

Proposed Senate Substitute for HOUSE BILL NO. 2124

AN ACT concerning the uniform commercial code; relating to the exclusion of consumer transactions governed by federal law; secured transactions; amending K.S.A. 84-4a-108 and K.S.A. 2014 Supp. 84-9-408, 84-9-803, 84-9-805 and 84-9-807 and repealing the existing sections.

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

Section 1. K.S.A. 84-4a-108 is hereby amended to read as follows: 84-4a-108. (a) Except as provided in subsection (b), this article does not apply to a funds transfer any part of which is governed by the electronic fund transfer act of 1978 (title XX, public law 95-630, 92 Stat. 3728, 15 U.S.C. § 1693 et seq.) as amended from time to time.

(b) This article applies to a funds transfer that is a remittance transfer as defined in the electronic fund transfer act (15 U.S.C. § 1693o-1), unless the remittance transfer is an electronic fund transfer as defined in the electronic fund transfer act (15 U.S.C. § 1693a).

(c) In a funds transfer to which this article applies, in the event of an inconsistency between an applicable provision of this article and an applicable provision of the electronic fund transfer act, the provision of the electronic fund transfer act governs to the extent of the inconsistency.

Sec. 2. K.S.A. 2014 Supp. 84-9-408 is hereby amended to read as follows: 84-9-408.

(a) **Term restricting assignment generally ineffective.** Except as otherwise provided in ~~subsection (b) and subsection (g) of K.S.A. 17-76,134(b) and (g),~~ and amendments thereto, a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or

creation, attachment, or perfection of a security interest in, the promissory note, health-care-insurance receivable, or general intangible, is ineffective to the extent that the term:

(1) Would impair the creation, attachment, or perfection of a security interest; or

(2) provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(b) **Applicability of subsection (a) to sales of certain rights to payment.** Subsection (a) applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note, other than a sale pursuant to a disposition under K.S.A. 2014 Supp. 84-9-610, and amendments thereto, or an acceptance of collateral under K.S.A. 2014 Supp. 84-9-620, and amendments thereto.

(c) **Legal restrictions on assignment generally ineffective.** Except as otherwise provided in ~~and subsection (g) of~~ K.S.A. 17-76,134(g), and amendments thereto, a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health-care-insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation:

(1) Would impair the creation, attachment, or perfection of a security interest; or

(2) provides that the assignment or transfer or the creation, attachment, or perfection of

the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(d) **Limitation on ineffectiveness under subsections (a) and (c).** To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or general intangible or a rule of law, statute, or regulation described in subsection (c) would be effective under law other than this article but is ineffective under subsection (a) or (c), the creation, attachment, or perfection of a security interest in the promissory note, health-care-insurance receivable, or general intangible:

(1) Is not enforceable against the person obligated on the promissory note or the account debtor;

(2) does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;

(3) does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;

(4) does not entitle the secured party to use or assign the debtor's rights under the promissory note, health-care-insurance receivable, or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health-care-insurance receivable, or general intangible;

(5) does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account

debtor; and

(6) does not entitle the secured party to enforce the security interest in the promissory note, health-care-insurance receivable, or general intangible.

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

Sec. 3. K.S.A. 2014 Supp. 84-9-803 is hereby amended to read as follows: 84-9-803.

(a) **Continuing perfection: Perfection requirements satisfied.** A security interest that is a perfected security interest immediately before July 1, 2013, is a perfected security interest under article 9 of chapter 84 of the Kansas Statutes Annotated, as amended by this act, if, on July 1, 2013, the applicable requirements for attachment and perfection under article 9 of chapter 84 of the Kansas Statutes Annotated, as amended by this act, are satisfied without further action.

(b) **Continuing perfection: Perfection requirements not satisfied.** Except as otherwise provided in K.S.A. 2014 Supp. ~~84-9-806~~ 84-9-805, and amendments thereto, if immediately before July 1, 2013, a security interest is a perfected security interest, but the applicable requirements for perfection under article 9 of chapter 84 of the Kansas Statutes Annotated, as amended by this act, are not satisfied on July 1, 2013, the security interest remains perfected thereafter only if the applicable requirements for perfection under article 9 of chapter 84 of the Kansas Statutes Annotated, as amended by this act, are satisfied within one year after July 1, 2013.

Sec. 4. K.S.A. 2014 Supp. 84-9-805 is hereby amended to read as follows: 84-9-805.

(a) **Pre-effective-date filing effective.** The filing of a financing statement before July 1, 2013, is effective to perfect a security interest to the extent the filing would satisfy the applicable

requirements for perfection under article 9 of chapter 84 of the Kansas Statutes Annotated, and as amended by this act.

(b) **When pre-effective-date filing becomes ineffective.** This act does not render ineffective an effective financing statement that, before July 1, 2013, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in article 9 of chapter 84 of the Kansas Statutes Annotated, prior to amendments by this act. However, except as otherwise provided in subsections (c) and (d) ~~of and~~ K.S.A. 2014 Supp. 84-9-807 84-9-806, and amendments thereto, the financing statement ceases to be effective:

(1) If the financing statement is filed in this state, at the time the financing statement would have ceased to be effective had this act not taken effect; or

(2) if the financing statement is filed in another jurisdiction, at the earlier of:

(A) At the time the financing statement would have ceased to be effective under the law of that jurisdiction; or

(B) June 30, 2018.

(c) **Continuation statement.** The filing of a continuation statement after July 1, 2013, does not continue the effectiveness of a financing statement filed before this act takes effect. However, upon the timely filing of a continuation statement after July 1, 2013, and in accordance with the law of the jurisdiction governing perfection as provided in article 9 of chapter 84 of the Kansas Statutes Annotated, as amended by this act, the effectiveness of a financing statement filed in the same office in that jurisdiction before July 1, 2013, continues for a period provided by the law of that jurisdiction.

(d) **Application of subsection (b)(2)(B) to transmitting utility financing statement.**

Subsection (b)(2)(B) applies to a financing statement that, before July 1, 2013, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in article 9 of chapter 84 of the Kansas Statutes Annotated, prior to amendments by this act, only to the extent that article 9 of chapter 84 of the Kansas Statutes Annotated, as amended by this act, provides that the law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

(e) **Application of part 5.** A financing statement that includes a financing statement filed before July 1, 2013, and a continuation statement filed after July 1, 2013, is effective only to the extent that it satisfies the requirements of part 5 of article 9 of chapter 84 of the Kansas Statutes Annotated, as amended by this act, for an initial financing statement. A financing statement that indicates that the debtor is a decedent's estate indicates that the collateral is being administered by a personal representative within the meaning of K.S.A. 2014 Supp. 84-9-503(a)(2), as amended by this act. A financing statement that indicates that the debtor is a trust or trustee acting with respect to property held in trust indicates that the collateral is held in a trust within the meaning of K.S.A. 2014 Supp. 84-9-503(a)(3), as amended by this act.

Sec. 5. K.S.A. 2014 Supp. 84-9-807 is hereby amended to read as follows: 84-9-807.

(a) **Pre-effective-date financing statement.** In this section, "pre-effective-date financing statement" means a financing statement filed before July 1, 2013.

(b) **Applicable law.** After July 1, 2013, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in, a pre-effective-date financing statement only in accordance with the law of the jurisdiction

governing perfection as provided in article 9 of chapter 84 of the Kansas Statutes Annotated, as amended by this act. However, the effectiveness of a pre-effective-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

(c) **Method of amending: General rule.** Except as otherwise provided in subsection (d), if the law of this state governs perfection of a security interest, the information in a pre-effective-date financing statement may be amended after July 1, 2013, only if:

(1) The pre-effective-date financing statement and an amendment are filed in the office specified in K.S.A. 2014 Supp. 84-9-501, and amendments thereto;

(2) an amendment is filed in the office specified in K.S.A. 2014 Supp. 84-9-501, and amendments thereto, concurrently with, or after the filing in that office of, an initial financing statement that satisfies ~~subsection (c) of~~ K.S.A. 2014 Supp. ~~84-9-807~~ 84-9-806(c), and amendments thereto; or

(3) an initial financing statement that provides the information as amended and satisfies ~~subsection (c) of~~ K.S.A. 2014 Supp. 84-9-807(c), and amendments thereto, is filed in the office specified in K.S.A. 2014 Supp. 84-9-501, and amendments thereto.

(d) **Method of amending: Continuation.** If the law of this state governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement may be continued only under ~~subsections (c) and (d) of~~ K.S.A. 2014 Supp. ~~84-9-806~~ 84-9-805(c) and (d), and amendments thereto, or K.S.A. 2014 Supp. ~~84-9-807~~ 84-9-806, and amendments thereto.

(e) **Method of amending: Additional termination rule.** Whether or not the law of this state governs perfection of a security interest, the effectiveness of a pre-effective-date financing

statement filed in this state may be terminated after July 1, 2013, by filing a termination statement in the office in which the pre-effective-date financing statement is filed, unless an initial financing statement that satisfies ~~subsection (e) of K.S.A. 2014 Supp. 84-9-807~~ 84-9-806(c), and amendments thereto, has been filed in the office specified by the law of the jurisdiction governing perfection as provided in article 9 of chapter 84 of the Kansas Statutes Annotated, as amended by this act, as the office in which to file a financing statement.

Sec. 6. K.S.A. 84-4a-108 and K.S.A. 2014 Supp. 84-9-408, 84-9-803, 84-9-805 and 84-9-807 are hereby repealed.

Sec. 7. This act shall take effect and be in force from and after its publication in the statute book.