

ENGROSSED SENATE AMENDMENT  
TO  
ENGROSSED HOUSE BILL NO. 2235

By: Isaac of the House

and

Hendrick of the Senate

An Act relating to the Commercial Code; amending 12A O.S. 1991, Sections 9-104, 9-105 and 9-302, which relate to secured transactions; removing certain transaction excluded from article; modifying definition; updating statutory reference; providing exception to filing a financing statement; and providing an effective date.

AMENDMENT NO. 1. Page 1, strike the title, enacting clause and entire bill and insert

"An Act relating to the Commercial Code; amending 12A O.S. 1991, Sections 9-104, 9-105 and 9-302, which relate to secured transactions; modifying definition; updating statutory reference; providing exception to filing a financing statement; and providing an effective date.

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

SECTION 1. AMENDATORY 12A O.S. 1991, Section 9-104, is amended to read as follows:

Section 9-104. Transactions Excluded From Article.

This article does not apply:

- (a) to a security interest subject to any statute of the United States to the extent that such statute governs

the rights of parties to and third parties affected by transactions in particular types of property; or

- (b) to a landlord's lien; or
- (c) to a lien given by statute or other rule of law for services or materials except as provided in Section 9-310 of this title on priority of such liens; or
- (d) to a transfer of a claim for wages, salary or other compensation of an employee; or
- (e) to a sale of accounts or chattel paper as part of a sale of the business out of which they arose, or an assignment of accounts or chattel paper which is for the purpose of collection only, or a transfer of a right to payment under a contract to an assignee who is also to do the performance under the contract or a transfer of a single account to an assignee in whole or partial satisfaction of a pre-existing indebtedness; or
- (f) to a transfer of an interest in or claim in or under any policy of insurance, except as provided with respect to proceeds as described in ~~(Section 9-306)~~ of this title and priorities in proceeds as described in ~~(Section 9-312)~~ of this title; or
- (g) to a right represented by a judgment, other than a judgment taken on a right to payment which was collateral; or
- (h) to any right of setoff; or
- (i) except to the extent that provision is made for fixtures in Section 9-313 of this title, to the creation or transfer of an interest in or lien on real estate, including a lease or rents thereunder; or
- (j) to a transfer in whole or in part of any claim arising out of tort; or

- (k) to a transfer of an interest in any deposit account as described in ~~subsection (1) of Section 9-105~~ of this title, except as provided with respect to proceeds as described in ~~Section 9-306~~ of this title and priorities in proceeds as described in ~~Section 9-312~~ of this title.

SECTION 2. AMENDATORY 12A O.S. 1991, Section 9-105, is amended to read as follows:

Section 9-105. Definitions and Index of Definitions.

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

- (a) "Account debtor" means the person who is obligated on an account, chattel paper or general intangible;
- (b) "Chattel paper" means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods, but a charter or other contract involving the use or hire of a vessel is not chattel paper. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper;
- (c) "Collateral" means the property subject to a security interest and includes accounts and chattel paper which have been sold;
- (d) "Debtor" means the person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral, and includes the seller of accounts or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term "debtor" means the owner of the collateral in any provision of the article dealing with the collateral, the obligor in any provision

dealing with the obligation, and may include both where the context so requires;

(e) "Deposit account" means a demand, time, savings, passbook or like account maintained with a bank, savings and loan association, credit union or like organization, other than an account evidenced ~~represented~~ by a certificate of deposit. A certificate of deposit includes:

(i) an instrument as defined in paragraph (i) of this subsection whether the instrument is subject to Section 3-104 of this title or not because it is not payable to order;

(ii) a writing that contains both an acknowledgment by a bank as defined in subsection (1) of Section 4-105 of this title that a sum of money has been received by the entity and its promise to repay the sum of money and that is considered to be a certificate of deposit by the entity that issues it, even if the writing provides that it is "nontransferable" or uses similar language; and

(iii) an uncertificated obligation of a bank as described in subparagraph (ii) of this paragraph not represented by a writing but only by an entry on the books of the bank and any documentation given to the customer of the bank.

A written certificate of deposit shall be considered an instrument within the definition in paragraph (i) of this subsection, and an uncertificated certificate of deposit shall be considered a general intangible;

(f) "Document" means document of title as defined in ~~the general definitions of Article 1 (Section 1-201)~~ of

this title, and a receipt of the kind described in subsection (2) of Section 7-201 of this title;

- (g) "Encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests;
- (h) "Goods" includes all things which are movable at the time the security interest attaches or which are fixtures as described in ~~Section 9-313~~ of this title, but does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction;
- (i) "Instrument" means a negotiable instrument as defined in Section 3-104 of this title, or a certificated security defined in Section 8-102 of this title, or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary endorsement or assignment;
- (j) "Mortgage" means a consensual interest created by a real estate mortgage, a trust deed on real estate, or the like;
- (k) An advance is made "pursuant to commitment" if the secured party has bound himself to make it, whether or not a subsequent event of default or other event not within his control has relieved or may relieve him from his obligation;
- (l) "Security agreement" means an agreement which creates or provides for a security interest;
- (m) "Secured party" means a lender, seller or other person in whose favor there is a security interest, including

a person to whom accounts or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement or the like are represented by a trustee or other person, the representative is the secured party; and

(n) "Transmitting utility" means any person primarily engaged in the railroad, street railway or trolley bus business, the electric or electronics communications transmission business, the transmission of goods by pipeline, or the transmission or the production and transmission of electricity, steam, gas or water, or the provision of sewer service.

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

"Account". Section 9-106.

"Attach". Section 9-203.

"Construction mortgage". Section 9-313(1).

"Consumer goods". Section 9-109(1).

"Equipment". Section 9-109(2).

"Farm products". Section 9-109(3).

"Fixture". Section 9-313.

"Fixture filing". Section 9-313.

"General intangibles". Section 9-106.

"Inventory". Section 9-109(4).

"Lien creditor". Section 9-301(3).

"Proceeds". Section 9-306(1).

"Purchase money security interest". Section 9-107.

"United States". Section 9-103.1.

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

"Check". Section 3-104.

"Contract for sale". Section 2-106.

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

"Note". Section 3-104.

"Sale". Section 2-106.

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

SECTION 3. AMENDATORY 12A O.S. 1991, Section 9-302, is amended to read as follows:

Section 9-302. When Filing is Required to Perfect Security Interest - Security Interests to Which Filing Provisions of This Article Do Not Apply.

(1) A financing statement must be filed to perfect all security interests except the following:

- (a) A security interest in collateral in possession of the secured party pursuant to the provisions of Section 9-305 of this title; or
- (b) A security interest temporarily perfected in instruments or documents without delivery pursuant to the provisions of Section 9-304 of this title or in proceeds for a ten-day period pursuant to the provisions of Section 9-306 of this title; or
- (c) A security interest created by an assignment of a beneficial interest in a trust or a decedent's estate; or
- (d) A purchase money security interest in consumer goods except for a vehicle as provided in paragraph (h) of this subsection; or
- (e) An assignment of accounts which does not transfer, alone or in conjunction with other assignments to the same assignee, a significant part of the outstanding accounts of the assignor; or

- (f) A security interest of a collecting bank, pursuant to the provisions of Section 4-208 of this title or in securities pursuant to the provisions of Section 8-321 of this title or arising according to the article on Sales as stated in Section 9-113 of this title or covered in subsection (3) of this section; or
- (g) An assignment for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder; or
- (h) A security interest in a vehicle as defined in Section 23.2b of Title 47 of the Oklahoma Statutes for which a certificate of title may be properly issued by the Oklahoma Tax Commission, except as otherwise provided for in Section 23.2b of Title 47 of the Oklahoma Statutes; or
- (i) A security interest in a deposit account. Such a security interest is perfected:
  - (i) when the certificate of deposit is an instrument, by the secured party taking possession of the certificate of deposit; and
  - (ii) when the certificate of deposit is a general intangible, by written notice to the issuer of the certificate of deposit by the secured party that reasonably identifies the certificate of deposit and provides reasonable proof of the claimed security interest. Notification to the issuer of a certificate of deposit by a secured party of the secured party's security interest in the certificate of deposit imposes no obligation on the issuer to the secured party, including any obligation to acknowledge the notice. An issuer by written acknowledgment of a notice from a

secured party may assume an obligation to the  
secured party in the circumstances and under the  
conditions specified in the acknowledgment.

(2) If a secured party assigns a perfected security interest, no filing as provided for in this article is required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

(3) The filing of a financing statement otherwise required by this article is not necessary or effective to perfect a security interest in property subject to:

- (a) a statute or treaty of the United States that provides for a national or international registration or a national or international certificate of title or that specifies a place of filing different from that specified in this article for filing of the security interest; or
- (b) a statute of this state that provides for central filing of, or that requires indication or delivery for indication on a certificate of title of, any security interests in the property, but, during any period in which collateral is inventory held for sale by a person who is in the business of selling goods of that kind, the filing provisions of Sections 9-401 et seq. of this title apply to a security interest in that collateral created by him as debtor; or
- (c) a certificate of title statute of another jurisdiction pursuant to the provisions of which delivery for indication or indication of a security interest on the certificate is required as a condition of perfection as stated in subsection (2) of Section 9-103.1 of this title.

(4) Compliance with a statute or treaty described in subsection (3) of this section is equivalent to the filing of a financing statement pursuant to the provisions of this article, and a security interest in property subject to the statute or treaty can be perfected only by compliance with such statute or treaty except as provided for in Section 9-103.1 of this title on multiple state transactions. Duration and renewal of perfection of a security interest perfected by compliance with the statute or treaty are governed by the provisions of the statute or treaty, but, in other respects, the security interest is subject to the provisions of this article.

SECTION 4. This act shall become effective September 1, 1994."

Passed the Senate the 12th day of April, 1994.

President of the Senate

Passed the House of Representatives the \_\_\_\_ day of

\_\_\_\_\_, 1994.

Speaker of the House of Representatives