

ENROLLED SENATE
BILL NO. 692

By: Coffee of the Senate

and

Vaughn of the House

An Act relating to the Uniform Commercial Code; amending Sections 31, 37, 122, 141 and 144, Chapter 371, O.S.L. 2000 (12A O.S. Supp. 2000, Sections 1-9-311, 1-9-317, 1-9-615, 1-9-707 and 1-9-710), which relate to perfection of security interests; exempting certain collateral under certain circumstances; describing certain types of chattel paper; providing for certain disposition of collateral; providing for uniform fees; clarifying language; amending 28 O.S. 1991, Section 32, as last amended by Section 168, Chapter 371, O.S.L. 2000 (28 O.S. Supp. 2000, Section 32), which relates to county clerk fees; specifying intent; amending 68 O.S. 1991, Section 3406, which relates to filing fees; providing for uniform fees; clarifying language; repealing 66 O.S. 1991, Sections 16 and 17, as amended by Section 40, Chapter 421, O.S.L. 1999 (66 O.S. Supp. 2000, Section 17), which relate to sale contracts for certain railroad or railway equipment and the filing of those contracts; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY Section 31, Chapter 371, O.S.L. 2000 (12A O.S. Supp. 2000, Section 1-9-311), is amended to read as follows:

Section 1-9-311.

PERFECTION OF SECURITY INTERESTS IN PROPERTY
SUBJECT TO CERTAIN STATUTES, REGULATIONS, AND TREATIES

(a) Except as otherwise provided in subsection (d) of this section, the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(1) a statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt subsection (a) of Section 1-9-310 of this title;

(2) another statute of this state that provides for central filing of, or that requires indication on or delivery for indication on a certificate of title of, any security interest in the property as a condition or result of perfection, including, but not limited to, Section 1110 of Title 47 and Section 4013 of Title 63 of the Oklahoma Statutes; or

(3) a certificate-of-title statute of another jurisdiction which provides for a security interest 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 property.

(b) Compliance with the requirements of a statute, regulation, or treaty described in subsection (a) of this section for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this article. Except as otherwise provided in subsection (d) of this section and Section 1-9-313 and subsections (d) and (e) of Section 1-9-316 of this title for goods covered by a certificate of title, a security interest in property subject to a statute, regulation, or treaty described in subsection (a) of this section may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

(c) Except as otherwise provided in subsection (d) of this section and subsections (d) and (e) of Section 1-9-316 of this title, duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation, or treaty described in subsection (a) of this section are governed by the statute, regulation, or treaty. In other respects, the security interest is subject to this article.

(d) During any period in which collateral, described in Section 1110 of Title 47 and Section 4013 of Title 63 of the Oklahoma Statutes, is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling goods of that kind, this section does not apply to a security interest in that collateral created by that person as debtor.

SECTION 2. AMENDATORY Section 37, Chapter 371, O.S.L. 2000 (12A O.S. Supp. 2000, Section 1-9-317), is amended to read as follows:

Section 1-9-317.

INTERESTS THAT TAKE PRIORITY OVER OR TAKE FREE
OF SECURITY INTEREST OR AGRICULTURAL LIEN

(a) A security interest or agricultural lien is subordinate to the rights of:

(1) a person entitled to priority under Section 1-9-322 of this title; and

(2) except as otherwise provided in subsection (e) of this section, a person that becomes a lien creditor before the earlier of the time:

- (A) the security interest or agricultural lien is perfected; or
- (B) one of the conditions specified in paragraph (3) of subsection (b) of Section 1-9-203 of this title is met and a financing statement covering the collateral is filed.

(b) Except as otherwise provided in subsection (e) of this section, a buyer, other than a secured party, of tangible chattel paper, documents, goods, instruments, or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) Except as otherwise provided in subsection (e) of this section, a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) A licensee of a general intangible or a buyer, other than a secured party, of accounts, electronic chattel paper, general intangibles, or investment property other than a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) Except as otherwise provided in Sections 1-9-320 and 1-9-321 of this title, if a person files a financing statement with respect to a purchase-money security interest before or within twenty (20) days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing.

SECTION 3. AMENDATORY Section 122, Chapter 371, O.S.L. 2000 (12A O.S. Supp. 2000, Section 1-9-615), is amended to read as follows:

Section 1-9-615.

APPLICATION OF PROCEEDS OF DISPOSITION;
LIABILITY FOR DEFICIENCY AND RIGHT TO SURPLUS

(a) A secured party shall apply or pay over for application the cash proceeds of disposition pursuant to Section 1-9-610 of this title in the following order to:

(1) the reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing, and, to the extent provided

for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

(2) the satisfaction of obligations secured by the security interest or agricultural lien under which the disposition is made;

(3) the satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral if:

(A) the secured party receives from the holder of the subordinate security interest or other lien an authenticated demand for proceeds before distribution of the proceeds is completed; and

(B) in a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor; and

(4) a secured party that is a consignor of the collateral if the secured party receives from the consignor an authenticated demand for proceeds before distribution of the proceeds is completed.

(b) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder does so, the secured party need not comply with the holder's demand under paragraph (3) of subsection (a) of this section.

(c) A secured party need not apply or pay over for application noncash proceeds of disposition ~~under this section~~ pursuant to Section 1-9-610 of this title unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(d) If the security interest under which a disposition is made secures payment or performance of an obligation, after making the payments and applications required by subsection (a) of this section and permitted by subsection (c) of this section:

(1) unless paragraph (4) of subsection (a) of this section requires the secured party to apply or pay over cash proceeds to a consignor, the secured party shall account to and pay a debtor for any surplus; and

(2) the obligor is liable for any deficiency.

(e) If the underlying transaction is a sale of accounts, tangible chattel paper, payment intangibles, or promissory notes:

(1) the debtor is not entitled to any surplus; and

(2) the obligor is not liable for any deficiency.

(f) The surplus or deficiency following a disposition is calculated based on the amount of proceeds that would have been

realized in a disposition complying with this part to a transferee other than the secured party, a person related to the secured party, or a secondary obligor if:

(1) the transferee in the disposition is the secured party, a person related to the secured party, or a secondary obligor; and

(2) the amount of proceeds of the disposition is significantly below the range of proceeds that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

(g) A secured party that receives cash proceeds of a disposition in good faith and without knowledge that the receipt violates the rights of the holder of a security interest or other lien that is not subordinate to the security interest or agricultural lien under which the disposition is made:

(1) takes the cash proceeds free of the security interest or other lien;

(2) is not obligated to apply the proceeds of the disposition to the satisfaction of obligations secured by the security interest or other lien; and

(3) is not obligated to account to or pay the holder of the security interest or other lien for any surplus.

SECTION 4. AMENDATORY Section 141, Chapter 371, O.S.L. 2000 (12A O.S. Supp. 2000, Section 1-9-707), is amended to read as follows:

Section 1-9-707.

PERSONS ENTITLED TO FILE INITIAL FINANCING STATEMENT

(a) In this section, "pre-effective-date financing statement" means a financing statement filed before this act takes effect.

(b) After this act takes effect, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in, a pre-effective-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in Part 3 of this article of this title. However, the effectiveness of a pre-effective-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

(c) Except as otherwise provided in subsection (d) of this section, if the law of this state governs perfection of a security interest, the information in a pre-effective-date financing statement may be amended after this act takes effect only if:

(1) the pre-effective-date financing statement and an amendment are filed in the office specified in Section 1-9-501 of this title;

(2) an amendment is filed in the office specified in Section 1-9-501 of this title concurrently with, or after the filing in that office of, an initial financing statement that satisfies subsection (c) of Section 1-9-706 of this title; or

(3) an initial financing statement that provides the information as amended and satisfies subsection (c) of Section 1-9-706 of this title is filed in the office specified in Section 1-9-501 of this title.

(d) If the law of this state governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement may be ~~contoured~~ continued only under subsections (d) and (f) of Section 1-9-705 or Section 1-9-706 of this title.

(e) Whether or not the law of this state governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement filed in this state may be terminated after this act takes effect by filing a termination statement in the office in which the pre-effective-date financing statement is filed, unless an initial financing statement that satisfies subsection (c) of Section 1-9-706 of this title has been filed in the office specified by the law of the jurisdiction governing perfection as provided in Part 3 of this article of this title as the office in which to file a financing statement.

SECTION 5. AMENDATORY Section 144, Chapter 371, O.S.L. 2000 (12A O.S. Supp. 2000, Section 1-9-710), is amended to read as follows:

Section 1-9-710. (a) In this section:

(1) "Local-filing office" means a filing office, other than the statewide filing office in the office of the County Clerk of Oklahoma County or the statewide filing office in the office of the Secretary of State, that is designated as the proper place to file a financing statement under former Article 9 of this title;

(2) (A) "Former-Article 9 records" means:

(i) financing statements and other records that have been filed in a local-filing office before July 1, 2001, and that are, or upon processing and indexing will be, reflected in the index maintained by the local-filing office for filing for financing statements and other records filed in the local-filing office before July 1, 2001, and

(ii) the index maintained by the local-filing office as of June 30, 2001, including entries for filings completed before July 1, 2001, even though processed on or after that date.

(B) "Former-Article 9 records" do not include records presented to a local-filing office for filing after June 30, 2001, whether or not the records relate to

financing statements filed in the local-filing office before July 1, 2001; and

(3) "Mortgage", "as-extracted collateral", "fixture filing", "goods" and "fixtures" have the meanings set forth in this article of this title.

(b) A local-filing office shall not accept for filing a record presented after June 30, 2001, whether or not the record relates to a financing statement filed in the local-filing office before July 1, 2001.

(c) Until July 1, 2008, each local-filing office shall maintain all former-Article 9 records in accordance with former-Article 9. A former-Article 9 record which is filed before July 1, 2001, but which is not reflected on the index maintained as of June 30, 2001, by the local-filing office, shall be processed and indexed and reflected on the index maintained as of June 30, 2001, as soon as practicable, but in no event later than July 30, 2001.

(d) Until July 1, 2008, each local-filing office shall respond to requests for information with respect to former-Article 9 records relating to a debtor and shall issue certificates in accordance with former-Article 9. ~~The fee for issuing a certificate shall be Five Dollars (\$5.00). The fee for furnishing a certified copy of a former-Article 9 record shall be One Dollar (\$1.00) per page~~ The fees for issuing a certificate or for furnishing a certified copy of a former-Article 9 record shall be the uniform fees provided by subsections (c) and (d) of Section 1-9-525 of this title.

(e) After June 30, 2008, each local-filing office may remove and destroy all former-Article 9 records pursuant to Section 155.2 of Title 19 of the Oklahoma Statutes.

(f) This section shall not apply, with respect to financing statements and other records, to a filing office in which mortgages or records of mortgages on real property are required to be filed or recorded if:

(1) the collateral is timber to be cut or as-extracted collateral, or

(2) the record is or relates to a financing statement files as a fixture filing and the collateral is goods that are or are to become fixtures.

SECTION 6. AMENDATORY 28 O.S. 1991, Section 32, as last amended by Section 168, Chapter 371, O.S.L. 2000 (28 O.S. Supp. 2000, Section 32), is amended to read as follows:

Section 32. A. Notwithstanding any other provision of law county clerks shall charge and collect the following flat fees to be uniform throughout the state regardless of the recording method used, and the county clerks shall not be required to itemize or charge these fees pursuant to any other schedule, except as specifically provided by law:

1. For recording the first page of deeds, mortgages and any other instruments not subject to the fee imposed by Section 1-9-525 of Title 12A of the Oklahoma Statutes\$8.00
 2. For recording each additional page of same instrument\$2.00
 3. For furnishing hard copies of microfilmed records to bonded abstractors only, per page.....\$1.00
 4. For furnishing photographic copies of photographic records, or of typewritten script or printed records, per page.....\$1.00
 5. For recording plat of one block or less \$10.00
 6. For recording plat of more than one block \$25.00
 7. For certifying to any copy per page..... \$1.00
 8. For recording an assignment of Tax Sale Certificate to be paid by the party purchasing.....\$5.00
 9. For recording of any mark or brand and giving certificate for same\$5.00
 10. For recording each certificate for estrays and forwarding description of same, as required by law\$1.00
 11. a. For recording and filing of mechanics' or materialmen's liens which includes the release thereof.....\$10.00
 - b. For preparing and mailing notice of mechanics' or materialmen's lien.....\$8.00
 - c. For each additional page or exhibit \$2.00
 12. For recording and filing of fictitious name partnership certificates\$5.00
- To this fee shall be added the fees required by Sections 81 through 86 of Title 54 of the Oklahoma Statutes.
13. For recording the first page of deeds, mortgages, and any other instruments which are nonconforming pursuant to subsection C of Section 298 of Title 19 of the Oklahoma Statutes \$25.00

14. For recording each additional page of an instrument which is nonconforming pursuant to subsection C of Section 298 of Title 19 of the Oklahoma Statutes..... \$10.00

B. The fees prescribed in paragraph 4 of subsection A of this section shall be deposited into the County Clerk's Lien Fee Account, created pursuant to Section 265 of Title 19 of the Oklahoma Statutes in an amount not to exceed Twenty Thousand Dollars (\$20,000.00) each fiscal year.

C. For the purpose of preserving, maintaining, and archiving recorded instruments including, but not limited to, records management, records preservation, automation, modernization, and related lawful expenditures, in addition to all other fees required by law, the county clerk shall collect Five Dollars (\$5.00) for each instrument recorded with the Registrar of Deeds.

D. There is hereby created a fund to be known as the "County Clerk's Records Management and Preservation Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of the fees and monies accruing to the fund, as prescribed in subsection C of this section with all monies accruing to the fund to be expended by the clerk and not transferred to any other fund. The intent of this section is to increase the net funding level available to the county clerk to maintain and preserve public records.

SECTION 7. AMENDATORY 68 O.S. 1991, Section 3406, is amended to read as follows:

Section 3406. A. The fee for filing and indexing each notice of lien or certificate of notice affecting the lien, including a lien on real estate; a lien on tangible and intangible personal property; a certificate of discharge or subordination; and all other notices, including a certificate of release or nonattachment, shall be ~~Eight Dollars (\$8.00)~~ the uniform filing fee provided by paragraphs (1) and (2) of subsection (a) of Section 1-9-525 of Title 12A of the Oklahoma Statutes if the notice of lien is first filed on or after ~~November 1, 1988~~ July 1, 2001.

B. For notices of lien first filed prior to ~~November 1, 1988~~ July 1, 2001, the filing fee paid at the time of filing shall be payment for the subsequent filing of all other certificates or notices affecting said tax lien.

C. The filing officer shall bill the District Director of the Internal Revenue Service or other appropriate federal officials on a monthly basis for fees for documents filed by the Internal Revenue Service.

SECTION 8. REPEALER 66 O.S. 1991, Sections 16 and 17, as amended by Section 40, Chapter 421, O.S.L. 1999 (66 O.S. Supp. 2000, Section 17), are hereby repealed.

SECTION 9. This act shall become effective July 1, 2001.

SECTION 10. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 16th day of May, 2001.

Presiding Officer of the Senate

Passed the House of Representatives the 21st day of May, 2001.

Presiding Officer of the House
of Representatives