

3 Senate Bill No. 692

4 SENATE BILL NO. 692 - By: COFFEE of the Senate and VAUGHN of the
5 House.

6 An Act relating to the Uniform Commercial Code; amending
7 Sections 31, 37, 122 and 141, Chapter 371, O.S.L. 2000 (12A
8 O.S. Supp. 2000, Sections 1-9-311, 1-9-317, 1-9-615 and 1-9-
9 707), which relate to perfection of security interests;
10 exempting certain collateral under certain circumstances;
11 describing certain types of chattel paper; providing for
12 certain disposition of collateral; clarifying language;
13 providing an effective date; and declaring an emergency.

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

15 SECTION 1. AMENDATORY Section 31, Chapter 371, O.S.L.
16 2000 (12A O.S. Supp. 2000, Section 1-9-311), is amended to read as
17 follows:

18 Section 1-9-311.

19 PERFECTION OF SECURITY INTERESTS IN PROPERTY

20 SUBJECT TO CERTAIN STATUTES, REGULATIONS, AND TREATIES

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

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

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

7 (3) a certificate-of-title statute of another jurisdiction
8 which provides for a security interest to be indicated on the
9 certificate as a condition or result of the security interest's
10 obtaining priority over the rights of a lien creditor with respect
11 to the property.

12 (b) Compliance with the requirements of a statute, regulation,
13 or treaty described in subsection (a) of this section for obtaining
14 priority over the rights of a lien creditor is equivalent to the
15 filing of a financing statement under this article. Except as
16 otherwise provided in subsection (d) of this section and Section
17 1-9-313 and subsections (d) and (e) of Section 1-9-316 of this title
18 for goods covered by a certificate of title, a security interest in
19 property subject to a statute, regulation, or treaty described in
20 subsection (a) of this section may be perfected only by compliance
21 with those requirements, and a security interest so perfected
22 remains perfected notwithstanding a change in the use or transfer of
23 possession of the collateral.

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

8 (d) During any period in which collateral, described in Section
9 1110 of Title 47 and Section 4013 of Title 63 of the Oklahoma
10 Statutes, is inventory held for sale or lease by a person or leased
11 by that person as lessor and that person is in the business of
12 selling goods of that kind, this section does not apply to a
13 security interest in that collateral created by that person as
14 debtor.

15 SECTION 2. AMENDATORY Section 37, Chapter 371, O.S.L.
16 2000 (12A O.S. Supp. 2000, Section 1-9-317), is amended to read as
17 follows:

18 Section 1-9-317.

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

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

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

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

6 (A) the security interest or agricultural lien is
7 perfected; or

8 (B) one of the conditions specified in paragraph (3) of
9 subsection (b) of Section 1-9-203 of this title is met
10 and a financing statement covering the collateral is
11 filed.

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

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

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

7 (e) Except as otherwise provided in Sections 1-9-320 and 1-9-
8 321 of this title, if a person files a financing statement with
9 respect to a purchase-money security interest before or within
10 twenty (20) days after the debtor receives delivery of the
11 collateral, the security interest takes priority over the rights of
12 a buyer, lessee, or lien creditor which arise between the time the
13 security interest attaches and the time of filing.

14 SECTION 3. AMENDATORY Section 122, Chapter 371, O.S.L.
15 2000 (12A O.S. Supp. 2000, Section 1-9-615), is amended to read as
16 follows:

17 Section 1-9-615.

18 APPLICATION OF PROCEEDS OF DISPOSITION;

19 LIABILITY FOR DEFICIENCY AND RIGHT TO SURPLUS

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

1 (1) the reasonable expenses of retaking, holding, preparing for
2 disposition, processing, and disposing, and, to the extent provided
3 for by agreement and not prohibited by law, reasonable attorney's
4 fees and legal expenses incurred by the secured party;

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

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

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

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

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

20 (b) If requested by a secured party, a holder of a subordinate
21 security interest or other lien shall furnish reasonable proof of
22 the interest or lien within a reasonable time. Unless the holder

1 does so, the secured party need not comply with the holder's demand
2 under paragraph (3) of subsection (a) of this section.

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

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

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

17 (2) the obligor is liable for any deficiency.

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

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

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

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

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

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

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

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

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

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

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

1 SECTION 4. AMENDATORY Section 141, Chapter 371, O.S.L.
2 2000 (12A O.S. Supp. 2000, Section 1-9-707), is amended to read as
3 follows:

4 Section 1-9-707.

5 PERSONS ENTITLED TO FILE INITIAL FINANCING STATEMENT

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

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

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

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

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

5 (3) an initial financing statement that provides the
6 information as amended and satisfies subsection (c) of Section 1-9-
7 706 of this title is filed in the office specified in Section 1-9-
8 501 of this title.

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

13 (e) Whether or not the law of this state governs perfection of
14 a security interest, the effectiveness of a pre-effective-date
15 financing statement filed in this state may be terminated after this
16 act takes effect by filing a termination statement in the office in
17 which the pre-effective-date financing statement is filed, unless an
18 initial financing statement that satisfies subsection (c) of Section
19 1-9-706 of this title has been filed in the office specified by the
20 law of the jurisdiction governing perfection as provided in Part 3
21 of this article of this title as the office in which to file a
22 financing statement.

23 SECTION 5. This act shall become effective July 1, 2001.

1 SECTION 6. It being immediately necessary for the preservation
2 of the public peace, health and safety, an emergency is hereby
3 declared to exist, by reason whereof this act shall take effect and
4 be in full force from and after its passage and approval.

5 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-20-01 - DO
6 PASS, As Coauthored.