

AN ACT relating to property.

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

➔SECTION 1. KRS 355.7-101 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

*This Article may be cited as Uniform Commercial Code-Documents of Title.*

➔SECTION 2. KRS 355.7-102 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

*(1) In this article, unless the context otherwise requires:*

*(a) "Bailee" means a person that by a warehouse receipt, bill of lading, or other document of title acknowledges possession of goods and contracts to deliver them;*

*(b) "Carrier" means a person that issues a bill of lading;*

*(c) "Consignee" means a person named in a bill of lading to which or to whose order the bill promises delivery;*

*(d) "Consignor" means a person named in a bill of lading as the person from which the goods have been received for shipment;*

*(e) "Delivery order" means a record that contains an order to deliver goods directed to a warehouse, carrier, or other person that in the ordinary course of business issues warehouse receipts or bills of lading;*

*(f) Reserved;*

*(g) "Goods" means all things that are treated as movable for the purposes of a contract for storage or transportation;*

*(h) "Issuer" means a bailee that issues a document of title or, in the case of an unaccepted delivery order, the person that orders the possessor of goods to deliver. The term includes a person for which an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, even if the issuer did not receive any*

goods, the goods were misdescribed, or in any other respect the agent or employee violated the issuer's instructions;

(i) "Person entitled under the document" means the holder, in the case of a negotiable document of title, or the person to which delivery of the goods is to be made by the terms of, or pursuant to instructions in a record under, a nonnegotiable document of title;

(j) Reserved;

(k) "Sign" means, with present intent to authenticate or adopt a record:

1. To execute or adopt a tangible symbol; or

2. To attach to or logically associate with the record an electronic sound, symbol, or process;

(l) "Shipper" means a person that enters into a contract of transportation with a carrier; and

(m) "Warehouse" means a person engaged in the business of storing goods for hire.

(2) Definitions in other articles applying to this article and the sections in which they appear are:

(a) "Contract for sale," KRS 355.2-106;

(b) "Lessee in ordinary course," KRS 355.2A-103; and

(c) "'Receipt' of goods," KRS 355.2-103.

(3) In addition, Subtitle 1 of KRS Chapter 355 contains general definitions and principles of construction and interpretation applicable throughout this article.

➔SECTION 3. KRS 355.7-103 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

(1) This article is subject to any treaty or statute of the United States or a regulatory statute of this state to the extent the treaty, statute, or regulatory statute is applicable.

(2) This article does not repeal or modify any law prescribing the form or contents of a document of title or the services or facilities to be afforded by a bailee, or otherwise regulating a bailee's businesses in respects not specifically treated in this article. However, violation of these laws does not affect the status of a document of title that otherwise complies with the definition of a document of title.

(3) This article modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. secs. 7001, et. seq, but does not modify, limit, or supersede Section 101(c) of that Act, 15 U.S.C. sec. 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that Act, 15 U.S.C. sec. 7003(b).

(4) To the extent there is a conflict between the Uniform Electronic Transactions Act and this article, this article governs.

➔SECTION 4. KRS 355.7-104 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

(1) A document of title is negotiable if by its terms the goods are to be delivered to bearer or to the order of a named person.

(2) A document of title other than one described in subsection (1) of this section is nonnegotiable. A bill of lading that states that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against an order in a record signed by the same or another named person.

(3) A document of title is nonnegotiable if, at the time it is issued, the document has a conspicuous legend, however expressed, that it is nonnegotiable.

➔SECTION 5. KRS 355.7-105 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

(1) Upon request of a person entitled under an electronic document of title, the issuer

of the electronic document may issue a tangible document of title as a substitute for the electronic document if:

- (a) The person entitled under the electronic document surrenders control of the document to the issuer; and
- (b) The tangible document when issued contains a statement that it is issued in substitution for the electronic document.

(2) Upon issuance of a tangible document of title in substitution for an electronic document of title in accordance with subsection (1) of this section:

- (a) The electronic document ceases to have any effect or validity; and
- (b) The person that procured issuance of the tangible document warrants to all subsequent persons entitled under the tangible document that the warrantor was a person entitled under the electronic document when the warrantor surrendered control of the electronic document to the issuer.

(3) Upon request of a person entitled under a tangible document of title, the issuer of the tangible document may issue an electronic document of title as a substitute for the tangible document if:

- (a) The person entitled under the tangible document surrenders possession of the document to the issuer; and
- (b) The electronic document when issued contains a statement that it is issued in substitution for the tangible document.

(4) Upon issuance of the electronic document of title in substitution for a tangible document of title in accordance with subsection (1) of this section:

- (a) The tangible document ceases to have any effect or validity; and
- (b) The person that procured issuance of the electronic document warrants to all subsequent persons entitled under the electronic document that the warrantor was a person entitled under the tangible document when the warrantor surrendered possession of the tangible document to the issuer.

➔SECTION 6. A NEW SECTION OF ARTICLE 7 OF KRS CHAPTER 355 IS TO BE NUMBERED 355.7-106 IS CREATED TO READ AS FOLLOWS:

(1) A person has control of an electronic document of title if a system employed for evidencing the transfer of interests in the electronic document reliably establishes that person as the person to which the electronic document was issued or transferred.

(2) A system satisfies subsection (1) of this section, and a person is deemed to have control of an electronic document of title, if the document is created, stored, and assigned in such a manner that:

(a) A single authoritative copy of the document exists which is unique, identifiable, and, except as otherwise provided in paragraphs (d), (e), and (f) of this subsection, unalterable;

(b) The authoritative copy identifies the person asserting control as:

1. The person to which the document was issued; or

2. If the authoritative copy indicates that the document has been transferred, the person to which the document was most recently transferred;

(c) The authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(d) Copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(e) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(f) Any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

➔SECTION 7. KRS 355.7-201 IS REPEALED AND REENACTED TO READ

AS FOLLOWS:

(1) A warehouse receipt may be issued by any warehouse.

(2) If goods, including distilled spirits and agricultural commodities, are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods is deemed to be a warehouse receipt even if issued by a person that is the owner of the goods and is not a warehouse.

➔SECTION 8. KRS 355.7-202 IS REPEALED AND REENACTED TO READ

AS FOLLOWS:

(1) A warehouse receipt need not be in any particular form.

(2) Unless a warehouse receipt provides for each of the following, the warehouse is liable for damages caused to a person injured by its omission:

(a) The location of the warehouse facility where the goods are stored;

(b) The date of issue of the receipt;

(c) The unique identification code of the receipt;

(d) A statement whether the goods received will be delivered to the bearer, to a named person, or to a named person or its order;

(e) The rate of storage and handling charges, but if goods are stored under a field warehousing arrangement, a statement of that fact is sufficient on a nonnegotiable receipt;

(f) A description of the goods or the packages containing them;

(g) The signature of the warehouse or its agent;

(h) If the receipt is issued for goods that the warehouse owns, either solely, jointly, or in common with others, the fact of that ownership; and

(i) A statement of the amount of advances made and of liabilities incurred for which the warehouse claims a lien or security interest, but if the precise amount of advances made or of liabilities incurred is, at the time of the

issue of the receipt, unknown to the warehouse or to its agent that issued the receipt, a statement of the fact that advances have been made or liabilities incurred and the purpose of the advances or liabilities is sufficient.

(3) A warehouse may insert in its receipt any terms that are not contrary to the Uniform Commercial Code and do not impair its obligation of delivery under KRS 355.7-403 or its duty of care under KRS 355.7-204. Any contrary provisions are ineffective.

➔SECTION 9. KRS 355.7-203 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

A party to or purchaser for value in good faith of a document of title, other than a bill of lading, that relies upon the description of the goods in the document may recover from the issuer damages caused by the nonreceipt or misdescription of the goods, except to the extent that:

(1) The document conspicuously indicates that the issuer does not know whether all or part of the goods in fact were received or conform to the description, such as a case in which the description is in terms of marks or labels or kind, quantity, or condition, or the receipt or description is qualified by "contents, condition, and quality unknown," "said to contain," or words of similar import, if the indication is true; or

(2) The party or purchaser otherwise has notice of the nonreceipt or misdescription.

➔SECTION 10. KRS 355.7-204 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

(1) A warehouse is liable for damages for loss of or injury to the goods caused by its failure to exercise care with regard to the goods that a reasonably careful person would exercise under similar circumstances. However, unless otherwise agreed, the warehouse is not liable for damages that could not have been avoided by the

exercise of that care.

(2) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage beyond which the warehouse is not liable. Such a limitation is not effective with respect to the warehouse's liability for conversion to its own use. The warehouse's liability, on request of the bailor in a record at the time of signing such storage agreement or within a reasonable time after receipt of the warehouse receipt, may be increased on part or all of the goods covered by the storage agreement or the warehouse receipt. In this event, increased rates may be charged based on an increased valuation of the goods.

(3) Reasonable provisions as to the time and manner of presenting claims and commencing actions based on the bailment may be included in the warehouse receipt or storage agreement.

➔SECTION 11. KRS 355.7-205 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

A buyer in the ordinary course of business of fungible goods sold and delivered by a warehouse that is also in the business of buying and selling such goods takes the goods free of any claim under a warehouse receipt even if the receipt is negotiable and has been duly negotiated.

➔SECTION 12. KRS 355.7-206 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

(1) A warehouse, by giving notice to the person on whose account the goods are held and any other person known to claim an interest in the goods, may require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document of title or, if a period is not fixed, within a stated period not less than thirty (30) days after the warehouse gives notice. If the goods are not removed before the date specified in the notice,



the warehouse may sell them pursuant to KRS 355.7-210.

- (2) If a warehouse in good faith believes that goods are about to deteriorate or decline in value to less than the amount of its lien within the time provided in subsection (1) of this section and KRS 355.7-210, the warehouse may specify in the notice given under subsection (1) of this section any reasonable shorter time for removal of the goods and, if the goods are not removed, may sell them at public sale held not less than one (1) week after a single advertisement or posting.
- (3) If, as a result of a quality or condition of the goods of which the warehouse did not have notice at the time of deposit, the goods are a hazard to other property, the warehouse facilities, or other persons, the warehouse may sell the goods at public or private sale without advertisement or posting on reasonable notification to all persons known to claim an interest in the goods. If the warehouse, after a reasonable effort, is unable to sell the goods, it may dispose of them in any lawful manner and does not incur liability by reason of that disposition.
- (4) A warehouse shall deliver the goods to any person entitled to them under this article upon due demand made at any time before sale or other disposition under this section.
- (5) A warehouse may satisfy its lien from the proceeds of any sale or disposition under this section but shall hold the balance for delivery on the demand of any person to which the warehouse would have been bound to deliver the goods.

➔SECTION 13. KRS 355.7-207 IS REPEALED AND REENACTED TO READ

AS FOLLOWS:

- (1) Unless the warehouse receipt provides otherwise, a warehouse shall keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods. However, different lots of fungible goods may be commingled.
- (2) If different lots of fungible goods are commingled, the goods are owned in

common by the persons entitled thereto and the warehouse is severally liable to each owner for that owner's share. If, because of overissue, a mass of fungible goods is insufficient to meet all the receipts the warehouse has issued against it, the persons entitled include all holders to which overissued receipts have been duly negotiated.

➔SECTION 14. KRS 355.7-208 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

If a blank in a negotiable tangible warehouse receipt has been filled in without authority, a good faith purchaser for value and without notice of the lack of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any tangible or electronic warehouse receipt enforceable against the issuer according to its original tenor.

➔SECTION 15. KRS 355.7-209 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

(1) A warehouse has a lien against the bailor on the goods covered by a warehouse receipt or storage agreement or on the proceeds thereof in its possession for charges for storage or transportation, including demurrage and terminal charges, insurance, labor, or other charges, present or future, in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for similar charges or expenses in relation to other goods whenever deposited and it is stated in the warehouse receipt or storage agreement that a lien is claimed for charges and expenses in relation to other goods, the warehouse also has a lien against the goods covered by the warehouse receipt or storage agreement or on the proceeds thereof in its possession for those charges and expenses, whether or not the other goods have been delivered by the warehouse. However, as against a person to which a negotiable warehouse

receipt is duly negotiated, a warehouse's lien is limited to charges in an amount or at a rate specified in the warehouse receipt or, if no charges are so specified, to a reasonable charge for storage of the specific goods covered by the receipt subsequent to the date of the receipt.

(2) The warehouse may also reserve a security interest under Article 9 of this chapter against the bailor for the maximum amount specified on the receipt for charges other than those specified in subsection (1) of this section, such as for money advanced and interest. A security interest is governed by Article 9 of this Chapter.

(3) A warehouse's lien for charges and expenses under subsection (1) of this section or a security interest under subsection (2) of this section is also effective against any person that so entrusted the bailor with possession of the goods that a pledge of them by the bailor to a good faith purchaser for value would have been valid. However, the lien or security interest is not effective against a person that before issuance of a document of title had a legal interest or a perfected security interest in the goods and that did not:

(a) Deliver or entrust the goods or any document covering the goods to the bailor or the bailor's nominee with actual or apparent authority to ship, store, or sell; or with power to obtain delivery under KRS 355.7-403; or with power of disposition under KRS 355.2-403, 355.2A-304(2), 355.2A-305(2), or 355.9-320 or other statute or rule of law; or

(b) Acquiesce in the procurement by the bailor or its nominee of any document.

(4) A warehouse's lien on household goods for charges and expenses in relation to the goods under subsection (1) of this section is also effective against all persons if the depositor was the legal possessor of the goods at the time of deposit. In this subsection, "household goods" means furniture, furnishings, or personal effects used by the depositor in a dwelling.

(5) A warehouse loses its lien on any goods that it voluntarily delivers or

unjustifiably refuses to deliver.

➔SECTION 16. KRS 355.7-210 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

(1) Except as otherwise provided in subsection (2) of this section, a warehouse's lien may be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification shall include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the warehouse is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The warehouse has sold in a commercially reasonable manner if the warehouse sells the goods in the usual manner in any recognized market therefor, sells at the price current in that market at the time of the sale, or has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.

(2) A warehouse's lien on goods, other than goods stored by a merchant in the course of its business, may be enforced only if the following requirements are satisfied:

(a) All persons known to claim an interest in the goods shall be notified;

(b) The notification shall include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than ten (10) days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time

and place;

(c) The sale shall conform to the terms of the notification;

(d) The sale shall be held at the nearest suitable place to where the goods are held or stored; and

(e) After the expiration of the time given in the notification, an advertisement of the sale shall be published once a week for two (2) weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement shall include a description of the goods, the name of the person on whose account the goods are being held, and the time and place of the sale. The sale shall take place at least fifteen (15) days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement shall be posted at least ten (10) days before the sale in not less than six (6) conspicuous places in the neighborhood of the proposed sale.

(3) Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying with this section. In that event, the goods may not be sold but shall be retained by the warehouse subject to the terms of the receipt and this article.

(4) A warehouse may buy at any public sale held pursuant to this section.

(5) A purchaser in good faith of goods sold to enforce a warehouse's lien takes the goods free of any rights of persons against which the lien was valid, despite the warehouse's noncompliance with this section.

(6) A warehouse may satisfy its lien from the proceeds of any sale pursuant to this section but shall hold the balance, if any, for delivery on demand to any person to which the warehouse would have been bound to deliver the goods.

(7) The rights provided by this section are in addition to all other rights allowed by

law to a creditor against a debtor.

(8) If a lien is on goods stored by a merchant in the course of its business, the lien may be enforced in accordance with subsection (1) or (2) of this section.

(9) A warehouse is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of willful violation, is liable for conversion.

➔SECTION 17. KRS 355.7-301 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

(1) A consignee of a nonnegotiable bill of lading which has given value in good faith, or a holder to which a negotiable bill has been duly negotiated, relying upon the description of the goods in the bill or upon the date shown in the bill, may recover from the issuer damages caused by the misdating of the bill or the nonreceipt or misdescription of the goods, except to the extent that the document of title indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, such as in a case in which the description is in terms of marks or labels or kind, quantity, or condition or the receipt or description is qualified by "contents or condition of contents of packages unknown," "said to contain," "shipper's weight, load and count," or words of similar import, if that indication is true.

(2) If goods are loaded by the issuer of the bill of lading, the issuer shall count the packages of goods if shipped in packages and ascertain the kind and quantity if shipped in bulk and words such as "shipper's weight, load and count," or words of similar import indicating that the description was made by the shipper are ineffective except as to goods concealed by packages.

(3) If bulk goods are loaded by a shipper that makes available to the issuer of the bill of lading adequate facilities for weighing those goods, the issuer shall ascertain the kind and quantity within a reasonable time after receiving the shipper's

request in a record to do so. In that case, "shipper's weight" or words of similar import are ineffective.

(4) The issuer, by including in the bill of lading the words "shipper's weight, load and count," or words of similar import, may indicate that the goods were loaded by the shipper, and, if that statement is true, the issuer is not liable for damages caused by the improper loading. However, omission of such words does not imply liability for damages caused by improper loading.

(5) A shipper guarantees to the issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition, and weight, as furnished by the shipper, and the shipper shall indemnify the issuer against damage caused by inaccuracies in those particulars. This right of the issuer to that indemnity does not limit its responsibility or liability under the contract of carriage to any person other than the shipper.

➔SECTION 18. KRS 355.7-302 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

(1) The issuer of a through bill of lading or other document of title embodying an undertaking to be performed in part by a person acting as its agent or by a performing carrier is liable to any person entitled to recover on the document for any breach by the other person or the performing carrier of its obligation under the document. However, to the extent that the bill covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation, this liability for breach by the other person or the performing carrier may be varied by agreement of the parties.

(2) If goods covered by a through bill of lading or other document of title embodying an undertaking to be performed in part by a person other than the issuer are received by that person, the person is subject, with respect to its own performance

while the goods are in its possession, to the obligation of the issuer. The person's obligation is discharged by delivery of the goods to another person pursuant to the document and does not include liability for breach by any other person or by the issuer.

(3) The issuer of a through bill of lading or other document of title described in subsection (1) of this section is entitled to recover from the performing carrier, or other person in possession of the goods when the breach of the obligation under the document occurred:

(a) The amount it may be required to pay to any person entitled to recover on the document for the breach, as may be evidenced by any receipt, judgment, or transcript of judgment; and

(b) The amount of any expense reasonably incurred by the issuer in defending any action commenced by any person entitled to recover on the document for the breach.

➔SECTION 19. KRS 355.7-303 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

(1) Unless the bill of lading otherwise provides, a carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods, without liability for misdelivery, on instructions from:

(a) The holder of a negotiable bill;

(b) The consignor on a nonnegotiable bill even if the consignee has given contrary instructions;

(c) The consignee on a nonnegotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the tangible bill or in control of the electronic bill; or

(d) The consignee on a nonnegotiable bill, if the consignee is entitled as against



the consignor to dispose of the goods.

(2) Unless instructions described in subsection (1) of this section are included in a negotiable bill of lading, a person to which the bill is duly negotiated may hold the bailee according to the original terms.

➔SECTION 20. KRS 355.7-304 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

(1) Except as customary in international transportation, a tangible bill of lading may not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.

(2) If a tangible bill of lading is lawfully issued in a set of parts, each of which contains an identification code and is expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts constitutes one bill.

(3) If a tangible negotiable bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to which the first due negotiation is made prevails as to both the document of title and the goods even if any later holder may have received the goods from the carrier in good faith and discharged the carrier's obligation by surrendering its part.

(4) A person that negotiates or transfers a single part of a tangible bill of lading issued in a set is liable to holders of that part as if it were the whole set.

(5) The bailee is obliged to deliver in accordance with Article 4 of this chapter against the first presented part of a tangible bill of lading lawfully issued in a set. Delivery in this manner discharges the bailee's obligation on the whole bill.

➔SECTION 21. KRS 355.7-305 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

(1) Instead of issuing a bill of lading to the consignor at the place of shipment, a carrier, at the request of the consignor, may procure the bill to be issued at

destination or at any other place designated in the request.

(2) Upon request of any person entitled as against a carrier to control the goods while in transit and on surrender of possession or control of any outstanding bill of lading or other receipt covering the goods, the issuer, subject to KRS 355.7-105, may procure a substitute bill to be issued at any place designated in the request.

➔SECTION 22. KRS 355.7-306 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

An unauthorized alteration or filling in of a blank in a bill of lading leaves the bill enforceable according to its original tenor.

➔SECTION 23. KRS 355.7-307 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

(1) A carrier has a lien on the goods covered by a bill of lading or on the proceeds thereof in its possession for charges after the date of the carrier's receipt of the goods for storage or transportation, including demurrage and terminal charges, and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. However, against a purchaser for value of a negotiable bill of lading, a carrier's lien is limited to charges stated in the bill or the applicable tariffs or, if no charges are stated, a reasonable charge.

(2) A lien for charges and expenses under subsection (1) of this section on goods that the carrier was required by law to receive for transportation is effective against the consignor or any person entitled to the goods unless the carrier had notice that the consignor lacked authority to subject the goods to those charges and expenses. Any other lien under subsection (1) of this section is effective against the consignor and any person that permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked

authority.

(3) A carrier loses its lien on any goods that it voluntarily delivers or unjustifiably refuses to deliver.

➔SECTION 24. KRS 355.7-308 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

(1) A carrier's lien on goods may be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification shall include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The carrier has sold goods in a commercially reasonable manner if the carrier sells the goods in the usual manner in any recognized market therefor, sells at the price current in that market at the time of the sale, or has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.

(2) Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying with this section. In that event, the goods may not be sold but shall be retained by the carrier, subject to the terms of the bill of lading and this article.

(3) A carrier may buy at any public sale pursuant to this section.

(4) A purchaser in good faith of goods sold to enforce a carrier's lien takes the goods

free of any rights of persons against which the lien was valid, despite the carrier's noncompliance with this section.

(5) A carrier may satisfy its lien from the proceeds of any sale pursuant to this section but shall hold the balance, if any, for delivery on demand to any person to which the carrier would have been bound to deliver the goods.

(6) The rights provided by this section are in addition to all other rights allowed by law to a creditor against a debtor.

(7) A carrier's lien may be enforced pursuant to either subsection (1) of this section or the procedure set forth in KRS 355.7-210(2).

(8) A carrier is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of willful violation, is liable for conversion.

➔SECTION 25. KRS 355.7-309 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

(1) A carrier that issues a bill of lading, whether negotiable or nonnegotiable, shall exercise the degree of care in relation to the goods which a reasonably careful person would exercise under similar circumstances. This subsection does not affect any statute, regulation, or rule of law that imposes liability upon a common carrier for damages not caused by its negligence.

(2) Damages may be limited by a term in the bill of lading or in a transportation agreement that the carrier's liability may not exceed a value stated in the bill or transportation agreement if the carrier's rates are dependent upon value and the consignor is afforded an opportunity to declare a higher value and the consignor is advised of the opportunity. However, such a limitation is not effective with respect to the carrier's liability for conversion to its own use.

(3) Reasonable provisions as to the time and manner of presenting claims and commencing actions based on the shipment may be included in a bill of lading or

a transportation agreement.

➔SECTION 26. KRS 355.7-401 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

The obligations imposed by this article on an issuer apply to a document of title even if:

- (1) The document does not comply with the requirements of this article or of any other statute, rule, or regulation regarding its issue, form, or content;
- (2) The issuer violated laws regulating the conduct of its business;
- (3) The goods covered by the document were owned by the bailee when the document was issued; or
- (4) The person issuing the document is not a warehouse but the document purports to be a warehouse receipt.

➔SECTION 27. KRS 355.7-402 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

A duplicate or any other document of title purporting to cover goods already represented by an outstanding document of the same issuer does not confer any right in the goods, except as provided in the case of tangible bills of lading in a set of parts, overissue of documents for fungible goods, substitutes for lost, stolen, or destroyed documents, or substitute documents issued pursuant to KRS 355.7-105. The issuer is liable for damages caused by its overissue or failure to identify a duplicate document by a conspicuous notation.

➔SECTION 28. KRS 355.7-403 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) A bailee shall deliver the goods to a person entitled under a document of title if the person complies with subsections (2) and (3) of this section, unless and to the extent that the bailee establishes any of the following:
  - (a) Delivery of the goods to a person whose receipt was rightful as against the

claimant;

(b) Damage to or delay, loss, or destruction of the goods for which the bailee is not liable;

(c) Previous sale or other disposition of the goods in lawful enforcement of a lien or on a warehouse's lawful termination of storage;

(d) The exercise by a seller of its right to stop delivery pursuant to KRS 355.2-705 or by a lessor of its right to stop delivery pursuant to KRS 355.2A-526;

(e) A diversion, reconsignment, or other disposition pursuant to KRS 355.7-303;

(f) Release, satisfaction, or any other fact affording a personal defense against the claimant; or

(g) Any other lawful excuse.

(2) A person claiming goods covered by a document of title shall satisfy the bailee's lien if the bailee so requests or the bailee is prohibited by law from delivering the goods until the charges are paid.

(3) Unless a person claiming the goods is one against which the document of title does not confer a right under KRS 355.7-503(1):

(a) The person claiming under a document shall surrender possession or control of any outstanding negotiable document covering the goods for cancellation or indication of partial deliveries; and

(b) The bailee shall cancel the document or conspicuously indicate in the document the partial delivery or be liable to any person to which the document is duly negotiated.

➔SECTION 29. KRS 355.7-404 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

A bailee that in good faith has received goods and delivered or otherwise disposed of the goods according to the terms of a document of title or pursuant to this article is not

liable for the goods even if:

- (1) The person from which the bailee received the goods did not have authority to procure the document or to dispose of the goods; or
- (2) The person to which the bailee delivered the goods did not have authority to receive the goods.

➔SECTION 30. KRS 355.7-501 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

(1) The following rules apply to a negotiable tangible document of title:

- (a) If the document's original terms run to the order of a named person, the document is negotiated by the named person's indorsement and delivery. After the named person's indorsement in blank or to bearer, any person may negotiate the document by delivery alone;
- (b) If the document's original terms run to bearer, it is negotiated by delivery alone;
- (c) If the document's original terms run to the order of a named person and it is delivered to the named person, the effect is the same as if the document had been negotiated;
- (d) Negotiation of the document after it has been indorsed to a named person requires indorsement by the named person as well as delivery; and
- (e) A document is duly negotiated if it is negotiated in the manner stated in this subsection to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves receiving the document in settlement or payment of a monetary obligation;

(2) The following rules apply to a negotiable electronic document of title:

- (a) If the document's original terms run to the order of a named person or to

bearer, the document is negotiated by delivery of the document to another person. Indorsement by the named person is not required to negotiate the document.

(b) If the document's original terms run to the order of a named person and the named person has control of the document, the effect is the same as if the document had been negotiated.

(c) A document is duly negotiated if it is negotiated in the manner stated in this subsection to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves taking delivery of the document in settlement or payment of a monetary obligation.

(3) Indorsement of a nonnegotiable document of title neither makes it negotiable nor adds to the transferee's rights.

(4) The naming in a negotiable bill of lading of a person to be notified of the arrival of the goods does not limit the negotiability of the bill or constitute notice to a purchaser of the bill of any interest of that person in the goods.

➔SECTION 31. KRS 355.7-502 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

(1) Subject to KRS 355.7-205 and 355.7-503, a holder to which a negotiable document of title has been duly negotiated acquires thereby:

(a) Title to the document;

(b) Title to the goods;

(c) All rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and

(d) The direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by the issuer except



those arising under the terms of the document or under this article. In the case of a delivery order, the bailee's obligation accrues only upon the bailee's acceptance of the delivery order and the obligation acquired by the holder is that the issuer and any indorser will procure the acceptance of the bailee.

(2) Subject to KRS 355.7-503, title and rights acquired by due negotiation are not defeated by any stoppage of the goods represented by the document of title or by surrender of the goods by the bailee and are not impaired even if:

(a) The due negotiation or any prior due negotiation constituted a breach of duty;

(b) Any person has been deprived of possession of a negotiable tangible document or control of a negotiable electronic document by misrepresentation, fraud, accident, mistake, duress, loss, theft, or conversion; or

(c) A previous sale or other transfer of the goods or document has been made to a third person.

➔SECTION 32. KRS 355.7-503 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

(1) A document of title confers no right in goods against a person that before issuance of the document had a legal interest or a perfected security interest in the goods and that did not:

(a) Deliver or entrust the goods or any document covering the goods to the bailor or the bailor's nominee with actual or apparent authority to ship, store, or sell; with power to obtain delivery under KRS 355.7-403; or with power of disposition under KRS 355.2-403, 355.2A-304(2), 355.2A-305(2), or 355.9-320 or other statute or rule of law; or

(b) Acquiesce in the procurement by the bailor or its nominee of any document.

- (2) Title to goods based upon an unaccepted delivery order is subject to the rights of any person to which a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. That title may be defeated under KRS 355.7-504 to the same extent as the rights of the issuer or a transferee from the issuer.
- (3) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of any person to which a bill issued by the freight forwarder is duly negotiated. However, delivery by the carrier in accordance with KRS 355.7-401 to 355.7-404 pursuant to its own bill of lading discharges the carrier's obligation to deliver.

➔SECTION 33. KRS 355.7-504 IS REPEALED AND REENACTED TO READ  
AS FOLLOWS:

- (1) A transferee of a document of title, whether negotiable or nonnegotiable, to which the document has been delivered but not duly negotiated, acquires the title and rights that its transferor had or had actual authority to convey.
- (2) In the case of a nonnegotiable document of title, until but not after the bailee receives notice of the transfer, the rights of the transferee may be defeated:
- (a) By those creditors of the transferor that could treat the transfer as void under KRS 355.2-402 or 355.2A-308;
- (b) By a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of the buyer's rights;
- (c) By a lessee from the transferor in ordinary course of business if the bailee has delivered the goods to the lessee or received notification of the lessee's rights; or
- (d) As against the bailee, by good faith dealings of the bailee with the transferor.
- (3) A diversion or other change of shipping instructions by the consignor in a

nonnegotiable bill of lading which causes the bailee not to deliver the goods to the consignee defeats the consignee's title to the goods if the goods have been delivered to a buyer in ordinary course of business or a lessee in ordinary course of business and in any event defeats the consignee's rights against the bailee.

(4) Delivery of the goods pursuant to a nonnegotiable document of title may be stopped by a seller under KRS 355.2-705 or a lessor under KRS 355.2A-526, subject to the requirements of due notification in those sections. A bailee honoring the seller's or lessor's instructions is entitled to be indemnified by the seller or lessor against any resulting loss or expense.

➔SECTION 34. KRS 355.7-505 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

The indorsement of a tangible document of title issued by a bailee does not make the indorser liable for any default by the bailee or previous indorsers.

➔SECTION 35. KRS 355.7-506 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

The transferee of a negotiable tangible document of title has a specifically enforceable right to have its transferor supply any necessary indorsement, but the transfer becomes a negotiation only as of the time the indorsement is supplied.

➔SECTION 36. KRS 355.7-507 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

If a person negotiates or delivers a document of title for value, otherwise than as a mere intermediary under KRS 355.7-508, unless otherwise agreed, the transferor warrants to its immediate purchaser only in addition to any warranty made in selling or leasing the goods that:

(1) The document is genuine;

(2) The transferor does not have knowledge of any fact that would impair the document's validity or worth; and

(3) The negotiation or delivery is rightful and fully effective with respect to the title to the document and the goods it represents.

➔SECTION 37. KRS 355.7-508 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

A collecting bank or other intermediary known to be entrusted with documents of title on behalf of another or with collection of a draft or other claim against delivery of documents warrants by the delivery of the documents only its own good faith and authority even if the collecting bank or other intermediary has purchased or made advances against the claim or draft to be collected.

➔SECTION 38. KRS 355.7-509 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

Whether a document of title is adequate to fulfill the obligations of a contract for sale, a contract for lease, or the conditions of a letter of credit is determined by Article 2, 2A, or 5 of this chapter.

➔SECTION 39. KRS 355.7-601 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

(1) If a document of title is lost, stolen, or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with the order. If the document was negotiable, a court shall not order delivery of the goods or issuance of a substitute document without the claimant's posting security unless it finds that any person that may suffer loss as a result of nonsurrender of possession or control of the document is adequately protected against the loss. If the document was nonnegotiable, the court may require security. The court may also order payment of the bailee's reasonable costs and attorney's fees in any action under this subsection.

(2) A bailee that without court order delivers goods to a person claiming under a missing negotiable document of title is liable to any person injured thereby. If the

delivery is not in good faith, the bailee is liable for conversion. Delivery in good faith is not conversion if the claimant posts security with the bailee in an amount at least double the value of the goods at the time of posting to indemnify any person injured by the delivery which files a notice of claim within one (1) year after the delivery.

➔SECTION 40. KRS 355.7-602 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

Unless a document of title was originally issued upon delivery of the goods by a person that did not have power to dispose of them, a lien does not attach by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless possession or control of the document is first surrendered to the bailee or the document's negotiation is enjoined. The bailee may not be compelled to deliver the goods pursuant to process until possession or control of the document is surrendered to the bailee or to the court. A purchaser of the document for value without notice of the process or injunction takes free of the lien imposed by judicial process.

➔SECTION 41. KRS 355.7-603 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

If more than one (1) person claims title to or possession of the goods, the bailee is excused from delivery until the bailee has a reasonable time to ascertain the validity of the adverse claims or to commence an action for interpleader. The bailee may assert an interpleader either in defending an action for nondelivery of the goods or by original action.

➔SECTION 42. A NEW SECTION OF ARTICLE 7 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS:

This article, as effective on the effective date of this Act:

(1) Applies to a document of title that is issued or a bailment that arises on or after

the effective date of this Act;

(2) Does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this article, as effective on the effective date of this Act, if the document of title had been issued or bailment had arisen after the effective date of this Act; and

(3) Does not apply to a right of action that has accrued before the effective date of this Act.

➔SECTION 43. A NEW SECTION OF ARTICLE 7 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS:

A document of title issued or a bailment that arises before the effective date of this Act and the rights, obligations, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule.

➔Section 44. KRS 355.1-201 is amended to read as follows:

- (1) Unless the context otherwise requires, words or phrases defined in this section, or in the additional definitions contained in other articles of the Uniform Commercial Code that apply to particular articles or parts thereof, have the meanings stated.
- (2) Subject to definitions contained in other articles of the Uniform Commercial Code that apply to particular articles or parts thereof:
  - (a) "Action," in the sense of a judicial proceeding, includes recoupment, counterclaim, set-off, suit in equity, and any other proceeding in which rights are determined;
  - (b) "Aggrieved party" means a party entitled to pursue a remedy;
  - (c) "Agreement," as distinguished from "contract," means the bargain of the parties in fact, as found in their language or inferred from other

circumstances, including course of performance, course of dealing, or usage of trade as provided in KRS 355.1-303;

- (d) "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company;
- (e) "Bearer" means a person *in control of a negotiable electronic document of title or a person* in possession of a negotiable instrument, *a negotiable tangible* document of title, or certificated security that is payable to bearer or indorsed in blank;
- (f) "Bill of lading" means a document *of title* evidencing the receipt of goods for shipment issued by a person engaged in the business of *directly or indirectly* transporting or forwarding goods. *The term does not include a warehouse receipt;*
- (g) "Branch" includes a separately incorporated foreign branch of a bank;
- (h) "Burden of establishing" a fact means the burden of persuading the trier of fact that the existence of the fact is more probable than its nonexistence;
- (i) "Buyer in ordinary course of business" means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover

the goods from the seller under Article 2 of this chapter may be a buyer in ordinary course of business. "Buyer in ordinary course of business" does not include a person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt;

- (j) "Conspicuous," with reference to a term, means so written, displayed, or presented that a reasonable person against which it is to operate ought to have noticed it. Whether a term is "conspicuous" or not is a decision for the court. Conspicuous terms include the following:

1. A heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and
2. Language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the language;

- (k) "Consumer" means an individual who enters into a transaction primarily for personal, family, or household purposes;
- (l) "Contract," as distinguished from "agreement," means the total legal obligation that results from the parties' agreement as determined by the Uniform Commercial Code as supplemented by any other applicable laws;
- (m) "Creditor" includes a general creditor, a secured creditor, a lien creditor, and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity, and an executor or administrator of an insolvent debtor's or assignor's estate;
- (n) "Defendant" includes a person in the position of defendant in a counterclaim, cross-claim, or third-party claim;
- (o) "Delivery," with respect to an electronic document of title means voluntary



transfer of control and with respect to an instrument, document of title, or chattel paper, means voluntary transfer of possession;

(p) "Document of title" means a record that:

1. In the regular course of business or financing is treated as adequately evidencing that the person in possession or control of the record is entitled to receive, control, hold, and dispose of the record and the goods the record covers; and
2. Purports to be issued by or addressed to a bailee and to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

The term includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt and order for delivery of goods. An electronic document of title is evidenced by a record consisting of information stored in an electronic medium. A tangible document of title is evidenced by a record consisting of information that is inscribed on a tangible medium~~[includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold, and dispose of the document and the goods it covers. To be a document of title, a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass];~~

(q) "Fault" means a default, breach, or wrongful act or omission;

(r) "Fungible goods" means:

1. Goods of which any unit, by nature or usage of trade, is the equivalent of any other like unit; or

2. Goods that by agreement are treated as equivalent;
- (s) "Genuine" means free of forgery or counterfeiting;
- (t) "Good faith," except as otherwise provided in Article 5 of this chapter, means honesty in fact and the observance of reasonable commercial standards of fair dealing;
- (u) "Holder" means:
1. The person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession; ~~{or}~~
  2. The person in possession of a document of title if the goods are deliverable either to bearer or to the order of the person in possession;
- or**
- 3. A person in control of a negotiable electronic document of title;**
- (v) "Insolvency proceeding" includes an assignment for the benefit of creditors or other proceeding intended to liquidate or rehabilitate the estate of the person involved;
- (w) "Insolvent" means:
1. Having generally ceased to pay debts in the ordinary course of business other than as a result of bona fide dispute;
  2. Being unable to pay debts as they become due; or
  3. Being insolvent within the meaning of federal bankruptcy law;
- (x) "Money" means a medium of exchange currently authorized or adopted by a domestic or foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two (2) or more countries;
- (y) "Organization" means a person other than an individual;
- (z) "Party," as distinguished from "third party," means a person that has engaged in

- a transaction or made an agreement subject to the Uniform Commercial Code;
- (aa) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity;
  - (ab) "Present value" means the amount as of a date certain of one (1) or more sums payable in the future, discounted to the date certain by use of either an interest rate specified by the parties if that rate is not manifestly unreasonable at the time the transaction is entered into or, if an interest rate is not so specified, a commercially reasonable rate that takes into account the facts and circumstances at the time the transaction is entered into;
  - (ac) "Purchase" means taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property;
  - (ad) "Purchaser" means a person that takes by purchase;
  - (ae) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;
  - (af) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal;
  - (ag) "Representative" means a person empowered to act for another, including an agent, an officer of a corporation or association, and a trustee, executor, or administrator of an estate;
  - (ah) "Right" includes remedy;
  - (ai) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. "Security interest" includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to Article 9 of

this chapter. "Security interest" does not include the special property interest of a buyer of goods on identification of those goods to a contract for sale under KRS 355.2-401, but a buyer may also acquire a "security interest" by complying with Article 9 of this chapter. Except as otherwise provided in KRS 355.2-505, the right of a seller or lessor of goods under Article 2 or 2A of this chapter to retain or acquire possession of the goods is not a "security interest," but a seller or lessor may also acquire a "security interest" by complying with Article 9 of this chapter. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer under KRS 355.2-401 is limited in effect to a reservation of a "security interest." Whether a transaction in the form of a lease creates a "security interest" is determined pursuant to KRS 355.1-203;

(aj) "Send" in connection with a writing, record, or notice means:

1. To deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and, in the case of an instrument, to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances; or
2. In any other way to cause to be received any record or notice within the time it would have arrived if properly sent;

(ak) "Signed" includes using any symbol executed or adopted with present intention to adopt or accept a writing;

(al) "State" means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States;

(am) "Surety" includes a guarantor or other secondary obligor;

(an) "Term" means a portion of an agreement that relates to a particular matter;

- (ao) "Unauthorized signature" means a signature made without actual, implied, or apparent authority. The term includes a forgery;
- (ap) "Warehouse receipt" means a document of title~~[receipt]~~ issued by a person engaged in the business of storing goods for hire; and
- (aq) "Writing" includes printing, typewriting, or any other intentional reduction to tangible form. "Written" has a corresponding meaning.

➔Section 45. KRS 355.2-103 is amended to read as follows:

- (1) In this article unless the context otherwise requires:
  - (a) "Buyer" means a person who buys or contracts to buy goods;
  - (b) (Reserved)
  - (c) "Receipt" of goods means taking physical possession of them; and
  - (d) "Seller" means a person who sells or contracts to sell goods.
- (2) Other definitions applying to this article or to specified parts thereof, and the sections in which they appear are:
  - (a) "Acceptance." KRS 355.2-606;
  - (b) "Banker's credit." KRS 355.2-325;
  - (c) "Between merchants." KRS 355.2-104;
  - (d) "Cancellation." KRS 355.2-106 (4);
  - (e) "Commercial unit." KRS 355.2-105;
  - (f) "Confirmed credit." KRS 355.2-325;
  - (g) "Conforming to contract." KRS 355.2-106;
  - (h) "Contract for sale." KRS 355.2-106;
  - (i) "Cover." KRS 355.2-712;
  - (j) "Entrusting." KRS 355.2-403;
  - (k) "Financing agency." KRS 355.2-104;
  - (l) "Future goods." KRS 355.2-105;
  - (m) "Goods." KRS 355.2-105;

- (n) "Identification." KRS 355.2-501;
  - (o) "Installment contract." KRS 355.2-612;
  - (p) "Letter of credit." KRS 355.2-325;
  - (q) "Lot." KRS 355.2-105;
  - (r) "Merchant." KRS 355.2-104;
  - (s) "Overseas." KRS 355.2-323;
  - (t) "Person in position of seller." KRS 355.2-707;
  - (u) "Present sale." KRS 355.2-106;
  - (v) "Sale." KRS 355.2-106;
  - (w) "Sale on approval." KRS 355.2-326;
  - (x) "Sale or return." KRS 355.2-326; and
  - (y) "Termination." KRS 355.2-106.
- (3) The following definitions in other articles apply to this article:
- (a) "Check." KRS 355.3-104;
  - (b) "Consignee." KRS 355.7-102;
  - (c) "Consignor." KRS 355.7-102;
  - (d) "Consumer goods." KRS 355.9-102;
  - (e) **"Control." KRS 355.7-106;**
  - ~~(f)~~ "Dishonor." KRS 355.3-502; and
  - ~~(g)~~~~(f)~~ "Draft." KRS 355.3-104.
- (4) In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.
- ➔Section 46. KRS 355.2-104 is amended to read as follows:
- (1) "Merchant" means a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by

his occupation holds himself out as having such knowledge or skill.

- (2) "Financing agency" means a bank, finance company or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller's draft or making advances against it or by merely taking it for collection whether or not documents of title accompany or are associated with the draft. "Financing agency" includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (KRS 355.2-707).
- (3) "Between merchants" means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants.

➔Section 47. KRS 355.2-310 is amended to read as follows:

Unless otherwise agreed:

- (1) Payment is due at the time and place at which the buyer is to receive the goods even though the place of shipment is the place of delivery; and
- (2) If the seller is authorized to send the goods he may ship them under reservation, and may tender the documents of title, but the buyer may inspect the goods after their arrival before payment is due unless such inspection is inconsistent with the terms of the contract (KRS 355.2-513); and
- (3) If delivery is authorized and made by way of documents of title otherwise than by subsection (2) of this section, then payment is due regardless of where the goods are to be received:
- (a) At the time and place at which the buyer is to receive delivery of the tangible documents; or
- (b) At the time the buyer is to receive delivery of the electronic documents and at the seller's place of business or if none, the seller's residence [regardless

~~of where the goods are to be received~~; and

- (4) Where the seller is required or authorized to ship the goods on credit the credit period runs from the time of shipment but postdating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period.

➔Section 48. KRS 355.2-503 is amended to read as follows:

- (1) Tender of delivery requires that the seller put and hold conforming goods at the buyer's disposition and give the buyer any notification reasonably necessary to enable him to take delivery. The manner, time and place for tender are determined by the agreement and this article, and in particular
- (a) tender must be at a reasonable hour, and if it is of goods they must be kept available for the period reasonably necessary to enable the buyer to take possession; but
- (b) unless otherwise agreed the buyer must furnish facilities reasonably suited to the receipt of the goods.
- (2) Where the case is within KRS 355.2-504 respecting shipment tender requires that the seller comply with its provisions.
- (3) Where the seller is required to deliver at a particular destination tender requires that he comply with subsection (1) and also in any appropriate case tender documents as described in subsections (4) and (5) of this section.
- (4) Where goods are in the possession of a bailee and are to be delivered without being moved
- (a) tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgement by the bailee of the buyer's right to possession of the goods; but
- (b) tender to the buyer of a nonnegotiable document of title or of a written direction to the bailee to deliver is sufficient tender unless the buyer seasonably objects, and receipt by the bailee of notification of the buyer's



rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the nonnegotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

(5) Where the contract requires the seller to deliver documents

- (a) he must tender all such documents in correct form, except as provided in this article with respect to bills of lading in a set (subsection (2) of KRS 355.2-323); and
- (b) tender through customary banking channels is sufficient and dishonor of a draft accompanying or associated with the documents constitutes nonacceptance or rejection.

➔Section 49. KRS 355.2-505 is amended to read as follows:

(1) Where the seller has identified goods to the contract by or before shipment:

- (a) His procurement of a negotiable bill of lading to his own order or otherwise reserves in him a security interest in the goods. His procurement of the bill to the order of a financing agency or of the buyer indicates in addition only the seller's expectation of transferring that interest to the person named.
- (b) A nonnegotiable bill of lading to himself or his nominee reserves possession of the goods as security but except in a case of conditional delivery (subsection (2) of KRS 355.2-507) a nonnegotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession or control of the bill of lading.

(2) When shipment by the seller with reservation of a security interest is in violation of the contract for sale it constitutes an improper contract for transportation within KRS 355.2-504 but impairs neither the rights given to the buyer by shipment and

identification of the goods to the contract nor the seller's powers as a holder of a negotiable document.

➔Section 50. KRS 355.2-506 is amended to read as follows:

- (1) A financing agency by paying or purchasing for value a draft which relates to a shipment of goods acquires to the extent of the payment or purchase and in addition to its own rights under the draft and any document of title securing it any rights of the shipper in the goods including the right to stop delivery and the shipper's right to have the draft honored by the buyer.
- (2) The right to reimbursement of a financing agency which has in good faith honored or purchased the draft under commitment to or authority from the buyer is not impaired by subsequent discovery of defects with reference to any relevant document which was apparently regular~~[on its face]~~.

➔Section 51. KRS 355.2-509 is amended to read as follows:

- (1) Where the contract requires or authorizes the seller to ship the goods by carrier
  - (a) if it does not require him to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier even though the shipment is under reservation (KRS 355.2-505); but
  - (b) if it does require him to deliver them at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the buyer when the goods are there duly so tendered as to enable the buyer to take delivery.
- (2) Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer:
  - (a) On the buyer's~~[his]~~ receipt of possession or control of a negotiable document of title covering the goods; or
  - (b) On acknowledgement by the bailee of the buyer's right to possession of the goods; or

- (c) After the buyer's~~his~~ receipt of possession or control of a nonnegotiable document of title or other written direction to deliver, as provided in subsection (4)(b) of KRS 355.2-503.
- (3) In any case not within subsection (1) or (2) of this section, the risk of loss passes to the buyer on his receipt of the goods if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery.
- (4) The provisions of this section are subject to contrary agreement of the parties and to the provisions of this article on sale on approval (KRS 355.2-327) and on effect of breach on risk of loss (KRS 355.2-510).

➔Section 52. KRS 355.2-605 is amended to read as follows:

- (1) The buyer's failure to state in connection with rejection a particular defect which is ascertainable by reasonable inspection precludes him from relying on the unstated defect to justify rejection or to establish breach :
  - (a) Where the seller could have cured it if stated seasonably; or
  - (b) Between merchants when the seller has after rejection made a request in writing for a full and final written statement of all defects on which the buyer proposes to rely.
- (2) A buyer's payment against documents tendered to the buyer made without reservation of rights precludes recovery of the payment for defects apparent in~~on~~ ~~the face of~~ the documents.

➔Section 53. KRS 355.2-705 is amended to read as follows:

- (1) The seller may stop delivery of goods in the possession of a carrier or other bailee when he discovers the buyer to be insolvent (KRS 355.2-702) and may stop delivery of carload, truckload, planeload or larger shipments of express or freight when the buyer repudiates or fails to make a payment due before delivery or if for any other reason the seller has a right to withhold or reclaim the goods.
- (2) As against such buyer the seller may stop delivery until:

- (a) Receipt of the goods by the buyer; or
  - (b) Acknowledgement to the buyer by any bailee of the goods except a carrier that the bailee holds the goods for the buyer; or
  - (c) Such acknowledgement to the buyer by a carrier by reshipment or as a warehouse~~[warehouseman]~~; or
  - (d) Negotiation to the buyer of any negotiable document of title covering the goods.
- (3) (a) To stop delivery the seller must so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.
- (b) After such notification the bailee must hold and deliver the goods according to the directions of the seller but the seller is liable to the bailee for any ensuing charges or damages.
- (c) If a negotiable document of title has been issued for goods the bailee is not obliged to obey a notification to stop until surrender of possession or control of the document.
- (d) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

➔Section 54. KRS 355.2A-103 is amended to read as follows:

- (1) In this article unless the context otherwise requires:
- (a) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a pre-existing contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of

- a money debt;
- (b) "Cancellation" occurs when either party puts an end to the lease contract for default by the other party;
  - (c) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine, or a set of articles, as a suite of furniture or a line of machinery, or a quantity, as a gross or carload, or any other unit treated in use or in the relevant market as a single whole;
  - (d) "Conforming" goods or performance under a lease contract means goods or performance that are in accordance with the obligations under the lease contract;
  - (e) "Consumer lease" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual and who takes under the lease primarily for a personal, family, or household purpose;
  - (f) "Fault" means wrongful act, omission, breach, or default;
  - (g) "Finance lease" means a lease with respect to which:
    - 1. The lessor does not select, manufacture, or supply the goods;
    - 2. The lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and
    - 3. One (1) of the following occurs:
      - a. The lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;
      - b. The lessee's approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract;

- c. The lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; or
  - d. If the lease is not a consumer lease, the lessor, before the lessee signs the lease contract, informs the lessee in writing (a) of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person, (b) that the lessee is entitled under this article to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods, and (c) that the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies;
- (h) "Goods" means all things that are movable at the time of identification to the lease contract, or are fixtures (KRS 355.2A-309), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals;

- (i) "Installment lease contract" means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause "each delivery is a separate lease" or its equivalent;
- (j) "Lease" means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease;
- (k) "Lease agreement" means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this article. Unless the context clearly indicates otherwise, the term includes a sublease agreement;
- (l) "Lease contract" means the total legal obligation that results from the lease agreement as affected by this article and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract;
- (m) "Leasehold interest" means the interest of the lessor or the lessee under a lease contract;
- (n) "Lessee" means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee;
- (o) "Lessee in ordinary course of business" means a person who in good faith and without knowledge that the lease to him is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods leases in ordinary course from a person in the business of selling or leasing goods of that kind but does not include a pawnbroker. "Leasing" may be for cash or by

exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a pre-existing lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt;

- (p) "Lessor" means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor;
- (q) "Lessor's residual interest" means the lessor's interest in the goods after expiration, termination, or cancellation of the lease contract;
- (r) "Lien" means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest;
- (s) "Lot" means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.
- (t) "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind subject to the lease;
- (u) "Present value" means the amount as of a date certain of one (1) or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into;
- (v) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods;
- (w) "Sublease" means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease;



- (x) "Supplier" means a person from whom a lessor buys or leases goods to be leased under a finance lease;
  - (y) "Supply contract" means a contract under which a lessor buys or leases goods to be leased; and
  - (z) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.
- (2) Other definitions applying to this article and the sections in which they appear are:
- (a) "Accessions." KRS 355.2A-310(1);
  - (b) "Construction mortgage." KRS 355.2A-309(1)(d);
  - (c) "Encumbrance." KRS 355.2A-309(1)(e);
  - (d) "Fixtures." KRS 355.2A-309(1)(a);
  - (e) "Fixture filing." KRS 355.2A-309(1)(b); and
  - (f) "Purchase money lease." KRS 355.2A-309(1)(c).
- (3) The following definitions in other articles apply to this article:
- (a) "Account." KRS 355.9-102(1)(b);
  - (b) "Between merchants." KRS 355.2-104(3);
  - (c) "Buyer." KRS 355.2-103(1)(a);
  - (d) "Chattel paper." KRS 355.9-102(1)(k);
  - (e) "Consumer goods." KRS 355.9-102(1)(w);
  - (f) "Document." KRS 355.9-102(1)(ad);
  - (g) "Entrusting." KRS 355.2-403(3);
  - (h) "General intangible." KRS 355.9-102(1)(ap);
  - (i) "Instrument." KRS 355.9-102(1)(au);
  - (j) "Merchant." KRS 355.2-104(1);
  - (k) "Mortgage." KRS 355.9-102(1)(bc);
  - (l) "Pursuant to commitment." KRS 355.9-102(1)(bq)~~[KRS 355.9-102(1)(bp)]~~;
  - (m) "Receipt." KRS 355.2-103(1)(c);

- (n) "Sale." KRS 355.2-106(1);
  - (o) "Sale on approval." KRS 355.2-326;
  - (p) "Sale or return." KRS 355.2-326; and
  - (q) "Seller." KRS 355.2-103(1)(d).
- (4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

➔Section 55. KRS 355.2A-514 is amended to read as follows:

- (1) In rejecting goods, a lessee's failure to state a particular defect that is ascertainable by reasonable inspection precludes the lessee from relying on the defect to justify rejection or to establish default:
- (a) If, stated seasonably, the lessor or the supplier could have cured it (KRS 355.2A-513); or
  - (b) Between merchants if the lessor or the supplier after rejection has made a request in writing for a full and final written statement of all defects on which the lessee proposes to rely.
- (2) A lessee's failure to reserve rights when paying rent or other consideration against documents precludes recovering of the payment for defects apparent ~~in~~on the face of the documents.

➔Section 56. KRS 355.2A-526 is amended to read as follows:

- (1) A lessor may stop delivery of goods in the possession of a carrier or other bailee if the lessor discovers the lessee to be insolvent and may stop delivery of carload, truckload, planeload, or larger shipments of express or freight if the lessee repudiates or fails to make a payment due before delivery, whether for rent, security or otherwise under the lease contract, or for any other reason the lessor has a right to withhold or take possession of the goods.
- (2) In pursuing its remedies under subsection (1), the lessor may stop delivery until:
- (a) Receipt of the goods by the lessee;

- (b) Acknowledgment to the lessee by any bailee of the goods, except a carrier, that the bailee holds the goods for the lessee; or
  - (c) Such an acknowledgment to the lessee by a carrier via reshipment or as a warehouse~~[warehouseman]~~.
- (3) (a) To stop delivery, a lessor shall so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.
- (b) After notification, the bailee shall hold and deliver the goods according to the directions of the lessor, but the lessor is liable to the bailee for any ensuing charges or damages.
- (c) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

➔Section 57. KRS 355.4-104 is amended to read as follows:

- (1) In this article, unless the context otherwise requires:
- (a) "Account" means any deposit or credit account with a bank, including a demand, time, savings, passbook, share draft, or like account, other than an account evidenced by a certificate of deposit;
  - (b) "Afternoon" means the period of a day between noon and midnight;
  - (c) "Banking day" means the part of a day on which a bank is open to the public for carrying on substantially all of its banking functions;
  - (d) "Clearing house" means an association of banks or other payors regularly clearing items;
  - (e) "Customer" means a person having an account with a bank or for whom a bank has agreed to collect items including a bank that maintains an account at another bank;
  - (f) "Documentary draft" means a draft to be presented for acceptance or payment if specified documents, certificated securities (KRS 355.8-102) or instructions for uncertificated securities (KRS 355.8-102), or other certificates, statements,

or the like are to be received by the drawee or other payor before acceptance or payment of the draft;

- (g) "Draft" means a draft as defined in KRS 355.3-104 or an item, other than an instrument, that is an order;
  - (h) "Drawee" means a person ordered in a draft to make payment;
  - (i) "Item" means an instrument or a promise or order to pay money handled by a bank for collection or payment. The term does not include a payment order governed by Article 4A of this chapter or a credit or debit card slip;
  - (j) "Midnight deadline" with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later;
  - (k) "Settle" means to pay in cash, by clearing-house settlement, in a charge or credit or by remittance, or otherwise as agreed. A settlement may be either provisional or final; and
  - (l) "Suspends payments" with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over, or that it ceases or refuses to make payments in the ordinary course of business.
- (2) Other definitions applying to this article and the sections in which they appear are:
- (a) "Agreement for electronic presentment." KRS 355.4-110;
  - (b) "Collecting bank." KRS 355.4-105;
  - (c) "Depositary bank." KRS 355.4-105;
  - (d) "Intermediary bank." KRS 355.4-105;
  - (e) "Payor bank." KRS 355.4-105;
  - (f) "Presenting bank." KRS 355.4-105; and
  - (g) "Presentment notice." KRS 355.4-110.

(3) The following definitions in other articles apply to this article:

- (a) "Acceptance." KRS 355.3-409;
- (b) "Alteration." KRS 355.3-407;
- (c) "Cashier's check." KRS 355.3-104;
- (d) "Certificate of deposit." KRS 355.3-104;
- (e) "Certified check." KRS 355.3-409;
- (f) "Check." KRS 355.3-104;
- (g) **"Control." KRS 355.7-106**
- (h)** "Holder in due course." KRS 355.3-302;
- (i)**~~(h)~~ "Instrument." KRS 355.3-104;
- (j)**~~(i)~~ "Notice of dishonor." KRS 355.3-503;
- (k)**~~(j)~~ "Order." KRS 355.3-103;
- (l)**~~(k)~~ "Ordinary care." KRS 355.3-103;
- (m)**~~(l)~~ "Person entitled to enforce." KRS 355.3-301;
- (n)**~~(m)~~ "Presentment." KRS 355.3-501;
- (o)**~~(n)~~ "Promise." KRS 355.3-103;
- (p)**~~(o)~~ "Prove." KRS 355.3-103;
- (q)**~~(p)~~ "Record." KRS 355.1-201;
- (r)**~~(q)~~ "Remotely created item." KRS 355.3-103;
- (s)**~~(r)~~ "Teller's check." KRS 355.3-104; and
- (t)**~~(s)~~ "Unauthorized signature." KRS 355.3-403.

(4) In addition, Article 1 of this chapter contains general definitions and principles of construction and interpretation applicable throughout this article.

➔Section 58. KRS 355.4-210 is amended to read as follows:

- (1) A collecting bank has a security interest in an item and any accompanying documents or the proceeds of either:
  - (a) In case of an item deposited in an account, to the extent to which credit given

- for the item has been withdrawn or applied;
- (b) In case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given, whether or not the credit is drawn upon or there is a right of charge-back; or
  - (c) If it makes an advance on or against the item.
- (2) If credit given for several items received at one (1) time or pursuant to a single agreement is withdrawn or applied in part, the security interest remains upon all the items, any accompanying documents or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.
- (3) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents, and proceeds. So long as the bank does not receive final settlement for the item or give up possession of the item or possession or control of the accompanying documents for purposes other than collection, the security interest continues to that extent and is subject to Article 9 of this chapter, but:
- (a) No security agreement is necessary to make the security interest enforceable (KRS 355.9-203(2)(c)1.); and
  - (b) No filing is required to perfect the security interest; and
  - (c) The security interest has priority over conflicting perfected security interests in the item, accompanying documents, or proceeds.

➔Section 59. KRS 355.8-103 is amended to read as follows:

- (1) A share or similar equity interest issued by a corporation, business trust, joint stock company, or similar entity is a security.
- (2) An "investment company security" is a security. "Investment company security" means a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust that is so registered, or a face-amount certificate issued by a

face-amount certificate company that is so registered. Investment company security does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.

- (3) An interest in a partnership or limited liability company is not a security unless it is dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that it is a security governed by this article, or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.
- (4) A writing that is a security certificate is governed by this article and not by Article 3 of this chapter, even though it also meets the requirements of that article. However, a negotiable instrument governed by Article 3 of this chapter is a financial asset if it is held in a securities account.
- (5) An option or similar obligation issued by a clearing corporation to its participants is not a security, but is a financial asset.
- (6) A commodity contract, as defined in KRS 355.9-102(1)(o), is not a security or a financial asset.

**(7) A document of title, as defined in KRS 355.1-201(2)(p), is not a financial asset unless KRS 355.8-102(1)(i)3. applies.**

➔Section 60. KRS 355.9-102 is amended to read as follows:

- (1) In this article:
  - (a) "Accession" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost;
  - (b) 1. "Account," except as used in "account for," means a right to payment of a monetary obligation, whether or not earned by performance:
    - a. For property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of;
    - b. For services rendered or to be rendered;

- c. For a policy of insurance issued or to be issued;
  - d. For a secondary obligation incurred or to be incurred;
  - e. For energy provided or to be provided;
  - f. For the use or hire of a vessel under a charter or other contract;
  - g. Arising out of the use of a credit or charge card or information contained on or for use with the card; or
  - h. As winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state.
- 2. The term includes health-care-insurance receivables.
  - 3. The term does not include:
    - a. Rights to payment evidenced by chattel paper or an instrument;
    - b. Commercial tort claims;
    - c. Deposit accounts;
    - d. Investment property;
    - e. Letter-of-credit rights or letters of credit; or
    - f. Rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card;
- (c) "Account debtor" means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper;
- (d) "Accounting," except as used in "accounting for," means a record:
- 1. Authenticated by a secured party;
  - 2. Indicating the aggregate unpaid secured obligations as of a date not more than thirty-five (35) days earlier or thirty-five (35) days later than



- the date of the record; and
3. Identifying the components of the obligations in reasonable detail;
- (e) "Agricultural lien" means an interest in farm products:
1. Which secures payment or performance of an obligation for:
    - a. Goods or services furnished in connection with a debtor's farming operation; or
    - b. Rent on real property leased by a debtor in connection with its farming operation;
  2. Which is created by statute in favor of a person that:
    - a. In the ordinary course of its business furnished goods or services to a debtor in connection with a debtor's farming operation; or
    - b. Leased real property to a debtor in connection with the debtor's farming operation; and
  3. Whose effectiveness does not depend on the person's possession of the personal property;
- (f) "As-extracted collateral" means:
1. Oil, gas, or other minerals that are subject to a security interest that:
    - a. Is created by a debtor having an interest in the minerals before extraction; and
    - b. Attaches to the minerals as extracted; or
  2. Accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction;
- (g) "Authenticate" means:
1. To sign; or
  2. *With present intent to adopt or accept a record, to attach to or logically associate with the record an electronic sound, symbol, or process*~~To execute or otherwise adopt a symbol, or encrypt or similarly process a~~

~~record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record~~];

- (h) "Bank" means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions, and trust companies;
- (i) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the like;
- (j) "Certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. *The term includes another record maintained as an alternative to a certificate of title by the governmental unit that issues certificates of title if a statute permits the security interest in question to be indicated on the record as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral;*
- (k) "Chattel paper" means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this paragraph, "monetary obligation" means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term does not include:
  - 1. Charters or other contracts involving the use or hire of a vessel; or
  - 2. Records that evidence a right of payment arising out of the use of a credit or charge card or information contained on or for use with the

card.

If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper;

- (l) "Collateral" means the property subject to a security interest or agricultural lien. The term includes:
  - 1. Proceeds to which a security interest attaches;
  - 2. Accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and
  - 3. Goods that are the subject of a consignment;
- (m) "Commercial tort claim" means a claim arising in tort with respect to which:
  - 1. The claimant is an organization; or
  - 2. The claimant is an individual and the claim:
    - a. Arose in the course of the claimant's business or profession; and
    - b. Does not include damages arising out of personal injury to or the death of an individual;
- (n) "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer;
- (o) "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:
  - 1. Traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or
  - 2. Traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer;

- (p) "Commodity customer" means a person for which a commodity intermediary carries a commodity contract on its books;
- (q) "Commodity intermediary" means a person that:
  - 1. Is registered as a futures commission merchant under federal commodities law; or
  - 2. In the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law;
- (r) "Communicate" means:
  - 1. To send a written or other tangible record;
  - 2. To transmit a record by any means agreed upon by the persons sending and receiving the record; or
  - 3. In the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule;
- (s) "Consignee" means a merchant to which goods are delivered in a consignment;
- (t) "Consignment" means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:
  - 1. The merchant:
    - a. Deals in goods of that kind under a name other than the name of the person making delivery;
    - b. Is not an auctioneer; and
    - c. Is not generally known by its creditors to be substantially engaged in selling the goods of others;
  - 2. With respect to each delivery, the aggregate value of the goods is one thousand dollars (\$1,000) or more at the time of delivery;
  - 3. The goods are not consumer goods immediately before delivery; and

4. The transaction does not create a security interest that secures an obligation;
- (u) "Consignor" means a person that delivers goods to a consignee in a consignment;
  - (v) "Consumer debtor" means a debtor in a consumer transaction;
  - (w) "Consumer goods" means goods that are used or bought for use primarily for personal, family, or household purposes;
  - (x) "Consumer-goods transaction" means a consumer transaction in which:
    1. An individual incurs an obligation primarily for personal, family, or household purposes; and
    2. A security interest in consumer goods secures the obligation;
  - (y) "Consumer obligor" means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family, or household purposes;
  - (z) "Consumer transaction" means a transaction in which:
    1. An individual incurs an obligation primarily for personal, family, or household purposes;
    2. A security interest secures the obligation; and
    3. The collateral is held or acquired primarily for personal, family, or household purposes.

The term includes consumer-goods transactions;

- (aa) "Continuation statement" means an amendment of a financing statement which:
  1. Identifies, by its file number, the initial financing statement to which it relates; and
  2. Indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement;

- (ab) "Debtor" means:
1. A person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;
  2. A seller of accounts, chattel paper, payment intangibles, or promissory notes; or
  3. A consignee;
- (ac) "Deposit account" means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument;
- (ad) "Document" means a document of title or a receipt of the type described in KRS 355.7-201(2);
- (ae) "Electronic chattel paper" means chattel paper evidenced by a record or records consisting of information stored in an electronic medium;
- (af) "Encumbrance" means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property;
- (ag) "Equipment" means goods other than inventory, farm products, or consumer goods;
- (ah) "Farm products" means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:
1. Crops grown, growing, or to be grown, including:
    - a. Crops produced on trees, vines, and bushes; and
    - b. Aquatic goods produced in aquacultural operations;
  2. Livestock, born or unborn, including aquatic goods produced in aquacultural operations;
  3. Supplies used or produced in a farming operation;
  4. Products of crops or livestock in their unmanufactured states; or
  5. Equine interests, including, but not limited to, interests in horses, mares,

yearlings, foals, weanlings, stallions, syndicated stallions, and stallion shares (including seasons and other rights in connection therewith), whether or not the debtor is engaged in farming operations and without regard to the use thereof. If goods are farm products, they are neither equipment nor inventory;

- (ai) "Farming operation" means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation;
- (aj) "File number" means the number assigned to an initial financing statement pursuant to KRS 355.9-519(1);
- (ak) "Filing office" means an office designated in KRS 355.9-501 as the place to file a financing statement;
- (al) "Filing-office rule" means a rule adopted pursuant to KRS 355.9-526;
- (am) "Financing statement" means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement;
- (an) "Fixture filing" means the filing of a financing statement covering goods that are or are to become fixtures and satisfying KRS 355.9-502(1) and (2). The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures;
- (ao) "Fixtures" means goods that have become so related to particular real property that an interest in them arises under real property law;
- (ap) "General intangible" means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software;
- (aq) (Reserved)

(ar) "Goods" means all things that are movable when a security interest attaches.

1. The term includes:
  - a. Fixtures;
  - b. Standing timber that is to be cut and removed under a conveyance or contract for sale;
  - c. The unborn young of animals;
  - d. Crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes; and
  - e. Manufactured homes.
2. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if:
  - a. The program is associated with the goods in such a manner that it customarily is considered part of the goods; or
  - b. By becoming the owner of the goods, a person acquires a right to use the program in connection with the goods.
3. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded.
4. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction;

(as) "Governmental unit" means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a State, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United



States;

- (at) "Health-care-insurance receivable" means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health-care goods or services provided or to be provided;
- (au) "Instrument" means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include:
  - 1. Investment property;
  - 2. Letters of credit; or
  - 3. Writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card;
- (av) "Inventory" means goods, other than farm products, which:
  - 1. Are leased by a person as lessor;
  - 2. Are held by a person for sale or lease or to be furnished under a contract of service;
  - 3. Are furnished by a person under a contract of service; or
  - 4. Consist of raw materials, work in process, or materials used or consumed in a business;
- (aw) "Investment property" means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account;
- (ax) "Jurisdiction of organization," with respect to a registered organization, means the jurisdiction under whose law the organization is organized;
- (ay) "Letter-of-credit right" means a right to payment or performance under a letter

of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit;

(az) "Lien creditor" means:

1. A creditor that has acquired a lien on the property involved by attachment, levy, or the like;
2. An assignee for benefit of creditors from the time of assignment;
3. A trustee in bankruptcy from the date of the filing of the petition; or
4. A receiver in equity from the time of appointment;

(ba) "Manufactured home" means a structure, transportable in one (1) or more sections, which, in the traveling mode, is eight (8) body feet or more in width or forty (40) body feet or more in length, or, when erected on site, is three hundred twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States Secretary of Housing and Urban Development and complies with the standards established under Title 42 of the United States Code;

(bb) "Manufactured-home transaction" means a secured transaction:

1. That creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or
2. In which a manufactured home, other than a manufactured home held as inventory, is the primary collateral;

- (bc) "Mortgage" means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation;
- (bd) "New debtor" means a person that becomes bound as debtor under KRS 355.9-203(4) by a security agreement previously entered into by another person;
- (be) "New value" means:
  - 1. Money;
  - 2. Money's worth in property, services, or new credit; or
  - 3. Release by a transferee of an interest in property previously transferred to the transferee.

The term does not include an obligation substituted for another obligation;

- (bf) "Noncash proceeds" means proceeds other than cash proceeds;
- (bg) "Obligor" means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral:
  - 1. Owes payment or other performance of the obligation;
  - 2. Has provided property other than the collateral to secure payment or other performance of the obligation; or
  - 3. Is otherwise accountable in whole or in part for payment or other performance of the obligation.

The term does not include issuers or nominated persons under a letter of credit;

- (bh) "Original debtor," except as used in KRS 355.9-310(3), means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under KRS 355.9-203(4);
- (bi) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation;
- (bj) "Person related to," with respect to an individual, means:

1. The spouse of the individual;
2. A brother, brother-in-law, sister, or sister-in-law of the individual;
3. An ancestor or lineal descendant of the individual or the individual's spouse; or
4. Any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual;

(bk) "Person related to," with respect to an organization, means:

1. A person directly or indirectly controlling, controlled by, or under common control with the organization;
2. An officer or director of, or a person performing similar functions with respect to, the organization;
3. An officer or director of, or a person performing similar functions with respect to, a person described in subparagraph 1. of this paragraph;
4. The spouse of an individual described in subparagraph 1., 2., or 3. of this paragraph; or
5. An individual who is related by blood or marriage to an individual described in subparagraph 1., 2., 3., or 4. of this paragraph and shares the same home with the individual;

(bl) "Proceeds," except as used in KRS 355.9-609(2), means the following property:

1. Whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;
2. Whatever is collected on, or distributed on account of, collateral;
3. Rights arising out of collateral;
4. To the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or

5. To the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral;
- (bm) "Promissory note" means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds;
- (bn) "Proposal" means a record authenticated by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to KRS 355.9-620, 355.9-621, and 355.9-622;
- (bo) "Public-finance transaction" means a secured transaction in connection with which:
1. Debt securities are issued;
  2. All or a portion of the securities issued have an initial stated maturity of at least twenty (20) years; and
  3. The debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a state or a governmental unit of a state;
- (bp) **"Public organic record" means a record that is available to the public for inspection and that is:**
- 1. A record consisting of the record initially filed with or issued by a state or the United States to form or organize an organization and any record filed with or issued by the state or the United States which amends or restates the initial record;**

2. An organic record of a business trust consisting of the record initially filed with a state and any record filed with the state which amends or restates the initial record, if a statute of the state governing business trusts requires that the record be filed with the state; or
3. A record consisting of legislation enacted by the legislature of a state or the Congress of the United States which forms or organizes an organization, any record amending the legislation, and any record filed with or issued by the state or United States which amends or restates the name of the organization;

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

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

~~(bs)~~~~[(br)]~~ "Registered organization" means an organization formed or organized solely under the law of a single state or the United States by the filing of a public organic record with, the issuance of a public organic record by, or the enactment of legislation by the state or the United States. The term includes a business trust that is formed or organized under the law of a single state if a statute of the state governing business trusts requires that the business trust's organic record be filed with the state~~and as to which the state or the United States must maintain a public record showing the organization to have been organized~~;

~~(bt)~~~~[(bs)]~~ "Secondary obligor" means an obligor to the extent that:

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

~~(bu)~~~~[(bt)]~~ "Secured party" means:

1. A person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;
2. A person that holds an agricultural lien;
3. A consignor;
4. A person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;
5. A trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or
6. A person that holds a security interest arising under KRS 355.2-401, 355.2-505, 355.2-711(3), 355.2A-508(5), 355.4-210, or 355.5-118;

~~(bv)~~~~[(bu)]~~ "Security agreement" means an agreement that creates or provides for a security interest;

~~(bw)~~~~[(bv)]~~ "Send," in connection with a record or notification, means:

1. To deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or
2. To cause the record or notification to be received within the time that it would have been received if properly sent under subparagraph 1. of this paragraph;

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

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

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

(ca)~~(bz)~~ "Tangible chattel paper" means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium;

(cb)~~(ca)~~ "Termination statement" means an amendment of a financing statement which:

1. Identifies, by its file number, the initial financing statement to which it relates; and
2. Indicates either that it is a termination statement or that the identified financing statement is no longer effective; and

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

1. Operating a railroad, subway, street railway, or trolley bus;
2. Transmitting communications electrically, electromagnetically, or by light;
3. Transmitting goods by pipeline or sewer; or
4. Transmitting or producing and transmitting electricity, steam, gas, or water.



(2) The following definitions in other articles apply to this article:

- (a) "Applicant." KRS 355.5-102;
- (b) "Beneficiary." KRS 355.5-102;
- (c) "Broker." KRS 355.8-102;
- (d) "Certificated security." KRS 355.8-102;
- (e) "Check." KRS 355.3-104;
- (f) "Clearing corporation." KRS 355.8-102;
- (g) "Contract for sale." KRS 355.2-106;
- (h) "Customer." KRS 355.4-104;
- (i) "Entitlement holder." KRS 355.8-102;
- (j) "Financial asset." KRS 355.8-102;
- (k) "Holder in due course." KRS 355.3-302;
- (l) "Issuer." (with respect to a letter of credit or letter-of-credit right) KRS 355.5-102;
- (m) "Issuer." (with respect to a security) KRS 355.8-201;
- (n) "Lease." KRS 355.2A-103;
- (o) "Lease agreement." KRS 355.2A-103;
- (p) "Lease contract." KRS 355.2A-103;
- (q) "Leasehold interest." KRS 355.2A-103;
- (r) "Lessee." KRS 355.2A-103;
- (s) "Lessee in ordinary course of business." KRS 355.2A-103;
- (t) "Lessor." KRS 355.2A-103;
- (u) "Lessor's residual interest." KRS 355.2A-103;
- (v) "Letter of credit." KRS 355.5-102;
- (w) "Merchant." KRS 355.2-104;
- (x) "Negotiable instrument." KRS 355.3-104;
- (y) "Nominated person." KRS 355.5-102;

- (z) "Note." KRS 355.3-104;
  - (aa) "Proceeds of a letter of credit." KRS 355.5-114;
  - (ab) "Prove." KRS 355.3-103;
  - (ac) "Sale." KRS 355.2-106;
  - (ad) "Securities account." KRS 355.8-501;
  - (ae) "Securities intermediary." KRS 355.8-102;
  - (af) "Security." KRS 355.8-102;
  - (ag) "Security certificate." KRS 355.8-102;
  - (ah) "Security entitlement." KRS 355.8-102; and
  - (ai) "Uncertificated security." KRS 355.8-102.
- (3) Article 1 of this chapter contains general definitions and principles of construction and interpretation applicable throughout this article.

➔Section 61. KRS 355.9-105 is amended to read as follows:

(1) A secured party has control of electronic chattel paper if *a system employed for evidencing the transfer of interests in the chattel paper reliably establishes the secured party as the person to which the chattel paper was assigned.*

(2) A system satisfies subsection (1) of this section, and a secured party has control of electronic chattel paper, if the record or records comprising the chattel paper are created, stored, and assigned in such a manner that:

(a)~~(1)~~ A single authoritative copy of the record or records exists which is unique, identifiable and, except as otherwise provided in paragraphs (d), (e), and (f) of this subsection~~[subsections (4), (5), and (6) of this section]~~, unalterable;

(b)~~(2)~~ The authoritative copy identifies the secured party as the assignee of the record or records;

(c)~~(3)~~ The authoritative copy is communicated to and maintained by the secured party or its designated custodian;

~~(d)~~~~(4)~~ Copies or amendments~~revisions~~ that add or change an identified assignee of the authoritative copy can be made only with the consent~~participation~~ of the secured party;

~~(e)~~~~(5)~~ Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

~~(f)~~~~(6)~~ Any amendment~~revision~~ of the authoritative copy is readily identifiable as~~an~~ authorized or unauthorized~~revision~~.

➔Section 62. KRS 355.9-203 is amended 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 or electronic documents, and the secured party has control under KRS 355.9-104, 355.9-105, 355.9-106,~~[-or]~~ 355.9-107, or 355.7-106 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 63. KRS 355.9-207 is amended to read as follows:

- (1) Except as otherwise provided in subsection (4) of this section, a secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession. In the case of chattel paper or an instrument, reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.
- (2) Except as otherwise provided in subsection (4) of this section, if a secured party has possession of collateral:
  - (a) Reasonable expenses, including the cost of insurance and payment of taxes or other charges, incurred in the custody, preservation, use, or operation of the collateral are chargeable to the debtor and are secured by the collateral;
  - (b) The risk of accidental loss or damage is on the debtor to the extent of a deficiency in any effective insurance coverage;
  - (c) The secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and
  - (d) The secured party may use or operate the collateral:
    - 1. For the purpose of preserving the collateral or its value;
    - 2. As permitted by an order of a court having competent jurisdiction; or
    - 3. Except in the case of consumer goods, in the manner and to the extent agreed by the debtor.

- (3) Except as otherwise provided in subsection (4) of this section, a secured party

having possession of collateral or control of collateral under KRS 355.9-104, 355.9-105, 355.9-106,~~[-or]~~ 355.9-107, or 355.7-106:

- (a) May hold as additional security any proceeds, except money or funds, received from the collateral;
  - (b) Shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and
  - (c) May create a security interest in the collateral.
- (4) If the secured party is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor:
- (a) Subsection (1) of this section does not apply unless the secured party is entitled under an agreement:
    - 1. To charge back uncollected collateral; or
    - 2. Otherwise to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other default of an account debtor or other obligor on the collateral; and
  - (b) Subsections (2) and (3) of this section do not apply.

➔Section 64. KRS 355.9-208 is amended 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; and

(f) A secured party having control of an electronic document shall:

1. Give control of the electronic document 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 document 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.

➔Section 65. KRS 355.9-301 is amended to read as follows:

Except as otherwise provided in KRS 355.9-303 to 355.9-306, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

- (1) Except as otherwise provided in this section, while a debtor 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 collateral.
- (2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral.



- (3) Except as otherwise provided in subsection (4) of this section, while tangible negotiable documents, goods, instruments, money, or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:
- (a) Perfection of a security interest in the goods by filing a fixture filing;
  - (b) Perfection of a security interest in timber to be cut; and
  - (c) The effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.
- (4) The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.

➔Section 66. KRS 355.9-307 is amended to read as follows:

- (1) In this section, "place of business" means a place where a debtor conducts its affairs.
- (2) Except as otherwise provided in this section, the following rules determine a debtor's location:
- (a) A debtor who is an individual is located at the individual's principal residence.
  - (b) A debtor that is an organization and has only one (1) place of business is located at its place of business.
  - (c) A debtor that is an organization and has more than one (1) place of business is located at its chief executive office.
- (3) Subsection (2) of this section applies only if a debtor's residence, place of business, or chief executive office, as applicable, is located in a jurisdiction whose law generally requires information concerning the existence of a nonpossessory security interest to be made generally available in a filing, recording, or registration system as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. If subsection (2) of this section does not apply, the debtor is located in the District of Columbia.

- (4) A person that ceases to exist, have a residence, or have a place of business continues to be located in the jurisdiction specified by subsections (2) and (3) of this section.
- (5) A registered organization that is organized under the law of a state is located in that state.
- (6) Except as otherwise provided in subsection (9) of this section, a registered organization that is organized under the law of the United States and a branch or agency of a bank that is not organized under the law of the United States or a state are located:
  - (a) In the state that the law of the United States designates, if the law designates a state of location;
  - (b) In the state that the registered organization, branch, or agency designates, if the law of the United States authorizes the registered organization, branch, or agency to designate its state of location, including by designating its main office, home office, or other comparable office; or
  - (c) In the District of Columbia, if neither paragraph (a) nor paragraph (b) of this subsection applies.
- (7) A registered organization continues to be located in the jurisdiction specified by subsection (5) or (6) of this section notwithstanding:
  - (a) The suspension, revocation, forfeiture, or lapse of the registered organization's status as such in its jurisdiction of organization; or
  - (b) The dissolution, winding up, or cancellation of the existence of the registered organization.
- (8) The United States is located in the District of Columbia.
- (9) A branch or agency of a bank that is not organized under the law of the United States or a state is located in the state in which the branch or agency is licensed, if all branches and agencies of the bank are licensed in only one (1) state.

- (10) A foreign air carrier under the Federal Aviation Act of 1958, as amended, is located at the designated office of the agent upon which service of process may be made on behalf of the carrier.
- (11) This section applies only for purposes of this part of this article.
- ➔Section 67. KRS 355.9-310 is amended to read as follows:
- (1) Except as otherwise provided in subsection (2) of this section and KRS 355.9-312(2), a financing statement must be filed to perfect all security interests and agricultural liens.
- (2) The filing of a financing statement is not necessary to perfect a security interest:
- (a) That is perfected under KRS 355.9-308(4), (5), (6), or (7);
  - (b) That is perfected under KRS 355.9-309 when it attaches;
  - (c) In property subject to a statute, regulation, or treaty described in KRS 355.9-311(1);
  - (d) In goods in possession of a bailee which is perfected under KRS 355.9-312(4)(a) or (b);
  - (e) In certificated securities, documents, goods, or instruments which is perfected without filing, control, or possession under KRS 355.9-312(5), (6), or (7);
  - (f) In collateral in the secured party's possession under KRS 355.9-313;
  - (g) In a certificated security which is perfected by delivery of the security certificate to the secured party under KRS 355.9-313;
  - (h) In deposit accounts, electronic chattel paper, electronic documents, investment property, or letter-of-credit rights which is perfected by control under KRS 355.9-314;
  - (i) In proceeds which is perfected under KRS 355.9-315; or
  - (j) That is perfected under KRS 355.9-316.
- (3) If a secured party assigns a perfected security interest or agricultural lien, a filing under this article is not required to continue the perfected status of the security

interest against creditors of and transferees from the original debtor.

➔Section 68. KRS 355.9-311 is amended to read as follows:

- (1) Except as otherwise provided in subsection (4) of this section, the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:
  - (a) A statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt KRS 355.9-310(1);
  - (b) KRS Chapter 186A; or
  - (c) A ~~certificate of title~~ statute of another jurisdiction which provides for a security interest to be indicated on ~~a~~<sup>the</sup> certificate ***of title*** as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.
- (2) Compliance with the requirements of a statute, regulation, or treaty described in subsection (1) of this section for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this article. Except as otherwise provided in subsection (4) of this section and KRS 355.9-313 and 355.9-316(4) and (5) for goods covered by a certificate of title, a security interest in property subject to a statute, regulation, or treaty described in subsection (1) of this section may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.
- (3) Except as otherwise provided in subsection (4) of this section and KRS 355.9-316(4) and (5), duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation, or treaty described in subsection (1) of this section are governed by the statute, regulation, or treaty. In other respects, the security interest is subject to this article.

- (4) During any period in which collateral subject to a statute specified in subsection (1)(b) of this section is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling goods of that kind, this section does not apply to a security interest in that collateral created by that person.

➔Section 69. KRS 355.9-312 is amended to read as follows:

- (1) A security interest in chattel paper, negotiable documents, instruments, or investment property may be perfected by filing.
- (2) Except as otherwise provided in KRS 355.9-315(3) and (4) for proceeds:
- (a) A security interest in a deposit account may be perfected only by control under KRS 355.9-314;
- (b) And except as otherwise provided in KRS 355.9-308(4), a security interest in a letter-of-credit right may be perfected only by control under KRS 355.9-314; and
- (c) A security interest in money may be perfected only by the secured party's taking possession under KRS 355.9-313.
- (3) While goods are in the possession of a bailee that has issued a negotiable document covering the goods:
- (a) A security interest in the goods may be perfected by perfecting a security interest in the document; and
- (b) A security interest perfected in the document has priority over any security interest that becomes perfected in the goods by another method during that time.
- (4) While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:
- (a) Issuance of a document in the name of the secured party;
- (b) The bailee's receipt of notification of the secured party's interest; or
- (c) Filing as to the goods.

- (5) A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession or control for a period of twenty (20) days from the time it attaches to the extent that it arises for new value given under an authenticated security agreement.
- (6) A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for twenty (20) days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:
  - (a) Ultimate sale or exchange; or
  - (b) Loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.
- (7) A perfected security interest in a certificated security or instrument remains perfected for twenty (20) days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:
  - (a) Ultimate sale or exchange; or
  - (b) Presentation, collection, enforcement, renewal, or registration of transfer.
- (8) After the twenty (20) day period specified in subsection (5), (6), or (7) of this section expires, perfection depends upon compliance with this article.

➔Section 70. KRS 355.9-313 is amended to read as follows:

- (1) Except as otherwise provided in subsection (2) of this section, a secured party may perfect a security interest in tangible 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 71. KRS 355.9-314 is amended to read as follows:

- (1) A security interest in investment property, deposit accounts, letter-of-credit rights,~~or~~ electronic chattel paper, or electronic documents may be perfected by control of the collateral under KRS 355.9-104, 355.9-105, 355.9-106,~~or~~ 355.9-107, or 355.7-106.
- (2) A security interest in deposit accounts, electronic chattel paper,~~or~~ letter-of-credit rights, or electronic documents is perfected by control under KRS 355.9-104, 355.9-105,~~or~~ 355.9-107, or 355.7-106 when the secured party obtains control and remains perfected by control only while the secured party retains control.
- (3) A security interest in investment property is perfected by control under KRS 355.9-106 from the time the secured party obtains control and remains perfected by control until:
  - (a) The secured party does not have control; and
  - (b) One (1) of the following occurs:
    - 1. If the collateral is a certificated security, the debtor has or acquires possession of the security certificate;
    - 2. If the collateral is an uncertificated security, the issuer has registered or



registers the debtor as the registered owner; or

3. If the collateral is a security entitlement, the debtor is or becomes the entitlement holder.

➔Section 72. KRS 355.9-316 is amended to read as follows:

- (1) A security interest perfected pursuant to the law of the jurisdiction designated in KRS 355.9-301(1) or 355.9-305(3) remains perfected until the earliest of:
  - (a) The time perfection would have ceased under the law of that jurisdiction;
  - (b) The expiration of four (4) months after a change of the debtor's location to another jurisdiction; or
  - (c) The expiration of one (1) year after a transfer of collateral to a person that thereby becomes a debtor and is located in another jurisdiction.
- (2) If a security interest described in subsection (1) of this section becomes perfected under the law of the other jurisdiction before the earliest time or event described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earliest time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.
- (3) A possessory security interest in collateral, other than goods covered by a certificate of title and as-extracted collateral consisting of goods, remains continuously perfected if:
  - (a) The collateral is located in one jurisdiction and subject to a security interest perfected under the law of that jurisdiction;
  - (b) Thereafter the collateral is brought into another jurisdiction; and
  - (c) Upon entry into the other jurisdiction, the security interest is perfected under the law of the other jurisdiction.
- (4) Except as otherwise provided in subsection (5) of this section, a security interest in goods covered by a certificate of title which is perfected by any method under the

law of another jurisdiction when the goods become covered by a certificate of title from this Commonwealth remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered.

- (5) A security interest described in subsection (4) of this section becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value if the applicable requirements for perfection under KRS 355.9-311(2) or 355.9-313 are not satisfied before the earlier of:
  - (a) The time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from this Commonwealth; or
  - (b) The expiration of four (4) months after the goods had become so covered.
- (6) A security interest in deposit accounts, letter-of-credit rights, or investment property which is perfected under the law of the bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's jurisdiction, as applicable, remains perfected until the earlier of:
  - (a) The time the security interest would have become unperfected under the law of that jurisdiction; or
  - (b) The expiration of four (4) months after a change of the applicable jurisdiction to another jurisdiction.
- (7) If a security interest described in subsection (6) of this section becomes perfected under the law of the other jurisdiction before the earlier of the time or the end of the period described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier of that time or the end of that period, it becomes unperfected and is deemed

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

(8) The following rules apply to collateral to which a security interest attaches within four (4) months after the debtor changes its location to another jurisdiction:

(a) A financing statement filed before the change pursuant to the law of the jurisdiction designated in KRS 355.9-301(1) or 355.9-305(3) is effective to perfect a security interest in the collateral if the financing statement would have been effective to perfect a security interest in the collateral if the debtor had not changed its location; and

(b) If a security interest that is perfected by a financing statement that is effective under paragraph (a) of this subsection becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in KRS 355.9-301(1) or 355.9-305(3) or the expiration of the four (4) month period, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(9) If a financing statement naming an original debtor is filed pursuant to the law of the jurisdiction designated in KRS 355.9-301(1) or 355.9-305(3) and the new debtor is located in another jurisdiction, the following rules apply:

(a) The financing statement is effective to perfect a security interest in collateral in which the new debtor has or acquires rights before or within four (4) months after the new debtor becomes bound under KRS 355.9-203(4), if the financing statement would have been effective to perfect a security interest in the collateral if the collateral had been acquired by the original debtor; and

(b) A security interest that is perfected by the financing statement and which

becomes perfected under the law of the other jurisdiction before the earlier of the expiration of the four (4) month period or the time the financing statement would have become ineffective under the law of the jurisdiction designated in KRS 355.9-301(1) or 355.9-305(3) remains perfected thereafter. A security interest that is perfected by the financing statement but which does not become perfected under the law of the other jurisdiction before the earlier time or event becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

➔Section 73. KRS 355.9-317 is amended to read as follows:

- (1) A security interest or agricultural lien is subordinate to the rights of:
  - (a) A person entitled to priority under KRS 355.9-322; and
  - (b) Except as otherwise provided in subsection (5) of this section, a person that becomes a lien creditor before the earlier of the time:
    1. The security interest or agricultural lien is perfected; or
    2. One (1) of the conditions specified in KRS 355.9-203(2)(c) is met and a financing statement covering the collateral is filed.
- (2) Except as otherwise provided in subsection (5) of this section, a buyer, other than a secured party, of tangible chattel paper, documents, goods, instruments, or a certificated security~~[security certificate]~~ takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.
- (3) Except as otherwise provided in subsection (5) of this section, a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.
- (4) A licensee of a general intangible or a buyer, other than a secured party, of

~~collateral~~[accounts, electronic chattel paper, general intangibles, or investment property] other than **tangible chattel paper, tangible documents, goods, instruments, or** a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

- (5) Except as otherwise provided in KRS 355.9-320 and 355.9-321, if a person files a financing statement with respect to a purchase-money security interest before or within twenty (20) days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing.

➔Section 74. KRS 355.9-326 is amended to read as follows:

- (1) Subject to subsection (2) of this section, a security interest **that is** created by a new debtor **in collateral in which the new debtor has or acquires rights and**~~[which is]~~ perfected by a filed financing statement that **would be ineffective to perfect the security interest but for the application of KRS 355.9-508 or KRS 355.9-508 and 355.9-316(9)(a)**~~[is effective solely under KRS 355.9-508 in collateral in which a new debtor has or acquires rights]~~ is subordinate to a security interest in the same collateral which is perfected other than by a filed financing statement that is effective solely under KRS 355.9-508.
- (2) The other provisions of this part of this article determine the priority among conflicting security interests in the same collateral perfected by filed financing statements **described in subsection (1) of this section**~~[that are effective solely under KRS 355.9-508]~~. However, if the security agreements to which a new debtor became bound as debtor were not entered into by the same original debtor, the conflicting security interests rank according to priority in time of the new debtor's having become bound.

➔Section 75. KRS 355.9-338 is amended to read as follows:

If a security interest or agricultural lien is perfected by a filed financing statement providing information described in KRS 355.9-516(2)(e) which is incorrect at the time the financing statement is filed:

- (1) The security interest or agricultural lien is subordinate to a conflicting perfected security interest in the collateral to the extent that the holder of the conflicting security interest gives value in reasonable reliance upon the incorrect information; and
- (2) A purchaser, other than a secured party, of the collateral takes free of the security interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect information, the purchaser gives value and, in the case of chattel paper, documents, goods, instruments, or a security certificate, receives delivery of the collateral.

➔Section 76. KRS 355.9-406 is amended 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, **other than a sale pursuant to a disposition under KRS 355.9-610**

*or an acceptance of collateral under KRS 355.9-620.*

- (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 77. KRS 355.9-408 is amended 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 *other than a sale pursuant to a disposition under KRS 355.9-610 or an acceptance of collateral under KRS 355.9-620.*
- (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(11), 234.330(10), 243.630(2), 260.815, 286.4-

460(2), 292.320(2)(b), 286.8-036(3), 304.3-410(2)(f), 304.3-520(5), 333.080, 350.135(1), 365.430(27), and 286.9-070(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.

➔Section 78. KRS 355.9-502 is amended to read as follows:

- (1) Subject to subsection (2) of this section, a financing statement is sufficient only if it:
- (a) Provides the name of the debtor;
  - (b) Provides the name of the secured party or a representative of the secured party; and
  - (c) Indicates the collateral covered by the financing statement.
- (2) Except as otherwise provided in KRS 355.9-501(2), to be sufficient, a financing statement that covers as-extracted collateral or timber to be cut, or which is filed as a fixture filing and covers goods that are or are to become fixtures, must satisfy subsection (1) of this section and also:
- (a) Indicate that it covers this type of collateral;
  - (b) Indicate that it is to be filed in the real property records;
  - (c) Provide a description of the real property to which the collateral is related; and
  - (d) If the debtor does not have an interest of record in the real property, provide the name of a record owner.
- (3) A record of a mortgage is effective, from the date of recording, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if:
- (a) The record indicates the goods or accounts that it covers;

- (b) The goods are or are to become fixtures related to the real property described in the record or the collateral is related to the real property described in the record and is as-extracted collateral or timber to be cut;
  - (c) The record satisfies the requirements for a financing statement in this section:
    - 1. The record need not indicate~~[other than an indication]~~ that it is to be filed in the real property records; and
    - 2. The record sufficiently provides the name of a debtor who is an individual if it provides the individual name of the debtor or the surname and first personal name of the debtor, even if the debtor is an individual to whom KRS 355.9-503(1)(d) applies; and
  - (d) The record is recorded.
- (4) A financing statement may be filed before a security agreement is made or a security interest otherwise attaches.

➔Section 79. KRS 355.9-503 is amended to read as follows:

- (1) A financing statement sufficiently provides the name of the debtor:
  - (a) Except as otherwise provided in paragraph (c) of this subsection, if the debtor is a registered organization, or the collateral is held in a trust that is a registered organization, only if the financing statement provides the name that is stated to be the registered organization's name ~~[of the debtor indicated]~~ on the public organic record~~[of]~~ most recently filed with or issued or enacted by the registered organization's~~[debtor's]~~ jurisdiction of organization which purports to state, amend, or restate the registered organization's name~~[shows the debtor to have been organized]~~;
  - (b) Subject to subsection (6) of this section, if the collateral is being administered by the personal representative of a decedent~~[debtor is a decedent's estate]~~, only if the financing statement provides, as the name of the debtor, the name of the decedent and, in a separate part of the financing

statement, indicates that the collateral is being administered by a personal representative~~[debtor is an estate];~~

- (c) If the collateral is held in a trust that is not a registered organization, only if the financing statement ~~[debtor is a trust or a trustee acting with respect to property held in trust, only if the financing statement];~~

1. Provides, as the name of the debtor:

a. If the organic record of the trust specifies a name for the trust, the name so specified; or

b. If the organic record of the trust does not specify a name for the trust, the name of the settlor or testator~~[Provides the name specified for the trust in its organic documents or, if no name is specified, provides the name of the settlor and additional information sufficient to distinguish the debtor from other trusts having one or more of the same settlors]; and~~

2. In a separate part of the financing statement:

a. If the name is provided in accordance with subparagraph 1.a. of this paragraph, indicates that the collateral is held in a trust; or

b. If the name is provided in accordance with subparagraph 1.b. of this paragraph, provides additional information sufficient to distinguish the trust from other trusts having one (1) or more of the same settlors or the same testator and indicates that the collateral is held in a trust, unless the additional information so indicates;

- (d) Subject to subsection (7) of this section, if the debtor is an individual to whom this state has issued an operator's license that has not expired, only if it provides the name of the individual which is indicated on the operator's license;

(e) If the debtor is an individual to whom paragraph (d) of this subsection does not apply, only if it provides the individual name of the debtor or the surname and first personal name of the debtor~~Indicates, in the debtor's name or otherwise, that the debtor is a trust or is a trustee acting with respect to property held in trust~~; and

~~(f)(d)~~ In other cases:

1. If the debtor has a name, only if it provides the ~~individual or~~ organizational name of the debtor; and
2. If the debtor does not have a name, only if it provides the names of the partners, members, associates, or other persons comprising the debtor, in a manner that each name provided would be sufficient if the person named were the debtor.

- (2) A financing statement that provides the name of the debtor in accordance with subsection (1) of this section is not rendered ineffective by the absence of:
  - (a) A trade name or other name of the debtor; or
  - (b) Unless required under subsection (1)(f)2.~~(1)(d)2.~~ of this section, names of partners, members, associates, or other persons comprising the debtor.
- (3) A financing statement that provides only the debtor's trade name does not sufficiently provide the name of the debtor.
- (4) Failure to indicate the representative capacity of a secured party or representative of a secured party does not affect the sufficiency of a financing statement.
- (5) A financing statement may provide the name of more than one (1) debtor and the name of more than one (1) secured party.

(6) The name of the decedent indicated on the order appointing the personal representative of the decedent issued by the court having jurisdiction over the collateral is sufficient as the "name of the decedent" under subsection (1)(b) of this section.

(7) If this state has issued to an individual more than one (1) operator's license of a kind described in subsection (1)(d) of this section, the one that was issued most recently is the one to which subsection (1)(d) of this section refers.

(8) The "name of the settlor or testator" means:

(a) If the settlor is a registered organization, the name of the registered organization indicated on the public organic record filed with or issued or enacted by the registered organization's jurisdiction of organization; or

(b) In other cases, the name of the settlor or testator indicated in the trust's organic record.

➔Section 80. KRS 355.9-507 is amended to read as follows:

- (1) A filed financing statement remains effective with respect to collateral that is sold, exchanged, leased, licensed, or otherwise disposed of and in which a security interest or agricultural lien continues, even if the secured party knows of or consents to the disposition.
- (2) Except as otherwise provided in subsection (3) of this section and KRS 355.9-508, a financing statement is not rendered ineffective if, after the financing statement is filed, the information provided in the financing statement becomes seriously misleading under KRS 355.9-506.
- (3) If ~~the~~[a debtor so changes its] name that a filed financing statement provides for a debtor becomes insufficient as the name of the debtor under KRS 355.9-503(1) so that the financing statement becomes seriously misleading under KRS 355.9-506:
  - (a) The financing statement is effective to perfect a security interest in collateral acquired by the debtor before ~~[the change]~~, or within four (4) months after, the filed financing statement becomes seriously misleading ~~[debtor notifies the secured party in writing of the change]~~; and
  - (b) The financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than four (4) months after the filed

financing statement becomes seriously misleading~~[debtor notifies the secured party in writing of the change]~~, unless an amendment to the financing statement which renders the financing statement not seriously misleading is filed within four (4) months after the filed financing statement becomes seriously misleading~~[the change]~~.

➔Section 81. KRS 355.9-510 is amended to read as follows:

- (1) A filed record is effective only to the extent that it was filed by a person that may file it under KRS 355.9-509 or 355.9-518~~(6)~~(4).
- (2) A record authorized by one secured party of record does not affect the financing statement with respect to another secured party of record.
- (3) A continuation statement that is not filed within the six (6) month period prescribed by KRS 355.9-515(4) is ineffective.

➔Section 82. KRS 355.9-515 is amended to read as follows:

- (1) Except as otherwise provided in subsections (2), (5), (6), and (7) of this section, a filed financing statement is effective for a period of five (5) years after the date of filing.
- (2) Except as otherwise provided in subsections (5), (6), and (7) of this section, an initial financing statement filed in connection with a public-finance transaction or manufactured-home transaction is effective for a period of thirty (30) years after the date of filing if it indicates that it is filed in connection with a public-finance transaction or manufactured-home transaction.
- (3) The effectiveness of a filed financing statement lapses on the expiration of the period of its effectiveness unless before the lapse a continuation statement is filed pursuant to subsection (4) of this section. Upon lapse, a financing statement ceases to be effective and any security interest or agricultural lien that was perfected by the financing statement becomes unperfected, unless the security interest is perfected otherwise. If the security interest or agricultural lien becomes unperfected upon



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

- (4) A continuation statement may be filed only within six (6) months before the expiration of the five (5) year period specified in subsection (1) of this section or the thirty (30) year period specified in subsection (2) of this section, whichever is applicable.
- (5) Except as otherwise provided in KRS 355.9-510, upon timely filing of a continuation statement, the effectiveness of the initial financing statement continues for a period of five (5) years commencing on the day on which the financing statement would have become ineffective in the absence of the filing. Upon the expiration of the five (5) year period, the financing statement lapses in the same manner as provided in subsection (3) of this section, unless, before the lapse, another continuation statement is filed pursuant to subsection (4) of this section. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the initial financing statement.
- (6) If a debtor is a transmitting utility and a filed ***initial*** financing statement so indicates, the financing statement is effective until a termination statement is filed.
- (7) A record of a mortgage that is effective as a financing statement filed as a fixture filing under KRS 355.9-502(3) remains effective as a financing statement filed as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real property.

➔Section 83. KRS 355.9-516 is amended to read as follows:

- (1) Except as otherwise provided in subsection (2) of this section, communication of a record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing.
- (2) Filing does not occur with respect to a record that a filing office refuses to accept because:

- (a) The record is not communicated by a method or medium of communication authorized by the filing office;
- (b) An amount equal to or greater than the applicable filing fee is not tendered;
- (c) The filing office is unable to index the record because:
  - 1. In the case of an initial financing statement, the record does not provide a name for the debtor;
  - 2. In the case of an amendment or information~~correction~~ statement, the record:
    - a. Does not identify the initial financing statement as required by KRS 355.9-512 or 355.9-518, as applicable; or
    - b. Identifies an initial financing statement whose effectiveness has lapsed under KRS 355.9-515;
  - 3. In the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's surname~~last name~~; or
  - 4. In the case of a record filed in the filing office described in KRS 355.9-501(1)(a), the record does not provide a sufficient description of the real property to which it relates;
- (d) In the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;
- (e) In the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement to which the amendment relates, the record does not:
  - 1. Provide a mailing address for the debtor; or

2. Indicate whether the name provided as the name of the debtor is the name of an individual or an organization; ~~or~~
  3. ~~If the financing statement indicates that the debtor is an organization, provide:~~
    - a. ~~A type of organization for the debtor;~~
    - b. ~~A jurisdiction of organization for the debtor; or~~
    - c. ~~An organizational identification number for the debtor or indicate that the debtor has none;~~
  - (f) In the case of an assignment reflected in an initial financing statement under KRS 355.9-514(1) or an amendment filed under KRS 355.9-514(2), the record does not provide a name and mailing address for the assignee; or
  - (g) In the case of a continuation statement, the record is not filed within the six (6) month period prescribed by KRS 355.9-515(4).
  - (3) For purposes of subsection (2) of this section:
    - (a) A record does not provide information if the filing office is unable to read or decipher the information; and
    - (b) A record that does not indicate that it is an amendment or identify an initial financing statement to which it relates, as required by KRS 355.9-512, 355.9-514, or 355.9-518, is an initial financing statement.
  - (4) A record that is communicated to the filing office with tender of the filing fee, but which the filing office refuses to accept for a reason other than one set forth in subsection (2) of this section, is effective as a filed record except as against a purchaser of the collateral which gives value in reasonable reliance upon the absence of the record from the files.
- ➔Section 84. KRS 355.9-518 is amended to read as follows:
- (1) A person may file in the filing office an information ~~[a correction]~~ statement with respect to a record indexed there under the person's name if the person believes that

the record is inaccurate or was wrongfully filed.

(2) *An information*~~[A correction]~~ statement *filed under subsection (1) of this section* shall:

- (a) Identify the record to which it relates by the file number assigned to the initial financing statement to which the record relates;
- (b) Indicate that it is *an information*~~[a correction]~~ statement; and
- (c) Provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.

(3) Except as provided in subsection ~~(6)~~~~[(4)]~~ of this section, *a person may file in the filing office an information statement with respect to a record filed there if the person is a secured party of record with respect to the financing statement to which the record relates and believes that the person that filed the record was not entitled to do so under KRS 355.9-509(4).*

*(4) An information statement filed under subsection (3) of this section shall:*

- (a) Identify the record to which it relates by the file number assigned to the initial financing statement to which the record relates;*
- (b) Indicate that it is an information statement; and*
- (c) Provide the basis for the person's belief that the person that filed the record was not entitled to do so under KRS 355.9-509(4).*

(5) The filing of *an information*~~[a correction]~~ statement does not affect the effectiveness of an initial financing statement or other filed record.

~~(6)~~~~[(4)]~~ *An information*~~[A correction]~~ statement that is filed by a bank, or subsidiary or affiliate thereof, shall affect the effectiveness of the record to which it relates if:

- (a) The *information*~~[correction]~~ statement includes a written statement of an officer of the entity filing the *information*~~[correction]~~ statement, which

provides the information specified in subsection (2) of this section;

- (b) The officer's written statement provides the officer's title and information identifying how the filer qualifies as a bank, or subsidiary or affiliate thereof;
- (c) The officer's written statement has been duly acknowledged before a notary public; and
- (d) The record to which the information~~[correction]~~ statement relates was originally filed by or refers to a record filed by the entity filing the information~~[correction]~~ statement.

➔Section 85. KRS 355.9-521 is amended to read as follows:

- (1) A filing office that accepts written records may not refuse to accept a written initial financing statement in the following form and format~~[set forth as Form UCC1 and Form UCC1Ad in the final official text of the 1999 revisions to Article 9 of the Uniform Commercial Code promulgated by The American Law Institute and the National Conference of Commissioners on Uniform State Laws]~~, except for a reason set forth in KRS 355.9-516(2);~~[-]~~

### **UCC FINANCING STATEMENT**

#### **A. NAME AND PHONE OF CONTACT AT FILER [optional]**

---

#### **B. SEND ACKNOWLEDGMENT TO: (Name and Address)**

---



---

**THE ABOVE SPACE IS  
FOR FILING OFFICE  
USE ONLY**

#### **1. DEBTOR'S EXACT FULL LEGAL NAME-insert only one debtor name (1.a. or 1.b.) (Do not abbreviate or combine names).**

##### **a. ORGANIZATION'S NAME**

---

OR

b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

c. MAILING ADDRESS

---

CITY

STATE

POSTAL CODE

COUNTRY

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME-insert only one debtor name (2.a. or 2.b.)(use exact, full name; do not omit, modify, or abbreviate any word in the Debtor's name).

---

a. ORGANIZATION'S NAME

---

OR

b. INDIVIDUAL'S LAST NAME FIRST NAME

---

c. MAILING ADDRESS

---

CITY

STATE

POSTAL CODE

COUNTRY

3. SECURED PARTY'S NAME (or name of ASSIGNEE or ASSIGNOR SECURED PARTY )-provide only one secured party name (3.a. or 3.b.).

a. ORGANIZATION'S NAME

---

OR

b. INDIVIDUAL'S LAST NAME FIRST NAME

---

c. MAILING ADDRESS

---

CITY

STATE

POSTAL CODE

COUNTRY

4. This FINANCING STATEMENT covers the following collateral:5. Check only if applicable and check only one box:

Collateral is ( ) held in a Trust ( ) being administered by Decedent's Personal Representative

6. a. Check only if applicable and check only one box:

( ) Public-Finance Transaction ( ) Manufactured-Home Transaction

( ) A Debtor is a Transmitting Utility

b. Check only if applicable and check only one box:

( ) Agricultural Lien ( ) Non-UCC Filing

7. ALTERNATIVE DESIGNATION [if applicable]:

( ) Lessee/Lessor ( ) Consignee/Consignor ( ) Seller/Buyer

( ) Bailee/Bailor ( ) Licensee/Licensor

8. OPTIONAL FILER REFERENCE DATAUCC FINANCING STATEMENT ADDENDUM9. NAME OF FIRST DEBTOR (same as item 1.a. or 1.b. on Financing Statement)

a. ORGANIZATION'S NAME

\_\_\_\_\_

OR

b. INDIVIDUAL'S LAST NAME FIRST NAME

\_\_\_\_\_

c. MAILING ADDRESS

\_\_\_\_\_

CITY STATE POSTAL CODE COUNTRY

ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

---

**10. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME-provide only one name (10.a. or 10.b.)(use exact, full name; do not omit, modify or abbreviate any word in the Debtor's name)**

**a. ORGANIZATION'S NAME**

---

**OR**

**b. INDIVIDUAL'S LAST NAME FIRST NAME**

---

**c. MAILING ADDRESS**

---

**CITY STATE POSTAL CODE COUNTRY**

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**11 ( ) ADDITIONAL SECURED PARTY'S NAME or**

**( ) ASSIGNOR SECURED PARTY'S NAME-provide only one name (11.a. or 11.b.)**

**a. ORGANIZATION'S NAME**

---

**OR**

**b. INDIVIDUAL'S LAST NAME FIRST NAME SUFFIX**

---

**c. MAILING ADDRESS**

---

**CITY STATE POSTAL CODE COUNTRY**

---

**12. ADDITIONAL SPACE FOR ITEM (Collateral)**

---

**13. This FINANCING STATEMENT is to be recorded in the REAL ESTATE RECORDS (if applicable)**



**14. This FINANCING STATEMENT:**

( ) covers timber to be cut ( ) as extracted collateral, or  
is filed as a ( ) fixture filing.

**15. Name and address of a RECORD OWNER of real estate described in item 16. (if Debtor does not have record interest):****16. Description of real estate:****17. MISCELLANEOUS**

(2) A filing office that accepts written records may not refuse to accept a written  
record in the following form and format except for a reason set forth in section  
KRS 355.9-516(2):

**UCC FINANCING STATEMENT AMENDMENT****FOLLOW INSTRUCTIONS****A. NAME AND PHONE OF CONTACT AT FILER [optional]****B. E-MAIL CONTACT AT FILER (optional)****C. SEND ACKNOWLEDGMENT TO: (Name and Address)****THE ABOVE SPACE****IS FOR FILING OFFICE****USE ONLY****1. a. INITIAL FINANCING STATEMENT FILE NUMBER**

b. ( ) This FINANCING STATEMENT AMENDMENT is to be filed in the

**REAL ESTATE RECORDS.**

**Filer: attach Amendment Addendum (form UCC3Ad) and provide Debtor's name in item 13.**

**2. ( ) TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to security interest(s) of the Secured Party authorizing this Termination Statement.**

**3. ( ) ASSIGNMENT (full or partial): Provide name of assignee in item 7.a. or 7.b. and address of assignee in item 7.c.; and give name of Assignor in item 9. For partial assignment, complete items 7. and 9. and also indicate affected collateral in item 8.**

**4. ( ) CONTINUATION: Effectiveness of the Financing Statement identified above with respect to security interest(s) of the Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law.**

**5. ( ) PARTY INFORMATION CHANGE:**

**Check one of these two boxes:**

**This Change affects ( ) Debtor or ( ) Secured Party of record**

**AND**

**Check one of these three boxes to:**

**( ) CHANGE name and/or address: Complete item 6.a. or 6.b., and item 7.a. or 7.b. and item 7.c..**

**( ) ADD name: Complete item 7.a. or 7.b. and item 7.c..**

**( ) DELETE name: Give record name to be deleted in item 6.a. or 6.b..**

**6. CURRENT RECORD INFORMATION: Complete for Party Information change-provide only one name (6.a. or 6.b.) (use exact, full name; do not omit, modify or abbreviate any word in the Debtor's name)**

**a. ORGANIZATION'S NAME**

---

OR

b.    *INDIVIDUAL'S LAST NAME*                      *FIRST NAME*

---

*ADDITIONAL NAME(S)/INITIAL(S)*                                      *SUFFIX*

---

**7.    *CHANGED (NEW) OR ADDED INFORMATION: Complete for Assignment or Party Information Change-provide only one name (7.a. or 7.b.) (use exact, full name; do not omit, modify or abbreviate any word in the Debtor's name)***

a.    *ORGANIZATION'S NAME*

---

OR

b.    *INDIVIDUAL'S LAST NAME*                      *FIRST NAME*

---

*ADDITIONAL NAME(S)/INITIAL(S)*                                      *SUFFIX*

---

c.    *MAILING ADDRESS*

---

*CITY*                                      *STATE*    *POSTAL CODE*                      *COUNTRY*

---

**8.    *COLLATERAL CHANGE: check only one of the four boxes:***

( ) *ADD collateral*                      ( ) *DELETE collateral*                      (    )    *RESTATE*  
*covered collateral*                      ( ) *ASSIGN collateral*

**9.    *NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT-provide only one name (9.a. or 9.b.) (name of Assignor, if this is an Assignment).***

a.    *ORGANIZATION'S NAME*

---

OR

---

b.    *INDIVIDUAL'S LAST NAME*                      *FIRST NAME*

---

                    *ADDITIONAL NAMES*    *SUFFIX*

---

**10.    *OPTIONAL FILE REFERENCE DATA***

**11.    *INITIAL FINANCING STATEMENT FILE NUMBER. (same as item 1.a. on  
Amendment form)***

**12.    *NAME OF PARTY AUTHORIZING THIS AMENDMENT (same as item 9. on  
Amendment form)***

a.    *ORGANIZATION'S NAME*

---

***OR***

b.    *INDIVIDUAL'S LAST NAME*                      *FIRST NAME*

---

                    *ADDITIONAL NAMES*    *SUFFIX*

---

**13.    *Name of DEBTOR ON RELATED FINANCING STATEMENT (Name of a  
current Debtor of record required for indexing purposes only in some filing  
offices-see Instruction for item 13.-insert only one Debtor name (13.a. or 13.b.)  
(use exact, full name; do not omit, modify or abbreviate any word in the Debtor's  
name).***

a.    *ORGANIZATION'S NAME*

---

***OR***

b.    *INDIVIDUAL'S LAST NAME*                      *FIRST NAME*

---

                    *ADDITIONAL NAMES*    *SUFFIX*

---

---

**14. ADDITIONAL SPACE FOR ITEM 8. (COLLATERAL)**

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**15. This FINANCING STATEMENT AMENDMENT:**

( ) covers timber to be cut ( ) as-extracted collateral, or is filed as a ( ) fixture filing.

**16. Name and address of a RECORD OWNER of real estate described in item 17. (if debtor does not have a record interest):**

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**17. Description of real estate**

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~~(3)~~~~(2)~~ A filing office that accepts written records may not refuse to accept a written record in the form and format set forth as Form UCC3 and Form UCC3Ad in the final official text of the 1999 revisions to Article 9 of the Uniform Commercial Code promulgated by The American Law Institute and the National Conference of Commissioners on Uniform State Laws, except for a reason set forth in KRS 355.9-516(2).

➔Section 86. KRS 355.9-601 is amended to read as follows:

- (1) After default, a secured party has the rights provided in this part of this article and, except as otherwise provided in KRS 355.9-602, those provided by agreement of the parties. A secured party:
  - (a) May reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, or agricultural lien by any available judicial procedure; and
  - (b) If the collateral is documents, may proceed either as to the documents or as to the goods they cover.
- (2) A secured party in possession of collateral or control of collateral under KRS 355.9-104, 355.9-105, 355.9-106, ~~for 355.9-107,~~ or 355.7-106 has the rights and

duties provided in KRS 355.9-207.

- (3) The rights under subsections (1) and (2) of this section are cumulative and may be exercised simultaneously.
- (4) Except as otherwise provided in subsection (7) of this section and KRS 355.9-605, after default, a debtor and an obligor have the rights provided in this part of this article and by agreement of the parties.
- (5) If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:
  - (a) The date of perfection of the security interest or agricultural lien in the collateral;
  - (b) The date of filing a financing statement covering the collateral; or
  - (c) Any date specified in a statute under which the agricultural lien was created.
- (6) A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this article.
- (7) Except as otherwise provided in KRS 355.9-607(3), this part of this article imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes.

➔Section 87. KRS 355.9-607 is amended to read as follows:

- (1) If so agreed, and in any event after default, a secured party:
  - (a) May notify an account debtor or other person obligated on collateral to make payment or otherwise render performance to or for the benefit of the secured party;
  - (b) May take any proceeds to which the secured party is entitled under KRS 355.9-315;

- (c) May enforce the obligations of an account debtor or other person obligated on collateral and exercise the rights of the debtor with respect to the obligation of the account debtor or other person obligated on collateral to make payment or otherwise render performance to the debtor, and with respect to any property that secures the obligations of the account debtor or other person obligated on the collateral;
  - (d) If it holds a security interest in a deposit account perfected by control under KRS 355.9-104(1)(a), may apply the balance of the deposit account to the obligation secured by the deposit account; and
  - (e) If it holds a security interest in a deposit account perfected by control under KRS 355.9-104(1)(b) or (c), may instruct the bank to pay the balance of the deposit account to or for the benefit of the secured party.
- (2) If necessary to enable a secured party to exercise under subsection (1)(c) of this section the right of a debtor to enforce a mortgage nonjudicially, the secured party may record in the office in which a record of the mortgage is recorded:
- (a) A copy of the security agreement that creates or provides for a security interest in the obligation secured by the mortgage; and
  - (b) The secured party's sworn affidavit in recordable form stating that:
    - 1. A default has occurred with respect to the obligation secured by the mortgage; and
    - 2. The secured party is entitled to enforce the mortgage nonjudicially.
- (3) A secured party shall proceed in a commercially reasonable manner if the secured party:
- (a) Undertakes to collect from or enforce an obligation of an account debtor or other person obligated on collateral; and
  - (b) Is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor or a secondary obligor.

- (4) A secured party may deduct from the collections made pursuant to subsection (3) of this section reasonable expenses of collection and enforcement, including reasonable attorney's fees and legal expenses incurred by the secured party.
- (5) This section does not determine whether an account debtor, bank, or other person obligated on collateral owes a duty to a secured party.

➔SECTION 88. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 TO BE NUMBERED 355.9-801 IS CREATED TO READ AS FOLLOWS:

Sections 88 to 96 shall take effect on July 1, 2013.

➔SECTION 89. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 TO BE NUMBERED 355.9-802 IS CREATED TO READ AS FOLLOWS:

(1) Except as otherwise provided in this subtitle, this subtitle applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before the effective date of Sections 88 to 96 of this Act.

(2) Sections 88 to 96 of this Act do not affect an action, case, or proceeding commenced before the effective date of Sections 88 to 96 of this Act.

➔SECTION 90. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 TO BE NUMBERED 355.9-803 IS CREATED TO READ AS FOLLOWS:

(1) A security interest that is a perfected security interest immediately before the effective date of Sections 88 to 96 of this Act is a perfected security interest under Subtitle 9 as amended by Sections 88 to 96 of this Act if, on or after the effective date of Sections 88 to 96 of this Act, the applicable requirements for attachment and perfection under Subtitle 9 as amended by Sections 88 to 96 of this Act are satisfied without further action.

(2) Except as otherwise provided in Section 92 of this Act, if, immediately before the effective date of Sections 88 to 96 of this Act, a security interest is a perfected security interest, but the applicable requirements for perfection under Subtitle 9, as amended by Sections 88 to 96 of this Act, are not satisfied on the effective date



of Sections 88 to 96 of this Act, the security interest remains perfected thereafter only if the applicable requirements for perfection under Subtitle 9, as amended by Sections 88 to 96 of this Act, are satisfied within one (1) year after the effective date of Sections 88 to 96 of this Act.

➔SECTION 91. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 TO BE NUMBERED 355.9-804 IS CREATED TO READ AS FOLLOWS:

A security interest that is an unperfected security interest immediately before the effective date of Sections 88 to 96 of this Act becomes a perfected security interest:

(1) Without further action, on or after the effective date of Sections 88 to 96 of this Act, if the applicable requirements for perfection under Article 9 of KRS Chapter 355 as amended by Sections 88 to 96 of this Act are satisfied before or at the time;  
or

(2) When the applicable requirements for perfection are satisfied if the requirements are satisfied after the effective date of Sections 88 to 96 of this Act.

➔SECTION 92. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 TO BE NUMBERED 355.9-805 IS CREATED TO READ AS FOLLOWS:

(1) The filing of a financing statement before the effective date of Sections 88 to 96 of this Act is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under Subtitle 9 of KRS Chapter 355, as amended by Sections 88 to 96 of this Act.

(2) Sections 88 to 96 of this Act do not render ineffective an effective financing statement that, before the effective date of Sections 88 to 96 of this Act, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in Subtitle 9 of KRS Chapter 355 as it existed before Sections 88 to 96 of this Act became law. However, except as otherwise provided in subsections (3) and (4) of this section and Section 93 of this Act, the financing statement ceases to be effective:

- (a) If the financing statement is filed in this state, at the time the financing statement would have ceased to be effective had this section not become law; or
- (b) If the financing statement is filed in another jurisdiction, at the earlier of:
1. The time the financing statement would have ceased to be effective under the law of that jurisdiction; or
  2. June 30, 2018.
- (3) The filing of a continuation statement after the effective date of Sections 88 to 96 of this Act does not continue the effectiveness of the financing statement filed before the effective date of Sections 88 to 96 of this Act. However, upon the timely filing of a continuation statement after the effective date of Sections 88 to 96 of this Act and in accordance with the law of the jurisdiction governing perfection as provided in Subtitle 9 of KRS Chapter 355, as amended by Sections 88 to 96 of this Act, the effectiveness of a financing statement filed in the same office in that jurisdiction before the effective date of Sections 88 to 96 of this Act continues for the period provided by the law of that jurisdiction.
- (4) Subsection (2)(b)2. of this section applies to a financing statement that, before the effective date of Sections 88 to 96 of this Act, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in Subtitle 9 of KRS Chapter 355 as it existed before Sections 88 to 96 of this Act became law only to the extent that Subtitle 9 of KRS Chapter 355 as amended by Sections 88 to 96 of 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.
- (5) A financing statement that includes a financing statement filed before the effective date of Sections 88 to 96 of this Act and a continuation statement filed

after the effective date of Sections 88 to 96 of this Act is effective only to the extent that it satisfies the requirements of Subtitle 5 of KRS Chapter 355, as amended by Sections 88 to 96 of 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 KRS 355.9-503(1)(b). A financing statement that indicates that the debtor is a trust or is a trustee acting with respect to property held in trust indicates that the collateral is held in a trust within the meaning of KRS 355.9-503(1)(c).

➔SECTION 93. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 TO BE NUMBERED 355.9-806 IS CREATED TO READ AS FOLLOWS:

(1) The filing of an initial financing statement in the office specified in KRS 355.9-501 continues the effectiveness of a financing statement filed before the effective date of Sections 88 to 96 of this Act if:

(a) The filing of an initial financing statement in that office would be effective to perfect a security interest under Subtitle 9 of KRS Chapter 355 as amended by Sections 88 to 96 of this Act;

(b) The pre-effective-date financing statement was filed in an office in another state; and

(c) The initial financing statement satisfies subsection (3) of this section.

(2) The filing of an initial financing statement under subsection (1) of this section continues the effectiveness of the pre-effective-date financing statement:

(a) If the initial financing statement is filed before the effective date of Sections 88 to 96 of this Act, for the period provided in KRS 355.9-515 before the effective date of Section 82 of this Act, with respect to an initial financing statement; and

(b) If the initial financing statement is filed after the effective date of Sections

88 to 96 of this Act, for the period provided in KRS 355.9-515 on the effective date of Section 82 of this Act, with respect to an initial financing statement.

(3) To be effective for purposes of subsection (1) of this section, an initial financing statement shall:

(a) Satisfy the requirements of KRS Chapter 355 as amended by Sections 88 to 96 of this Act for an initial financing statement;

(b) Identify the pre-effective-date financing statement by indicating the office in which the financing statement was filed and providing the dates of filing and file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement; and

(c) Indicate that the pre-effective-date financing statement remains effective.

➔SECTION 94. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 TO BE NUMBERED 355.9-807 IS CREATED TO READ AS FOLLOWS:

(1) In this section, "pre-effective-date financing statement" means a financing statement filed before the effective date of Sections 88 to 96 of this Act.

(2) After the effective date of Sections 88 to 96 of this Act, 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 Subtitle 9 of KRS Chapter 355 as amended by Sections 88 to 96 of 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.

(3) Except as otherwise provided in subsection (4) of this section, 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 the effective date of Sections 88

to 96 of this Act only if:

- (a) The pre-effective-date financing statement and an amendment are filed in the office specified in KRS 355.9-501;
  - (b) An amendment is filed in the office specified in KRS 355.9-501 concurrently with, or after the filing in that office of, an initial financing statement that satisfies subsection (3) of Section 93 of this Act; or
  - (c) An initial financing statement that provides the information as amended and satisfies subsection (3) of Section 93 of this Act is filed in the office specified in KRS 355.9-501.
- (4) 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 (3) and (5) of Section 92 of this Act or Section 93 of this Act.
- (5) 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 the effective date of Sections 88 to 96 of this Act 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 (3) of Section 93 of this Act has been filed in the office specified by the law of the jurisdiction governing perfection as provided in Subtitle 9 of KRS Chapter 355 as amended by Sections 88 to 96 of this Act as the office in which to file a financing statement.

➔SECTION 95. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 TO BE NUMBERED 355.9-808 IS CREATED TO READ AS FOLLOWS:

A person may file an initial financing statement or a continuation statement under this part if:

- (1) The secured party of record authorizes the filing; and
- (2) The filing is necessary under this part:

(a) To continue the effectiveness of a financing statement filed before the effective date of Sections 88 to 96 of this Act; or

(b) To perfect or continue the perfection of a security interest.

➔SECTION 96. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 TO BE NUMBERED 355.9-809 IS CREATED TO READ AS FOLLOWS:

Sections 88 to 96 of this Act determines the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before the effective date of Sections 88 to 96 of this Act, Subtitle 9 of KRS Chapter 355 as it existed before amendment determines priority.

➔Section 97. KRS 131.515 is amended to read as follows:

- (1) If any person liable to pay any tax administered by the department, other than a tax subject to KRS 134.420, neglects or refuses to pay the tax after demand, the tax due together with all penalties, interest, and other costs applicable provided by law shall be a lien in favor of the Commonwealth of Kentucky. The lien shall attach to all property and rights to property owned or subsequently acquired by the person neglecting or refusing to pay the tax.
- (2) The lien imposed by subsection (1) of this section shall remain in force for ten (10) years from the date the notice of tax lien has been filed by the commissioner, or his or her designee with the county clerk of any county or counties in which the taxpayer's business or residence is located, or any county in which the taxpayer has an interest in property. The notice shall be recorded in the same manner as notices of lis pendens are filed, and the file shall be designated miscellaneous state and city delinquent and unpaid tax liens.
- (3) The tax lien imposed by subsection (1) of this section shall not be valid as against any purchaser, judgment lien creditor, or holder of a security interest or mechanic's lien until notice of the tax lien has been filed by the commissioner or his or her designee with both:

(a) The county clerk of any county or counties in which the taxpayer's business or residence is located, or in any county in which the taxpayer has an interest in property; and

(b) The Secretary of State.

The Secretary of State shall index notices of tax liens filed with it in a tax lien index which shall be accessible to the public in the same manner as financing statements filed with the Secretary of State under Article 9 of KRS Chapter 355, including online and searchable databases. The recording of the tax lien with both the Secretary of State and county clerk shall constitute notice of both the original assessment and all subsequent assessments of liability against the same taxpayer. Upon request, the department shall disclose the specific amount of liability at a given date to any interested party legally entitled to the information.

(4) Even though notice of a tax lien has been filed as provided by subsection (3) of this section, and notwithstanding the provisions of KRS 382.520, the tax lien imposed by subsection (1) of this section shall not be valid with respect to a security interest which came into existence after tax lien filing by reason of disbursements made within forty-five (45) days after the date of tax lien filing or the date the person making the disbursements had actual notice or knowledge of tax lien filing, whichever is earlier, provided the security interest:

(a) Is in property which:

1. At the time of tax lien filing is subject to the tax lien imposed by subsection (1) of this section; and
2. Is covered by the terms of a written agreement entered into before tax lien filing; and

(b) Is protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

➔Section 98. KRS 382.430 is amended to read as follows:

- (1) No mortgage, conveyance, or other instrument or writing constituting a lien or other security for any note or other evidence of indebtedness shall be received for record by any county clerk unless such mortgage, conveyance, or other writing gives the address of the lienholder~~[person or the address of the principal place of business of the corporation owning or holding the note or other evidence of indebtedness, or liable for the payment of taxes thereon].~~
- (2) Should there be an assignment of such mortgage, conveyance, or other instrument or writing constituting a lien or other security for any note or other evidence of indebtedness, of record in the clerk's office, the assignment shall state a mailing~~[the]~~ address of the assignee.~~[Unless any assignment is made of record, the original holder or owner shall be liable for taxes as though no assignment had been made.]~~
- (3) For the purposes of this chapter, a mortgage that has been recorded with any county clerk shall not be deemed invalid or ineffective as constructive notice for failure to include the county of residence or the principal place of business of the mortgagee or holder of the note or other evidence of indebtedness~~[in the mortgagee's address].~~

➔Section 99. KRS 382.480 is amended to read as follows:

- (1) Notices of tax liens payable to the United States and certificates discharging such liens shall be filed by the collector of internal revenue as follows:~~[.]~~
  - (a) In duplicate, in the office of the county clerk of each county within which the property subject to the lien is located; and
  - (b) In the Office of the Secretary of State.
- (2) When a notice of a federal tax lien is filed, the county clerk shall forthwith enter the same in an alphabetical federal tax lien index, showing on one (1) line the name and residence of the taxpayer named in the notice, the collector's serial number of such notice, the date and hour of filing, and the amount of tax and penalties. He shall



endorse on both the original and duplicate copies of the notice the date and hour of filing and shall mail the duplicate to the collector of internal revenue from whom received. The county clerk shall file and keep all original notices so filed, in numerical order, in a file designated "Federal Tax Lien Notices," or in the encumbrance book.

- (3) Notices of all other liens payable to the United States, including, but not limited to environmental protection liens, and certificates discharging such liens shall be filed as follows:~~[-]~~

(a) In duplicate, in the office of the county clerk of each county within which the property subject to the lien is located; and

(b) In the Office of the Secretary of State.

- (4) When a notice of a federal lien as provided by subsection (3)(a) of this section is filed, the county clerk shall forthwith enter the same in an alphabetical federal lien index, showing on one (1) line the name and residence of the property owner named in the notice, identifying the specific lien holder, the date and hour of filing, and the amount of the lien. He shall indorse on both the original and duplicate copies of the notice the date and hour of filing and shall mail the duplicate to the lien holder from whom received. The county clerk shall file and keep all original notices so filed, in numerical order, in a file designated "Federal Lien Notices," or in the encumbrance book.

- (5) When a notice of a federal lien or a certificate discharging such lien, as provided by subsection (1)(b) or (3)(b) of this section is filed, the Secretary of State shall forthwith enter the same in a federal lien index, showing the name and residence of the property owner named in the notice, identifying the specific lien holder, the date and hour of filing, and the amount of the lien. The Secretary of State's federal lien index shall be accessible to the public in the same manner as are financing statements filed with the Secretary of State under Subtitle 9 of KRS

**Chapter 355, including online and searchable databases.**

➔Section 100. KRS 382.500 is amended to read as follows:

**(1)** The county clerk shall be entitled to receive from the Internal Revenue Service a fee pursuant to KRS 64.012 for each notice of tax lien so filed, and a like fee for each lien discharged.

**(2) The Secretary of State shall be entitled to receive from the Internal Revenue Service a fee pursuant to KRS 355.9-525(1) for each notice of tax lien so filed, and a like fee for each lien discharged.**

➔Section 101. Sections 60 to 96 of this Act take effect July 1, 2013.