

SENATE BILL 631

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HB 1009/01 - ECM

2002 Regular Session  
2lr2045  
CF 2lr2044

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By: **Senator Della**

Introduced and read first time: February 1, 2002

Assigned to: Finance

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A BILL ENTITLED

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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (A) A CLAIM OR RIGHT TO RECEIVE AMOUNTS UNDER A WORKERS'  
15 COMPENSATION ACT AS COMPENSATION FOR AN ACCIDENTAL INJURY OR AN  
16 OCCUPATIONAL DISEASE;

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

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

23 9-408.

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

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

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

1 (b) Subsection (a) applies to a security interest in a payment intangible or  
2 promissory note only if the security interest arises out of a sale of the payment  
3 intangible or promissory note.

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

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

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

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

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

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

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

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

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

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

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

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

4 (A) A CLAIM OR RIGHT TO RECEIVE AMOUNTS UNDER A WORKERS'  
5 COMPENSATION ACT AS COMPENSATION FOR AN ACCIDENTAL INJURY OR AN  
6 OCCUPATIONAL DISEASE;

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

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

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