

Substitute for HOUSE BILL No. 2487

By Committee on Judiciary

2-27

AN ACT concerning the uniform commercial code; relating to secured transactions; amending K.S.A. 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, 84-9-306, 84-9-311, 84-9-316, 84-9-317, 84-9-331, 84-9-334, 84-9-406, 84-9-509, 84-9-513, 84-9-525, 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

1 the rights and interests of the parties thereto as to property described in
2 the filed instrument and property acquired subsequent to the execution
3 thereof if the instrument so provides. Notwithstanding any provision of
4 law to the contrary, no other filing of any such instrument shall be nec-
5 essary. Any such mortgage or deed of trust filed in the office of the reg-
6 ister of deeds of any county in this state may be refiled in the office of
7 the secretary of state in the manner provided in this section. Such refileing
8 shall thereafter as to any property not previously released from such mort-
9 gage or deed of trust be of the same effect as if the instrument had been
10 originally filed in the office of the secretary of state. *The secretary of state*
11 *shall charge the same filing and information retrieval fees and credit the*
12 *amounts in the same manner as financing statements filed under part 5*
13 *of article 9 of the uniform commercial code, and amendments thereto.*

14 Sec. 2. K.S.A. 58-244 is hereby amended to read as follows: 58-244.

15 (a) To be perfected, the lien must have attached and the supplier entitled
16 to the lien must have filed a lien-notification statement in the form pro-
17 vided for in K.S.A. 58-242, *and amendments thereto, accompanied by the*
18 *form prescribed by K.S.A. 84-9-521(a), and amendments thereto, which*
19 *must indicate in box 10 of the form that the lien is filed in accordance*
20 *with this section, with the appropriate filing office under K.S.A. ~~84-9-401~~*
21 *84-9-501 and amendments thereto within 20 days after the last date that*
22 *agricultural production input was furnished. A lien-notification statement*
23 *filed pursuant to this section shall include the date which notice was*
24 *mailed to the lender and a statement signed by the supplier indicating*
25 *that the lender did not respond to the lien-notification statement.*

26 (b) Subject to the provisions of subsection (d) of K.S.A. 58-242, *and*
27 *amendments thereto*, a lien that is not perfected shall be entitled to the
28 same priority as an unperfected security interest as determined by ~~K.S.A.~~
29 ~~84-9-312~~ *part 3 of article 9 of the uniform commercial code and amend-*
30 *ments thereto.*

31 (c) The filing officer shall file, index, amend, maintain, remove and
32 destroy the lien-notification statement in the same manner as a financing
33 statement filed under part 4 5 of article 9 of the uniform commercial code
34 *and amendments thereto.* ~~The secretary of state~~ *filing officer* shall charge
35 the same filing and information retrieval fees and credit the amounts in
36 the same manner as financing statements filed under part 4 5 of article
37 9 of the uniform commercial code *and amendments thereto.*

38 Sec. 3. K.S.A. 66-1217 is hereby amended to read as follows: 66-
39 1217. Any mortgage of real property or of both real property and personal
40 property, including fixtures, or a security interest in fixtures alone, made
41 by a corporation which is a railroad company as defined in K.S.A. 66-180,
42 *and amendments thereto*, or a public utility as defined in K.S.A. 66-104,
43 *and amendments thereto*, shall be recorded in the office of the register

1 of deeds of the county or counties in which the real property is located,
2 and when so recorded shall be a lien on the real property and fixtures
3 described in the mortgage or security agreement from the time of re-
4 cording ~~and~~. If the instrument so provides, *the instrument* shall be a lien
5 on any real property and fixtures thereafter acquired subject to the mort-
6 gage or security agreement from the time of acquisition. If ~~said such~~
7 mortgage or security agreement includes personal property, a copy of ~~said~~
8 *such* mortgage or security agreement certified as true by the debtor or
9 creditor, or an officer of either, shall also be filed with the secretary of
10 state, ~~and when in accordance with part 5 of article 9 of the uniform~~
11 *commercial code and amendments thereto and accompanied by the form*
12 *prescribed by K.S.A. 84-9-521(a), and amendments thereto, which must*
13 *indicate in box 10 of the form that the lien is filed in accordance with this*
14 *section. When so filed the mortgage or security agreement shall be a lien*
15 *on said such property described in said such mortgage or security agree-*
16 *ment from the time of said such filing, and if the instrument so provides,*
17 *shall be a lien on any property thereafter acquired subject to the mortgage*
18 *or security agreement from the time of acquisition; and. The lien thereon*
19 *shall be enforceable in accordance with the laws of this state governing*
20 *mortgages of real estate. No other recording or filing of any such instru-*
21 *ment shall be necessary, notwithstanding the provisions of any other statu-*
22 *te. The instrument shall be effective upon the record until terminated*
23 *and the filing officer shall remove the record one year after termination.*

24 Sec. 4. K.S.A. 66-1219 is hereby amended to read as follows: 66-
25 1219. The secretary of state shall maintain a file for mortgages, security
26 agreements, and releases thereof of railroads and public utilities filed
27 pursuant to this act, ~~and he shall receive for such filing a fee of five dollars~~
28 *(\$5). The secretary of state shall charge the same filing and information*
29 *retrieval fees and credit the amounts in the same manner as financing*
30 *statements filed under part 5 of article 9 of the uniform commercial code*
31 *and amendments thereto.*

32 Sec. 5. K.S.A. 79-2616 is hereby amended to read as follows: 79-
33 2616. (a) If a notice of federal lien, a refiling of a notice of federal lien
34 or a notice of revocation of any certificate described in subsection (b) is
35 presented to a filing officer who is:

36 (1) The secretary of state, the secretary shall cause the notice to be
37 marked, held and indexed in accordance with ~~the provisions of subsection~~
38 *(4) of K.S.A. 84-9-403 part 5 of article 9 of the uniform commercial code,*
39 *and amendments thereto, as if the notice were a financing statement*
40 *within the meaning of the uniform commercial code, except the notice*
41 *shall remain filed for 10 years from the date of filing, if the date of filing*
42 *was on or after November 5, 1990, and liens filed prior to November 5,*
43 *1990, shall remain on file for a period of four years from the close of the*

1 preceding required refiling period; or

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

9 (b) If a certificate of release, nonattachment, discharge or subordi-
10 nation of any lien is presented to the secretary of state for filing, the
11 secretary shall:

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

15 (2) cause a certificate of discharge or subordination to be marked,
16 held and indexed as if the certificate were a release of collateral within
17 the meaning of the uniform commercial code.

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

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

36 Sec. 6. K.S.A. 79-2617 is hereby amended to read as follows: 79-
37 2617. ~~The fee for filing and indexing each notice of lien or certificate or~~
38 ~~notice affecting the lien is:~~

39 ~~— (1) For a lien on real estate, \$5;~~

40 ~~— (2) for a lien on tangible and intangible personal property, \$5;~~

41 ~~— (3) for a certificate of discharge or subordination, \$5; and~~

42 ~~— (4) for all other notices, except for a certificate of release or nonat-~~
43 ~~tachment, \$2. The filing officer shall charge the same filing and infor-~~

1 *mation retrieval fees and credit the amounts in the same manner as fi-*
2 *nanancing statements filed under part 5 of article 9 of the uniform*
3 *commercial code and amendments thereto.*

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

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

8 (2) "Account," except as used in "account for," means a right to pay-
9 ment of a monetary obligation, whether or not earned by performance,
10 (A) for property that has been or is to be sold, leased, licensed, assigned,
11 or otherwise disposed of, (B) for services rendered or to be rendered, (C)
12 for a policy of insurance issued or to be issued, (D) for a secondary ob-
13 ligation incurred or to be incurred, (E) for energy provided or to be
14 provided, (F) for the use or hire of a vessel under a charter or other
15 contract, (G) arising out of the use of a credit or charge card or infor-
16 mation contained on or for use with the card, or (H) as winnings in a
17 lottery or other game of chance operated or sponsored by a state, gov-
18 ernmental unit of a state, or person licensed or authorized to operate the
19 game by a state or governmental unit of a state. The term includes health-
20 care-insurance receivables. The term does not include: (A) rights to pay-
21 ment evidenced by chattel paper or an instrument, (B) commercial tort
22 claims, (C) deposit accounts, (D) investment property, (E) letter-of-credit
23 rights or letters of credit, or (F) rights to payment for money or funds
24 advanced or sold, other than rights arising out of the use of a credit or
25 charge card or information contained on or for use with the card.

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

30 (4) "Accounting," except as used in "accounting for," means a record:

31 (A) Authenticated by a secured party;

32 (B) indicating the aggregate unpaid secured obligations as of a date
33 not more than 35 days earlier or 35 days later than the date of the record;
34 and

35 (C) identifying the components of the obligations in reasonable
36 detail.

37 (5) "Agricultural lien" means an interest, other than a security inter-
38 est, in farm products: (A) Which secures payment or performance of an
39 obligation for:

40 (i) Goods or services furnished in connection with a debtor's farming
41 operation; or

42 (ii) rent on real property leased by a debtor in connection with its
43 farming operation;

- 1 (B) which is created by statute in favor of a person that:
2 (i) In the ordinary course of its business furnished goods or services
3 to a debtor in connection with a debtor's farming operation; or
4 (ii) leased real property to a debtor in connection with the debtor's
5 farming operation; and
6 (C) whose effectiveness does not depend on the person's possession
7 of the personal property. Agricultural lien shall not include statutory liens.
- 8 (6) "As-extracted collateral" means: (A) Oil, gas, or other minerals
9 that are subject to a security interest that:
10 (i) Is created by a debtor having an interest in the minerals before
11 extraction; and
12 (ii) attaches to the minerals as extracted; or
13 (B) accounts arising out of the sale at the wellhead or minehead of
14 oil, gas, or other minerals in which the debtor had an interest before
15 extraction.
- 16 (7) "Authenticate" means:
17 (A) To sign; or
18 (B) to execute or otherwise adopt a symbol, or encrypt or similarly
19 process a record in whole or in part, with the present intent of the au-
20 thenticating person to identify the person and adopt or accept a record.
- 21 (8) "Bank" means an organization that is engaged in the business of
22 banking. The term includes savings banks, savings and loan associations,
23 credit unions, and trust companies.
- 24 (9) "Cash proceeds" means proceeds that are money, checks, deposit
25 accounts, or the like.
- 26 (10) "Certificate of title" means a certificate of title with respect to
27 which a statute provides for the security interest in question to be indi-
28 cated on the certificate as a condition or result of the security interest's
29 obtaining priority over the rights of a lien creditor with respect to the
30 collateral.
- 31 (11) "Chattel paper" means a record or records that evidence both a
32 monetary obligation and a security interest in specific goods, a security
33 interest in specific goods and software used in the goods, a security in-
34 terest in specific goods and license of software used in the goods, a lease
35 of specific goods, or a lease of specific goods and license of software used
36 in the goods. In this subsection, "monetary obligation" means a monetary
37 obligation secured by the goods or owed under a lease of the goods and
38 includes a monetary obligation with respect to software used in the goods.
39 The term does not include (i) charters or other contracts involving the
40 use or hire of a vessel or (ii) records that evidence a right to payment
41 arising out of the use of a credit or charge card or information contained
42 on or for use with the card. If a transaction is evidenced by records that
43 include an instrument or series of instruments, the group of records taken

1 together constitutes chattel paper.

2 (12) “Collateral” means the property subject to a security interest or
3 agricultural lien. The term includes:

4 (A) Proceeds to which a security interest attaches;

5 (B) accounts, chattel paper, payment intangibles, and promissory
6 notes that have been sold; and

7 (C) goods that are the subject of a consignment.

8 (13) “Commercial tort claim” means a claim arising in tort with re-
9 spect to which:

10 (A) The claimant is an organization; or

11 (B) the claimant is an individual and the claim:

12 (i) arose in the course of the claimant’s business or profession; and

13 (ii) does not include damages arising out of personal injury to or the
14 death of an individual.

15 (14) “Commodity account” means an account maintained by a com-
16modity intermediary in which a commodity contract is carried for a com-
17modity customer.

18 (15) “Commodity contract” means a commodity futures contract, an
19 option on a commodity futures contract, a commodity option, or another
20 contract if the contract or option is:

21 (A) Traded on or subject to the rules of a board of trade that has
22 been designated as a contract market for such a contract pursuant to
23 federal commodities laws; or

24 (B) traded on a foreign commodity board of trade, exchange, or mar-
25ket, and is carried on the books of a commodity intermediary for a com-
26modity customer.

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

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

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

32 (B) in the ordinary course of its business provides clearance or set-
33tlement services for a board of trade that has been designated as a contract
34 market pursuant to federal commodities law.

35 (18) “Communicate” means:

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

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

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

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

43 (20) “Consignment” means a transaction, regardless of its form, in

1 which a person delivers goods to a merchant for the purpose of sale and:

2 (A) The merchant:

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

5 (ii) is not an auctioneer; and

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

8 (B) with respect to each delivery, the aggregate value of the goods is
9 \$1,000 or more at the time of delivery;

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (28) “Debtor” means:

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

41 (B) a seller of accounts, chattel paper, payment intangibles, or prom-
42 issory notes; or

43 (C) a consignee.

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

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

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

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

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

14 (34) “Farm products” means goods, other than standing timber, with
15 respect to which the debtor is engaged in a farming operation and which
16 are: (A) Crops grown, growing, or to be grown, including:

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

18 (ii) aquatic goods produced in aquacultural operations;

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

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

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

23 (35) “Farming operation” means raising, cultivating, propagating, fat-
24 tening, grazing, or any other farming, livestock, or aquacultural operation.

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

28 (37) “Filing office” means an office designated in K.S.A. 2001 Supp.
29 84-9-501 and amendments thereto as the place to file a financing
30 statement.

31 (38) “Filing-office rule” means a rule adopted pursuant to K.S.A.
32 2001 Supp. 84-9-526 and amendments thereto.

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

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

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

43 (42) “General intangible” means any personal property, including

1 things in action, other than accounts, chattel paper, commercial tort
2 claims, deposit accounts, documents, goods, instruments, investment
3 property, letter-of-credit rights, letters of credit, money, and oil, gas, or
4 other minerals before extraction. The term includes payment intangibles
5 and software.

6 (43) “Good faith” means honesty in fact and the observance of rea-
7 sonable commercial standards of fair dealing.

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

25 (45) “Governmental unit” means a subdivision, agency, department,
26 county, parish, municipality, or other unit of the government of the
27 United States, a state, or a foreign country. The term includes an organ-
28 ization having a separate corporate existence if the organization is eligible
29 to issue debt on which interest is exempt from income taxation under the
30 laws of the United States.

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

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

1 with the card.

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

3 (A) Are leased by a person as lessor;

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

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

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

9 (49) “Investment property” means a security, whether certificated or
10 uncertificated, security entitlement, securities account, commodity con-
11 tract, or commodity account.

12 (50) “Jurisdiction of organization,” with respect to a registered or-
13 ganization, means the jurisdiction under whose law the organization is
14 organized.

15 (51) “Letter-of-credit right” means a right to payment or perform-
16 ance under a letter of credit, whether or not the beneficiary has de-
17 manded or is at the time entitled to demand payment or performance.
18 The term does not include the right of a beneficiary to demand payment
19 or performance under a letter of credit.

20 (52) “Lien creditor” means:

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

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

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

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

27 (53) “Manufactured home” means a structure, transportable in one
28 or more sections, which, in the traveling mode, is eight body feet or more
29 in width or 40 body feet or more in length, or, when erected on site, is
30 320 or more square feet, and which is built on a permanent chassis and
31 designed to be used as a dwelling with or without a permanent foundation
32 when connected to the required utilities, and includes the plumbing,
33 heating, air conditioning, and electrical systems contained therein. The
34 term includes any structure that meets all of the requirements of this
35 paragraph except the size requirements and with respect to which the
36 manufacturer voluntarily files a certification required by the United States
37 Secretary of Housing and Urban Development and complies with the
38 standards established under Title 42 of the United States Code.

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

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

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

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

3 (56) “New debtor” means a person that becomes bound as a debtor
4 under K.S.A. 2001 Supp. 84-9-203(d) and amendments thereto by a se-
5 curity agreement previously entered into by another person.

6 (57) “New value” means (A) money, (B) money’s worth in property,
7 services, or new credit, or (C) release by a transferee of an interest in
8 property previously transferred to the transferee. The term does not in-
9 clude an obligation substituted for another obligation.

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

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

18 (60) “Original debtor” *except as used in K.S.A. 2001 Supp. 84-9-*
19 *310(c) and amendments thereto* means a person that, as debtor, entered
20 into a security agreement to which a new debtor has become bound under
21 K.S.A. 2001 Supp. 84-9-203(d) and amendments thereto.

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

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

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

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

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

43 (64) “Proceeds” *except as used in K.S.A. 2001 Supp. 84-9-609(b) and*

1 *amendments thereto* means the following property:

2 (A) Whatever is acquired upon the sale, lease, license, exchange, or
3 other disposition of collateral;

4 (B) whatever is collected on, or distributed on account of, collateral;

5 (C) rights arising out of collateral;

6 (D) to the extent of the value of collateral, claims arising out of the
7 loss, nonconformity, or interference with the use of, defects or infringe-
8 ment of rights in, or damage to, the collateral; or

9 (E) to the extent of the value of collateral and to the extent payable
10 to the debtor or the secured party, insurance payable by reason of the
11 loss or nonconformity of, defects or infringement of rights in, or damage
12 to, the collateral.

13 (65) "Promissory note" means an instrument that evidences a prom-
14 ise to pay a monetary obligation, does not evidence an order to pay, and
15 does not contain an acknowledgment by a bank that the bank has received
16 for deposit a sum of money or funds.

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

22 (67) "Public-finance transaction" means a secured transaction in con-
23 nection with which:

24 (A) Debt securities are issued;

25 (B) all or a portion of the securities issued have an initial stated ma-
26 turity of at least 20 years; and

27 (C) the debtor, obligor, secured party, account debtor or other person
28 obligated on collateral, assignor or assignee of a secured obligation, or
29 assignor or assignee of a security interest is a state or a governmental unit
30 of a state.

31 (68) "Pursuant to commitment," with respect to an advance made or
32 other value given by a secured party, means pursuant to the secured
33 party's obligation, whether or not a subsequent event of default or other
34 event not within the secured party's control has relieved or may relieve
35 the secured party from its obligation.

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

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

1 (71) “Secondary obligor” means an obligor to the extent that:

2 (A) The obligor’s obligation is secondary; or

3 (B) The obligor has a right of recourse with respect to an obligation
4 secured by collateral against the debtor, another obligor, or property of
5 either.

6 (72) “Secured party” means:

7 (A) A person in whose favor a security interest is created or provided
8 for under a security agreement, whether or not any obligation to be se-
9 cured is outstanding;

10 (B) a person that holds an agricultural lien;

11 (C) a consignor;

12 (D) a person to which accounts, chattel paper, payment intangibles,
13 or promissory notes have been sold;

14 (E) a trustee, indenture trustee, agent, collateral agent, or other rep-
15 resentative in whose favor a security interest or agricultural lien is created
16 or provided for; or

17 (F) a person that holds a security interest arising under K.S.A. 84-2-
18 401, 84-2-505, 84-2-711(3), 84-2a-508(5), 84-4-210 and 84-5-118 and
19 amendments thereto.

20 (73) “Security agreement” means an agreement that creates or pro-
21 vides for a security interest.

22 (74) “Send,” in connection with a record or notification, means:

23 (A) To deposit in the mail, deliver for transmission, or transmit by
24 any other usual means of communication, with postage or cost of trans-
25 mission provided for, addressed to any address reasonable under the cir-
26 cumstances; or

27 (B) to cause the record or notification to be received within the time
28 that it would have been received if properly sent under subparagraph (A).

29 (75) “Software” means a computer program and any supporting in-
30 formation provided in connection with a transaction relating to the pro-
31 gram. The term does not include a computer program that is included in
32 the definition of goods.

33 (76) “State” means a state of the United States, the District of Co-
34 lumbia, Puerto Rico, the United States Virgin Islands, or any territory or
35 insular possession subject to the jurisdiction of the United States.

36 (77) “Statutory lien” means liens created by K.S.A. 2-1319, 2-2608,
37 2-3007, 34-239, 47-836, 58-201, 58-203, 58-204, 58-207, 58-218, 58-220,
38 58-221, 58-241, 58-242, 58-2524, 58-2525, 58-2526, 58-2527, 58-2528 and
39 84-7-209, and amendments thereto.

40 (78) “Supporting obligation” means a letter-of-credit right or second-
41 ary obligation that supports the payment or performance of an account,
42 chattel paper, a document, a general intangible, an instrument, or in-
43 vestment property.

1 (79) “Tangible chattel paper” means chattel paper evidenced by a
 2 record or records consisting of information that is inscribed on a tangible
 3 medium.

4 (80) “Termination statement” means an amendment of a financing
 5 statement which:

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

8 (B) indicates either that it is a termination statement or that the iden-
 9 tified financing statement is no longer effective.

10 (81) “Transmitting utility” means a person primarily engaged in the
 11 business of:

12 (A) Operating a railroad, subway, street railway, or trolley bus;

13 (B) transmitting communications electrically, electromagnetically, or
 14 by light;

15 (C) transmitting goods by pipeline or sewer; or

16 (D) transmitting or producing and transmitting electricity, steam, gas,
 17 or water.

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

20	“Applicant”	K.S.A. 84-5-102
21	“Beneficiary”	K.S.A. 84-5-102
22	“Broker”	K.S.A. 84-8-102
23	“Certificated security”	K.S.A. 84-8-102
24	“Check”	K.S.A. 84-3-104
25	“Clearing corporation”	K.S.A. 84-8-102
26	“Contract for sale”	K.S.A. 84-2-106
27	“Customer”	K.S.A. 84-4-104
28	“Entitlement holder”	K.S.A. 84-8-102
29	“Financial asset”	K.S.A. 84-8-102
30	“Holder in due course”	K.S.A. 84-3-302
31	“Issuer” (with respect to a	K.S.A. 84-5-102
32	letter of credit or letter-of-	
33	credit right)	
34	“Issuer” (with respect to a	K.S.A. 84-8-102
35	security)	
36	“Lease”	K.S.A. 84-2a-103
37	“Lease agreement”	K.S.A. 84-2a-103
38	“Lease contract”	K.S.A. 84-2a-103
39	“Leasehold interest”	K.S.A. 84-2a-103
40	“Lessee”	K.S.A. 84-2a-103
41	“Lessee in ordinary course of	K.S.A. 84-2a-103
42	business”	
43	“Lessor”	K.S.A. 84-2a-103

1	“Lessor’s residual interest”	K.S.A. 84-2a-103
2	“Letter of credit”	K.S.A. 84-5-102
3	“Merchant”	K.S.A. 84-2-104
4	“Negotiable instrument”	K.S.A. 84-3-104
5	“Nominated person”	K.S.A. 84-5-102
6	“Note”	K.S.A. 84-3-104
7	“Proceeds of a letter of	K.S.A. 84-5-114
8	credit”	
9	“Prove”	K.S.A. 84-3-103
10	“Sale”	K.S.A. 84-2-106
11	“Securities account”	K.S.A. 84-8-501
12	“Securities intermediary”	K.S.A. 84-8-102
13	“Security”	K.S.A. 84-8-102
14	“Security certificate”	K.S.A. 84-8-102
15	“Security entitlement”	K.S.A. 84-8-102
16	“Uncertificated security”	K.S.A. 84-8-102

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

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

23 (1) The secured party is the bank with which the deposit account is
24 maintained;

25 (2) the debtor, secured party, and bank have agreed in an authenti-
26 cated record that the bank will comply with instructions originated by the
27 secured party directing disposition of the funds in the *deposit* account
28 without further consent by the debtor; or

29 (3) the secured party becomes the bank’s customer with respect to
30 the deposit account.

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

34 Sec. 9. K.S.A. 2001 Supp. 84-9-306 is hereby amended to read as
35 follows: 84-9-306. (a) **Governing law: issuers issuer’s or nominated**
36 **person’s jurisdiction.** Subject to subsection (c), the local law of the
37 issuer’s jurisdiction or a nominated person’s jurisdiction governs perfec-
38 tion, the effect of perfection or nonperfection, and the priority of a se-
39 curity interest in a letter-of-credit right if the issuer’s jurisdiction or nom-
40 inated person’s jurisdiction is a state.

41 (b) **Issuer’s or nominated person’s jurisdiction.** For purposes of
42 this part, an issuer’s jurisdiction or nominated person’s jurisdiction is the
43 jurisdiction whose law governs the liability of the issuer or nominated

1 person with respect to the letter-of-credit right as provided in K.S.A. 84-
2 5-116 and amendments thereto.

3 (c) **When section not applicable.** This section does not apply to a
4 security interest that is perfected only under K.S.A. 2001 Supp. 84-9-
5 308(d) and amendments thereto.

6 Sec. 10. K.S.A. 2001 Supp. 84-9-311 is hereby amended to read as
7 follows: 84-9-311. (a) **Security interest subject to other law.** Except
8 as otherwise provided in subsection (d), the filing of a financing statement
9 is not necessary or effective to perfect a security interest in property
10 subject to:

11 (1) A statute, regulation, or treaty of the United States whose require-
12 ments for a security interest's obtaining priority over the rights of a lien
13 creditor with respect to the property preempt K.S.A. 2001 Supp. 84-9-
14 310(a) and amendments thereto;

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

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

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

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

41 (d) **Inapplicability to certain inventory.** During any period in
42 which collateral *subject to a statute specified in subsection (a)(2)* is inven-
43 tory held for sale or lease by a person or leased by that person as lessor

1 and that person is in the business of selling ~~or leasing~~ goods of that kind,
2 this section does not apply to a security interest in that collateral created
3 by that person ~~as debtor~~.

4 Sec. 11. K.S.A. 2001 Supp. 84-9-316 is hereby amended to read as
5 follows: 84-9-316. (a) **General rule: effect on perfection of change in**
6 **governing law.** A security interest perfected pursuant to the law of the
7 jurisdiction designated in K.S.A. 2001 Supp. 84-9-301(l) or 84-9-305(c)
8 and amendments thereto remains perfected until the earliest of:

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

11 (2) the expiration of four months after a change of the debtor's lo-
12 cation to another jurisdiction; or

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

15 (b) **Security interest perfected or unperfected under law of**
16 **new jurisdiction.** If a security interest described in subsection (a) be-
17 comes perfected under the law of the other jurisdiction before the earliest
18 time or event described in that subsection, it remains perfected there-
19 after. If the security interest does not become perfected under the law
20 of the other jurisdiction before the earliest time or event, it becomes
21 unperfected and is deemed never to have been perfected as against a
22 purchaser of the collateral for value.

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

27 (1) The collateral is located in one jurisdiction and subject to a se-
28 curity interest perfected under the law of that jurisdiction;

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

30 (3) upon entry into the other jurisdiction, the security interest is per-
31 fected under the law of the other jurisdiction.

32 (d) **Goods covered by certificate of title from this state.** Except
33 as otherwise provided in subsection (e), a security interest in goods cov-
34 ered by a certificate of title which is perfected by any method under the
35 law of another jurisdiction when the goods become covered by a certifi-
36 cate of title from this state remains perfected until the security interest
37 would have become unperfected under the law of the other jurisdiction
38 had the goods not become so covered.

39 (e) **When subsection (d) security interests interest becomes un-**
40 **perfected against purchasers.** A security interest described in subsec-
41 tion (d) becomes unperfected as against a purchaser of the goods for value
42 and is deemed never to have been perfected as against a purchaser of the
43 goods for value if the applicable requirements for perfection under K.S.A.

1 2001 Supp. 84-9-311(b) or 84-9-313 and amendments thereto are not
2 satisfied before the earlier of:

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

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

8 (f) **Change in jurisdiction of bank, issuer, nominated person,
9 securities intermediary, or commodity intermediary.** A security in-
10 terest in deposit accounts, letter-of-credit rights, or investment property
11 which is perfected under the law of the bank's jurisdiction, the issuer's
12 jurisdiction, a nominated person's jurisdiction, the securities intermedi-
13 ary's jurisdiction, or the commodity intermediary's jurisdiction, as appli-
14 cable, remains perfected until the earlier of:

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

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

19 (g) **Subsection (f) security interest perfected or unperfected
20 under law of new jurisdiction.** If a security interest described in sub-
21 section (f) becomes perfected under the law of the other jurisdiction
22 before the earlier of the time or the end of the period described in that
23 subsection, it remains perfected thereafter. If the security interest does
24 not become perfected under the law of the other jurisdiction before the
25 earlier of that time or the end of that period, it becomes unperfected and
26 is deemed never to have been perfected as against a purchaser of the
27 collateral for value.

28 Sec. 12. K.S.A. 2001 Supp. 84-9-317 is hereby amended to read as
29 follows: 84-9-317. (a) **Conflicting security interests and rights of lien
30 creditors.** A security interest or agricultural lien is subordinate to the
31 rights of:

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

34 (2) except as otherwise provided in subsection (e), a person that be-
35 comes a lien creditor before the earlier of the time:

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

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

40 (b) **Buyers that receive delivery.** Except as otherwise provided in
41 subsection (e), a buyer, other than a secured party, of tangible chattel
42 paper, documents, goods, instruments, or a security certificate takes free
43 of a security interest or agricultural lien if the buyer gives value and

1 receives delivery of the collateral without knowledge of the security inter-
2 est or agricultural lien and before it is perfected.

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

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

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

21 Sec. 13. K.S.A. 2001 Supp. 84-9-331 is hereby amended to read as
22 follows: 84-9-331. (a) **Rights under Articles 3, 7, and 8 not limited.**
23 This article does not limit the rights of a holder in due course of a ne-
24 gotiable instrument, a holder to which a negotiable document of title has
25 been duly negotiated, or a protected purchaser of a security. These hold-
26 ers or purchasers take priority over an earlier security interest, even if
27 perfected, to the extent provided in articles 3, 7, and 8.

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

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

34 Sec. 14. K.S.A. 2001 Supp. 84-9-334 is hereby amended to read as
35 follows: 84-9-334. (a) **Security interest in fixtures under this article.**
36 A security interest under this article may be created in goods that are
37 fixtures or may continue in goods that become fixtures. A security interest
38 does not exist under this article in ordinary building materials incorpo-
39 rated into an improvement on land.

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

43 (c) **General rule: subordination of security interest in fixtures.**

1 In cases not governed by subsections (d) through (h), a security interest
2 in fixtures is subordinate to a conflicting interest of an encumbrancer or
3 owner of the related real property other than the debtor.

4 (d) **Fixtures purchase-money priority.** Except as otherwise pro-
5 vided in subsection (h), a perfected security interest in fixtures has priority
6 over a conflicting interest of an encumbrancer or owner of the real prop-
7 erty if the debtor has an interest of record in or is in possession of the
8 real property and:

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

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

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

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

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

19 (A) Is perfected by a fixture filing before the interest of the encum-
20 brancer or owner is of record; and

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

23 (2) before the goods become fixtures, the security interest is per-
24 fected by any method permitted by this article and the fixtures are readily
25 removable:

26 (A) Factory or office machines;

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

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

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

33 (4) the security interest is:

34 (A) Created in a manufactured home in a manufactured-home trans-
35 action; and

36 (B) perfected pursuant to a statute described in K.S.A. 2001 Supp.
37 84-9-311(a)(2) and amendments thereto.

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

41 (1) The encumbrancer or owner has, in an authenticated record, con-
42 sented to the security interest or disclaimed an interest in the goods as
43 fixtures; or

1 (2) the debtor has a right to remove the goods as against the encum-
2 brancer or owner.

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

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

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

21 (j) **Subsection (i) prevails.** Subsection (i) prevails over any incon-
22 sistent provisions of law of this state.

23 Sec. 15. K.S.A. 2001 Supp. 84-9-406 is hereby amended to read as
24 follows: 84-9-406. (a) **Discharge of account debtor; effect of notifi-**
25 **cation.** Subject to subsections (b) through (i), an account debtor on an
26 account, chattel paper, or a payment intangible may discharge the account
27 debtor's obligation by paying the assignor until, but not after, the account
28 debtor receives a notification, authenticated by the assignor or the as-
29 signee, that the amount due or to become due has been assigned and that
30 payment is to be made to the assignee. After receipt of the notification,
31 the account debtor may discharge the account debtor's obligation by pay-
32 ing the assignee and may not discharge the obligation by paying the
33 assignor.

34 (b) **When notification ineffective.** Subject to subsection (h), noti-
35 fication is ineffective under subsection (a):

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

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

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

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

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

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

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

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

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

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

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

28 (f) **Legal restrictions on assignment generally ineffective.** Ex-
29 cept as otherwise provided in K.S.A. 84-2a-303 and K.S.A. 2001 Supp.
30 84-9-407 and amendments thereto, and subject to subsections (h) and (i),
31 a rule of law, statute, or regulation that prohibits, restricts, or requires
32 the consent of a government, governmental body or official, or account
33 debtor to the assignment or transfer of, or creation of a security interest
34 in, an account or chattel paper is ineffective to the extent that the rule of
35 law, statute, or regulation:

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

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

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

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

7 (i) **Inapplicability to health-care-insurance receivable.** This sec-
8 tion does not apply to an assignment of a health-care-insurance
9 receivable.

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

13 Sec. 16. K.S.A. 2001 Supp. 84-9-509 is hereby amended to read as
14 follows: 84-9-509. (a) **Person entitled to file record.** A person may file
15 an initial financing statement, amendment that adds collateral covered by
16 a financing statement, or amendment that adds a debtor to a financing
17 statement only if:

18 (1) The debtor authorizes the filing in an authenticated record *pur-*
19 *suant to subsection (b) or (c)*; or

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

23 (b) **Security agreement as authorization.** By authenticating or be-
24 coming bound as debtor by a security agreement, a debtor or new debtor
25 authorizes the filing of an initial financing statement, and an amendment,
26 covering:

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

28 (2) property that becomes collateral under K.S.A. 2001 Supp. 84-9-
29 315(a)(2) and amendments thereto, whether or not the security agree-
30 ment expressly covers proceeds.

31 (c) **Acquisition of collateral as authorization.** By acquiring collat-
32 eral in which a security interest or agricultural lien continues under K.S.A.
33 2001 Supp. 84-9-315(a)(1) and amendments thereto, a debtor authorizes
34 the filing of an initial financing statement, and an amendment, covering
35 the collateral and property that becomes collateral under K.S.A. 2001
36 Supp. 84-9-315(a)(2) and amendments thereto.

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

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

42 (2) the amendment is a termination statement for a financing state-
43 ment as to which the secured party of record has failed to file or send a

1 termination statement as required by K.S.A. 2001 Supp. 84-9-513(a) or
2 (c) and amendments thereto, the debtor authorizes the filing, and the
3 termination statement indicates that the debtor authorized it to be filed.

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

7 Sec. 17. K.S.A. 2001 Supp. 84-9-513 is hereby amended to read as
8 follows: 84-9-513. (a) **Consumer goods.** A secured party shall cause the
9 secured party of record for a financing statement to file a termination
10 statement for the financing statement if the financing statement covers
11 consumer goods and:

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

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

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

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

23 (2) if earlier, within 20 days after the secured party receives an au-
24 thenticated demand from a debtor.

25 (c) **Other collateral.** In cases not governed by subsection (a), within
26 20 days after a secured party receives an authenticated demand from a
27 debtor, the secured party shall cause the secured party of record for a
28 financing statement to send to the debtor a termination statement for the
29 financing statement or file the termination statement in the filing office
30 if:

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

36 (2) the financing statement covers accounts or chattel paper that has
37 been sold but as to which the account debtor or other person obligated
38 has discharged its obligation;

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

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

43 (d) **Effect of filing termination statement.** Except as otherwise

1 provided in K.S.A. 2001 Supp. 84-9-510 and amendments thereto, upon
2 the filing of a termination statement with the filing office, the financing
3 statement to which the termination statement relates ceases to be effec-
4 tive. *Except as otherwise provided in K.S.A. 2001 Supp. 84-9-510, and*
5 *amendments thereto, for purposes of K.S.A. 2001 Supp. 84-9-519(g),*
6 *K.S.A. 2001 Supp. 84-9-522(a), and K.S.A. 2001 Supp. 84-9-523(c), and*
7 *amendments thereto, the filing with the filing office of a termination state-*
8 *ment relating to a financing statement that indicates that the debtor is a*
9 *transmitting utility also causes the effectiveness of the financing statement*
10 *to lapse.*

11 Sec. 18. K.S.A. 2001 Supp. 84-9-525 is hereby amended to read as
12 follows: 84-9-525. ~~(a)~~ **Initial financing statement or other record:**
13 **general rule.** The fee for filing and indexing a record under this part
14 shall be provided by the secretary of state.

15 Sec. 19. K.S.A. 2001 Supp. 84-9-608 is hereby amended to read as
16 follows: 84-9-608. (a) **Application of proceeds, surplus, and defi-**
17 **ciency if obligation secured.** If a security interest or agricultural lien
18 secures payment or performance of an obligation, the following rules
19 apply:

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

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

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

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

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

37 (3) A secured party need not apply or pay over for application non-
38 cash proceeds of collection and enforcement under ~~this section~~ *K.S.A.*
39 *2001 Supp. 84-9-607, and amendments thereto*, unless the failure to do
40 so would be commercially unreasonable. A secured party that applies or
41 pays over for application noncash proceeds shall do so in a commercially
42 reasonable manner.

43 (4) A secured party shall account to and pay a debtor for any surplus,

1 and the obligor is liable for any deficiency.

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

6 Sec. 20. K.S.A. 2001 Supp. 84-9-613 is hereby amended to read as
7 follows: 84-9-613. Except in a consumer-goods transaction, the following
8 rules apply:

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

11 (A) Describes the debtor and the secured party;

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

14 (C) states the method of intended disposition;

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

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

19 (2) Whether the contents of a notification that lacks any of the infor-
20 mation specified in paragraph (1) are nevertheless sufficient is a question
21 of fact.

22 (3) The contents of a notification providing substantially the infor-
23 mation specified in paragraph (1) are sufficient, even if the notification
24 includes:

25 (A) Information not specified by that paragraph; or

26 (B) minor errors that are not seriously misleading.

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

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

31 **NOTIFICATION OF DISPOSITION OF COLLATERAL**

32 To:

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

34 From:

35 *Name, address, and telephone number of secured party*

36 Name of Debtor(s):

37 *Include only if debtor(s) are not an addressee*

38 *For a public disposition:*

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

41 Day and Date:

42 Time:

43 Place:

1 *For a private disposition:*

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

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

8 Sec. 21. K.S.A. 2001 Supp. 84-9-615 is hereby amended to read as
9 follows: 84-9-615. (a) **Application of proceeds.** A secured party shall
10 apply or pay over for application the cash proceeds of disposition *under*
11 *K.S.A. 2001 Supp. 84-9-610, and amendments thereto*, in the following
12 order to:

13 (1) The reasonable expenses of retaking, holding, preparing for dis-
14 position, processing, and disposing, and, to the extent provided for by
15 agreement and not prohibited by law, reasonable attorney fees and legal
16 expenses incurred by the secured party;

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

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

21 (A) The secured party receives from the holder of the subordinate
22 security interest or other lien an authenticated demand for proceeds be-
23 fore distribution of the proceeds is completed; and

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

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

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

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

41 (d) **Surplus or deficiency if obligation secured.** If the security
42 interest under which a disposition is made secures payment or perform-
43 ance of an obligation, after making the payments and applications re-

1 quired by subsection (a) and permitted by subsection (c):

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

5 (2) the obligor is liable for any deficiency.

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

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

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

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

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

19 (2) the amount of proceeds of the disposition is significantly below
20 the range of proceeds that a complying disposition to a person other than
21 the secured party, a person related to the secured party, or a secondary
22 obligor would have brought.

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

28 (1) Takes the cash proceeds free of the security interest or other lien;

29 (2) is not obligated to apply the proceeds of the disposition to the
30 satisfaction of obligations secured by the security interest or other lien;
31 and

32 (3) is not obligated to account to or pay the holder of the security
33 interest or other lien for any surplus.

34 Sec. 22. K.S.A. 2001 Supp. 84-9-625 is hereby amended to read as
35 follows: 84-9-625. (a) **Judicial orders concerning noncompliance.** If
36 it is established that a secured party is not proceeding in accordance with
37 this article, a court may order or restrain collection, enforcement, or dis-
38 position of collateral on appropriate terms and conditions.

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

1 or increased costs of, alternative financing.

2 (c) **Persons entitled to recover damages; statutory damages in**
3 **consumer-goods transaction.** Except as otherwise provided in K.S.A.
4 2001 Supp. 84-9-628 and amendments thereto:

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

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

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

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

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

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

29 (3) files a record that the person is not entitled to file under K.S.A.
30 2001 Supp. 84-9-509(a) and amendments thereto;

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

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

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

39 (f) **Statutory damages: noncompliance with K.S.A. 2001 Supp.**
40 **84-9-210 and amendments thereto.** A debtor or consumer obligor may
41 recover damages under subsection (b) and, in addition, \$500 in each case
42 from a person that, without reasonable cause, fails to comply with a re-
43 quest under K.S.A. 2001 Supp. 84-9-210 and amendments thereto. A

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

6 (g) **Limitation of security interest: noncompliance with K.S.A.**
7 **2001 Supp. 84-9-210 and amendments thereto.** If a secured party
8 fails to comply with a request regarding a list of collateral or a statement
9 of account under K.S.A. 2001 Supp. 84-9-210 and amendments thereto,
10 the secured party may claim a security interest only as shown in the *list*
11 *or* statement included in the request as against a person that is reasonably
12 misled by the failure.

13 Sec. 23. K.S.A. 2001 Supp. 84-9-628 is hereby amended to read as
14 follows: 84-9-628. (a) ~~Limitation of liability to debtor or obligor of~~
15 ~~secured party for noncompliance with article.~~ Unless a secured party
16 knows that a person is a debtor or obligor, knows the identity of the
17 person, and knows how to communicate with the person:

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

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

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

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

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

29 (B) the identity of the person; and

30 (C) how to communicate with the person; or

31 (2) to a secured party or lienholder that has filed a financing state-
32 ment against a person, unless the secured party knows:

33 (A) That the person is a debtor; and

34 (B) the identity of the person.

35 (c) **Limitation of liability if reasonable belief that transaction**
36 **not a consumer-goods transaction or consumer transaction.** A se-
37 cured party is not liable to any person, and a person's liability for a de-
38 ficiency is not affected, because of any act or omission arising out of the
39 secured party's reasonable belief that a transaction is not a consumer-
40 goods transaction or a consumer transaction or that goods are not con-
41 sumer goods, if the secured party's belief is based on its reasonable reli-
42 ance on:

43 (1) A debtor's representation concerning the purpose for which col-

1 lateral was to be used, acquired, or held; or

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

4 (d) **Limitation of liability for statutory damages.** A secured party
5 is not liable to any person under K.S.A. 2001 Supp. 84-9-625(c)(2) and
6 amendments thereto, for its failure to comply with K.S.A. 2001 Supp. 84-
7 9-616 and amendments thereto.

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

12 Sec. 24. K.S.A. 2001 Supp. 84-9-702 is hereby amended to read as
13 follows: 84-9-702. (a) **Pre-effective date transactions or liens.** Except
14 as otherwise provided in this part, this act applies to a transaction or lien
15 within its scope, even if the transaction or lien was entered into or created
16 before this act takes effect.

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

20 (1) Transactions and liens that were not governed by former article
21 9, were validly entered into or created before this act takes effect, and
22 would be subject to this act if they had been entered into or created after
23 this act takes effect, and the rights, duties, and interests flowing from
24 those transactions and liens remain valid after this act takes effect; and

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

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

30 Sec. 25. K.S.A. 2001 Supp. 84-9-705 is hereby amended to read as
31 follows: 84-9-705. (a) **Pre-effective date action; one-year perfection
32 period unless reperfected.** If action, other than the filing of a financing
33 statement, is taken before this act takes effect and the action would have
34 resulted in priority of a security interest over the rights of a person that
35 becomes a lien creditor had the security interest become enforceable
36 before this act takes effect, the action is effective to perfect a security
37 interest that attaches under this act within one year after this act takes
38 effect. An attached security interest becomes unperfected one year after
39 this act takes effect unless the security interest becomes a perfected se-
40 curity interest under this act before the expiration of that period.

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

1 under this act.

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

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

12 (2) June 30, 2006.

13 (d) **Continuation statement.** The filing of a continuation statement
14 after this act takes effect does not continue the effectiveness of the fi-
15 nancing statement filed before this act takes effect. However, upon the
16 timely filing of a continuation statement after this act takes effect and in
17 accordance with the law of the jurisdiction governing perfection as pro-
18 vided in part 3, the effectiveness of a financing statement filed in the
19 same office in that jurisdiction before this act takes effect continues for
20 the period provided by the law of that jurisdiction.

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

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

35 New Sec. 26. (a) **Pre-effective-date financing statement.** In this
36 section, “pre-effective-date financing statement” means a financing state-
37 ment filed before this act takes effect.

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

1 cordance with the law of the jurisdiction in which the financing statement
2 is filed.

3 (c) **Method of amending; general rule.** Except as otherwise pro-
4 vided in subsection (d), if the law of this state governs perfection of a
5 security interest, the information in a pre-effective-date financing state-
6 ment may be amended after this act takes effect only if:

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

10 (2) an amendment is filed in the office specified in K.S.A. 2001 Supp.
11 84-9-501, and amendments thereto, concurrently with, or after the filing
12 in that office of, an initial financing statement that satisfies K.S.A. 2001
13 Supp. 84-9-706(c), and amendments thereto; or

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

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

22 (e) **Method of amending; additional termination rule.** Whether
23 or not the law of this state governs perfection of a security interest, the
24 effectiveness of a pre-effective-date financing statement filed in this state
25 may be terminated after this act takes effect by filing a termination state-
26 ment in the office in which the pre-effective-date financing statement is
27 filed, unless an initial financing statement that satisfies K.S.A. 2001 Supp.
28 84-9-706(c), and amendments thereto, has been filed in the office spec-
29 ified by the law of the jurisdiction governing perfection as provided in
30 part 3 as the office in which to file a financing statement.

31 Sec. 27. K.S.A. 2001 Supp. 84-1-105 is hereby amended to read as
32 follows: 84-1-105. (1) Except as provided hereafter in this section, when
33 a transaction bears a reasonable relation to this state and also to another
34 state or nation the parties may agree that the law either of this state or
35 of such other state or nation shall govern their rights and duties. Failing
36 such agreement this act applies to transactions bearing an appropriate
37 relation to this state.

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

42 Rights of creditors against sold goods. K.S.A. 84-2-402 and amend-
43 ments thereto.

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

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

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

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

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

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

13 Sec. 28. K.S.A. 58-244, 66-1217, 66-1219, 79-2616 and 79-2617 and
14 K.S.A. 2001 Supp. 17-630, 84-1-105, 84-9-102, 84-9-104, 84-9-306, 84-9-
15 311, 84-9-316, 84-9-317, 84-9-331, 84-9-334, 84-9-406, 84-9-509, 84-9-
16 513, 84-9-525, 84-9-608, 84-9-613, 84-9-615, 84-9-625, 84-9-628, 84-9-
17 702 and 84-9-705 are hereby repealed.

18 Sec. 29. This act shall take effect and be in force from and after its
19 publication in the Kansas Register

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