

SECOND REGULAR SESSION

HOUSE BILL NO. 1551

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SASSMANN.

3243H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal section 400.9-102, RSMo, and to enact in lieu thereof one new section relating to secured transactions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 400.9-102, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 400.9-102, to read as follows:

400.9-102. (a) In this article:

- (1) "Accession" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost;
- (2) "Account", except as used in "account for", means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state. The term includes health-care-insurance receivables. The term does not include (i) rights to payment evidenced by chattel paper or an instrument, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card;

EXPLANATION — Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 (3) "Account debtor" means a person obligated on an account, chattel paper, or
19 general intangible. The term does not include persons obligated to pay a negotiable
20 instrument, even if the instrument constitutes part of chattel paper;

21 (4) "Accounting", except as used in "accounting for", means a record:

22 (A) Authenticated by a secured party;

23 (B) Indicating the aggregate unpaid secured obligations as of a date not more than
24 thirty-five days earlier or thirty-five days later than the date of the record; and

25 (C) Identifying the components of the obligations in reasonable detail;

26 (5) "Agricultural lien" means an interest, other than a security interest, in farm
27 products:

28 (A) Which secures payment or performance of an obligation for:

29 (i) Goods or services furnished in connection with a debtor's farming operation; or

30 (ii) Rent on real property leased by a debtor in connection with its farming operation;

31 (B) Which is created by statute in favor of a person that:

32 (i) In the ordinary course of its business furnished goods or services to a debtor in
33 connection with a debtor's farming operation; or

34 (ii) Leased real property to a debtor in connection with the debtor's farming operation;

35 and

36 (C) Whose effectiveness does not depend on the person's possession of the personal
37 property;

38 (6) "As-extracted collateral" means:

39 (A) Oil, gas, or other minerals that are subject to a security interest that:

40 (i) Is created by a debtor having an interest in the minerals before extraction; and

41 (ii) Attaches to the minerals as extracted; or

42 (B) Accounts arising out of the sale at the wellhead or minehead of oil, gas, or other
43 minerals in which the debtor had an interest before extraction;

44 (7) "Authenticate" means:

45 (A) To sign; or

46 (B) With the present intent to adopt or accept a record, to attach to or logically
47 associate with the record an electronic sound, symbol or process;

48 (8) "Bank" means an organization that is engaged in the business of banking. The
49 term includes savings banks, savings and loan associations, credit unions, and trust
50 companies;

51 (9) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the
52 like;

53 (10) "Certificate of title" means a certificate of title with respect to which a statute
54 provides for the security interest in question to be indicated on the certificate as a condition or

55 result of the security interest's obtaining priority over the rights of a lien creditor with respect
56 to the collateral. The term includes another record maintained as an alternative to a certificate
57 of title by the governmental unit that issues certificates of title if a statute permits the security
58 interest in question to be indicated on the record as a condition or result of the security
59 interest's obtaining priority over the rights of a lien creditor with respect to the collateral;

60 (11) "Chattel paper" means a record or records that evidence both a monetary
61 obligation and a security interest in specific goods, a security interest in specific goods and
62 software used in the goods, a security interest in specific goods and license of software used
63 in the goods, a lease of specific goods, or a lease of specific goods and license of software
64 used in the goods. In this paragraph, "monetary obligation" means a monetary obligation
65 secured by the goods or owed under a lease of the goods and includes a monetary obligation
66 with respect to software used in the goods. The term does not include (i) charters or other
67 contracts involving the use or hire of a vessel or (ii) records that evidence a right to payment
68 arising out of the use of a credit or charge card or information contained on or for use with the
69 card. If a transaction is evidenced by records that include an instrument or series of
70 instruments, the group of records taken together constitutes chattel paper;

71 (12) "Collateral" means the property subject to a security interest or agricultural lien.
72 The term includes:

73 (A) Proceeds to which a security interest attaches;

74 (B) Accounts, chattel paper, payment intangibles, and promissory notes that have
75 been sold; and

76 (C) Goods that are the subject of a consignment;

77 (13) "Commercial tort claim" means a claim arising in tort with respect to which:

78 (A) The claimant is an organization; or

79 (B) The claimant is an individual and the claim:

80 (i) Arose in the course of the claimant's business or profession; and

81 (ii) Does not include damages arising out of personal injury to or the death of an
82 individual;

83 (14) "Commodity account" means an account maintained by a commodity
84 intermediary in which a commodity contract is carried for a commodity customer;

85 (15) "Commodity contract" means a commodity futures contract, an option on a
86 commodity futures contract, a commodity option, or another contract if the contract or option
87 is:

88 (A) Traded on or subject to the rules of a board of trade that has been designated as a
89 contract market for such a contract pursuant to federal commodities laws; or

90 (B) Traded on a foreign commodity board of trade, exchange, or market, and is
91 carried on the books of a commodity intermediary for a commodity customer;

92 (16) "Commodity customer" means a person for which a commodity intermediary
93 carries a commodity contract on its books;

94 (17) "Commodity intermediary" means a person that:

95 (A) Is registered as a futures commission merchant under federal commodities law; or

96 (B) In the ordinary course of its business provides clearance or settlement services for
97 a board of trade that has been designated as a contract market pursuant to federal commodities
98 law;

99 (18) "Communicate" means:

100 (A) To send a written or other tangible record;

101 (B) To transmit a record by any means agreed upon by the persons sending and
102 receiving the record; or

103 (C) In the case of transmission of a record to or by a filing office, to transmit a record
104 by any means prescribed by filing-office rule;

105 (19) "Consignee" means a merchant to which goods are delivered in a consignment;

106 (20) "Consignment" means a transaction, regardless of its form, in which a person
107 delivers goods to a merchant for the purpose of sale and:

108 (A) The merchant:

109 (i) Deals in goods of that kind under a name other than the name of the person making
110 delivery;

111 (ii) Is not an auctioneer; and

112 (iii) Is not generally known by its creditors to be substantially engaged in selling the
113 goods of others;

114 (B) With respect to each delivery, the aggregate value of the goods is one thousand
115 dollars or more at the time of delivery;

116 (C) The goods are not consumer goods immediately before delivery; and

117 (D) The transaction does not create a security interest that secures an obligation;

118 (21) "Consignor" means a person that delivers goods to a consignee in a consignment;

119 (22) "Consumer debtor" means a debtor in a consumer transaction;

120 (23) "Consumer goods" means goods that are used or bought for use primarily for
121 personal, family, or household purposes;

122 (24) "Consumer-goods transaction" means a consumer transaction in which:

123 (A) An individual incurs an obligation primarily for personal, family, or household
124 purposes; and

125 (B) A security interest in consumer goods secures the obligation;

126 (25) "Consumer obligor" means an obligor who is an individual and who incurred the
127 obligation as part of a transaction entered into primarily for personal, family, or household
128 purposes;

- 129 (26) "Consumer transaction" means a transaction in which (i) an individual incurs an
130 obligation primarily for personal, family, or household purposes, (ii) a security interest
131 secures the obligation, and (iii) the collateral is held or acquired primarily for personal,
132 family, or household purposes. The term includes consumer-goods transactions;
- 133 (27) "Continuation statement" means an amendment of a financing statement which:
134 (A) Identifies, by its file number, the initial financing statement to which it relates;
135 and
136 (B) Indicates that it is a continuation statement for, or that it is filed to continue the
137 effectiveness of, the identified financing statement;
- 138 (28) "Debtor" means:
139 (A) A person having an interest, other than a security interest or other lien, in the
140 collateral, whether or not the person is an obligor;
141 (B) A seller of accounts, chattel paper, payment intangibles, or promissory notes; or
142 (C) A consignee;
- 143 (29) "Deposit account" means a demand, time, savings, passbook, or similar account
144 maintained with a bank. The term does not include investment property or accounts
145 evidenced by an instrument;
- 146 (30) "Document" means a document of title or a receipt of the type described in
147 section 400.7-201(b);
- 148 (31) "Electronic chattel paper" means chattel paper evidenced by a record or records
149 consisting of information stored in an electronic medium;
- 150 (32) "Encumbrance" means a right, other than an ownership interest, in real property.
151 The term includes mortgages and other liens on real property;
- 152 (33) "Equipment" means goods other than inventory, farm products, or consumer
153 goods;
- 154 (34) "Farm products" means goods[~~, other than standing timber,~~] with respect to
155 which the debtor is engaged in a farming operation and which are:
156 (A) Crops grown, growing, or to be grown, including:
157 (i) **Trees**, crops produced on trees, vines, and bushes; and
158 (ii) Aquatic goods produced in aquacultural operations;
159 (B) Livestock, born or unborn, including aquatic goods produced in aquacultural
160 operations;
161 (C) Supplies used or produced in a farming operation; or
162 (D) Products of crops or livestock in their unmanufactured states;
- 163 (35) "Farming operation" means raising, cultivating, propagating, fattening, grazing,
164 or any other farming, livestock, or aquacultural operation;

165 (36) "File number" means the number assigned to an initial financing statement
166 pursuant to section 400.9-519(a);

167 (37) "Filing office" means an office designated in section 400.9-501 as the place to
168 file a financing statement;

169 (38) "Filing-office rule" means a rule adopted pursuant to section 400.9-526;

170 (39) "Financing statement" means a record or records composed of an initial
171 financing statement and any filed record relating to the initial financing statement;

172 (40) "Fixture filing" means the filing of a financing statement covering goods that are
173 or are to become fixtures and satisfying section 400.9-502(a) and (b). The term includes the
174 filing of a financing statement covering goods of a transmitting utility which are or are to
175 become fixtures;

176 (41) "Fixtures" means goods that have become so related to particular real property
177 that an interest in them arises under real property law;

178 (42) "General intangible" means any personal property, including things in action,
179 other than accounts, chattel paper, commercial tort claims, deposit accounts, documents,
180 goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and
181 oil, gas, or other minerals before extraction. The term includes payment intangibles and
182 software;

183 (43) "Good faith" means honesty in fact;

184 (44) "Goods" means all things that are movable when a security interest attaches. The
185 term includes (i) fixtures, (ii) standing timber that is to be cut and removed under a
186 conveyance or contract for sale, (iii) the unborn young of animals, (iv) crops grown, growing,
187 or to be grown, even if the crops are produced on trees, vines, or bushes, and (v)
188 manufactured homes. The term also includes a computer program embedded in goods and
189 any supporting information provided in connection with a transaction relating to the program
190 if (i) the program is associated with the goods in such a manner that it customarily is
191 considered part of the goods, or (ii) by becoming the owner of the goods, a person acquires a
192 right to use the program in connection with the goods. The term does not include a computer
193 program embedded in goods that consist solely of the medium in which the program is
194 embedded. The term also does not include accounts, chattel paper, commercial tort claims,
195 deposit accounts, documents, general intangibles, instruments, investment property, letter-of-
196 credit rights, letters of credit, money, or oil, gas, or other minerals before extraction;

197 (45) "Governmental unit" means a subdivision, agency, department, county, parish,
198 municipality, or other unit of the government of the United States, a state, or a foreign
199 country. The term includes an organization having a separate corporate existence if the
200 organization is eligible to issue debt on which interest is exempt from income taxation under
201 the laws of the United States;

202 (46) "Health-care-insurance receivable" means an interest in or claim under a policy
203 of insurance which is a right to payment of a monetary obligation for health-care goods or
204 services provided or to be provided;

205 (47) "Instrument" means a negotiable instrument or any other writing that evidences a
206 right to the payment of a monetary obligation, is not itself a security agreement or lease, and
207 is of a type that in ordinary course of business is transferred by delivery with any necessary
208 indorsement or assignment. The term does not include (i) investment property, (ii) letters of
209 credit, or (iii) writings that evidence a right to payment arising out of the use of a credit or
210 charge card or information contained on or for use with the card;

211 (48) "Inventory" means goods, other than farm products, which:

212 (A) Are leased by a person as lessor;

213 (B) Are held by a person for sale or lease or to be furnished under a contract of
214 service;

215 (C) Are furnished by a person under a contract of service; or

216 (D) Consist of raw materials, work in process, or materials used or consumed in a
217 business;

218 (49) "Investment property" means a security, whether certificated or uncertificated,
219 security entitlement, securities account, commodity contract, or commodity account;

220 (50) "Jurisdiction of organization", with respect to a registered organization, means
221 the jurisdiction under whose law the organization is formed or organized;

222 (51) "Letter-of-credit right" means a right to payment or performance under a letter of
223 credit, whether or not the beneficiary has demanded or is at the time entitled to demand
224 payment or performance. The term does not include the right of a beneficiary to demand
225 payment or performance under a letter of credit;

226 (52) "Lien creditor" means:

227 (A) A creditor that has acquired a lien on the property involved by attachment, levy,
228 or the like;

229 (B) An assignee for benefit of creditors from the time of assignment;

230 (C) A trustee in bankruptcy from the date of the filing of the petition; or

231 (D) A receiver in equity from the time of appointment;

232 (53) "Manufactured home" means a structure, transportable in one or more sections,
233 which, in the traveling mode, is eight body feet or more in width or forty body feet or more in
234 length, or, when erected on site, is three hundred twenty or more square feet, and which is
235 built on a permanent chassis and designed to be used as a dwelling with or without a
236 permanent foundation when connected to the required utilities, and includes the plumbing,
237 heating, air-conditioning, and electrical systems contained therein. The term includes any
238 structure that meets all of the requirements of this paragraph except the size requirements and

239 with respect to which the manufacturer voluntarily files a certification required by the United
240 States Secretary of Housing and Urban Development and complies with the standards
241 established under Title 42 of the United States Code;

242 (54) "Manufactured-home transaction" means a secured transaction:

243 (A) That creates a purchase-money security interest in a manufactured home, other
244 than a manufactured home held as inventory; or

245 (B) In which a manufactured home, other than a manufactured home held as
246 inventory, is the primary collateral;

247 (55) "Mortgage" means a consensual interest in real property, including fixtures,
248 which secures payment or performance of an obligation;

249 (56) "New debtor" means a person that becomes bound as debtor under section 400.9-
250 203(d) by a security agreement previously entered into by another person;

251 (57) "New value" means (i) money, (ii) money's worth in property, services, or new
252 credit, or (iii) release by a transferee of an interest in property previously transferred to the
253 transferee. The term does not include an obligation substituted for another obligation;

254 (58) "Noncash proceeds" means proceeds other than cash proceeds;

255 (59) "Obligor" means a person that, with respect to an obligation secured by a
256 security interest in or an agricultural lien on the collateral, (i) owes payment or other
257 performance of the obligation, (ii) has provided property other than the collateral to secure
258 payment or other performance of the obligation, or (iii) is otherwise accountable in whole or
259 in part for payment or other performance of the obligation. The term does not include issuers
260 or nominated persons under a letter of credit;

261 (60) "Original debtor", except as used in section 400.9-310(c), means a person that, as
262 debtor, entered into a security agreement to which a new debtor has become bound under
263 section 400.9-203(d);

264 (61) "Payment intangible" means a general intangible under which the account
265 debtor's principal obligation is a monetary obligation;

266 (62) "Person related to", with respect to an individual, means:

267 (A) The spouse of the individual;

268 (B) A brother, brother-in-law, sister, or sister-in-law of the individual;

269 (C) An ancestor or lineal descendant of the individual or the individual's spouse; or

270 (D) Any other relative, by blood or marriage, of the individual or the individual's
271 spouse who shares the same home with the individual;

272 (63) "Person related to", with respect to an organization, means:

273 (A) A person directly or indirectly controlling, controlled by, or under common
274 control with the organization;

275 (B) An officer or director of, or a person performing similar functions with respect to,
276 the organization;

277 (C) An officer or director of, or a person performing similar functions with respect to,
278 a person described in subparagraph (A);

279 (D) The spouse of an individual described in subparagraph (A), (B), or (C); or

280 (E) An individual who is related by blood or marriage to an individual described in
281 subparagraph (A), (B), (C), or (D) and shares the same home with the individual;

282 (64) "Proceeds", except as used in section 400.9-609(b), means the following
283 property:

284 (A) Whatever is acquired upon the sale, lease, license, exchange, or other disposition
285 of collateral;

286 (B) Whatever is collected on, or distributed on account of, collateral;

287 (C) Rights arising out of collateral;

288 (D) To the extent of the value of collateral, claims arising out of the loss,
289 nonconformity, or interference with the use of, defects or infringement of rights in, or damage
290 to, the collateral; or

291 (E) To the extent of the value of collateral and to the extent payable to the debtor or
292 the secured party, insurance payable by reason of the loss or nonconformity of, defects or
293 infringement of rights in, or damage to, the collateral;

294 (65) "Promissory note" means an instrument that evidences a promise to pay a
295 monetary obligation, does not evidence an order to pay, and does not contain an
296 acknowledgment by a bank that the bank has received for deposit a sum of money or funds;

297 (66) "Proposal" means a record authenticated by a secured party which includes the
298 terms on which the secured party is willing to accept collateral in full or partial satisfaction of
299 the obligation it secures pursuant to sections 400.9-620, 400.9-621 and 400.9-622;

300 (67) "Public organic record" means a record that is available to the public for
301 inspection and is:

302 (A) A record consisting of the record initially filed with or issued by a state or the
303 United States to form or organize an organization and any record filed with or issued by the
304 state or the United States which amends or restates the initial record;

305 (B) An organic record of a business trust consisting of the record initially filed with a
306 state and any record filed with the state which amends or restates the initial record, if a statute
307 of the state governing business trusts requires that the record be filed with the state; or

308 (C) A record consisting of legislation enacted by the legislature of a state or the
309 Congress of the United States which forms or organizes an organization, any record amending
310 the legislation, and any record filed with or issued by the state or the United States which
311 amends or restates the name of the organization;

312 (68) "Pursuant to commitment", with respect to an advance made or other value given
313 by a secured party, means pursuant to the secured party's obligation, whether or not a
314 subsequent event of default or other event not within the secured party's control has relieved
315 or may relieve the secured party from its obligation;

316 (69) "Record", except as used in "for record", "of record", "record or legal title", and
317 "record owner", means information that is inscribed on a tangible medium or which is stored
318 in an electronic or other medium and is retrievable in perceivable form;

319 (70) "Registered organization" means an organization formed or organized solely
320 under the law of a single state or the United States by the filing of a public organic record
321 with, the issuance of a public organic record by, or the enactment of legislation by the state or
322 the United States. The term includes a business trust that is formed or organized under the
323 law of a single state if a statute of the state governing business trusts requires that the business
324 trust's organic record be filed with the state;

325 (71) "Secondary obligor" means an obligor to the extent that:

326 (A) The obligor's obligation is secondary; or

327 (B) The obligor has a right of recourse with respect to an obligation secured by
328 collateral against the debtor, another obligor, or property of either;

329 (72) "Secured party" means:

330 (A) A person in whose favor a security interest is created or provided for under a
331 security agreement, whether or not any obligation to be secured is outstanding;

332 (B) A person that holds an agricultural lien;

333 (C) A consignor;

334 (D) A person to which accounts, chattel paper, payment intangibles, or promissory
335 notes have been sold;

336 (E) A trustee, indenture trustee, agent, collateral agent, or other representative in
337 whose favor a security interest or agricultural lien is created or provided for; or

338 (F) A person that holds a security interest arising under sections 400.2-401, 400.2-
339 505, 400.2-711(3), 400.2A-508(5), 400.4-210 or 400.5-118;

340 (73) "Security agreement" means an agreement that creates or provides for a security
341 interest;

342 (74) "Send", in connection with a record or notification, means:

343 (A) To deposit in the mail, deliver for transmission, or transmit by any other usual
344 means of communication, with postage or cost of transmission provided for, addressed to any
345 address reasonable under the circumstances; or

346 (B) To cause the record or notification to be received within the time that it would
347 have been received if properly sent under subparagraph (A);

348 (75) "Software" means a computer program and any supporting information provided
 349 in connection with a transaction relating to the program. The term does not include a
 350 computer program that is included in the definition of goods;

351 (76) "State" means a state of the United States, the District of Columbia, Puerto Rico,
 352 the United States Virgin Islands, or any territory or insular possession subject to the
 353 jurisdiction of the United States;

354 (77) "Supporting obligation" means a letter-of-credit right or secondary obligation
 355 that supports the payment or performance of an account, chattel paper, a document, a general
 356 intangible, an instrument, or investment property;

357 (78) "Tangible chattel paper" means chattel paper evidenced by a record or records
 358 consisting of information that is inscribed on a tangible medium;

359 (79) "Termination statement" means an amendment of a financing statement which:

360 (A) Identifies, by its file number, the initial financing statement to which it relates;
 361 and

362 (B) Indicates either that it is a termination statement or that the identified financing
 363 statement is no longer effective;

364 (80) "Transmitting utility" means a person primarily engaged in the business of:

365 (A) Operating a railroad, subway, street railway, or trolley bus;

366 (B) Transmitting communications electrically, electromagnetically, or by light;

367 (C) Transmitting goods by pipeline or sewer; or

368 (D) Transmitting or producing and transmitting electricity, steam, gas, or water.

369 (b) "Control" as provided in section 400.8-106 and the following definitions in other
 370 articles apply to this article:

371	"Applicant"	Section 400.5-102.
372	"Beneficiary"	Section 400.5-102.
373	"Broker"	Section 400.8-102.
374	"Certificated security"	Section 400.8-102.
375	"Check"	Section 400.3-104.
376	"Clearing corporation"	Section 400.8-102.
377	"Contract for sale"	Section 400.2-106.
378	"Customer"	Section 400.4-104.
379	"Entitlement holder"	Section 400.8-102.
380	"Financial asset"	Section 400.8-102.
381	"Holder in due course"	Section 400.3-302.
382	"Issuer" (with respect to a letter of credit or letter-of-credit	Section 400.5-102.
383	right)	

384	"Issuer" (with respect to a security)	Section 400.8-201.
385	"Lease"	Section 400.2A-103.
386	"Lease agreement"	Section 400.2A-103.
387	"Lease contract"	Section 400.2A-103.
388	"Leasehold interest"	Section 400.2A-103.
389	"Lessee"	Section 400.2A-103.
390	"Lessee in ordinary course of business"	Section 400.2A-103.
391	"Lessor"	Section 400.2A-103.
392	"Lessor's residual interest"	Section 400.2A-103.
393	"Letter of credit"	Section 400.5-102.
394	"Merchant"	Section 400.2-104.
395	"Negotiable instrument"	Section 400.3-104.
396	"Nominated person"	Section 400.5-102.
397	"Note"	Section 400.3-104.
398	"Proceeds of a letter of credit"	Section 400.5-114.
399	"Prove"	Section 400.3-103.
400	"Sale"	Section 400.2-106.
401	"Securities account"	Section 400.8-501.
402	"Securities intermediary"	Section 400.8-102.
403	"Security"	Section 400.8-102.
404	"Security certificate"	Section 400.8-102.
405	"Security entitlement"	Section 400.8-102.
406	"Uncertificated security"	Section 400.8-102.

407 (c) This section contains general definitions and principles of construction and
408 interpretation applicable throughout sections 400.9-103 to 400.9-809.

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