

VIRGINIA ACTS OF ASSEMBLY -- 2001 SESSION

CHAPTER 296

An Act to amend and reenact §§ 8.9A-109 and 8.9A-703 of the Code of Virginia and to amend the Code of Virginia by adding in Article 1 of Chapter 17 of Title 2.1 a section numbered 2.1-304.1:2, relating to government bonds; the Uniform Commercial Code.

[H 1769]

Approved March 15, 2001

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.9A-109 and 8.9A-703 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 1 of Chapter 17 of Title 2.1 a section numbered 2.1-304.1:2 as follows:

§ 2.1-304.1:2. Pledges and security interests created by governmental units.

Except for security interests, liens or pledges in goods or software, or the proceeds thereof, described in § 8.9A-109(e), the creation, perfection, priority and enforcement of a security interest, lien or pledge created, made or granted by the Commonwealth or a governmental unit of the Commonwealth, as defined in § 8.9A-102, to pay or secure any bonds, notes, obligations or other debt securities, herein collectively called "bonds," shall be governed by this section, the provisions of law under which the bonds were authorized, and the ordinance, resolution, trust agreement, indenture, financing agreement or similar instrument securing the bonds, herein called the "security interest." Property pledged or in which a security interest is created for the payment or security of any bonds, whether presently held by the governmental unit or as thereafter received by or otherwise credited to the governmental unit, shall immediately be subject to the lien of such pledge or security interest without any physical delivery, control, filing or further act. The lien of such pledge or security interest made or granted in the security instrument shall have priority over any other obligations or liabilities of the governmental unit, except as may be otherwise provided in the security instrument. The lien of each such pledge or security interest shall be valid, binding and enforceable as against all persons having claims of any kind in tort, contract, or otherwise against the governmental unit regardless of whether such persons have notice of such pledge or security interest.

§ 8.9A-109. Scope.

(a) General scope of title. Except as otherwise provided in subsections (c) and (d), this title 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 §§ 8.2-401, 8.2-505, 8.2-711 (3), or § 8.2A-508 (5), as provided in § 8.9A-110; and

(6) a security interest arising under § 8.4-210 or § 8.5A-118.

(b) Security interest in secured obligation. The application of this title 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 title does not apply.

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

(1) a statute, regulation, or treaty of the United States preempts this title;

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

(3) 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) the rights of a transferee beneficiary or nominated person under a letter of credit are independent and superior under § 8.5A-114.

(d) Inapplicability of title. This title 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 § 8.9A-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 or contract for an annuity including a variable, 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 §§ 8.9A-315 and 8.9A-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 set-off, but:

(A) § 8.9A-340 applies with respect to the effectiveness of rights of recoupment or set-off against deposit accounts; and

(B) § 8.9A-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 §§ 8.9A-203 and 8.9A-308;

(B) fixtures in § 8.9A-334;

(C) fixture filings in §§ 8.9A-501, 8.9A-502, 8.9A-512, 8.9A-516, and 8.9A-519; and

(D) security agreements covering personal and real property in § 8.9A-604;

(12) an assignment of a claim arising in tort, other than a commercial tort claim, but §§ 8.9A-315 and 8.9A-322 apply with respect to proceeds and priorities in proceeds;

(13) an assignment of a deposit account in a consumer transaction, but §§ 8.9A-315 and 8.9A-322 apply with respect to proceeds and priorities in proceeds;

(14) *a sale of promissory notes by the Commonwealth or a governmental unit of the Commonwealth in connection with or in furtherance of the exercise of the borrowing power of the Commonwealth or a governmental unit of the Commonwealth.*

(e) Except as provided below, the creation, perfection, priority and enforcement of a security interest, lien or pledge created, made or granted by the Commonwealth or a governmental unit of the Commonwealth to pay or secure any bonds, notes, obligations or other debt securities issued thereby shall be governed by § 2.1-304.1:2 and this title shall not apply to such a security interest, lien or pledge. Security interests, liens or pledges created by the Commonwealth or a governmental unit of this Commonwealth in goods or software, or the proceeds thereof, shall be governed by this title.

§ 8.9A-703. Security interest perfected before effective date.

(a) Continuing priority over lien creditor; perfection requirements satisfied. A security interest that is enforceable immediately before this title takes effect and would have priority over the rights of a person that becomes a lien creditor at that time is a perfected security interest under this title if, when this takes effect, the applicable requirements for enforceability and perfection under this title are satisfied without further action.

(b) Continuing priority over lien creditor; perfection requirements not satisfied. Except as otherwise provided in § 8.9A-705, if, immediately before this title takes effect, a security interest is enforceable and would have priority over the rights of a person that becomes a lien creditor at that time, but the applicable requirements for enforceability or perfection under this title are not satisfied when this takes effect, the security interest:

(1) is a perfected security interest for one year after this takes effect;

(2) remains enforceable thereafter only if the security interest becomes enforceable under § 8.9A-203 before the year expires; and

(3) remains perfected thereafter only if the applicable requirements for perfection under this title are satisfied before the year expires.

(c) Notwithstanding subsections (a) and (b) of this section, a lien, pledge or security interest granted by the Commonwealth or a governmental unit of the Commonwealth prior to July 1, 2001, which is enforceable immediately before July 1, 2001, and would have priority over the rights of a person that becomes a lien creditor at that time, shall remain enforceable and continue to have such priority on or after July 1, 2001.