

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

- 4 (1) Unless the context otherwise requires, words or phrases defined in this section, or in
5 the additional definitions contained in other articles of ~~the Uniform~~ ***this chapter***
6 ~~Commercial Code~~ that apply to particular articles or parts thereof, have the
7 meanings stated.
- 8 (2) Subject to definitions contained in other articles of ~~the Uniform~~ ***this chapter***
9 ~~Commercial Code~~ that apply to particular articles or parts thereof:
- 10 (a) "Action," in the sense of a judicial proceeding, includes recoupment,
11 counterclaim, set-off, suit in equity, and any other proceeding in which rights
12 are determined;
- 13 (b) "Aggrieved party" means a party entitled to pursue a remedy;
- 14 (c) "Agreement," as distinguished from "contract," means the bargain of the
15 parties in fact, as found in their language or inferred from other
16 circumstances, including course of performance, course of dealing, or usage
17 of trade as provided in KRS 355.1-303;
- 18 (d) "Bank" means a person engaged in the business of banking and includes a
19 savings bank, savings and loan association, credit union, and trust company;
- 20 (e) "Bearer" means a person in control of a negotiable electronic document of
21 title or a person in possession of a negotiable instrument, a negotiable tangible
22 document of title, or certificated security that is payable to bearer or indorsed
23 in blank;
- 24 (f) 1. "Bill of lading" means a document of title evidencing the receipt of
25 goods for shipment issued by a person engaged in the business of
26 directly or indirectly transporting or forwarding goods.
- 27 2. The term does not include a warehouse receipt;

- 1 (g) "Branch" includes a separately incorporated foreign branch of a bank;
- 2 (h) "Burden of establishing" a fact means the burden of persuading the trier of
3 fact that the existence of the fact is more probable than its nonexistence;
- 4 (i) 1. "Buyer in ordinary course of business" means a person that buys goods
5 in good faith, without knowledge that the sale violates the rights of
6 another person in the goods, and in the ordinary course from a person,
7 other than a pawnbroker, in the business of selling goods of that kind.
- 8 2. A person buys goods in the ordinary course if the sale to the person
9 comports with the usual or customary practices in the kind of business in
10 which the seller is engaged or with the seller's own usual or customary
11 practices.
- 12 3. A person that sells oil, gas, or other minerals at the wellhead or
13 minehead is a person in the business of selling goods of that kind.
- 14 4. A buyer in ordinary course of business may buy for cash, by exchange
15 of other property, or on secured or unsecured credit, and may acquire
16 goods or documents of title under a preexisting contract for sale.
- 17 5. Only a buyer that takes possession of the goods or has a right to recover
18 the goods from the seller under Article 2 of this chapter may be a buyer
19 in ordinary course of business.
- 20 6. "Buyer in ordinary course of business" does not include a person that
21 acquires goods in a transfer in bulk or as security for or in total or partial
22 satisfaction of a money debt;
- 23 (j) 1. "Conspicuous," with reference to a term, means so written, displayed, or
24 presented that, ***based on the totality of the circumstances,*** a reasonable
25 person against which it is to operate ought to have noticed it.
- 26 2. Whether a term is "conspicuous" or not is a decision for the court.
27 ~~Conspicuous terms include the following:~~

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

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

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

10 (l) "Contract," as distinguished from "agreement," means the total legal
 11 obligation that results from the parties' agreement as determined by *this*
 12 ~~*chapter*~~~~[the Uniform Commercial Code]~~ as supplemented by any other
 13 applicable laws;

14 (m) "Creditor" includes a general creditor, a secured creditor, a lien creditor, and
 15 any representative of creditors, including an assignee for the benefit of
 16 creditors, a trustee in bankruptcy, a receiver in equity, and an executor or
 17 administrator of an insolvent debtor's or assignor's estate;

18 (n) "Defendant" includes a person in the position of defendant in a counterclaim,
 19 cross-claim, or third-party claim;

20 (o) "Delivery~~[,]~~":

21 1. With respect to an electronic document of title, means voluntary transfer
 22 of control; and

23 2. With respect to an instrument, *a tangible* document of title, or *an*
 24 *authoritative tangible copy of a record evidencing* chattel paper, means
 25 voluntary transfer of possession;

26 (p) 1. "Document of title" means a record that:

27 a.~~[1.]~~In the regular course of business or financing is treated as

1 adequately evidencing that the person in possession or control of
2 the record is entitled to receive, control, hold, and dispose of the
3 record and the goods the record covers; and

4 b.~~[2.]~~ Purports to be issued by or addressed to a bailee and to cover
5 goods in the bailee's possession which are either identified or are
6 fungible portions of an identified mass.

7 2. The term includes a bill of lading, transport document, dock warrant,
8 dock receipt, warehouse receipt, and order for delivery of goods.

9 3. An electronic document of title is evidenced by a record consisting of
10 information stored in an electronic medium.

11 4. A tangible document of title is evidenced by a record consisting of
12 information that is inscribed on a tangible medium;

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

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

16 (s)~~[(t)]~~ "Fungible goods" means:

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

19 2. Goods that by agreement are treated as equivalent;

20 (t)~~[(s)]~~ "Genuine" means free of forgery or counterfeiting;

21 (u)~~[(t)]~~ "Good faith," except as otherwise provided in Article 5 of this chapter,
22 means honesty in fact and the observance of reasonable commercial standards
23 of fair dealing;

24 (v)~~[(u)]~~ "Holder" means:

25 1. The person in possession of a negotiable instrument that is payable
26 either to bearer or to an identified person that is the person in
27 possession;

1 2. The person in possession of a ***negotiable tangible*** document of title if
2 the goods are deliverable either to bearer or to the order of the person in
3 possession; or

4 3. ~~The~~^[A] person in control, ***other than pursuant to subsection (7) of***
5 ***Section 38 of this Act***, of a negotiable electronic document of title;

6 ~~(w)~~^[(v)] "Insolvency proceeding" includes an assignment for the benefit of
7 creditors or other proceeding intended to liquidate or rehabilitate the estate of
8 the person involved;

9 ~~(x)~~^[(w)] "Insolvent" means:

10 1. Having generally ceased to pay debts in the ordinary course of business
11 other than as a result of bona fide dispute;

12 2. Being unable to pay debts as they become due; or

13 3. Being insolvent within the meaning of federal bankruptcy law;

14 ~~(y)~~^[(x)] ***1.*** "Money" means a medium of exchange ***that is*** currently
15 authorized or adopted by a domestic or foreign government.

16 ***2.*** The term includes a monetary unit of account established by an
17 intergovernmental organization or by agreement between two (2) or
18 more countries.

19 ***3. The term does not include an electronic record that is a medium of***
20 ***exchange recorded and transferable in a system that existed and***
21 ***operated for the medium of exchange before the medium of exchange***
22 ***was authorized or adopted by the government;***

23 ~~(z)~~^[(y)] "Organization" means a person other than an individual;

24 ~~(aa)~~^[(z)] "Party," as distinguished from "third party," means a person that has
25 engaged in a transaction or made an agreement subject to ***this chapter***~~the~~
26 ~~Uniform Commercial Code~~];

27 ~~(ab)~~^[(aa)] ***1.*** "Person" means an individual, corporation, business trust, estate,

1 trust, partnership, limited liability company, association, joint venture,
2 government, governmental subdivision, agency, or instrumentality,
3 ~~[public corporation,]~~ or any other legal or commercial entity.

4 **2. The term includes a protected series, however denominated, of an**
5 **entity if the protected series is established under law other than this**
6 **chapter that limits, or limits if conditions specified under the law are**
7 **satisfied, the ability of a creditor of the entity or of any other protected**
8 **series of the entity to satisfy a claim from assets of the protected series;**

9 **(ac)**~~[(ab)]~~ "Present value" means the amount as of a date certain of one (1) or more
10 sums payable in the future, discounted to the date certain by use of either an
11 interest rate specified by the parties if that rate is not manifestly unreasonable
12 at the time the transaction is entered into or, if an interest rate is not so
13 specified, a commercially reasonable rate that takes into account the facts and
14 circumstances at the time the transaction is entered into;

15 **(ad)**~~[(ae)]~~ "Purchase" means taking by sale, lease, discount, negotiation, mortgage,
16 pledge, lien, security interest, issue or reissue, gift, or any other voluntary
17 transaction creating an interest in property;

18 **(ae)**~~[(ad)]~~ "Purchaser" means a person that takes by purchase;

19 **(af)**~~[(ae)]~~ "Record" means information that is inscribed on a tangible medium or
20 that is stored in an electronic or other medium and is retrievable in
21 perceivable form;

22 **(ag)**~~[(af)]~~ "Remedy" means any remedial right to which an aggrieved party is
23 entitled with or without resort to a tribunal;

24 **(ah)**~~[(ag)]~~ "Representative" means a person empowered to act for another,
25 including an agent, an officer of a corporation or association, and a trustee,
26 executor, or administrator of an estate;

27 **(ai)**~~[(ah)]~~ "Right" includes remedy;

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

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

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

10 4. Except as otherwise provided in KRS 355.2-505, the right of a seller or
11 lessor of goods under Article 2 or 2A of this chapter to retain or acquire
12 possession of the goods is not a "security interest," but a seller or lessor
13 may also acquire a "security interest" by complying with Article 9 of
14 this chapter.

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

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

20 ~~(ak)~~~~(aj)~~ "Send," in connection with a ~~writing,~~ record~~,~~ or notification,~~notice~~
21 means:

22 1. To deposit in the mail,~~or~~ deliver for transmission, or transmit by any
23 other usual means of communication, with postage or cost of
24 transmission provided for, addressed~~and properly addressed and, in the~~
25 ~~case of an instrument, to an address specified thereon or otherwise~~
26 ~~agreed, or if there be none~~ to any address reasonable under the
27 circumstances; or

1 2. To cause the record or notification to be received within the time it
 2 would have been received if properly sent under subparagraph 1. of
 3 this paragraph~~[In any other way to cause to be received any record or~~
 4 notice within the time it would have arrived if properly sent];

5 ~~(al)~~~~(ak)~~ 1. "Sign~~[Signed]~~" means, with present intent to authenticate or
 6 adopt a record:

7 a. Execute or adopt a tangible symbol; or

8 b. Attach to or logically associate with the record an electronic
 9 symbol, sound, or process.

10 2. "Signed," "signing," and "signature" have corresponding
 11 meanings~~[includes using any symbol executed or adopted with present~~
 12 intention to adopt or accept a writing];

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

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

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

19 ~~(ap)~~~~(ao)~~ 1. "Unauthorized signature" means a signature made without actual,
 20 implied, or apparent authority.

21 2. The term includes a forgery;

22 ~~(aq)~~~~(ap)~~ "Warehouse receipt" means a document of title issued by a person
 23 engaged in the business of storing goods for hire; and

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

26 2. "Written" has a corresponding meaning.

27 ➔Section 2. KRS 355.1-204 is amended to read as follows:

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

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

9 ➔Section 3. KRS 355.1-301 is amended to read as follows:

10 (1) This section applies to a transaction to the extent that it is governed by another
11 article of this chapter~~[the Uniform Commercial Code]~~.

12 (2) Except as otherwise provided in this section, when a transaction bears a reasonable
13 relation to this state and also to another state or nation, the parties may agree that
14 the law of either this state or such other state or nation shall govern their rights and
15 duties.

16 (3) In the absence of an agreement effective under subsection (2) of this section, the
17 rights and obligations of the parties are determined by the law that would be
18 selected by application of this state's conflict-of-laws principles.

19 (4) To the extent that this chapter~~[the Uniform Commercial Code]~~ governs a
20 transaction, if one (1) of the following provisions of this chapter~~[the Uniform~~
21 ~~Commercial Code]~~ specifies the applicable law, that provision governs and a
22 contrary agreement is effective only to the extent permitted by the law so specified:

- 23 (a) KRS 355.2-402;
- 24 (b) KRS 355.2A-105 and 355.2A-106;
- 25 (c) KRS 355.4-102;
- 26 (d) KRS 355.4A-507;
- 27 (e) KRS 355.5-116;

- 1 (f) KRS 355.8-110;
- 2 (g) KRS 355.9-301 to 355.9-307; or
- 3 (h) Section 100 of this Act.

4 ➔Section 4. KRS 355.1-306 is amended to read as follows:

5 A claim or right arising out of an alleged breach may be discharged in whole or in part
6 without consideration by agreement of the aggrieved party in a signed~~[an authenticated]~~
7 record.

8 ➔SECTION 5. KRS 355.2-102 IS REPEALED AND REENACTED TO READ
9 AS FOLLOWS:

10 (1) Unless the context otherwise requires, and except as provided in subsection (3) of
11 this section, this article applies to transactions in goods and, in the case of a
12 hybrid transaction, it applies to the extent provided in subsection (2) of this
13 section.

14 (2) In a hybrid transaction:

15 (a) If the sale-of-goods aspects do not predominate, only the provisions of this
16 article which relate primarily to the sale-of-goods aspects of the transaction
17 apply, and the provisions that relate primarily to the transaction as a whole
18 do not apply; and

19 (b) If the sale-of-goods aspects predominate, this article applies to the
20 transaction but does not preclude application in appropriate circumstances
21 of other law to aspects of the transaction which do not relate to the sale of
22 goods.

23 (3) This article does not:

24 (a) Apply to a transaction that, even though in the form of an unconditional
25 contract to sell or present sale, operates only to create a security interest; or

26 (b) Impair or repeal any statute regulating sales to consumers, farmers, or
27 other specified classes of buyers.

1 ➔Section 6. KRS 355.2-106 is amended to read as follows:

- 2 (1) In this article, unless the context otherwise requires:
- 3 (a) "Contract" and "agreement" are limited to those relating to the present or
4 future sale of goods;~~[-]~~
- 5 (b) "Contract for sale" includes both a present sale of goods and a contract to sell
6 goods at a future time;~~[-]~~
- 7 (c) A "sale" consists in the passing of title from the seller to the buyer for a price
8 (KRS 355.2-401); ~~and~~~~[-]~~
- 9 (d) A "present sale" means a sale which is accomplished by the making of the
10 contract.
- 11 (2) Goods or conduct, including any part of a performance, are "conforming" or
12 conform to the contract when they are in accordance with the obligations under the
13 contract.
- 14 (3) (a) "Termination" occurs when either party, pursuant to a power created by
15 agreement or law, puts an end to the contract otherwise than for its breach.
- 16 (b) On "termination," all obligations which are still executory on both sides are
17 discharged, but any right based on prior breach or performance survives.
- 18 (4) "Cancellation" occurs when either party puts an end to the contract for breach by
19 the other and its effect is the same as that of "termination," except that the canceling
20 party also retains any remedy for breach of the whole contract or any unperformed
21 balance.
- 22 **(5) "Hybrid transaction" means a single transaction involving a sale of goods and:**
- 23 **(a) The provision of services;**
- 24 **(b) A lease of other goods; or**
- 25 **(c) A sale, lease, or license of property other than goods.**

26 ➔Section 7. KRS 355.2-201 is amended to read as follows:

- 27 (1) Except as otherwise provided in this section, a contract for the sale of goods for the

1 price of **five hundred dollars** (\$500) or more is not enforceable by way of action or
 2 defense unless there is **a record**~~[some writing]~~ sufficient to indicate that a contract
 3 for sale has been made between the parties and signed by the party against whom
 4 enforcement is sought or by **the party's**~~[his]~~ authorized agent or broker. A
 5 **record**~~[writing]~~ is not insufficient because it omits or incorrectly states a term
 6 agreed upon, but the contract is not enforceable under this **subsection**~~[paragraph]~~
 7 beyond the quantity of goods shown in **the record**~~[such writing]~~.

8 (2) Between merchants, if within a reasonable time a **record**~~[writing]~~ in confirmation of
 9 the contract and sufficient against the sender is received and the party receiving it
 10 has reason to know its contents, it satisfies the requirements of subsection (1) **of**
 11 **this section** against **the**~~[such]~~ party unless~~[written]~~ notice **in a record** of objection
 12 to its contents is given within ten (10) days after it is received.

13 (3) A contract which does not satisfy the requirements of subsection (1) **of this section**
 14 but which is valid in other respects is enforceable:

15 (a) If the goods are to be specially manufactured for the buyer and are not
 16 suitable for sale to others in the ordinary course of the seller's business and the
 17 seller, before notice of repudiation is received and under circumstances which
 18 reasonably indicate that the goods are for the buyer, has made either a
 19 substantial beginning of their manufacture or commitments for their
 20 procurement;~~[or]~~

21 (b) If the party against whom enforcement is sought admits in **that party's**~~[his]~~
 22 pleading **or**~~[,]~~ testimony, or otherwise, in court that a contract for sale was
 23 made, but the contract is not enforceable under this provision beyond the
 24 quantity of goods admitted; or

25 (c) With respect to goods for which payment has been made and accepted or
 26 which have been received and accepted (KRS 355.2-606).

27 ➔Section 8. KRS 355.2-202 is amended to read as follows:

1 Terms with respect to which the confirmatory memoranda of the parties agree or which
2 are otherwise set forth in a record~~[writing]~~ intended by the parties as a final expression of
3 their agreement with respect to such terms as are included therein may not be
4 contradicted by evidence of any prior agreement or of a contemporaneous oral agreement
5 but may be explained or supplemented:

6 (1) By course of performance, course of dealing, or usage of trade (KRS 355.1-303);
7 and

8 (2) By evidence of consistent additional terms unless the court finds the
9 record~~[writing]~~ to have been intended also as a complete and exclusive statement of
10 the terms of the agreement.

11 ➔Section 9. KRS 355.2-203 is amended to read as follows:

12 The affixing of a seal to a record~~[writing]~~ evidencing a contract for sale or an offer to
13 buy or sell goods does not constitute the record~~[writing]~~ a sealed instrument and the law
14 with respect to sealed instruments does not apply to such a contract or offer.

15 ➔Section 10. KRS 355.2-205 is amended to read as follows:

16 An offer by a merchant to buy or sell goods in a signed record~~[writing]~~ which by its
17 terms gives assurance that it will be held open is not revocable, for lack of consideration,
18 during the time stated or if no time is stated, for a reasonable time, but in no event may
19 such period of irrevocability exceed three (3) months~~[-]~~ and~~[but]~~ any such term of
20 assurance on a form supplied by the offeree must be separately signed by the offeror.

21 ➔Section 11. KRS 355.2-209 is amended to read as follows:

22 (1) An agreement modifying a contract within this article needs no consideration to be
23 binding.

24 (2) A signed agreement that~~[which]~~ excludes modification or rescission except by a
25 signed writing or other signed record cannot be otherwise modified or rescinded,
26 but, except as between merchants, such a requirement on a form supplied by the
27 merchant must be separately signed by the other party.

1 (3) The requirements of the statute of frauds section of this article (KRS 355.2-201)
2 must be satisfied if the contract as modified is within its provisions.

3 (4) Although an attempt at modification or rescission does not satisfy the requirements
4 of subsection (2) or (3) **of this section**, it can operate as a waiver.

5 (5) A party who has made a waiver affecting an executory portion of the contract may
6 retract the waiver by reasonable notification received by the other party that strict
7 performance will be required of any term waived, unless the retraction would be
8 unjust in view of a material change of position in reliance on the waiver.

9 ➔Section 12. KRS 355.2A-102 is amended to read as follows:

10 **(1)** This article applies to any transaction, regardless of form, that creates a lease **and,**
11 **in the case of a hybrid lease, it applies to the extent provided in subsection (2) of**
12 **this section.**

13 **(2) In a hybrid lease:**

14 **(a) If the lease-of-goods aspects do not predominate:**

15 **1. Only the provisions of this article which relate primarily to the lease-**
16 **of-goods aspects of the transaction apply, and the provisions that**
17 **relate primarily to the transaction as a whole do not apply;**

18 **2. KRS 355.2A-209 applies if the lease is a finance lease; and**

19 **3. KRS 355.2A-407 applies to the promises of the lessee in a finance**
20 **lease to the extent the promises are consideration for the right to**
21 **possession and use of the leased goods; and**

22 **(b) If the lease-of-goods aspects predominate, this article applies to the**
23 **transaction, but does not preclude application in appropriate circumstances**
24 **of other law to aspects of the lease which do not relate to the lease of goods.**

25 ➔Section 13. KRS 355.2A-103 is amended to read as follows:

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

27 (a) **1.** "Buyer in ordinary course of business" means a person who, in good

1 faith and without knowledge that the sale to the person~~[him]~~ is in
2 violation of the ownership rights or security interest or leasehold interest
3 of a third party in the goods, buys in ordinary course from a person in
4 the business of selling goods of that kind but does not include a
5 pawnbroker.

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

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

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

16 2. A commercial unit may be a single article, as a machine, or a set of
17 articles, as a suite of furniture or a line of machinery, or a quantity, as a
18 gross or carload, or any other unit treated in use or in the relevant
19 market as a single whole;

20 (d) "Conforming" goods or performance under a lease contract means goods or
21 performance that are in accordance with the obligations under the lease
22 contract;

23 (e) "Consumer lease" means a lease that a lessor regularly engaged in the
24 business of leasing or selling makes to a lessee who is an individual and who
25 takes under the lease primarily for a personal, family, or household purpose;

26 (f) "Fault" means wrongful act, omission, breach, or default;

27 (g) "Finance lease" means a lease with respect to which:

- 1 1. The lessor does not select, manufacture, or supply the goods;
- 2 2. The lessor acquires the goods or the right to possession and use of the
- 3 goods in connection with the lease; and
- 4 3. One (1) of the following occurs:
- 5 a. The lessee receives a copy of the contract by which the lessor
- 6 acquired the goods or the right to possession and use of the goods
- 7 before signing the lease contract;
- 8 b. The lessee's approval of the contract by which the lessor acquired
- 9 the goods or the right to possession and use of the goods is a
- 10 condition to effectiveness of the lease contract;
- 11 c. The lessee, before signing the lease contract, receives an accurate
- 12 and complete statement designating the promises and warranties,
- 13 and any disclaimers of warranties, limitations, or modifications of
- 14 remedies, or liquidated damages, including those of a third party,
- 15 such as the manufacturer of the goods, provided to the lessor by
- 16 the person supplying the goods in connection with or as part of the
- 17 contract by which the lessor acquired the goods or the right to
- 18 possession and use of the goods; or
- 19 d. If the lease is not a consumer lease, the lessor, before the lessee
- 20 signs the lease contract, informs the lessee in writing: ~~[(a)]~~
- 21 *i.* Of the identity of the person supplying the goods to the
- 22 lessor, unless the lessee has selected that person and directed
- 23 the lessor to acquire the goods or the right to possession and
- 24 use of the goods from that person; ~~[(b)]~~
- 25 *ii.* That the lessee is entitled under this article to the promises
- 26 and warranties, including those of any third party, provided
- 27 to the lessor by the person supplying the goods in connection

1 with or as part of the contract by which the lessor acquired
 2 the goods or the right to possession and use of the goods;~~[-]~~
 3 and~~[-(e)-]~~

4 **iii.** That the lessee may communicate with the person supplying
 5 the goods to the lessor and receive an accurate and complete
 6 statement of those promises and warranties, including any
 7 disclaimers and limitations of them or of remedies;

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

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

14 (i) **"Hybrid lease" means a single transaction involving a lease of goods and:**

15 **1. The provision of services;**

16 **2. A sale of other goods; or**

17 **3. A sale, lease, or license of property other than goods;**

18 **(j)** "Installment lease contract" means a lease contract that authorizes or requires
 19 the delivery of goods in separate lots to be separately accepted, even though
 20 the lease contract contains a clause "each delivery is a separate lease" or its
 21 equivalent;

22 ~~(k)~~~~(j)~~ **1.** "Lease" means a transfer of the right to possession and use of
 23 goods for a term in return for consideration, but a sale, including a sale
 24 on approval or a sale or return, or retention or creation of a security
 25 interest is not a lease.

26 **2.** Unless the context clearly indicates otherwise, the term includes a
 27 sublease;

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

5 2. Unless the context clearly indicates otherwise, the term includes a
 6 sublease agreement;

7 ~~(m)~~(l) 1. "Lease contract" means the total legal obligation that results from
 8 the lease agreement as affected by this article and any other applicable
 9 rules of law.

10 2. Unless the context clearly indicates otherwise, the term includes a
 11 sublease contract;

12 ~~(n)~~(m) "Leasehold interest" means the interest of the lessor or the lessee under a
 13 lease contract;

14 ~~(o)~~(n) 1. "Lessee" means a person who acquires the right to possession and
 15 use of goods under a lease.

16 2. Unless the context clearly indicates otherwise, the term includes a
 17 sublessee;

18 ~~(p)~~(o) 1. "Lessee in ordinary course of business" means a person who, in
 19 good faith and without knowledge that the lease to ~~the person~~~~him~~ is in
 20 violation of the ownership rights or security interest or leasehold interest
 21 of a third party in the goods, leases in ordinary course from a person in
 22 the business of selling or leasing goods of that kind but does not include
 23 a pawnbroker.

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

1 debt;

2 ~~(q)~~~~(p)~~ 1. "Lessor" means a person who transfers the right to possession and
3 use of goods under a lease.

4 2. Unless the context clearly indicates otherwise, the term includes a
5 sublessor;

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

8 ~~(s)~~~~(r)~~ "Lien" means a charge against or interest in goods to secure payment of
9 a debt or performance of an obligation, but the term does not include a
10 security interest;

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

14 ~~(u)~~~~(t)~~ "Merchant lessee" means a lessee that is a merchant with respect to
15 goods of the kind subject to the lease;

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

18 2. The discount is determined by the interest rate specified by the parties if
19 the rate was not manifestly unreasonable at the time the transaction was
20 entered into; otherwise, the discount is determined by a commercially
21 reasonable rate that takes into account the facts and circumstances of
22 each case at the time the transaction was entered into;

23 ~~(w)~~~~(v)~~ "Purchase" includes taking by sale, lease, mortgage, security interest,
24 pledge, gift, or any other voluntary transaction creating an interest in goods;

25 ~~(x)~~~~(w)~~ "Sublease" means a lease of goods the right to possession and use of
26 which was acquired by the lessor as a lessee under an existing lease;

27 ~~(y)~~~~(x)~~ "Supplier" means a person from whom a lessor buys or leases goods to

1 be leased under a finance lease;

2 ~~(z)(y)~~ "Supply contract" means a contract under which a lessor buys or leases
3 goods to be leased; and

4 ~~(aa)(z)~~ "Termination" occurs when either party pursuant to a power created by
5 agreement or law puts an end to the lease contract otherwise than for default.

6 (2) **The following**~~Other~~ definitions **in**~~applying to~~ this article **apply to this**
7 **article**~~and the sections in which they appear are~~:

8 (a) "Accessions." KRS 355.2A-310(1);

9 (b) "Construction mortgage." KRS 355.2A-309(1)~~(d)~~;

10 (c) "Encumbrance." KRS 355.2A-309(1)~~(e)~~;

11 (d) "Fixtures." KRS 355.2A-309(1)~~(a)~~;

12 (e) "Fixture filing." KRS 355.2A-309(1)~~(b)~~; and

13 (f) "Purchase money lease." KRS 355.2A-309(1)~~(c)~~.

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

15 (a) "Account." KRS 355.9-102~~(1)(b)~~;

16 (b) "Between merchants." KRS 355.2-104~~(3)~~;

17 (c) "Buyer." KRS 355.2-103(1)~~(a)~~;

18 (d) "Chattel paper." KRS 355.9-102~~(1)(k)~~;

19 (e) "Consumer goods." KRS 355.9-102~~(1)(w)~~;

20 (f) "Document." KRS 355.9-102~~(1)(ad)~~;

21 (g) "Entrusting." KRS 355.2-403(3);

22 (h) "General intangible." KRS 355.9-102~~(1)(ap)~~;

23 (i) "Instrument." KRS 355.9-102~~(1)(au)~~;

24 (j) "Merchant." KRS 355.2-104~~(1)~~;

25 (k) "Mortgage." KRS 355.9-102~~(1)(be)~~;

26 (l) "Pursuant to commitment." KRS 355.9-102~~(1)(bq)~~;

27 (m) "Receipt." KRS 355.2-103~~(1)(e)~~;

- 1 (n) "Sale." KRS 355.2-106(1);
2 (o) "Sale on approval." KRS 355.2-326;
3 (p) "Sale or return." KRS 355.2-326; and
4 (q) "Seller." KRS 355.2-103~~[(1)(d)]~~.

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

7 ➔Section 14. KRS 355.2A-107 is amended to read as follows:

8 Any claim or right arising out of an alleged default or breach of warranty may be
9 discharged in whole or in part without consideration by a ~~written~~ waiver or renunciation
10 ***in a*** signed ***record***~~and~~ delivered by the aggrieved party.

11 ➔Section 15. KRS 355.2A-201 is amended to read as follows:

12 (1) A lease contract is not enforceable by way of action or defense unless:

- 13 (a) The total payments to be made under the lease contract, excluding payments
14 for options to renew or buy, are less than five hundred dollars (\$500); or
15 (b) There is a ***record***~~writing~~, signed by the party against whom enforcement is
16 sought or by that party's authorized agent, sufficient to indicate that a lease
17 contract has been made between the parties and to describe the goods leased
18 and the lease term.

19 (2) Any description of leased goods or of the lease term is sufficient and satisfies
20 subsection (1)(b) ***of this section***, whether or not it is specific, if it reasonably
21 identifies what is described.

22 (3) A ***record***~~writing~~ is not insufficient because it omits or incorrectly states a term
23 agreed upon, but the lease contract is not enforceable under subsection (1)(b) ***of this***
24 ***section*** beyond the lease term and the quantity of goods shown in the
25 ***record***~~writing~~.

26 (4) A lease contract that does not satisfy the requirements of subsection (1) ***of this***
27 ***section***, but which is valid in other respects, is enforceable:

- 1 (a) If the goods are to be specially manufactured or obtained for the lessee and
2 are not suitable for lease or sale to others in the ordinary course of the lessor's
3 business, and the lessor, before notice of repudiation is received and under
4 circumstances that reasonably indicate that the goods are for the lessee, has
5 made either a substantial beginning of their manufacture or commitments for
6 their procurement;
- 7 (b) If the party against whom enforcement is sought admits in that party's
8 pleading or testimony, or otherwise, in court that a lease contract was made,
9 but the lease contract is not enforceable under this provision beyond the
10 quantity of goods admitted; or
- 11 (c) With respect to goods that have been received and accepted by the lessee.
- 12 (5) The lease term under a lease contract referred to in subsection (4) ***of this section*** is:
- 13 (a) If there is a record writing signed by the party against whom enforcement is
14 sought or by that party's authorized agent specifying the lease term, the term
15 so specified;
- 16 (b) If the party against whom enforcement is sought admits in that party's
17 pleading or testimony, or otherwise, in court a lease term, the term so
18 admitted; or
- 19 (c) A reasonable lease term.

20 ➔Section 16. KRS 355.2A-202 is amended to read as follows:

21 Terms with respect to which the confirmatory memoranda of the parties agree or which
22 are otherwise set forth in a record writing intended by the parties as a final expression of
23 their agreement with respect to such terms as are included therein may not be
24 contradicted by evidence of any prior agreement or of a contemporaneous oral agreement
25 but may be explained or supplemented:

- 26 (1) By course of dealing or usage of trade or by course of performance; and
27 (2) By evidence of consistent additional terms unless the court finds the

1 ~~record~~^[writing] to have been intended also as a complete and exclusive statement of
2 the terms of the agreement.

3 ➔Section 17. KRS 355.2A-203 is amended to read as follows:

4 The affixing of a seal to a ~~record~~^[writing] evidencing a lease contract or an offer to enter
5 into a lease contract does not render the ~~record~~^[writing] a sealed instrument and the law
6 with respect to sealed instruments does not apply to the lease contract or offer.

7 ➔Section 18. KRS 355.2A-205 is amended to read as follows:

8 An offer by a merchant to lease goods to or from another person in a signed
9 ~~record~~^[writing] that by its terms gives assurance it will be held open is not revocable, for
10 lack of consideration, during the time stated or~~[-]~~ if no time is stated, for a reasonable
11 time, but in no event may the period of irrevocability exceed three (3) months ~~and~~^[-] any
12 such term of assurance on a form supplied by the offeree must be separately signed by the
13 offeror.

14 ➔Section 19. KRS 355.2A-208 is amended to read as follows:

- 15 (1) An agreement modifying a lease contract needs no consideration to be binding.
- 16 (2) A signed lease agreement that excludes modification or rescission except by a
17 signed ~~record cannot~~^[writing may not] be otherwise modified or rescinded, but,
18 except as between merchants, such a requirement on a form supplied by a merchant
19 must be separately signed by the other party.
- 20 (3) Although an attempt at modification or rescission does not satisfy the requirements
21 of subsection (2) ***of this section***, it may operate as a waiver.
- 22 (4) A party who has made a waiver affecting an executory portion of a lease contract
23 may retract the waiver by reasonable notification received by the other party that
24 strict performance will be required of any term waived, unless the retraction would
25 be unjust in view of a material change of position in reliance on the waiver.

26 ➔Section 20. KRS 355.3-104 is amended to read as follows:

- 27 (1) Except as provided in subsections (3) and (4) of this section, "negotiable

1 instrument" means an unconditional promise or order to pay a fixed amount of
2 money, with or without interest or other charges described in the promise or order,
3 if it:

4 (a) Is payable to bearer or to order at the time it is issued or first comes into
5 possession of a holder;

6 (b) Is payable on demand or at a definite time; and

7 (c) Does not state any other undertaking or instruction by the person promising or
8 ordering payment to do any act in addition to the payment of money, but the
9 promise or order may contain:

10 1. An undertaking or power to give, maintain, or protect collateral to
11 secure payment;

12 2. An authorization or power to the holder to confess judgment or realize
13 on or dispose of collateral;~~or~~

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

16 **4. A term that specifies the law that governs the promise or order; or**

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

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

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

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

27 (5) **(a)** An instrument is a "note" if it is a promise and is a "draft" if it is an order.

1 **(b)** If an instrument falls within the definition of both "note" and "draft," a person
2 entitled to enforce the instrument may treat it as either.

3 (6) **(a)** "Check" means:

4 ~~1.(a)~~ A draft, other than a documentary draft, payable on demand and
5 drawn on a bank; or

6 ~~2.(b)~~ A cashier's check or teller's check.

7 **(b)** An instrument may be a check even though it is described on its face by
8 another term, such as "money order."

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

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

12 (a) On another bank; or

13 (b) Payable at or through a bank.

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

15 (a) Is payable on demand;

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

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

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

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

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

25 ➔Section 21. KRS 355.3-105 is amended to read as follows:

26 (1) "Issue" means:

27 **(a)** The first delivery of an instrument by the maker or drawer, whether to a

1 holder or nonholder, for the purpose of giving rights on the instrument to any
2 person; or

3 (b) If agreed by the payee, the first transmission by the drawer to the payee of
4 an image of an item and information derived from the item that enables the
5 depository bank to collect the item by transferring or presenting under
6 federal law an electronic check.

7 (2) (a) An unissued instrument, or an unissued incomplete instrument that is
8 completed, is binding on the maker or drawer, but nonissuance is a defense.

9 (b) An instrument that is conditionally issued or is issued for a special purpose is
10 binding on the maker or drawer, but failure of the condition or special purpose
11 to be fulfilled is a defense.

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

14 ➔Section 22. KRS 355.3-401 is amended to read as follows:

15 ~~[(1)]~~ A person is not liable on an instrument unless:

16 ~~(1)(a)~~ The person signed the instrument; or

17 ~~(2)(b)~~ The person is represented by an agent or representative who signed the
18 instrument and the signature is binding on the represented person under KRS 355.3-
19 402.

20 ~~[(2)]~~ A signature may be made:

21 ~~(a)~~ Manually or by means of a device or machine; and

22 ~~(b)~~ By the use of any name, including a trade or assumed name, or by a word,
23 mark, or symbol executed or adopted by a person with present intention to
24 authenticate a writing.]

25 ➔Section 23. KRS 355.3-417 is amended to read as follows:

26 (1) (a) If an unaccepted draft is presented to the drawee for payment or acceptance
27 and the drawee pays or accepts the draft,

- 1 1. The person obtaining payment or acceptance, at the time of presentment;
2 and
3 2. A previous transferor of the draft, at the time of transfer,
4 warrant to the drawee making payment or accepting the draft in good faith the
5 conditions set out in paragraph (b) of this subsection.
- 6 (b) 1. The warrantor is, or was, at the time the warrantor transferred the draft,
7 a person entitled to enforce the draft or authorized to obtain payment or
8 acceptance of the draft on behalf of a person entitled to enforce the
9 draft;
10 2. The draft has not been altered;
11 3. The warrantor has no knowledge that the signature of the drawer of the
12 draft is unauthorized; and
13 4. With respect to any remotely created item, that the person on whose
14 account the item is drawn authorized the issuance of the item in the
15 amount for which the item is drawn.
- 16 (2) (a) A drawee making payment may recover from any warrantor damages for
17 breach of warranty equal to the amount paid by the drawee less the amount
18 the drawee received or is entitled to receive from the drawer because of the
19 payment. In addition, the drawee is entitled to compensation for expenses,
20 including reasonable attorney's fees, and loss of interest resulting from the
21 breach.
- 22 (b) The right of the drawee to recover damages under this subsection is not
23 affected by any failure of the drawee to exercise ordinary care in making
24 payment.
- 25 (c) If the drawee accepts the draft, breach of warranty is a defense to the
26 obligation of the acceptor.
- 27 (d) If the acceptor makes payment with respect to the draft, the acceptor is

1 entitled to recover from any warrantor for breach of warranty the amounts
2 stated in this subsection.

3 (3) If a drawee asserts a claim for breach of warranty under subsection (1) of this
4 section based on an unauthorized indorsement of the draft or an alteration of the
5 draft, the warrantor may defend by proving that the indorsement is effective under
6 KRS 355.3-404 or 355.3-405 or the drawer is precluded under KRS 355.3-406 or
7 355.4-406 from asserting against the drawee the unauthorized indorsement or
8 alteration.

9 (4) (a) If:

10 1. a. A dishonored draft is presented for payment to the drawer or an
11 indorser; or

12 b. Any other instrument is presented for payment to a party obliged
13 to pay the instrument; and

14 2. Payment is received,

15 the rules set out in paragraph (b) of this subsection apply.

16 (b) 1. The person obtaining payment and a prior transferor of the instrument
17 warrant to the person making payment in good faith that the warrantor
18 is, or was, at the time the warrantor transferred the instrument, a person
19 entitled to enforce the instrument or authorized to obtain payment on
20 behalf of a person entitled to enforce the instrument.

21 2. The person making payment may recover from any warrantor for breach
22 of warranty an amount equal to the amount paid plus expenses,
23 including reasonable attorney's fees, and loss of interest resulting from
24 the breach.

25 (5) (a) The warranties stated in subsections (1) and (4) of this section cannot be
26 disclaimed with respect to checks.

27 (b) Unless notice of a claim for breach of warranty is given to the warrantor

1 within thirty (30) days after the claimant has reason to know of the breach and
 2 the identity of the warrantor, the liability of the warrantor under subsection (2)
 3 or (4) of this section is discharged to the extent of any loss caused by the
 4 delay in giving notice of the claim.

5 (6) A claim for relief for breach of warranty under this section accrues when the
 6 claimant has reason to know of the breach.

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

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

10 1.[(a)] By an intentional voluntary act, such as surrender of the
 11 instrument to the party, destruction, mutilation, or cancellation of the
 12 instrument, cancellation or striking out of the party's signature, or the
 13 addition of words to the instrument indicating discharge; or

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

16 **(b) The obligation of a party to pay the instrument is not discharged solely by**
 17 **the destruction of a check in connection with a process in which**
 18 **information is extracted from the check and an image of the check is made**
 19 **and, subsequently, the information and image are transmitted for payment.**

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

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

25 ➔Section 25. KRS 355.4-208 is amended to read as follows:

26 (1) (a) If an unaccepted draft is presented to the drawee for payment or acceptance
 27 and the drawee pays or accepts the draft,

1 1. The person obtaining payment or acceptance, at the time of presentment;
2 and

3 2. A previous transferor of the draft, at the time of transfer,
4 warrant to the drawee that pays or accepts the draft in good faith the
5 conditions set out in paragraph (b) of this subsection.

6 (b) 1. The warrantor is, or was, at the time the warrantor transferred the draft,
7 a person entitled to enforce the draft or authorized to obtain payment or
8 acceptance of the draft on behalf of a person entitled to enforce the
9 draft;

10 2. The draft has not been altered;

11 3. The warrantor has no knowledge that the signature of the purported
12 drawer of the draft is unauthorized; and

13 4. With respect to any remotely created item, that the person on whose
14 account the item is drawn authorized the issuance of the item in the
15 amount for which the item is drawn.

16 (2) (a) A drawee making payment may recover from a warrantor damages for breach
17 of warranty equal to the amount paid by the drawee less the amount the
18 drawee received or is entitled to receive from the drawer because of the
19 payment. In addition, the drawee is entitled to compensation for expenses,
20 including reasonable attorney's fees, and loss of interest resulting from the
21 breach.

22 **(b)** The right of the drawee to recover damages under this subsection is not
23 affected by any failure of the drawee to exercise ordinary care in making
24 payment.

25 **(c)** If the drawee accepts the draft:

26 ~~1. (a)~~ Breach of warranty is a defense to the obligation of the acceptor;
27 and

1 ~~2.[(b)]~~ If the acceptor makes payment with respect to the draft, the
2 acceptor is entitled to recover from a warrantor for breach of warranty
3 the amounts stated in this subsection.

4 (3) If a drawee asserts a claim for breach of warranty under subsection (1) of this
5 section based on an unauthorized indorsement of the draft or an alteration of the
6 draft, the warrantor may defend by proving that the indorsement is effective under
7 KRS 355.3-404 or 355.3-405 or the drawer is precluded under KRS 355.3-406 or
8 355.4-406 from asserting against the drawee the unauthorized indorsement or
9 alteration.

10 (4) (a) If:

11 ~~1.[(a)]~~ A dishonored draft is presented for payment to the drawer or an
12 indorser; or

13 ~~2.[(b)]~~ Any other item is presented for payment to a party obliged to pay
14 the item,

15 and the item is paid, the person obtaining payment and a prior transferor of
16 the item warrant to the person making payment in good faith that the
17 warrantor is, or was, at the time the warrantor transferred the item, a person
18 entitled to enforce the item or authorized to obtain payment on behalf of a
19 person entitled to enforce the item.

20 (b) The person making payment may recover from any warrantor for breach of
21 warranty an amount equal to the amount paid plus expenses, including
22 reasonable attorney's fees, and loss of interest resulting from the breach.

23 (5) (a) The warranties stated in subsections (1) and (4) of this section cannot be
24 disclaimed with respect to checks.

25 (b) Unless notice of a claim for breach of warranty is given to the warrantor
26 within thirty (30) days after the claimant has reason to know of the breach and
27 the identity of the warrantor, the warrantor is discharged to the extent of any

1 loss caused by the delay in giving notice of the claim.

2 (6) A claim for relief for breach of warranty under this section accrues when the
3 claimant has reason to know of the breach.

4 ➔Section 26. KRS 355.4A-103 is amended to read as follows:

5 (1) In this article:

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

- 10 1. The instruction does not state a condition to payment to the beneficiary
11 other than time of payment;
- 12 2. The receiving bank is to be reimbursed by debiting an account of, or
13 otherwise receiving payment from, the sender; and
- 14 3. The instruction is transmitted by the sender directly to the receiving
15 bank or to an agent, funds-transfer system, or communication system for
16 transmittal to the receiving bank.

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

18 (c) "Beneficiary's bank" means the bank identified in a payment order in which
19 an account of the beneficiary is to be credited pursuant to the order or which
20 otherwise is to make payment to the beneficiary if the order does not provide
21 for payment to an account.

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

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

25 (2) If an instruction complying with subsection (1)(a) of this section is to make more
26 than one (1) payment to a beneficiary, the instruction is a separate payment order
27 with respect to each payment.

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

2 ➔Section 27. KRS 355.4A-201 is amended to read as follows:

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

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

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

9 (2) A security procedure may:

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

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

14 (3) Comparison of a signature on a payment order or communication with an
15 authorized specimen signature of the customer **or requiring a payment order to be**
16 **sent from a known email address, IP address, or phone number** is not by itself a
17 security procedure.

18 ➔Section 28. KRS 355.4A-202 is amended to read as follows:

19 (1) A payment order received by the receiving bank is the authorized order of the
20 person identified as sender if that person authorized the order or is otherwise bound
21 by it under the law of agency.

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

26 1.~~(a)~~ The security procedure is a commercially reasonable method of
27 providing security against unauthorized payment orders; and

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

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

10 (3) **(a)** Commercial reasonableness of a security procedure is a question of law to be
11 determined by considering the wishes of the customer expressed to the bank,
12 the circumstances of the customer known to the bank, including the size, type,
13 and frequency of payment orders normally issued by the customer to the bank,
14 alternative security procedures offered to the customer, and security
15 procedures in general use by customers and receiving banks similarly situated.

16 **(b)** A security procedure is deemed to be commercially reasonable if:

17 ~~1.[(a)]~~ The security procedure was chosen by the customer after the bank
18 offered, and the customer refused, a security procedure that was
19 commercially reasonable for that customer; and

20 ~~2.[(b)]~~ The customer expressly agreed in ~~a record~~~~[-writing]~~ to be bound by
21 any payment order, whether or not authorized, issued in its name and
22 accepted by the bank in compliance with the **bank's obligations under**
23 **the** security procedure chosen by the customer.

24 (4) The term "sender" in this article includes the customer in whose name a payment
25 order is issued if the order is:

26 **(a)** The authorized order of the customer under subsection (1) **of this section;**~~[-]~~
27 or~~[-it is-]~~

1 **(b)** Effective as the order of the customer under subsection (2) **of this section.**

2 (5) This section applies to amendments and cancellations of payment orders to the
3 same extent it applies to payment orders.

4 (6) Except as provided in this section and in KRS 355.4A-203(1)(a), rights and
5 obligations arising under this section or KRS 355.4A-203 may not be varied by
6 agreement.

7 ➔Section 29. KRS 355.4A-203 is amended to read as follows:

8 (1) If an accepted payment order is not, under KRS 355.4A-202(1), an authorized order
9 of a customer identified as sender, but is effective as an order of the customer
10 pursuant to KRS 355.4A-202(2), the following rules apply:

11 (a) By express~~[-written]~~ agreement, **evidenced by a record,** the receiving bank
12 may limit the extent to which it is entitled to enforce or retain payment of the
13 payment order; **and**~~[-]~~

14 (b) The receiving bank is not entitled to enforce or retain payment of the payment
15 order if the customer proves that the order was not caused, directly or
16 indirectly, by a person:

17 1. Entrusted at any time with duties to act for the customer with respect to
18 payment orders or the security procedure; or

19 2. Who obtained access to transmitting facilities of the customer or who
20 obtained, from a source controlled by the customer and without
21 authority of the receiving bank, information facilitating breach of the
22 security procedure, regardless of how the information was obtained or
23 whether the customer was at fault. **Information includes any access**
24 **device, computer software, or the like.**

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

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

1 ➔Section 30. KRS 355.4A-207 is amended to read as follows:

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

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

9 (a) Except as otherwise provided in subsection (3) ***of this section***:~~[-]~~

10 1. If the beneficiary's bank does not know that the name and number refer
11 to different persons, it may rely on the number as the proper
12 identification of the beneficiary of the order; ***and***~~[-]~~

13 2. The beneficiary's bank need not determine whether the name and
14 number refer to the same person; ***and***~~[-]~~

15 (b) 1. If the beneficiary's bank pays the person identified by name or knows
16 that the name and number identify different persons, no person has
17 rights as beneficiary except the person paid by the beneficiary's bank if
18 that person was entitled to receive payment from the originator of the
19 funds transfer.

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

22 ~~[(a)]~~ If a payment order described in subsection (2) ***of this section*** is
23 accepted~~[-]~~;

24 ~~[(b)]~~ the originator's payment order described the beneficiary inconsistently by
25 name and number~~[-]~~ and

26 ~~[(c)]~~ the beneficiary's bank pays the person identified by number as permitted by
27 subsection (2)(a) ***of this section***, the following rules apply:

1 ~~(a)~~ If the originator is a bank, the originator is obliged to pay its order;
2 ~~and~~

3 ~~(b)~~ 1. If the originator is not a bank and proves that the person identified
4 by number was not entitled to receive payment from the originator, the
5 originator is not obliged to pay its order unless the originator's bank
6 proves that the originator, before acceptance of the originator's order,
7 had notice that payment of a payment order issued by the originator
8 might be made by the beneficiary's bank on the basis of an identifying or
9 bank account number even if it identifies a person different from the
10 named beneficiary.

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

12 3. The originator's bank satisfies the burden of proof if it proves that the
13 originator, before the payment order was accepted, signed a
14 ~~record~~^{writing} stating the information to which the notice relates.

15 (4) In a case governed by subsection (2)(a) of this section, if the beneficiary's bank
16 rightfully pays the person identified by number and that person was not entitled to
17 receive payment from the originator, the amount paid may be recovered from that
18 person to the extent allowed by the law governing mistake and restitution as
19 follows:

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

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

24 ➔Section 31. KRS 355.4A-208 is amended to read as follows:

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

27 ~~(b)~~^(a) The receiving bank may rely on the number as the proper identification

1 of the intermediary or beneficiary's bank and need not determine whether the
2 number identifies a bank.

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

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

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

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

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

18 ~~(c)~~~~(b)~~ 1. If the sender is not a bank and the receiving bank proves that the
19 sender, before the payment order was accepted, had notice that the
20 receiving bank might rely on the number as the proper identification of
21 the intermediary or beneficiary's bank even if it identifies a person
22 different from the bank identified by name, the rights and obligations of
23 the sender and the receiving bank are governed by paragraph (b) of this
24 subsection~~subsection (1)(b)~~, as though the sender were a bank.

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

26 3. The receiving bank satisfies the burden of proof if it proves that the
27 sender, before the payment order was accepted, signed a record~~writing~~

1 stating the information to which the notice relates.

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

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

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

12 ➔Section 32. KRS 355.4A-210 is amended to read as follows:

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

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

18 **(c)** Rejection is effective when the notice is given if transmission is by a means
19 that is reasonable in the circumstances.

20 **(d)** If notice of rejection is given by a means that is not reasonable, rejection is
21 effective when the notice is received.

22 **(e)** If an agreement of the sender and receiving bank establishes the means to be
23 used to reject a payment order:

24 ~~1.~~~~(a)~~ Any means complying with the agreement is reasonable; and

25 ~~2.~~~~(b)~~ Any means not complying is not reasonable unless no significant
26 delay in receipt of the notice resulted from the use of the noncomplying
27 means.

- 1 (2) (a) This subsection applies if a receiving bank other than the beneficiary's bank
2 fails to execute a payment order despite the existence on the execution date of
3 a withdrawable credit balance in an authorized account of the sender
4 sufficient to cover the order.
- 5 (b) If the sender does not receive notice of rejection of the order on the execution
6 date and the authorized account of the sender does not bear interest, the bank
7 is obliged to pay interest to the sender on the amount of the order for the
8 number of days elapsing after the execution date to the earlier of the day the
9 order is canceled pursuant to KRS 355.4A-211(4) or the day the sender
10 receives notice or learns that the order was not executed, counting the final
11 day of the period as an elapsed day. If the withdrawable credit balance during
12 that period falls below the amount of the order, the amount of interest is
13 reduced accordingly.
- 14 (3) If a receiving bank suspends payments, all unaccepted payment orders issued to it
15 are deemed rejected at the time the bank suspends payments.
- 16 (4) (a) Acceptance of a payment order precludes a later rejection of the order.
17 (b) Rejection of a payment order precludes a later acceptance of the order.
- 18 ➔Section 33. KRS 355.4A-211 is amended to read as follows:
- 19 (1) (a) A communication of the sender of a payment order canceling or amending the
20 order may be transmitted to the receiving bank orally~~[, electronically,]~~ or in a
21 record~~[writing]~~.
- 22 (b) If a security procedure is in effect between the sender and the receiving bank,
23 the communication is not effective to cancel or amend the order unless the
24 communication is verified pursuant to the security procedure or the bank
25 agrees to the cancellation or amendment.
- 26 (2) Subject to subsection (1) of this section, a communication by the sender canceling
27 or amending a payment order is effective to cancel or amend the order if notice of

1 the communication is received at a time and in a manner affording the receiving
2 bank a reasonable opportunity to act on the communication before the bank accepts
3 the payment order.

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

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

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

- 15 1. That is a duplicate of a payment order previously issued by the sender;
- 16 2. That orders payment to a beneficiary not entitled to receive payment
17 from the originator; or
- 18 3. That orders payment in an amount greater than the amount the
19 beneficiary was entitled to receive from the originator. If the payment
20 order is canceled or amended, the beneficiary's bank is entitled to
21 recover from the beneficiary any amount paid to the beneficiary to the
22 extent allowed by the law governing mistake and restitution.

23 (4) An unaccepted payment order is canceled by operation of law at the close of the
24 fifth funds-transfer business day of the receiving bank after the execution date or
25 payment date of the order.

26 (5) (a) A canceled payment order cannot be accepted.

27 (b) If an accepted payment order is canceled, the acceptance is nullified and no

1 person has any right or obligation based on the acceptance.

2 (c) Amendment of a payment order is deemed to be cancellation of the original
3 order at the time of amendment and issue of a new payment order in the
4 amended form at the same time.

5 (6) Unless otherwise provided in an agreement of the parties or in a funds-transfer
6 system rule, if the receiving bank, after accepting a payment order, agrees to
7 cancellation or amendment of the order by the sender or is bound by a funds-
8 transfer system rule allowing cancellation or amendment without the bank's
9 agreement, the sender, whether or not cancellation or amendment is effective, is
10 liable to the bank for any loss and expenses, including reasonable attorney's fees,
11 incurred by the bank as a result of the cancellation or amendment or attempted
12 cancellation or amendment.

13 (7) A payment order is not revoked by the death or legal incapacity of the sender unless
14 the receiving bank knows of the death or of an adjudication of incapacity by a court
15 of competent jurisdiction and has reasonable opportunity to act before acceptance
16 of the order.

17 (8) A funds-transfer system rule is not effective to the extent it conflicts with
18 subsection (3)~~(c)~~~~(b)~~ of this section.

19 ➔Section 34. KRS 355.4A-305 is amended to read as follows:

20 (1) If a funds transfer is completed but execution of a payment order by the receiving
21 bank in breach of KRS 355.4A-302 results in delay in payment to the beneficiary,
22 the bank is obliged to pay interest to either the originator or the beneficiary of the
23 funds transfer for the period of delay caused by the improper execution. Except as
24 provided in subsection (3) of this section, additional damages are not recoverable.

25 (2) If execution of a payment order by a receiving bank in breach of KRS 355.4A-302
26 results in ~~the~~

27 ~~(a)~~ noncompletion of the funds transfer, ~~the~~

1 ~~(b)~~ failure to use an intermediary bank designated by the originator, ~~and~~ or ~~(c)~~
2 ~~(c)~~ issuance of a payment order that does not comply with the terms of the
3 payment order of the originator, the bank is liable to the originator for its
4 expenses in the funds transfer and for incidental expenses and interest losses,
5 to the extent not covered by subsection (1) **of this section**, resulting from the
6 improper execution. Except as provided in subsection (3) **of this section**,
7 additional damages are not recoverable.

8 (3) In addition to the amounts payable under subsections (1) and (2) **of this section**,
9 damages, including consequential damages, are recoverable to the extent provided
10 in an express ~~written~~ agreement of the receiving bank, **evidenced by a record**.

11 (4) If a receiving bank fails to execute a payment order it was obliged by express
12 agreement to execute, the receiving bank is liable to the sender for its expenses in
13 the transaction and for incidental expenses and interest losses resulting from the
14 failure to execute. Additional damages, including consequential damages, are
15 recoverable to the extent provided in an express ~~written~~ agreement of the
16 receiving bank, **evidenced by a record**, but are not otherwise recoverable.

17 (5) **(a)** Reasonable attorney's fees are recoverable if demand for compensation under
18 subsection (1) or (2) **of this section** is made and refused before an action is
19 brought on the claim.

20 **(b)** If a claim is made for breach of an agreement under subsection (4) **of this**
21 **section** and the agreement does not provide for damages, reasonable attorney's
22 fees are recoverable if demand for compensation under subsection (4) **of this**
23 **section** is made and refused before an action is brought on the claim.

24 (6) Except as stated in this section, the liability of a receiving bank under subsections
25 (1) and (2) **of this section** may not be varied by agreement.

26 ➔Section 35. KRS 355.5-104 is amended to read as follows:

27 A letter of credit, confirmation, advice, transfer, amendment, or cancellation may be

1 issued in any form that is a signed record ~~and is authenticated:~~

2 ~~(1) By a signature; or~~

3 ~~(2) In accordance with the agreement of the parties or the standard practice referred to~~
4 ~~in KRS 355.5-108(5)].~~

5 ➔Section 36. KRS 355.5-116 is amended to read as follows:

6 (1) The liability of an issuer, nominated person, or adviser for action or omission is
7 governed by the law of the jurisdiction chosen by an agreement in the form of a
8 record signed ~~or otherwise authenticated~~ by the affected parties ~~in the manner~~
9 ~~provided in KRS 355.5-104~~ or by a provision in the person's letter of credit,
10 confirmation, or other undertaking. The jurisdiction whose law is chosen need not
11 bear any relation to the transaction.

12 (2) *Unless subsection (1) of this section applies, the liability of an issuer, nominated*
13 *person, or adviser for action or omission is governed by the law of the jurisdiction*
14 *in which the person is located. The person is considered to be located at the*
15 *address indicated in the person's undertaking. If more than one (1) address is*
16 *indicated, the person is considered to be located at the address from which the*
17 *person's undertaking was issued.*

18 (3) *For purposes of jurisdiction, choice of law, and recognition of interbranch letters*
19 *of credit, but not enforcement of a judgment, all branches of a bank are*
20 *considered separate juridical entities and a bank is considered to be located at the*
21 *place where its relevant branch is considered to be located under subsection (4) of*
22 *this section.*

23 (4) *A branch of a bank is considered to be located at the address indicated in the*
24 *branch's undertaking. If more than one (1) address is indicated, the branch is*
25 *considered to be located at the address from which the undertaking was issued.*

26 (5) (a) Except as otherwise provided in this subsection, the liability of an issuer,
27 nominated person, or adviser is governed by any rules of custom or practice,

1 such as the Uniform Customs and Practice for Documentary Credits, to which
 2 the letter of credit, confirmation, or other undertaking is expressly made
 3 subject.

4 **(b)** If ~~the~~
 5 ~~(a)~~ this article would govern the liability of an issuer, nominated person, or
 6 adviser under subsection (1) **or (2)** of this section, ~~the~~
 7 ~~(b)~~ the relevant undertaking incorporates rules of custom or practice, ~~and~~ and ~~the~~
 8 ~~(c)~~ there is conflict between this article and those rules as applied to that
 9 undertaking, those rules govern except to the extent of any conflict with the
 10 nonvariable provisions specified in KRS 355.5-103(3).

11 ~~(6)~~~~(3)~~ If there is conflict between this article and Article 3, 4, 4A, or 9 of this
 12 chapter, this article governs.

13 ~~(7)~~~~(4)~~ The forum for settling disputes arising out of an undertaking within this article
 14 may be chosen in the manner and with the binding effect that governing law may be
 15 chosen in accordance with subsection (1) of this section.

16 ➔Section 37. KRS 355.7-102 is amended to read as follows:

- 17 (1) In this article, unless the context otherwise requires:
- 18 (a) "Bailee" means a person that by a warehouse receipt, bill of lading, or other
 19 document of title acknowledges possession of goods and contracts to deliver
 20 them;
- 21 (b) "Carrier" means a person that issues a bill of lading;
- 22 (c) "Consignee" means a person named in a bill of lading to which or to whose
 23 order the bill promises delivery;
- 24 (d) "Consignor" means a person named in a bill of lading as the person from
 25 which the goods have been received for shipment;
- 26 (e) "Delivery order" means a record that contains an order to deliver goods
 27 directed to a warehouse, carrier, or other person that in the ordinary course of

- 1 business issues warehouse receipts or bills of lading;
- 2 (f) Reserved;
- 3 (g) "Goods" means all things that are treated as movable for the purposes of a
4 contract for storage or transportation;
- 5 (h) 1. "Issuer" means a bailee that issues a document of title or, in the case of
6 an unaccepted delivery order, the person that orders the possessor of
7 goods to deliver.
- 8 2. The term includes a person for which an agent or employee purports to
9 act in issuing a document if the agent or employee has real or apparent
10 authority to issue documents, even if the issuer did not receive any
11 goods, the goods were misdescribed, or in any other respect the agent or
12 employee violated the issuer's instructions;
- 13 (i) "Person entitled under the document" means the holder, in the case of a
14 negotiable document of title, or the person to which delivery of the goods is to
15 be made by the terms of, or pursuant to instructions in a record under, a
16 nonnegotiable document of title;
- 17 (j) Reserved;
- 18 (k) ~~Reserved~~ "Sign" means, with present intent to authenticate or adopt a record:
19 ~~1. To execute or adopt a tangible symbol; or~~
20 ~~2. To attach to or logically associate with the record an electronic sound,~~
21 ~~symbol, or process};~~
- 22 (l) "Shipper" means a person that enters into a contract of transportation with a
23 carrier; and
- 24 (m) "Warehouse" means a person engaged in the business of storing goods for
25 hire.
- 26 (2) Definitions in other articles applying to this article and the sections in which they
27 appear are:

- 1 (a) "Contract for sale," KRS 355.2-106;
- 2 (b) "Lessee in ordinary course *of business*," KRS 355.2A-103; and
- 3 (c) "'Receipt' of goods," KRS 355.2-103.
- 4 (3) In addition, Article 1 of this chapter~~[KRS Chapter 355]~~ contains general definitions
- 5 and principles of construction and interpretation applicable throughout this article.
- 6 ➔Section 38. KRS 355.7-106 is amended to read as follows:
- 7 (1) A person has control of an electronic document of title if a system employed for
- 8 evidencing the transfer of interests in the electronic document reliably establishes
- 9 that person as the person to which the electronic document was issued or
- 10 transferred.
- 11 (2) A system satisfies subsection (1) of this section, and a person ~~has~~~~is deemed to~~
- 12 ~~have~~ control of an electronic document of title, if the document is created, stored,
- 13 and transferred~~[assigned]~~ in~~[such]~~ a manner that:
- 14 (a) A single authoritative copy of the document exists which is unique,
- 15 identifiable, and, except as otherwise provided in paragraphs (d), (e), and (f)
- 16 of this subsection, unalterable;
- 17 (b) The authoritative copy identifies the person asserting control as:
- 18 1. The person to which the document was issued; or
- 19 2. If the authoritative copy indicates that the document has been
- 20 transferred, the person to which the document was most recently
- 21 transferred;
- 22 (c) The authoritative copy is communicated to and maintained by the person
- 23 asserting control or its designated custodian;
- 24 (d) Copies or amendments that add or change an identified transferee~~[assignee]~~
- 25 of the authoritative copy can be made only with the consent of the person
- 26 asserting control;
- 27 (e) Each copy of the authoritative copy and any copy of a copy is readily

1 identifiable as a copy that is not the authoritative copy; and

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

4 (3) A system satisfies subsection (1) of this section, and a person has control of an
5 electronic document of title, if an authoritative electronic copy of the document, a
6 record attached to or logically associated with the electronic copy, or a system in
7 which the electronic copy is recorded:

8 (a) Enables the person to readily identify each electronic copy as either an
9 authoritative copy or a nonauthoritative copy;

10 (b) Enables the person to readily identify itself in any way, including by name,
11 identifying number, cryptographic key, office, or account number, as the
12 person to which each authoritative electronic copy was issued or
13 transferred; and

14 (c) Gives the person exclusive power, subject to subsection (4) of this section,
15 to:

16 1. Prevent others from adding or changing the person to which each
17 authoritative electronic copy has been issued or transferred; and

18 2. Transfer control of each authoritative electronic copy.

19 (4) Subject to subsection (5) of this section, a power is exclusive under subsection
20 (3)(c)1. and 2. of this section even if:

21 (a) The authoritative electronic copy, a record attached to or logically
22 associated with the authoritative electronic copy, or a system in which the
23 authoritative electronic copy is recorded limits the use of the document of
24 title or has a protocol that is programmed to cause a change, including a
25 transfer or loss of control; or

26 (b) The power is shared with another person.

27 (5) A power of a person is not shared with another person under subsection (4)(b) of

1 *this section and the person's power is not exclusive if:*

2 *(a) The person can exercise the power only if the power also is exercised by the*
3 *other person; and*

4 *(b) The other person:*

5 *1. Can exercise the power without exercise of the power by the person; or*

6 *2. Is the transferor to the person of an interest in the document of title.*

7 *(6) If a person has the powers specified in subsection (3)(c)1. and 2. of this section,*
8 *the powers are presumed to be exclusive.*

9 *(7) A person has control of an electronic document of title if another person, other*
10 *than the transferor to the person of an interest in the document:*

11 *(a) Has control of the document and acknowledges that it has control on behalf*
12 *of the person; or*

13 *(b) Obtains control of the document after having acknowledged that it will*
14 *obtain control of the document on behalf of the person.*

15 *(8) A person that has control under this section is not required to acknowledge that it*
16 *has control on behalf of another person.*

17 *(9) If a person acknowledges that it has or will obtain control on behalf of another*
18 *person, unless the person otherwise agrees or law other than this article or*
19 *Article 9 of this chapter otherwise provides, the person does not owe any duty to*
20 *the other person and is not required to confirm the acknowledgment to any other*
21 *person.*

22 ➔Section 39. KRS 355.8-102 is amended to read as follows:

23 (1) In this article:

24 (a) "Adverse claim" means a claim that a claimant has a property interest in a
25 financial asset and that it is a violation of the rights of the claimant for another
26 person to hold, transfer, or deal with the financial asset;

27 (b) "Bearer form," as applied to a certificated security, means a form in which the

- 1 security is payable to the bearer of the security certificate according to its
2 terms but not by reason of an indorsement;
- 3 (c) "Broker" means a person defined as a broker or dealer under the federal
4 securities laws, but without excluding a bank acting in that capacity;
- 5 (d) "Certificated security" means a security that is represented by a certificate;
- 6 (e) "Clearing corporation" means:
- 7 1. A person that is registered as a "clearing agency" under the federal
8 securities laws;
- 9 2. A federal reserve bank; or
- 10 3. Any other person that provides clearance or settlement services with
11 respect to financial assets that would require it to register as a clearing
12 agency under the federal securities laws but for an exclusion or
13 exemption from the registration requirement, if its activities as a
14 clearing corporation, including promulgation of rules, are subject to
15 regulation by a federal or state governmental authority;
- 16 (f) "Communicate" means to:
- 17 1. Send a signed ~~record~~^{writing}; or
- 18 2. Transmit information by any mechanism agreed upon by the persons
19 transmitting and receiving the information;
- 20 (g) 1. "Entitlement holder" means a person identified in the records of a
21 securities intermediary as the person having a security entitlement
22 against the securities intermediary.
- 23 2. If a person acquires a security entitlement by virtue of KRS 355.8-
24 501(2)(b) or (c), that person is the entitlement holder;
- 25 (h) "Entitlement order" means a notification communicated to a securities
26 intermediary directing transfer or redemption of a financial asset to which the
27 entitlement holder has a security entitlement;

- 1 (i) 1. "Financial asset," except as otherwise provided in KRS 355.8-103,
2 means:
3 a.~~[1.]~~ A security;
4 b.~~[2.]~~ An obligation of a person or a share, participation, or other interest
5 in a person or in property or an enterprise of a person, which is, or
6 is of a type, dealt in or traded on financial markets, or which is
7 recognized in any area in which it is issued or dealt in as a medium
8 for investment; or
9 c.~~[3.]~~ Any property that is held by a securities intermediary for another
10 person in a securities account if the securities intermediary has
11 expressly agreed with the other person that the property is to be
12 treated as a financial asset under this article.
- 13 2. As context requires, the term means either the interest itself or the
14 means by which a person's claim to it is evidenced, including a
15 certificated or uncertificated security, a security certificate, or a security
16 entitlement;
- 17 (j) ~~{(Reserved)}~~;
- 18 (k) "Indorsement" means a signature that alone or accompanied by other words is
19 made on a security certificate in registered form or on a separate document for
20 the purpose of assigning, transferring, or redeeming the security or granting a
21 power to assign, transfer, or redeem it;
- 22 (l) "Instruction" means a notification communicated to the issuer of an
23 uncertificated security which directs that the transfer of the security be
24 registered or that the security be redeemed;
- 25 (m) "Registered form," as applied to a certificated security, means a form in
26 which:
27 1. The security certificate specifies a person entitled to the security; and

1 2. A transfer of the security may be registered upon books maintained for
2 that purpose by or on behalf of the issuer, or the security certificate so
3 states;

4 (n) "Securities intermediary" means:

5 1. A clearing corporation; or

6 2. A person, including a bank or broker, that in the ordinary course of its
7 business maintains securities accounts for others and is acting in that
8 capacity;

9 (o) "Security," except as otherwise provided in KRS 355.8-103, means an
10 obligation of an issuer or a share, participation, or other interest in an issuer or
11 in property or an enterprise of an issuer:

12 1. Which is represented by a security certificate in bearer or registered
13 form, or the transfer of which may be registered upon books maintained
14 for that purpose by or on behalf of the issuer;

15 2. Which is one of a class or series or by its terms is divisible into a class
16 or series of shares, participations, interests, or obligations; and

17 3. Which:

18 a. Is, or is of a type, dealt in or traded on securities exchanges or
19 securities markets; or

20 b. Is a medium for investment and by its terms expressly provides
21 that it is a security governed by this article;

22 (p) "Security certificate" means a certificate representing a security;

23 (q) "Security entitlement" means the rights and property interest of an entitlement
24 holder with respect to a financial asset specified in Part 5 of this article; and

25 (r) "Uncertificated security" means a security that is not represented by a
26 certificate.

27 (2) **The following definitions in** ~~[Other definitions applying to]~~ this article and **other**

1 articles of this chapter apply to this article~~[the sections in which they appear are]:~~

2 (a) "Appropriate person." KRS 355.8-107;

3 (b) "Control." KRS 355.8-106;

4 (c) "Controllable account." Section 44 of this Act;

5 (d) "Controllable electronic record." Section 95 of this Act;

6 (e) "Controllable payment intangible." Section 44 of this Act;

7 (f) "Delivery." KRS 355.8-301;

8 (g)~~(d)~~ "Investment company security." KRS 355.8-103;

9 (h)~~(e)~~ "Issuer." KRS 355.8-201;

10 (i)~~(f)~~ "Overissue." KRS 355.8-210;

11 (j)~~(g)~~ "Protected purchaser." KRS 355.8-303; and

12 (k)~~(h)~~ "Securities account." KRS 355.8-501.

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

15 (4) The characterization of a person, business, or transaction for purposes of this article
16 does not determine the characterization of the person, business, or transaction for
17 purposes of any other law, regulation, or rule.

18 ➔Section 40. KRS 355.8-103 is amended to read as follows:

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

21 (2) (a) An "investment company security" is a security.

22 (b) "Investment company security" means a share or similar equity interest issued
23 by an entity that is registered as an investment company under the federal
24 investment company laws, an interest in a unit investment trust that is so
25 registered, or a face-amount certificate issued by a face-amount certificate
26 company that is so registered.

27 (c) Investment company security does not include an insurance policy or

1 endowment policy or annuity contract issued by an insurance company.

2 (3) (a) An interest in a partnership or limited liability company is not a security
3 unless:

4 1. It is dealt in or traded on securities exchanges or in securities markets;~~[-]~~

5 2. Its terms expressly provide that it is a security governed by this
6 article;~~[-]~~ or

7 3. It is an investment company security.

8 (b) However, an interest in a partnership or limited liability company is a
9 financial asset if it is held in a securities account.

10 (4) (a) A writing that is a security certificate is governed by this article and not by
11 Article 3 of this chapter, even though it also meets the requirements of that
12 article.

13 (b) However, a negotiable instrument governed by Article 3 of this chapter is a
14 financial asset if it is held in a securities account.

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

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

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

21 **(8) A controllable account, controllable electronic record, or controllable payment**
22 **intangible is not a financial asset unless subsection (1)(i)l.c. of Section 39 of this**
23 **Act applies.**

24 ➔Section 41. KRS 355.8-106 is amended to read as follows:

25 (1) A purchaser has "control" of a certificated security in bearer form if the certificated
26 security is delivered to the purchaser.

27 (2) A purchaser has "control" of a certificated security in registered form if the

- 1 certificated security is delivered to the purchaser, and:
- 2 (a) The certificate is indorsed to the purchaser or in blank by an effective
- 3 indorsement; or
- 4 (b) The certificate is registered in the name of the purchaser, upon original issue
- 5 or registration of transfer by the issuer.
- 6 (3) A purchaser has "control" of an uncertificated security if:
- 7 (a) The uncertificated security is delivered to the purchaser; or
- 8 (b) The issuer has agreed that it will comply with instructions originated by the
- 9 purchaser without further consent by the registered owner.
- 10 (4) A purchaser has "control" of a security entitlement if:
- 11 (a) The purchaser becomes the entitlement holder;
- 12 (b) The securities intermediary has agreed that it will comply with entitlement
- 13 orders originated by the purchaser without further consent by the entitlement
- 14 holder; or
- 15 (c) Another person, **other than the transferor to the purchaser of an interest in**
- 16 **the security entitlement:**
- 17 **1.** Has control of the security entitlement ~~and~~ ~~on behalf of the purchaser~~
- 18 ~~or, having previously acquired control of the security entitlement,~~
- 19 acknowledges that it has control on behalf of the purchaser; **or**
- 20 **2. Obtains control of the security entitlement after having acknowledged**
- 21 **that it will obtain control of the security entitlement on behalf of the**
- 22 **purchaser.**
- 23 (5) If an interest in a security entitlement is granted by the entitlement holder to the
- 24 entitlement holder's own securities intermediary, the securities intermediary has
- 25 control.
- 26 (6) A purchaser who has satisfied the requirements of subsection (3) or (4) of this
- 27 section has control, even if the registered owner in the case of subsection (3) of this

1 section or the entitlement holder in the case of subsection (4) of this section retains
2 the right to make substitutions for the uncertificated security or security entitlement,
3 to originate instructions or entitlement orders to the issuer or securities
4 intermediary, or otherwise to deal with the uncertificated security or security
5 entitlement.

6 (7) An issuer or a securities intermediary may not enter into an agreement of the kind
7 described in subsection (3)(b) or (4)(b) of this section without the consent of the
8 registered owner or entitlement holder, but an issuer or a securities intermediary is
9 not required to enter into such an agreement even though the registered owner or
10 entitlement holder so directs. An issuer or securities intermediary that has entered
11 into such an agreement is not required to confirm the existence of the agreement to
12 another party unless requested to do so by the registered owner or entitlement
13 holder.

14 **(8) A person that has control under this section is not required to acknowledge that it**
15 **has control on behalf of a purchaser.**

16 **(9) If a person acknowledges that it has or will obtain control on behalf of a**
17 **purchaser, unless the person otherwise agrees or law other than this article or**
18 **Article 9 of this chapter otherwise provides, the person does not own any duty to**
19 **the purchaser and is not required to confirm the acknowledgment to any other**
20 **person.**

21 ➔Section 42. KRS 355.8-110 is amended to read as follows:

22 (1) The local law of the issuer's jurisdiction, as specified in subsection (4) of this
23 section, governs:

- 24 (a) The validity of a security;
- 25 (b) The rights and duties of the issuer with respect to registration of transfer;
- 26 (c) The effectiveness of registration of transfer by the issuer;
- 27 (d) Whether the issuer owes any duties to an adverse claimant to a security; and

- 1 (e) Whether an adverse claim can be asserted against a person to whom transfer
2 of a certificated or uncertificated security is registered or a person who obtains
3 control of an uncertificated security.
- 4 (2) The local law of the securities intermediary's jurisdiction, as specified in subsection
5 (5) of this section, governs:
- 6 (a) Acquisition of a security entitlement from the securities intermediary;
- 7 (b) The rights and duties of the securities intermediary and entitlement holder
8 arising out of a security entitlement;
- 9 (c) Whether the securities intermediary owes any duties to an adverse claimant to
10 a security entitlement; and
- 11 (d) Whether an adverse claim can be asserted against a person who acquires a
12 security entitlement from the securities intermediary or a person who
13 purchases a security entitlement or interest therein from an entitlement holder.
- 14 (3) The local law of the jurisdiction in which a security certificate is located at the time
15 of delivery governs whether an adverse claim can be asserted against a person to
16 whom the security certificate is delivered.
- 17 (4) (a) "Issuer's jurisdiction" means the jurisdiction under which the issuer of the
18 security is organized or, if permitted by the law of that jurisdiction, the law of
19 another jurisdiction specified by the issuer.
- 20 (b) An issuer organized under the law of this Commonwealth may specify the law
21 of another jurisdiction as the law governing the matters specified in
22 subsection (1)(b) to (e) of this section.
- 23 (5) The following rules determine a "securities intermediary's jurisdiction" for purposes
24 of this section:
- 25 (a) If an agreement between the securities intermediary and its entitlement holder
26 governing the securities account expressly provides that a particular
27 jurisdiction is the securities intermediary's jurisdiction for purposes of this

1 part of this article, this article, or Article 9 of this chapter, that jurisdiction is
2 the securities intermediary's jurisdiction; ~~and~~

3 (b) If paragraph (a) of this subsection does not apply and an agreement between
4 the securities intermediary and its entitlement holder governing the securities
5 account expressly provides that the agreement is governed by the law of a
6 particular jurisdiction, that jurisdiction is the securities intermediary's
7 jurisdiction; ~~and~~

8 (c) If neither paragraph (a) nor paragraph (b) ***of this subsection*** applies and an
9 agreement between the securities intermediary and its entitlement holder
10 governing the securities account expressly provides that the securities account
11 is maintained at an office in a particular jurisdiction, that jurisdiction is the
12 securities intermediary's jurisdiction; ~~and~~

13 (d) If none of the preceding paragraphs of this subsection applies, the securities
14 intermediary's jurisdiction is the jurisdiction in which the office identified in
15 an account statement as the office serving the entitlement holder's account is
16 located; ***and*** ~~and~~

17 (e) If none of the preceding paragraphs of this subsection applies, the securities
18 intermediary's jurisdiction is the jurisdiction in which the chief executive
19 office of the securities intermediary is located.

20 (6) A securities intermediary's jurisdiction is not determined by the:

21 ***(a)*** Physical location of certificates representing financial assets; ~~or by the~~

22 ***(b)*** Jurisdiction in which is organized the issuer of the financial asset with respect
23 to which an entitlement holder has a security entitlement; ~~or by the~~

24 ***(c)*** Location of facilities for data processing or other record keeping concerning
25 the account.

26 **(7) *The local law of the issuer's jurisdiction or the securities intermediary's***
27 ***jurisdiction governs a matter or transaction specified in subsection (1) or (2) of***

1 *this section even if the matter or transaction does not bear any relation to the*
 2 *jurisdiction.*

3 ➔Section 43. KRS 355.8-303 is amended to read as follows:

- 4 (1) "Protected purchaser" means a purchaser of a certificated or uncertificated security,
 5 or of an interest therein, who:
- 6 (a) Gives value;
 - 7 (b) Does not have notice of any adverse claim to the security; and
 - 8 (c) Obtains control of the certificated or uncertificated security.
- 9 (2) ~~[In addition to acquiring the rights of a purchaser,]~~A protected purchaser~~[also]~~
 10 acquires its interest in the security free of any adverse claim.

11 ➔Section 44. KRS 355.9-102 is amended to read as follows:

12 (1) In this article:

- 13 (a) "Accession" means goods that are physically united with other goods in such
 14 a manner that the identity of the original goods is not lost;
- 15 (b) 1. "Account," except as used in "account for," *"account statement,"*
 16 *"account to," "commodity account" in paragraph (p) of this*
 17 *subsection, "customer's account," "deposit account" in paragraph*
 18 *(ag) of this subsection, "on account of," and "statement of account,"*
 19 means a right to payment of a monetary obligation, whether or not
 20 earned by performance:
 - 21 a. For property that has been or is to be sold, leased, licensed,
 22 assigned, or otherwise disposed of;
 - 23 b. For services rendered or to be rendered;
 - 24 c. For a policy of insurance issued or to be issued;
 - 25 d. For a secondary obligation incurred or to be incurred;
 - 26 e. For energy provided or to be provided;
 - 27 f. For the use or hire of a vessel under a charter or other contract;

- 1 g. Arising out of the use of a credit or charge card or information
 2 contained on or for use with the card; or
- 3 h. As winnings in a lottery or other game of chance operated or
 4 sponsored by a state, governmental unit of a state, or person
 5 licensed or authorized to operate the game by a state or
 6 governmental unit of a state.
- 7 2. The term includes:
- 8 **a. Controllable accounts; and**
- 9 **b.** Health-care-insurance receivables.
- 10 3. The term does not include:
- 11 a. ~~[Rights to payment evidenced by]~~Chattel paper~~[or an~~
 12 ~~instrument];~~
- 13 b. Commercial tort claims;
- 14 c. Deposit accounts;
- 15 d. Investment property;
- 16 e. Letter-of-credit rights or letters of credit;~~[or]~~
- 17 f. Rights to payment for money or funds advanced or sold, other than
 18 rights arising out of the use of a credit or charge card or
 19 information contained on or for use with the card; **or**
- 20 **g. Rights to payment evidenced by an instrument;**
- 21 (c) **1.** "Account debtor" means a person obligated on an account, chattel paper,
 22 or general intangible.
- 23 **2.** The term does not include persons obligated to pay a negotiable
 24 instrument, even if the **negotiable** instrument **evidences**~~[constitutes part~~
 25 ~~of]~~ chattel paper;
- 26 (d) "Accounting," except as used in "accounting for," means a record:
- 27 1. **Signed**~~[Authenticated]~~ by a secured party;

- 1 2. Indicating the aggregate unpaid secured obligations as of a date not
2 more than thirty-five (35) days earlier or thirty-five (35) days later than
3 the date of the record; and
- 4 3. Identifying the components of the obligations in reasonable detail;
- 5 (e) "Agricultural lien" means an interest in farm products:
- 6 1. Which secures payment or performance of an obligation for:
- 7 a. Goods or services furnished in connection with a debtor's farming
8 operation; or
- 9 b. Rent on real property leased by a debtor in connection with its
10 farming operation;
- 11 2. Which is created by statute in favor of a person that:
- 12 a. In the ordinary course of its business furnished goods or services
13 to a debtor in connection with a debtor's farming operation; or
- 14 b. Leased real property to a debtor in connection with the debtor's
15 farming operation; and
- 16 3. Whose effectiveness does not depend on the person's possession of the
17 personal property;
- 18 (f) "As-extracted collateral" means:
- 19 1. Oil, gas, or other minerals that are subject to a security interest that:
- 20 a. Is created by a debtor having an interest in the minerals before
21 extraction; and
- 22 b. Attaches to the minerals as extracted; or
- 23 2. Accounts arising out of the sale at the wellhead or minehead of oil, gas,
24 or other minerals in which the debtor had an interest before extraction;
- 25 (g) ~~**Reserved**~~ "Authenticate" means:
- 26 1. ~~To sign; or~~
- 27 2. ~~With present intent to adopt or accept a record, to attach to or logically~~

1 associate with the record an electronic sound, symbol, or process};

2 (h) 1. "Assignee," except as used in "assignee for benefit of creditors,"

3 means a person:

4 a. In whose favor a security interest that secures an obligation is
5 created or provided for under a security agreement, whether or
6 not the obligation is outstanding; or

7 b. To which an account, chattel paper, payment intangible, or
8 promissory note has been sold.

9 2. The term includes a person to which a security interest has been
10 transferred by a security party;

11 (i) 1. "Assignor" means a person that:

12 a. Under a security agreement, creates or provides for a security
13 interest that secures an obligation; or

14 b. Sells an account, chattel paper, payment intangible, or
15 promissory note.

16 2. The term includes a security party that has transferred a security
17 interest to another person;

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

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

23 ~~(L)(j)~~ 1. "Certificate of title" means a certificate of title with respect to
24 which a statute provides for the security interest in question to be
25 indicated on the certificate as a condition or result of the security
26 interest's obtaining priority over the rights of a lien creditor with respect
27 to the collateral.

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

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

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

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

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

25 *b. A right to payment of a monetary obligation owed by a lessee*
 26 *under a lease agreement with respect to specific goods and a*
 27 *monetary obligation owed by the lessee in connection with the*

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transaction giving rise to the lease, if:
i. The right to payment and lease agreement are evidenced by a record; and
ii. The predominant purpose of the transaction giving rise to the lease was to give the lessee the right to possession and use of the goods.

2. The term does not include a right to payment arising out of a charter or other contract involving the use or hire of a vessel or a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card;

~~(n)~~⁽⁴⁾ 1. "Collateral" means the property subject to a security interest or agricultural lien.

2. The term includes:
a.~~[1.]~~ Proceeds to which a security interest attaches;
b.~~[2.]~~ Accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and
c.~~[3.]~~ Goods that are the subject of a consignment;

~~(o)~~^(m) "Commercial tort claim" means a claim arising in tort with respect to which:

- 1. The claimant is an organization; or
- 2. The claimant is an individual and the claim:
 - a. Arose in the course of the claimant's business or profession; and
 - b. Does not include damages arising out of personal injury to or the death of an individual;

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

1 ~~(q)~~~~(e)~~ "Commodity contract" means a commodity futures contract, an option
2 on a commodity futures contract, a commodity option, or another contract if
3 the contract or option is:

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

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

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

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

18 ~~(t)~~~~(e)~~ "Communicate" means:

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

24 ~~(u)~~~~(s)~~ "Consignee" means a merchant to which goods are delivered in a
25 consignment;

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

- 1 1. The merchant:
- 2 a. Deals in goods of that kind under a name other than the name of
- 3 the person making delivery;
- 4 b. Is not an auctioneer; and
- 5 c. Is not generally known by its creditors to be substantially engaged
- 6 in selling the goods of others;
- 7 2. With respect to each delivery, the aggregate value of the goods is one
- 8 thousand dollars (\$1,000) or more at the time of delivery;
- 9 3. The goods are not consumer goods immediately before delivery; and
- 10 4. The transaction does not create a security interest that secures an
- 11 obligation;
- 12 (w)~~(u)~~ "Consignor" means a person that delivers goods to a consignee in a
- 13 consignment;
- 14 (x)~~(v)~~ "Consumer debtor" means a debtor in a consumer transaction;
- 15 (y)~~(w)~~ "Consumer goods" means goods that are used or bought for use
- 16 primarily for personal, family, or household purposes;
- 17 (z)~~(x)~~ "Consumer-goods transaction" means a consumer transaction in which:
- 18 1. An individual incurs an obligation primarily for personal, family, or
- 19 household purposes; and
- 20 2. A security interest in consumer goods secures the obligation;
- 21 (aa)~~(y)~~ "Consumer obligor" means an obligor who is an individual and who
- 22 incurred the obligation as part of a transaction entered into primarily for
- 23 personal, family, or household purposes;
- 24 (ab)~~(z)~~ **1.** "Consumer transaction" means a transaction in which:
- 25 a.~~[1.]~~ An individual incurs an obligation primarily for personal, family,
- 26 or household purposes;
- 27 b.~~[2.]~~ A security interest secures the obligation; and

1 ~~c.[3.]~~ The collateral is held or acquired primarily for personal, family, or
2 household purposes.

3 2. The term includes consumer-goods transactions;

4 ~~(ac)[(aa)]~~ "Continuation statement" means an amendment of a financing statement
5 which:

6 1. Identifies, by its file number, the initial financing statement to which it
7 relates; and

8 2. Indicates that it is a continuation statement for, or that it is filed to
9 continue the effectiveness of, the identified financing statement;

10 *(ad) "Controllable account" means an account evidenced by a controllable*
11 *electronic record that provides that the account debtor undertakes to pay the*
12 *person that has control under Section 98 of this Act of the controllable*
13 *electronic record;*

14 *(ae) "Controllable payment intangible" means a payment intangible evidenced*
15 *by a controllable electronic record that provides that the account debtor*
16 *undertakes to pay the person that has control under Section 98 of this Act of*
17 *the controllable electronic record;*

18 ~~(af)[(ab)]~~ "Debtor" means:

19 1. A person having an interest, other than a security interest or other lien,
20 in the collateral, whether or not the person is an obligor;

21 2. A seller of accounts, chattel paper, payment intangibles, or promissory
22 notes; or

23 3. A consignee;

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

26 2. The term does not include investment property or accounts evidenced by
27 an instrument;

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

3 ~~(ai)~~~~(ae)~~ **Reserved**~~["Electronic chattel paper" means chattel paper evidenced by a~~
4 ~~record or records consisting of information stored in an electronic medium];~~

5 **(aj) "Electronic money" means money in an electronic form;**

6 ~~(ak)~~~~(af)~~ **1.** "Encumbrance" means a right, other than an ownership interest, in
7 real property.

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

9 ~~(al)~~~~(ag)~~ "Equipment" means goods other than inventory, farm products, or
10 consumer goods;

11 ~~(am)~~~~(ah)~~ **1.** "Farm products" means goods, other than standing timber, with
12 respect to which the debtor is engaged in a farming operation and which
13 are:

14 ~~a.~~~~[1.]~~ Crops grown, growing, or to be grown, including:

15 ~~i.~~~~[a.]~~ Crops produced on trees, vines, and bushes; and

16 ~~ii.~~~~[b.]~~ Aquatic goods produced in aquacultural operations;

17 ~~b.~~~~[2.]~~ Livestock, born or unborn, including aquatic goods produced in
18 aquacultural operations;

19 ~~c.~~~~[3.]~~ Supplies used or produced in a farming operation;

20 ~~d.~~~~[4.]~~ Products of crops or livestock in their unmanufactured states; or

21 ~~e.~~~~[5.]~~ Equine interests, including, but not limited to, interests in horses,
22 mares, yearlings, foals, weanlings, stallions, syndicated stallions,
23 and stallion shares (including seasons and other rights in
24 connection therewith), whether or not the debtor is engaged in
25 farming operations and without regard to the use thereof.

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

27 ~~(an)~~~~(ai)~~ "Farming operation" means raising, cultivating, propagating, fattening,

- 1 grazing, or any other farming, livestock, or aquacultural operation;
- 2 ~~(ao)~~~~(aj)~~ "File number" means the number assigned to an initial financing
- 3 statement pursuant to KRS 355.9-519(1);
- 4 ~~(ap)~~~~(ak)~~ "Filing office" means an office designated in KRS 355.9-501 as the
- 5 place to file a financing statement;
- 6 ~~(aq)~~~~(al)~~ "Filing-office rule" means a rule adopted pursuant to KRS 355.9-526;
- 7 ~~(ar)~~~~(am)~~ "Financing statement" means a record or records composed of an initial
- 8 financing statement and any filed record relating to the initial financing
- 9 statement;
- 10 ~~(as)~~~~(an)~~ 1. "Fixture filing" means the filing of a financing statement covering
- 11 goods that are or are to become fixtures and satisfying KRS 355.9-
- 12 502(1) and (2).
- 13 2. The term includes the filing of a financing statement covering goods of a
- 14 transmitting utility which are or are to become fixtures;
- 15 ~~(at)~~~~(ao)~~ "Fixtures" means goods that have become so related to particular real
- 16 property that an interest in them arises under real property law;
- 17 ~~(au)~~~~(ap)~~ 1. "General intangible" means any personal property, including
- 18 things in action, other than accounts, chattel paper, commercial tort
- 19 claims, deposit accounts, documents, goods, instruments, investment
- 20 property, letter-of-credit rights, letters of credit, money, and oil, gas, or
- 21 other minerals before extraction.
- 22 2. The term includes:
- 23 a. *Controllable electronic records;*
- 24 b. Payment intangibles; and
- 25 c. Software;
- 26 ~~(av)~~~~(aq)~~ ~~{Reserved}~~;
- 27 ~~(aw)~~~~(ar)~~ 1. "Goods" means all things that are movable when a security interest

1 attaches.

2 ~~2.1.1~~ The term includes:

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

10 ~~3.1.2~~ The term also includes a computer program embedded in goods and any

11 supporting information provided in connection with a transaction

12 relating to the program if:

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

17 ~~4.1.3~~ The term does not include a computer program embedded in goods that

18 consist solely of the medium in which the program is embedded.

19 ~~5.1.4~~ The term also does not include accounts, chattel paper, commercial tort

20 claims, deposit accounts, documents, general intangibles, instruments,

21 investment property, letter-of-credit rights, letters of credit, money, or

22 oil, gas, or other minerals before extraction;

23 ~~(ax)~~~~(as)~~ 1. "Governmental unit" means a subdivision, agency, department,

24 county, parish, municipality, or other unit of the government of the

25 United States, a State, or a foreign country.

26 2. The term includes an organization having a separate corporate existence

27 if the organization is eligible to issue debt on which interest is exempt

1 from income taxation under the laws of the United States;

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

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

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

11 **a.**~~[1.]~~ Investment property;

12 **b.**~~[2.]~~ Letters of credit;~~[or]~~

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

16 **d.** **Writings that evidence chattel paper;**

17 ~~(ba)~~~~(av)~~ "Inventory" means goods, other than farm products, which:

18 1. Are leased by a person as lessor;

19 2. Are held by a person for sale or lease or to be furnished under a contract
20 of service;

21 3. Are furnished by a person under a contract of service; or

22 4. Consist of raw materials, work in process, or materials used or
23 consumed in a business;

24 ~~(bb)~~~~(aw)~~ "Investment property" means a security, whether certificated or
25 uncertificated, security entitlement, securities account, commodity contract, or
26 commodity account;

27 ~~(bc)~~~~(ax)~~ "Jurisdiction of organization," with respect to a registered organization,

1 means the jurisdiction under whose law the organization is organized;

2 ~~(bd)~~~~(ay)~~ **1.** "Letter-of-credit right" means a right to payment or performance
3 under a letter of credit, whether or not the beneficiary has demanded or
4 is at the time entitled to demand payment or performance.

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

7 ~~(be)~~~~(az)~~ "Lien creditor" means:

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

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

21 **2.** The term includes any structure that meets all of the requirements of this
22 paragraph except the size requirements and with respect to which the
23 manufacturer voluntarily files a certification required by the United
24 States Secretary of Housing and Urban Development and complies with
25 the standards established under Title 42 of the United States Code;

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

- 27 1. That creates a purchase-money security interest in a manufactured

- 1 home, other than a manufactured home held as inventory; or
- 2 2. In which a manufactured home, other than a manufactured home held as
- 3 inventory, is the primary collateral;

4 **(bh) "Money" has the meaning in Section 1 of this Act, but does not include:**

5 **1. A deposit account; or**

6 **2. Money in an electronic form that cannot be subjected to control under**
 7 **Section 47 of this Act;**

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

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

13 ~~(bk)~~~~(be)~~ **1.** "New value" means:

14 **a.**~~[1.]~~ Money;

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

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

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

20 ~~(bl)~~~~(bf)~~ "Noncash proceeds" means proceeds other than cash proceeds;

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

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

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

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

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

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

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

8 2. *The term includes a controllable payment intangible;*

9 ~~(bp)~~~~(bj)~~ "Person related to," with respect to an individual, means:

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

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

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

1 ~~(br)~~~~(b1)~~ "Proceeds," except as used in KRS 355.9-609(2), means the following
2 property:

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

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

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

22 ~~(bu)~~~~(be)~~ "Public-finance transaction" means a secured transaction in connection
23 with which:

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

1 obligated on collateral, assignor or assignee of a secured obligation, or
2 assignor or assignee of a security interest is a state or a governmental
3 unit of a state;

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

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

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

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

1 ~~(cc)[(bw)] **Reserved**~~["Send," in connection with a record or notification, means:

2 1. ~~To deposit in the mail, deliver for transmission, or transmit by any other~~
3 ~~usual means of communication, with postage or cost of transmission~~
4 ~~provided for, addressed to any address reasonable under the~~
5 ~~circumstances; or~~

6 2. ~~To cause the record or notification to be received within the time that it~~
7 ~~would have been received if properly sent under subparagraph 1. of this~~
8 ~~paragraph];~~

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

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

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

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

23 **(ch) "Tangible money" means money in a tangible form;**

24 ~~(ci)[(cb)]~~ "Termination statement" means an amendment of a financing statement
25 which:

26 1. Identifies, by its file number, the initial financing statement to which it
27 relates; and

1 2. Indicates either that it is a termination statement or that the identified
2 financing statement is no longer effective; and

3 ~~(c)~~~~(ee)~~ "Transmitting utility" means a person primarily engaged in the business
4 of:

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

11 (2) **"Control" as provided in Section 38 of this Act and** the following definitions in
12 other articles **of this chapter** apply to this article:

- 13 (a) "Applicant." KRS 355.5-102;
- 14 (b) "Beneficiary." KRS 355.5-102;
- 15 (c) "Broker." KRS 355.8-102;
- 16 (d) "Certificated security." KRS 355.8-102;
- 17 (e) "Check." KRS 355.3-104;
- 18 (f) "Clearing corporation." KRS 355.8-102;
- 19 (g) "Contract for sale." KRS 355.2-106;
- 20 (h) **"Controllable electronic record." Section 95 of this Act;**
- 21 ~~(i)~~ "Customer." KRS 355.4-104;
- 22 ~~(j)~~~~(i)~~ "Entitlement holder." KRS 355.8-102;
- 23 ~~(k)~~~~(j)~~ "Financial asset." KRS 355.8-102;
- 24 ~~(l)~~~~(k)~~ "Holder in due course." KRS 355.3-302;
- 25 ~~(m)~~~~(l)~~ "Issuer." (with respect to a letter of
26 credit or letter-of-credit right) KRS 355.5-102;
- 27 ~~(n)~~~~(m)~~ "Issuer." (with respect to a security) KRS 355.8-201;

- 1 ~~(o)~~~~(n)~~ "Lease." KRS 355.2A-103;
- 2 ~~(p)~~~~(o)~~ "Lease agreement." KRS 355.2A-103;
- 3 ~~(q)~~~~(p)~~ "Lease contract." KRS 355.2A-103;
- 4 ~~(r)~~~~(q)~~ "Leasehold interest." KRS 355.2A-103;
- 5 ~~(s)~~~~(r)~~ "Lessee." KRS 355.2A-103;
- 6 ~~(t)~~~~(s)~~ "Lessee in ordinary course of business." KRS 355.2A-103;
- 7 ~~(u)~~~~(t)~~ "Lessor." KRS 355.2A-103;
- 8 ~~(v)~~~~(u)~~ "Lessor's residual interest." KRS 355.2A-103;
- 9 ~~(w)~~~~(v)~~ "Letter of credit." KRS 355.5-102;
- 10 ~~(x)~~~~(w)~~ "Merchant." KRS 355.2-104;
- 11 ~~(y)~~~~(x)~~ "Negotiable instrument." KRS 355.3-104;
- 12 ~~(z)~~~~(y)~~ "Nominated person." KRS 355.5-102;
- 13 ~~(aa)~~~~(z)~~ "Note." KRS 355.3-104;
- 14 ~~(ab)~~~~(aa)~~ "Proceeds of a letter of credit." KRS 355.5-114;
- 15 ~~(ac)~~ **"Protected purchaser." Section 43 of this Act;**
- 16 ~~(ad)~~~~(ab)~~ "Prove." KRS 355.3-103;
- 17 ~~(ae)~~ **"Qualifying purchaser." Section 95 of this Act;**
- 18 ~~(af)~~~~(ae)~~ "Sale." KRS 355.2-106;
- 19 ~~(ag)~~~~(ad)~~ "Securities account." KRS 355.8-501;
- 20 ~~(ah)~~~~(ae)~~ "Securities intermediary." KRS 355.8-102;
- 21 ~~(ai)~~~~(af)~~ "Security." KRS 355.8-102;
- 22 ~~(aj)~~~~(ag)~~ "Security certificate." KRS 355.8-102;
- 23 ~~(ak)~~~~(ah)~~ "Security entitlement." KRS 355.8-102; and
- 24 ~~(al)~~~~(ai)~~ "Uncertificated security." KRS 355.8-102.
- 25 (3) Article 1 of this chapter contains general definitions and principles of construction
- 26 and interpretation applicable throughout this article.
- 27 ➔ Section 45. KRS 355.9-104 is amended to read as follows:

- 1 (1) A secured party has control of a deposit account if:
- 2 (a) The secured party is the bank with which the deposit account is maintained;
- 3 (b) The debtor, secured party, and bank have agreed in a signed~~[an authenticated]~~
- 4 record that the bank will comply with instructions originated by the secured
- 5 party directing disposition of the funds in the deposit account without further
- 6 consent by the debtor;~~[or]~~
- 7 (c) The secured party becomes the bank's customer with respect to the deposit
- 8 account; or

9 **(d) Another person, other than the debtor:**

- 10 **1. Has control of the deposit account and acknowledges that it has**
- 11 **control on behalf of the secured party; or**
- 12 **2. Obtains control of the deposit account after having acknowledged that**
- 13 **it will obtain control of the deposit account on behalf of the secured**
- 14 **party.**

- 15 (2) A secured party that has satisfied subsection (1) of this section has control, even if
- 16 the debtor retains the right to direct the disposition of funds from the deposit
- 17 account.

18 ➔SECTION 46. KRS 355.9-105 IS REPEALED AND REENACTED TO READ

19 AS FOLLOWS:

20 **(1) A purchaser has control of an authoritative electronic copy of a record**

21 **evidencing chattel paper if a system employed for evidencing the assignment of**

22 **interests in the chattel paper reliably establishes the purchaser as the person to**

23 **which the authoritative electronic copy was assigned.**

24 **(2) A system satisfies subsection (1) of this section if the record or records evidencing**

25 **the chattel paper are created, stored, and assigned in a manner that:**

26 **(a) A single authoritative copy of the record or records exists which is unique,**

27 **identifiable, and, except as otherwise provided in paragraphs (d), (e), and (f)**

- 1 of this subsection, unalterable;
- 2 (b) The authoritative copy identifies the purchaser as the assignee of the record
- 3 or records;
- 4 (c) The authoritative copy is communicated to and maintained by the purchaser
- 5 or its designated custodian;
- 6 (d) Copies or amendments that add or change an identified assignee of the
- 7 authoritative copy can be made only with the consent of the purchaser;
- 8 (e) Each copy of the authoritative copy and any copy of a copy is readily
- 9 identifiable as a copy that is not the authoritative copy; and
- 10 (f) Any amendment of the authoritative copy is readily identifiable as
- 11 authorized or unauthorized.
- 12 (3) A system satisfies subsection (1) of this section, and a purchaser has control of an
- 13 authoritative electronic copy of a record evidencing chattel paper, if the electronic
- 14 copy, a record attached to or logically associated with the electronic copy, or a
- 15 system in which the electronic copy is recorded:
- 16 (a) Enables the purchaser to readily identify each electronic copy as either an
- 17 authoritative copy or a nonauthoritative copy;
- 18 (b) Enables the purchaser to readily identify itself in any way, including by
- 19 name, identifying number, cryptographic key, office, or account number, as
- 20 the assignee of the authoritative electronic copy; and
- 21 (c) Gives the purchaser exclusive power, subject to subsection (4) of this
- 22 section, to:
- 23 1. Prevent others from adding or changing an identified assignee of the
- 24 authoritative electronic copy; and
- 25 2. Transfer control of the authoritative electronic copy.
- 26 (4) Subject to subsection (5) of this section, a power is exclusive under subsection
- 27 (3)(c)1. and 2. of this section even if:

1 (a) The authoritative electronic copy, a record attached to or logically
2 associated with the authoritative electronic copy, or a system in which the
3 authoritative electronic copy is recorded limits the use of the authoritative
4 electronic copy or has a protocol programmed to cause a change, including
5 a transfer or loss of control; or

6 (b) The power is shared with another person.

7 (5) A power of a purchaser is not shared with another person under subsection (4)(b)
8 of this section and the purchaser's power is not exclusive if:

9 (a) The purchaser can exercise the power only if the power also is exercised by
10 the other person; and

11 (b) The other person:

12 1. Can exercise the power without exercise of the power by the
13 purchaser; or

14 2. Is the transferor to the purchaser of an interest in the chattel paper.

15 (6) If a purchaser has the powers specified in subsection (3)(c)1. and 2. of this
16 section, the powers are presumed to be exclusive.

17 (7) A purchaser has control of an authoritative electronic copy of a record
18 evidencing chattel paper if another person, other than the transferor to the
19 purchaser of an interest in the chattel paper:

20 (a) Has control of the authoritative electronic copy and acknowledges that it
21 has control on behalf of the purchaser; or

22 (b) Obtains control of the authoritative electronic copy after having
23 acknowledged that it will obtain control of the electronic copy on behalf of
24 the purchaser.

25 ➔SECTION 47. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS
26 CREATED TO READ AS FOLLOWS:

27 (1) A person has control of electronic money if the electronic money, a record

1 attached to or logically associated with the electronic money, or a system in which
2 the electronic money is recorded:

3 (a) Gives the person:

4 1. Power to avail itself of substantially all the benefit from the electronic
5 money; and

6 2. Exclusive power, subject to subsection (2) of this section, to:

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

9 b. Transfer control of the electronic money to another person or
10 cause another person to obtain control of other electronic money
11 as a result of the transfer of the electronic money; and

12 (b) Enables the person to readily identify itself in any way, including by name,
13 identifying number, cryptographic key, office, or account number, as
14 having the powers under paragraph (a) of this subsection.

15 (2) Subject to subsection (3) of this section, a power is exclusive under subsection
16 (1)(a)2.a. and b. of this section even if:

17 (a) The electronic money, a record attached to or logically associated with the
18 electronic money, or a system in which the electronic money is recorded
19 limits the use of the electronic money or has a protocol programmed to
20 cause a change, including a transfer or loss of control; or

21 (b) The power is shared with another person.

22 (3) A power of a person is not shared with another person under subsection (2)(b) of
23 this section and the person's power is not exclusive if:

24 (a) The person can exercise the power only if the power also is exercised by the
25 other person; and

26 (b) The other person:

27 1. Can exercise the power without exercise of the power by the person; or

- 1 2. Is the transferor to the person of an interest in the electronic money.
- 2 (4) If a person has the powers specified in subsection (1)(a)2.a. and b. of this section,
- 3 the powers are presumed to be exclusive.
- 4 (5) A person has control of electronic money if another person, other than the
- 5 transferor to the person of an interest in the electronic money:
- 6 (a) Has control of the electronic money and acknowledges that it has control on
- 7 behalf of the person; or
- 8 (b) Obtains control of the electronic money after having acknowledged that it
- 9 will obtain control of the electronic money on behalf of the person.

10 ➔SECTION 48. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS

11 CREATED TO READ AS FOLLOWS:

- 12 (1) A secured party has control of a controllable electronic record as provided in
- 13 Section 98 of this Act.
- 14 (2) A secured party has control of a controllable account or controllable payment
- 15 intangible if the secured party has control of the controllable electronic record
- 16 that evidences the controllable account or controllable payment intangible.

17 ➔SECTION 49. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS

18 CREATED TO READ AS FOLLOWS:

- 19 (1) A person that has control under Section 45, 46, or 47 of this Act is not required to
- 20 acknowledge that it has control on behalf of another person.
- 21 (2) If a person acknowledges that it has or will obtain control on behalf of another
- 22 person, unless the person otherwise agrees or law other than this article
- 23 otherwise provides, the person does not owe any duty to the other person and is
- 24 not required to confirm the acknowledgment to any other person.

25 ➔Section 50. KRS 355.9-203 is amended to read as follows:

- 26 (1) A security interest attaches to collateral when it becomes enforceable against the
- 27 debtor with respect to the collateral, unless an agreement expressly postpones the

1 time of attachment.

2 (2) Except as otherwise provided in subsections (3) to (9) of this section, a security
3 interest is enforceable against the debtor and third parties with respect to the
4 collateral only if:

5 (a) Value has been given;

6 (b) The debtor has rights in the collateral or the power to transfer rights in the
7 collateral to a secured party; and

8 (c) One (1) of the following conditions is met:

9 1. The debtor has signed~~[authenticated]~~ a security agreement that provides
10 a description of the collateral and, if the security interest covers timber
11 to be cut, a description of the land concerned;

12 2. The collateral is not a certificated security and is in the possession of the
13 secured party under KRS 355.9-313 pursuant to the debtor's security
14 agreement;

15 3. The collateral is a certificated security in registered form and the
16 security certificate has been delivered to the secured party under KRS
17 355.8-301 pursuant to the debtor's security agreement;~~[or]~~

18 4. The collateral is controllable accounts, controllable electronic records,
19 controllable payment intangibles, deposit accounts, electronic
20 documents~~[chattel paper]~~, electronic money, investment property, or
21 letter-of-credit rights,~~[or electronic documents,]~~ and the secured party
22 has control under KRS 355.7-106, 355.9-104, ~~[355.9-105,]~~ Section 47
23 of this Act, 355.9-106,~~[or]~~ 355.9-107, or Section 48 of this Act
24 pursuant to the debtor's security agreement; or

25 5. The collateral is chattel paper and the secured party has possession
26 and control under Section 65 of this Act pursuant to the debtor's
27 security agreement.

- 1 (3) Subsection (2) of this section is subject to KRS 355.4-210 on the security interest of
2 a collecting bank, KRS 355.5-118 on the security interest of a letter-of-credit issuer
3 or nominated person, KRS 355.9-110 on a security interest arising under Article 2
4 or 2A of this chapter, and KRS 355.9-206 on security interests in investment
5 property.
- 6 (4) A person becomes bound as debtor by a security agreement entered into by another
7 person if, by operation of law other than this article or by contract:
- 8 (a) The security agreement becomes effective to create a security interest in the
9 person's property; or
- 10 (b) The person becomes generally obligated for the obligations of the other
11 person, including the obligation secured under the security agreement, and
12 acquires or succeeds to all or substantially all of the assets of the other person.
- 13 (5) If a new debtor becomes bound as debtor by a security agreement entered into by
14 another person:
- 15 (a) The agreement satisfies subsection (2)(c) of this section with respect to
16 existing or after-acquired property of the new debtor to the extent the property
17 is described in the agreement; and
- 18 (b) Another agreement is not necessary to make a security interest in the property
19 enforceable.
- 20 (6) The attachment of a security interest in collateral gives the secured party the rights
21 to proceeds provided by KRS 355.9-315 and is also attachment of a security interest
22 in a supporting obligation for the collateral.
- 23 (7) The attachment of a security interest in a right to payment or performance secured
24 by a security interest or other lien on personal or real property is also attachment of
25 a security interest in the security interest, mortgage, or other lien.
- 26 (8) The attachment of a security interest in a securities account is also attachment of a
27 security interest in the security entitlements carried in the securities account.

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

3 ➔Section 51. KRS 355.9-204 is amended to read as follows:

4 (1) Except as otherwise provided in subsection (2) of this section, a security agreement
5 may create or provide for a security interest in after-acquired collateral.

6 (2) **(a) Subject to paragraph (b) of this subsection,** a security interest does not attach
7 under a term constituting an after-acquired property clause to:

8 ~~1.(a)~~ Consumer goods, other than an accession when given as additional
9 security, unless the debtor acquires rights in them within ten (10) days
10 after the secured party gives value; or

11 ~~2.(b)~~ A commercial tort claim.

12 **(b) Paragraph (a) of this subsection does not prevent a security interest from**
13 **attaching:**

14 **1. To consumer goods as proceeds under KRS 355.9-315(1) or**
15 **commingled goods under KRS 355.9-336(3);**

16 **2. To a commercial tort claim as proceeds under KRS 355.9-315(1); or**

17 **3. Under an after-acquired property clause to property that is proceeds of**
18 **consumer goods or a commercial tort claim.**

19 (3) A security agreement may provide that collateral secures, or that accounts, chattel
20 paper, payment intangibles, or promissory notes are sold in connection with, future
21 advances or other value, whether or not the advances or value are given pursuant to
22 commitment.

23 ➔Section 52. KRS 355.9-207 is amended to read as follows:

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

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

27 **(b)** In the case of chattel paper or an instrument, reasonable care includes taking

1 necessary steps to preserve rights against prior parties unless otherwise
2 agreed.

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

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

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

10 (c) The secured party shall keep the collateral identifiable, but fungible collateral
11 may be commingled; and

12 (d) The secured party may use or operate the collateral:

13 1. For the purpose of preserving the collateral or its value;

14 2. As permitted by an order of a court having competent jurisdiction; or

15 3. Except in the case of consumer goods, in the manner and to the extent
16 agreed by the debtor.

17 (3) Except as otherwise provided in subsection (4) of this section, a secured party
18 having possession of collateral or control of collateral under KRS 355.7-106, 355.9-
19 104, 355.9-105, **Section 47 of this Act**, 355.9-106,~~or~~ 355.9-107, **or Section 48 of**
20 **this Act**:

21 (a) May hold as additional security any proceeds, except money or funds,
22 received from the collateral;

23 (b) Shall apply money or funds received from the collateral to reduce the secured
24 obligation, unless remitted to the debtor; and

25 (c) May create a security interest in the collateral.

26 (4) If the secured party is a buyer of accounts, chattel paper, payment intangibles, or
27 promissory notes or a consignor:

1 (a) Subsection (1) of this section does not apply unless the secured party is
2 entitled under an agreement:

- 3 1. To charge back uncollected collateral; or
4 2. Otherwise to full or limited recourse against the debtor or a secondary
5 obligor based on the nonpayment or other default of an account debtor
6 or other obligor on the collateral; and

7 (b) Subsections (2) and (3) of this section do not apply.

8 ➔Section 53. KRS 355.9-208 is amended to read as follows:

- 9 (1) This section applies to cases in which:
10 **(a)** There is no outstanding secured obligation; and
11 **(b)** The secured party is not committed to make advances, incur obligations, or
12 otherwise give value.
13 (2) Within ten (10) days after receiving **a signed**~~[an authenticated]~~ demand by the
14 debtor:
15 (a) A secured party having control of a deposit account under KRS 355.9-
16 104(1)(b) shall send to the bank with which the deposit account is maintained
17 **a signed record**~~[an authenticated statement]~~ that releases the bank from any
18 further obligation to comply with instructions originated by the secured party;
19 (b) A secured party having control of a deposit account under KRS 355.9-
20 104(1)(c) shall:
21 1. Pay the debtor the balance on deposit in the deposit account; or
22 2. Transfer the balance on deposit into a deposit account in the debtor's
23 name;
24 (c) A secured party, other than a buyer, having control~~[of electronic chattel~~
25 ~~paper]~~ under KRS 355.9-105 **of an authoritative electronic copy of a record**
26 **evidencing chattel paper** shall **transfer control of the electronic copy to the**
27 **debtor or a person designated by the debtor**:

- 1 1. ~~Communicate the authoritative copy of the electronic chattel paper to~~
2 ~~the debtor or its designated custodian;~~
- 3 2. ~~If the debtor designates a custodian that is the designated custodian with~~
4 ~~which the authoritative copy of the electronic chattel paper is maintained~~
5 ~~for the secured party, communicate to the custodian an authenticated~~
6 ~~record releasing the designated custodian from any further obligation to~~
7 ~~comply with instructions originated by the secured party and instructing~~
8 ~~the custodian to comply with instructions originated by the debtor; and~~
- 9 3. ~~Take appropriate action to enable the debtor or its designated custodian~~
10 ~~to make copies of or revisions to the authoritative copy which add or~~
11 ~~change an identified assignee of the authoritative copy without the~~
12 ~~consent of the secured party];~~
- 13 (d) A secured party having control of investment property under KRS 355.8-
14 106(4)(b) or 355.9-106(2) shall send to the securities intermediary or
15 commodity intermediary with which the security entitlement or commodity
16 contract is maintained a signed~~[an authenticated]~~ record that releases the
17 securities intermediary or commodity intermediary from any further
18 obligation to comply with entitlement orders or directions originated by the
19 secured party;
- 20 (e) A secured party having control of a letter-of-credit right under KRS 355.9-107
21 shall send to each person having an unfulfilled obligation to pay or deliver
22 proceeds of the letter of credit to the secured party a signed~~[an authenticated]~~
23 release from any further obligation to pay or deliver proceeds of the letter of
24 credit to the secured party;~~[and]~~
- 25 (f) A secured party having control under Section 38 of this Act of an
26 authoritative electronic copy of an electronic document shall transfer control
27 of the electronic copy to the debtor or a person designated by the debtor;~~[-~~

- 1 1. ~~Give control of the electronic document to the debtor or its designated~~
- 2 ~~eustodian;~~
- 3 2. ~~If the debtor designates a custodian that is the designated custodian with~~
- 4 ~~which the authoritative copy of the electronic document is maintained~~
- 5 ~~for the secured party, communicate to the custodian an authenticated~~
- 6 ~~record releasing the designated custodian from any further obligation to~~
- 7 ~~comply with instructions originated by the secured party and instructing~~
- 8 ~~the custodian to comply with instructions originated by the debtor; and~~
- 9 3. ~~Take appropriate action to enable the debtor or its designated custodian~~
- 10 ~~to make copies of or revisions to the authoritative copy which add or~~
- 11 ~~change an identified assignee of the authoritative copy without the~~
- 12 ~~consent of the secured party]~~

13 **(g) A secured party having control under Section 47 of this Act of electronic**
 14 **money shall transfer control of the electronic copy to the debtor or a person**
 15 **designated by the debtor; and**

16 **(h) A secured party having control under Section 98 of this Act of a**
 17 **controllable electronic record, other than a buyer of a controllable account**
 18 **or controllable payment intangible evidenced by the controllable electronic**
 19 **record, shall transfer control of the controllable electronic record to the**
 20 **debtor or a person designated by the debtor.**

21 ➔Section 54. KRS 355.9-209 is amended to read as follows:

- 22 (1) Except as otherwise provided in subsection (3) of this section, this section applies
- 23 if:
- 24 (a) There is no outstanding secured obligation; and
- 25 (b) The secured party is not committed to make advances, incur obligations, or
- 26 otherwise give value.
- 27 (2) Within ten (10) days after receiving **a signed**~~[an authenticated]~~ demand by the

1 debtor, a secured party shall send to an account debtor that has received notification
2 under subsection (1) of Section 77 of this Act or subsection (2) of Section 99 of
3 this Act of an assignment to the secured party as assignee a signed~~under KRS~~
4 ~~355.9-406(1) an authenticated~~ record that releases the account debtor from any
5 further obligation to the secured party.

6 (3) This section does not apply to an assignment constituting the sale of an account,
7 chattel paper, or payment intangible.

8 ➔Section 55. KRS 355.9-210 is amended to read as follows:

9 (1) In this section:

10 (a) "Request" means a record of a type described in paragraph (b), (c), or (d) of
11 this subsection.

12 (b) "Request for an accounting" means a record signed~~authenticated~~ by a debtor
13 requesting that the recipient provide an accounting of the unpaid obligations
14 secured by collateral and reasonably identifying the transaction or relationship
15 that is the subject of the request.

16 (c) "Request regarding a list of collateral" means a record signed~~authenticated~~
17 by a debtor requesting that the recipient approve or correct a list of what the
18 debtor believes to be the collateral securing an obligation and reasonably
19 identifying the transaction or relationship that is the subject of the request.

20 (d) "Request regarding a statement of account" means a record
21 signed~~authenticated~~ by a debtor requesting that the recipient approve or
22 correct a statement indicating what the debtor believes to be the aggregate
23 amount of unpaid obligations secured by collateral as of a specified date and
24 reasonably identifying the transaction or relationship that is the subject of the
25 request.

26 (2) Subject to subsections (3), (4), (5), and (6) of this section, a secured party, other
27 than a buyer of accounts, chattel paper, payment intangibles, or promissory notes or

- 1 a consignor, shall comply with a request within fourteen (14) days after receipt:
- 2 (a) In the case of a request for an accounting, by signing~~[authenticating]~~ and
3 sending to the debtor an accounting; and
- 4 (b) In the case of a request regarding a list of collateral or a request regarding a
5 statement of account, by signing~~[authenticating]~~ and sending to the debtor an
6 approval or correction.
- 7 (3) A secured party that claims a security interest in all of a particular type of collateral
8 owned by the debtor may comply with a request regarding a list of collateral by
9 sending to the debtor a signed~~[an authenticated]~~ record including a statement to that
10 effect within fourteen (14) days after receipt.
- 11 (4) A person that receives a request regarding a list of collateral, claims no interest in
12 the collateral when it receives the request, and claimed an interest in the collateral
13 at an earlier time shall comply with the request within fourteen (14) days after
14 receipt by sending to the debtor a signed~~[an authenticated]~~ record:
- 15 (a) Disclaiming any interest in the collateral; and
- 16 (b) If known to the recipient, providing the name and mailing address of any
17 assignee of or successor to the recipient's interest in the collateral.
- 18 (5) A person that receives a request for an accounting or a request regarding a
19 statement of account, claims no interest in the obligations when it receives the
20 request, and claimed an interest in the obligations at an earlier time shall comply
21 with the request within fourteen (14) days after receipt by sending to the debtor a
22 signed~~[an authenticated]~~ record:
- 23 (a) Disclaiming any interest in the obligations; and
- 24 (b) If known to the recipient, providing the name and mailing address of any
25 assignee of or successor to the recipient's interest in the obligations.
- 26 (6) (a) A debtor is entitled without charge to one (1) response to a request under this
27 section during any six (6) month period.

1 **(b)** The secured party may require payment of a charge not exceeding twenty-five
2 dollars (\$25) for each additional response.

3 ➔Section 56. KRS 355.9-301 is amended to read as follows:

4 Except as otherwise provided in KRS 355.9-303 to **Section 60 of this Act**~~[355.9-306]~~, the
5 following rules determine the law governing perfection, the effect of perfection or
6 nonperfection, and the priority of a security interest in collateral:

7 (1) Except as otherwise provided in this section, while a debtor is located in a
8 jurisdiction, the local law of that jurisdiction governs perfection, the effect of
9 perfection or nonperfection, and the priority of a security interest in collateral;~~[-]~~

10 (2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs
11 perfection, the effect of perfection or nonperfection, and the priority of a possessory
12 security interest in that collateral;~~[-]~~

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

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

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

19 (c) The effect of perfection or nonperfection and the priority of a nonpossessory
20 security interest in the collateral;**and**~~[-]~~

21 (4) The local law of the jurisdiction in which the wellhead or minehead is located
22 governs perfection, the effect of perfection or nonperfection, and the priority of a
23 security interest in as-extracted collateral.

24 ➔Section 57. KRS 355.9-304 is amended to read as follows:

25 (1) The local law of a bank's jurisdiction governs perfection, the effect of perfection or
26 nonperfection, and the priority of a security interest in a deposit account maintained
27 with that bank **even if the transaction does not bear any relation to the bank's**

1 *jurisdiction.*

- 2 (2) The following rules determine a bank's jurisdiction for purposes of this part of this
3 article:
- 4 (a) If an agreement between the bank and its customer governing the deposit
5 account expressly provides that a particular jurisdiction is the bank's
6 jurisdiction for purposes of this part of this article, this article, or this chapter,
7 that jurisdiction is the bank's jurisdiction;~~[-]~~
- 8 (b) If paragraph (a) of this subsection does not apply and an agreement between
9 the bank and its customer governing the deposit account expressly provides
10 that the agreement is governed by the law of a particular jurisdiction, that
11 jurisdiction is the bank's jurisdiction;~~[-]~~
- 12 (c) If neither paragraph (a) nor (b) of this subsection applies and an agreement
13 between the bank and its customer governing the deposit account expressly
14 provides that the deposit account is maintained at an office in a particular
15 jurisdiction, that jurisdiction is the bank's jurisdiction;~~[-]~~
- 16 (d) If none of the preceding paragraphs applies, the bank's jurisdiction is the
17 jurisdiction in which the office identified in an account statement as the office
18 serving the customer's account is located; and~~[-]~~
- 19 (e) If none of the preceding paragraphs applies, the bank's jurisdiction is the
20 jurisdiction in which the chief executive office of the bank is located.

21 ➔Section 58. KRS 355.9-305 is amended to read as follows:

- 22 (1) Except as otherwise provided in subsection (3) of this section, the following rules
23 apply:
- 24 (a) While a security certificate is located in a jurisdiction, the local law of that
25 jurisdiction governs perfection, the effect of perfection or nonperfection, and
26 the priority of a security interest in the certificated security represented
27 thereby;~~[-]~~

- 1 (b) The local law of the issuer's jurisdiction as specified in KRS 355.8-110(4)
2 governs perfection, the effect of perfection or nonperfection, and the priority
3 of a security interest in an uncertificated security;[~~]~~
- 4 (c) The local law of the securities intermediary's jurisdiction as specified in KRS
5 355.8-110(5) governs perfection, the effect of perfection or nonperfection, and
6 the priority of a security interest in a security entitlement or securities
7 account;[~~]~~
- 8 (d) The local law of the commodity intermediary's jurisdiction governs
9 perfection, the effect of perfection or nonperfection, and the priority of a
10 security interest in a commodity contract or commodity account; and
- 11 *(e) Paragraphs (b), (c), and (d) of this subsection apply even if the transaction*
12 *does not bear any relation to the jurisdiction.*
- 13 (2) The following rules determine a commodity intermediary's jurisdiction for purposes
14 of this part of this article:
- 15 (a) If an agreement between the commodity intermediary and commodity
16 customer governing the commodity account expressly provides that a
17 particular jurisdiction is the commodity intermediary's jurisdiction for
18 purposes of this part of this article, this article, or this chapter, that jurisdiction
19 is the commodity intermediary's jurisdiction;[~~]~~
- 20 (b) If paragraph (a) of this subsection does not apply and an agreement between
21 the commodity intermediary and commodity customer governing the
22 commodity account expressly provides that the agreement is governed by the
23 law of a particular jurisdiction, that jurisdiction is the commodity
24 intermediary's jurisdiction;[~~]~~
- 25 (c) If neither paragraph (a) nor paragraph (b) of this subsection applies and an
26 agreement between the commodity intermediary and commodity customer
27 governing the commodity account expressly provides that the commodity

1 account is maintained at an office in a particular jurisdiction, that jurisdiction
2 is the commodity intermediary's jurisdiction;[-]

3 (d) If none of the preceding paragraphs applies, the commodity intermediary's
4 jurisdiction is the jurisdiction in which the office identified in an account
5 statement as the office serving the commodity customer's account is located;
6 and[-]

7 (e) If none of the preceding paragraphs applies, the commodity intermediary's
8 jurisdiction is the jurisdiction in which the chief executive office of the
9 commodity intermediary is located.

10 (3) The local law of the jurisdiction in which the debtor is located governs:

11 (a) Perfection of a security interest in investment property by filing;

12 (b) Automatic perfection of a security interest in investment property created by a
13 broker or securities intermediary; and

14 (c) Automatic perfection of a security interest in a commodity contract or
15 commodity account created by a commodity intermediary.

16 ➔SECTION 59. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS
17 CREATED TO READ AS FOLLOWS:

18 **(1) Except as provided in subsection (4) of this section, if chattel paper is evidenced**
19 **only by an authoritative electronic copy of the chattel paper or is evidenced by an**
20 **authoritative electronic copy and an authoritative tangible copy, the local law of**
21 **the chattel paper's jurisdiction governs perfection, the effect of perfection or**
22 **nonperfection, and the priority of a security interest in the chattel paper, even if**
23 **the transaction does not bear any relation to the chattel paper's jurisdiction.**

24 **(2) The following rules determine the chattel paper's jurisdiction under this section:**

25 **(a) If the authoritative electronic copy of the record evidencing chattel paper, or**
26 **a record attached to or logically associated with the electronic copy and**
27 **readily available for review, expressly provides that a particular jurisdiction**

1 is the chattel paper's jurisdiction for purposes of this part, this article, or
2 this chapter, that jurisdiction is the chattel paper's jurisdiction;

3 (b) If paragraph (a) of this subsection does not apply and the rules of the
4 system in which the authoritative electronic copy is recorded are readily
5 available for review and expressly provide that a particular jurisdiction is
6 the chattel paper's jurisdiction for purposes of this part, this article, or this
7 chapter, that jurisdiction is the chattel paper's jurisdiction;

8 (c) If paragraphs (a) and (b) of this subsection do not apply and the
9 authoritative electronic copy, or a record attached to or logically associated
10 with the electronic copy and readily available for review, expressly provides
11 that the chattel paper is governed by the law of a particular jurisdiction, that
12 jurisdiction is the chattel paper's jurisdiction;

13 (d) If paragraphs (a), (b), and (c) of this subsection do not apply and the rules
14 of the system in which the authoritative electronic copy is recorded are
15 readily available for review and expressly provide that the chattel paper or
16 the system is governed by the law of a particular jurisdiction, that
17 jurisdiction is the chattel paper's jurisdiction; and

18 (e) If paragraphs (a) to (d) of this subsection do not apply, the chattel paper's
19 jurisdiction is the jurisdiction in which the debtor is located.

20 (3) If an authoritative tangible copy of a record evidences chattel paper and the
21 chattel paper is not evidenced by an authoritative electronic copy, while the
22 authoritative tangible copy of the record evidencing chattel paper is located in a
23 jurisdiction, the local law of that jurisdiction governs:

24 (a) Perfection of a security interest in the chattel paper by possession under
25 Section 65 of this Act; and

26 (b) The effect of perfection or nonperfection and the priority of a security
27 interest in the chattel paper.

1 **(4) The local law of the jurisdiction in which the debtor is located governs perfection**
 2 **of a security interest in chattel paper by filing.**

3 ➔SECTION 60. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS
 4 CREATED TO READ AS FOLLOWS:

5 **(1) Except as provided in subsection (2) of this section, the local law of the**
 6 **controllable electronic record's jurisdiction specified in subsections (3) and (4) of**
 7 **Section 100 of this Act governs perfection, the effect of perfection or**
 8 **nonperfection, and the priority of a security interest in a controllable electronic**
 9 **record and a security interest in a controllable account or controllable payment**
 10 **intangible evidenced by the controllable electronic record.**

11 **(2) The local law of the jurisdiction in which the debtor is located governs:**

12 **(a) Perfection of a security interest in a controllable account, controllable**
 13 **electronic record, or controllable payment intangible by filing; and**

14 **(b) Automatic perfection of a security interest in a controllable payment**
 15 **intangible created by a sale of the controllable payment intangible.**

16 ➔Section 61. KRS 355.9-310 is amended to read as follows:

17 (1) Except as otherwise provided in subsection (2) of this section and KRS 355.9-
 18 312(2), a financing statement must be filed to perfect all security interests and
 19 agricultural liens.

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

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

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

23 (c) In property subject to a statute, regulation, or treaty described in KRS 355.9-
 24 311(1);

25 (d) In goods in possession of a bailee which is perfected under KRS 355.9-
 26 312(4)(a) or (b);

27 (e) In certificated securities, documents, goods, or instruments which is perfected

- 1 without filing, control, or possession under KRS 355.9-312(5), (6), or (7);
- 2 (f) In collateral in the secured party's possession under KRS 355.9-313;
- 3 (g) In a certificated security which is perfected by delivery of the security
4 certificate to the secured party under KRS 355.9-313;
- 5 (h) In **controllable accounts, controllable electronic records, controllable**
6 **payment intangibles,** deposit accounts,~~[electronic chattel paper,]~~ electronic
7 documents, investment property, or letter-of-credit rights which is perfected
8 by control under KRS 355.9-314;
- 9 (i) In proceeds which is perfected under KRS 355.9-315;~~[or]~~
- 10 (j) That is perfected under KRS 355.9-316; **or**
- 11 **(k) In chattel paper which is perfected by possession and control under Section**
12 **65 of this Act.**
- 13 (3) If a secured party assigns a perfected security interest or agricultural lien, a filing
14 under this article is not required to continue the perfected status of the security
15 interest against creditors of and transferees from the original debtor.
- 16 ➔Section 62. KRS 355.9-312 is amended to read as follows:
- 17 (1) A security interest in chattel paper, **controllable accounts, controllable electronic**
18 **records, controllable payment intangibles**~~[negotiable documents,]~~ instruments,~~[or]~~
19 investment property, **or negotiable documents** may be perfected by filing.
- 20 (2) Except as otherwise provided in KRS 355.9-315(3) and (4) for proceeds:
- 21 (a) A security interest in a deposit account may be perfected only by control
22 under KRS 355.9-314;
- 23 (b) And except as otherwise provided in KRS 355.9-308(4), a security interest in
24 a letter-of-credit right may be perfected only by control under KRS 355.9-
25 314;~~[and]~~
- 26 (c) A security interest in **tangible** money may be perfected only by the secured
27 party's taking possession under KRS 355.9-313; **and**

1 *(d) A security interest in electronic money may be perfected only by control*
2 *under Section 64 of this Act.*

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

1 perfected for twenty (20) days without filing if the secured party delivers the
2 security certificate or instrument to the debtor for the purpose of:

- 3 (a) Ultimate sale or exchange; or
4 (b) Presentation, collection, enforcement, renewal, or registration of transfer.

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

7 ➔Section 63. KRS 355.9-313 is amended to read as follows:

8 (1) (a) Except as otherwise provided in subsection (2) of this section, a secured party
9 may perfect a security interest in ~~tangible negotiable documents,~~ goods,
10 instruments, **negotiable tangible documents, or tangible** money ~~, or tangible~~
11 ~~chattel paper~~ by taking possession of the collateral.

12 (b) A secured party may perfect a security interest in certificated securities by
13 taking delivery of the certificated securities under KRS 355.8-301.

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

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

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

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

27 (4) If perfection of a security interest depends upon possession of the collateral by a

1 secured party, perfection occurs ~~not~~ earlier than the time the secured party takes
2 possession and continues only while the secured party retains possession.

3 (5) A security interest in a certificated security in registered form is perfected by
4 delivery when delivery of the certificated security occurs under KRS 355.8-301 and
5 remains perfected by delivery until the debtor obtains possession of the security
6 certificate.

7 (6) A person in possession of collateral is not required to acknowledge that it holds
8 possession for a secured party's benefit.

9 (7) If a person acknowledges that it holds possession for the secured party's benefit:

10 (a) The acknowledgment is effective under subsection (3) of this section or KRS
11 355.8-301(1), even if the acknowledgment violates the rights of a debtor; and

12 (b) Unless the person otherwise agrees or law other than this article otherwise
13 provides, the person does not owe any duty to the secured party and is not
14 required to confirm the acknowledgment to another person.

15 (8) A secured party having possession of collateral does not relinquish possession by
16 delivering the collateral to a person other than the debtor or a lessee of the collateral
17 from the debtor in the ordinary course of the debtor's business if the person was
18 instructed before the delivery or is instructed contemporaneously with the delivery:

19 (a) To hold possession of the collateral for the secured party's benefit; or

20 (b) To redeliver the collateral to the secured party.

21 (9) (a) A secured party does not relinquish possession, even if a delivery under
22 subsection (8) of this section violates the rights of a debtor.

23 (b) A person to which collateral is delivered under subsection (8) of this section
24 does not owe any duty to the secured party and is not required to confirm the
25 delivery to another person unless the person otherwise agrees or law other
26 than this article otherwise provides.

27 ➔Section 64. KRS 355.9-314 is amended to read as follows:

- 1 (1) A security interest in controllable accounts, controllable electronic records,
 2 controllable payment intangibles, deposit accounts, electronic documents,
 3 electronic money, investment property, ~~deposit accounts,~~ or letter-of-credit
 4 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 47
 6 of this Act, 355.9-106, ~~or~~ 355.9-107, or Section 48 of this Act.
- 7 (2) A security interest in controllable accounts, controllable electronic records,
 8 controllable payment intangibles, deposit accounts, electronic documents,
 9 electronic money~~chattel paper,~~ or letter-of-credit rights~~, or electronic documents~~
 10 is perfected by control under KRS 355.7-106, 355.9-104, ~~355.9-105,~~ Section 47
 11 of this Act, ~~or~~ 355.9-107, or Section 48 of this Act not earlier than the time
 12 ~~when~~ the secured party obtains control and remains perfected by control only while
 13 the secured party retains control.
- 14 (3) A security interest in investment property is perfected by control under KRS 355.9-
 15 106 not earlier than~~from~~ the time the secured party obtains control and remains
 16 perfected by control until:
- 17 (a) The secured party does not have control; and
- 18 (b) One (1) of the following occurs:
- 19 1. If the collateral is a certificated security, the debtor has or acquires
 20 possession of the security certificate;
- 21 2. If the collateral is an uncertificated security, the issuer has registered or
 22 registers the debtor as the registered owner; or
- 23 3. If the collateral is a security entitlement, the debtor is or becomes the
 24 entitlement holder.

25 ➔SECTION 65. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS
 26 CREATED TO READ AS FOLLOWS:

27 (1) A secured party may perfect a security interest in chattel paper by taking

1 possession of each authoritative tangible copy of the record evidencing the chattel
 2 paper and obtaining control of each authoritative electronic copy of the electronic
 3 record evidencing the chattel paper.

4 (2) A security interest is perfected under subsection (1) of this section not earlier
 5 than the time the secured party takes possession and obtains control and remains
 6 perfected under subsection (1) of this section only while the secured party retains
 7 possession and control.

8 (3) Subsections (3) and (6) to (9) of Section 63 of this Act apply to perfection by
 9 possession of an authoritative tangible copy of a record evidencing chattel paper.

10 ➔Section 66. KRS 355.9-316 is amended to read as follows:

11 (1) A security interest perfected pursuant to the law of the jurisdiction designated in
 12 KRS 355.9-301(1), ~~or~~ 355.9-305(3), subsection (4) of Section 59 of this Act, or
 13 subsection (2) of Section 60 of this Act remains perfected until the earliest of:

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

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

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

- 1 (a) The collateral is located in one jurisdiction and subject to a security interest
2 perfected under the law of that jurisdiction;
- 3 (b) Thereafter the collateral is brought into another jurisdiction; and
- 4 (c) Upon entry into the other jurisdiction, the security interest is perfected under
5 the law of the other jurisdiction.
- 6 (4) Except as otherwise provided in subsection (5) of this section, a security interest in
7 goods covered by a certificate of title which is perfected by any method under the
8 law of another jurisdiction when the goods become covered by a certificate of title
9 from this Commonwealth remains perfected until the security interest would have
10 become unperfected under the law of the other jurisdiction had the goods not
11 become so covered.
- 12 (5) A security interest described in subsection (4) of this section becomes unperfected
13 as against a purchaser of the goods for value and is deemed never to have been
14 perfected as against a purchaser of the goods for value if the applicable
15 requirements for perfection under KRS 355.9-311(2) or 355.9-313 are not satisfied
16 before the earlier of:
- 17 (a) The time the security interest would have become unperfected under the law
18 of the other jurisdiction had the goods not become covered by a certificate of
19 title from this Commonwealth; or
- 20 (b) The expiration of four (4) months after the goods had become so covered.
- 21 (6) A security interest in *chattel paper, controllable accounts, controllable electronic*
22 *records, controllable payment intangibles,* deposit accounts, letter-of-credit rights,
23 or investment property which is perfected under the law of the *chattel paper's*
24 *jurisdiction, the controllable electronic record's jurisdiction, the* bank's
25 jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities
26 intermediary's jurisdiction, or the commodity intermediary's jurisdiction, as
27 applicable, remains perfected until the earlier of:

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

1 jurisdiction designated in KRS 355.9-301(1) or 355.9-305(3) and the new debtor is
2 located in another jurisdiction, the following rules apply:

- 3 (a) The financing statement is effective to perfect a security interest in collateral
4 in which the new debtor has or acquires rights before or within four (4)
5 months after the new debtor becomes bound under KRS 355.9-203(4), if the
6 financing statement would have been effective to perfect a security interest in
7 the collateral if the collateral had been acquired by the original debtor; and
- 8 (b) A security interest that is perfected by the financing statement and which
9 becomes perfected under the law of the other jurisdiction before the earlier of
10 the expiration of the four (4) month period or the time the financing statement
11 would have become ineffective under the law of the jurisdiction designated in
12 KRS 355.9-301(1) or 355.9-305(3) remains perfected thereafter. A security
13 interest that is perfected by the financing statement but which does not
14 become perfected under the law of the other jurisdiction before the earlier
15 time or event becomes unperfected and is deemed never to have been
16 perfected as against a purchaser of the collateral for value.

17 ➔Section 67. KRS 355.9-317 is amended to read as follows:

- 18 (1) A security interest or agricultural lien is subordinate to the rights of:
- 19 (a) A person entitled to priority under KRS 355.9-322; and
- 20 (b) Except as otherwise provided in subsection (5) of this section, a person that
21 becomes a lien creditor before the earlier of the time:
- 22 1. The security interest or agricultural lien is perfected; or
- 23 2. One (1) of the conditions specified in KRS 355.9-203(2)(c) is met and a
24 financing statement covering the collateral is filed.
- 25 (2) Except as otherwise provided in subsection (5) of this section, a buyer, other than a
26 secured party, of ~~of tangible chattel paper, documents,~~ goods, instruments, **tangible**
27 **documents**, or a certificated security takes free of a security interest or agricultural

1 lien if the buyer gives value and receives delivery of the collateral without
2 knowledge of the security interest or agricultural lien and before it is perfected.

3 (3) Except as otherwise provided in subsection (5) of this section, a lessee of goods
4 takes free of a security interest or agricultural lien if the lessee gives value and
5 receives delivery of the collateral without knowledge of the security interest or
6 agricultural lien and before it is perfected.

7 (4) **Subject to subsections (6) to (9) of this section,** a licensee of a general intangible or
8 a buyer, other than a secured party, of collateral other than **electronic**
9 **money,** ~~intangible chattel paper, tangible documents,~~ goods, instruments, **tangible**
10 **documents,** or a certificated security takes free of a security interest if the licensee
11 or buyer gives value without knowledge of the security interest and before it is
12 perfected.

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

18 **(6) A buyer, other than a secured party, of chattel paper takes free of a security**
19 **interest if, without knowledge of the security interest and before it is perfected,**
20 **the buyer gives value and:**

21 **(a) Receives delivery of each authoritative tangible copy of the record**
22 **evidencing the chattel paper; and**

23 **(b) If each authoritative electronic copy of the record evidencing chattel paper**
24 **can be subjected to control under Section 46 of this Act, obtains control of**
25 **each authoritative electronic copy.**

26 **(7) A buyer of an electronic document takes free of a security interest if, without**
27 **knowledge of the security interest and before it is perfected, the buyer gives value**

1 and, if each authoritative electronic copy of the document can be subjected to
 2 control under Section 38 of this Act, obtains control of each authoritative
 3 electronic copy.

4 (8) A buyer of a controllable electronic record takes free of a security interest if,
 5 without knowledge of the security interest and before it is perfected, the buyer
 6 gives value and obtains control of the controllable electronic record.

7 (9) A buyer, other than a secured party, of a controllable account or a controllable
 8 payment intangible takes free of a security interest if, without knowledge of the
 9 security interest and before it is perfected, the buyer gives value and obtains
 10 control of the controllable account or controllable payment intangible.

11 ➔Section 68. KRS 355.9-323 is amended to read as follows:

12 (1) Except as otherwise provided in subsection (3) of this section, for purposes of
 13 determining the priority of a perfected security interest under KRS 355.9-322(1)(a),
 14 perfection of the security interest dates from the time an advance is made to the
 15 extent that the security interest secures an advance that:

16 (a) Is made while the security interest is perfected only:

- 17 1. Under KRS 355.9-309 when it attaches; or
- 18 2. Temporarily under KRS 355.9-312(5), (6), or (7); and

19 (b) Is not made pursuant to a commitment entered into before or while the
 20 security interest is perfected by a method other than under KRS 355.9-309 or
 21 355.9-312(5), (6), or (7).

22 (2) Except as otherwise provided in subsection (3) of this section, a security interest is
 23 subordinate to the rights of a person that becomes a lien creditor to the extent that
 24 the security interest secures an advance made more than forty-five (45) days after
 25 the person becomes a lien creditor unless the advance is made:

26 (a) Without knowledge of the lien; or

27 (b) Pursuant to a commitment entered into without knowledge of the lien.

1 (3) Subsections (1) and (2) of this section do not apply to a security interest held by a
2 secured party that is a buyer of accounts, chattel paper, payment intangibles, or
3 promissory notes or a consignor.

4 (4) Except as otherwise provided in subsection (5) of this section, a buyer of goods~~[~~
5 ~~other than a buyer in ordinary course of business]~~ takes free of a security interest to
6 the extent that it secures advances made after the earlier of:

7 (a) The time the secured party acquires knowledge of the buyer's purchase; or

8 (b) Forty-five (45) days after the purchase.

9 (5) Subsection (4) of this section does not apply if the advance is made pursuant to a
10 commitment entered into without knowledge of the buyer's purchase and before the
11 expiration of the forty-five (45) day period.

12 (6) Except as otherwise provided in subsection (7) of this section, a lessee of goods~~[~~
13 ~~other than a lessee in ordinary course of business]~~ takes the leasehold interest free
14 of a security interest to the extent that it secures advances made after the earlier of:

15 (a) The time the secured party acquires knowledge of the lease; or

16 (b) Forty-five (45) days after the lease contract becomes enforceable.

17 (7) Subsection (6) of this section does not apply if the advance is made pursuant to a
18 commitment entered into without knowledge of the lease and before the expiration
19 of the forty-five (45) day period.

20 ➔Section 69. KRS 355.9-324 is amended to read as follows:

21 (1) Except as otherwise provided in subsection (7) of this section, a perfected purchase-
22 money security interest in goods other than inventory or livestock has priority over
23 a conflicting security interest in the same goods, and, except as otherwise provided
24 in KRS 355.9-327, a perfected security interest in its identifiable proceeds also has
25 priority, if the purchase-money security interest is perfected when the debtor
26 receives possession of the collateral or within twenty (20) days thereafter.

27 (2) Subject to subsection (3) of this section and except as otherwise provided in

1 subsection (7) of this section, a perfected purchase-money security interest in
2 inventory has priority over a conflicting security interest in the same inventory, has
3 priority over a conflicting security interest in chattel paper or an instrument
4 constituting proceeds of the inventory and in proceeds of the chattel paper, if so
5 provided in KRS 355.9-330, and, except as otherwise provided in KRS 355.9-327,
6 also has priority in identifiable cash proceeds of the inventory to the extent the
7 identifiable cash proceeds are received on or before the delivery of the inventory to
8 a buyer, if:

- 9 (a) The purchase-money security interest is perfected when the debtor receives
10 possession of the inventory;
- 11 (b) The purchase-money secured party sends a signed~~[an authenticated]~~
12 notification to the holder of the conflicting security interest;
- 13 (c) The holder of the conflicting security interest receives the notification within
14 five (5) years before the debtor receives possession of the inventory; and
- 15 (d) The notification states that the person sending the notification has or expects
16 to acquire a purchase-money security interest in inventory of the debtor and
17 describes the inventory.

18 (3) Subsection (2)(b) to (d) of this section apply only if the holder of the conflicting
19 security interest had filed a financing statement covering the same types of
20 inventory:

- 21 (a) If the purchase-money security interest is perfected by filing, before the date
22 of the filing; or
- 23 (b) If the purchase-money security interest is temporarily perfected without filing
24 or possession under KRS 355.9-312(6), before the beginning of the twenty
25 (20) day period thereunder.

26 (4) Subject to subsection (5) of this section and except as otherwise provided in
27 subsection (7) of this section, a perfected purchase-money security interest in

1 livestock that are farm products has priority over a conflicting security interest in
2 the same livestock, and, except as otherwise provided in KRS 355.9-327, a
3 perfected security interest in their identifiable proceeds and identifiable products in
4 their unmanufactured states also has priority, if:

- 5 (a) The purchase-money security interest is perfected when the debtor receives
6 possession of the livestock;
- 7 (b) The purchase-money secured party sends a signed~~[an authenticated]~~
8 notification to the holder of the conflicting security interest;
- 9 (c) The holder of the conflicting security interest receives the notification within
10 six (6) months before the debtor receives possession of the livestock; and
- 11 (d) The notification states that the person sending the notification has or expects
12 to acquire a purchase-money security interest in livestock of the debtor and
13 describes the livestock.

14 (5) Subsection (4)(b) to (d) of this section apply only if the holder of the conflicting
15 security interest had filed a financing statement covering the same types of
16 livestock:

- 17 (a) If the purchase-money security interest is perfected by filing, before the date
18 of the filing; or
- 19 (b) If the purchase-money security interest is temporarily perfected without filing
20 or possession under KRS 355.9-312(6), before the beginning of the twenty
21 (20) day period thereunder.

22 (6) Except as otherwise provided in subsection (7) of this section, a perfected purchase-
23 money security interest in software has priority over a conflicting security interest
24 in the same collateral, and, except as otherwise provided in KRS 355.9-327, a
25 perfected security interest in its identifiable proceeds also has priority, to the extent
26 that the purchase-money security interest in the goods in which the software was
27 acquired for use has priority in the goods and proceeds of the goods under this

1 section.

2 (7) If more than one **(1)** security interest qualifies for priority in the same collateral
3 under subsection (1), (2), (4), or (6) of this section:

4 (a) A security interest securing an obligation incurred as all or part of the price of
5 the collateral has priority over a security interest securing an obligation
6 incurred for value given to enable the debtor to acquire rights in or the use of
7 collateral; and

8 (b) In all other cases, KRS 355.9-322(1) applies to the qualifying security
9 interests.

10 ➔SECTION 70. A NEW SECTION OF ARTICLE 9 OF KRS CHAPTER 355 IS
11 CREATED TO READ AS FOLLOWS:

12 **A security interest in a controllable account, controllable electronic record, or**
13 **controllable payment intangible held by a secured party having control of the account,**
14 **electronic record, or payment intangible has priority over a conflicting security interest**
15 **held by a secured party that does not have control.**

16 ➔Section 71. KRS 355.9-330 is amended to read as follows:

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

19 (a) In good faith and in the ordinary course of the purchaser's business, the
20 purchaser gives new value, ~~and~~ takes possession of **each authoritative**
21 **tangible copy of the record evidencing** the chattel paper, ~~and~~ ~~or~~ obtains
22 control **under Section 46 of this Act of each authoritative electronic copy of**
23 **the record evidencing** ~~of~~ the chattel paper ~~under KRS 355.9-105~~; and

24 (b) The **authoritative copies of the record evidencing the** chattel paper ~~do~~ ~~does~~
25 not indicate that **the chattel paper** ~~it~~ has been assigned to an identified
26 assignee other than the purchaser.

27 (2) A purchaser of chattel paper has priority over a security interest in the chattel paper

1 which is claimed other than merely as proceeds of inventory subject to a security
2 interest if the purchaser gives new value, ~~and~~ takes possession of **each**
3 **authoritative tangible copy of the record evidencing** the chattel paper, ~~and~~ ~~of~~
4 obtains control **under Section 46 of this Act of each authoritative electronic copy**
5 **of the record evidencing** ~~of~~ the chattel paper ~~under KRS 355.9-105~~ in good faith,
6 in the ordinary course of the purchaser's business, and without knowledge that the
7 purchase violates the rights of the secured party.

8 (3) Except as otherwise provided in KRS 355.9-327, a purchaser having priority in
9 chattel paper under subsection (1) or (2) of this section also has priority in proceeds
10 of the chattel paper to the extent that:

11 (a) KRS 355.9-322 provides for priority in the proceeds; or

12 (b) The proceeds consist of the specific goods covered by the chattel paper or
13 cash proceeds of the specific goods, even if the purchaser's security interest in
14 the proceeds is unperfected.

15 (4) Except as otherwise provided in KRS 355.9-331(1), a purchaser of an instrument
16 has priority over a security interest in the instrument perfected by a method other
17 than possession if the purchaser gives value and takes possession of the instrument
18 in good faith and without knowledge that the purchase violates the rights of the
19 secured party.

20 (5) For purposes of subsections (1) and (2) of this section, the holder of a purchase-
21 money security interest in inventory gives new value for chattel paper constituting
22 proceeds of the inventory.

23 (6) For purposes of subsections (2) and (4) of this section, if **the authoritative copies of**
24 **the record evidencing** chattel paper or an instrument **indicate** ~~indicates~~ that **the**
25 **chattel paper or instrument** ~~it~~ has been assigned to an identified secured party
26 other than the purchaser, a purchaser of the chattel paper or instrument has
27 knowledge that the purchase violates the rights of the secured party.

1 ➔Section 72. KRS 355.9-331 is amended to read as follows:

- 2 (1) This article does not limit the rights of a holder in due course of a negotiable
3 instrument, a holder to which a negotiable document of title has been duly
4 negotiated,~~[or]~~ a protected purchaser of a security, **or a qualifying purchaser of a**
5 **controllable account, controllable electronic record, or controllable payment**
6 **intangible**. These holders or purchasers take priority over an earlier security
7 interest, even if perfected, to the extent provided in Articles 3, 7, **8**, and **12**~~[8]~~ of
8 this chapter.
- 9 (2) This article does not limit the rights of or impose liability on a person to the extent
10 that the person is protected against the assertion of a claim under Article 8 **or 12** of
11 this chapter.
- 12 (3) Filing under this article does not constitute notice of a claim or defense to the
13 holders, or purchasers, or persons described in subsections (1) and (2) of this
14 section.

15 ➔Section 73. KRS 355.9-332 is amended to read as follows:

- 16 (1) A transferee of **tangible** money takes the money free of a security interest **if the**
17 **transferee receives possession of the money without acting**~~[unless the transferee~~
18 ~~acts]~~ in collusion with the debtor in violating the rights of the secured party.
- 19 (2) A transferee of funds from a deposit account takes the funds free of a security
20 interest in the deposit account **if the transferee receives the funds without**
21 **acting**~~[unless the transferee acts]~~ in collusion with the debtor in violating the rights
22 of the secured party.
- 23 **(3) A transferee of electronic money takes the money free of a security interest if the**
24 **transferee obtains control of the money without acting in collusion with the**
25 **debtor in violating the rights of the secured party.**

26 ➔Section 74. KRS 355.9-334 is amended to read as follows:

- 27 (1) **(a)** A security interest under this article may be created in goods that are fixtures

1 or may continue in goods that become fixtures.

2 **(b)** A security interest does not exist under this article in ordinary building
3 materials incorporated into an improvement on land.

4 (2) This article does not prevent creation of an encumbrance upon fixtures under real
5 property law.

6 (3) In cases not governed by subsections (4) to (8) of this section, a security interest in
7 fixtures is subordinate to a conflicting interest of an encumbrancer or owner of the
8 related real property other than the debtor.

9 (4) Except as otherwise provided in subsection (8) of this section, a perfected security
10 interest in fixtures has priority over a conflicting interest of an encumbrancer or
11 owner of the real property if the debtor has an interest of record in or is in
12 possession of the real property and:

13 (a) The security interest is a purchase-money security interest;

14 (b) The interest of the encumbrancer or owner arises before the goods become
15 fixtures; and

16 (c) The security interest is perfected by a fixture filing before the goods become
17 fixtures or within twenty (20) days thereafter.

18 (5) A perfected security interest in fixtures has priority over a conflicting interest of an
19 encumbrancer or owner of the real property if:

20 (a) The debtor has an interest of record in the real property or is in possession of
21 the real property and the security interest:

22 1. Is perfected by a fixture filing before the interest of the encumbrancer or
23 owner is of record; and

24 2. Has priority over any conflicting interest of a predecessor in title of the
25 encumbrancer or owner;

26 (b) Before the goods become fixtures, the security interest is perfected by any
27 method permitted by this article and the fixtures are readily removable:

- 1 1. Factory or office machines;
- 2 2. Equipment that is not primarily used or leased for use in the operation of
- 3 the real property; or
- 4 3. Replacements of domestic appliances that are consumer goods;
- 5 (c) The conflicting interest is a lien on the real property obtained by legal or
- 6 equitable proceedings after the security interest was perfected by any method
- 7 permitted by this article; or
- 8 (d) The security interest is:
- 9 1. Created in a manufactured home in a manufactured-home transaction;
- 10 and
- 11 2. Perfected pursuant to a statute described in KRS 355.9-311(1)(b).
- 12 (6) A security interest in fixtures, whether or not perfected, has priority over a
- 13 conflicting interest of an encumbrancer or owner of the real property if:
- 14 (a) The encumbrancer or owner has, in a signed~~[an authenticated]~~ record,
- 15 consented to the security interest or disclaimed an interest in the goods as
- 16 fixtures; or
- 17 (b) The debtor has a right to remove the goods as against the encumbrancer or
- 18 owner.
- 19 (7) The priority of the security interest under subsection (6)(b) of this section continues
- 20 for a reasonable time if the debtor's right to remove the goods as against the
- 21 encumbrancer or owner terminates.
- 22 (8) (a) A mortgage is a construction mortgage to the extent that it secures an
- 23 obligation incurred for the construction of an improvement on land, including
- 24 the acquisition cost of the land, if a recorded record of the mortgage so
- 25 indicates.
- 26 (b) Except as otherwise provided in subsections (5) and (6) of this section, a
- 27 security interest in fixtures is subordinate to a construction mortgage if a

1 record of the mortgage is recorded before the goods become fixtures and the
2 goods become fixtures before the completion of the construction. A mortgage
3 has this priority to the same extent as a construction mortgage to the extent
4 that it is given to refinance a construction mortgage.

5 (9) A perfected security interest in crops growing on real property has priority over a
6 conflicting interest of an encumbrancer or owner of the real property if the debtor
7 has an interest of record in or is in possession of the real property.

8 ➔Section 75. KRS 355.9-341 is amended to read as follows:

9 Except as otherwise provided in KRS 355.9-340(3), and unless the bank otherwise agrees
10 in a signed~~[an authenticated]~~ record, a bank's rights and duties with respect to a deposit
11 account maintained with the bank are not terminated, suspended, or modified by:

- 12 (1) The creation, attachment, or perfection of a security interest in the deposit account;
- 13 (2) The bank's knowledge of the security interest; or
- 14 (3) The bank's receipt of instructions from the secured party.

15 ➔Section 76. KRS 355.9-404 is amended to read as follows:

16 (1) Unless an account debtor has made an enforceable agreement not to assert defenses
17 or claims, and subject to subsections (2) to (5) of this section, the rights of an
18 assignee are subject to:

- 19 (a) All terms of the agreement between the account debtor and assignor and any
20 defense or claim in recoupment arising from the transaction that gave rise to
21 the contract; and
- 22 (b) Any other defense or claim of the account debtor against the assignor which
23 accrues before the account debtor receives a notification of the assignment
24 signed~~[authenticated]~~ by the assignor or the assignee.

25 (2) Subject to subsection (3) of this section and except as otherwise provided in
26 subsection (4) of this section, the claim of an account debtor against an assignor
27 may be asserted against an assignee under subsection (1) of this section only to

1 reduce the amount the account debtor owes.

2 (3) This section is subject to law other than this article which establishes a different
3 rule for an account debtor who is an individual and who incurred the obligation
4 primarily for personal, family, or household purposes.

5 (4) In a consumer transaction, if a record evidences the account debtor's obligation, law
6 other than this article requires that the record include a statement to the effect that
7 the account debtor's recovery against an assignee with respect to claims and
8 defenses against the assignor may not exceed amounts paid by the account debtor
9 under the record, and the record does not include such a statement, the extent to
10 which a claim of an account debtor against the assignor may be asserted against an
11 assignee is determined as if the record included such a statement.

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

13 ➔Section 77. KRS 355.9-406 is amended to read as follows:

14 (1) Subject to subsections (2) to (9) and (12) of this section, an account debtor on an
15 account, chattel paper, or a payment intangible may discharge its obligation by
16 paying the assignor until, but not after, the account debtor receives a notification,
17 signed~~authenticated~~ by the assignor or the assignee, that the amount due or to
18 become due has been assigned and that payment is to be made to the assignee. After
19 receipt of the notification, the account debtor may discharge its obligation by
20 paying the assignee and may not discharge the obligation by paying the assignor.

21 (2) Subject to subsections~~subsection~~ (8) and (12) of this section, notification is
22 ineffective under subsection (1) of this section:

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

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

27 (c) At the option of an account debtor, if the notification notifies the account

1 debtor to make less than the full amount of any installment or other periodic
2 payment to the assignee, even if:

- 3 1. Only a portion of the account, chattel paper, or payment intangible has
4 been assigned to that assignee;
- 5 2. A portion has been assigned to another assignee; or
- 6 3. The account debtor knows that the assignment to that assignee is
7 limited.

8 (3) Subject to ~~subsections~~ subsections (8) and (12) of this section, if requested by the
9 account debtor, an assignee shall seasonably furnish reasonable proof that the
10 assignment has been made. Unless the assignee complies, the account debtor may
11 discharge its obligation by paying the assignor, even if the account debtor has
12 received a notification under subsection (1) of this section.

13 (4) (a) In this subsection, "promissory note" includes a negotiable instrument that
14 evidences chattel paper.

15 (b) Except as otherwise provided in subsection (5) and (11) of this section and
16 KRS 355.2A-303 and 355.9-407, and subject to subsection (8) of this section,
17 a term in an agreement between an account debtor and an assignor or in a
18 promissory note is ineffective to the extent that it:

19 ~~1.(a)~~ Prohibits, restricts, or requires the consent of the account debtor or
20 person obligated on the promissory note to the assignment or transfer of,
21 or the creation, attachment, perfection, or enforcement of a security
22 interest in, the account, chattel paper, payment intangible, or promissory
23 note; or

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

1 paper, payment intangible, or promissory note.

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

5 (6) Except as otherwise provided in subsection (11) of this section and KRS 355.2A-
6 303 and 355.9-407 and subject to subsections (8) and (9) of this section, a rule of
7 law, statute, or regulation that prohibits, restricts, or requires the consent of a
8 government, governmental body or official, or account debtor to the assignment or
9 transfer of, or creation of a security interest in, an account or chattel paper is
10 ineffective to the extent that the rule of law, statute, or regulation:

11 (a) Prohibits, restricts, or requires the consent of the government, governmental
12 body or official, or account debtor to the assignment or transfer of, or the
13 creation, attachment, perfection, or enforcement of a security interest in the
14 account or chattel paper; or

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

19 (7) Subject to ~~subsections~~ subsection (8) and (12) of this section, an account debtor
20 may not waive or vary its option under subsection (2)(c) of this section.

21 (8) This section is subject to law other than this article which establishes a different
22 rule for an account debtor who is an individual and who incurred the obligation
23 primarily for personal, family, or household purposes.

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

25 (10) Reserved.

26 (11) Subsections (4) and (6) of this section do not apply to a security interest in an
27 ownership interest in a general partnership, limited partnership, or limited

1 liability company.

2 (12) Subsections (1) to (3) and (7) of this section do not apply to a controllable
3 account or controllable payment intangible.

4 ➔Section 78. KRS 355.9-408 is amended to read as follows:

5 (1) Except as otherwise provided in subsections~~[subsection]~~ (2) and (6) of this section,
6 a term in a promissory note or in an agreement between an account debtor and a
7 debtor which relates to a health-care-insurance receivable or a general intangible,
8 including a contract, permit, license, or franchise, and which term prohibits,
9 restricts, or requires the consent of the person obligated on the promissory note or
10 the account debtor to, the assignment or transfer of, or creation, attachment, or
11 perfection of a security interest in, the promissory note, health-care-insurance
12 receivable, or general intangible, is ineffective to the extent that the term:

13 (a) Would impair the creation, attachment, or perfection of a security interest; or

14 (b) Provides that the assignment or transfer or the creation, attachment, or
15 perfection of the security interest may give rise to a default, breach, right of
16 recoupment, claim, defense, termination, right of termination, or remedy
17 under the promissory note, health-care-insurance receivable, or general
18 intangible.

19 (2) Subsection (1) of this section applies to a security interest in a payment intangible
20 or promissory note only if the security interest arises out of a sale of the payment
21 intangible or promissory note, other than a sale pursuant to a disposition under KRS
22 355.9-610 or an acceptance of collateral under KRS 355.9-620.

23 (3) (a) Except as otherwise provided in paragraph (b) of this subsection and
24 subsection (6) of this section, a rule of law, statute, or regulation that
25 prohibits, restricts, or requires the consent of a government, governmental
26 body or official, person obligated on a promissory note, or account debtor to
27 the assignment or transfer of, or creation of a security interest in, a promissory

1 note, health-care-insurance receivable, or general intangible, including a
2 contract, permit, license, or franchise between an account debtor and a debtor,
3 is ineffective to the extent that the rule of law, statute, or regulation:

4 ~~1.(a)~~ Would impair the creation, attachment, or perfection of a security
5 interest; or

6 ~~2.(b)~~ Provides that the assignment or transfer or the creation,
7 attachment, or perfection of the security interest may give rise to a
8 default, breach, right of recoupment, claim, defense, termination, right
9 of termination, or remedy under the promissory note, health-care-
10 insurance receivable, or general intangible.

11 **(b) Paragraph (a) of this subsection does not apply to the following statutes,**
12 **including administrative regulations promulgated under the authority of**
13 **those statutes: KRS 304.2-260, KRS 304.24-420, Subtitle 33 of KRS Chapter**
14 **304, and Subtitle 37 of KRS Chapter 304.**

15 (4) To the extent that a term in a promissory note or in an agreement between an
16 account debtor and a debtor which relates to a health-care-insurance receivable or
17 general intangible or a rule of law, statute, or regulation described in subsection (3)
18 of this section would be effective under law other than this article but is ineffective
19 under subsection (1) or (3) of this section, the creation, attachment, or perfection of
20 a security interest in the promissory note, health-care-insurance receivable, or
21 general intangible:

22 (a) Is not enforceable against the person obligated on the promissory note or the
23 account debtor;

24 (b) Does not impose a duty or obligation on the person obligated on the
25 promissory note or the account debtor;

26 (c) Does not require the person obligated on the promissory note or the account
27 debtor to recognize the security interest, pay or render performance to the

- 1 secured party, or accept payment or performance from the secured party;
- 2 (d) Does not entitle the secured party to use or assign the debtor's rights under the
- 3 promissory note, health-care-insurance receivable, or general intangible,
- 4 including any related information or materials furnished to the debtor in the
- 5 transaction giving rise to the promissory note, health-care-insurance
- 6 receivable, or general intangible;
- 7 (e) Does not entitle the secured party to use, assign, possess, or have access to
- 8 any trade secrets or confidential information of the person obligated on the
- 9 promissory note or the account debtor; and
- 10 (f) Does not entitle the secured party to enforce the security interest in the
- 11 promissory note, health-care-insurance receivable, or general intangible.
- 12 (5) This section prevails over any inconsistent provisions of the following statutes and
- 13 any administrative regulations based on those statutes: KRS 56.230~~(3)~~~~(2)~~,
- 14 138.320~~(5)~~~~(3)~~, 138.665~~(5)~~~~(4)~~, 138.720(5), 139.250, 154A.400(3), 190.047(1),
- 15 190.070(2)(c), 217B.535(2),~~228.070(2)~~, 230.300(11), 234.330~~(6)~~~~(10)~~,
- 16 243.630(2), 260.815, 286.4-460(2), 292.320~~(3)~~~~(2)~~(b), 286.8-036(3), 304.3-
- 17 410(2)(f), 304.3-520(5), 333.080, 350.135(1), 365.430~~(1)~~~~(27)~~, and 286.9-
- 18 070~~(6)~~~~(2)~~.
- 19 (6) **This section does not apply to a security interest in an ownership interest in a**
- 20 **general partnership, limited partnership, or limited liability company**~~[Subsection~~
- 21 ~~(3) of this section does not apply to the following statutes and to administrative~~
- 22 ~~regulations promulgated under the authority of those statutes: KRS 304.2-260, KRS~~
- 23 ~~304.24-420, Subtitle 33 of KRS Chapter 304, and Subtitle 37 of KRS Chapter 304].~~
- 24 **(7) In this section, "promissory note" includes a negotiable instrument that**
- 25 **evidences chattel paper.**
- 26 ➔Section 79. KRS 355.9-509 is amended to read as follows:
- 27 (1) A person may file an initial financing statement, amendment that adds collateral

1 covered by a financing statement, or amendment that adds a debtor to a financing
2 statement only if:

3 (a) The debtor authorizes the filing in a signed~~[an authenticated]~~ record or
4 pursuant to subsection ~~[(1) or]~~(2) or (3) of this section; or

5 (b) The person holds an agricultural lien that has become effective at the time of
6 filing and the financing statement covers only collateral in which the person
7 holds an agricultural lien.

8 (2) By signing~~[authenticating]~~ or becoming bound as debtor by a security agreement, a
9 debtor or new debtor authorizes the filing of an initial financing statement, and an
10 amendment, covering:

11 (a) The collateral described in the security agreement; and

12 (b) Property that becomes collateral under KRS 355.9-315(1)(b), whether or not
13 the security agreement expressly covers proceeds.

14 (3) By acquiring collateral in which a security interest or agricultural lien continues
15 under KRS 355.9-315(1)(a), a debtor authorizes the filing of an initial financing
16 statement, and an amendment, covering the collateral and property that becomes
17 collateral under KRS 355.9-315(1)(b).

18 (4) A person may file an amendment other than an amendment that adds collateral
19 covered by a financing statement or an amendment that adds a debtor to a financing
20 statement only if:

21 (a) The secured party of record authorizes the filing; or

22 (b) The amendment is a termination statement for a financing statement as to
23 which the secured party of record has failed to file or send a termination
24 statement as required by KRS 355.9-513(1) or (3), the debtor authorizes the
25 filing, and the termination statement indicates that the debtor authorized it to
26 be filed.

27 (5) If there is more than one (1) secured party of record for a financing statement, each

1 secured party of record may authorize the filing of an amendment under subsection
2 (4) of this section.

3 ➔Section 80. KRS 355.9-513 is amended to read as follows:

4 (1) A secured party shall cause the secured party of record for a financing statement to
5 file a termination statement for the financing statement if the financing statement
6 covers consumer goods and:

7 (a) There is no obligation secured by the collateral covered by the financing
8 statement and no commitment to make an advance, incur an obligation, or
9 otherwise give value; or

10 (b) The debtor did not authorize the filing of the initial financing statement.

11 (2) To comply with subsection (1) of this section, a secured party shall cause the
12 secured party of record to file the termination statement:

13 (a) Within one (1) month after there is no obligation secured by the collateral
14 covered by the financing statement and no commitment to make an advance,
15 incur an obligation, or otherwise give value; or

16 (b) If earlier, within twenty (20) days after the secured party receives a signed~~an~~
17 ~~authenticated~~ demand from a debtor.

18 (3) In cases not governed by subsection (1) of this section, within twenty (20) days
19 after a secured party receives a signed~~an authenticated~~ demand from a debtor, the
20 secured party shall cause the secured party of record for a financing statement to
21 send to the debtor a termination statement for the financing statement or file the
22 termination statement in the filing office if:

23 (a) Except in the case of a financing statement covering accounts or chattel paper
24 that has been sold or goods that are the subject of a consignment, there is no
25 obligation secured by the collateral covered by the financing statement and no
26 commitment to make an advance, incur an obligation, or otherwise give value;

27 (b) The financing statement covers accounts or chattel paper that has been sold

1 but as to which the account debtor or other person obligated has discharged its
2 obligation;

3 (c) The financing statement covers goods that were the subject of a consignment
4 to the debtor but are not in the debtor's possession; or

5 (d) The debtor did not authorize the filing of the initial financing statement.

6 (4) (a) Except as otherwise provided in KRS 355.9-510, upon the filing of a
7 termination statement with the filing office, the financing statement to which
8 the termination statement relates ceases to be effective.

9 (b) Except as otherwise provided in KRS 355.9-510, for purposes of KRS 355.9-
10 519(7), 355.9-522(1), and 355.9-523(3), the filing with the filing office of a
11 termination statement relating to a financing statement that indicates that the
12 debtor is a transmitting utility also causes the effectiveness of the financing
13 statement to lapse.

14 ➔Section 81. KRS 355.9-601 is amended to read as follows:

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

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

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

22 (2) A secured party in possession of collateral or control of collateral under KRS 355.7-
23 106, 355.9-104, 355.9-105, **Section 47 of this Act**, 355.9-106,~~or~~ 355.9-107, **or**
24 **Section 48 of this Act** has the rights and duties provided in KRS 355.9-207.

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

27 (4) Except as otherwise provided in subsection (7) of this section and KRS 355.9-605,

1 after default, a debtor and an obligor have the rights provided in this part of this
2 article and by agreement of the parties.

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

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

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

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

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

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

17 ➔Section 82. KRS 355.9-605 is amended to read as follows:

18 **(1) Except as provided in subsection (2) of this section,** a secured party does not owe a
19 duty based on its status as secured party:

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

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

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

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

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

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

27 **2.**~~(b)~~ The identity of the person.

1 **(2) A secured party owes a duty based on its status as a secured party to a person if,**
 2 **at the time the secured party obtains control of collateral that is a controllable**
 3 **account, controllable electronic record, or controllable payment intangible or at**
 4 **the time the security interest attaches to the collateral, whichever is later:**

5 **(a) The person is a debtor or obligor; and**

6 **(b) The secured party knows that the information in subsection (1)(a)1., 2., or**
 7 **3. of this section relating to the person is not provided by the collateral, a**
 8 **record attached to or logically associated with the collateral, or the system**
 9 **in which the collateral is recorded.**

10 ➔Section 83. KRS 355.9-608 is amended to read as follows:

11 (1) If a security interest or agricultural lien secures payment or performance of an
 12 obligation, the following rules apply:

13 (a) A secured party shall apply or pay over for application the cash proceeds of
 14 collection or enforcement under KRS 355.9-607 in the following order to:

- 15 1. The reasonable expenses of collection and enforcement and, to the
 16 extent provided for by agreement and not prohibited by law, reasonable
 17 attorney's fees and legal expenses incurred by the secured party;
- 18 2. The satisfaction of obligations secured by the security interest or
 19 agricultural lien under which the collection or enforcement is made; and
- 20 3. The satisfaction of obligations secured by any subordinate security
 21 interest in or other lien on the collateral subject to the security interest or
 22 agricultural lien under which the collection or enforcement is made if
 23 the secured party receives **a signed**~~[an authenticated]~~ demand for
 24 proceeds before distribution of the proceeds is completed;~~[-]~~

25 (b) If requested by a secured party, a holder of a subordinate security interest or
 26 other lien shall furnish reasonable proof of the interest or lien within a
 27 reasonable time. Unless the holder complies, the secured party need not

1 comply with the holder's demand under paragraph (a)3. of this subsection;~~[-]~~

2 (c) A secured party need not apply or pay over for application noncash proceeds
3 of collection and enforcement under KRS 355.9-607 unless the failure to do
4 so would be commercially unreasonable. A secured party that applies or pays
5 over for application noncash proceeds shall do so in a commercially
6 reasonable manner; and~~[-]~~

7 (d) A secured party shall account to and pay a debtor for any surplus, and the
8 obligor is liable for any deficiency.

9 (2) If the underlying transaction is a sale of accounts, chattel paper, payment
10 intangibles, or promissory notes, the debtor is not entitled to any surplus, and the
11 obligor is not liable for any deficiency.

12 ➔Section 84. KRS 355.9-611 is amended to read as follows:

13 (1) In this section, "notification date" means the earlier of the date on which:

14 (a) A secured party sends to the debtor and any secondary obligor a signed~~an~~
15 ~~authenticated~~ notification of disposition; or

16 (b) The debtor and any secondary obligor waive the right to notification.

17 (2) Except as otherwise provided in subsection (4) of this section, a secured party that
18 disposes of collateral under KRS 355.9-610 shall send to the persons specified in
19 subsection (3) of this section a reasonable signed~~authenticated~~ notification of
20 disposition.

21 (3) To comply with subsection (2) of this section, the secured party shall send a
22 signed~~an authenticated~~ notification of disposition to:

23 (a) The debtor;

24 (b) Any secondary obligor; and

25 (c) If the collateral is other than consumer goods:

26 1. Any other person from which the secured party has received, before the
27 notification date, a signed~~an authenticated~~ notification of a claim of an

- 1 interest in the collateral;
- 2 2. Any other secured party or lienholder that, ten (10) days before the
- 3 notification date, held a security interest in or other lien on the collateral
- 4 perfected by the filing of a financing statement that:
- 5 a. Identified the collateral;
- 6 b. Was indexed under the debtor's name as of that date; and
- 7 c. Was filed in the office in which to file a financing statement
- 8 against the debtor covering the collateral as of that date; and
- 9 3. Any other secured party that, ten (10) days before the notification date,
- 10 held a security interest in the collateral perfected by compliance with a
- 11 statute, regulation, or treaty described in KRS 355.9-311(1).
- 12 (4) Subsection (2) of this section does not apply if the collateral is perishable or
- 13 threatens to decline speedily in value or is of a type customarily sold on a
- 14 recognized market.
- 15 (5) A secured party complies with the requirement for notification prescribed by
- 16 subsection (3)(c)2. of this section if:
- 17 (a) Not later than twenty (20) days or earlier than thirty (30) days before the
- 18 notification date, the secured party requests, in a commercially reasonable
- 19 manner, information concerning financing statements indexed under the
- 20 debtor's name in the office indicated in subsection (3)(c)2. of this section; and
- 21 (b) Before the notification date, the secured party:
- 22 1. Did not receive a response to the request for information; or
- 23 2. Received a response to the request for information and sent a signed~~an~~
- 24 ~~authenticated~~ notification of disposition to each secured party or other
- 25 lienholder named in that response whose financing statement covered
- 26 the collateral.

27 ➔Section 85. KRS 355.9-613 is amended to read as follows:

1 **(1)** Except in a consumer-goods transaction, the following rules apply:

2 **(a)**~~[(1)]~~ The contents of a notification of disposition are sufficient if the
3 notification:

4 **1.**~~[(a)]~~ Describes the debtor and the secured party;

5 **2.**~~[(b)]~~ Describes the collateral that is the subject of the intended
6 disposition;

7 **3.**~~[(c)]~~ States the method of intended disposition;

8 **4.**~~[(d)]~~ States that the debtor is entitled to an accounting of the unpaid
9 indebtedness and states the charge, if any, for an accounting; and

10 **5.**~~[(e)]~~ States the time and place of a public disposition or the time after
11 which any other disposition is to be made;~~[-]~~

12 **(b)**~~[(2)]~~ Whether the contents of a notification that lacks any of the information
13 specified in **paragraph (a)**~~[(subsection (1))]~~ of this **subsection**~~[(section)]~~ are
14 nevertheless sufficient is a question of fact;~~[-]~~

15 **(c)**~~[(3)]~~ The contents of a notification providing substantially the information
16 specified in **paragraph (a)**~~[(subsection (1))]~~ of this **subsection**~~[(section)]~~ are
17 sufficient, even if the notification includes:

18 **1.**~~[(a)]~~ Information not specified by that **paragraph**~~[(subsection)]~~; or

19 **2.**~~[(b)]~~ Minor errors that are not seriously misleading;~~[-]~~

20 **(d)**~~[(4)]~~ A particular phrasing of the notification is not required; **and**~~[-]~~

21 **(e)**~~[(5)]~~ The following form of notification and the form appearing in KRS
22 355.9-614**(1)(c)**~~[(3)]~~, when completed **in accordance with the instructions in**
23 **subsection (2) of this section and subsection (2) of Section 86 of this Act,**
24 each provides sufficient information:

25 **"NOTIFICATION OF DISPOSITION OF COLLATERAL**

26 **To: (Name of debtor, obligor, or other person to which the notification is sent)**

27 **From: (Name, address, and telephone number of secured party)**

1 *{1} Name of any debtor that is not an addressee: (Name of each debtor)*

2 *{2} We will sell (describe collateral) (to the highest qualified bidder) at public*
3 *sale. A sale could include a lease or license. The sale will be held as follows:*

4 *(Date)*

5 *(Time)*

6 *(Place)*

7 *{3} We will sell (describe collateral) at private sale sometime after (date). A sale*
8 *could include a lease or license.*

9 *{4} You are entitled to an accounting of the unpaid indebtedness secured by the*
10 *property that we intend to sell, or as applicable, lease or license.*

11 *{5} If you request an accounting, you must pay a charge of \$ (amount).*

12 *{6} You may request an accounting by calling us at (telephone number).*

13 *[End of Form]'*

14 ~~["NOTIFICATION OF DISPOSITION OF COLLATERAL~~

15 ~~To:<Name of debtor, obligor, or other person to which the notification is sent>~~

16 ~~From:<Name, address, and telephone number of secured party>~~

17 ~~Name of Debtor(s):<Include only if debtor(s) are not an addressee>~~

18 ~~<For a public disposition:>~~

19 ~~_____ We will sell <or lease or license, as applicable> the<describe collateral> <to the~~
20 ~~highest qualified bidder> in public as follows:~~

21 ~~Day and Date:~~

22 ~~Time:~~

23 ~~Place:~~

24 ~~<For a private disposition:>~~

25 ~~_____ We will sell <or lease or license, as applicable> the<describe collateral>~~
26 ~~privately sometime after <day and date>.~~

27 ~~_____ You are entitled to an accounting of the unpaid indebtedness secured by the~~

1 property that we intend to sell <or lease or license, as applicable> <for a charge of \$.....>.
2 You may request an accounting by calling us at<telephone number>".]

3 **(2) The following instructions apply to the form of notification in subsection (1)(e) of**
4 **this section:**

5 **(a) The instructions in this subsection refer to the numbers in braces before**
6 **items in the form of notification in subsection (1)(e) of this section. Do not**
7 **include the numbers or braces in the notification. The numbers and braces**
8 **are used only for the purpose of these instructions;**

9 **(b) Include and complete item {1} only if there is a debtor that is not an**
10 **addressee of the notification and list the name or names;**

11 **(c) Include and complete either item {2}, if the notification relates to a public**
12 **disposition of the collateral, or item {3}, if the notification relates to a**
13 **private disposition of the collateral. If item {2} is included, include the**
14 **words "to the highest qualified bidder" only if applicable;**

15 **(d) Include and complete items {4} and {6}; and**

16 **(e) Include and complete item {5} only if the sender will charge the recipient**
17 **for an accounting.**

18 ➔Section 86. KRS 355.9-614 is amended to read as follows:

19 **(1)** In a consumer-goods transaction, the following rules apply:

20 **(a)** A notification of disposition must provide the following information:

21 **1.** The information specified in KRS 355.9-613(1)**(a)**;

22 **2.** A description of any liability for a deficiency of the person to
23 which the notification is sent;

24 **3.** A telephone number from which the amount that must be paid to
25 the secured party to redeem the collateral under KRS 355.9-623 is
26 available; and

27 **4.** A telephone number or mailing address from which additional

1 information concerning the disposition and the obligation secured is
2 available;[-]

3 ~~(b)(2)~~ A particular phrasing of the notification is not required;[-]

4 ~~(c)(3)~~ The following form of notification, when completed **in accordance with**
5 **the instructions in subsection (2) of this section,** provides sufficient
6 information:

7 **“(Name and address of secured party)**

8 **(Date)**

9 **NOTICE OF OUR PLAN TO SELL PROPERTY**

10 **(Name and address of any obligor who is also a debtor)**

11 **Subject: (Identify transaction)**

12 **We have your (describe collateral) because you broke promises in our agreement.**

13 **{1} We will sell (describe collateral) at public sale. A sale could include a lease or**
14 **license. The sale will be held as follows:**

15 **(Date)**

16 **(Time)**

17 **(Place)**

18 **You may attend the sale and bring bidders if you want.**

19 **{2} We will sell (describe collateral) at private sale sometime after (date). A sale**
20 **could include a lease or license.**

21 **{3} The money that we get from the sale, after paying our costs, will reduce the**
22 **amount you owe. If we get less money than you owe, you (will or will not, as**
23 **applicable) still owe us the difference. If we get more money than you owe, you will get**
24 **the extra money, unless we must pay it to someone else.**

25 **{4} You can get your property back at any time before we sell it by paying us the**
26 **full amount you owe, not just the past due payments, including our expenses. To learn**
27 **the exact amount you must pay, call us at (telephone number).**

1 Place: _____

2 ~~— You may attend the sale and bring bidders if you want.~~

3 ~~<For a private disposition:>~~

4 ~~— We will sell<describe collateral> at private sale sometime after<date>. A~~
5 ~~sale could include a lease or license.~~

6 ~~— The money that we get from the sale (after paying our costs) will reduce the amount~~
7 ~~you owe. If we get less money than you owe, you<will or will not, as applicable> still~~
8 ~~owe us the difference. If we get more money than you owe, you will get the extra money,~~
9 ~~unless we must pay it to someone else.~~

10 ~~— You can get the property back at any time before we sell it by paying us the full~~
11 ~~amount you owe (not just the past due payments), including our expenses. To learn the~~
12 ~~exact amount you must pay, call us at<telephone number>.~~

13 ~~— If you want us to explain to you in writing how we have figured the amount that~~
14 ~~you owe us, you may call us at<telephone number> <or write us at<secured~~
15 ~~party's address>> and request a written explanation. <We will charge you \$..... for the~~
16 ~~explanation if we sent you another written explanation of the amount you owe us within~~
17 ~~the last six (6) months.>~~

18 ~~— If you need more information about the sale call us at<telephone number> <or~~
19 ~~write us at<secured party's address>>.~~

20 ~~— We are sending this notice to the following other people who have an interest in~~
21 ~~.....<describe collateral> or who owe money under your agreement:~~

22 ~~.....<Names of all other debtors and obligors, if any>"]~~

23 ~~(d)[(4)] A notification in the form of paragraph (c)[subsection (3)] of this~~
24 ~~subsection[section] is sufficient, even if additional information appears at the~~
25 ~~end of the form;[-]~~

26 ~~(e)[(5)] A notification in the form of paragraph (c)[subsection (3)] of this~~
27 ~~subsection[section] is sufficient, even if it includes errors in information not~~

1 required by paragraph (a)~~[subsection (1)]~~ of this subsection~~[section]~~, unless
2 the error is misleading with respect to rights arising under this article; and~~[.]~~

3 ~~(f)~~~~[6]~~ If a notification under this section is not in the form of paragraph
4 (c)~~[subsection (3)]~~ of this subsection~~[section]~~, law other than this article
5 determines the effect of including information not required by paragraph
6 (a)~~[subsection (1)]~~ of this subsection~~[section]~~.

7 **(2) The following instructions apply to the form of notification in subsection (1)(c) of**
8 **this section:**

9 **(a) The instructions in this subsection refer to the numbers in braces before**
10 **items in the form of notification in subsection (1)(c) of this section. Do not**
11 **include the numbers or braces in the notification. The numbers and braces**
12 **are used only for the purpose of these instructions;**

13 **(b) Include and complete either item {1}, if the notification relates to a public**
14 **disposition of the collateral, or item {2}, if the notification relates to a**
15 **private disposition of the collateral;**

16 **(c) Include and complete items {3}, {4}, {5}, {6}, and {7};**

17 **(d) In item {5}, include and complete any one (1) of the three (3) alternative**
18 **methods for the explanation - writing, writing or electronic record, or**
19 **electronic record;**

20 **(e) In item {6}, include the telephone number. In addition, the sender may**
21 **include and complete either or both of the two (2) additional alternative**
22 **methods of communication - writing or electronic communication - for the**
23 **recipient of the notification to communicate with the sender. Neither of the**
24 **two (2) additional methods of communication is required to be included;**

25 **(f) In item {7}, include and complete the method or methods for the**
26 **explanation - writing, writing or electronic record, or electronic record -**
27 **included in item {5};**

1 (g) Include and complete item {8} only if a written explanation is included in
 2 item {5} as a method for communicating the explanation and the sender will
 3 charge the recipient for another written explanation;

4 (h) In item {9}, include either the telephone number or the address or both the
 5 telephone number and the address. In addition, the sender may include and
 6 complete the additional method of communication – electronic
 7 communication – for the recipient of the notification to communicate with
 8 the sender. The additional method of electronic communication is not
 9 required to be included; and

10 (i) If item {10} does not apply, insert "None" after "agreement".

11 ➔Section 87. KRS 355.9-615 is amended to read as follows:

12 (1) A secured party shall apply or pay over for application the cash proceeds of
 13 disposition under KRS 355.9-610 in the following order to:

14 (a) The reasonable expenses of retaking, holding, preparing for disposition,
 15 processing, and disposing, and, to the extent provided for by agreement and
 16 not prohibited by law, reasonable attorney's fees and legal expenses incurred
 17 by the secured party;

18 (b) The satisfaction of obligations secured by the security interest or agricultural
 19 lien under which the disposition is made;

20 (c) The satisfaction of obligations secured by any subordinate security interest in
 21 or other subordinate lien on the collateral if:

22 1. The secured party receives from the holder of the subordinate security
 23 interest or other lien a signed~~[an authenticated]~~ demand for proceeds
 24 before distribution of the proceeds is completed; and

25 2. In a case in which a consignor has an interest in the collateral, the
 26 subordinate security interest or other lien is senior to the interest of the
 27 consignor; and

- 1 (d) A secured party that is a consignor of the collateral if the secured party
2 receives from the consignor a signed~~[an authenticated]~~ demand for proceeds
3 before distribution of the proceeds is completed.
- 4 (2) If requested by a secured party, a holder of a subordinate security interest or other
5 lien shall furnish reasonable proof of the interest or lien within a reasonable time.
6 Unless the holder does so, the secured party need not comply with the holder's
7 demand under subsection (1)(c) of this section.
- 8 (3) (a) A secured party need not apply or pay over for application noncash proceeds
9 of disposition under KRS 355.9-610 unless the failure to do so would be
10 commercially unreasonable.
- 11 (b) A secured party that applies or pays over for application noncash proceeds
12 shall do so in a commercially reasonable manner.
- 13 (4) If the security interest under which a disposition is made secures payment or
14 performance of an obligation, after making the payments and applications required
15 by subsection (1) of this section and permitted by subsection (3) of this section:
- 16 (a) Unless subsection (1)(d) of this section requires the secured party to apply or
17 pay over cash proceeds to a consignor, the secured party shall account to and
18 pay a debtor for any surplus; and
- 19 (b) The obligor is liable for any deficiency.
- 20 (5) If the underlying transaction is a sale of accounts, chattel paper, payment
21 intangibles, or promissory notes:
- 22 (a) The debtor is not entitled to any surplus; and
23 (b) The obligor is not liable for any deficiency.
- 24 (6) The surplus or deficiency following a disposition is calculated based on the amount
25 of proceeds that would have been realized in a disposition complying with this part
26 of this article to a transferee other than the secured party, a person related to the
27 secured party, or a secondary obligor if:

- 1 (a) The transferee in the disposition is the secured party, a person related to the
2 secured party, or a secondary obligor; and
- 3 (b) The amount of proceeds of the disposition is significantly below the range of
4 proceeds that a complying disposition to a person other than the secured party,
5 a person related to the secured party, or a secondary obligor would have
6 brought.
- 7 (7) A secured party that receives cash proceeds of a disposition in good faith and
8 without knowledge that the receipt violates the rights of the holder of a security
9 interest or other lien that is not subordinate to the security interest or agricultural
10 lien under which the disposition is made:
- 11 (a) Takes the cash proceeds free of the security interest or other lien;
- 12 (b) Is not obligated to apply the proceeds of the disposition to the satisfaction of
13 obligations secured by the security interest or other lien; and
- 14 (c) Is not obligated to account to or pay the holder of the security interest or other
15 lien for any surplus.

16 ➔Section 88. KRS 355.9-616 is amended to read as follows:

17 (1) In this section:

- 18 (a) "Explanation" means a record~~[writing]~~ that:
- 19 1. States the amount of the surplus or deficiency;
- 20 2. Provides an explanation in accordance with subsection (3) of this section
21 of how the secured party calculated the surplus or deficiency;
- 22 3. States, if applicable, that future debits, credits, charges, including
23 additional credit service charges or interest, rebates, and expenses may
24 affect the amount of the surplus or deficiency; and
- 25 4. Provides a telephone number or mailing address from which additional
26 information concerning the transaction is available; and~~[.]~~
- 27 (b) "Request" means a record:

- 1 1. ~~Signed~~~~Authenticated~~ by a debtor or consumer obligor;
 - 2 2. Requesting that the recipient provide an explanation; and
 - 3 3. Sent after disposition of the collateral under KRS 355.9-610.
- 4 (2) In a consumer-goods transaction in which the debtor is entitled to a surplus or a
- 5 consumer obligor is liable for a deficiency under KRS 355.9-615, the secured party
- 6 shall:
- 7 (a) Send an explanation to the debtor or consumer obligor, as applicable, after the
 - 8 disposition and:
 - 9 1. Before or when the secured party accounts to the debtor and pays any
 - 10 surplus or first makes~~written~~ demand ***in a record*** on the consumer
 - 11 obligor after the disposition for payment of the deficiency; and
 - 12 2. Within fourteen (14) days after receipt of a request; or
 - 13 (b) In the case of a consumer obligor who is liable for a deficiency, within
 - 14 fourteen (14) days after receipt of a request, send to the consumer obligor a
 - 15 record waiving the secured party's right to a deficiency.
- 16 (3) To comply with subsection (1)(a)2. of this section, ***an explanation***~~a writing~~ must
- 17 provide the following information in the following order:
- 18 (a) The aggregate amount of obligations secured by the security interest under
 - 19 which the disposition was made, and, if the amount reflects a rebate of
 - 20 unearned interest or credit service charge, an indication of that fact, calculated
 - 21 as of a specified date:
 - 22 1. If the secured party takes or receives possession of the collateral after
 - 23 default, not more than thirty-five (35) days before the secured party
 - 24 takes or receives possession; or
 - 25 2. If the secured party takes or receives possession of the collateral before
 - 26 default or does not take possession of the collateral, not more than
 - 27 thirty-five (35) days before the disposition;

- 1 (b) The amount of proceeds of the disposition;
- 2 (c) The aggregate amount of the obligations after deducting the amount of
3 proceeds;
- 4 (d) The amount, in the aggregate or by type, and types of expenses, including
5 expenses of retaking, holding, preparing for disposition, processing, and
6 disposing of the collateral, and attorney's fees secured by the collateral which
7 are known to the secured party and relate to the current disposition;
- 8 (e) The amount, in the aggregate or by type, and types of credits, including
9 rebates of interest or credit service charges, to which the obligor is known to
10 be entitled and which are not reflected in the amount in paragraph (a) of this
11 subsection; and
- 12 (f) The amount of the surplus or deficiency.
- 13 (4) (a) A particular phrasing of the explanation is not required.
- 14 (b) An explanation complying substantially with the requirements of subsection
15 (1) of this section is sufficient, even if it includes minor errors that are not
16 seriously misleading.
- 17 (5) A debtor or consumer obligor is entitled without charge to one (1) response to a
18 request under this section during any six (6) month period in which the secured
19 party did not send to the debtor or consumer obligor an explanation pursuant to
20 subsection (2)(a) of this section. The secured party may require payment of a charge
21 not exceeding twenty-five dollars (\$25) for each additional response.
- 22 ➔Section 89. KRS 355.9-619 is amended to read as follows:
- 23 (1) In this section, "transfer statement" means a record signed~~authenticated~~ by a
24 secured party stating:
- 25 (a) That the debtor has defaulted in connection with an obligation secured by
26 specified collateral;
- 27 (b) That the secured party has exercised its post-default remedies with respect to

1 the collateral;

2 (c) That, by reason of the exercise, a transferee has acquired the rights of the
3 debtor in the collateral; and

4 (d) The name and mailing address of the secured party, debtor, and transferee.

5 (2) (a) A transfer statement entitles the transferee to the transfer of record of all
6 rights of the debtor in the collateral specified in the statement in any official
7 filing, recording, registration, or certificate-of-title system covering the
8 collateral.

9 (b) If a transfer statement is presented with the applicable fee and request form to
10 the official or office responsible for maintaining the system, the official or
11 office shall:

12 1.[(a)] Accept the transfer statement;

13 2.[(b)] Promptly amend its records to reflect the transfer; and

14 3.[(c)] If applicable, issue a new appropriate certificate of title in the
15 name of the transferee.

16 (3) A transfer of the record or legal title to collateral to a secured party under
17 subsection (2) of this section or otherwise is not of itself a disposition of collateral
18 under this article and does not of itself relieve the secured party of its duties under
19 this article.

20 (4) A secured party who complies with KRS 186.045(6) is considered to have provided
21 a transfer statement for purposes of this section.

22 ➔Section 90. KRS 355.9-620 is amended to read as follows:

23 (1) Except as otherwise provided in subsection (7) of this section, a secured party may
24 accept collateral in full or partial satisfaction of the obligation it secures only if:

25 (a) The debtor consents to the acceptance under subsection (3) of this section;

26 (b) The secured party does not receive, within the time set forth in subsection (4)
27 of this section, a notification of objection to the proposal

- 1 ~~signed~~~~[authenticated]~~ by:
- 2 1. A person to which the secured party was required to send a proposal
- 3 under KRS 355.9-621; or
- 4 2. Any other person, other than the debtor, holding an interest in the
- 5 collateral subordinate to the security interest that is the subject of the
- 6 proposal;
- 7 (c) If the collateral is consumer goods, the collateral is not in the possession of
- 8 the debtor when the debtor consents to the acceptance; and
- 9 (d) Subsection (5) of this section does not require the secured party to dispose of
- 10 the collateral or the debtor waives the requirement pursuant to KRS 355.9-
- 11 624.
- 12 (2) A purported or apparent acceptance of collateral under this section is ineffective
- 13 unless:
- 14 (a) The secured party consents to the acceptance in a signed~~[an authenticated]~~
- 15 record or sends a proposal to the debtor; and
- 16 (b) The conditions of subsection (1) of this section are met.
- 17 (3) For purposes of this section:
- 18 (a) A debtor consents to an acceptance of collateral in partial satisfaction of the
- 19 obligation it secures only if the debtor agrees to the terms of the acceptance in
- 20 a record signed~~[authenticated]~~ after default; and
- 21 (b) A debtor consents to an acceptance of collateral in full satisfaction of the
- 22 obligation it secures only if the debtor agrees to the terms of the acceptance in
- 23 a record signed~~[authenticated]~~ after default or the secured party:
- 24 1. Sends to the debtor after default a proposal that is unconditional or
- 25 subject only to a condition that collateral not in the possession of the
- 26 secured party be preserved or maintained;
- 27 2. In the proposal, proposes to accept collateral in full satisfaction of the

- 1 obligation it secures; and
- 2 3. Does not receive a notification of objection ~~signed~~~~[authenticated]~~ by the
- 3 debtor within twenty (20) days after the proposal is sent.
- 4 (4) To be effective under subsection (1)(b) of this section, a notification of objection
- 5 must be received by the secured party:
- 6 (a) In the case of a person to which the proposal was sent pursuant to KRS 355.9-
- 7 621, within twenty (20) days after notification was sent to that person; and
- 8 (b) In other cases:
- 9 1. Within twenty (20) days after the last notification was sent pursuant to
- 10 KRS 355.9-621; or
- 11 2. If a notification was not sent, before the debtor consents to the
- 12 acceptance under subsection (3) of this section.
- 13 (5) A secured party that has taken possession of collateral shall dispose of the collateral
- 14 pursuant to KRS 355.9-610 within the time specified in subsection (6) of this
- 15 section if:
- 16 (a) Sixty percent (60%) of the cash price has been paid in the case of a purchase-
- 17 money security interest in consumer goods; or
- 18 (b) Sixty percent (60%) of the principal amount of the obligation secured has
- 19 been paid in the case of a non-purchase-money security interest in consumer
- 20 goods.
- 21 (6) To comply with subsection (5) of this section, the secured party shall dispose of the
- 22 collateral:
- 23 (a) Within ninety (90) days after taking possession; or
- 24 (b) Within any longer period to which the debtor and all secondary obligors have
- 25 agreed in an agreement to that effect entered into and ~~signed~~~~[authenticated]~~
- 26 after default.
- 27 (7) In a consumer transaction, a secured party may not accept collateral in partial

1 satisfaction of the obligation it secures.

2 ➔Section 91. KRS 355.9-621 is amended to read as follows:

3 (1) A secured party that desires to accept collateral in full or partial satisfaction of the
4 obligation it secures shall send its proposal to:

5 (a) Any person from which the secured party has received, before the debtor
6 consented to the acceptance, a signed~~[an authenticated]~~ notification of a claim
7 of an interest in the collateral;

8 (b) Any other secured party or lienholder that, ten (10) days before the debtor
9 consented to the acceptance, held a security interest in or other lien on the
10 collateral perfected by the filing of a financing statement that:

- 11 1. Identified the collateral;
- 12 2. Was indexed under the debtor's name as of that date; and
- 13 3. Was filed in the office or offices in which to file a financing statement
14 against the debtor covering the collateral as of that date; and

15 (c) Any other secured party that, ten (10) days before the debtor consented to the
16 acceptance, held a security interest in the collateral perfected by compliance
17 with a statute, regulation, or treaty described in KRS 355.9-311(1).

18 (2) A secured party that desires to accept collateral in partial satisfaction of the
19 obligation it secures shall send its proposal to any secondary obligor in addition to
20 the persons described in subsection (1) of this section.

21 ➔Section 92. KRS 355.9-624 is amended to read as follows:

22 (1) A debtor or secondary obligor may waive the right to notification of disposition of
23 collateral under KRS 355.9-611 only by an agreement to that effect entered into and
24 signed~~[authenticated]~~ after default.

25 (2) A debtor may waive the right to require disposition of collateral under KRS 355.9-
26 620(5) only by an agreement to that effect entered into and signed~~[authenticated]~~
27 after default.

1 (3) Except in a consumer-goods transaction, a debtor or secondary obligor may waive
2 the right to redeem collateral under KRS 355.9-623 only by an agreement to that
3 effect entered into and signed~~authenticated~~ after default.

4 ➔Section 93. KRS 355.9-628 is amended to read as follows:

5 (1) **Subject to subsection (6) of this section,** unless a secured party knows that a person
6 is a debtor or obligor, knows the identity of the person, and knows how to
7 communicate with the person:

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

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

13 (2) **Subject to subsection (6) of this section,** a secured party is not liable because of its
14 status as secured party:

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

- 16 1. That the person is a debtor or obligor;
- 17 2. The identity of the person; and
- 18 3. How to communicate with the person; or

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

- 21 1. That the person is a debtor; and
- 22 2. The identity of the person.

23 (3) A secured party is not liable to any person, and a person's liability for a deficiency
24 is not affected, because of any act or omission arising out of the secured party's
25 reasonable belief that a transaction is not a consumer-goods transaction or a
26 consumer transaction or that goods are not consumer goods, if the secured party's
27 belief is based on its reasonable reliance on:

- 1 (a) A debtor's representation concerning the purpose for which collateral was to
2 be used, acquired, or held; or
- 3 (b) An obligor's representation concerning the purpose for which a secured
4 obligation was incurred.
- 5 (4) A secured party is not liable to any person under KRS 355.9-625(3)(b) for its
6 failure to comply with KRS 355.9-616.
- 7 (5) A secured party is not liable under KRS 355.9-625(3)(b) more than once with
8 respect to any one (1) secured obligation.

9 **(6) Subsections (1) and (2) of this section do not apply to limit the liability of a**
10 **secured party to a person if, at the time the secured party obtains control of**
11 **collateral that is a controllable account, controllable electronic record, or**
12 **controllable payment intangible or at the time the security interest attaches to the**
13 **collateral, whichever is later:**

14 **(a) The person is a debtor or obligor; and**

15 **(b) The secured party knows that the information in subsection (2)(a)1., 2., or**
16 **3. of this section relating to the person is not provided by the collateral, a**
17 **record attached to or logically associated with the collateral, or the system**
18 **in which the collateral is recorded.**

19 ➔SECTION 94. ARTICLE 12 OF KRS CHAPTER 355 IS ESTABLISHED,
20 AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

21 **This article may be cited as Uniform Commercial Code – Controllable Electronic**
22 **Records.**

23 ➔SECTION 95. A NEW SECTION OF ARTICLE 12 OF KRS CHAPTER 355
24 IS CREATED TO READ AS FOLLOWS:

25 **(1) In this article:**

26 **(a) 1. "Controllable electronic record" means a record stored in an**
27 **electronic medium that can be subjected to control under Section 98 of**

1 *this Act.*

2 *2. The term does not include:*

3 *a. A controllable account;*

4 *b. A controllable payment intangible;*

5 *c. A deposit account;*

6 *d. An electronic copy of a record evidencing chattel paper;*

7 *e. An electronic document of title;*

8 *f. Electronic money;*

9 *g. Investment property; or*

10 *h. A transferable record;*

11 *(b) "Qualifying purchaser" means a purchaser of a controllable electronic*
12 *record or an interest in a controllable electronic record that obtains control*
13 *of the controllable electronic record for value, in good faith, and without*
14 *notice of a claim of a property right in the controllable electronic record;*

15 *(c) "Transferable record" has the meaning provided for that term in:*

16 *1. The Electronic Signatures in Global and National Commerce Act, 15*
17 *U.S.C. sec. 7021, as amended; or*

18 *2. The Uniform Electronic Transactions Act, Section 112 of this Act; and*

19 *(d) "Value" has the meaning provided in KRS 355.3-303(1), as if references in*
20 *that subsection to an "instrument" were references to a controllable*
21 *account, controllable electronic record, or controllable payment intangible.*

22 *(2) The following definitions in Article 9 of this chapter apply to this article:*

23 *(a) "Account debtor";*

24 *(b) "Chattel paper";*

25 *(c) "Controllable account";*

26 *(d) "Controllable payment intangible";*

27 *(e) "Deposit account";*

1 (f) "Electronic money"; and

2 (g) "Investment property."

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

5 ➔SECTION 96. A NEW SECTION OF ARTICLE 12 OF KRS CHAPTER 355
6 IS CREATED TO READ AS FOLLOWS:

7 (1) If there is conflict between this article and Article 9 of this chapter, Article 9
8 governs.

9 (2) A transaction subject to this article is subject to any applicable rule of law that
10 establishes a different rule for consumers.

11 ➔SECTION 97. A NEW SECTION OF ARTICLE 12 OF KRS CHAPTER 355
12 IS CREATED TO READ AS FOLLOWS:

13 (1) This section applies to the acquisition and purchase of rights in a controllable
14 account or controllable payment intangible, including the rights and benefits
15 under subsections (3), (4), (5), (7), and (8) of this section of a purchaser and
16 qualifying purchaser, in the same manner this section applies to a controllable
17 electronic record.

18 (2) To determine whether a purchaser of a controllable account or a controllable
19 payment intangible is a qualifying purchaser, the purchaser obtains control of
20 the account or payment intangible if it obtains control of the controllable
21 electronic record that evidences the account or payment intangible.

22 (3) Except as provided in this section, law other than this article determines whether
23 a person acquires a right in a controllable electronic record and the right the
24 person acquires.

25 (4) A purchaser of a controllable electronic record acquires all rights in the
26 controllable electronic record that the transferor had or had power to transfer,
27 except that a purchaser of a limited interest in a controllable electronic record

1 acquires rights only to the extent of the interest purchased.

2 (5) A qualifying purchaser acquires its rights in the controllable electronic record
3 free of a claim of a property right in the controllable electronic record.

4 (6) Except as provided in subsections (1) and (5) of this section for a controllable
5 account and a controllable payment intangible or law other than this article, a
6 qualifying purchaser takes a right to payment, right to performance, or other
7 interest in property evidenced by the controllable electronic record subject to a
8 claim of a property right in the right to payment, right to performance, or other
9 interest in property.

10 (7) An action may not be asserted against a qualifying purchaser based on both a
11 purchase by the qualifying purchaser of a controllable electronic record and a
12 claim of a property right in another controllable electronic record, whether the
13 action is framed in conversion, replevin, constructive trust, equitable lien, or
14 other theory.

15 (8) Filing of a financing statement under Article 9 of this chapter is not notice of a
16 claim of a property right in a controllable electronic record.

17 ➔SECTION 98. A NEW SECTION OF ARTICLE 12 OF KRS CHAPTER 355
18 IS CREATED TO READ AS FOLLOWS:

19 (1) A person has control of a controllable electronic record if the electronic record, a
20 record attached to or logically associated with the electronic record, or a system
21 in which the electronic record is recorded:

22 (a) Gives the person:

23 1. Power to avail itself of substantially all the benefit from the electronic
24 record; and

25 2. Exclusive power, subject to subsection (2) of this section, to:

26 a. Prevent others from availing themselves of substantially all the
27 benefit from the electronic record; and

- 1 *b. Transfer control of the electronic record to another person or*
2 *cause another person to obtain control of another controllable*
3 *electronic record as a result of the transfer of the electronic*
4 *record; and*
- 5 *(b) Enables the person to readily identify itself in any way, including by name,*
6 *identifying number, cryptographic key, office, or account number, as*
7 *having the powers specified in paragraph (a) of this subsection.*
- 8 *(2) Subject to subsection (3) of this section, a power is exclusive under subsection*
9 *(1)(a)2.a. and b. of this section even if:*
- 10 *(a) The controllable electronic record, a record attached to or logically*
11 *associated with the electronic record, or a system in which the electronic*
12 *record is recorded limits the use of the electronic record or has a protocol*
13 *programmed to cause a change, including a transfer or loss of control or a*
14 *modification of benefits afforded by the electronic record; or*
- 15 *(b) The power is shared with another person.*
- 16 *(3) A power of a person is not shared with another person under subsection (2)(b) of*
17 *this section and the person's power is not exclusive if:*
- 18 *(a) The person can exercise the power only if the power also is exercised by the*
19 *other person; and*
- 20 *(b) The other person:*
- 21 *1. Can exercise the power without exercise of the power by the person; or*
22 *2. Is the transferor to the person of an interest in the controllable*
23 *electronic record or a controllable account or controllable payment*
24 *intangible evidenced by the controllable electronic record.*
- 25 *(4) If a person has the powers specified in subsection (1)(a)2.a. and b. of this section,*
26 *the powers are presumed to be exclusive.*
- 27 *(5) A person has control of a controllable electronic record if another person, other*

1 than the transferor to the person of an interest in the controllable electronic
2 record or a controllable account or controllable payment intangible evidenced by
3 the controllable electronic record:

4 (a) Has control of the electronic record and acknowledges that it has control on
5 behalf of the person; or

6 (b) Obtains control of the electronic record after having acknowledged that it
7 will obtain control of the electronic record on behalf of the person.

8 (6) A person that has control under this section is not required to acknowledge that it
9 has control on behalf of another person.

10 (7) If a person acknowledges that it has or will obtain control on behalf of another
11 person, unless the person otherwise agrees or law other than this article or
12 Article 9 of this chapter otherwise provides, the person does not owe any duty to
13 the other person and is not required to confirm acknowledgment to any other
14 person.

15 ➔SECTION 99. A NEW SECTION OF ARTICLE 12 OF KRS CHAPTER 355
16 IS CREATED TO READ AS FOLLOWS:

17 (1) An account debtor on a controllable account or controllable payment intangible
18 may discharge its obligation by paying:

19 (a) The person having control of the controllable electronic record that
20 evidences the controllable account or controllable payment intangible; or

21 (b) Except as provided in subsection (2) of this section, a person that formerly
22 had control of the controllable electronic record.

23 (2) Subject to subsection (4) of this section, the account debtor may not discharge its
24 obligation by paying a person that formerly had control of the controllable
25 electronic record if the account debtor receives a notification that:

26 (a) Is signed by a person that formerly had control or the person to which
27 control was transferred;

- 1 (b) Reasonably identifies the controllable account or controllable payment
2 intangible;
- 3 (c) Notifies the account debtor that control of the controllable electronic record
4 that evidences the controllable account or controllable payment intangible
5 was transferred;
- 6 (d) Identifies the transferee, in any reasonable way, including by name,
7 identifying number, cryptographic key, office, or account number; and
- 8 (e) Provides a commercially reasonable method by which the account debtor is
9 to pay the transferee.
- 10 (3) After receipt of a notification that complies with subsection (2) of this section, the
11 account debtor may discharge its obligation by paying in accordance with the
12 notification and may not discharge the obligation by paying a person that
13 formerly had control.
- 14 (4) Subject to subsection (8) of this section, notification is ineffective under
15 subsection (2) of this section:
- 16 (a) Unless, before the notification is sent, the account debtor and the person
17 that, at that time, had control of the controllable electronic record that
18 evidences the controllable account or controllable payment intangible agree
19 in a signed record to a commercially reasonable method by which a person
20 may furnish reasonable proof that control has been transferred;
- 21 (b) To the extent an agreement between the account debtor and seller of a
22 payment intangible limits the account debtor's duty to pay a person other
23 than the seller and the limitation is effective under law other than this
24 article; or
- 25 (c) At the option of the account debtor, if the notification notifies the account
26 debtor to:
- 27 1. Divide a payment;

- 1 2. Make less than the full amount of an installment or other periodic
2 payment; or
- 3 3. Pay any part of a payment by more than one (1) method or to more
4 than one (1) person.
- 5 (5) Subject to subsection (8) of this section, if requested by the account debtor, the
6 person giving the notification under subsection (2) of this section seasonably
7 shall furnish reasonable proof, using the method in the agreement referred to in
8 subsection (4)(a) of this section, that control of the controllable electronic record
9 has been transferred. Unless the person complies with the request, the account
10 debtor may discharge its obligation by paying a person that formerly had control,
11 even if the account debtor has received a notification under subsection (2) of this
12 section.
- 13 (6) A person furnishes reasonable proof under subsection (5) of this section that
14 control has been transferred if the person demonstrates, using the method in the
15 agreement referred to in subsection (4)(a) of this section, that the transferee has
16 the power to:
- 17 (a) Avail itself of substantially all the benefit from the controllable electronic
18 record;
- 19 (b) Prevent others from availing themselves of substantially all the benefit from
20 the controllable electronic record; and
- 21 (c) Transfer the powers specified in paragraphs (a) and (b) of this subsection to
22 another person.
- 23 (7) Subject to subsection (8) of this section, an account debtor may not waive or vary
24 its rights under subsections (4)(a) and (5) of this section or its option under
25 subsection (4)(c) of this section.
- 26 (8) This section is subject to law other than this article which establishes a different
27 rule for an account debtor who is an individual and who incurred the obligation

1 primarily for personal, family, or household purposes.

2 ➔SECTION 100. A NEW SECTION OF ARTICLE 12 OF KRS CHAPTER 355
3 IS CREATED TO READ AS FOLLOWS:

4 (1) Except as provided in subsection (2) of this section, the local law of a controllable
5 electronic record's jurisdiction governs the matters covered by this article.

6 (2) For a controllable electronic record that evidences a controllable account or
7 controllable payment intangible, the local law of the controllable electronic
8 record's jurisdiction governs a matter covered by Section 99 of this Act unless an
9 effective agreement determines that the local law of another jurisdiction governs.

10 (3) The following rules determine a controllable electronic record's jurisdiction
11 under this section:

12 (a) If the controllable electronic record, or a record attached to or logically
13 associated with the controllable electronic record and readily available for
14 review, expressly provides that a particular jurisdiction is the controllable
15 electronic record's jurisdiction for purposes of this article or chapter, that
16 jurisdiction is the controllable electronic record's jurisdiction;

17 (b) If paragraph (a) of this subsection does not apply and the rules of the
18 system in which the controllable electronic record is recorded are readily
19 available for review and expressly provide that a particular jurisdiction is
20 the controllable electronic record's jurisdiction for purposes of this article
21 or this chapter, that jurisdiction is the controllable electronic record's
22 jurisdiction;

23 (c) If paragraphs (a) and (b) of this subsection do not apply and the
24 controllable electronic record, or a record attached to or logically associated
25 with the controllable electronic record and readily available for review,
26 expressly provides that the controllable electronic record is governed by the
27 law of a particular jurisdiction, that jurisdiction is the controllable

1 electronic record's jurisdiction;

2 (d) If paragraphs (a), (b), and (c) of this subsection do not apply and the rules
3 of the system in which the controllable electronic record is recorded are
4 readily available for review and expressly provide that the controllable
5 electronic record or the system is governed by the law of a particular
6 jurisdiction, that jurisdiction is the controllable electronic record's
7 jurisdiction; and

8 (e) If paragraphs (a) to (d) of this subsection do not apply, the controllable
9 electronic record's jurisdiction is the District of Columbia.

10 (4) (a) If subsection (3)(e) of this section applies and Article 12 is not in effect in
11 the District of Columbia without material modification, the governing law
12 for a matter covered by this article is the law of the District of Columbia as
13 though Article 12 were in effect in the District of Columbia without material
14 modification.

15 (b) In this subsection, "Article 12" means Article 12 of the Uniform
16 Commercial Code Amendments (2022).

17 (5) To the extent subsections (1) and (2) of this section provide that the local law of
18 the controllable electronic record's jurisdiction governs a matter covered by this
19 article, that law governs even if the matter or a transaction to which the matter
20 relates does not bear any relation to the controllable electronic record's
21 jurisdiction.

22 (6) The rights acquired under Section 97 of this Act by a purchaser or qualifying
23 purchaser are governed by the law applicable under this section at the time of
24 purchase.

25 ➔SECTION 101. A NEW SECTION OF ARTICLE 11 OF KRS CHAPTER 355
26 IS CREATED TO READ AS FOLLOWS:

27 This article may be cited as Transitional Provisions for Uniform Commercial Code

1 Amendments (2022).

2 ➔SECTION 102. A NEW SECTION OF ARTICLE 11 OF KRS CHAPTER 355
3 IS CREATED TO READ AS FOLLOWS:

4 (1) In this article:

5 (a) "Adjustment date" means July 1, 2025; and

6 (b) "Article 12 property" means a controllable account, controllable electronic
7 record, or controllable payment intangible.

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

9 (a) "Controllable account." Section 44 of this Act;

10 (b) "Controllable electronic record." Section 95 of this Act;

11 (c) "Controllable payment intangible." Section 44 of this Act;

12 (d) "Electronic money." Section 44 of this Act; and

13 (e) "Financing statement." Section 44 of this Act.

14 (3) Article 1 of this chapter contains general definitions and principles of
15 construction and interpretation applicable throughout this article.

16 ➔SECTION 103. A NEW SECTION OF ARTICLE 11 OF KRS CHAPTER 355
17 IS CREATED TO READ AS FOLLOWS:

18 Except as provided in Sections 104 to 109 of this Act, a transaction validly entered into
19 before the effective date of this Act and the rights, duties, and interests flowing from
20 the transaction remain valid thereafter and may be terminated, completed,
21 consummated, or enforced as required or permitted by law other than this chapter or, if
22 applicable, this chapter, as though this Act had not taken effect.

23 ➔SECTION 104. A NEW SECTION OF ARTICLE 11 OF KRS CHAPTER 355
24 IS CREATED TO READ AS FOLLOWS:

25 (1) Except as provided in this section and Sections 105 to 109 of this Act, Article 9 of
26 this chapter, as amended by this Act, and Article 12 of this chapter apply to a
27 transaction, lien, or other interest in property, even if the transaction, lien, or

1 interest was entered into, created, or acquired before the effective date of this Act.

2 (2) Except as provided in subsection (3) of this section and Sections 105 to 109 of this

3 Act:

4 (a) A transaction, lien, or interest in property that was validly entered into,
5 created, or transferred before the effective date of this Act and was not
6 governed by this chapter, but would be subject to Article 9 of this chapter, as
7 amended by this Act, or Article 12 of this chapter if it had been entered into,
8 created, or transferred on or after the effective date of this Act, including
9 the rights, duties, and interests flowing from the transaction, lien, or
10 interest, remains valid on and after the effective date of this Act; and

11 (b) The transaction, lien, or interest may be terminated, completed,
12 consummated, and enforced as required or permitted by this Act or by the
13 law that would apply if this Act had not taken effect.

14 (3) This Act does not affect an action, case, or proceeding commenced before the
15 effective date of this Act.

16 ➔SECTION 105. A NEW SECTION OF ARTICLE 11 OF KRS CHAPTER 355
17 IS CREATED TO READ AS FOLLOWS:

18 (1) A security interest that is enforceable and perfected immediately before the
19 effective date of this Act is a perfected security interest under this Act if, on the
20 effective date of this Act, the requirements for enforceability and perfection under
21 this Act are satisfied without further action.

22 (2) If a security interest is enforceable and perfected immediately before the effective
23 date of this Act, but the requirements for enforceability or perfection under this
24 Act are not satisfied on the effective date of this Act, the security interest:

25 (a) Is a perfected security interest until the earlier of the time perfection would
26 have ceased under the law in effect immediately before the effective date of
27 this Act or the adjustment date;

1 **(b) Remains enforceable thereafter only if the security interest satisfies the**
 2 **requirements for enforceability under Section 50 of this Act, as amended by**
 3 **this Act, before the adjustment date; and**

4 **(c) Remains perfected thereafter only if the requirements for perfection under**
 5 **this Act are satisfied before the time specified in paragraph (a) of this**
 6 **subsection.**

7 ➔SECTION 106. A NEW SECTION OF ARTICLE 11 OF KRS CHAPTER 355
 8 IS CREATED TO READ AS FOLLOWS:

9 **A security interest that is enforceable immediately before the effective date of this Act**
 10 **but is unperfected at that time:**

11 **(1) Remains an enforceable security interest until the adjustment date;**

12 **(2) Remains enforceable thereafter if the security interest becomes enforceable under**
 13 **Section 50 of this Act, as amended by this Act, on the effective date of this Act or**
 14 **before the adjustment date; and**

15 **(3) Becomes perfected:**

16 **(a) Without further action, on the effective date of this Act if the requirements**
 17 **for perfection under this Act are satisfied before or at that time; or**

18 **(b) When the requirements for perfection are satisfied if the requirements are**
 19 **satisfied after that time.**

20 ➔SECTION 107. A NEW SECTION OF ARTICLE 11 OF KRS CHAPTER 355
 21 IS CREATED TO READ AS FOLLOWS:

22 **(1) (a) If action, other than the filing of a financing statement, is taken before the**
 23 **effective date of this Act and the action would have resulted in perfection of**
 24 **the security interest had the security interest become enforceable before the**
 25 **effective date of this Act, the action is effective to perfect a security interest**
 26 **that attaches under this Act before the adjustment date.**

27 **(b) An attached security interest becomes unperfected on the adjustment date**

1 unless the security interest becomes a perfected security interest under this
2 Act before the adjustment date.

3 (2) The filing of a financing statement before the effective date of this Act is effective
4 to perfect a security interest on the effective date of this Act to the extent the filing
5 would satisfy the requirements for perfection under this Act.

6 (3) The taking of an action before the effective date of this Act is sufficient for the
7 enforceability of a security interest on the effective date of this Act if the action
8 would satisfy the requirements for enforceability under this Act.

9 ➔SECTION 108. A NEW SECTION OF ARTICLE 11 OF KRS CHAPTER 355
10 IS CREATED TO READ AS FOLLOWS:

11 (1) Subject to subsections (2) and (3) of this section, this Act determines the priority
12 of conflicting claims to collateral.

13 (2) Subject to subsection (3) of this section, if the priority of claims to collateral were
14 established before the effective date of this Act, Article 9 of this chapter, as in
15 effect before the effective date of this Act, determines priority.

16 (3) On the adjustment date, to the extent the priorities determined by Article 9 of this
17 chapter, as amended by this Act, modify the priorities established before the
18 effective date of this Act, the priorities of claims to Article 12 property and
19 electronic money established before the effective date of this Act cease to apply.

20 ➔SECTION 109. A NEW SECTION OF ARTICLE 11 OF KRS CHAPTER 355
21 IS CREATED TO READ AS FOLLOWS:

22 (1) Subject to subsections (2) and (3) of this section, Article 12 of this chapter
23 determines the priority of conflicting claims to Article 12 property when the
24 priority rules of Article 9 of this chapter, as amended by this Act, do not apply.

25 (2) Subject to subsection (3) of this section, when the priority rules of Article 9 of this
26 chapter, as amended by this Act, do not apply and the priorities of claims to
27 Article 12 property were established before the effective date of this Act, law other

1 than Article 12 of this chapter determines priority.

2 (3) When the priority rules of Article 9 of this chapter, as amended by this Act, do not
3 apply, to the extent the priorities determined by this Act modify the priorities
4 established before the effective date of this Act, the priorities of claims to Article
5 12 property established before the effective date of this Act cease to apply on the
6 adjustment date.

7 ➔Section 110. KRS 304.7-360 is amended to read as follows:

8 (1) As used in this section:

- 9 (a) "Clearing corporation" shall be defined as provided in KRS 355.8-102~~[(3)]~~
10 except that, with respect to securities issued by institutions organized or
11 existing under the laws of any foreign country or securities used to meet the
12 deposit requirements pursuant to the laws of a foreign country as a condition
13 of doing business therein, "clearing corporation" may include a corporation
14 organized or existing under the laws of any foreign country which is legally
15 qualified under such laws to effect transactions in securities by computerized
16 book entry;
- 17 (b) "Custodian bank" means a national bank, state bank, or trust company which
18 is a member of the Federal Reserve System which acts as custodian of all or
19 any part of an insurance company's securities;
- 20 (c) "Direct participant" means a bank, trust company, or other institution which
21 maintains an account in its name in a clearing corporation and through which
22 an insurance company participates in a clearing corporation;
- 23 (d) "Federal reserve book-entry system" means the computerized systems
24 sponsored by the United States Department of the Treasury and certain
25 agencies and instrumentalities of the United States for holding and
26 transferring securities of the United States government and such agencies and
27 instrumentalities, respectively, in federal reserve banks through banks which

1 are members of the Federal Reserve System or which otherwise have access
2 to such computerized systems;

3 (e) "Member bank" means a national bank, state bank, or trust company which is
4 a member of the Federal Reserve System through which an insurance
5 company participates in the federal reserve book-entry system;

6 (f) "Security" means a certificated security or an uncertificated security;

7 (g) "Certificated security" means a share, participation, or other interest in
8 property or an enterprise of the issuer or an obligation of the issuer which is
9 represented by an instrument issued in bearer or registered form, of a type
10 commonly dealt in on securities exchanges or markets or commonly
11 recognized in any area in which it is issued or dealt in as a medium for
12 investment, and either one (1) of a class or series or by its terms divisible into
13 a class or series of shares, participations, interests, or obligations; and

14 (h) "Uncertificated security" means a share, participation, or other interest in
15 property or an enterprise of the issuer or an obligation of the issuer which is
16 not represented by an instrument and the transfer of which is registered upon
17 books maintained for that purpose by or on behalf of the issuer, of a type
18 commonly dealt in on securities exchanges or markets; and either one (1) of a
19 class or series or by its terms divisible into a class or series of shares,
20 participations, interests, or obligations.

21 (2) Notwithstanding any other provision of law, an insurance company or its custodian
22 bank may deposit or arrange for the deposit of securities held in or purchased for
23 the general account and the separate accounts of such insurance company in a
24 clearing corporation or the federal reserve book-entry system. When securities are
25 deposited with a clearing corporation, certificates representing securities of the
26 same class of the same issuer may be merged and held in bulk in the name of the
27 nominee of such clearing corporation with any other securities deposited with such

1 clearing corporation by any person, regardless of the ownership of such securities,
2 and certificates representing securities of small denominations may be merged into
3 one (1) or more certificates of larger denominations. The records of any member
4 bank through which an insurance company holds securities in the federal reserve
5 book-entry system, and the records of any direct participant through which an
6 insurance company holds securities in a clearing corporation, shall at all times show
7 that such securities are held for such insurance company or its custodian bank and
8 for which accounts thereof. Ownership of, and other interests in, such securities
9 may be transferred by bookkeeping entry on the books of such clearing corporation
10 or in the federal reserve book-entry system without, in either case, physical delivery
11 of certificates representing such securities.

12 (3) Notwithstanding any other provision of law, an insurance company may deposit
13 securities held in or purchased for its general account and its separate accounts in a
14 custodial account with a custodian bank approved by, and under a custodial
15 agreement approved by, the commissioner. When securities are deposited in such
16 custodial account, certificates representing securities of the same class of the same
17 issuer may be merged and held in bulk in the name of the custodian bank or its
18 nominee with any other securities held in the custody of the custodian bank or its
19 nominee by any person, regardless of the ownership of such securities, and
20 certificates representing securities of small denominations may be merged into one
21 (1) or more certificates of larger denominations. The records of the custodian bank
22 which holds securities for an insurance company in a custodial account shall at all
23 times show that such securities are held for such insurance company and for which
24 accounts thereof. Ownership of, and other interests in, such securities may be
25 transferred by bookkeeping entry on the books of such custodian bank without
26 physical delivery of certificates representing such securities.

27 (4) The same bank or trust company may act as direct participant, member bank, and

1 custodian bank for an insurance company.

2 (5) The commissioner of insurance shall promulgate administrative~~[rules and]~~
3 regulations governing the deposit by insurance companies of securities with
4 clearing corporations and in the federal reserve book-entry system and with
5 custodian banks.

6 ➔Section 111. KRS 367.976 is amended to read as follows:

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

8 (1) "Advertisement" means a commercial message in any medium that aids, promotes,
9 or assists directly or indirectly a rental-purchase agreement, excluding in-store
10 merchandising aids;~~[.]~~

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

13 (3) "Consumer" means a natural person who rents personal property under a rental-
14 purchase agreement;~~[.]~~

15 (4) "Consummation" means the time a consumer becomes contractually obligated on a
16 rental-purchase agreement;~~[.]~~

17 (5) "Division" means the Division of Consumer Protection in the Office of the Attorney
18 General;~~[.]~~

19 (6) "Lessor" means a person who, in the ordinary course of business, regularly leases,
20 offers to lease, or arranges for the leasing of property under a rental-purchase
21 agreement;~~[.]~~

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

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

3 ~~1.(a)~~ A lease or agreement which constitutes a credit sale as defined in
4 12 C.F.R. part 226.2(a)(16) and Section 1602~~(h)(g)~~ of the Truth in
5 Lending Act, 15 U.S.C. ~~sec.~~~~secs.~~ 1601 et seq.;

6 ~~2.(b)~~ A lease which constitutes a consumer lease as defined in 12 C.F.R.
7 part 213.2~~(e)(1)(a)(6)~~;

8 ~~3.(c)~~ Any lease for agricultural, business, or commercial purposes;

9 ~~4.(d)~~ Any lease made to an organization;

10 ~~5.(e)~~ A lease or agreement which constitutes a retail installment
11 transaction or retail installment contract as defined in KRS 371.210;

12 ~~6.(f)~~ A security interest as defined in KRS 355.1-201~~(37)~~; or

13 ~~7.(g)~~ A home solicitation sale as that term is defined in KRS 367.410.

14 ➔Section 112. KRS 369.116 is amended to read as follows:

15 (1) In this section, "transferable record" means an electronic record that:

16 (a) Would be a note under Article 3 of KRS Chapter 355 or a document under
17 Article 7 of KRS Chapter 355 if the electronic record were in writing; and

18 (b) The issuer of the electronic record expressly has agreed is a transferable
19 record.

20 (2) A person has control of a transferable record if a system employed for evidencing
21 the transfer of interests in the transferable record reliably establishes that person as
22 the person to which the transferable record was issued or transferred.

23 (3) A system satisfies subsection (2) of this section, and a person is deemed to have
24 control of a transferable record, if the transferable record is created, stored, and
25 assigned in such a manner that:

26 (a) A single authoritative copy of the transferable record exists which is unique,
27 identifiable, and, except as otherwise provided in paragraphs (d), (e), and (f)

- 1 of this subsection, unalterable;
- 2 (b) The authoritative copy identifies the person asserting control as:
- 3 1. The person to which the transferable record was issued; or
- 4 2. If the authoritative copy indicates that the transferable record has been
- 5 transferred, the person to which the transferable record was most
- 6 recently transferred;
- 7 (c) The authoritative copy is communicated to and maintained by the person
- 8 asserting control or its designated custodian;
- 9 (d) Copies of revisions that add or change an identified assignee of the
- 10 authoritative copy can be made only with the consent of the person asserting
- 11 control;
- 12 (e) Each copy of the authoritative copy and any copy of a copy is readily
- 13 identifiable as a copy that is not the authoritative copy; and
- 14 (f) Any revision of the authoritative copy is readily identifiable as authorized or
- 15 unauthorized.
- 16 (4) (a) Except as otherwise agreed, a person having control of a transferable record is
- 17 the holder, as defined in KRS 355.1-201~~[(20)]~~, of the transferable record and
- 18 has the same rights and defenses as a holder of an equivalent record or writing
- 19 under KRS Chapter 355, including, if the applicable statutory requirements
- 20 under KRS 355.3-302(1), 355.7-501, or 355.9-330 are satisfied, the rights and
- 21 defenses of a holder in due course, a holder to which a negotiable document
- 22 of title has been duly negotiated, or a purchaser, respectively.
- 23 (b) Delivery, possession, and indorsement are not required to obtain or exercise
- 24 any of the rights under this subsection.
- 25 (5) Except as otherwise agreed, an obligor under a transferable record has the same
- 26 rights and defenses as an equivalent obligor under equivalent records or writing
- 27 under KRS Chapter 355.

1 (6) If requested by a person against which enforcement is sought, the person seeking to
2 enforce the transferable record shall provide reasonable proof that the person is in
3 control of the transferable record. Proof may include access to the authoritative
4 copy of the transferable record and related business records sufficient to review the
5 terms of the transferable record and to establish the identity of the person having
6 control of the transferable record.

7 ➔Section 113. Nothing in this Act shall be construed to support, endorse, create,
8 or implement a national digital currency.

9 ➔Section 114. This Act takes effect on January 1, 2025.