

- 1 (5) A security interest arising under G.S. 25-2-401, 25-2-505, 25-2-711(3),
2 or 25-2A-508(5), as provided in G.S. 25-9-110; and
- 3 (6) A security interest arising under G.S. 25-4-208 or G.S. 25-5-118.
- 4 (b) Security interest in secured obligation. – The application of this Article to a
5 security interest in a secured obligation is not affected by the fact that the obligation is
6 itself secured by a transaction or interest to which this Article does not apply.
- 7 (c) Extent to which Article does not apply. – This Article does not apply to the
8 extent that:
- 9 (1) A statute, regulation, or treaty of the United States preempts this
10 Article;
- 11 ~~(2) Another statute of this State expressly governs the creation, perfection,~~
12 ~~priority, or enforcement of a security interest created by this State or a~~
13 ~~governmental unit of this State;~~
- 14 ~~(3)~~(2) A statute of another state, a foreign country, or a governmental unit of
15 another state or a foreign country, other than a statute generally
16 applicable to security interests, expressly governs creation, perfection,
17 priority, or enforcement of a security interest created by the state,
18 country, or governmental unit; or
- 19 ~~(4)~~(3) The rights of a transferee beneficiary or nominated person under a
20 letter of credit are independent and superior under G.S. 25-5-114.
- 21 (d) Inapplicability of Article. – This Article does not apply to:
- 22 (1) A landlord's lien, other than an agricultural lien;
- 23 (2) A lien, other than an agricultural lien, given by statute or other rule of
24 law for services or materials, but G.S. 25-9-333 applies with respect to
25 priority of the lien;
- 26 (3) An assignment of a claim for wages, salary, or other compensation of
27 an employee;
- 28 (4) A sale of accounts, chattel paper, payment intangibles, or promissory
29 notes as part of a sale of the business out of which they arose;
- 30 (5) An assignment of accounts, chattel paper, payment intangibles, or
31 promissory notes which is for the purpose of collection only;
- 32 (6) An assignment of a right to payment under a contract to an assignee
33 that is also obligated to perform under the contract;
- 34 (7) An assignment of a single account, payment intangible, or promissory
35 note to an assignee in full or partial satisfaction of a preexisting
36 indebtedness;
- 37 (8) A transfer of an interest in or an assignment of a claim under a policy
38 of insurance, other than an assignment by or to a health-care provider
39 of a health-care-insurance receivable and any subsequent assignment
40 of the right to payment, but G.S. 25-9-315 and G.S. 25-9-322 apply
41 with respect to proceeds and priorities in proceeds;
- 42 (9) An assignment of a right represented by a judgment, other than a
43 judgment taken on a right to payment that was collateral;
- 44 (10) A right of recoupment or setoff, but:

- 1 a. G.S. 25-9-340 applies with respect to the effectiveness of rights
2 of recoupment or setoff against deposit accounts; and
3 b. G.S. 25-9-404 applies with respect to defenses or claims of an
4 account debtor;
- 5 (11) The creation or transfer of an interest in or lien on real property,
6 including a lease or rents thereunder, except to the extent that
7 provision is made for:
8 a. Liens on real property in G.S. 25-9-203 and G.S. 25-9-308;
9 b. Fixtures in G.S. 25-9-334;
10 c. Fixture filings in G.S. 25-9-501, 25-9-502, 25-9-512, 25-9-516,
11 and 25-9-519; and
12 d. Security agreements covering personal and real property in G.S.
13 25-9-604;
- 14 (12) An assignment of a claim arising in tort, other than a commercial tort
15 claim, but G.S. 25-9-315 and G.S. 25-9-322 apply with respect to
16 proceeds and priorities in proceeds; ~~or~~
- 17 (13) An assignment of a deposit account in a consumer transaction, but
18 G.S. 25-9-315 and G.S. 25-9-322 apply with respect to proceeds and
19 priorities in ~~proceeds~~.proceeds; or
- 20 (14) The creation, perfection, priority, or enforcement of any lien on,
21 assignment of, pledge of, or security in, any revenues, rights, funds, or
22 other tangible or intangible assets created, made, or granted by this
23 State or a governmental unit in this State, including the assignment of
24 rights as secured party in security interests granted by any party
25 subject to the provisions of this Article to this State or a governmental
26 unit in this State, to secure, directly or indirectly, any bond, note, other
27 evidence of indebtedness, or other payment obligations for borrowed
28 money issued by, or in connection with, installment or lease purchase
29 financings by, this State or a governmental unit in this State. However,
30 notwithstanding this subdivision, this Article does apply to the
31 creation, perfection, priority, and enforcement of security interests
32 created by this State or a governmental unit in this State in equipment
33 or fixtures."

34 **SECTION 3.** G.S. 25-9-310(b)(11) is repealed.

35 **SECTION 4.** G.S. 25-9-702 reads as rewritten:

36 **"§ 25-9-702. Savings clause.**

37 (a) Pre-effective-date transactions or liens. – Except as otherwise provided in this
38 Part, this act applies to a transaction or lien within its scope, even if the transaction or
39 lien was entered into or created before July 1, 2001.

40 (b) Continuing validity. – Except as otherwise provided in subsection (c) of this
41 section and G.S. 25-9-703 through G.S. 25-9-709:

- 42 (1) Transactions and liens that were not governed by former Article 9,
43 were validly entered into or created before July 1, 2001, and would be
44 subject to this act if they had been entered into or created after July 1,

2001, and the rights, duties, and interests flowing from those transactions and liens remain valid after July 1, 2001; and

- (2) The transactions and liens described in subdivision (1) of this subsection may be terminated, completed, consummated, and enforced as required or permitted by this act or by the law that otherwise would apply if this act had not taken effect.

(c) Pre-effective-date proceedings. – This act does not affect an action, case, or proceeding commenced before July 1, 2001.

(d) Special rule for certain governmental transactions. – Notwithstanding any other provision of this act, security interests that were excluded under former Article 9 pursuant to former G.S. 25-9-104(e) or as to which the filing requirements of former Article 9 did not apply pursuant to former G.S. 25-9-302(6), and which are effective prior to July 1, 2001, but for which the applicable requirements for creation, perfection, or enforceability under this act are not satisfied on July 1, 2001, shall nonetheless be treated as valid, enforceable, and perfected security interests under this act for the duration of those security interests."

SECTION 5. G.S. 63A-11(e), 143B-456.1(f), 159C-28, and 159D-23, are repealed.

SECTION 6. The Revisor of Statutes shall cause to be printed along with the portions of this act amending Article 9 of Chapter 25 of the General Statutes, the following explanatory comments:

To follow G.S. 25-9-109:

NORTH CAROLINA OFFICIAL COMMENT

The State, units of local government, and special authorities and agencies thereof are authorized by applicable law to issue bonds and other obligations and evidences of indebtedness secured by pledges of revenues and other identified sources of funds available to the issuer to pay the obligations. The statutes authorizing the issuance of these bonds and other obligations and evidences of indebtedness customarily authorize the issuer to pledge these revenues and other sources of funds and provide for the perfection, priority, and enforceability of the pledge (see, e.g. G.S. 159-91; G.S. 159B-17; G.S. 159I-30(b), G.S. 122A-10, G.S. 131A-13, G.S. 159C-12, and G.S. 159-47). Generally, these statutory provisions provide that a first lien on the pledged revenues or other resources (and the right to receive the same) is created at the time the pledge is made, and that no other action is necessary to perfect the pledge. Therefore, the creation, perfection, priority, and enforcement of a security interest arising from the pledge of those revenues and other sources of funds are excepted from Article 9 in its entirety.

In contrast, in certain transactions the State or unit of local government or special authorities or agencies thereof may enter into transactions in which a security interest in equipment or fixtures is given to secure bonds or other obligations or evidences of indebtedness (see, e.g. G.S. 160A-20). In those instances, generally there

1 are not specific statutory provisions addressing the procedures for the creation,
2 perfection, priority, and enforcement of the security interest created. Article 9 applies to
3 security interests created in equipment and fixtures in those transactions. The provisions
4 of Article 9 shall not be construed to be an independent authorization for the creation of
5 security interests by the State or any governmental unit. To the extent that the original
6 security interest is not created in equipment and fixtures, the exception from application
7 of Article 9 described in the first paragraph hereof would apply.

8 The exception from application of Article 9 applies only to security interests
9 granted by governmental units (as defined in G.S. 25-9-102(45)). In some "conduit"
10 financings (such as under Chapter 159C or Chapter 131A), a nongovernmental unit may
11 grant a security interest in various collateral to secure its obligations to the
12 governmental unit incurred in connection with the financing transaction. The security
13 interest may be assigned by the governmental unit to a corporate trustee or similar entity
14 to secure bonds or other obligations issued by the governmental unit. Under these
15 circumstances, the security interest created by a nongovernmental unit to secure
16 obligations to the governmental unit is subject to the provisions of Article 9, while the
17 assignment of rights by the governmental unit in that security interest to secure the
18 bonds or other obligations of the governmental unit is not subject to the provisions of
19 Article 9 regardless of the type of collateral being assigned. In addition, if a
20 governmental unit grants a security interest in equipment or fixtures to another
21 governmental unit, the assignment of rights as secured party by the governmental unit is
22 not subject to the provisions of Article 9.

23
24 To follow G.S. 25-9-702:

25
26 NORTH CAROLINA OFFICIAL COMMENT

27
28 The intent of the special public finance-related transition rule added by G.S.
29 25-9-702(d) is that security interests created prior to July 1, 2001, and not subject to
30 former Article 9 through the specified provisions thereof will remain exempt from the
31 provisions of new Article 9 after that date. Security interests that are subject to former
32 Article 9 and created in connection with transactions involving governmental units prior
33 to July 1, 2001, will either be (a) of a type not subject to new Article 9, in which case no
34 action need be taken, or (b) of a type that is subject to new Article 9, in which case the
35 provisions of G.S. 25-9-703 through G.S. 25-9-709 are applicable thereto.

36 **SECTION 7.** This act becomes effective July 1, 2001.