

ENROLLED SENATE
BILL NO. 1034

By: Henry of the Senate

and

Askins of the House

An Act relating to commercial law; amending 12A O.S. 1991, Sections 5-102, 5-103, as amended by Section 5, Chapter 46, O.S.L. 1994, 5-104, 5-105, 5-106, 5-107, 5-108, 5-109, 5-110, 5-111, 5-112, 5-113, 5-114, as amended by Section 55, Chapter 242, O.S.L. 1995, 5-115, 5-116 and 5-117 (12A O.S. Supp. 1995, Sections 5-103 and 5-114), which relate to letters of credit; providing definitions; specifying scope of article; stating formal requirements of letters of credit; modifying consideration requirements; providing standards for issuance, amendment, cancellation and duration of letters of credit; specifying responsibilities of confirmers, nominated persons and advisers; specifying rights and obligations of issuers; stating what constitutes fraud or forgery with regard to letters of credit; stating warranties; providing remedies for wrongful conduct; providing requirements for transfer of letters of credit; providing procedures for assignment of proceeds; providing a statute of limitations for actions under this article; specifying jurisdiction and forums of actions; allowing subrogation to rights of certain persons; specifying applicability of act; clarifying status of transactions occurring prior to effective date of act; amending 12A O.S. 1991, Section 1-105, as amended by Section 52, Chapter 242, O.S.L. 1995 (12A O.S. Supp. 1995, Section 1-105), which relates to the applicability of the Uniform Commercial Code; adding letters of credit; amending 12A O.S. 1991, Section 2-512, which relates to commercial sales; clarifying statutory citation; amending 12A O.S. 1991, Sections 9-102, 9-103.1, as amended by Section 56, Chapter 242, O.S.L. 1995, 9-104, as amended by Section 1, Chapter 143, O.S.L. 1994, 9-105, as last amended by Section 57, Chapter 242, O.S.L. 1995, 9-106, as amended by Section 58, Chapter 242, O.S.L. 1995, 9-302, as last amended by Section 63, Chapter 242, O.S.L. 1995, 9-304, as amended by Section 64, Chapter 242, O.S.L. 1995 and 9-305, as amended by Section 65, Chapter 242, O.S.L. 1995 (12A O.S. Supp. 1995, Sections 9-103.1, 9-104, 9-105, 9-106, 9-302, 9-304 and 9-305), which relate to secured transactions; clarifying applicability of article to transfer of ownership of accounts or

chattel paper; adding letters of credit to applicability of perfection of security interests procedures; excluding certain transfer of interest in letter of credit from applicability of article; adding and modifying definitions; clarifying exception to certain filing requirement; providing procedure for perfection of security interest in proceeds of a letter of credit; amending 15 O.S. 1991, Section 262, which relates to repayment of money lent; clarifying that parties may agree to different measure of value for money lent; repealing 23 O.S. 1991, Sections 23 and 24, which relate to damages for dishonor of foreign bills; providing for codification; providing an effective date; making certain provision apply retroactively; and declaring an emergency.

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

SECTION 1. AMENDATORY 12A O.S. 1991, Section 5-102, is amended to read as follows:

Section 5-102. ~~Scope~~ Definitions.

~~(1) This (a) In this article applies~~

- ~~(a) to a credit issued by a bank if the credit requires a documentary draft or a documentary demand for payment; and~~
- ~~(b) to a credit issued by a person other than a bank if the credit requires that the draft or demand for payment be accompanied by a document of title; and~~
- ~~(c) to a credit issued by a bank or other person if the credit is not within subparagraphs (a) or (b) but conspicuously states that it is a letter of credit or is conspicuously so entitled.~~

~~(2) Unless the engagement meets the requirements of subsection (1), this article does not apply to engagements to make advances or to honor drafts or demands for payment, to authorities to pay or purchase, to guarantees or to general agreements.~~

~~(3) This article deals with some but not all of the rules and concepts of letters of credit as such rules or concepts have developed prior to this act or may hereafter develop. The fact that this article states a rule does not by itself require, imply or negate application of the same or a converse rule to a situation not provided for or to a person not specified by this article:~~

- (1) "Adviser" means a person who, at the request of the issuer, a confirmer, or another adviser, notifies or requests another adviser to notify the beneficiary that a letter of credit has been issued, confirmed, or amended;
- (2) "Applicant" means a person at whose request or for whose account a letter of credit is issued. The term includes a person who requests an issuer to issue a letter of credit on behalf of another if the person making the request undertakes an obligation to reimburse the issuer;
- (3) "Beneficiary" means a person who under the terms of a letter of credit is entitled to have its complying

presentation honored. The term includes a person to whom drawing rights have been transferred under a transferable letter of credit;

- (4) "Confirmer" means a nominated person who undertakes, at the request or with the consent of the issuer, to honor a presentation under a letter of credit issued by another;
- (5) "Dishonor" of a letter of credit means failure timely to honor or to take an interim action, such as acceptance of a draft, that may be required by the letter of credit;
- (6) "Document" means a draft or other demand, document of title, investment security, certificate, invoice, or other record, statement, or representation of fact, law, right, or opinion:
- (i) which is presented in a written or other medium permitted by the letter of credit or, unless prohibited by the letter of credit, by the standard practice referred to in subsection (e) of Section 5-108 of this title; and
 - (ii) which is capable of being examined for compliance with the terms and conditions of the letter of credit.
- A document may not be oral;
- (7) "Good faith" means honesty in fact in the conduct or transaction concerned;
- (8) "Honor" of a letter of credit means performance of the issuer's undertaking in the letter of credit to pay or deliver an item of value. Unless the letter of credit otherwise provides, "honor" occurs:
- (i) upon payment;
 - (ii) if the letter of credit provides for acceptance, upon acceptance of a draft and, at maturity, its payment; or
 - (iii) if the letter of credit provides for incurring a deferred obligation, upon incurring the obligation and, at maturity, its performance;
- (9) "Issuer" means a bank or other person that issues a letter of credit, but does not include an individual who makes an engagement for personal, family, or household purposes;
- (10) "Letter of credit" means a definite undertaking that satisfies the requirements of Section 5-104 of this title by an issuer to a beneficiary at the request or for the account of an applicant or, in the case of a financial institution, to itself or for its own account, to honor a documentary presentation by payment or delivery of an item of value;
- (11) "Nominated person" means a person whom the issuer:
- (i) designates or authorizes to pay, accept, negotiate, or otherwise give value under a letter of credit; and
 - (ii) undertakes by agreement or custom and practice to reimburse;
- (12) "Presentation" means delivery of a document to an issuer or nominated person for honor or giving of value under a letter of credit;
- (13) "Presenter" means a person making a presentation as or on behalf of a beneficiary or nominated person;

- (14) "Record" means information that is inscribed on a tangible medium, or that is stored in an electronic or other medium and is retrievable in perceivable form; and
- (15) "Successor of a beneficiary" means a person who succeeds to substantially all of the rights of a beneficiary by operation of law, including a corporation with or into which the beneficiary has been merged or consolidated, an administrator, executor, personal representative, trustee in bankruptcy, debtor in possession, liquidator, and receiver.

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

"Accept or "Acceptance" Section 3-409.

"Value" Sections 3-303 and 4-211.

(c) Article 1 of this title contains certain additional general definitions and principles of construction and interpretation applicable throughout this article.

SECTION 2. AMENDATORY 12A O.S. 1991, Section 5-103, as amended by Section 5, Chapter 46, O.S.L. 1994 (12A O.S. Supp. 1995, Section 5-103), is amended to read as follows:

Section 5-103. Definitions Scope.

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

- ~~(a) "Credit" or "letter of credit" means an engagement by a bank or other person made at the request of a customer and of a kind within the scope of this article (Section 5-102) that the issuer will honor drafts or other demands for payment upon compliance with the conditions specified in the credit. A credit may be either revocable or irrevocable. The engagement may be either an agreement to honor or a statement that the bank or other person is authorized to honor.~~
- ~~(b) A "documentary draft" or a "documentary demand for payment" is one honor of which is conditioned upon the presentation of a document or documents. "Document" means any paper including document of title, security, invoice, certificate, notice of default and the like.~~
- ~~(c) An "issuer" is a bank or other person issuing a credit.~~
- ~~(d) A "beneficiary" of a credit is a person who is entitled under its terms to draw or demand payment.~~
- ~~(e) An "advising bank" is a bank which gives notification of the issuance of a credit by another bank.~~
- ~~(f) A "confirming bank" is a bank which engages either that it will itself honor a credit already issued by another bank or that such a credit will be honored by the issuer or a third bank.~~
- ~~(g) A "customer" is a buyer or other person who causes an issuer to issue a credit. The term also includes a bank which procures issuance or confirmation on behalf of that bank's customer.~~

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

~~"Notation of Credit". Section 5-108.~~

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

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

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

~~"Contract for sale". Section 2-106.~~

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

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

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

~~"Security". Section 8-102.~~

~~(4) In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article applies to letters of credit and to certain rights and obligations arising out of transactions involving letters of credit.~~

~~(b) The statement of a rule in this article does not by itself require, imply, or negate application of the same or a different rule to a situation not provided for, or to a person not specified, in this article.~~

~~(c) With the exception of this subsection, subsections (a) and (d) of this section, paragraphs (9) and (10) of subsection (a) of Section 5-102 of this title, subsection (d) of Section 5-106 of this title, and subsection (d) of Section 5-114 of this title, and except to the extent prohibited in subsection (3) of Section 1-102 of this title and subsection (d) of Section 5-117 of this title, the effect of this article may be varied by agreement or by a provision stated or incorporated by reference in an undertaking. A term in an agreement or undertaking generally excusing liability or generally limiting remedies for failure to perform obligations is not sufficient to vary obligations prescribed by this article.~~

~~(d) Rights and obligations of an issuer to a beneficiary or a nominated person under a letter of credit are independent of the existence, performance, or nonperformance of a contract or arrangement out of which the letter of credit arises or which underlies it, including contracts or arrangements between the issuer and the applicant and between the applicant and the beneficiary.~~

SECTION 3. AMENDATORY 12A O.S. 1991, Section 5-104, is amended to read as follows:

Section 5-104. Formal Requirements; ~~Signing.~~

~~(1) Except as otherwise required in subsection (1) (c) of Section 5-102 on scope, no particular form of phrasing is required for a credit. A letter of credit must be in writing and signed by the issuer and a confirmation must be in writing and signed by the confirming bank. A modification of the terms of a credit or confirmation must be signed by the issuer or confirming bank.~~

~~(2) A telegram may be a sufficient signed writing if it identifies its sender by an authorized authentication. The authentication may be in code and the authorized naming of the issuer in an advice of credit is a sufficient signing, confirmation, advice, transfer, amendment, or cancellation may be issued in any form that is a record and is authenticated:~~

~~(1) By a signature; or~~

~~(2) In accordance with the agreement of the parties or the standard practice referred to in subsection (e) of Section 5-108 of this title.~~

SECTION 4. AMENDATORY 12A O.S. 1991, Section 5-105, is amended to read as follows:

Section 5-105. Consideration.

~~No consideration Consideration is necessary to establish a credit or to enlarge or otherwise modify its terms not required to issue, amend, transfer, or cancel a letter of credit, advice, or confirmation.~~

SECTION 5. AMENDATORY 12A O.S. 1991, Section 5-106, is amended to read as follows:

Section 5-106. Time and Effect of Establishment of Credit Issuance, Amendment, Cancellation, and Duration.

~~(1) Unless otherwise agreed a~~ (a) A letter of credit is established

~~(a) as regards the customer as soon as a letter of credit is sent to him or the letter of credit or an authorized written advice of its issuance is sent to the beneficiary; and~~

~~(b) as regards the beneficiary when he receives a letter of credit or an authorized written advice of its issuance.~~

~~(2) Unless otherwise agreed once an irrevocable credit is established as regards the customer it can be modified or revoked only with the consent of the customer and once it is established as regards the beneficiary it can be modified or revoked only with his consent.~~

~~(3) Unless otherwise agreed after a revocable credit is established it may be modified or revoked by the issuer without notice to or consent from the customer or beneficiary.~~

~~(4) Notwithstanding any modification or revocation of a revocable credit any person authorized to honor or negotiate under the terms of the original credit is entitled to reimbursement for or honor of any draft or demand for payment duly honored or negotiated before receipt of notice of the modification or revocation and the issuer in turn is entitled to reimbursement from its customer issued and becomes enforceable according to its terms against the issuer when the issuer sends or otherwise transmits it to the person requested to advise or to the beneficiary. A letter of credit is revocable only if it so provides.~~

(b) After a letter of credit is issued, rights and obligations of a beneficiary, applicant, confirmer, and issuer are not affected by an amendment or cancellation to which that person has not consented except to the extent the letter of credit provides that it is revocable or that the issuer may amend or cancel the letter of credit without that consent.

(c) If there is no stated expiration date or other provision that determines its duration, a letter of credit expires one (1) year after its stated date of issuance or, if none is stated, after the date on which it is issued.

(d) A letter of credit that states that it is perpetual expires five (5) years after its stated date of issuance, or if none is stated, after the date on which it is issued.

SECTION 6. AMENDATORY 12A O.S. 1991, Section 5-107, is amended to read as follows:

~~Section 5-107. Advice of Credit; Confirmation; Error in Statement of Terms~~ Confirmer, Nominated Person, and Adviser.

~~(1) Unless otherwise specified an advising bank by advising a~~ (a) A confirmer is directly obligated on a letter of credit issued by another bank does not assume any obligation to honor drafts drawn or demands for payment made under the credit but it does assume obligation for the accuracy of its own statement.

~~(2) A confirming bank by confirming a credit becomes directly obligated on the credit to the extent of its confirmation as though it were its issuer and acquires the rights of an issuer.~~

~~(3) Even though an advising bank incorrectly advises the terms of a credit it has been authorized to advise the credit is established as against the issuer to the extent of its original terms.~~

~~(4) Unless otherwise specified the customer bears as against the issuer all risks of transmission and reasonable translation or~~

interpretation of any message relating to a credit and has the rights and obligations of an issuer to the extent of its confirmation. The confirmer also has rights against and obligations to the issuer as if the issuer were an applicant and the confirmer had issued the letter of credit at the request and for the account of the issuer.

(b) A nominated person who is not a confirmer is not obligated to honor or otherwise give value for a presentation.

(c) A person requested to advise may decline to act as an adviser. An adviser that is not a confirmer is not obligated to honor or give value for a presentation. An adviser undertakes to the issuer and to the beneficiary accurately to advise the terms of the letter of credit, confirmation, amendment, or advice received by that person and undertakes to the beneficiary to check the apparent authenticity of the request to advise. Even if the advice is inaccurate, the letter of credit, confirmation, or amendment is enforceable as issued.

(d) A person who notifies a transferee beneficiary of the terms of a letter of credit, confirmation, amendment, or advice has the rights and obligations of an adviser under subsection (c) of this section. The terms in the notice to the transferee beneficiary may differ from the terms in any notice to the transferor beneficiary to the extent permitted by the letter of credit, confirmation, amendment, or advice received by the person who so notifies.

SECTION 7. AMENDATORY 12A O.S. 1991, Section 5-108, is amended to read as follows:

Section 5-108. "Notation Credit"; Exhaustion of Credit Issuer's Rights and Obligations.

~~(1) A credit which specifies that any person purchasing or paying drafts drawn or demands for payment made under it must note the amount of the draft or demand on the letter or advice of credit is a "notation credit".~~

~~(2) Under a notation credit~~

~~(a) a person paying the beneficiary or purchasing a draft or demand for payment from him acquires a right to honor only if the appropriate notation is made and by transferring or forwarding for honor the documents under the credit such a person warrants to the issuer that the notation has been made; and~~

~~(b) unless the credit or a signed statement that an appropriate notation has been made accompanies the draft or demand for payment the issuer may delay honor until evidence of notation has been procured which is satisfactory to it but its obligation and that of its customer continue for a reasonable time not exceeding thirty (30) days to obtain such evidence.~~

(3) (a) Except as otherwise provided in Section 5-109 of this title, an issuer shall honor a presentation that, as determined by the standard practice referred to in subsection (e) of this section, appears on its face strictly to comply with the terms and conditions of the letter of credit. Except as otherwise provided in Section 5-113 of this title and unless otherwise agreed with the applicant, an issuer shall dishonor a presentation that does not appear so to comply.

(b) An issuer has a reasonable time after presentation, but not beyond the end of the seventh business day of the issuer after the day of its receipt of documents:

(1) To honor;

(2) If the letter of credit provides for honor to be completed more than seven (7) business days after

presentation, to accept a draft or incur a deferred obligation; or

(3) To give notice to the presenter of discrepancies in the presentation.

(c) Except as otherwise provided in subsection (d) of this section, an issuer is precluded from asserting as a basis for dishonor any discrepancy if timely notice is not given, or any discrepancy not stated in the notice if timely notice is given.

(d) Failure to give the notice specified in subsection (b) of this section or to mention fraud, forgery, or expiration in the notice does not preclude the issuer from asserting as a basis for dishonor fraud or forgery as described in subsection (a) of Section 5-109 of this title or expiration of the letter of credit before presentation.

(e) An issuer shall observe standard practice of financial institutions that regularly issue letters of credit. Determination of the issuer's observance of the standard practice is a matter of interpretation for the court. The court shall offer the parties a reasonable opportunity to present evidence of the standard practice.

(f) An issuer is not responsible for:

(1) The performance or nonperformance of the underlying contract, arrangement, or transaction;

(2) An act or omission of others; or

(3) Observance or knowledge of the usage of a particular trade other than the standard practice referred to in subsection (e) of this section.

(g) If the credit is not a notation credit

~~(a) the issuer may honor complying drafts or demands for payment presented to it in the order in which they are presented and is discharged pro tanto by honor of any such draft or demand;~~

~~(b) as between competing good faith purchasers of complying drafts or demands the person first purchasing has priority over a subsequent purchaser even though the later purchased draft or demand has been first honored~~

an undertaking constituting a letter of credit under paragraph (10) of subsection (a) of Section 5-102 of this title contains nondocumentary conditions, an issuer shall disregard the nondocumentary conditions and treat them as if they were not stated.

(h) An issuer that has dishonored a presentation shall return the documents or hold them at the disposal of, and send advice to that effect to, the presenter.

(i) An issuer that has honored a presentation as permitted or required by this article:

(1) Is entitled to be reimbursed by the applicant in immediately available funds not later than the date of its payment of funds;

(2) Takes the documents free of claims of the beneficiary or presenter;

(3) Is precluded from asserting a right of recourse on a draft under Sections 3-414 and 3-415 of this title;

(4) Except as otherwise provided in Sections 5-110 and 5-117 of this title, is precluded from restitution of money paid or other value given by mistake to the extent the mistake concerns discrepancies in the documents or tender which are apparent on the face of the presentation; and

(5) Is discharged to the extent of its performance under the letter of credit unless the issuer honored a

presentation in which a required signature of a beneficiary was forged.

SECTION 8. AMENDATORY 12A O.S. 1991, Section 5-109, is amended to read as follows:

Section 5-109. ~~Issuer's Obligation to its Customer~~ Fraud and Forgery.

~~(1) An issuer's obligation to its customer includes good faith and observance of any general banking usage but unless otherwise agreed does not include liability or responsibility~~

~~(a) for performance of the underlying contract for sale or other transaction between the customer and the beneficiary; or~~

~~(b) for any act or omission of any person other than itself or its own branch or for loss or destruction of a draft, demand or document in transit or in the possession of others; or~~

~~(c) based on knowledge or lack of knowledge of any usage of any particular trade.~~

~~(2) An issuer must examine documents with care so as to ascertain that on their face they appear~~

~~(a) If a presentation is made that appears on its face strictly to comply with the terms and conditions of the letter of credit, but unless otherwise agreed assumes no liability or responsibility for the genuineness, falsification or effect of any document which appears on such examination to be regular on its face.~~

~~(3) A nonbank issuer is not bound by any banking usage of which it has no knowledge a required document is forged or materially fraudulent, or honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant:~~

~~(1) The issuer shall honor the presentation, if honor is demanded by:~~

~~(i) a nominated person who has given value in good faith and without notice of forgery or material fraud;~~

~~(ii) a confirmer who has honored its confirmation in good faith;~~

~~(iii) a holder in due course of a draft drawn under the letter of credit which was taken after acceptance by the issuer or nominated person; or~~

~~(iv) an assignee of the issuer's or nominated person's deferred obligation that was taken for value and without notice of forgery or material fraud after the obligation was incurred by the issuer or nominated person; and~~

~~(2) The issuer, acting in good faith, may honor or dishonor the presentation in any other case.~~

~~(b) If an applicant claims that a required document is forged or materially fraudulent or that honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant, a court of competent jurisdiction may temporarily or permanently enjoin the issuer from honoring a presentation or grant similar relief against the issuer or other persons only if the court finds that:~~

~~(1) The relief is not prohibited under the law applicable to an accepted draft or deferred obligation incurred by the issuer;~~

~~(2) A beneficiary, issuer, or nominated person who may be adversely affected is adequately protected against loss that it may suffer because the relief is granted;~~

- (3) All of the conditions to entitle a person to the relief under the law of this state have been met; and
- (4) On the basis of the information submitted to the court, the applicant is more likely than not to succeed under its claim of forgery or material fraud and the person demanding honor does not qualify for protection under paragraph (1) of subsection (a) of this section.

SECTION 9. AMENDATORY 12A O.S. 1991, Section 5-110, is amended to read as follows:

Section 5-110. ~~Availability of Credit in Portions; Presenter's Reservation of Lien or Claim Warranties.~~

~~(1) Unless otherwise specified a credit may be used in portions in the discretion of (a) If its presentation is honored, the beneficiary.~~

~~(2) Unless otherwise specified a person by presenting a documentary draft or demand for payment under a credit relinquishes upon its honor all claims to the documents and a person by transferring such draft or demand or causing such presentment authorizes such relinquishment. An explicit reservation of claim makes the draft or demand noncomplying warrants:~~

- (1) To the issuer, any other person to whom presentation is made, and the applicant that there is no fraud or forgery of the kind described in subsection (a) of Section 5-109 of this title; and
- (2) To the applicant that the drawing does not violate any agreement between the applicant and beneficiary or any other agreement intended by them to be augmented by the letter of credit.

(b) The warranties in subsection (a) of this section are in addition to warranties arising under Articles III, IV, VII and VIII of this title because of the presentation or transfer of documents covered by any of those articles.

SECTION 10. AMENDATORY 12A O.S. 1991, Section 5-111, is amended to read as follows:

Section 5-111. ~~Warranties on Transfer and Presentment Remedies.~~

~~(1) Unless otherwise agreed the beneficiary by transferring or presenting a documentary draft or demand for payment warrants to all interested parties that the necessary conditions of the (a) If an issuer wrongfully dishonors or repudiates its obligation to pay money under a letter of credit before presentation, the beneficiary, successor, or nominated person presenting on its own behalf may recover from the issuer the amount that is the subject of the dishonor or repudiation. If the issuer's obligation under the letter of credit have been complied with. This is in addition to any warranties arising under Articles 3, 4, 7 and 8.~~

~~(2) Unless otherwise agreed a negotiating, advising, confirming, collecting or issuing bank presenting or transferring a draft or demand for payment under a credit warrants only the matters warranted by a collecting bank under Article 4 and any such bank transferring a document warrants only the matters warranted by an intermediary under Articles 7 and 8 is not for the payment of money, the claimant may obtain specific performance or, at the claimant's election, recover an amount equal to the value of performance from the issuer. In either case, the claimant may also recover incidental but not consequential damages. The claimant is not obligated to take action to avoid damages that might be due from the issuer under this subsection. If, although not obligated to do so, the claimant avoids damages, the claimant's recovery from the issuer must be reduced by the amount of damages avoided. The issuer has~~

the burden of proving the amount of damages avoided. In the case of repudiation the claimant need not present any document.

(b) If an issuer wrongfully dishonors a draft or demand presented under a letter of credit or honors a draft or demand in breach of its obligation to the applicant, the applicant may recover damages resulting from the breach, including incidental but not consequential damages, less any amount saved as a result of the breach.

(c) If an adviser or nominated person other than a confirmer breaches an obligation under this article or an issuer breaches an obligation not covered in subsection (a) or (b) of this section, a person to whom the obligation is owed may recover damages resulting from the breach, including incidental but not consequential damages, less any amount saved as a result of the breach. To the extent of the confirmation, a confirmer has the liability of an issuer specified in this subsection and subsections (a) and (b) of this section.

(d) An issuer, nominated person, or adviser who is found liable under subsection (a), (b), or (c) of this section shall pay interest on the amount owed thereunder from the date of wrongful dishonor or other appropriate date.

(e) Reasonable attorney's fees and other expenses of litigation must be awarded to the prevailing party in an action in which a remedy is sought under this article.

(f) Damages that would otherwise be payable by a party for breach of an obligation under this article may be liquidated by agreement or undertaking, but only in an amount or by a formula that is reasonable in light of the harm anticipated.

SECTION 11. AMENDATORY 12A O.S. 1991, Section 5-112, is amended to read as follows:

~~Section 5-112. Time Allowed for Honor or Rejection; Withholding Honor or Rejection by Consent; "Presenter"~~ Transfer of Letter of Credit.

~~(1) A bank to which a documentary draft or~~ (a) Except as otherwise provided in Section 5-113 of this title, unless a letter of credit provides that it is transferable, the right of a beneficiary to draw or otherwise demand for payment is presented under a credit may without dishonor of the draft, demand or credit.

~~(a) defer honor until the close of the third banking day following receipt of the documents; and~~

~~(b) further defer honor if the presenter has expressly or impliedly consented thereto.~~

~~Failure to honor within the time here specified constitutes dishonor of the draft or demand and of the credit except as otherwise provided in subsection (4) of Section 5-114 on conditional payment.~~

~~(2) Upon dishonor the bank may unless otherwise instructed fulfill its duty to return the draft or demand and the documents by holding them at the disposal of the presenter and sending him an advice to that effect.~~

~~(3) "Presenter" means any person presenting a draft or demand for payment for honor under a credit even though that person is a confirming bank or other correspondent which is acting under an issuer's authorization performance under a letter of credit may not be transferred.~~

(b) Even if a letter of credit provides that it is transferable, the issuer may refuse to recognize or carry out a transfer if:

(1) The transfer would violate applicable law; or

(2) The transferor or transferee has failed to comply with any requirement stated in the letter of credit or any

other requirement relating to transfer imposed by the issuer which is within the standard practice referred to in subsection (e) of Section 5-108 of this title or is otherwise reasonable under the circumstances.

SECTION 12. AMENDATORY 12A O.S. 1991, Section 5-113, is amended to read as follows:

Section 5-113. ~~Indemnities~~ Transfer by Operation of Law.

~~(1) (a) A bank seeking to obtain (whether for itself or another) honor, negotiation or reimbursement under a credit may give an indemnity to induce such honor, negotiation or reimbursement.~~

~~(2) An indemnity agreement inducing honor, negotiation or reimbursement.~~

~~(a) unless otherwise explicitly agreed applies to defects in the documents but not in the goods; and~~

~~(b) unless a longer time is explicitly agreed expires at the end of ten (10) business days following receipt of the documents by the ultimate customer unless notice of objection is sent before such expiration date. The ultimate customer may send notice of objection to the person from whom he received the documents and any bank receiving such notice is under a duty to send notice to its transferor before its midnight deadline~~

successor of a beneficiary may consent to amendments, sign and present documents, and receive payment or other items of value in the name of the beneficiary without disclosing its status as a successor.

(b) A successor of a beneficiary may consent to amendments, sign and present documents, and receive payment or other items of value in its own name as the disclosed successor of the beneficiary. Except as otherwise provided in subsection (e) of this section, an issuer shall recognize a disclosed successor of a beneficiary as beneficiary in full substitution for its predecessor upon compliance with the requirements for recognition by the issuer of a transfer of drawing rights by operation of law under the standard practice referred to in subsection (e) of Section 5-108 of this title or, in the absence of such a practice, compliance with other reasonable procedures sufficient to protect the issuer.

(c) An issuer is not obligated to determine whether a purported successor is a successor of a beneficiary or whether the signature of a purported successor is genuine or authorized.

(d) Honor of a purported successor's apparently complying presentation under subsection (a) or (b) of this section has the consequences specified in subsection (i) of Section 5-108 of this title even if the purported successor is not the successor of a beneficiary. Documents signed in the name of the beneficiary or of a disclosed successor by a person who is neither the beneficiary nor the successor of the beneficiary are forged documents for the purposes of Section 5-109 of this title.

(e) An issuer whose rights of reimbursement are not covered by subsection (d) of this section or substantially similar law and any confirmer or nominated person may decline to recognize a presentation under subsection (b) of this section.

(f) A beneficiary whose name is changed after the issuance of a letter of credit has the same rights and obligations as a successor of a beneficiary under this section.

SECTION 13. AMENDATORY 12A O.S. 1991, Section 5-114, as amended by Section 55, Chapter 242, O.S.L. 1995 (12A O.S. Supp. 1995, Section 5-114), is amended to read as follows:

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

~~(1) An issuer must honor a (a) In this section, "proceeds of a letter of credit" means the cash, check, accepted 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 8-108 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, or other item of value paid or delivered upon honor or giving of value by the issuer or any nominated person under the letter of credit. The term does not include a beneficiary's drawing rights or documents presented by the beneficiary.~~

(b) A beneficiary may assign its right to part or all of the proceeds of a letter of credit. The beneficiary may do so before presentation as a present assignment of its right to receive proceeds contingent upon its compliance with the terms and conditions of the letter of credit.

(c) An issuer or nominated person need not recognize an assignment of proceeds of a letter of credit until it consents to the assignment.

(d) An issuer or nominated person has no obligation to give or withhold its consent to an assignment of proceeds of a letter of credit, but consent may not be unreasonably withheld if the assignee possesses and exhibits the letter of credit and presentation of the letter of credit is a condition to honor.

(e) Rights of a transferee beneficiary or nominated person are independent of the beneficiary's assignment of the proceeds of a letter of credit and are superior to the assignee's right to the proceeds.

(f) Neither the rights recognized by this section between an assignee and an issuer, transferee beneficiary, or nominated person nor the issuer's or nominated person's payment of proceeds to an assignee or a third person affect the rights between the assignee and any person other than the issuer, transferee beneficiary, or nominated person. The mode of creating and perfecting a security interest in or granting an assignment of a beneficiary's rights to proceeds is governed by Article 9 of this title or other law. Against persons other than the issuer, transferee beneficiary, or nominated person, the rights and obligations arising upon the creation of a security interest or other assignment of a beneficiary's right to proceeds and its perfection are governed by Article 9 of this title or other law.

SECTION 14. AMENDATORY 12A O.S. 1991, Section 5-115, is amended to read as follows:

Section 5-115. ~~Remedy for Improper Dishonor or Anticipatory Repudiation~~ Statute of Limitations.

~~(1) When an issuer wrongfully dishonors a draft or demand for payment presented under a credit the person entitled to honor has with respect to any documents the rights of a person in the position of a seller (Section 2-707) and may recover from the issuer the face amount of the draft or demand together with incidental damages under Section 2-710 on seller's incidental damages and interest but less any amount realized by resale or other use or disposition of the subject matter of the transaction. In the event no resale or other utilization is made the documents, goods or other subject matter involved in the transaction must be turned over to the issuer on payment of judgment.~~

~~(2) When an issuer wrongfully cancels or otherwise repudiates a credit before presentment of a draft or demand for payment drawn under it the beneficiary has the rights of a seller after anticipatory repudiation by the buyer under Section 2-610 if he learns of the repudiation in time reasonably to avoid procurement of the required documents. Otherwise the beneficiary has an immediate right of action for wrongful dishonor right or obligation arising under this article must be commenced within one (1) year after the expiration date of the relevant letter of credit or one (1) year after the cause of action accrues, whichever occurs later. A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach.~~

SECTION 15. AMENDATORY 12A O.S. 1991, Section 5-116, is amended to read as follows:

Section 5-116. ~~Transfer and Assignment~~ Choice of Law and Forum.

~~(1) (a) The right to draw under a credit can be transferred or assigned only when the credit is expressly designated as transferable or assignable.~~

~~(2) Even though the credit specifically states that it is nontransferable or nonassignable the beneficiary may, before~~

~~performance of the conditions of the credit, assign his right to proceeds. Such an assignment is an assignment of an account under Article 9 on Secured Transactions and is governed by that article except that:~~

- ~~(a) the assignment is ineffective until the letter of credit or advice of credit is delivered to the assignee, which delivery constitutes perfection of the security interest under Article 9; and~~
- ~~(b) the issuer may honor drafts or demands for payment drawn under the credit until it receives a notification of the assignment signed by the beneficiary which reasonably identifies the credit involved in the assignment and contains a request to pay the assignee; and~~
- ~~(c) after what reasonably appears to be such a notification has been received, the issuer may without dishonor refuse to accept or pay even to a person otherwise entitled to honor until the letter of credit or advice of credit is exhibited to the issuer.~~

~~(3) Except where the beneficiary has effectively assigned his right to draw or his right to proceeds, nothing in this section limits his right to transfer or negotiate drafts or demands drawn under the credit liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction chosen by an agreement in the form of a record signed or otherwise authenticated by the affected parties in the manner provided in Section 5-104 of this title or by a provision in the person's letter of credit, confirmation, or other undertaking. The jurisdiction whose law is chosen need not bear any relation to the transaction.~~

(b) Unless subsection (a) of this section applies, the liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction in which the person is located. The person is considered to be located at the address indicated in the person's undertaking. If more than one address is indicated, the person is considered to be located at the address from which the person's undertaking was issued. For the purpose of jurisdiction, choice of law, and recognition of interbranch letters of credit, but not enforcement of a judgment, all branches of a bank are considered separate juridical entities and a bank is considered to be located at the place where its relevant branch is considered to be located under this subsection.

(c) Except as otherwise provided in this subsection, the liability of an issuer, nominated person, or adviser is governed by any rules of custom or practice, such as the Uniform Customs and Practice for Documentary Credits, to which the letter of credit, confirmation, or other undertaking is expressly made subject. If:

- (1) This article would govern the liability of an issuer, nominated person, or adviser under subsection (a) or (b) of this section;
- (2) The relevant undertaking incorporates rules of custom or practice; and
- (3) There is conflict between this article and those rules as applied to that undertaking,

those rules govern except to the extent of any conflict with the nonvariable provisions specified in subsection (c) of Section 5-103 of this title.

(d) If there is conflict between this article and Article 3, 4, 4A, or 9 of this title, this article governs.

(e) The forum for settling disputes arising out of an undertaking within this article may be chosen in the manner and with the binding effect that governing law may be chosen in accordance with subsection (a) of this section.

SECTION 16. AMENDATORY 12A O.S. 1991, Section 5-117, is amended to read as follows:

Section 5-117. ~~Insolvency of Bank Holding Funds for Documentary Credit Subrogation of Issuer, Applicant, and Nominated Person.~~

~~(1) Where an (a) An issuer or an advising or confirming bank or a bank which has for a customer procured issuance of a credit by another bank becomes insolvent before final payment under the credit and the credit is one to which this article is made applicable by paragraphs (a) or (b) of Section 5-102(1) on scope, the receipt or allocation of funds or collateral to secure or meet obligations under the credit shall have the following results:~~

- ~~(a) to the extent of any funds or collateral turned over after or before the insolvency as indemnity against or specifically for the purpose of payment of drafts or demands for payment drawn under the designated credit, the drafts or demands are entitled to payment in preference over depositors or other general creditors of the issuer or bank; and~~
- ~~(b) on expiration of the credit or surrender of the beneficiary's rights under it unused any person who has given such funds or collateral is similarly entitled to return thereof; and~~
- ~~(c) a charge to a general or current account with a bank if specifically consented to for the purpose of indemnity against or payment of drafts or demands for payment drawn under the designated credit falls under the same rules as if the funds had been drawn out in cash and then turned over with specific instructions.~~

~~(2) After honor or reimbursement under this section the customer or other person for whose account the insolvent bank has acted is entitled to receive the documents involved that honors a beneficiary's presentation is subrogated to the rights of the beneficiary to the same extent as if the issuer were a secondary obligor of the underlying obligation owed to the beneficiary and of the applicant to the same extent as if the issuer were the secondary obligor of the underlying obligation owed to the applicant.~~

(b) An applicant that reimburses an issuer is subrogated to the rights of the issuer against any beneficiary, presenter, or nominated person to the same extent as if the applicant were the secondary obligor of the obligations owed to the issuer and has the rights of subrogation of the issuer to the rights of the beneficiary stated in subsection (a) of this section.

(c) A nominated person who pays or gives value against a draft or demand presented under a letter of credit is subrogated to the rights of:

- (1) The issuer against the applicant to the same extent as if the nominated person were a secondary obligor of the obligation owed to the issuer by the applicant;
- (2) The beneficiary to the same extent as if the nominated person were a secondary obligor of the underlying obligation owed to the beneficiary; and
- (3) The applicant to the same extent as if the nominated person were a secondary obligor of the underlying obligation owed to the applicant.

(d) Notwithstanding any agreement or term to the contrary, the rights of subrogation stated in subsections (a) and (b) of this

section do not arise until the issuer honors the letter of credit or otherwise pays and the rights in subsection (c) of this section do not arise until the nominated person pays or otherwise gives value. Until then, the issuer, nominated person, and the applicant do not derive under this section present or prospective rights forming the basis of a claim, defense, or excuse.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-118 of Title 12A, unless there is created a duplication in numbering, reads as follows:

Applicability.

This act applies to a letter of credit that is issued on or after January 1, 1997. This act does not apply to a transaction, event, obligation, or duty arising out of or associated with a letter of credit that was issued before January 1, 1997.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-119 of Title 12A, unless there is created a duplication in numbering, reads as follows:

Savings Clause.

A transaction arising out of or associated with a letter of credit that was issued before January 1, 1997, and the rights, obligations, and interests flowing from that transaction are governed by any statute or other law amended or repealed by this act as if repeal or amendment had not occurred and may be terminated, completed, consummated, or enforced under that statute or other law.

SECTION 19. AMENDATORY 12A O.S. 1991, Section 1-105, as amended by Section 52, Chapter 242, O.S.L. 1995 (12A O.S. Supp. 1995, 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.

Letters of credit. Section 5-116 of this title.

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

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

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

SECTION 20. AMENDATORY 12A O.S. 1991, Section 2-512, is amended to read as follows:

Section 2-512. (1) Where the contract requires payment before inspection nonconformity of the goods does not excuse the buyer from so making payment unless

(a) the nonconformity appears without inspection; or

(b) despite tender of the required documents the circumstances would justify injunction against honor under the provisions of this act (~~Section 5-114~~ subsection (b) of Section 5-109 of this title).

(2) Payment pursuant to subsection (1) of this section does not constitute an acceptance of goods or impair the buyer's right to inspect or any of his remedies.

SECTION 21. AMENDATORY 12A O.S. 1991, Section 9-102, is amended to read as follows:

Section 9-102. Policy and Subject Matter of Article.

(1) Except as otherwise provided in Section 9-104 of this title on excluded transactions, this article applies:

(a) to any transaction, regardless of its form, which is intended to create a security interest in personal property or fixtures including goods, documents, instruments, general intangibles, chattel paper or accounts; and also

(b) to any sale of accounts or chattel paper.

(2) This article applies to security interests created by contract including pledge, assignment, chattel mortgage, chattel trust, trust deed, factor's lien, equipment trust, conditional sale, trust receipt, other lien or title retention contract and lease or consignment intended as security. This article does not apply to statutory liens except as provided in Section 9-310 of this title.

(3) The application of this article to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this article does not apply.

(4) This article does not prevent the transfer of ownership of accounts or chattel paper. The determination of whether a particular transfer of accounts or chattel paper constitutes a sale or a transfer for security purposes is not governed by this article.

SECTION 22. AMENDATORY 12A O.S. 1991, Section 9-103.1, as amended by Section 56, Chapter 242, O.S.L. 1995 (12A O.S. Supp. 1995, 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, Letters of Credit, and Ordinary Goods.

(a) This subsection applies to documents ~~and~~ instruments, rights to proceeds of written letters of credit, 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) of this section 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) of this section apply to a possessory security interest in chattel paper. The rules stated for accounts in subsection (3) of this section 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) 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. Paragraphs (c), (d) and (e) of subsection (3) of this section apply to security interests to which this paragraph applies.

SECTION 23. AMENDATORY 12A O.S. 1991, Section 9-104, as amended by Section 1, Chapter 143, O.S.L. 1994 (12A O.S. Supp. 1995, Section 9-104), is amended to read as follows:

Section 9-104. Transactions Excluded From Article.

This article does not apply:

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

- creation or transfer of an interest in or lien on real estate, including a lease or rents thereunder; or
- (j) to a transfer in whole or in part of any claim arising out of tort; or
- (k) to a transfer of an interest in any deposit account as described in subsection (1) of Section 9-105 of this title, except as provided with respect to proceeds as described in Section 9-306 of this title and priorities in proceeds as described in Section 9-312 of this title; or
- (l) to a transfer of an interest in a letter of credit other than the rights to proceeds of a written letter of credit.

SECTION 24. AMENDATORY 12A O.S. 1991, Section 9-105, as last amended by Section 57, Chapter 242, O.S.L. 1995 (12A O.S. Supp. 1995, 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 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.
"Letter of credit". Section 5-102.
"Note". Section 3-104.
"Proceeds of a letter of credit". Section 5-114(a).
"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 25. AMENDATORY 12A O.S. 1991, Section 9-106, as amended by Section 58, Chapter 242, O.S.L. 1995 (12A O.S. Supp. 1995, 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, rights to proceeds of written letters of credit, 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 26. AMENDATORY 12A O.S. 1991, Section 9-302, as last amended by Section 63, Chapter 242, O.S.L. 1995 (12A O.S. Supp. 1995, Section 9-302), is amended to read as follows:

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

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

- (a) A security interest in collateral in possession of the secured party pursuant to the provisions of Section 9-305 of this title; or
- (b) A security interest temporarily perfected in instruments, 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 (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 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
- (j) A security interest in a certificate of 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 27. AMENDATORY 12A O.S. 1991, Section 9-304, as amended by Section 64, Chapter 242, O.S.L. 1995 (12A O.S. Supp. 1995, Section 9-304), is amended to read as follows:

Section 9-304. Perfection of Security Interest in Instruments, Documents, Proceeds of a Written Letter of Credit, 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 the rights to proceeds of a written letter of credit can be perfected only by the secured party's taking possession of the letter of credit. A security interest in money or instruments, other than 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, 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, 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 or certificated security 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 28. AMENDATORY 12A O.S. 1991, Section 9-305, as amended by Section 65, Chapter 242, O.S.L. 1995 (12A O.S. Supp. 1995, 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, money, negotiable documents, or chattel paper may be perfected by the secured party's taking possession of the collateral. A security interest in the right to proceeds of a written letter of credit may be perfected by the secured party's taking possession of the letter of credit. 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 29. AMENDATORY 15 O.S. 1991, Section 262, is amended to read as follows:

Section 262. A Except when the parties otherwise expressly agree in writing, a borrower of money must pay the amount due in such money as is current at the time when the loan becomes due, whether such money is worth more or less than the actual money lent.

SECTION 30. REPEALER 23 O.S. 1991, Sections 23 and 24, are hereby repealed.

SECTION 31. Sections 1 through 20 and 22 through 27 of this act shall become effective January 1, 1997.

SECTION 32. Section 21 of this act shall apply retroactively to February 1, 1996.

SECTION 33. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 11th day of March, 1996.

President of the Senate

Passed the House of Representatives the 2nd day of April, 1996.

Speaker of the House of Representatives

