

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 2466

By: Bass

COMMITTEE SUBSTITUTE

An Act relating to the Uniform Commercial Code; amending 12A O.S. 1991, Sections 1-201, 2-103, 2-511, 3-415, 5-103, 9-203, 9-206, 9-302 and 9-312, which relate to the Uniform Commercial Code; correcting and modifying internal references; and providing an effective date.

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

SECTION 1. AMENDATORY 12A O.S. 1991, 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 and 2A-207 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" 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 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 made without actual, implied or apparent authority and includes a forgery.

(44) "Value". Except as otherwise provided for in Sections 3-303, ~~4-208~~ 4-210 and ~~4-209~~ 4-211 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. 1991, Section 2-103, is amended to read as follows:

Section 2-103. Definitions and Index of Definitions.

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

- (a) "Buyer" means a person who buys or contracts to buy goods.
- (b) "Good faith" in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.
- (c) "Receipt" of goods means taking physical possession of them.
- (d) "Seller" means a person who sells or contracts to sell goods.

(2) Other definitions applying to this article or to specified parts thereof, and the sections in which they appear are:

- "Acceptance". Section 2-606.
- "Banker's credit". Section 2-325.
- "Between merchants". Section 2-104.
- "Cancellation". Section 2-106(4).
- "Commercial unit". Section 2-105.
- "Confirmed credit". Section 2-325.
- "Conforming to contract". Section 2-106.
- "Contract for sale". Section 2-106.
- "Cover". Section 2-712.
- "Entrusting". Section 2-403.
- "Financing agency". Section 2-104.
- "Future goods". Section 2-105.
- "Goods". Section 2-105.
- "Identification". Section 2-501.
- "Installment contract". Section 2-612.
- "Letter of credit". Section 2-325.
- "Lot". Section 2-105.
- "Merchant". Section 2-104.

"Overseas". Section 2-323.  
"Person in position of seller". Section 2-707.  
"Present sale". Section 2-106.  
"Sale". Section 2-106.  
"Sale on approval". Section 2-326.  
"Sale or return". Section 2-326.  
"Termination". Section 2-106.

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

"Check". Section 3-104.  
"Consignee". Section 7-102.  
"Consignor". Section 7-102.  
"Consumer goods". Section 9-109.  
"Dishonor". Section ~~3-507~~ 3-502.  
"Draft". Section 3-104.

(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 2-511, is amended to read as follows:

Section 2-511. Tender of Payment by Buyer; Payment by Check.

(1) Unless otherwise agreed tender of payment is a condition to the seller's duty to tender and complete any delivery.

(2) Tender of payment is sufficient when made by any means or in any manner current in the ordinary course of business unless the seller demands payment in legal tender and gives any extension of time reasonably necessary to procure it.

(3) Subject to the provisions of this act on the effect of an instrument on an obligation (Section ~~3-802~~ 3-310), payment by check is conditional and is defeated as between the parties by dishonor of the check on due presentment.

SECTION 4. AMENDATORY 12A O.S. 1991, Section 3-415, is amended to read as follows:

Section 3-415.

#### OBLIGATION OF INDORSER

(a) Subject to subsections (b), (c), ~~and (d)~~, and (e) 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 depository 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 5. AMENDATORY 12A O.S. 1991, Section 5-103, is amended to read as follows:

Section 5-103. Definitions.

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

- (a) "Credit" or "letter of credit" means an engagement by a bank or other person made at the request of a customer and of a kind within the scope of this article (Section 5-102) that the issuer will honor drafts or other demands for payment upon compliance with the conditions specified in the credit. A

credit may be either revocable or irrevocable. The engagement may be either an agreement to honor or a statement that the bank or other person is authorized to honor.

(b) A "documentary draft" or a "documentary demand for payment" is one honor of which is conditioned upon the presentation of a document or documents.

"Document" means any paper including document of title, security, invoice, certificate, notice of default and the like.

(c) An "issuer" is a bank or other person issuing a credit.

(d) A "beneficiary" of a credit is a person who is entitled under its terms to draw or demand payment.

(e) An "advising bank" is a bank which gives notification of the issuance of a credit by another bank.

(f) A "confirming bank" is a bank which engages either that it will itself honor a credit already issued by another bank or that such a credit will be honored by the issuer or a third bank.

(g) A "customer" is a buyer or other person who causes an issuer to issue a credit. The term also includes a bank which procures issuance or confirmation on behalf of that bank's customer.

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

"Notation of Credit". Section 5-108.

"Presenter". Section 5-112(3).

(3) Definitions in other articles applying to this article and the sections in which they appear are:

"Accept" or "Acceptance". Section ~~3-410~~ 3-409.

"Contract for sale". Section 2-106.

"Draft". Section 3-104.

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

"Midnight deadline". Section 4-104.

"Security". Section 8-102.

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

SECTION 6. AMENDATORY 12A O.S. 1991, Section 9-203, is amended to read as follows:

Section 9-203. Attachment and Enforceability of Security Interest; Proceeds, Formal Requisites.

(1) Subject to the provisions of Section ~~4-208~~ 4-210 of this title on the security interest of a collecting bank, Section ~~38~~ 8-321 of this ~~act~~ title on security interests in securities, and Section 9-113 of this title on a security interest arising under the ~~article~~ articles on Sales and Leases, a security interest is not enforceable against the debtor or third parties with respect to the collateral and does not attach unless:

- (a) the collateral is in the possession of the secured party pursuant to agreement, or the debtor has signed a security agreement which contains a description of the collateral, and in addition, when the security interest covers crops growing or to be grown or timber to be cut, a description of the land concerned;
- (b) value has been given; and
- (c) the debtor has rights in the collateral.

(2) A security interest attaches when it becomes enforceable against the debtor with respect to the collateral. Attachment occurs as soon as all of the events specified in subsection (1) of this section have taken place unless explicit agreement postpones the time of attaching.

(3) Unless otherwise agreed, a security agreement gives the secured party the rights to proceeds provided by Section 9-306 of this title.

(4) A transaction, although subject to this article, may also be subject to the Uniform Consumer Credit Code, to the extent applicable, and in the case of conflict between the provisions of this article and any such statute, the provisions of such statute

control. Failure to comply with any applicable statute has only the effect which is specified therein.

SECTION 7. AMENDATORY 12A O.S. 1991, Section 9-206, is amended to read as follows:

Section 9-206. Agreement Not to Assert Defenses Against Assignee; Modification of Sales Warranties Where Security Agreement Exists.

(1) Subject to any statute or decision which establishes a different rule for buyers or lessees of consumer goods, an agreement by a buyer or lessee that he will not assert against an assignee any claim or defense which he may have against the seller or lessor is enforceable by an assignee who takes his assignment for value, in good faith and without notice of a claim or defense, except as to defenses of a type which may be asserted against a holder in due course of a negotiable instrument under the article on ~~Commercial Paper~~ Negotiable Instruments (Article 3). A buyer who as part of one transaction signs both a negotiable instrument and a security agreement makes such an agreement.

(2) When a seller retains a purchase money security interest in goods the Article on Sales (Article 2) governs the sale and any disclaimer, limitation or modification of the seller's warranties.

SECTION 8. 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~~ 4-210 of this title or in securities pursuant to the provisions of Section 8-321 of this title or arising according to the ~~article~~ articles on Sales and Leases 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~~ 1110 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~~ 1110 of Title 47 of the Oklahoma Statutes.

(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 9. AMENDATORY 12A O.S. 1991, Section 9-312, is amended to read as follows:

Section 9-312. Priorities Among Conflicting Security Interests in the Same Collateral.

(1) The rules of priority stated in other sections of this part and in the following sections shall govern when applicable:

Section ~~4-208~~ 4-210 of this title with respect to the security interests of collecting banks in items being collected, accompanying documents and proceeds; Section 9-103.1 of this title on security interests related to other jurisdictions; and Section 9-114 of this title on consignments.

(2) A perfected security interest in crops for new value given to enable the debtor to produce the crops during the production season and given not more than three (3) months before the crops become growing crops by planting or otherwise takes priority over an earlier perfected security interest to the extent that such earlier interest secures obligations due more than six (6) months before the crops become growing crops by planting or otherwise, even though the person giving new value had knowledge of the earlier security interest.

(3) A perfected purchase money security interest in inventory has priority over a conflicting security interest in the same inventory and also has priority in identifiable cash proceeds received on or before the delivery of the inventory to a buyer if:

- (a) the purchase money security interest is perfected at the time the debtor receives possession of the inventory; and
- (b) the purchase money secured party gives notification in writing to the holder of the conflicting security interest, if the holder had filed a financing statement covering the same types of inventory (i) before the date of the filing made by the purchase money secured party, or (ii) before the beginning of the twenty-one-day period where the purchase money security interest is temporarily perfected without filing or possession (subsection (5) of Section 9-304 of this title); and
- (c) the holder of the conflicting security interest receives the notification within five (5) years before the debtor receives possession of the inventory; and

(d) the notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing such inventory by item or type.

(4) A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral or its proceeds if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within twenty (20) days thereafter.

(5) In all cases not governed by other rules stated in this section, including cases of purchase money security interests which do not qualify for the special priorities set forth in subsections (3) and (4) of this section, priority between conflicting security interests in the same collateral shall be determined according to the following rules:

(a) conflicting security interests rank according to priority in time of filing or perfection. Priority dates from the time a filing is first made covering the collateral or the time the security interest is first perfected, whichever is earlier, provided that there is no period thereafter when there is neither filing nor perfection; and

(b) so long as conflicting security interests are unperfected, the first to attach has priority.

(6) For the purposes of subsection (5) of this section, a date of filing or perfection as to collateral is also a date of filing or perfection as to proceeds.

(7) If future advances are made while a security interest is perfected by filing, the taking of possession, or pursuant to the provisions of Section 8-321 of this title on securities, the security interest has the same priority for the purposes of subsection (5) of this section with respect to the future advances as it does with respect to the first advance. If a commitment is made before or while the security interest is so perfected, the security interest has the same priority with respect to advances

made pursuant thereto. In other cases a perfected security interest has priority from the date the advance is made.

SECTION 10. This act shall become effective September 1, 1994.

44-2-8816

PS