

§ 25-9-408. Restrictions on assignment of promissory notes, health-care-insurance receivables, and certain general intangibles ineffective.

(a) Term restricting assignment generally ineffective. – Except as otherwise provided in subsection (b) of this section, a term in a promissory note or in an agreement between an account debtor and a debtor which 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:

- (1) Would impair the creation, attachment, or perfection of a security interest; or
- (2) 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.

(b) Applicability of subsection (a) to sales of certain rights to payment. – Subsection (a) of this section 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 G.S. 25-9-610 or an acceptance of collateral under G.S. 25-9-620.

(c) Legal restrictions on assignment generally ineffective. – 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:

- (1) Would impair the creation, attachment, or perfection of a security interest; or
- (2) 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.

(d) Limitation on ineffectiveness under subsections (a) and (c). – To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or general intangible or a rule of law, statute, or regulation described in subsection (c) of this section would be effective under law other than this Article but is ineffective under subsection (a) or (c) of this section, the creation, attachment, or perfection of a security interest in the promissory note, health-care-insurance receivable, or general intangible:

- (1) Is not enforceable against the person obligated on the promissory note or the account debtor;
- (2) Does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;
- (3) 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;

- (4) 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;
- (5) 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; and
- (6) Does not entitle the secured party to enforce the security interest in the promissory note, health-care-insurance receivable, or general intangible.

(e) Section prevails over inconsistent law. – Except to the extent otherwise provided in subsection (f) of this section, this section prevails over any inconsistent provision of an existing or future statute, rule, or regulation of this State unless the provision is contained in a statute of this State, refers expressly to this section, and states that the provision prevails over this section.

(f) Inapplicability. – This section does not apply to an assignment of an interest in a partnership or limited liability company. Subsection (c) of this section does not apply to an assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, a right the transfer of which is prohibited or restricted by any of the following statutes to the extent that the statute is inconsistent with subsection (c) of this section:

- (1) North Carolina Structured Settlement Act (Article 44B of Chapter 1 of the General Statutes).
- (2) North Carolina Crime Victims Compensation Act (Chapter 15B of the General Statutes).
- (3) North Carolina Consumer Finance Act (Article 15 of Chapter 53 of the General Statutes).
- (4) North Carolina Firefighters' and Rescue Squad Workers' Pension Fund (Article 86 of Chapter 58 of the General Statutes).
- (5) Employment Security Law (Chapter 96 of the General Statutes).
- (6) North Carolina Workers' Compensation Fund Act (Article 1 of Chapter 97 of the General Statutes).
- (7) Programs of Public Assistance (Article 2 of Chapter 108A of the General Statutes).
- (8) North Carolina State Lottery Act (Chapter 18C of the General Statutes). (2000-169, s. 1; 2012-70, s. 9; 2013-157, s. 32; 2013-284, s. 1(c).)