STATE OF OKLAHOMA

1st Session of the 45th Legislature (1995)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 522 By: Hendrick of the Senate

and

Askins of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to Investment Securities; amending 12A O.S. 1991, Sections 8-101, 8-102, 8-103, 8-104, 8-105, 8-106, 8-107, 8-108, 8-201, 8-202, 8-203, 8-204, 8-205, 8-206, 8-207, 8-208, 8-301, 8-302, 8-303, 8-304, 8-305, 8-306, 8-307, 8-401, 8-402, 8-403, 8-404, 8-405 and 8-406, which relate to investment securities; modifying definitions; specifying rules for determining whether certain obligations and interests are securities or financial assets; providing requirements for determining acquisition of security on financial asset; specifying when a person has notice of an adverse claim; specifying requirements for control of a security; specifying when an indorsement, instruction or entitlement is effective; specifying warranties in direct and indirect holdings; providing for applicability of law; providing for clearing corporation rules; specifying creditor's legal process; making statute of frauds inapplicable; providing evidentiary rules concerning certain securities; providing rules and procedures concerning securities intermediaries and others; modifying and clarifying issuer definition; modifying issuer responsibilities and defenses; conforming language concerning staleness as notice of defects or defense; modifying effect of issuer's restrictions on transfers; clarifying effect of unauthorized signature on security certificates; deleting provisions concerning initial transaction statements; deleting provisions concerning duties of issuer with respect to certain pledges and pledgees; clarifying effect of signature on certain documents; providing for an issuer's lien; specifying procedures concerning overissues; specifying when delivery occurs for certain securities; specifying rights of purchasers; defining protected purchaser and rights thereof; providing for indorsements; providing rules related to instructions; specifying effect of guaranteeing signature, indorsement or instruction; providing for purchaser's right to requisites for registration of transfer; modifying duties concerning registering certain actions; clarifying assurances that indorsements or instructions are effective; providing requirements and procedures concerning demands that issuers not register transfers; providing procedures concerning wrongful registrations; modifying and clarifying procedure for replacement of certain security certificates; providing obligation to notify issuer of lost, destroyed or wrongfully taken

security certificates; modifying obligation of authenticating trustee, transfer agent and registrar under certain circumstances; providing for securities accounts and security entitlements; providing for adverse claims against entitlement holders; specifying property interest of entitlement holder in financial asset held by securities intermediary; specifying duties of securities intermediary to maintain financial assets; specifying duties of securities intermediary with respect to payments and distributions; requiring securities intermediary to exercise rights as directed by entitlement holder; requiring compliance with entitlement orders; requiring securities intermediary to change entitlement holder's position under certain circumstances; specifying duties of securities intermediary pursuant to other statutes or regulations; specifying rights of purchaser of security entitlement; specifying priority of security interests and entitlement holders; amending 12A O.S. 1991, Sections 1-105 and 1-206, which relate to general provisions of the Uniform Commercial Code; updating and conforming statutory cites; amending 12A O.S. 1991, Section 4-104, which relates to definitions concerning bank deposits and collections; updating and conforming statutory cites; amending 12A O.S. 1991, Section 5-114, which relates to letters of credit; updating and conforming statutory cites; amending 12A O.S. 1991, Sections 9-103.1, 9-105, as amended by Section 2, Chapter 143 O.S.L. 1994, 9-106, 9-203, as amended by Section 6, Chapter 46, O.S.L. 1994, 9-301, 9-302, as last amended by Section 1 of Enrolled House Bill No. 1012 of the 1st Session of the 45th Oklahoma Legislature, 9-304, 9-305, 9-306, as amended by Section 17, Chapter 342, O.S.L. 1994, 9-309 and 9-312, as amended by Section 9, Chapter 46, O.S.L. 1994 (12A O.S. Supp. 1994, Sections 9-105, 9-203, 9-306 and 9-312), which relate to secured transactions; specifying applicable jurisdictional law for perfecting security interest in certain investment property; modifying definitions; providing requirements and procedures concerning perfection and priority of security interests in investment property; providing instances under which security interest arises; providing for attachment and enforceability of security interest in investment property; specifying priority over unperfected security interests in investment property; modifying exceptions concerning filing financing statements to perfect security interest; modifying requirements for perfection of security interest in certain securities; modifying definition of proceeds; modifying exception to unperfection of security interest after receipt of proceeds; conforming references and citations; adding security interests on investment property to certain rules on priority; repealing 12A O.S. 1991, Sections 8-308, as amended by Section 3, Chapter 313, O.S.L. 1994, 8-309, 8-310, 8-311, 8-312, 8-313, 8-314, 8-315, 8-316, 8-317, 8-318, 8-319, 8-320, 8-321, 8-407 and 8-408 (12A O.S. Supp. 1994, Section 8-308), which relate to investment securities; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 12A O.S. 1991, Section 8-101, is amended to read as follows:

Section 8-101. Short Title.

This article ~~shall be known and~~ may be cited as Uniform Commercial Code - Investment Securities.

SECTION 2. AMENDATORY 12A O.S. 1991, Section 8-102, is amended to read as follows:

Section 8-102. Definitions ~~and Index of Definitions~~.

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

~~(a) A "certificated security" is a share, participation, or other interest in property of or an enterprise of the issuer or an obligation of the issuer which is:~~

~~(i) represented by an instrument issued in bearer or registered form;~~

~~(ii) of a type commonly dealt in on securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment; and~~

~~(iii) either one of a class or series or by its terms divisible into a class or series of shares, participations, interests, or obligations.~~

~~(b) An "uncertificated security" is a share, participation, or other interest in property or an enterprise of the issuer or an obligation of the issuer which is:~~

~~(i) not represented by an instrument and the transfer of which is registered upon books maintained for that purpose by or on behalf of the issuer;~~

~~(ii) of a type commonly dealt in on securities exchanges or markets; and~~

~~(iii) either one of a class or series or by its terms divisible into a class or series of shares, participations, interests, or obligations.~~

~~(c) A "security" is either a certificated or an uncertificated security. If a security is certificated, the terms "security" and "certificated security" may mean either the intangible interest, the instrument representing that interest, or both, as the context requires. A writing that is a certificated security is governed by this article and not by Article 3 of this title, even though it also meets the requirements of that article. This article does not apply to money. If a certificated security has been retained by or surrendered to the issuer or its transfer agent for reasons other than registration of transfer, other temporary purpose, payment, exchange, or acquisition by the issuer, that security shall be treated as an uncertificated security for purposes of this article.~~

~~(d) A certificated security is in "registered form" if:~~

~~(i) it specifies a person entitled to the security or the rights it represents; and~~

~~(ii) its transfer may be registered upon books maintained for that purpose by or on behalf of the issuer, or the security so states.~~

~~(e) A certificated security is in "bearer form" if it runs to bearer according to its terms and not by reason of any endorsement.~~

~~(2) A "subsequent purchaser" is a person who takes other than by original issue.~~

~~(3) A "clearing corporation" is a corporation registered as a "clearing agency" according to federal securities laws or a corporation:~~

~~(a) at least ninety percent (90%) of whose capital stock is held by or for one or more organizations, none of which, other than a national securities exchange or association, holds in excess of twenty percent (20%) of~~

~~the capital stock of the corporation, and each of which is:~~

~~(i) subject to supervision or regulation pursuant to the provisions of federal or state banking laws or state insurance laws, or~~

~~(ii) a broker or dealer or investment company registered pursuant to the provisions of federal securities laws, or~~

~~(iii) a national securities exchange or association registered pursuant to the provisions of federal securities laws; and~~

~~(b) any remaining capital stock of which is held by individuals who have purchased it at or prior to the time of their taking office as directors of the corporation and who have purchased only so much of such capital stock as is necessary to permit them to qualify as directors.~~

~~(4) A "custodian bank" is a bank or trust company that is supervised and examined by state or federal authority having supervision over banks and is acting as custodian for a clearing corporation.~~

~~(5)~~ (1) "Adverse claim" means a claim that a claimant has a property interest in a financial asset and that it is a violation of the rights of the claimant for another person to hold, transfer or deal with the financial asset;

(2) "Bearer form", as applied to a certificated security, means a form in which the security is payable to the bearer of the security certificate according to its term but not by reason of an indorsement;

(3) "Broker" means a person defined as a broker or dealer under the federal securities laws, but without excluding a bank acting in that capacity;

(4) "Certificated security" means a security that is represented by a certificate;

(5) "Clearing corporation" means:

(i) a person that is registered as a "clearing agency" under the federal securities laws;

(ii) a federal reserve bank; or

(iii) any other person that provides clearance or settlement services with respect to financial assets that would require it to register as a clearing agency under the federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including promulgation of rules, are subject to regulation by a federal or state governmental authority;

(6) "Communicate" means to:

(i) send a signed writing; or

(ii) transmit information by any mechanism agreed upon by the persons transmitting and receiving the information;

(7) "Entitlement holder" means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary. If a person acquires a security entitlement by virtue of paragraph (2) or (3) of subsection (b) of Section 8-501 of this title, that person is the entitlement holder;

(8) "Entitlement order" means a notification communicated to a securities intermediary directing transfer or redemption of a financial asset to which the entitlement holder has a security entitlement;

(9) "Financial asset", except as otherwise provided in Section 8-103 of this title, means:

(i) a security;

(ii) an obligation of a person or a share, participation or other interest in a person or in property or an enterprise of a person, which is, or is of a type, dealt in or traded on financial markets, or which is recognized in any

area in which it is issued or dealt in as a medium for investment; or

(iii) any property that is held by a securities intermediary for another person in a securities account if the securities intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under this article.

As context requires, the term means either the interest itself or the means by which a person's claim to it is evidenced, including a certificated or uncertificated security, a security certificate, or a security entitlement;

(10) "Good faith", for purposes of the obligation of good faith in the performance or enforcement of contracts or duties within this article, means honesty in fact and the observance of reasonable commercial standards of fair dealing;

(11) "Indorsement" means a signature that alone or accompanied by other words is made on a security certificate in registered form or on a separate document for the purpose of assigning, transferring or redeeming the security or granting a power to assign, transfer, or redeem it;

(12) "Instruction" means a notification communicated to the issuer of an uncertificated security which directs that the transfer of the security be registered or that the security be redeemed;

(13) "Registered form", as applied to a certificate security, means a form in which:

(i) the security certificate specifies a person entitled to the security; and

(ii) a transfer of the security may be registered upon books maintained for that purpose by or on behalf of the issuer, or the security certificate so states;

(14) "Securities intermediary" means:

(i) a clearing corporation; or

(ii) a person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity;

(15) "Security", except as otherwise provided in Section 8-103 of this title, means an obligation of an issuer or a share, participation, or other interest in an issuer or in property or an enterprise of an issuer:

(i) which is represented by a security certificate in bearer or registered form, or the transfer of which may be registered upon books maintained for that purpose by or on behalf of the issuer;

(ii) which is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations; and

(iii) which:

(A) is, or is of a type, dealt in or traded on securities exchanges or securities markets; or

(B) is a medium for investment and by its terms expressly provides that it is a security governed by this article;

(16) "Security certificate" means a certificate representing a security;

(17) "Security entitlement" means the rights and property interest of an entitlement holder with respect to a financial asset specified in Part 5 of this article; and

(18) "Uncertificated security" means a security that is not represented by a certificate.

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

~~"Adverse claim." Section 8-302.~~

~~"Bona fide purchaser." Section 8-302.~~

~~"Broker." Section 8-303.~~

~~"Debtor." Section 9-105.~~

~~"Financial intermediary." Section 8-313.~~

~~"Guarantee of the signature." Section 8-402.~~

~~"Initial transaction statement." Section 8-408.~~

~~"Instruction." Section 8-308.~~

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

"Appropriate person". Section 8-107.

"Control". Section 8-106.

"Delivery". Section 8-301.

"Investment company security". Section 8-103.

"Issuer~~.~~". Section 8-201.

"Overissue~~.~~". Section ~~8-104~~ 8-210.

~~"Secured party." Section 9-105.~~

~~"Security agreement." Section 9-105.~~

"Protected purchaser". Section 8-303.

"Securities account". Section 8-501.

~~(6)~~ (c) In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

(d) The characterization of a person, business, or transaction for purposes of this article does not determine the characterization of the person, business, or transaction for purposes of any other law, regulation, or rule.

SECTION 3. AMENDATORY 12A O.S. 1991, Section 8-103, is amended to read as follows:

Section 8-103. ~~Issuer's Lien~~ Rules for Determining Whether Certain Obligations and Interests Are Securities or Financial Assets.

(a) A ~~lien upon~~ share or similar equity interest issued by a corporation, business trust, joint stock company, or similar entity is a security ~~in favor of an issuer thereof is valid against a purchaser only if:~~

~~(a) the security is certificated and the right of the issuer to the lien is noted conspicuously thereon; or~~

~~(b) the security is uncertificated and a notation of the right of the issuer to the lien is contained in the initial transaction statement sent to the purchaser or, if his interest is transferred to him other than by registration of transfer, pledge, or release, the initial transaction statement sent to the registered owner or the registered pledgee~~.

(b) An "investment company security" is a security. "Investment company security" means a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust that is so registered, or a face-amount certificate issued by a face-amount certificate company that is so registered. Investment company security does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.

(c) An interest in a partnership or limited liability company is not a security unless it is dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that it is a security governed by this article, or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.

(d) A writing that is a security certificate is governed by this article and not by Article 3 of this code, even though it also meets the requirements of that article. However, a negotiable instrument governed by Article 3 of this code is a financial asset if it is held in a securities account.

(e) An option or similar obligation issued by a clearing corporation to its participants is not a security, but is a financial asset.

(f) A commodity contract, as defined in Section 9-115 of this title, is not a security or a financial asset.

SECTION 4. AMENDATORY 12A O.S. 1991, Section 8-104, is amended to read as follows:

Section 8-104. ~~Effect of Overissue; "Overissue"~~ Acquisition of Security on Financial Asset or Interest Therein.

~~(1) The provisions of~~ (a) A person acquires a security or an interest therein, under this article ~~which validate a security or compel its issue or reissue do not apply to the extent that validation, issue, or reissue would result in overissue; but~~, if:

~~(a) an identical security which does not constitute an overissue is reasonably available for purchase, the person entitled to issue or validation may compel the issuer to purchase the security for him and either to deliver a certificated security or to register the transfer of an uncertificated security to him, against surrender of any certificated security he holds; or~~

~~(b) a security is not so available for purchase, the person entitled to issue or validation may recover from the issuer the price he or the last purchaser for value paid for it with interest from the date of his demand.~~

~~(2) "Overissue" means the issue of securities in excess of the amount the issuer has corporate power to issue.~~

(1) the person is a purchaser to whom a security is delivered pursuant to Section 8-301 of this title; or

(2) the person acquires a security entitlement to the security pursuant to Section 8-501 of this title.

(b) A person acquires a financial asset, other than a security, or an interest therein, under this article, if the person acquires a security entitlement to the financial asset.

(c) A person who acquires a security entitlement to a security or other financial asset has the rights specified in Part 5 of this code, but is a purchaser of any security, security entitlement, or other financial asset held by the securities intermediary only to the extent provided in Section 8-503 of this title.

(d) Unless the context shows that a different meaning is intended, a person who is required by other law, regulation, rule, or agreement to transfer, deliver, present, surrender, exchange,

or otherwise put in the possession of another person a security or financial asset satisfied that requirement by causing the other person to acquire an interest in the security or financial asset pursuant to subsection (a) or (b) of this section.

SECTION 5. AMENDATORY 12A O.S. 1991, Section 8-105, is amended to read as follows:

Section 8-105. ~~Certificated Securities Negotiable; Statements and Instructions Not Negotiable; Presumptions~~ Notice of Adverse Claim.

~~(1) Certificated securities governed by this article are negotiable instruments.~~

~~(2) Statements as provided for in Section 46 of this act, notices, or the like, sent by the issuer of uncertificated securities and instructions (Section 8-308) are neither negotiable instruments nor certificated securities.~~

~~(3) In any action on~~ (a) A person has notice of an adverse claim if:

(1) the person knows of the adverse claim;

(2) the person is aware of facts sufficient to indicate that there is a significant probability that the adverse claim exists and deliberately avoids information that would establish the existence of the adverse claim; or

(3) the person has a duty, imposed by statute or regulation, to investigate whether an adverse claim exists, and the investigation so required would establish the existence of the adverse claim.

(b) Having knowledge that a financial asset or interest therein is or has been transferred by a representative imposes no duty of inquiry into the rightfulness of a transaction and is not notice of an adverse claim. However, a person who knows that a representative has transferred a financial asset or interest therein in a transaction that is, or whose proceeds are being used, for the individual benefit of the representative or otherwise in breach of duty has notice of an adverse claim.

(c) An act or event that creates a right to immediate performance of the principal obligation represented by a security certificate or sets a date on or after which the certificate is to be presented or surrendered for redemption or exchange does not itself constitute notice of an adverse claim except in the case of a transfer more than:

~~(a) unless specifically denied in the pleadings, each signature on a certificated security, in a necessary endorsement, on an initial transaction statement, or on an instruction, is admitted;~~

~~(b) if the effectiveness of a signature is put in issue, the burden of establishing it is on the party claiming under the signature, but the signature is presumed to be genuine or authorized;~~

~~(c) if signatures on a certificated security are admitted or established, production of the security entitles a holder to recover on it unless the defendant establishes a defense or a defect going to the validity of the security;~~

~~(d) if signatures on an initial transaction statement are admitted or established, the facts stated in the statement are presumed to be true as of the time of its issuance; and~~

~~(e) after it is shown that a defense or defect exists, the plaintiff has the burden of establishing that he or some person under whom he claims is a person against whom the defense or defect is ineffective (Section 8-202)~~

(1) one (1) year after a date set for presentment or surrender for redemption or exchange; or

(2) six (6) months after a date set for payment of money against presentation or surrender of the certificate, if money was available for payment on that date.

(d) A purchaser of a certificated security has notice of an adverse claim if the security certificate:

(1) whether in bearer or registered form, has been indorsed "for collection" or "for surrender" or for some other purpose not involving transfer; or

(2) is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor, but the mere writing of a name on the certificate is not such a statement.

(e) Filing of a financing statement under Article 9 of this code is not notice of an adverse claim to a financial asset.

SECTION 6. AMENDATORY 12A O.S. 1991, Section 8-106, is amended to read as follows:

Section 8-106. ~~Applicability~~ Control.

~~The law, including the conflict of laws rules, of the jurisdiction of organization of the issuer governs the validity of a security, the effectiveness of registration by the issuer, and the rights and duties of the issuer with respect to:~~

(a) ~~registration of transfer~~ A purchaser has "control" of a certificated security~~;~~

~~(b) registration of transfer, pledge, or release of an uncertificated security; and~~

~~(c) sending of statements of uncertificated securities.~~

in bearer form if the certificated security is delivered to the purchaser.

(b) A purchaser has "control" of a certificated security in registered form if the certificated security is delivered to the purchaser, and:

(1) the certificate is indorsed to the purchaser or in blank by an effective indorsement; or

(2) the certificate is registered in the name of the purchaser, upon original issue or registration of transfer by the issuer.

(c) A purchaser has "control" of an uncertificated security if:

(1) the uncertificated security is delivered to the purchaser; or

(2) the issuer has agreed that it will comply with instructions originated by the purchaser without further consent by the registered owner.

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

(1) the purchaser becomes the entitlement holder; or

(2) the securities intermediary has agreed that it will comply with entitlement orders originated by the purchaser without further consent by the entitlement holder.

(e) If an interest in a security entitlement is granted by the entitlement holder to the entitlement holder's own securities intermediary, the securities intermediary has control.

(f) A purchaser who has satisfied the requirements of paragraph (2) of subsection (c) or paragraph (2) of subsection (d) of this section has control even if the registered owner in the case of paragraph (2) of subsection (c) of this section or the entitlement holder in the case of paragraph (2) of subsection (d) of this section retains the right to make substitutions for the uncertificated security or security entitlement, to originate instructions or entitlement orders to the issuer or securities intermediary, or otherwise to deal with the uncertificated security or security entitlement.

(g) An issuer or a securities intermediary may not enter into an agreement of the kind described in paragraph (2) of subsection (c) or paragraph (2) of subsection (d) of this section without the consent of the registered owner or entitlement holder, but an issuer or a securities intermediary is not required to enter into such an agreement even though the registered owner or entitlement holder so directs. An issuer or securities intermediary that has entered into such an agreement is not required to confirm the existence of the agreement to another party unless requested to do so by the registered owner or entitlement holder.

SECTION 7. AMENDATORY 12A O.S. 1991, Section 8-107, is amended to read as follows:

Section 8-107. ~~Securities Transferable; Action for Price~~ Whether Indorsement, Instruction, or Entitlement Order is Effective.

~~(1) Unless otherwise agreed and subject to any applicable law or regulation respecting short sales, a person obligated to transfer securities may transfer any certificated~~

(a) "Appropriate person" means:

(1) with respect to an indorsement, the person specified by a security ~~of the specified issue in bearer form or registered in the name of the transferee, or endorsed to him or in blank, or he may transfer an equivalent uncertificated security to the transferee or a person designated by the transferee.~~

~~(2) If the buyer fails to pay the price as it comes due under a contract of sale, the seller may recover the price of:~~

~~(a) certificated securities accepted by the buyer;~~

~~(b) uncertificated securities that have been transferred to the buyer or a person designated by the buyer; and~~

~~(c) other securities if efforts at their resale would be unduly burdensome or if there is no readily available market for their resale.~~ certificate or by an effective special indorsement to be entitled to the security;

(2) with respect to an instruction, the registered owner of an uncertificated security;

(3) with respect to an entitlement order, the entitlement holder;

(4) if the person designated in paragraph (1), (2) or (3) of this subsection is deceased, the designated person's successor taking under other law or the designated person's personal representative acting for the estate of the decedent; or

(5) if the person designated in paragraph (1), (2) or (3) of this subsection lacks capacity, the designated person's guardian, conservator, or other

similar representative who has power under other law to transfer the security or financial asset.

(b) An indorsement, instruction, or entitlement order is effective if:

(1) it is made by the appropriate person;

(2) it is made by a person who has power under the law of agency to transfer the security or financial asset on behalf of the appropriate person, including, in the case of an instruction or entitlement order, a person who has control under paragraph (2) of subsection (c) or paragraph (2) of subsection (d) of Section 8-106 of this title; or

(3) the appropriate person has ratified it or is otherwise precluded from asserting its ineffectiveness.

(c) An indorsement, instruction, or entitlement order made by a representative is effective even if:

(1) the representative has failed to comply with a controlling instrument or with the law of the state having jurisdiction of the representative relationship, including any law requiring the representative to obtain court approval of the transaction; or

(2) the representative's action in making the indorsement, instruction, or entitlement order or using the proceeds of the transaction is otherwise a breach of duty.

(d) If a security is registered in the name of or specially indorsed to a person described as a representative, or if a securities account is maintained in the name of a person described as a representative, an indorsement, instruction, or entitlement order made by the person is effective even though the person is no longer serving in the described capacity.

(e) Effectiveness of an indorsement, instruction, or entitlement order is determined as of the date the indorsement, instruction, or entitlement order is made, and an indorsement,

instruction, or entitlement order does not become ineffective by reason of any later change of circumstances.

SECTION 8. AMENDATORY 12A O.S. 1991, Section 8-108, is amended to read as follows:

Section 8-108. ~~Registration of Pledge and Release of Uncertificated Securities~~ Warranties in Direct Holding.

(a) A person who transfers a certificated security ~~interest in an uncertificated security may be evidenced by the registration of pledge to the secured party or a person designated by him. There can be no more than one registered pledge of an uncertificated security at any time. The registered owner of an uncertificated security is the person in whose name the security is registered, even if the security is subject to a registered pledge. The rights of a registered pledgee of an uncertificated security pursuant to the provisions of this article are terminated by the registration of release~~ to a purchaser for value warrants to the purchaser, and an indorser, if the transfer is by indorsement, warrants to any subsequent purchaser, that:

(1) the certificate is genuine and has not been materially altered;

(2) the transferor or indorser does not know of any fact that might impair the validity of the security;

(3) there is no adverse claim to the security;

(4) the transfer does not violate any restriction on transfer;

(5) if the transfer is by indorsement, the indorsement is made by an appropriate person, or if the indorsement is by an agent, the agent has actual authority to act on behalf of the appropriate person; and

(6) the transfer is otherwise effective and rightful.

(b) A person who originates an instruction for registration of transfer of an uncertificated security to a purchaser for value warrants to the purchaser that:

(1) the instruction is made by an appropriate person, or if the instruction is by an agent, the agent has

actual authority to act on behalf of the appropriate person;

(2) the security is valid;

(3) there is no adverse claim to the security; and

(4) at the time the instruction is presented to the issuer:

(i) the purchaser will be entitled to the registration of transfer;

(ii) the transfer will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction;

(iii) the transfer will not violate any restriction on transfer; and

(iv) the requested transfer will otherwise be effective and rightful.

(c) A person who transfers an uncertificated security to a purchaser for value and does not originate an instruction in connection with the transfer warrants that:

(1) the uncertificated security is valid;

(2) there is no adverse claim to the security;

(3) the transfer does not violate any restriction on transfer; and

(4) the transfer is otherwise effective and rightful.

(d) A person who indorses a security certificate warrants to the issuer that:

(1) there is no adverse claim to the security; and

(2) the indorsement is effective.

(e) A person who originates an instruction for registration of transfer of an uncertificated security warrants to the issuer that:

(1) the instruction is effective; and

(2) at the time the instruction is presented to the issuer, the purchaser will be entitled to the registration of transfer.

(f) A person who presents a certificated security for registration of transfer or for payment or exchange warrants to the issuer that the person is entitled to the registration, payment, or exchange, but a purchaser for value and without notice of adverse claims to whom transfer is registered warrants only that the person has no knowledge of any unauthorized signature in a necessary indorsement.

(g) If a person acts as agent of another in delivering a certificated security to a purchaser, the identity of the principal was known to the person to whom the certificate was delivered, and the certificate delivered by the agent was received by the agent from the principal or received by the agent from another person at the direction of the principal, the person delivering the security certificate warrants that the delivering person has authority to act for the principal and does not know of any adverse claim to the certificated security.

(h) A secured party who redelivers a security certificate received, or after payment and on order of the debtor delivers the security certificate to another person, makes only the warranties of an agent under subsection (g) of this section.

(i) Except as otherwise provided in subsection (g) of this section, a broker acting for a customer makes to the issuer and a purchaser the warranties provided in subsections (a) through (f) of this section. A broker that delivers a security certificate to its customer, or causes its customer to be registered as the owner of an uncertificated security, makes to the customer the warranties provided in subsection (a) or (b) of this section, and has the rights and privileges of a purchaser under this section. The warranties of and in favor of the broker acting as an agent are in addition to applicable warranties given by and in favor of the customer.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 8-109 of Title 12A, unless there is created a duplication in numbering, reads as follows:

Warranties in Indirect Holding.

(a) A person who originates an entitlement order to a securities intermediary warrants to the securities intermediary that:

(1) the entitlement order is made by an appropriate person, or if the entitlement order is by an agent, the agent has actual authority to act on behalf of the appropriate person; and

(2) there is no adverse claim to the security entitlement.

(b) A person who delivers a security certificate to a securities intermediary for credit to a securities account or originates an instruction with respect to an uncertificated security directing that the uncertificated security be credited to a securities account makes to the securities intermediary the warranties specified in subsection (a) or (b) of Section 8-108 of this title.

(c) If a securities intermediary delivers a security certificate to its entitlement holder or causes its entitlement holder to be registered as the owner of an uncertificated security, the securities intermediary makes to the entitlement holder the warranties specified in subsection (a) or (b) of Section 8-108 of this title.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 8-110 of Title 12A, unless there is created a duplication in numbering, reads as follows:

Applicability; Choice of Law.

(a) The local law of the issuer's jurisdiction, as specified in subsection (d) of this section, governs:

(1) the validity of a security;

(2) the rights and duties of the issuer with respect to registration of transfer;

(3) the effectiveness of registration of transfer by the issuer;

(4) whether the issuer owes any duties to an adverse claimant to a security; and

(5) whether an adverse claim can be asserted against a person to whom transfer of a certificated or uncertificated security is registered or a person who obtains control of an uncertificated security.

(b) The local law of the securities intermediary's jurisdiction, as specified in subsection (e) of this section, governs:

(1) acquisition of a security entitlement from the securities intermediary;

(2) the rights and duties of the securities intermediary and entitlement holder arising out of a security entitlement;

(3) whether the securities intermediary owes any duties to an adverse claimant to a security entitlement; and

(4) whether an adverse claim can be asserted against a person who acquires a security entitlement from the securities intermediary or a person who purchases a security entitlement or interest therein from an entitlement holder.

(c) The local law of the jurisdiction in which a security certificate is located at the time of delivery governs whether an adverse claim can be asserted against a person to whom the security certificate is delivered.

(d) "Issuer's jurisdiction" means the jurisdiction under which the issuer of the security is organized or, if permitted by the law of that jurisdiction, the law of another jurisdiction specified by the issuer. An issuer organized under the law of this state may specify the law of another jurisdiction as the law governing the matters specified in paragraphs (2) through (5) of subsection (a) of this section.

(e) The following rules determine a "securities intermediary's jurisdiction" for purposes of this section:

(1) If an agreement between the securities intermediary and its entitlement holder specifies that it is governed by the law of a particular jurisdiction,

that jurisdiction is the securities intermediary's jurisdiction;

(2) If an agreement between the securities intermediary and its entitlement holder does not specify the governing law as provided in paragraph (1) of this subsection, but expressly specifies that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction;

(3) If an agreement between the securities intermediary and its entitlement holder does not specify a jurisdiction as provided in paragraph (1) or (2) of this subsection, the securities intermediary's jurisdiction is the jurisdiction in which is located the office identified in an account statement as the office serving the entitlement holder's account; and

(4) If an agreement between the securities intermediary and its entitlement holder does not specify a jurisdiction as provided in paragraph (1) or (2) of this subsection and an account statement does not identify an office serving the entitlement holder's account as provided in paragraph (3) of this subsection, the securities intermediary's jurisdiction is the jurisdiction in which is located the chief executive office of the securities intermediary.

(f) A securities intermediary's jurisdiction is not determined by the physical location of certificates representing financial assets, or by the jurisdiction in which is organized the issuer of the financial asset with respect to which an entitlement holder has a security entitlement, or by the location of facilities for data processing or other recordkeeping concerning the account.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 8-111 of Title 12A,

unless there is created a duplication in numbering, reads as follows:

Clearing Corporation Rules.

A rule adopted by a clearing corporation governing rights and obligations among the clearing corporation and its participants in the clearing corporation is effective even if the rule conflicts with this act and affects another party who does not consent to the rule.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 8-112 of Title 12A, unless there is created a duplication in numbering, reads as follows:

Creditor's Legal Process.

(a) The interest of a debtor in a certificated security may be reached by a creditor only by actual seizure of the security certificate by the officer making the attachment or levy, except as otherwise provided in subsection (d) of this section. However, a certificated security for which the certificate has been surrendered to the issuer may be reached by a creditor by legal process upon the issuer.

(b) The interest of a debtor in an uncertificated security may be reached by a creditor only by legal process upon the issuer at its chief executive office in the United States, except as otherwise provided in subsection (d) of this section.

(c) The interest of a debtor in a security entitlement may be reached by a creditor only by legal process upon the securities intermediary with whom the debtor's securities account is maintained, except as otherwise provided in subsection (d) of this section.

(d) The interest of a debtor in a certificated security for which the certificate is in the possession of a secured party, or in an uncertificated security registered in the name of a secured party, or a security entitlement maintained in the name of a secured party, may be reached by a creditor by legal process upon the secured party.

(e) A creditor whose debtor is the owner of a certificated security, uncertificated security, or security entitlement is entitled to aid from a court of competent jurisdiction, by injunction or otherwise, in reaching the certificated security, uncertificated security, or security entitlement or in satisfying the claim by means allowed at law or in equity in regard to property that cannot readily be reached by other legal process.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 8-113 of Title 12A, unless there is created a duplication in numbering, reads as follows:

Statute of Frauds Inapplicable.

A contract or modification of a contract for the sale or purchase of a security is enforceable whether or not there is a writing signed or record authenticated by a party against whom enforcement is sought, even if the contract or modification is not capable of performance within one (1) year of its making.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 8-114 of Title 12A, unless there is created a duplication in numbering, reads as follows:

Evidentiary Rules Concerning Certificated Securities.

The following rules apply in an action on a certificated security against the issuer:

(1) Unless specifically denied in the pleadings, each signature on a security certificate or in a necessary indorsement is admitted;

(2) If the effectiveness of a signature is put in issue, the burden of establishing effectiveness is on the party claiming under the signature, but the signature is presumed to be genuine or authorized;

(3) If signatures on a security certificate are admitted or established, production of the certificate entitles a holder to recover on it unless the defendant establishes a defense or a defect going to the validity of the security; and

(4) If it is shown that a defense or defect exists, the plaintiff has the burden of establishing that the plaintiff or some person under whom the plaintiff claims is a person against whom the defense or defect cannot be asserted.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 8-115 of Title 12A, unless there is created a duplication in numbering, reads as follows:

Securities Intermediary and Others Not Liable to Adverse Claimant.

A securities intermediary that has transferred a financial asset pursuant to an effective entitlement order, or a broker or other agent or bailee that has dealt with a financial asset at the direction of its customer or principal, is not liable to a person having an adverse claim to the financial asset, unless the securities intermediary, or broker or other agent or bailee:

(1) took the action after it has been served with an injunction, restraining order, or other legal process enjoining it from doing so, issued by a court of competent jurisdiction, and had a reasonable opportunity to act on the injunction, restraining order, or other legal process; or

(2) acted in collusion with the wrongdoer in violating the rights of the adverse claimant; or

(3) in the case of a security certificate that has been stolen, acted with notice of the adverse claim.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 8-116 of Title 12A, unless there is created a duplication in numbering, reads as follows:

Securities Intermediary as Purchaser for Value.

A securities intermediary that receives a financial asset and establishes a security entitlement to the financial asset in favor of an entitlement holder is a purchaser for value of the financial asset. A securities intermediary that acquires a security

entitlement to a financial asset from another securities intermediary acquires the security entitlement for value if the securities intermediary acquiring the security entitlement establishes a security entitlement to the financial asset in favor of an entitlement holder.

SECTION 17. AMENDATORY 12A O.S. 1991, Section 8-201, is amended to read as follows:

Section 8-201. ~~"~~Issuer~~"~~.

~~(1)~~ (a) With respect to ~~obligations~~ an obligation on or ~~defenses~~ a defense to a security, an "issuer" includes a person ~~who~~ that:

~~(a)~~ (1) places or authorizes the placing of ~~his~~ its name on a ~~certificated~~ security ~~(otherwise~~ certificate, other than as authenticating trustee, registrar, transfer agent, or the like~~)~~, to evidence ~~that it represents~~ a share, participation, or other interest in ~~his~~ its property or in an enterprise, or to evidence ~~his~~ its duty to perform an obligation represented by the ~~certificated security~~ certificate; ~~or~~

~~(b)~~ (2) creates ~~shares~~ a share, ~~participations~~ participation, or other ~~interests~~ interest in ~~his~~ its property or in an enterprise, or undertakes ~~obligations~~ an obligation, ~~which shares, participations, interests, or obligations are~~ that is an uncertificated ~~securities~~ security; ~~or~~

~~(c)~~ (3) directly or indirectly creates a fractional ~~interests~~ interest in ~~his~~ its rights or property, ~~which~~ if the fractional ~~interests are~~ interest is represented by ~~certificated securities~~ a security certificate; or

~~(d)~~ (4) becomes responsible for, or in place of ~~any other~~, another person described as an issuer in this section.

~~(2)~~ (b) With respect to ~~obligations~~ an obligation on or ~~defenses~~ defense to a security, a guarantor is an issuer to the

extent of ~~his~~ its guaranty, whether or not ~~his~~ its obligation is noted on a ~~certificated~~ security ~~or on statements of uncertificated securities sent pursuant to the provisions of Section 46 of this act~~ certificate.

~~(3)~~ (c) With respect to a registration of a transfer, ~~pledge, or release (Part 4 of this article), "~~issuer~~"~~ means a person on whose behalf transfer books are maintained.

SECTION 18. AMENDATORY 12A O.S. 1991, Section 8-202, is amended to read as follows:

Section 8-202. Issuer's Responsibility and Defenses; Notice of Defect or Defense.

~~(1)~~ (a) Even against a purchaser for value and without notice, the terms of a security include~~:~~

~~(a) if the security is certificated, those stated on the security;~~

~~(b) if the security is uncertificated, those contained in the initial transaction statement sent to such purchaser, or if his interest is transferred to him other than by registration of transfer, pledge, or release, the initial transaction statement sent to the registered owner or registered pledgee; and~~

~~(c) those~~ terms stated on the certificate and terms made part of the security by reference~~,~~ on the ~~certificated security or in the initial transaction statement,~~ certificate to another instrument, indenture, or document or to a constitution, statute, ordinance, rule, regulation, order, or the like, to the extent ~~that~~ the terms referred to do not conflict with ~~the~~ terms stated on the ~~certificated security or contained in the statement~~ certificate. A reference ~~according to the provisions of this paragraph~~ under this subsection does not of itself charge a purchaser for value with notice of a defect going to the validity of the security, even ~~though~~ if the ~~certificated security or statement~~ certificate expressly states that a person accepting it admits notice. The terms of an uncertificated security

include those stated in any instrument, indenture, or document or in a constitution, statute, ordinance, rule, regulation, order, or the like, pursuant to which the security is issued.

(b) The following rules apply if an issuer asserts that a security is not valid:

~~(2)~~ (1) A ~~certificated~~ security ~~in the hands of a purchaser for value or an uncertificated security as to which an initial transaction statement has been sent to a purchaser for value,~~ other than ~~a security~~ one issued by a government or governmental subdivision, agency, or ~~unit~~ instrumentality, even though issued with a defect going to its validity, is valid ~~with respect to the purchaser if he is~~ in the hands of a purchaser for value and without notice of the particular defect unless the defect involves a violation of a constitutional ~~provisions, in which~~ provision. In that case, the security is valid ~~with respect to a subsequent~~ in the hands of a purchaser for value and without notice of the defect, other than one who takes by original issue. ~~This subsection~~

(2) Paragraph (1) of this subsection applies to an issuer that is a government or governmental subdivision, agency, or ~~unit~~ instrumentality only if ~~either~~ there has been substantial compliance with the legal requirements governing the issue or the issuer has received a substantial consideration for the issue as a whole or for the particular security and a stated purpose of the issue is one for which the issuer has power to borrow money or issue the security.

~~(3)~~ (c) Except as otherwise provided ~~for in the case of certain unauthorized signatures (~~ in Section 8-205~~)~~ of this title, lack of genuineness of a certificated security ~~or an initial transaction statement~~ is a complete defense, even against a purchaser for value and without notice.

~~(4)~~ (d) All other defenses of the issuer of a ~~certificated or uncertificated~~ security, including nondelivery and conditional delivery of a certificated security, are ineffective against a

purchaser for value who has taken the certificated security without notice of the particular defense.

~~(5) Nothing in this~~ (e) This section ~~shall be construed to~~ does not affect the right of a party to ~~a~~ cancel a contract for a security "when, as and if issued" or ~~a~~ "when distributed" ~~contract to cancel the contract~~ in the event of a material change in the character of the security that is the subject of the contract or in the plan or arrangement pursuant to which the security is to be issued or distributed.

(f) If a security is held by a securities intermediary against whom an entitlement holder has a security entitlement with respect to the security, the issuer may not assert any defense that the issuer could not assert if the entitlement holder held the security directly.

SECTION 19. AMENDATORY 12A O.S. 1991, Section 8-203, is amended to read as follows:

Section 8-203. Staleness as Notice of Defects or Defenses.

~~(1)~~ After an act or event, other than a call that has been revoked, creating a right to immediate performance of the principal obligation represented by a certificated security or ~~that sets~~ setting a date on or after which the security is to be presented or surrendered for redemption or exchange, a purchaser is charged with notice of any defect in its issue or defense of the issuer, if the act or event:

~~(a)~~ (1) ~~the act or event is one requiring~~ requires the payment of money, the delivery of a certificated ~~securities~~ security, the registration of transfer of an uncertificated ~~securities~~ security, or any of ~~these~~ them on presentation or surrender of the ~~certificated~~ security certificate, the ~~funds~~ money or ~~securities are~~ security is available on the date set for payment or exchange, and ~~he~~ the purchaser takes the security more than one (1) year after that date; ~~and~~ or

~~(b)~~ (2) ~~the act or event~~ is not covered by paragraph ~~(a) of subsection~~ (1) of this ~~section~~ subsection and ~~he~~ the

purchaser takes the security more than two (2) years after the date set for surrender or presentation or the date on which performance became due.

~~(2) A call that has been revoked is not within the purview of subsection (1) of this section.~~

SECTION 20. AMENDATORY 12A O.S. 1991, Section 8-204, is amended to read as follows:

Section 8-204. Effect of Issuer's Restrictions on Transfer.

A restriction on transfer of a security imposed by the issuer, even ~~though~~ if otherwise lawful, is ineffective against ~~any~~ a person without ~~actual~~ knowledge of ~~it~~ the restriction unless:

~~(a)~~ (1) the security is certificated and the restriction is noted conspicuously ~~thereon~~ on the security certificate; or

~~(b)~~ (2) the security is uncertificated and ~~a notation of the restriction is contained in the initial transaction statement sent to the person or, if his interest is transferred to him other than by registration of transfer, pledge, or release, the initial transaction statement sent to the registered owner or the registered pledgee~~ the registered owner has been notified of the restriction.

SECTION 21. AMENDATORY 12A O.S. 1991, Section 8-205, is amended to read as follows:

Section 8-205. Effect of Unauthorized Signature on ~~Certificated~~ Security ~~or Initial Transaction Statement~~ Certificate.

An unauthorized signature placed on a ~~certificated~~ security ~~prior to~~ certificate before or in the course of issue ~~or placed on an initial transaction statement~~ is ineffective, but the signature is effective in favor of a purchaser for value of the certificated security ~~or a purchaser for value of an uncertificated security to whom such initial transaction statement has been sent,~~ if the purchaser is without notice of the lack of authority and the signing has been done by:

~~(a)~~ (1) an authenticating trustee, registrar, transfer agent, or other person entrusted by the issuer with the signing of the security~~,~~ certificate or of similar ~~securities~~ security certificates, or ~~of initial transaction statements or~~ the immediate preparation for signing of any of them; or

~~(b)~~ (2) an employee of the issuer, or of any of the ~~foregoing~~ persons listed in paragraph (1) of this subsection, entrusted with responsible handling of the security ~~or initial transaction statement~~ certificate.

SECTION 22. AMENDATORY 12A O.S. 1991, Section 8-206, is amended to read as follows:

Section 8-206. Completion or Alteration of ~~Certificated~~ Security ~~or Initial Transaction Statement~~ Certificate.

(~~1)~~ (a) If a ~~certificated~~ security certificate contains the signatures necessary to its issue or transfer but is incomplete in any other respect:

~~(a)~~ (1) any person may complete it by filling in the blanks as authorized; and

~~(b)~~ (2) even ~~though~~ if the blanks are incorrectly filled in, the security certificate as completed is enforceable by a purchaser who took it for value and without notice of the incorrectness.

~~(2)~~ (b) A complete ~~certificated~~ security certificate that has been improperly altered, even ~~though~~ if fraudulently, remains enforceable, but only according to its original terms.

~~(3) If an initial transaction statement contains the signatures necessary to its validity, but is incomplete in any other respect:~~

~~(a) any person may complete it by filling in the blanks as authorized; and~~

~~(b) even though the blanks are incorrectly filled in, the statement as completed is effective in favor of the person to whom it is sent if he purchased the~~

~~security referred to therein for value and without notice of the incorrectness.~~

~~(4) A complete initial transaction statement that has been improperly altered, even though fraudulently, is effective in favor of a purchaser to whom it has been sent, but only according to its original terms.~~

SECTION 23. AMENDATORY 12A O.S. 1991, Section 8-207, is amended to read as follows:

Section 8-207. Rights and Duties of Issuer with Respect to Registered Owners ~~and Registered Pledgees~~.

~~(1) Prior to~~ (a) Before due presentment for registration of transfer of a certificated security in registered form or of an instruction requesting registration of transfer of an uncertificated security, the issuer or indenture trustee may treat the registered owner as the person exclusively entitled to vote, ~~to~~ receive notifications, and otherwise ~~to~~ exercise all the rights and powers of an owner.

~~(2) Subject to the provisions of subsections (3), (4) and (6) of this section, the issuer or indenture trustee may treat the registered owner of an uncertificated security as the person exclusively entitled to vote, to receive notifications, and otherwise to exercise all the rights and powers of an owner.~~

~~(3) The registered owner of an uncertificated security that is subject to a registered pledge is not entitled to registration of transfer prior to the due presentment to the issuer of a release instruction. The exercise of conversion rights with respect to a convertible uncertificated security is a transfer within the meaning of this section.~~

~~(4) Upon due presentment of a transfer instruction from the registered pledgee of an uncertificated security, the issuer shall:~~

~~(a) register the transfer of the security to the new owner free of pledge, if the instruction specifies a new owner (who may be the registered pledgee) and does not specify a pledgee; or~~

~~(b) register the transfer of the security to the new owner subject to the interest of the existing pledgee, if the instruction specifies a new owner and the existing pledgee; or~~

~~(c) register the release of the security from the existing pledge and register the pledge of the security to the other pledgee, if the instruction specifies the existing owner and another pledgee.~~

~~(5) Continuity of perfection of a security interest is not broken by registration of transfer according to the provisions of paragraph (b) of subsection (4) of this section or by registration of release and pledge according to the provisions of paragraph (c) of subsection (4) of this section, if the security interest is assigned.~~

~~(6) If an uncertificated security is subject to a registered pledge:~~

~~(a) any uncertificated securities issued in exchange for or distributed with respect to the pledged security shall be registered subject to the pledge;~~

~~(b) any certificated securities issued in exchange for or distributed with respect to the pledged security shall be delivered to the registered pledgee; and~~

~~(c) any money paid in exchange for or in redemption of part or all of the security shall be paid to the registered pledgee.~~

~~(7) Nothing in this article shall be construed to~~ (b) This article does not affect the liability of the registered owner of a security for ~~calls, assessments~~ a call, assessment, or the like.

SECTION 24. AMENDATORY 12A O.S. 1991, Section 8-208, is amended to read as follows:

Section 8-208. Effect of Signature of Authenticating Trustee, Registrar, or Transfer Agent.

~~(1)~~ (a) A person ~~placing his signature upon a certificated security or an initial transaction statement~~ signing a security certificate as authenticating trustee, registrar, transfer agent, or the like, warrants to a purchaser for value of the certificated

security ~~or a purchaser for value of an uncertificated security to whom the initial transaction statement has been sent~~, if the purchaser is without notice of ~~the~~ a particular defect, that:

~~(a)~~ (1) the ~~certificated security or initial transaction statement~~ certificate is genuine;

~~(b)~~ (2) ~~his~~ the person's own participation in the issue ~~or registration of the transfer, pledge, or release~~ of the security is within ~~his~~ the person's capacity and within the scope of the authority received by ~~him~~ the person from the issuer; and

~~(c)~~ (3) ~~he~~ the person has reasonable grounds to believe that the certificated security is in the form and within the amount the issuer is authorized to issue.

~~(2)~~ (b) Unless otherwise agreed, a person ~~by so placing his signature~~ signing under subsection (a) of this section does not assume responsibility for the validity of the security in other respects.

SECTION 25. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 8-209 of Title 12A, unless there is created a duplication in numbering, reads as follows:

Issuer's Lien.

A lien in favor of an issuer upon certificated security is valid against a purchaser only if the right of the issuer to the lien is noted conspicuously on the security certificate.

SECTION 26. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 8-210 of Title 12A, unless there is created a duplication in numbering, reads as follows:

Overissue.

(a) In this section, "overissue" means the issue of securities in excess of the amount the issuer has corporate power to issue, but an overissue does not occur if appropriate action has cured the overissue.

(b) Except as otherwise provided in subsections (c) and (d) of this section, the provisions of this article which validate a

security or compel its issue or reissue do not apply to the extent that validation, issue, or reissue would result in overissue.

(c) If an identical security not constituting an overissue is reasonably available for purchase, a person entitled to issue or validation may compel the issuer to purchase the security and deliver it if certificated or register its transfer if uncertificated, against surrender of any security certificate the person holds.

(d) If a security is not reasonably available for purchase, a person entitled to issue or validation may recover from the issuer the price the person or the last purchaser for value paid for it with interest from the date of the person's demand.

SECTION 27. AMENDATORY 12A O.S. 1991, Section 8-301, is amended to read as follows:

Section 8-301. ~~Rights Acquired by Purchaser~~ Delivery.

~~(1) Upon transfer of a~~ (a) Delivery of a certificated security to a purchaser ~~(Section 8-313), the purchaser acquires the rights in the security which his transferor had or had actual authority to convey unless the purchaser's rights are limited by the provisions of subsection (4) of Section 8-302 of this title.~~

~~(2) A transferee of a limited interest acquires rights only to the extent of the interest transferred. The creation or release of a security interest in a security is a transfer of a limited interest in that security~~ occurs when:

(1) the purchaser acquires possession of the security certificate;

(2) another person, other than a securities intermediary, either acquires possession of the security certificate on behalf of the purchaser or, having previously acquired possession of the certificate, acknowledges that it holds for the purchaser; or

(3) a securities intermediary acting on behalf of the purchaser acquires possession of the security certificate, only if the certificate is in

registered form and has been specially indorsed to the purchaser by an effective indorsement.

(b) Delivery of an uncertificated security to a purchaser occurs when:

(1) the issuer registers the purchaser as the registered owner, upon original issue or registration of transfer; or

(2) another person, other than a securities intermediary, either becomes the registered owner of the uncertificated security on behalf of the purchaser or, having previously become the registered owner, acknowledges that it holds for the purchaser.

SECTION 28. AMENDATORY 12A O.S. 1991, Section 8-302, is amended to read as follows:

Section 8-302. ~~"Bona Fide Purchaser"; "Adverse Claim"; Title Acquired by Bona Fide Purchaser~~ Rights of Purchaser.

~~(1) A "bona fide purchaser" is a purchaser for value in good faith and without notice of any adverse claim:~~

~~(a) who takes delivery of a certificated security in bearer form or in registered form, issued or endorsed to him or in blank;~~

~~(b) to whom the transfer, pledge or release of an uncertificated security is registered on the books of the issuer; or~~

~~(c) to whom a security is transferred under the provisions of paragraph (c), (d)(i), or (g) of Section 8-313(1).~~

~~(2) "Adverse claim" includes a claim that a transfer was or would be wrongful or that a particular adverse person is the owner of or has an interest in the security.~~

~~(3) A bona fide purchaser in addition to acquiring the rights of a purchaser (Section 8-301) also acquires his interest in the security free of any adverse claim.~~

~~(4) Regardless of the provisions of subsection (1) of Section 8-301 of this title, the transferee of a particular~~

(a) Except as otherwise provided in subsections (b) and (c) of this section, upon delivery of a certificated or uncertificated security to a purchaser, the purchaser acquires all rights in the security that the transferor had or had power to transfer.

(b) A purchaser of a limited interest acquires rights only to the extent of the interest purchased.

(c) A purchaser of a certificated security who ~~has been a party to any fraud or illegality affecting the security, or who as a prior holder of that certificated security had notice of an adverse claim, cannot improve his position by taking from a bona fide purchaser~~ as a previous holder had notice of an adverse claim does not improve its position by taking from a protected purchaser.

SECTION 29. AMENDATORY 12A O.S. 1991, Section 8-303, is amended to read as follows:

Section 8-303. ~~"Broker"~~ Protected Purchaser.

(a) "Protected purchaser" means a ~~person engaged for all or part of his time in the business of buying and selling securities, who in the transaction concerned acts for, buys a security from, or sells a security to, a customer. Nothing in this article determines the capacity in which a person acts for purposes of any other statute or rule to which the person is subject~~ purchaser of a certificated or uncertificated security, or of an interest therein, who:

(1) gives value;

(2) does not have notice of any adverse claim to the security; and

(3) obtains control of the certificated or uncertificated security.

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

SECTION 30. AMENDATORY 12A O.S. 1991, Section 8-304, is amended to read as follows:

Section 8-304. ~~Notice to Purchaser of Adverse Claims~~ Indorsement.

~~(1) A purchaser (including a broker for the seller or buyer, but excluding an intermediary bank)~~

(a) An indorsement may be in blank or special. An indorsement in blank includes an indorsement to bearer. A special indorsement specifies to whom a security is to be transferred or who has power to transfer it. A holder may convert a blank indorsement to a special indorsement.

(b) An indorsement purporting to be only of part of a ~~certificated~~ security ~~is charged with notice of adverse claims if:~~

~~(a) the security, whether in bearer or registered form, has been endorsed "for collection" or "for surrender" or for some other purpose not involving transfer; or~~

~~(b) the security is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor. The mere writing of a name on a security is not such a statement.~~

~~(2) A purchaser (including a broker for the seller or buyer, but excluding an intermediary bank) to whom the transfer, pledge, or release of an uncertificated security is registered is charged with notice of adverse claims as to which the issuer has a duty under Section 8-403(4) at the time of registration and which are noted in the initial transaction statement sent to the purchaser or, if his interest is transferred to him other than by registration of transfer, pledge, or release, the initial transaction statement sent to the registered owner or the registered pledgee.~~

~~(3) The fact that the purchaser (including a broker for the seller or buyer) of a certificated or uncertificated security has notice that the security is held for a third person or is registered in the name of or endorsed by a fiduciary does not create a duty of inquiry into the rightfulness of the transfer or constitute constructive notice of adverse claims. However, if the purchaser (excluding an intermediary bank) has knowledge that the proceeds are being used or the transaction is for the individual benefit of the fiduciary or otherwise in breach of duty, the purchaser is charged with notice of adverse claims~~ certificate

representing units intended by the issuer to be separately transferable is effective to the extent of the indorsement.

(c) An indorsement, whether special or in blank, does not constitute a transfer until delivery of the certificate on which it appears or, if the indorsement is on a separate document, until delivery of both the document and the certificate.

(d) If a security certificate in registered form has been delivered to a purchaser without a necessary indorsement, the purchaser may become a protected purchaser only when the indorsement is supplied. However, against a transferor, a transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary indorsement supplied.

(e) An indorsement of a security certificate in bearer form may give notice of an adverse claim to the certificate, but it does not otherwise affect a right to registration that the holder possesses.

(f) Unless otherwise agreed, a person making an indorsement assumes only the obligations provided in Section 8-108 of this title and not an obligation that the security will be honored by the issuer.

SECTION 31. AMENDATORY 12A O.S. 1991, Section 8-305, is amended to read as follows:

Section 8-305. ~~Staleness as Notice of Adverse Claims~~ Instruction.

~~An act or event that creates a right to immediate performance of the principal obligation represented by a certificated security or sets a date on or after which a certificated security is to be presented or surrendered for redemption or exchange does not itself constitute any notice of adverse claims except in the case of a transfer:~~

~~(a) after one (1) year from any date set for presentment or surrender for redemption or exchange; or~~

~~(b) after six (6) months from any date set for payment of money against presentation or surrender of~~

(a) If an instruction has been originated by an appropriate person but is incomplete in any other respect, any person may complete it as authorized and the issuer may rely on it as completed, even though it has been completed incorrectly.

(b) Unless otherwise agreed, a person initiating an instruction assumes only the obligations imposed by Section 8-108 of this title and not an obligation that the security ~~if funds are available for payment on that date~~ will be honored by the issuer.

SECTION 32. AMENDATORY 12A O.S. 1991, Section 8-306, is amended to read as follows:

Section 8-306. ~~Warranties on Presentment and Transfer of Certificated Securities; Warranties of Originators of Instructions~~ Effect of Guaranteeing Signature, Indorsement, or Instruction.

~~(1)~~ (a) A person who ~~presents a certificated security for registration of transfer or for payment or exchange warrants to the issuer that he is entitled to the registration, payment, or exchange. But, a purchaser for value and without notice of adverse claims who receives a new, reissued, or re-registered certificated security on registration of transfer or receives an initial transaction statement confirming the registration of transfer of an equivalent uncertificated security to him warrants only that he has no knowledge of any unauthorized signature (Section 8-311) in a necessary endorsement.~~

~~(2) A person by transferring a certificated security to a purchaser for value warrants only that:~~

~~(a) his transfer is effective and rightful;~~

~~(b) the security is genuine and has not been materially altered; and~~

~~(c) he knows of no fact which might impair the validity of the security.~~

~~(3) If a certificated security is delivered by an intermediary known to be entrusted with delivery of the security on behalf of another or with collection of a draft or other claim against delivery, the intermediary by delivery warrants only his own good faith and authority, even though he has purchased or made advances against the claim to be collected against the delivery.~~

~~(4) A pledgee or other holder for security who redelivers a certificated security received, or after payment and on order of the debtor delivers that security to a third person, makes only the warranties of an intermediary pursuant to the provisions of subsection (3) of this section.~~

~~(5) A person who originates an instruction warrants to the issuer that:~~

~~(a) he is an appropriate person to originate the instruction; and~~

~~(b) at the time the instruction is presented to the issuer he will be entitled to the registration of transfer, pledge, or release.~~

~~(6) A person who originates an instruction warrants to any person specially guaranteeing his signature (subsection (3) of Section 8-312 of this title) that:~~

~~(a) he is an appropriate person to originate the instruction; and~~

~~(b) at the time the instruction is presented to the issuer (i) he will be entitled to the registration of transfer, pledge, or release; and~~

~~(ii) the transfer, pledge, or release requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction.~~

~~(7) A person who originates an instruction warrants to a purchaser for value and to any person guaranteeing the instruction (Section 8-312(6)) that:~~

~~(a) he is an appropriate person to originate the instruction;~~

~~(b) the uncertificated security referred to therein is valid; and~~

~~(c) at the time the instruction is presented to the issuer~~

~~(i) the transferor will be entitled to the registration of transfer, pledge, or release;~~

~~(ii) the transfer, pledge, or release requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction; and~~

~~(iii) the requested transfer, pledge, or release will be rightful.~~

~~(8) If a secured party is the registered pledgee or the registered owner of an uncertificated security, a person who originates an instruction of release or transfer to the debtor or, after payment and on order of the debtor, a transfer instruction to a third person, warrants to the debtor or the third person only that he is an appropriate person to originate the instruction and at the time the instruction is presented to the issuer, the transferor will be entitled to the registration of release or transfer. If a transfer instruction to a third person who is a purchaser for value is originated on order of the debtor, the debtor makes to the purchaser the warranties of paragraphs (b), (c)(ii) and (c)(iii) of subsection (7) of this section.~~

~~(9) A person who transfers an uncertificated security to a purchaser for value and does not originate an instruction in connection with the transfer warrants only that:~~

~~(a) his transfer is effective and rightful; and~~

~~(b) the uncertificated security is valid.~~

~~(10) A broker gives to his customer and to the issuer and a purchaser the applicable warranties provided for in this section and has the rights and privileges of a purchaser pursuant to the provisions of this section. The warranties of and in favor of the broker acting as an agent are in addition to applicable warranties given by and in favor of his customer~~ guarantees a signature of an indorser of a security certificate warrants that at the time of signing:

(1) the signature was genuine;

(2) the signer was an appropriate person to indorse, or if the signature is by an agent, the agent had actual authority to act on behalf of the appropriate person; and

(3) the signer had legal capacity to sign.

(b) A person who guarantees a signature of the originator of an instruction warrants that at the time of signing:

(1) the signature was genuine;

(2) the signer was an appropriate person to originate the instruction, or if the signature is by an agent, the agent had actual authority to act on behalf of the appropriate person, if the person specified in the instruction as the registered owner was, in fact, the registered owner, as to which fact the signature guarantor does not make a warranty; and

(3) the signer had legal capacity to sign.

(c) A person who specially guarantees the signature of an originator of an instruction make the warranties of a signature guarantor under subsection (b) of this section and also warrants that at the time the instruction is presented to the issuer:

(1) the person specified in the instruction as the registered owner of the uncertificated security will be the registered owner; and

(2) the transfer of the uncertificated security requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction.

(d) A guarantor under subsections (a) and (b) of this section or a special guarantor under subsection (c) of this section does not otherwise warrant the rightfulness of the transfer.

(e) A person who guarantees an indorsement of a security certificate makes the warranties of a signature guarantor under subsection (a) of this section and also warrants the rightfulness of the transfer in all respects.

(f) A person who guarantees an instruction requesting the transfer of an uncertificated security makes the warranties of a special signature guarantor under subsection (c) of this section and also warrants the rightfulness of the transfer in all respects.

(g) An issuer may not require a special guaranty of signature, a guaranty of indorsement, or a guaranty of instruction as a condition to registration of transfer.

(h) The warranties under this section are made to a person taking or dealing with the security in reliance on the guaranty, and the guarantor is liable to the person for loss resulting from their breach. An indorser or originator of an instruction whose signature, indorsement, or instruction has been guaranteed is liable to a guarantor for any loss suffered by the guarantor as a result of breach of the warranties of the guarantor.

SECTION 33. AMENDATORY 12A O.S. 1991, Section 8-307, is amended to read as follows:

Section 8-307. ~~Effect of Delivery Without Endorsement; Right to Compel Endorsement~~ Purchaser's Right to Requisites for Registration of Transfer.

~~If~~ Unless otherwise agreed, the transferor of a ~~certificated~~ security ~~in registered form has been delivered to a purchaser without a necessary endorsement he may become a bona fide purchaser only as of the time the endorsement is supplied; but against the transferor, the transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary endorsement supplied~~ on due demand shall supply the purchaser with proof of authority to transfer or with any other requisite necessary to obtain registration of the transfer of the security, but if the transfer is not for value, a transferor need not comply unless the purchaser pays the necessary expenses. If the transferor fails within a reasonable time to comply with the demand, the purchaser may reject or rescind the transfer.

SECTION 34. AMENDATORY 12A O.S. 1991, Section 8-401, is amended to read as follows:

Section 8-401. Duty of Issuer to Register Transfer~~, Pledge, or Release~~.

~~(1)~~ (a) If a certificated security in registered form is presented to ~~the~~ an issuer with a request to register transfer or an instruction is presented to ~~the~~ an issuer with a request to register transfer~~, pledge, or release~~ of an uncertificated security, the issuer shall register the transfer~~, pledge, or release~~ as requested if:

~~(a) the security is endorsed or the instruction was originated by the appropriate person or persons (Section 8-308);~~

~~(b) reasonable assurance is given that those endorsements or instructions are genuine and effective (Section 8-402);~~

~~(c) the issuer has no duty as to adverse claims or has discharged the duty (Section 8-403);~~

~~(d) any applicable law relating to the collection of taxes has been complied with; and~~

~~(e) the transfer, pledge, or release is in fact rightful or is to a bona fide purchaser~~

(1) under the terms of the security the person seeking registration of transfer is eligible to have the security registered in its name;

(2) the indorsement or instruction is made by the appropriate person or by an agent who has actual authority to act on behalf of the appropriate person;

(3) reasonable assurance is given that the indorsement or instruction is genuine and authorized;

(4) any applicable law relating to the collection of taxes has been complied with;

(5) the transfer does not violate any restriction on transfer imposed by the issuer in accordance with Section 8-204 of this title;

(6) a demand that the issuer not register transfer has not become effective under Section 8-403 of this

title, or the issuer has complied with subsection (b) of Section 8-403 of this title but no legal process or indemnity bond is obtained as provided in subsection (d) of Section 8-403 of this title; and

(7) the transfer is in fact rightful or is to a protected purchaser.

~~(2)~~ (b) If an issuer is under a duty to register a transfer~~, pledge, or release~~ of a security, the issuer is ~~also~~ liable to ~~the~~ a person presenting a certificated security or an instruction for registration or ~~his~~ to the person's principal for loss resulting from ~~any~~ unreasonable delay in registration or ~~from~~ failure or refusal to register the transfer~~, pledge, or release~~.

SECTION 35. AMENDATORY 12A O.S. 1991, Section 8-402, is amended to read as follows:

Section 8-402. Assurance that ~~Endorsements and Instructions Are~~ Indorsement or Instruction is Effective.

~~(1) The~~ (a) An issuer may require the following assurance that each necessary ~~endorsement of a certificated security~~ indorsement or each instruction ~~(Section 8-308)~~ is genuine and ~~effective~~ authorized:

~~(a)~~ (1) in all cases, a ~~guarantee~~ guaranty of the signature ~~(subsection (1) or (2) of Section 8-312 of this title)~~ of the person ~~endorsing a certificated security~~ making an indorsement or originating an instruction including, in the case of an instruction, ~~a warranty of the taxpayer identification number or, in the absence thereof, other~~ reasonable assurance of identity;

~~(b)~~ (2) if the ~~endorsement~~ indorsement is made or the instruction is originated by an agent, appropriate assurance of actual authority to sign;

~~(c)~~ (3) if the ~~endorsement~~ indorsement is made or the instruction is originated by a fiduciary pursuant to paragraph (4) or (5) of subsection (a) of Section 8-107 of this title, appropriate evidence of appointment or incumbency;

~~(d)~~ (4) if there is more than one fiduciary, reasonable assurance that all who are required to sign have done so; and

~~(e)~~ (5) if the ~~endorsement~~ indorsement is made or the instruction is originated by a person not covered by ~~any of the foregoing, assurance appropriate to the case corresponding as nearly as may be to the foregoing~~ another provision of this subsection, assurance appropriate to the case corresponding as nearly as may be to the provisions of this subsection.

~~(2) A "guarantee~~

(b) An issuer may elect to require reasonable assurance beyond that specified in this section.

(c) In this section:

(1) "Guaranty of the signature" ~~in subsection (1) of this section~~ means a ~~guarantee~~ guaranty signed by or on behalf of a person reasonably believed by the issuer to be responsible. ~~The~~ An issuer may adopt standards with respect to responsibility if they are not manifestly unreasonable.

~~(3)~~ (2) "Appropriate evidence of appointment or incumbency" ~~in subsection (1) of this section~~ means:

~~(a)~~ (i) in the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of ~~that~~ the court or an officer thereof and dated within sixty (60) days before the date of presentation for transfer~~, pledge, or release~~; or

~~(b)~~ (ii) in any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by ~~the~~ an issuer to be responsible or, in the absence of that document or certificate, other evidence the issuer reasonably ~~deemed by the issuer to be~~ considers appropriate. ~~The issuer may adopt~~

~~standards with respect to the evidence if they are not manifestly unreasonable. The issuer is not charged with notice of the contents of any document obtained pursuant to this paragraph (b) except to the extent that the contents relate directly to the appointment or incumbency.~~

~~(4) The issuer may elect to require reasonable assurance beyond that specified in this section, but if it does so and, for a purpose other than that specified in subsection (3) (b), both requires and obtains a copy of a will, trust, indenture, articles of copartnership, bylaws, or other controlling instrument, it is charged with notice of all matters contained therein affecting the transfer, pledge, or release.~~

SECTION 36. AMENDATORY 12A O.S. 1991, Section 8-403, is amended to read as follows:

Section 8-403. ~~Issuer's Duty as to Adverse Claims~~ Demand that Issuer not Register Transfer.

~~(1) An issuer to whom~~ (a) A person who is an appropriate person to make an indorsement or originate an instruction may demand that the issuer not register transfer of a security by communicating to the issuer a notification that identifies the registered owner and the issue of which the security is a part and provides an address for communications directed to the person making the demand. The demand is effective only if it is received by the issuer at a time and in a manner affording the issuer reasonable opportunity to act on it.

(b) If a certificated security ~~is presented for registration shall inquire into adverse claims if:~~

~~(a) a written notification of an adverse claim is received at a time and in a manner affording the issuer a reasonable opportunity to act on it prior to the issuance of a new, reissued, or re-registered certificated security, and the notification identifies the claimant, the registered owner, and the issue of which the security is a part, and~~

~~provides an address for communications directed to the claimant; or~~

~~(b) the issuer is charged with notice of an adverse claim from a controlling instrument it has elected to require pursuant to the provisions of subsection (4) of Section 8-402 of this title.~~

~~(2) The issuer may discharge any duty of inquiry by any reasonable means, including notifying an adverse claimant by registered or certified mail at the address furnished by him or, if there be no such address, at his residence or regular place of business that the certificated security has been presented for registration of transfer by a named person, and that the transfer will be registered unless within thirty (30) days from the date of mailing the notification, either:~~

~~(a) an appropriate restraining order, injunction, or other process issues from a court of competent jurisdiction; or~~

~~(b) there is filed with the issuer an indemnity bond, sufficient in the issuer's judgment to protect the issuer and any transfer agent, registrar, or other agent of the issuer involved from any loss it or they may suffer by complying with the adverse claim.~~

~~(3) Unless an issuer is charged with notice of an adverse claim from a controlling instrument which it has elected to require pursuant to the provisions of subsection (4) of Section 8-402 of this title or receives notification of an adverse claim pursuant to the provisions of subsection (1) of this section, if a certificated security presented for registration is endorsed by the appropriate person or persons the issuer is under no duty to inquire into adverse claims. In particular:~~

~~(a) an issuer registering a certificated security in the name of a person who is a fidiciary or who is described as a fiduciary is not bound to inquire into the existence, extent, or correct description of the fiduciary relationship; and thereafter the issuer may assume without inquiry that the newly~~

~~registered owner continues to be the fiduciary until the issuer receives written notice that the fiduciary is no longer acting as such with respect to the particular security;~~

~~(b) an issuer registering transfer on an endorsement by a fiduciary is not bound to inquire whether the transfer is made in compliance with a controlling instrument or with the law of the state having jurisdiction of the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer; and~~

~~(c) the issuer is not charged with notice of the contents of any court record or file or other recorded or unrecorded document even though the document is in its possession and even though the transfer is made on the endorsement of a fiduciary to the fiduciary himself or to his nominee.~~

~~(4) An issuer is under no duty as to adverse claims with respect to an uncertificated security except:~~

~~(a) claims embodied in a restraining order, injunction, or other legal process served upon the issuer if the process was served at a time and in a manner affording the issuer a reasonable opportunity to act on it in accordance with the requirements of subsection (5) of this section;~~

~~(b) claims of which the issuer has received a written notification from the registered owner or the registered pledgee if the notification was received at a time and in a manner affording the issuer a reasonable opportunity to act on it in accordance with the requirements of subsection (5) of this section;~~

~~(c) claims (including restrictions on transfer not imposed by the issuer) to which the registration of transfer to the present registered owner was subject~~

~~and were so noted in the initial transaction statement sent to him; and~~

~~(d) claims as to which an issuer is charged with notice from a controlling instrument it has elected to require pursuant to the provisions of subsection (4) of Section 8-402 of this title.~~

~~(5) If the issuer of an uncertificated security is under a duty as to an adverse claim, he discharges that duty by:~~

~~(a) including a notation of the claim in any statements sent with respect to the security pursuant to the provisions of subsections (3), (6) and (7) of Section 46 of this act; and~~

~~(b) refusing to register the transfer or pledge of the security unless the nature of the claim does not preclude transfer or pledge subject thereto.~~

~~(6) If the transfer or pledge of the security is registered subject to an adverse claim, a notation of the claim must be included in the initial transaction statement and all subsequent statements sent to the transferee and pledgee pursuant to the provisions of Section 46 of this act.~~

~~(7) Regardless of the provisions of subsections (4) and (5) of this section, if an uncertificated security was subject to a registered pledge at the time the issuer first came under a duty as to a particular adverse claim, the issuer has no duty as to that claim if transfer of the security is requested by the registered pledgee or an appropriate person acting for the registered pledgee unless:~~

~~(a) the claim was embodied in legal process which expressly provides otherwise;~~

~~(b) the claim was asserted in a written notification from the registered pledgee;~~

~~(c) the claim was one as to which the issuer was charged with notice from a controlling instrument it required pursuant to the provisions of subsection (4) of Section 8-402 of this title in connection with the pledgee's request for transfer; or~~

~~(d) the transfer requested is to the registered owner~~ in registered form is presented to an issuer with a request to register transfer or an instruction is presented to an issuer with a request to register transfer of an uncertificated security after a demand that the issuer not register transfer has become effective, the issuer shall promptly communicate to (i) the person who initiated the demand at the address provided in the demand and (ii) the person who presented the security for registration of transfer or initiated the instruction requesting registration of transfer a notification stating that:

(1) the certificated security has been presented for registration of transfer or instruction for registration of transfer of the uncertificated security has been received;

(2) a demand that the issuer not register transfer had previously been received; and

(3) the issuer will withhold registration of transfer for a period of time stated in the notification in order to provide the person who initiated the demand an opportunity to obtain legal process or an indemnity bond.

(c) The period described in paragraph (3) of subsection (b) of this section may not exceed thirty (30) days after the date of communication of the notification. A shorter period may be specified by the issuer if it is not manifestly unreasonable.

(d) An issuer is not liable to a person who initiated a demand that the issuer not register transfer for any loss the person suffers as a result of registration of a transfer pursuant to an effective indorsement or instruction if the person who initiated the demand does not, within the time stated in the issuer's communication, either:

(1) obtain an appropriate restraining order, injunction, or other process from a court of competent jurisdiction enjoining the issuer from registering the transfer; or

(2) file with the issuer an indemnity bond, sufficient in the issuer's judgment to protect the issuer and any transfer agent, registrar, or other agent of the issuer involved from any loss it or they may suffer by refusing to register the transfer.

(e) This section does not relieve an issuer from liability for registering transfer pursuant to an indorsement or instruction that was not effective.

SECTION 37. AMENDATORY 12A O.S. 1991, Section 8-404, is amended to read as follows:

Section 8-404. ~~Liability and Nonliability for~~ Wrongful Registration.

~~(1)~~ (a) Except as otherwise provided in ~~any law relating to the collection of taxes~~ Section 8-406 of this title, ~~the~~ an issuer is ~~not~~ liable ~~to the owner, pledgee, or any other person suffering loss as a result of the registration of a transfer, pledge, or release of a security if:~~

~~(a) there were on or with a certificated security the necessary endorsements or the issuer had received an instruction originated by an appropriate person (Section 8-308); and~~

~~(b) the issuer had no duty as to adverse claims or has discharged the duty (Section 8-403).~~

~~(2) If an issuer has registered a transfer of a certificated security to a person not entitled to it, the issuer on demand shall deliver a like security to the true owner unless:~~

~~(a) the registration was pursuant to the provisions of subsection (1) of this section; or~~

~~(b) the owner is precluded from asserting any claim for registering the transfer pursuant to the provisions of subsection (1) of Section 8-405 of this title; or~~

~~(c) the delivery would result in overissue, in which case the issuer's liability is governed by Section 8-104 of this title.~~

~~(3) If an issuer has improperly registered a transfer, pledge, or release of an uncertificated security, the issuer on demand~~

~~from the injured party shall restore the records as to the injured party to the condition that would have obtained if the improper registration had not been made unless:~~

~~(a) the registration was pursuant to the provisions of subsection (1) of this section; or~~

~~(b) the registration would result in overissue, in which case the issuer's liability is governed by Section 8-104 of this title~~

for wrongful registration of transfer if the issuer has registered a transfer of a security to a person not entitled to it, and the transfer was registered:

(1) pursuant to an ineffective indorsement or instruction;

(2) after a demand that the issuer not register transfer became effective under subsection (a) of Section 8-403 of this title and the issuer did not comply with subsection (b) of Section 8-403 of this title;

(3) after the issuer had been served with an injunction, restraining order, or other legal process enjoining it from registering the transfer, issued by a court of competent jurisdiction, and the issuer had a reasonable opportunity to act on the injunction, restraining order, or other legal process; or

(4) by an issuer acting in collusion with the wrongdoer.

(b) An issuer that is liable for wrongful registration of transfer under subsection (a) of this section on demand shall provide the person entitled to the security with a like certificated or uncertificated security, and any payments or distributions that the person did not receive as a result of the wrongful registration. If an overissue would result, the issuer's liability to provide the person with a like security is governed by Section 8-210 of this title.

(c) Except as otherwise provided in subsection (a) of this section or in a law relating to the collection of taxes, an issuer is not liable to an owner or other person suffering loss as a result of the registration of a transfer of a security if

registration was made pursuant to an effective indorsement or instruction.

SECTION 38. AMENDATORY 12A O.S. 1991, Section 8-405, is amended to read as follows:

Section 8-405. Replacement of Lost, Destroyed, ~~and Stolen Certificated Securities~~ or Wrongfully Taken Security Certificate.

~~(1) If a certificated security has been lost, apparently destroyed, or wrongfully taken, and the owner fails to notify the issuer of that fact within a reasonable time after he has notice of it and the issuer registers a transfer of the security before receiving notification, the owner is precluded from asserting against the issuer any claim for registering the transfer pursuant to the provisions of Section 8-404 of this title or any claim to a new security according to the provisions of this section.~~

~~(2)~~ (a) If ~~the~~ an owner of a certificated security, whether in registered or bearer form, claims that the ~~security~~ certificate has been lost, destroyed, or wrongfully taken, the issuer shall issue a new ~~certificated security or, at the option of the issuer, an equivalent uncertificated security in place of the original security~~ certificate if the owner:

~~(a)~~ (1) so requests before the issuer has notice that the ~~security~~ certificate has been acquired by a ~~bona fide~~ protected purchaser;

~~(b)~~ (2) files with the issuer a sufficient indemnity bond; and

~~(c)~~ (3) satisfies ~~any~~ other reasonable requirements imposed by the issuer.

~~(3)~~ (b) If, after the issue of a new ~~certificated or uncertificated~~ security certificate, a ~~bona fide~~ protected purchaser of the original ~~certificated security~~ certificate presents it for registration of transfer, the issuer shall register the transfer unless ~~registration would result in~~ an overissue~~, in which event~~ would result. In that case, the issuer's liability is governed by Section ~~8-104~~ 8-210 of this title. In addition to any rights on the indemnity bond, ~~the~~ an issuer may recover the new ~~certificated security~~ certificate from

~~the~~ a person to whom it was issued or any person taking under ~~him~~ that person, except a ~~bona fide~~ protected purchaser ~~or may cancel the uncertificated security unless a bona fide purchaser or any person taking under a bona fide purchaser is then the registered owner or registered pledgee thereof~~.

SECTION 39. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 8-405.1 of Title 12A, unless there is created a duplication in numbering, reads as follows:

Obligation to Notify Issuer of Lost, Destroyed, or Wrongfully Taken Security Certificate.

If a security certificate has been lost, apparently destroyed, or wrongfully taken, and the owner fails to notify the issuer of that fact within a reasonable time after the owner has notice of it and the issuer registers a transfer of the security before receiving notification, the owner may not assert against the issuer a claim for registering the transfer under Section 8-404 of this title or a claim to a new security certificate under Section 8-405 of this title.

SECTION 40. AMENDATORY 12A O.S. 1991, Section 8-406, is amended to read as follows:

Section 8-406. ~~Duty of~~ Authenticating Trustee, Transfer Agent, ~~or~~ and Registrar.

~~(1) If a~~ A person ~~acts~~ acting as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of ~~transfers~~ a transfer of its ~~certificated~~ securities ~~or in the registration of transfers, pledges, and releases of its uncertificated securities~~, in the issue of new ~~securities~~ security certificates or uncertificated securities, or in the cancellation of surrendered ~~securities~~:

~~(a) he is under a duty to the issuer to exercise good faith and due diligence in performing his functions; and~~

~~(b) with regard to the particular functions he performs, he~~ security certificates has the same obligation to the holder or owner of a certificated ~~security~~ or ~~to~~

~~the owner or pledgee of an~~ uncertificated security ~~and has the same rights and privileges~~ with regard to the particular functions performed as the issuer has in regard to those functions.

~~(2) Notice to an authenticating trustee, transfer agent, registrar, or other agent is notice to the issuer with respect to the functions performed by the agent.~~

SECTION 41. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 8-501 of Title 12A, unless there is created a duplication in numbering, reads as follows:

Securities Account; Acquisition of Security Entitlement from Securities Intermediary.

(a) "Securities account" means an account to which a financial asset is or may be credited in accordance with an agreement under which the person maintaining the account undertakes to treat the person for whom the account is maintained as entitled to exercise the rights that comprise the financial asset.

(b) Except as otherwise provided in subsections (d) and (e) of this section, a person acquires a security entitlement if a securities intermediary:

(1) indicates by book entry that a financial asset has been credited to the person's securities account;

(2) receives a financial asset from the person or acquires a financial asset for the person and, in either case, accepts it for credit to the person's securities account; or

(3) becomes obligated under other law, regulation, or rule to credit a financial asset to the person's securities account.

(c) If a condition of subsection (b) of this section has been met, a person has a security entitlement even though the securities intermediary does not itself hold the financial asset.

(d) If a securities intermediary holds a financial asset for another person, and the financial asset is registered in the name

of, payable to the order of, or specially indorsed to the other person, and has not been indorsed to the securities intermediary or in blank, the other person is treated as holding the financial asset directly rather than as having a security entitlement with respect to the financial asset.

(e) Issuance of a security is not establishment of a security entitlement.

SECTION 42. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 8-502 of Title 12A, unless there is created a duplication in numbering, reads as follows:

Assertion of Adverse Claim Against Entitlement Holder.

An action based on an adverse claim to a financial asset, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who acquires a security entitlement under Section 8-501 of this title for value and without notice of the adverse claim.

SECTION 43. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 8-503 of Title 12A, unless there is created a duplication in numbering, reads as follows:

Property Interest of Entitlement Holder in Financial Asset Held by Securities Intermediary.

(a) To the extent necessary for a securities intermediary to satisfy all security entitlements with respect to a particular financial asset, all interests in that financial asset held by the securities intermediary are held by the securities intermediary for the entitlement holders, are not property of the securities intermediary, and are not subject to claims of creditors of the securities intermediary, except as otherwise provided in Section 8-511 of this title.

(b) An entitlement holder's property interest with respect to a particular financial asset under subsection (a) of this section is a pro rata property interest in all interests in that financial asset held by the securities intermediary, without regard to the time the entitlement holder acquired the security entitlement or

the time the securities intermediary acquired the interest in that financial asset.

(c) An entitlement holder's property interest with respect to a particular financial asset under subsection (a) of this section may be enforced against the securities intermediary only by exercise of the entitlement holder's rights under Sections 8-505 through 8-508 of this title.

(d) An entitlement holder's property interest with respect to a particular financial asset under subsection (a) of this section may be enforced against a purchaser of the financial asset or interest therein only if:

(1) insolvency proceedings have been initiated by or against the securities intermediary;

(2) the securities intermediary does not have sufficient interests in the financial asset to satisfy the security entitlements of all of its entitlement holders to that financial asset;

(3) the securities intermediary violated its obligations under Section 8-504 of this title by transferring the financial asset or interest therein to the purchaser; and

(4) the purchaser is not protected under subsection (e) of this section.

The trustee or other liquidator, acting on behalf of all entitlement holders having security entitlements with respect to a particular financial asset, may recover the financial asset, or interest therein, from the purchaser. If the trustee or other liquidator elects not to pursue that right, an entitlement holder whose security entitlement remains unsatisfied has the right to recover its interest in the financial asset from the purchaser.

(e) An action based on the entitlement holder's property interest with respect to a particular financial asset under subsection (a) of this section, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against any purchaser of a financial asset or interest therein who gives value, obtains control, and does not

act in collusion with the securities intermediary in violating the securities intermediary's obligations under Section 8-504 of this title.

SECTION 44. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 8-504 of Title 12A, unless there is created a duplication in numbering, reads as follows:

Duty of Securities Intermediary to Maintain Financial Asset.

(a) A securities intermediary shall promptly obtain and thereafter maintain a financial asset in a quantity corresponding to the aggregate of all security entitlements it has established in favor of its entitlement holders with respect to that financial asset. The securities intermediary may maintain those financial assets directly or through one or more other securities intermediaries.

(b) Except to the extent otherwise agreed by its entitlement holder, a securities intermediary may not grant any security interests in a financial asset it is obligated to maintain pursuant to subsection (a) of this section.

(c) A securities intermediary satisfies the duty in subsection (a) of this section if:

(1) the securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(2) in the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to obtain and maintain the financial asset.

(d) This section does not apply to a clearing corporation that is itself the obligor of an option or similar obligation to which its entitlement holders have security entitlements.

SECTION 45. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 8-505 of Title 12A, unless there is created a duplication in numbering, reads as follows:

Duty of Securities Intermediary with Respect to Payments and Distributions.

(a) A securities intermediary shall take action to obtain a payment or distribution made by the issuer of a financial asset. A securities intermediary satisfies the duty if:

(1) the securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(2) in the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to attempt to obtain the payment or distribution.

(b) A securities intermediary is obligated to its entitlement holder for a payment or distribution made by the issuer of a financial asset if the payment or distribution is received by the securities intermediary.

SECTION 46. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 8-506 of Title 12A, unless there is created a duplication in numbering, reads as follows:

Duty of Securities Intermediary to Exercise Rights as Directed by Entitlement Holder.

A securities intermediary shall exercise rights with respect to a financial asset if directed to do so by an entitlement holder. A securities intermediary satisfies the duty if:

(1) the securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(2) in the absence of agreement, the securities intermediary either places the entitlement holder in a position to exercise the rights directly or exercises due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder.

SECTION 47. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 8-507 of Title 12A,

unless there is created a duplication in numbering, reads as follows:

Duty of Securities Intermediary to Comply with Entitlement Order.

(a) A securities intermediary shall comply with an entitlement order if the entitlement order is originated by the appropriate person, the securities intermediary has had reasonable opportunity to assure itself that the entitlement order is genuine and authorized, and the securities intermediary has had reasonable opportunity to comply with the entitlement order. A securities intermediary satisfies the duty if:

(1) the securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(2) in the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to comply with the entitlement order.

(b) If a securities intermediary transfers a financial asset pursuant to an ineffective entitlement order, the securities intermediary shall reestablish a security entitlement in favor of the person entitled to it, and pay or credit any payments or distributions that the person did not receive as a result of the wrongful transfer. If the securities intermediary does not reestablish a security entitlement, the securities intermediary is liable to the entitlement holder for damages.

SECTION 48. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 8-508 of Title 12A, unless there is created a duplication in numbering, reads as follows:

Duty of Securities Intermediary to Change Entitlement Holder's Position to Other Forms of Security Holding.

A securities intermediary shall act at the direction of an entitlement holder to change a security entitlement into another available form of holding for which the entitlement holder is eligible, or to cause the financial asset to be transferred to a

securities account of the entitlement holder with another securities intermediary. A securities intermediary satisfies the duty if:

(1) the securities intermediary acts as agreed upon by the entitlement holder and the securities intermediary; or

(2) in the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder.

SECTION 49. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 8-509 of Title 12A, unless there is created a duplication in numbering, reads as follows:

Specification of Duties of Securities Intermediary by Other Statute or Regulation; Manner of Performance of Duties of Securities Intermediary and Exercise of Rights of Entitlement Holder.

(a) If the substance of a duty imposed upon a securities intermediary by Sections 8-504 through 8-508 of this title is the subject of other statute, regulation, or rule, compliance with that statute, regulation, or rule satisfies the duty.

(b) To the extent that specific standards for the performance of the duties of a securities intermediary or the exercise of the rights of an entitlement holder are not specified by other statute, regulation, or rule or by agreement between the securities intermediary and entitlement holder, the securities intermediary shall perform its duties and the entitlement holder shall exercise its rights in a commercially reasonable manner.

(c) The obligation of a securities intermediary to perform the duties imposed by Sections 8-504 through 8-508 of this title is subject to:

(1) rights of the securities intermediary arising out of a security interest under a security agreement with the entitlement holder or otherwise; and

(2) rights of the securities intermediary under other law, regulation, rule, or agreement to withhold performance of its duties as a result of unfulfilled obligations of the entitlement holder to the securities intermediary.

(d) Sections 8-504 through 8-508 of this title do not require a securities intermediary to take any action that is prohibited by other statute, regulation, or rule.

SECTION 50. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 8-510 of Title 12A, unless there is created a duplication in numbering, reads as follows:

Rights of Purchaser of Security Entitlement from Entitlement Holder.

(a) An action based on an adverse claim to a financial asset or security entitlement, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who purchases a security entitlement, or an interest therein, from an entitlement holder if the purchaser gave value, does not have notice of the adverse claim, and obtains control.

(b) If an adverse claim could not have been asserted against an entitlement holder under Section 8-502 of this title, the adverse claim cannot be asserted against a person who purchases a security entitlement, or an interest therein, from the entitlement holder.

(c) In a case not covered by the priority rules in Article 9 of this code, a purchaser for value of a security entitlement, or an interest therein, who obtains control has priority over a purchaser of a security entitlement, or an interest therein, who does not obtain control. Purchasers who have control rank equally, except that a securities intermediary as purchaser has priority over a conflicting purchaser who has control unless otherwise agreed by the securities intermediary.

SECTION 51. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 8-511 of Title 12A,

unless there is created a duplication in numbering, reads as follows:

Priority Among Security Interests and Entitlement Holders.

(a) Except as otherwise provided in subsections (b) and (c) of this section, if a securities intermediary does not have sufficient interests in a particular financial asset to satisfy both its obligations to entitlement holders who have security entitlements to that financial asset and its obligation to a creditor of the securities intermediary who has a security interest in that financial asset, the claims of entitlement holders, other than the creditor, have priority over the claim of the creditor.

(b) A claim of a creditor of a securities intermediary who has a security interest in a financial asset held by a securities intermediary has priority over claims of the securities intermediary's entitlement holders who have security entitlements with respect to that financial asset if the creditor has control over the financial asset.

(c) If a clearing corporation does not have sufficient financial assets to satisfy both its obligations to entitlement holders who have security entitlements with respect to a financial asset and its obligation to a creditor of the clearing corporation who has a security interest in that financial asset, the claim of the creditor has priority over the claims of entitlement holders.

SECTION 52. AMENDATORY 12A O.S. 1991, Section 1-105, is amended to read as follows:

Section 1-105. Territorial Application of the Act; Parties' Power to Choose Applicable Law.

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

(2) Where one of the following provisions of this title specifies the applicable law, that provision governs and a

contrary agreement is effective only to the extent permitted by the law, including the conflict of laws rules, so specified:

Rights of creditors against sold goods. Section 2-402 of this title.

Applicability of the article on Leases. Sections 2A-105 and 2A-106 of this title.

Applicability of the Article on Bank Deposits and Collections. Section 4-102 of this title.

Governing law in the article on Funds Transfers. Section 4A-507 of this title.

Bulk sales subject to the article on Bulk Sales. Section ~~2~~ 6-202 of this ~~act~~ title.

Applicability of the article on Investment Securities. Section ~~8-106~~ 8-110 of this title.

Perfection provisions of the article on Secured Transactions. Section 9-103.1 of this title.

SECTION 53. AMENDATORY 12A O.S. 1991, Section 1-206, is amended to read as follows:

Statute of Frauds for Kinds of Personal Property Not Otherwise Covered.

(1) Except in the cases described in subsection (2) of this section a contract for the sale of personal property is not enforceable by way of action or defense beyond Five Thousand Dollars ($5,000.00) in amount or value of remedy unless there is some writing which indicates that a contract for sale has been made between the parties at a defined or stated price, reasonably identifies the subject matter, and is signed by the party against whom enforcement is sought or by his authorized agent.

(2) Subsection (1) of this section does not apply to contracts for the sale of goods (Section 2-201 of this title) nor of securities (Section ~~8-319~~ 8-113 of this title) nor security agreements (Section 9-203 of this title).

SECTION 54. AMENDATORY 12A O.S. 1991, Section 4-104, is amended to read as follows:

Section 4-104.

DEFINITIONS AND INDEX OF DEFINITIONS

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

(1) "Account" means any deposit or credit account with a bank, including a demand, time, savings, passbook, share draft, or like account, other than an account evidenced by a certificate of deposit;

(2) "Afternoon" means the period of a day between noon and midnight;

(3) "Banking day" means the part of a day on which a bank is open to the public for carrying on substantially all of its banking functions;

(4) "Clearing house" means an association of banks or other payors regularly clearing items;

(5) "Customer" means a person having an account with a bank or for whom a bank has agreed to collect items, including a bank that maintains an account at another bank;

(6) "Documentary draft" means a draft to be presented for acceptance or payment if specified documents, certified securities (Section 8-102 of this title) or instructions for ~~uncertified~~ uncertificated securities (Section ~~8-308~~ 8-102 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;

(9) "Item" means 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;

(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;

(11) "Settle" means to pay in cash, by clearing-house settlement, in a charge or credit or by remittance, or otherwise as agreed. A settlement may be either provisional or final; and

(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.

(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.

"Presentment Notice" Section 4-110.

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

"Acceptance" Section 3-409.

"Alteration" Section 3-407.

"Cashier's check" Section 3-104.

"Certificate of deposit" Section 3-104.

"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 3-503.

"Order" Section 3-103.

"Ordinary care" Section 3-103.

"Person entitled to enforce" Section 3-301.

"Presentment" Section 3-501.

"Promise" Section 3-103.

"Prove" Section 3-103.

"Teller's check" Section 3-104.

"Unauthorized signature" Section 3-403.

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

SECTION 55. AMENDATORY 12A O.S. 1991, Section 5-114, is amended to read as follows:

Section 5-114. Issuer's Duty and Privilege to Honor; Right to Reimbursement.

(1) An issuer must honor a draft or demand for payment which complies with the terms of the relevant credit regardless of whether the goods or documents conform to the underlying contract for sale or other contract between the customer and the beneficiary. The issuer is not excused from honor of such a draft or demand by reason of an additional general term that all documents must be satisfactory to the issuer, but an issuer may require that specified documents must be satisfactory to it.

(2) Unless otherwise agreed when documents appear on their face to comply with the terms of a credit but a required document does not in fact conform to the warranties made on negotiation or transfer of a document of title (Section 7-507 of this title) or of a certificated security (Section ~~8-306~~ 8-108 of this title) or is forged or fraudulent or there is fraud in the transaction:

(a) the issuer must honor the draft or demand for payment if honor is demanded by a negotiating bank or other holder of the draft or demand which has taken the draft or demand under the credit and under circumstances which would make it a holder in due course (Section 3-302 of this title) and in an appropriate case would make it a person to whom a

document of title has been duly negotiated (Section 7-502 of this title) or a bona fide purchaser of a certificated security (Section 8-302 of this title); and

(b) in all other cases as against its customer, an issuer acting in good faith may honor the draft or demand for payment despite notification from the customer of fraud, forgery or other defect not apparent on the face of the documents but a court of appropriate jurisdiction may enjoin such honor.

(3) Unless otherwise agreed an issuer which has duly honored a draft or demand for payment is entitled to immediate reimbursement of any payment made under the credit and to be put in effectively available funds not later than the day before maturity of any acceptance made under the credit.

(4) When a credit provides for payment by the issuer on receipt of notice that the required documents are in the possession of a correspondent or other agent of the issuer

(a) any payment made on receipt of such notice is conditional;

(b) the issuer may reject documents which do not comply with the credit if it does so within three (3) banking days following its receipt of the documents; and

(c) in the event of such rejection, the issuer is entitled by charge back or otherwise to return of the payment made.

(5) Failure to reject documents within the time specified in paragraph (b) of subsection (4) of this section constitutes acceptance of the documents and makes the payment final in favor of the beneficiary.

SECTION 56. AMENDATORY 12A O.S. 1991, Section 9-103.1, is amended to read as follows:

Section 9-103.1 Perfection of Security Interests in Multiple State Transactions.

(1) Documents, Instruments and Ordinary Goods.

(a) This subsection applies to documents and instruments and to goods other than those covered by a certificate of title described in subsection (2) of this section, mobile goods described in subsection (3) of this section, and minerals described in subsection (5) of this section.

(b) Except as otherwise provided in this subsection, perfection and the effect of perfection or nonperfection of a security interest in collateral are governed by the law of the jurisdiction where the collateral is when the last event occurs on which is based the assertion that the security interest is perfected or unperfected.

(c) If the parties to a transaction creating a purchase money security interest in goods in one jurisdiction understand at the time that the security interest attaches that the goods will be kept in another jurisdiction, then the law of the other jurisdiction governs the perfection and the effect of perfection or nonperfection of the security interest from the time it attaches until thirty (30) days after the debtor receives possession of the goods and thereafter if the goods are taken to the other jurisdiction before the end of the thirty-day period.

(d) When collateral is brought into and kept in this state while subject to a security interest perfected under the law of the jurisdiction from which the collateral was removed, the security interest remains perfected; but if action is required by Part 3 of this article to perfect the security interest:

(i) if the action is not taken before the expiration of the period of perfection in the other jurisdiction or the end of four (4) months after the collateral is brought into this state, whichever period first expires, the security

interest becomes unperfected at the end of that period and is thereafter deemed to have been unperfected as against a person who became a purchaser after removal, or

(ii) if the action is taken before the expiration of the period specified in subparagraph (i), the security interest continues perfected thereafter.

(2) Certificate of Title.

(a) This subsection applies to goods covered by a certificate of title issued under a statute of this state or of another jurisdiction under the law of which indication or delivery for indication of a security interest on the certificate is required as a condition of perfection.

(b) Except as otherwise provided in this subsection, perfection and the effect of perfection or nonperfection of the security interest are governed by the law, including the conflict of laws rules, of the jurisdiction issuing the certificate until four (4) months after the goods are removed from that jurisdiction and thereafter until the goods are registered in another jurisdiction, but in any event not beyond surrender of the certificate. After the expiration of that period, the goods are not covered by the certificate of title within the meaning of this section.

(c) Except with respect to the rights of a buyer described in the next paragraph, a security interest, perfected in another jurisdiction otherwise than by notation on a certificate of title, in goods brought into this state and thereafter covered by a certificate of title issued by this state is subject to the rules stated in paragraph (d) of subsection (1) of this section.

(d) If goods are brought into this state while a security interest therein is perfected in any manner under the law of the jurisdiction from which the goods are removed, and a certificate of title is issued by this state and the certificate does not show that the goods are subject to the security interest or that they may be subject to security interests not shown on the certificate, the security interest is subordinate to the rights of a buyer of the goods who is not in the business of selling goods of that kind to the extent that he gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest.

(3) Accounts, General Intangibles and Mobile Goods.

(a) This subsection applies to accounts, other than an account described in subsection (5) on minerals, and general intangibles, other than uncertificated securities, and to goods which are mobile and which are of a type normally used in more than one jurisdiction, such as motor vehicles, trailers, rolling stock, airplanes, shipping containers, road building and construction machinery and commercial harvesting machinery and the like, if the goods are equipment or are inventory leased or held for lease by the debtor to others and are not covered by a certificate of title described in subsection (2) of this section.

(b) The law, including the conflict of laws rules, of the jurisdiction in which the debtor is located governs the perfection and the effect of perfection or nonperfection of the security interest.

(c) If, however, the debtor is located in a jurisdiction which is not a part of the United States and which does not provide for perfection of the security interest by filing or recording in that

jurisdiction, the law of the jurisdiction in the United States in which the debtor has its major executive office in the United States governs the perfection and the effect of perfection or nonperfection of the security interest through filing. In the alternative, if the debtor is located in a jurisdiction which is not a part of the United States or Canada and the collateral is accounts or general intangibles for money due or to become due, the security interest may be perfected by notification to the account debtor. As used in this paragraph, "United States" includes its territories and possessions and the Commonwealth of Puerto Rico.

(d) A debtor shall be deemed located at his place of business if he has one, at his chief executive office if he has more than one place of business; otherwise, at his residence. If, however, the debtor is a foreign air carrier under the Federal Aviation Act of 1958, as amended, it shall be deemed located at the designated office of the agent upon whom service of process may be made on behalf of the foreign air carrier.

(e) A security interest perfected under the law of the jurisdiction of the location of the debtor is perfected until the expiration of four (4) months after a change of the debtor's location to another jurisdiction or until perfection would have ceased by the law of the first jurisdiction whichever period first expires. Unless perfected in the new jurisdiction before the end of that period, it becomes unperfected thereafter and is deemed to have been unperfected as against a person who became a purchaser after the change.

(4) Chattel Paper.

The rules stated for goods in subsection (1) apply to a possessory security interest in chattel paper. The rules stated for accounts in subsection (3) apply to a nonpossessory security interest in chattel paper, but the security interest may not be perfected by notification to the account debtor.

(5) Minerals.

Perfection and the effect of perfection or nonperfection of a security interest which is created by a debtor who has an interest in minerals or the like, including oil and gas, before extraction and which attaches thereto as extracted, or which attaches to an account resulting from the sale thereof at the wellhead or minehead are governed by the law, including the conflict of laws rules, of the jurisdiction wherein the wellhead or minehead is located.

(6) ~~Uncertificated Securities.~~

~~The law, including the conflict of laws rules, of the jurisdiction of organization of the issuer governs the perfection and the effect of perfection or nonperfection of a security interest in uncertificated securities~~ Investment Property.

(a) This subsection applies to investment property.

(b) Except as otherwise provided in paragraph (f) of this subsection, during the time that a security certificate is located in a jurisdiction, perfection of a security interest, the effect of perfection or nonperfection, and the priority of a security interest in the certificated security represented thereby are governed by the local law of that jurisdiction.

(c) Except as otherwise provided in paragraph (f) of this subsection, perfection of a security interest, the effect of perfection or nonperfection, and the priority of a security interest in an uncertificated security are governed by the local law of the issuer's jurisdiction as specified in subsection (d) of Section 8-110 of this title.

(d) Except as otherwise provided in paragraph (f) of this subsection, perfection of a security interest, the effect of perfection or nonperfection, and the priority of a security interest in a security entitlement or securities account are governed by the local law of the securities intermediary's jurisdiction as specified in subsection (e) of Section 8-110 of this title.

(e) Except as otherwise provided in paragraph (f) of this subsection, perfection of a security interest, the effect of perfection or nonperfection, and the priority of a security interest in a commodity contract or commodity account are governed by the local law of the commodity intermediary's jurisdiction. The following rules determine a "commodity intermediary's jurisdiction" for purposes of this paragraph:

(i) If an agreement between the commodity intermediary and commodity customer specifies that it is governed by the law of a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(ii) If an agreement between the commodity intermediary and commodity customer does not specify the governing law as provided in subparagraph (i) of this paragraph, but expressly specifies that the commodity account is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(iii) If an agreement between the commodity intermediary and commodity customer does not specify a jurisdiction as provided in subparagraph (i) or (ii) of this paragraph, the commodity intermediary's jurisdiction is the jurisdiction in which is located the office

identified in an account statement as the office serving the commodity customer's account.

(iv) If an agreement between the commodity intermediary and commodity customer does not specify a jurisdiction as provided in subparagraph (i) or (ii) of this paragraph and an account statement does not identify an office serving the commodity customer's account as provided in subparagraph (iii) of this paragraph, the commodity intermediary's jurisdiction is the jurisdiction in which is located the chief executive office of the commodity intermediary.

(f) Perfection of a security interest by filing, automatic perfection of a security interest in investment property granted by a broker or securities intermediary, and automatic perfection of a security interest in a commodity contract or commodity account granted by a commodity intermediary are governed by the local law of the jurisdiction in which the debtor is located.

SECTION 57. AMENDATORY 12A O.S. 1991, Section 9-105, as amended by Section 2, Chapter 143, O.S.L. 1994 (12A O.S. Supp. 1994, 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 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 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, investment property, commodity contracts, 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. The term does not include investment property;

(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.

"Commodity contract". Section 9-115.

"Commodity customer". Section 9-115.

"Commodity intermediary". Section 9-115.

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

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

"Control". Section 9-115.

"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).

"Investment property". Section 9-115.

"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:

"Broker". Section 8-102.

"Certificated security". Section 8-102.

"Check". Section 3-104.

"Clearing corporation". Section 8-102.

"Contract for sale". Section 2-106.

"Control". Section 8-106.

"Delivery". Section 8-301.

"Entitlement holder". Section 8-102.

"Financial asset". Section 8-102.

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

"Note". Section 3-104.

"Sale". Section 2-106.

"Securities intermediary". Section 8-102.

"Security". Section 8-102.

"Security certificate". Section 8-102.

"Security entitlement". Section 8-102.

"Uncertificated security". Section 8-102.

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

SECTION 58. AMENDATORY 12A O.S. 1991, Section 9-106, is amended to read as follows:

Section 9-106. Definitions: "Account"; "General Intangibles".

"Account" means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument

or chattel paper, whether or not it has been earned by performance.

"General intangibles" means any personal property~~,~~ (including things in action~~,~~) other than goods, accounts, chattel paper, documents, instruments, investment property, and money. All rights to payment earned or unearned under a charter or other contract involving the use or hire of a vessel and all rights incident to the charter or contract are accounts.

SECTION 59. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9-115 of Title 12A, unless there is created a duplication in numbering, reads as follows:

Investment Property.

(1) In this article:

(a) "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer;

(b) "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or other contract that, in each case, is:

(i) traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to the federal commodities law; or

(ii) traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer;

(c) "Commodity customer" means a person for whom a commodity intermediary carries a commodity contract on its books;

(d) "Commodity intermediary" means:

(i) a person who is registered as a futures commission merchant under the federal commodities laws; or

(ii) a person who in the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to the federal commodities law;

(e) "Control" with respect to a certificated security, uncertificated security, or security entitlement has the meaning specified in Section 8-106 of this title. A secured party has control over a commodity contract if by agreement among the commodity customer, the commodity intermediary, and the secured party, the commodity intermediary has agreed that it will apply any value distributed on account of the commodity contract as directed by the secured party without further consent by the commodity customer. If a commodity customer grants a security interest in a commodity contract to its own commodity intermediary, the commodity intermediary as secured party has control. A secured party has control over a securities account or commodity account if the secured party has control over all security entitlements or commodity contracts carried in the securities account or commodity account; and

(f) "Investment property" means:

(i) a security, whether certificated or uncertificated;

(ii) a security entitlement;

(iii) a securities account;

(iv) a commodity contract; or

(v) a commodity account.

(2) Attachment or perfection of a security interest in a securities account is also attachment or perfection of a security interest in all security entitlements carried in the securities account. Attachment or perfection of a security interest in a commodity account is also attachment or perfection of a security

interest in all commodity contracts carried in the commodity account.

(3) A description of collateral in a security agreement or financing statement is sufficient to create or perfect a security interest in a certificated security, uncertificated security, security entitlement, securities account, commodity contract, or commodity account whether it describes the collateral by those terms, or as investment property, or by description of the underlying security, financial asset, or commodity contract. A description of investment property collateral in a security agreement or financing statement is sufficient if it identifies the collateral by specific listing, by category, by quantity, by a computational or allocational formula or procedure, or by any other method, if the identity of the collateral is objectively determinable.

(4) Perfection of a security interest in investment property is governed by the following rules:

(a) A security interest in investment property may be perfected by control;

(b) Except as otherwise provided in paragraphs (c) and (d) of this subsection, a security interest in investment property may be perfected by filing;

(c) If the debtor is a broker or securities intermediary, a security interest in investment property is perfected when it attaches. The filing of a financing statement with respect to a security interest in investment property granted by a broker or securities intermediary has no effect for purposes of perfection or priority with respect to that security interest;

(d) If a debtor is a commodity intermediary, a security interest in a commodity contract or a commodity account is perfected when it attaches. The filing of a financing statement with respect to a security interest in a commodity contract or a commodity account granted by a commodity intermediary has no

effect for purposes of perfection or priority with respect to that security interest.

(5) Priority between conflicting security interests in the same investment property is governed by the following rules:

(a) A security interest of a secured party who has control over investment property has priority over a security interest of a secured party who does not have control over the investment property;

(b) Except as otherwise provided in paragraphs (c) and (d) of this subsection, conflicting security interests of secured parties each of whom has control rank equally;

(c) Except as otherwise agreed by the securities intermediary, a security interest in a security entitlement or a securities account granted to the debtor's own securities intermediary has priority over any security interest granted by the debtor to another secured party;

(d) Except as otherwise agreed by the commodity intermediary, a security interest in a commodity contract or a commodity account granted to the debtor's own commodity intermediary has priority over any security interest granted by the debtor to another secured party;

(e) Conflicting security interests granted by a broker, a securities intermediary, or a commodity intermediary which are perfected without control rank equally;

(f) In all other cases, priority between conflicting security interests in investment property is governed by subsections (5), (6) and (7) of Section 9-312 of this title. Subsection (4) of Section 9-312 of this title does not apply to investment property.

(6) If a security certificate in registered form is delivered to a secured party pursuant to agreement, a written security

agreement is not required for attachment or enforceability of the security interest, delivery suffices for perfection of the security interest, and the security interest has priority over a conflicting security interest perfected by means other than control, even if a necessary indorsement is lacking.

SECTION 60. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9-116 of Title 12A, unless there is created a duplication in numbering, reads as follows:

Security Interest Arising in Purchase or Delivery of Financial Asset.

(1) If a person buys a financial asset through a securities intermediary in a transaction in which the buyer is obligated to pay the purchase price to the securities intermediary at the time of the purchase, and the securities intermediary credits the financial asset to the buyer's securities account before the buyer pays the securities intermediary, the securities intermediary has a security interest in the buyer's security entitlement securing the buyer's obligation to pay. A security agreement is not required for attachment or enforceability of the security interest, and the security interest is automatically perfected.

(2) If a certificated security, or other financial asset represented by a writing which in the ordinary course of business is transferred by delivery with any necessary indorsement or assignment is delivered pursuant to an agreement between persons in the business of dealing with such securities or financial assets and the agreement calls for delivery versus payment, the person delivering the certificate or other financial asset has a security interest in the certificated security or other financial asset securing the seller's right to receive payment. A security agreement is not required for attachment or enforceability of the security interest and the security interest is automatically perfected.

SECTION 61. AMENDATORY 12A O.S. 1991, Section 9-203, as amended by Section 6, Chapter 46, O.S.L. 1994 (12A O.S. Supp. 1994, 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 4-210 of this title on the security interest of a collecting bank, ~~Section 8-321 of this title on security interests in securities~~ Sections 9-115 and 9-116 of this title on security interests in investment property, and Section 9-113 of this title on a security interest arising under the 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, the collateral is investment property and the secured party has control 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 62. AMENDATORY 12A O.S. 1991, Section 9-301, is amended to read as follows:

Section 9-301. Persons Who Take Priority Over Unperfected Security Interests; Right of "Lien Creditor".

(1) Except as otherwise provided in subsection (2) of this section, an unperfected security interest is subordinate to the rights of:

(a) persons entitled to priority under Section 9-312 of this title;

(b) a person who becomes a lien creditor before the security interest is perfected;

(c) in the case of goods, instruments, documents and chattel paper, a person who is not a secured party and who is a transferee in bulk or other buyer not in ordinary course of business, or is a buyer of farm products in the ordinary course of business, to the extent that he gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected; or

(d) in the case of accounts ~~and~~, general intangibles, and investment property, a person who is not a secured party and who is a transferee to the extent that he gives value without knowledge of the security interest and before it is perfected.

(2) If the secured party files with respect to a purchase money security interest before or within twenty (20) days after the debtor receives possession of the collateral, he takes priority over the rights of a transferee in bulk or of a lien creditor which arise between the time the security interest attaches and the time of filing.

(3) A "lien creditor" means a creditor who has acquired a lien on the property involved by attachment, levy or the like and includes an assignee for benefit of creditors from the time of assignment, and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time of appointment.

(4) A person who becomes a lien creditor while a security interest is perfected takes subject to the security interest only to the extent that it secures advances made before he becomes a lien creditor or within forty-five (45) days thereafter or is made without knowledge of the lien or pursuant to a commitment entered into without knowledge of the lien.

SECTION 63. AMENDATORY 12A O.S. 1991, Section 9-302, as last amended by Section 1 of Enrolled House Bill No. 1012 of the 1st Session of the 45th Oklahoma Legislature, 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, certificated securities, 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)~~ (i) 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 4-210 of this title ~~or~~

~~in securities pursuant to the provisions of Section 8-321 of this title~~ or arising according to the 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 investment property which is perfected without filing pursuant to the provisions of Section 9-115 or 9-116 of this title; or

(i) A security interest in a vehicle as defined in Section 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 1110 of Title 47 of the Oklahoma Statutes; or

~~(i)~~ (j) 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 64. AMENDATORY 12A O.S. 1991, Section 9-304, is amended to read as follows:

Section 9-304. Perfection of Security Interest in Instruments, Documents and Goods Covered by Documents; Perfection by Permissive Filing; Temporary Perfection Without Filing or Transfer of Possession.

(1) A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in money or instruments, other than ~~certificated securities or~~ instruments which constitute part of chattel paper, can be perfected only by the secured party's taking possession, except as provided in subsections (4) and (5) of this section and subsections (2) and (3) of Section 9-306 of this title on proceeds.

(2) During the period that goods are in the possession of the issuer of a negotiable document therefor, a security interest in the goods is perfected by perfecting a security interest in the document, and any security interest in the goods otherwise perfected during such period is subject thereto.

(3) A security interest in goods in the possession of a bailee other than one who has issued a negotiable document therefor is perfected by issuance of a document in the name of the secured party or by the bailee's receipt of notification of the secured party's interest or by filing as to the goods.

(4) A security interest in instruments, ~~other than~~ certificated securities, or negotiable documents is perfected without filing or the taking of possession for a period of twenty-one (21) days from the time it attaches to the extent that it arises for new value given under a written security agreement.

(5) A security interest remains perfected for a period of twenty-one (21) days without filing where a secured party having a perfected security interest in an instrument, ~~other than~~ a certificated security, a negotiable document or goods in possession of a bailee other than one who has issued a negotiable document therefor:

(a) makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with them in a manner preliminary to their sale or exchange, but priority between conflicting security interests in the goods is subject to subsection (3) of Section 9-312 of this title; or

(b) delivers the instrument <u>or certificated security</u> to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal, or registration of transfer.

(6) After the twenty-one-day period in subsections (4) and (5) of this section perfection depends upon compliance with applicable provisions of this article.

SECTION 65. AMENDATORY 12A O.S. 1991, Section 9-305, is amended to read as follows:

Section 9-305. When Possession by Secured Party Perfects Security Interest Without Filing.

A security interest in letters of credit and advices of credit (paragraph (a) of subsection (2) of Section 5-116), goods, instruments ~~other than certificated securities~~, money, negotiable documents, or chattel paper may be perfected by the secured party's taking possession of the collateral. If such collateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee receives notification of the secured party's interest. A security interest is perfected by possession from the time possession is taken without relation back and continues only

so long as possession is retained, unless otherwise specified in this article. The security interest may be otherwise perfected as provided for in this article before or after the period of possession by the secured party.

SECTION 66. AMENDATORY 12A O.S. 1991, Section 9-306, as amended by Section 17, Chapter 342, O.S.L. 1994 (12A O.S. Supp. 1994, Section 9-306), is amended to read as follows:

Section 9-306. "Proceeds"; Secured Party's Rights on Disposition of Collateral.

(1) "Proceeds" includes whatever is received upon the sale, exchange, collection or other disposition of collateral or proceeds including, but not limited to, payments from a third party tort-feasor or his or her insurer. Insurance payable from any source by reason of loss or damage to the collateral is proceeds, except to the extent that it is payable to a person other than a party to the security agreement. Any payments or distributions made with respect to investment property collateral are proceeds. Money, checks, deposit accounts and the like are "cash proceeds". All other proceeds are "noncash proceeds".

(2) Except where this article otherwise provides, a security interest continues in collateral, notwithstanding sale, exchange or other disposition thereof, unless the disposition was authorized by the secured party in the security agreement or otherwise, and also continues in any identifiable proceeds including collections received by the debtor.

(3) The security interest in proceeds is a continuously perfected security interest if the interest in the original collateral was perfected, but it ceases to be a perfected security interest and becomes unperfected ten (10) days after receipt of the proceeds by the debtor unless:

(a) a filed financing statement covers the original collateral and the proceeds are collateral in which a security interest may be perfected by filing in the office or offices where the financing statement has been filed and, if the proceeds are acquired with cash proceeds, the description of collateral in

the financing statement indicates the types of property constituting the proceeds; ~~or~~

(b) a filed financing statement covers the original collateral and the proceeds are identifiable cash proceeds; ~~or~~

(c) the original collateral was investment property and the proceeds are identifiable cash proceeds; or

(d) the security interest in the proceeds is perfected before the expiration of the ten-day period.

Except as provided in this section, a security interest in proceeds can be perfected only by the methods or under the circumstances permitted in this article for original collateral of the same type.

(4) In the event of insolvency proceedings instituted by or against a debtor, a secured party with a perfected security interest in proceeds has a perfected security interest only in the following proceeds:

(a) identifiable noncash proceeds and separate deposit accounts containing only proceeds;

(b) identifiable cash proceeds in the form of money which is neither commingled with other money nor deposited in a deposit account prior to the insolvency proceedings;

(c) identifiable cash proceeds in the form of checks and the like which are not deposited in a deposit account prior to the insolvency proceedings; and

(d) all cash and deposit accounts of the debtor, in which proceeds have been commingled with other funds, but the perfected security interest under this paragraph (d) is:

(i) subject to any right of set-off; and

(ii) limited to an amount not greater than the amount of any cash proceeds received by the debtor within ten (10) days before the institution of the insolvency proceedings less the sum of:

(I) the payments to the secured party on account of cash proceeds received by the debtor during such period, and

(II) the cash proceeds received by the debtor during such period to which the secured party is entitled under subparagraphs (a) through (c) of this subsection.

(5) If a sale of goods results in an account or chattel paper which is transferred by the seller to a secured party and if the goods are returned to or are repossessed by the seller or the secured party, the following rules determine priorities:

(a) If the goods were collateral at the time of sale, for an indebtedness of the seller which is still unpaid, the original security interest attaches again to the goods and continues as a perfected security interest if it was perfected at the time when the goods were sold. If the security interest was originally perfected by a filing which is still effective, nothing further is required to continue the perfected status; in any other case, the secured party must take possession of the returned or repossessed goods or must file.

(b) An unpaid transferee of the chattel paper has a security interest in the goods against the transferor. Such security interest is prior to a security interest asserted under subparagraph (a) of this section to the extent that the transferee of the chattel paper was entitled to priority under Section 9-308 of this title.

(c) An unpaid transferee of the account has a security interest in the goods against the transferor. Such security interest is subordinate to a security interest asserted under subparagraph (a) of this section.

(d) A security interest of an unpaid transferee asserted under subparagraph (b) or (c) of this section must

be perfected for protection against creditors of the transferor and purchasers of the returned or repossessed goods.

SECTION 67. AMENDATORY 12A O.S. 1991, Section 9-309, is amended to read as follows:

Section 9-309. Protection of Purchasers of Instruments, Documents, and Securities.

Nothing in this article limits the rights of a holder in due course of a negotiable instrument (Section 3-302 of this title) or a holder to whom a negotiable document of title has been duly negotiated (Section 7-501 of this title) or a ~~bona fide~~ protected purchaser of a security (Section ~~8-302~~ 8-303 of this title) and such holders or purchasers take priority over an earlier security interest even though perfected. Filing under this article does not constitute notice of the security interest to such holders or purchasers.

SECTION 68. AMENDATORY 12A O.S. 1991, Section 9-312, as amended by Section 9, Chapter 46, O.S.L. 1994 (12A O.S. Supp. 1994, 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 4-210 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; and Section 9-115 of this title on security interests on investment property.

(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~~ 9-115 or 9-116 of this title on ~~securities~~ investment property, 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 69. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 8-603 of Title 12A, unless there is created a duplication in numbering, reads as follows:

A. This act does not affect an action or proceeding commenced before this act takes effect.

B. If a security interest in a security is perfected before this act takes effect, and the action by which the security interest was perfected would suffice to perfect a security interest under this act, no further action is required to continue

perfection. If a security interest in a security is perfected before this act takes effect but the action by which the security interest was perfected would not suffice to perfect a security interest under this act, the security interest remains perfected for a period of four months after the effective date and continues perfected thereafter if appropriate action to perfect under this act is taken within that period. If a security interest is perfected before this act takes effect and the security interest can be perfected by filing under this act, a financing statement signed by the secured party instead of the debtor may be filed within that period to continue perfection or thereafter to perfect.

SECTION 70. REPEALER 12A O.S. 1991, Sections 8-308, as amended by Section 3, Chapter 313, O.S.L. 1994, 8-309, 8-310, 8-311, 8-312, 8-313, 8-314, 8-315, 8-316, 8-317, 8-318, 8-319, 8-320, 8-321, 8-407 and 8-408 (12A O.S. Supp. 1994, Section 8-308), are hereby repealed.

SECTION 71. This act shall become effective February 1, 1996.

45-1-1268 MHR