, or by striking out the party's signature; or~~

~~(b) by renouncing his rights by a writing signed and delivered or by surrender of the instrument to the party to be discharged.~~

~~(2) Neither cancellation nor renunciation without surrender of the instrument affects the title thereto.~~

DISCHARGE OF INDORSERS, ACCOMMODATION, AND OTHER PARTIES

(a) In this section, the term "indorser" includes a drawer having the obligation described in subsection (d) of Section 3-414 of this title.

(b) Discharge, under Section 3-604 of this title, of the obligation of a party to pay an instrument does not discharge the obligation of an indorser or accommodation party having a right of recourse against the discharged party.

(c) If a person entitled to enforce an instrument agrees, with or without consideration, to an extension of the due date of the obligation of a party to pay the instrument, the extension discharges an indorser or accommodation party having a right of recourse against the party whose obligation is extended to the extent the indorser or accommodation party proves that the extension caused loss to the indorser or accommodation party with respect to the right of recourse.

(d) If a person entitled to enforce an instrument agrees, with or without consideration, to a material modification of the obligation of a party other than an extension of the due date, the modification discharges the obligation of an indorser or accommodation party having a right of recourse against the person whose obligation is modified to the extent the modification causes loss to the indorser or accommodation party with respect to the right of recourse. The loss suffered by the indorser or accommodation party as a result of the modification is equal to the amount of the right of recourse unless the person enforcing the instrument proves that no loss was caused by the modification or that the loss caused by the modification was an amount less than the amount of the right of recourse.

(e) If the obligation of a party to pay an instrument is secured by an interest in collateral and a person entitled to enforce the instrument impairs the value of the interest in collateral, the obligation of an indorser or accommodation party having a right of recourse against the obligor is discharged to the extent of the impairment. The value of an interest in collateral is impaired to the extent (i) the value of the interest is reduced to an amount less than the amount of the right of recourse of the party asserting discharge, or (ii) the reduction in value of the interest causes an increase in the amount by which the amount of the right of recourse exceeds the value of the interest. The burden of proving impairment is on the party asserting discharge.

(f) If the obligation of a party is secured by an interest in collateral not provided by an accommodation party and a person entitled to enforce the instrument impairs the value of the interest in collateral, the obligation of any party who is jointly and severally liable with respect to the secured obligation is discharged to the extent the impairment causes the party asserting discharge to pay more than that party would have been obliged to pay, taking into account rights of contribution, if impairment had not occurred. If the party asserting discharge is an accommodation party not entitled to discharge under subsection (e) of this section, the party is deemed to have a right to contribution based on joint and several liability rather than a right to reimbursement. The burden of proving impairment is on the party asserting discharge.

(g) Under subsection (e) or (f) of this section, impairing value of an interest in collateral includes (i) failure to obtain or maintain perfection or recordation of the interest in collateral, (ii) release of collateral without substitution of collateral of equal value, (iii) failure to perform a duty to preserve the value of collateral owed, under Article 9 of this title or other law, to a debtor or surety or other person secondarily liable, or (iv) failure to comply with applicable law in disposing of collateral.

(h) An accommodation party is not discharged under subsection (c), (d), or (e) of this section unless the person entitled to enforce the instrument knows of the accommodation or has notice under subsection (c) of Section 3-419 of this title that the instrument was signed for accommodation.

(i) A party is not discharged under this section if (i) the party asserting discharge consents to the event or conduct that is the basis of the discharge, or (ii) the instrument or a separate agreement of the party provides for waiver of discharge under this section either specifically or by general language indicating that parties waive defenses based on suretyship or impairment of collateral.

SECTION 94. AMENDATORY 12A O.S. 1981, Section 4-101, is amended to read as follows:

Section 4-101.

SHORT TITLE

This article ~~shall be known and~~ may be cited as Uniform Commercial Code - Bank Deposits and Collections.

SECTION 95. AMENDATORY 12A O.S. 1981, Section 4-102, is amended to read as follows:

Section 4-102.

APPLICABILITY

~~(1)~~ (a) To the extent that items within this article are also within ~~the scope of~~ Articles 3 and 8 of this title, they are subject to ~~the provisions of~~ those articles. ~~In the event of~~ If there is conflict, ~~the provisions of~~ this article ~~govern those of~~ governs Article 3, but ~~the provisions of~~ Article 8 ~~govern those of~~ governs this article.

~~(2)~~ (b) The liability of a bank for action or nonaction with respect to any item handled by it for purposes of presentment, payment or collection is governed by the law of the place where the bank is located.

SECTION 96. AMENDATORY 12A O.S. 1981, Section 4-103, is amended to read as follows:

Section 4-103.

VARIATION BY AGREEMENT; MEASURE OF DAMAGES; CERTAIN ACTION CONSTITUTING ORDINARY CARE

~~(1)~~ (a) The effect of the provisions of this article may be varied by agreement ~~except that no agreement can~~, but the parties to the agreement cannot disclaim a bank's responsibility for its ~~own~~ lack of good faith or failure to exercise ordinary care or ~~can~~ limit the measure of damages for ~~such~~ the lack or failure; ~~but~~ however, the parties may determine by agreement ~~determine~~ the standards by which ~~such~~ the bank's responsibility is to be measured if ~~such~~ those standards are not manifestly unreasonable.

~~(2)~~ (b) Federal Reserve regulations and operating ~~letters~~ circulars, ~~clearing house~~ clearing-house rules, and the like~~,~~ have the effect of agreements under subsection ~~(1)~~ (a) of this section, whether or not specifically assented to by all parties interested in items handled.

~~(3)~~ (c) Action or ~~nonaction~~ non-action approved by this article or pursuant to Federal Reserve regulations or operating ~~letters constitutes~~ circulars is the exercise of ordinary care and, in the absence of special instructions, action or ~~nonaction~~ non-action consistent with ~~clearing house~~ clearing-house rules and the like or with a general banking usage not disapproved by this article, is prima facie ~~constitutes~~ the exercise of ordinary care.

~~(4)~~ (d) The specification or approval of certain procedures by this article ~~does not constitute~~ is not disapproval of other procedures ~~which~~ that may be reasonable under the circumstances.

~~(5)~~ (e) The measure of damages for failure to exercise ordinary care in handling an item is the amount of the item reduced by an amount ~~which~~ that could not have been realized by the ~~use~~ exercise of ordinary care~~, and where~~. If there is also bad faith it includes any other damages~~, if any, suffered by~~ the party suffered as a proximate consequence.

SECTION 97. AMENDATORY 12A O.S. 1981, Section 4-104, as amended by Section 2, Chapter 39, O.S.L. 1988 (12A O.S. Supp. 1990, Section 4-104), is amended to read as follows:

Section 4-104.

DEFINITIONS AND INDEX OF DEFINITIONS

~~(1)~~ (a) In this article unless the context otherwise requires:

~~(a)~~ (1) "Account" means any deposit or credit account with a bank ~~and includes~~, including a ~~checking, time, interest or savings account~~ demand, time, savings, passbook, share draft, or like account, other than an account evidenced by a certificate of deposit;

~~(b)~~ (2) "Afternoon" means the period of a day between noon and midnight;

~~(c) "Bank" means any person engaged in the business of banking, including banks, savings and loan associations, savings banks and credit unions;~~

~~(d)~~ (3) "Banking day" means ~~that~~ the part of ~~any~~ a day on which a bank is open to the public for carrying on substantially all of its banking functions;

~~(e)~~ (4) "Clearing house" means ~~any~~ an association of banks or other payors regularly clearing items;

~~(f)~~ (5) "Customer" means ~~any~~ a person having an account with a bank or for whom a bank has agreed to collect items ~~and includes~~, including a bank ~~carrying~~ that maintains an account ~~with~~ at another bank;

~~(g)~~ (6) "Documentary draft" means ~~any negotiable or nonnegotiable draft with accompanying documents, securities or other papers to be delivered against honor of the draft~~ a draft to be presented for acceptance or payment if specified documents, certified securities (Section 8-102 of this title) or instructions for uncertified securities (Section 8-308 of this title) or other certificates, statements, or the like are to be received by the drawee or other payor before acceptance or payment of the draft;

(7) "Draft" means a draft as defined in Section 3-104 of this title or an item, other than an instrument, that is an order;

(8) "Drawee" means a person ordered in a draft to make payment;

~~(h)~~ (9) "Item" means ~~any instrument for the payment of money even though it is not negotiable but does not include money~~ an instrument or a promise or order to pay money handled by a bank for collection or payment. The term does not include a payment order governed by Article 4A of this title or a credit or debit card slip;

~~(i)~~ (10) "Midnight deadline" with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later;

~~(j) "Properly payable" includes the availability of funds for payment at the time of decision to pay or dishonor;~~

~~(k)~~ (11) "Settle" means to pay in cash, by ~~clearing house~~ clearing-house settlement, in a charge or credit or by remittance, or otherwise as ~~instructed~~ agreed. A settlement may be either provisional or final; and

~~(l)~~ (12) "Suspends payments" with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over or that it ceases or refuses to make payments in the ordinary course of business.

~~(2)~~ (b) Other definitions applying to this article and the sections of this title in which they appear are:

"Agreement for electronic presentment" Section 4-110.
"Bank" Section 4-105.
"Collecting bank" Section 4-105.
"Depositary bank" Section 4-105.
"Intermediary bank" Section 4-105.
"Payor bank" Section 4-105.
"Presenting bank" Section 4-105.
~~"Remitting bank" Section 4-105.~~
"Presentment Notice" Section 4-110.

~~(3)~~ (c) The following definitions in other articles of this title apply to this article:

"Acceptance" Section ~~3-410~~ 3-409.
"Alteration" Section 3-407.
"Cashier's check" Section 3-104.
"Certificate of deposit" Section 3-104.
~~"Certification" Section 3-411.~~
"Certified check" Section 3-409.
"Check" Section 3-104.
"Draft" Section 3-104.
"Good faith" Section 3-103.
"Holder in due course" Section 3-302.
"Instrument" Section 3-104.
"Notice of dishonor" Section ~~3-508~~ 3-503.
"Order" Section 3-103.
"Ordinary care" Section 3-103.
"Person entitled to enforce" Section 3-301.
"Presentment" Section ~~3-504~~ 3-501.
~~"Protest" Section 3-509.~~
~~"Secondary party" Section 3-102.~~
"Promise" Section 3-103.
"Prove" Section 3-103.
"Teller's check" Section 3-104.

"Unauthorized signature" Section 3-403.

~~(4)~~ (d) In addition, Article 1 of this title contains general definitions and principles of construction and interpretation applicable throughout this article.

SECTION 98. AMENDATORY 12A O.S. 1981, Section 4-105, is amended to read as follows:

Section 4-105.

"BANK"; "DEPOSITARY BANK"; "PAYOR BANK"; "INTERMEDIARY BANK";"COLLECTING BANK"; ~~"PAYOR BANK";~~ "PRESENTING BANK"~~; "REMITTING BANK"~~

In this article ~~unless the context otherwise requires~~:

(1) "Bank" means a person engaged in the business of banking, including a savings bank, savings and loan association, credit union, or trust company;

~~(a)~~ (2) "Depositary bank" means the first bank to ~~which~~ take an item ~~is transferred for collection~~ even though it is also the payor bank, unless the item is presented for immediate payment over the counter;

~~(b)~~ (3) "Payor bank" means a bank ~~by which an item is payable as drawn or accepted~~ that is the drawee of a draft;

~~(c)~~ (4) "Intermediary bank" means ~~any~~ a bank to which an item is transferred in course of collection except the depositary or payor bank;

~~(d)~~ (5) "Collecting bank" means ~~any~~ a bank handling ~~the~~ an item for collection except the payor bank; and

~~(e)~~ (6) "Presenting bank" means ~~any~~ a bank presenting an item except a payor bank~~;~~.

~~(f) "Remitting bank" means any payor or intermediary bank remitting for an item.~~

SECTION 99. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4-106 of Title 12A, unless there is created a duplication in numbering, reads as follows:

PAYABLE THROUGH OR PAYABLE AT BANK; COLLECTING BANK

(a) If an item states that it is "payable through" a bank identified in the item, (i) the item designates the bank as a collecting bank and does not by itself authorize the bank to pay the item, and (ii) the item may be presented for payment only by or through the bank.

(b) If an item states that it is "payable at" a bank identified in the item, (i) the item designates the bank as a collecting bank and does not by itself authorize the bank to pay the item, and (ii) the item may be presented for payment only by or through the bank.

(c) If a draft names a nonbank drawee and it is unclear whether a bank named in the draft is a co-drawee or a collecting bank, the bank is a collecting bank.

SECTION 100. AMENDATORY 12A O.S. 1981, Section 4-107, is amended to read as follows:

Section 4-107. ~~Time of Receipt of Items.~~

~~(1) For the purpose of allowing time to process items, prove balances and make the necessary entries on its books to determine its position for the day, a bank may fix an afternoon hour of 2 p.m. or later as a cutoff hour for the handling of money and items and the making of entries on its books.~~

~~(2) Any item or deposit of money received on any day after a cutoff hour so fixed or after the close of the banking day may be treated as being received at the opening of the next banking day.~~

SEPARATE OFFICE OF BANK

A branch or separate office of a bank is a separate bank for the purpose of computing the time within which and determining the place

at or to which action may be taken or notice or orders must be given under this article and under Article 3 of this title.

SECTION 101. AMENDATORY 12A O.S. 1981, Section 4-108, is amended to read as follows:

Section 4-108. ~~Delays.~~

~~(1) Unless otherwise instructed, a collecting bank in a good faith effort to secure payment may, in the case of specific items and with or without the approval of any person involved, waive, modify or extend time limits imposed or permitted by this act for a period not in excess of an additional banking day without discharge of secondary parties and without liability to its transferor or any prior party.~~

~~(2) Delay by a collecting bank or payor bank beyond time limits prescribed or permitted by this act or by instructions is excused if caused by interruption of communication facilities, suspension of payments by another bank, war, emergency conditions or other circumstances beyond the control of the bank provided it exercises such diligence as the circumstances require.~~

TIME OF RECEIPT OF ITEMS

(a) For the purpose of allowing time to process items, prove balances, and make the necessary entries on its books to determine its position for the day, a bank may fix an afternoon hour of 2:00 p.m. or later as a cut-off hour for the handling of money and items and the making of entries on its books.

(b) An item or deposit of money received on any day after a cut-off so fixed or after the close of the banking day may be treated as being received at the opening of the next banking day.

SECTION 102. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4-109 of Title 12A, unless there is created a duplication in numbering, reads as follows:

DELAYS

(a) Unless otherwise instructed, a collecting bank in a good faith effort to secure payment of a specific item drawn on a payor other than a bank, and with or without the approval of any person involved, may waive, modify, or extend time limits imposed or permitted by this article for a period not exceeding two (2) additional banking days without discharge of drawers or indorsers or liability to its transferor or a prior party.

(b) Delay by a collecting bank or payor bank beyond time limits prescribed or permitted by this article or by instructions is excused if (i) the delay is caused by interruption of communication or computer facilities, suspension of payments by another bank, war, emergency conditions, failure of equipment, or other circumstances beyond the control of the bank, and (ii) the bank exercises such diligence as the circumstances require.

SECTION 103. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4-110 of Title 12A, unless there is created a duplication in numbering, reads as follows:

ELECTRONIC PRESENTMENT

(a) "Agreement for electronic presentment" means an agreement, clearing-house rule, or Federal Reserve regulation or operating circular, providing that presentment of an item may be made by transmission of an image of an item or information describing the item ("presentment notice") rather than delivery of the item itself. The agreement may provide for procedures governing retention, presentment, payment, dishonor, and other matters concerning items subject to the agreement.

(b) Presentment of an item pursuant to an agreement for presentment is made when the presentment notice is received.

(c) If presentment is made by presentment notice, a reference to "item" or "check" in this article means the presentment notice unless the context otherwise indicates.

SECTION 104. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4-111 of Title 12A, unless there is created a duplication in numbering, reads as follows:

STATUTE OF LIMITATIONS

An action to enforce an obligation, duty, or right arising under this article must be commenced within three (3) years after the claim for relief accrues.

SECTION 105. AMENDATORY 12A O.S. 1981, Section 4-201, is amended to read as follows:

Section 4-201.

~~PRESUMPTION AND DURATION OF AGENCY~~ STATUS OF COLLECTING ~~BANKS~~ BANK AS AGENT AND PROVISIONAL STATUS OF CREDITS; APPLICABILITY OF ARTICLE; ITEM ENDORSED "PAY ANY BANK"

~~(1)~~ (a) Unless a contrary intent clearly appears and ~~prior to~~ before the time that a settlement given by a collecting bank for an item is or becomes final ~~(subsection (3) of Section 4-211 and Sections 4-212 and 4-213)~~, the bank, with respect to the item, is an agent or subagent of the owner of the item and any settlement given for the item is provisional. This provision applies regardless of the form of ~~endorsement~~ indorsement or lack of ~~endorsement~~ indorsement and even though credit given for the item is subject to immediate withdrawal as of right or is in fact withdrawn; but the continuance of ownership of an item by its owner and any rights of the owner to proceeds of the item are subject to rights of a collecting bank, such as those resulting from outstanding advances on the item and ~~valid~~ rights of recoupment or setoff. ~~When~~ If an item is handled by banks for purposes of presentment, payment ~~and~~, collection, or return, the relevant provisions of this article apply even though action of parties clearly establishes that a particular bank has purchased the item and is the owner of it.

~~(2)~~ (b) After an item has been ~~endorsed~~ indorsed with the words "pay any bank" or the like, only a bank may acquire the rights of a holder until the item has been:

~~(a)~~ ~~until the item has been~~ (1) returned to the customer initiating collection; or

~~(b)~~ ~~until the item has been~~ (2) specially ~~endorsed~~ indorsed by bank to a person who is not a bank.

SECTION 106. AMENDATORY 12A O.S. 1981, Section 4-202, is amended to read as follows:

Section 4-202.

RESPONSIBILITY FOR COLLECTION OR RETURN; WHEN ACTION ~~SEASONABLE~~ TIMELY

~~(1)~~ (a) A collecting bank must ~~use~~ exercise ordinary care in:

~~(a)~~ (1) ~~presenting~~ Presenting an item or sending it for presentment; ~~and~~

~~(b)~~ (2) ~~sending~~ Sending notice of dishonor or nonpayment or returning an item other than a documentary draft to the bank's transferor ~~or directly to the depositary bank under subsection (2) of Section 4-212~~ after learning that the item has not been paid or accepted, as the case may be; ~~and~~

~~(c)~~ (3) ~~settling~~ Settling for an item when the bank receives final settlement; and

~~(d) making or providing for any necessary protest; and~~

~~(c)~~ (4) ~~notifying~~ Notifying its transferor of any loss or delay in transit within a reasonable time after discovery thereof.

~~(2) A collecting bank taking proper action before its midnight deadline following receipt of an item, notice or payments acts seasonably; taking proper action within a reasonably longer time may be seasonable but the bank has the burden of so establishing.~~

(b) A collecting bank exercises ordinary care under subsection (a) of this section by taking proper action before its midnight deadline following receipt of an item, notice, or settlement. Taking proper action within a reasonably longer time may constitute the exercise of ordinary care, but the bank has the burden of establishing timeliness.

~~(3)~~ (c) Subject to paragraph (1) of subsection ~~(1)~~(a) of this section, a bank is not liable for the insolvency, neglect, misconduct, mistake or default of another bank or person or for loss or destruction of an item in the possession of others or in transit ~~or in the possession of others~~.

SECTION 107. AMENDATORY 12A O.S. 1981, Section 4-203, is amended to read as follows:

Section 4-203.

EFFECT OF INSTRUCTIONS

Subject to ~~the provisions of~~ Article 3 of this title concerning conversion of instruments (Section ~~3-419~~ 3-420 of this title) and ~~the provisions of both Article 3 and this article concerning~~ restrictive ~~endorsements~~ indorsements (Section 3-206 of this title), only a collecting bank's transferor can give instructions ~~which~~ that affect the bank or constitute notice to it, and a collecting bank is not liable to prior parties for any action taken pursuant to ~~such~~ the instructions or in accordance with any agreement with its transferor.

SECTION 108. AMENDATORY 12A O.S. 1981, Section 4-204, is amended to read as follows:

Section 4-204.

METHODS OF SENDING AND PRESENTING;
SENDING ~~DIRECT~~ DIRECTLY TO PAYOR BANK

~~(1)~~ (a) A collecting bank ~~must~~ shall send items by a reasonably prompt method, taking into consideration ~~any~~ relevant instructions, the nature of the item, the number of ~~such~~ those items on hand, ~~and~~ the cost of collection involved, and the method generally used by it or others to present ~~such~~ those items.

~~(2)~~ (b) A collecting bank may send:

~~(a)~~ ~~any~~ (1) An item ~~direct~~ directly to the payor bank;

~~(b)~~ ~~any~~ (2) An item to ~~any~~ a nonbank payor if authorized by its transferor; and

~~(c)~~ ~~any~~ (3) An item other than documentary drafts to ~~any~~ a nonbank payor, if authorized by Federal Reserve regulation or operating ~~letter~~ circular, ~~clearing house~~ clearing-house rule, or the like.

(c) Presentment may be made by a presenting bank at a place where the payor bank or other payor has requested that presentment be made.

SECTION 109. AMENDATORY 12A O.S. 1981, Section 4-205, is amended to read as follows:

Section 4-205.

~~SUPPLYING MISSING ENDORSEMENT; NO NOTICE FROM PRIOR ENDORSEMENT~~

DEPOSITARY BANK HOLDER OF UNINDORSED ITEM

If a customer delivers an item to a depositary bank for collection:

(1) ~~A depositary bank which has taken an item for collection may supply any endorsement of the customer which is necessary to title unless the item contains the words "payee's endorsement required" or the like. In the absence of such a requirement a statement placed on the item by the depositary bank to the effect that the item was deposited by a customer or credited to his account is effective as the customer's endorsement.~~ The depositary bank becomes a holder of the item at the time it receives the item for collection if the customer at the time of delivery was a holder of the item, whether or not the customer indorses the item, and, if the bank satisfies the other requirements of Section 3-302 of this title, it is a holder in due course; and

(2) ~~An intermediary bank, or payor bank which is not a depositary bank, is neither given notice nor otherwise affected by a restrictive endorsement of any person except the bank's immediate transferor.~~ The depositary bank warrants to collecting banks, the payor bank or other payor, and the drawer that the amount of the item was paid to the customer or deposited to the customer's account.

SECTION 110. AMENDATORY 12A O.S. 1981, Section 4-206, is amended to read as follows:

Section 4-206.

TRANSFER BETWEEN BANKS

Any agreed method ~~which~~ that identifies the transferor bank is sufficient for the item's further transfer to another bank.

SECTION 111. AMENDATORY 12A O.S. 1981, Section 4-207, is amended to read as follows:

Section 4-207. ~~Warranties of Customer and Collecting Bank on Transfer or Presentment of Items; Time For Claims.~~

~~(1) Each customer or collecting bank who obtains payment or acceptance of an item and each prior customer and collecting bank warrants to the payor bank or other payor who in good faith pays or accepts the item that~~

~~(a) he has a good title to the item or is authorized to obtain payment or acceptance on behalf of one who has a good title; and~~

~~(b) he has no knowledge that the signature of the maker or drawer is unauthorized, except that this warranty is not given by any customer or collecting bank that is a holder in due course and acts in good faith~~

~~(i) to a maker with respect to the maker's own signature; or~~

~~(ii) to a drawer with respect to the drawer's own signature, whether or not the drawer is also the drawee; or~~

~~(iii) to an acceptor of an item if the holder in due course took the item after the acceptance or obtained the acceptance without knowledge that the drawer's signature was unauthorized; and~~

~~(c) the item has not been materially altered, except that this warranty is not given by any customer or collecting bank that is a holder in due course and acts in good faith~~

~~(i) to the maker of a note; or~~

~~(ii) to the drawer of a draft whether or not the drawer is also the drawee; or~~

~~(iii) to the acceptor of an item with respect to an alteration made prior to the acceptance if the holder in due course took the item after the acceptance, even~~

~~though the acceptance provided "payable as originally drawn" or equivalent terms; or~~

~~(iv) to the acceptor of an item with respect to an alteration made after the acceptance.~~

~~(2) Each customer and collecting bank who transfers an item and receives a settlement or other consideration for it warrants to his transferee and to any subsequent collecting bank who takes the item in good faith that~~

~~(a) he has a good title to the item or is authorized to obtain payment or acceptance on behalf of one who has a good title and the transfer is otherwise rightful; and~~

~~(b) all signatures are genuine or authorized; and~~

~~(c) the item has not been materially altered; and~~

~~(d) no defense of any party is good against him; and~~

~~(e) he has no knowledge of any insolvency proceeding instituted with respect to the maker or acceptor or the drawer of an unaccepted item.~~

~~In addition each customer and collecting bank so transferring an item and receiving a settlement or other consideration engages that upon dishonor and any necessary notice of dishonor and protest he will take up the item.~~

~~(3) The warranties and the engagement to honor set forth in the two preceding subsections arise notwithstanding the absence of endorsement or words of guaranty or warranty in the transfer or presentment and a collecting bank remains liable for their breach despite remittance to its transferor. Damages for breach of such warranties or engagement to honor shall not exceed the consideration received by the customer or collecting bank responsible plus finance charges and expenses related to the item, if any.~~

~~(4) Unless a claim for breach of warranty under this section is made within a reasonable time after the person claiming learns of the breach, the person liable is discharged to the extent of any loss caused by the delay in making claim.~~

TRANSFER WARRANTIES

(a) A customer or collecting bank that transfers an item and receives a settlement or other consideration warrants to the transferee and to any subsequent collecting bank that:

(1) The warrantor is a person entitled to enforce the item;

(2) All signatures on the item are authentic and authorized;

(3) The item has not been altered;

(4) The item is not subject to a defense or claim in recoupment (subsection (a) of Section 3-305 of this title) of any party that can be asserted against the warrantor; and

(5) The warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer.

(b) If an item is dishonored, a customer or collecting bank transferring the item and receiving settlement or other consideration is obliged to pay the amount due on the item (i) according to the terms of the item at the time it was transferred, or (ii) if the transfer was of an incomplete item, according to its terms when completed as stated in Sections 3-115 and 3-407 of this title. The obligation of a transferor is owed to the transferee and to any subsequent collecting bank that takes the item in good faith. A transferor cannot disclaim its obligation under this subsection

by an indorsement stating that it is made "without recourse" or otherwise disclaiming liability.

(c) A person to whom the warranties under subsection (a) of this section are made and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the item plus expenses and loss of interest incurred as a result of the breach.

(d) The warranties stated in subsection (a) of this section cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty (30) days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(e) A claim for relief for breach of warranty under this section accrues when the claimant has reason to know of the breach.

SECTION 112. AMENDATORY 12A O.S. 1981, Section 4-208, is amended to read as follows:

Section 4-208. ~~Security Interest of Collecting Bank in Items, Accompanying Documents and Proceeds.~~

~~(1) A bank has a security interest in an item and any accompanying documents or the proceeds of either~~

~~(a) in case of an item deposited in an account to the extent to which credit given for the item has been withdrawn or applied;~~

~~(b) in case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given whether or not the credit is drawn upon and whether or not there is a right of charge-back; or~~

~~(c) if it makes an advance on or against the item.~~

~~(2) When credit which has been given for several items received at one time or pursuant to a single agreement is withdrawn or applied in part the security interest remains upon all the items, any accompanying documents or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.~~

~~(3) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents and proceeds. To the extent and so long as the bank does not receive final settlement for the item or give up possession of the item or accompanying documents for purposes other than collection, the security interest continues and is subject to the provisions of Article 9 except that~~

~~(a) no security agreement is necessary to make the security interest enforceable (subsection (1) (b) of Section 9-203); and~~

~~(b) no filing is required to perfect the security interest; and~~

~~(c) the security interest has priority over conflicting perfected security interests in the item, accompanying documents or proceeds.~~

PRESENTMENT WARRANTIES

(a) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, (i) the person obtaining payment or acceptance, at the time of presentment, and (ii) a previous transferor of the draft, at the time of transfer, warrant to the drawee that pays or accepts the draft in good faith that:

(1) The warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

(2) The draft has not been altered; and

(3) The warrantor has no knowledge that the signature of the purported drawer of the draft is unauthorized.

(b) A drawee making payment may recover from a warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft (i) breach of warranty is a defense to the obligation of the acceptor, and (ii) if the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from a warrantor for breach of warranty the amounts stated in this subsection.

(c) If a drawee asserts a claim for breach of warranty under subsection (a) of this section based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under Section 3-404 or 3-405 of this title or the drawer is precluded under Section 3-406 or 4-406 of this title from asserting against the drawee the unauthorized indorsement or alteration.

(d) If (i) a dishonored draft is presented for payment to the drawer or an indorser or (ii) any other item is presented for payment to a party obliged to pay the item, and the item is paid, the person obtaining payment and a prior transferor of the item warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the item, a person entitled to enforce the item or authorized to obtain payment on behalf of a person entitled to enforce the item. The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(e) The warranties stated in subsections (a) and (d) of this section cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty (30) days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(f) A claim for relief for breach of warranty under this section accrues when the claimant has reason to know of the breach.

SECTION 113. AMENDATORY 12A O.S. 1981, Section 4-209, is amended to read as follows:

Section 4-209. ~~When Bank Gives Value for Purposes of Holder in Due Course.~~

~~For purposes of determining its status as a holder in due course, the bank has given value to the extent that it has a security interest in an item provided that the bank otherwise complies with the requirements of Section 3-302 on what constitutes a holder in due course.~~

ENCODING AND RETENTION WARRANTIES

(a) A person who encodes information on or with respect to an item after issue warrants to any subsequent collecting bank and to the payor bank or other payor that the information is correctly

encoded. If the customer of a depositary bank encodes, that bank also makes the warranty.

(b) A person who undertakes to retain an item pursuant to an agreement for electronic presentment warrants to any subsequent collecting bank and to the payor bank or other payor that retention and presentment of the item comply with the agreement. If a customer of a depositary bank undertakes to retain an item, that bank also makes this warranty.

(c) A person to whom warranties are made under this section and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, plus expenses and loss of interest incurred as a result of the breach.

SECTION 114. AMENDATORY 12A O.S. 1981, Section 4-210, is amended to read as follows:

Section 4-210. ~~Presentment by Notice of Item Not Payable By, Through or at a Bank; Liability of Secondary Parties.~~

~~(1) Unless otherwise instructed, a collecting bank may present an item not payable by, through or at a bank by sending to the party to accept or pay a written notice that the bank holds the item for acceptance or payment. The notice must be sent in time to be received on or before the day when presentment is due and the bank must meet any requirement of the party to accept or pay under Section 3-505 by the close of the bank's next banking day after it knows of the requirement.~~

~~(2) Where presentment is made by notice and neither honor nor request for compliance with a requirement under Section 3-505 is received by the close of business on the day after maturity or in the case of demand items by the close of business on the third banking day after notice was sent, the presenting bank may treat the item as dishonored and charge any secondary party by sending him notice of the facts.~~

SECURITY INTEREST OF COLLECTING BANK IN ITEMS, ACCOMPANYING DOCUMENTS AND PROCEEDS

(a) A collecting bank has a security interest in an item and any accompanying documents or the proceeds of either:

(1) In case of an item deposited in an account, to the extent to which credit given for the item has been withdrawn or applied;

(2) In case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given, whether or not the credit is drawn upon or there is a right of charge-back; or

(3) If it makes an advance on or against the item.

(b) If credit given for several items received at one time or pursuant to a single agreement is withdrawn or applied in part, the security interest remains upon all the items, any accompanying documents or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.

(c) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents, and proceeds. So long as the bank does not receive final settlement for the item or give up possession of the item or accompanying documents for purposes other than collection, the security interest continues to that extent and is subject to Article 9 of this title, but:

(1) No security agreement is necessary to make the security interest enforceable (paragraph (a) of subsection (1) of Section 9-203 of this title);

(2) No filing is required to perfect the security interest; and

(3) The security interest has priority over conflicting perfected security interests in the item, accompanying documents, or proceeds.

SECTION 115. AMENDATORY 12A O.S. 1981, Section 4-211, is amended to read as follows:

Section 4-211. ~~Media of Remittance; Provisional and Final Settlement in Remittance Cases.~~

~~(1) A collecting bank may take in settlement of an item~~

~~(a) a check of the remitting bank or of another bank on any bank except the remitting bank; or~~

~~(b) a cashier's check or similar primary obligation of a remitting bank which is a member of or clears through a member of the same clearing house or group as the collecting bank; or~~

~~(c) appropriate authority to charge an account of the remitting bank or of another bank with the collecting bank; or~~

~~(d) if the item is drawn upon or payable by a person other than a bank, a cashier's check, certified check or other bank check or obligation.~~

~~(2) If before its midnight deadline the collecting bank properly dishonors a remittance check or authorization to charge on itself or presents or forwards for collection a remittance instrument of or on another bank which is of a kind approved by subsection (1) or has not been authorized by it, the collecting bank is not liable to prior parties in the event of the dishonor of such check, instrument or authorization.~~

~~(3) A settlement for an item by means of a remittance instrument or authorization to charge is or becomes a final settlement as to both the person making and the person receiving the settlement~~

~~(a) if the remittance instrument or authorization to charge is of kind approved by subsection (1) or has not been authorized by the person receiving the settlement and in either case the person receiving the settlement acts seasonably before its midnight deadline in presenting, forwarding for collection or paying the instrument or authorization, - at the time the remittance instrument or authorization is finally paid by the payor by which it is payable;~~

~~(b) if the person receiving the settlement has authorized remittance by a nonbank check or obligation or by a cashier's check or similar primary obligation of or a check upon the payor or other remitting bank which is not of a kind approved by subsection (1) (b), - at the time of the receipt of such remittance check or obligation; or~~

~~(c) if in a case not covered by subparagraphs (a) or (b) the person receiving the settlement fails to seasonably present, forward for collection, pay or return a remittance instrument or authorization to it to charge before its midnight deadline, - at such midnight deadline.~~

WHEN BANK GIVES VALUE FOR PURPOSES OF HOLDER IN DUE COURSE

For purposes of determining its status as a holder in due course, a bank has given value to the extent it has a security interest in an item, if the bank otherwise complies with the requirements of Section 3-302 of this title on what constitutes a holder in due course.

SECTION 116. AMENDATORY 12A O.S. 1981, Section 4-212, is amended to read as follows:

Section 4-212. ~~Right of Charge-Back or Refund.~~

~~(1) If a collecting bank has made provisional settlement with its customer for an item and itself fails by reason of dishonor, suspension of payments by a bank or otherwise to receive a settlement for the item which is or becomes final, the bank may revoke the settlement given by it, charge-back the amount of any credit given for the item to its customer's account or obtain refund from its customer whether or not it is able to return the items if by its midnight deadline or within a longer reasonable time after it learns the facts it returns the item or sends notification of the facts. These rights to revoke, charge-back and obtain refund terminate if and when a settlement for the item received by the bank is or becomes final (subsection (3) of Section 4-211 and subsections (2) and (3) of Section 4-213).~~

~~(2) Within the time and manner prescribed by this section and Section 4-301, an intermediary or payor bank, as the case may be, may return an unpaid item directly to the depositary bank and may send for collection a draft on the depositary bank and obtain reimbursement. In such case, if the depositary bank has received provisional settlement for the item, it must reimburse the bank drawing the draft and any provisional credits for the item between banks shall become and remain final.~~

~~(3) A depositary bank which is also the payor may charge-back the amount of an item to its customer's account or obtain refund in accordance with the section governing return of an item received by a payor bank for credit on its books. (Section 4-301).~~

~~(4) The right to charge-back is not affected by~~

~~(a) prior use of the credit given for the item; or~~

~~(b) failure by any bank to exercise ordinary care with respect to the item but any bank so failing remains liable.~~

~~(5) A failure to charge-back or claim refund does not affect other rights of the bank against the customer or any other party.~~

~~(6) If credit is given in dollars as the equivalent of the value of an item payable in a foreign currency, the dollar amount of any charge-back shall be calculated on the basis of the buying sight rate for foreign currency prevailing on the day when credit was given.~~

PRESENTMENT BY NOTICE OF ITEM NOT PAYABLE BY, THROUGH, OR AT BANK; LIABILITY OF DRAWER OR INDORSER

(a) Unless otherwise instructed, a collecting bank may present an item not payable by, through, or at a bank by sending to the party to accept or pay a written notice that the bank holds the item for acceptance or payment. The notice must be sent in time to be received on or before the day when presentment is due and the bank must meet any requirement of the party to accept or pay under Section 3-501 by the close of the bank's next banking day after it knows of the requirement.

(b) If presentment is made by notice and payment, acceptance, or request for compliance with a requirement under Section 3-501 of this title is not received by the close of business on the day after maturity or, in the case of demand items, by the close of business on the third banking day after notice was sent, the presenting bank may treat the item as dishonored and charge any drawer or indorser by sending it notice of the facts.

SECTION 117. AMENDATORY 12A O.S. 1981, Section 4-213, is amended to read as follows:

Section 4-213. ~~Final Payment of Item by Payor Bank; When Provisional Debits and Credits Become Final; When Certain Credits Become Available for Withdrawal.~~

~~(1) An item is finally paid by a payor bank when the bank has done any of the following, whichever happens first:~~

~~(a) paid the item in cash; or~~

~~(b) settled for the item without reserving a right to revoke the settlement and without having such right under statute, clearing house rule or agreement; or~~

~~(c) completed the process of posting the item to the indicated account of the drawer, maker or other person to be charged therewith; or~~

~~(d) made a provisional settlement for the item and failed to revoke the settlement in the time and manner permitted by statute, clearing house rule or agreement.~~

~~Upon a final payment under subparagraphs (b), (c) or (d) the payor bank shall be accountable for the amount of the item.~~

~~(2) If provisional settlement for an item between the presenting and payor banks in made through a clearing house or by debits or credits in an account between them, then to the extent that provisional debits or credits for the item are entered in accounts between the presenting and payor banks or between the presenting and successive prior collecting banks seriatim, they become final upon final payment of the item by the payor bank.~~

~~(3) If a collecting bank receives a settlement for an item which is or becomes final (subsection (3) of Section 4-211, subsection (2) of Section 4-213) the bank is accountable to its customer for the amount of the item and any provisional credit given for the item in an account with its customer becomes final.~~

~~(4) Subject to any right of the bank to apply the credit to an obligation of the customer, credit given by a bank for an item in an account with its customer becomes available for withdrawal as of right~~

~~(a) in any case where the bank has received a provisional settlement for the item, - when such settlement becomes final and the bank has had a reasonable time to learn that the settlement is final;~~

~~(b) in any case where the bank is both a depositary bank and a payor bank and the item is finally paid, - at the opening of the bank's second banking day following receipt of the item.~~

~~(5) A deposit of money in a bank is final when made but, subject to any right of the bank to apply the deposit to an obligation of the customer, the deposit becomes available for withdrawal as of right at the opening of the bank's next banking day following receipt of the deposit.~~

MEDIUM AND TIME OF SETTLEMENT BY BANK

(a) With respect to settlement by a bank, the medium and time of settlement may be prescribed by Federal Reserve regulations or circulars, clearing-house rules, and the like, or agreement. In the absence of such prescription:

(1) The medium of settlement is cash or credit to an account in a Federal Reserve bank of or specified by the person to receive settlement; and

(2) The time of settlement, is:

(i) with respect to tender of settlement by cash, a cashier's check, or teller's check, when the cash or check is sent or delivered;

(ii) with respect to tender of settlement by credit in an account in a Federal Reserve bank, when the credit is made;

(iii) with respect to tender of settlement by a credit or debit to an account in a bank, when the credit or debit is made or, in the case of tender of settlement by authority to charge an account, when the authority is sent or delivered; or

(iv) with respect to tender of settlement by a funds transfer, when payment is made pursuant to subsection (a) of Section 4A-406 of this title to the person receiving settlement.

(b) If the tender of settlement is not by a medium authorized by subsection (a) of this section or the time of settlement is not fixed by subsection (a) of this section, no settlement occurs until the tender or settlement is accepted by the person receiving settlement.

(c) If settlement for an item is made by cashier's check or teller's check and the person receiving settlement, before its midnight deadline:

(1) Presents or forwards the check for collection, settlement is final when the check is finally paid; or

(2) Fails to present or forward the check for collection, settlement is final at the midnight deadline of the person receiving settlement.

(d) If settlement for an item is made by giving authority to charge the account of the bank giving settlement in the bank receiving settlement, settlement is final when the charge is make by the bank receiving settlement if there are funds available in the account for the amount of the item.

SECTION 118. AMENDATORY 12A O.S. 1981, Section 4-214, is amended to read as follows:

Section 4-214. ~~Insolvency and Preference.~~

~~(1) Any item in or coming into the possession of a payor or collecting bank which suspends payment and which item is not finally paid shall be returned by the receiver, trustee or agent in charge of the closed bank to the presenting bank or the closed bank's customer.~~

~~(2) If a payor bank finally pays an item and suspends payments without making a settlement for the item with its customer or the presenting bank which settlement is or becomes final, the owner of the item has a preferred claim against the payor bank.~~

~~(3) If a payor bank gives or a collecting bank gives or receives a provisional settlement for an item and thereafter suspends payments, the suspension does not prevent or interfere with the settlement becoming final if such finality occurs automatically upon the lapse of certain time or the happening of certain events (subsection (3) of Section 4-211, subsections (1) (d), (2) and (3) of Section 4-213).~~

~~(4) If a collecting bank receives from subsequent parties settlement for an item which settlement is or becomes final and suspends payments without making a settlement for the item with its customer which is or becomes final, the owner of the item has a preferred claim against such collecting bank.~~

RIGHT OF CHARGE-BACK OR REFUND;
LIABILITY OF COLLECTING BANK; RETURN OF ITEM

(a) If a collecting bank has made provisional settlement with its customer for an item and fails by reason of dishonor, suspension of payments by a bank, or otherwise to receive settlement for the

item which is or becomes final, the bank may revoke the settlement given by it, charge back the amount of any credit given for the item to its customer's account, or obtain refund from its customer, whether or not it is able to return the item, if by its midnight deadline or within a longer reasonable time after it learns the facts it returns the item or sends notification of the facts. If the return or notice is delayed beyond the bank's midnight deadline or a longer reasonable time after it learns the facts, the bank may revoke the settlement, charge back the credit, or obtain refund from its customer, but it is liable for any loss resulting from the delay. These rights to revoke, charge back, and obtain refund terminate if and when a settlement for the item received by the bank is or becomes final.

(b) A collecting bank returns an item when it is sent or delivered to the bank's customer or transferor or pursuant to its instructions.

(c) A depositary bank that is also the payor may charge back the amount of an item to its customer's account or obtain refund in accordance with the section governing return of an item received by a payor bank for credit on its books (Section 4-301 of this title).

(d) The right to charge back is not affected by:

(1) Previous use of a credit given for the item; or

(2) Failure by any bank to exercise ordinary care with respect to the item, but a bank so failing remains liable.

(e) A failure to charge back or claim refund does not affect other rights of the bank against the customer or any other party.

(f) If credit is given in dollars as the equivalent of the value of an item payable in foreign money, the dollar amount of any charge-back or refund must be calculated on the basis of the bank-offered spot rate for the foreign money prevailing on the day when the person entitled to the charge-back or refund learns that it will not receive payment in ordinary course.

SECTION 119. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4-215 of Title 12A, unless there is created a duplication in numbering, reads as follows:

FINAL PAYMENT OF ITEM BY PAYOR BANK; WHEN PROVISIONAL DEBITS AND CREDITS BECOME FINAL; WHEN CERTAIN CREDITS BECOME AVAILABLE FOR WITHDRAWAL

(a) An item is finally paid by a payor bank when the bank has first done any of the following:

(1) Paid the item in cash;

(2) Settled for the item without having a right to revoke the settlement under statute, clearing-house rule, or agreement; or

(3) Made a provisional settlement for the item and failed to revoke the settlement in the time and manner permitted by statute, clearing-house rule, or agreement.

(b) If provisional settlement for an item does not become final, the item is not finally paid.

(c) If provisional settlement for an item between the presenting and payor banks is made through a clearing-house or by debits or credits in an account between them, then to the extent that provisional debits or credits for the item are entered in accounts between the presenting and payor banks or between the presenting and successive prior collecting banks seriatim, they become final upon final payment of the items by the payor bank.

(d) If a collecting bank receives a settlement for an item which is or becomes final, the bank is accountable to its customer for the amount of the item and any provisional credit given for the item in an account with its customer becomes final.

(e) Subject to (i) applicable law stating a time for availability of funds and (ii) any right of the bank to apply the credit to an obligation of the customer, credit given by a bank for an item in a customer's account becomes available for withdrawal as of right:

(1) If the bank has received a provisional settlement for the item, when the settlement becomes final and the bank has had a reasonable time to receive return of the item and the item has not been received within that time; or

(2) If the bank is both the depositary bank and the payor bank, and the item is finally paid, at the opening of the bank's second banking day following receipt of the item.

(f) Subject to applicable law stating a time for availability of funds and any right of a bank to apply a deposit to an obligation of the depositor, a deposit of money becomes available for withdrawal as of right at the opening of the bank's next banking day after receipt of the deposit.

SECTION 120. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4-216 of Title 12A, unless there is created a duplication in numbering, reads as follows:

INSOLVENCY AND PREFERENCE

(a) If an item is in or comes into the possession of a payor or collecting bank that suspends payment and the item has not been finally paid, the item must be returned by the receiver, trustee, or agent in charge of the closed bank to the presenting bank or the closed bank's customer.

(b) If a payor bank finally pays an item and suspends payments without making a settlement for the item with its customer or the presenting bank which settlement is or becomes final, the owner of the item has a preferred claim against the payor bank.

(c) If a payor bank gives or a collecting bank gives or receives a provisional settlement for an item and thereafter suspends payments, the suspension does not prevent or interfere with the settlement's becoming final if the finality occurs automatically upon the lapse of certain time or the happening of certain events.

(d) If a collecting bank receives from subsequent parties settlement for an item, which settlement is or becomes final and the bank suspends payments without making a settlement for the item with its customer which settlement is or becomes final, the owner of the item has a preferred claim against the collecting bank.

SECTION 121. AMENDATORY 12A O.S. 1981, Section 4-301, is amended to read as follows:

Section 4-301.

DEFERRED POSTING; RECOVERY OF PAYMENT BY RETURN OF ITEMS; TIME OF DISHONOR; RETURN OF ITEMS BY PAYOR BANK

~~(1) Where an authorized settlement~~ (a) If a payor bank settles for a demand item ~~(~~other than a documentary draft~~) received by a payor bank~~ presented otherwise than for immediate payment over the counter ~~has been made~~ before midnight of the banking day of receipt, the payor bank may revoke the settlement and recover ~~any payment~~ the settlement if, before it has made final payment ~~(subsection (1) of Section 4-213)~~ and before its midnight deadline, it:

~~(a)~~ (1) ~~returns~~ Returns the item; or

~~(b)~~ (2) ~~sends~~ Sends written notice of dishonor or nonpayment if the item is ~~held for protest or is otherwise~~ unavailable for return.

~~(2)~~ (b) If a demand item is received by a payor bank for credit on its books, it may return ~~such~~ the item or send notice of dishonor and may revoke any credit given or recover the amount thereof withdrawn by its customer, if it acts within the time limit and in the manner specified in ~~the preceding~~ subsection (a) of this section.

~~(3)~~ (c) Unless previous notice of dishonor has been sent an item is dishonored at the time when for purposes of dishonor it is returned or notice sent in accordance with this section.

~~(4)~~ (d) An item is returned:

~~(a)~~ (1) ~~as~~ As to an item ~~received~~ presented through a ~~clearinghouse~~ clearing-house, when it is delivered to the presenting or last collecting bank or to the ~~clearinghouse~~ clearing-house or is sent or delivered in accordance with ~~its~~ clearing-house rules; or

~~(b)~~ (2) ~~in~~ In all other cases, when it is sent or delivered to the bank's customer or transferor or pursuant to ~~his~~ instructions.

SECTION 122. AMENDATORY 12A O.S. 1981, Section 4-302, is amended to read as follows:

Section 4-302.

PAYOR BANK'S RESPONSIBILITY FOR LATE RETURN OF ITEM

~~In the absence of a valid defense such as breach of a presentment warranty (subsection (1) of Section 4-207), settlement effected or the like, if~~ (a) If an item is presented ~~on~~ to and received by a payor bank, the bank is accountable for the amount of:

~~(a)~~ (1) a demand item, other than a documentary draft, whether properly payable or not, if the bank, in any case ~~where~~ in which it is not also the depositary bank, retains the item beyond midnight of the banking day of receipt without settling for it or, ~~regardless of~~ whether or not it is also the depositary bank, does not pay or return the item or send notice of dishonor until after its midnight deadline; or

~~(b)~~(2) any other properly payable item unless, within the time allowed for acceptance or payment of that item, the bank either accepts or pays the item or returns it and accompanying documents.

(b) The liability of a payor bank to pay an item pursuant to subsection (a) of this section is subject to defenses based on breach of presentment warranty (Section 4-208 of this title) or proof that the person seeking enforcement of the liability presented or transferred the item for the purpose of defrauding the payor bank.

SECTION 123. AMENDATORY 12A O.S. 1981, Section 4-303, is amended to read as follows:

Section 4-303.

WHEN ITEMS SUBJECT TO NOTICE, ~~STOP-ORDER~~ STOP-PAYMENT ORDER, LEGAL PROCESS, OR SETOFF; ORDER IN WHICH ITEMS MAY BE CHARGED OR CERTIFIED

~~(1)~~ (a) Any knowledge, notice, or ~~stop-order~~ stop-payment order received by, legal process served upon, or setoff exercised by a payor bank~~, whether or not effective under other rules of law~~ comes too late to terminate, suspend, or modify the bank's right or duty

to pay an item or to charge its customer's account for the item~~, comes too late to so terminate, suspend or modify such right or duty~~ if the knowledge, notice, ~~stop-order~~ stop-payment order, or legal process is received or served and a reasonable time for the bank to act thereon expires or the setoff is exercised after the ~~bank has done any~~ earliest of the following:

~~(a)~~ ~~accepted or certified~~ (1) The bank accepts or certifies the item;

~~(b)~~ ~~paid~~ (2) The bank pays the item in cash;

~~(c)~~ ~~settled~~ (3) The bank settles for the item without ~~reserving~~ having a right to revoke the settlement ~~and without having such right~~ under statute, ~~clearinghouse~~ clearing-house rule, or agreement;

~~(d)~~ ~~completed the process of posting the item to the indicated account of the drawer, maker or other person to be charged therewith or otherwise has evidenced by examination of such indicated account and by action its decision to pay the item; or~~

~~(e)~~ ~~become~~ (4) The bank becomes accountable for the amount of the item under ~~subsection (1)(d) of Section 4-213 and~~ Section 4-302 of this title dealing with the payor bank's responsibility for late return of items; or

(5) With respect to checks, a cutoff hour no earlier than one (1) hour after the opening of the next banking day after the banking day on which the bank received the check and no later than the close of that next banking day or, if no cutoff hour is fixed, the close of the next banking day after the banking day on which the bank received the check.

~~(2)~~ (b) Subject to ~~the provisions of~~ subsection ~~(1)~~ (a) of this section, items may be accepted, paid, certified, or charged to the indicated account of its customer in any order ~~convenient to the bank~~.

SECTION 124. AMENDATORY 12A O.S. 1981, Section 4-401, is amended to read as follows:

Section 4-401.

WHEN BANK MAY CHARGE CUSTOMER'S ACCOUNT

~~(1) As against its customer, a~~ (a) A bank may charge against ~~his~~ the account ~~any~~ of a customer an item ~~which~~ that is ~~otherwise~~ properly payable from that account even though the charge creates an overdraft. An item is properly payable if it is authorized by the customer and is in accordance with any agreement between the customer and bank.

(b) A customer is not liable for the amount of an overdraft if the customer neither signed the item nor benefited from the proceeds of the item.

(c) A bank may charge against the account of a customer a check that is otherwise properly payable from the account, even though payment was made before the date of the check, unless the customer has given notice to the bank of the postdating describing the check with reasonable certainty. The notice is effective for the period stated in subsection (b) of Section 4-403 of this title for stop-payment orders, and must be received at such time and in such manner as to afford the bank a reasonable opportunity to act on it before the bank takes any action with respect to the check described in Section 4-303 of this title. If a bank charges against the account of a customer a check before the date stated in the notice of postdating, the bank is liable for damages for the loss resulting

from its act. The loss may include damages for dishonor or subsequent items under Section 4-402 of this title.

~~(2)~~ (d) A bank ~~which~~ that in good faith makes payment to a holder may charge the indicated account of its customer according to:

~~(a)~~ (1) The original ~~tenor~~ terms of ~~his~~ the altered item; or

~~(b)~~ (2) The ~~tenor~~ terms of ~~his~~ the completed item, even though the bank knows the item has been completed unless the bank has notice that the completion was improper.

SECTION 125. AMENDATORY 12A O.S. 1981, Section 4-402, is amended to read as follows:

Section 4-402.

BANK'S LIABILITY TO CUSTOMER FOR WRONGFUL DISHONOR; TIME FOR DETERMINING INSUFFICIENCY OF ACCOUNT

(a) Except as otherwise provided in this article, a payor bank wrongfully dishonors an item if it dishonors an item that is properly payable, but a bank may dishonor an item that would create an overdraft unless it has agreed to pay the overdraft.

(b) A payor bank is liable to its customer for damages proximately caused by the wrongful dishonor of an item. ~~When the dishonor occurs through mistake liability~~ Liability is limited to actual damages proved~~. If so proximately caused and proved damages~~ and may include damages for an arrest or prosecution of the customer or other consequential damages. Whether any consequential damages are proximately caused by the wrongful dishonor is a question of fact to be determined in each case.

(c) A payor bank's determination of the customer's account balance on which a decision to dishonor for insufficiency of available funds is based and may be made at any time between the time the item is received by the payor bank and the time that the payor bank returns the item or gives notice in lieu of return, and no more than one (1) determination need be made. If, at the election of the payor bank, a subsequent balance determination is made for the purpose of reevaluating the bank's decision to dishonor the item, the account balance at that time is determinative of whether a dishonor for insufficiency of available funds is wrongful.

SECTION 126. AMENDATORY 12A O.S. 1981, Section 4-403, is amended to read as follows:

Section 4-403.

CUSTOMER'S RIGHT TO STOP PAYMENT; BURDEN OF PROOF OF LOSS

~~(1)~~ (a) A customer ~~may by order to his bank stop payment of any item payable for his account but the order must be~~ or any person authorized to draw on the account if there is more than one person may stop payment of any item drawn on the customer's account or close the account by an order to the bank describing the item or account with reasonable certainty received at ~~such~~ a time and in ~~such~~ a manner ~~as to afford~~ that affords the bank a reasonable opportunity to act on it ~~prior to~~ before any action by the bank with respect to the item described in Section 4-303 of this title. If the signature of more than one person is required to draw on an account, any of these persons may stop payment or close the account.

~~(2) An oral order is binding upon the bank only for fourteen (14) calendar days unless confirmed in writing within that period. A written order is effective for only six (6) months unless renewed in writing.~~

(b) A stop-payment order is effective for six (6) months, but it lapses after fourteen (14) calendar days if the original order

was oral and was not confirmed in writing within that period. A stop-payment order may be renewed for additional six-month periods by a writing given to the bank within a period during which the stop-payment order is effective.

~~(3)~~ (c) The burden of establishing the fact and amount of loss resulting from the payment of an item contrary to a ~~binding stop payment~~ stop-payment order or order to close an account is on the customer. The loss from payment of an item contrary to a stop-payment order may include damages for dishonor of subsequent items under Section 4-402 of this title.

SECTION 127. AMENDATORY 12A O.S. 1981, Section 4-405, is amended to read as follows:

Section 4-405.

DEATH OR INCOMPETENCE OF CUSTOMER

~~(1)~~ (a) A payor or collecting bank's authority to accept, pay, or collect an item or to account for proceeds of its collection, if otherwise effective, is not rendered ineffective by incompetence of a customer of either bank existing at the time the item is issued or its collection is undertaken if the bank does not know of an adjudication of incompetence. Neither death nor incompetence of a customer revokes ~~such~~ the authority to accept, pay, collect, or account until the bank knows of the fact of death or of an adjudication of incompetence and has reasonable opportunity to act on it.

~~(2)~~ (b) Even with knowledge, a bank may for ten (10) days after the date of death pay or certify checks drawn on or ~~prior to~~ before that date unless ordered to stop payment by a person claiming an interest in the account.

SECTION 128. AMENDATORY 12A O.S. 1981, Section 4-406, is amended to read as follows:

Section 4-406.

CUSTOMER'S DUTY TO DISCOVER AND REPORT
UNAUTHORIZED SIGNATURE OR ALTERATION

~~(1) When a bank sends to its customer a statement of account accompained by items paid in good faith in support of the debit entries or holds the statement and items pursuant to a request or instructions of its customer or otherwise in a reasonable manner makes the statement and items available to the customer, the customer must exercise reasonable care and promptness to examine the statement and items to discover his unauthorized signature or any alteration on an item and must notify the bank promptly after discovery thereof.~~

(a) A bank that sends or makes available to a customer a statement of account showing payment of items for the account shall either return or make available to the customer the items paid or provide information in the statement of account sufficient to allow the customer reasonably to identify the items paid. The statement of account provides sufficient information if the item is described by item number, amount, and date of payment.

(b) If the items are not returned to the customer, the person retaining the items shall either retain the items or, if the items are destroyed, maintain the capacity to furnish legible copies of the items until the expiration of seven (7) years after receipt of the items. A customer may request an item from the bank that paid the item, and that bank must provide in a reasonable time either the item or, if the item has been destroyed or is not otherwise obtainable, a legible copy of the item.

(c) If a bank sends or makes available a statement of account or items pursuant to subsection (a) of this section, the customer

must exercise reasonable promptness in examining the statement or the items to determine whether any payment was not authorized because of an alteration of an item or because a purported signature by or on behalf of the customer was not authorized. If, based on the statement or items provided, the customer should reasonably have discovered the unauthorized payment, the customer must promptly notify the bank of the relevant facts.

~~(2)~~ (d) If the bank ~~establishes~~ proves that the customer failed, with respect to an item, to comply with the duties imposed on the customer by subsection ~~(1)~~ (c) of this section, the customer is precluded from asserting against the bank:

~~(a)~~ ~~his~~ (1) The customer's unauthorized signature or any alteration on the item, if the bank also ~~establishes~~ proves that it suffered a loss by reason of ~~such~~ the failure; and

~~(b)~~ ~~an~~ (2) The customer's unauthorized signature or alteration by the same wrongdoer on any other item paid in good faith by the bank ~~after the first item and statement was available to the customer for a reasonable period not exceeding fourteen (14) calendar days and before the bank receives notification from the customer of any such unauthorized signature or alteration~~ if the payment was made before the bank received notice from the customer of the unauthorized signature or alteration and after the customer had been afforded a reasonable period of time, not exceeding thirty (30) days, in which to examine the item or statement of account and notify the bank.

~~(3) The preclusion under subsection (2) does not apply if the customer establishes lack of ordinary care on the part of the bank in paying the item(s).~~

(e) If subsection (d) of this section applies and the customer proves that the bank failed to exercise ordinary care in paying the item and that the failure substantially contributed to loss, the loss is allocated between the customer precluded and the bank asserting the preclusion according to the extent to which the failure of the customer to comply with subsection (c) of this section and the failure of the bank to exercise ordinary care contributed to the loss. If the customer proves that the bank did not pay the item in good faith, the preclusion under subsection (d) of this section does not apply.

~~(4)~~ (f) Without regard to care or lack of care of either the customer or the bank, a customer who does not within one (1) year ~~from the time~~ after the statement ~~and~~ or items are made available to the customer (subsection ~~(1)~~ (a) of this section) discover and report ~~his~~ the customer's unauthorized signature on or any alteration on the ~~face or back of the~~ item ~~or does not within three (3) years from that time discover and report any unauthorized endorsement~~ is precluded from asserting against the bank ~~such~~ the unauthorized signature ~~or endorsement~~ or ~~such~~ alteration. If there is a preclusion under this subsection, the payor bank may not recover for breach of warranty under Section 4-208 of this title with respect to the unauthorized signature or alteration to which the preclusion applies.

~~(5) If under this section a payor bank has a valid defense against a claim of a customer upon or resulting from payment of an item and waives or fails upon request to assert the defense the bank may not assert against any collecting bank or other prior party presenting or transferring the item a claim based upon the~~

~~unauthorized signature or alteration giving rise to the customer's claim.~~

SECTION 129. AMENDATORY 12A O.S. 1981, Section 4-407, is amended to read as follows:

Section 4-407.

PAYOR BANK'S RIGHT TO SUBROGATION ON IMPROPER PAYMENT

If a payor bank has paid an item over the ~~stop payment~~ order of the drawer or maker to stop payment, or after an account has been closed, or otherwise under circumstances giving a basis for objection by the drawer or maker, to prevent unjust enrichment and only to the extent necessary to prevent loss to the bank by reason of its payment of the item, the payor bank ~~shall be~~ is subrogated to the rights:

~~(a)~~ (1) ~~of~~ Of any holder in due course on the item against the drawer or maker; ~~and~~

~~(b)~~ (2) ~~of~~ Of the payee or any other holder of the item against the drawer or maker either on the item or under transaction out of which the item arose; and

~~(c)~~ (3) ~~of~~ Of the drawer or maker against the payee or any other holder of the item with respect to the transaction of which the item arose.

SECTION 130. AMENDATORY 12A O.S. 1981, Section 4-501, is amended to read as follows:

Section 4-501.

HANDLING OF DOCUMENTARY DRAFTS; DUTY TO SEND FOR PRESENTMENT AND TO NOTIFY CUSTOMER OF DISHONOR

A bank ~~which~~ that takes a documentary draft for collection ~~must~~ shall present or send the draft and accompanying documents for presentment and, upon learning that the draft has not been paid or accepted in due course, ~~must~~ shall seasonably notify its customer of ~~such~~ the fact even though it may have discounted or bought the draft or extended credit available for withdrawal as of right.

SECTION 131. AMENDATORY 12A O.S. 1981, Section 4-502, is amended to read as follows:

Section 4-502.

PRESENTMENT OF "ON ARRIVAL" DRAFTS

~~When~~ If a draft or the relevant instructions require presentment "on arrival", "when goods arrive" or the like, the collecting bank need not present until in its judgment a reasonable time for arrival of the goods has expired. Refusal to pay or accept because the goods have not arrived is not dishonor; the bank must notify its transferor of ~~such~~ the refusal but need not present the draft again until it is instructed to do so or learns of the arrival of the goods.

SECTION 132. AMENDATORY 12A O.S. 1981, Section 4-503, is amended to read as follows:

Section 4-503.

RESPONSIBILITY OF PRESENTING BANK FOR DOCUMENTS AND GOODS; REPORT OF REASONS FOR DISHONOR; REFEREE IN CASE OF NEED

Unless otherwise instructed and except as provided in Article 5 of this title, a bank presenting a documentary draft:

~~(a)~~ (1) ~~must~~ Must deliver the documents to the drawee on acceptance of the draft if it is payable more than three (3) days after presentment; otherwise, only on payment; and

~~(b)~~ (2) ~~upon~~ Upon dishonor, either in the case of presentment for acceptance or presentment for

payment, may seek and follow instructions from any referee in case of need designated in the draft or, if the presenting bank does not choose to utilize ~~his~~ the referee's services, it must use diligence and good faith to ascertain the reason for dishonor, must notify its transferor of the dishonor and of the results of its effort to ascertain the reasons therefor, and must request instructions.

~~But~~ However, the presenting bank is under no obligation with respect to goods represented by the documents except to follow any reasonable instructions seasonably received; it has a right to reimbursement for any expense incurred in following instructions and to prepayment of or indemnity for ~~such~~ those expenses.

SECTION 133. AMENDATORY 12A O.S. 1981, Section 4-504, is amended to read as follows:

Section 4-504.

PRIVILEGE OF PRESENTING BANK TO DEAL WITH GOODS; SECURITY INTEREST FOR EXPENSES

~~(1)~~ (a) A presenting bank ~~which~~ that, following the dishonor of a documentary draft, has seasonably requested instructions but does not receive them within a reasonable time may store, sell, or otherwise deal with the goods in any reasonable manner.

~~(2)~~ (b) For its reasonable expenses incurred by action under subsection ~~(1)~~ (a) of this section, the presenting bank has a lien upon the goods or their proceeds, which may be foreclosed in the same manner as an unpaid seller's lien.

SECTION 134. AMENDATORY Section 13, Chapter 179, O.S.L. 1985, as last amended by Section 3, Chapter 58, O.S.L. 1989 (47 O.S. Supp. 1990, Section 1110), is amended to read as follows:

Section 1110. A. 1. Except for a security interest in vehicles held by a dealer for sale or lease, as defined in Section 1-112 of this title and a vehicle being registered in this state which was previously registered in another state and which title contains the name of a secured party on the face of the other state certificate or title, a security interest, as defined in Section 1-201 of Title 12A of the Oklahoma Statutes, in a vehicle as to which a certificate of title may be properly issued by the Oklahoma Tax Commission shall be perfected only when a lien entry form prescribed by the Commission, and the existing certificate of title, if any, or application for a certificate of title and manufacturer's certificate of origin containing the name and address of the secured party and the date of the security agreement and the required fee are delivered to the Commission or to a motor license agent. For the purposes of this section, the term "vehicle" shall not include special mobilized machinery, machinery used in highway construction or road material construction and rubber-tired road construction vehicles including rubber-tired cranes. The filing and duration of perfection of a security interest, pursuant to the provisions of Title 12A of the Oklahoma Statutes, including, but not limited to, Section 9-302 of Title 12A of the Oklahoma Statutes, shall not be applicable to perfection of security interests in vehicles as to which a certificate of title may be properly issued by the Commission, except as to vehicles held by a dealer for sale or lease and except as provided in subsection D of this section. In all other respects Title 12A of the Oklahoma Statutes shall be applicable to such security interests in vehicles as to which a certificate of title may be properly issued by the Commission.

2. Whenever a person creates a security interest in a vehicle, such person shall surrender to the secured party the certificate of title or the signed application for a new certificate of title, on the form prescribed by the Commission, and the manufacturer's certificate of origin. The secured party shall deliver the lien entry form and the required lien filing fee within fifteen (15) days as provided hereafter with certificate of title or the application for certificate of title and the manufacturer's certificate of origin to the Commission or to a motor license agent. If the lien entry form, the lien filing fee and the certificate of title or application for certificate of title and the manufacturer's certificate of origin are delivered to the Commission or to a motor license agent within fifteen (15) days after the date of the lien entry form, perfection of the security interest shall begin from the date of the execution of the lien entry form, but, otherwise, perfection of the security interest shall begin from the date of the delivery to the Commission or to a motor license agent.

3. a. For each security interest recorded on a certificate of title, or manufacturer's certificate of origin, such person shall pay a fee of Ten Dollars ($10.00), which shall be in addition to other fees provided for in Section 1101 et seq. of this ~~act~~ title. Upon the receipt of the lien entry form and the required fees with either the certificate of title or an application for certificate of title and manufacturer's certificate of origin, a motor license agent shall, by placement of a clearly distinguishing mark, record the date and number shown in a conspicuous place, on each of these instruments. Of the ten-dollar fee, the motor license agent shall retain Two Dollars ($2.00) for recording the security interest lien.

b. It shall be unlawful for any person to solicit, accept or receive any gratuity or compensation for acting as a messenger and for acting as the agent or representative of another person in applying for the recording of a security interest or for the registration of a motor vehicle and obtaining the license plates or for the issuance of a certificate of title therefor unless the Commission has appointed and approved said person to perform such acts; and before acting as a messenger, any such person shall furnish to the Commission a surety bond in such amount as the Commission shall determine appropriate.

4. The certificate of title or the application for certificate of title and manufacturer's certificate of origin with the record of the date of receipt clearly marked thereon shall be returned to the debtor together with a notice that the debtor is required to register and pay all additional fees and taxes due within thirty (30) days from the date of purchase of said vehicle.

5. Any person creating a security interest in a vehicle that has been previously registered in the debtor's name and on which all taxes due the state have been paid shall surrender the certificate of ownership to the secured party. The secured party shall have the duty to record the security interest as provided in this section and shall, at the same time, obtain a new certificate of title which shall show the secured interest on the face of such certificate of title.

6. The lien entry form with the date and assigned number thereof clearly marked thereon shall be returned to the secured party. If the lien entry form is received and authenticated, as

herein provided, by a motor license agent, such agent shall make a report thereof to the Commission upon the forms and in the manner as may be prescribed by the Commission.

7. The Commission shall have the duty to record the lien upon the face of the certificate of title issued at the time of registering and paying all fees and taxes due on such vehicle.

B. 1. A secured party shall, within fifteen (15) business days after the satisfaction of such security interest, furnish directly or by mail a release of a security interest to the Commission and mail a copy thereof to the last-known address of the debtor. If the secured party fails to furnish such release as herein required, the secured party shall be liable to the debtor for a penalty of One Hundred Dollars ($100.00) and, in addition, any loss caused to the debtor by such failure.

2. Upon release of a security interest the owner may obtain a new certificate of title omitting reference to the security interest, by submitting to the Commission or to a motor license agent:

a. a release signed by the secured party, an application for new certificate of title and the proper fees, or

b. by submitting to the Commission or the motor license agent an affidavit, supported by such documentation as the Commission may require, by the owner on a form prescribed by the Commission stating that the security interest has been satisfied and stating the reasons why a release cannot be obtained, an application for a new certificate of title and the proper fees.

Upon receiving such affidavit that the security interest has been satisfied, the Commission shall issue a new certificate of title eliminating the satisfied security interest and the name and address of the secured parties who have been paid and satisfied.

The words "security interest" when used in this act do not include liens dependent upon possession.

C. The Commission shall file and index certificates of title so that at all times it will be possible to trace a certificate of title to the vehicle designated therein, identify the lien entry form, and the names and addresses of secured parties, or their assignees, so that all or any part of such information may be made readily available to those who make legitimate inquiry of the Commission as to the existence or nonexistence of security interest in the vehicle.

D. Any security interest in a vehicle properly perfected prior to July 1, 1979, may be continued as to its effectiveness or duration as provided by subsection (3) of ~~Sections~~ Section 9-401 and subsection (3) of Section 9-403 of Title 12A of the Oklahoma Statutes, or may be terminated, assigned or released as provided by Sections 9-404, 9-405 and 9-406 of Title 12A of the Oklahoma Statutes, as fully as if this section had not been enacted, or, at the option of the secured party, may also be perfected under this section, and, if so perfected, the time of perfection under this section shall be the date said security interest was originally perfected under the prior law. Upon request of the secured party, the debtor or any other holder of the certificate of title shall surrender said certificate of title to the secured party and shall do such other acts as may be required to perfect said security interest under this section.

E. The priority of a valid security interest in a manufactured home, including without limitation a mobile home or sectional home, perfected pursuant to this section, shall not be affected by reason of the manufactured home becoming a fixture or otherwise being

permanently attached to real property after the date of perfection of the security interest. A security interest in a manufactured home perfected pursuant to this section shall have priority over a conflicting interest of a mortgagee or other lien encumbrancer, or the owner of the real property upon which the manufactured home became affixed or otherwise permanently attached. The holder of the security interest in the manufactured home, upon default, may remove the manufactured home from such real property. The holder of the security interest in the manufactured home shall reimburse the owner of the real property who is not the debtor and who has not otherwise agreed to access the real property for the cost of repair of any physical injury to the real property, but shall not be liable for any diminution in value to the real property caused by the removal of the manufactured home, trespass, or any other damages caused by such removal. The debtor shall notify the holder of the security interest in the manufactured home of the street address, if any, and the legal description of the real property upon which the manufactured home is affixed or otherwise permanently attached and shall sign such other documents, including any appropriate mortgage, as may reasonably be requested by the holder of such security interest.

F. In the case of motor vehicles or trailers, notwithstanding any other provision of law, a transaction does not create a sale or security interest merely because it provides that the rental price is permitted or required to be adjusted under the agreement either upward or downward by reference to the amount realized upon sale or other disposition of the motor vehicle or trailer.

SECTION 135. AMENDATORY Section 71, Chapter 86, O.S.L. 1988 (12A O.S. Supp. 1990, Section 2A-524), is amended to read as follows:

Section 2A-524.

LESSOR'S RIGHT TO IDENTIFY GOODS TO LEASE CONTRACT

(1) ~~A lessor aggrieved under subsection (1) of Section 70 of this act~~ After default by the lessee under the lease contract of the type described in either subsection (1) of Section 2A-523 of this title or paragraph (a) of subsection (3) of Section 2A-523 of this title, or, if agreed, after other default by the lessee, the lessor may:

(a) identify to the lease contract conforming goods not already identified if at the time the lessor learned of the default they were in the lessor's or the supplier's possession or control; and

(b) dispose of goods (subsection (1) of Section ~~74~~ 2A-527 of this ~~act~~ title) that demonstrably have been intended for the particular lease contract even though those goods are unfinished.

(2) If the goods are unfinished, in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization, an aggrieved lessor or the supplier may either complete manufacture and wholly identify the goods to the lease contract or cease manufacture and lease, sell, or otherwise dispose of the goods for scrap or salvage value or proceed in any other reasonable manner.

SECTION 136. Transactions validly entered into before the effective date of this act and the rights, duties and interests flowing from them remain valid thereafter and may be terminated, completed, consummated or enforced as required or permitted by any statute or other law amended or repealed by this act as though such amendment or repeal has not occurred.

SECTION 137. REPEALER 12A O.S. 1981, Sections 3-120, 3-121, 3-122, 3-208, 3-506, 3-507, 3-508, 3-509, 3-510, 3-511, 3-606, 3-701, 3-801, 3-802, 3-803, 3-804 and 3-805, are hereby repealed.

SECTION 138. The provisions of Section 136 of this act shall not be codified in the Oklahoma Statutes.

SECTION 139. This act shall become effective January 1, 1992.

Passed the Senate the 12th day of March, 1991.

President of the Senate

Passed the House of Representatives the 18th day of April, 1991.

Speaker of the House of Representatives