

REPORTS OF STANDING COMMITTEES

MR. SPEAKER:

The Committee on **Judiciary** recommends **HB 2398** be passed as amended on page 1, in line 24, by striking "2012" and inserting "2013";

On page 9, in line 36, before "in" by inserting "as a plaintiff in an action to determine that the plaintiff is a member of a limited liability company or";

On page 12, in line 40, by striking "2012" and inserting "2013";

On page 13, by striking all in line 11;

And by renumbering paragraphs accordingly;

On page 14, in line 42, by striking "2012" and inserting "2013";

On page 17, in line 27, by striking "2012" and inserting "2013";

On page 21, in line 12, by striking "2012" and inserting "2013"; in line 16, by striking "2012" and inserting "2013";

On page 25, in line 28, by striking "2013" and inserting "2014";

On page 34, in line 6, by striking "2013" and inserting "2014"; in line 7, by striking "2013" and inserting "2014"; in line 23, by striking "2013" and inserting "2014"; in line 24, by striking "2013" and inserting "2014";

On page 53, in line 5, by striking "2013" and inserting "2014"; in line 8, by striking "2012" and inserting "2013";

On page 58, by striking lines 6 and 7;

And by renumbering paragraphs accordingly;

On page 59, by striking all in lines 18 through 43;

By striking all on page 60 and 61;

On page 62, by striking all in lines 1 through 42 and inserting:

"Sec. 66. K.S.A. 2013 Supp. 84-9-406 is hereby amended to read as follows: 84-9-406. (a)

**Discharge of account debtor; effect of notification.** Subject to subsections (b) through (i), an account debtor on an account, chattel paper, or a payment intangible may discharge the account debtor's obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge the account debtor's obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(b) **When notification ineffective.** Subject to subsection (h), notification is ineffective under subsection (a):

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

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

(3) at the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

(A) Only a portion of the account, chattel paper, or payment intangible has been assigned to that assignee;

(B) a portion has been assigned to another assignee; or

(C) the account debtor knows that the assignment to that assignee is limited.

(c) **Proof of assignment.** Subject to subsection (h), if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the

assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (a).

(d) **Term restricting assignment generally ineffective.** Except as otherwise provided in subsection (e), subsection (g) of K.S.A. 17-76,134, K.S.A. 84-2a-303 and K.S.A. 2013 Supp. 84-9-407, and amendments thereto, and subject to subsection (h), a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

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

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

(e) **Inapplicability of subsection (d) to certain sales.** Subsection (d) does not apply to the sale of a payment intangible or promissory note, other than a sale pursuant to a disposition under K.S.A. 2013 Supp. 84-9-610, and amendments thereto, or an acceptance of collateral under K.S.A. 2013 Supp. 84-9-620, and amendments thereto.

(f) **Legal restrictions on assignment generally ineffective.** Except as otherwise provided in subsection (g) of K.S.A. 17-76,134, K.S.A. 84-2a-303 and K.S.A. 2013 Supp. 84-9-407, and amendments thereto, and subject to subsections (h) and (i), a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation:

(1) Prohibits, restricts, or requires the consent of the government, governmental body or official,

or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in the account or chattel paper; or

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

(g) **Subsection (b)(3) not waivable.** Subject to subsection (h), an account debtor may not waive or vary its option under subsection (b)(3).

(h) **Rule for individual under other law.** This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(i) **Inapplicability to health-care-insurance receivable.** This section does not apply to an assignment of a health-care-insurance receivable.

(j) **Section prevails over specified inconsistent law.** This section prevails over any inconsistent provisions of any laws, rules, and regulations.

Sec. 67. K.S.A. 2013 Supp. 84-9-408 is hereby amended to read as follows: 84-9-408. (a) **Term restricting assignment generally ineffective.** Except as otherwise provided in subsection (b) and subsection (g) of K.S.A. 17-76,134, and amendments thereto, a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health-care-insurance receivable, or general intangible, is ineffective to the extent that the term:

(1) Would impair the creation, attachment, or perfection of a security interest; or

(2) provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(b) **Applicability of subsection (a) to sales of certain rights to payment.** Subsection (a) applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note, other than a sale pursuant to a disposition under K.S.A. 2013 Supp. 84-9-610, and amendments thereto, or an acceptance of collateral under K.S.A. 2013 Supp. 84-9-620, and amendments thereto.

(c) **Legal restrictions on assignment generally ineffective.** Except as otherwise provided in and subsection (g) of K.S.A. 17-76,134, and amendments thereto, a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health-care-insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation:

(1) Would impair the creation, attachment, or perfection of a security interest; or

(2) provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(d) **Limitation on ineffectiveness under subsections (a) and (c).** To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or general intangible or a rule of law, statute, or regulation described in

subsection (c) would be effective under law other than this article but is ineffective under subsection (a) or (c), the creation, attachment, or perfection of a security interest in the promissory note, health-care-insurance receivable, or general intangible:

(1) Is not enforceable against the person obligated on the promissory note or the account debtor;

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

(3) does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;

(4) does not entitle the secured party to use or assign the debtor's rights under the promissory note, health-care-insurance receivable, or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health-care-insurance receivable, or general intangible;

(5) does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and

(6) does not entitle the secured party to enforce the security interest in the promissory note, health-care-insurance receivable, or general intangible.

(e) **Section prevails over specified inconsistent law.** This section prevails over any inconsistent provisions of any laws, rules, and regulations of this state.";

On page 63, in line 8, by striking "; K.S.A. 2011"; by striking all in lines 9 and 10; in line 11, by striking all before "and"; also in line 11, by striking "2012" and inserting "2013"; in line 12, by striking "and" and inserting a comma; also in line 12, after "17-76,143" by inserting ", 84-9-406 and 84-9-408";

On page 1, in the title, in line 11, by striking all after "17-76,140"; by striking all in lines 12 and 13; in line 14, by striking all before "and"; also in line 12, by striking "2012" and inserting "2013"; in

line 15, by striking the first "and" and inserting a comma; also in line 15, after "17-76,143" by inserting ", 84-9-406 and 84-9-408"; and the bill be passed as amended.

\_\_\_\_\_Chairperson