STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

SENATE BILL 692 By: Coffee

AS INTRODUCED

An Act relating to the Uniform Commercial Code; amending Sections 31, 37, 122 and 141, Chapter 371, O.S.L. 2000 (12A O.S. Supp. 2000, Sections 1-9-311, 1-9-317, 1-9-615 and 1-9-707), 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; clarifying language; 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<u>, described in Section 1110 of Title 47 and Section 4013 of Title 63 of the Oklahoma Statutes,</u> 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 <u>tangible</u> 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 <u>pursuant to Section 1-9-610 of this title</u> 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 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, 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. This act shall become effective July 1, 2001.

SECTION 6. 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.

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