

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

COMMITTEE SUBSTITUTE
FOR
SENATE BILL 1625

By: Coffee

COMMITTEE SUBSTITUTE

[Uniform Commercial Code - definitions - security
interests - codification -

effective date]

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

SECTION 1. AMENDATORY 12A O.S. 2001, Section 1-101, is amended to read as follows:

Section 1-101. Short Title.

~~Short Title~~ Titles; Scope of Article.

~~Sections 1-101 through 1-107 of this title and Sections 1 through 78 of this~~ (1) This act shall be known and may be cited as the Uniform Commercial Code.

(2) This article shall be known and may be cited as the Uniform Commercial Code General Provisions. This article applies to a transaction to the extent that it is governed by another article of the Uniform Commercial Code.

SECTION 2. AMENDATORY 12A O.S. 2001, Section 1-102, is amended to read as follows:

Section 1-102. ~~Purposes; Rules of Construction; Variation by Agreement~~ Construction of Uniform Commercial Code to Promote its Purposes and Policies; Variation by Agreement; Use of Singular and Plural; Gender.

(1) ~~This act~~ The Uniform Commercial Code shall be liberally construed and applied to promote its underlying purposes and policies.

~~(2)~~ Underlying purposes and policies of this Act are, which
are:

- (a) to simplify, clarify and modernize the law governing commercial transactions;
- (b) to permit the continued expansion of commercial practices through custom, usage and agreement of the parties; and
- (c) to make uniform the law among the various jurisdictions.

(3) ~~The~~ Except as otherwise provided in subsection C of this section or elsewhere in the Uniform Commercial Code, the effect of provisions of this act the Uniform Commercial Code may be varied by agreement, except as otherwise provided in this act and except that the.

(4) The obligations of good faith, diligence, reasonableness and care prescribed by this act the Uniform Commercial Code may not be disclaimed by agreement but the. The parties, may by agreement, may determine the standards by which the performance of such those obligations is to be measured if such those standards are not manifestly unreasonable. Whenever the Uniform Commercial Code requires an action to be taken within a reasonable time, a time that is not manifestly unreasonable may be fixed by agreement.

~~(4)~~ (5) The presence in certain provisions of this act the Uniform Commercial Code of the words phrase "unless otherwise agreed", or words of similar import, does not imply that the effect of other provisions may not be varied by agreement under subsection
~~(3)~~ this section.

~~(5)~~ (6) In this act the Uniform Commercial Code, unless the statutory context otherwise requires:

- (a) words in the singular number include the plural, and those in the plural include the singular; and

(b) words of ~~the masculine~~ any gender ~~include the feminine and the neuter, and when the sense so indicates words of the neuter gender may~~ also refer to any other gender.

SECTION 3. AMENDATORY 12A O.S. 2001, Section 1-103, is amended to read as follows:

Section 1-103. Supplementary General Principles of Law Applicable.

Unless displaced by the particular provisions of ~~this act~~ the Uniform Commercial Code, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement its provisions.

SECTION 4. AMENDATORY 12A O.S. 2001, Section 1-104, is amended to read as follows:

Section 1-104. Construction Against Implicit Repeal.

~~This act~~ The Uniform Commercial Code being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

SECTION 5. AMENDATORY 12A O.S. 2001, Section 1-105, is amended to read as follows:

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

~~Territorial Application of the Act~~ Applicability; Parties' Power to Choose Applicable Law.

(1) In this section:

(a) "Domestic transaction" means a transaction other than an international transaction; and

(b) "International transaction" means a transaction that bears a reasonable relation to a country other than a United States.

(2) This section applies to a transaction to the extent that it is governed by another article of the Uniform Commercial Code.

(3) Except as otherwise provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation, the:

(a) an agreement by parties to a domestic transaction that any or all of their rights and obligations are to be determined by the law of this state or of another state is effective, whether or not the transaction bears a relation to the state designated; and

(b) an agreement by parties may agree to an international transaction that any or all of their rights and obligations are to be determined by the law either of this state or of such other another state or nation shall govern their rights and duties. Failing such agreement, this title applies to transactions bearing an appropriate relation to this state country is effective, whether or not the transaction bears a relation to the state or country designated.

~~(2) Where~~ (4) In the absence of an agreement effective under subsection C of this section, and except as provided in subsections E and G of this section, the rights and obligations of the parties are determined by the law that would be selected by application of this state's conflict of laws principles.

(5) If one of the parties to a transaction is a consumer, the following rules apply:

a. An agreement referred to in subsection C of this section is not effective unless the transaction bears a reasonable relation to the state or country designated.

b. Application of the law of the state or country determined pursuant to subsection C or D of this section may not deprive the consumer of the protection of any rule of law governing a matter within the scope of this section, which both is protective of consumers and may not be varied by agreement:

- (i) of the state or country in which the consumer principally resides, unless subparagraph b applies; or
- (ii) if the transaction is a sale of goods, of the state or country in which the consumer both makes the contract and takes delivery of those goods, if the state or country is not the state or country in which the consumer principally resides.

(6) An agreement otherwise effective under subsection C of this section is not effective to the extent that application of the law of the state or country designated would be contrary to a fundamental policy of the state or country whose law would govern in the absence of agreement under subsection D of this section.

(7) To the extent that the Uniform Commercial Code governs a transaction, if 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:

(a) Rights of creditors against sold goods. Section 2-402 of this title.;

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

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

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

(e) Letters of credit. Section 5-116 of this title.;

(f) Section 6-103;

(g) Applicability of the article on Investment Securities. Section 8-110 of this title.; and

(h) Law governing perfection, the effect of perfection or nonperfection, and the priority of security interests and agricultural liens. Sections 1-9-301 through 1-9-307 of this title.

SECTION 6. AMENDATORY 12A O.S. 2001, Section 1-106, is amended to read as follows:

Section 1-106. Remedies to Be Liberally Administered.

(1) The remedies provided by ~~this act~~ the Uniform Commercial Code shall be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special damages nor penal damages may be had except as specifically provided in ~~this act~~ the Uniform Commercial Code or by other rule of law.

(2) Any right or obligation declared by ~~this act~~ the Uniform Commercial Code is enforceable by action unless the provision declaring it specifies a different and limited effect.

SECTION 7. AMENDATORY 12A O.S. 2001, Section 1-107, is amended to read as follows:

Section 1-107. Waiver or Renunciation of Claim or Right after Breach.

~~Any~~ A claim or right arising out of an alleged breach ~~can~~ may be discharged in whole or in part without consideration by ~~a written waiver or renunciation signed and delivered by~~ agreement of the aggrieved party in an authenticated record.

SECTION 8. AMENDATORY 12A O.S. 2001, Section 1-109, is amended to read as follows:

Section 1-109. Section Captions.

Section captions are ~~parts~~ part of ~~Sections 1-101 through 11-107 of this title and Sections 1 through 78 of this act~~ the Uniform Commercial Code.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-110 of Title 12A, unless there is created a duplication in numbering, reads as follows:

Relation to Electronic Signatures in Global and National Commerce Act.

This article modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit or supersede Section 101(c) of that Act, 15 U.S.C. Section 7001(c), or authorizes electronic delivery of any of the notices described in Section 103(b) of that Act, 15 U.S.C. Section 7003(b).

SECTION 10. AMENDATORY 12A O.S. 2001, Section 1-201, is amended to read as follows:

Section 1-201.

GENERAL DEFINITIONS

(a) Unless the context otherwise requires, words or phrases defined in this section, or in the additional definitions contained in other articles of the Uniform Commercial Code that apply to particular articles or parts thereof, have the meanings stated.

(b) Subject to ~~additional~~ definitions contained in the ~~subsequent other~~ articles of the Uniform Commercial Code ~~which are applicable that apply~~ to specific articles or parts thereof, and unless the context otherwise requires, in the Uniform Commercial Code:

(1) "Action", in the sense of a judicial proceeding, includes a recoupment, counterclaim, ~~set-off~~ set-off, suit in equity, and any other proceedings in which rights are determined~~;~~;

(2) "Aggrieved party" means a party entitled to ~~resort to~~ pursue a remedy~~;~~;

(3) "Agreement", as distinguished from "contract", means the bargain of the parties in fact, as found in their language or by implication inferred from other circumstances, including course of dealing, ~~or~~ usage of trade or course of performance as provided for in ~~the Uniform Commercial Code (Sections 1-205, 2-208 and 2A-207 of this title).~~ ~~Whether an agreement has legal consequences is determined by the provisions of the Uniform Commercial Code, if~~

~~applicable; otherwise by the law of contracts (Section 1-103 of this title). (Compare "Contract").;~~

(4) "Bank" means ~~any~~ a person engaged in the business of banking. and includes a savings bank, savings and loan association, credit union and trust company;

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

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

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

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

(9) "Buyer in ordinary course of business" means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale.

Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under Article 2 may be a buyer in ordinary course of business. A "Buyer in ordinary course of business" does not include a person that acquires goods in a transfer in bulk or as security for or total or partial satisfaction of a money debt ~~is not a buyer in ordinary course of business.~~

(10) "Conspicuous": ~~A, with reference to a term, means ~~or~~ clause is conspicuous when it is~~ so written, displayed or presented that a reasonable person against whom it is to operate ought to have noticed it. ~~A printed heading in capitals, as: NONNEGOTIABLE BILL OF LADING, is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous". Whether a term or clause is "conspicuous" or not is for a decision by for the court.~~ Conspicuous terms include the following:

(A) a heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and

(B) language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the language;

(11) "Consumer" means an individual who enters into a transaction primarily for personal, family, or household purposes;

(12) "Contract", as distinguished from "agreement", means the total legal obligation which results from the parties' agreement as affected determined by the provisions of the Uniform Commercial Code and as supplemented by any other applicable ~~rules of law~~ (Compare "Agreement"). laws;

~~(12)~~ (13) "Creditor" includes a general creditor, a secured creditor, a lien creditor, and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity, and an executor or administrator of an insolvent debtor's or assignor's estate-;

~~(13)~~ (14) "Defendant" includes a person in the position of defendant in a ~~cross action or counterclaim~~, cross-claim, or third-party claim;

~~(14)~~ (15) "Delivery" with respect to ~~instruments documents an instrument document~~, of title, or chattel paper, ~~or certificated securities~~ means voluntary transfer of possession-;

~~(15)~~ (16) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt, or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold, and dispose of the document and the goods it covers. To be a document of title, a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass-;

~~(16)~~ (17) "Fault" means a default, wrongful act, omission, or breach-;

~~(17)~~ (18) "Fungible goods" means ~~goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of the Uniform Commercial Code to the extent that according to a particular agreement or document unlike units are treated as equivalents:~~

(A) goods of which any unit, by nature of usage or trade, is the equivalent of any other like unit, or

(B) goods that by agreement are treated as equivalent.

~~(18)~~ (19) "Genuine" means free of forgery or counterfeiting.

~~(19)~~ (20) "Good faith", except as otherwise provided in Article 5 of the Uniform Commercial Code, means honesty in fact ~~in the conduct or transaction concerned.~~ and the observance of reasonable commercial standards of fair dealing;

~~(20)~~ (21) "Holder" ~~with respect to a negotiable instrument,~~ means:

- a. the person in possession ~~if the~~ of a negotiable instrument that is payable either to bearer or, in the case of an instrument payable to an identified person, ~~if the identified person who is the person in possession,~~ or
- b. ~~"Holder" with respect to the person in possession of a document of title means the person in possession if the goods are deliverable either to bearer or to the order of the person in possession;~~

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

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

(23) ~~A person is "insolvent" who either has~~ "Insolvent" means:

- (A) having generally ceased to pay his debts in the ordinary course of business or cannot other than as a result of a bona fide dispute,
- (B) being unable to pay his debts as they become due, or
- (C) is being insolvent within the meaning of the federal bankruptcy law;

(24) "Money" means a medium of exchange currently authorized or adopted by a domestic or foreign government ~~and.~~ The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more ~~nations.~~ countries;

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

~~(a) he has actual knowledge of it; or~~

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

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

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

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

~~(a) it comes to his attention; or~~

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

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

~~information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.~~

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

~~(29) (26) "Party", as ~~distinct~~ distinguished from "third party", means a person who has engaged in a transaction or made an agreement ~~within the provisions of~~ subject to the Uniform Commercial Code-;~~

~~(30) (27) "Person" ~~includes~~ means an individual or an organization (See Section 1-102 of this title)., corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity;~~

~~(28) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain by use of either an interest rate specified by the parties if that rate is not manifestly unreasonable at the time the transaction is entered into or, if an interest rate is not so specified, a commercially reasonable rate that takes into account the facts and circumstances at the time the transaction is entered into;~~

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

~~(32) (29) "Purchase" ~~includes~~ means taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest,~~

issue or reissue, gift, or any other voluntary transaction creating an interest in property-;

~~(33)~~ (30) "Purchaser" means a person who takes by purchase-;

(31) "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;

~~(34)~~ (32) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal-;

~~(35)~~ (33) "Representative" ~~includes an agent, an officer of a corporation or association, and a trustee, executor, or administrator of an estate, or any other~~ means a person empowered to act for another-, including an agent, an officer of a corporation or association, and a trustee, executor, or administrator of an estate;

~~(36)~~ (34) "Rights" includes ~~remedies.~~ remedy;

~~(37)~~ ~~(a)~~ (35) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The term also includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to Article 9 of this title. The "Security interest" does not include the special property interest of a buyer of goods on identification of such those goods to a contract for sale under Section 2-401 of this title is not a "security interest", but a buyer may also acquire a "security interest" by complying with the provisions of Article 9 of this title. Except as otherwise provided in Section 2-505 of this title, the right of a seller or lessor of goods under Article 2 or 2A of this title to retain or acquire possession of the goods is not a "security interest", but a seller or lessor may also acquire a "security interest" by

complying with Article 9 of this title. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer ~~under Section 2-401 of this title~~ is limited in effect to a reservation of a "security interest".

~~(b) Whether a transaction creates in the form of a lease ~~or creates a "security interest"~~ is determined ~~by the facts of each case pursuant to Section 1-203 of this title~~; however, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee, and:~~

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

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

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

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

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

~~(i) the present value of the consideration the lessee is obligated to pay the lessor for the right to~~

~~possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into,~~

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

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

~~(iv) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed, or~~

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

~~(d) For purposes of this subsection:~~

~~(i) additional consideration is not nominal if:~~

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

~~(B) when the option to become the owner of the goods is granted to the lessee the price is stated to be the fair market value of the goods determined at the time the option is~~

~~to be performed. Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised;~~

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

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

~~(38)~~ (36) "Send" in connection with any a writing, record, or notice means:

(A) to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and, in the case of an instrument, to an address specified thereon or otherwise agreed, or if there be none, to any address reasonable under the circumstances; or

(B) ~~The receipt of~~ in any other way to cause to be received any writing record or notice within the time

~~at which it would have arrived if properly sent has the effect of a proper sending.;~~

~~(39)~~ (37) "Signed" includes using any symbol executed or adopted by a party with present intention to authenticate adopt or accept a writing.;

(38) "State" means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States;

~~(40)~~ (39) "Surety" includes a guarantor or other secondary obligor;

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

~~(42)~~ (40) "Term" means that a portion of an agreement which that relates to a particular matter.;

~~(43)~~ (41) "Unauthorized signature" means a signature made without actual, implied or apparent authority and. The term includes a forgery.;

~~(44) "Value". Except as otherwise provided for in Sections 3-303, 4-210 and 4-211 of this title with respect to negotiable instruments and bank collections, a person gives "value" for rights if he acquires them:~~

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

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

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

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

~~(45)~~ (42) "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire ~~;~~ and

~~(46)~~ ~~"Written" or "writing"~~

(43) "Writing" includes printing, typewriting, or any other intentional reduction to tangible form. "Written" has a corresponding meaning.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-201a of Title 12A, unless there is created a duplication in numbering, reads as follows:

Notice; Knowledge.

(1) Subject to subsection (6) of this section, a person has notice of a fact if a person:

- (a) Has actual knowledge of the fact;
- (b) Has received a notice or notification of the fact; or
- (c) Has reason to know the fact.

(2) "Knowledge" means actual knowledge. "Knows" has a corresponding meaning.

(3) "Discover", "learn" or words of similar import refer to knowledge rather than reason to know.

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

(5) Subject to subsection F of this section, a person "receives" a notice or notification when:

- (a) It comes to that person's attention; or
- (b) It is duly delivered in a form reasonable under the circumstances at the place of business through which the contract was made or at another location held out by that person as the place for receipt of such communications.

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

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-201b of Title 12A, unless there is created a duplication in numbering, reads as follows:

Lease Distinguished from Security Interest.

(1) Whether a transaction in the form of a lease creates a lease or security interest is determined by the facts of each case.

(2) A transaction in the form of a lease creates a security interest if the consideration that the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease and is not subject to termination by the lessee, and:

(a) The original term of the lease is equal to or greater than the remaining economic life of the goods;

(b) The lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

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

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

(3) A transaction in the form of a lease does not create a security interest merely because:

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

(b) The lessee assumes risk of loss of the goods;

(c) The lessee agrees to pay, with respect to the goods, taxes, insurance, filing, recording, or registration fees, or service or maintenance costs;

(d) The lessee has an option to renew the lease or to become owner of the goods;

(e) The lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed; or

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

(4) Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised. Additional consideration is not nominal if:

(a) When the option to renew the lease is granted to the lessee, the rent is stated to be the fair market rent for the use of

the goods for the term of the renewal determined at the time the option is to be performed; or

(b) When the option to become the owner of the goods is granted to the lessee, the price is stated to be the fair market value of the goods determined at the time the option is to be performed.

(5) The remaining economic life of the goods and reasonably predictable fair market rent, fair market value, or cost of performing under the lease agreement must be determined with reference to the facts and circumstances at the time the transaction is entered into.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-201c of Title 12A, unless there is created a duplication in numbering, reads as follows:

Value.

Except as otherwise provided in Articles 3, 4, 5 and 6, a person gives value for rights if the person acquires them:

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

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

(c) By accepting delivery under a preexisting contract for purchase; or

(d) In return for any consideration sufficient to support a simple contract.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-201d of Title 12A, unless there is created a duplication in numbering, reads as follows:

Presumptions.

Whenever the Uniform Commercial Code creates a "presumption" with respect to a fact, or provides that a fact is "presumed", the

trier of fact must find the existence of the fact unless and until evidence is introduced that supports a finding of its nonexistence.

SECTION 15. AMENDATORY 12A O.S. 2001, Section 1-202, is amended to read as follows:

Section 1-202. Prima Facie Evidence by Third Party Documents.

A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party ~~shall be~~ is prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party.

SECTION 16. AMENDATORY 12A O.S. 2001, Section 1-203, is amended to read as follows:

Section 1-203. Obligation of Good Faith.

Every contract or duty within ~~this Act~~ the Uniform Commercial Code imposes an obligation of good faith in its performance or enforcement.

SECTION 17. AMENDATORY 12A O.S. 2001, Section 1-204, is amended to read as follows:

Section 1-204. ~~Time;~~ Reasonable Time; "Seasonably".

(1) ~~Whenever this act requires any action to be taken within a reasonable time, any time which is not manifestly unreasonable may be fixed by agreement.~~

~~(2) What is~~ Whether a reasonable time for taking ~~any~~ an action required by the Uniform Commercial Code is reasonable depends on the nature, purpose and circumstances of ~~such~~ the action.

~~(3) (2)~~ An action is taken "seasonably" ~~when~~ if it is taken at or within the time agreed or, if no time is agreed, at or within a reasonable time.

SECTION 18. AMENDATORY 12A O.S. 2001, Section 1-205, is amended to read as follows:

Section 1-205. Course of Performance, Course of Dealing and Usage of Trade.

(1) A "course of performance" is a sequence of conduct between the parties to a particular transaction that exists if:

(a) The agreement of the parties with respect to the transaction involves repeated occasions for performance by a party; and

(b) The other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection.

(2) A "course of dealing" is a sequence of ~~previous~~ conduct concerning previous transactions between the parties to a particular transaction ~~which~~ that is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

~~(2)~~ (3) A "usage of trade" is any practice or method of dealing having such regularity of observance in a place, vocation or trade as to justify ~~and~~ an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage ~~are to~~ must be proved as facts. If it is established that such a usage is embodied in a ~~written~~ trade code or similar ~~writing~~ record, the interpretation of the ~~writing~~ record is ~~for the court~~ a question of law.

~~(3)~~ (4) A course of performance or course of dealing between the parties and any or usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware is relevant in ascertaining the meaning of the parties' agreement, may give particular meaning to specific terms of the agreement, and may supplement or qualify the terms of an the agreement. A usage of trade applicable in the place in which part of the performance under the agreement is to occur may be so utilized as to that part of the performance.

~~(4)~~ (5) Except as otherwise provided in subsection (6) of this section, ~~The~~ the express terms of an agreement and ~~an~~ any applicable course of performance, course of dealing or usage of trade shall be construed ~~wherever~~ whenever reasonable as consistent with each other; ~~but when~~ . If such a construction is unreasonable ~~express:~~

(a) Express terms ~~control both~~ prevail over course of performance, course of dealing and usage of trade;

(b) Course of performance prevails over ~~and~~ course of dealing ~~controls~~ and usage of trade; and

(c) Course of dealing prevails over usage of trade.

~~(5)~~ ~~An applicable usage of trade in the place where any part of performance is to occur shall be used in interpreting the agreement as to that part of the performance.~~

(6) Subject to Section 2-209 of the Uniform Commercial Code, a course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.

(7) Evidence of a relevant usage of trade offered by one party is not admissible unless ~~and until he~~ that party has given the other party ~~such~~ notice ~~as~~ that the court finds sufficient to prevent unfair surprise to the ~~latter~~ other party.

SECTION 19. AMENDATORY 12A O.S. 2001, Section 1-208, is amended to read as follows:

Section 1-208. Option to Accelerate at Will.

A term providing that one party or ~~his~~ that party's successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or "when ~~he~~ the party "deems ~~himself~~ itself insecure" or ~~in~~ words of similar import ~~shall be construed to mean~~ means that ~~he shall have~~ the party has power to do so only if ~~he~~ that party in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against whom the power has been exercised.

SECTION 20. AMENDATORY 12A O.S. 2001, Section 1-209, is amended to read as follows:

Section 1-209. ~~Subordination of~~ Subordinated obligations.

An obligation may be issued as subordinated to ~~payment~~ performance of another obligation of the person obligated, or a creditor may subordinate ~~his~~ its right to ~~payment~~ performance of an obligation by agreement with either the person obligated or another creditor of the person obligated. ~~Such a subordination~~ Subordination does not create a security interest as against either the common debtor or a subordinated creditor. ~~This section shall be construed as declaring the law as it existed prior to the enactment of this section and not as modifying it.~~

SECTION 21. AMENDATORY 12A O.S. 2001, Section 2-202, is amended to read as follows:

Section 2-202. Final Written Expression: Parole or Extrinsic Evidence.

Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented

- (a) by course of performance, course of dealing or usage of trade (Section 1-205) or by course of performance (Section 2-208); and
- (b) by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

SECTION 22. AMENDATORY 12A O.S. 2001, Section 1-9-102, is amended to read as follows:

Section 1-9-102. Definitions and index of definitions.

DEFINITIONS AND INDEX OF DEFINITIONS

(a) In this article:

(1) "Accession" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(2) (A) "Account", except as used in "account for", means a right to payment of a monetary obligation, whether or not earned by performance:

(i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of;

(ii) for services rendered or to be rendered;

(iii) for a policy of insurance issued or to be issued;

(iv) for a secondary obligation incurred or to be incurred;

(v) for energy provided or to be provided;

(vi) for the use or hire of a vessel under a charter or other contract;

(vii) arising out of the use of a credit or charge card or information contained on or for use with the card; or

(viii) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or a person licensed or authorized to operate the game by a state or governmental unit of a state.

(B) The term includes health-care-insurance receivables.

(C) The term does not include:

(i) rights to payment evidenced by chattel paper or an instrument;

(ii) commercial tort claims;

(iii) deposit accounts;

- (iv) investment property;
- (v) letter-of-credit rights or letters of credit; or
- (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

(3) "Account debtor" means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

(4) "Accounting", except as used in "accounting for", means a record:

- (A) authenticated by a secured party;
- (B) indicating the aggregate unpaid secured obligations as of a date not more than thirty-five (35) days earlier or thirty-five (35) days later than the date of the record; and
- (C) identifying the components of the obligations in reasonable detail.

(5) "Agricultural lien" means an interest, ~~other than a security interest,~~ in farm products:

- (A) which secures payment or performance of an obligation for:
 - (i) goods or services furnished in connection with a debtor's farming operation; or
 - (ii) rent on real property leased by a debtor in connection with its farming operation;
- (B) which is created by statute in favor of a person that:
 - (i) in the ordinary course of its business furnished goods or services to a debtor in connection with a debtor's farming operation; or

(ii) leased real property to a debtor in connection with the debtor's farming operation; and

(C) whose effectiveness does not depend on the person's possession of the personal property.

(6) "As-extracted collateral" means:

(A) oil, gas, or other minerals that are subject to a security interest that:

(i) is created by a debtor having an interest in the minerals before extraction; and

(ii) attaches to the minerals as extracted; or

(B) accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

(7) "Authenticate" means:

(A) to sign; or

(B) to execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record.

(8) "Bank" means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions, and trust companies.

(9) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the like.

(10) "Certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

(11) "Chattel paper" means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in

the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this paragraph, "monetary obligation" means a monetary obligation secured by the goods or owed under a lease of goods and includes a monetary obligation with respect to software used in the goods. The term does not include charters or other contracts involving the use or hire of a vessel. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

(12) "Collateral" means the property subject to a security interest or agricultural lien. The term includes:

- (A) proceeds to which a security interest attaches;
- (B) accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and
- (C) goods that are the subject of a consignment.

(13) "Commercial tort claim" means a claim arising in tort with respect to which:

- (A) the claimant is an organization; or
- (B) the claimant is an individual and the claim:
 - (i) arose in the course of the claimant's business or profession; and
 - (ii) does not include damages arising out of personal injury to or the death of an individual.

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

(15) "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:

- (A) 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 federal commodities laws; or
- (B) 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.

(16) "Commodity customer" means a person for which a commodity intermediary carries a commodity contract on its books.

(17) "Commodity intermediary" means a person that:

- (A) is registered as a futures commission merchant under federal commodities law; or
- (B) 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 federal commodities law.

(18) "Communicate" means:

- (A) to send a written or other tangible record;
- (B) to transmit a record by any means agreed upon by the persons sending and receiving the record; or
- (C) in the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.

(19) "Consignee" means a merchant to which goods are delivered in a consignment.

(20) "Consignment" means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

- (A) the merchant:
 - (i) deals in goods of that kind under a name other than the name of the person making delivery;
 - (ii) is not an auctioneer; and

(iii) is not generally known by its creditors to be substantially engaged in selling the goods of others;

(B) with respect to each delivery, the aggregate value of the goods is One Thousand Dollars (\$1,000.00) or more at the time of delivery;

(C) the goods are not consumer goods immediately before delivery; and

(D) the transaction does not create a security interest that secures an obligation.

(21) "Consignor" means a person that delivers goods to a consignee in a consignment.

(22) "Consumer debtor" means a debtor in a consumer transaction.

(23) "Consumer goods" means goods that are used or bought for use primarily for personal, family, or household purposes.

(24) "Consumer-goods transaction" means a consumer transaction in which:

(A) an individual incurs an obligation primarily for personal, family, or household purposes; and

(B) a security interest in consumer goods secures the obligation.

(25) "Consumer obligor" means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family, or household purposes.

(26) "Consumer transaction" means a transaction in which (i) an individual incurs an obligation primarily for personal, family, or household purposes, (ii) a security interest secures the obligation, and (iii) the collateral is held or acquired primarily for personal, family, or household purposes. The term includes consumer-goods transactions.

(27) "Continuation statement" means an amendment of a financing statement which:

- (A) identifies, by its file number, the initial financing statement to which it relates; and
- (B) indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(28) "Debtor" means:

- (A) a person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;
- (B) a seller of accounts, chattel paper, payment intangibles, or promissory notes; or
- (C) a consignee.

(29) "Deposit account" means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property ~~or accounts~~; a deposit account; evidenced by an instrument; or an acknowledgement by a bank as defined in paragraph (8) of this subsection that a sum of money has been received by the entity and its promise to repay that sum of money, not represented by a writing but only by an entry on the books of the entity and by any documentation given to the customer of the entity, and that is considered to be a certificate of deposit by the entity that issues it, which shall be classified as a general intangible under paragraph (42) of this subsection. An instrument includes:

- (A) an instrument as defined in paragraph (47) (A) of this subsection whether the instrument is subject to Section 3-104 of the Uniform Commercial Code or not because it is not payable to order; and
- (B) a writing that contains both an acknowledgement by a bank as defined in paragraph (8) of this subsection

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.

(30) "Document" means a document of title or a receipt of the type described in paragraph (2) of Section 7-201 of this title.

(31) "Electronic chattel paper" means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

(32) "Encumbrance" means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

(33) "Equipment" means goods other than inventory, farm products, or consumer goods.

(34) "Farm products" means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:

(A) crops grown, growing, or to be grown, including:

(i) crops produced on trees, vines, and bushes; and

(ii) aquatic goods produced in aquacultural operations;

(B) livestock, born or unborn, including aquatic goods produced in aquacultural operations;

(C) supplies used or produced in a farming operation; or

(D) products of crops or livestock in their unmanufactured states.

(35) "Farming operation" means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

(36) "File number" means the number assigned to an initial financing statement pursuant to subsection (a) of Section 1-9-519 of this title.

(37) "Filing office" means an office designated in Section 1-9-501 as the place to file a financing statement.

(38) "Filing-office rule" means a rule adopted pursuant to Section 1-9-526 and 1-9-526.1 of this title.

(39) "Financing statement" means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(40) "Fixture filing" means the filing of a financing statement covering goods that are or are to become fixtures and satisfying subsections (a) and (b) of Section 1-9-502 of this title. The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

(41) "Fixtures" means goods that have become so related to particular real property that an interest in them arises under real property law.

(42) "General intangible" means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.

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

(44) (A) "Goods" means all things that are movable when a security interest attaches.

(B) The term includes:

(i) fixtures;

(ii) standing timber that is to be cut and removed under a conveyance or contract for sale;

- (iii) the unborn young of animals
- (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes; and
- (v) manufactured homes.

(C) The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if:

- (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods; or
- (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods.

(D) The term does not include a computer program which is embedded in goods and that consist solely of the medium in which the program is embedded.

(E) The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

(45) "Governmental unit" means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

(46) "Health-care-insurance receivable" means an interest in or claim under a policy of insurance which is a right to payment of a

monetary obligation for health-care goods or services provided or to be provided.

(47) (A) "Instrument" means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary endorsement or assignment.

(B) The term does not include:

- (i) investment property;
- (ii) letters of credit; or
- (iii) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(48) "Inventory" means goods, other than farm products, which:

- (A) are leased by a person as lessor;
- (B) are held by a person for sale or lease or to be furnished under a contract of service;
- (C) are furnished by a person under a contract of service; or
- (D) consist of raw materials, work in process, or materials used or consumed in a business.

(49) "Investment property" means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

(50) "Jurisdiction of organization", with respect to a registered organization, means the jurisdiction under whose law the organization is organized.

(51) "Letter-of-credit right" means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or

performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(52) "Lien creditor" means:

- (A) a creditor that has acquired a lien on the property involved by attachment, levy, or the like;
- (B) an assignee for benefit of creditors from the time of assignment;
- (C) a trustee in bankruptcy from the date of the filing of the petition; or
- (D) a receiver in equity from the time of appointment.

(53) (A) "Manufactured home" means a structure, transportable in one or more sections, which:

- (i) in the traveling mode, is eight body feet or more in width or forty (40) body feet or more in length, or, when erected on site, is three hundred twenty (320) or more square feet,
- (ii) is built on a permanent chassis,
- (iii) is designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and
- (iv) includes the plumbing, heating, air-conditioning, and electrical systems contained therein.

(B) The term includes any structure that meets all of the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States Secretary of Housing and Urban Development and complies with the standards established under Title 42 of the United States Code.

(54) "Manufactured-home transaction" means a secured transaction:

(A) that creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or

(B) in which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

(55) "Mortgage" means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.

(56) "New debtor" means a person that becomes bound as a debtor under subsection (d) of Section 1-9-203 of this title by a security agreement previously entered into by another person.

(57) (A) "New value" means:

(i) money;

(ii) money's worth in property, services, or new credit; or

(iii) release by a transferee of an interest in property previously transferred to the transferee.

(B) The term does not include an obligation substituted for another obligation.

(58) "Noncash proceeds" means proceeds other than cash proceeds.

(59) (A) "Obligor" means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral:

(i) owes payment or other performance of the obligation;

(ii) has provided property other than the collateral to secure payment or other performance of the obligation; or

(iii) is otherwise accountable in whole or in part for payment or other performance of the obligation.

(B) The term does not include issuers or nominated persons under a letter of credit.

(60) "Original debtor" means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under subsection (d) of Section 1-9-203 of this title.

(61) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation.

(62) "Person related to", with respect to an individual, means:

- (A) the spouse of the individual;
- (B) a brother, brother-in-law, sister, or sister-in-law of the individual;
- (C) an ancestor or lineal descendant of the individual or the individual's spouse; or
- (D) any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

(63) "Person related to", with respect to an organization, means:

- (A) a person directly or indirectly controlling, controlled by, or under common control with the organization;
- (B) an officer or director of, or a person performing similar functions with respect to, the organization;
- (C) an officer or director of, or a person performing similar functions with respect to, a person described in subparagraph (A);
- (D) the spouse of an individual described in subparagraph (A), (B), or (C) of this paragraph; or

(E) an individual who is related by blood or marriage to an individual described in subparagraph (A), (B), (C), or (D) of this paragraph and who shares the same home with the individual.

(64) "Proceeds" means the following property:

(A) whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;

(B) whatever is collected on, or distributed on account of, collateral;

(C) rights arising out of collateral;

(D) to the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or

(E) to the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

(65) "Promissory note" means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(66) "Proposal" means a record authenticated by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to Sections 1-9-620, 1-9-621, and 1-9-622 of this title.

(67) "Public-finance transaction" means a secured transaction in connection with which:

(A) debt securities are issued;

- (B) all or a portion of the securities issued have an initial stated maturity of at least twenty (20) years; and
- (C) the debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a state or a governmental unit of a state.

(68) "Pursuant to commitment", with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.

(69) "Record", except as used in "for record", "of record", "record or legal title", and "record owner", means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

(70) "Registered organization" means an organization organized solely under the law of a single state or the United States and as to which the state or the United States must maintain a public record showing the organization to have been organized.

(71) "Secondary obligor" means an obligor to the extent that:

- (A) the obligor's obligation is secondary; or
- (B) the obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

(72) "Secured party" means:

- (A) a person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;
- (B) a person that holds an agricultural lien;
- (C) a consignor;

- (D) a person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;
- (E) a trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or
- (F) a person that holds a security interest arising under Section 2-401, 2-505, paragraph (3) of Section 2-711, paragraph (5) of Section 2A-508, 4-210, or 5-118 of this title.

(73) "Security agreement" means an agreement that creates or provides for a security interest.

(74) "Send", in connection with a record or notification, means:

- (A) to deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or
- (B) to cause the record or notification to be received within the time that it would have been received if properly sent under subparagraph (A) of this paragraph.

(75) "Software" means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

(76) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(77) "Supporting obligation" means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument, or investment property.

(78) "Tangible chattel paper" means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

(79) "Termination statement" means an amendment of a financing statement which:

(A) identifies, by its file number, the initial financing statement to which it relates; and

(B) indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(80) "Transmitting utility" means a person primarily engaged in the business of:

(A) operating a railroad, subway, street railway, or trolley bus;

(B) transmitting communications electrically, electromagnetically, or by light;

(C) transmitting goods by pipeline or sewer; or

(D) transmitting or producing and transmitting electricity, steam, gas, or water.

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

"Applicant" - Section 5-102 of this title.

"Beneficiary" - Section 5-102 of this title.

"Broker" - Section 8-102 of this title.

"Certificated security" - Section 8-102 of this title.

"Check" - Section 3-104 of this title.

"Clearing corporation" - Section 8-102 of this title.

"Contract for sale" - Section 2-106 of this title.

"Customer" - Section 4-104 of this title.

"Entitlement holder" - Section 8-102 of this title.

"Financial asset" - Section 8-102 of this title.

"Holder in due course" - Section 3-302 of this title.

"Issuer" (with respect to a letter of credit or letter-of-credit right)- Section 5-102 of this title.

"Issuer" - (with respect to a security) - Section 8-201 of this title.

"Lease" - Section 2A-103 of this title.

"Lease agreement" - Section 2A-103 of this title.

"Lease contract" - Section 2A-103 of this title.

"Leasehold interest" - Section 2A-103 of this title.

"Lessee" - Section 2A-103 of this title.

"Lessee in ordinary course of business" - Section 2A-103 of this title.

"Lessor" - Section 2A-103 of this title.

"Lessor's residual interest" - Section 2A-103 of this title.

"Letter of credit" - Section 5-102 of this title.

"Merchant" - Section 2-104 of this title.

"Negotiable instrument" - Section 3-104 of this title.

"Nominated person" - Section 5-102 of this title.

"Note" - Section 3-104 of this title.

"Proceeds of a letter of credit" - Section 5-114 of this title.

"Prove" - Section 3-103 of this title.

"Sale" - Section 2-106 of this title.

"Securities account" - Section 8-501 of this title.

"Securities intermediary" - Section 8-102 of this title.

"Security" - Section 8-102 of this title.

"Security certificate" - Section 8-102 of this title.

"Security entitlement" - Section 8-102 of this title.

"Uncertificated security" - Section 8-102 of this title.

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

SECTION 23. AMENDATORY 12A O.S. 2001, Section 1-9-304, is amended to read as follows:

Section 1-9-304.

LAW GOVERNING PERFECTION AND PRIORITY OF
SECURITY INTERESTS IN DEPOSIT ACCOUNTS

(a) The local law of a bank's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a deposit account maintained with that bank.

(b) The following rules determine a bank's jurisdiction for purposes of this part:

(1) If an agreement between the bank and ~~the debtor~~ its customer governing the deposit account expressly provides that a particular jurisdiction is the bank's jurisdiction for purposes of this part, this article, or ~~this title~~ the Uniform Commercial Code, that jurisdiction is the bank's jurisdiction.

(2) If paragraph (1) of this subsection does not apply and an agreement between the bank and its customer governing the deposit account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

(3) If neither paragraph (1) nor paragraph (2) of this subsection applies and an agreement between the bank and its customer governing the deposit account expressly provides that the deposit account is maintained at an office in a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

(4) If none of the preceding paragraphs of this subsection applies, the bank's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the customer's account is located.

(5) If none of the preceding paragraphs applies, the bank's jurisdiction is the jurisdiction in which the chief executive office of the bank is located.

SECTION 24. AMENDATORY 12A O.S. 2001, Section 1-9-309, is amended to read as follows:

Section 1-9-309.

SECURITY INTEREST PERFECTED UPON ATTACHMENT

The following security interests are perfected when they attach:

(1) a purchase-money security interest in consumer goods, except as otherwise provided in subsection (b) of Section 1-9-311 of this title with respect to consumer goods that are subject to a statute or treaty described in subsection (a) of Section 1-9-311 of this title;

(2) an assignment of accounts or payment intangibles which does not by itself or in conjunction with other assignments to the same assignee transfer a significant part of the assignor's outstanding accounts or payment intangibles;

(3) a sale of a payment intangible;

(4) a sale of a promissory note;

(5) a security interest created by the assignment of a health-care-insurance receivable to the provider of the health-care goods or services;

(6) a security interest arising under Section 2-401, 2-505, paragraph (3) of Section 2-711, or paragraph (5) of Section 2A-508 of this title, until the debtor obtains possession of the collateral;

(7) a security interest of a collecting bank arising under Section 4-210 of this title;

(8) a security interest of an issuer or nominated person arising under Section 5-118 of this title;

(9) a security interest arising in the delivery of a financial asset under subsection (c) of Section 1-9-206 of this title;

(10) a security interest in investment property created by a broker or securities intermediary;

(11) a security interest in a commodity contract or a commodity account created by a commodity intermediary;

(12) an assignment for the benefit of all creditors of the transferor and subsequent transfers by the assignee thereunder; ~~and~~

(13) a security interest created by an assignment of a beneficial interest in a decedent's estate; and

(14) a sale by an individual of an account that is a right to payment of winnings in a lottery or other game of chance.

SECTION 25. AMENDATORY 12A O.S. 2001, Section 1-9-406, is amended to read as follows:

Section 1-9-406.

DISCHARGE OF ACCOUNT DEBTOR; NOTIFICATION OF ASSIGNMENT;

IDENTIFICATION AND PROOF OF ASSIGNMENT; RESTRICTIONS ON

ASSIGNMENT OF ACCOUNTS, CHATTEL PAPER, PAYMENT

INTANGIBLES, AND PROMISSORY NOTES INEFFECTIVE

(a) Subject to subsections (b) through (i) of this section, an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(b) Subject to subsection (h) of this section, notification is ineffective under subsection (a) of this section:

(1) if it does not reasonably identify the rights assigned;

(2) to the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's

duty to pay a person other than the seller and the limitation is effective under law other than this article; or

(3) at the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

- (A) only a portion of the account, chattel paper, or general intangible has been assigned to that assignee;
- (B) a portion has been assigned to another assignee; or
- (C) the account debtor knows that the assignment to that assignee is limited.

(c) Subject to subsection (h) of this section, if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (a) of this section.

(d) (1) Except as otherwise provided in paragraph (2) of this subsection and subsection (e) of this section and Sections 2A-303 and 1-9-407 of this title, and subject to subsection (h) of this section, a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

- (A) prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note; or
- (B) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense,

termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

(2) This subsection does not apply to the assignment or transfer of or creation of a security interest in the following:

- (i) a claim or right to receive compensation for injuries or sickness as described in 26 U.S.C., Section 104 (a)(1) or (2), as amended from time to time; ~~or~~
- (ii) a claim or right to receive benefits under a special needs trust as described in 42 U.S.C., Section 1396p(d)(4), as amended from time to time; or
- (iii) a structured settlement payment right as defined in paragraph (16) of Section 3239 of Title 12 of the Oklahoma Statutes to the extent of any conflict between the Uniform Commercial Code and the Structured Settlement Protection Act of 2001, Section 3238 et seq. of Title 12 of the Oklahoma Statutes.

(e) Subsection (d) of this section does not apply to the sale of a payment intangible or promissory note.

(f) Except as otherwise provided in Sections 2A-303 and 1-9-407 of this title and subject to subsections (h) and (i) of this section, a rule of law, statute, or regulation, that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation:

(1) prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account or chattel paper; or

(2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account or chattel paper.

(g) Subject to subsection (h) of this section, an account debtor may not waive or vary its option under paragraph (3) of subsection (b) of this section.

(h) This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(i) This section does not apply to an assignment of a health-care-insurance receivable.

SECTION 26. AMENDATORY 12A O.S. 2001, Section 1-9-408, is amended to read as follows:

Section 1-9-408.

RESTRICTIONS ON ASSIGNMENT OF PROMISSORY
NOTES, HEALTH-CARE-INSURANCE RECEIVABLES, AND
CERTAIN GENERAL INTANGIBLES INEFFECTIVE

(a) Except as otherwise provided in subsection (b) of this section, a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health-care-insurance receivable, or general intangible, is ineffective to the extent that the term:

(1) would impair the creation, attachment, or perfection of a security interest; or

(2) provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(b) Subsection (a) of this section applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note.

(c) A rule of law, statute, or regulation, that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health-care-insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation:

(1) would impair the creation, attachment, or perfection of a security interest; or

(2) provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(d) To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or general intangible or a rule of law, statute, or regulation described in subsection (c) of this section would be effective under law other than this article but is ineffective under subsection (a) or (c) of this section, the creation, attachment, or perfection of a security interest in the

promissory note, health-care-insurance receivable, or general intangible:

(1) is not enforceable against the person obligated on the promissory note or the account debtor;

(2) does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;

(3) does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;

(4) does not entitle the secured party to use or assign the debtor's rights under the promissory note, health-care-insurance receivable, or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health-care-insurance receivable, or general intangible;

(5) does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and

(6) does not entitle the secured party to enforce the security interest in the promissory note, health-care-insurance receivable, or general intangible.

(e) Subsections (a) and (c) of this section do not apply to the assignment or transfer of or creation of a security interest in:

(1) a claim or right to receive compensation for injuries or sickness as described in 26 U.S.C., Section 104(a)(1) or (2), as amended from time to time; ~~or~~

(2) a claim or right to receive benefits under a special needs trust as described in 42 U.S.C., Section 1396p(d)(4), as amended from time to time; or

(3) a structured settlement payment right as defined in paragraph (16) of Section 3239 of Title 12 of the Oklahoma Statutes to the extent of any conflict between the Uniform Commercial Code and the Structured Settlement Protection Act of 2001, Section 3238 et seq. of Title 12 of the Oklahoma Statutes.

SECTION 27. AMENDATORY 47 O.S. 2001, Section 1110, is amended to read as follows:

Section 1110. A. 1. Except for a security interest in vehicles held by a dealer for sale or lease, and a vehicle being registered in this state which was previously registered in another state and which title contains the name of a secured party on the face of the other state certificate or title, a security interest in a vehicle as to which a certificate of title may be properly issued by the Oklahoma Tax Commission shall be perfected only when a lien entry form, and the existing certificate of title, if any, or application for a certificate of title and manufacturer's certificate of origin containing the name and address of the secured party and the date of the security agreement and the required fee are delivered to the Tax Commission or to a motor license agent. As used in this section, the term "dealer" shall be defined as provided in Section 1-112 of this title and the term "security interest" shall be defined as provided in paragraph (37) of Section 1-201 of Title 12A of the Oklahoma Statutes. When a vehicle title is presented to a motor license agent for transferring or registering and the documents reflect a lien holder, the motor license agent shall perfect the lien pursuant to subsection G of Section 1105 of this title. For the purposes of this section, the term "vehicle" shall not include special mobilized machinery, machinery used in highway construction or road material construction and rubber-tired road construction vehicles including rubber-tired cranes. The filing and duration of perfection of a security interest, pursuant to the provisions of Title 12A of the Oklahoma Statutes, including,

but not limited to, Section 1-9-311 of Title 12A of the Oklahoma Statutes, shall not be applicable to perfection of security interests in vehicles as to which a certificate of title may be properly issued by the Tax Commission, except as to vehicles held by a dealer for sale or lease and except as provided in subsection D of this section. In all other respects Title 12A of the Oklahoma Statutes shall be applicable to such security interests in vehicles as to which a certificate of title may be properly issued by the Tax Commission.

2. Whenever a person creates a security interest in a vehicle, the person shall surrender to the secured party the certificate of title or the signed application for a new certificate of title, on the form prescribed by the Tax Commission, and the manufacturer's certificate of origin. The secured party shall deliver the lien entry form and the required lien filing fee within ~~twenty-five (25)~~ twenty (20) days as provided hereafter with certificate of title or the application for certificate of title and the manufacturer's certificate of origin to the Tax Commission or to a motor license agent. If the lien entry form, the lien filing fee and the certificate of title or application for certificate of title and the manufacturer's certificate of origin are delivered to the Tax Commission or to a motor license agent within ~~twenty-five (25)~~ twenty (20) days after the date of the lien entry form, perfection of the security interest shall begin from the date of the execution of the lien entry form, but otherwise, perfection of the security interest shall begin from the date of the delivery to the Tax Commission or to a motor license agent.

3. a. For each security interest recorded on a certificate of title, or manufacturer's certificate of origin, such person shall pay a fee of Ten Dollars (\$10.00), which shall be in addition to other fees provided for in the Oklahoma Vehicle License and Registration Act.

Upon the receipt of the lien entry form and the required fees with either the certificate of title or an application for certificate of title and manufacturer's certificate of origin, a motor license agent shall, by placement of a clearly distinguishing mark, record the date and number shown in a conspicuous place, on each of these instruments. Of the ten-dollar fee, the motor license agent shall retain Two Dollars (\$2.00) for recording the security interest lien.

- b. It shall be unlawful for any person to solicit, accept or receive any gratuity or compensation for acting as a messenger and for acting as the agent or representative of another person in applying for the recording of a security interest or for the registration of a motor vehicle and obtaining the license plates or for the issuance of a certificate of title therefor unless the Tax Commission has appointed and approved the person to perform such acts; and before acting as a messenger, any such person shall furnish to the Tax Commission a surety bond in such amount as the Tax Commission shall determine appropriate.

4. The certificate of title or the application for certificate of title and manufacturer's certificate of origin with the record of the date of receipt clearly marked thereon shall be returned to the debtor together with a notice that the debtor is required to register and pay all additional fees and taxes due within thirty (30) days from the date of purchase of the vehicle.

5. Any person creating a security interest in a vehicle that has been previously registered in the debtor's name and on which all taxes due the state have been paid shall surrender the certificate

of ownership to the secured party. The secured party shall have the duty to record the security interest as provided in this section and shall, at the same time, obtain a new certificate of title which shall show the secured interest on the face of the certificate of title.

6. The lien entry form with the date and assigned number thereof clearly marked thereon shall be returned to the secured party. If the lien entry form is received and authenticated, as herein provided, by a motor license agent, the agent shall make a report thereof to the Tax Commission upon the forms and in the manner as may be prescribed by the Tax Commission.

7. The Tax Commission shall have the duty to record the lien upon the face of the certificate of title issued at the time of registering and paying all fees and taxes due on the vehicle.

B. 1. A secured party shall, within seven (7) business days after the satisfaction of the security interest, furnish directly or by mail a release of a security interest to the Tax Commission and mail a copy thereof to the last-known address of the debtor. If the security interest has been satisfied by payment from a licensed used motor vehicle dealer to whom the motor vehicle has been transferred, the secured party shall also, within seven (7) business days after such satisfaction, mail an additional copy of the release to the dealer. If the secured party fails to furnish the release as required, the secured party shall be liable to the debtor for a penalty of One Hundred Dollars (\$100.00) and, in addition, any loss caused to the debtor by such failure.

2. Upon release of a security interest the owner may obtain a new certificate of title omitting reference to the security interest, by submitting to the Tax Commission or to a motor license agent:

- a. a release signed by the secured party, an application for new certificate of title and the proper fees, or

- b. by submitting to the Tax Commission or the motor license agent an affidavit, supported by such documentation as the Tax Commission may require, by the owner on a form prescribed by the Tax Commission stating that the security interest has been satisfied and stating the reasons why a release cannot be obtained, an application for a new certificate of title and the proper fees.

Upon receiving such affidavit that the security interest has been satisfied, the Tax Commission shall issue a new certificate of title eliminating the satisfied security interest and the name and address of the secured parties who have been paid and satisfied. The Tax Commission shall accept a release of a security interest in any form that identifies the debtor, the secured party, and the vehicle, and contains the signature of the secured party. The Tax Commission shall not require any particular form for the release of a security interest.

The words "security interest" when used in the Oklahoma Vehicle License and Registration Act do not include liens dependent upon possession.

C. The Tax Commission shall file and index certificates of title so that at all times it will be possible to trace a certificate of title to the vehicle designated therein, identify the lien entry form, and the names and addresses of secured parties, or their assignees, so that all or any part of such information may be made readily available to those who make legitimate inquiry of the Tax Commission as to the existence or nonexistence of security interest in the vehicle.

D. 1. Any security interest in a vehicle properly perfected prior to July 1, 1979, may be continued as to its effectiveness or duration as provided by Sections 1-9-501 and 1-9-515 of Title 12A of the Oklahoma Statutes, or may be terminated, assigned or released as

provided by Sections 1-9-512, 1-9-513 and 1-9-514 of Title 12A of the Oklahoma Statutes, as fully as if this section had not been enacted, or, at the option of the secured party, may also be perfected under this section, and, if so perfected, the time of perfection under this section shall be the date the security interest was originally perfected under the prior law.

2. Upon request of the secured party, the debtor or any other holder of the certificate of title shall surrender the certificate of title to the secured party and shall do such other acts as may be required to perfect the security interest under this section.

E. The priority of a valid security interest in a manufactured home, including without limitation a mobile home or sectional home, perfected pursuant to this section, shall not be affected by reason of the manufactured home becoming a fixture or otherwise being permanently attached to real property after the date of perfection of the security interest. A security interest in a manufactured home perfected pursuant to this section shall have priority over a conflicting interest of a mortgagee or other lien encumbrancer, or the owner of the real property upon which the manufactured home became affixed or otherwise permanently attached. The holder of the security interest in the manufactured home, upon default, may remove the manufactured home from such real property. The holder of the security interest in the manufactured home shall reimburse the owner of the real property who is not the debtor and who has not otherwise agreed to access the real property for the cost of repair of any physical injury to the real property, but shall not be liable for any diminution in value to the real property caused by the removal of the manufactured home, trespass, or any other damages caused by the removal. The debtor shall notify the holder of the security interest in the manufactured home of the street address, if any, and the legal description of the real property upon which the manufactured home is affixed or otherwise permanently attached and

shall sign such other documents, including any appropriate mortgage, as may reasonably be requested by the holder of such security interest.

F. In the case of motor vehicles or trailers, notwithstanding any other provision of law, a transaction does not create a sale or security interest merely because it provides that the rental price is permitted or required to be adjusted under the agreement either upward or downward by reference to the amount realized upon sale or other disposition of the motor vehicle or trailer.

SECTION 28. This act shall become effective November 1, 2002.

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