

1 ENGROSSED HOUSE AMENDMENT
TO
2 ENGROSSED SENATE BILL NO. 991

By: Coffee and Ivester of the
Senate

3
4 and

Duncan of the House

5
6
7
8 (Uniform Commercial Code - negotiable instruments -
9 warehouse lien - repealer -
10 effective date)

11
12
13 AMENDMENT NO. 1. Strike the stricken title, enacting clause and
entire bill and insert

14
15 "An Act relating to the Uniform Commercial Code;
16 amending Section 16, Chapter 139, O.S.L. 2005 (12A
O.S. Supp. 2008, Section 1-303), which relates to
17 negotiable instruments; modifying statutory
references; amending 12A O.S. 2001, Sections 3-103,
18 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
19 the Uniform Commercial Code pertaining to negotiable
instruments; adding definitions; removing
20 definitions covered by other articles; modifying
terminology to reflect inscription of information in
21 medium other than written document; eliminating
certain discharge provision covered by another
22 provision of law; providing for consistency in
application of laws; modifying circumstances for
23 which a person not in possession of an instrument is
entitled to enforcement; providing effect of
signature by accommodation party; providing for
24 recourse by accommodation party against accommodated

1 party; providing effect of payment if payment is to
2 person formerly entitled to enforcement; providing
3 adequacy of notice; providing when payment
4 discharges obligation; providing that transferees
5 and certain other parties are deemed to have notice
6 of payment after certain date; defining term;
7 providing for discharge of secondary obligors;
8 amending 12A O.S. 2001, Sections 4-102, 4-104, as
9 amended by Section 56, Chapter 140, O.S.L. 2005, 4-
10 105, 4-212, 4-301 and 4-403 (12A O.S. Supp. 2008,
11 Section 4-104), which relate to Article 4 of the
12 Uniform Commercial Code which pertains to bank
13 deposits and collections; stating applicable law for
14 certain liability; eliminating definition now
15 covered by another article; modifying reference to
16 definition in another article; modifying terminology
17 to reflect inscription of information in medium
18 other than written document; modifying circumstances
19 under which payor bank may revoke settlement and
20 recover any settlement made; amending 12A O.S. 2001,
21 Section 4A-505, which relates to period of objection
22 to debit of consumer accounts; allowing for
23 modification of period, with limitation; amending
24 12A O.S. 2001, Section 7-209, as amended by Section
14, Chapter 140, O.S.L. 2005 (12A O.S. Supp. 2008,
Section 7-209), which relates to warehouse liens;
correcting language relating to persons against whom
lien or security interest is not effective; amending
42 O.S. 2001, Section 47, which relates to
agricultural liens; modifying requirements for lien
to be effective; repealing Sections 1 through 20,
Chapter 382, O.S.L. 2008, which relate to the
Uniform Commercial Code; repealing 12A O.S. 2001,
Section 2-208, which relates to course of
performance and practical construction; and
providing an effective date.

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. 2008, Section 1-303), is amended to read as
follows:

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

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

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

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

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

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

23 (d) A course of performance or course of dealing between the
24 parties or usage of trade in the vocation or trade in which they are

1 engaged or of which they are or should be aware is relevant in
2 ascertaining the meaning of the agreement of the parties, may give
3 particular meaning to specific terms of the agreement, and may
4 supplement or qualify the terms of the agreement. A usage of trade
5 applicable in the place in which part of the performance under the
6 agreement is to occur may be so utilized as to that part of the
7 performance.

8 (e) Except as otherwise provided in subsection (f) of this
9 section, the express terms of an agreement and any applicable course
10 of performance, course of dealing, or usage of trade must be
11 construed whenever reasonable as consistent with each other. If
12 such a construction is unreasonable:

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

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

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

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

22 (g) Evidence of a relevant usage of trade offered by one party
23 is not admissible unless that party has given the other party notice
24

1 that the court finds sufficient to prevent unfair surprise to the
2 other party.

3 SECTION 2. AMENDATORY 12A O.S. 2001, Section 3-103, is
4 amended to read as follows:

5 Section 3-103.

6 DEFINITIONS

7 (a) In this article:

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

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

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

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

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

18 (6) "Order" means a written instruction to pay money
19 signed by the person giving the instruction. The
20 instruction may be addressed to any person, including
21 the person giving the instruction, or to one or more
22 persons jointly or in the alternative but not in
23 succession. An authorization to pay is not an order
24

1 unless the person authorized to pay is also instructed
2 to pay;

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

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

17 (9) "Principal obligor", with respect to an instrument,
18 means the accommodated party or any other party to the
19 instrument against whom a secondary obligor has
20 recourse under this article;

21 (10) "Promise" means a written undertaking to pay money
22 signed by the person undertaking to pay. An
23 acknowledgment of an obligation by the obligor is not
24

1 a promise unless the obligor also undertakes to pay
2 the obligation;

3 ~~(10)~~ (11) "Prove", with respect to a fact, means to meet the
4 burden of establishing the fact (subsection (8) of
5 Section 1-201 of this title); ~~and~~

6 ~~(11)~~ (12) Reserved;

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

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

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

19 "Acceptance"	Section 3-409
20 "Accommodated party"	Section 3-419
21 "Accommodation party"	Section 3-419
22 <u>"Account"</u>	<u>Section 4-104</u>
23 "Alteration"	Section 3-407
24 "Anomalous indorsement"	Section 3-205

1	"Blank indorsement"	Section 3-205
2	"Cashier's check"	Section 3-104
3	"Certificate of deposit"	Section 3-104
4	"Certified check"	Section 3-409
5	"Check"	Section 3-104
6	"Consideration"	Section 3-303
7	"Draft"	Section 3-104
8	"Holder in due course"	Section 3-302
9	"Incomplete instrument"	Section 3-115
10	"Indorsement"	Section 3-204
11	"Indorser"	Section 3-204
12	"Instrument"	Section 3-104
13	"Issue"	Section 3-105
14	"Issuer"	Section 3-105
15	"Negotiable instrument"	Section 3-104
16	"Negotiation"	Section 3-201
17	"Note"	Section 3-104
18	"Payable at a definite time"	Section 3-108
19	"Payable on demand"	Section 3-108
20	"Payable to bearer"	Section 3-109
21	"Payable to order"	Section 3-109
22	"Payment"	Section 3-602
23	"Person entitled to enforce"	Section 3-301
24	"Presentment"	Section 3-501

1	"Reacquisition"	Section 3-207
2	"Special indorsement"	Section 3-205
3	"Teller's check"	Section 3-104
4	"Transfer of instrument"	Section 3-203
5	"Traveler's check"	Section 3-104
6	"Value"	Section 3-303

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

9	"Bank"	Section 4-105
10	"Banking day"	Section 4-104
11	"Clearing house"	Section 4-104
12	"Collecting bank"	Section 4-105
13	"Depositary bank"	Section 4-105
14	"Documentary draft"	Section 4-104
15	"Intermediary bank"	Section 4-105
16	"Item"	Section 4-104
17	"Payor bank"	Section 4-105
18	"Suspends payments"	Section 4-104

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

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

24 Section 3-106.

1 UNCONDITIONAL PROMISE OR ORDER

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

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

14 (c) If a promise or order requires, as a condition to payment,
15 a countersignature by a person whose specimen signature appears on
16 the promise or order, the condition does not make the promise or
17 order conditional for the purposes of subsection (a) of Section 3-
18 104 of this title. If the person whose specimen signature appears
19 on an instrument fails to countersign the instrument, the failure to
20 countersign is a defense to the obligation of the issuer, but the
21 failure does not prevent a transferee of the instrument from
22 becoming a holder of the instrument.

23 (d) If a promise or order at the time it is issued or first
24 comes into possession of a holder contains a statement, required by

1 applicable statutory or administrative law, to the effect that the
2 rights of a holder or transferee are subject to claims or defenses
3 that the issuer could assert against the original payee, the promise
4 or order is not thereby made conditional for the purposes of
5 subsection (a) of Section 3-104 of this title; but if the promise or
6 order is an instrument, there cannot be a holder in due course of
7 the instrument.

8 SECTION 4. AMENDATORY 12A O.S. 2001, Section 3-116, is
9 amended to read as follows:

10 Section 3-116.

11 JOINT AND SEVERAL LIABILITY; CONTRIBUTION

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

17 (b) Except as provided in subsection ~~(e)~~ (f) of Section 3-419
18 of this title or by agreement of the affected parties, a party
19 having joint and several liability who pays the instrument is
20 entitled to receive from any party having the same joint and several
21 liability contribution in accordance with applicable law.

22 ~~(c) Discharge of one party having joint and several liability~~
23 ~~by a person entitled to enforce the instrument does not affect the~~
24 ~~right under subsection (b) of this section of a party having the~~

1 ~~same joint and several liability to receive contribution from the~~
2 ~~party discharged.~~

3 SECTION 5. AMENDATORY 12A O.S. 2001, Section 3-119, is
4 amended to read as follows:

5 Section 3-119.

6 NOTICE OF RIGHT TO DEFEND ACTION

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

18 SECTION 6. AMENDATORY 12A O.S. 2001, Section 3-305, is
19 amended to read as follows:

20 Section 3-305.

21 DEFENSES AND CLAIMS IN RECOUPMENT

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

- 1 (1) a defense of the obligor based on (i) infancy of the
2 obligor to the extent it is a defense to a simple
3 contract, (ii) duress, lack of legal capacity, or
4 illegality of the transaction which, under other law,
5 nullifies the obligation of the obligor, (iii) fraud
6 that induced the obligor to sign the instrument with
7 neither knowledge nor reasonable opportunity to learn
8 of its character or its essential terms, or (iv)
9 discharge of the obligor in insolvency proceedings;
- 10 (2) a defense of the obligor stated in another section of
11 this article or a defense of the obligor that would be
12 available if the person entitled to enforce the
13 instrument were enforcing a right to payment under a
14 simple contract; and
- 15 (3) a claim in recoupment of the obligor against the
16 original payee of the instrument if the claim arose
17 from the transaction that gave rise to the instrument;
18 but the claim of the obligor may be asserted against a
19 transferee of the instrument only to reduce the amount
20 owing on the instrument at the time the action is
21 brought.

22 (b) The right of a holder in due course to enforce the
23 obligation of a party to pay the instrument is subject to defenses
24 of the obligor stated in paragraph (1) of subsection (a) of this

1 section, but is not subject to defenses of the obligor stated in
2 paragraph (2) of subsection (a) of this section or claims in
3 recoupment stated in paragraph (3) of subsection (a) of this section
4 against a person other than the holder.

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

17 (d) In an action to enforce the obligation of an accommodation
18 party to pay an instrument, the accommodation party may assert
19 against the person entitled to enforce the instrument any defense or
20 claim in recoupment under subsection (a) of this section that the
21 accommodated party could assert against the person entitled to
22 enforce the instrument, except the defenses of discharge in
23 insolvency proceedings, infancy, and lack of legal capacity.

24

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

3 SECTION 7. AMENDATORY 12A O.S. 2001, Section 3-309, is
4 amended to read as follows:

5 Section 3-309.

6 ENFORCEMENT OF LOST, DESTROYED, OR STOLEN INSTRUMENT

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

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

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

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

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

19 (3) the person cannot reasonably obtain possession of the
20 instrument because the instrument was destroyed, its
21 whereabouts cannot be determined, or it is in the
22 wrongful possession of an unknown person or a person
23 that cannot be found or is not amenable to service of
24 process.

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

11 SECTION 8. AMENDATORY 12A O.S. 2001, Section 3-312, is
12 amended to read as follows:

13 Section 3-312.

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

16 (a) In this section:

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

19 (2) "Claimant" means a person who claims the right to
20 receive the amount of a cashier's check, teller's
21 check, or certified check that was lost, destroyed, or
22 stolen;

23 (3) "Declaration of loss" means a ~~written~~ statement, made
24 in a record under penalty of perjury, to the effect

1 that (i) the declarer lost possession of a check, (ii)
2 the declarer is the drawer or payee of the check, in
3 the case of a certified check, or the remitter or
4 payee of the check, in the case of a cashier's or
5 teller's check, (iii) the loss of possession was not
6 the result of a transfer by the declarer or a lawful
7 seizure, and (iv) the declarer cannot reasonably
8 obtain possession of the check because the check was
9 destroyed, its whereabouts cannot be determined, or it
10 is in the wrongful possession of an unknown person or
11 a person that cannot be found or is not amenable to
12 service of process; and

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

16 (b) A claimant may assert a claim to the amount of a check by a
17 communication to the obligated bank describing the check with
18 reasonable certainty and requesting payment of the amount of the
19 check, if (i) the claimant is the drawer or payee of a certified
20 check or the remitter or payee of a cashier's check or teller's
21 check, (ii) the communication contains or is accompanied by a
22 declaration of loss of the claimant with respect to the check, (iii)
23 the communication is received at a time and in a manner affording
24 the bank reasonable time to act on it before the check is paid, and

1 (iv) the claimant provides reasonable identification if requested by
2 the obligated bank. Delivery of a declaration of loss is a warranty
3 of the truth of the statements made in the declaration. If a claim
4 is asserted in compliance with this subsection, the following rules
5 apply:

6 (1) The claim becomes enforceable at the later of (i) the
7 time the claim is asserted, or (ii) the ninetieth
8 (90th) day following the date of the check, in the
9 case of a cashier's check or teller's check, or the
10 ninetieth (90th) day following the date of the
11 acceptance, in the case of a certified check;

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

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

21 (4) When the claim becomes enforceable, the obligated bank
22 becomes obliged to pay the amount of the check to the
23 claimant if payment of the check has not been made to
24 a person entitled to enforce the check. Subject to

1 paragraph (1) of subsection (a) of Section ~~122~~ 4-302
2 of this ~~act~~ title, payment to the claimant discharges
3 all liability of the obligated bank with respect to
4 the check.

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

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

18 SECTION 9. AMENDATORY 12A O.S. 2001, Section 3-419, is
19 amended to read as follows:

20 Section 3-419.

21 INSTRUMENTS SIGNED FOR ACCOMMODATION

22 (a) If an instrument is issued for value given for the benefit
23 of a party to the instrument ("accommodated party") and another
24 party to the instrument ("accommodation party") signs the instrument

1 for the purpose of incurring liability on the instrument without
2 being a direct beneficiary of the value given for the instrument,
3 the instrument is signed by the accommodation party "for
4 accommodation".

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

12 (c) A person signing an instrument is presumed to be an
13 accommodation party and there is notice that the instrument is
14 signed for accommodation if the signature is an anomalous
15 indorsement or is accompanied by words indicating that the signer is
16 acting as surety or guarantor with respect to the obligation of
17 another party to the instrument. Except as provided in Section 3-
18 605 of this title, the obligation of an accommodation party to pay
19 the instrument is not affected by the fact that the person enforcing
20 the obligation had notice when the instrument was taken by that
21 person that the accommodation party signed the instrument for
22 accommodation.

23 (d) If the signature of a party to an instrument is accompanied
24 by words indicating unambiguously that the party is guaranteeing

1 collection rather than payment of the obligation of another party to
2 the instrument, the signer is obliged to pay the amount due on the
3 instrument to a person entitled to enforce the instrument only if
4 (i) execution of judgment against the other party has been returned
5 unsatisfied, (ii) the other party is insolvent or in an insolvency
6 proceeding, (iii) the other party cannot be served with process, or
7 (iv) it is otherwise apparent that payment cannot be obtained from
8 the other party.

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

18 (f) An accommodation party ~~who~~ that pays the instrument is
19 entitled to reimbursement from the accommodated party and is
20 entitled to enforce the instrument against the accommodated party.
21 In proper circumstances, an accommodation party may obtain relief
22 that requires the accommodated party to perform its obligations on
23 the instrument. An accommodated party ~~who~~ that pays the instrument

24

1 has no right of recourse against, and is not entitled to
2 contribution from, an accommodation party.

3 SECTION 10. AMENDATORY 12A O.S. 2001, Section 3-602, is
4 amended to read as follows:

5 Section 3-602.

6 PAYMENT

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

14 (b) Subject to subsection (e) of this section, a note is paid
15 to the extent payment is made by or on behalf of a party obliged to
16 pay the note to a person that formerly was entitled to enforce the
17 note only if at the time of the payment the party obliged to pay has
18 not received adequate notification that the note has been
19 transferred and that payment is to be made to the transferee. A
20 notification is adequate only if it is signed by the transferor or
21 the transferee, reasonably identifies the transferred note, and
22 provides an address at which payments subsequently are to be made.
23 Upon request, a transferee shall seasonably furnish reasonable proof
24 that the note has been transferred. Unless the transferee complies

1 with the request, a payment to the person that formerly was entitled
2 to enforce the note is effective for purposes of subsection (c) of
3 this section even if the party obliged to pay the note has received
4 a notification under this subsection.

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

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

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

21 (1) A claim to the instrument under Section 3-306 of this
22 title is enforceable against the party receiving
23 payment and (i) payment is made with knowledge by the
24 payor that payment is prohibited by injunction or

1 similar process of a court of competent jurisdiction,
2 or (ii) in the case of an instrument other than a
3 cashier's check, teller's check, or certified check,
4 the party making payment accepted, from the person
5 having a claim to the instrument, indemnity against
6 loss resulting from refusal to pay the person entitled
7 to enforce the instrument; or

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

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

15 SECTION 11. AMENDATORY 12A O.S. 2001, Section 3-604, is
16 amended to read as follows:

17 Section 3-604.

18 DISCHARGE BY CANCELLATION OR RENUNCIATION

19 (a) A person entitled to enforce an instrument, with or without
20 consideration, may discharge the obligation of a party to pay the
21 instrument (i) by an intentional voluntary act, such as surrender of
22 the instrument to the party, destruction, mutilation, or
23 cancellation of the instrument, cancellation or striking out of the
24 party's signature, or the addition of words to the instrument

1 indicating discharge, or (ii) by agreeing not to sue or otherwise
2 renouncing rights against the party by a signed ~~writing~~ record.

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

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

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

12 Section 3-605.

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

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

18 ~~(b) Discharge, under Section 3-604 of this title, of the~~
19 ~~obligation of a party to pay an instrument does not discharge the~~
20 ~~obligation of an indorser or accommodation party having a right of~~
21 ~~recourse against the discharged party.~~

22 ~~(c) If a person entitled to enforce an instrument agrees, with~~
23 ~~or without consideration, to an extension of the due date of the~~
24 ~~obligation of a party to pay the instrument, the extension~~

1 ~~discharges an indorser or accommodation party having a right of~~
2 ~~recourse against the party whose obligation is extended to the~~
3 ~~extent the indorser or accommodation party proves that the extension~~
4 ~~caused loss to the indorser or accommodation party with respect to~~
5 ~~the right of recourse.~~

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

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

17 (2) Unless the terms of the release provide that the
18 person entitled to enforce the instrument retains the
19 right to enforce the instrument against the secondary
20 obligor, the secondary obligor is discharged to the
21 same extent as the principal obligor from any
22 unperformed portion of its obligation on the
23 instrument. If the instrument is a check and the
24 obligation of the secondary obligor is based on an

1 indorsement of the check, the secondary obligor is
2 discharged without regard to the language or
3 circumstances of the discharge or other release.

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

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

15 (1) Any obligations of the principal obligor to the
16 secondary obligor with respect to any previous payment
17 by the secondary obligor are not affected. Unless the
18 terms of the extension preserve the secondary
19 obligor's recourse, the extension correspondingly
20 extends the time for performance of any other duties
21 owed to the secondary obligor by the principal obligor
22 under this article.

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

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

15 (c) If a person entitled to enforce an instrument agrees, with
16 or without consideration, to a ~~material~~ modification of the
17 obligation of a ~~party~~ principal obligor other than a complete or a
18 partial release or an extension of the due date, ~~the modification~~
19 ~~discharges the obligation of an indorser or accommodation party~~
20 ~~having a right of recourse against the person whose obligation is~~
21 ~~modified to the extent the modification causes loss to the indorser~~
22 ~~or accommodation party with respect to the right of recourse. The~~
23 ~~loss suffered by the indorser or accommodation party as a result of~~
24 ~~the modification is equal to the amount of the right of recourse~~

1 ~~unless the person enforcing the instrument proves that no loss was~~
2 ~~caused by the modification or that the loss caused by the~~
3 ~~modification was an amount less than the amount of the right of~~
4 ~~recourse and another party to the instrument is a secondary obligor~~
5 ~~with respect to the obligation of that principal obligor, the~~
6 following rules apply:

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

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

17 (3) To the extent that the secondary obligor is not
18 discharged under paragraph (2) of this subsection, the
19 secondary obligor may satisfy its obligation on the
20 instrument as if the modification had not occurred, or
21 treat its obligation on the instrument as having been
22 modified correspondingly.

23 ~~(e)~~ (d) ~~If the obligation of a party to pay an instrument~~
24 principal obligor is secured by an interest in collateral, another

1 party to the instrument is a secondary obligor with respect to that
2 obligation, and a person entitled to enforce the instrument impairs
3 the value of the interest in collateral, the obligation of ~~an~~
4 ~~indorser or accommodation party having a right of recourse against~~
5 the secondary obligor is discharged to the extent of the impairment.
6 The value of an interest in collateral is impaired to the extent ~~(i)~~
7 the value of the interest is reduced to an amount less than the
8 amount of the ~~right of recourse of the party asserting discharge~~
9 secondary obligor, or ~~(ii)~~ the reduction in value of the interest
10 causes an increase in the amount by which the amount of the ~~right of~~
11 ~~recourse exceeds the value of the interest. The burden of proving~~
12 ~~impairment is on the party asserting discharge.~~

13 ~~(f) If the obligation of a party is secured by an interest in~~
14 ~~collateral not provided by an accommodation party and a person~~
15 ~~entitled to enforce the instrument impairs the value of the interest~~
16 ~~in collateral, the obligation of any party who is jointly and~~
17 ~~severally liable with respect to the secured obligation is~~
18 ~~discharged to the extent the impairment causes the party asserting~~
19 ~~discharge to pay more than that party would have been obliged to~~
20 ~~pay, taking into account rights of contribution, if impairment had~~
21 ~~not occurred. If the party asserting discharge is an accommodation~~
22 ~~party not entitled to discharge under subsection (e) of this~~
23 ~~section, the party is deemed to have a right to contribution based~~
24 ~~on joint and several liability rather than a right to reimbursement.~~

1 ~~The burden of proving impairment is on the party asserting~~
2 ~~discharge.~~

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

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

16 ~~(i) A party is not discharged under this section if (i) the~~
17 ~~party asserting discharge consents to the event or conduct that is~~
18 ~~the basis of the discharge, or (ii) the instrument or a separate~~
19 ~~agreement of the party provides for waiver of discharge under this~~
20 ~~section either specifically or by general language indicating that~~
21 ~~parties waive defenses based on suretyship or impairment of~~
22 ~~collateral. For purposes of this subsection, impairing the value of~~
23 ~~an interest in collateral includes failure to obtain or maintain~~
24 ~~perfection or recordation of the interest in collateral, release of~~

1 collateral without substitution of collateral of equal value or
2 equivalent reduction of the underlying obligation, failure to
3 perform a duty to preserve the value of collateral owed, under
4 Article 9 of the Uniform Commercial Code or other law, to a debtor
5 or other person secondarily liable, and failure to comply with
6 applicable law in disposing of or otherwise enforcing the interest
7 in collateral.

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

14 (f) A secondary obligor is not discharged under this section if
15 the secondary obligor consents to the event or conduct that is the
16 basis of the discharge, or the instrument or a separate agreement of
17 the party provides for waiver of discharge under this section
18 specifically or by general language indicating that parties waive
19 defenses based on suretyship or impairment of collateral. Unless
20 the circumstances indicate otherwise, consent by the principal
21 obligor to an act that would lead to a discharge under this section
22 constitutes consent to that act by the secondary obligor if the
23 secondary obligor controls the principal obligor or deals with the
24

1 person entitled to enforce the instrument on behalf of the principal
2 obligor.

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

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

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

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

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

24

1 SECTION 13. AMENDATORY 12A O.S. 2001, Section 4-102, is
2 amended to read as follows:

3 Section 4-102.

4 APPLICABILITY

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

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

15 SECTION 14. AMENDATORY 12A O.S. 2001, Section 4-104, as
16 amended by Section 56, Chapter 140, O.S.L. 2005 (12A O.S. Supp.
17 2008, Section 4-104), is amended to read as follows:

18 Section 4-104.

19 DEFINITIONS AND INDEX OF DEFINITIONS

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

21 (1) "Account" means any deposit or credit account with a bank,
22 including a demand, time, savings, passbook, share draft, or like
23 account, other than an account evidenced by a certificate of
24 deposit;

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

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

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

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

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

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

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

20 (9) "Item" means an instrument or a promise or order to pay
21 money handled by a bank for collection or payment. The term does
22 not include a payment order governed by Article 4A of this title or
23 a credit or debit card slip;

24

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

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

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

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

14 "Agreement for electronic presentment" Section 4-110.

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

16 "Collecting bank" Section 4-105.

17 "Depositary bank" Section 4-105.

18 "Intermediary bank" Section 4-105.

19 "Payor bank" Section 4-105.

20 "Presenting bank" Section 4-105.

21 "Presentment Notice" Section 4-110.

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

1 "Acceptance" Section 3-409.
2 "Alteration" Section 3-407.
3 "Cashier's check" Section 3-104.
4 "Certificate of deposit" Section 3-104.
5 "Certified check" Section 3-409.
6 "Check" Section 3-104.
7 "Draft" Section 3-104.
8 "Good faith" Section 3-103.
9 "Holder in due course" Section 3-302.
10 "Instrument" Section 3-104.
11 "Notice of dishonor" Section 3-503.
12 "Order" Section 3-103.
13 "Ordinary care" Section 3-103.
14 "Person entitled to enforce" Section 3-301.
15 "Presentment" Section 3-501.
16 "Promise" Section 3-103.
17 "Prove" Section 3-103.
18 "Record" Section 3-103
19 "Teller's check" Section 3-104.
20 "Unauthorized signature" Section 3-403.

21 (d) In addition, Article 1 of this title contains general
22 definitions and principles of construction and interpretation
23 applicable throughout this article.
24

1 SECTION 15. AMENDATORY 12A O.S. 2001, Section 4-105, is
2 amended to read as follows:

3 Section 4-105.

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

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

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

7 In this article:

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

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

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

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

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

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

22 SECTION 16. AMENDATORY 12A O.S. 2001, Section 4-212, is
23 amended to read as follows:

24 Section 4-212.

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

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

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

18 SECTION 17. AMENDATORY 12A O.S. 2001, Section 4-301, is
19 amended to read as follows:

20 Section 4-301.

21 DEFERRED POSTING; RECOVERY OF PAYMENT BY RETURN OF ITEMS;

22 TIME OF DISHONOR; RETURN OF ITEMS BY PAYOR BANK

23 (a) If a payor bank settles for a demand item other than a
24 documentary draft presented otherwise than for immediate payment

1 over the counter before midnight of the banking day of receipt, the
2 payor bank may revoke the settlement and recover the settlement if,
3 before it has made final payment and before its midnight deadline,
4 it:

- 5 (1) Returns the item; ~~or~~
- 6 (2) ~~Sends written~~ Returns an image of the item, if the
7 party to which the return is made has entered into an
8 agreement to accept an image as a return of the item
9 and the image is returned in accordance with that
10 agreement; or
- 11 (3) Sends a record providing notice of dishonor or
12 nonpayment if the item is unavailable for return.

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

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

21 (d) An item is returned:

- 22 (1) As to an item presented through a clearing-house, when
23 it is delivered to the presenting or last collecting
24

1 bank or to the clearing-house or is sent or delivered
2 in accordance with clearing-house rules; or

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

6 SECTION 18. AMENDATORY 12A O.S. 2001, Section 4-403, is
7 amended to read as follows:

8 Section 4-403.

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

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

19 (b) A stop-payment order is effective for six (6) months, but
20 it lapses after fourteen (14) calendar days if the original order
21 was oral and was not confirmed in ~~writing~~ a record within that
22 period. A stop-payment order may be renewed for additional six-
23 month periods by a ~~writing~~ record given to the bank within a period
24 during which the stop-payment order is effective.

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

7 SECTION 19. AMENDATORY 12A O.S. 2001, Section 4A-505, is
8 amended to read as follows:

9 Section 4A-505.

10 PRECLUSION OF OBJECTION TO DEBIT OF CUSTOMER'S ACCOUNT

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

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

22 SECTION 20. AMENDATORY 12A O.S. 2001, Section 7-209, as
23 amended by Section 14, Chapter 140, O.S.L. 2005 (12A O.S. Supp.
24 2008, Section 7-209), is amended to read as follows:

1 Section 7-209. Lien of Warehouse.

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

22 (b) A warehouse may also reserve a security interest against
23 the bailor for the maximum amount specified on the receipt for
24 charges other than those specified in subsection (a) of this

1 section, such as for money advanced and interest. The security
2 interest is governed by Article 9 of the Uniform Commercial Code.

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

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

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

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

18 (C) power of disposition under Sections 2-403, 2A-304(2),
19 2A-305(2), 1-9-320, or 1-9-321(c) of the Uniform
20 Commercial Code or other statute or rule of law; or

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

23 (d) A warehouse's lien on household goods for charges and
24 expenses in relation to the goods under subsection (a) of this

1 section is also effective against all persons if the depositor was
2 the legal possessor of the goods at the time of deposit. In this
3 subsection, "household goods" means furniture, furnishings, or
4 personal effects used by the depositor in a dwelling.

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

7 SECTION 21. AMENDATORY 42 O.S. 2001, Section 47, is
8 amended to read as follows:

9 Section 47. A. Any person selling, furnishing, applying or
10 providing to the owner of crops which are growing or to be grown,
11 any seed, chemicals, pesticides, herbicides or fertilizer for the
12 growing of the crops shall, upon filing, have a lien on the crops
13 for the amount due for such seed, chemicals, pesticides, herbicides
14 or fertilizer or for the application thereof. The lien provided for
15 in this section shall be subject to all prior perfected liens.

16 B. The lien created by this section shall not be effective
17 unless+

18 ~~1. Filed~~ filed as an agricultural lien pursuant to Article 9 of
19 the Uniform Commercial Code, ~~and~~

20 ~~2. Notice is given to the owner of the land on which the crops~~
21 ~~are growing or to be grown at the time of filing by mailing a copy~~
22 ~~of the verified statement by certified mail, return receipt~~
23 ~~requested.~~

24

1 C. The lien created by this section may be foreclosed by the
2 sale of the crops subject to the lien anytime within twelve (12)
3 months after filing of the lien in accordance with the provisions of
4 Title 12A of the Oklahoma Statutes.

5 SECTION 22. REPEALER Sections 1 through 20, Chapter 382,
6 O.S.L. 2008, are hereby repealed.

7 SECTION 23. REPEALER 12A O.S. 2001, Section 2-208, is
8 hereby repealed.

9 SECTION 24. This act shall become effective November 1, 2009."
10 Passed the House of Representatives the 23rd day of April, 2009.

11
12
13 Presiding Officer of the House of
14 Representatives

15 Passed the Senate the ____ day of _____, 2009.

16
17
18 Presiding Officer of the Senate