

UNIFORM COMMERCIAL CODE (EXCERPT)
Act 174 of 1962

***** 440.9408.amended THIS AMENDED SECTION IS EFFECTIVE JULY 1, 2013 *****

440.9408.amended Restrictions on assignment of promissory notes, health-care-insurance receivables, and certain general intangibles ineffective.

Sec. 9408. (1) Except as otherwise provided in subsection (2) or (4), a term in a promissory note or in an agreement between an account debtor and a debtor that relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health-care-insurance receivable, or general intangible, is ineffective to the extent that the term does 1 or more of the following:

(a) Would impair the creation, attachment, or perfection of a security interest.

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

(2) Subsection (1) applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note, other than a sale pursuant to a disposition under section 9610 or an acceptance of collateral under section 9620.

(3) Except as otherwise provided in subsection (4), a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health-care-insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation does 1 or more of the following:

(a) Would impair the creation, attachment, or perfection of a security interest.

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

(4) To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor that relates to a health-care-insurance receivable or general intangible or a rule of law, statute, or regulation described in subsection (3) would be effective under law other than this article but is ineffective under subsection (1) or (3), the creation, attachment, or perfection of a security interest in the promissory note, health-care-insurance receivable, or general intangible is not or does not do all of the following:

(a) Is not enforceable against the person obligated on the promissory note or the account debtor.

(b) Does not impose a duty or obligation on the person obligated on the promissory note or the account debtor.

(c) Does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party.

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

(e) Does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor.

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

(5) Subsections (1) and (3) do not apply to either of the following:

(a) A claim or right to receive an amount that would be excluded from gross income under section 104(a)(1) or (2) of the internal revenue code, 26 USC 104.

(b) A claim or right to receive benefits from a special needs trust. For purposes of this subdivision, a "special needs trust" is a trust described in section 1917(d)(4)(A), (B), or (C) of title XIX of the social security act, 42 USC 1396p.

History: Add. 1963, Act 223, Eff. Sept. 6, 1963;—Am. 2000, Act 348, Eff. July 1, 2001;—Am. 2012, Act 88, Eff. July 1, 2013.