

**TECHNICAL AMENDMENTS
TO
MODEL TRIBAL SECURED TRANSACTIONS ACT**

This document contains a list of technical changes made to the Official Text of the Model Tribal Secured Transactions Act. Additions are shown with underlining and deletions are shown in ~~strikeout type~~. In the event of additional changes being made in the future, this document will be updated to reflect them and their respective dates.

**I.
AUGUST 2005 CHANGES TO THE MAY 2005 OFFICIAL TEXT**

SECTION 9-313(c):

(c) [**Collateral in possession of person other than debtor.**] 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:

(1) the person in possession signs a record acknowledging that it holds possession of the collateral for the secured ~~party~~ party's benefit; or

(2) the person takes possession of the collateral after having signed a record acknowledging that it will hold possession of collateral for the secured ~~party~~ party's benefit.

SECTION 9-313(e):

(e) [**Acknowledgment not required.**] A person in possession of collateral is not required to acknowledge that it holds possession for a secured ~~party~~ party's benefit.

SECTION 9-403(a):

(a) [**Waiver-of-defense clauses; limitations thereon.**] An agreement between an account debtor and an assignor not to assert against an assignee any claim or defense that the account debtor may have against the assignor is enforceable by an assignee that ~~is a~~

~~purchaser for value in good faith~~ takes an assignment in good faith, and for value as defined in the law governing negotiable instruments, except as to claims or defenses that may be asserted against a holder in due course of a negotiable instrument. However, such an agreement is not enforceable if

(1) the agreement relates to an obligation incurred on account of a sale or lease of goods or services;

(2) the account debtor seeks or acquires the goods or services primarily for personal, family or household use; and

(3) the assignor, in the ordinary course of its business, sells or leases goods or services to consumers.

SECTIONS 9-404(b) and (c):

(b) [**Commercially harmful defined for ~~traditional~~ certain transactions.**] In an assignment of accounts other than health-care-insurance receivables, an assignment of chattel paper, an assignment of payment intangibles that is not a sale, or a transfer of promissory notes that is not a sale, the term “commercially harmful restriction on alienation” means a term in an agreement between an account debtor and an assignor, or in a promissory note, to the extent that it

(1) 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 affected property; or

(2) provides that such an assignment, transfer, creation, attachment, perfection, or enforcement may give rise to a default or remedy.

(c) (1) [**Commercially harmful defined less broadly for ~~certain~~ other transactions.**] In an assignment of a health-care-insurance receivable, a sale of promissory notes, a sale of payment intangibles, or a security interest in other general intangibles (including a contract, permit, or license, or franchise) that is not a sale, the term “commercially harmful restriction on alienation” has the same meaning as in subsection (b) except that the references to enforcement of a security interest appearing in subsection (b)(1) and (2) are excluded.

(2) [**Limitation on ~~enforcement~~ effect in ~~new~~ such other transactions.**] To the extent a commercially harmful restriction on alienation under paragraph (c)(1) would otherwise be effective under law other than this [act], the creation, attachment, or perfection of the security interest:

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

(B) is not enforceable against the account debtor or person obligated on the promissory note; and

(C) does not entitle the secured party to:

(i) use the debtor’s rights in or to the property;

(ii) have access to trade secrets or confidential

information of the account debtor or person obligated on the promissory note; or

(iii) enforce the security interest.

SECTION 9-501(d):

(d) **[Subordination in certain cases of reliance.]** If information that the filing office's regulations require to be included in a record, but that Section 9-502(a) does not require for perfection of a security interest, is incorrect at the time the record is filed, the security interest is subordinate to a conflicting perfected security interest or the interest of a purchaser other than a secured party, to the extent that

(1) the holder of the conflicting security interest gives value in reasonable reliance on the incorrect information; or

(2) the purchaser gives value and, in the case of a buyer or lessee of property capable of being possessed, takes possession, all in reasonable reliance on the incorrect information.

SECTION 9-615(e):

(e) **[Calculation of surplus or deficiency in disposition to person related to secured party.]** The surplus or deficiency following a disposition is calculated based on the amount of proceeds received, but if the fairness of the amount of those proceeds is placed in issue and the disposition was to a person related to the secured party, the secured party has the burden of establishing that the amount is not significantly below the range of proceeds that are represented by at least the wholesale value of the collateral.

II.

MARCH 2006 CHANGES TO THE AUGUST 2005 OFFICIAL TEXT

SECTION 9-602:

Except as otherwise provided in the provisions of this [act] dealing with waivers (Section ~~9-622~~ 9-624), to the extent that they give rights to a debtor or obligor and impose duties on a secured party, the debtor or obligor may not waive or vary the rules stated in the following sections of this [act] dealing with:

[. . .]

(12) waivers (Section 9-624); ~~and~~

(13) the secured party's liability for failure to comply with this [act] (Sections 9-625 and 9-626); ~~and~~

(14) attorney's fees (Section 9-629).

SECTION 9-615(e):

(e) **[Calculation of surplus or deficiency in disposition to person related to secured party or related person.]** ~~The surplus or deficiency following a disposition is calculated based on the amount of proceeds received, but if the fairness of the amount of those proceeds is placed in issue and the disposition was to a person related to the secured party, the secured party has the burden of establishing that the amount is not significantly below the range of proceeds that are represented by at least the wholesale value of the collateral.~~ Following a disposition to the secured party or a person related thereto, the surplus or deficiency is calculated based on the amount of proceeds that would have been realized in a hypothetical disposition complying with this part to a person other than the secured party or a person related thereto, if the debtor establishes that the amount of proceeds of the actual disposition is significantly below the range of proceeds that would have been brought by the hypothetical disposition. For purposes of this section, a secondary obligor is a person related to the secured party.

SECTION 9-629:

ATTORNEY'S FEES IN ~~CONSUMER~~ CERTAIN TRANSACTIONS. If the secured party's compliance with this [act] is placed in issue in an action ~~with respect to a consumer transaction~~, the following rules apply:

(1) If the secured party would have been entitled by agreement to attorney's fees as the prevailing party, and the original principal amount of the indebtedness secured does not exceed [\$25,000], a ~~consumer~~ debtor or ~~consumer~~ obligor prevailing on the issue is entitled to the costs of the action and reasonable attorney's fees.

(2) In other cases, the court may award to a consumer debtor or consumer obligor prevailing on that issue the costs of the action and reasonable attorney's fees.

(3) In determining the attorney's fees, the amount of the recovery on behalf of the prevailing ~~consumer~~ debtor or ~~consumer~~ obligor is not a controlling factor.

Last updated: March 10, 2006