

1 AN ACT relating to the Uniform Commercial Code.

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

3 ➔SECTION 1. ARTICLE 12 OF KRS CHAPTER 355 IS ESTABLISHED, AND  
4 A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

5 *This article may be cited as Uniform Commercial Code – Controllable Electronic*  
6 *Records.*

7 ➔SECTION 2. A NEW SECTION OF ARTICLE 12 OF KRS CHAPTER 355 IS  
8 CREATED TO READ AS FOLLOWS:

9 *(1) In this article:*

10 *(a) 1. "Controllable electronic record" means an electronic record that can*  
11 *be subjected to control under Section 5 of this Act.*

12 *2. Except as otherwise provided or the context otherwise requires, the*  
13 *term includes a controllable account or a controllable payment*  
14 *intangible evidenced by a controllable electronic record.*

15 *3. The term does not include:*

16 *a. Deposit accounts;*

17 *b. Chattel paper;*

18 *c. Electronic documents of title;*

19 *d. Intangible money;*

20 *e. Investment property; or*

21 *f. A transferable record, as defined in:*

22 *i. The Electronic Signatures in Global and National*  
23 *Commerce Act, 15 U.S.C. sec. 7021; or*

24 *ii. The Uniform Electronic Transactions Act, Section 53 of*  
25 *this Act; and*

26 *(b) "Electronic record" means a record stored in an electronic medium.*

27 *(2) The following definitions in Section 24 of this Act apply to this article:*

- 1        (a) "Account debtor";  
 2        (b) "Authenticate";  
 3        (c) "Chattel paper";  
 4        (d) "Controllable account";  
 5        (e) "Controllable payment intangible";  
 6        (f) "Deposit account";  
 7        (g) "Intangible money";  
 8        (h) "Investment property"; and  
 9        (i) "Proceeds."

10       (3) In this article, "value" has the meaning provided in KRS 355.3-303(1).

11       ➔SECTION 3. A NEW SECTION OF ARTICLE 12 OF KRS CHAPTER 355 IS  
 12       CREATED TO READ AS FOLLOWS:

13       (1) This article applies to controllable electronic records.

14       (2) If there is conflict between this article and Article 9 of this chapter, Article 9  
 15       governs.

16       (3) A transaction subject to this article is subject to any applicable rule of law that  
 17       establishes a different rule for consumers.

18       (4) (a) In case of conflict between this article and a rule of law described in  
 19       subsection (3) of this section, the rule of law controls.

20       (b) Failure to comply with a rule of law described in subsection (3) of this  
 21       section has only the effect the rule of law specifies.

22       (5) This article does not:

23       (a) Validate any rate, charge, agreement, or practice that violates a rule of law  
 24       described in subsection (3) of this section; or

25       (b) Extend the application of a rule of law described in subsection (3) of this  
 26       section to a transaction not otherwise subject to it.

27       ➔SECTION 4. A NEW SECTION OF ARTICLE 12 OF KRS CHAPTER 355 IS

1 CREATED TO READ AS FOLLOWS:

- 2 (1) In this section, "qualifying purchaser" means a purchaser of a controllable  
3 electronic record, or an interest in the controllable electronic record, that obtains  
4 control of the controllable electronic record for value, in good faith, and without  
5 notice of a claim of a property right in the controllable electronic record.
- 6 (2) Except as provided in this section, law other than this article determines whether  
7 a person acquires a right in a controllable electronic record and the right, if any,  
8 the person acquires.
- 9 (3) A purchaser of a controllable electronic record acquires all rights in the  
10 controllable electronic record that the transferor had or had power to transfer.
- 11 (4) A purchaser of a limited interest in a controllable electronic record acquires  
12 rights only to the extent of the interest purchased.
- 13 (5) A qualifying purchaser acquires its rights in the controllable electronic record  
14 free of a claim of a property right in the controllable electronic record.
- 15 (6) Except as provided in subsection (5) of this section or law other than this article,  
16 a qualifying purchaser takes a right to payment, right to performance, or interest  
17 in property evidenced by the controllable electronic record subject to a claim of a  
18 property right in the right to payment, right to performance, or other interest in  
19 property.
- 20 (7) An action based on a claim of a property right in a controllable electronic record,  
21 whether framed in conversion, replevin, constructive trust, equitable lien, or  
22 other theory, may not be asserted against a qualifying purchaser of any  
23 controllable electronic record.
- 24 (8) Filing of a financing statement under Article 9 of this chapter is not notice of a  
25 claim of a property right in a controllable electronic record.

26 ➔SECTION 5. A NEW SECTION OF ARTICLE 12 OF KRS CHAPTER 355 IS  
27 CREATED TO READ AS FOLLOWS:

1 (1) A person has control of a controllable electronic record if:

2 (a) The controllable electronic record, a record attached to or logically  
3 associated with the controllable electronic record, or the system in which  
4 the controllable electronic record is recorded, if any, gives the person:

5 1. The power to avail itself of substantially all the benefit from the  
6 controllable electronic record; and

7 2. Subject to subsection (2) of this section, the exclusive power to:

8 a. Prevent others from availing themselves of substantially all the  
9 benefit from the controllable electronic record; and

10 b. Transfer control of the controllable electronic record to another  
11 person or cause another person to obtain control of a  
12 controllable electronic record that is derived from the  
13 controllable electronic record; and

14 (b) The controllable electronic record, a record attached to or logically  
15 associated with the controllable electronic record, or the system in which  
16 the controllable electronic record is recorded, if any, enables the person to  
17 readily identify itself in any way as having the powers specified in  
18 paragraph (a) of this subsection, including by name, identifying number,  
19 cryptographic key, office, or account number.

20 (2) A power specified in subsection (1)(a) of this section is exclusive, even if:

21 (a) The controllable electronic record or the system in which the controllable  
22 electronic record is recorded, if any:

23 1. Limits the use to which the controllable electronic record may be put;  
24 or

25 2. Has a protocol that is programmed to result in a transfer of control; or

26 (b) The person has agreed to share the power with another person.

27 ➔SECTION 6. A NEW SECTION OF ARTICLE 12 OF KRS CHAPTER 355 IS

1 CREATED TO READ AS FOLLOWS:

2 (1) Except as provided in this section, an account debtor on a controllable account or  
3 controllable payment intangible may discharge its obligation:

4 (a) By paying the person having control of the controllable electronic record  
5 that evidences the controllable account or controllable payment intangible;  
6 or

7 (b) By paying a person that formerly had control of the controllable electronic  
8 record.

9 (2) Subject to subsections (4) and (8) of this section, an account debtor may not  
10 discharge its obligation by paying a person that formerly had control of the  
11 controllable electronic record if the account debtor receives a notification that:

12 (a) Is authenticated by:

13 1. A person that formerly had control; or

14 2. The person to which control was transferred;

15 (b) Reasonably identifies the controllable account or controllable payment  
16 intangible;

17 (c) Notifies the account debtor that control of the controllable electronic record  
18 that evidences the controllable account or controllable payment intangible  
19 was transferred;

20 (d) Identifies the transferee, in any reasonable way, including by name,  
21 identifying number, cryptographic key, office, or account number; and

22 (e) Provides a commercially reasonable method by which the account debtor is  
23 to pay the transferee.

24 (3) After receipt of a notification that complies with subsection (2) of this section, the  
25 account debtor may:

26 (a) Discharge its obligation only by paying in accordance with the notification;  
27 and

1 (b) Not discharge the obligation by paying a person that formerly had control.

2 (4) Subject to subsection (8) of this section, notification is ineffective under  
3 subsection (2) of this section:

4 (a) Unless, before the notification is sent, the account debtor and the person  
5 that at that time had control of the controllable electronic record that  
6 evidences the controllable account or controllable payment intangible agree  
7 in an authenticated record to a commercially reasonable method by which a  
8 person can furnish reasonable proof that control has been transferred;

9 (b) To the extent that an agreement between the account debtor and the seller  
10 of a payment intangible limits the account debtor's duty to pay a person  
11 other than the seller and the limitation is effective under law other than this  
12 article; or

13 (c) At the option of the account debtor, if the notification notifies the account  
14 debtor to:

15 1. Divide a payment;

16 2. Make less than the full amount of any required payment; or

17 3. Pay any portions of a payment by more than one (1) method or to  
18 more than one (1) person.

19 (5) Subject to subsection (8) of this section:

20 (a) If requested by the account debtor, the person giving the notification shall  
21 seasonably furnish reasonable proof, using the agreed method, that control  
22 of the controllable electronic record has been transferred; and

23 (b) Unless the person complies with the request, the account debtor may  
24 discharge its obligation by paying a person that formerly had control, even  
25 if the account debtor has received a notification under subsection (2) of this  
26 section.

27 (6) A person furnishes reasonable proof that control has been transferred if the

1 person demonstrates, using the agreed method, that the transferee has the power

2 to:

3 (a) Avail itself of substantially all the benefit from the controllable electronic

4 record;

5 (b) Prevent others from availing themselves of substantially all the benefit from

6 the controllable electronic record; and

7 (c) Transfer these powers to another person.

8 (7) Subject to subsection (8) of this section, an account debtor may not waive or vary

9 its option under subsection (4)(c) of this section.

10 (8) This section is subject to law other than this article which establishes a different

11 rule for an account debtor who:

12 (a) Is an individual; and

13 (b) Incurred the obligation primarily for personal, family, or household

14 purposes.

15 ➔SECTION 7. A NEW SECTION OF ARTICLE 12 OF KRS CHAPTER 355 IS

16 CREATED TO READ AS FOLLOWS:

17 (1) Except as provided in subsection (3) of this section, the local law of a controllable

18 electronic record's jurisdiction governs the matters covered by this article.

19 (2) The following rules determine a controllable electronic record's jurisdiction for

20 purposes of this section:

21 (a) If the controllable electronic record, or a record attached to or logically

22 associated with the controllable electronic record which is readily available

23 for review, expressly provides that a particular jurisdiction is the

24 controllable electronic record's jurisdiction for purposes of this article or

25 chapter, that jurisdiction is the controllable electronic record's jurisdiction;

26 (b) If paragraph (a) of this subsection does not apply and the rules of the

27 system in which the controllable electronic record is recorded are readily

1 available for review and expressly provide that a particular jurisdiction is  
 2 the controllable electronic record's jurisdiction for purposes of this article  
 3 or this chapter, that jurisdiction is the controllable electronic record's  
 4 jurisdiction;

5 (c) If neither paragraph (a) nor paragraph (b) of this subsection applies and  
 6 the controllable electronic record, or a record attached to or logically  
 7 associated with the controllable electronic record which is readily available  
 8 for review, expressly provides that the controllable electronic record is  
 9 governed by the law of a particular jurisdiction, that jurisdiction is the  
 10 controllable electronic record's jurisdiction;

11 (d) If none of the preceding paragraphs applies and the rules of the system in  
 12 which the controllable electronic record is recorded are readily available for  
 13 review and expressly provide that the controllable electronic record or the  
 14 system is governed by the law of a particular jurisdiction, that jurisdiction is  
 15 the controllable electronic record's jurisdiction; and

16 (e) If none of the preceding paragraphs applies, the controllable electronic  
 17 record's jurisdiction is the jurisdiction in which the transferor is located,  
 18 unless the location of the transferor cannot readily be determined.

19 (3) If none of paragraphs (a) to (e) of subsection (2) of this section applies, the law  
 20 that governs the matters covered by this article is determined under KRS 355.1-  
 21 301.

22 ➔Section 8. KRS 355.1-201 is amended to read as follows:

23 (1) Unless the context otherwise requires, words or phrases defined in this section, or in  
 24 the additional definitions contained in other articles of this chapter~~[the Uniform~~  
 25 ~~Commercial Code]~~ that apply to particular articles or parts thereof, have the  
 26 meanings stated.

27 (2) Subject to definitions contained in other articles of this chapter~~[the Uniform~~



1 ~~Commercial Code~~ that apply to particular articles or parts thereof:

- 2 (a) "Action," in the sense of a judicial proceeding, includes recoupment,  
3 counterclaim, set-off, suit in equity, and any other proceeding in which rights  
4 are determined;
- 5 (b) "Aggrieved party" means a party entitled to pursue a remedy;
- 6 (c) "Agreement," as distinguished from "contract," means the bargain of the  
7 parties in fact, as found in their language or inferred from other circumstances,  
8 including course of performance, course of dealing, or usage of trade as  
9 provided in KRS 355.1-303;
- 10 (d) "Bank" means a person engaged in the business of banking and includes a  
11 savings bank, savings and loan association, credit union, and trust company;
- 12 (e) "Bearer" means a person in control of a negotiable electronic document of title  
13 or a person in possession of a negotiable instrument, a negotiable tangible  
14 document of title, or certificated security that is payable to bearer or indorsed  
15 in blank;
- 16 (f) 1. "Bill of lading" means a document of title evidencing the receipt of  
17 goods for shipment issued by a person engaged in the business of  
18 directly or indirectly transporting or forwarding goods.  
19 2. The term does not include a warehouse receipt;
- 20 (g) "Branch" includes a separately incorporated foreign branch of a bank;
- 21 (h) "Burden of establishing" a fact means the burden of persuading the trier of  
22 fact that the existence of the fact is more probable than its nonexistence;
- 23 (i) 1. "Buyer in ordinary course of business" means a person that buys goods  
24 in good faith, without knowledge that the sale violates the rights of  
25 another person in the goods, and in the ordinary course from a person,  
26 other than a pawnbroker, in the business of selling goods of that kind.  
27 2. A person buys goods in the ordinary course if the sale to the person

1 comports with the usual or customary practices in the kind of business in  
 2 which the seller is engaged or with the seller's own usual or customary  
 3 practices.

4 3. A person that sells oil, gas, or other minerals at the wellhead or  
 5 minehead is a person in the business of selling goods of that kind.

6 4. A buyer in ordinary course of business may buy for cash, by exchange of  
 7 other property, or on secured or unsecured credit, and may acquire goods  
 8 or documents of title under a preexisting contract for sale.

9 5. Only a buyer that takes possession of the goods or has a right to recover  
 10 the goods from the seller under Article 2 of this chapter may be a buyer  
 11 in ordinary course of business.

12 6. "Buyer in ordinary course of business" does not include a person that  
 13 acquires goods in a transfer in bulk or as security for or in total or partial  
 14 satisfaction of a money debt;

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

19 ~~1. A heading in capitals equal to or greater in size than the surrounding~~  
 20 ~~text, or in contrasting type, font, or color to the surrounding text of the~~  
 21 ~~same or lesser size; and~~

22 ~~2. Language in the body of a record or display in larger type than the~~  
 23 ~~surrounding text, or in contrasting type, font, or color to the surrounding~~  
 24 ~~text of the same size, or set off from surrounding text of the same size~~  
 25 ~~by symbols or other marks that call attention to the language];~~

26 (k) "Consumer" means an individual who enters into a transaction primarily for  
 27 personal, family, or household purposes;

- 1 (l) "Contract," as distinguished from "agreement," means the total legal  
 2 obligation that results from the parties' agreement as determined by *this*  
 3 *chapter and*~~[the Uniform Commercial Code]~~ as supplemented by any other  
 4 applicable laws;
- 5 (m) "Creditor" includes a general creditor, a secured creditor, a lien creditor, and  
 6 any representative of creditors, including an assignee for the benefit of  
 7 creditors, a trustee in bankruptcy, a receiver in equity, and an executor or  
 8 administrator of an insolvent debtor's or assignor's estate;
- 9 (n) "Defendant" includes a person in the position of defendant in a counterclaim,  
 10 cross-claim, or third-party claim;
- 11 (o) "Delivery~~[,]~~":  
 12 1. With respect to an electronic document of title, means voluntary transfer  
 13 of control; and  
 14 2. With respect to an instrument, document of title, or chattel paper, means  
 15 voluntary transfer of possession;
- 16 (p) 1. "Document of title" means a record that:  
 17 a.~~[1.]~~In the regular course of business or financing is treated as  
 18 adequately evidencing that the person in possession or control of  
 19 the record is entitled to receive, control, hold, and dispose of the  
 20 record and the goods the record covers; and  
 21 b.~~[2.]~~Purports to be issued by or addressed to a bailee and to cover  
 22 goods in the bailee's possession which are either identified or are  
 23 fungible portions of an identified mass.
- 24 2. The term includes a bill of lading, transport document, dock warrant,  
 25 dock receipt, warehouse receipt, and order for delivery of goods~~[. An~~  
 26 ~~electronic document of title is evidenced by a record consisting of~~  
 27 ~~information stored in an electronic medium. A tangible document of title~~

1 is evidenced by a record consisting of information that is inscribed on a  
2 tangible medium];

3 (q) **"Electronic" means relating to technology having electrical, digital,**  
4 **magnetic, wireless, optical, electromagnetic, or similar capabilities;**

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

6 (s){(r)} "Fungible goods" means:

- 7 1. Goods of which any unit, by nature or usage of trade, is the equivalent of  
8 any other like unit; or
- 9 2. Goods that by agreement are treated as equivalent;

10 (t){(s)} "Genuine" means free of forgery or counterfeiting;

11 (u){(t)} "Good faith," except as otherwise provided in Article 5 of this chapter,  
12 means honesty in fact and the observance of reasonable commercial standards  
13 of fair dealing;

14 (v){(u)} "Holder" means:

- 15 1. The person in possession of a negotiable instrument that is payable  
16 either to bearer or to an identified person that is the person in  
17 possession;
- 18 2. The person in possession of a document of title if the goods are  
19 deliverable either to bearer or to the order of the person in possession; or
- 20 3. A person in control of a negotiable electronic document of title;

21 (w){(v)} "Insolvency proceeding" includes an assignment for the benefit of  
22 creditors or other proceeding intended to liquidate or rehabilitate the estate of  
23 the person involved;

24 (x){(w)} "Insolvent" means:

- 25 1. Having generally ceased to pay debts in the ordinary course of business  
26 other than as a result of bona fide dispute;
- 27 2. Being unable to pay debts as they become due; or



1 at the time the transaction is entered into or, if an interest rate is not so  
2 specified, a commercially reasonable rate that takes into account the facts and  
3 circumstances at the time the transaction is entered into;

4 ~~(ad)~~ "Purchase" means taking by sale, lease, discount, negotiation, mortgage,  
5 pledge, lien, security interest, issue or reissue, gift, or any other voluntary  
6 transaction creating an interest in property;

7 ~~(ae)~~ "Purchaser" means a person that takes by purchase;

8 ~~(af)~~ "Record" means information that is inscribed on a tangible medium or  
9 that is stored in an electronic or other medium and is retrievable in perceivable  
10 form;

11 ~~(ag)~~ "Remedy" means any remedial right to which an aggrieved party is  
12 entitled with or without resort to a tribunal;

13 ~~(ah)~~ "Representative" means a person empowered to act for another,  
14 including an agent, an officer of a corporation or association, and a trustee,  
15 executor, or administrator of an estate;

16 ~~(ai)~~ "Right" includes remedy;

17 ~~(aj)~~ 1. "Security interest" means an interest in personal property or  
18 fixtures which secures payment or performance of an obligation.

19 2. ~~The term~~ "Security interest" includes any interest of a consignor and a  
20 buyer of accounts, chattel paper, a payment intangible, or a promissory  
21 note in a transaction that is subject to Article 9 of this chapter.

22 3. ~~The term~~ "Security interest" does not include the special property  
23 interest of a buyer of goods on identification of those goods to a contract  
24 for sale under KRS 355.2-401, but a buyer may also acquire a "security  
25 interest" by complying with Article 9 of this chapter.

26 4. Except as otherwise provided in KRS 355.2-505, the right of a seller or  
27 lessor of goods under Article 2 or 2A of this chapter to retain or acquire

1 possession of the goods is not a "security interest," but a seller or lessor  
 2 may also acquire a "security interest" by complying with Article 9 of this  
 3 chapter.

4 **5.** The retention or reservation of title by a seller of goods notwithstanding  
 5 shipment or delivery to the buyer under KRS 355.2-401 is limited in  
 6 effect to a reservation of a "security interest."

7 **6.** Whether a transaction in the form of a lease creates a "security interest"  
 8 is determined pursuant to KRS 355.1-203;

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

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

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

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

22 **(an)**~~(am)~~ "Surety" includes a guarantor or other secondary obligor;

23 **(ao)**~~(an)~~ "Term" means a portion of an agreement that relates to a particular  
 24 matter;

25 **(ap)**~~(ao)~~ "Unauthorized signature" means a signature made without actual,  
 26 implied, or apparent authority. The term includes a forgery;

27 **(aq)**~~(ap)~~ "Warehouse receipt" means a document of title issued by a person

1 engaged in the business of storing goods for hire; and

2 ~~(ar)~~~~(aq)~~ 1. "Writing" includes printing, typewriting, or any other intentional  
3 reduction to tangible form.

4 2. "Written" has a corresponding meaning.

5 ➔Section 9. KRS 355.1-204 is amended to read as follows:

6 Except as otherwise provided in Articles 3, 4, ~~and~~ 5, and 12 of this chapter, a person  
7 gives value for rights if the person acquires them:

- 8 (1) In return for a binding commitment to extend credit or for the extension of  
9 immediately available credit, whether or not drawn upon and whether or not a  
10 charge-back is provided for in the event of difficulties in collection;
- 11 (2) As security for, or in total or partial satisfaction of, a preexisting claim;
- 12 (3) By accepting delivery under a preexisting contract for purchase; or
- 13 (4) In return for any consideration sufficient to support a simple contract.

14 ➔Section 10. KRS 355.3-104 is amended to read as follows:

15 (1) Except as provided in subsections (3) and (4) of this section, "negotiable  
16 instrument" means an unconditional promise or order to pay a fixed amount of  
17 money, with or without interest or other charges described in the promise or order,  
18 if it:

- 19 (a) Is payable to bearer or to order at the time it is issued or first comes into  
20 possession of a holder;
- 21 (b) Is payable on demand or at a definite time; and
- 22 (c) Does not state any other undertaking or instruction by the person promising or  
23 ordering payment to do any act in addition to the payment of money, but the  
24 promise or order may contain:
- 25 1. An undertaking or power to give, maintain, or protect collateral to  
26 secure payment;
- 27 2. An authorization or power to the holder to confess judgment or realize



1 on or dispose of collateral;~~[-or]~~

2 3. A waiver of the benefit of any law intended for the advantage or  
3 protection of an obligor;

4 **4. An agreement as to what law governs the instrument or the rights and**  
5 **obligations created by the instrument; or**

6 **5. An undertaking to resolve a dispute concerning the promise or order**  
7 **in a specified forum.**

8 (2) "Instrument" means a negotiable instrument.

9 (3) An order that meets all of the requirements of subsection (1) of this section, except  
10 paragraph (a) of that subsection, and otherwise falls within the definition of "check"  
11 in subsection (6) of this section is a negotiable instrument and a check.

12 (4) A promise or order other than a check is not an instrument if, at the time it is issued  
13 or first comes into possession of a holder, it contains a conspicuous statement,  
14 however expressed, to the effect that the promise or order is not negotiable or is not  
15 an instrument governed by this article.

16 (5) An instrument is a "note" if it is a promise and is a "draft" if it is an order. If an  
17 instrument falls within the definition of both "note" and "draft," a person entitled to  
18 enforce the instrument may treat it as either.

19 (6) "Check" means:

20 (a) A draft, other than a documentary draft, payable on demand and drawn on a  
21 bank; or

22 (b) A cashier's check or teller's check. An instrument may be a check even though  
23 it is described on its face by another term, such as "money order."

24 (7) "Cashier's check" means a draft with respect to which the drawer and drawee are the  
25 same bank or branches of the same bank.

26 (8) "Teller's check" means a draft drawn by a bank:

27 (a) On another bank; or

1 (b) Payable at or through a bank.

2 (9) "Traveler's check" means an instrument that:

3 (a) Is payable on demand;

4 (b) Is drawn on or payable at or through a bank;

5 (c) Is designated by the term "traveler's check" or by a substantially similar term;  
6 and

7 (d) Requires, as a condition to payment, a countersignature by a person whose  
8 specimen signature appears on the instrument.

9 (10) (a) "Certificate of deposit" means an instrument containing an acknowledgment  
10 by a bank that a sum of money has been received by the bank and a promise  
11 by the bank to repay the sum of money.

12 (b) A certificate of deposit is a note of the bank.

13 ➔Section 11. KRS 355.3-105 is amended to read as follows:

14 (1) "Issue" means the first delivery of an instrument, or first transmission of an image  
15 of an item and information describing the item, by the maker or drawer, whether  
16 to a holder or nonholder, for the purpose of giving rights on the instrument to any  
17 person.

18 (2) An unissued instrument, or an unissued incomplete instrument that is completed, is  
19 binding on the maker or drawer, but nonissuance is a defense. An instrument that is  
20 conditionally issued or is issued for a special purpose is binding on the maker or  
21 drawer, but failure of the condition or special purpose to be fulfilled is a defense.

22 (3) "Issuer" applies to issued and unissued instruments and means a maker or drawer of  
23 an instrument.

24 ➔Section 12. KRS 355.3-604 is amended to read as follows:

25 (1) (a) A person entitled to enforce an instrument, with or without consideration, may  
26 discharge the obligation of a party to pay the instrument:

27 1.{(a)} By an intentional voluntary act, such as surrender of the instrument

1 to the party, destruction, mutilation, or cancellation of the instrument,  
 2 cancellation or striking out of the party's signature, or the addition of  
 3 words to the instrument indicating discharge; or

4 ~~2.[(b)]~~ By agreeing not to sue or otherwise renouncing rights against the  
 5 party by a signed record.

6 **(b) The obligation of a party to pay the instrument is not discharged solely by**  
 7 **the destruction of a check in connection with a process by which, initially,**  
 8 **information is extracted from the check or an image is made and,**  
 9 **subsequently, the information or image is transmitted for payment.**

10 (2) Cancellation or striking out of an indorsement pursuant to subsection (1) of this  
 11 section does not affect the status and rights of a party derived from the indorsement.

12 (3) In this section, "signed," with respect to a record that is not in writing, includes the  
 13 attachment to or logical association with the record of an electronic symbol, sound,  
 14 or process with the present intent to adopt or accept the record.

15 ➔Section 13. KRS 355.4-406 is amended to read as follows:

16 (1) **(a)** A bank that sends or makes available to a customer a statement of account  
 17 showing payment of items for the account shall either return or make available  
 18 to the customer the items paid or provide information in the statement of  
 19 account sufficient to allow the customer reasonably to identify the items paid.

20 **(b)** ~~A [The]~~ statement of account **that describes each item paid**~~[provides sufficient~~  
 21 ~~information if the item is described]~~ by item number, amount, and date of  
 22 payment **and includes an image of each item showing the name of the payee**  
 23 **and the date of the item is sufficient.**

24 **(c) Whether a statement of account that does not include an image of each item**  
 25 **is sufficient is a question of fact.**

26 (2) If the items are not returned to the customer, the person retaining the items shall  
 27 either retain the items or, if the items are destroyed, maintain the capacity to furnish

1 legible copies of the items until the expiration of seven (7) years after receipt of the  
2 items. A customer may request an item from the bank that paid the item, and that  
3 bank must provide in a reasonable time either the item or, if the item has been  
4 destroyed or is not otherwise obtainable, a legible copy of the item.

5 (3) If a bank sends or makes available a statement of account or items pursuant to  
6 subsection (1) of this section, the customer must exercise reasonable promptness in  
7 examining the statement or the items to determine whether any payment was not  
8 authorized because of an alteration of an item or because a purported signature by or  
9 on behalf of the customer was not authorized. If, based on the statement or items  
10 provided, the customer should reasonably have discovered the unauthorized  
11 payment, the customer must promptly notify the bank of the relevant facts.

12 (4) If the bank proves that the customer failed, with respect to an item, to comply with  
13 the duties imposed on the customer by subsection (3) of this section, the customer is  
14 precluded from asserting against the bank:

15 (a) The customer's unauthorized signature or any alteration on the item, if the  
16 bank also proves that it suffered a loss by reason of the failure; and

17 (b) The customer's unauthorized signature or alteration by the same wrongdoer on  
18 any other item paid in good faith by the bank if the payment was made before  
19 the bank received notice from the customer of the unauthorized signature or  
20 alteration and after the customer had been afforded a reasonable period of  
21 time, not exceeding thirty (30) days, in which to examine the item or  
22 statement of account and notify the bank.

23 (5) If subsection (4) of this section applies and the customer proves that the bank failed  
24 to exercise ordinary care in paying the item and that the failure substantially  
25 contributed to loss, the loss is allocated between the customer precluded and the  
26 bank asserting the preclusion according to the extent to which the failure of the  
27 customer to comply with subsection (3) of this section and the failure of the bank to

1 exercise ordinary care contributed to the loss. If the customer proves that the bank  
2 did not pay the item in good faith, the preclusion under subsection (4) of this section  
3 does not apply.

4 (6) Without regard to care or lack of care of either the customer or the bank, a customer  
5 who does not within one (1) year after the statement or items are made available to  
6 the customer (subsection (1)) discover and report the customer's unauthorized  
7 signature on or any alteration on the item is precluded from asserting against the  
8 bank the unauthorized signature or alteration. If there is a preclusion under this  
9 subsection, the payor bank may not recover for breach of warranty under KRS  
10 355.4-208 with respect to the unauthorized signature or alteration to which the  
11 preclusion applies.

12 ➔Section 14. KRS 355.4A-103 is amended to read as follows:

13 (1) In this article:

14 (a) "Payment order" means an instruction of a sender to a receiving bank,  
15 transmitted orally~~[, electronically,]~~ or in a record~~[writing]~~, to pay, or to cause  
16 another bank to pay, a fixed or determinable amount of money to a beneficiary  
17 if:

- 18 1. The instruction does not state a condition to payment to the beneficiary  
19 other than time of payment;
- 20 2. The receiving bank is to be reimbursed by debiting an account of, or  
21 otherwise receiving payment from, the sender; and
- 22 3. The instruction is transmitted by the sender directly to the receiving  
23 bank or to an agent, funds-transfer system, or communication system for  
24 transmittal to the receiving bank.

25 (b) "Beneficiary" means the person to be paid by the beneficiary's bank.

26 (c) "Beneficiary's bank" means the bank identified in a payment order in which an  
27 account of the beneficiary is to be credited pursuant to the order or which

1 otherwise is to make payment to the beneficiary if the order does not provide  
2 for payment to an account.

3 (d) "Receiving bank" means the bank to which the sender's instruction is  
4 addressed.

5 (e) "Sender" means the person giving the instruction to the receiving bank.

6 (2) If an instruction complying with subsection (1)(a) is to make more than one (1)  
7 payment to a beneficiary, the instruction is a separate payment order with respect to  
8 each payment.

9 (3) A payment order is issued when it is sent to the receiving bank.

10 ➔Section 15. KRS 355.4A-201 is amended to read as follows:

11 (1) "Security procedure" means a procedure established by agreement of a customer and  
12 a receiving bank for the purpose of:

13 (a)~~(1)~~ Verifying that a payment order or communication amending or canceling  
14 a payment order is that of the customer; or

15 (b)~~(2)~~ Detecting error in the transmission or the content of the payment order  
16 or communication.

17 (2) A security procedure may:

18 (a) **Impose an obligation on the receiving bank or the customer; and**

19 (b) Require the use of algorithms or other codes, identifying words,~~or~~ numbers,  
20 **symbols, sounds, or biometrics,** encryption, callback procedures, or similar  
21 security devices.

22 (3) Comparison of a signature on a payment order or communication with an  
23 authorized specimen signature of the customer **or requiring that a payment order**  
24 **be sent from a known email address, IP address, or phone number** is not by itself  
25 a security procedure.

26 ➔Section 16. KRS 355.4A-202 is amended to read as follows:

27 (1) A payment order received by the receiving bank is the authorized order of the

1 person identified as sender if that person authorized the order or is otherwise bound  
2 by it under the law of agency.

3 (2) (a) If a bank and its customer have agreed that the authenticity of payment orders  
4 issued to the bank in the name of the customer as sender will be verified  
5 pursuant to a security procedure, a payment order received by the receiving  
6 bank is effective as the order of the customer, whether or not authorized, if:

7 1.[(a)] The security procedure is a commercially reasonable method of  
8 providing security against unauthorized payment orders; and

9 2.[(b)] The bank proves that it accepted the payment order in good faith  
10 and in compliance with the **bank's obligations under the** security  
11 procedure and any~~[-written]~~ agreement or instruction of the customer,  
12 **evidenced by a record**, restricting acceptance of payment orders issued  
13 in the name the customer.

14 (b) The bank is not required to follow an instruction that violates an~~[-a-written]~~  
15 agreement, **evidenced by a record**, with the customer or notice of which is not  
16 received at a time and in a manner affording the bank a reasonable opportunity  
17 to act on it before the payment order is accepted.

18 (3) Commercial reasonableness of a security procedure is a question of law to be  
19 determined by considering the wishes of the customer expressed to the bank, the  
20 circumstances of the customer known to the bank, including the size, type, and  
21 frequency of payment orders normally issued by the customer to the bank,  
22 alternative security procedures offered to the customer, and security procedures in  
23 general use by customers and receiving banks similarly situated. A security  
24 procedure is deemed to be commercially reasonable if:

25 (a) The security procedure was chosen by the customer after the bank offered, and  
26 the customer refused, a security procedure that was commercially reasonable  
27 for that customer; and

- 1 (b) The customer expressly agreed in a record~~[writing]~~ to be bound by any  
2 payment order, whether or not authorized, issued in its name and accepted by  
3 the bank in compliance with the bank's obligation under the security  
4 procedure chosen by the customer.
- 5 (4) The term "sender" in this article includes the customer in whose name a payment  
6 order is issued if the order is:
- 7 (a) The authorized order of the customer under subsection (1) of this section;~~[ ]~~  
8 or~~[ it is ]~~
- 9 (b) Effective as the order of the customer under subsection (2) of this section.
- 10 (5) This section applies to amendments and cancellations of payment orders to the same  
11 extent it applies to payment orders.
- 12 (6) Except as provided in this section and in KRS 355.4A-203(1)(a), rights and  
13 obligations arising under this section or KRS 355.4A-203 may not be varied by  
14 agreement.
- 15 ➔Section 17. KRS 355.4A-203 is amended to read as follows:
- 16 (1) If an accepted payment order is not, under KRS 355.4A-202(1), an authorized order  
17 of a customer identified as sender, but is effective as an order of the customer  
18 pursuant to KRS 355.4A-202(2), the following rules apply:
- 19 (a) By express~~[written]~~ agreement, evidenced by a record, the receiving bank  
20 may limit the extent to which it is entitled to enforce or retain payment of the  
21 payment order; and~~[ ]~~
- 22 (b) The receiving bank is not entitled to enforce or retain payment of the payment  
23 order if the customer proves that the order was not caused, directly or  
24 indirectly, by a person:
- 25 1. Entrusted at any time with duties to act for the customer with respect to  
26 payment orders or the security procedure; or
- 27 2. Who obtained access to transmitting facilities of the customer or who



1           obtained, from a source controlled by the customer and without authority  
 2           of the receiving bank, information facilitating breach of the security  
 3           procedure, regardless of how the information was obtained or whether  
 4           the customer was at fault. **Information includes any access device,**  
 5           **computer software, or the like.**

6 [~~Information includes any access device, computer software, or the like.~~]

7 (2) This section applies to amendments of payment orders to the same extent it applies  
 8 to payment orders.

9 ➔Section 18. KRS 355.4A-207 is amended to read as follows:

10 (1) Subject to subsection (2) **of this section**, if, in a payment order received by the  
 11 beneficiary's bank, the name, bank account number, or other identification of the  
 12 beneficiary refers to a nonexistent or unidentifiable person or account, no person  
 13 has rights as a beneficiary of the order and acceptance of the order cannot occur.

14 (2) If a payment order received by the beneficiary's bank identifies the beneficiary both  
 15 by name and by an identifying or bank account number and the name and number  
 16 identify different persons, the following rules apply:

17 (a) Except as otherwise provided in subsection (3) **of this section**:~~;~~

18 **1.** If the beneficiary's bank does not know that the name and number refer  
 19 to different persons, it may rely on the number as the proper  
 20 identification of the beneficiary of the order; **and**:~~;~~

21 **2.** The beneficiary's bank need not determine whether the name and  
 22 number refer to the same person; **and**:~~;~~

23 (b) **1.** If the beneficiary's bank pays the person identified by name or knows  
 24 that the name and number identify different persons, no person has  
 25 rights as beneficiary except the person paid by the beneficiary's bank if  
 26 that person was entitled to receive payment from the originator of the  
 27 funds transfer.

1           2. If no person has rights as beneficiary, acceptance of the order cannot  
2           occur.

3           (3) ~~{(a)-}~~ If a payment order described in subsection (2) **of this section** is  
4           accepted,~~;~~

5           ~~{(b)-}~~ the originator's payment order described the beneficiary inconsistently by  
6           name and number,~~;~~ and

7           ~~{(c)-}~~ the beneficiary's bank pays the person identified by number as permitted by  
8           subsection (2)(a) **of this section**, the following rules apply:

9           (a)~~{1-}~~ If the originator is a bank, the originator is obliged to pay its order;  
10           and~~{-}~~

11           (b)~~{2-}~~ 1. If the originator is not a bank and proves that the person identified  
12           by number was not entitled to receive payment from the originator, the  
13           originator is not obliged to pay its order unless the originator's bank  
14           proves that the originator, before acceptance of the originator's order,  
15           had notice that payment of a payment order issued by the originator  
16           might be made by the beneficiary's bank on the basis of an identifying or  
17           bank account number even if it identifies a person different from the  
18           named beneficiary.

19           2. Proof of notice may be made by any admissible evidence.

20           3. The originator's bank satisfies the burden of proof if it proves that the  
21           originator, before the payment order was accepted, **authenticated a**  
22           **record**~~{signed a writing}~~ stating the information to which the notice  
23           relates.

24           (4) In a case governed by subsection (2)(a) **of this section**, if the beneficiary's bank  
25           rightfully pays the person identified by number and that person was not entitled to  
26           receive payment from the originator, the amount paid may be recovered from that  
27           person to the extent allowed by the law governing mistake and restitution as

1 follows:

2 (a) If the originator is obliged to pay its payment order as stated in subsection (3)  
3 of this section, the originator has the right to recover; ~~and~~

4 (b) If the originator is not a bank and is not obliged to pay its payment order, the  
5 originator's bank has the right to recover.

6 →Section 19. KRS 355.4A-208 is amended to read as follows:

7 (1) (a) This subsection applies to a payment order identifying an intermediary bank or  
8 the beneficiary's bank only by an identifying number.

9 (b)~~(a)~~ The receiving bank may rely on the number as the proper identification  
10 of the intermediary or beneficiary's bank and need not determine whether the  
11 number identifies a bank.

12 (c)~~(b)~~ The sender is obliged to compensate the receiving bank for any loss and  
13 expenses incurred by the receiving bank as a result of its reliance on the  
14 number in executing or attempting to execute the order.

15 (2) (a) This subsection applies to a payment order identifying an intermediary bank or  
16 the beneficiary's bank both by name and an identifying number if the name  
17 and number identify different persons.

18 (b)~~(a)~~ 1. If the sender is a bank, the receiving bank may rely on the number  
19 as the proper identification of the intermediary or beneficiary's bank if  
20 the receiving bank, when it executes the sender's order, does not know  
21 that the name and number identify different persons.

22 2. The receiving bank need not determine whether the name and number  
23 refer to the same person or whether the number refers to a bank.

24 3. The sender is obliged to compensate the receiving bank for any loss and  
25 expenses incurred by the receiving bank as a result of its reliance on the  
26 number in executing or attempting to execute the order.

27 (c)~~(b)~~ 1. If the sender is not a bank and the receiving bank proves that the

1 sender, before the payment order was accepted, had notice that the  
 2 receiving bank might rely on the number as the proper identification of  
 3 the intermediary or beneficiary's bank even if it identifies a person  
 4 different from the bank identified by name, the rights and obligations of  
 5 the sender and the receiving bank are governed by subsection (1)(c)(b)  
 6 ***of this section***, as though the sender were a bank.

7 **2.** Proof of notice may be made by any admissible evidence.

8 **3.** The receiving bank satisfies the burden of proof if it proves that the  
 9 sender, before the payment order was accepted, ***authenticated a***  
 10 ***record***~~signed a writing~~ stating the information to which the notice  
 11 relates.

12 ~~(d)(e)~~ **1.** Regardless of whether the sender is a bank, the receiving bank may  
 13 rely on the name as the proper identification of the intermediary or  
 14 beneficiary's bank if the receiving bank, at the time it executes the  
 15 sender's order, does not know that the name and number identify  
 16 different persons.

17 **2.** The receiving bank need not determine whether the name and number  
 18 refer to the same person.

19 ~~(e)(d)~~ If the receiving bank knows that the name and number identify different  
 20 persons, reliance on either the name or the number in executing the sender's  
 21 payment order is a breach of the obligation stated in KRS 355.4A-302(1)(a).

22 ➔Section 20. KRS 355.4A-210 is amended to read as follows:

23 (1) **(a)** A payment order is rejected by the receiving bank by a notice of rejection  
 24 transmitted to the sender orally~~, electronically,~~ or in ***a record***~~writing~~.

25 **(b)** A notice of rejection need not use any particular words and is sufficient if it  
 26 indicates that the receiving bank is rejecting the order or will not execute or  
 27 pay the order.

- 1        (c) Rejection is effective when the notice is given if transmission is by a means  
2            that is reasonable in the circumstances.
- 3        (d) If notice of rejection is given by a means that is not reasonable, rejection is  
4            effective when the notice is received.
- 5        (e) If an agreement of the sender and receiving bank establishes the means to be  
6            used to reject a payment order:
- 7            ~~1.(a)~~ Any means complying with the agreement is reasonable; and  
8            ~~2.(b)~~ Any means not complying is not reasonable unless no significant  
9            delay in receipt of the notice resulted from the use of the noncomplying  
10           means.
- 11    (2) (a) This subsection applies if a receiving bank other than the beneficiary's bank  
12           fails to execute a payment order despite the existence on the execution date of  
13           a withdrawable credit balance in an authorized account of the sender sufficient  
14           to cover the order.
- 15        (b) If the sender does not receive notice of rejection of the order on the execution  
16           date and the authorized account of the sender does not bear interest, the bank  
17           is obliged to pay interest to the sender on the amount of the order for the  
18           number of days elapsing after the execution date to the earlier of the day the  
19           order is canceled pursuant to KRS 355.4A-211(4) or the day the sender  
20           receives notice or learns that the order was not executed, counting the final  
21           day of the period as an elapsed day. If the withdrawable credit balance during  
22           that period falls below the amount of the order, the amount of interest is  
23           reduced accordingly.
- 24    (3) If a receiving bank suspends payments, all unaccepted payment orders issued to it  
25           are deemed rejected at the time the bank suspends payments.
- 26    (4) (a) Acceptance of a payment order precludes a later rejection of the order.  
27        (b) Rejection of a payment order precludes a later acceptance of the order.

1       ➔Section 21. KRS 355.4A-211 is amended to read as follows:

2       (1) (a) A communication of the sender of a payment order canceling or amending the  
3           order may be transmitted to the receiving bank orally~~[-, electronically,]~~ or in a  
4           record~~[writing]~~.

5       (b) If a security procedure is in effect between the sender and the receiving bank,  
6           the communication is not effective to cancel or amend the order unless the  
7           communication is verified pursuant to the security procedure or the bank  
8           agrees to the cancellation or amendment.

9       (2) Subject to subsection (1) of this section, a communication by the sender canceling  
10       or amending a payment order is effective to cancel or amend the order if notice of  
11       the communication is received at a time and in a manner affording the receiving  
12       bank a reasonable opportunity to act on the communication before the bank accepts  
13       the payment order.

14       (3) (a) After a payment order has been accepted, cancellation or amendment of the  
15       order is not effective unless the receiving bank agrees or a funds-transfer  
16       system rule allows cancellation or amendment without agreement of the bank.

17       (b)~~(a)~~ With respect to a payment order accepted by a receiving bank other than  
18       the beneficiary's bank, cancellation or amendment is not effective unless a  
19       conforming cancellation or amendment of the payment order issued by the  
20       receiving bank is also made.

21       (c)~~(b)~~ With respect to a payment order accepted by the beneficiary's bank,  
22       cancellation or amendment is not effective unless the order was issued in  
23       execution of an unauthorized payment order, or because of a mistake by a  
24       sender in the funds transfer which resulted in the issuance of a payment order:

- 25           1. That is a duplicate of a payment order previously issued by the sender;  
26           2. That orders payment to a beneficiary not entitled to receive payment  
27           from the originator; or

- 1           3. That orders payment in an amount greater than the amount the  
2           beneficiary was entitled to receive from the originator. If the payment  
3           order is canceled or amended, the beneficiary's bank is entitled to  
4           recover from the beneficiary any amount paid to the beneficiary to the  
5           extent allowed by the law governing mistake and restitution.
- 6 (4) An unaccepted payment order is canceled by operation of law at the close of the  
7       fifth funds-transfer business day of the receiving bank after the execution date or  
8       payment date of the order.
- 9 (5) (a) A canceled payment order cannot be accepted.
- 10 (b) If an accepted payment order is canceled, the acceptance is nullified and no  
11       person has any right or obligation based on the acceptance.
- 12 (c) Amendment of a payment order is deemed to be cancellation of the original  
13       order at the time of amendment and issue of a new payment order in the  
14       amended form at the same time.
- 15 (6) Unless otherwise provided in an agreement of the parties or in a funds-transfer  
16       system rule, if the receiving bank, after accepting a payment order, agrees to  
17       cancellation or amendment of the order by the sender or is bound by a funds-  
18       transfer system rule allowing cancellation or amendment without the bank's  
19       agreement, the sender, whether or not cancellation or amendment is effective, is  
20       liable to the bank for any loss and expenses, including reasonable attorney's fees,  
21       incurred by the bank as a result of the cancellation or amendment or attempted  
22       cancellation or amendment.
- 23 (7) A payment order is not revoked by the death or legal incapacity of the sender unless  
24       the receiving bank knows of the death or of an adjudication of incapacity by a court  
25       of competent jurisdiction and has reasonable opportunity to act before acceptance of  
26       the order.
- 27 (8) A funds-transfer system rule is not effective to the extent it conflicts with

1 subsection (3)(c)~~[(b)]~~ of this section.

2 ➔Section 22. KRS 355.5-102 is amended to read as follows:

3 (1) In this article:

4 (a) "Adviser" means a person who, at the request of the issuer, a confirmer, or  
5 another adviser, notifies or requests another adviser to notify the beneficiary  
6 that a letter of credit has been issued, confirmed, or amended;~~[-]~~

7 (b) 1. "Applicant" means a person at whose request or for whose account a  
8 letter of credit is issued.

9 2. The term includes a person who requests an issuer to issue a letter of  
10 credit on behalf of another if the person making the request undertakes  
11 an obligation to reimburse the issuer;~~[-]~~

12 (c) 1. "Beneficiary" means a person who under the terms of a letter of credit is  
13 entitled to have its complying presentation honored.

14 2. The term includes a person to whom drawing rights have been  
15 transferred under a transferable letter of credit;~~[-]~~

16 (d) "Confirmer" means a nominated person who undertakes, at the request or with  
17 the consent of the issuer, to honor a presentation under a letter of credit issued  
18 by another;~~[-]~~

19 (e) "Dishonor" of a letter of credit means failure timely to honor or to take an  
20 interim action, such as acceptance of a draft, that may be required by the letter  
21 of credit;~~[-]~~

22 (f) 1. "Document" means a draft or other demand, document of title,  
23 investment security, certificate, invoice, or other record, statement, or  
24 representation of fact, law, right, or opinion:

25 a.~~[-]~~Which is presented in a written or other medium permitted by the  
26 letter of credit or, unless prohibited by the letter of credit, by the  
27 standard practice referred to in KRS 355.5-108(5); and



- 1                    b.~~[2.]~~ Which is capable of being examined for compliance with the terms  
2                    and conditions of the letter of credit.
- 3                    2. A document may not be oral;~~[.]~~
- 4                    (g) "Good faith" means honesty in fact in the conduct or transaction concerned;~~[.]~~
- 5                    (h) 1. "Honor" of a letter of credit means performance of the issuer's  
6                    undertaking in the letter of credit to pay or deliver an item of value.
- 7                    2. Unless the letter of credit otherwise provides, "honor" occurs:
- 8                    a.~~[1.]~~ Upon payment;
- 9                    b.~~[2.]~~ If the letter of credit provides for acceptance, upon acceptance of a  
10                    draft and, at maturity, its payment; or
- 11                    c.~~[3.]~~ If the letter of credit provides for incurring a deferred obligation,  
12                    upon incurring the obligation and, at maturity, its performance;~~[.]~~
- 13                    (i) "Issuer" means a bank or other person that issues a letter of credit, but does  
14                    not include an individual who makes an engagement for personal, family, or  
15                    household purposes;~~[.]~~
- 16                    (j) "Letter of credit" means a definite undertaking that satisfies the requirements  
17                    of KRS 355.5-104 by an issuer to a beneficiary at the request or for the  
18                    account of an applicant or, in the case of a financial institution, to itself or for  
19                    its own account, to honor a documentary presentation by payment or delivery  
20                    of an item of value;~~[.]~~
- 21                    (k) "Nominated person" means a person whom the issuer:
- 22                    1. Designates or authorizes to pay, accept, negotiate, or otherwise give  
23                    value under a letter of credit; and
- 24                    2. Undertakes by agreement or custom and practice to reimburse;~~[.]~~
- 25                    (l) "Presentation" means delivery of a document to an issuer or nominated person  
26                    for honor or giving of value under a letter of credit;~~[.]~~
- 27                    (m) "Presenter" means a person making a presentation as or on behalf of a

1 beneficiary or nominated person;[.]

2 (n) "Record" means information that is inscribed on a tangible medium, or that is  
3 stored in an electronic or other medium and is retrievable in perceivable  
4 form;[.]

5 (o) **"Signed," with respect to a record that is not a writing, means to attach to**  
6 **or logically associate with the record an electronic sound, symbol, biometric**  
7 **measurement or calculation, or process with present intent to adopt or**  
8 **accept the record; and**

9 (p) "Successor of a beneficiary" means a person who succeeds to substantially all  
10 of the rights of a beneficiary by operation of law, including a corporation with  
11 or into which the beneficiary has been merged or consolidated, an  
12 administrator, executor, personal representative, trustee in bankruptcy, debtor  
13 in possession, liquidator, and receiver.

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

16 "Accept" or "Acceptance,"[ ] KRS 355.3-409;

17 "Value," [ ] KRS 355.3-303 and 355.4-211.

18 (3) Article 1 of this chapter contains certain additional general definitions and  
19 principles of construction and interpretation applicable throughout this article.

20 ➔SECTION 23. KRS 355.7-106 IS REPEALED AND REENACTED TO READ  
21 AS FOLLOWS:

22 **(1) A secured party has control of an electronic copy of a document of title if:**

23 **(a) The electronic copy, a record attached to or logically associated with the**  
24 **electronic copy, or the system in which the electronic copy is recorded, if**  
25 **any:**

26 **1. Enables the secured party to readily identify each electronic copy of**  
27 **the document of title as an authoritative copy or nonauthoritative copy**

- 1                   of the document of title;
- 2                   2. Enables the secured party to readily identify itself as the assignee of
- 3                   each authoritative electronic copy of the document of title; and
- 4                   3. Subject to subsection (2) of this section, gives the secured party the
- 5                   exclusive power to:
- 6                   a. Prevent others from adding or changing an identified assignee
- 7                   of each authoritative electronic copy of the document of title;
- 8                   and
- 9                   b. Transfer control of the authoritative copy of the document of
- 10                   title; or
- 11                   (b) Another person on behalf of the secured party obtains control of the
- 12                   document of title or, having previously obtained control of the electronic
- 13                   copy, acknowledges in an authenticated record that it has control.
- 14                   (2) A power specified in subsection (1)(a) of this section is exclusive, even if:
- 15                   (a) The electronic copy or the system in which the electronic copy is recorded, if
- 16                   any:
- 17                   1. Limits the use to which the electronic record may be put; or
- 18                   2. Has protocols that are programmed to result in a transfer of control;
- 19                   or
- 20                   (b) The secured party has agreed to share the power with another person.
- 21                   (3) For the purposes of subsection (1)(a)2. of this section, a secured party may be
- 22                   identified in any way, including by name, identifying number, cryptographic key,
- 23                   office, or account number.

24                   ➔Section 24. KRS 355.9-102 is amended to read as follows:

- 25                   (1) In this article:
- 26                   (a) "Accession" means goods that are physically united with other goods in such a
- 27                   manner that the identity of the original goods is not lost;

- 1 (b) 1. "Account," except as used in "account for~~[,]~~" **and "on account of,"**  
 2 means a right to payment of a monetary obligation, whether or not  
 3 earned by performance:
- 4 a. For property that has been or is to be sold, leased, licensed,  
 5 assigned, or otherwise disposed of;
  - 6 b. For services rendered or to be rendered;
  - 7 c. For a policy of insurance issued or to be issued;
  - 8 d. For a secondary obligation incurred or to be incurred;
  - 9 e. For energy provided or to be provided;
  - 10 f. For the use or hire of a vessel under a charter or other contract;
  - 11 g. Arising out of the use of a credit or charge card or information  
 12 contained on or for use with the card; or
  - 13 h. As winnings in a lottery or other game of chance operated or  
 14 sponsored by a state, governmental unit of a state, or person  
 15 licensed or authorized to operate the game by a state or  
 16 governmental unit of a state.
- 17 2. The term includes:
- 18 **a. Controllable accounts; and**
  - 19 **b.** Health-care-insurance receivables.
- 20 3. The term does not include:
- 21 a. ~~[Rights to payment evidenced by ]~~Chattel paper~~[or an instrument];~~
  - 22 b. Commercial tort claims;
  - 23 c. Deposit accounts;
  - 24 d. Investment property;
  - 25 e. Letter-of-credit rights or letters of credit;~~[or]~~
  - 26 f. Rights to payment for money or funds advanced or sold, other than  
 27 rights arising out of the use of a credit or charge card or

1 information contained on or for use with the card; **or**

2 **g. *Rights to payment evidenced by an instrument;***

3 (c) **1.** "Account debtor" means a person obligated on an account, chattel paper,  
4 or general intangible.

5 **2.** The term does not include persons obligated to pay a negotiable  
6 instrument, even if the instrument constitutes part of chattel paper;

7 (d) "Accounting," except as used in "accounting for," means a record:

8 1. Authenticated by a secured party;

9 2. Indicating the aggregate unpaid secured obligations as of a date not more  
10 than thirty-five (35) days earlier or thirty-five (35) days later than the  
11 date of the record; and

12 3. Identifying the components of the obligations in reasonable detail;

13 (e) "Agricultural lien" means an interest in farm products:

14 1. Which secures payment or performance of an obligation for:

15 a. Goods or services furnished in connection with a debtor's farming  
16 operation; or

17 b. Rent on real property leased by a debtor in connection with its  
18 farming operation;

19 2. Which is created by statute in favor of a person that:

20 a. In the ordinary course of its business furnished goods or services to  
21 a debtor in connection with a debtor's farming operation; or

22 b. Leased real property to a debtor in connection with the debtor's  
23 farming operation; and

24 3. Whose effectiveness does not depend on the person's possession of the  
25 personal property;

26 (f) "As-extracted collateral" means:

27 1. Oil, gas, or other minerals that are subject to a security interest that:

1 a. Is created by a debtor having an interest in the minerals before  
2 extraction; and

3 b. Attaches to the minerals as extracted; or

4 2. Accounts arising out of the sale at the wellhead or minehead of oil, gas,  
5 or other minerals in which the debtor had an interest before extraction;

6 (g) **"Assignee" means a person:**

7 **1. In whose favor a security interest that secures an obligation is created**  
8 **or provided for under a security agreement, whether or not an**  
9 **obligation to be secured is outstanding; or**

10 **2. To which accounts, chattel paper, payment intangibles, or promissory**  
11 **notes have been sold;**

12 (h) **"Assignor" means a person that:**

13 **1. Under a security agreement creates or provides for a security interest**  
14 **that secures an obligation; or**

15 **2. Sells accounts, chattel paper, payment intangibles, or promissory**  
16 **notes;**

17 (i) "Authenticate" means:

18 1. To sign; or

19 2. With present intent to adopt or accept a record, to attach to or logically  
20 associate with the record an electronic sound, symbol, or process;

21 ~~(j)(h)~~ "Bank" means an organization that is engaged in the business of  
22 banking. The term includes savings banks, savings and loan associations,  
23 credit unions, and trust companies;

24 ~~(k)(i)~~ "Cash proceeds" means proceeds that are money, checks, deposit  
25 accounts, or the like;

26 ~~(l)(j)~~ **1.** "Certificate of title" means a certificate of title with respect to  
27 which a statute provides for the security interest in question to be

1 indicated on the certificate as a condition or result of the security  
2 interest's obtaining priority over the rights of a lien creditor with respect  
3 to the collateral.

4 2. The term includes another record maintained as an alternative to a  
5 certificate of title by the governmental unit that issues certificates of title  
6 if a statute permits the security interest in question to be indicated on the  
7 record as a condition or result of the security interest's obtaining priority  
8 over the rights of a lien creditor with respect to the collateral;

9 ~~(m)~~~~(k)~~ 1. "Chattel paper" means:~~[a record or records that evidence both a~~  
10 ~~monetary obligation and a security interest in specific goods, a security~~  
11 ~~interest in specific goods and software used in the goods, a security~~  
12 ~~interest in specific goods and license of software used in the goods, a~~  
13 ~~lease of specific goods, or a lease of specific goods and license of~~  
14 ~~software used in the goods. In this paragraph, "monetary obligation"~~  
15 ~~means a monetary obligation secured by the goods or owed under a lease~~  
16 ~~of the goods and includes a monetary obligation with respect to software~~  
17 ~~used in the goods. The term does not include:~~

- 18 ~~1. Charters or other contracts involving the use or hire of a vessel; or~~
- 19 ~~2. Records that evidence a right of payment arising out of the use of a~~  
20 ~~credit or charge card or information contained on or for use with the~~  
21 ~~card.~~

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

25 *a. A right to payment of a monetary obligation secured by specific*  
26 *goods, if the right to payment and security agreement are*  
27 *evidenced by a record; or*

1                   **b. A right to payment of a monetary obligation owed by a lessee**  
 2                   **under a lease agreement with respect to specific goods and a**  
 3                   **monetary obligation, if any, owed by the lessee in connection**  
 4                   **with the transaction giving rise to the lease, if:**

5                   **i. The right to payment and lease agreement are evidenced by**  
 6                   **a record; and**

7                   **ii. The predominant purpose of the transaction giving rise to**  
 8                   **the lease was to give the lessee the right to possession and**  
 9                   **use of the goods.**

10                   **2. The term does not include:**

11                   **a. A right to payment arising out of a charter or other contract**  
 12                   **involving the use or hire of a vessel; or**

13                   **b. A right to payment arising out of the use of a credit or charge**  
 14                   **card or information contained on or for use with the card;**

15                   ~~(n)~~<sup>(4)</sup> **1.** "Collateral" means the property subject to a security interest or  
 16                   agricultural lien.

17                   **2.** The term includes:

18                   **a.**~~[1.]~~ Proceeds to which a security interest attaches;

19                   **b.**~~[2.]~~ Accounts, chattel paper, payment intangibles, and promissory  
 20                   notes that have been sold; and

21                   **c.**~~[3.]~~ Goods that are the subject of a consignment;

22                   ~~(o)~~<sup>(m)</sup> "Commercial tort claim" means a claim arising in tort with respect to  
 23                   which:

24                   1. The claimant is an organization; or

25                   2. The claimant is an individual and the claim:

26                   a. Arose in the course of the claimant's business or profession; and

27                   b. Does not include damages arising out of personal injury to or the



1 death of an individual;

2 ~~(p)~~~~(n)~~ "Commodity account" means an account maintained by a commodity  
3 intermediary in which a commodity contract is carried for a commodity  
4 customer;

5 ~~(q)~~~~(o)~~ "Commodity contract" means a commodity futures contract, an option  
6 on a commodity futures contract, a commodity option, or another contract if  
7 the contract or option is:

- 8 1. Traded on or subject to the rules of a board of trade that has been  
9 designated as a contract market for such a contract pursuant to federal  
10 commodities laws; or  
11 2. Traded on a foreign commodity board of trade, exchange, or market, and  
12 is carried on the books of a commodity intermediary for a commodity  
13 customer;

14 ~~(r)~~~~(p)~~ "Commodity customer" means a person for which a commodity  
15 intermediary carries a commodity contract on its books;

16 ~~(s)~~~~(e)~~ "Commodity intermediary" means a person that:

- 17 1. Is registered as a futures commission merchant under federal  
18 commodities law; or  
19 2. In the ordinary course of its business provides clearance or settlement  
20 services for a board of trade that has been designated as a contract  
21 market pursuant to federal commodities law;

22 ~~(t)~~~~(r)~~ "Communicate" means:

- 23 1. To send a written or other tangible record;  
24 2. To transmit a record by any means agreed upon by the persons sending  
25 and receiving the record; or  
26 3. In the case of transmission of a record to or by a filing office, to transmit  
27 a record by any means prescribed by filing-office rule;

1       (u)~~{(s)}~~ "Consignee" means a merchant to which goods are delivered in a  
2               consignment;

3       (v)~~{(t)}~~ "Consignment" means a transaction, regardless of its form, in which a  
4               person delivers goods to a merchant for the purpose of sale and:

- 5           1. The merchant:
  - 6               a. Deals in goods of that kind under a name other than the name of  
7                       the person making delivery;
  - 8               b. Is not an auctioneer; and
  - 9               c. Is not generally known by its creditors to be substantially engaged  
10                       in selling the goods of others;
- 11          2. With respect to each delivery, the aggregate value of the goods is one  
12               thousand dollars (\$1,000) or more at the time of delivery;
- 13          3. The goods are not consumer goods immediately before delivery; and
- 14          4. The transaction does not create a security interest that secures an  
15               obligation;

16       (w)~~{(u)}~~ "Consignor" means a person that delivers goods to a consignee in a  
17               consignment;

18       (x)~~{(v)}~~ "Consumer debtor" means a debtor in a consumer transaction;

19       (y)~~{(w)}~~ "Consumer goods" means goods that are used or bought for use  
20               primarily for personal, family, or household purposes;

21       (z)~~{(x)}~~ "Consumer-goods transaction" means a consumer transaction in which:

- 22           1. An individual incurs an obligation primarily for personal, family, or  
23               household purposes; and
- 24           2. A security interest in consumer goods secures the obligation;

25       (aa)~~{(y)}~~ "Consumer obligor" means an obligor who is an individual and who  
26               incurred the obligation as part of a transaction entered into primarily for  
27               personal, family, or household purposes;

- 1        ~~(ab)~~~~(z)~~ 1. "Consumer transaction" means a transaction in which:
- 2                    ~~a.~~~~[1.]~~ An individual incurs an obligation primarily for personal, family,
- 3                    or household purposes;
- 4                    ~~b.~~~~[2.]~~ A security interest secures the obligation; and
- 5                    ~~c.~~~~[3.]~~ The collateral is held or acquired primarily for personal, family, or
- 6                    household purposes.

- 7                    2. The term includes consumer-goods transactions;

8        ~~(ac)~~~~(aa)~~ "Continuation statement" means an amendment of a financing statement

9                    which:

- 10                    1. Identifies, by its file number, the initial financing statement to which it
- 11                    relates; and
- 12                    2. Indicates that it is a continuation statement for, or that it is filed to
- 13                    continue the effectiveness of, the identified financing statement;

14        ~~(ad)~~ **"Controllable account" means an account evidenced by a controllable**

15                    **electronic record that provides that the account debtor undertakes to pay the**

16                    **person that has control under Section 5 of this Act of the controllable**

17                    **electronic record;**

18        ~~(ae)~~ **"Controllable payment intangible" means a payment intangible evidenced**

19                    **by a controllable electronic record that provides that the account debtor**

20                    **undertakes to pay the person that has control under Section 5 of this Act of**

21                    **the controllable electronic record;**

22        ~~(af)~~~~(ab)~~ "Debtor" means:

- 23                    1. A person having an interest, other than a security interest or other lien, in
- 24                    the collateral, whether or not the person is an obligor;
- 25                    2. A seller of accounts, chattel paper, payment intangibles, or promissory
- 26                    notes; or
- 27                    3. A consignee;

1 ~~(ag)~~~~(ae)~~ 1. "Deposit account" means a demand, time, savings, passbook, or  
2 similar account maintained with a bank.

3 2. *The term includes an account that is money under Section 8 of this*  
4 *Act.*

5 3. The term does not include investment property or accounts evidenced by  
6 an instrument;

7 ~~(ah)~~~~(ad)~~ "Document" means a document of title or a receipt of the type described  
8 in KRS 355.7-201(2);

9 ~~{(ae) "Electronic chattel paper" means chattel paper evidenced by a record or~~  
10 ~~records consisting of information stored in an electronic medium;}~~

11 ~~(ai)~~~~(af)~~ 1. "Encumbrance" means a right, other than an ownership interest, in  
12 real property.

13 2. The term includes mortgages and other liens on real property;

14 ~~(aj)~~~~(ag)~~ "Equipment" means goods other than inventory, farm products, or  
15 consumer goods;

16 ~~(ak)~~~~(ah)~~ 1. "Farm products" means goods, other than standing timber, with  
17 respect to which the debtor is engaged in a farming operation and which  
18 are:

19 a.~~{1.}~~ Crops grown, growing, or to be grown, including:

20 i.~~{a.}~~ Crops produced on trees, vines, and bushes; and

21 ii.~~{b.}~~ Aquatic goods produced in aquacultural operations;

22 b.~~{2.}~~ Livestock, born or unborn, including aquatic goods produced in  
23 aquacultural operations;

24 c.~~{3.}~~ Supplies used or produced in a farming operation;

25 d.~~{4.}~~ Products of crops or livestock in their unmanufactured states; or

26 e.~~{5.}~~ Equine interests, including, but not limited to, interests in horses,  
27 mares, yearlings, foals, weanlings, stallions, syndicated stallions,

1 and stallion shares (including seasons and other rights in  
2 connection therewith), whether or not the debtor is engaged in  
3 farming operations and without regard to the use thereof.

4 2. If goods are farm products, they are neither equipment nor inventory;

5 ~~(al)~~~~(ai)~~ "Farming operation" means raising, cultivating, propagating, fattening,  
6 grazing, or any other farming, livestock, or aquacultural operation;

7 ~~(am)~~~~(aj)~~ "File number" means the number assigned to an initial financing  
8 statement pursuant to KRS 355.9-519(1);

9 ~~(an)~~~~(ak)~~ "Filing office" means an office designated in KRS 355.9-501 as the  
10 place to file a financing statement;

11 ~~(ao)~~~~(al)~~ "Filing-office rule" means a rule adopted pursuant to KRS 355.9-526;

12 ~~(ap)~~~~(am)~~ "Financing statement" means a record or records composed of an initial  
13 financing statement and any filed record relating to the initial financing  
14 statement;

15 ~~(aq)~~~~(an)~~ 1. "Fixture filing" means the filing of a financing statement covering  
16 goods that are or are to become fixtures and satisfying KRS 355.9-  
17 502(1) and (2).

18 2. The term includes the filing of a financing statement covering goods of a  
19 transmitting utility which are or are to become fixtures;

20 ~~(ar)~~~~(ao)~~ "Fixtures" means goods that have become so related to particular real  
21 property that an interest in them arises under real property law;

22 ~~(as)~~~~(ap)~~ 1. "General intangible" means any personal property, including things  
23 in action, other than accounts, chattel paper, commercial tort claims,  
24 deposit accounts, documents, goods, instruments, investment property,  
25 letter-of-credit rights, letters of credit, money, and oil, gas, or other  
26 minerals before extraction.

27 2. The term includes payment intangibles and software;

1 ~~(at)~~~~(aq)~~ (Reserved)

2 ~~(au)~~~~(ar)~~ **1.** "Goods" means all things that are movable when a security interest  
3 attaches.

4 ~~2.~~~~1.~~ The term includes:

- 5 a. Fixtures;
- 6 b. Standing timber that is to be cut and removed under a conveyance  
7 or contract for sale;
- 8 c. The unborn young of animals;
- 9 d. Crops grown, growing, or to be grown, even if the crops are  
10 produced on trees, vines, or bushes; and
- 11 e. Manufactured homes.

12 ~~3.~~~~2.~~ The term also includes a computer program embedded in goods and any  
13 supporting information provided in connection with a transaction  
14 relating to the program if:

- 15 a. The program is associated with the goods in such a manner that it  
16 customarily is considered part of the goods; or
- 17 b. By becoming the owner of the goods, a person acquires a right to  
18 use the program in connection with the goods.

19 ~~4.~~~~3.~~ The term does not include a computer program embedded in goods that  
20 consist solely of the medium in which the program is embedded.

21 ~~5.~~~~4.~~ The term also does not include accounts, chattel paper, commercial tort  
22 claims, deposit accounts, documents, general intangibles, instruments,  
23 investment property, letter-of-credit rights, letters of credit, money, or  
24 oil, gas, or other minerals before extraction;

25 ~~(av)~~~~(as)~~ **1.** "Governmental unit" means a subdivision, agency, department,  
26 county, parish, municipality, or other unit of the government of the  
27 United States, a State, or a foreign country.

1           2. The term includes an organization having a separate corporate existence  
 2           if the organization is eligible to issue debt on which interest is exempt  
 3           from income taxation under the laws of the United States;

4           ~~(aw)~~~~(at)~~ "Health-care-insurance receivable" means an interest in or claim under a  
 5           policy of insurance which is a right to payment of a monetary obligation for  
 6           health-care goods or services provided or to be provided;

7           ~~(ax)~~~~(au)~~ 1. "Instrument" means a negotiable instrument or any other writing  
 8           that evidences a right to the payment of a monetary obligation, is not  
 9           itself a security agreement or lease, and is of a type that in ordinary  
 10          course of business is transferred by delivery with any necessary  
 11          indorsement or assignment.

12          2. The term does not include:

13          a.~~[1.]~~ Investment property;

14          b.~~[2.]~~ Letters of credit;~~[or]~~

15          c.~~[3.]~~ Writings that evidence a right to payment arising out of the use of  
 16          a credit or charge card or information contained on or for use with  
 17          the card; or

18          d. *Writings that evidence chattel paper;*

19          (ay) *"Intangible money" does not include a deposit account;*

20          ~~(az)~~~~(av)~~ "Inventory" means goods, other than farm products, which:

- 21           1. Are leased by a person as lessor;
- 22           2. Are held by a person for sale or lease or to be furnished under a contract  
 23           of service;
- 24           3. Are furnished by a person under a contract of service; or
- 25           4. Consist of raw materials, work in process, or materials used or  
 26           consumed in a business;

27          ~~(ba)~~~~(aw)~~ "Investment property" means a security, whether certificated or

1           uncertificated, security entitlement, securities account, commodity contract, or  
2           commodity account;

3           **(bb)**~~[(ax)]~~ "Jurisdiction of organization," with respect to a registered organization,  
4           means the jurisdiction under whose law the organization is organized;

5           **(bc)**~~[(ay)]~~ **1.** "Letter-of-credit right" means a right to payment or performance  
6           under a letter of credit, whether or not the beneficiary has demanded or  
7           is at the time entitled to demand payment or performance.

8           **2.** The term does not include the right of a beneficiary to demand payment  
9           or performance under a letter of credit;

10          **(bd)**~~[(az)]~~ "Lien creditor" means:

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

16          **(be)**~~[(ba)]~~ **1.** "Manufactured home" means a structure, transportable in one (1)  
17           or more sections, which, in the traveling mode, is eight (8) body feet or  
18           more in width or forty (40) body feet or more in length, or, when erected  
19           on site, is three hundred twenty (320) or more square feet, and which is  
20           built on a permanent chassis and designed to be used as a dwelling with  
21           or without a permanent foundation when connected to the required  
22           utilities, and includes the plumbing, heating, air-conditioning, and  
23           electrical systems contained therein.

24          **2.** The term includes any structure that meets all of the requirements of this  
25           paragraph except the size requirements and with respect to which the  
26           manufacturer voluntarily files a certification required by the United  
27           States Secretary of Housing and Urban Development and complies with



1 the standards established under Title 42 of the United States Code;

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

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

7 ~~(bg)~~~~(be)~~ "Mortgage" means a consensual interest in real property, including  
8 fixtures, which secures payment or performance of an obligation;

9 ~~(bh)~~~~(bd)~~ "New debtor" means a person that becomes bound as debtor under KRS  
10 355.9-203(4) by a security agreement previously entered into by another  
11 person;

12 ~~(bi)~~~~(be)~~ 1. "New value" means:

13 a.~~[1.]~~ Money;

14 b.~~[2.]~~ Money's worth in property, services, or new credit; or

15 c.~~[3.]~~ Release by a transferee of an interest in property previously  
16 transferred to the transferee.

17 2. The term does not include an obligation substituted for another  
18 obligation;

19 ~~(bj)~~~~(bf)~~ "Noncash proceeds" means proceeds other than cash proceeds;

20 ~~(bk)~~~~(bg)~~ 1. "Obligor" means a person that, with respect to an obligation  
21 secured by a security interest in or an agricultural lien on the collateral:

22 a.~~[1.]~~ Owes payment or other performance of the obligation;

23 b.~~[2.]~~ Has provided property other than the collateral to secure payment  
24 or other performance of the obligation; or

25 c.~~[3.]~~ Is otherwise accountable in whole or in part for payment or other  
26 performance of the obligation.

27 2. The term does not include issuers or nominated persons under a letter of

1 credit;

2 ~~(bl)~~~~(bh)~~ "Original debtor," except as used in KRS 355.9-310(3), means a person  
3 that, as debtor, entered into a security agreement to which a new debtor has  
4 become bound under KRS 355.9-203(4);

5 ~~(bm)~~~~(bi)~~ **1.** "Payment intangible" means a general intangible under which the  
6 account debtor's principal obligation is a monetary obligation.

7 **2. The term includes controllable payment intangibles;**

8 ~~(bn)~~~~(bj)~~ "Person related to," with respect to an individual, means:

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

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

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

27 ~~(bp)~~~~(bl)~~ "Proceeds," except as used in KRS 355.9-609(2), means the following

1 property:

- 2 1. Whatever is acquired upon the sale, lease, license, exchange, or other  
3 disposition of collateral;
- 4 2. Whatever is collected on, or distributed on account of, collateral;
- 5 3. Rights arising out of collateral;
- 6 4. To the extent of the value of collateral, claims arising out of the loss,  
7 nonconformity, or interference with the use of, defects or infringement  
8 of rights in, or damage to, the collateral; or
- 9 5. To the extent of the value of collateral and to the extent payable to the  
10 debtor or the secured party, insurance payable by reason of the loss or  
11 nonconformity of, defects or infringement of rights in, or damage to, the  
12 collateral;

13 ~~(bq)~~~~(bm)~~ "Promissory note" means an instrument that evidences a promise to pay  
14 a monetary obligation, does not evidence an order to pay, and does not contain  
15 an acknowledgment by a bank that the bank has received for deposit a sum of  
16 money or funds;

17 ~~(br)~~~~(bn)~~ "Proposal" means a record authenticated by a secured party which  
18 includes the terms on which the secured party is willing to accept collateral in  
19 full or partial satisfaction of the obligation it secures pursuant to KRS 355.9-  
20 620, 355.9-621, and 355.9-622;

21 ~~(bs)~~~~(bo)~~ "Public-finance transaction" means a secured transaction in connection  
22 with which:

- 23 1. Debt securities are issued;
- 24 2. All or a portion of the securities issued have an initial stated maturity of  
25 at least twenty (20) years; and
- 26 3. The debtor, obligor, secured party, account debtor or other person  
27 obligated on collateral, assignor or assignee of a secured obligation, or

1 assignor or assignee of a security interest is a state or a governmental  
2 unit of a state;

3 ~~(bt)~~~~(bp)~~ "Public organic record" means a record that is available to the public for  
4 inspection and that is:

- 5 1. A record consisting of the record initially filed with or issued by a state  
6 or the United States to form or organize an organization and any record  
7 filed with or issued by the state or the United States which amends or  
8 restates the initial record;
- 9 2. An organic record of a business trust consisting of the record initially  
10 filed with a state and any record filed with the state which amends or  
11 restates the initial record, if a statute of the state governing business  
12 trusts requires that the record be filed with the state; or
- 13 3. A record consisting of legislation enacted by the legislature of a state or  
14 the Congress of the United States which forms or organizes an  
15 organization, any record amending the legislation, and any record filed  
16 with or issued by the state or United States which amends or restates the  
17 name of the organization;

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

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

27 ~~(bw)~~~~(bs)~~ **I.** "Registered organization" means an organization formed or

1 organized solely under the law of a single state or the United States by  
 2 the filing of a public organic record with, the issuance of a public  
 3 organic record by, or the enactment of legislation by the state or the  
 4 United States.

5 2. The term includes a business trust that is formed or organized under the  
 6 law of a single state if a statute of the state governing business trusts  
 7 requires that the business trust's organic record be filed with the state;

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

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

12 (by)~~[(bu)]~~ "Secured party" means:

- 13 1. A person in whose favor a security interest is created or provided for  
 14 under a security agreement, whether or not any obligation to be secured  
 15 is outstanding;
- 16 2. A person that holds an agricultural lien;
- 17 3. A consignor;
- 18 4. A person to which accounts, chattel paper, payment intangibles, or  
 19 promissory notes have been sold;
- 20 5. A trustee, indenture trustee, agent, collateral agent, or other  
 21 representative in whose favor a security interest or agricultural lien is  
 22 created or provided for; or
- 23 6. A person that holds a security interest arising under KRS 355.2-401,  
 24 355.2-505, 355.2-711(3), 355.2A-508(5), 355.4-210, or 355.5-118;

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

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

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

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

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

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

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

21          (ce)~~[(eb)]~~ "Termination statement" means an amendment of a financing statement  
22          which:

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

27          (cf)~~[(ee)]~~ "Transmitting utility" means a person primarily engaged in the business

1 of:

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

8 (2) The following definitions in other articles ***of this chapter*** apply to this article:

- 9 (a) "Applicant." KRS 355.5-102;
- 10 (b) "Beneficiary." KRS 355.5-102;
- 11 (c) "Broker." KRS 355.8-102;
- 12 (d) "Certificated security." KRS 355.8-102;
- 13 (e) "Check." KRS 355.3-104;
- 14 (f) "Clearing corporation." KRS 355.8-102;
- 15 (g) "Contract for sale." KRS 355.2-106;
- 16 (h) ***"Controllable electronic record." Section 2 of this Act;***
- 17 ***(i)*** "Customer." KRS 355.4-104;
- 18 ***(j)***~~(i)~~ "Entitlement holder." KRS 355.8-102;
- 19 ***(k)***~~(j)~~ "Financial asset." KRS 355.8-102;
- 20 ***(l)***~~(k)~~ "Holder in due course." KRS 355.3-302;
- 21 ***(m)***~~(l)~~ "Issuer." (with respect to a letter of
- 22 credit or letter-of-credit right) KRS 355.5-102;
- 23 ***(n)***~~(m)~~ "Issuer." (with respect to a security) KRS 355.8-201;
- 24 ***(o)***~~(n)~~ "Lease." KRS 355.2A-103;
- 25 ***(p)***~~(o)~~ "Lease agreement." KRS 355.2A-103;
- 26 ***(q)***~~(p)~~ "Lease contract." KRS 355.2A-103;
- 27 ***(r)***~~(q)~~ "Leasehold interest." KRS 355.2A-103;

- 1        ~~(s)~~~~(r)~~ "Lessee." KRS 355.2A-103;
- 2        ~~(t)~~~~(s)~~ "Lessee in ordinary course of business." KRS 355.2A-103;
- 3        ~~(u)~~~~(t)~~ "Lessor." KRS 355.2A-103;
- 4        ~~(v)~~~~(u)~~ "Lessor's residual interest." KRS 355.2A-103;
- 5        ~~(w)~~~~(v)~~ "Letter of credit." KRS 355.5-102;
- 6        ~~(x)~~~~(w)~~ "Merchant." KRS 355.2-104;
- 7        ~~(y)~~~~(x)~~ "Negotiable instrument." KRS 355.3-104;
- 8        ~~(z)~~~~(y)~~ "Nominated person." KRS 355.5-102;
- 9        ~~(aa)~~~~(z)~~ "Note." KRS 355.3-104;
- 10       ~~(ab)~~~~(aa)~~ "Proceeds of a letter of credit." KRS 355.5-114;
- 11       ~~(ac)~~~~(ab)~~ "Prove." KRS 355.3-103;
- 12       **(ad) "Qualifying purchaser." Section 4 of this Act;**
- 13       ~~(ae)~~~~(ae)~~ "Sale." KRS 355.2-106;
- 14       ~~(af)~~~~(ad)~~ "Securities account." KRS 355.8-501;
- 15       ~~(ag)~~~~(ae)~~ "Securities intermediary." KRS 355.8-102;
- 16       ~~(ah)~~~~(af)~~ "Security." KRS 355.8-102;
- 17       ~~(ai)~~~~(ag)~~ "Security certificate." KRS 355.8-102;
- 18       ~~(aj)~~~~(ah)~~ "Security entitlement." KRS 355.8-102; and
- 19       ~~(ak)~~~~(ai)~~ "Uncertificated security." KRS 355.8-102.
- 20       (3) Article 1 of this chapter contains general definitions and principles of construction
- 21       and interpretation applicable throughout this article.
- 22       ➔SECTION 25. KRS 355.9-105 IS REPEALED AND REENACTED TO READ
- 23       AS FOLLOWS:
- 24       **(1) A secured party has control of an electronic copy of a record evidencing chattel**
- 25       **paper if:**
- 26       **(a) The electronic copy, a record attached to or logically associated with the**
- 27       **electronic copy, or the system in which the electronic copy is recorded, if**



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any:

1. Enables the secured party to readily identify each electronic copy of the record as an authoritative copy or nonauthoritative copy of the record;

2. Enables the secured party to readily identify itself as the assignee of each authoritative electronic copy of the record; and

3. Subject to subsection (2) of this section, gives the secured party the exclusive power to:

a. Prevent others from adding or changing an identified assignee of each authoritative electronic copy of the record; and

b. Transfer control of the authoritative copy of the record; or

(b) Another person on behalf of the secured party obtains control of the electronic copy of a record evidencing chattel paper or, having previously obtained control of the electronic copy, acknowledges in an authenticated record that it has control.

(2) A power specified in subsection (1)(a) is exclusive, even if:

(a) The electronic copy, or the system in which the electronic copy is recorded, if any:

1. Limits the use to which the electronic record may be put; or

2. Has protocols that are programmed to result in a transfer of control;

or

(b) The secured party has agreed to share the power with another person.

(3) For purposes of subsection (1)(a)2. of this section, a secured party may be identified in any way, including by name, identifying number, cryptographic key, office, or account number.

➔SECTION 26. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS:

1 (1) A person has control of intangible money if the following conditions are met:

2 (a) The intangible money or the system in which the intangible money is  
 3 recorded, if any, gives the person:

4 1. The power to avail itself of substantially all the benefit from the  
 5 intangible money; and

6 2. Subject to subsection (2) of this section, the exclusive power to:

7 a. Prevent others from availing themselves of substantially all the  
 8 benefit from the intangible money; and

9 b. Transfer control of the intangible money to another person or  
 10 cause another person to obtain control of intangible money that  
 11 is traceable to the intangible money; and

12 (b) 1. The intangible money, a record attached to or logically associated with  
 13 the intangible money, or the system in which the intangible money is  
 14 recorded, if any, enables the person to readily identify itself as having  
 15 the powers under paragraph (a) of this subsection.

16 2. The person may be identified in any way, including by name,  
 17 identifying number, cryptographic key, office, or account number.

18 (2) A power specified in subsection (1) of this section is exclusive, even if:

19 (a) The intangible money, or the system in which the intangible money is  
 20 recorded, if any:

21 1. Limits the use to which the intangible money may be put; or

22 2. Has protocols that are programmed to result in a transfer of control;  
 23 or

24 (b) The person has agreed to share the power with another person.

25 ➔SECTION 27. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS  
 26 CREATED TO READ AS FOLLOWS:

27 (1) A secured party has control of a controllable electronic record as provided in

1        **Section 5 of this Act.**

2        **(2) A secured party has control of a controllable account or controllable payment**  
 3        **intangible if the secured party has control of the controllable electronic record**  
 4        **that evidences the controllable account or controllable payment intangible.**

5        ➔Section 28. KRS 355.9-203 is amended to read as follows:

- 6        (1) A security interest attaches to collateral when it becomes enforceable against the  
 7        debtor with respect to the collateral, unless an agreement expressly postpones the  
 8        time of attachment.
- 9        (2) Except as otherwise provided in subsections (3) to ~~(10)~~~~(9)~~ of this section, a  
 10       security interest is enforceable against the debtor and third parties with respect to  
 11       the collateral only if:
- 12       (a) Value has been given;
- 13       (b) The debtor has rights in the collateral or the power to transfer rights in the  
 14       collateral to a secured party; and
- 15       (c) One (1) of the following conditions is met:
- 16           1. The debtor has authenticated a security agreement that provides a  
 17           description of the collateral and, if the security interest covers timber to  
 18           be cut, a description of the land concerned;
- 19           2. The collateral is not a certificated security and is in the possession of the  
 20           secured party under KRS 355.9-313 pursuant to the debtor's security  
 21           agreement;
- 22           3. The collateral is a certificated security in registered form and the security  
 23           certificate has been delivered to the secured party under KRS 355.8-301  
 24           pursuant to the debtor's security agreement;~~[-or]~~
- 25           4. The collateral is **controllable electronic records, controllable accounts,**  
 26           **controllable payment intangibles,** deposit accounts, electronic  
 27           **documents**~~[chattel paper]~~, **intangible money,** investment property, **or**

1 letter-of-credit rights,~~[or electronic documents,]~~ and the secured party  
 2 has control under KRS 355.7-106, 355.9-104, ~~[355.9-105,]~~ **Section 26**  
 3 **of this Act,** 355.9-106,~~[or]~~ 355.9-107, **or Section 27 of this Act**  
 4 pursuant to the debtor's security agreement; **or**

5 **5. The collateral is chattel paper and the secured party has possession**  
 6 **and control under Section 38 of this Act pursuant to the debtor's**  
 7 **security agreement.**

8 (3) Subsection (2) of this section is subject to KRS 355.4-210 on the security interest of  
 9 a collecting bank, KRS 355.5-118 on the security interest of a letter-of-credit issuer  
 10 or nominated person, KRS 355.9-110 on a security interest arising under Article 2  
 11 or 2A of this chapter, and KRS 355.9-206 on security interests in investment  
 12 property.

13 (4) A person becomes bound as debtor by a security agreement entered into by another  
 14 person if, by operation of law other than this article or by contract:

15 (a) The security agreement becomes effective to create a security interest in the  
 16 person's property; or

17 (b) The person becomes generally obligated for the obligations of the other  
 18 person, including the obligation secured under the security agreement, and  
 19 acquires or succeeds to all or substantially all of the assets of the other person.

20 (5) If a new debtor becomes bound as debtor by a security agreement entered into by  
 21 another person:

22 (a) The agreement satisfies subsection (2)(c) of this section with respect to  
 23 existing or after-acquired property of the new debtor to the extent the property  
 24 is described in the agreement; and

25 (b) Another agreement is not necessary to make a security interest in the property  
 26 enforceable.

27 (6) The attachment of a security interest in collateral gives the secured party the rights

1 to proceeds provided by KRS 355.9-315 and is also attachment of a security interest  
2 in a supporting obligation for the collateral.

3 (7) The attachment of a security interest in a right to payment or performance secured  
4 by a security interest or other lien on personal or real property is also attachment of  
5 a security interest in the security interest, mortgage, or other lien.

6 (8) The attachment of a security interest in a securities account is also attachment of a  
7 security interest in the security entitlements carried in the securities account.

8 (9) The attachment of a security interest in a commodity account is also attachment of a  
9 security interest in the commodity contracts carried in the commodity account.

10 **(10) The attachment of a security interest in a controllable electronic record that**  
11 **evidences a controllable account or controllable payment intangible is also**  
12 **attachment of a security interest in the controllable account or controllable**  
13 **payment intangible.**

14 ➔Section 29. KRS 355.9-207 is amended to read as follows:

15 (1) Except as otherwise provided in subsection (4) of this section:~~[-]~~

16 **(a)** A secured party shall use reasonable care in the custody and preservation of  
17 collateral in the secured party's possession; **and**~~[-]~~

18 **(b)** In the case of chattel paper or an instrument, reasonable care includes taking  
19 necessary steps to preserve rights against prior parties unless otherwise  
20 agreed.

21 (2) Except as otherwise provided in subsection (4) of this section, if a secured party has  
22 possession of collateral:

23 (a) Reasonable expenses, including the cost of insurance and payment of taxes or  
24 other charges, incurred in the custody, preservation, use, or operation of the  
25 collateral are chargeable to the debtor and are secured by the collateral;

26 (b) The risk of accidental loss or damage is on the debtor to the extent of a  
27 deficiency in any effective insurance coverage;

- 1 (c) The secured party shall keep the collateral identifiable, but fungible collateral  
2 may be commingled; and
- 3 (d) The secured party may use or operate the collateral:
- 4 1. For the purpose of preserving the collateral or its value;
- 5 2. As permitted by an order of a court having competent jurisdiction; or
- 6 3. Except in the case of consumer goods, in the manner and to the extent  
7 agreed by the debtor.
- 8 (3) Except as otherwise provided in subsection (4) of this section, a secured party  
9 having possession of collateral or control of collateral under KRS 355.7-106, 355.9-  
10 104, 355.9-105, 355.9-106,~~or~~ 355.9-107, **or Section 27 of this Act:**
- 11 (a) May hold as additional security any proceeds, except money or funds,  
12 received from the collateral;
- 13 (b) Shall apply money or funds received from the collateral to reduce the secured  
14 obligation, unless remitted to the debtor; and
- 15 (c) May create a security interest in the collateral.
- 16 (4) If the secured party is a buyer of accounts, chattel paper, payment intangibles, or  
17 promissory notes or a consignor:
- 18 (a) Subsection (1) of this section does not apply unless the secured party is  
19 entitled under an agreement:
- 20 1. To charge back uncollected collateral; or
- 21 2. Otherwise to full or limited recourse against the debtor or a secondary  
22 obligor based on the nonpayment or other default of an account debtor  
23 or other obligor on the collateral; and
- 24 (b) Subsections (2) and (3) of this section do not apply.
- 25 ➔Section 30. KRS 355.9-208 is amended to read as follows:
- 26 (1) This section applies to cases in which there is no outstanding secured obligation and  
27 the secured party is not committed to make advances, incur obligations, or

1 otherwise give value.

2 (2) Within ten (10) days after receiving an authenticated demand by the debtor:

3 (a) A secured party having control of a deposit account under KRS 355.9-  
4 104(1)(b) shall send to the bank with which the deposit account is maintained  
5 an authenticated statement that releases the bank from any further obligation  
6 to comply with instructions originated by the secured party;

7 (b) A secured party having control of a deposit account under KRS 355.9-  
8 104(1)(c) shall:

- 9 1. Pay the debtor the balance on deposit in the deposit account; or
- 10 2. Transfer the balance on deposit into a deposit account in the debtor's  
11 name;

12 (c) A secured party, other than a buyer, having control of an electronic copy of a  
13 record evidencing chattel paper under KRS 355.9-105 shall transfer control  
14 of the electronic copy to:

- 15 1. The debtor~~[Communicate the authoritative copy of the electronic chattel~~  
16 ~~paper to the debtor or its designated custodian]; or~~
- 17 2. A person designated by the debtor~~[If the debtor designates a custodian~~  
18 ~~that is the designated custodian with which the authoritative copy of the~~  
19 ~~electronic chattel paper is maintained for the secured party,~~  
20 ~~communicate to the custodian an authenticated record releasing the~~  
21 ~~designated custodian from any further obligation to comply with~~  
22 ~~instructions originated by the secured party and instructing the custodian~~  
23 ~~to comply with instructions originated by the debtor; and~~
- 24 3. ~~Take appropriate action to enable the debtor or its designated custodian~~  
25 ~~to make copies of or revisions to the authoritative copy which add or~~  
26 ~~change an identified assignee of the authoritative copy without the~~  
27 ~~consent of the secured party];~~

- 1 (d) A secured party having control of investment property under KRS 355.8-  
2 106(4)(b) or 355.9-106(2) shall send to the securities intermediary or  
3 commodity intermediary with which the security entitlement or commodity  
4 contract is maintained an authenticated record that releases the securities  
5 intermediary or commodity intermediary from any further obligation to  
6 comply with entitlement orders or directions originated by the secured party;
- 7 (e) A secured party having control of a letter-of-credit right under KRS 355.9-107  
8 shall send to each person having an unfulfilled obligation to pay or deliver  
9 proceeds of the letter of credit to the secured party an authenticated release  
10 from any further obligation to pay or deliver proceeds of the letter of credit to  
11 the secured party;~~and~~
- 12 (f) A secured party having control of an electronic document shall:
- 13 1. Give control of the electronic document to the debtor or its designated  
14 custodian;
- 15 2. If the debtor designates a custodian that is the designated custodian with  
16 which the authoritative copy of the electronic document is maintained  
17 for the secured party, communicate to the custodian an authenticated  
18 record;
- 19 a. Releasing the designated custodian from any further obligation to  
20 comply with instructions originated by the secured party; and
- 21 b. Instructing the custodian to comply with instructions originated by  
22 the debtor; and
- 23 3. Take appropriate action to enable the debtor or its designated custodian  
24 to make copies of or revisions to the authoritative copy which add or  
25 change an identified assignee of the authoritative copy without the  
26 consent of the secured party;
- 27 **(g) A secured party having control of a controllable electronic record shall**



1                    **transfer control of the controllable electronic record to:**

2                    **1. The debtor; or**

3                    **2. A person designated by the debtor; and**

4                    **(h) A secured party having control of intangible money under Section 26 of this**  
 5                    **Act shall transfer control of the intangible money to:**

6                    **1. The debtor; or**

7                    **2. A person designated by the debtor.**

8                    ➔Section 31. KRS 355.9-301 is amended to read as follows:

9                    Except as otherwise provided in KRS 355.9-303 to **Section 32 of this Act**~~[355.9-306]~~, the  
 10                    following rules determine the law governing perfection, the effect of perfection or  
 11                    nonperfection, and the priority of a security interest in collateral:

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

15                    (2) **Except as otherwise provided in subsection (5) of this section,** while collateral is  
 16                    located in a jurisdiction, the local law of that jurisdiction governs perfection, the  
 17                    effect of perfection or nonperfection, and the priority of a possessory security  
 18                    interest in that collateral.

19                    (3) Except as otherwise provided in subsection (4) of this section, while tangible  
 20                    negotiable documents, goods, instruments, **or tangible** money~~[, or tangible chattel~~  
 21                    ~~paper]~~ is located in a jurisdiction, the local law of that jurisdiction governs:

22                    (a) Perfection of a security interest in the goods by filing a fixture filing;

23                    (b) Perfection of a security interest in timber to be cut; and

24                    (c) The effect of perfection or nonperfection and the priority of a nonpossessory  
 25                    security interest in the collateral.

26                    (4) The local law of the jurisdiction in which the wellhead or minehead is located  
 27                    governs perfection, the effect of perfection or nonperfection, and the priority of a

1 security interest in as-extracted collateral.

2 **(5) While a tangible authoritative copy of a record evidencing chattel paper is located**  
 3 **in a jurisdiction, the local law of that jurisdiction governs:**

4 **(a) Perfection of a security interest in the chattel paper by possession and**  
 5 **control under Section 38 of this Act; and**

6 **(b) The effect of perfection or nonperfection and the priority of a security**  
 7 **interest in the chattel paper.**

8 ➔SECTION 32. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS  
 9 CREATED TO READ AS FOLLOWS:

10 **(1) Except as provided in subsection (2) of this section, perfection, the effect of**  
 11 **perfection or nonperfection, and the priority of a security interest in a**  
 12 **controllable electronic record are governed by:**

13 **(a) The local law of the controllable electronic record's jurisdiction, as**  
 14 **specified in subsections (2)(a) to (d) of Section 7 of this Act; or**

15 **(b) If none of the subsections referenced in paragraph (a) of this subsection**  
 16 **apply, the local law of the jurisdiction in which the debtor is located.**

17 **(2) The local law of the jurisdiction in which the debtor is located governs perfection**  
 18 **of a security interest in a controllable electronic record by filing.**

19 **(3) If the location of the debtor cannot readily be determined, the debtor is deemed to**  
 20 **be located in this state.**

21 ➔Section 33. KRS 355.9-308 is amended to read as follows:

22 (1) Except as otherwise provided in this section and KRS 355.9-309, a security interest  
 23 is perfected if it has attached and all of the applicable requirements for perfection in  
 24 KRS 355.9-310 to 355.9-316 have been satisfied. A security interest is perfected  
 25 when it attaches if the applicable requirements are satisfied before the security  
 26 interest attaches.

27 (2) An agricultural lien is perfected if it has become effective and all of the applicable

1 requirements for perfection in KRS 355.9-310 have been satisfied. An agricultural  
2 lien is perfected when it becomes effective if the applicable requirements are  
3 satisfied before the agricultural lien becomes effective.

4 (3) A security interest or agricultural lien is perfected continuously if it is originally  
5 perfected by one (1) method under this article and is later perfected by another  
6 method under this article, without an intermediate period when it was unperfected.

7 (4) Perfection of a security interest in collateral also perfects a security interest in a  
8 supporting obligation for the collateral.

9 (5) Perfection of a security interest in a right to payment or performance also perfects a  
10 security interest in a security interest, mortgage, or other lien on personal or real  
11 property securing the right.

12 (6) Perfection of a security interest in a securities account also perfects a security  
13 interest in the security entitlements carried in the securities account.

14 (7) Perfection of a security interest in a commodity account also perfects a security  
15 interest in the commodity contracts carried in the commodity account.

16 **(8) Perfection of a security interest in a controllable electronic record that evidences**  
17 **a controllable account or controllable payment intangible also perfects a security**  
18 **interest in the controllable account or controllable payment intangible.**

19 ➔Section 34. KRS 355.9-310 is amended to read as follows:

20 (1) Except as otherwise provided in subsection (2) of this section and KRS 355.9-  
21 312(2), a financing statement must be filed to perfect all security interests and  
22 agricultural liens.

23 (2) The filing of a financing statement is not necessary to perfect a security interest:

24 (a) That is perfected under KRS 355.9-308(4), (5), (6), or (7);

25 (b) That is perfected under KRS 355.9-309 when it attaches;

26 (c) In property subject to a statute, regulation, or treaty described in KRS 355.9-  
27 311(1);

- 1 (d) In goods in possession of a bailee which is perfected under KRS 355.9-  
2 312(4)(a) or (b);
- 3 (e) In certificated securities, documents, goods, or instruments which is perfected  
4 without filing, control, or possession under KRS 355.9-312(5), (6), or (7);
- 5 (f) In collateral in the secured party's possession under KRS 355.9-313;
- 6 (g) In a certificated security which is perfected by delivery of the security  
7 certificate to the secured party under KRS 355.9-313;
- 8 (h) In **controllable electronic records**, deposit accounts,~~[-electronic chattel~~  
9 ~~paper,]~~ electronic documents, **intangible money**, investment property, or  
10 letter-of-credit rights which is perfected by control under KRS 355.9-314;
- 11 (i) In proceeds which is perfected under KRS 355.9-315;~~[-or]~~
- 12 (j) That is perfected under KRS 355.9-316; **or**
- 13 **(k) In chattel paper which is perfected by possession and control under Section**  
14 **38 of this Act.**
- 15 (3) If a secured party assigns a perfected security interest or agricultural lien, a filing  
16 under this article is not required to continue the perfected status of the security  
17 interest against creditors of and transferees from the original debtor.
- 18 ➔Section 35. KRS 355.9-312 is amended to read as follows:
- 19 (1) A security interest in chattel paper, **controllable electronic records**~~[-negotiable~~  
20 ~~documents]~~, instruments,~~[-or]~~ investment property, **or negotiable documents** may  
21 be perfected by filing.
- 22 (2) Except as otherwise provided in KRS 355.9-315(3) and (4) for proceeds:
- 23 (a) A security interest in a deposit account may be perfected only by control under  
24 KRS 355.9-314;
- 25 (b) And except as otherwise provided in KRS 355.9-308(4), a security interest in  
26 a letter-of-credit right may be perfected only by control under KRS 355.9-  
27 314;~~[-and]~~

- 1 (c) A security interest in *tangible* money may be perfected only by the secured  
2 party's taking possession under KRS 355.9-313; and  
3 (d) A security interest in intangible money may be perfected only by control  
4 under Section 26 of this Act.
- 5 (3) While goods are in the possession of a bailee that has issued a negotiable document  
6 covering the goods:
- 7 (a) A security interest in the goods may be perfected by perfecting a security  
8 interest in the document; and
- 9 (b) A security interest perfected in the document has priority over any security  
10 interest that becomes perfected in the goods by another method during that  
11 time.
- 12 (4) While goods are in the possession of a bailee that has issued a nonnegotiable  
13 document covering the goods, a security interest in the goods may be perfected by:
- 14 (a) Issuance of a document in the name of the secured party;
- 15 (b) The bailee's receipt of notification of the secured party's interest; or
- 16 (c) Filing as to the goods.
- 17 (5) A security interest in certificated securities, negotiable documents, or instruments is  
18 perfected without filing or the taking of possession or control for a period of twenty  
19 (20) days from the time it attaches to the extent that it arises for new value given  
20 under an authenticated security agreement.
- 21 (6) A perfected security interest in a negotiable document or goods in possession of a  
22 bailee, other than one that has issued a negotiable document for the goods, remains  
23 perfected for twenty (20) days without filing if the secured party makes available to  
24 the debtor the goods or documents representing the goods for the purpose of:
- 25 (a) Ultimate sale or exchange; or
- 26 (b) Loading, unloading, storing, shipping, transshipping, manufacturing,  
27 processing, or otherwise dealing with them in a manner preliminary to their

1 sale or exchange.

2 (7) A perfected security interest in a certificated security or instrument remains  
3 perfected for twenty (20) days without filing if the secured party delivers the  
4 security certificate or instrument to the debtor for the purpose of:

5 (a) Ultimate sale or exchange; or

6 (b) Presentation, collection, enforcement, renewal, or registration of transfer.

7 (8) After the twenty (20) day period specified in subsection (5), (6), or (7) of this  
8 section expires, perfection depends upon compliance with this article.

9 ➔Section 36. KRS 355.9-313 is amended to read as follows:

10 (1) Except as otherwise provided in subsection (2) of this section, a secured party may  
11 perfect a security interest in tangible negotiable documents, goods, instruments, or  
12 tangible money~~[, or tangible chattel paper]~~ by taking possession of the collateral. A  
13 secured party may perfect a security interest in certificated securities by taking  
14 delivery of the certificated securities under KRS 355.8-301.

15 (2) With respect to goods covered by a certificate of title issued by this  
16 Commonwealth, a secured party may perfect a security interest in the goods by  
17 taking possession of the goods only in the circumstances described in KRS 355.9-  
18 316(4).

19 (3) With respect to collateral other than certificated securities and goods covered by a  
20 document, a secured party takes possession of collateral in the possession of a  
21 person other than the debtor, the secured party, or a lessee of the collateral from the  
22 debtor in the ordinary course of the debtor's business, when:

23 (a) The person in possession authenticates a record acknowledging that it holds  
24 possession of the collateral for the secured party's benefit; or

25 (b) The person takes possession of the collateral after having authenticated a  
26 record acknowledging that it will hold possession of collateral for the secured  
27 party's benefit.

- 1 (4) If perfection of a security interest depends upon possession of the collateral by a  
2 secured party, perfection occurs no earlier than the time the secured party takes  
3 possession and continues only while the secured party retains possession.
- 4 (5) A security interest in a certificated security in registered form is perfected by  
5 delivery when delivery of the certificated security occurs under KRS 355.8-301 and  
6 remains perfected by delivery until the debtor obtains possession of the security  
7 certificate.
- 8 (6) A person in possession of collateral is not required to acknowledge that it holds  
9 possession for a secured party's benefit.
- 10 (7) If a person acknowledges that it holds possession for the secured party's benefit:
- 11 (a) The acknowledgment is effective under subsection (3) of this section or KRS  
12 355.8-301(1), even if the acknowledgment violates the rights of a debtor; and
- 13 (b) Unless the person otherwise agrees or law other than this article otherwise  
14 provides, the person does not owe any duty to the secured party and is not  
15 required to confirm the acknowledgment to another person.
- 16 (8) A secured party having possession of collateral does not relinquish possession by  
17 delivering the collateral to a person other than the debtor or a lessee of the collateral  
18 from the debtor in the ordinary course of the debtor's business if the person was  
19 instructed before the delivery or is instructed contemporaneously with the delivery:
- 20 (a) To hold possession of the collateral for the secured party's benefit; or  
21 (b) To redeliver the collateral to the secured party.
- 22 (9) (a) A secured party does not relinquish possession, even if a delivery under  
23 subsection (8) of this section violates the rights of a debtor.
- 24 (b) A person to which collateral is delivered under subsection (8) of this section  
25 does not owe any duty to the secured party and is not required to confirm the  
26 delivery to another person unless the person otherwise agrees or law other  
27 than this article otherwise provides.

1        ➔ Section 37. KRS 355.9-314 is amended to read as follows:

- 2        (1) A security interest in **controllable electronic records, deposit accounts, electronic**  
 3        **documents**, investment property, **intangible money**~~[deposit accounts]~~, **or** letter-of-  
 4        credit rights~~[-, electronic chattel paper, or electronic documents]~~ may be perfected by  
 5        control of the collateral under KRS 355.7-106, 355.9-104,~~[- 355.9-105,]~~ **Section 26**  
 6        **of this Act**, 355.9-106,~~[- or]~~ 355.9-107, **or Section 27 of this Act**.
- 7        (2) A security interest in **controllable electronic records**, deposit accounts, **electronic**  
 8        **documents, intangible money**~~[electronic chattel paper]~~, **or** letter-of-credit rights~~[-,~~  
 9        ~~or electronic documents]~~ is perfected by control under KRS 355.7-106, 355.9-104,  
 10        ~~[- 355.9-105,]~~ **Section 26 of this Act**,~~[- or]~~ 355.9-107, **or Section 27 of this Act** when  
 11        the secured party obtains control and remains perfected by control only while the  
 12        secured party retains control.
- 13        (3) A security interest in investment property is perfected by control under KRS 355.9-  
 14        106 from the time the secured party obtains control and remains perfected by  
 15        control until:
- 16        (a) The secured party does not have control; and
- 17        (b) One (1) of the following occurs:
- 18                1. If the collateral is a certificated security, the debtor has or acquires  
 19                possession of the security certificate;
- 20                2. If the collateral is an uncertificated security, the issuer has registered or  
 21                registers the debtor as the registered owner; or
- 22                3. If the collateral is a security entitlement, the debtor is or becomes the  
 23                entitlement holder.

24        ➔ SECTION 38. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS  
 25        CREATED TO READ AS FOLLOWS:

26        **(1) A secured party may perfect a security interest in chattel paper by:**

27        **(a) Taking possession of the tangible authoritative copy, if any, of the record**



- 1                   *evidencing the chattel paper; and*  
 2                   *(b) Obtaining control of the electronic authoritative copy, if any, of the*  
 3                   *electronic record evidencing the chattel paper.*

4                   *(2) A security interest:*

- 5                   *(a) Is perfected under subsection (1) of this section when the secured party*  
 6                   *takes possession and obtains control; and*  
 7                   *(b) Remains perfected under subsection (1) of this section only while the*  
 8                   *secured party retains possession and control.*

9                   *(3) Subsections (3) and (6) to (9) of Section 36 of this Act apply to perfection by*  
 10                   *possession of tangible authoritative copies of records evidencing chattel paper.*

11                   ➔Section 39. KRS 355.9-316 is amended to read as follows:

12                   (1) A security interest perfected pursuant to the law of the jurisdiction designated in  
 13                   KRS 355.9-301(1), ~~or~~ 355.9-305(3), *or subsection (1)(b) or (2) of Section 32 of*  
 14                   *this Act* remains perfected until the earliest of:

- 15                   (a) The time perfection would have ceased under the law of that jurisdiction;  
 16                   (b) The expiration of four (4) months after a change of the debtor's location to  
 17                   another jurisdiction; or  
 18                   (c) The expiration of one (1) year after a transfer of collateral to a person that  
 19                   thereby becomes a debtor and is located in another jurisdiction.

20                   (2) If a security interest described in subsection (1) of this section becomes perfected  
 21                   under the law of the other jurisdiction before the earliest time or event described in  
 22                   that subsection, it remains perfected thereafter. If the security interest does not  
 23                   become perfected under the law of the other jurisdiction before the earliest time or  
 24                   event, it becomes unperfected and is deemed never to have been perfected as against  
 25                   a purchaser of the collateral for value.

26                   (3) A possessory security interest in collateral, other than goods covered by a certificate  
 27                   of title and as-extracted collateral consisting of goods, remains continuously

1 perfected if:

2 (a) The collateral is located in one jurisdiction and subject to a security interest  
3 perfected under the law of that jurisdiction;

4 (b) Thereafter the collateral is brought into another jurisdiction; and

5 (c) Upon entry into the other jurisdiction, the security interest is perfected under  
6 the law of the other jurisdiction.

7 (4) Except as otherwise provided in subsection (5) of this section, a security interest in  
8 goods covered by a certificate of title which is perfected by any method under the  
9 law of another jurisdiction when the goods become covered by a certificate of title  
10 from this Commonwealth remains perfected until the security interest would have  
11 become unperfected under the law of the other jurisdiction had the goods not  
12 become so covered.

13 (5) A security interest described in subsection (4) of this section becomes unperfected  
14 as against a purchaser of the goods for value and is deemed never to have been  
15 perfected as against a purchaser of the goods for value if the applicable  
16 requirements for perfection under KRS 355.9-311(2) or 355.9-313 are not satisfied  
17 before the earlier of:

18 (a) The time the security interest would have become unperfected under the law  
19 of the other jurisdiction had the goods not become covered by a certificate of  
20 title from this Commonwealth; or

21 (b) The expiration of four (4) months after the goods had become so covered.

22 (6) A security interest in deposit accounts, letter-of-credit rights, or investment property  
23 which is perfected under the law of the bank's jurisdiction, the issuer's jurisdiction, a  
24 nominated person's jurisdiction, the securities intermediary's jurisdiction, or the  
25 commodity intermediary's jurisdiction, as applicable, remains perfected until the  
26 earlier of:

27 (a) The time the security interest would have become unperfected under the law

- 1 of that jurisdiction; or
- 2 (b) The expiration of four (4) months after a change of the applicable jurisdiction
- 3 to another jurisdiction.
- 4 (7) If a security interest described in subsection (6) of this section becomes perfected
- 5 under the law of the other jurisdiction before the earlier of the time or the end of the
- 6 period described in that subsection, it remains perfected thereafter. If the security
- 7 interest does not become perfected under the law of the other jurisdiction before the
- 8 earlier of that time or the end of that period, it becomes unperfected and is deemed
- 9 never to have been perfected as against a purchaser of the collateral for value.
- 10 (8) The following rules apply to collateral to which a security interest attaches within
- 11 four (4) months after the debtor changes its location to another jurisdiction:
- 12 (a) A financing statement filed before the change pursuant to the law of the
- 13 jurisdiction designated in KRS 355.9-301(1) or 355.9-305(3) is effective to
- 14 perfect a security interest in the collateral if the financing statement would
- 15 have been effective to perfect a security interest in the collateral if the debtor
- 16 had not changed its location; and
- 17 (b) If a security interest that is perfected by a financing statement that is effective
- 18 under paragraph (a) of this subsection becomes perfected under the law of the
- 19 other jurisdiction before the earlier of the time the financing statement would
- 20 have become ineffective under the law of the jurisdiction designated in KRS
- 21 355.9-301(1) or 355.9-305(3) or the expiration of the four (4) month period, it
- 22 remains perfected thereafter. If the security interest does not become perfected
- 23 under the law of the other jurisdiction before the earlier time or event, it
- 24 becomes unperfected and is deemed never to have been perfected as against a
- 25 purchaser of the collateral for value.
- 26 (9) If a financing statement naming an original debtor is filed pursuant to the law of the
- 27 jurisdiction designated in KRS 355.9-301(1) or 355.9-305(3) and the new debtor is

1 located in another jurisdiction, the following rules apply:

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

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

16 **(10) (a) A security interest that is perfected pursuant to the law designated in**  
17 **subsection (1)(a) of Section 32 of this Act remains perfected until the**  
18 **expiration of four (4) months after a change of the applicable law to**  
19 **another jurisdiction.**

20 **(b) If a security interest described in paragraph (a) of this subsection becomes**  
21 **perfected under the law of the other jurisdiction before the end of the period**  
22 **described in that paragraph, it remains perfected thereafter. If the security**  
23 **interest does not become perfected under the law of the other jurisdiction**  
24 **before the earlier of that time or the end of that period, it becomes**  
25 **unperfected and is deemed never to have been perfected as against a**  
26 **purchaser of the collateral for value.**

27 ➔Section 40. KRS 355.9-317 is amended to read as follows:

- 1 (1) A security interest or agricultural lien is subordinate to the rights of:
- 2 (a) A person entitled to priority under KRS 355.9-322; and
- 3 (b) Except as otherwise provided in subsection (5) of this section, a person that
- 4 becomes a lien creditor before the earlier of the time:
- 5 1. The security interest or agricultural lien is perfected; or
- 6 2. One (1) of the conditions specified in KRS 355.9-203(2)(c) is met and a
- 7 financing statement covering the collateral is filed.
- 8 (2) Except as otherwise provided in subsection (5) of this section, a buyer, other than a
- 9 secured party, of ~~tangible chattel paper,~~ documents, goods, instruments, or a
- 10 certificated security takes free of a security interest or agricultural lien if the buyer
- 11 gives value and receives delivery of the collateral without knowledge of the security
- 12 interest or agricultural lien and before it is perfected.
- 13 (3) Except as otherwise provided in subsection (5) of this section, a lessee of goods
- 14 takes free of a security interest or agricultural lien if the lessee gives value and
- 15 receives delivery of the collateral without knowledge of the security interest or
- 16 agricultural lien and before it is perfected.
- 17 (4) A licensee of a general intangible or a buyer, other than a secured party, of collateral
- 18 other than ~~tangible~~ chattel paper, tangible documents, goods, instruments, or a
- 19 certificated security takes free of a security interest if the licensee or buyer gives
- 20 value without knowledge of the security interest and before it is perfected.
- 21 (5) Except as otherwise provided in KRS 355.9-320 and 355.9-321, if a person files a
- 22 financing statement with respect to a purchase-money security interest before or
- 23 within twenty (20) days after the debtor receives delivery of the collateral, the
- 24 security interest takes priority over the rights of a buyer, lessee, or lien creditor
- 25 which arise between the time the security interest attaches and the time of filing.
- 26 **(6) A buyer, other than a secured party, of chattel paper takes free of a security**
- 27 **interest if, without knowledge of the security interest and before it is perfected,**

1 *the buyer:*

2 *(a) Gives value and receives delivery of the tangible authoritative copy, if any,*  
 3 *of the record evidencing the chattel paper; and*

4 *(b) Obtains control of the electronic authoritative copy, if any, of the record*  
 5 *evidencing the chattel paper.*

6 ➔SECTION 41. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS  
 7 CREATED TO READ AS FOLLOWS:

8 *A security interest in a controllable electronic record held by a secured party having*  
 9 *control of the controllable electronic record has priority over a conflicting security*  
 10 *interest held by a secured party that does not have control.*

11 ➔Section 42. KRS 355.9-330 is amended to read as follows:

12 (1) A purchaser of chattel paper has priority over a security interest in the chattel paper  
 13 which is claimed merely as proceeds of inventory subject to a security interest if:

14 (a) In good faith and in the ordinary course of the purchaser's business, the  
 15 purchaser:

16 *1.* Gives new value and takes possession of the *tangible authoritative*  
 17 *copy, if any, of the record evidencing the* chattel paper; ~~and~~

18 *2.* Obtains control of the *electronic authoritative copy, if any, of the*  
 19 *record evidencing the* chattel paper~~[under KRS 355.9-105]; and~~

20 (b) The *authoritative copy of the record evidencing the* chattel paper does not  
 21 indicate that *the copy* has been assigned to an identified assignee other than  
 22 the purchaser.

23 (2) A purchaser of chattel paper has priority over a security interest in the chattel paper  
 24 which is claimed other than merely as proceeds of inventory subject to a security  
 25 interest if the purchaser:

26 *(a)* Gives new value and takes possession of the *tangible authoritative copy, if*  
 27 *any, of the record evidencing the* chattel paper; ~~and~~

- 1       **(b)** Obtains control of the **electronic authoritative copy, if any, of the record**  
 2       **evidencing the** chattel paper~~[under KRS 355.9-105]~~ in good faith, in the  
 3       ordinary course of the purchaser's business, and without knowledge that the  
 4       purchase violates the rights of the secured party.
- 5       (3) Except as otherwise provided in KRS 355.9-327, a purchaser having priority in  
 6       chattel paper under subsection (1) or (2) of this section also has priority in proceeds  
 7       of the chattel paper to the extent that:
- 8       (a) KRS 355.9-322 provides for priority in the proceeds; or
- 9       (b) The proceeds consist of the specific goods covered by the chattel paper or  
 10       cash proceeds of the specific goods, even if the purchaser's security interest in  
 11       the proceeds is unperfected.
- 12       (4) Except as otherwise provided in KRS 355.9-331(1), a purchaser of an instrument  
 13       has priority over a security interest in the instrument perfected by a method other  
 14       than possession if the purchaser gives value and takes possession of the instrument  
 15       in good faith and without knowledge that the purchase violates the rights of the  
 16       secured party.
- 17       (5) For purposes of subsections (1) and (2) of this section, the holder of a purchase-  
 18       money security interest in inventory gives new value for chattel paper constituting  
 19       proceeds of the inventory.
- 20       (6) For purposes of subsections (2) and (4) of this section, if chattel paper or an  
 21       instrument indicates that it has been assigned to an identified secured party other  
 22       than the purchaser, a purchaser of the chattel paper or instrument has knowledge  
 23       that the purchase violates the rights of the secured party.
- 24       ➔Section 43. KRS 355.9-331 is amended to read as follows:
- 25       (1) This article does not limit the rights of a holder in due course of a negotiable  
 26       instrument, a holder to which a negotiable document of title has been duly  
 27       negotiated,~~[or]~~ a protected purchaser of a security, **or a qualifying purchaser of a**

1 **controllable electronic record**. These holders or purchasers take priority over an  
 2 earlier security interest, even if perfected, to the extent provided in Articles 3, 7, **8**,  
 3 and **12**~~[8]~~ of this chapter.

4 (2) This article does not limit the rights of, or impose liability on, a person to the extent  
 5 that the person is protected against the assertion of a claim under Article 8 **or 12** of  
 6 this chapter.

7 (3) Filing under this article does not constitute notice of a claim or defense to the  
 8 holders, or purchasers, or persons described in subsections (1) and (2) of this  
 9 section.

10 ➔Section 44. KRS 355.9-332 is amended to read as follows:

11 (1) A transferee of **tangible** money takes the money free of a security interest **if the**  
 12 **transferee receives delivery of the money without acting**~~[unless the transferee acts]~~  
 13 in collusion with the debtor in violating the rights of the secured party.

14 (2) **A transferee of intangible money takes the money free of a security interest if the**  
 15 **transferee obtains control of the money without acting in collusion with the**  
 16 **debtor in violating the rights of the secured party.**

17 **(3)** A transferee of funds from a deposit account takes the funds free of a security  
 18 interest in the deposit account **if the transferee receives the funds without**  
 19 **acting**~~[unless the transferee acts]~~ in collusion with the debtor in violating the rights  
 20 of the secured party.

21 ➔Section 45. KRS 355.9-406 is amended to read as follows:

22 (1) Subject to subsections (2) to (9) of this section **and subsection (10) of this**  
 23 **section:**~~[.]~~

24 **(a)** An account debtor on an account, chattel paper, or a payment intangible may  
 25 discharge its obligation by paying the assignor until, but not after, the account  
 26 debtor receives a notification, authenticated by the assignor or the assignee,  
 27 that the amount due or to become due has been assigned and that payment is



1 to be made to the assignee; ~~and~~[-]

2 **(b)** After receipt of the notification, the account debtor may discharge its  
3 obligation by paying the assignee and may not discharge the obligation by  
4 paying the assignor.

5 (2) Subject to subsection (8) **and (10)** of this section, notification is ineffective under  
6 subsection (1) of this section:

7 (a) If it does not reasonably identify the rights assigned;

8 (b) To the extent that an agreement between an account debtor and a seller of a  
9 payment intangible limits the account debtor's duty to pay a person other than  
10 the seller and the limitation is effective under law other than this article; or

11 (c) At the option of an account debtor, if the notification notifies the account  
12 debtor to make less than the full amount of any installment or other periodic  
13 payment to the assignee, even if:

14 1. Only a portion of the account, chattel paper, or payment intangible has  
15 been assigned to that assignee;

16 2. A portion has been assigned to another assignee; or

17 3. The account debtor knows that the assignment to that assignee is  
18 limited.

19 (3) Subject to subsection (8) **and (10)** of this section: [-]

20 **(a)** If requested by the account debtor, an assignee shall seasonably furnish  
21 reasonable proof that the assignment has been made; ~~and~~[-]

22 **(b)** Unless the assignee complies, the account debtor may discharge its obligation  
23 by paying the assignor, even if the account debtor has received a notification  
24 under subsection (1) of this section.

25 (4) Except as otherwise provided in subsection (5) of this section and KRS 355.2A-303  
26 and 355.9-407, and subject to subsection (8) of this section, a term in an agreement  
27 between an account debtor and an assignor or in a promissory note is ineffective to

1 the extent that it:

2 (a) Prohibits, restricts, or requires the consent of the account debtor or person  
3 obligated on the promissory note to the assignment or transfer of, or the  
4 creation, attachment, perfection, or enforcement of a security interest in, the  
5 account, chattel paper, payment intangible, or promissory note; or

6 (b) Provides that the assignment or transfer or the creation, attachment,  
7 perfection, or enforcement of the security interest may give rise to a default,  
8 breach, right of recoupment, claim, defense, termination, right of termination,  
9 or remedy under the account, chattel paper, payment intangible, or promissory  
10 note.

11 (5) Subsection (4) of this section does not apply to the sale of a payment intangible or  
12 promissory note, other than a sale pursuant to a disposition under KRS 355.9-610 or  
13 an acceptance of collateral under KRS 355.9-620.

14 (6) Except as otherwise provided in KRS 355.2A-303 and 355.9-407 and subject to  
15 subsections (8) and (9) of this section, a rule of law, statute, or regulation that  
16 prohibits, restricts, or requires the consent of a government, governmental body or  
17 official, or account debtor to the assignment or transfer of, or creation of a security  
18 interest in, an account or chattel paper is ineffective to the extent that the rule of  
19 law, statute, or regulation:

20 (a) Prohibits, restricts, or requires the consent of the government, governmental  
21 body or official, or account debtor to the assignment or transfer of, or the  
22 creation, attachment, perfection, or enforcement of a security interest in the  
23 account or chattel paper; or

24 (b) Provides that the assignment or transfer or the creation, attachment,  
25 perfection, or enforcement of the security interest may give rise to a default,  
26 breach, right of recoupment, claim, defense, termination, right of termination,  
27 or remedy under the account or chattel paper.

1 (7) Subject to subsection (8) of this section, an account debtor may not waive or vary  
2 its option under subsection (2)(c) of this section.

3 (8) This section is subject to law other than this article which establishes a different  
4 rule for an account debtor who:

5 (a) Is an individual; and ~~[who]~~

6 (b) Incurred the obligation primarily for personal, family, or household purposes.

7 (9) This section does not apply to an assignment of a health-care-insurance receivable.

8 **(10) Subsections (1) to (3) of this section and subsection (7) of this section do not**  
9 **apply to a controllable account or controllable payment intangible.**

10 ➔Section 46. KRS 355.9-601 is amended to read as follows:

11 (1) After default, a secured party has the rights provided in this part of this article and,  
12 except as otherwise provided in KRS 355.9-602, those provided by agreement of  
13 the parties. A secured party:

14 (a) May reduce a claim to judgment, foreclose, or otherwise enforce the claim,  
15 security interest, or agricultural lien by any available judicial procedure; and

16 (b) If the collateral is documents, may proceed either as to the documents or as to  
17 the goods they cover.

18 (2) A secured party in possession of collateral or control of collateral under KRS 355.7-  
19 106, 355.9-104, 355.9-105, 355.9-106, ~~or~~ 355.9-107, **or Section 26 of this Act** has  
20 the rights and duties provided in KRS 355.9-207.

21 (3) The rights under subsections (1) and (2) of this section are cumulative and may be  
22 exercised simultaneously.

23 (4) Except as otherwise provided in subsection (7) of this section and KRS 355.9-605,  
24 after default, a debtor and an obligor have the rights provided in this part of this  
25 article and by agreement of the parties.

26 (5) If a secured party has reduced its claim to judgment, the lien of any levy that may be  
27 made upon the collateral by virtue of an execution based upon the judgment relates

1 back to the earliest of:

2 (a) The date of perfection of the security interest or agricultural lien in the  
3 collateral;

4 (b) The date of filing a financing statement covering the collateral; or

5 (c) Any date specified in a statute under which the agricultural lien was created.

6 (6) A sale pursuant to an execution is a foreclosure of the security interest or  
7 agricultural lien by judicial procedure within the meaning of this section. A secured  
8 party may purchase at the sale and thereafter hold the collateral free of any other  
9 requirements of this article.

10 (7) Except as otherwise provided in KRS 355.9-607(3), this part of this article imposes  
11 no duties upon a secured party that is a consignor or is a buyer of accounts, chattel  
12 paper, payment intangibles, or promissory notes.

13 ➔Section 47. KRS 355.9-605 is amended to read as follows:

14 **(1) Subject to subsection (2) of this section,** a secured party does not owe a duty based  
15 on its status as secured party:

16 ~~(a)(1)~~ To a person that is a debtor or obligor, unless the secured party knows:

17 ~~1.(a)~~ That the person is a debtor or obligor;

18 ~~2.(b)~~ The identity of the person; and

19 ~~3.(c)~~ How to communicate with the person; or

20 ~~(b)(2)~~ To a secured party or lienholder that has filed a financing statement  
21 against a person, unless the secured party knows:

22 ~~1.(a)~~ That the person is a debtor; and

23 ~~2.(b)~~ The identity of the person.

24 **(2) Subsection (1) of this section does not apply to a secured party that, at the time**  
25 **the secured party's security interest attaches to a controllable electronic record,**  
26 **has notice that the nature of the collateral, or the system in which the collateral is**  
27 **recorded, if any, would prevent the secured party from acquiring the knowledge**

1 specified in that subsection.

2 ➔Section 48. KRS 355.9-628 is amended to read as follows:

3 (1) Unless a secured party knows that a person is a debtor or obligor, knows the identity  
4 of the person, and knows how to communicate with the person:

5 (a) The secured party is not liable to the person, or to a secured party or lienholder  
6 that has filed a financing statement against the person, for failure to comply  
7 with this article; and

8 (b) The secured party's failure to comply with this article does not affect the  
9 liability of the person for a deficiency.

10 (2) Subject to subsection (3) of this section, a secured party is not liable because of its  
11 status as secured party:

12 (a) To a person that is a debtor or obligor, unless the secured party knows:

- 13 1. That the person is a debtor or obligor;  
14 2. The identity of the person; and  
15 3. How to communicate with the person; or

16 (b) To a secured party or lienholder that has filed a financing statement against a  
17 person, unless the secured party knows:

- 18 1. That the person is a debtor; and  
19 2. The identity of the person.

20 (3) Subsection (2) of this section does not apply to a secured party that, at the time  
21 the secured party's security interest attaches to a controllable electronic record,  
22 has notice that the nature of the collateral, or the system in which the collateral is  
23 recorded, if any, would prevent the secured party from acquiring the knowledge  
24 specified in that subsection.

25 (4) A secured party is not liable to any person, and a person's liability for a deficiency is  
26 not affected, because of any act or omission arising out of the secured party's  
27 reasonable belief that a transaction is not a consumer-goods transaction or a

1 consumer transaction or that goods are not consumer goods, if the secured party's  
2 belief is based on its reasonable reliance on:

- 3 (a) A debtor's representation concerning the purpose for which collateral was to  
4 be used, acquired, or held; or  
5 (b) An obligor's representation concerning the purpose for which a secured  
6 obligation was incurred.

7 ~~(5)~~~~(4)~~ A secured party is not liable to any person under KRS 355.9-625(3)(b) for its  
8 failure to comply with KRS 355.9-616.

9 ~~(6)~~~~(5)~~ A secured party is not liable under KRS 355.9-625(3)(b) more than once with  
10 respect to any one (1) secured obligation.

11 ➔Section 49. KRS 355.2A-103 is amended to read as follows:

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

13 (a) 1. "Buyer in ordinary course of business" means a person who in good faith  
14 and without knowledge that the sale to him or her is in violation of the  
15 ownership rights or security interest or leasehold interest of a third party  
16 in the goods, buys in ordinary course from a person in the business of  
17 selling goods of that kind but does not include a pawnbroker.

18 2. "Buying" may be for cash or by exchange of other property or on  
19 secured or unsecured credit and includes receiving goods or documents  
20 of title under a pre-existing contract for sale but does not include a  
21 transfer in bulk or as security for or in total or partial satisfaction of a  
22 money debt;

23 (b) "Cancellation" occurs when either party puts an end to the lease contract for  
24 default by the other party;

25 (c) 1. "Commercial unit" means such a unit of goods as by commercial usage  
26 is a single whole for purposes of lease and division of which materially  
27 impairs its character or value on the market or in use.

- 1           2. A commercial unit may be a single article, as a machine, or a set of  
2           articles, as a suite of furniture or a line of machinery, or a quantity, as a  
3           gross or carload, or any other unit treated in use or in the relevant market  
4           as a single whole;
- 5           (d) "Conforming" goods or performance under a lease contract means goods or  
6           performance that are in accordance with the obligations under the lease  
7           contract;
- 8           (e) "Consumer lease" means a lease that a lessor regularly engaged in the business  
9           of leasing or selling makes to a lessee who is an individual and who takes  
10          under the lease primarily for a personal, family, or household purpose;
- 11          (f) "Fault" means wrongful act, omission, breach, or default;
- 12          (g) "Finance lease" means a lease with respect to which:
- 13           1. The lessor does not select, manufacture, or supply the goods;
- 14           2. The lessor acquires the goods or the right to possession and use of the  
15           goods in connection with the lease; and
- 16           3. One (1) of the following occurs:
- 17           a. The lessee receives a copy of the contract by which the lessor  
18           acquired the goods or the right to possession and use of the goods  
19           before signing the lease contract;
- 20           b. The lessee's approval of the contract by which the lessor acquired  
21           the goods or the right to possession and use of the goods is a  
22           condition to effectiveness of the lease contract;
- 23           c. The lessee, before signing the lease contract, receives an accurate  
24           and complete statement designating the promises and warranties,  
25           and any disclaimers of warranties, limitations or modifications of  
26           remedies, or liquidated damages, including those of a third party,  
27           such as the manufacturer of the goods, provided to the lessor by

1 the person supplying the goods in connection with or as part of the  
 2 contract by which the lessor acquired the goods or the right to  
 3 possession and use of the goods; or

4 d. If the lease is not a consumer lease, the lessor, before the lessee  
 5 signs the lease contract, informs the lessee in writing:

6 ~~i. (a)~~ Of the identity of the person supplying the goods to the  
 7 lessor, unless the lessee has selected that person and directed  
 8 the lessor to acquire the goods or the right to possession and  
 9 use of the goods from that person; ~~(b)~~

10 ii. That the lessee is entitled under this article to the promises  
 11 and warranties, including those of any third party, provided  
 12 to the lessor by the person supplying the goods in connection  
 13 with or as part of the contract by which the lessor acquired  
 14 the goods or the right to possession and use of the goods; ~~(c)~~  
 15 and ~~(e)~~

16 iii. That the lessee may communicate with the person supplying  
 17 the goods to the lessor and receive an accurate and complete  
 18 statement of those promises and warranties, including any  
 19 disclaimers and limitations of them or of remedies;

20 (h) 1. "Goods" means all things that are movable at the time of identification  
 21 to the lease contract, or are fixtures (KRS 355.2A-309), but the term  
 22 does not include money, documents, instruments, accounts, chattel  
 23 paper, general intangibles, or minerals or the like, including oil and gas,  
 24 before extraction.

25 2. The term also includes the unborn young of animals;

26 (i) "Installment lease contract" means a lease contract that authorizes or requires  
 27 the delivery of goods in separate lots to be separately accepted, even though



1 the lease contract contains a clause "each delivery is a separate lease" or its  
2 equivalent;

3 (j) 1. "Lease" means a transfer of the right to possession and use of goods for  
4 a term in return for consideration, but a sale, including a sale on  
5 approval or a sale or return, or retention or creation of a security interest  
6 is not a lease.

7 2. Unless the context clearly indicates otherwise, the term includes a  
8 sublease;

9 (k) 1. "Lease agreement" means the bargain, with respect to the lease, of the  
10 lessor and the lessee in fact as found in their language or by implication  
11 from other circumstances including course of dealing or usage of trade  
12 or course of performance as provided in this article.

13 2. Unless the context clearly indicates otherwise, the term includes a  
14 sublease agreement;

15 (l) 1. "Lease contract" means the total legal obligation that results from the  
16 lease agreement as affected by this article and any other applicable rules  
17 of law.

18 2. Unless the context clearly indicates otherwise, the term includes a  
19 sublease contract;

20 (m) "Leasehold interest" means the interest of the lessor or the lessee under a lease  
21 contract;

22 (n) 1. "Lessee" means a person who acquires the right to possession and use of  
23 goods under a lease.

24 2. Unless the context clearly indicates otherwise, the term includes a  
25 sublessee;

26 (o) 1. "Lessee in ordinary course of business" means a person who in good  
27 faith and without knowledge that the lease to him is in violation of the

1 ownership rights or security interest or leasehold interest of a third party  
2 in the goods leases in ordinary course from a person in the business of  
3 selling or leasing goods of that kind but does not include a pawnbroker.

4 2. "Leasing" may be for cash or by exchange of other property or on  
5 secured or unsecured credit and includes receiving goods or documents  
6 of title under a pre-existing lease contract but does not include a transfer  
7 in bulk or as security for or in total or partial satisfaction of a money  
8 debt;

9 (p) 1. "Lessor" means a person who transfers the right to possession and use of  
10 goods under a lease.

11 2. Unless the context clearly indicates otherwise, the term includes a  
12 sublessor;

13 (q) "Lessor's residual interest" means the lessor's interest in the goods after  
14 expiration, termination, or cancellation of the lease contract;

15 (r) "Lien" means a charge against or interest in goods to secure payment of a debt  
16 or performance of an obligation, but the term does not include a security  
17 interest;

18 (s) "Lot" means a parcel or a single article that is the subject matter of a separate  
19 lease or delivery, whether or not it is sufficient to perform the lease  
20 contract;[-]

21 (t) "Merchant lessee" means a lessee that is a merchant with respect to goods of  
22 the kind subject to the lease;

23 (u) 1. "Present value" means the amount as of a date certain of one (1) or more  
24 sums payable in the future, discounted to the date certain.

25 2. The discount is determined by the interest rate specified by the parties if  
26 the rate was not manifestly unreasonable at the time the transaction was  
27 entered into; otherwise, the discount is determined by a commercially

- 1                   reasonable rate that takes into account the facts and circumstances of  
 2                   each case at the time the transaction was entered into;
- 3           (v) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge,  
 4           gift, or any other voluntary transaction creating an interest in goods;
- 5           (w) "Sublease" means a lease of goods the right to possession and use of which  
 6           was acquired by the lessor as a lessee under an existing lease;
- 7           (x) "Supplier" means a person from whom a lessor buys or leases goods to be  
 8           leased under a finance lease;
- 9           (y) "Supply contract" means a contract under which a lessor buys or leases goods  
 10          to be leased; and
- 11          (z) "Termination" occurs when either party pursuant to a power created by  
 12          agreement or law puts an end to the lease contract otherwise than for default.
- 13   (2) Other definitions applying to this article and the sections in which they appear are:
- 14          (a) "Accessions." KRS 355.2A-310~~[(1)]~~;
- 15          (b) "Construction mortgage." KRS 355.2A-309~~[(1)(d)]~~;
- 16          (c) "Encumbrance." KRS 355.2A-309~~[(1)(e)]~~;
- 17          (d) "Fixtures." KRS 355.2A-309~~[(1)(a)]~~;
- 18          (e) "Fixture filing." KRS 355.2A-309~~[(1)(b)]~~; and
- 19          (f) "Purchase money lease." KRS 355.2A-309~~[(1)(c)]~~.
- 20   (3) The following definitions in other articles ***of this chapter*** apply to this article:
- 21          (a) "Account." KRS 355.9-102~~[(1)(b)]~~;
- 22          (b) "Between merchants." KRS 355.2-104~~[(3)]~~;
- 23          (c) "Buyer." KRS 355.2-103~~[(1)(a)]~~;
- 24          (d) "Chattel paper." KRS 355.9-102~~[(1)(k)]~~;
- 25          (e) "Consumer goods." KRS 355.9-102~~[(1)(w)]~~;
- 26          (f) "Document." KRS 355.9-102~~[(1)(ad)]~~;
- 27          (g) "Entrusting." KRS 355.2-403~~[(3)]~~;

- 1 (h) "General intangible." KRS 355.9-102~~[(1)(ap)]~~;
- 2 (i) "Instrument." KRS 355.9-102~~[(1)(au)]~~;
- 3 (j) "Merchant." KRS 355.2-104~~[(1)]~~;
- 4 (k) "Mortgage." KRS 355.9-102~~[(1)(be)]~~;
- 5 (l) "Pursuant to commitment." KRS 355.9-102~~[(1)(bq)]~~;
- 6 (m) "Receipt." KRS 355.2-103~~[(1)(e)]~~;
- 7 (n) "Sale." KRS 355.2-106~~[(1)]~~;
- 8 (o) "Sale on approval." KRS 355.2-326;
- 9 (p) "Sale or return." KRS 355.2-326; and
- 10 (q) "Seller." KRS 355.2-103~~[(1)(d)]~~.

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

13 ➔Section 50. KRS 355.8-103 is amended to read as follows:

14 (1) A share or similar equity interest issued by a corporation, business trust, joint stock  
 15 company, or similar entity is a security.

16 (2) **(a)** An "investment company security" is a security.

17 **(b)** "Investment company security" means a share or similar equity interest issued  
 18 by an entity that is registered as an investment company under the federal  
 19 investment company laws, an interest in a unit investment trust that is so  
 20 registered, or a face-amount certificate issued by a face-amount certificate  
 21 company that is so registered.

22 **(c)** Investment company security does not include an insurance policy or  
 23 endowment policy or annuity contract issued by an insurance company.

24 (3) An interest in a partnership or limited liability company is not a security unless it is  
 25 dealt in or traded on securities exchanges or in securities markets, its terms  
 26 expressly provide that it is a security governed by this article, or it is an investment  
 27 company security. However, an interest in a partnership or limited liability company

1 is a financial asset if it is held in a securities account.

2 (4) A writing that is a security certificate is governed by this article and not by Article 3  
3 of this chapter, even though it also meets the requirements of that article. However,  
4 a negotiable instrument governed by Article 3 of this chapter is a financial asset if it  
5 is held in a securities account.

6 (5) An option or similar obligation issued by a clearing corporation to its participants is  
7 not a security, but is a financial asset.

8 (6) A commodity contract, as defined in KRS 355.9-102~~[(1)(e)]~~, is not a security or a  
9 financial asset.

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

12 ➔Section 51. KRS 355.9-338 is amended to read as follows:

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

16 (1) The security interest or agricultural lien is subordinate to a conflicting perfected  
17 security interest in the collateral to the extent that the holder of the conflicting  
18 security interest gives value in reasonable reliance upon the incorrect information;  
19 and

20 (2) A purchaser, other than a secured party, of the collateral takes free of the security  
21 interest or agricultural lien to the extent that, in reasonable reliance upon the  
22 incorrect information, the purchaser gives value and, in the case of ~~[-tangible chattel  
23 paper,]~~ documents, goods, instruments, or a security certificate, receives delivery of  
24 the collateral.

25 ➔Section 52. KRS 367.976 is amended to read as follows:

26 As used in KRS 367.976 to 367.985, unless the context otherwise requires:

27 (1) "Advertisement" means a commercial message in any medium that aids, promotes,

1 or assists directly or indirectly a rental-purchase agreement, excluding in-store  
2 merchandising aids;[redacted]

3 (2) "Cash price" means the price at which the lessor would have sold the property to the  
4 consumer for cash on the date of the rental-purchase agreement;[redacted]

5 (3) "Consumer" means a natural person who rents personal property under a rental-  
6 purchase agreement;[redacted]

7 (4) "Consummation" means the time a consumer becomes contractually obligated on a  
8 rental-purchase agreement;[redacted]

9 (5) "Division" means the Division of Consumer Protection in the Office of the Attorney  
10 General;[redacted]

11 (6) "Lessor" means a person who, in the ordinary course of business, regularly leases,  
12 offers to lease, or arranges for the leasing of property under a rental-purchase  
13 agreement;[redacted]

14 (7) (a) "Rental-purchase agreement" means an agreement for the use of personal  
15 property by a natural person primarily for personal, family, or household  
16 purposes, for an initial period of four (4) months or less, whether or not there  
17 is any obligation beyond the initial period, that is automatically renewable  
18 with each payment and that permits the consumer to become the owner of the  
19 property.

20 (b) The term rental-purchase agreement shall not be construed to be, nor be  
21 governed by, any of the following:

22 1.[(a)] A lease or agreement which constitutes a credit sale as defined in  
23 12 C.F.R. part 226.2(a)(16) and Section 1602(g) of the Truth in Lending  
24 Act, 15 U.S.C. secs. 1601 et seq.;

25 2.[(b)] A lease which constitutes a consumer lease as defined in 12 C.F.R.  
26 part 213.2(a)(6);

27 3.[(c)] Any lease for agricultural, business, or commercial purposes;

- 1           ~~4.[(d)]~~     Any lease made to an organization;
- 2           ~~5.[(e)]~~     A lease or agreement which constitutes a retail installment  
3                    transaction or retail installment contract as defined in KRS 371.210;
- 4           ~~6.[(f)]~~     A security interest as defined in KRS 355.1-201~~[(37)]~~; or
- 5           ~~7.[(g)]~~     A home solicitation sale as that term is defined in KRS 367.410.

6           ➔Section 53. KRS 369.116 is amended to read as follows:

- 7       (1) In this section, "transferable record" means an electronic record that:
- 8           (a) Would be a note under Article 3 of KRS Chapter 355 or a document under  
9                    Article 7 of KRS Chapter 355 if the electronic record were in writing; and
- 10          (b) The issuer of the electronic record expressly has agreed is a transferable  
11                    record.
- 12       (2) A person has control of a transferable record if a system employed for evidencing  
13                    the transfer of interests in the transferable record reliably establishes that person as  
14                    the person to which the transferable record was issued or transferred.
- 15       (3) A system satisfies subsection (2) of this section, and a person is deemed to have  
16                    control of a transferable record, if the transferable record is created, stored, and  
17                    assigned in such a manner that:
- 18           (a) A single authoritative copy of the transferable record exists which is unique,  
19                    identifiable, and, except as otherwise provided in paragraphs (d), (e), and (f)  
20                    of this subsection, unalterable;
- 21           (b) The authoritative copy identifies the person asserting control as:
- 22                    1. The person to which the transferable record was issued; or
- 23                    2. If the authoritative copy indicates that the transferable record has been  
24                    transferred, the person to which the transferable record was most  
25                    recently transferred;
- 26           (c) The authoritative copy is communicated to and maintained by the person  
27                    asserting control or its designated custodian;

- 1 (d) Copies of revisions that add or change an identified assignee of the  
2 authoritative copy can be made only with the consent of the person asserting  
3 control;
- 4 (e) Each copy of the authoritative copy and any copy of a copy is readily  
5 identifiable as a copy that is not the authoritative copy; and
- 6 (f) Any revision of the authoritative copy is readily identifiable as authorized or  
7 unauthorized.
- 8 (4) Except as otherwise agreed, a person having control of a transferable record is the  
9 holder, as defined in KRS 355.1-201~~[(20)]~~, of the transferable record and has the  
10 same rights and defenses as a holder of an equivalent record or writing under KRS  
11 Chapter 355, including, if the applicable statutory requirements under KRS 355.3-  
12 302(1), 355.7-501, or 355.9-330 are satisfied, the rights and defenses of a holder in  
13 due course, a holder to which a negotiable document of title has been duly  
14 negotiated, or a purchaser, respectively. Delivery, possession, and indorsement are  
15 not required to obtain or exercise any of the rights under this subsection.
- 16 (5) Except as otherwise agreed, an obligor under a transferable record has the same  
17 rights and defenses as an equivalent obligor under equivalent records or writing  
18 under KRS Chapter 355.
- 19 (6) If requested by a person against which enforcement is sought, the person seeking to  
20 enforce the transferable record shall provide reasonable proof that the person is in  
21 control of the transferable record. Proof may include access to the authoritative copy  
22 of the transferable record and related business records sufficient to review the terms  
23 of the transferable record and to establish the identity of the person having control  
24 of the transferable record.