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HOUSE BILL 110

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

W. Ken Martinez

AN ACT

RELATING TO COMMERCIAL LAW; PROVIDING THAT THE UNIFORM
COMMERCIAL CODE DOES NOT APPLY TO AN ASSIGNMENT OF A CLAIM OR
RIGHT TO RECEIVE A WORKERS' COMPENSATION SETTLEMENT OR MEDICAID
BENEFITS SETTLEMENT; AMENDING A SECTION OF THE UNIFORM
COMMERCIAL CODE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 55-9-109 NMSA 1978 (being Laws 2001,
Chapter 139, Section 9, as amended) is amended to read:

"55-9-109. SCOPE. --

(a) Except as otherwise provided in Subsections (c)
and (d) of this section, Chapter 55, Article 9 NMSA 1978
applies to:

(1) a transaction, regardless of its form,
that creates a security interest in personal property or

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1 fixtures by contract;

2 (2) an agricultural lien;

3 (3) a sale of accounts, chattel paper, payment
4 intangibles or promissory notes;

5 (4) a consignment;

6 (5) a security interest arising under Section
7 55-2-401, 55-2-505, Subsection (3) of Section 55-2-711 or
8 Subsection (5) of Section 55-2A-508 NMSA 1978, as provided in
9 Section 55-9-110 NMSA 1978; and

10 (6) a security interest arising under Section
11 55-4-210 or 55-5-118 NMSA 1978.

12 (b) The application of Chapter 55, Article 9 NMSA
13 1978 to a security interest in a secured obligation is not
14 affected by the fact that the obligation is itself secured by a
15 transaction or interest to which this article does not apply.

16 (c) Chapter 55, Article 9 NMSA 1978 does not apply
17 to the extent that:

18 (1) a statute, regulation or treaty of the
19 United States preempts the article;

20 (2) another statute of this state expressly
21 governs the creation, perfection, priority or enforcement of a
22 security interest created by this state or a governmental unit
23 of this state;

24 (3) a statute of another state, a foreign
25 country or a governmental unit of another state or a foreign

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1 country, other than a statute generally applicable to security
2 interests, expressly governs creation, perfection, priority or
3 enforcement of a security interest created by the state,
4 country or governmental unit; or

5 (4) the rights of a transferee beneficiary or
6 nominated person under a letter of credit are independent and
7 superior under Section 55-5-114 NMSA 1978.

8 (d) Chapter 55, Article 9 NMSA 1978 does not apply
9 to:

10 (1) a landlord's lien, other than an
11 agricultural lien;

12 (2) a lien, other than an agricultural lien,
13 given by statute or other rule of law for services or
14 materials, but Section 55-9-333 NMSA 1978 applies with respect
15 to priority of the lien;

16 (3) an assignment of a claim for wages, salary
17 or other compensation of an employee;

18 (4) a sale of accounts, chattel paper, payment
19 intangibles or promissory notes as part of a sale of the
20 business out of which they arose;

21 (5) an assignment of accounts, chattel paper,
22 payment intangibles or promissory notes which is for the
23 purpose of collection only;

24 (6) an assignment of a right to payment under
25 a contract to an assignee that is also obligated to perform

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1 under the contract;

2 (7) an assignment of a single account, payment
3 intangible or promissory note to an assignee in full or partial
4 satisfaction of a preexisting indebtedness;

5 (8) a transfer of an interest in or an
6 assignment of a claim under a policy of insurance, other than
7 an assignment by or to a health-care provider of a health-care-
8 insurance receivable and any subsequent assignment of the right
9 to payment, but Sections 55-9-315 and 55-9-322 NMSA 1978 apply
10 with respect to proceeds and priorities in proceeds;

11 (9) an assignment of a right represented by a
12 judgment, other than a judgment taken on a right to payment
13 that was collateral;

14 (10) a right of recoupment or set-off, but:

15 (A) Section 55-9-340 NMSA 1978 applies
16 with respect to the effectiveness of rights of recoupment or
17 set-off against deposit accounts; and

18 (B) Section 55-9-404 NMSA 1978 applies
19 with respect to defenses or claims of an account debtor;

20 (11) the creation or transfer of an interest
21 in or lien on real property, including a lease or rents
22 thereunder, except to the extent that provision is made for:

23 (A) liens on real property in Sections
24 55-9-203 and 55-9-308 NMSA 1978;

25 (B) fixtures in Section 55-9-334 NMSA

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1 1978;

2 (C) fixture filings in Sections
3 55-9-501, 55-9-502, 55-9-512, 55-9-516 and 55-9-519 NMSA 1978;
4 and

5 (D) security agreements covering
6 personal and real property in Section 55-9-604 NMSA 1978;

7 (12) an assignment of a claim arising in tort,
8 other than a commercial tort claim, but Sections 55-9-315 and
9 55-9-322 NMSA 1978 apply with respect to proceeds and
10 priorities in proceeds;

11 (13) an assignment of a deposit account in a
12 consumer transaction, but Sections 55-9-315 and 55-9-322 NMSA
13 1978 apply with respect to proceeds and priorities in proceeds;
14 [~~or~~]

15 (14) a transfer by this state or a
16 governmental unit of this state;

17 (15) an assignment of a claim or right to
18 receive compensation for injuries or sickness as described in
19 26 U.S.C. Section 104 (a) (1) or (2), as amended; or

20 (16) an assignment of a claim or right to
21 receive benefits under a special needs trust as describes in 42
22 U.S.C. Section 1396p (d) (4), as amended. "

23 Section 2. EFFECTIVE DATE. --The effective date of the
24 provisions of this act is July 1, 2003.