

SENATE BILL NO. 1256

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR NICOLA.

3830S.011

KRISTINA MARTIN, Secretary

AN ACT

To repeal sections 400.8-110, 400.8-503, 400.8-511, and 400.9-305, RSMo, and to enact in lieu thereof four new sections relating to the uniform commercial code.

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

Section A. Sections 400.8-110, 400.8-503, 400.8-511, and
2 400.9-305, RSMo, are repealed and four new sections enacted in
3 lieu thereof, to be known as sections 400.8-110, 400.8-503,
4 400.8-511, and 400.9-305, to read as follows:

400.8-110. (a) The local law of the issuer's
2 jurisdiction, as specified in subsection (d), governs:

3 (1) The validity of a security;

4 (2) The rights and duties of the issuer with respect
5 to registration of transfer;

6 (3) The effectiveness of registration of transfer by
7 the issuer;

8 (4) Whether the issuer owes any duties to an adverse
9 claimant to a security; and

10 (5) Whether an adverse claim can be asserted against a
11 person to whom transfer of a certificated or uncertificated
12 security is registered or a person who obtains control of an
13 uncertificated security.

14 (b) The **[local]** law of **[the securities intermediary's**
15 **jurisdiction, as specified in subsection (e)]** **this state,**
16 governs:

EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

17 (1) Acquisition of a security entitlement from the
18 securities intermediary;

19 (2) The rights and duties of the securities
20 intermediary and entitlement holder arising out of a
21 security entitlement;

22 (3) Whether the securities intermediary owes any
23 duties to an adverse claimant to a security entitlement; and

24 (4) Whether an adverse claim can be asserted against a
25 person who acquires a security entitlement from the
26 securities intermediary or a person who purchases a security
27 entitlement or interest therein from an entitlement holder.

28 (c) The local law of the jurisdiction in which a
29 security certificate is located at the time of delivery
30 governs whether an adverse claim can be asserted against a
31 person to whom the security certificate is delivered.

32 (d) "Issuer's jurisdiction" means the jurisdiction
33 under which the issuer of the security is organized or, if
34 permitted by the law of that jurisdiction, the law of
35 another jurisdiction specified by the issuer. An issuer
36 organized under the law of this state may specify the law of
37 another jurisdiction as the law governing the matters
38 specified in subsection (a) (2) through (5).

39 [(e) The following rules determine a "securities
40 intermediary's jurisdiction" for purposes of this section:

41 (1) If an agreement between the securities
42 intermediary and its entitlement holder governing the
43 securities account expressly provides that a particular
44 jurisdiction is the securities intermediary's jurisdiction
45 for purposes of this part, this article, or chapter 400,
46 that jurisdiction is the securities intermediary's
47 jurisdiction;

48 (2) If paragraph (1) does not apply and an agreement
49 between the securities intermediary and its entitlement
50 holder governing the securities account expressly provides
51 that the agreement is governed by the law of a particular
52 jurisdiction, that jurisdiction is the securities
53 intermediary's jurisdiction.

54 (3) If neither paragraph (1) nor paragraph (2)
55 applies, and an agreement between the securities
56 intermediary and its entitlement holder governing the
57 securities account expressly provides that the securities
58 account is maintained at an office in a particular
59 jurisdiction, that jurisdiction is the securities
60 intermediary's jurisdiction;

61 (4) If none of the preceding paragraphs apply, the
62 securities intermediary's jurisdiction is the jurisdiction
63 in which the office identified in an account statement as
64 the office serving the entitlement holder's account is
65 located.

66 (5) If none of the preceding paragraphs apply, the
67 securities intermediary's jurisdiction is the jurisdiction
68 in which the chief executive office of the securities
69 intermediary is located.

70 (f) A securities intermediary's jurisdiction is not
71 determined by the physical location of certificates
72 representing financial assets, or by the jurisdiction in
73 which is organized the issuer of the financial asset with
74 respect to which an entitlement holder has a security
75 entitlement, or by the location of facilities for data
76 processing or other record keeping concerning the account.]

400.8-503. (a) To the extent necessary for a
2 securities intermediary to satisfy all security entitlements
3 with respect to a particular financial asset, all interests

4 in that financial asset held by the securities intermediary
5 are held by the securities intermediary for the entitlement
6 holders, are not property of the securities intermediary,
7 and are not subject to claims of creditors of the securities
8 intermediary[, except as otherwise provided in section 400.8-
9 511].

10 (b) An entitlement holder's property interest with
11 respect to a particular financial asset under subsection (a)
12 is a pro rata property interest in all interests in that
13 financial asset held by the securities intermediary, without
14 regard to the time the entitlement holder acquired the
15 security entitlement or the time the securities intermediary
16 acquired the interest in that financial asset.

17 (c) An entitlement holder's property interest with
18 respect to a particular financial asset under subsection (a)
19 may be enforced against the securities intermediary only by
20 exercise of the entitlement holder's rights under sections
21 400.8-505 through 400.8-508.

22 (d) An entitlement holder's property interest with
23 respect to a particular financial asset under subsection (a)
24 may be enforced against a purchaser of the financial asset
25 or interest therein only if:

26 (1) Insolvency proceedings have been initiated by or
27 against the securities intermediary;

28 (2) The securities intermediary does not have
29 sufficient interests in the financial asset to satisfy the
30 security entitlements of all of its entitlement holders to
31 that financial asset;

32 (3) The securities intermediary violated its
33 obligations under section 400.8-504 by transferring the
34 financial asset or interest therein to the purchaser; and

35 (4) The purchaser is not protected under subsection
36 (e). The trustee or other liquidator, acting on behalf of
37 all entitlement holders having security entitlements with
38 respect to a particular financial asset, may recover the
39 financial asset, or interest therein, from the purchaser.
40 If the trustee or other liquidator elects not to pursue that
41 right, an entitlement holder whose security entitlement
42 remains unsatisfied has the right to recover its interest in
43 the financial asset from the purchaser.

44 (e) An action based on the entitlement holder's
45 property interest with respect to a particular financial
46 asset under subsection (a), whether framed in conversion,
47 replevin, constructive trust, equitable lien or other
48 theory, may not be asserted against any purchaser of a
49 financial asset or interest therein who gives value, obtains
50 control, and does not act in collusion with the securities
51 intermediary in violating the securities intermediary's
52 obligations under section 400.8-504.

 400.8-511. [(a) Except as otherwise provided in
2 subsections (b) and (c),] If a securities intermediary does
3 not have sufficient interests in a particular financial
4 asset to satisfy both its obligations to entitlement holders
5 who have security entitlements to that financial asset and
6 its obligation to a creditor of the securities intermediary
7 who has a security interest in that financial asset, the
8 claims of entitlement holders, other than the creditor, have
9 priority over the claim of the creditor.

10 [(b) A claim of a creditor of a securities
11 intermediary who has a security interest in a financial
12 asset held by a securities intermediary has priority over
13 claims of the securities intermediary's entitlement holders
14 who have security entitlements with respect to that

15 financial asset if the creditor has control over the
16 financial asset.

17 (c) If a clearing corporation does not have sufficient
18 financial assets to satisfy both its obligations to
19 entitlement holders who have security entitlements with
20 respect to a financial asset and its obligation to a
21 creditor of the clearing corporation who has a security
22 interest in that financial asset, the claim of the creditor
23 has priority over the claims of entitlement holders.]

400.9-305. (a) Except as otherwise provided in
2 subsection (c), the following rules apply:

3 (1) While a security certificate is located in a
4 jurisdiction, the local law of that jurisdiction governs
5 perfection, the effect of perfection or nonperfection, and
6 the priority of a security interest in the certificated
7 security represented thereby;

8 (2) The local law of the issuer's jurisdiction as
9 specified in section 400.8-110(d) governs perfection, the
10 effect of perfection or nonperfection, and the priority of a
11 security interest in an uncertificated security;

12 (3) The [local] law of [the securities intermediary's
13 jurisdiction as specified in section 400.8-110(e)] **this**
14 **state** governs perfection, the effect of perfection or
15 nonperfection, and the priority of a security interest in a
16 security entitlement or securities account;

17 (4) The local law of the commodity intermediary's
18 jurisdiction governs perfection, the effect of perfection or
19 nonperfection, and the priority of a security interest in a
20 commodity contract or commodity account.

21 (b) The following rules determine a commodity
22 intermediary's jurisdiction for purposes of this part:

23 (1) If an agreement between the commodity intermediary
24 and commodity customer governing the commodity account
25 expressly provides that a particular jurisdiction is the
26 commodity intermediary's jurisdiction for purposes of this
27 part, this article, or this chapter, that jurisdiction is
28 the commodity intermediary's jurisdiction;

29 (2) If paragraph (1) does not apply and an agreement
30 between the commodity intermediary and commodity customer
31 governing the commodity account expressly provides that the
32 agreement is governed by the law of a particular
33 jurisdiction, that jurisdiction is the commodity
34 intermediary's jurisdiction;

35 (3) If neither paragraph (1) nor paragraph (2) applies
36 and an agreement between the commodity intermediary and
37 commodity customer governing the commodity account expressly
38 provides that the commodity account is maintained at an
39 office in a particular jurisdiction, that jurisdiction is
40 the commodity intermediary's jurisdiction;

41 (4) If none of the preceding paragraphs applies, the
42 commodity intermediary's jurisdiction is the jurisdiction in
43 which the office identified in an account statement as the
44 office serving the commodity customer's account is located;

45 (5) If none of the preceding paragraphs applies, the
46 commodity intermediary's jurisdiction is the jurisdiction in
47 which the chief executive office of the commodity
48 intermediary is located.

49 (c) The local law of the jurisdiction in which the
50 debtor is located governs:

51 (1) Perfection of a security interest in investment
52 property by filing;

53 (2) Automatic perfection of a security interest in
54 investment property created by a broker or securities
55 intermediary; and

56 (3) Automatic perfection of a security interest in a
57 commodity contract or commodity account created by a
58 commodity intermediary.

✓