

CHAPTER 119**(HB 329)**

AN ACT to revise and correct the Kentucky Revised Statutes.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

PART A**LEGISLATIVE FINDINGS AND DECLARATIONS**

Section 1. The General Assembly finds and declares as follows:

(1) Sections 2 to 12 of this Act repeal and reenact versions of KRS 355.9-106, 355.9-109, 355.9-203, 355.9-208, 355.9-305, 355.9-309, 355.9-313, 355.9-322, 355.9-328, 355.9-406, and 355.9-407 that become effective July 1, 2001, to ratify and confirm action by the Reviser of Statutes in codifying those versions as they were enacted by 2000 Ky. Acts ch. 408. In codification, the Reviser had corrected under KRS 7.136(1)(h) incorrect internal cross-references that had resulted from the amendment process to make the text consistent with the official text of Revised Article 9 of the Uniform Commercial Code.

(2) 2000 Ky. Acts ch. 408, sec. 90, mistakenly purported to create a new KRS 355.9-408, effective July 1, 2001, although this statute was already in existence, having been created by 1986 Ky. Acts ch. 118, sec. 81. It was intended in 2000 Ky. Acts ch. 408 that the existing KRS 355.9-408 be repealed and reenacted to contain the text of Section 9-408 of the current Revised Article 9 of the Uniform Commercial Code. The repeal and reenactment of KRS 355.9-408 in Section 13 of this Act repeals both existing versions of that statute and reenacts the version that becomes effective July 1, 2001, without change.

(3) Sections 14 and 15 of this Act amend versions of KRS 355.5-103 and 355.8-110 that become effective July 1, 2001, to correct inadvertent drafting oversights that failed to make the enacted text of these statutes match the official text of Revised Article 9 of the Uniform Commercial Code.

(4) Revised Article 9 of the Uniform Commercial Code eliminates the determination of residency provisions contained in the current KRS 355.9-401(5)(b) to (k), and 2000 Ky. Acts ch. 408, sec. 179, amended KRS 186A.190, effective July 1, 2001, to incorporate expressly this existing statutory text. Because of this action, the amendment to KRS 365.015 contained in Section 16 of this Act should have been included in 2000 Ky. Acts ch. 408 as a conforming change but was overlooked. This oversight is rectified by Section 16 of this Act.

(5) The repeal of KRS 14.150 set out in Section 17 of this Act should have been included in 2000 Ky. Acts ch. 408 as a conforming change because provisions of the Revised Article 9 of the Uniform Commercial Code supersede and eliminate the need for the Kentucky Lien Information System established by KRS 14.150.

PART B**REPEALS AND REENACTMENTS****OF EXISTING STATUTES**

Section 2. KRS 355.9-106, as effective July 1, 2001, is repealed and reenacted to read as follows:

- (1) A person has control of a certificated security, uncertificated security, or security entitlement as provided in KRS 355.8-106.
- (2) A secured party has control of a commodity contract if:
 - (a) The secured party is the commodity intermediary with which the commodity contract is carried; or
 - (b) The commodity customer, secured party, and commodity intermediary have agreed that the commodity intermediary will apply any value distributed on account of the commodity contract as directed by the secured party without further consent by the commodity customer.
- (3) A secured party having control of all security entitlements or commodity contracts carried in a securities account or commodity account has control over the securities account or commodity account.

Section 3. KRS 355.9-109, as effective July 1, 2001, is repealed and reenacted to read as follows:

- (1) Except as otherwise provided in subsections (3) and (4) of this section, this article applies to:
 - (a) A transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;
 - (b) An agricultural lien;
 - (c) A sale of accounts, chattel paper, payment intangibles, or promissory notes;
 - (d) A consignment;
 - (e) A security interest arising under KRS 355.2-401, 355.2-505, 355.2-711(3), or 355.2A-508(5), as provided in KRS 355.9-110; and
 - (f) A security interest arising under KRS 355.4-210 or 355.5-118.
- (2) The application of this article to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this article does not apply.
- (3) This article does not apply to the extent that:
 - (a) A statute, regulation, or treaty of the United States preempts this article;
 - (b) Another statute of this Commonwealth expressly governs the creation, perfection, priority, or enforcement of a security interest created by this Commonwealth or a governmental unit of this Commonwealth;
 - (c) A statute of another state, a foreign country, or a governmental unit of another state or a foreign country, other than a statute generally applicable to security interests, expressly governs creation, perfection, priority, or enforcement of a security interest created by the state, country, or governmental unit; or
 - (d) The rights of a transferee beneficiary or nominated person under a letter of credit are independent and superior under KRS 355.5-114.
- (4) This article does not apply to:

- (a) A landlord's lien, other than an agricultural lien;
- (b) A lien, other than an agricultural lien, given by statute or other rule of law for services or materials, but KRS 355.9-333 applies with respect to priority of the lien;
- (c) An assignment of a claim for wages, salary, or other compensation of an employee, or for workers' compensation benefits payable to an individual;
- (d) A sale of accounts, chattel paper, payment intangibles, or promissory notes as part of a sale of the business out of which they arose;
- (e) An assignment of accounts, chattel paper, payment intangibles, or promissory notes which is for the purpose of collection only;
- (f) An assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract;
- (g) An assignment of a single account, payment intangible, or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness;
- (h) A transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health-care provider of a health-care-insurance receivable and any subsequent assignment of the right to payment, but KRS 355.9-315 and 355.9-322 apply with respect to proceeds and priorities in proceeds;
- (i) An assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral;
- (j) A right of recoupment or set-off, but:
 - 1. KRS 355.9-340 applies with respect to the effectiveness of rights of recoupment or set-off against deposit accounts; and
 - 2. KRS 355.9-404 applies with respect to defenses or claims of an account debtor;
- (k) The creation or transfer of an interest in or lien on real property, including a lease or rents thereunder, except to the extent that provision is made for:
 - 1. Liens on real property in KRS 355.9-203 and 355.9-308;
 - 2. Fixtures in KRS 355.9-334;
 - 3. Fixture filings in KRS 355.9-501, 355.9-502, 355.9-512, 355.9-516, and 355.9-519; and
 - 4. Security agreements covering personal and real property in KRS 355.9-604;
- (l) An assignment of a claim arising in tort, other than a commercial tort claim, but KRS 355.9-315 and 355.9-322 apply with respect to proceeds and priorities in proceeds;
- (m) An assignment of a deposit account in a consumer transaction, but KRS 355.9-315 and 355.9-322 apply with respect to proceeds and priorities in proceeds;
- (n) A claim or right to receive compensation for injuries or sickness as described in 26 U.S.C. sec. 104(a)(1) or (2), as amended from time to time;
- (o) A claim or right to receive benefits under a special needs trust as described in 42 U.S.C. sec. 1396p(d)(4), as amended from time to time; or
- (p) A right to receive money under a structured settlement as defined by KRS 454.430.

Section 4. KRS 355.9-203, as effective July 1, 2001, is repealed and reenacted to read as follows:

- (1) A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.
- (2) Except as otherwise provided in subsections (3) to (9) of this section, a security interest is enforceable against the debtor and third parties with respect to the collateral only if:
 - (a) Value has been given;
 - (b) The debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and
 - (c) One (1) of the following conditions is met:
 1. The debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;
 2. The collateral is not a certificated security and is in the possession of the secured party under KRS 355.9-313 pursuant to the debtor's security agreement;
 3. The collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under KRS 355.8-301 pursuant to the debtor's security agreement; or
 4. The collateral is deposit accounts, electronic chattel paper, investment property, or letter-of-credit rights, and the secured party has control under KRS 355.9-104, 355.9-105, 355.9-106, or 355.9-107 pursuant to the debtor's security agreement.
- (3) Subsection (2) of this section is subject to KRS 355.4-210 on the security interest of a collecting bank, KRS 355.5-118 on the security interest of a letter-of-credit issuer or nominated person, KRS 355.9-110 on a security interest arising under Article 2 or 2A of this chapter, and KRS 355.9-206 on security interests in investment property.
- (4) A person becomes bound as debtor by a security agreement entered into by another person if, by operation of law other than this article or by contract:
 - (a) The security agreement becomes effective to create a security interest in the person's property; or
 - (b) The person becomes generally obligated for the obligations of the other person, including the obligation secured under the security agreement, and acquires or succeeds to all or substantially all of the assets of the other person.
- (5) If a new debtor becomes bound as debtor by a security agreement entered into by another person:
 - (a) The agreement satisfies subsection (2)(c) of this section with respect to existing or after-acquired property of the new debtor to the extent the property is described in the agreement; and
 - (b) Another agreement is not necessary to make a security interest in the property enforceable.

- (6) The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by KRS 355.9-315 and is also attachment of a security interest in a supporting obligation for the collateral.
- (7) The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien.
- (8) The attachment of a security interest in a securities account is also attachment of a security interest in the security entitlements carried in the securities account.
- (9) The attachment of a security interest in a commodity account is also attachment of a security interest in the commodity contracts carried in the commodity account.

Section 5. KRS 355.9-208, as effective July 1, 2001, is repealed and reenacted to read as follows:

- (1) This section applies to cases in which there is no outstanding secured obligation and the secured party is not committed to make advances, incur obligations, or otherwise give value.
- (2) Within ten (10) days after receiving an authenticated demand by the debtor:
 - (a) A secured party having control of a deposit account under KRS 355.9-104(1)(b) shall send to the bank with which the deposit account is maintained an authenticated statement that releases the bank from any further obligation to comply with instructions originated by the secured party;
 - (b) A secured party having control of a deposit account under KRS 355.9-104(1)(c) shall:
 1. Pay the debtor the balance on deposit in the deposit account; or
 2. Transfer the balance on deposit into a deposit account in the debtor's name;
 - (c) A secured party, other than a buyer, having control of electronic chattel paper under KRS 355.9-105 shall:
 1. Communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian;
 2. If the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and
 3. Take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party;
 - (d) A secured party having control of investment property under KRS 355.8-106(4)(b) or 355.9-106(2) shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party; and

- (e) A secured party having control of a letter-of-credit right under KRS 355.9-107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party.

Section 6. KRS 355.9-305, as effective July 1, 2001, is repealed and reenacted to read as follows:

- (1) Except as otherwise provided in subsection (3) of this section, the following rules apply:
 - (a) While a security certificate is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in the certificated security represented thereby.
 - (b) The local law of the issuer's jurisdiction as specified in KRS 355.8-110(4) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in an uncertificated security.
 - (c) The local law of the securities intermediary's jurisdiction as specified in KRS 355.8-110(5) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a security entitlement or securities account.
 - (d) The local law of the commodity intermediary's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a commodity contract or commodity account.
- (2) The following rules determine a commodity intermediary's jurisdiction for purposes of this part of this article:
 - (a) If an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that a particular jurisdiction is the commodity intermediary's jurisdiction for purposes of this part of this article, this article, or this chapter, that jurisdiction is the commodity intermediary's jurisdiction.
 - (b) If paragraph (a) of this subsection does not apply and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.
 - (c) If neither paragraph (a) nor paragraph (b) of this subsection applies and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the commodity account is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.
 - (d) If none of the preceding paragraphs applies, the commodity intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the commodity customer's account is located.
 - (e) If none of the preceding paragraphs applies, the commodity intermediary's jurisdiction is the jurisdiction in which the chief executive office of the commodity intermediary is located.
- (3) The local law of the jurisdiction in which the debtor is located governs:
 - (a) Perfection of a security interest in investment property by filing;

- (b) Automatic perfection of a security interest in investment property created by a broker or securities intermediary; and
- (c) Automatic perfection of a security interest in a commodity contract or commodity account created by a commodity intermediary.

Section 7. KRS 355.9-309, as effective July 1, 2001, is repealed and reenacted to read as follows:

The following security interests are perfected when they attach:

- (1) A purchase-money security interest in consumer goods, except as otherwise provided in KRS 355.9-311(2) with respect to consumer goods that are subject to a statute or treaty described in KRS 355.9-311(1);
- (2) An assignment of accounts or payment intangibles which does not by itself or in conjunction with other assignments to the same assignee transfer a significant part of the assignor's outstanding accounts or payment intangibles;
- (3) A sale of a payment intangible;
- (4) A sale of a promissory note;
- (5) A security interest created by the assignment of a health-care-insurance receivable to the provider of the health-care goods or services;
- (6) A security interest arising under KRS 355.2-401, 355.2-505, 355.2-711(3), or 355.2A-508(5), until the debtor obtains possession of the collateral;
- (7) A security interest of a collecting bank arising under KRS 355.4-210;
- (8) A security interest of an issuer or nominated person arising under KRS 355.5-118;
- (9) A security interest arising in the delivery of a financial asset under KRS 355.9-206(3);
- (10) A security interest in investment property created by a broker or securities intermediary;
- (11) A security interest in a commodity contract or a commodity account created by a commodity intermediary;
- (12) An assignment for the benefit of all creditors of the transferor and subsequent transfers by the assignee thereunder; and
- (13) A security interest created by an assignment of a beneficial interest in a decedent's estate.

Section 8. KRS 355.9-313, as effective July 1, 2001, is repealed and reenacted to read as follows:

- (1) Except as otherwise provided in subsection (2) of this section, a secured party may perfect a security interest in negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under KRS 355.8-301.
- (2) With respect to goods covered by a certificate of title issued by this Commonwealth, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in KRS 355.9-316(4).

- (3) With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when:
 - (a) The person in possession authenticates a record acknowledging that it holds possession of the collateral for the secured party's benefit; or
 - (b) The person takes possession of the collateral after having authenticated a record acknowledging that it will hold possession of collateral for the secured party's benefit.
- (4) If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.
- (5) A security interest in a certificated security in registered form is perfected by delivery when delivery of the certificated security occurs under KRS 355.8-301 and remains perfected by delivery until the debtor obtains possession of the security certificate.
- (6) A person in possession of collateral is not required to acknowledge that it holds possession for a secured party's benefit.
- (7) If a person acknowledges that it holds possession for the secured party's benefit:
 - (a) The acknowledgment is effective under subsection (3) of this section or KRS 355.8-301(1), even if the acknowledgment violates the rights of a debtor; and
 - (b) Unless the person otherwise agrees or law other than this article otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.
- (8) A secured party having possession of collateral does not relinquish possession by delivering the collateral to a person other than the debtor or a lessee of the collateral from the debtor in the ordinary course of the debtor's business if the person was instructed before the delivery or is instructed contemporaneously with the delivery:
 - (a) To hold possession of the collateral for the secured party's benefit; or
 - (b) To redeliver the collateral to the secured party.
- (9) A secured party does not relinquish possession, even if a delivery under subsection (8) of this section violates the rights of a debtor. A person to which collateral is delivered under subsection (8) of this section does not owe any duty to the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees or law other than this article otherwise provides.

Section 9. KRS 355.9-322, as effective July 1, 2001, is repealed and reenacted to read as follows:

- (1) Except as otherwise provided in this section, priority among conflicting security interests and agricultural liens in the same collateral is determined according to the following rules:
 - (a) Conflicting perfected security interests and agricultural liens rank according to priority in time of filing or perfection. Priority dates from the earlier of the time a filing covering the collateral is first made or the security interest or agricultural lien is first perfected, if there is no period thereafter when there is neither filing nor perfection.

- (b) A perfected security interest or agricultural lien has priority over a conflicting unperfected security interest or agricultural lien.
 - (c) The first security interest or agricultural lien to attach or become effective has priority if conflicting security interests and agricultural liens are unperfected.
- (2) For the purposes of subsection (1)(a) of this section:
- (a) The time of filing or perfection as to a security interest in collateral is also the time of filing or perfection as to a security interest in proceeds; and
 - (b) The time of filing or perfection as to a security interest in collateral supported by a supporting obligation is also the time of filing or perfection as to a security interest in the supporting obligation.
- (3) Except as otherwise provided in subsection (6) of this section, a security interest in collateral which qualifies for priority over a conflicting security interest under KRS 355.9-327, 355.9-328, 355.9-329, 355.9-330, or 355.9-331 also has priority over a conflicting security interest in:
- (a) Any supporting obligation for the collateral; and
 - (b) Proceeds of the collateral if:
 - 1. The security interest in proceeds is perfected;
 - 2. The proceeds are cash proceeds or of the same type as the collateral; and
 - 3. In the case of proceeds that are proceeds of proceeds, all intervening proceeds are cash proceeds, proceeds of the same type as the collateral, or an account relating to the collateral.
- (4) Subject to subsection (5) of this section and except as otherwise provided in subsection (6) of this section, if a security interest in chattel paper, deposit accounts, negotiable documents, instruments, investment property, or letter-of-credit rights is perfected by a method other than filing, conflicting perfected security interests in proceeds of the collateral rank according to priority in time of filing.
- (5) Subsection (4) of this section applies only if the proceeds of the collateral are not cash proceeds, chattel paper, negotiable documents, instruments, investment property, or letter-of-credit rights.
- (6) Subsections (1) to (5) of this section are subject to:
- (a) Subsection (7) of this section and the other provisions of this part of this article;
 - (b) KRS 355.4-210 with respect to a security interest of a collecting bank;
 - (c) KRS 355.5-118 with respect to a security interest of an issuer or nominated person; and
 - (d) KRS 355.9-110 with respect to a security interest arising under Article 2 or 2A of this chapter.
- (7) A perfected agricultural lien on collateral has priority over a conflicting security interest in or agricultural lien on the same collateral if the statute creating the agricultural lien so provides.

Section 10. KRS 355.9-328, as effective July 1, 2001, is repealed and reenacted to read as follows:

The following rules govern priority among conflicting security interests in the same investment property:

- (1) A security interest held by a secured party having control of investment property under KRS 355.9-106 has priority over a security interest held by a secured party that does not have control of the investment property.
- (2) Except as otherwise provided in subsections (3) and (4) of this section, conflicting security interests held by secured parties each of which has control under KRS 355.9-106 rank according to priority in time of:
 - (a) If the collateral is a security, obtaining control;
 - (b) If the collateral is a security entitlement carried in a securities account and:
 1. If the secured party obtained control under KRS 355.8-106(4)(a), the secured party's becoming the person for which the securities account is maintained;
 2. If the secured party obtained control under KRS 355.8-106(4)(b), the securities intermediary's agreement to comply with the secured party's entitlement orders with respect to security entitlements carried or to be carried in the securities account; or
 3. If the secured party obtained control through another person under KRS 355.8-106(4)(c), the time on which priority would be based under this paragraph if the other person were the secured party; or
 - (c) If the collateral is a commodity contract carried with a commodity intermediary, the satisfaction of the requirement for control specified in KRS 355.9-106(2)(b) with respect to commodity contracts carried or to be carried with the commodity intermediary.
- (3) A security interest held by a securities intermediary in a security entitlement or a securities account maintained with the securities intermediary has priority over a conflicting security interest held by another secured party.
- (4) A security interest held by a commodity intermediary in a commodity contract or a commodity account maintained with the commodity intermediary has priority over a conflicting security interest held by another secured party.
- (5) A security interest in a certificated security in registered form which is perfected by taking delivery under KRS 355.9-313(1) and not by control under KRS 355.9-314 has priority over a conflicting security interest perfected by a method other than control.
- (6) Conflicting security interests created by a broker, securities intermediary, or commodity intermediary which are perfected without control under KRS 355.9-106 rank equally.
- (7) In all other cases, priority among conflicting security interests in investment property is governed by KRS 355.9-322 and 355.9-323.

Section 11. KRS 355.9-406, as effective July 1, 2001, is repealed and reenacted to read as follows:

- (1) Subject to subsections (2) to (9) of this section, an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.
- (2) Subject to subsection (8) of this section, notification is ineffective under subsection (1) of this section:
 - (a) If it does not reasonably identify the rights assigned;
 - (b) To the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this article; or
 - (c) At the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:
 1. Only a portion of the account, chattel paper, or payment intangible has been assigned to that assignee;
 2. A portion has been assigned to another assignee; or
 3. The account debtor knows that the assignment to that assignee is limited.
- (3) Subject to subsection (8) of this section, if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (1) of this section.
- (4) Except as otherwise provided in subsection (5) of this section and KRS 355.2A-303 and 355.9-407, and subject to subsection (8) of this section, a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:
 - (a) Prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note; or
 - (b) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.
- (5) Subsection (4) of this section does not apply to the sale of a payment intangible or promissory note.
- (6) Except as otherwise provided in KRS 355.2A-303 and 355.9-407 and subject to subsections (8) and (9) of this section, a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation:

- (a) Prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in the account or chattel paper; or
 - (b) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account or chattel paper.
- (7) Subject to subsection (8) of this section, an account debtor may not waive or vary its option under subsection (2)(c) of this section.
- (8) This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.
- (9) This section does not apply to an assignment of a health-care-insurance receivable.

Section 12. KRS 355.9-407, as effective July 1, 2001, is repealed and reenacted to read as follows:

- (1) Except as otherwise provided in subsection (2) of this section, a term in a lease agreement is ineffective to the extent that it:
- (a) Prohibits, restricts, or requires the consent of a party to the lease to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, an interest of a party under the lease contract or in the lessor's residual interest in the goods; or
 - (b) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the lease.
- (2) Except as otherwise provided in KRS 355.2A-303(7), a term described in subsection (1)(b) of this section is effective to the extent that there is:
- (a) A transfer by the lessee of the lessee's right of possession or use of the goods in violation of the term; or
 - (b) A delegation of a material performance of either party to the lease contract in violation of the term.
- (3) The creation, attachment, perfection, or enforcement of a security interest in the lessor's interest under the lease contract or the lessor's residual interest in the goods is not a transfer that materially impairs the lessee's prospect of obtaining return performance or materially changes the duty of or materially increases the burden or risk imposed on the lessee within the purview of KRS 355.2A-303(4) unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the lessor.

Section 13. KRS 355.9-408 is repealed and reenacted to read as follows:

- (1) Except as otherwise provided in subsection (2) of this section, 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:

- (a) Would impair the creation, attachment, or perfection of a security interest; or
 - (b) 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.
- (2) Subsection (1) of this section 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.
- (3) 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:
- (a) Would impair the creation, attachment, or perfection of a security interest; or
 - (b) 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.
- (4) 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 (3) of this section would be effective under law other than this article but is ineffective under subsection (1) or (3) of this section, the creation, attachment, or perfection of a security interest in the promissory note, health-care-insurance receivable, or general intangible:
- (a) Is not enforceable against the person obligated on the promissory note or the account debtor;
 - (b) Does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;
 - (c) 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;
 - (d) 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;
 - (e) 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

- (f) Does not entitle the secured party to enforce the security interest in the promissory note, health-care-insurance receivable, or general intangible.
- (5) This section prevails over any inconsistent provisions of the following statutes and any administrative regulations based on those statutes: KRS 56.230(2), 138.320(3), 138.665(4), 138.720(5), 139.250, 154A.400(3), 190.047(1), 190.070(2)(c), 217B.535(2), 228.070(2), 230.300(9), 234.330(10), 243.630(2), 260.730(3), 260.815, 288.460(2), 292.320(2)(b), 294.036(3), 304.3-410(2)(f), 304.3-520(5), 333.080, 350.135(1), 365.430(27), and 368.070(2).
- (6) Subsection (3) of this section does not apply to the following statutes and to administrative regulations promulgated under the authority of those statutes: KRS 304.2-260, KRS 304.24-420, Subtitle 33 of KRS Chapter 304, and Subtitle 37 of KRS Chapter 304.

PART C

AMENDMENTS OF EXISTING STATUTES

Section 14. KRS 355.5-103, as effective July 1, 2001, is amended to read as follows:

- (1) This article applies to letters of credit and to certain rights and obligations arising out of transactions involving letters of credit.
- (2) The statement of a rule in this article does not by itself require, imply, or negate application of the same or a different rule to a situation not provided for, or to a person not specified, in this article.
- (3) With the exception of this subsection, subsections (1) and (4) of this section, KRS 355.5-102(1)(i) and (j), 355.5-106(4), and 355.5-114(4), and *except* to the extent prohibited in KRS 355.1-102(3) and 355.5-117(4), the effect of this article may be varied by agreement or by a provision stated or incorporated by reference in an undertaking. A term in an agreement or undertaking generally excusing liability or generally limiting remedies for failure to perform obligations is not sufficient to vary obligations prescribed by this article.
- (4) Rights and obligations of an issuer to a beneficiary or a nominated person under a letter of credit are independent of the existence, performance, or nonperformance of a contract or arrangement out of which the letter of credit arises or which underlies it, including contracts or arrangements between the issuer and the applicant and between the applicant and the beneficiary.

Section 15. KRS 355.8-110, as effective July 1, 2001, is amended to read as follows:

- (1) The local law of the issuer's jurisdiction, as specified in subsection (4) of this section, governs:
- (a) The validity of a security;
- (b) The rights and duties of the issuer with respect to registration of transfer;
- (c) The effectiveness of registration of transfer by the issuer;
- (d) Whether the issuer owes any duties to an adverse claimant to a security; and
- (e) Whether an adverse claim can be asserted against a person to whom transfer of a certificated or uncertificated security is registered or a person who obtains control of an uncertificated security.

- (2) The local law of the securities intermediary's jurisdiction, as specified in subsection (5) of this section, governs:
 - (a) Acquisition of a security entitlement from the securities intermediary;
 - (b) The rights and duties of the securities intermediary and entitlement holder arising out of a security entitlement;
 - (c) Whether the securities intermediary owes any duties to an adverse claimant to a security entitlement; and
 - (d) Whether an adverse claim can be asserted against a person who acquires a security entitlement from the securities intermediary or a person who purchases a security entitlement or interest therein from an entitlement holder.
- (3) The local law of the jurisdiction in which a security certificate is located at the time of delivery governs whether an adverse claim can be asserted against a person to whom the security certificate is delivered.
- (4) "Issuer's jurisdiction" means the jurisdiction under which the issuer of the security is organized or, if permitted by the law of that jurisdiction, the law of another jurisdiction specified by the issuer. An issuer organized under the law of this Commonwealth may specify the law of another jurisdiction as the law governing the matters specified in subsection (1)(b) to (e) of this section.
- (5) The following rules determine a "securities intermediary's jurisdiction" for purposes of this section:
 - (a) If an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that a particular jurisdiction is the securities intermediary's jurisdiction for purposes of this part of this article, this article, or Article 9 of this chapter, that jurisdiction is the securities intermediary's jurisdiction.
 - (b) If paragraph (a) of this subsection does not apply and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.
 - (c) If neither paragraph (a) nor paragraph (b) applies and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.
 - (d) If none of the preceding paragraphs of this subsection applies, the securities intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the entitlement holder's account is located.
 - (e) If none of the preceding paragraphs of this subsection applies, the securities intermediary's jurisdiction is the jurisdiction in which ~~is located~~ the chief executive office of the securities intermediary is located.
- (6) A securities intermediary's jurisdiction is not determined by the physical location of certificates representing financial assets, or by the jurisdiction in which is organized the issuer of the financial asset with respect to which an entitlement holder has a security

entitlement, or by the location of facilities for data processing or other record keeping concerning the account.

Section 16. KRS 365.015 is amended to read as follows:

- (1) The real name of an individual shall include his or her surname at birth, or his or her name as changed by a court of competent jurisdiction, or the surname of a married woman; the real name of a domestic general partnership is that name which includes the real name of each of the partners; the real name of a registered limited liability partnership is the name stated in its statement of registered limited liability partnership filed under KRS Chapter 362; the real name of a domestic limited partnership is that name stated in its certificate of limited partnership filed pursuant to KRS Chapter 362; the real name of a domestic business trust is the name set forth in the declaration of trust; the real name of a domestic corporation is the name set forth in its articles of incorporation; and the real name of a domestic limited liability company is the name set forth in its articles of organization. The real name of a foreign general partnership, including a foreign registered limited liability partnership, or limited partnership and of a foreign business trust is the name recognized by the laws of the foreign state under which it is formed as being the real name or the fictitious name adopted for use in this state; the real name of a foreign registered limited liability partnership is the name stated in its statement of foreign registered limited liability partnership filed under KRS Chapter 362; the real name of a foreign corporation is the name set forth in its articles of incorporation or the fictitious name adopted for use in this state under KRS 271B.15-060; and the real name of a foreign limited liability company is the name set forth in its articles of organization or the fictitious name adopted for use in this state under KRS 275.410.
- (2)
 - (a) No individual, general partnership, including a registered limited liability partnership, limited partnership, business trust, corporation, or limited liability company shall conduct or transact business in this state under an assumed name or any style other than his or its real name, as defined in subsection (1) of this section, unless such individual, partnership, limited partnership, business trust, corporation, or limited liability company has filed a certificate of assumed name;
 - (b) The certificate shall state the assumed name under which the business will be conducted or transacted, the real name of the individual, partnership, limited partnership, business trust, corporation, or limited liability company and his or its address, including street and number, if any;
 - (c) A separate certificate shall be filed for each assumed name;
 - (d) No certificate to be filed with the Secretary of State shall set forth an assumed name which is not distinguishable upon the records of the Secretary of State from any other name previously filed and on record with the Secretary of State;
 - (e) The certificate shall be executed for an individual, by the individual; for a general partnership, including a registered limited liability partnership, by at least one (1) partner authorized to do so by the partners; for a limited partnership, by a general partner; for a business trust, by the trustees; for a corporation, by any person authorized to act for the corporation; and for a limited liability company, by a member or manager authorized to act for the limited liability company.
- (3) The certificate of assumed name for an individual shall be filed with the county clerk where the person is deemed a resident~~[for the purposes of and]~~ under the provisions of KRS **186A.190(2)(a) to (j)**~~[Chapter 355]~~. The certificate of assumed name for a general

partnership, including a registered limited liability partnership, limited partnership, business trust, corporation, or limited liability company shall be delivered to the Secretary of State for filing, accompanied by one (1) exact or conformed copy. One (1) of the exact or conformed copies stamped as "filed" by the Secretary of State shall be filed with the county clerk of the county where the entity is deemed a resident~~[for the purposes of and]~~ under the provisions of KRS *186A.190(2)(a) to (j)*~~[Chapter 355]~~. If the entity is not deemed a resident of a county in the Commonwealth, the entity shall file only with the Secretary of State.

- (4) An assumed name shall be effective for a term of five (5) years from the date of registration and may be renewed for successive terms upon filing a renewal certificate within six (6) months prior to the expiration of the term, in the same manner of filing the original certificate as set out in subsection (3) of this section. Any certificate in effect on July 15, 1998, shall continue in effect for five (5) years and may be renewed by filing a renewal certificate with the Secretary of State.
- (5) Upon discontinuing the use of an assumed name, the certificate shall be withdrawn by filing a certificate in the office wherein the original certificate of assumed name was filed. The certificate of withdrawal shall state the assumed name, the real name and address of the party transacting business and the date upon which the original certificate was filed. The certificate of withdrawal shall be signed for a general partnership, including a registered limited liability partnership, by at least one (1) partner authorized to do so by the partners, for a limited partnership by a general partner, for a business trust by the trustees, for a corporation by any person authorized to act for the corporation, and for a limited liability company by a member or manager authorized to act for the limited liability company.
- (6) A general partnership shall amend an assumed name to reflect a change in the identity of partners. The amendment shall set forth:
 - (a) The assumed name and date of original filing;
 - (b) A statement setting out the changes in identity of the partners; and
 - (c) Shall be signed by at least one (1) partner authorized to do so by the partners.
- (7) The county clerk shall receive a fee pursuant to KRS 64.012 for filing each certificate, and the Secretary of State shall receive a fee of twenty dollars (\$20) for filing each certificate, amendment, and renewal certificate.

PART D

REPEAL OF EXISTING STATUTES

Section 17. The following KRS section is repealed:

14.150 Kentucky Lien Information System.

PART E

NONCODIFIED PROVISIONS

Section 18. Nothing in this Act shall be construed under KRS 7.123(4) as appearing to effect any substantive change in the statute law of Kentucky, and the actions contained within this Act shall not operate under KRS 446.250 or 446.260 to defeat any amendments in other Acts of this 2001 Regular Session of the Kentucky General Assembly to the statutes contained in this Act.

Section 19. This Act takes effect July 1, 2001.

Approved March 19, 2001