ENGROSSED HOUSE
BILL NO. 2171 By: Duncan of the House

and

Coffee of the Senate

An Act relating to the Uniform Commercial Code; amending Sections 16 and 17, Chapter 139, O.S.L. 2005 (12A O.S. Supp. 2006, Sections 1-303 and 1-304), which relate to negotiable instruments; modifying statutory references; providing scope of obligation of good faith; amending 12A O.S. 2001, Sections 3-103, 3-106, 3-116, 3-119, 3-305, 3-309, 3-312, 3-419, 3-602, 3-604 and 3-605, which relate to Article 3 of the Uniform Commercial Code pertaining to negotiable instruments; adding definitions; removing definitions covered by other articles; modifying terminology to reflect inscription of information in medium other than written document; eliminating certain discharge provision covered by another provision of law; providing for consistency in application of laws; modifying circumstances for which a person not in possession of an instrument is entitled to enforcement; providing effect of signature by accommodation party; providing for recourse by accommodation party against accommodated party; providing effect of payment if payment is to person formerly entitled to enforcement; providing adequacy of notice; providing when payment discharges obligation; providing that transferees and certain other parties are deemed to have notice of payment after certain date; defining term; providing for discharge of secondary obligors; amending 12A O.S. 2001, Sections 4-102, 4-104, as amended by Section 56, Chapter 140, O.S.L. 2005, 4-105, 4-212, 4-301 and 4-403 (12A O.S. Supp. 2006, Section 4-104), which relate to Article 4 of the Uniform Commercial Code which pertains to bank deposits and collections; stating applicable law for certain liability; eliminating definition now covered by another article; modifying reference to definition in another

article; modifying terminology to reflect inscription of information in medium other than written document; modifying circumstances under which payor bank may revoke settlement and recover any settlement made; amending 12A O.S. 2001, Section 4A-505, which relates to period of objection to debit of consumer accounts; allowing for modification of period, with limitation; amending 12A O.S. 2001, Section 7-209, as amended by Section 14, Chapter 140, O.S.L. 2005 (12A O.S. Supp. 2006, Section 7-209), which relates to warehouse liens; correcting language relating to persons against whom lien or security interest is not effective; repealing 12A O.S. 2001, Section 2-208, which relates to course of performance and practical construction; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY Section 16, Chapter 139, O.S.L. 2005 (12A O.S. Supp. 2006, Section 1-303), is amended to read as follows:

Section 1-303. Course of Performance, Course of Dealing, and Usage of Trade.

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

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

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

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

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

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

(e) Except as otherwise provided in subsection (f) of this section, the express terms of an agreement and any applicable course of performance, course of dealing, or usage of trade must be

construed whenever reasonable as consistent with each other. If such a construction is unreasonable:

(1) express terms prevail over course of performance, course of dealing, and usage of trade;

(2) course of performance prevails over course of dealing and usage of trade; and

(3) course of dealing prevails over usage of trade.

(f) Subject to Section 2-209 and Section 2A-208 of ~~Title 12A of the Oklahoma Statutes~~ this title, a course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.

(g) Evidence of a relevant usage of trade offered by one party is not admissible unless that party has given the other party notice that the court finds sufficient to prevent unfair surprise to the other party.

SECTION 2. AMENDATORY Section 17, Chapter 139, O.S.L. 2005 (12A O.S. Supp. 2006, Section 1-304), is amended to read as follows:

Section 1-304. Obligation of Good Faith.

Every contract ~~of~~ or duty within the Uniform Commercial Code imposes an obligation of good faith in its performance and enforcement. The obligation of good faith does not support an independent cause of action in tort or otherwise for a failure to perform or enforce in good faith. Rather, the obligation means that

a failure to perform or enforce in good faith a specific duty or obligation under the contract or this act constitutes a breach of that contract or duty or makes unavailable, under the particular circumstances, a remedial right or power. The obligation of good faith in this title displaces any common law or other statutory obligation or duty of good faith with respect to each contract or duty with the Uniform Commercial Code.

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

Section 3-103.

DEFINITIONS

(a) In this article:

(1) "Acceptor" means a drawee who has accepted a draft;

(2) "Drawee" means a person ordered in a draft to make payment;

(3) "Drawer" means a person who signs or is identified in a draft as a person ordering payment;

(4) ~~"Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing~~ Reserved;

(5) "Maker" means a person who signs or is identified in a note as a person undertaking to pay;

(6) "Order" means a written instruction to pay money signed by the person giving the instruction. The

instruction may be addressed to any person, including the person giving the instruction, or to one or more persons jointly or in the alternative but not in succession. An authorization to pay is not an order unless the person authorized to pay is also instructed to pay;

(7) "Ordinary care" in the case of a person engaged in business means observance of reasonable commercial standards, prevailing in the area in which the person is located, with respect to the business in which the person is engaged. In the case of a bank that takes an instrument for processing for collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank's prescribed procedures and the bank's procedures do not vary unreasonably from general banking usage not disapproved by this article or Article 4 of this title;

(8) "Party" means a party to an instrument;

(9) <u>"Principal obligor", with respect to an instrument, means the accommodated party or any other party to the instrument against whom a secondary obligor has recourse under this article;</u>

(10) "Promise" means a written undertaking to pay money signed by the person undertaking to pay. An acknowledgment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation;

~~(10)~~ (11) "Prove", with respect to a fact, means to meet the burden of establishing the fact (subsection (8) of Section 1-201 of this title); ~~and~~

~~(11)~~ (12) Reserved;

(13) "Remitter" means a person who purchases an instrument from its issuer if the instrument is payable to an identified person other than the purchaser; and

(14) "Secondary obligor", with respect to an instrument, means (i) an indorser or an accommodation party, (ii) a drawer having the obligation described in subsection (d) of Section 3-414 of this title, or (iii) any other party to the instrument that has recourse against another party to the instrument pursuant to subsection (b) of Section 3-116 of this title.

(b) Other definitions applying to this article and the sections in which they appear in this title are:

"Acceptance"	Section 3-409
"Accommodated party"	Section 3-419
"Accommodation party"	Section 3-419

"Account"	Section 4-104
"Alteration"	Section 3-407
"Anomalous indorsement"	Section 3-205
"Blank indorsement"	Section 3-205
"Cashier's check"	Section 3-104
"Certificate of deposit"	Section 3-104
"Certified check"	Section 3-409
"Check"	Section 3-104
"Consideration"	Section 3-303
"Draft"	Section 3-104
"Holder in due course"	Section 3-302
"Incomplete instrument"	Section 3-115
"Indorsement"	Section 3-204
"Indorser"	Section 3-204
"Instrument"	Section 3-104
"Issue"	Section 3-105
"Issuer"	Section 3-105
"Negotiable instrument"	Section 3-104
"Negotiation"	Section 3-201
"Note"	Section 3-104
"Payable at a definite time"	Section 3-108
"Payable on demand"	Section 3-108
"Payable to bearer"	Section 3-109
"Payable to order"	Section 3-109

"Payment"	Section 3-602
"Person entitled to enforce"	Section 3-301
"Presentment"	Section 3-501
"Reacquisition"	Section 3-207
"Special indorsement"	Section 3-205
"Teller's check"	Section 3-104
"Transfer of instrument"	Section 3-203
"Traveler's check"	Section 3-104
"Value"	Section 3-303

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

~~"Bank"~~	~~Section 4-105~~
"Banking day"	Section 4-104
"Clearing house"	Section 4-104
"Collecting bank"	Section 4-105
"Depositary bank"	Section 4-105
"Documentary draft"	Section 4-104
"Intermediary bank"	Section 4-105
"Item"	Section 4-104
"Payor bank"	Section 4-105
"Suspends payments"	Section 4-104

(d) In addition, Article 1 of the Uniform Commercial Code, this title, contains general definitions and principles of construction and interpretation applicable throughout this article.

SECTION 4. AMENDATORY 12A O.S. 2001, Section 3-106, is amended to read as follows:

Section 3-106.

UNCONDITIONAL PROMISE OR ORDER

(a) Except as provided in this section, for the purposes of subsection (a) of Section 3-104 of this title, a promise or order is unconditional unless it states (i) an express condition to payment, (ii) that the promise or order is subject to or governed by another ~~writing~~ record, or (iii) that rights or obligations with respect to the promise or order are stated in another ~~writing~~ record. A reference to another ~~writing~~ record does not of itself make the promise or order conditional.

(b) A promise or order is not made conditional (i) by a reference to another ~~writing~~ record for a statement of rights with respect to collateral, prepayment, or acceleration, or (ii) because payment is limited to resort to a particular fund or source.

(c) If a promise or order requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the promise or order, the condition does not make the promise or order conditional for the purposes of subsection (a) of Section 3-104 of this title. If the person whose specimen signature appears on an instrument fails to countersign the instrument, the failure to countersign is a defense to the obligation of the issuer, but the

failure does not prevent a transferee of the instrument from becoming a holder of the instrument.

(d) If a promise or order at the time it is issued or first comes into possession of a holder contains a statement, required by applicable statutory or administrative law, to the effect that the rights of a holder or transferee are subject to claims or defenses that the issuer could assert against the original payee, the promise or order is not thereby made conditional for the purposes of subsection (a) of Section 3-104 of this title; but if the promise or order is an instrument, there cannot be a holder in due course of the instrument.

SECTION 5. AMENDATORY 12A O.S. 2001, Section 3-116, is amended to read as follows:

Section 3-116.

JOINT AND SEVERAL LIABILITY; CONTRIBUTION

(a) Except as otherwise provided in the instrument, two or more persons who have the same liability on an instrument as makers, drawers, acceptors, endorsers who indorse as joint payees, or anomalous indorsers are jointly and severally liable in the capacity in which they sign.

(b) Except as provided in subsection ~~(e)~~ (f) of Section 3-419 of this title or by agreement of the affected parties, a party having joint and several liability who pays the instrument is

entitled to receive from any party having the same joint and several liability contribution in accordance with applicable law.

~~(c) Discharge of one party having joint and several liability by a person entitled to enforce the instrument does not affect the right under subsection (b) of this section of a party having the same joint and several liability to receive contribution from the party discharged.~~

SECTION 6. AMENDATORY 12A O.S. 2001, Section 3-119, is amended to read as follows:

Section 3-119.

NOTICE OF RIGHT TO DEFEND ACTION

In an action for breach of an obligation for which a third person is answerable over pursuant to this article or Article 4 of this title, the defendant may give the third person ~~written~~ notice of the litigation in a record, and the person notified may then give similar notice to any other person who is answerable over. If the notice states (i) that the person notified may come in and defend and (ii) that failure to do so will bind the person notified in an action later brought by the person giving the notice as to any determination of fact common to the two litigations, the person notified is so bound unless after seasonable receipt of the notice the person notified does come in and defend.

SECTION 7. AMENDATORY 12A O.S. 2001, Section 3-305, is amended to read as follows:

Section 3-305.

DEFENSES AND CLAIMS IN RECOUPMENT

(a) Except as ~~stated in subsection (b) of~~ otherwise provided in this section, the right to enforce the obligation of a party to pay an instrument is subject to the following:

(1) a defense of the obligor based on (i) infancy of the obligor to the extent it is a defense to a simple contract, (ii) duress, lack of legal capacity, or illegality of the transaction which, under other law, nullifies the obligation of the obligor, (iii) fraud that induced the obligor to sign the instrument with neither knowledge nor reasonable opportunity to learn of its character or its essential terms, or (iv) discharge of the obligor in insolvency proceedings;

(2) a defense of the obligor stated in another section of this article or a defense of the obligor that would be available if the person entitled to enforce the instrument were enforcing a right to payment under a simple contract; and

(3) a claim in recoupment of the obligor against the original payee of the instrument if the claim arose from the transaction that gave rise to the instrument; but the claim of the obligor may be asserted against a transferee of the instrument only to reduce the amount

owing on the instrument at the time the action is brought.

(b) The right of a holder in due course to enforce the obligation of a party to pay the instrument is subject to defenses of the obligor stated in paragraph (1) of subsection (a) of this section, but is not subject to defenses of the obligor stated in paragraph (2) of subsection (a) of this section or claims in recoupment stated in paragraph (3) of subsection (a) of this section against a person other than the holder.

(c) Except as stated in subsection (d) of this section, in an action to enforce the obligation of a party to pay the instrument, the obligor may not assert against the person entitled to enforce the instrument a defense, claim in recoupment, or claim to the instrument (Section 3-306 of this title) of another person, but the other person's claim to the instrument may be asserted by the obligor if the other person is joined in the action and personally asserts the claim against the person entitled to enforce the instrument. An obligor is not obliged to pay the instrument if the person seeking enforcement of the instrument does not have rights of a holder in due course and the obligor proves that the instrument is a lost or stolen instrument.

(d) In an action to enforce the obligation of an accommodation party to pay an instrument, the accommodation party may assert against the person entitled to enforce the instrument any defense or

claim in recoupment under subsection (a) of this section that the accommodated party could assert against the person entitled to enforce the instrument, except the defenses of discharge in insolvency proceedings, infancy, and lack of legal capacity.

(e) This section is subject to law other than this article that establishes a different rule for consumer transactions.

SECTION 8. AMENDATORY 12A O.S. 2001, Section 3-309, is amended to read as follows:

Section 3-309.

ENFORCEMENT OF LOST, DESTROYED, OR STOLEN INSTRUMENT

(a) A person not in possession of an instrument is entitled to enforce the instrument if ~~(i)~~:

(1) the person ~~was in possession of~~ seeking to enforce the instrument ~~and~~:

(A) was entitled to enforce ~~it~~ the instrument when loss of possession occurred~~, (ii)~~; or

(B) has directly or indirectly acquired ownership of the instrument from a person who was entitled to enforce the instrument when loss of possession occurred;

(2) the loss of possession was not the result of a transfer by the person or a lawful seizure~~,~~; and ~~(iii)~~

(3) the person cannot reasonably obtain possession of the instrument because the instrument was destroyed, its

whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

(b) A person seeking enforcement of an instrument under subsection (a) of this section must prove the terms of the instrument and the person's right to enforce the instrument. If that proof is made, Section ~~59~~ 3-308 of this ~~act~~ title applies to the case as if the person seeking enforcement had produced the instrument. The court may not enter judgment in favor of the person seeking enforcement unless it finds that the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument. Adequate protection may be provided by any reasonable means.

SECTION 9. AMENDATORY 12A O.S. 2001, Section 3-312, is amended to read as follows:

Section 3-312.

LOST, DESTROYED, OR STOLEN CASHIER'S CHECK, TELLER'S CHECK, OR CERTIFIED CHECK

(a) In this section:

(1) "Check" means a cashier's check, teller's check, or certified check;

(2) "Claimant" means a person who claims the right to receive the amount of a cashier's check, teller's

check, or certified check that was lost, destroyed, or stolen;

(3) "Declaration of loss" means a ~~written~~ statement, made in a record under penalty of perjury, to the effect that (i) the declarer lost possession of a check, (ii) the declarer is the drawer or payee of the check, in the case of a certified check, or the remitter or payee of the check, in the case of a cashier's or teller's check, (iii) the loss of possession was not the result of a transfer by the declarer or a lawful seizure, and (iv) the declarer cannot reasonably obtain possession of the check because the check was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process; and

(4) "Obligated bank" means the issuer of a cashier's check or a teller's check or the acceptor of a certified check.

(b) A claimant may assert a claim to the amount of a check by a communication to the obligated bank describing the check with reasonable certainty and requesting payment of the amount of the check, if (i) the claimant is the drawer or payee of a certified check or the remitter or payee of a cashier's check or teller's

check, (ii) the communication contains or is accompanied by a declaration of loss of the claimant with respect to the check, (iii) the communication is received at a time and in a manner affording the bank reasonable time to act on it before the check is paid, and (iv) the claimant provides reasonable identification if requested by the obligated bank. Delivery of a declaration of loss is a warranty of the truth of the statements made in the declaration. If a claim is asserted in compliance with this subsection, the following rules apply:

(1) The claim becomes enforceable at the later of (i) the time the claim is asserted, or (ii) the ninetieth (90th) day following the date of the check, in the case of a cashier's check or teller's check, or the ninetieth (90th) day following the date of the acceptance, in the case of a certified check;

(2) Until the claim becomes enforceable, it has no legal effect and the obligated bank may pay the check or, in the case of a teller's check, may permit the drawee to pay the check. Payment to a person entitled to enforce the check discharges all liability of the obligated bank with respect to the check;

(3) If the claim becomes enforceable before the check is presented for payment, the obligated bank is not obliged to pay the check; and

(4) When the claim becomes enforceable, the obligated bank becomes obliged to pay the amount of the check to the claimant if payment of the check has not been made to a person entitled to enforce the check. Subject to paragraph (1) of subsection (a) of Section ~~122~~ 4-302 of this ~~act~~ title, payment to the claimant discharges all liability of the obligated bank with respect to the check.

(c) If the obligated bank pays the amount of a check to a claimant under paragraph (4) of subsection (b) of this section and the check is presented for payment by a person having rights of a holder in due course, the claimant is obliged to (i) refund the payment to the obligated bank if the check is paid, or (ii) pay the amount of the check to the person having rights of a holder in due course if the check is dishonored.

(d) If a claimant has the right to assert a claim under subsection (b) of this section and is also a person entitled to enforce a cashier's check, teller's check, or certified check which is lost, destroyed, or stolen, the claimant may assert rights with respect to the check either under this section or Section ~~60~~ 3-309 of this ~~act~~ title.

SECTION 10. AMENDATORY 12A O.S. 2001, Section 3-419, is amended to read as follows:

Section 3-419.

INSTRUMENTS SIGNED FOR ACCOMMODATION

(a) If an instrument is issued for value given for the benefit of a party to the instrument ("accommodated party") and another party to the instrument ("accommodation party") signs the instrument for the purpose of incurring liability on the instrument without being a direct beneficiary of the value given for the instrument, the instrument is signed by the accommodation party "for accommodation".

(b) An accommodation party may sign the instrument as maker, drawer, acceptor, or indorser and, subject to subsection (d) of this section, is obliged to pay the instrument in the capacity in which the accommodation party signs. The obligation of an accommodation party may be enforced notwithstanding any statute of frauds and whether or not the accommodation party receives consideration for the accommodation.

(c) A person signing an instrument is presumed to be an accommodation party and there is notice that the instrument is signed for accommodation if the signature is an anomalous indorsement or is accompanied by words indicating that the signer is acting as surety or guarantor with respect to the obligation of another party to the instrument. Except as provided in Section 3-605 of this title, the obligation of an accommodation party to pay the instrument is not affected by the fact that the person enforcing the obligation had notice when the instrument was taken by that

person that the accommodation party signed the instrument for accommodation.

(d) If the signature of a party to an instrument is accompanied by words indicating unambiguously that the party is guaranteeing collection rather than payment of the obligation of another party to the instrument, the signer is obliged to pay the amount due on the instrument to a person entitled to enforce the instrument only if (i) execution of judgment against the other party has been returned unsatisfied, (ii) the other party is insolvent or in an insolvency proceeding, (iii) the other party cannot be served with process, or (iv) it is otherwise apparent that payment cannot be obtained from the other party.

(e) If the signature of a party to an instrument is accompanied by words indicating that the party guarantees payment or the signer signs the instrument as an accommodation party in some other manner that does not unambiguously indicate an intention to guarantee collection rather then payment, the signer is obliged to pay the amount due on the instrument to a person entitled to enforce the instrument in the same circumstances as the accommodated party would be obliged, without prior resort to the accommodated party by the person entitled to enforce the instrument.

(f) An accommodation party ~~who~~ that pays the instrument is entitled to reimbursement from the accommodated party and is entitled to enforce the instrument against the accommodated party.

In proper circumstances, an accommodation party may obtain relief that requires the accommodated party to perform its obligations on the instrument. An accommodated party ~~who~~ that pays the instrument has no right of recourse against, and is not entitled to contribution from, an accommodation party.

SECTION 11. AMENDATORY 12A O.S. 2001, Section 3-602, is amended to read as follows:

Section 3-602.

PAYMENT

(a) Subject to subsection ~~(b)~~ (e) of this section, an instrument is paid to the extent payment is made ~~(i)~~ by or on behalf of a party obliged to pay the instrument, and ~~(ii)~~ to a person entitled to enforce the instrument. To the extent of the payment, the obligation of the party obliged to pay the instrument is discharged even though payment is made with knowledge of a claim to the instrument under Section 3-306 of this title by another person.

(b) Subject to subsection (e) of this section, a note is paid to the extent payment is made by or on behalf of a party obliged to pay the note to a person that formerly was entitled to enforce the note only if at the time of the payment the party obliged to pay has not received adequate notification that the note has been transferred and that payment is to be made to the transferee. A notification is adequate only if it is signed by the transferor or the transferee, reasonably identifies the transferred note, and

provides an address at which payments subsequently are to be made. Upon request, a transferee shall seasonably furnish reasonable proof that the note has been transferred. Unless the transferee complies with the request, a payment to the person that formerly was entitled to enforce the note is effective for purposes of subsection (c) of this section even if the party obliged to pay the note has received a notification under this subsection.

(c) Subject to subsection (e) of this section, to the extent of a payment under subsections (a) and (b) of this section, the obligation of the party obliged to pay the instrument is discharged even though payment is made with knowledge of a claim to the instrument under Section 3-306 of this title by another person.

(d) Subject to subsection (e) of this section, a transferee, or any party that has acquired rights in the instrument directly or indirectly from a transferee, including any such party that has rights as a holder in due course, is deemed to have notice of any payment that is made under subsection (b) of this section after the date that the note is transferred to the transferee but before the party obliged to pay the note receives adequate notification of the transfer.

(e) The obligation of a party to pay the instrument is not discharged under ~~subsection~~ subsections (a) through (d) of this section if:

(1) A claim to the instrument under Section 3-306 of this title is enforceable against the party receiving payment and (i) payment is made with knowledge by the payor that payment is prohibited by injunction or similar process of a court of competent jurisdiction, or (ii) in the case of an instrument other than a cashier's check, teller's check, or certified check, the party making payment accepted, from the person having a claim to the instrument, indemnity against loss resulting from refusal to pay the person entitled to enforce the instrument; or

(2) The person making payment knows that the instrument is a stolen instrument and pays a person it knows is in wrongful possession of the instrument.

(f) As used in this section, "signed", with respect to a record that is not a writing, includes the attachment to or logical association with the record of an electronic symbol, sound, or process with the present intent to adopt or accept the record.

SECTION 12. AMENDATORY 12A O.S. 2001, Section 3-604, is amended to read as follows:

Section 3-604.

DISCHARGE BY CANCELLATION OR RENUNCIATION

(a) A person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the

instrument (i) by an intentional voluntary act, such as surrender of the instrument to the party, destruction, mutilation, or cancellation of the instrument, cancellation or striking out of the party's signature, or the addition of words to the instrument indicating discharge, or (ii) by agreeing not to sue or otherwise renouncing rights against the party by a signed ~~writing~~ record.

(b) Cancellation or striking out of an indorsement pursuant to subsection (a) of this section does not affect the status and rights of a party derived from the indorsement.

(c) As used in this section, "signed", with respect to a record that is not a writing, includes the attachment to or logical association with the record of an electronic symbol, sound, or process with the present intent to adopt or accept the record.

SECTION 13. AMENDATORY 12A O.S. 2001, Section 3-605, is amended to read as follows:

Section 3-605.

DISCHARGE OF ~~INDORSERS, ACCOMMODATION, AND OTHER PARTIES~~ SECONDARY OBLIGORS

(a) ~~In this section, the term "indorser" includes a drawer having the obligation described in subsection (d) of Section 3-414 of this title.~~

~~(b) Discharge, under Section 3-604 of this title, of the obligation of a party to pay an instrument does not discharge the~~

~~obligation of an indorser or accommodation party having a right of recourse against the discharged party.~~

~~(c) If a person entitled to enforce an instrument agrees, with or without consideration, to an extension of the due date of the obligation of a party to pay the instrument, the extension discharges an indorser or accommodation party having a right of recourse against the party whose obligation is extended to the extent the indorser or accommodation party proves that the extension caused loss to the indorser or accommodation party with respect to the right of recourse.~~

~~(d)~~ If a person entitled to enforce an instrument releases the obligation of a principal obligor in whole or in part, and another party to the instrument is a secondary obligor with respect to the obligation of that principal obligor, the following rules apply:

(1) Any obligations of the principal obligor to the secondary obligor with respect to any previous payment by the secondary obligor are not affected. Unless the terms of the release preserve the secondary obligor's recourse, the principal obligor is discharged, to the extent of the release, from any other duties to the secondary obligor under this article.

(2) Unless the terms of the release provide that the person entitled to enforce the instrument retains the right to enforce the instrument against the secondary

obligor, the secondary obligor is discharged to the same extent as the principal obligor from any unperformed portion of its obligation on the instrument. If the instrument is a check and the obligation of the secondary obligor is based on an indorsement of the check, the secondary obligor is discharged without regard to the language or circumstances of the discharge or other release.

(3) If the secondary obligor is not discharged under paragraph (2) of this subsection, the secondary obligor is discharged to the extent of the value of the consideration for the release, and to the extent that the release would otherwise cause the secondary obligor a loss.

(b) If a person entitled to enforce an instrument grants a principal obligor an extension of the time at which one or more payments are due on the instrument and another party to the instrument is a secondary obligor with respect to the obligation of that principal obligor, the following rules apply:

(1) Any obligations of the principal obligor to the secondary obligor with respect to any previous payment by the secondary obligor are not affected. Unless the terms of the extension preserve the secondary obligor's recourse, the extension correspondingly

extends the time for performance of any other duties owed to the secondary obligor by the principal obligor under this article.

(2) The secondary obligor is discharged to the extent that the extension would otherwise cause the secondary obligor a loss.

(3) To the extent that the secondary obligor is not discharged under paragraph (2) of this subsection, the secondary obligor may perform its obligations to a person entitled to enforce the instrument as if the time for payment had not been extended or, unless the terms of the extension provide that the person entitled to enforce the instrument retains the right to enforce the instrument against the secondary obligor as if the time for payment had not been extended, treat the time for performance of its obligations as having been extended correspondingly.

(c) If a person entitled to enforce an instrument agrees, with or without consideration, to a ~~material~~ modification of the obligation of a ~~party~~ principal obligor other than a complete or a partial release or an extension of the due date~~, the modification discharges the obligation of an indorser or accommodation party having a right of recourse against the person whose obligation is modified to the extent the modification causes loss to the indorser~~

~~or accommodation party with respect to the right of recourse. The loss suffered by the indorser or accommodation party as a result of the modification is equal to the amount of the right of recourse unless the person enforcing the instrument proves that no loss was caused by the modification or that the loss caused by the modification was an amount less than the amount of the right of recourse~~ and another party to the instrument is a secondary obligor with respect to the obligation of that principal obligor, the following rules apply:

(1) Any obligations of the principal obligor to the secondary obligor with respect to any previous payment by the secondary obligor are not affected. The modification correspondingly modifies any other duties owed to the secondary obligor by the principal obligor under this article.

(2) The secondary obligor is discharged from any unperformed portion of its obligation to the extent that the modification would otherwise cause the secondary obligor a loss.

(3) To the extent that the secondary obligor is not discharged under paragraph (2) of this subsection, the secondary obligor may satisfy its obligation on the instrument as if the modification had not occurred, or

treat its obligation on the instrument as having been modified correspondingly.

~~(e)~~ (d) If the obligation of a ~~party to pay an instrument~~ principal obligor is secured by an interest in collateral, another party to the instrument is a secondary obligor with respect to that obligation, and a person entitled to enforce the instrument impairs the value of the interest in collateral, the obligation of ~~an indorser or accommodation party having a right of recourse against~~ the secondary obligor is discharged to the extent of the impairment. The value of an interest in collateral is impaired to the extent ~~(i)~~ the value of the interest is reduced to an amount less than the amount of the ~~right of~~ recourse of the ~~party asserting discharge~~ secondary obligor, or ~~(ii)~~ the reduction in value of the interest causes an increase in the amount by which the amount of the ~~right of~~ recourse exceeds the value of the interest. ~~The burden of proving impairment is on the party asserting discharge.~~

~~(f) If the obligation of a party is secured by an interest in collateral not provided by an accommodation party and a person entitled to enforce the instrument impairs the value of the interest in collateral, the obligation of any party who is jointly and severally liable with respect to the secured obligation is discharged to the extent the impairment causes the party asserting discharge to pay more than that party would have been obliged to pay, taking into account rights of contribution, if impairment had~~

~~not occurred. If the party asserting discharge is an accommodation party not entitled to discharge under subsection (c) of this section, the party is deemed to have a right to contribution based on joint and several liability rather than a right to reimbursement. The burden of proving impairment is on the party asserting discharge.~~

~~(g) Under subsection (e) or (f) of this section, impairing value of an interest in collateral includes (i) failure to obtain or maintain perfection or recordation of the interest in collateral, (ii) release of collateral without substitution of collateral of equal value, (iii) failure to perform a duty to preserve the value of collateral owed, under Article 9 of this title or other law, to a debtor or surety or other person secondarily liable, or (iv) failure to comply with applicable law in disposing of collateral.~~

~~(h) An accommodation party is not discharged under subsection (c), (d), or (e) of this section unless the person entitled to enforce the instrument knows of the accommodation or has notice under subsection (c) of Section 3-419 of this title that the instrument was signed for accommodation.~~

~~(i) A party is not discharged under this section if (i) the party asserting discharge consents to the event or conduct that is the basis of the discharge, or (ii) the instrument or a separate agreement of the party provides for waiver of discharge under this section either specifically or by general language indicating that~~

~~parties waive defenses based on suretyship or impairment of collateral~~ For purposes of this subsection, impairing the value of an interest in collateral includes failure to obtain or maintain perfection or recordation of the interest in collateral, release of collateral without substitution of collateral of equal value or equivalent reduction of the underlying obligation, failure to perform a duty to preserve the value of collateral owed, under Article 9 of the Uniform Commercial Code or other law, to a debtor or other person secondarily liable, and failure to comply with applicable law in disposing of or otherwise enforcing the interest in collateral.

(e) A secondary obligor is not discharged under paragraph (3) of subsection (a) of this section or subsections (b), (c), or (d) of this section unless the person entitled to enforce the instrument knows that the person is a secondary obligor or has notice under subsection (c) of Section 3-419 of this title that the instrument was signed for accommodation.

(f) A secondary obligor is not discharged under this section if the secondary obligor consents to the event or conduct that is the basis of the discharge, or the instrument or a separate agreement of the party provides for waiver of discharge under this section specifically or by general language indicating that parties waive defenses based on suretyship or impairment of collateral. Unless the circumstances indicate otherwise, consent by the principal

obligor to an act that would lead to a discharge under this section constitutes consent to that act by the secondary obligor if the secondary obligor controls the principal obligor or deals with the person entitled to enforce the instrument on behalf of the principal obligor.

(g) A release or extension preserves a secondary obligor's recourse if the terms of the release or extension provide that:

(1) the person entitled to enforce the instrument retains the right to enforce the instrument against the secondary obligor; and

(2) the recourse of the secondary obligor continues as if the release or extension had not been granted.

(h) Except as otherwise provided in subsection (i) of this section, a secondary obligor asserting discharge under this section has the burden of persuasion both with respect to the occurrence of the acts alleged to harm the secondary obligor and loss or prejudice caused by those acts.

(i) If the secondary obligor demonstrates prejudice caused by an impairment of its recourse, and the circumstances of the case indicate that the amount of loss is not reasonably susceptible of calculation or requires proof of facts that are not ascertainable, it is presumed that the act impairing recourse caused a loss or impairment equal to the liability of the secondary obligor on the instrument. In that event, the burden of persuasion as to any

lesser amount of the loss is on the person entitled to enforce the instrument.

SECTION 14. AMENDATORY 12A O.S. 2001, Section 4-102, is amended to read as follows:

Section 4-102.

APPLICABILITY

(a) To the extent that items within this article are also within Articles 3 and 8 of this title, they are subject to those articles. If there is conflict, this article governs Article 3, but Article 8 governs this article.

(b) The liability of a bank for action or nonaction with respect to any item handled by it for purposes of presentment, payment or collection is governed by the law of the place where the bank is located. In the case of action or nonaction by or at a branch or separate office of a bank, its liability is governed by the law of the place where the branch or separate office is located.

SECTION 15. AMENDATORY 12A O.S. 2001, Section 4-104, as amended by Section 56, Chapter 140, O.S.L. 2005 (12A O.S. Supp. 2006, Section 4-104), is amended to read as follows:

Section 4-104.

DEFINITIONS AND INDEX OF DEFINITIONS

(a) In this article unless the context otherwise requires:

(1) "Account" means any deposit or credit account with a bank, including a demand, time, savings, passbook, share draft, or like

account, other than an account evidenced by a certificate of deposit;

(2) "Afternoon" means the period of a day between noon and midnight;

(3) "Banking day" means the part of a day on which a bank is open to the public for carrying on substantially all of its banking functions;

(4) "Clearing house" means an association of banks or other payors regularly clearing items;

(5) "Customer" means a person having an account with a bank or for whom a bank has agreed to collect items, including a bank that maintains an account at another bank;

(6) "Documentary draft" means a draft to be presented for acceptance or payment if specified documents, certified securities (Section 8-102 of this title) or instructions for uncertificated securities (Section 8-102 of this title) or other certificates, statements, or the like are to be received by the drawee or other payor before acceptance or payment of the draft;

(7) "Draft" means a draft as defined in Section 3-104 of this title or an item, other than an instrument, that is an order;

(8) "Drawee" means a person ordered in a draft to make payment;

(9) "Item" means an instrument or a promise or order to pay money handled by a bank for collection or payment. The term does

not include a payment order governed by Article 4A of this title or a credit or debit card slip;

(10) "Midnight deadline" with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later;

(11) "Settle" means to pay in cash, by clearing-house settlement, in a charge or credit or by remittance, or otherwise as agreed. A settlement may be either provisional or final; and

(12) "Suspends payments" with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over or that it ceases or refuses to make payments in the ordinary course of business.

(b) Other definitions applying to this article and the sections of this title in which they appear are:

"Agreement for electronic presentment" Section 4-110.

~~"Bank" Section 4-105.~~

"Collecting bank" Section 4-105.

"Depositary bank" Section 4-105.

"Intermediary bank" Section 4-105.

"Payor bank" Section 4-105.

"Presenting bank" Section 4-105.

"Presentment Notice" Section 4-110.

(c) “Control” as provided in Section 7-106 of this title and the following definitions in other articles of this title apply to this article:

"Acceptance" Section 3-409.

"Alteration" Section 3-407.

"Cashier's check" Section 3-104.

"Certificate of deposit" Section 3-104.

"Certified check" Section 3-409.

"Check" Section 3-104.

"Draft" Section 3-104.

"Good faith" Section 3-103.

"Holder in due course" Section 3-302.

"Instrument" Section 3-104.

"Notice of dishonor" Section 3-503.

"Order" Section 3-103.

"Ordinary care" Section 3-103.

"Person entitled to enforce" Section 3-301.

"Presentment" Section 3-501.

"Promise" Section 3-103.

"Prove" Section 3-103.

“Record” Section 3-103

"Teller's check" Section 3-104.

"Unauthorized signature" Section 3-403.

(d) In addition, Article 1 of this title contains general definitions and principles of construction and interpretation applicable throughout this article.

SECTION 16. AMENDATORY 12A O.S. 2001, Section 4-105, is amended to read as follows:

Section 4-105.

~~"BANK"; "DEPOSITARY BANK"; "PAYOR BANK";~~

~~"INTERMEDIARY BANK"; "COLLECTING BANK";~~

~~"PRESENTING BANK"~~ DEFINITIONS OF TYPES OF BANKS

In this article:

(1) ~~"Bank" means a person engaged in the business of banking, including a savings bank, savings and loan association, credit union, or trust company~~ Reserved;

(2) "Depositary bank" means the first bank to take an item even though it is also the payor bank, unless the item is presented for immediate payment over the counter;

(3) "Payor bank" means a bank that is the drawee of a draft;

(4) "Intermediary bank" means a bank to which an item is transferred in course of collection except the depositary or payor bank;

(5) "Collecting bank" means a bank handling an item for collection except the payor bank; and

(6) "Presenting bank" means a bank presenting an item except a payor bank.

SECTION 17. AMENDATORY 12A O.S. 2001, Section 4-212, is amended to read as follows:

Section 4-212.

PRESENTMENT BY NOTICE OF ITEM NOT PAYABLE BY, THROUGH, OR AT BANK; LIABILITY OF DRAWER OR INDORSER

(a) Unless otherwise instructed, a collecting bank may present an item not payable by, through, or at a bank by sending to the party to accept or pay a ~~written~~ record providing notice that the bank holds the item for acceptance or payment. The notice must be sent in time to be received on or before the day when presentment is due and the bank must meet any requirement of the party to accept or pay under Section 3-501 of this title by the close of the bank's next banking day after it knows of the requirement.

(b) If presentment is made by notice and payment, acceptance, or request for compliance with a requirement under Section 3-501 of this title is not received by the close of business on the day after maturity or, in the case of demand items, by the close of business on the third banking day after notice was sent, the presenting bank may treat the item as dishonored and charge any drawer or indorser by sending it notice of the facts.

SECTION 18. AMENDATORY 12A O.S. 2001, Section 4-301, is amended to read as follows:

Section 4-301.

DEFERRED POSTING; RECOVERY OF PAYMENT BY RETURN OF ITEMS;

TIME OF DISHONOR; RETURN OF ITEMS BY PAYOR BANK

(a) If a payor bank settles for a demand item other than a documentary draft presented otherwise than for immediate payment over the counter before midnight of the banking day of receipt, the payor bank may revoke the settlement and recover the settlement if, before it has made final payment and before its midnight deadline, it:

(1) Returns the item; ~~or~~

(2) ~~Sends written~~ Returns an image of the item, if the party to which the return is made has entered into an agreement to accept an image as a return of the item and the image is returned in accordance with that agreement; or

(3) Sends a record providing notice of dishonor or nonpayment if the item is unavailable for return.

(b) If a demand item is received by a payor bank for credit on its books, it may return the item or send notice of dishonor and may revoke any credit given or recover the amount thereof withdrawn by its customer, if it acts within the time limit and in the manner specified in subsection (a) of this section.

(c) Unless previous notice of dishonor has been sent an item is dishonored at the time when for purposes of dishonor it is returned or notice sent in accordance with this section.

(d) An item is returned:

(1) As to an item presented through a clearing-house, when it is delivered to the presenting or last collecting bank or to the clearing-house or is sent or delivered in accordance with clearing-house rules; or

(2) In all other cases, when it is sent or delivered to the bank's customer or transferor or pursuant to instructions.

SECTION 19. AMENDATORY 12A O.S. 2001, Section 4-403, is amended to read as follows:

Section 4-403.

CUSTOMER'S RIGHT TO STOP PAYMENT; BURDEN OF PROOF OF LOSS

(a) A customer or any person authorized to draw on the account if there is more than one person may stop payment of any item drawn on the customer's account or close the account by an order to the bank describing the item or account with reasonable certainty received at a time and in a manner that affords the bank a reasonable opportunity to act on it before any action by the bank with respect to the item described in Section 4-303 of this title. If the signature of more than one person is required to draw on an account, any of these persons may stop payment or close the account.

(b) A stop-payment order is effective for six (6) months, but it lapses after fourteen (14) calendar days if the original order was oral and was not confirmed in ~~writing~~ a record within that period. A stop-payment order may be renewed for additional six-

month periods by a ~~writing~~ record given to the bank within a period during which the stop-payment order is effective.

(c) The burden of establishing the fact and amount of loss resulting from the payment of an item contrary to a stop-payment order or order to close an account is on the customer. The loss from payment of an item contrary to a stop-payment order may include damages for dishonor of subsequent items under Section 4-402 of this title.

SECTION 20. AMENDATORY 12A O.S. 2001, Section 4A-505, is amended to read as follows:

Section 4A-505.

PRECLUSION OF OBJECTION TO DEBIT OF CUSTOMER'S ACCOUNT

(a) If a receiving bank has received payment from its customer with respect to a payment order issued in the name of the customer as sender and accepted by the bank, and the customer received notification reasonably identifying the order, the customer is precluded from asserting that the bank is not entitled to retain the payment unless the customer notifies the bank of the customer's objection to the payment within (1) one year after the notification was received by the customer.

(b) The one-year period provided for in subsection (a) of this section may be reduced by agreement, but not to less than sixty (60) days.

SECTION 21. AMENDATORY 12A O.S. 2001, Section 7-209, as amended by Section 14, Chapter 140, O.S.L. 2005 (12A O.S. Supp. 2006, Section 7-209), is amended to read as follows:

Section 7-209. Lien of Warehouse.

(a) A warehouse has a lien against the bailor on the goods covered by a warehouse receipt or storage agreement or on the proceeds thereof in its possession for charges for storage or transportation, including demurrage and terminal charges, insurance, labor, or other charges, present or future, in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for similar charges or expenses in relation to other goods whenever deposited and it is stated in the warehouse receipt or storage agreement that a lien is claimed for charges and expenses in relation to other goods, the warehouse also has a lien against the goods covered by the warehouse receipt or storage agreement or on the proceeds thereof in its possession for those charges and expenses, whether or not the goods have been delivered by the warehouse. However, as against a person to which a negotiable warehouse receipt is duly negotiated, a warehouse's lien is limited to charges in an amount or at a rate specified in the warehouse receipt or, if no charges are so specified, to a reasonable charge for storage of the specific goods covered by the receipt subsequent to the date of the receipt.

(b) A warehouse may also reserve a security interest against the bailor for the maximum amount specified on the receipt for charges other than those specified in subsection (a) of this section, such as for money advanced and interest. The security interest is governed by Article 9 of the Uniform Commercial Code.

(c) A warehouse's lien for charges and expenses under subsection (a) of this section or a security interest under subsection (b) of this section is also effective against any person that so entrusted the bailor with possession of the goods that a pledge of them by the bailor to a good faith purchaser for value would have been valid. However, the lien or security interest is not effective against a person that before issuance of a document of title had a legal interest or a perfected security interest in the goods and that did not:

(1) ~~delivers or entrusts~~ deliver or entrust the goods or any document of title covering the goods to the bailor or the bailor's nominee with:

(A) actual or apparent authority to ship, store, or sell;

(B) power to obtain delivery under Section 7-403 of this title; or

(C) power of disposition under Sections 2-403, 2A-304(2), 2A-305(2), 1-9-320, or 1-9-321(c) of the Uniform Commercial Code or other statute or rule of law; or

(2) ~~acquiesces~~ acquiesce in the procurement by the bailor or its nominee of any document.

(d) A warehouse's lien on household goods for charges and expenses in relation to the goods under subsection (a) of this section is also effective against all persons if the depositor was the legal possessor of the goods at the time of deposit. In this subsection, "household goods" means furniture, furnishings, or personal effects used by the depositor in a dwelling.

(e) A warehouse loses its lien on any goods that it voluntarily delivers or unjustifiably refuses to deliver.

SECTION 22. REPEALER 12A O.S. 2001, Section 2-208, is hereby repealed.

SECTION 23. Sections 3 through 20 of this act shall become effective November 1, 2007.

SECTION 24. 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 House of Representatives the 15th day of March, 2007.

_____
Presiding Officer of the House of Representatives

Passed the Senate the ____ day of _____, 2007.

_____
Presiding Officer of the Senate