

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

COMMITTEE SUBSTITUTE
FOR
SENATE BILL 1584

By: Capps

COMMITTEE SUBSTITUTE

An Act relating to the Uniform Commercial Code; amending 12A O.S. 2001, Sections 1-9-102, 1-9-109, 1-9-304, 1-9-309, 1-9-406, 1-9-408 and 1-9-705, which relate to secured transactions; modifying definitions; modifying scope of article; clarifying language; adding certain security interest; adding exception to applicability of certain provisions; stating effect of certain statement; stating applicability of certain provisions; construing provisions; determining priorities of certain claims; repealing 24 O.S. 2001, Sections 91, 92 and 93, which relate to sending claims out of state; providing for noncodification; and providing an effective date.

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

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

Section 1-9-102.

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 as defined in paragraph

(8) of this subsection. The term does not include investment property or ~~accounts~~ a deposit account evidenced by an instrument.

(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) "Instrument" includes:

(i) an instrument as defined in subparagraph (A) of this paragraph, whether the instrument is subject to Section 3-104 of this title because it is not payable to order; and

(ii) a writing that contains both an acknowledgment by a bank as defined in paragraph (8) of this subsection that a sum of money has been received by the bank and its promise to repay the sum of money, which is considered a certificate of deposit by the bank issuing it, even if the writing provides that it is nontransferable or uses similar language.

(C) 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 2. AMENDATORY 12A O.S. 2001, Section 1-9-109, is amended to read as follows:

Section 1-9-109.

SCOPE OF ARTICLE

(a) Except as otherwise provided in subsections (c) and (d) of this section, this article applies to:

(1) a transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;

(2) an agricultural lien;

(3) a sale of accounts, chattel paper, payment intangibles, or promissory notes;

(4) a consignment;

(5) a security interest arising under Section 2-401, Section 2-505, paragraph (3) of Section 2-711, or paragraph (5) of Section 2A-508 of this title, as provided in Section 1-9-110 of this title; and

(6) a security interest arising under Section 4-210 or 5-118 of this title.

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

(c) This article does not apply to the extent that:

(1) a statute, regulation, or treaty of the United States preempts this article;

(2) another statute of this state expressly governs the creation, perfection, priority, or enforcement of a security interest created by this state or a governmental unit of this state;

(3) a statute of another state, a foreign country, or a governmental unit of another state or a foreign country, other than a statute generally applicable to security interests, expressly governs creation, perfection, priority, or enforcement of a security interest created by the state, country, or governmental unit; or

(4) the rights of a transferee beneficiary or nominated person under a letter of credit are independent and superior under Section 5-114 of this title.

(d) This article does not apply to:

(1) a landlord's lien, other than an agricultural lien;

(2) a lien, other than an agricultural lien, given by statute or other rule of law for services or materials, but Section 1-9-333 of this title applies with respect to priority of the lien;

(3) an assignment of a claim for wages, salary, or other compensation of an employee;

(4) a sale of accounts, chattel paper, payment intangibles, or promissory notes as part of a sale of the business out of which they arose;

(5) an assignment of accounts, chattel paper, payment intangibles, or promissory notes which is for the purpose of collection only;

(6) an assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract;

(7) an assignment of a single account, payment intangible, or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness;

(8) a transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health-care provider of a health-care-insurance receivable and any subsequent assignment of the right to payment, but Sections 1-9-315 and 1-9-322 of this title apply with respect to proceeds and priorities in proceeds;

(9) an assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral;

(10) a right of recoupment or set-off, but:

(A) Section 1-9-340 of this title applies with respect to the effectiveness of rights of recoupment or set-off against deposit accounts; and

(B) Section 1-9-404 of this title applies with respect to defenses or claims of an account debtor;

(11) the creation or transfer of an interest in or lien on real property, including a lease or rents thereunder, except to the extent that provision is made for:

(A) liens on real property in Sections 1-9-203 and 1-9-308 of this title;

(B) fixtures in Section 1-9-334 of this title;

(C) fixture filings in Sections 1-9-501, 1-9-502, 1-9-512, 1-9-516, and 1-9-519 of this title; and

(D) security agreements covering personal and real property in Section 1-9-604 of this title; or

(12) an assignment of a claim arising in tort, other than a commercial tort claim, but Sections 1-9-315 and 1-9-322 of this title apply with respect to proceeds and priorities in proceeds; ~~or~~

~~(13) an assignment of a deposit account in a consumer transaction, but Sections 1-9-315 and 1-9-322 of this title apply with respect to proceeds and priorities in proceeds.~~

SECTION 3. 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 4. 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 5. 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.

(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 6. 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 7. AMENDATORY 12A O.S. 2001, Section 1-9-705, is amended to read as follows:

Section 1-9-705.

EFFECTIVENESS OF ACTION TAKEN

BEFORE EFFECTIVE DATE OF ACT

(a) If action, other than the filing of a financing statement, is taken before this act takes effect and the action would have resulted in priority of a security interest over the rights of a person that becomes a lien creditor had the security interest become enforceable before this act takes effect, the action is effective to perfect a security interest that attaches under this act within one (1) year after this act takes effect. An attached security interest becomes unperfected one (1) year after this act takes effect unless the security interest becomes a perfected security interest under this act before the expiration of that period.

(b) The filing of a financing statement before this act takes effect is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under this act.

(c) This act does not render ineffective an effective financing statement that, before this act takes effect, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in former Section 9-103.1 of this title. However, except as otherwise provided in subsections (d) and (e) of this section and Section 1-9-706 of this title, the financing statement ceases to be effective at the earlier of:

- (1) the time the financing statement would have ceased to be effective under the law of the jurisdiction in which it is filed; or
- (2) June 30, 2006.

(d) The filing of a continuation statement after this act takes effect does not continue the effectiveness of the financing

statement filed before this act takes effect. However, upon the timely filing of a continuation statement after this act takes effect and in accordance with the law of the jurisdiction governing perfection as provided in Part 3 of this article, the effectiveness of a financing statement filed in the same office in that jurisdiction before this act takes effect continues for the period provided by the law of that jurisdiction.

(e) Paragraph (2) of subsection (c) of this section applies to a financing statement that, before this act takes effect, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in former Section 9-103.1 only to the extent that Part 3 of this article provides that the law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

(f) A financing statement that includes a financing statement filed before this act takes effect and a continuation statement filed after this act takes effect is effective only to the extent that it satisfies the requirements of Part 5 of this article for an initial financing statement.

(g) If an effective financing statement was filed before July 1, 2001, and that financing statement would otherwise cease to be effective on June 30, 2006, by operation of paragraph (2) of subsection (c) of this section, a continuation statement permitted to be filed by the second sentence of subsection (d) of this section may be filed between December 30, 2005, and June 30, 2006, inclusive, and will be timely, notwithstanding subsection (d) of Section 1-9-515 of this title. Without limitation, this provision applies to collateral, however described under former law, that meets the definition of "as-extracted collateral" in Section 1-9-102 of this title.

SECTION 8. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

The amendments contained in Section 3 of this act, and in those portions of Section 1 of this act amending paragraphs (5) and (46) of subsection (a) of Section 1-9-102 of Title 12A of the Oklahoma Statutes, shall be construed as declaring the law as it existed prior to the effective date of this act and not as modifying prior law.

Paragraph (14) of Section 1-9-309 of Title 12A of the Oklahoma Statutes, as added by Section 4 of this act, shall apply to the sale of an account described in said paragraph (14), even if the sale was entered into prior to the effective date of this act; provided, however, if the relative priorities of conflicting claims to the account were established before the effective date of this act, the version of said Section 1-9-309 in effect immediately prior to the effective date of this act shall determine priorities of conflicting claims to the account.

SECTION 9. REPEALER 12A O.S. 2001, Sections 91, 92 and 93, is hereby repealed.

SECTION 10. This act shall become effective November 1, 2004.

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