

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

**SESSION LAW 2001-218
SENATE BILL 829**

AN ACT TO CLARIFY TREATMENT OF CERTAIN SECURITY INTERESTS
CREATED BY THE STATE OR GOVERNMENTAL UNITS OF THE STATE
UNDER ARTICLE 9 OF THE NORTH CAROLINA UNIFORM COMMERCIAL
CODE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 25-9-102(45) reads as rewritten:

"(45) "Governmental unit" means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, or a foreign country. The term includes an organization having a separate corporate existence if the organization (i) is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States, or (ii) was created to facilitate the issuance of notes, bonds, other evidences of indebtedness or payment obligations for borrowed money by, or in conjunction with, installment or lease purchase financings for, this State or any county, municipality, or other agency or political subdivision thereof as evidenced by the documents creating the organization."

SECTION 2. G.S. 25-9-109 reads as rewritten:

"§ 25-9-109. Scope.

(a) General scope of Article. – Except as otherwise provided in subsections (c) and (d) of this section, this Article applies to:

- (1) A transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;
- (2) An agricultural lien;
- (3) A sale of accounts, chattel paper, payment intangibles, or promissory notes;
- (4) A consignment;
- (5) A security interest arising under G.S. 25-2-401, 25-2-505, 25-2-711(3), or 25-2A-508(5), as provided in G.S. 25-9-110; and
- (6) A security interest arising under G.S. 25-4-208 or G.S. 25-5-118.

(b) Security interest in secured obligation. – The application of this Article to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this Article does not apply.

(c) Extent to which Article does not apply. – This Article does not apply to the extent that:

- (1) A statute, regulation, or treaty of the United States preempts this Article;
- ~~(2) Another statute of this State expressly governs the creation, perfection, priority, or enforcement of a security interest created by this State or a governmental unit of this State;~~
- ~~(3)~~(2) A statute of another state, a foreign country, or a governmental unit of another state or a foreign country, other than a statute generally applicable to security interests, expressly governs creation, perfection,

- priority, or enforcement of a security interest created by the state, country, or governmental unit; or
- (4)(3) The rights of a transferee beneficiary or nominated person under a letter of credit are independent and superior under G.S. 25-5-114.
- (d) Inapplicability of Article. – This Article does not apply to:
- (1) A landlord's lien, other than an agricultural lien;
 - (2) A lien, other than an agricultural lien, given by statute or other rule of law for services or materials, but G.S. 25-9-333 applies with respect to priority of the lien;
 - (3) An assignment of a claim for wages, salary, or other compensation of an employee;
 - (4) A sale of accounts, chattel paper, payment intangibles, or promissory notes as part of a sale of the business out of which they arose;
 - (5) An assignment of accounts, chattel paper, payment intangibles, or promissory notes which is for the purpose of collection only;
 - (6) An assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract;
 - (7) An assignment of a single account, payment intangible, or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness;
 - (8) A transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health-care provider of a health-care-insurance receivable and any subsequent assignment of the right to payment, but G.S. 25-9-315 and G.S. 25-9-322 apply with respect to proceeds and priorities in proceeds;
 - (9) An assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral;
 - (10) A right of recoupment or setoff, but:
 - a. G.S. 25-9-340 applies with respect to the effectiveness of rights of recoupment or setoff against deposit accounts; and
 - b. G.S. 25-9-404 applies with respect to defenses or claims of an account debtor;
 - (11) The creation or transfer of an interest in or lien on real property, including a lease or rents thereunder, except to the extent that provision is made for:
 - a. Liens on real property in G.S. 25-9-203 and G.S. 25-9-308;
 - b. Fixtures in G.S. 25-9-334;
 - c. Fixture filings in G.S. 25-9-501, 25-9-502, 25-9-512, 25-9-516, and 25-9-519; and
 - d. Security agreements covering personal and real property in G.S. 25-9-604;
 - (12) An assignment of a claim arising in tort, other than a commercial tort claim, but G.S. 25-9-315 and G.S. 25-9-322 apply with respect to proceeds and priorities in proceeds; ~~or~~
 - (13) An assignment of a deposit account in a consumer transaction, but G.S. 25-9-315 and G.S. 25-9-322 apply with respect to proceeds and priorities in ~~proceeds~~; ~~proceeds~~; or
 - (14) The creation, perfection, priority, or enforcement of any lien on, assignment of, pledge of, or security in, any revenues, rights, funds, or other tangible or intangible assets created, made, or granted by this State or a governmental unit in this State, including the assignment of rights as secured party in security interests granted by any party subject to the provisions of this Article to this State or a governmental unit in this State, to secure, directly or indirectly, any bond, note, other evidence of indebtedness, or other payment obligations for borrowed

money issued by, or in connection with, installment or lease purchase financings by, this State or a governmental unit in this State. However, notwithstanding this subdivision, this Article does apply to the creation, perfection, priority, and enforcement of security interests created by this State or a governmental unit in this State in equipment or fixtures."

SECTION 3. G.S. 25-9-310(b)(11) is repealed.

SECTION 4. G.S. 25-9-702 reads as rewritten:

"§ 25-9-702. Savings clause.

(a) Pre-effective-date transactions or liens. – Except as otherwise provided in this Part, this act applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before July 1, 2001.

(b) Continuing validity. – Except as otherwise provided in subsection (c) of this section and G.S. 25-9-703 through G.S. 25-9-709:

(1) Transactions and liens that were not governed by former Article 9, were validly entered into or created before July 1, 2001, and would be subject to this act if they had been entered into or created after July 1, 2001, and the rights, duties, and interests flowing from those transactions and liens remain valid after July 1, 2001; and

(2) The transactions and liens described in subdivision (1) of this subsection may be terminated, completed, consummated, and enforced as required or permitted by this act or by the law that otherwise would apply if this act had not taken effect.

(c) Pre-effective-date proceedings. – This act does not affect an action, case, or proceeding commenced before July 1, 2001.

(d) Special rule for certain governmental transactions. – Notwithstanding any other provision of this act, security interests that were excluded under former Article 9 pursuant to former G.S. 25-9-104(e) or as to which the filing requirements of former Article 9 did not apply pursuant to former G.S. 25-9-302(6), and which are effective prior to July 1, 2001, but for which the applicable requirements for creation, perfection, or enforceability under this act are not satisfied on July 1, 2001, shall nonetheless be treated as valid, enforceable, and perfected security interests under this act for the duration of those security interests."

SECTION 5. G.S. 63A-11(e), 143B-456.1(f), 159C-28, and 159D-23 are repealed.

SECTION 6. The Revisor of Statutes shall cause to be printed along with the portions of this act amending Article 9 of Chapter 25 of the General Statutes, such North Carolina official comments explaining the amendments made by this act as the Revisor deems appropriate.

SECTION 7. This act becomes effective July 1, 2001.
In the General Assembly read three times and ratified this the 7th day of June,
2001.

s/ Beverly E. Perdue
President of the Senate

s/ Joe Hackney
Speaker Pro Tempore of the House of Representatives

s/ Michael F. Easley
Governor

Approved 4:31 p.m. this 15th day of June, 2001