

HOUSE BILL No. 2709

AN ACT concerning the uniform commercial code; relating to secured and other transactions thereunder; amending K.S.A. 34-2,101, 34-2,112, 58-204, 58-244, 66-1217, 66-1219, 79-2616 and 79-2617 and K.S.A. 2001 Supp. 17-630, 84-1-105, 84-9-102, 84-9-104, 84-9-109, 84-9-306, 84-9-311, 84-9-316, 84-9-317, 84-9-331, 84-9-334, 84-9-406, 84-9-509, 84-9-513, 84-9-515, 84-9-525, 84-9-608, 84-9-613, 84-9-615, 84-9-625, 84-9-628, 84-9-702 and 84-9-705 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2001 Supp. 17-630 is hereby amended to read as follows: 17-630. Every mortgage or deed of trust, or satisfaction thereof, covering any real or personal property situated in this state, made to secure the payment of bonds issued or to be issued thereafter by any corporation which is an interstate gas pipeline company, or by any public utility as defined in K.S.A. 66-104 and amendments thereto except nothing herein shall apply to or affect railroad corporations, and every mortgage or deed of trust, or satisfaction thereof, covering any real or personal property situated in this state made to secure any indebtedness incurred under the rural electrification act of 1936, as amended (U.S. code, title 7, chapter 31), shall be executed and duly acknowledged and certified, as other instruments affecting real estate. Such mortgage or deed of trust, or satisfaction thereof shall be filed in the office of the secretary of state *accompanied by the form prescribed by K.S.A. 84-9-521(a), and amendments thereto, which must indicate in box 10 of the form that the instrument is filed in accordance with this section.* The secretary shall certify that the instrument has been filed in the secretary's office by endorsing upon the original signed instrument the word "filed" and the date and hour of its filing. This endorsement is the "filing date" of the instrument and is conclusive of the date and time of its filing in the absence of actual fraud. The secretary of state shall thereupon file and index the endorsed instrument *in accordance with part 5 of article 9 of the uniform commercial code, and amendments thereto. The instrument shall be effective upon the record until terminated and the secretary of state shall remove the record one year after termination.* The filing of such instrument in the office of the secretary of state shall be notice to all persons of the contents thereof and to all subsequent purchasers and encumbrancers of the rights and interests of the parties thereto as to property described in the filed instrument and property acquired subsequent to the execution thereof if the instrument so provides. Notwithstanding any provision of law to the contrary, no other filing of any such instrument shall be necessary. Any such mortgage or deed of trust filed in the office of the register of deeds of any county in this state may be refiled in the office of the secretary of state in the manner provided in this section. Such refiled shall thereafter as to any property not previously released from such mortgage or deed of trust be of the same effect as if the instrument had been originally filed in the office of the secretary of state. *The secretary of state shall charge the same filing and information retrieval fees and credit the amounts in the same manner as financing statements filed under part 5 of article 9 of the uniform commercial code, and amendments thereto.*

Sec. 2. K.S.A. 58-244 is hereby amended to read as follows: 58-244. (a) To be perfected, the lien must have attached and the supplier entitled to the lien must have filed a lien-notification statement in the form provided for in K.S.A. 58-242, *and amendments thereto, accompanied by the form prescribed by K.S.A. 84-9-521(a), and amendments thereto, which must indicate in box 10 of the form that the lien is filed in accordance with this section,* with the appropriate filing office under K.S.A. ~~84-9-401~~ 84-9-501 and amendments thereto within 20 days after the last date that agricultural production input was furnished. A lien-notification statement filed pursuant to this section shall include the date which notice was mailed to the lender and a statement signed by the supplier indicating that the lender did not respond to the lien-notification statement.

(b) Subject to the provisions of subsection (d) of K.S.A. 58-242, *and amendments thereto,* a lien that is not perfected shall be entitled to the same priority as an unperfected security interest as determined by ~~K.S.A. 84-9-312~~ *part 3 of article 9 of the uniform commercial code* and amendments thereto.

(c) The filing officer shall file, index, amend, maintain, remove and destroy the lien-notification statement in the same manner as a financing statement filed under part ~~4~~ 5 of article 9 of the uniform commercial code *and amendments thereto.* The ~~secretary of state~~ *filing officer* shall charge

the same filing and information retrieval fees and credit the amounts in the same manner as financing statements filed under part 5 of article 9 of the uniform commercial code *and amendments thereto*.

Sec. 3. K.S.A. 66-1217 is hereby amended to read as follows: 66-1217. Any mortgage of real property or of both real property and personal property, including fixtures, or a security interest in fixtures alone, made by a corporation which is a railroad company as defined in K.S.A. 66-180, *and amendments thereto*, or a public utility as defined in K.S.A. 66-104, *and amendments thereto*, shall be recorded in the office of the register of deeds of the county or counties in which the real property is located, and when so recorded shall be a lien on the real property and fixtures described in the mortgage or security agreement from the time of recording ~~and~~. If the instrument so provides, *the instrument* shall be a lien on any real property and fixtures thereafter acquired subject to the mortgage or security agreement from the time of acquisition. If ~~said such~~ mortgage or security agreement includes personal property, a copy of ~~said such~~ mortgage or security agreement certified as true by the debtor or creditor, or an officer of either, shall also be filed with the secretary of state, ~~and when in accordance with part 5 of article 9 of the uniform commercial code and amendments thereto and accompanied by the form prescribed by K.S.A. 84-9-521(a), and amendments thereto, which must indicate in box 10 of the form that the lien is filed in accordance with this section.~~ When so filed *the mortgage or security agreement* shall be a lien on ~~said such~~ property described in ~~said such~~ mortgage or security agreement from the time of ~~said such~~ filing, and if the instrument so provides, shall be a lien on any property thereafter acquired subject to the mortgage or security agreement from the time of acquisition, ~~and~~. The lien thereon shall be enforceable in accordance with the laws of this state governing mortgages of real estate. No other recording or filing of any such instrument shall be necessary, notwithstanding the provisions of any other statute. *The instrument shall be effective upon the record until terminated and the filing officer shall remove the record one year after termination.*

Sec. 4. K.S.A. 66-1219 is hereby amended to read as follows: 66-1219. The secretary of state shall maintain a file for mortgages, security agreements, and releases thereof of railroads and public utilities filed pursuant to this act, ~~and he shall receive for such filing a fee of five dollars (\$5).~~ *The secretary of state shall charge the same filing and information retrieval fees and credit the amounts in the same manner as financing statements filed under part 5 of article 9 of the uniform commercial code and amendments thereto.*

Sec. 5. K.S.A. 79-2616 is hereby amended to read as follows: 79-2616. (a) If a notice of federal lien, a refiling of a notice of federal lien or a notice of revocation of any certificate described in subsection (b) is presented to a filing officer who is:

(1) The secretary of state, the secretary shall cause the notice to be marked, held and indexed in accordance with ~~the provisions of subsection (4) of K.S.A. 84-9-403~~ *part 5 of article 9 of the uniform commercial code*, and amendments thereto, as if the notice were a financing statement within the meaning of the uniform commercial code, except the notice shall remain filed for 10 years from the date of filing, if the date of filing was on or after November 5, 1990, and liens filed prior to November 5, 1990, shall remain on file for a period of four years from the close of the preceding required refiling period; or

(2) any other officer described in K.S.A. 79-2614, and amendments thereto, the officer shall endorse thereon the officer's identification and the date and time of receipt and file it alphabetically or enter it in an alphabetical index showing the name and address of the person named in the notice; the date and time of receipt, the title and address of the official or entity certifying the lien and the total amount appearing on the notice of lien.

(b) If a certificate of release, nonattachment, discharge or subordination of any lien is presented to the secretary of state for filing, the secretary shall:

(1) Cause a certificate of release or nonattachment to be marked, held and indexed as if the certificate were a termination statement within the meaning of the uniform commercial code; and

(2) cause a certificate of discharge or subordination to be marked,

held and indexed as if the certificate were a release of collateral within the meaning of the uniform commercial code.

(c) If a refiled notice of federal lien referred to in subsection (a) or any of the certificates or notices referred to in subsection (b) is presented for filing to any other filing officer specified in K.S.A. 79-2614, and amendments thereto, such officer shall enter the refiled notice or the certificate with the date of filing in any alphabetical lien index.

(d) Upon request of any person, the filing officer shall issue a certificate showing whether there is on file, on the date and hour stated therein, any notice of lien or certificate or notice affecting any lien filed pursuant to this act or pursuant to the uniform federal tax lien registration act, K.S.A. 79-2608 *et seq.*, and amendments thereto, as it existed prior to the effective date of this act, naming a particular person, and if a notice or certificate is on file, giving the date and hour of filing of each notice or certificate. ~~The fee for a certificate is \$5. Upon request, the filing officer shall furnish a copy of any notice of federal lien, or notice or certificate affecting a federal lien, for a fee of \$.25 per page, unless the filing officer is the secretary of state, in which case, the fee shall be an amount fixed by the secretary of state and approved by the director of accounts and reports pursuant to K.S.A. 45-204, and amendments thereto.~~

Sec. 6. K.S.A. 79-2617 is hereby amended to read as follows: 79-2617. ~~The fee for filing and indexing each notice of lien or certificate or notice affecting the lien is:~~

- ~~—(1) For a lien on real estate, \$5;~~
- ~~—(2) for a lien on tangible and intangible personal property, \$5;~~
- ~~—(3) for a certificate of discharge or subordination, \$5; and~~
- ~~—(4) for all other notices, except for a certificate of release or nonattachment, \$2. The filing officer shall charge the same filing and information retrieval fees and credit the amounts in the same manner as financing statements filed under part 5 of article 9 of the uniform commercial code and amendments thereto.~~

Sec. 7. K.S.A. 2001 Supp. 84-9-102 is hereby amended to read as follows: 84-9-102. (a) **Definitions.** In this article:

(1) “Accession” means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(2) “Account,” except as used in “account for,” means a right to payment of a monetary obligation, whether or not earned by performance, (A) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (B) for services rendered or to be rendered, (C) for a policy of insurance issued or to be issued, (D) for a secondary obligation incurred or to be incurred, (E) for energy provided or to be provided, (F) for the use or hire of a vessel under a charter or other contract, (G) arising out of the use of a credit or charge card or information contained on or for use with the card, or (H) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state. The term includes health-care-insurance receivables. The term does not include: (A) rights to payment evidenced by chattel paper or an instrument, (B) commercial tort claims, (C) deposit accounts, (D) investment property, (E) letter-of-credit rights or letters of credit, or (F) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

(3) “Account debtor” means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

(4) “Accounting,” except as used in “accounting for,” means a record:

- (A) Authenticated by a secured party;
- (B) indicating the aggregate unpaid secured obligations as of a date not more than 35 days earlier or 35 days later than the date of the record; and
- (C) identifying the components of the obligations in reasonable detail.

(5) “Agricultural lien” means an interest, other than a security interest, in farm products: (A) Which secures payment or performance of an obligation for:

- (i) Goods or services furnished in connection with a debtor's farming operation; or
 - (ii) rent on real property leased by a debtor in connection with its farming operation;
 - (B) which is created by statute in favor of a person that:
 - (i) In the ordinary course of its business furnished goods or services to a debtor in connection with a debtor's farming operation; or
 - (ii) leased real property to a debtor in connection with the debtor's farming operation; and
 - (C) whose effectiveness does not depend on the person's possession of the personal property. Agricultural lien shall not include statutory liens.
- (6) "As-extracted collateral" means: (A) Oil, gas, or other minerals that are subject to a security interest that:
- (i) Is created by a debtor having an interest in the minerals before extraction; and
 - (ii) attaches to the minerals as extracted; or
- (B) accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.
- (7) "Authenticate" means:
- (A) To sign; or
 - (B) to execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record.
- (8) "Bank" means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions, and trust companies.
- (9) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the like.
- (10) "Certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.
- (11) "Chattel paper" means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this subsection, "monetary obligation" means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term does not include (i) charters or other contracts involving the use or hire of a vessel or (ii) records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.
- (12) "Collateral" means the property subject to a security interest or agricultural lien. The term includes:
- (A) Proceeds to which a security interest attaches;
 - (B) accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and
 - (C) goods that are the subject of a consignment.
- (13) "Commercial tort claim" means a claim arising in tort with respect to which:
- (A) The claimant is an organization; or
 - (B) the claimant is an individual and the claim:
 - (i) arose in the course of the claimant's business or profession; and
 - (ii) does not include damages arising out of personal injury to or the death of an individual.
- (14) "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.
- (15) "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:
- (A) Traded on or subject to the rules of a board of trade that has

been designated as a contract market for such a contract pursuant to federal commodities laws; or

(B) traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.

(16) “Commodity customer” means a person for which a commodity intermediary carries a commodity contract on its books.

(17) “Commodity intermediary” means a person that:

(A) Is registered as a futures commission merchant under federal commodities law; or

(B) in the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.

(18) “Communicate” means:

(A) To send a written or other tangible record;

(B) to transmit a record by any means agreed upon by the persons sending and receiving the record; or

(C) in the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.

(19) “Consignee” means a merchant to which goods are delivered in a consignment.

(20) “Consignment” means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

(A) The merchant:

(i) Deals in goods of that kind under a name other than the name of the person making delivery;

(ii) is not an auctioneer; and

(iii) is not generally known by its creditors to be substantially engaged in selling the goods of others;

(B) with respect to each delivery, the aggregate value of the goods is \$1,000 or more at the time of delivery;

(C) the goods are not consumer goods immediately before delivery; and

(D) the transaction does not create a security interest that secures an obligation.

(21) “Consignor” means a person that delivers goods to a consignee in a consignment.

(22) “Consumer debtor” means a debtor in a consumer transaction.

(23) “Consumer goods” means goods that are used or bought for use primarily for personal, family, or household purposes.

(24) “Consumer-goods transaction” means a consumer transaction in which:

(A) An individual incurs an obligation primarily for personal, family, or household purposes; and

(B) a security interest in consumer goods secures the obligation.

(25) “Consumer obligor” means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family, or household purposes.

(26) “Consumer transaction” means a transaction in which (i) an individual incurs an obligation primarily for personal, family, or household purposes, (ii) a security interest secures the obligation, and (iii) the collateral is held or acquired primarily for personal, family, or household purposes. The term includes consumer-goods transactions.

(27) “Continuation statement” means an amendment of a financing statement which:

(A) Identifies, by its file number, the initial financing statement to which it relates; and

(B) indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(28) “Debtor” means:

(A) A person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;

(B) a seller of accounts, chattel paper, payment intangibles, or promissory notes; or

(C) a consignee.

(29) “Deposit account” means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.

(30) “Document” means a document of title or a receipt of the type described in ~~section (2)~~ *subsection (2) of K.S.A. 84-7-201 and amendments thereto.*

(31) “Electronic chattel paper” means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

(32) “Encumbrance” means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

(33) “Equipment” means goods other than inventory, farm products, or consumer goods.

(34) “Farm products” means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:

(A) Crops grown, growing, or to be grown, including:

(i) Crops produced on trees, vines, and bushes; and

(ii) aquatic goods produced in aquacultural operations;

(B) livestock, born or unborn, including aquatic goods produced in aquacultural operations;

(C) supplies used or produced in a farming operation; or

(D) products of crops or livestock in their unmanufactured states.

(35) “Farming operation” means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

(36) “File number” means the number assigned to an initial financing statement pursuant to *subsection (a) of K.S.A. 2001 Supp. 84-9-519(a)* and amendments thereto.

(37) “Filing office” means an office designated in K.S.A. 2001 Supp. 84-9-501 and amendments thereto as the place to file a financing statement.

(38) “Filing-office rule” means a rule adopted pursuant to K.S.A. 2001 Supp. 84-9-526 and amendments thereto.

(39) “Financing statement” means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(40) “Fixture filing” means the filing of a financing statement covering goods that are or are to become fixtures and satisfying *subsections (a) and (b) of K.S.A. 2001 Supp. 84-9-502(a) and (b)* and amendments thereto. The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

(41) “Fixtures” means goods that have become so related to particular real property that an interest in them arises under real property law.

(42) “General intangible” means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.

(43) “Good faith” means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(44) “Goods” means all things that are movable when a security interest attaches. The term includes (A) fixtures, (B) standing timber that is to be cut and removed under a conveyance or contract for sale, (C) the unborn young of animals, (D) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and (E) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (A) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (B) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

(45) “Governmental unit” means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, or a foreign country. The term includes an organ-

ization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

(46) “Health-care-insurance receivable” means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health-care goods or services provided.

(47) “Instrument” means a negotiable instrument, a writing that would otherwise qualify as a certificate of deposit (defined in subsection (j) of K.S.A. 84-3-104, and amendments thereto) but for the fact that the writing contains a limitation on transfer, or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include (i) investment property, (ii) letters of credit, or (iii) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(48) “Inventory” means goods, other than farm products, which:

(A) Are leased by a person as lessor;

(B) are held by a person for sale or lease or to be furnished under a contract of service;

(C) are furnished by a person under a contract of service; or

(D) consist of raw materials, work in process, or materials used or consumed in a business.

(49) “Investment property” means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

(50) “Jurisdiction of organization,” with respect to a registered organization, means the jurisdiction under whose law the organization is organized.

(51) “Letter-of-credit right” means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(52) “Lien creditor” means:

(A) A creditor that has acquired a lien on the property involved by attachment, levy, or the like;

(B) an assignee for benefit of creditors from the time of assignment;

(C) a trustee in bankruptcy from the date of the filing of the petition; or

(D) a receiver in equity from the time of appointment.

(53) “Manufactured home” means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States Secretary of Housing and Urban Development and complies with the standards established under Title 42 of the United States Code.

(54) “Manufactured-home transaction” means a secured transaction:

(A) That creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or

(B) in which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

(55) “Mortgage” means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.

(56) “New debtor” means a person that becomes bound as a debtor under *subsection (d) of K.S.A. 2001 Supp. 84-9-203* and amendments thereto by a security agreement previously entered into by another person.

(57) “New value” means (A) money, (B) money’s worth in property, services, or new credit, or (C) release by a transferee of an interest in

property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

(58) “Noncash proceeds” means proceeds other than cash proceeds.

(59) “Obligor” means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral, (A) owes payment or other performance of the obligation, (B) has provided property other than the collateral to secure payment or other performance of the obligation, or (C) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

(60) “Original debtor” *except as used in K.S.A. 2001 Supp. 84-9-310(c), and amendments thereto* means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under *subsection (d) of K.S.A. 2001 Supp. 84-9-203(d) and amendments thereto.*

(61) “Payment intangible” means a general intangible under which the account debtor’s principal obligation is a monetary obligation.

(62) “Person related to,” with respect to an individual, means:

- (A) The spouse of the individual;
- (B) a brother, brother-in-law, sister, or sister-in-law of the individual;
- (C) an ancestor or lineal descendant of the individual or the individual’s spouse; or
- (D) any other relative, by blood or marriage, of the individual or the individual’s spouse who shares the same home with the individual.

(63) “Person related to,” with respect to an organization, means:

- (A) A person directly or indirectly controlling, controlled by, or under common control with the organization;
- (B) an officer or director of, or a person performing similar functions with respect to, the organization;
- (C) an officer or director of, or a person performing similar functions with respect to, a person described in subparagraph (A);
- (D) the spouse of an individual described in subparagraph (A), (B), or (C); or
- (E) an individual who is related by blood or marriage to an individual described in subparagraph (A), (B), (C), or (D) and shares the same home with the individual.

(64) “Proceeds” *except as used in K.S.A. 2001 Supp. 84-9-609(b), and amendments thereto* means the following property:

- (A) Whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;
- (B) whatever is collected on, or distributed on account of, collateral;
- (C) rights arising out of collateral;
- (D) to the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or
- (E) to the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

(65) “Promissory note” means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(66) “Proposal” means a record authenticated by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to K.S.A. 2001 Supp. 84-9-620, 84-9-621 and 84-9-622 and amendments thereto.

~~(67) “Public finance transaction” means a secured transaction in connection with which:~~

- ~~(A) Debt securities are issued;~~
- ~~(B) all or a portion of the securities issued have an initial stated maturity of at least 20 years, and~~
- ~~(C) the debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a state or a governmental unit of a state.~~

~~(68)~~ (67) “Pursuant to commitment,” with respect to an advance made or other value given by a secured party, means pursuant to the

secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.

~~(69)~~ (68) "Record," except as used in "for record," "of record," "record or legal title," and "record owner," means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

~~(70)~~ (69) "Registered organization" means an organization organized solely under the law of a single state or the United States and as to which the state or the United States must maintain a public record showing the organization to have been organized.

~~(71)~~ (70) "Secondary obligor" means an obligor to the extent that:

- (A) The obligor's obligation is secondary; or
- (B) The obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

~~(72)~~ (71) "Secured party" means:

- (A) A person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;
- (B) a person that holds an agricultural lien;
- (C) a consignor;
- (D) a person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;
- (E) a trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or
- (F) a person that holds a security interest arising under K.S.A. 84-2-401, 84-2-505, *subsection (3) of 84-2-711*~~(3)~~, *subsection (5) of 84-2a-508*~~(5)~~, 84-4-210 and 84-5-118 and amendments thereto.

~~(73)~~ (72) "Security agreement" means an agreement that creates or provides for a security interest.

~~(74)~~ (73) "Send," in connection with a record or notification, means:

- (A) To deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or
- (B) to cause the record or notification to be received within the time that it would have been received if properly sent under subparagraph (A).

~~(75)~~ (74) "Software" means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

~~(76)~~ (75) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

~~(77)~~ (76) "Statutory lien" means liens created by K.S.A. 2-1319, 2-2608, 2-3007, 34-239, 47-836, 58-201, 58-203, 58-204, 58-207, 58-218, 58-220, 58-221, 58-241, 58-242, 58-2524, 58-2525, 58-2526, 58-2527, 58-2528 and 84-7-209, and amendments thereto.

~~(78)~~ (77) "Supporting obligation" means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument, or investment property.

~~(79)~~ (78) "Tangible chattel paper" means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

~~(80)~~ (79) "Termination statement" means an amendment of a financing statement which:

- (A) Identifies, by its file number, the initial financing statement to which it relates; and
- (B) indicates either that it is a termination statement or that the identified financing statement is no longer effective.

~~(81)~~ (80) "Transmitting utility" means a person primarily engaged in the business of:

- (A) Operating a railroad, subway, street railway, or trolley bus;
- (B) transmitting communications electrically, electromagnetically, or by light;

- (C) transmitting goods by pipeline or sewer; or
- (D) transmitting or producing and transmitting electricity, steam, gas, or water.

(b) **Definitions in other articles.** The following definitions in other articles apply to this article:

“Applicant”	K.S.A. 84-5-102
“Beneficiary”	K.S.A. 84-5-102
“Broker”	K.S.A. 84-8-102
“Certificated security”	K.S.A. 84-8-102
“Check”	K.S.A. 84-3-104
“Clearing corporation”	K.S.A. 84-8-102
“Contract for sale”	K.S.A. 84-2-106
“Customer”	K.S.A. 84-4-104
“Entitlement holder”	K.S.A. 84-8-102
“Financial asset”	K.S.A. 84-8-102
“Holder in due course”	K.S.A. 84-3-302
“Issuer” (with respect to a letter of credit or letter-of-credit right)	K.S.A. 84-5-102
“Issuer” (with respect to a security)	K.S.A. 84-8-102
“Lease”	K.S.A. 84-2a-103
“Lease agreement”	K.S.A. 84-2a-103
“Lease contract”	K.S.A. 84-2a-103
“Leasehold interest”	K.S.A. 84-2a-103
“Lessee”	K.S.A. 84-2a-103
“Lessee in ordinary course of business”	K.S.A. 84-2a-103
“Lessor”	K.S.A. 84-2a-103
“Lessor’s residual interest”	K.S.A. 84-2a-103
“Letter of credit”	K.S.A. 84-5-102
“Merchant”	K.S.A. 84-2-104
“Negotiable instrument”	K.S.A. 84-3-104
“Nominated person”	K.S.A. 84-5-102
“Note”	K.S.A. 84-3-104
“Proceeds of a letter of credit”	K.S.A. 84-5-114
“Prove”	K.S.A. 84-3-103
“Sale”	K.S.A. 84-2-106
“Securities account”	K.S.A. 84-8-501
“Securities intermediary”	K.S.A. 84-8-102
“Security”	K.S.A. 84-8-102
“Security certificate”	K.S.A. 84-8-102
“Security entitlement”	K.S.A. 84-8-102
“Uncertificated security”	K.S.A. 84-8-102

(c) **Article 1 definitions and principles.** Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

Sec. 8. K.S.A. 2001 Supp. 84-9-104 is hereby amended to read as follows: 84-9-104. **Requirements for control.** (a) A secured party has control of a deposit account if:

- (1) The secured party is the bank with which the deposit account is maintained;
- (2) the debtor, secured party, and bank have agreed in an authenticated record that the bank will comply with instructions originated by the secured party directing disposition of the funds in the *deposit* account without further consent by the debtor; or
- (3) the secured party becomes the bank’s customer with respect to the deposit account.

(b) **Debtor’s right to direct disposition.** A secured party that has satisfied subsection (a) has control, even if the debtor retains the right to direct the disposition of funds from the deposit account.

Sec. 9. K.S.A. 2001 Supp. 84-9-109 is hereby amended to read as follows: 84-9-109. (a) **General scope of article.** Except as otherwise provided in subsections (c) and (d), this article applies to:

- (1) A transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;
- (2) an agricultural lien;
- (3) a sale of accounts, chattel paper, payment intangibles, or promissory notes;
- (4) a consignment;

(5) a security interest arising under K.S.A. 84-2-401, 84-2-505, *subsection (3) of 84-2-711*~~(3)~~ or *subsection (5) of 84-2a-508*~~(5)~~ and amendments thereto, as provided in K.S.A. 2001 Supp. 84-9-110 and amendments thereto; and

(6) a security interest arising under K.S.A. 84-4-201 or 84-5-118 and amendments thereto.

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

(c) **Extent to which article does not apply.** This article does not apply to the extent that:

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

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

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

(4) the rights of a transferee beneficiary or nominated person under a letter of credit are independent and superior under K.S.A. 84-5-114 and amendments thereto.

(d) **Inapplicability of article.** This article does not apply to:

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

(2) a statutory lien, or a lien given by statute or other rule of law for services or materials, but K.S.A. 2001 Supp. 84-9-333 and amendments thereto applies with respect to priority of the lien;

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

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

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

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

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

(8) a transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health-care provider of a health-care-insurance receivable and any subsequent assignment of the right to payment, but K.S.A. 2001 Supp. 84-9-315 and 84-9-322 and amendments thereto apply with respect to proceeds and priorities in proceeds;

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

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

(A) K.S.A. 2001 Supp. 84-9-340 and amendments thereto applies with respect to the effectiveness of rights of recoupment or set-off against deposit accounts; and

(B) K.S.A. 2001 Supp. 84-9-404 and amendments thereto applies with respect to defenses or claims of an account debtor;

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

(A) Liens on real property in K.S.A. 2001 Supp. 84-9-203 and 84-9-308 and amendments thereto;

(B) fixtures in K.S.A. 2001 Supp. 84-9-334 and amendments thereto;

(C) fixture filings in K.S.A. 2001 Supp. 84-9-501, 84-9-502, 84-9-512, 84-9-516 and 84-9-519 and amendments thereto; and

(D) security agreements covering personal and real property in K.S.A. 2001 Supp. 84-9-604 and amendments thereto;

(12) an assignment of a claim arising in tort, other than a commercial tort claim, but K.S.A. 2001 Supp. 84-9-315 and 84-9-322 and amendments thereto apply with respect to proceeds and priorities in proceeds;

(13) an assignment of a deposit account in a consumer transaction, but K.S.A. 2001 Supp. 84-9-315 and 84-9-322 and amendments thereto apply with respect to proceeds and priorities in proceeds; ~~or~~

(14) an assignment of rights in or under:

(A) A claim or right to receive benefits under any workers compensation, industrial accident or similar statute or regulation which provides benefits for occupational injury or illness; or

(B) a deferred payment or benefit arrangement that enables a participant to exclude or defer recognition of income for purposes of federal or state income taxation; ~~or~~

(15) *a transfer by a government or governmental agency or subdivision.*

Sec. 10. K.S.A. 2001 Supp. 84-9-306 is hereby amended to read as follows: 84-9-306. (a) **Governing law: issuer's or nominated person's jurisdiction.** Subject to subsection (c), the local law of the issuer's jurisdiction or a nominated person's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a letter-of-credit right if the issuer's jurisdiction or nominated person's jurisdiction is a state.

(b) **Issuer's or nominated person's jurisdiction.** For purposes of this part, an issuer's jurisdiction or nominated person's jurisdiction is the jurisdiction whose law governs the liability of the issuer or nominated person with respect to the letter-of-credit right as provided in K.S.A. 84-5-116 and amendments thereto.

(c) **When section not applicable.** This section does not apply to a security interest that is perfected only under K.S.A. 2001 Supp. 84-9-308(d) and amendments thereto.

Sec. 11. K.S.A. 2001 Supp. 84-9-311 is hereby amended to read as follows: 84-9-311. (a) **Security interest subject to other law.** Except as otherwise provided in subsection (d), the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(1) A statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt K.S.A. 2001 Supp. 84-9-310(a) and amendments thereto;

(2) any certificate-of-title law of this state covering automobiles, trailers, mobile homes, boats, farm tractors, or the like, which provides for a security interest to be indicated on the certificate as a condition or result of perfection; or

(3) a certificate-of-title statute of another jurisdiction which provides for a security interest to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

(b) **Compliance with other law.** Compliance with the requirements of a statute, regulation, or treaty described in subsection (a) for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this article. Except as otherwise provided in subsection (d) and K.S.A. 2001 Supp. 84-9-313 and 84-9-316(d) and (e) and amendments thereto for goods covered by a certificate of title, a security interest in property subject to a statute, regulation, or treaty described in subsection (a) may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

(c) **Duration and renewal of perfection.** Except as otherwise provided in subsection (d) and K.S.A. 2001 Supp. 84-9-316(d) and (e) and amendments thereto, duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation, or treaty described in subsection (a) are governed by the statute, regulation, or treaty. In other respects, the security interest is subject to this article.

(d) **Inapplicability to certain inventory.** During any period in which collateral *subject to a statute specified in subsection (a)(2)* is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling ~~or leasing~~ goods of that kind,

this section does not apply to a security interest in that collateral created by that person ~~as debtor~~.

Sec. 12. K.S.A. 2001 Supp. 84-9-316 is hereby amended to read as follows: 84-9-316. (a) **General rule: effect on perfection of change in governing law.** A security interest perfected pursuant to the law of the jurisdiction designated in K.S.A. 2001 Supp. 84-9-301(l) or 84-9-305(c) and amendments thereto remains perfected until the earliest of:

(1) The time perfection would have ceased under the law of that jurisdiction;

(2) the expiration of four months after a change of the debtor's location to another jurisdiction; or

(3) the expiration of one year after a transfer of collateral to a person that thereby becomes a debtor and is located in another jurisdiction.

(b) **Security interest perfected or unperfected under law of new jurisdiction.** If a security interest described in subsection (a) becomes perfected under the law of the other jurisdiction before the earliest time or event described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earliest time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(c) **Possessory security interest in collateral moved to new jurisdiction.** A possessory security interest in collateral, other than goods covered by a certificate of title and as extracted collateral consisting of goods, remains continuously perfected if:

(1) The collateral is located in one jurisdiction and subject to a security interest perfected under the law of that jurisdiction;

(2) thereafter the collateral is brought into another jurisdiction; and

(3) upon entry into the other jurisdiction, the security interest is perfected under the law of the other jurisdiction.

(d) **Goods covered by certificate of title from this state.** Except as otherwise provided in subsection (e), a security interest in goods covered by a certificate of title which is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from this state remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered.

(e) **When subsection (d) security interest becomes unperfected against purchasers.** A security interest described in subsection (d) becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value if the applicable requirements for perfection under K.S.A. 2001 Supp. 84-9-311(b) or 84-9-313 and amendments thereto are not satisfied before the earlier of:

(1) The time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from this state; or

(2) the expiration of four months after the goods had become so covered.

(f) **Change in jurisdiction of bank, issuer, nominated person, securities intermediary, or commodity intermediary.** A security interest in deposit accounts, letter-of-credit rights, or investment property which is perfected under the law of the bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's jurisdiction, as applicable, remains perfected until the earlier of:

(1) The time the security interest would have become unperfected under the law of that jurisdiction; or

(2) the expiration of four months after a change of the applicable jurisdiction to another jurisdiction.

(g) **Subsection (f) security interest perfected or unperfected under law of new jurisdiction.** If a security interest described in subsection (f) becomes perfected under the law of the other jurisdiction before the earlier of the time or the end of the period described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier of that time or the end of that period, it becomes unperfected and

is deemed never to have been perfected as against a purchaser of the collateral for value.

Sec. 13. K.S.A. 2001 Supp. 84-9-317 is hereby amended to read as follows: 84-9-317. (a) **Conflicting security interests and rights of lien creditors.** A security interest or agricultural lien is subordinate to the rights of:

(1) A person entitled to priority under K.S.A. 2001 Supp. 84-9-322 and amendments thereto; and

(2) except as otherwise provided in subsection (e), a person that becomes a lien creditor before the earlier of the time:

(A) The security interest or agricultural lien is perfected; or

(B) *on the conditions specified in K.S.A. 2001 Supp. 84-9-203 (b)(3) and amendments thereto, is met and* a financing statement covering the collateral is filed.

(b) **Buyers that receive delivery.** Except as otherwise provided in subsection (e), a buyer, other than a secured party, of tangible chattel paper, documents, goods, instruments, or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) **Lessees that receive delivery.** Except as otherwise provided in subsection (e), a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) **Licensees and buyers of certain collateral.** A licensee of a general intangible or a buyer, other than a secured party, of accounts, electronic chattel paper, general intangibles, or investment property other than a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) **Purchase-money security interest.** Except as otherwise provided in K.S.A. 2001 Supp. 84-9-320 and 84-9-321 and amendments thereto, if a person files a financing statement with respect to a purchase-money security interest before or within 20 days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing.

Sec. 14. K.S.A. 2001 Supp. 84-9-331 is hereby amended to read as follows: 84-9-331. (a) **Rights under Articles 3, 7, and 8 not limited.** This article does not limit the rights of a holder in due course of a negotiable instrument, a holder to which a negotiable document of title has been duly negotiated, or a protected purchaser of a security. These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided in articles 3, 7, and 8.

(b) **Protection under Article 8.** This article does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of ~~an adverse~~ a claim under article 8.

(c) **Filing not notice.** Filing under this article does not constitute notice of a claim or defense to the holders, or purchasers, or persons described in subsections (a) and (b).

Sec. 15. K.S.A. 2001 Supp. 84-9-334 is hereby amended to read as follows: 84-9-334. (a) **Security interest in fixtures under this article.** A security interest under this article may be created in goods that are fixtures or may continue in goods that become fixtures. A security interest does not exist under this article in ordinary building materials incorporated into an improvement on land.

(b) **Security interest in fixtures under real-property law.** This article does not prevent creation of an encumbrance upon fixtures under real property law.

(c) **General rule: subordination of security interest in fixtures.** In cases not governed by subsections (d) through (h), a security interest in fixtures is subordinate to a conflicting interest of an encumbrancer or owner of the related real property other than the debtor.

(d) **Fixtures purchase-money priority.** Except as otherwise provided in subsection (h), a perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real prop-

erty if the debtor has an interest of record in or is in possession of the real property and:

(1) The security interest is a purchase-money security interest;

(2) the interest of the encumbrancer or owner arises before the goods become fixtures; and

(3) the security interest is perfected by a fixture filing before the goods become fixtures or within 20 days thereafter.

(e) **Priority of security interest in fixtures over interests in real property.** A perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(1) The debtor has an interest of record in the real property or is in possession of the real property and the security interest:

(A) Is perfected by a fixture filing before the interest of the encumbrancer or owner is of record; and

(B) has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner;

(2) before the goods become fixtures, the security interest is perfected by any method permitted by this article and the fixtures are readily removable:

(A) Factory or office machines;

(B) equipment that is not primarily used or leased for use in the operation of the real property; or

(C) replacements of domestic appliances that are consumer goods;

(3) the conflicting interest is a lien on the real property obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this article; or

(4) the security interest is:

(A) Created in a manufactured home in a manufactured-home transaction; and

(B) perfected pursuant to a statute described in K.S.A. 2001 Supp. 84-9-311(a)(2) and amendments thereto.

(f) **Priority based on consent, disclaimer, or right to remove.** A security interest in fixtures, whether or not perfected, has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(1) The encumbrancer or owner has, in an authenticated record, consented to the security interest or disclaimed an interest in the goods as fixtures; or

(2) the debtor has a right to remove the goods as against the encumbrancer or owner.

(g) **Continuation of ~~subsection (f)~~ paragraph (f)(2) priority.** The priority of the security interest under ~~subsection (f)~~ paragraph (f)(2) continues for a reasonable time if the debtor's right to remove the goods as against the encumbrancer or owner terminates.

(h) **Priority of construction mortgage.** A mortgage is a construction mortgage to the extent that it secures an obligation incurred for the construction of an improvement on land, including the acquisition cost of the land, if a recorded record of the mortgage so indicates. Except as otherwise provided in subsections (e) and (f), a security interest in fixtures is subordinate to a construction mortgage if a record of the mortgage is recorded before the goods become fixtures and the goods become fixtures before the completion of the construction. A mortgage has this priority to the same extent as a construction mortgage to the extent that it is given to refinance a construction mortgage.

(i) **Priority of security interest in crops.** A perfected security interest in crops growing on real property has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property.

(j) **Subsection (i) prevails.** Subsection (i) prevails over any inconsistent provisions of law of this state.

Sec. 16. K.S.A. 2001 Supp. 84-9-406 is hereby amended to read as follows: 84-9-406. (a) **Discharge of account debtor; effect of notification.** Subject to subsections (b) through (i), an account debtor on an account, chattel paper, or a payment intangible may discharge the account debtor's obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification,

the account debtor may discharge the account debtor's obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(b) **When notification ineffective.** Subject to subsection (h), notification is ineffective under subsection (a):

(1) If it does not reasonably identify the rights assigned;

(2) to the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this article; or

(3) at the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

(A) Only a portion of the account, chattel paper, or ~~general payment~~ payment intangible has been assigned to that assignee;

(B) a portion has been assigned to another assignee; or

(C) the account debtor knows that the assignment to that assignee is limited.

(c) **Proof of assignment.** Subject to subsection (h), if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (a).

(d) **Term restricting assignment generally ineffective.** Except as otherwise provided in subsection (e), K.S.A. 84-2a-303 and K.S.A. 2001 Supp. 84-9-407, and amendments thereto, and subject to subsection (h), a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

(1) Prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note; or

(2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

(e) **Inapplicability of subsection (d) to certain sales.** Subsection (d) does not apply to the sale of a payment intangible or promissory note.

(f) **Legal restrictions on assignment generally ineffective.** Except as otherwise provided in K.S.A. 84-2a-303 and K.S.A. 2001 Supp. 84-9-407 and amendments thereto, and subject to subsections (h) and (i), a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation:

(1) Prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in the account or chattel paper; or

(2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account or chattel paper.

(g) **Subsection (b)(3) not waivable.** Subject to subsection (h), an account debtor may not waive or vary its option under subsection (b)(3).

(h) **Rule for individual under other law.** This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(i) **Inapplicability to health-care-insurance receivable.** This section does not apply to an assignment of a health-care-insurance receivable.

(j) **Section prevails over specified inconsistent law.** This section prevails over any inconsistent provisions of any laws, rules, and regulations.

Sec. 17. K.S.A. 2001 Supp. 84-9-509 is hereby amended to read as follows: 84-9-509. (a) **Person entitled to file record.** A person may file an initial financing statement, amendment that adds collateral covered by a financing statement, or amendment that adds a debtor to a financing statement only if:

(1) The debtor authorizes the filing in an authenticated record *pursuant to subsection (b) or (c)*; or

(2) the person holds an agricultural lien that has become effective at the time of filing and the financing statement covers only collateral in which the person holds an agricultural lien.

(b) **Security agreement as authorization.** By authenticating or becoming bound as debtor by a security agreement, a debtor or new debtor authorizes the filing of an initial financing statement, and an amendment, covering:

(1) The collateral described in the security agreement; and

(2) property that becomes collateral under K.S.A. 2001 Supp. 84-9-315(a)(2) and amendments thereto, whether or not the security agreement expressly covers proceeds.

(c) **Acquisition of collateral as authorization.** By acquiring collateral in which a security interest or agricultural lien continues under K.S.A. 2001 Supp. 84-9-315(a)(1) and amendments thereto, a debtor authorizes the filing of an initial financing statement, and an amendment, covering the collateral and property that becomes collateral under K.S.A. 2001 Supp. 84-9-315(a)(2) and amendments thereto.

(d) **Person entitled to file certain amendments.** A person may file an amendment other than an amendment that adds collateral covered by a financing statement or an amendment that adds a debtor to a financing statement only if:

(1) The secured party of record authorizes the filing; or

(2) the amendment is a termination statement for a financing statement as to which the secured party of record has failed to file or send a termination statement as required by K.S.A. 2001 Supp. 84-9-513(a) or (c) and amendments thereto, the debtor authorizes the filing, and the termination statement indicates that the debtor authorized it to be filed.

(e) **Multiple secured parties of record.** If there is more than one secured party of record for a financing statement, each secured party of record may authorize the filing of an amendment under subsection (d).

Sec. 18. K.S.A. 2001 Supp. 84-9-513 is hereby amended to read as follows: 84-9-513. (a) **Consumer goods.** A secured party shall cause the secured party of record for a financing statement to file a termination statement for the financing statement if the financing statement covers consumer goods and:

(1) There is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or

(2) the debtor did not authorize the filing of the initial financing statement.

(b) **Time for compliance with subsection (a).** To comply with subsection (a), a secured party shall cause the secured party of record to file the termination statement:

(1) Within one month after there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or

(2) if earlier, within 20 days after the secured party receives an authenticated demand from a debtor.

(c) **Other collateral.** In cases not governed by subsection (a), within 20 days after a secured party receives an authenticated demand from a debtor, the secured party shall cause the secured party of record for a financing statement to send to the debtor a termination statement for the financing statement or file the termination statement in the filing office if:

(1) Except in the case of a financing statement covering accounts or chattel paper that has been sold or goods that are the subject of a consignment, there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value;

(2) the financing statement covers accounts or chattel paper that has

been sold but as to which the account debtor or other person obligated has discharged its obligation;

(3) the financing statement covers goods that were the subject of a consignment to the debtor but are not in the debtor's possession; or

(4) the debtor did not authorize the filing of the initial financing statement.

(d) **Effect of filing termination statement.** Except as otherwise provided in K.S.A. 2001 Supp. 84-9-510 and amendments thereto, upon the filing of a termination statement with the filing office, the financing statement to which the termination statement relates ceases to be effective. *Except as otherwise provided in K.S.A. 2001 Supp. 84-9-510, and amendments thereto, for purposes of K.S.A. 2001 Supp. 84-9-519(g), K.S.A. 2001 Supp. 84-9-522(a), and K.S.A. 2001 Supp. 84-9-523(c), and amendments thereto, the filing with the filing office of a termination statement relating to a financing statement that indicates that the debtor is a transmitting utility also causes the effectiveness of the financing statement to lapse.*

Sec. 19. K.S.A. 2001 Supp. 84-9-515 is hereby amended to read as follows: 84-9-515. (a) **Five-year effectiveness.** Except as otherwise provided in subsections (b), (e), (f), and (g), a filed financing statement is effective for a period of five years after the date of filing.

(b) ~~Public-finance or Manufactured-home transaction.~~ Except as otherwise provided in subsections (e), (f), and (g), an initial financing statement filed in connection with a ~~public-finance transaction or~~ manufactured-home transaction is effective for a period of 30 years after the date of filing if it indicates that it is filed in connection with a ~~public-finance transaction or~~ manufactured-home transaction.

(c) **Lapse and continuation of financing statement.** The effectiveness of a filed financing statement lapses on the expiration of the period of its effectiveness unless before the lapse a continuation statement is filed pursuant to subsection (d). Upon lapse, a financing statement ceases to be effective and any security interest or agricultural lien that was perfected by the financing statement becomes unperfected, unless the security interest is perfected otherwise. If the security interest or agricultural lien becomes unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the collateral for value.

(d) **When continuation statement may be filed.** A continuation statement may be filed only within six months before the expiration of the five-year period specified in subsection (a) or the thirty-year period specified in subsection (b), whichever is applicable.

(e) **Effect of filing continuation statement.** Except as otherwise provided in K.S.A. 2001 Supp. 84-9-510 and amendments thereto, upon timely filing of a continuation statement, the effectiveness of the initial financing statement continues for a period of five years commencing on the day on which the financing statement would have become ineffective in the absence of the filing. Upon the expiration of the five-year period, the financing statement lapses in the same manner as provided in subsection (c), unless, before the lapse, another continuation statement is filed pursuant to subsection (d). Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the initial financing statement.

(f) **Transmitting utility financing statement.** If a debtor is a transmitting utility and a filed financing statement so indicates, the financing statement is effective until a termination statement is filed.

(g) **Record of mortgage as financing statement.** A record of a mortgage that is effective as a financing statement filed as a fixture filing under *subsection (c) of K.S.A. 2001 Supp. 84-9-502*~~(e)~~ and amendments thereto, remains effective as a financing statement filed as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real property.

Sec. 20. K.S.A. 2001 Supp. 84-9-525 is hereby amended to read as follows: 84-9-525. ~~(a)~~ **Initial financing statement or other record: general rule.** The fee for filing and indexing a record under this part shall be provided by the secretary of state.

Sec. 21. K.S.A. 2001 Supp. 84-9-608 is hereby amended to read as follows: 84-9-608. (a) **Application of proceeds, surplus, and deficiency if obligation secured.** If a security interest or agricultural lien

secures payment or performance of an obligation, the following rules apply:

(1) A secured party shall apply or pay over for application the cash proceeds of collection or enforcement under ~~this section~~ *K.S.A. 2001 Supp. 84-9-607, and amendments thereto*, in the following order to:

(A) The reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorney fees and legal expenses incurred by the secured party;

(B) the satisfaction of obligations secured by the security interest or agricultural lien under which the collection or enforcement is made; and

(C) the satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest or agricultural lien under which the collection or enforcement is made if the secured party receives an authenticated demand for proceeds before distribution of the proceeds is completed.

(2) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder complies, the secured party need not comply with the holder's demand under paragraph (1)(C).

(3) A secured party need not apply or pay over for application non-cash proceeds of collection and enforcement under ~~this section~~ *K.S.A. 2001 Supp. 84-9-607, and amendments thereto*, unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(4) A secured party shall account to and pay a debtor for any surplus, and the obligor is liable for any deficiency.

(b) **No surplus or deficiency in sales of certain rights to payment.** If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes, the debtor is not entitled to any surplus, and the obligor is not liable for any deficiency.

Sec. 22. *K.S.A. 2001 Supp. 84-9-613* is hereby amended to read as follows: *84-9-613*. Except in a consumer-goods transaction, the following rules apply:

(1) The contents of a notification of disposition are sufficient if the notification:

(A) Describes the debtor and the secured party;

(B) describes the collateral that is the subject of the intended disposition;

(C) states the method of intended disposition;

(D) states that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting; and

(E) states the time and place of a public ~~sale~~ *disposition* or the time after which any other disposition is to be made.

(2) Whether the contents of a notification that lacks any of the information specified in paragraph (1) are nevertheless sufficient is a question of fact.

(3) The contents of a notification providing substantially the information specified in paragraph (1) are sufficient, even if the notification includes:

(A) Information not specified by that paragraph; or

(B) minor errors that are not seriously misleading.

(4) A particular phrasing of the notification is not required.

(5) The following form of notification and the form appearing in *K.S.A. 2001 Supp. 84-9-614(3)* and amendments thereto, when completed, each provides sufficient information:

NOTIFICATION OF DISPOSITION OF COLLATERAL

To:

Name of debtor, obligor, or other person to which the notification is sent

From:

Name, address, and telephone number of secured party

Name of Debtor(s):

Include only if debtor(s) are not an addressee

For a public disposition:

We will sell [or lease or license, *as applicable*] the *describe collateral* [to the highest qualified bidder] in public as follows:

Day and Date:

Time:

Place:

For a private disposition:

We will sell [or lease or license, *as applicable*] the *describe collateral* privately sometime after; [*day and date*].

You are entitled to an accounting of the unpaid indebtedness secured by the property that we intend to sell [or lease or license, *as applicable*] [for a charge of \$_____]. You may request an accounting by calling us at[*telephone number*].

Sec. 23. K.S.A. 2001 Supp. 84-9-615 is hereby amended to read as follows: 84-9-615. (a) **Application of proceeds.** A secured party shall apply or pay over for application the cash proceeds of disposition *under K.S.A. 2001 Supp. 84-9-610, and amendments thereto*, in the following order to:

(1) The reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing, and, to the extent provided for by agreement and not prohibited by law, reasonable attorney fees and legal expenses incurred by the secured party;

(2) the satisfaction of obligations secured by the security interest or agricultural lien under which the disposition is made;

(3) the satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral if:

(A) The secured party receives from the holder of the subordinate security interest or other lien an authenticated demand for proceeds before distribution of the proceeds is completed; and

(B) in a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor; and

(4) a secured party that is a consignor of the collateral if the secured party receives from the consignor an authenticated demand for proceeds before distribution of the proceeds is completed.

(b) **Proof of subordinate interest.** If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder does so, the secured party need not comply with the holder's demand under subsection (a)(3).

(c) **Application of noncash proceeds.** A secured party need not apply or pay over for application noncash proceeds of disposition under ~~this section~~ *K.S.A. 2001 Supp. 84-9-610, and amendments thereto*, unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(d) **Surplus or deficiency if obligation secured.** If the security interest under which a disposition is made secures payment or performance of an obligation, after making the payments and applications required by subsection (a) and permitted by subsection (c):

(1) Unless subsection (a)(4) requires the secured party to apply or pay over cash proceeds to a consignor, the secured party shall account to and pay a debtor for any surplus; and

(2) the obligor is liable for any deficiency.

(e) **No surplus or deficiency in sales of certain rights to payment.** If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes:

(1) The debtor is not entitled to any surplus; and

(2) the obligor is not liable for any deficiency.

(f) **Calculation of surplus or deficiency in disposition to person related to secured party.** The surplus or deficiency following a disposition is calculated based on the amount of proceeds that would have been realized in a disposition complying with this part to a transferee other than the secured party, a person related to the secured party, or a secondary obligor if:

(1) The transferee in the disposition is the secured party, a person related to the secured party, or a secondary obligor; and

(2) the amount of proceeds of the disposition is significantly below

the range of proceeds that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

(g) **Cash proceeds received by junior secured party.** A secured party that receives cash proceeds of a disposition in good faith and without knowledge that the receipt violates the rights of the holder of a security interest or other lien that is not subordinate to the security interest or agricultural lien under which the disposition is made:

- (1) Takes the cash proceeds free of the security interest or other lien;
- (2) is not obligated to apply the proceeds of the disposition to the satisfaction of obligations secured by the security interest or other lien; and
- (3) is not obligated to account to or pay the holder of the security interest or other lien for any surplus.

Sec. 24. K.S.A. 2001 Supp. 84-9-625 is hereby amended to read as follows: 84-9-625. (a) **Judicial orders concerning noncompliance.** If it is established that a secured party is not proceeding in accordance with this article, a court may order or restrain collection, enforcement, or disposition of collateral on appropriate terms and conditions.

(b) **Damages for noncompliance.** Subject to subsections (c), (d), and (f), a person is liable for damages in the amount of any loss caused by a failure to comply with this article. Loss caused by a failure to comply with a request under K.S.A. 2001 Supp. 84-9-210 and amendments thereto may include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing.

(c) **Persons entitled to recover damages; statutory damages in consumer-goods transaction.** Except as otherwise provided in K.S.A. 2001 Supp. 84-9-628 and amendments thereto:

(1) A person that, at the time of the failure, was a debtor, was an obligor, or held a security interest in or other lien on the collateral may recover damages under subsection (b) for its loss; and

(2) if the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply with this part may recover for that failure in any event an amount not less than the credit service charge plus 10 percent of the principal amount of the obligation or the time-price differential plus 10 percent of the cash price.

(d) **Recovery when deficiency eliminated or reduced.** A debtor whose deficiency is eliminated under K.S.A. 2001 Supp. 84-9-626 and amendments thereto may recover damages for the loss of any surplus. However, a debtor or secondary obligor whose deficiency is eliminated or reduced under K.S.A. 2001 Supp. 84-9-626 and amendments thereto may not otherwise recover under subsection (b) for noncompliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance.

(e) **Statutory damages: noncompliance with specified provisions.** In addition to any damages recoverable under subsection (b), the debtor, consumer obligor, or person named as a debtor in a filed record, as applicable, may recover \$500 in each case from a person that:

(1) Fails to comply with K.S.A. 2001 Supp. 84-9-208 and amendments thereto;

(2) fails to comply with K.S.A. 2001 Supp. 84-9-209 and amendments thereto;

(3) files a record that the person is not entitled to file under K.S.A. 2001 Supp. 84-9-509(a) and amendments thereto;

(4) fails to cause the secured party of record to file or send a termination statement as required by K.S.A. 2001 Supp. 84-9-513(a) or (c) and amendments thereto;

(5) fails to comply with K.S.A. 2001 Supp. 84-9-616(b)(1) and amendments thereto, and whose failure is part of a pattern, or consistent with a practice, of noncompliance; or

(6) fails to comply with K.S.A. 2001 Supp. 84-9-616(b)(2) and amendments thereto.

(f) **Statutory damages: noncompliance with K.S.A. 2001 Supp. 84-9-210 and amendments thereto.** A debtor or consumer obligor may recover damages under subsection (b) and, in addition, \$500 in each case from a person that, without reasonable cause, fails to comply with a request under K.S.A. 2001 Supp. 84-9-210 and amendments thereto. A

recipient of a request under K.S.A. 2001 Supp. 84-9-210 and amendments thereto which never claimed an interest in the collateral or obligations that are the subject of a request under that section has a reasonable excuse for failure to comply with the request within the meaning of this subsection.

(g) **Limitation of security interest: noncompliance with K.S.A. 2001 Supp. 84-9-210 and amendments thereto.** If a secured party fails to comply with a request regarding a list of collateral or a statement of account under K.S.A. 2001 Supp. 84-9-210 and amendments thereto, the secured party may claim a security interest only as shown in the *list or statement* included in the request as against a person that is reasonably misled by the failure.

Sec. 25. K.S.A. 2001 Supp. 84-9-628 is hereby amended to read as follows: 84-9-628. (a) **Limitation of liability to debtor or obligor of secured party for noncompliance with article.** Unless a secured party knows that a person is a debtor or obligor, knows the identity of the person, and knows how to communicate with the person:

(1) The secured party is not liable to the person, or to a secured party or lienholder that has filed a financing statement against the person, for failure to comply with this article; and

(2) the secured party's failure to comply with this article does not affect the liability of the person for a deficiency.

(b) **Limitation of liability to debtor, obligor, another secured party, or lienholder based on status as secured party.** A secured party is not liable because of its status as secured party:

(1) To a person that is a debtor or obligor, unless the secured party knows:

(A) That the person is a debtor or obligor;

(B) the identity of the person; and

(C) how to communicate with the person; or

(2) to a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

(A) That the person is a debtor; and

(B) the identity of the person.

(c) **Limitation of liability if reasonable belief that transaction not a consumer-goods transaction or consumer transaction.** A secured party is not liable to any person, and a person's liability for a deficiency is not affected, because of any act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer-goods transaction or a consumer transaction or that goods are not consumer goods, if the secured party's belief is based on its reasonable reliance on:

(1) A debtor's representation concerning the purpose for which collateral was to be used, acquired, or held; or

(2) an obligor's representation concerning the purpose for which a secured obligation was incurred.

(d) **Limitation of liability for statutory damages.** A secured party is not liable to any person under K.S.A. 2001 Supp. 84-9-625(c)(2) and amendments thereto, for its failure to comply with K.S.A. 2001 Supp. 84-9-616 and amendments thereto.

(e) **Limitation of multiple liability for statutory damages.** A secured party is not liable under K.S.A. 2001 Supp. 84-9-625(c)(2) and amendments thereto, more than once with respect to any one secured obligation.

Sec. 26. K.S.A. 2001 Supp. 84-9-702 is hereby amended to read as follows: 84-9-702. (a) **Pre-effective date transactions or liens.** Except as otherwise provided in this part, this act applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before this act takes effect.

(b) **Continuing validity.** Except as otherwise provided in subsection (c) and K.S.A. 2001 Supp. 84-9-304 and 84-9-703 through 84-9-709 and amendments thereto:

(1) Transactions and liens that were not governed by former article 9, were validly entered into or created before this act takes effect, and would be subject to this act if they had been entered into or created after this act takes effect, and the rights, duties, and interests flowing from those transactions and liens remain valid after this act takes effect; and

(2) the transactions and liens may be terminated, completed, consummated, and enforced as required or permitted by this act or by the law that otherwise would apply if this act had not taken effect.

(c) **Pre-effective date proceedings.** This act does not affect an action, case, or proceeding commenced before this act takes effect.

Sec. 27. K.S.A. 2001 Supp. 84-9-705 is hereby amended to read as follows: 84-9-705. (a) **Pre-effective date action; one-year perfection period unless reperfected.** If action, other than the filing of a financing statement, is taken before this act takes effect and the action would have resulted in priority of a security interest over the rights of a person that becomes a lien creditor had the security interest become enforceable before this act takes effect, the action is effective to perfect a security interest that attaches under this act within one year after this act takes effect. An attached security interest becomes unperfected one year after this act takes effect unless the security interest becomes a perfected security interest under this act before the expiration of that period.

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

(c) **Pre-effective date filing in jurisdiction formerly governing perfection.** This act does not render ineffective an effective financing statement that, before this act takes effect, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in K.S.A. 84-9-103 prior to the effective date of this act. However, except as otherwise provided in subsections (d) and (e) and K.S.A. 2001 Supp. 84-9-706 and amendments thereto, the financing statement ceases to be effective at the earlier of:

(1) The time the financing statement would have ceased to be effective under the law of the jurisdiction in which it is filed; or

(2) June 30, 2006.

(d) **Continuation statement.** The filing of a continuation statement after this act takes effect does not continue the effectiveness of the financing statement filed before this act takes effect. However, upon the timely filing of a continuation statement after this act takes effect and in accordance with the law of the jurisdiction governing perfection as provided in part 3, the effectiveness of a financing statement filed in the same office in that jurisdiction before this act takes effect continues for the period provided by the law of that jurisdiction.

(e) **Application of subsection (c)(2) to transmitting utility financing statement.** Subsection (c)(2) applies to a financing statement that, before this act takes effect, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in K.S.A. 84-9-103 prior to the effective date of this act only to the extent that part 3 provides that the law of a jurisdiction other than *the* jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

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

New Sec. 28. (a) **Pre-effective-date financing statement.** In this section, “pre-effective-date financing statement” means a financing statement filed before this act takes effect.

(b) **Applicable law.** After this act takes effect, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in, a pre-effective-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in part 3. However, the effectiveness of a pre-effective-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

(c) **Method of amending; general rule.** Except as otherwise provided in subsection (d), if the law of this state governs perfection of a

security interest, the information in a pre-effective-date financing statement may be amended after this act takes effect only if:

(1) The pre-effective-date financing statement and an amendment are filed in the office specified in K.S.A. 2001 Supp. 84-9-501, and amendments thereto;

(2) an amendment is filed in the office specified in K.S.A. 2001 Supp. 84-9-501, and amendments thereto, concurrently with, or after the filing in that office of, an initial financing statement that satisfies K.S.A. 2001 Supp. 84-9-706(c), and amendments thereto; or

(3) an initial financing statement that provides the information as amended and satisfies K.S.A. 2001 Supp. 84-9-706(c), and amendments thereto, is filed in the office specified in K.S.A. 2001 Supp. 84-9-501, and amendments thereto.

(d) **Method of amending: continuation.** If the law of this state governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement may be continued only under K.S.A. 2001 Supp. 84-9-705(d) and (f), and amendments thereto.

(e) **Method of amending: additional termination rule.** Whether or not the law of this state governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement filed in this state may be terminated after this act takes effect by filing a termination statement in the office in which the pre-effective-date financing statement is filed, unless an initial financing statement that satisfies K.S.A. 2001 Supp. 84-9-706(c), and amendments thereto, has been filed in the office specified by the law of the jurisdiction governing perfection as provided in part 3 as the office in which to file a financing statement.

Sec. 29. K.S.A. 2001 Supp. 84-1-105 is hereby amended to read as follows: 84-1-105. (1) Except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement this act applies to transactions bearing an appropriate relation to this state.

(2) Where one of the following provisions of this act specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. K.S.A. 84-2-402 and amendments thereto.

Applicability of the article on leases. K.S.A. 84-2a-105 and 84-2a-106, and amendments thereto.

Applicability of the article on bank deposits and collections. K.S.A. 84-4-102 and amendments thereto.

Applicability of the article on investment securities. K.S.A. 84-8-110 and amendments thereto.

Governing law in the article on funds transfers. K.S.A. 84-4a-507 and amendments thereto.

Letters of credit. K.S.A. 84-5-116 and amendments thereto.

Law governing perfection, the effect of perfection or nonperfection, and the priority of security interests *and agricultural liens*. K.S.A. 2001 Supp. 84-9-301 through 84-9-307 and amendments thereto.

Sec. 30. K.S.A. 34-2,101 is hereby amended to read as follows: 34-2,101. The provisions of this act relating to licensing, bonding and supervision of warehouses shall not be construed to apply to any public warehouseman who is, or shall hereafter be, duly licensed under the federal warehouse act, *except that the provisions of K.S.A. 34-2,112, and amendments thereto, shall apply to all state and federally licensed warehouses.*

Sec. 31. K.S.A. 34-2,112 is hereby amended to read as follows: 34-2,112. (a) Whenever any amount of grain is received in any public warehouse from a producer and is sold by the producer ~~to the public warehouseman with~~, *or if a grain producer delivers grain for sale pursuant to an agreement with the public warehouseman for deferred payment or deferred pricing, and if upon demand for payment by the producer, the warehouseman fails to make full payment as due or makes payment by check, if the check that fails; because of insufficient funds; to clear the bank or other financial institution on which it is drawn within 15 days after the date the check is issued or the demand is made,* excluding Sat-

urdays, Sundays and holidays, the sale of such amount of grain may be voided by the producer by notifying the public warehouseman in writing that the sale is void. In any such case, the public warehouseman shall include such amount of grain in the public warehouseman's daily position record and other records as an open storage obligation upon receiving such written notice voiding the sale.

(b) As used in this section, the words and phrases defined in K.S.A. 34-223 and amendments thereto shall have the meanings ascribed to them in that statute.

(c) This section shall be construed as supplemental to the statutes contained in article 2 of chapter 34 of the Kansas Statutes Annotated and amendments thereto.

Sec. 32. K.S.A. 58-204 is hereby amended to read as follows: 58-204. Any person claiming a lien as ~~provided in K.S.A. 58-203, and amendments thereto,~~ shall file in the office of the register of deeds of the county in which ~~said the~~ threshing or harvesting is done, a statement in writing, duly verified by ~~him or her, setting such person.~~ *Such statement shall set forth the name of the owner or owners of the grain or grain crops, threshed or harvested, the kind of grain, the number of bushels threshed or acres harvested, the description of the land upon which ~~said~~ such grain or grain crop was raised, the contract price for such threshing or harvesting, or the price or value of such wages, the date of the threshing or harvesting, the amount due and the name of the claimant.*

~~Said~~ *Such* statement shall be filed and entered by the register of deeds in the same manner and upon the same books as in the case of other financing statements provided for under the uniform commercial code; ~~and the said.~~ *The register of deeds shall collect from the person presenting the ~~same~~ statement, a fee equal to the fee for filing financing statements under the uniform commercial code; Such statement shall be filed within ~~fifteen~~ 30 days after the completion of ~~said such~~ threshing or harvesting or the rendering of such services; ~~and in case said threshing or harvesting has begun and the work is interrupted for more than five days, such statement shall be filed within fifteen days after the beginning of such interruption.~~*

Sec. 33. K.S.A. 34-2-101, 34-2-112, 58-204, 58-244, 66-1217, 66-1219, 79-2616 and 79-2617 and K.S.A. 2001 Supp. 17-630, 84-1-105, 84-9-102, 84-9-104, 84-9-109, 84-9-306, 84-9-311, 84-9-316, 84-9-317, 84-9-331, 84-9-334, 84-9-406, 84-9-509, 84-9-513, 84-9-515, 84-9-525, 84-9-608, 84-9-613, 84-9-615, 84-9-625, 84-9-628, 84-9-702 and 84-9-705 are hereby repealed.

Sec. 34. This act shall take effect and be in force from and after its publication in the Kansas register.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.