

SB 991

Senate Bill No. 991
As Amended

SENATE BILL NO. 991 - By: Coffee of the Senate and Duncan of the House.

[Uniform Commercial Code - negotiable instruments -
warehouse lien - 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:

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

1 transaction that is fairly to be regarded as establishing a common
2 basis of understanding for interpreting their expressions and other
3 conduct.

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

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

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

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

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

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

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

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

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

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

18 Section 3-103.

19 DEFINITIONS

20 (a) In this article:

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

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

- 1 (3) "Drawer" means a person who signs or is identified in
2 a draft as a person ordering payment;
- 3 (4) ~~"Good faith" means honesty in fact and the observance~~
4 ~~of reasonable commercial standards of fair dealing~~
5 Reserved;
- 6 (5) "Maker" means a person who signs or is identified in a
7 note as a person undertaking to pay;
- 8 (6) "Order" means a written instruction to pay money
9 signed by the person giving the instruction. The
10 instruction may be addressed to any person, including
11 the person giving the instruction, or to one or more
12 persons jointly or in the alternative but not in
13 succession. An authorization to pay is not an order
14 unless the person authorized to pay is also instructed
15 to pay;
- 16 (7) "Ordinary care" in the case of a person engaged in
17 business means observance of reasonable commercial
18 standards, prevailing in the area in which the person
19 is located, with respect to the business in which the
20 person is engaged. In the case of a bank that takes
21 an instrument for processing for collection or payment
22 by automated means, reasonable commercial standards do
23 not require the bank to examine the instrument if the

1 failure to examine does not violate the bank's
2 prescribed procedures and the bank's procedures do not
3 vary unreasonably from general banking usage not
4 disapproved by this article or Article 4 of this
5 title;

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

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

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

16 ~~(10)~~ (11) "Prove", with respect to a fact, means to meet the
17 burden of establishing the fact (subsection (8) of
18 Section 1-201 of this title); ~~and~~

19 ~~(11)~~ (12) Reserved;

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

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

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

10	"Acceptance"	Section 3-409
11	"Accommodated party"	Section 3-419
12	"Accommodation party"	Section 3-419
13	<u>"Account"</u>	<u>Section 4-104</u>
14	"Alteration"	Section 3-407
15	"Anomalous indorsement"	Section 3-205
16	"Blank indorsement"	Section 3-205
17	"Cashier's check"	Section 3-104
18	"Certificate of deposit"	Section 3-104
19	"Certified check"	Section 3-409
20	"Check"	Section 3-104
21	"Consideration"	Section 3-303
22	"Draft"	Section 3-104
23	"Holder in due course"	Section 3-302

1	"Incomplete instrument"	Section 3-115
2	"Indorsement"	Section 3-204
3	"Indorser"	Section 3-204
4	"Instrument"	Section 3-104
5	"Issue"	Section 3-105
6	"Issuer"	Section 3-105
7	"Negotiable instrument"	Section 3-104
8	"Negotiation"	Section 3-201
9	"Note"	Section 3-104
10	"Payable at a definite time"	Section 3-108
11	"Payable on demand"	Section 3-108
12	"Payable to bearer"	Section 3-109
13	"Payable to order"	Section 3-109
14	"Payment"	Section 3-602
15	"Person entitled to enforce"	Section 3-301
16	"Presentment"	Section 3-501
17	"Reacquisition"	Section 3-207
18	"Special indorsement"	Section 3-205
19	"Teller's check"	Section 3-104
20	"Transfer of instrument"	Section 3-203
21	"Traveler's check"	Section 3-104
22	"Value"	Section 3-303

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

3	"Bank"	Section 4-105
4	"Banking day"	Section 4-104
5	"Clearing house"	Section 4-104
6	"Collecting bank"	Section 4-105
7	"Depository bank"	Section 4-105
8	"Documentary draft"	Section 4-104
9	"Intermediary bank"	Section 4-105
10	"Item"	Section 4-104
11	"Payor bank"	Section 4-105
12	"Suspends payments"	Section 4-104

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

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

18 Section 3-106.

19 UNCONDITIONAL PROMISE OR ORDER

20 (a) Except as provided in this section, for the purposes of
21 subsection (a) of Section 3-104 of this title, a promise or order is
22 unconditional unless it states (i) an express condition to payment,
23 (ii) that the promise or order is subject to or governed by another

1 ~~writing~~ record, or (iii) that rights or obligations with respect to
2 the promise or order are stated in another ~~writing~~ record. A
3 reference to another ~~writing~~ record does not of itself make the
4 promise or order conditional.

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

9 (c) If a promise or order requires, as a condition to payment,
10 a countersignature by a person whose specimen signature appears on
11 the promise or order, the condition does not make the promise or
12 order conditional for the purposes of subsection (a) of Section 3-
13 104 of this title. If the person whose specimen signature appears
14 on an instrument fails to countersign the instrument, the failure to
15 countersign is a defense to the obligation of the issuer, but the
16 failure does not prevent a transferee of the instrument from
17 becoming a holder of the instrument.

18 (d) If a promise or order at the time it is issued or first
19 comes into possession of a holder contains a statement, required by
20 applicable statutory or administrative law, to the effect that the
21 rights of a holder or transferee are subject to claims or defenses
22 that the issuer could assert against the original payee, the promise
23 or order is not thereby made conditional for the purposes of

1 subsection (a) of Section 3-104 of this title; but if the promise or
2 order is an instrument, there cannot be a holder in due course of
3 the instrument.

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

6 Section 3-116.

7 JOINT AND SEVERAL LIABILITY; CONTRIBUTION

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

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

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

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

3 Section 3-119.

4 NOTICE OF RIGHT TO DEFEND ACTION

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

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

18 Section 3-305.

19 DEFENSES AND CLAIMS IN RECOUPMENT

20 (a) Except as ~~stated in subsection (b) of~~ otherwise provided in
21 this section, the right to enforce the obligation of a party to pay
22 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

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

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

18 (d) In an action to enforce the obligation of an accommodation
19 party to pay an instrument, the accommodation party may assert
20 against the person entitled to enforce the instrument any defense or
21 claim in recoupment under subsection (a) of this section that the
22 accommodated party could assert against the person entitled to

1 enforce the instrument, except the defenses of discharge in
2 insolvency proceedings, infancy, and lack of legal capacity.

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

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

7 Section 3-309.

8 ENFORCEMENT OF LOST, DESTROYED, OR STOLEN INSTRUMENT

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

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

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

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

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

21 (3) the person cannot reasonably obtain possession of the
22 instrument because the instrument was destroyed, its
23 whereabouts cannot be determined, or it is in the

1 wrongful possession of an unknown person or a person
2 that cannot be found or is not amenable to service of
3 process.

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

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

16 Section 3-312.

17 LOST, DESTROYED, OR STOLEN CASHIER'S CHECK,

18 TELLER'S CHECK, OR CERTIFIED CHECK

19 (a) In this section:

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

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

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

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

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

20 (b) A claimant may assert a claim to the amount of a check by a
21 communication to the obligated bank describing the check with
22 reasonable certainty and requesting payment of the amount of the
23 check, if (i) the claimant is the drawer or payee of a certified

1 check or the remitter or payee of a cashier's check or teller's
2 check, (ii) the communication contains or is accompanied by a
3 declaration of loss of the claimant with respect to the check, (iii)
4 the communication is received at a time and in a manner affording
5 the bank reasonable time to act on it before the check is paid, and
6 (iv) the claimant provides reasonable identification if requested by
7 the obligated bank. Delivery of a declaration of loss is a warranty
8 of the truth of the statements made in the declaration. If a claim
9 is asserted in compliance with this subsection, the following rules
10 apply:

- 11 (1) The claim becomes enforceable at the later of (i) the
12 time the claim is asserted, or (ii) the ninetieth
13 (90th) day following the date of the check, in the
14 case of a cashier's check or teller's check, or the
15 ninetieth (90th) day following the date of the
16 acceptance, in the case of a certified check;
- 17 (2) Until the claim becomes enforceable, it has no legal
18 effect and the obligated bank may pay the check or, in
19 the case of a teller's check, may permit the drawee to
20 pay the check. Payment to a person entitled to
21 enforce the check discharges all liability of the
22 obligated bank with respect to the check;

1 (3) If the claim becomes enforceable before the check is
2 presented for payment, the obligated bank is not
3 obliged to pay the check; and
4 (4) When the claim becomes enforceable, the obligated bank
5 becomes obliged to pay the amount of the check to the
6 claimant if payment of the check has not been made to
7 a person entitled to enforce the check. Subject to
8 paragraph (1) of subsection (a) of Section ~~122~~ 4-302
9 of this ~~act~~ title, payment to the claimant discharges
10 all liability of the obligated bank with respect to
11 the check.

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

19 (d) If a claimant has the right to assert a claim under
20 subsection (b) of this section and is also a person entitled to
21 enforce a cashier's check, teller's check, or certified check which
22 is lost, destroyed, or stolen, the claimant may assert rights with

1 respect to the check either under this section or Section ~~60~~ 3-309
2 of this ~~act~~ title.

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

5 Section 3-419.

6 INSTRUMENTS SIGNED FOR ACCOMMODATION

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

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

21 (c) A person signing an instrument is presumed to be an
22 accommodation party and there is notice that the instrument is
23 signed for accommodation if the signature is an anomalous

1 indorsement or is accompanied by words indicating that the signer is
2 acting as surety or guarantor with respect to the obligation of
3 another party to the instrument. Except as provided in Section 3-
4 605 of this title, the obligation of an accommodation party to pay
5 the instrument is not affected by the fact that the person enforcing
6 the obligation had notice when the instrument was taken by that
7 person that the accommodation party signed the instrument for
8 accommodation.

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

19 (e) If the signature of a party to an instrument is accompanied
20 by words indicating that the party guarantees payment or the signer
21 signs the instrument as an accommodation party in some other manner
22 that does not unambiguously indicate an intention to guarantee
23 collection rather than payment, the signer is obliged to pay the

1 amount due on the instrument to a person entitled to enforce the
2 instrument in the same circumstances as the accommodated party would
3 be obliged, without prior resort to the accommodated party by the
4 person entitled to enforce the instrument.

5 (f) An accommodation party ~~who~~ that pays the instrument is
6 entitled to reimbursement from the accommodated party and is
7 entitled to enforce the instrument against the accommodated party.
8 In proper circumstances, an accommodation party may obtain relief
9 that requires the accommodated party to perform its obligations on
10 the instrument. An accommodated party ~~who~~ that pays the instrument
11 has no right of recourse against, and is not entitled to
12 contribution from, an accommodation party.

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

15 Section 3-602.

16 PAYMENT

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

1 (b) Subject to subsection (e) of this section, a note is paid
2 to the extent payment is made by or on behalf of a party obliged to
3 pay the note to a person that formerly was entitled to enforce the
4 note only if at the time of the payment the party obliged to pay has
5 not received adequate notification that the note has been
6 transferred and that payment is to be made to the transferee. A
7 notification is adequate only if it is signed by the transferor or
8 the transferee, reasonably identifies the transferred note, and
9 provides an address at which payments subsequently are to be made.
10 Upon request, a transferee shall seasonably furnish reasonable proof
11 that the note has been transferred. Unless the transferee complies
12 with the request, a payment to the person that formerly was entitled
13 to enforce the note is effective for purposes of subsection (c) of
14 this section even if the party obliged to pay the note has received
15 a notification under this subsection.

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

21 (d) Subject to subsection (e) of this section, a transferee, or
22 any party that has acquired rights in the instrument directly or
23 indirectly from a transferee, including any such party that has

1 rights as a holder in due course, is deemed to have notice of any
2 payment that is made under subsection (b) of this section after the
3 date that the note is transferred to the transferee but before the
4 party obliged to pay the note receives adequate notification of the
5 transfer.

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

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

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

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

3 Section 3-605.

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

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

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

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

21 ~~(d) If a person entitled to enforce an instrument releases the~~
22 ~~obligation of a principal obligor in whole or in part, and another~~

1 party to the instrument is a secondary obligor with respect to the
2 obligation of that principal obligor, the following rules apply:

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

10 (2) Unless the terms of the release provide that the
11 person entitled to enforce the instrument retains the
12 right to enforce the instrument against the secondary
13 obligor, the secondary obligor is discharged to the
14 same extent as the principal obligor from any
15 unperformed portion of its obligation on the
16 instrument. If the instrument is a check and the
17 obligation of the secondary obligor is based on an
18 indorsement of the check, the secondary obligor is
19 discharged without regard to the language or
20 circumstances of the discharge or other release.

21 (3) If the secondary obligor is not discharged under
22 paragraph (2) of this subsection, the secondary
23 obligor is discharged to the extent of the value of

1 the consideration for the release, and to the extent
2 that the release would otherwise cause the secondary
3 obligor a loss.

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

9 (1) Any obligations of the principal obligor to the
10 secondary obligor with respect to any previous payment
11 by the secondary obligor are not affected. Unless the
12 terms of the extension preserve the secondary
13 obligor's recourse, the extension correspondingly
14 extends the time for performance of any other duties
15 owed to the secondary obligor by the principal obligor
16 under this article.

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

20 (3) To the extent that the secondary obligor is not
21 discharged under paragraph (2) of this subsection, the
22 secondary obligor may perform its obligations to a
23 person entitled to enforce the instrument as if the

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

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

11 (3) To the extent that the secondary obligor is not
12 discharged under paragraph (2) of this subsection, the
13 secondary obligor may satisfy its obligation on the
14 instrument as if the modification had not occurred, or
15 treat its obligation on the instrument as having been
16 modified correspondingly.

17 ~~(e)~~ (d) If the obligation of a ~~party to pay an instrument~~
18 principal obligor is secured by an interest in collateral, another
19 party to the instrument is a secondary obligor with respect to that
20 obligation, and a person entitled to enforce the instrument impairs
21 the value of the interest in collateral, the obligation of ~~an~~
22 ~~indorser or accommodation party having a right of recourse against~~
23 the secondary obligor is discharged to the extent of the impairment.

1 The value of an interest in collateral is impaired to the extent ~~(i)~~
2 the value of the interest is reduced to an amount less than the
3 amount of the ~~right of~~ recourse of the ~~party asserting discharge~~
4 secondary obligor, or ~~(ii)~~ the reduction in value of the interest
5 causes an increase in the amount by which the amount of the ~~right of~~
6 recourse exceeds the value of the interest. ~~The burden of proving~~
7 ~~impairment is on the party asserting discharge.~~

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

22 ~~(g) Under subsection (e) or (f) of this section, impairing~~
23 ~~value of an interest in collateral includes (i) failure to obtain or~~

1 ~~maintain perfection or recordation of the interest in collateral,~~
2 ~~(ii) release of collateral without substitution of collateral of~~
3 ~~equal value, (iii) failure to perform a duty to preserve the value~~
4 ~~of collateral owed, under Article 9 of this title or other law, to a~~
5 ~~debtor or surety or other person secondarily liable, or (iv) failure~~
6 ~~to comply with applicable law in disposing of collateral.~~

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

12 ~~(i) A party is not discharged under this section if (i) the~~
13 ~~party asserting discharge consents to the event or conduct that is~~
14 ~~the basis of the discharge, or (ii) the instrument or a separate~~
15 ~~agreement of the party provides for waiver of discharge under this~~
16 ~~section either specifically or by general language indicating that~~
17 ~~parties waive defenses based on suretyship or impairment of~~
18 ~~collateral~~ For purposes of this subsection, impairing the value of
19 an interest in collateral includes failure to obtain or maintain
20 perfection or recordation of the interest in collateral, release of
21 collateral without substitution of collateral of equal value or
22 equivalent reduction of the underlying obligation, failure to
23 perform a duty to preserve the value of collateral owed, under

1 Article 9 of the Uniform Commercial Code or other law, to a debtor
2 or other person secondarily liable, and failure to comply with
3 applicable law in disposing of or otherwise enforcing the interest
4 in collateral.

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

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

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

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

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

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

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

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

1 Section 4-102.

2 APPLICABILITY

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

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

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

16 Section 4-104.

17 DEFINITIONS AND INDEX OF DEFINITIONS

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

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

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.

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

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

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

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

6 Section 4-105.

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

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

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

10 In this article:

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

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

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

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

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

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

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

5 Section 4-212.

6 PRESENTMENT BY NOTICE OF ITEM NOT PAYABLE BY, THROUGH, OR AT BANK;

7 LIABILITY OF DRAWER OR INDORSER

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

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

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

3 Section 4-301.

4 DEFERRED POSTING; RECOVERY OF PAYMENT BY RETURN OF ITEMS;
5 TIME OF DISHONOR; RETURN OF ITEMS BY PAYOR BANK

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

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

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

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

20 (b) If a demand item is received by a payor bank for credit on
21 its books, it may return the item or send notice of dishonor and may
22 revoke any credit given or recover the amount thereof withdrawn by

1 its customer, if it acts within the time limit and in the manner
2 specified in subsection (a) of this section.

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

6 (d) An item is returned:

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

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

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

16 Section 4-403.

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

18 (a) A customer or any person authorized to draw on the account
19 if there is more than one person may stop payment of any item drawn
20 on the customer's account or close the account by an order to the
21 bank describing the item or account with reasonable certainty
22 received at a time and in a manner that affords the bank a
23 reasonable opportunity to act on it before any action by the bank

1 with respect to the item described in Section 4-303 of this title.
2 If the signature of more than one person is required to draw on an
3 account, any of these persons may stop payment or close the account.

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

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

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

18 Section 4A-505.

19 PRECLUSION OF OBJECTION TO DEBIT OF CUSTOMER'S ACCOUNT

20 (a) If a receiving bank has received payment from its customer
21 with respect to a payment order issued in the name of the customer
22 as sender and accepted by the bank, and the customer received
23 notification reasonably identifying the order, the customer is

1 precluded from asserting that the bank is not entitled to retain the
2 payment unless the customer notifies the bank of the customer's
3 objection to the payment within (1) one year after the notification
4 was received by the customer.

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

8 SECTION 20. AMENDATORY 12A O.S. 2001, Section 7-209, as
9 amended by Section 14, Chapter 140, O.S.L. 2005 (12A O.S. Supp.
10 2008, Section 7-209), is amended to read as follows:

11 Section 7-209. Lien of Warehouse.

12 (a) A warehouse has a lien against the bailor on the goods
13 covered by a warehouse receipt or storage agreement or on the
14 proceeds thereof in its possession for charges for storage or
15 transportation, including demurrage and terminal charges, insurance,
16 labor, or other charges, present or future, in relation to the
17 goods, and for expenses necessary for preservation of the goods or
18 reasonably incurred in their sale pursuant to law. If the person on
19 whose account the goods are held is liable for similar charges or
20 expenses in relation to other goods whenever deposited and it is
21 stated in the warehouse receipt or storage agreement that a lien is
22 claimed for charges and expenses in relation to other goods, the
23 warehouse also has a lien against the goods covered by the warehouse

1 receipt or storage agreement or on the proceeds thereof in its
2 possession for those charges and expenses, whether or not the goods
3 have been delivered by the warehouse. However, as against a person
4 to which a negotiable warehouse receipt is duly negotiated, a
5 warehouse's lien is limited to charges in an amount or at a rate
6 specified in the warehouse receipt or, if no charges are so
7 specified, to a reasonable charge for storage of the specific goods
8 covered by the receipt subsequent to the date of the receipt.

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

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

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

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

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

7 (C) power of disposition under Sections 2-403, 2A-304(2),
8 2A-305(2), 1-9-320, or 1-9-321(c) of the Uniform
9 Commercial Code or other statute or rule of law; or

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

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

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

20 SECTION 21. REPEALER Sections 1 through 20, Chapter 382,
21 O.S.L. 2008, are hereby repealed.

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

1 SECTION **23**. This act shall become effective November 1, 2009.
2 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-17-09 - DO
3 PASS, As Amended and Coauthored.