

HOUSE BILL 888

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HB 1009/01 - ECM

2002 Regular Session
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By: **Delegate McHale**
Introduced and read first time: February 7, 2002
Assigned to: Economic Matters

Committee Report: Favorable
House action: Adopted
Read second time: March 12, 2002

CHAPTER_____

1 AN ACT concerning

2 **Commercial Law - Uniform Commercial Code - Secured Transactions -**
3 **Scope**

4 FOR the purpose of exempting certain claims or rights to receive compensation for
5 injuries or sickness and certain claims or rights to receive benefits under certain
6 special needs trusts from certain provisions governing the assignment of certain
7 rights under Title 9 of the Maryland Uniform Commercial Code.

8 BY repealing and reenacting, with amendments,
9 Article - Commercial Law
10 Section 9-406 and 9-408
11 Annotated Code of Maryland
12 (1997 Replacement Volume and 2001 Supplement)

13 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
14 MARYLAND, That the Laws of Maryland read as follows:

15 **Article - Commercial Law**

16 9-406.

17 (a) Subject to subsections (b) through (j), an account debtor on an account,
18 chattel paper, or a payment intangible may discharge its obligation by paying the
19 assignor until, but not after, the account debtor receives a notification, authenticated
20 by the assignor or the assignee, that the amount due or to become due has been
21 assigned and that payment is to be made to the assignee. After receipt of the
22 notification, the account debtor may discharge its obligation by paying the assignee
23 and may not discharge the obligation by paying the assignor.

1 (b) Subject to subsection (h), notification is ineffective under subsection (a):

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

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

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

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

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

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

14 (c) Subject to subsection (h), if requested by the account debtor, an assignee
15 shall seasonably furnish reasonable proof that the assignment has been made. Unless
16 the assignee complies, the account debtor may discharge its obligation by paying the
17 assignor, even if the account debtor has received a notification under subsection (a).

18 (d) Except as otherwise provided in subsection (e) and §§ 2A-303 of this article
19 and 9-407, and subject to subsection (h), a term in an agreement between an account
20 debtor and an assignor or in a promissory note is ineffective to the extent that it:

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

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

29 (e) Subsection (d) does not apply to the sale of a payment intangible or
30 promissory note.

31 (f) Except as otherwise provided in §§ 2A-303 of this article and 9-407, and
32 subject to subsections (h) and (i) of this section, a rule of law, statute, or regulation
33 that prohibits, restricts, or requires the consent of a government, governmental body
34 or official, or account debtor to the assignment or transfer of, or creation of a security
35 interest in, an account or chattel paper is ineffective to the extent that the rule of law,
36 statute, or regulation:

1 (1) Prohibits, restricts, or requires the consent of the government,
2 governmental body or official, or account debtor to the assignment or transfer of, or
3 the creation of a security interest in, the account or chattel paper; or

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

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

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

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

15 (j) (1) [This section prevails over any inconsistent statute of this State.]
16 EXCEPT AS PROVIDED IN PARAGRAPH (2), THIS SECTION PREVAILS OVER ANY
17 INCONSISTENT STATUTE OF THIS STATE, UNLESS THE PROVISION IS CONTAINED IN
18 A STATUTE OF THIS STATE, REFERS EXPRESSLY TO THIS SECTION, AND STATES THAT
19 THE PROVISION PREVAILS OVER THIS SECTION.

20 (2) SUBSECTIONS (D) AND (F) DO NOT APPLY TO:

21 (A) A CLAIM OR RIGHT TO RECEIVE AMOUNTS UNDER A WORKERS'
22 COMPENSATION ACT AS COMPENSATION FOR AN ACCIDENTAL INJURY OR AN
23 OCCUPATIONAL DISEASE;

24 (B) A CLAIM OR RIGHT TO RECEIVE AMOUNTS, WHETHER BY SUIT
25 OR AGREEMENT AND WHETHER AS LUMP SUMS OR AS PERIODIC PAYMENTS, FOR
26 DAMAGES ARISING FROM PERSONAL INJURIES; AND

27 (C) A CLAIM OR RIGHT TO RECEIVE BENEFITS FROM A SPECIAL
28 NEEDS TRUST DESCRIBED IN 42 U.S.C. § 1396P(D)(4), AS AMENDED FROM TIME TO
29 TIME.

30 9-408.

31 (a) Except as otherwise provided in subsection (b), a term in a promissory note
32 or in an agreement between an account debtor and a debtor which relates to a
33 health-care-insurance receivable or a general intangible, including a contract,
34 permit, license, or franchise, and which term prohibits, restricts, or requires the
35 consent of the person obligated on the promissory note or the account debtor to, the
36 assignment or transfer of, or creation, attachment, or perfection of a security interest
37 in, the promissory note, health-care-insurance receivable, or general intangible, is
38 ineffective to the extent that the term:

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

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

7 (b) Subsection (a) applies to a security interest in a payment intangible or
8 promissory note only if the security interest arises out of a sale of the payment
9 intangible or promissory note.

10 (c) A rule of law, statute, or regulation that prohibits, restricts, or requires the
11 consent of a government, governmental body or official, person obligated on a
12 promissory note, or account debtor to the assignment or transfer of, or creation of a
13 security interest in, a promissory note, health-care-insurance receivable, or general
14 intangible, including a contract, permit, license, or franchise between an account
15 debtor and a debtor, is ineffective to the extent that the rule of law, statute, or
16 regulation:

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

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

23 (d) To the extent that a term in a promissory note or in an agreement between
24 an account debtor and a debtor which relates to a health-care-insurance receivable
25 or general intangible or a rule of law, statute, or regulation described in subsection (c)
26 would be effective under law other than this title but is ineffective under subsection
27 (a) or (c), the creation, attachment, or perfection of a security interest in the
28 promissory note, health-care-insurance receivable, or general intangible:

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

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

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

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

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

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

6 (e) (1) This section prevails over any inconsistent statute of this State
7 EXCEPT AS PROVIDED IN PARAGRAPH (2).

8 (2) SUBSECTIONS (A) AND (C) DO NOT APPLY TO:

9 (A) A CLAIM OR RIGHT TO RECEIVE AMOUNTS UNDER A WORKERS'
10 COMPENSATION ACT AS COMPENSATION FOR AN ACCIDENTAL INJURY OR AN
11 OCCUPATIONAL DISEASE;

12 (B) A CLAIM OR RIGHT TO RECEIVE AMOUNTS, WHETHER BY SUIT
13 OR AGREEMENT AND WHETHER AS LUMP SUMS OR AS PERIODIC PAYMENTS, FOR
14 DAMAGES ARISING FROM PERSONAL INJURIES; AND

15 (C) A CLAIM OR RIGHT TO RECEIVE BENEFITS FROM A SPECIAL
16 NEEDS TRUST DESCRIBED IN 42 U.S.C. § 1396P(D)(4), AS AMENDED FROM TIME TO
17 TIME.

18 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
19 October 1, 2002.