

CHAPTER 247

CONSUMER AND COMMERCIAL TRANSACTIONS

HOUSE BILL 02-1397

BY REPRESENTATIVE(S) Smith, Garcia, and Jameson;
also SENATOR(S) Thiebaut.**AN ACT****CONCERNING THE ADOPTION OF CHANGES TO ARTICLE 9 OF THE "UNIFORM COMMERCIAL CODE".***Be it enacted by the General Assembly of the State of Colorado:***SECTION 1.** The introductory portion to 4-9-102 (a) (5) and 4-9-102 (a) (46), Colorado Revised Statutes, are amended to read:**4-9-102. Definitions and index of definitions.** (a) In this article:(5) "Agricultural lien" means an interest ~~other than a security interest~~, in farm products:(46) "Health-care-insurance receivable" means an interest in or claim under a policy of insurance ~~which~~ THAT is a right to payment of a monetary obligation for health-care goods or services provided OR TO BE PROVIDED.**SECTION 2.** 4-9-201 (b) and (c), Colorado Revised Statutes, are amended to read:**4-9-201. General effectiveness of security agreement.** (b) A transaction subject to this article is subject to ANY APPLICABLE RULE OF LAW THAT ESTABLISHES A DIFFERENT RULE FOR CONSUMERS AND any other statute or regulation of this state that regulates the rates, charges, agreements, and practices for loans, credit sales, or other extensions of credit and any consumer protection statute or regulation of this state, including, but not limited to, the "Uniform Consumer Credit Code", articles 1 to 9 of title 5, C.R.S., the "Colorado Consumer Protection Act", article 1 of title 6, C.R.S., "assignment of wages", article 9 of title 8, C.R.S., "property and earnings exempt", article 54 of title 13, C.R.S., and the "Colorado Fair Debt Collection Practices Act", article 14 of title 12, C.R.S.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(c) In case of conflict between this article and a RULE OF LAW, statute, or regulation described in subsection (b) of this section, the RULE OF LAW, statute, or regulation controls. Failure to comply with a statute or regulation described in subsection (b) of this section has only the effect the statute or regulation specifies.

SECTION 3. 4-9-304 (b) (1), Colorado Revised Statutes, is amended to read:

4-9-304. Law governing perfection and priority of security interests in deposit accounts. (b) The following rules determine a bank's jurisdiction for purposes of this part 3:

(1) If an agreement between the bank and ~~the debtor~~ ITS CUSTOMER governing the deposit account expressly provides that a particular jurisdiction is the bank's jurisdiction for purposes of this part 3, this article, or this title, that jurisdiction is the bank's jurisdiction.

SECTION 4. 4-9-309, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

4-9-309. Security interest perfected upon attachment. The following security interests are perfected when they attach:

(14) A SALE BY AN INDIVIDUAL OF AN ACCOUNT THAT IS A RIGHT TO PAYMENT OF WINNINGS IN A LOTTERY OR OTHER GAME OF CHANCE.

SECTION 5. 4-9-323 (b), Colorado Revised Statutes, is amended to read:

4-9-323. Future advances. (b) Except as otherwise provided in subsection (c) of this section, a security interest is subordinate to the rights of a person that becomes a lien creditor WHILE THE SECURITY INTEREST IS PERFECTED ONLY to the extent that the security interest secures an advance made more than forty-five days after the person becomes a lien creditor unless the advance is made:

SECTION 6. 4-9-331 (b), Colorado Revised Statutes, is amended to read:

4-9-331. Priority of rights of purchasers of instruments, documents, and securities under other articles - priority of interests in financial assets and security entitlements under article 8. (b) This article does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of ~~an adverse~~ A claim under article 8 of this title.

SECTION 7. Repeal. 4-9-530, Colorado Revised Statutes, is repealed as follows:

4-9-530. Proper office to file certain amendments. ~~(a) A financing statement filed before January 1, 2000, may be continued, amended, assigned, or terminated of record between January 1, 2000, and June 30, 2001, only by filing a continuation statement, amendment, or termination statement, as applicable, in the filing office in which such financing statement would be required to be filed on or after January 1, 2000, and prior to July 1, 2001, pursuant to section 4-9-401 (b) to perfect a security~~

interest in the collateral described in such financing statement:

~~(b) Collateral may be released of record between January 1, 2000, and June 30, 2001, only by filing a statement of release in the filing office in which the financing statement that is the subject of the statement of release would be required to be filed on or after January 1, 2000, and prior to July 1, 2001, pursuant to section 4-9-401 (b) to perfect a security interest in the collateral described in such financing statement.~~

~~(c) A financing statement filed before January 1, 2000, may be continued, amended, assigned or terminated of record on or after July 1, 2001, only by filing a continuation statement, amendment, or termination statement, as applicable, in the filing office in which such financing statement would be required to be filed on or after July 1, 2001, pursuant to sections 4-9-501 (a) and (b) to perfect a security interest in the collateral described in such financing statement.~~

~~(d) Collateral may be released of record on and after July 1, 2001, only by filing a statement of release in the filing office in which the financing statement that is the subject of the statement of release would be required to be filed on or after July 1, 2001, pursuant to sections 4-9-501 (a) and (b) to perfect a security interest in the collateral described in such financing statement.~~

SECTION 8. 4-9-625 (j) (1), Colorado Revised Statutes, is amended to read:

4-9-625. Remedies for secured party's failure to comply with article. (j) The number "five hundred dollars" as provided in subsections (e) and (f) of this section shall be increased on July 1, 2004, and on July 1 of each third succeeding year in accordance with any aggregate increase in the United States department of labor bureau of labor statistics consumer price index for all urban consumers for the Denver-Boulder consolidated metropolitan statistical area for the preceding three calendar years as reflected in the final consumer price index for the Denver-Boulder consolidated metropolitan statistical area for the calendar year immediately preceding the calendar year in which the adjustment is to be made; except that:

(1) Such dollar amount shall not be increased if such final consumer price index does not reflect an aggregate increase in the consumer price index for the preceding three calendar years and shall ~~not~~ be decreased if such final consumer price index reflects an aggregate decrease in the consumer price index for the preceding three calendar years.

SECTION 9. Repeal. 4-9-628 (d) (2), Colorado Revised Statutes, is repealed as follows:

4-9-628. Nonliability and limitation on liability of secured party - liability of secondary obligor. (d) (2) ~~This subsection (d) is repealed, effective July 1, 2003.~~

SECTION 10. 4-9-629, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

4-9-629. Secured party's liability when taking possession after default - legislative declaration - fund. (g) NOTWITHSTANDING ANY PROVISION BY CONTRACT OR COMMON LAW, IN EXERCISING ITS RIGHTS AFTER DEFAULT, A SECURED

PARTY OR LESSOR TAKING POSSESSION OF A MOTOR VEHICLE MAY NOT DISABLE OR RENDER UNUSABLE ANY COMPUTER PROGRAM OR OTHER SIMILAR DEVICE EMBEDDED IN THE MOTOR VEHICLE IF IMMEDIATE INJURY TO ANY PERSON OR PROPERTY IS A REASONABLY FORESEEABLE CONSEQUENCE OF SUCH ACTION. ANY SECURED PARTY OR LESSOR WHO DISABLES OR RENDERS UNUSABLE SUCH A COMPUTER PROGRAM OR OTHER SIMILAR DEVICE IN SUCH CIRCUMSTANCES SHALL BE LIABLE IN ACCORDANCE WITH APPLICABLE RULES OF LAW TO ANY PERSON WHO SUSTAINS AN INJURY TO PERSON OR PROPERTY AS A REASONABLY FORESEEABLE RESULT OF THE SECURED PARTY'S OR LESSOR'S ACTION.

SECTION 11. The introductory portion to 4-9-702 (b), Colorado Revised Statutes, is amended to read:

4-9-702. Savings clause. (b) Except as otherwise provided in subsection (c) of this section and sections 4-9-703 to ~~4-9-709~~ 4-9-710:

SECTION 12. 4-9-706 (a) (2), Colorado Revised Statutes, is amended to read:

4-9-706. When initial financing statement suffices to continue effectiveness of financing statement. (a) The filing of an initial financing statement in the office specified in section 4-9-501 continues the effectiveness of a financing statement filed before this act takes effect if:

(2) The pre-effective-date financing statement was filed in an office in another state, ~~or~~ another office in this state, OR IN THE OFFICE OF ANY CLERK AND RECORDER IN THIS STATE; and

SECTION 13. Part 7 of article 9 of title 4, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

4-9-710. Effectiveness of filing in clerk and recorders' offices. EXCEPT AS PROVIDED IN THIS SECTION, A PRE-EFFECTIVE-DATE FINANCING STATEMENT FILED WITH RESPECT TO A SECURITY INTEREST IN THE OFFICE OF ANY CLERK AND RECORDER IN THIS STATE SHALL BE TREATED AS IF IT HAD BEEN FILED IN THE OFFICE OF THE SECRETARY OF STATE. THE PRECEDING SENTENCE DOES NOT APPLY TO A FINANCING STATEMENT TO THE EXTENT THAT THE FINANCING STATEMENT:

- (1) COVERS TIMBER TO BE CUT, OR AS-EXTRACTED COLLATERAL; OR
- (2) WAS FILED AS A FIXTURE FILING.

SECTION 14. Effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution; except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Approved: June 1, 2002